

BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL ) OAH DOCKET NO. 13-015-020  
SITING PERMIT APPLICATION OF ) DOCKET NO. DEQ/ISC 12-02  
FMC WYOMING CORPORATION )

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**  
**GRANTING PERMIT APPLICATION WITH CONDITIONS**  
**AND ALLOCATING IMPACT ASSISTANCE FUNDS**

THIS MATTER came before the Industrial Siting Council (Council) on November 1, 2012, for an evidentiary hearing on whether the Council should issue a permit for the construction and operation of the Granger Optimization Project. Council members present for the proceedings included Chairman Shawn Warner, Sandy Shuptrine, Gregg Bierei, Jim Miller, Richard O’Gara, and Peter Brandjord. Justin A. Daraie, Assistant Attorney General, was also present on the Council’s behalf. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceedings. The Applicant, FMC Wyoming Corporation (FMC), appeared by and through its counsel, Jenifer E. Scoggin. The Industrial Siting Division (Division) appeared by and through its counsel, Assistant Attorney General Luke J. Esch. Six other parties participated in the evidentiary hearing, including the Sweetwater County Commissioners, represented by Clifford Boevers; the Lincoln County Commissioners, represented by Joshua T. Smith; the Uinta County Planner, Kent Williams; the City of Green River, represented by Marty Black; the Town of Granger, represented by Mayor Lenora Perry; and the Wyoming Building and Construction Trades Council, represented by Douglas C. Thomas. FMC’s Exhibits 1 (Application) through 5, the Division’s Exhibits 1 through 4, and Sweetwater County Commissioner’s Exhibits A, B, and C were admitted for purposes of the evidentiary hearing. The Council received no limited appearance statements in this case prior to

the close of the evidentiary hearing. The Council has considered the evidence and arguments of the Applicant and the parties and makes the following findings:

### I. JURISDICTION

Wyoming Statute § 35-12-106(a) (LexisNexis 2012) provides that “[n]o person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council.”

“Industrial facility” or “facility” means any industrial facility with an estimated construction cost of at least one hundred eighty six million, seven hundred thousand dollars (\$186,700,000.00). *See* Wyo. Stat. Ann. § 35-12-102(a)(vii) (LexisNexis 2012).

Wyoming Statute § 35-12-110(d) (LexisNexis 2012) provides that “[o]n receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by W.S. § 35-12-109 and the rules and regulations.”

Wyoming Statute § 35-12-110(f) (LexisNexis 2012) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

- (i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;
- (ii) Notify the applicant and local governments of the hearing . . . ;
- (iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and
- (iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

Wyoming Statute § 35-12-113(a) (LexisNexis 2012) provides that “within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue

an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate.”

On August 13, 2012, FMC submitted an application to the Division for an industrial siting permit to allow construction and operation of the Granger Optimization Project (the Project) to be located in Sweetwater County, Wyoming, 26 miles west of Green River and near the town of Granger, Wyoming. At a previously held jurisdictional meeting on January 10, 2012, FMC showed cost estimates for the total construction were in excess of the \$186.7 million threshold statutory jurisdictional limit of the Industrial Siting Council. Therefore, this Council has jurisdiction to hear and decide this matter.

## **II. STATEMENT OF THE CASE**

FMC filed its Application for an industrial siting permit pursuant to Wyoming Statute § 35-12-109 (LexisNexis 2012) on August 13, 2012. The proposed Project is to restore the production capacity of the plant to the original production rate at 1.3 million tons of soda ash per year, using new brine processing equipment and mine water as the feedstock. The current production rate of the plant is 650,000 tons of soda ash per year. The Project site is located in Sweetwater County, approximately 26 miles west of Green River and near the town of Granger.

As originally submitted, the Division’s staff found that the Application was lacking some information and asked FMC to supply additional information. Upon the submittal of the additional information, the Division’s staff determined that FMC’s Application was complete and in full compliance with Wyoming law, and was ready for the Council’s determination as to whether a permit should be issued. FMC requested the Council approve the Application as submitted with Addendum 1 and exhibits. The Division and six separate entities filed notices to

become a party to these proceedings and appeared at the evidentiary hearing. All six parties were in favor of issuing the permit.

### **III. ISSUES AND CONTENTIONS**

The sole issue in this case is whether FMC has proven, by a preponderance of the evidence, that the Application regarding the Project meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LexisNexis 2012), and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (2011) (Division's Rules) governing the proposed Project. If the Council decides to issue the industrial siting permit, it must also decide what, if any, conditions to place on the permit.

FMC asserted its Application was complete and in compliance with all applicable laws, will not pose a threat of serious injury to the environment, will not substantially impair the health, safety or welfare of the inhabitants in the affected area.

The Sweetwater County Commissioners, Lincoln County Commissioners, Uinta County Planner, City of Green River, Town of Granger, and Wyoming Building and Construction Trades Council were all in support of the Project.

