

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF            )  
**FMC WYOMING CORPORATION**            )  
FROM A NOTICE OF VALUATION            )     Docket No. **2011-30**  
FOR TAXATION PURPOSES BY THE            )  
MINERAL DIVISION OF THE                )  
DEPARTMENT OF REVENUE                 )

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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**APPEARANCES**

Walter F. Eggers, III, and Lawrence J. Wolfe of Holland & Hart, LLP, appeared on behalf of FMC Wyoming Corporation (FMC). Mr. Eggers appeared at the hearing in this matter.

Karl D. Anderson of the Wyoming Attorney General’s Office appeared on behalf of the Wyoming Department of Revenue (Department).

**JURISDICTION**

The Wyoming State Board of Equalization (Board) shall review final decisions of the Department on application of any interested person adversely affected, including boards of county commissioners. *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayers are specifically authorized to appeal final decisions of the Department. *Wyo. Stat. Ann. § 39-14-309(b)*. The taxpayer’s appeal must be filed with the Board within thirty days of the Department’s final decision. *Wyo. Stat. Ann. § 39-14-309(b); Rules, Wyoming State Board of Equalization, Chapter 2, § 5(a)*. By Notice of Appeal dated June 21, 2011, FMC timely appealed the Department’s Notice of Valuation (NOV) and decision letter dated May 23, 2011. The Board accordingly has jurisdiction to hear this matter.

## STATEMENT OF THE CASE

FMC operates trona mines in Sweetwater County and uses two different mining techniques at its mines. One is the traditional mechanical mining process and the other is a mine water process. It is the valuation of trona recovered using the mine water process that is the subject of this appeal. FMC's mine water operation involves the injection of water into underground areas which have previously been mechanically mined to dispose of tailings. Using this method to dispose of tailings, FMC discovered it could recover additional trona. As the water disperses throughout the abandoned portions of the mine, some of the remaining trona is dissolved. The water is then recovered from the mine and contains small quantities of dissolved trona. The dissolved trona is then processed into soda ash by FMC.

In 1995 the Department and FMC reached an agreement regarding the valuation of trona recovered using the mine water process. Under the 1995 letter agreement, the statutory variable industry factor was applied and FMC was allowed an additional deduction for some processing costs to arrive at the taxable value of trona recovered using the mine water process. In the 1995 letter agreement the Department reserved the right to reevaluate this method for valuing trona recovered using the mine water operation.

In 2003, the Wyoming Legislature altered the variable industry factor for trona and set a fixed industry factor of 32.5% for trona. In a decision letter dated May 23, 2011, the Department advised FMC it was abandoning the method set forth in the 1995 agreement to value trona recovered using the mine water process and would be applying the fixed industry factor of .325 to value all trona. This change was reflected in the NOV issued by the Department for FMC's 2010 mineral production in Sweetwater County, Wyoming. FMC appealed the 2010 NOV, arguing the Department should not have altered the valuation method set forth in the 1995 letter agreement for trona recovered using the mine water process.

The Board, consisting of Chairman Steven D. Olmstead, Vice Chairman Deborah J. Smith, and Paul Thomas Glause, heard this matter on January 24, 2012.<sup>1</sup> The decision of the Department of Revenue set forth in its letter and NOV dated May 23, 2011, is affirmed.

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<sup>1</sup> Deborah J. Smith, the Board's third member, retired effective December 9, 2012, during the time this matter was pending. The Board position was vacant at the time this opinion was issued.

## CONTENTIONS AND ISSUES

In its prehearing pleadings, FMC identified five contested issues of fact and six contested issues of law pertaining to the valuation of trona recovered using the mine water process. FMC stated the issues of fact as:

- a. Is FMC's mine water production and processing fundamentally different than the mechanical mining of trona?
- b. Have the facts of FMC's mine water production changed since operations commenced in 1995?
- c. Does the Department's decision in this appeal result in a valuation of FMC's mine water product that exceeds fair market value?
- d. Do the processes and operations conducted at FMC's ELDM facility change the physical or chemical characteristics of the product?
- e. Do the processes and operations conducted at FMC's ELDM enhance the marketability of the mineral?

[*Petitioner FMC Wyoming Corporation's Issues of Fact and Law and Exhibit Index*, p. 1].

