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September 14, 2010

RECEIVED
PIMA COUNTY
SEP 14 2010
ENVIRONMENTAL QUALITY
AIR PROGRAM

HAND-DELIVERED
Ursula Kramer
Director
Pima County Department of
Environmental Quality
33 North Stone Avenue
Suite 700
Tucson, AZ 85701

Re: Rosemont Copper Company Application for Class II Permit,
Rosemont Copper Project Southeastern Arizona

Dear Ms. Kramer:

We are writing on behalf of Rosemont Copper Company, which submitted an application for a Class II Permit relating to its proposed copper mining project in southeastern Arizona. That application was submitted to the Pima County Department of Environmental Quality ("PDEQ") on July 29, 2010.

The Pima County Administrator, Mr. Chuck Huckelberry, has made statements to various media outlets over the last several months indicating that he intends to delay or disapprove the project and the air quality permit. In particular, the Arizona Daily Star contained an article on August 11, 2010 indicating: "Pima County Administrator, Chuck Huckelberry, who opposes the Rosemont Mine, could postpone reviewing its air quality permit application so long it would further delay the mine's opening." In addition, the Pima County Board of Supervisors held an executive session on Tuesday, September 7, 2010, to discuss the air quality permit application filed by Rosemont Copper relating to the project.

From the foregoing, it appears that Mr. Huckelberry and the supervisors have the mistaken belief that they have authority and responsibility relating to individual air quality permits and the Rosemont application currently pending before PDEQ. Under state law and

Pima County's own regulations, the director of PDEQ has the exclusive authority to review and act on the pending air quality permit application. While the statutes and regulations are clear, the supervisors' and Mr. Huckelberry's actions indicate that they do not understand the legal obligations and limitations on PDEQ relating to this process. Consequently, we are providing the attached white paper for the PDEQ's review and the education of those outside PDEQ.

As explained in greater detail in the attached white paper, Rosemont and every applicant is entitled to have the control officer not base an air quality permitting decision in whole or in part on conditions or requirements that are not specifically authorized by a provision in Arizona law. See A.R.S. § 49-471.10, subsection C.

State law specifies that "control officer" means "the executive head of the department authorized or designated to enforce air pollution regulations or the executive head of an air pollution control district." Pima County regulations provide that the director of PDEQ is the air pollution control officer and executive head of Pima County Air Quality Control District. Thus, under Pima County's regulations, the director of PDEQ has the exclusive responsibility to review, process and administer individual air quality permits, including the pending air quality permit application filed by Rosemont.

The Pima County regulations also provide a specific mechanism for the public to comment on air quality permits. The Pima County regulations provide that the control officer shall provide public notice and an opportunity for public comment and an opportunity for hearing <u>after</u> the control officer makes a permit decision and prepares a proposed permit. Consequently, the only time provided for public comment with respect to an air quality permit application is after PDEQ has determined that an air permit is appropriate and has prepared a proposed permit for public comment and hearing. Public comment prior to that point is not authorized under Arizona state statute or Pima County regulations. This is different from the process for a rulemaking. A.R.S. § 49-471.06 provides that the Control Officer can meet informally with any interested party to discuss a proposed rule- or ordinance-making action. There is no similar allowance for air permits. Thus, PDEQ is limited to the public comment process specified under the regulations.

With respect to the pending permit application, the Control Officer has 60 days to make a completeness determination. And, as explained in greater detail in the attached white paper, in making that determination, the Control Officer is bound by the Pima County regulations setting forth the requirements that must be satisfied for a permit application to be considered complete. We trust PDEQ will ensure that any completeness determination complies with the requirements set forth in the Pima County Code and no other considerations suggested, proposed or urged by the County Board of Supervisors, the County Administrator or anyone else. To do so would violate the law, subject the County to a legal action, and act as a disservice to all citizens of Pima County who rely upon their government agencies complying with all legal mandates. While we

are confident that PDEQ understands its legal responsibilities and limitations, it appears from statements made by those outside PDEQ that others do not appreciate the legal responsibilities and limitations on PDEQ.

Rosemont appreciates PDEQ's efforts relating to the air quality permit and pending application. However, in view of the ongoing public statements by the County Administrator and actions by the Pima County Board of Supervisors, this letter and the attached white paper were necessary. A copy of this letter has been forwarded to the County Administrator and each member of the County Board of Supervisors for their information and education. Rosemont Copper looks forward to continued cooperation with PDEQ in ensuring that the project meets all legal requirements and is protective of human health and the environment.

Yours very truly,

FENNEMORE CRAIG, P.C.

Scott McDonald
Scott McDonald
Phillip F. Fargotstein

PFF/elp

Encl.
cc: Pima County Administrator
Pima County Board of Supervisors
Pima County Deputy County Attorney Chris Straub