### **IV. FINDINGS OF FACT**

#### **A. Documentary Evidence**

1. FMC Industrial Chemicals is a low-cost producer of inorganic chemicals with leading market positions in North American soda ash, hydrogen peroxide, and persulfates. The FMC Alkali Chemicals Division is the world's largest producer of natural soda ash. Soda ash is essential to the production of all forms of glass, namely fiberglass insulation, window glass, light bulbs, windshields, solar panels, jars, bottles, tableware, mirrors, and furniture glass. Soda ash is

also a key ingredient in detergents and many other common products like sodium bicarbonate, more commonly known as baking soda. *FMC Exhibit 1, Application at ES-1; p. 2- 1.*

2. FMC has operated two major production facilities in Southwest Wyoming for many decades. More than 900 employees operate a solution mine (the Granger facility) and a conventional trona mine (the Westvaco facility) from about 1,600 feet underground and then process the mineral into natural soda ash, sodium bicarbonate, and caustic soda using modern progressive technologies. *FMC Exhibit 1, Application at ES-1; p. 1-1.*

3. The FMC Granger facility currently produces soda ash and caustic soda using weak alkaline brine. The facility presently consists of a flooded underground trona mine used for recovery of brine. From the facility's inception in 1976 and until 2005, the feedstock for soda ash production came from dry ore produced from the underground trona mine. Using this operating mode, the soda ash plant had a production capacity of 1.3 million tons of refined soda ash. However, dry ore mining was eventually discontinued due to declining ore quality and higher production costs. In 2005, the feedstock for the soda ash plant was switched to mine water, the alkaline brine extracted from the underground trona mine. With the less concentrated mine water as the feedstock, the production capacity of the plant was effectively reduced from 1.3 million tons of refined soda ash per year to 650,000 tons annually. *FMC Exhibit 1, Application, p. 1-1.*

4. On August 13, 2012, FMC filed its Application with the Division requesting a permit to allow construction and operation of the Granger Optimization Project. FMC plans a single phase of construction over a 26 month period of time. The proposed site of the Project is entirely within the existing footprint of the current facility 26 miles west of Green River and near the Town of Granger. It is anticipated that with the completion of the proposed Granger

Optimization Project, the soda ash production capacity of the plant will be restored to approximately 1.3 million tons per year using mine water as the feedstock. *State's Exhibit 1, pp. 4, 17; FMC Exhibit 1, Application at ES-1; and p. 2-2.*

5. Prior to FMC filing its Application in this matter, company representatives and the Division's staff conducted a jurisdictional meeting on January 10, 2012, to discuss the details of the Project. The Division reviewed the financial budget for the Project and determined that the cost exceeded the statutory dollar threshold of \$186,700,000.00. The Division notified the Applicant by mail on January 20, 2012, that the Project was subject to the jurisdiction of the Wyoming Industrial Development Information and Siting Act Wyoming Statutes § 35-12-101 through 119, and that a permit was required to construct and operate the facility. *State's Exhibit 1, pp. 4, 15.*

6. All of the materials constituting the filing of the Application were received by the Division on August 13, 2012. The Application consisted of 60 hard copies of the Application, *FMC Granger Optimization Project Submittal of Section 109 Permit Application*; an electronic version of that document; the payment of the application fee in the amount of \$63,530.00, as required by Wyoming Statute § 35-12-109(b); and a letter of transmittal by Fred von Ahrens, Manufacturing Director, Green River Operations of FMC Corporation, asking for the permit and attesting to the truthfulness and accuracy of the Application. *State's Exhibit 1, pp. 4-5, and 17-18.*

7. The Division staff checked the contents of the Application against the applicable statutes and rules of the Council and determined that additional information was necessary. On October 11, 2012, FMC provided a response to the Division's Notice of Deficiency, which the Division's staff incorporated into the Application as Addendum 1. On October 12, 2012, FMC

was notified by the Division that the Application was complete. *State's Exhibit 1, pp. 5, 24-35, and 98.*

8. Upon review of the Application, the Administrator for the Division determined the study area for potential impacts of the Project included Sweetwater, Lincoln, and Uinta counties. The Administrator determined that the area primarily affected was a polygon that included the Project site, the municipalities of Rock Springs, Green River, Granger, Opal, Diamondville, Kemmerer, Lyman, and Mountain View. Examination copies of the Application were then filed on August 13, 2012, with the Sweetwater County library branches in Green River and Rock Springs, with the Wyoming State Library in Cheyenne, and with the Sweetwater County Clerk. Also on August 13, 2012, the Division's staff distributed copies of the Application to the various state agencies pursuant to Wyoming Statute § 35-12-110(b) (LexisNexis 2012) to obtain information and recommendations relative to the impact of the proposed Project as it applies to each agency's area of expertise. All agencies timely responded to the inquiry and none had any objection to the Project. *State's Exhibit 1, pp. 5-11, and 36-96.*

9. Pursuant to the Wyoming Statute § 35-12-110, the Division's staff placed a legal advertisement in the *Rocket-Miner* on August 16, 2012 and August 23, 2012, and the *Casper Star Tribune* on August 18, 2012 and August 19, 2012, publishing the location and description of the Project, the locations where the Application was available for review, and notice of the Council's hearing on the Application. *State's Exhibit 1, pp. 5-6, and 20-21.*

10. From March 2012, until the August 13, 2012 filing of the Application, FMC officials visited the governing bodies of the local governments in the areas primarily affected to discuss the Project. A list of those meetings is found in Table 4-1 on pages 4-2 and 4-3 of the Application. Open House meetings for public inquiry were held in Green River and Rock

Springs on May 8, 2012 and May 9, 2012. A list of all meetings and details of the public and government involvement is found in Section 4, *Public Involvement*, of the Application. *FMC Exhibit 1, Application, Section 4, Public Involvement; Appendix D, Public Involvement; State's Exhibit 1, p. 5.*