FMC stated its issues of law as:

- a. Do the processes and operations conducted at FMC's ELDM facility constitute "processing," as that term is defined in Wyo. Stat. § 39-14-301(a)(vii)?
- b. Is the Department's decision at issue in this appeal contrary to the trona tax valuation statute, Wyo. Stat. § 39-14-303(b)?
- c. Are the processes and operations conducted at FMC's ELDM facility "processing functions or operations" as that phrase is used in Subsection 39-14-303(b)(iv)?
- d. Does the Department's decision at issue in this appeal violate Section 39-14-303(b)(iv) of the trona valuation statute, which provides in part that "[i]n no event shall the value of the mineral

product include any processing functions or operations regardless of where the processing is performed”?

- e. Does the Department’s decision violate the constitutional and statutory mandate that the product be valued for tax purposes at fair market value? Wyo. Const. art. 1, § 28; art. 15, §§ 3, 11(a); Wyo. Stat. § 39-14-302(a)[?]
- f. Would any assessment of interest by the Department in this case be contrary to Wyo. Stat. § 39-14-308(c)(ii)?

[*Petitioner FMC Wyoming Corporation’s Issues of Fact and Law and Exhibit Index*, pp. 1-2].

The Department identified two mixed issues of fact and law:

- 1) Whether the Department correctly valued FMC’s 2010 production?
- 2) Whether the Department and/or the State Board has the ability to disregard the provisions of Wyo. Stat. § 39-14-303 in the valuation of FMC’s 2010 production?

[*Wyoming Department of Revenue’s Issues of Fact and Law and Exhibit Index*, pp. 1-2].

## **FINDINGS OF FACT**

- 1. There are four trona producers in the State of Wyoming. [Tr. p. 141].
- 2. Trona is a hard rock ore that is mined underground. In its raw form, trona consists of approximately 90% soda ash and 10% impurities. The impurities must be removed to produce marketable soda ash. [Tr. pp. 29-31].
- 3. Ninety percent of the soda ash produced in the United States is produced in Sweetwater County, Wyoming. [Tr. p. 29].
- 4. FMC operates several trona mines in Sweetwater County. [Stipulated Updated Summary of Uncontroverted Facts ¶1; Tr. p. 32; Exhibit 100].
- 5. FMC utilizes two different methods to mine trona. One method is traditional mechanical mining and the other method is a mine water process. [Tr. pp. 29-33].

6. Mechanical mining involves the use of huge equipment. With this technique 10 foot seams of trona are cut out in a checkerboard fashion. It is necessary to mine the trona in a checkerboard fashion to support the underground mine's roof. Using this method 50% of the trona is not recoverable. [Tr. pp. 29-34].
7. The mechanically mined trona is moved from the underground mine to the surface on large conveyor belts where it is processed into soda ash. [Tr. p. 30].
8. FMC utilizes two distinct methods to process the mechanically mined trona into soda ash, "sesqui" and "momo." [Tr. pp. 52-54; Exhibit 100].
9. In the sesqui process the trona is first crushed and dissolved. After the insolubles are separated and removed, the trona is then crystallized to form pure sodium sesquicarbonate. Finally, the crystals are heated in calciners to produce soda ash. This method produces a lighter grade of soda ash used primarily in detergents. [Tr. pp. 52-54; Exhibit 100].
10. The mono process differs from the sesqui process in that the order of processing is reversed. The mono processing method produces a heavier grade of soda ash. [Tr. pp. 52-54; Exhibit 100].
11. The impurities removed from the trona during processing, commonly referred to as tailings, were historically piled on the surface. FMC became concerned about the large quantities of tailings being piled on the surface. Working with various governmental agencies, FMC devised a system which utilized water to push the tailing to cavities underground which had previously been mined. [Tr. pp. 33-35].
12. While utilizing this process to dispose of the tailings, FMC discovered it could recover additional trona through a mine water process. [Tr. pp. 75-76].
13. The mine water process begins by drilling water wells above the mined out area of the mine. This water is then used to push the tailing underground to previously mined areas. As the water disperses throughout the previously mined areas, it comes in contact with trona. The trona is dissolved in the water and the saturated water collects in pools. The mine water, which contains 15 to 17 percent trona, is pumped to the surface for processing. [Tr. pp. 35-36].
14. FMC is the only trona producer in Wyoming that utilizes the mine water process to produce trona. [Tr. pp. 175, 184-185].
15. In 1995 FMC built a facility to process the mine water, commonly referred to as the ELDM process. [Tr. pp. 23, 38].

