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**Jim Ruby, Executive Secretary
Environmental Quality Council**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE

Respondent, the Wyoming Department of Environmental Quality ("DEQ")/ Air Quality Division ("AQD"), by and through the Office of the Attorney General of the State of Wyoming, in response to the Sierra Clubs' Protest and Petition for Hearing¹ on the DEQ's issuance of air quality construction permit CT-5873 to Medicine Bow Fuel & Power, LLC, responds as follows:

The Sierra Clubs' introductory paragraph and list of protestants appears to be for descriptive purposes and does not contain factual allegations. Therefore, a response is not required. However, to the extent this paragraph and list is deemed to contain any factual allegations, the DEQ/AQD denies.

1. DEQ/AQD admits it received a permit application from Medicine Bow Fuel & Power, LLC on December 31, 2007 ("Application AP-5873"), to construct an underground coal mine ("Saddleback Hills Mine") and industrial gasification and

¹ The Protest and Petition lists Protestants as: "Sierra Club Wyoming Office" and "Sierra Club National Headquarters." However, the only registered legal entity in Wyoming with a similar closely related name is the "Sierra Club" which shares the same address as the "Sierra Club National Headquarters."

liquefaction plant (“Medicine Bow IGL Plant”) (collectively the “Facility”) that will produce transportation fuels and other products. DEQ/AQD denies all other allegations contained in paragraph 1.

2. DEQ/AQD admits it conducted an analysis of Application AP-5873 dated June 19, 2008, (“Permit Application Analysis”) and it included proposed permit conditions. The Permit Application Analysis was put out for public comment on July 3, 2008. DEQ/AQD denies all other allegations contained in paragraph 2.

3. DEQ/AQD admits it received twenty comment letters during the public comment period, including an August 1, 2008 comment letter from Earthjustice stating the comments were being “submitted on behalf of the Sierra Club,” a July 28, 2008 comment letter from the Wyoming Outdoor Council stating the comments were being submitted “on behalf of the Wyoming Chapter of the Sierra Club,” and an August 4, 2008 letter from EPA Region VIII. Further, the DEQ/AQD admits it held one public hearing on August 4, 2008 in Medicine Bow, Wyoming. DEQ/AQD denies all other allegations contained in paragraph 3.

4. DEQ/AQD admits that on March 4, 2009, the DEQ/AQD granted approval to construct the Medicine Bow IGL Plant as described in Application AP-5873. DEQ/AQD denies all other allegations contained in paragraph 4.

5. DEQ/AQD admits that a general description of the processes for the Medicine Bow IGL Plant include coal preparation, gasification, syngas conditioning, acid gas removal, methanol synthesis, methanol to gasoline, CO₂ recovery and production, sulfur recovery and production, power generation, and an air separation unit. DEQ also

admits the last sentence and that the maximum coal production by calendar year at the Saddleback Hills Mine shall not exceed 3.2 million tons. The DEQ/AQD denies all other allegations contained in paragraph 5.

6. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

7. DEQ/AQD admits that its approval to construct the Medicine Bow IGL Plant as described in Application AP-5873 is in accordance with law. DEQ/AQD denies the remainder of the allegations contained in paragraph 7.

8. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

9. DEQ/AQD admits the first sentence. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted and therefore denies the same.

10. DEQ/AQD denies that ozone is “smog.” DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted and therefore denies the same.

11. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

12. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

13. DEQ/AQD admits that Medicine Bow Fuel & Power, LLC’s revised emission calculations indicate that the Medicine Bow IGL Plant is a minor source of

methanol emissions. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted and therefore denies the same.

14. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

15. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

16. DEQ/AQD admits that it received an August 1, 2008 comment letter from Earthjustice stating the comments were being “submitted on behalf of the Sierra Club,” and a July 28, 2008 comment letter from the Wyoming Outdoor Council stating the comments were being submitted “on behalf of the Wyoming Chapter of the Sierra Club.” DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted and therefore denies the same.

17. DEQ/AQD denies that its approval to construct the Medicine Bow IGL Plant as described in Application AP-5873 was not in accordance with law. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted and therefore denies the same.

