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FILED

DEC 03 2009

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF)
MEDICINE BOW FUEL & POWER) Docket No. 09-2801
AIR PERMIT CT-5873)

DEQ'S PRE-HEARING MEMORANDUM

In accordance with the EQC's November 20, 2009 Notice of Hearing and Order, Respondent Wyoming Department of Environmental Quality (DEQ) submits the following:

I. WITNESSES

The DEQ will call the following witnesses to testify at the hearing:

A. James (Josh) Nall, c/o DEQ/AQD, 122 West 25th Street, Herschler Building, 2nd Floor, Cheyenne WY 82002; (307) 777-7816. Mr. Nall is expected to testify regarding the DEQ/AQD's air quality modeling analysis conducted as part of the application review and construction permitting process for the Medicine Bow IGL Facility which resulted in the issuance of Permit CT-5873 on March 4, 2009, permit terms and conditions, applicable regulations and guidance, and related matters relevant to the issues in this case. Mr. Nall may also rebut testimony of the Sierra Club's witnesses.

B. Chad Schlichtemeier, c/o DEQ/AQD, 122 West 25th Street, Herschler Building, 2nd Floor, Cheyenne WY 82002; (307) 777-5924. Mr. Schlichtemeier is expected to testify regarding the DEQ/AQD's application review and construction permitting process for the Medicine Bow IGL Facility which resulted in the issuance of Permit CT-5873 on March 4, 2009, permit terms and conditions, applicable regulations and guidance, and related matters relevant to the issues in this case. Mr. Schlichtemeier may also rebut testimony of the Sierra Club's witnesses.

C. David Finley, c/o DEQ/AQD, 122 West 25th Street, Herschler Building, 2nd Floor, Cheyenne WY 82002; (307) 777-3746. Mr. Finley is expected to testify regarding the DEQ/AQD's application review and construction permitting process for the Medicine Bow IGL Facility which resulted in the issuance of Permit CT-5873 on March 4, 2009, permit terms and conditions, applicable regulations, guidance and policy, and related matters relevant to the issues in this case. Mr. Finley may also rebut testimony of the Sierra Club's witnesses.

E. May Call Witnesses. The DEQ may call the following witnesses to testify at the evidentiary hearing in this matter: i) Andrew Keyfauver, c/o DEQ/AQD, 122 West 25th Street, Herschler Building, 2nd Floor, Cheyenne WY 82002; (307) 777-7045; ii) any of the other parties' witnesses as may be needed for further examination; and iii) any other witnesses as may be needed for purposes of rebuttal or impeachment.

II. EXHIBITS

The DEQ intends to introduce, and requests the Council admit, the following exhibits into evidence: the exhibits on the DEQ Exhibit List attached hereto as

Attachment A. In addition to the exhibits on the DEQ Exhibit List, the DEQ may also use any documents filed by or listed on any of the other parties' exhibit lists, or any other exhibits needed for purposes of foundation, cross-examination or rebuttal.

III. ISSUE

Whether the DEQ/AQD's decision to issue air quality construction permit CT-5873 to Medicine Bow Fuel and Power for the Medicine Bow Facility complied with WYO. STAT. ANN. § 35-11-801 and Chapter 6, Sections 2 and 4 of the Wyoming Air Quality Standards and Regulations where:

A. The DEQ properly calculated the Facility's Potential to Emit (PTE) by including normal operations in the PTE and excluding the initial startup, cold startups, and malfunction events, which are not part of the Facility's normal operations; established the startup/shutdown emission minimization (SSEM) plan as BACT for startup/shutdowns; and concluded that the worst-case SO₂ emission modeling demonstrated that the NAAQS and WAAQS were protected.

B. The DEQ was authorized by and complied with the law, including Wyoming's SIP, EPA's PM_{2.5} NSR Implementation Rule and prior EQC precedent, by using EPA's PM₁₀ Surrogate Policy to analyze PM_{2.5} emissions, especially where EPA has not promulgated all of the necessary tools for analyzing PM_{2.5}.

C. The DEQ's review of Medicine Bow's fugitive Hazardous Air Pollutant (HAP) emission calculations based on the component type and count, service type, corresponding emission factor, and the Leak Detection and Repair (LDAR)

control effectiveness; and the DEQ's determination that an LDAR program was BACT for fugitive component emissions was reasonable and supported by the record.

D. The DEQ's determination that the Facility was a minor source of HAP emissions was reasonable and supported by the record.

E. The DEQ's determination that Medicine Bow demonstrated PM₁₀ NAAQS and WAAQS compliance by modeling long term (annual), but not short term (24 hour) fugitive PM₁₀ emissions was reasonable and supported by the law and the record, especially given the uncertainties and unrealistic predictions of ambient impacts associated with such modeling and where ambient standards will be monitored by a particulate monitoring network.

IV. STATUTES & REGULATIONS

The applicable statutory and regulatory provisions are:

A. The Wyoming Environmental Quality Act, specifically WYO. STAT. ANN. §§ 35-11-102, -201, and -801.

B. The Wyoming Administrative Procedure Act (WYO. STAT. ANN. §§ 16-3-101 through -115).

C. The Wyoming Air Quality Standards and Regulations (WAQSR), specifically WAQSR Ch 1, § 5 and Ch. 6, §§ 2 and 4.

V. UNCONTESTED FACTS

The DEQ requests the Council admit the facts contained in the *Annex to the DEQ's Motion for Summary Judgment* filed on November 16, 2009, into evidence.

VI. PENDING MOTIONS

A. The DEQ, Medicine Bow Fuel & Power, and Sierra Club's separate Motions for Summary Judgment are pending before this Council.

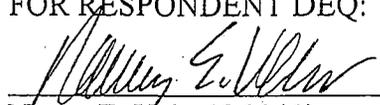
B. On November 30, 2009, the Sierra Club filed a Motion to Strike Katrina Winborn's *Expert Report* and certain sentences from her Affidavit submitted on November 16, 2009; and the portions of Medicine Bow's Memorandum of Law referencing those portions. The DEQ intends to file a Response in Opposition.

VII. CONCLUSION

Sierra Club has failed to present any evidence, much less substantial evidence, that the DEQ/AQD's decision to issue air quality permit CT-5873 to Medicine Bow Fuel and Power for the Medicine Bow Facility did not comply with WYO. STAT. ANN. § 35-11-801 and Chapter 6, §§ 2 and 4 of the WAQSR. Therefore, the DEQ requests the Council affirm the DEQ's March 4, 2009 decision to issue Permit CT-5873.

DATED this 3rd day of December, 2009.

FOR RESPONDENT DEQ:



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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing DEQ'S PRE-HEARING MEMORANDUM through United States mail, postage prepaid on this 3rd day of December, 2009 addressed to the following:

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