11. Workforce and delivery vehicles are expected to primarily use I-80 and Country Road 11 from the east, and Granger Road from the west, to reach the existing facility's road network. All deliveries will be trucked directly to the Project site using semi-tractor trailers. The primary components of the Project involve processing equipment that concentrates the water, crystallizes and purifies the desired components, and then sends the purified components to existing equipment for crystallizing and drying the soda ash. Additional infrastructure will include control equipment, storage tanks, clarifiers, and a new cooling tower. A study analyzed the potential impacts of construction and operation traffic on local roadway systems and determined impacts are expected to be minor. *FMC Exhibit 1, Application at ES-1 and 2; pp. 2-2.*

12. The water balance for the Project estimates a maximum annual water use of approximately 5,000 acre-feet/year. This use is less than FMC's adjudicated water right, which is equivalent to 5,419 acre-feet/year. The water source for the Project will be the existing 7.5 cubic feet per second Green River water right FMC currently holds. The State Engineer's Office is statutorily responsible for the administration of all waters within the state. FMC holds valid water right permits that are in good standing, which allow for the water use envisioned at the facility. Because the long-term water use is already permitted, the State Engineer's Office did not expect the facility's water use to impact others. The State Engineer's Office found that the water supply was adequate and found no reason to recommend denial of the permit. Because

the Project proposed to use more than 800 acre-feet of waters of the state annually, FMC was required to submit a water yield or water supply analysis to the State Engineer in accordance with Wyoming Statute § 35-12-108 (LexisNexis 2012). On May 22, 2012, the State Engineer found FMC to be operating within the limits of its permits and approved the analysis. *State's Exhibit 1, pp. 5, 77-78; FMC Exhibit 1, Application, at ES-3; Application Appendix F; FMC Exhibit 2; FMC Exhibit 3.*

13. According to the Application filed by FMC, upon approval by this Council and securing all other required permits, formal commencement of construction of the Project is planned for the second quarter (April, May, June) 2013, unless otherwise precluded by adverse weather conditions. The construction is scheduled to last approximately 26 months. The Project is anticipated to be 90 percent complete in the third quarter of 2015. *FMC Exhibit 1, Application, p. 3-1 through 3-3.*

14. Just three weeks prior to the hearing in this matter, on October 18, 2012, the Division received notification from FMC of a schedule change in commencement of the construction of the Project. According to the October 17, 2012 letter, due to various outstanding internal approvals and other unnamed issues, the likely date for commencement of construction would be the second quarter of 2014, rather than the second quarter of 2013. Completion of construction is now expected to occur in the second quarter of 2017, rather than the third quarter of 2015. *State's Exhibit 4.*

15. The Project will utilize approximately 338 construction workers during peak construction in the second quarter of 2014. FMC estimates that of the 338 peak workforce, 85 (25%) would be local workers and 253 (75%) would be non-local workers. Upon completion, the Project will require approximately 26 full-time employees. FMC provided confirmations and

commitments from hotels in the area primarily affected to accommodate the workforce. *FMC Exhibit 1, Application at Section 3, Construction and Operations, pp. 3-1 through 3-9; Appendix E, Housing Commitments; State's Exhibit 1, p. 11.*

16. The Project is anticipated to have no significant impact on fire protection, rescue, law enforcement, health care, and/or municipal services. *FMC Exhibit 1, Application at Section 5, Socioeconomic Baseline and Impacts.*

17. Impact assistance payments are expected to average \$10,550.00 each month until the project is 90 percent complete. The Division recommended the distribution of the funds, as it was agreed to between the counties, at 65 percent to Sweetwater County, 17.5 percent to Lincoln County, and 17.5 percent to Uinta County. *State's Exhibit 1, p. 12; Exhibit 1, Application at Appendix C, Impact Assistance Calculation.*

18. The Industrial Siting Division Report submitted as Exhibit 1 by the Division reflected that after review of the Application and Addendum 1, the Application was complete and suitable for the Council's consideration. The Report also recommended the Council place 15 conditions on the permit, including 14 standard conditions. *State's Exhibit 1, pp. 11-12; State's Exhibit 2.*

## **B. Testimonial Evidence**

### **i. Applicant's Witnesses**

19. Jim Pearce (Pearce) is the Venture Director for FMC. Pearce confirmed the need and purpose for the Project is to restore the production capacity of the Granger facility to the 1.3 million tons per year as was capable in the past. Pearce also testified that the natural soda ash produced at FMC produces approximately 40 percent less greenhouse gas than does synthetic soda ash. Finally, Pearce assured the Council that by moving to a solution mine, FMC will be

able to extend the life of the mine by at least 20 years. *Transcript of Proceedings (hereinafter Tr. of Proc.)*, pp. 22-28.

20. Daniel Moulden (Moulden) is the Senior Project Manager for FMC and has been employed with the corporation for 33 years. Moulden confirmed that, based upon economic and corporate decisions, the construction schedule for the Project has recently been changed from commencing in the second quarter of 2013 to commencing in mid 2014. As a result of the extension of the construction schedule, some of the high peaks from the manpower requirements will be lowered by 50 to 75 people, and some of the low peaks would be higher; however, the total man-hours required for the Project will remain the same. *Tr. of Proc.*, pp. 31-33; 49.

21. As of the date of hearing, FMC had not chosen a general contractor for the Project. However, Moulden testified that the general contractor would most likely be from within the Utah, Wyoming, Montana region. FMC plans to utilize a local supply base for equipment purchased for the Project. *Tr. of Proc.*, pp. 33-35.