18. Denied.

19. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

20. In paragraph 20, the Sierra Clubs purport to quote a statute. DEQ/AQD asserts that the statute speaks for itself and paraphrasing and quoting a statute are not allegations of fact which require a response. To the extent a response is required,

DEQ/AQD denies the allegations contained therein. The DEQ/AQD denies the remainder of this paragraph.

21. In paragraph 21, the Sierra Clubs purport to paraphrase a statute and regulations. DEQ/AQD asserts that the statute and regulations speak for themselves and paraphrasing statutes and regulations are not allegations of fact which require a response. To the extent a response is required, DEQ/AQD denies the allegations contained therein. DEQ/AQD denies the remainder of this paragraph.

22. In paragraph 22, the Sierra Clubs purport to paraphrase a statute and regulations. DEQ/AQD asserts that the statute and regulations speak for themselves and paraphrasing statutes and regulations are not allegations of fact which require a response. To the extent a response is required, DEQ/AQD denies the allegations contained therein. The DEQ/AQD denies the remainder of this paragraph.

23. DEQ/AQD admits the first sentence in paragraph 23. The remaining allegations contained in paragraph 23 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remaining allegations.

24. The allegations contained in paragraph 24 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remaining allegations.

25. The allegations contained in paragraph 25 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remaining allegations.

26. In paragraph 26, the Sierra Clubs purport to purport to quote and paraphrase regulations. DEQ/AQD asserts that the regulations speak for themselves and paraphrasing regulations are not allegations of fact which require a response. To the extent a response is required, DEQ/AQD denies the remainder of this paragraph.

27. In paragraph 27, the Sierra Clubs purport to quote and paraphrase regulations. DEQ/AQD asserts that the regulations speak for themselves and paraphrasing and quoting regulations are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

28. In paragraph 28, the Sierra Clubs purport to paraphrase and quote statutes. DEQ/AQD asserts that the statutes speak for themselves and paraphrasing and quoting statutes are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

29. DEQ/AQD asserts that the regulations speak for themselves and paraphrasing regulations are not allegations of fact which require a response. The DEQ/AQD denies the remainder of this paragraph to the extent it contains any factual allegations.

30. The allegations contained in paragraph 30 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remaining allegations.

31. The allegations contained in paragraph 31 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD the remaining allegations.

32. The allegations contained in paragraph 32 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remaining allegations.

33. In paragraph 33, the Sierra Clubs purport to paraphrase and quote regulations. DEQ/AQD asserts that the regulations speak for themselves and paraphrasing and quoting regulations are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

34. In paragraph 34, the Sierra Clubs purport to paraphrase and quote statute and regulations. DEQ/AQD asserts that the statute and regulations speak for themselves and paraphrasing and quoting statutes and regulations are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

35. Denied.

36. DEQ/AQD admits the first sentence and denies the remainder of this paragraph.

37. DEQ/AQD admits the first sentence and denies the remainder of this paragraph.

38. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies the same.

39. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted in the paragraph, or the footnote, and therefore denies the same.

40. Denied.

41. Denied.

42. DEQ/AQD asserts that Application AP-5873 speaks for itself and paraphrasing Application AP-5873 is not an allegation of fact which requires a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

43. DEQ/AQD asserts that the letter speaks for itself and paraphrasing the letter is not an allegation of fact which requires a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

44. Denied.

45. Denied.

46. Denied.

47. The allegations contained in paragraph 47 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

48. Admit.

49. Denied.

50. The allegations contained in paragraph 50 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

51. Denied.

52. The allegations contained in paragraph 52 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

53. DEQ/AQD denies the first sentence. DEQ/AQD incorporates its responses to the allegations from Claim II herein.

54. Denied.

55. The allegations contained in paragraph 55 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

56. DEQ/AQD asserts that the EPA comments speak for themselves and paraphrasing the comments are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

57. DEQ/AQD asserts that its Response speaks for itself and paraphrasing or quoting the Response are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

58. Denied.

59. Denied.

60. DEQ/AQD admits it conducted a BACT analysis and denies the remainder of this paragraph.

61. DEQ/AQD admits that coal cleaning would redefine the source and denies the remainder of this paragraph.

62. Denied.

63. DEQ/AQD asserts that its Response and the EPA comments speak for themselves and that paraphrasing the Response and the EPA comments are not allegations of fact which require a response. To the extent any response is required, the DEQ/AQD denies the remainder of this paragraph.

