

recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,
Secretary.

[FR Doc. 01-12661 Filed 5-18-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

May 16, 2001.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 11803.

c. *Date filed:* February 1, 2000.

d. *Applicant:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Broken Bow Reregulating Dam Project.

f. *Location:* On the Mountain Fork River near the town of Broken Bow, McCurtain County, Oklahoma utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Stewart Noland, Crist Engineers, Inc., 1405 North Pierce Street, Suite 301, Little Rock, AR 72207, (501) 664-1552.

i. *FERC Contact:* Peter Leitzke at (202) 219-28903; e-mail peter.leitzke@ferc.fed.us.

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

All comment filings must bear the heading "Comments on the Alternative Procedures," and include the project name and number (Broken Bow Reregulating Dam project No. 11803).

k. The proposed project would utilize the existing U.S. Army corps of Engineers' Broken Bow Reregulating Dam and would consist of: (1) A new 50-foot-long, 50-foot-wide, 20-foot-high powerhouse containing one or two generating units having a total installed capacity of 5,000 kilowatts; (2) a short transmission line; and (3) appurtenant facilities.

l. The City of Broken Bow has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. The City of Broken Bow has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. The City of Broken Bow has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. The City of Broken Bow has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on the City of Broken Bow's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. The City of Broken Bow will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

The City of Broken Bow has contacted federal and state resources agencies, NGOs, elected officials, environmental groups, business and economic development organizations, and members of the public regarding the Broken Bow Reregulating Dam Project. The City of Broken Bow intends to file

6-month progress reports during the alternative procedures process that leads to the filing of a license application.

David P. Boergers,
Secretary.

[FR Doc. 01-12682 Filed 5-18-01; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SW-FRL-6982-4]

Renewal of Case-by-Case Extension of the Land Disposal Restrictions (LDR) Effective Date for Hazardous Wastes Generated by FMC/Astaris Idaho LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision.

SUMMARY: Today, EPA is approving the request submitted by FMC/Astaris Idaho LLC (referred to in this Notice as FMC/Astaris) for a one-year Case-by-Case (CBC) extension renewal of the May 26, 2001 effective date of the RCRA land disposal restrictions (LDRs) applicable to hazardous wastes generated at their Pocatello, Idaho facility. This action responds to the request submitted by FMC/Astaris to renew their existing CBC extension for one additional year. FMC/Astaris requested a renewal of the CBC extension due to the continued lack of available treatment capacity for five waste streams, and the need for additional time to design, construct, and begin operation of an on-site treatment plant to treat the wastes. EPA concludes that FMC/Astaris has adequately demonstrated that the request should be granted. By RCRA statute, this is the last CBC extension that can be granted for these wastes. As a result of today's action, FMC/Astaris can continue to manage the five waste streams in their on-site surface impoundments until May 26, 2002 without these wastes being subject to the LDRs.

DATES: This case-by-case extension renewal becomes effective on May 26, 2001.

ADDRESSES: The official record for this action is identified as Docket Number F-2000-FM2F-FFFFF. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make

an appointment by calling (703) 603-9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

For more detailed information on specific aspects of this CBC extension, contact William Kline, Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308-8440, (e-mail address: kline.bill@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: The index of supporting materials evaluated by EPA in reaching our determination to approve the requested CBC extension renewal is available on the Internet. You will find this index at <<http://www.epa.gov/epaoswer/hazwaste/ldr/fmc.htm>>.

The information in this section is organized as follows:

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- II. What Are EPA's Responses to Comments Submitted on the Notice of Proposed Approval of Renewal of their existing CBC Extension?
 - A. Given the Recent Reductions in the Pocatello Facility Production and Waste Generated, Can FMC/Astaris Now Find Off-Site Treatment Capacity?
 - B. Who Will Permit the On-Site Disposal of LDR Treatment Plant Residue?
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IV. What Must FMC/Astaris Do Under this CBC Extension Renewal?

V. Administrative Requirements

I. Background of This Notice of Final Decision

A. What Is the Congressional Mandate Behind the Land Disposal Restrictions (LDR) and Extensions of the LDR Effective Date?

The Resource Conservation and Recovery Act (RCRA) establishes a program for controlling hazardous waste from the time it is generated, through its treatment and storage, until its ultimate disposal. RCRA requires EPA to develop regulations prohibiting the land disposal of certain hazardous wastes by specified dates in order to minimize threats to human health and the environment posed by land disposal of these wastes. These hazardous wastes cannot be land disposed without first meeting treatment standards established by EPA that substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized (see RCRA section 3004 (m)).

When writing RCRA, Congress recognized that adequate treatment, recovery, or disposal capacity which is protective of human health and the environment may not always be available by the applicable statutory effective dates. Therefore, EPA is authorized to grant a national capacity variance from the effective date which would otherwise apply to specific hazardous wastes, based on the earliest dates that such capacity will be available, but not to exceed two years. EPA also is authorized to grant an additional extension of the applicable LDR deadline, on a case-by-case basis, for up to one year. Such an extension is renewable once for up to an additional year.

