

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

DEC 09 2009

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF:)
MEDICINE BOW FUEL & POWER, LLC)
AIR PERMIT CT-5873)

DOCKET NO. 09-2801

PRE-HEARING CONFERENCE ORDER

THIS MATTER came before the Environmental Quality Council (Council) on December 4, 2009, for an informal pre-hearing conference. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner. Presiding Officer, F. David Searle and Council member Cathy Guschewsky participated telephonically. Also present at the conference were Jim Ruby, Executive Secretary of EQC, Marion Yoder, Assistant Attorney General and Joe Girardin, Paralegal for the EQC. Medicine Bow Fuel and Power (Medicine Bow) appeared by and through counsel, Mary Throne and John Coppede. The Protestants, Sierra Club Environmental Law Club (Sierra Club) appeared by and through counsel, Shannon Anderson, Andrea Issod, Daniel Galpern and David Bahr. The Department of Environmental Quality, Air Quality Division (DEQ) appeared by and through Senior Assistant Attorney General, Nancy Vehr. This Pre-hearing Conference Order arises out of the December 4, 2009 pre-hearing conference.

1. MOTIONS

- (a) DEQ and Medicine Bow informed the parties that it intends to file a motion or motions in limine to address issues identified by Sierra Club before the Council. Protestants will file all motions on or before noon, December 7, 2009. Written responses will be due no later than close of business, December 7, 2009. The motions will be addressed after the hearing on cross motions for summary judgment on December 7, 2009, prior to the beginning of the contested case hearing. The parties were advised that oral argument may be limited on the motions and Council may ask questions of the parties.

2. **ISSUES.** The following issues were identified by Sierra Club in its Protest and Petition for Hearing as the issues involved in this proceeding:

CLAIM I – (a) WYDEQ Failed to Consider Significant Sulfur Dioxide Emissions from Flares in Determining the Source’s Potential to Emit and Failed to Apply BACT to Flares

CLAIM II – WYDEQ Improperly Quantified HAP Emissions from Fugitive Component Leaks, and Failed to Apply BACT to VOC Emissions from Fugitive Component Leaks

CLAIM III – WYDEQ Erroneously Concluded that Medicine Bow is a Minor Source of Methanol and Failed to Consider a Case-by-Case MACT Determination to Control Methanol and other HAP Emissions

CLAIM IV – **WITHDRAWN BY SIERRA CLUB**

CLAIM V – WYDEQ Failed to Model Impacts of Fugitive Emissions of Particulate Matter

CLAIM VI - **WITHDRAWN BY SIERRA CLUB**

CLAIM VII – WYDEQ Failed to Regulate PM2.5 Emissions

CLAIM VIII – EQC **DISMISSED** after hearing

Sierra Club intends to present CLAIM VII as its first issue at the contested case hearing.

3. **WITNESSES.** The parties identified the following witnesses who will be in attendance at the hearing and available to testify:

- (a) DEQ will call as witnesses, James (Josh) Nall, Chad Schlichtemeier, and David Finley. DEQ may call as a witness Andrew Keyfauber.
- (b) Sierra Club will call as a witness Ranajit Sahu, Ph.D.
- (c) Medicine Bow will call as witnesses Katrina Winborn, Jude Rolfes and James Knox. Medicine Bow also listed Robert Moss and Gregg Bierrei as may call witnesses.

4. **EXHIBITS.** In their pre-hearing memoranda, the parties identified the exhibits they intend to use during the hearing. The parties agreed that many of the exhibits are duplicative and stipulated to some of the exhibits that are part of the Administrative Record and/or duplicative. A list of stipulated exhibits will be provided prior to the contested case hearing.

5. ORDER OF PROCEEDINGS. Each party will have ten (10) minutes for opening statements. Following opening statements, the order for the presentation of evidence shall be as follows:

1. DEQ (background information regarding the permit)
2. Sierra Club
3. Medicine Bow
4. Rebuttal

The parties will be provided 10 minutes for closing statements and Sierra Club will be permitted 5 minutes for rebuttal statement.

6. DATE, TIME AND LOCATION OF HEARING. The contested case hearing is scheduled for four days beginning December 8, 2009 at 9:00 a.m. through Friday, December 11, 2009. The hearing location remains set in the large conference room at the State Library, 2800 Central Avenue, Cheyenne, Wyoming.

SO ORDERED this 9th day of December, 2009.


F. David Searle, Presiding Officer
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 9th day of December, 2009, I served a copy of the foregoing **PRE-HEARING CONFERENCE ORDER** by electronic mail to the following:

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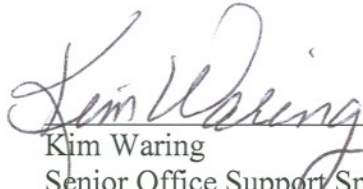
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