16. To process the mine water, it is first concentrated through evaporation (E). Then it is reacted with lime (L) to convert the residual sodium bicarbonate ( $\text{NaHCO}_3$ ) into sodium carbonate ( $\text{Na}_2\text{CO}_3$ ). The carbonate then goes through a two-step crystallization process, commonly referred to as the “deca” step, to form decahydrate (D) crystals, then monohydrate (M) crystals, which are calcined to produce dense soda ash. [Tr. pp. 38-40; Exhibit 100, 101].
17. The ELDM process produces a heavier grade of soda ash that is identical to soda ash produced using the mono method. [Exhibit 100; supra ¶ 10].
18. The deca step involves treating, heating, melting, separating, washing, refining and disposing of tailings. [Tr. pp. 42-44, 101].
19. The sesqui and mono processing methods do not involve the deca step utilized in the ELDM process, and the ELDM process does not involve the use of crushers and dissolvers utilized in the sesqui and mono processing methods. [Tr. pp. 42, 55-57; Exhibit 101].
20. Regardless of the processing method, sesqui, mono or ELDM, there is no chemical difference in the soda ash produced. [Tr. pp. 44-45].
21. Prior to 2003, the Department determined the value of trona for severance and ad valorem tax purposes by calculating a variable industry factor every two years based on costs submitted by all Wyoming trona producers. [Tr. pp. 69, 150-151].
22. The variable industry factor represented a fluctuating ratio of mining costs over total costs. The calculations used to compute the variable industry factor were based solely on the cost of mechanically mined trona. [Tr. pp. 112-113].
23. In the early 1990’s FMC and the Department met to discuss how to value trona produced using the ELDM process. Both parties were concerned that the inclusion of mine water costs would skew the variable industry factor. [Tr. pp. 45-49].
24. In a letter dated December 18, 1995, (1995 letter agreement) the Department agreed to value trona processed at FMC’s ELDM facility by applying the variable industry factor and allowing an additional deduction for the costs involved in the deca step. [Tr. pp. 90-91].
25. In this 1995 letter agreement, the Department reserved the right to review and amend the method used to value trona processed using the ELDM technique. [Tr. p. 85; Exhibit 705].

26. In 2003, the legislature amended Wyo. Stat. Ann. § 39-14-303(b)(ii) by removing the provisions for calculating the variable industry factor and set a fixed industry factor of 32.5% for trona. 2003 Wyo. Sess. Laws Ch. 24, § 1; [Tr. p. 152].

27. Mine water production and processing expenses were not utilized when the industry factor for trona was fixed at 32.5%. [Tr. p. 171].

28. For production years 1995 through 2009, the Department valued trona processed at FMC's ELDM facility in accordance with the 1995 letter agreement dated December 18, 1995. [Tr. pp. 50, 90-91; Exhibit 705].

29. In May of 2010, the Department informed FMC it was reconsidering the method used to value trona processed at the ELDM facility. FMC and the Department had numerous meetings and communications regarding the proposed changes to valuing trona processed at the ELDM facility operated by FMC. [Tr. pp. 114-115, 130].

30. On May 23, 2011, the Department advised FMC it would value all trona using the fixed industry factor of 32.5% and would no longer allow a deduction for the cost of the deca step for trona processed at FMC's ELDM facility. [Tr. pp. 50, 119-120; Exhibit 706].

31. Concurrent with its letter to FMC, the Department issued a NOV to Sweetwater County valuing all trona produced by FMC using the fixed industry factor of 32.5%, without any additional deduction for the processing of the mine water at FMC's ELDM facility. [Tr. pp. 144-147; Exhibit 706].

32. FMC timely filed a Case Notice for Review/Notice of Appeal with the Board on June 21, 2011, challenging the Department's May 23, 2011, Decision Letter and the NOV. [Notice of Appeal].