The requirements for obtaining a CBC extension of a LDR effective date are found in 40 CFR 268.5(a). The requirements for obtaining the renewal of a CBC extension of a Land Disposal Restriction (LDR) effective date are found in 40 CFR 268.59(e).

B. What Actions Have Led to This CBC Extension Renewal?

On January 25, 1996 (61 *FR* 2338), EPA published a proposed rule (the Phase IV LDR rule) that addressed land disposal restrictions applicable to characteristic mineral processing

wastes. FMC/Astaris Corporation's elemental phosphorus plant located in Pocatello, Idaho (EPA Identification Number: IDDO70929518) generated wastes affected by that proposal. Realizing the lack of adequate treatment capacity for five affected wastes, FMC/Astaris submitted a petition to EPA requesting a two-year national capacity variance. FMC/Astaris later submitted supplemental comments informing EPA that they could not design a treatment unit for their wastes until the applicable treatment standards and the wastes subject to treatment were defined by EPA.

In February 1997, attorneys for the United States met with the Tribal governing body representing the Shoshone-Bannock Tribes (on whose lands the facility is located), the Fort Hall Business Council. The Fort Hall Business Council was informed during this meeting that the United States intended to file an action against FMC/Astaris for past mishandling of hazardous wastes. This filing and subsequent negotiations led to the establishment of a proposed Consent Decree in October 1998, which is described below. This enforcement action's relevance to this case-by-case extension request is also explained below.

On May 12, 1997 (62 *FR* 26041), EPA proposed to grant a two-year national capacity variance for three of the facility's waste streams, Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown. FMC/Astaris submitted comments on the proposal that the Anderson Filter Media Rinsate had been eliminated by applying pollution prevention techniques. However, FMC/Astaris identified three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phosphy Water) generated in the same elemental phosphorus production process for which treatment capacity was not available. FMC/Astaris requested that these three additional wastes be included in the proposed two-year national capacity variance.

On May 26, 1998 (63 *FR* 28556), EPA finalized the Final LDR Phase IV rule, which granted a two-year national capacity variance for newly identified characteristic wastes from elemental phosphorus processing. This national capacity variance covered the five waste streams generated at the Pocatello facility, and extended the LDR effective date for these wastes to May 26, 2000.

In September, 1998, the United States agreed to delay the filing of the Consent Decree to explore options for penalty sharing with the Tribes. The Tribes subsequently were offered the

opportunity to become a formal party to the Consent Decree, but on October 9, 1998, the Fort Hall Business Council declined to sign the Consent Decree and passed a resolution opposing it.

On October 16, 1998, the United States filed the proposed Consent Decree in U.S. District Court for the District of Idaho, and opened a public comment period on the proposed Consent Decree.

On March 29, 1999, the United States filed the Proposed Consent Decree (*United States v. FMC*, Civ. No. 98-0406-E-BLW), requiring that FMC/Astaris design and construct a treatment system, referred to as the LDR Treatment System, which would treat the facility's production wastes to the LDR treatment standards. Under this RCRA Consent Decree, FMC/Astaris must begin operating the LDR Treatment System by May, 2002. In its "Reply Memorandum in Further Support of Motion of the United States for Entry of Proposed RCRA Consent Decree," (dated May 27, 1999), the United States noted that FMC/Astaris would need to obtain Case-by-Case extensions of the LDR effective date in order to allow the continued discharge of wastes to the facility's on-site surface impoundments beyond the May 26, 2000 expiration date of the national capacity variance.

On July 12, 1999, FMC/Astaris Corporation submitted to EPA a request, along with documentation to support the required seven demonstrations in 40 CFR 268.5, for a one-year CBC extension of the LDR effective date for the five waste streams.

On July 13, 1999, the District Court granted the United States' motion to enter as final the Consent Decree.

The Shoshone-Bannock Tribes filed Notice of Appeal on August 11, 1999 and on November 29, 1999, filed an appeal of the final RCRA Consent Decree (Appeal No. 99-35821) in the United States Court of Appeals for the Ninth Circuit. This appeal was ultimately denied.

On March 8, 2000 (65 FR 12233), EPA proposed to approve FMC/Astaris' request for a one-year CBC extension of the LDR effective date.

On April 17, 2000, FMC/Astaris Idaho LLC, a joint venture combining the phosphorus chemical businesses of FMC Corporation and Solutia, Inc., became the owner and operator of the Pocatello facility.

On May 2, 2000, Elizabeth Cotsworth (Director of the EPA Office of Solid Waste) met with the Fort Hall Business Council in Pocatello, Idaho to consult with the Tribes regarding FMC/Astaris' request for a CBC extension.

On May 31, 2000 (65 FR 34694), EPA approved the CBC extension, extending the LDR effective date to May 26, 2001.

On November 1, 2000, FMC/Astaris submitted a request to EPA for a one-year renewal of their CBC extension. On March 16, 2001 (66 FR 15243), EPA proposed to approve the FMC/Astaris request.

On April 24, 2001 (66 FR 20656), EPA published a "Notice of Data Availability" to provide public notice that FMC/Astaris had provided additional information relevant to their request for renewal of their CBC extension.