22. Moulden also confirmed that the Project would create 25 to 30 full-time positions upon its completion. Most of the positions are in the operations area, so the employees would likely come from the local area. Moulden also opined that 30 people added to the community would not substantially impact the existing infrastructure of the communities in the area affected. *Tr. of Proc.*, pp. 35-36.

23. The transportation and travel routes to the Granger facility include I-80, Highway 30, and a series of network roads maintained by FMC. Moulden testified that County Road 11 would seldom be used by FMC and that most of the traffic currently using County Road 11 is not related to FMC's operations. Rather, the biggest users of the road are OCI coal trucks and numerous oil and gas companies. Moulden estimated only five to ten percent of the traffic

would be related to FMC's operations. A traffic analysis was prepared and reviewed by the Wyoming Department of Transportation and Sweetwater County, both of whom had no objections to the plan. *Tr. of Proc.*, pp. 37-40; 175-176.

24. Moulden agreed to the conditions for the permit, as set forth in the Division's Exhibits 1 and 2. Moulden also stated his opinion that construction of the Project will not substantially impair the health, safety, or welfare of the inhabitants or the expected inhabitants, and would not pose a serious injury to the environment or the social and economic condition of the inhabitants. *Tr. of Proc.*, pp. 40-43.

25. John Lucas (Lucas) is FMC's Environmental Team Leader. FMC owns approximately 400 acres of land. The Project would be constructed upon its current footprint or disturbance area. All environmental studies conducted for this Project showed no impact for any inhabitants or future inhabitants in the area. Lucas also testified that he anticipates no issues in obtaining the necessary federal, state, and county permits as required by law. *Tr. of Proc.* pp 54-63.

26. Lucas confirmed that FMC officials met with county commissioners in Sweetwater, Lincoln, and Uinta counties, and also attended Green River and Rock Springs city council meetings. Two open house meetings were also held in Rock Springs and Green River. No specific concerns about the Project were raised at the meeting. *Tr. of Proc.*, pp. 64-65.

27. Lucas reviewed the State's standard proposed permit conditions and believed they were reasonable and appropriate. In Lucas's professional opinion, concerning the required permits, Lucas believed the proposed Project would comply with all applicable laws. Lucas opined the activities described in the Application would not create any serious threat of injury to the environment or the economic and social conditions of the inhabitants. Lucas also confirmed

that FMC currently supplies water to the Town of Granger and did not anticipate the water usage for the Project to affect the supply of water for Granger. *Tr. of Proc.*, pp. 65-75.

28. Joe Hammond (Hammond) is a Principal Project Manager for CH2M Hill Engineers and prepared the Application in this matter. Hammond explained that the Application contained seven major areas, including the purpose and description of the Project, socioeconomic analysis of impacts, construction and operations of the Project, public involvement, and a transportation analysis. *Tr. of Proc.*, pp. 86-89.

29. According to Hammond, all the deficiencies in the Application that were identified by the State in its Exhibit 1 have been addressed, and on October 12, 2012, the State determined the Application to be complete. Hammond identified the areas primarily affected to be Sweetwater, Lincoln, and Uinta Counties, and the municipalities of Rock Springs, Green River, Granger, Opal, Diamondville, Kemmerer, Lyman, and Mountain View. The area of influence was determined based upon a commuting distance of 100 miles or less or 90 minutes or less, as well as the availability of temporary housing. *Tr. of Proc.*, pp. 88-90.

30. According to Hammond, the Project capital cost was over \$200 million, and over \$56 million of that number was expected in local labor and services. The Project creates 235 direct and 86 indirect local jobs, and brings in approximately \$4.8 million ad valorem tax and \$2.2 million sales tax revenue. *Tr. of Proc.*, pp. 91-92.

31. *Section 5* and *Appendix E* of the Application contain details of the anticipated housing accommodations. Even considering the cumulative impact of other projects in the area, there was adequate housing availability based upon the schedule presented in the Application. Hammond was confident that starting construction roughly one year later would not impact the

available housing because the peak employment numbers decreased with the new construction schedule. *Tr. of Proc.*, pp. 93-98.

32. With respect to potential impacts to the environment, Hammond testified that because the Project is entirely within the existing FMC footprint, environmental impacts were not significant. Hammond also confirmed that all state agencies listed in the relevant statute were contacted, and all responses were supportive of the Project. The State Historic Preservation Office (SHPO) requested a special condition relating to the discovery of historical and cultural artifacts be attached to the permit. However, FMC determined, and SHPO later agreed, that SHPO does not have jurisdiction over the Project because it is entirely on FMC's private property. FMC's formal response to SHPO's requested permit condition is found in FMC's Exhibit 5. Hammond also agreed with the standard permit conditions as set forth in State's Exhibit 2. *Tr. of Proc.*, pp. 98-105.

33. In Hammond's professional opinion, the Application complied with all state and local laws, and the rules and regulations of the Industrial Siting Council. Additionally, based upon the results of the environmental and socioeconomic analyses performed in this matter, the Project would not substantially impair the health, safety, or welfare of the inhabitants. Hammond confirmed that with a shift in the construction schedule, no significant socioeconomic impact would occur. *Tr. of Proc.*, pp. 106-107.

#### **ii. Division's Witness**

34. Tia Raamot (Raamot) is the Principal Economist with the Department of Environmental Quality, Industrial Siting Division. Raamot received and processed the Application in this case. Raamot confirmed that as part of the process, a jurisdictional meeting was held with the Applicant on January 10, 2012. A determination was made that the Project

cost was in excess of the statutory threshold for obtaining an industrial siting permit. The Application for the Project was subsequently filed on August 13, 2012. *Tr. of Proc.*, pp. 121-123.

