



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2020-0442; FRL – 10024-70-OAR]

Withdrawal of Approval for Use of Phosphogypsum in Road Construction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing its October 14, 2020 approval for use of phosphogypsum in government road projects. Under the Clean Air Act, the EPA may approve a request for other use of phosphogypsum if it includes certain prescribed information. Upon further review, EPA has determined that the approval was premature and should be withdrawn because the request did not contain all of the required information. With this action, phosphogypsum remains prohibited from use in road construction projects.

DATES: Effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Jonathan P. Walsh, Radiation Protection Division, Office of Radiation and Indoor Air, Mail Code 6608T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 343-9238; fax number: (202) 343-2304; email address: walsh.jonathan@epa.gov.

Organization of this document. The information in this notice is organized as follows:

- I. General Information
- II. Background and Overview of Decision

SUPPLEMENTARY INFORMATION:

I. General Information

A. *How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2020-0442. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket in the EPA

Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

2. *Electronic Access.* You may access this Federal Register document electronically from the Government Printing Office under the “Federal Register” listings at FDSys (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>).

II. Background and Overview of Decision

On October 14, 2020, EPA approved, subject to certain conditions, a request by The Fertilizer Institute (TFI) for the use of phosphogypsum in government road projects.¹ This request was submitted pursuant to Clean Air Act regulations at 40 CFR 61.206, which provide that EPA may approve request for a specific use of phosphogypsum if it is determined that the proposed use is at least as protective of public health as placement in a stack, which is the designated management method. EPA identified ten components that such a request “must contain” (40 CFR 61.206(b)). These include such items as the specific location where phosphogypsum will be used and the quantity of phosphogypsum to be used.

On December 18, 2020, various groups² petitioned the United States Court of Appeals for the District of Columbia Circuit for review of EPA’s action conditionally approving TFI’s request. On that same date, these same groups, “as a precaution and as a matter of courtesy,” submitted to EPA, ostensibly under Clean Air Act (CAA) § 307(d)(7)(B) (42 U.S.C. § 7607(d)(7)(B)), a petition asking EPA to reconsider its action. EPA is further prompted to review this approval by Executive Order 13990, which directs agencies to examine a wide range of

¹ Letter from Andrew R. Wheeler, Administrator, Environmental Protection Agency, to Corey Rosenbusch, President and CEO, The Fertilizer Institute, dated October 14, 2020, Docket No. EPA-HQ-OAR-2020-0442-0015. See also 85 FR 66550, October 20, 2020.

² Center for Biological Diversity, Healthy Gulf, Manasota-88, Inc., North America’s Building Trades Unions, People for Protecting Peace River, Inc., Public Employees for Environmental Responsibility, Rise St. James, and Sierra Club and its Florida chapter. See *Center for Biological Diversity v. EPA*, No. 20-1506.

previously-issued actions in light of various policies and national objectives.³

EPA has the authority to review and reconsider, on its own initiative, previous decisions and actions. Upon further evaluation, EPA decides that it was premature for the Agency to approve the proposed use without all of the information specified as constituting a proper request under §61.206(b). Therefore, EPA has withdrawn, revoked and rescinded the October 2020 approval.⁴ This decision is without prejudice to a subsequent or further proper request under § 61.206 for approval of the use of phosphogypsum for other purposes that contains the information required by § 61.206(b). In accordance with the regulations at 40 CFR part 61, subpart R, unless and until any such request is approved, phosphogypsum must continue to be placed in stacks and may not be removed from stacks for use in road construction.

Michael S. Regan,
Administrator.

[FR Doc. 2021-14377 Filed: 7/6/2021 8:45 am; Publication Date: 7/7/2021]

³ “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” signed January 20, 2021. 86 FR 7037, January 25, 2021.

⁴ Letter from Michael S. Regan, Administrator, Environmental Protection Agency, to Corey Rosenbusch, President and CEO, The Fertilizer Institute, Docket No. EPA-HQ-OAR-2020-0442. See this letter for further discussion of the reasons for the withdrawal, revocation, and rescission of the prior October 2020 decision.