64. DEQ/AQD asserts that it is without sufficient knowledge or information to form a belief as to the truth of the matters asserted in the first sentence and therefore denies the same. The DEQ/AQD denies the remainder of this paragraph.

65. The allegations contained in paragraph 65 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

66. DEQ/AQD admits the first and third sentences. The DEQ/AQD denies the second sentence.

67. Denied.

68. DEQ/AQD asserts that the EPA Comments speak for themselves and that paraphrasing the EPA Comments is not an allegation of fact which requires a response. To the extent any response is required, the DEQ/AQD denies the remainder of this paragraph.

69. The allegations contained in paragraph 69 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

70. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted and therefore denies.

71. DEQ/AQD asserts that the Federal Register speaks for itself and that paraphrasing the Federal Register is not an allegation of fact which requires a response. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

72. DEQ/AQD admits that it analyzed PM_{2.5} using EPA's PM₁₀ Surrogate Policy. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted and therefore denies the same.

73. The allegations contained in paragraph 73 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

74. The allegations contained in paragraph 74 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

75. The allegations contained in paragraph 75 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

76. The allegations contained in paragraph 76 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

77. The allegations contained in paragraph 77 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

78. Denied.

79. The allegations contained in paragraph 79 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

80. The allegations contained in paragraph 80 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

81. The allegations contained in paragraph 81 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

82. The allegations contained in paragraph 82 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

83. The allegations contained in paragraph 83 and the accompanying footnote are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph and footnote.

84. The allegations contained in paragraph 84 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

85. Denied.

86. The allegations contained in paragraph 86 are legal conclusions, for which no response is required. To the extent any response is required, DEQ/AQD denies the remainder of this paragraph.

87. Denied.

88. DEQ/AQD asserts these are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

89. DEQ/AQD asserts these are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

90. DEQ/AQD asserts these are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

91. DEQ/AQD asserts these are not allegations of fact which require a response. To the extent a response is required, the DEQ/AQD denies the remainder of this paragraph.

92. DEQ/AQD denies each and every allegation in the Sierra Clubs' Protest and Petition for Hearing not specifically admitted.

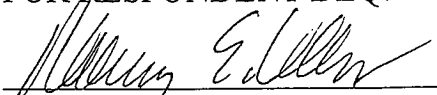
AFFIRMATIVE DEFENSES

1. The Sierra Clubs have failed to state a claim upon which relief can be granted.
2. The Sierra Clubs' Protest and Petition for Hearing is not a concise statement of the facts.
3. The Sierra Clubs do not have standing.
4. The Sierra Clubs have not presented the requisite facts or evidence to warrant their requested relief.
5. DEQ/AQD reserves the right to assert additional affirmative defenses after discovery is completed and as additional facts are learned.
6. DEQ/AQD did not violate the Wyoming Environmental Quality Act, Wyoming Air Quality Standards or Regulations, the Wyoming State Implementation Plan, the Clean Air Act, or any other law or regulation.

WHEREFORE, the DEQ/AQD respectfully requests this Council uphold DEQ/AQD's issuance of Permit CT-5873 to Medicine Bow Fuel & Power, LLC and deny the Sierra Clubs' requested relief.

Respectfully submitted this 4th day of June, 2009.

FOR RESPONDENT DEQ:



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CERTIFICATE OF SERVICE

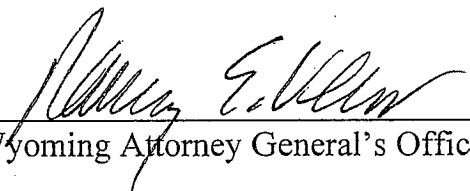
I hereby certify that I have served a true and correct copy of the foregoing *Department of Environmental Quality's Response* through United States mail, postage prepaid on this the 4th day of June, 2009 to the following:

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Wyoming Attorney General's Office