35. According to Raamot, after review of the Application, the Division issued a Notice of Deficiency to FMC identifying four deficiencies in the Application. The Division requested the numbers of the local migrating workforce, a discussion of the methods and strategies the company would use to hire local workers, an explanation of how the company would avoid creating a nuisance during the construction of the Project, and a further definition the family resources available in the surrounding area to support the Project. FMC's response to the request for additional information was provided as Addendum 1, and as a result, the Application was thereafter deemed complete. *Tr. of Proc.*, pp. 124-125.

36. Raamot further testified that the Application contained the statutory requirements pursuant to Wyoming Statute § 35-12-109, including, but not limited to, a description of the nature and location of the Project; an estimated time of construction of the facility; an estimate of the number of workers; copies of the studies of environmental impacts; an inventory of the estimated discharges, emissions, and solid waste disposal; as well as an evaluation of the potential impacts and proposals for alleviating social and economic impacts on the 17 areas of review as set forth in Wyoming Statute § 35-12-109 (xiii) (LexisNexis 2012). *Tr. of Proc.*, pp. 125-129.

37. Raamot further testified that all state agencies responded to a request for comments on the Application. No state agency recommended denial of the Application. Raamot recommended permit conditions as set forth in State's *Exhibits 1 and 2*, as the Application was complete per the statutory requirements. The permit conditions set forth in 1 through 14 are

standard permit conditions. Additionally, due to the Applicant's voluntary commitments in its response letters to various agencies, and testimony at hearing, those commitments are now memorialized and incorporated into the permit through condition 15. Raamot agreed with FMC's witnesses that the special condition requested by SHPO relating to the reporting of cultural resources found on FMC's property, should not be included in the permit. *Tr. of Proc.*, pp. 129-132.

38. Finally, Raamot testified as to the distribution of impact assistance funds. The split recommended by the counties was agreeable to the Division. *Tr. of Proc.*, pp. 132-133.

#### **iii. Sweetwater County's Witness**

39. Mark Kot (Kot) is the Public Lands Planner for Sweetwater County. Kot testified he prepared Exhibit A, which is a letter sent to 18 agencies and departments that interact with Sweetwater County, ranging from health departments to law enforcement, to assess potential impacts affecting the county. Kot received nine responses, and all agencies and departments that responded supported the Project. Only the Public Works Department expressed concern about the impacts to County Road 11. Kot admitted, however, that the primary users of the road are not FMC employees. Sweetwater County was anticipating the passage of a six cent sales tax, a portion of which would be used to rebuild the road. If the tax failed at election, Kot planned to work with FMC to come to a mutual resolution to improve the road. Sweetwater County also agreed to the 65 percent allocation of the impact assistance funds. *Tr. of Proc.*, pp. 144-155.

#### **iv. Lincoln County's Witness**

40. Kent Connelly (Connelly) is the Chairman of the Board of Lincoln County Commissioners and President of the Coalition of Local Governments for Southwestern Wyoming. Connelly stated that Lincoln County was in full support of the Project and in total

agreement as to the allocation of 17.5 percent of the impact assistance funds. Lincoln County has an agreement with the municipalities affected by the Project and intends to split the monies four equal ways, between Lincoln County, Opal, Kemmerer, and Diamondville. *Tr. of Proc.*, pp. 156-157.

**v. Uinta County's Witness**

41. Kent Williams (Williams) is the Uinta County Planner. Speaking on behalf of the Uinta County Commissioners, Williams expressed the county's complete support of the Project. Williams also stated that Uinta County agreed with allocation of the impact assistance funds for it to receive 17.5 percent of the monies. Williams also testified that the county further agreed to divide the monies equally between the county, and the communities of Lyman and Mountain View. *Tr. of Proc.*, p. 159.

**vi. City of Green River's Witness**

42. Marty Black (Black) is the City Administrator appearing on behalf of the City of Green River. Black was accompanied by Mayor Hank Castillon. Mayor Castillon testified that Green River was very supportive of the Project and believed the construction and operation of the Project would provide investment in the local community, employment, and additional tax revenue. Mayor Castillon testified that Green River values its long-standing relationship with FMC. *Tr. of Proc.*, pp. 161-162.

**vii. Town of Granger's Witness**

43. Lenore Perry (Mayor Perry) is the Mayor of the Town of Granger. Mayor Perry testified that Granger is the closest municipality to FMC. According to Mayor Perry, although not reflected in FMC's Application, the Town of Granger does, in fact, have some housing available for temporary workers. Mayor Perry also testified that a new school will have been

constructed and operational by the time FMC begins construction. Granger's population is roughly 180 people, counting the number of people who live on the periphery of the town. *Tr. of Proc.*, pp. 163-170.

**viii. Wyoming Building and Construction Trades Council**

44. Douglas C. Thomas (Thomas) has been the President of the Wyoming Building and Construction Trades Council (WBCTC) for 20 years. According to Thomas, the WBCTC supports the Project. *Tr. of Proc.*, p. 141.

45. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

**V. CONCLUSIONS OF LAW**

**A. Principles of Law**

46. FMC bears the burden of proof in the proceedings herein. "The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof." *JM v. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State, Wyo. Mental Health Professions Licensing Bd.*, 120 P.3d 152 (Wyo. 2005).