Any portion of the Conclusions of Law: Principles of Law, or the Conclusions of Law: Application of Principles of Law set forth below, which includes a finding of fact may also be considered a Finding of Fact, and therefore is incorporated herein by reference.

### **CONCLUSIONS OF LAW: PRINCIPLES OF LAW**

34. Wyoming Statutes section 39-14-303 provides for the taxation and valuation of trona. Relevant portions of the statute state:

- (a) Taxable event. The following shall apply:
- (i) There is levied a severance tax on the value of the gross product for the privilege of severing or extracting trona, in the state. The severance tax imposed by this article may be in addition to other taxes, including but not limited to the ad valorem taxes imposed by W.S. 39-13-104.
- (b) Basis of tax (valuation). The following shall apply;
- (i) Trona shall be valued for taxation as provided in this statute;
  - (ii) The department shall calculate the value of trona for severance and ad valorem tax purposes by using the individual producer's fair market value of soda ash f.o.b. plant multiplied by the industry factor divided by the individual producer's trona to soda ash ratio less exempt royalties. The industry factor shall be thirty-two and five-tenths percent (32.5%);
  - (iii) The value of the gross product shall be the fair market value of the product at the mouth of the mine where produced, after the mining or production process is completed;
  - (iv) Except as otherwise provided, the mining or production process is deemed completed when the mineral product reaches the mouth of the mine. In no event shall the value of the mineral product include any processing functions or operations regardless of where the processing is performed;
  - (v) Except as otherwise provided, if the product as defined by paragraph (iv) of this subsection is sold at the mouth of the mine, the fair market value shall be deemed to be the price established by bona fide arms length sale.

*Wyo. Stat. Ann. § 39-14-303(a) (b).*

35. Wyoming Statutes section 39-14-302(c) states:

- (c) Except as otherwise provided, in the event the product as defined in W.S. 39-14-303(b)(iv) is not sold at the mouth of the mine by bona fide arms-length sale, or if the product of the mine is used without sale, the



department shall determine the fair market value by application of recognized appraisal techniques.

36. Wyoming Statutes section 39-14-301(a)(vii) defines processing as it relates to trona.

“Processing” means crushing, sizing, milling, washing, drying, refining, upgrading, beneficiation, sampling, testing, treating, heating, separating, tailings or reject material disposal, compressing, storing, loading for shipment, transportation from the mouth of the mine to the loadout, transportation to market to the extent included in the price and provided by the producer, processing plant site and post-mouth of mine reclamation, maintenance of facilities and equipment relating to any of the functions stated in this paragraph, and any other function after severance that changes the physical or chemical characteristics or enhances the marketability of the material.

37. “Any taxpayer who feels aggrieved by the valuation and taxes levied by this article may appeal to the board.” *Wyo. Stat. Ann. § 39-14-309(b)(iii)*.

38. The Board must “[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department.” *Wyo. Stat. Ann. § 39-11-102.1(c)(iv)*.

39. The Board’s Rules provide:

Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department determination is incorrect, the burden shifts to the Department to defend its action. For all cases involving a claim for exemption, the Petitioner shall clearly establish the facts supporting an exemption. In proceedings involving the question of whether or not there is a taxable event under Wyoming law, the Petitioner shall have the burden of going forward and the Department shall have the ultimate burden of persuasion.

*Rules, Wyoming State Board of Equalization, Chapter 2 § 20.*

40. “A preponderance of the evidence is ‘proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.’” *Mitcheson v. State, ex rel. Wyo. Workers’ Safety & Compensation Div.*, 2012 WY 74, ¶ 11, 277 P.3d 725, 730 (Wyo.2012) (quoting *Kenyon v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2011 WY 14, ¶ 22, 247 P.3d 845, 851 (Wyo.2011)).

41. “The burden of proof is on the party asserting an improper valuation.” *Chevron U.S.A., Inc. v. Department of Revenue*, 2007 WY 79, ¶ 30, 158 P.3d 131, 139 (Wyo. 2007); *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006); *Thunder Basin Coal Company v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006); *Amoco Production Company v. Wyoming State Board of Equalization*, 899 P.2d 855, 858 (Wyo. 1995); *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987).

42. The role of this Board is strictly adjudicatory:

It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department.