C. What Other Actions Are Underway at the Pocatello facility?

The Pocatello facility is located on Shoshone-Bannock Tribes' lands (referred to as the Fort Hall Indian Reservation). Elemental phosphorus has been produced at this location for over 50 years. The Tribes are concerned about the cleanup of past environmental contamination resulting from these operations, and the risks posed by the continued discharge of untreated hazardous wastes into on-site surface impoundments. The RCRA Consent Decree addresses FMC/Astaris' past mishandling of hazardous wastes, and directs FMC/Astaris to take measures to avoid future environmental contamination. The Consent Decree mandates site-specific treatment requirements to deactivate ignitable and reactive waste streams, and requires FMC/Astaris to design, construct, and commence operation of a Land Disposal Restrictions Treatment System (LDR Treatment System) for these waste streams by May 2002. It also requires closure of surface impoundments (ponds) used to manage the wastes, establishes a Pond Management Plan, and mandates plant upgrades, including the installation of secondary containment for sumps, tanks, and piping at the facility.

As noted above, the Shoshone-Bannock Tribes raised an unsuccessful legal challenge to the Consent Decree, citing their opposition to the continued generation and on-site disposal of these hazardous wastes.

The Consent Decree is one of several actions underway to address the environmental impact of operations at the facility. Groundwater and soil contamination from old ponds is being addressed under a Superfund cleanup. Particulate air emissions will be addressed through a Clean Air Act Federal Implementation Plan. This Plan established federally enforceable limits and control requirements for particulate emissions.

D. What Decision Has Been Reached by the Tribes and FMC/Astaris Regarding The Use of a High Temperature Dust Filtration System at the Pocatello Facility?

In the Agency's March 16, 2001 **Federal Register** notice of proposed decision, we discussed the possibility that FMC/Astaris might switch to a High Temperature Dust Filtration (HTDF) system that would replace the LDR Treatment Plant now under construction (see 66 FR 15248). FMC/Astaris states that this technology, if employed, would eliminate two of the five waste streams and also cause a substantial change in the composition of the other three waste streams—such that the LDR Treatment Plant would no longer be necessary to treat these wastes. On April 24, 2001 (66 FR 20656), EPA published a "Notice of Data Availability" to provide public notice that FMC/Astaris had sent us additional information on the HTDF technology.

At this time, the Tribes and FMC/Astaris are discussing the implications of substituting the HTDF system for the LDR Treatment Plant. Meanwhile, construction of the LDR Treatment Plant is proceeding on schedule.

Today, we are approving this final CBC extension renewal based on the commitment made by FMC/Astaris that they will complete construction of the LDR Treatment Plant and begin its operation by May 2002. Should circumstances change, EPA will consider whether the extension remains warranted. See sections 40 CFR 268.5 (f) and (g), which say that the case-by-case applicant must notify EPA of changed circumstances, and that EPA is required to consider whether the approved case-by-case extension remains warranted in light of these changed circumstances. Public comments submitted on the April 24, 2001 "Notice of Data Availability" regarding the HTDF system do not apply to our approval today of the CBC extension renewal, which is keyed to the construction of the LDR Treatment Plant. EPA will address comments on the April 24, 2001 "Notice" if the Tribes and FMC/Astaris come to agreement on switching to the HTDF system.

E. Overview of the FMC/Astaris Request for Renewing Their CBC Extension

The Pocatello facility manufactures elemental phosphorus that is shipped to other facilities to produce phosphates and other phosphorus-based products for use in products such as processed foods, beverages, detergents, cleaners, agricultural chemicals, and water treatment chemicals. Elemental

phosphorus is produced by feeding a combination of phosphate ore, coke, and silica rock into electric arc furnaces.

As noted earlier, FMC/Astaris' application involves five waste streams which are generated in the production of elemental phosphorus and are part of the CBC extension renewal request: (1) Non-Hazardous Slurry Assurance Project (NOSAP) Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossey Water. These waste streams exhibit two characteristics of hazardous waste: Reactivity due to the presence of cyanide and phosphine, ignitability, and toxicity due to the presence of metals. The wastes are generated in large quantities and pose unique handling, treatment, and disposal considerations, given the presence of elemental phosphorus and cyanide. Each of these waste streams also contains varying levels of Naturally Occurring Radioactive Material, which most off-site commercial treatment, storage and disposal facilities are not permitted to manage.

FMC/Astaris requested a two-year national capacity variance from the Phase IV LDR requirements, and a subsequent one-year Case-by-Case (CBC) extension of the LDR effective date for these five waste streams. FMC/Astaris stated their need for the extension due to the lack of available treatment capacity for these five waste streams, the need for additional time to initially identify an appropriate treatment technology, and, when such technology subsequently was identified, the time to design, construct, and begin operation of an on-site LDR Treatment Plant. The initial CBC extension was approved by EPA.

On November 1, 2000, FMC/Astaris submitted a request to the EPA to renew for one year their existing CBC extension, set to expire on May 26, 2001. FMC/Astaris provided documentation that there still is no available off-site commercial treatment capacity for these five waste streams.

Since approval of the initial CBC extension, progress has been made toward completing the design, procuring equipment, and commencing construction of the planned LDR Treatment Plant. As required under their existing CBC extension, FMC/Astaris has submitted to EPA monthly progress reports documenting this. A detailed discussion of these showings are in the March 16, 2001 **Federal Register** document.

