



5296 Harvest Lake Drive, 4th Floor
Loveland, Colorado 80538

June 9, 2020

By Email

Ms. Paula J. Wilson
Hearing Coordinator
Idaho Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
paula.wilson@deq.idaho.gov

**RE: Design and Construction of Phosphogypsum Stacks: Docket No. 58-0119-2001
Negotiated Rulemaking**

Dear Ms. Wilson:

This correspondence comprises supplemental comments of Nu-West Industries, Inc. (Nu-West) respecting the Idaho Department of Environmental Quality's (DEQ) above-referenced negotiated rulemaking, Docket No. 58-0119-2001.

Nu-West is the former owner and operator of the Conda Phosphate Operations (CPO) phosphoric acid processing and fertilizer manufacturing facility, located near Soda Springs, Idaho. Although the CPO plant is now owned and operated by Itafos Conda LLC, Nu-West is jointly managing ongoing projects related to the phosphogypsum stack system (PSS) and is actively negotiating resolution of issues impacting the CPO facility PSS with the DEQ and the U.S. Environmental Protection Agency (EPA). Nu-West, therefore, has a current and ongoing interest in the CPO facility, in this negotiated rulemaking's impacts on the CPO facility PSS, and its potential impacts on negotiations with the DEQ and EPA.

As noted in our preliminary comments on this rulemaking submitted April 28, 2020, Nu-West generally supports the comments submitted by the Idaho Mining Association. As our April 28 comments also noted, at the time of the initial public meeting on April 16, 2020 Nu-West did not yet have sufficient time to adequately consider DEQ's initial draft of the proposed rule, the relevant enabling legislation, or the proposed rule's interaction with other relevant law affecting the CPO facility PSS. Therefore, Nu-West was not in a position to provide meaningful comments on the DEQ's proposed rule.

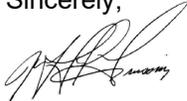
Since then, DEQ has not meaningfully advanced the rulemaking. Among other things, DEQ has yet to prepare a revised draft of the proposed rule for public review. Moreover, contrary to the position articulated in DEQ's "Discussion Points" document provided prior to the May 28 public meeting, there are in fact several agreements in place with the DEQ and EPA relating to subjects covered in the proposed rule which DEQ must take into account before stakeholders can provide meaningful input on this rulemaking.

Further, as many affected stakeholders noted during the May 28 public meeting, additional negotiations with DEQ and EPA directly related to Idaho PSS facilities are ongoing, and the details of those proceedings cannot be discussed publicly at this time. The enabling legislation governing this rulemaking contemplated that any PSS rule adopted by DEQ must be consistent with those anticipated settlements, and that legislation provides DEQ must exclude from the rule PSS governed by any such settlement agreements. Therefore, until those settlements are completed and able to be entered into the rulemaking docket, it is premature to continue with this rulemaking. In light of this situation, Nu-West concurs with the unanimous position of the stakeholders who spoke at the May 28 public meeting, urging DEQ to cease and defer the rulemaking until these settlements have progressed sufficiently to allow their entry into the rulemaking docket for consideration by DEQ and affected stakeholders.

Nu-West also disagrees with several other positions DEQ has articulated in its Discussion Points document and during the May 28 public meeting, including DEQ's position related to the proposed rule's interaction with federal RCRA Part 257 regulations governing solid waste. Once again, however, we are unable to elaborate at this time on those critical points in the context of this rulemaking, because they are the subject of confidential settlement discussions with DEQ and EPA.

Thank you for your consideration of these comments. We appreciate the DEQ's efforts to shepherd this proceeding in a manner affording an opportunity for participation by Nu-West and other interested stakeholders.

Sincerely,



Jeff Grussing
Senior Director Environmental Management, Nutrien
Project Coordinator, Nu-West Industries, Inc.

cc: Scott Burton, Esq., Hunton Andrews Kurth LLP