*Amoco Production Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 674 (Wyo.2000). See *Amoco Production Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 22, 94 P.3d 430, 440 (Wyo.2004).

43. It is an elementary rule of statutory interpretation that all portions of an act must be read *in pari materia*, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous. Also applicable is the oft-repeated rule that it must be presumed the Legislature did not intend futile things. *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo.1985). See *TPJ v. State*, 2003 WY 49, ¶ 11, 66 P.3d 710, 713 (Wyo.2003).

44. Wyoming Statutes section 8-1-103 provides in part:

(a) The construction of all statutes of this state shall be by the following rules, unless that construction is plainly contrary to the intent of the legislature:

(i) Words and phrases shall be taken in their ordinary and usual sense, but technical words and phrases having peculiar and appropriate meaning in law shall be understood according to their technical import.

45. The Wyoming Supreme Court has stated that statutory interpretation starts with the plain language of the statute:

As we have often stated, our rules of statutory construction focus on discerning the legislature's intent. In doing so, we begin by making an "inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection." *Parker Land and Cattle Company v. Wyoming Game and Fish Commission*, 845 P.2d 1040, 1042 (Wyo.1993) (quoting *Rasmussen v. Baker*, 7 Wyo. 117, 133, 50 P. 819, 823 (1897)). We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe together all parts of the statute *in pari materia*. *State Department of Revenue and Taxation v. Pacificorp*, 872 P.2d 1163, 1166 (Wyo.1994).

*Chevron U.S.A., Inc. v. Department of Revenue*, 2007 WY 79, ¶ 15, 158 P.3d 131, 136 (Wyo.2007).

46. The Wyoming Supreme Court has previously summarized a number of useful precepts concerning statutory interpretation:

In interpreting statutes, our primary consideration is to determine the legislature's intent. All statutes must be construed in *pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony. Statutory construction is a question of law, so our standard of review is *de novo*. We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute *in pari materia*. When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.

Moreover, we will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions.

Only if we determine the language of a statute is ambiguous will we proceed to the next step, which involves applying general principles of

statutory construction to the language of the statute in order to construe any ambiguous language to accurately reflect the intent of the legislature. If this Court determines that the language of the statute is not ambiguous, there is no room for further construction. We will apply the language of the statute using its ordinary and obvious meaning.

*BP America Production Co. v. Dep't of Revenue*, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo.2005) (internal citations and quotations omitted), *quoted in Cheyenne Newspapers, Inc. v. Building Code Board of Appeals of the City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo.2010).

47. “We must accept statutes as they are written; neither omitting words that are included, nor including words that are omitted.” *Cheyenne Newspapers, Inc. v. Building Code Board of Appeals of the City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo.2010); *accord BP America Production Co. v. Dep't of Revenue*, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo.2005); *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo.2005); *Fontaine v. Bd. of County Comm'rs of Park County*, 4 P.3d 890, 895 (Wyo.2000); *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo.1976).

48. “A basic tenet of statutory construction is that the omission of words from a statute is considered to be an intentional act by the legislature, and this [Board] will not read words into a statute when the legislature has chosen not to include them.” *Merrill v. Jansma*, 2004 WY 26, ¶ 29, 86 P.3d 270, 285 (Wyo.2004). “Words may not be inserted in a statutory provision under the guise of interpretation.” *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo.1976); *accord Spreeman v. State*, 2012 WY 88, ¶ 13, 278 P.3d 1159, 1163 (Wyo.2012); *Adelizzi v. Stratton*, 2010 WY 148, ¶ 11, 243 P.3d 563, 566 (Wyo.2010).

49. In construing statutes, the following standard applies:

The paramount consideration is to determine the legislature’s intent, which must be ascertained initially and primarily from the words used in the statute. We look first to the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations. If we determine that a statute is clear and unambiguous, we give effect to the plain language of the statute.

*RME Petroleum Co. v. Dep't of Revenue*, 2007 WY 16, ¶ 25, 150 P.3d 673, 683 (Wyo.2007)(citations omitted); *quoted in Morris v. CMS Oil and Gas Co.*, 2010 WY 37, ¶ 26, 227 P.3d 325, 333 (Wyo.2010) and *Kennedy Oil v. Dep't of Revenue*, 2008 WY 154, ¶ 10, 205 P.3d 999, 1003 (Wyo.2008)).