However, as was anticipated at the time of approval of the initial CBC extension, additional time is needed to

complete the design work, finish construction, and begin operation of the LDR Treatment Plant. May 2002 remains the date for bringing the LDR Treatment Plant on-line.

The LDR Treatment Plant will treat the five waste streams using a modified Zimpro treatment process. The Zimpro process will reduce the levels of elemental phosphorus and cyanide in the wastes so that the wastes will not exhibit the characteristic of reactivity for phosphine and hydrogen cyanide gas, or the characteristic of ignitability. Underlying hazardous constituents contained in the wastes will meet all of the applicable treatment standards found in 40 CFR 268.48 for these constituents.

Until the LDR Treatment Plant is finished, the five waste streams will continue to be managed in two on-site surface impoundments (Ponds 17 and 18). These surface impoundments may be used until May 26, 2002. The surface impoundments are constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2), including liners and groundwater monitoring. They must be operated in compliance with the Pond Management Plan that is part of the Consent Decree. The LDR Treatment Plant will eliminate the need for these surface impoundments.

F. Summary of EPA's Evaluations of the FMC/Astaris Demonstrations Under 40 CFR 268.5(a)

The following summarizes our evaluation of the adequacy of the demonstrations made by FMC/Astaris for each of the seven criteria required under 40 CFR 268.5(a) to obtain a CBC extension renewal.

1. Section 268.5 (a)(1)—the Applicant (FMC/Astaris) Has Made a Good-Faith Effort To Locate and Contract With Treatment, Recovery, or Disposal Facilities Nationwide To Manage Their Waste in Accordance With the LDR Effective Date of the Applicable Restriction (May 26, 2001)

As discussed in the March 16 (66 *FR* 15243) **Federal Register** notice of proposed decision (and the referenced March 8, 2000 (65 *FR* 12233) and May 31, 2000 (65 *FR* 34694) **Federal Register** notices to address the initial CBC extension), several surveys of treatment, storage, and disposal facilities (TSDFs) throughout the nation were conducted by FMC/Astaris to locate commercial treatment or disposal capacity. Each of these surveys showed that no TSDFs were able or willing to provide treatment or disposal capacity for these waste streams.

The presence of elemental phosphorus, the potential for generation of phosphine gas, lack of a permit to handle naturally occurring radioactive materials (NORM), and the volume of wastes to be managed were the primary reasons noted by the TSDFs in declining to manage these waste streams. EPA itself is not aware of any available capacity for these waste streams. No commercial entity providing waste treatment has disputed these conclusions, which have been made available for public comment in several **Federal Register** notices spanning a five-year time period.

On March 30, 2001, FMC/Astaris notified us that as a consequence of the current power shortage in the western United States, the facility reached a two-year agreement with Idaho Power Company to sell back electricity. As a result, the Pocatello facility will operate at a reduced level for an indefinite time. This reduction in production will result in a 30% reduction in the volume of the waste streams that are generated at the facility.

Except for one TSDF (Environmental Enterprises) contacted in the FMC/Astaris survey, the levels of phosphorus and NORM were the main reasons provided by TSDFs for not being able to manage the Pocatello waste streams. Several other TSDFs also said that they do not have the railcar capability to handle these waste streams. Based on our review of the survey information provided by FMC/Astaris and our follow-up discussion with Environmental Enterprises, the reduction in waste quantity at the Pocatello facility does not alter the conclusion that there still is no available capacity for these waste streams. At this point, even if a TSDF expressed an interest in taking these wastes, the time needed to design and construct the infrastructure for both the railcar loading and unloading facilities at Pocatello and the receiving TSDF would make this option unreasonable—given that the LDR Treatment Plant will be operational by May 2002.

FMC/Astaris has made a reasonable effort to locate adequate, alternative treatment capacity for the off-site management of the waste streams, and therefore has fulfilled the requirements of this demonstration.

2. Section 268.5 (a)(2)—The Applicant (FMC/Astaris) Has Entered Into a Binding Contractual Commitment To Construct or Otherwise Provide Alternative Treatment, Recovery, or Disposal Capacity That Meets The Treatment Standards Specified in 40 CFR Part 268, Subpart D or, Where Treatment Standards Have Not Been Specified, Such Treatment, Recovery, or Disposal Capacity Is Protective of Human Health and the Environment.

As discussed in the March 16 (66 FR 15243) **Federal Register** notice of proposed decision (and the referenced March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices to address the initial CBC extension), FMC/Astaris has a contract with Raytheon Engineers and Constructors to design and construct the LDR Treatment Plant. FMC/Astaris has provided EPA with documentation of their binding contractual commitment, such as a June 2000 Authorization for Expenditures for \$122.5 million. In addition, copies of many purchase orders for equipment, supplies, and services have been provided to EPA. And, since approval of the initial CBC extension in May 2000, FMC/Astaris has provided monthly reports documenting progress made in the design and construction of the LDR Treatment Plant. These progress reports show a good-faith effort by FMC/Astaris to construct the LDR Treatment Plant, with approximately \$60 million spent to date on this project. We also note that the RCRA Consent Decree imposes an additional binding legal commitment on FMC/Astaris to construct the LDR Treatment System. Under the RCRA Consent Decree, FMC/Astaris is compelled to design and construct the LDR Treatment System by May 2002. If FMC/Astaris fails to meet the stipulations of this RCRA Consent Decree, they will be subject to significant financial penalties.