47. Wyoming Statute § 35-12-109(a) (LexisNexis 2012) provides that an application for a permit shall be filed with the Division and contain the following information:

(i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;

(ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any

requirements specifically waived by the council pursuant to W.S. 35-12-107;

- (iii) A description of the nature and location of the facility;
- (iv) Estimated time of commencement of construction and construction time;
- (v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;
- (vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;
- (vii) A statement of why the proposed location was selected;
- (viii) A copy of any studies which may have been made of the environmental impact of the facility;
- (ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;
- (x) Inventory of estimated emissions and proposed methods of control;
- (xi) Inventory of estimated solid wastes and proposed disposal program;
- (xii) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;
- (xiii) An evaluation of potential impacts together with any plans and proposals for alleviating social and economic impacts upon local governments or special districts and alleviating environmental impacts which may result from the proposed facility. The evaluations, plans and proposals shall cover the following:
  - (A) Scenic resources;
  - (B) Recreational resources;
  - (C) Archaeological and historical resources;

- (D) Land use patterns;
- (E) Economic base;
- (F) Housing;
- (G) Transportation;
- (H) Sewer and water facilities;
- (J) Solid waste facilities;
- (K) Police and fire facilities;
- (M) Educational facilities;
- (N) Health and hospital facilities;
- (O) Water supply;
- (P) Other relevant areas;
- (Q) Agriculture;
- (R) Terrestrial and aquatic wildlife;
- (S) Threatened, endangered and rare species and other species of concern identified in the state wildlife action plan as prepared by the Wyoming game and fish department.

- (xiv) Estimated construction cost of the facility;
- (xv) What other local, state or federal permits and approvals are required;
- (xvi) Compatibility of the facility with state or local land use plans, if any;
- (xvii) Any other information the applicant considers relevant or required by council rule or regulation;
- (xviii) A description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state

contractors and labor force during the construction and operation of the facility;

(xix) Certification that the governing bodies of all local governments which will be primarily affected by the proposed facility were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xx) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years, and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xxi) Information demonstrating the applicant's financial capability to decommission and reclaim the facility.

48. Wyoming Statute § 35-12-110(b) (LexisNexis 2012) requires that the division obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(i) Wyoming department of transportation;

(ii) Public service commission;

.....

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

.....

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

- (xi) Department of environmental quality;
- .....
- .....
- (xiv) The University of Wyoming;
- (xv) Department of revenue;
- (xvi) The Wyoming business council;
- (xvii) Department of workforce services;
- (xviii) Office of state lands and investments;
- (xix) Department of workforce services
- (xx) Department of state parks and cultural resources;
- (xxi) Department of fire prevention and electrical safety;
- (xxii) Department of family services;
- (xxiii) Oil and gas conservation commission.

49. Wyoming Statute § 35-12-110(c) (LexisNexis 2012) provides:

The information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefore and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

50. Wyoming Statute § 35-12-110(d) (LexisNexis 2012) provides that upon receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by Wyoming Statute 35-12-109 and the rules and regulations. If the

director determines that the application is incomplete, he shall, within thirty (30) days of receipt of the application, notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

51. Wyoming Statute § 35-12-110(f) (LexisNexis 2012) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

52. Pursuant to Wyoming Statute § 35-12-111(a) (LexisNexis 2012), the parties to a permit proceeding include:

(a) The parties to the permit application shall include:

(i) The applicant;

(ii) Each local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i) and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to

represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

(b) Any party identified in paragraph (a)(iii) of this section waives his right to be a party if he does not participate orally at the hearing. Any party identified in paragraph (a)(ii) of this section waives its right to be a party unless the local government files a notice of intent to be a party with the office not less than twenty (20) days before the date set for the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

(d) No state agency other than the industrial siting division shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the industrial siting division or any party.

(e) Any person described in W.S. 35-12-111(a)(ii) or (iii) who participated in the public hearing under W.S. 35-12-107 may obtain judicial review of a council decision waiving all or part of the application requirements of this chapter.

53. Pursuant to Wyoming Statute § 35-12-113 (LexisNexis 2012), the council shall:

(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b), unless the other regulatory agency requests that conditions be imposed. In considering the imposition of conditions requested by other agencies upon private lands, the council shall consider in the same manner and to the same extent any comments presented by an affected landowner. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

- (i) The proposed facility complies with all applicable law;
  - (ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area;
  - (iii) The facility will not substantially impair the health, safety or welfare of the inhabitants
  - (iv) The applicant has the financial resources to decommission and reclaim the facility.
- (b) No permit shall be granted if the application is incomplete.
- (c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.
- (d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.
- (e) A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.
- (f) Within ten (10) days from the date of the council's decision, a copy of the findings and the council's decision shall be served upon the applicant, parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

54. The Industrial Development Information and Siting Rules and Regulations

(2011), Chapter 1 provide in part:

**Section 9. Application Information to be Submitted.**

In accordance with W.S. 35-12-109, the application shall contain the information required by the act with respect to both the construction period and online life of the proposed industrial facility and the following information the Council determines necessary:

(a) The application shall state the name, title, telephone number, mailing address, and physical address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components; and

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components of the proposed industrial facility such as boilers, steam generators, turbine generators, cooling facilities, production equipment, and dependent components.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life; and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands; and