50. The Board must avoid the construction of statutes that produce absurd, illogical or unreasonable results. *Matter of Cordova*, 882 P.2d 880, 883 (Wyo.1994). There is a presumption that the legislature intends to adopt legislation that is reasonable and logical. *Gerstell v. State ex rel. Dept. of Revenue & Taxation*, 769 P.2d 389, 394 (Wyo.1989).

51. In interpreting a statute, the Board will give deference to the statutory interpretation of an agency charged with administration of a statute, unless that interpretation is clearly erroneous. *Parker Land & Cattle Company*, 845 P.2d 1040, 1045 (Wyo.1993).

52. Tax statutes are strictly construed in favor of the taxpayer. “[T]axes may not be imposed by any means other than a clear, definite and unambiguous statement of legislative authority.” *Qwest Corp. v. State ex rel. Wyo. Dep't of Revenue*, 2006 WY 35, ¶ 9, 130 P.3d 507, 511 (Wyo.2006) (citation omitted).

### **CONCLUSIONS OF LAW: APPLICATION OF PRINCIPLES OF LAW**

53. The Petitioner’s appeal was timely filed and the Board has jurisdiction to hear this matter. *Wyo. Stat. Ann. § 39-11-102.1(c)*; *Rules, Wyoming State Board of Equalization, Chapter 2 § 5*; *supra* ¶¶ 32, 37-38.

54. The primary issue in this appeal is whether Wyoming Statutes section 39-14-303(b)(ii) applies to the valuation of trona recovered by FMC’s mine water operations and processed into soda ash at its ELDM facility. FMC argues that it is entitled to an additional deduction over and above the fixed industry factor of 32.5% for the cost of the deca step for trona processed at its ELDM facility. In support of its position, FMC contends the mine water costs were not utilized when the legislature set the fixed industry factor for trona, and the deca step involves “processing” as that term is defined by Wyoming Statutes section 39-14-301(a)(vii). *Supra* ¶¶ 5, 12-17, 21-30, 34-36.

55. Wyoming Statutes section 39-14-303(b)(ii) sets forth the valuation method for trona when it is sold as processed soda ash. It states:

The department shall calculate the value of trona for severance and ad valorem tax purposes by using the individual producer’s fair market value

of soda ash f.o.b. plant multiplied by the industry factor divided by the individual producer's trona to soda ash ratio less exempt royalties. The industry factor shall be thirty-two and five-tenths percent (32.5%)[].

*Wyo. Stat. Ann. § 39-14-303(b)(ii); supra ¶¶ 8, 16-17, 20, 34.*

56. Our analysis must begin by looking at the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. *RME Petroleum Co. v. Dep't of Revenue*, 2007 WY 16, ¶ 25, 150 P.3d 673, 683 (Wyo.2007); *see supra* ¶¶ 44-45. The language of Wyoming statutes section 39-14-303(b)(ii) is clear and not ambiguous. It does not require the Board to resort to the rules of statutory construction to determine the legislature's intent. *Supra* ¶¶ 34-35, 43-46, 49.

57. Wyoming Statutes section 39-14-303(b)(ii) sets the industry factor for **trona** (emphasis added) at 32.5%. It does not distinguish whether the trona was processed into soda ash using the sesqui, mono or ELDM process. Regardless of the processing method, sesqui, mono or ELDM, there is no chemical difference in the soda ash produced. "A basic tenet of statutory construction is that the omission of words from a statute is considered to be an intentional act by the legislature, and this [Board] will not read words into a statute when the legislature has chosen not to include them." *Merrill v. Jansma*, 2004 WY 26, ¶ 29, 86 P.3d 270, 285 (Wyo.2004). In Wyoming Statutes section 39-14-303(b)(ii), the legislature has chosen not to make a distinction in the methods used to process trona. It simply sets an industry factor to be used for valuing trona. *Supra* ¶¶ 8-10, 13-20, 34, 47-48.