We conclude that FMC/Astaris has demonstrated their binding contractual commitment to construct the LDR Treatment Plant.

3. Section 268.5 (a)(3)—Due to Circumstances Beyond the Applicant's (FMC/Astaris) Control, Such Alternative Capacity Cannot Reasonably Be Made Available by the Applicable Effective Date. This Demonstration May Include a Showing That the Technical and Practical Difficulties Associated With Providing the Alternative Capacity Will Result in the Capacity Not Being Available by the Applicable Effective Date

FMC/Astaris has committed considerable resources toward determining and developing the most appropriate treatment technology for these waste streams, which pose numerous and unique handling, safety, and treatment considerations. The lack of available commercial treatment capacity also attests to the difficulties encountered in managing these waste streams.

FMC/Astaris' search for appropriate treatment technology was delayed because they had to wait for EPA to finalize the Phase IV LDR treatment standards. As discussed in the March 16 (66 FR 15243) **Federal Register** notice of proposed decision (and the referenced March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices to address the initial CBC extension), FMC/Astaris documents that they made an intensive effort to determine the treatment technology most appropriate to treat the waste streams. Now that an appropriate treatment technology and treatment process have been identified, FMC/Astaris is constructing the LDR Treatment Plant.

We are convinced that FMC/Astaris has acted in good faith to provide the necessary treatment capacity, and that it is engaged in constructing the LDR Treatment Plant to provide the necessary treatment capacity. The monthly progress reports submitted by FMC/Astaris since June 2000 show that FMC/Astaris is proceeding on schedule to construct the LDR Treatment Plant. However, FMC/Astaris will not be able to begin operation of the LDR Treatment Plant by the May 26, 2001 expiration date of their existing CBC extension.

We conclude the lack of treatment capacity for these waste streams is due to circumstances beyond the control of FMC/Astaris. Therefore, FMC/Astaris has met the § 268.5(a)(3) demonstration.

4. Section 268.5 (a)(4)—The Capacity Being Constructed or Otherwise Provided by the Applicant (FMC/Astaris) Will Be Sufficient To Manage the Entire Quantity of Waste That Is the Subject of the Application

As discussed in the March 16, 2001 (66 FR 15243) **Federal Register** notice of proposed decision (and the referenced March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices to address the initial CBC extension), the LDR Treatment Plant being constructed will use a combination of lime treatment, anoxic hydrolysis, metals precipitation, filtration, and stabilization. This treatment will reduce the levels of elemental phosphorus and cyanide in the waste so that the waste does not exhibit the characteristic of reactivity or ignitability. The treatment will also stabilize the waste by permanently and irreversibly bonding the waste into the molecular structure of a solid product so that it does not leach heavy metals in concentrations greater than applicable LDR universal treatment standards. FMC/Astaris has provided documentation demonstrating that this treatment system will meet the LDR treatment standards.

FMC/Astaris states that the LDR Treatment Plant will have sufficient capacity to treat the full annual production of five waste streams. Within five years of commencing operation of the LDR Treatment Plant, it will also be able to treat all the accumulated solids in Pond 18, as required by the RCRA Consent Decree.

As previously mentioned, FMC/Astaris notified us that the facility will operate at a reduced level for an indefinite time. This reduction in production will result in an approximately 30% reduction of the quantity of the five waste streams generated. Since approval of their existing CBC extension in May, 2000, FMC/Astaris has reduced by approximately 20% their estimate of the quantity of Pond 18 solids that will need to be removed and treated in the LDR Treatment Plant. This reduction in solids is due to improved efficiency and the increased use of the NOSAP System. The combination of reduced solids in Pond 18, along with the reduction in quantity of waste generated, reinforces our conclusion that the planned LDR Treatment Plant will provide sufficient treatment capacity.

5. Section 268.5 (a)(5)—The Applicant (FMC/Astaris) Provides a Detailed Schedule for Obtaining Operating and Construction Permits or an Outline of How and When Alternative Capacity Will Be Available

As discussed in the March 16 (66 *FR* 15243) **Federal Register** notice of proposed decision (and the referenced March 8, 2000 (65 *FR* 12233) and May 31, 2000 (65 *FR* 34694) **Federal Register** notices to address the initial CBC extension), FMC/Astaris has provided EPA with a schedule for the design, construction, and permitting of the LDR Treatment Plant, which will be on-line by May 2002. FMC/Astaris has submitted monthly progress reports to us since June, 2000 showing that they are meeting their schedule. We conclude that FMC/Astaris has made a good faith effort to construct the LDR Treatment Plant in a timely manner.