- (ii) Products needed by facility operations and their source.
- (e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the Council.
- (f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.
- (g) The applicant shall identify what it deems to be the area of site influence and recommends as the local governments primarily affected by the proposed industrial facility as defined in Sections 2(c) and (b), respectively, of these regulations. The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.
- (h) Using tables, provide a detailed tally of the estimated work force to construct and to operate the facility showing the following information:
  - (i) All workers providing direct labor and direct support; (safety, supervision, inspection) at the work site;
  - (ii) Information by calendar quarter and year from the commencement of construction through the first year of operation;
  - (iii) Identify and provide totals of those which are construction and those which are permanent;
  - (iv) Identify and provide quarterly totals of the number, job classification and recurrence; of those which are estimated to be in-migrating (from outside the study area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in construction;
  - (v) Provide estimates of wages; and
  - (vi) Provide estimates of paid benefits including per diem and paid fees.
- (i) An evaluation of the social and economic conditions in the area of site influence. The social and economic conditions shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to

submitting its application, each applicant shall confer with the administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation may include, but is not limited to:

(i) Land use designation of the site location, including whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

(A) Employment projections by major sector;

(B) Economic bases and economic trends of the local economy;

(C) Estimates of basic versus non-basic employment;

(D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). An analysis of effects on transportation facilities including effects on service

levels of roads, haul routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities required for the administrative functions of government;

(B) Sewer and water distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and services;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of user-oriented community recreational facilities and programs and urban outdoor recreational opportunities including descriptions of recreational resources, locations of the recreational resources, and the types of

recreational resources and an analysis of outdoor, resource-oriented recreational opportunities including locations and types of the recreational resources;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility.

(B) An estimate of the cost of facility construction subject to sales and use taxes.

(C) An estimate of sales and use taxes by year for each county if the facility is located in more than one county.

(D) Estimates of impact assistance payments which will result from the project.

(E) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts. The items shall be noted and evaluated as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the proposed facility, including:

(i) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;

(ii) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

## **B. Application of Principles of Law**

55. This Council has considered all the evidence, testimony, and arguments presented at the November 1, 2012, evidentiary hearing. Through the evidence and testimony, this Council finds that FMC has shown, by a preponderance of the evidence, that it filed a complete Application with the Division regarding the proposed Granger Optimization Project, which

included the requirements in Wyoming Statute § 35-12-109(a) and Chapter 1, Section 9 (2011) of the Industrial Development Information and Siting Rules and Regulations, and that the proposed Project complies with all applicable law.

56. FMC has shown, through the testimony of all its witnesses and exhibits, that the proposed Project will not pose a threat of serious injury to the environment nor to the social and economic conditions or inhabitants in the affected area and that the Project will also not substantially impair the health, safety and welfare of those inhabitants. The testimonies of Moulden, Lucas, and Hammond all indicated this to be the case. The Council makes these findings in light of the anticipated change in the commencement of the construction of the Project.

57. Finally, with regard to the allocation of the impact assistance funds, this Council finds the Division's recommendation to allocate 65 percent of the impact funds to Sweetwater County, 17.5 percent to Lincoln County, and 17.5 percent to Uinta County is reasonable.

### DECISION

Pursuant to the authority vested in the Industrial Siting Council by Wyoming Statute § 35-12-113 (LexisNexis 2012), this Council hereby **grants** the Industrial Siting Permit Application filed by FMC Wyoming Corporation to construct and operate the Granger Optimization Project to be located near Granger, Wyoming.

The Council specifically finds, with the imposition of the following conditions, that:

- (1) The proposed facility complies with all applicable law;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social or economic condition of inhabitants or expected inhabitants of the affected area;

(3) The facility will not substantially impair the health, safety, or welfare of the inhabitants;

(4) The Applicant has the financial resources to decommission and reclaim the facility.

Pursuant to its authority, this Council allocates the impact assistance funds as follows:

Sweetwater County, Wyoming: 65%  
Lincoln County, Wyoming: 17.5%  
Uinta County, Wyoming: 17.5%

Finally, pursuant to its authority, this Council declines to place a condition on the permit as proposed by SHPO, and places the following terms and conditions on the facility, as exactly reflected in *State's Exhibits 1 and 2*:

**Condition #1.** FMC Wyoming Corporation (Permittee) shall obtain and maintain all required State and local permits and approvals in accordance with Wyoming Statute 35-12-109(a)(xv), 35-12-113(a) (i) and 35-12-115 during the term of this permit.

**Condition #2.** Permittee shall commence to construct within three years following the date of the award of this permit.

**Condition #3.** Before engaging in any activity over which the Industrial Siting Council (ISC) has jurisdiction, which could significantly affect the environment external to Permittee's permit area, or the social, or economic, or environmental conditions of the area of site influence and which was not evaluated in the permit process, the Permittee shall prepare and file an evaluation of such activity with the Industrial Siting Division (ISD). When in the opinion of the Director of the Department of Environmental Quality (Director), the evaluation indicates that such activity may result in significant adverse impacts that were not considered in the permit, the Permittee shall file a permit amendment in accordance with Wyoming Statute 35-12-106.

**Condition #4.** The Permittee shall develop a written compliance plan and program to ensure compliance with voluntary commitments of this Permit, testimony, agreements with local governments, and these permit conditions. A compliance coordinator shall be designated and identified to the ISD prior to the onset of construction. This individual shall present himself/herself and meet with the ISD staff before construction commences and review the permit requirements with the ISD staff. This coordinator shall assume the responsibility for assuring that contractors and subcontractors are aware of and enable the Permittee to meet all permit requirements.