58. FMC contends mine water costs were not utilized when the legislature amended Wyoming Statutes section 39-14-303(b)(ii) in 2003, and established a fixed industry factor for trona. The Department does not dispute this. Prior to 2003, both FMC and the Department were concerned that including mine water costs in the calculations would skew the variable industry factor. If mine water costs skewed the variable industry factor prior to 2003, including mine water costs in determining a fixed industry factor would have only exacerbated the issue. Therefore, it should not come as any surprise that costs associated with the mine water process were not considered when the legislature set a fixed industry factor for trona in 2003. *Supra* ¶¶ 22-23, 27.

59. FMC argues that it is entitled to an additional deduction over and above the fixed industry factor of 32.5% for the cost of the deca step for trona processed at its ELDM facility. While it is not disputed that the deca step involves processing, there is no basis for this argument. When trona is sold as processed soda ash, the industry factor set forth

in Wyoming Statutes section 39-14-303(b)(ii) is used to value the trona. The industry factor already has a deduction for processing costs built into it. When the legislature fixed the industry factor for trona sold as processed soda ash at 32.5%, they were actually giving trona producers a 67.5% credit for processing costs. To give an additional deduction for the deca step would lead to a reduced or negative value for trona processed at FMC's ELDM facility. The State Board must avoid the construction of statutes that produce absurd, illogical or unreasonable results. *Matter of Cordova*, 882 P.2d 880, 883 (Wyo.1994); *supra* ¶¶ 14-16, 18, 24, 34, 43, 50.

60. Wyoming Statutes section 39-14-303(b)(iii) requires the Department to value trona for taxation purposes at "the fair market value of the product at the mouth of the mine where produced, after the mining or production process is completed." When the legislature set the industry factor at 32.5% for trona sold as processed soda ash, they were providing the Department with a formula to extrapolate the value of trona at the mouth of the mine from soda ash sales. *Supra* ¶¶ 21-26, 30-31, 34.

61. FMC also attempts to argue that Wyoming Statutes section 39-14-303(b)(iv) mandates that it be given an additional deduction for the processing costs involved in the deca step. FMC relies heavily on the second sentence in subparagraph (iv) which provides, "[i]n no event shall the value of the mineral product include any processing functions or operations regardless of where the processing is performed." This argument is not persuasive when this portion of the statute is read together with all other portions of the statute. It is an elementary rule of statutory interpretation that all portions of an act must be read *in pari materia*, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous. *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo.1985). *See TPJ v. State*, 2003 WY 49, ¶ 11, 66 P.3d 710, 713 (Wyo.2003); *supra* ¶¶ 12-13, 15-18, 34, 36, 43-46.

62. Wyoming Statutes section 39-14-303(b)(iv) is only applicable if trona is sold before it is processed into soda ash. If trona is sold before it is processed into soda ash, the Department would be required to give credit for any processing functions to determine the trona's value for taxation purposes. For trona sold as processed soda ash, Wyoming Statutes section 39-14-303(b)(ii) provides an industry factor to give all trona producers a uniform credit for their processing functions. *Supra* ¶¶ 34-35.

63. The Department's decision not to give FMC an additional deduction for the deca step was a reasonable interpretation of Wyoming Statutes section 39-14-303. In interpreting a statute, the Board will give deference to the statutory interpretation of an agency charged with administration of a statute, unless that interpretation is clearly erroneous. *Parker Land & Cattle Company*, 845 P.2d 1040, 1045 (Wyo.1993); *supra* ¶¶ 23-25, 29-31, 34-36, 42, 51-52.

64. FMC has failed to persuade the State Board by a preponderance of the evidence that the Department has improperly valued trona processed at its ELDM facility, or that the value determined by the Department exceeds the fair market value of the product. *Supra* ¶¶ 30-31, 34, 39-42.

**ORDER**


**IT IS THEREFORE ORDERED** the Department of Revenue's decision letter dated May 23, 2011, and the corresponding Notice of Valuation are **affirmed**.

**Pursuant to *Wyo. Stat. Ann. § 16-3-114* and *Rule 12, Wyoming Rules of Appellate Procedure*, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.**

DATED this 19<sup>th</sup> day of March, 2013.

STATE BOARD OF EQUALIZATION

  
Steven D. Olmstead, Chairman

  
Paul Thomas Glause, Vice-Chairman

ATTEST:



Gayle R. Stewart, Executive Secretary/Staff Attorney



**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of March, 2013, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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