6. Section 268.5 (a)(6)—The Applicant (FMC/Astaris) Has Arranged for Adequate Capacity To Manage Their Waste During an Extension, and Has Documented the Location of all sites at Which the Waste Will Be Managed

As discussed in the March 16 (66 *FR* 15243) **Federal Register** notice of proposed decision, FMC/Astaris will continue to manage the five waste streams in two of their on-site surface impoundments, referred to as Ponds 17 and 18, during this CBC extension renewal. FMC/Astaris has provided data showing that each of these surface impoundments will have the necessary capacity available to manage these wastes during the extension.

The reduction (approximately 30%) in quantity of waste generated, due to the electric power shortage, and the approximately 20% decrease in the quantity of Pond 18 solids that will need to be removed and treated in the LDR Treatment Plant, also ensures that there will be sufficient capacity in Ponds 17 and 18. Even prior to this reduction (see March 16, 2001 (66 *FR* 15243) **Federal Register** notice of proposed decision), we concluded that Ponds 17 and 18 had adequate capacity to manage these waste streams until May 2002.

Further assurance of adequate capacity and proper management of these surface impoundments (ponds) will be provided by FMC/Astaris' adherence to the Pond Management Plan, as required by the RCRA Consent Decree.

We conclude that FMC/Astaris has satisfied this demonstration.

7. Section 268.5 (a)(7)—Any Waste Managed in a Surface Impoundment or Landfill During the Extension Period Will Meet the Requirements of 40 CFR 268.5(h)(2)

As previously described, the waste streams will continue to be managed in the on-site surface impoundments (Ponds 17 and 18) during this CBC extension renewal, until May 26, 2002. As discussed in the March 16 (66 *FR* 15243) **Federal Register** notice of proposed decision (and the referenced March 8, 2000 (65 *FR* 12233) and May 31, 2000 (65 *FR* 34694) **Federal Register** notices to address the initial CBC extension), FMC/Astaris has provided information demonstrating that these surface impoundments were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2), including such protective measures as double liners, leak detection, and groundwater monitoring wells. We conclude that FMC/Astaris has satisfied this demonstration.

II. What Are EPA's Responses to Comments Submitted on the Notice of Proposed Approval of the CBC Extension Renewal?

The Fort Hall Business Council and FMC/Astaris submitted comments in response to the March 16, 2001 **Federal Register** notice. The Fort Hall Business Council expressed the Tribes' continued opposition to the generation and disposal of untreated wastes in the on-site surface impoundments. The following section discusses specific issues raised in the comments made by the Fort Hall Business Council and FMC/Astaris.

FMC/Astaris expressed support of our proposed decision to approve the renewal of their existing CBC extension. FMC/Astaris noted the non-availability of off-site treatment capacity, and the need for additional time to construct the LDR Treatment Plant and bring it on-line to meet the May 2002 startup date. FMC/Astaris also provided clarification of several statements made by us in the March 16, 2001 "Notice". In a letter to EPA, dated May 3, 2001, FMC/Astaris responded to the comments submitted by the Fort Hall Business Council.

A. Given the Recent Reductions in the Pocatello Facility Production and Waste Generated, Can FMC/Astaris Now Find Off-Site Treatment Capacity?

With the recent announcement by FMC/Astaris of a reduction in production and a resultant reduction in waste generated, the Fort Hall Business Council believes it may now be possible for a TSDF to handle the reduced

volume of waste. They note the 40 CFR 268.5(a)(3) requirement—that alternative capacity cannot reasonably be made available by the effective date—may no longer be successfully demonstrated by FMC/Astaris.

As discussed earlier, except for one facility (Environmental Enterprises) contacted in the FMC/Astaris survey, the levels of phosphorus and NORM were the main reasons provided by TSDFs for not being able to manage the Pocatello waste streams. Several other TSDFs also said that they did not have the railcar capability to handle these waste streams. We reiterate that based on our review of the survey information provided by FMC/Astaris and our follow-up discussion with Environmental Enterprises, there is no available treatment capacity for these waste streams. At this point, even if a TSD facility expressed an interest in taking these wastes, the time needed to design and construct the infrastructure for both the railcar loading and unloading facilities at Pocatello and the receiving TSDF facility would make this option unreasonable "given that the LDR Treatment Plant is well under construction and will be in operation by May 2002.

B. Who Will Permit the On-Site Disposal of the LDR Treatment Plant Residue?

The LDR Treatment Plant will generate non-hazardous treatment residues (that no longer exhibit a characteristic of hazardous waste) that will be stabilized prior to disposal. The Fort Hall Business Council states that under 40 CFR 268.5(a)(5), FMC/Astaris must obtain a permit from the Shoshone-Bannock Tribes for construction of any on-site landfill for the disposal of these residuals.

FMC/Astaris states on page 89 of their November 1, 2000 submittal to us that: "Treated waste that has been verified to meet LDR and Consent Decree requirements will be disposed of in compliance with all applicable regulatory standards either on-site at the Astaris Idaho plant or at an off-site location." The Consent Decree only requires FMC/Astaris to treat their waste in the LDR treatment facility so that upon completion of treatment, the waste will have met all LDR requirements and also will no longer exhibit a characteristic of hazardous waste. The subsequent disposal of the waste will not be governed by RCRA hazardous waste rules, but by solid waste rules, including applicable Tribal requirements. Plans and schedules for the disposal of waste once it has met all RCRA LDR requirements are not required for the CBC extension. Finally,

FMC/Astaris has advised us that no final decision has been made on where waste treated by the LDR Treatment Plant will be disposed. Construction of an on-site landfill may not be required if FMC/Astaris selects an off-site facility for this waste. In any case, as noted in their May 3, 2001 to EPA, FMC/Astaris states: "If Astaris continues with its current plan to dispose of this material on-site, it will apply for and obtain any solid waste permit that may be necessary."

