

NOTICE OF PROPOSED ACTION

by the
U. S. Environmental Protection Agency
Region IX, WTR-5
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 947-3000

On Issuance of a National Pollutant
Discharge Elimination System Permit to Allow Discharge of
Pollutants to Waters of the United States and Amendment of a Record of
Decision/Finding of No Significant Impact

Public Notice: AZ-02-W-02

February 27, 2002

The Environmental Protection Agency (EPA), Region IX, San Francisco, California is issuing the following notice of proposed action under the Clean Water Act (CWA) for permittee referenced below:

Carlota Copper Company
8101 E. Prentice Avenue, Suite 800
Englewood, CO 80111

The EPA issued a National Pollutant Discharge Elimination System (NPDES) permit to the above referenced party on July 21, 2000. The permit was subsequently appealed to the Environmental Appeals Board (EAB). In accordance with 40 C.F.R. § 124.19(d), EPA withdrew two contested permit conditions in order to allow comment on these conditions and to review compliance with National Environmental Protection Act (NEPA) for these conditions. The remaining permit provisions and the petitions before the EAB have been stayed since that time.

On May 9, 2001 EPA public noticed the two withdrawn conditions and a supplemental environmental assessment (EA) for these two conditions. A response to the public comments, the NPDES permit and the Amendment of the Record of Decision/Finding of No Significant Impact have been prepared by EPA and are available for review at <http://www.epa.gov/region09/water/npdes/carlot.html> or by calling or writing to the following address:

U.S. Environmental Protection Agency, Region IX
CWA Office of Permits and Standards, WTR-5
ATTN: Shirin Tolle
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3515

Within 33 days of this public notice, any person who filed comments on the two withdrawn permit conditions may petition the EAB to review either of these two conditions. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period and a showing that the condition in question is based on: (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the EAB should, in its discretion, review. See 40 C.F.R. §§ 124.19(a) and 124.20(d).

40 C.F.R. § 124.60 (b)(1) states that, as provided in 40 C.F.R. § 124.16 (a), if an appeal of an initial permit decision is filed under Section 124.19 of this Part, the force and effect of the contested conditions of the final permit shall be stayed until final agency action under 40 C.F.R. § 124.19 (f). In accordance with 40 C.F.R. § 124.16 (a)(1), “[i]f the permit involves a . . . new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new . . . source or discharger pending final agency action.” Please review 40 C.F.R. § 124 and the revisions at 65 Fed. Reg. 30886 for a complete description of the requirements regarding appeal of NPDES permits.

Please bring the foregoing notice to the attention of all persons who may be interested in this matter.