**Condition #5.** The ISC may review any adverse social, economic, or environmental impacts either within or outside the area primarily affected that are attributed to the Permittee:

- a. Which adversely affect the current level of facilities or services provided by the local community;
- b. Which cannot be alleviated by financing through ordinary sources of revenue, given due consideration to bonding history and capacity of the jurisdiction involved;
- c. Which were not evaluated or foreseen at the time the permit was granted and can be attributed in whole or in part to the permitted facility; and
- d. Which are not or cannot be resolved by voluntary measures by industrial representatives in the community.

Then by order issued in accordance with the Wyoming Administrative Procedures Act, the ISC may require additional mitigation by the Permittee in cooperation with other basic industries [existing and future] provided that:

- a. A local government has requested mitigation assistance; and
- b. Such adverse impacts were determined to be a result of the activities of the Permittee.

Permittee shall be required to assist in mitigating any impacts that result from construction or operation of the Facility, including those resulting from direct and indirect employment. For purposes of determining additional mitigation measures by the Permittee, consideration shall be given to previous mitigation efforts. However, in any event, Permittee shall not be required to provide mitigation in excess of the proportion that the Permittee's activities are contributing to the total impacts within the impacted area (as defined by W. S. 35-12-102).

**Condition #6.** The Permittee shall give written notice to the ISD when construction commences.

**Condition #7.** The Permittee shall give written notice to the ISD when the physical components of the Facility are 90 percent complete.

**Condition #8.** As a means of adhering to Wyoming Statute 35-12-109 (a) (xviii) to provide preference for local and resident hiring, the Permittee, contractors and subcontractors shall:

a. Incorporate procedures to foster local hiring into the compliance plan and program of Condition #4.

b. File all job postings with the local Workforce Center.

**Condition #9.** The Permittee shall submit an annual report to ISC for the years or portion of a year that includes construction and again for the first year of operation of the Facility for each phase. The annual report shall include:

a. Efforts to assure compliance with voluntary commitments, mitigation agreements with local governments, and conditions contained in this permit;

b. The extent to which construction has been completed in accordance with the approved schedule;

c. Any revised time schedules or time tables for construction, operations, and reclamation, and a brief summary of the construction, reclamation, and other activities that will occur in the next one-year period; and

**Condition #10.** In order that the ISD may monitor Permittee's performance, the Permittee shall institute the following monitoring program that shall be recorded on a monthly basis and reported to the ISD on a quarterly basis through the construction period and through the first year of operation. Monthly data will be in a form prescribed by ISD and shall include:

a. The average and peak number of employees for the Permittee, contractors and subcontractors.

b. Employee city and state of residency at the time of hire and the employee city and state while employed and type of residence while employed.

c. The number of new students enrolled by grade level and school district who are related to Permittee employees, identified as local (no change of residence) and in-migrants.

d. Wyoming resident versus non-resident mix of workforce.

e. An updated construction schedule in the form of Figure 3-1, Figure 3-2 and Table 3-1 as shown on pages 3-3 through 3-7 of the *Section 109 Permit Application: FMC Granger Optimization Project* (Application).

**Condition #11.** The Permittee shall notify the ISD in advance of proposed changes to the scope, purpose, size or schedule of the Facility. At the request of the Director, the Permittee shall update the Application and socioeconomic analysis therein to address proposed changes. The Director may authorize such changes if he or she finds that:

- a. The change should not result in any significant adverse environmental, social, or economic impacts in the area of site influence; and
- b. No party nor ISC Member has requested that the matter be heard before the Council in accordance with the permit procedures of Wyoming Statute 35-12-106 (c) and (d).

The Director will provide public notice of the proposed change and his intent to approve the request.

**Condition #12.** The Permittee will notify the ISD in advance and provide updates to the On Site Construction Workforce Schedule, Table 3-1 on page 3-7 of the Application, and all other pages of the Application where changes have or are expected to occur if:

- a. Actual on-site workforce during construction is expected to exceed the peak number estimated in the Application by more than fifteen percent (15%);
- b. The Permittee wishes to make changes to the lodging plan as described in the Application.

The Director may authorize such changes or refer the matter to the ISC.

**Condition #13.** As may be subsequently required by the Director, the Permittee shall pay a fee based on the estimated cost to prepare, schedule, and conduct a special hearing or meeting of the ISC to remedy any action or inaction by the Permittee. Unused fees shall be refunded to the Permittee.

**Condition #14.** When the Project is nearing completion, Permittee shall place notice to that effect in the newspapers in the general area of the Facility.

**Condition #15.** All commitments made in the Application, testimony, exhibits, mitigative agreements with local governments, and correspondence with state agencies are incorporated into this permit and will be included in the compliance plan identified in standard permit condition #4.

**ORDER**

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application known as the FMC Granger Optimization Project, as submitted by the Applicant and modified by this Council and set forth above in Permit Conditions #1 through #15, is **GRANTED**.

DONE this 6<sup>th</sup> day of December, 2012.

*/s/*  
**Signature on file** \_\_\_\_\_

Industrial Siting Council  
Herschler Building, Fourth Floor West  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002  
(307) 777-7170

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division, and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 7<sup>th</sup> day of December, 2012, addressed to the following:

Office of Administrative Hearings  
2020 Carey Avenue, 5<sup>th</sup> Floor  
Cheyenne, Wyoming 82002

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Assistant Attorney General  
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Douglas C. Thomas – Representative for  
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Kent Williams – Attorney for Uinta County Planner  
Uinta County Planner  
225 Ninth Street  
Evanston, Wyoming 82930

Marty Black – City Administrator  
City of Green River  
50 East 2<sup>nd</sup> North Street  
Green River, Wyoming 82935

*/s/*  
**Signature on file**

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Industrial Siting Division