C. Does EPA Approval of This Final CBC Extension Impose Substantial Direct Compliance Costs on the Tribes?

The Fort Hall Business Council disagrees with our interpretation that this action will not impose substantial direct compliance costs on the Tribes. They state that this CBC extension renewal will require the Tribes to monitor the facility for compliance with the Pond Management Plan. EPA's view is that it, not the Tribes, is responsible for monitoring compliance with the Pond Management Plan.

The Pond Management Plan requires air monitoring at operating ponds and the fence line near the ponds. It also requires monitoring off-site if threshold values for phosphine and hydrogen cyanide are exceeded at the fence line. The Consent Decree does require FMC/Astaris to provide the Tribes with copies of reports on implementation of the Pond Management Plan.

EPA welcomes the Tribes' interest and involvement in this monitoring, and will continue to seek additional opportunities for Tribal involvement.

D. How Does This CBC Extension Renewal Affect Pond Emissions Onto the Fort Hall Indian Reservation for an Additional Year?

The Fort Hall Business Council states that allowing an additional year for hazardous waste disposal in the impoundments allows an additional year for toxic gases (phosphine and hydrogen cyanide) to be emitted onto the Fort Hall Indian Reservation.

There will be gas emissions associated with the discharge of the five hazardous wastes to the on-site surface impoundments (Ponds 17 and 18). The Pond Management Plan is designed to ensure that these emissions do not pose a danger to public health, however. There are no residences or businesses near the ponds. However, there is a potential for workers, such as railroad workers, to be in the area. Under the Pond Management Plan, FMC/Astaris must continuously monitor for phosphine and hydrogen cyanide around the ponds, and evacuate workers

without respiratory protection if the specified limits for workers are exceeded. In addition, the Pond Management Plan requires monitoring every four hours at the fence line to ensure that dangerous levels of phosphine and hydrogen cyanide are not present. If health-based levels are exceeded at the fence line, FMC/Astaris must monitor off-site and evacuate off-site areas near the ponds. FMC/Astaris also must provide immediate notice of any confirmed exceedance of the specified health-based levels to the Shoshone-Bannock Tribes, EPA, and the County Sheriff.

Once the LDR Treatment System comes on line in May 2002, further discharges to the on-site surface impoundments will be eliminated. The LDR Treatment Plant will also allow the removal and treatment of accumulated solids from Pond 18, thereby eventually eliminating the hazards posed by Pond 18 to the Fort Hall Indian Reservation.

III. What Is EPA's Final Determination on the FMC/Astaris Request To Renew Their Existing CBC Extension?

EPA concludes that FMC/Astaris has made each of the seven demonstrations required by 40 CFR 268.5(a) to be granted a renewal of their existing CBC extension. There is insufficient capacity to treat these wastes to meet the LDR requirements, a binding contractual commitment has been made to construct the necessary treatment capacity, and treatment capacity cannot reasonably be made available by the May 26, 2001 LDR effective date. Furthermore, EPA is satisfied that FMC/Astaris has made and is continuing to make a good-faith effort toward providing sufficient and appropriate treatment capacity for the five waste streams.

Therefore, EPA today is approving a final one-year extension of the applicable LDR effective date, until May 26, 2002, for these five waste streams: (1) NOSAP Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossey Water, generated at the Pocatello, Idaho facility. These wastes may continue to be managed in on-site surface impoundments (Ponds 17 and 18) without being subject to the land disposal restrictions applicable to these wastes until the LDR Treatment Plant commences operation (which must happen by May 26, 2002).

As previously mentioned, the Tribes are opposed to any extension of the LDR effective date, arguing that these hazardous wastes must be treated prior to being land disposed. As discussed in the March 16, 2001 Notice of proposed decision (and the referenced March 8,

2000 (65 *FR* 12233) and May 31, 2000 (65 *FR* 34694) **Federal Register** notices), the United States recognizes that it owes an important trust responsibility to the Tribes, on whose lands the facility is located. This includes the United States' responsibility to perform its obligations under RCRA and other statutes to protect the environment and the natural resources of tribal lands. We also acknowledge the Tribes' concerns regarding the continued placement of untreated hazardous wastes in the on-site surface impoundments. As noted in sections I B and I C of this notice, the United States entered into a RCRA Consent Decree with FMC/Astaris to address FMC/Astaris' past mishandling of hazardous wastes and to direct FMC/Astaris to take measures to avoid future environmental contamination. The Consent Decree mandates site-specific treatment requirements to deactivate ignitable and reactive waste streams, and requires FMC/Astaris to design, construct, and commence operation of a LDR Treatment Plant for these waste streams by no later than May 2002. It also requires closure of specified surface impoundments (ponds) used to manage the wastes, establishes a Pond Management Plan, and mandates plant upgrades, including the installation of secondary containment for sumps, tanks, and piping at the facility. The United States must also consider facts such as section 3004(h)(3) of RCRA, which establishes that an applicant who satisfies the conditions for a CBC extension (or renewal of a CBC extension) will be granted one.

The issue in evaluating the initial CBC extension application, as well as this request for renewal of their existing CBC extension, is whether FMC/Astaris has satisfied applicable statutory and regulatory conditions. As previously noted, it is not yet feasible for FMC/Astaris to treat these wastes prior to placement in the on-site surface impoundments, and there is no available off-site commercial treatment capacity for these five hazardous waste streams. The necessary treatment capacity and capability will not be available until the LDR Treatment Plant commences operation by May 2002. We are satisfied that FMC/Astaris has made and is continuing to make a good-faith effort to construct and commence operation of the LDR Treatment Plant by May 2002.

IV. What Must FMC/Astaris Do Under This CBC Extension Renewal?

Having been granted this CBC extension renewal, FMC/Astaris must immediately notify EPA of any change in the demonstrations made in the

petition (see 40 CFR 268.5(f)). FMC/Astaris also must continue to submit a monthly report describing the progress being made toward design, construction, and operation of the LDR Treatment Plant. The monthly progress report also must identify any delay, or possible delay in developing this treatment capacity and describe the actions being taken in response to the delay (see 40 CFR 268.5(g)). The monthly progress report must be submitted every thirty days, by the 26th day of each month for the duration of this CBC extension renewal, until June 26, 2002.

Four copies of each monthly progress report must be submitted to the following address: Chief, Analysis and Information Branch, U.S. Environmental Protection Agency, Office of Solid Waste (5302W), 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460.

A copy of the monthly progress report also must be provided to EPA Region 10 at the following address: Director, Office of Waste and Chemicals Management, U.S. Environmental Protection Agency 1200 Sixth Avenue, Seattle, WA 98101.

A copy of the monthly progress report must be provided to the Shoshone-Bannock Tribes at the following address: Director, CERCLA/RCRA Program, Shoshone-Bannock Tribes, P.O. Box 306, Fort Hall, Idaho 83203.

EPA can revoke this CBC extension renewal if FMC/Astaris fails to make a good-faith effort to meet the schedule for completion; if EPA denies or revokes any required permit; if conditions certified in the CBC extension renewal application change; or for a violation of any law or regulations in parts 260–266 and 268 (see § 268.5(g)). No further extension of the LDR effective date for these five hazardous wastes is allowed.

V. Administrative Requirements

Today, the EPA is approving the FMC/Astaris request for a one-year renewal of their existing CBC extension of the effective date of the RCRA land disposal restrictions, for a facility located on Tribal Lands. This action will have a substantial direct effect on the people of the Shoshone-Bannock Tribes and the Ft. Hall Business Council, as it will permit this facility to continue treating, storing, or disposing of five waste streams as currently managed in on-site surface impoundments until May 26, 2002.

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations and other actions that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

EPA has concluded that this decision has tribal implications, as it has a substantial direct effect on the people of the Shoshone-Bannock Tribes (on whose lands the Pocatello facility is located) and the Ft. Hall Business Council. Consistent with the Executive Order and EPA’s Indian policy, EPA has ensured the meaningful and timely input of tribal officials of the Ft. Hall Business Council in the development of this decision.

EPA has had numerous meetings and calls with Tribal government officials from May 2000 to April 2001. For example, on May 2, 2000, Elizabeth Cotsworth (Director-EPA Office of Solid Waste) met with the Ft. Hall Business Council in Pocatello, Idaho to consult with the Tribes regarding FMC’s request for a CBC extension. On June 9, 2000, Tim Fields (Assistant Administrator-EPA Office of Solid Waste and Emergency Response), met the Ft. Hall Business Council on the same issue. EPA has specifically solicited comment on this CBC extension from the elected officials of the Ft. Hall Business Council, and in recent months, Chuck Findley (Acting EPA Region 10 Administrator) has had several meetings and telephone conversations with the Ft. Hall Business Council to discuss the CBC extension and the HTDF option as an alternative to the LDR system.

Other consultation measures have included staff level discussions to obtain feedback from the Tribes on information provided by FMC/Astaris, providing the Tribes with an advance copy of draft **Federal Register** notices of Proposed Decision for their review and comment prior to publishing the notices, and inviting the Tribes to participate in all meetings held with FMC/Astaris on the CBC extension, as described in previous **Federal Register** notices addressing the CBC extension.

Finally, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA will continue to consult with the Tribes after this decision on all matters relating to the FMC/Astaris facility which affect the Tribes’ interests.

As discussed in the March 16, 2001 (66 FR 15243) **Federal Register** notice, Executive Order 13132, entitled

“Federalism,” this notice also does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of this Executive Order do not apply to this action.

Authority: Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

Dated: May 11, 2001.

Stephen D. Luftig,

Acting Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 01–12880 Filed 5–18–01; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the June 14, 2001 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Thursday, June 21, 2001. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT:

Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: May 16, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–12819 Filed 5–17–01; 11:17 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork