

However, the Council notifies Petitioner that on at least three occasions, one as recent as June 3, 2024, the Council has concluded that it does not have the legal authority to suspend or stay a permit during the pendency of an ongoing appeal. *See* Order Denying Petitioners' Motion for Stay, *In the Matter of the Appeal from the Permit to Construct #P0036295 Jackson Hole Conservation Alliance, et al.*, EQC Docket No. 24-2801 (attached); *see also* Order Denying Protect Our Water Jackson Hole's Motion to Suspend Permit, *In the Matter of the Appeal from the Permit to Construct #2023-025 Protect Our Water Jackson Hole*, EQC Docket No. 23-3801 (attached); *see also* Order Denying Protestants' Motion to Suspend Air Permit CT-4631 Pending Resolution of Protestants' Appeal, *In the Matter of: Basin Electric Power Cooperative Dry Fork Station, Air Permit CT-4631*, EQC Docket No. 07-2801 (attached). Accordingly, Petitioner must also explain

in its motion why its request for a stay in this matter is distinguishable from the Council's prior decisions and precedent.

Petitioner has until December 17, 2024 to file its motion for a stay and DEQ shall file its response within ten (10) working days from the date Petitioner files its motion, if one is filed.

ORDERED this 2nd day of December, 2024.

Stan Blake

Stan Blake (Dec 2, 2024 13:40 MST)

Stan Blake, Hearing Examiner
Environmental Quality Council

¹ Petitioners served their appeal petition on March 30 and it was filed with the Council on April 1.

After considering the parties' filings, arguments, and otherwise being fully advised, Petitioners' motion for stay is denied.² Petitioners' motion is denied because the Council lacks the legal authority to stay (or suspend) the effectiveness of Arbor Works Tree Service's permit during the pendency of this ongoing appeal. The Council's prior decisions³ that addressed a similar issue in *In the Matter of the Appeal from the Permit to Construct #2023-025 Protect Our Water Jackson Hole*, EQC Docket No. 23-3801 and *In the Matter of: Basin Electric Power Cooperative Dry Fork Station, Air Permit CT-4631*, EQC Docket No. 07-2801, are instructive and support denying Petitioners' motion. Based upon the Council's conclusions and reasoning in those prior decisions, the Council is without the legal authority to stay Arbor Works Tree Service's permit during the pendency of Petitioners' appeal.

Petitioners contend that the Council's decision in the Basin Electric appeal referenced above does not support the proposition that the Council is without the legal authority to "stay" a permit during the pendency of an appeal. Petitioners contend that their motion to stay is distinguishable from the Council's prior decision in Basic Electric because according to Petitioners, the Council's Basin Electric decision dealt only with a "motion to suspend" a permit, not a "motion to stay" a permit. Petitioners' argument is unpersuasive. First, the Council's Basin Electric decision addressed both "staying" and "suspending" a permit and concluded that the Council did not have the authority to suspend or stay the air permit in that case. The Council explained in its Basic Electric decision denying the motion to suspend:

16. Both Basin Electric and DEQ argued this Council has no statutory authority to suspend the air quality permit. Both argue that Protestants Motion to

² Petitioners' motion for stay is decided by the hearing examiner without consideration by the full Council. See DEQ Rules, Practice and Procedure, Chapter 2.

³ See Order Denying Protect Our Water Jackson Hole's Motion to Suspend Permit (January 12, 2024), Docket No. 23-3801; see also Order Denying Protestants' Motion to Suspend Air Permit CT-4631 Pending Resolution of Protestants' Appeal (August 21, 2008), Docket No. 07-2801.

Suspend is merely an effort to “stay” the issuance of the permit and construction of the project. This Council agrees with the legal interpretation of Basic Electric’s response and DEQ’s response in that the effect of suspending the permit in this case is equivalent to “staying” the issuance of the permit.

Although Petitioners attempt to distinguish between their motion for stay and the motion to suspend in the Basic Electric appeal, “suspending a permit” or “staying a permit,” is a distinction without a difference. Asking the Council to “suspend” or “stay” the effectiveness of an already issued permit during an appeal is asking for the same remedy. Indeed, to “suspend” is “**to stay, delay, or hinder[.]**” Black’s Law Dictionary, Abridged Sixth Edition, p. 1009 (emphasis added). Further, a “stay” “is **a suspension** of the case or some designated proceedings within it.” Black’s Law Dictionary, Abridged Sixth Edition, p. 983 (emphasis added). The Council concludes that the Basin Electric and Protect Our Water Jackson Hole decisions are still instructive and require the Council to deny Petitioners’ motion for stay.

In addition, Petitioners’ argument that Chapter 1, § 8 of DEQ’s practice and procedure rules authorizes the Council to grant a stay in this case is unconvincing. Petitioners contend that Chapter 1, § 8 of DEQ’s practice and procedure rules provide the Council with the requisite legal authority to stay Arbor Works Tree Service’s permit during this appeal. Section 8 states:

Section 8. Appeals to Council.

(a) Where authorized by the Wyoming Environmental Quality Act, appeals to the Council from final actions of the Administrators or Director shall be made within thirty (30) days of notification of such action.

(b) Within thirty (30) days after notification of the Director’s decision following an informal conference governed by Chapter 9, Section 2 of these rules, the applicant or any person with an interest that is or may be adversely affected may appeal the decision to the Council for a hearing in accordance with Chapters 1 and 2 of these rules. The Director shall notify all persons who submitted timely public comments on the underlying application. The Council shall start the hearing within thirty (30) days of the request for a hearing. The Council shall make a final written decision

within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to the hearing.

(c) Where a hearing is requested under subsection (b) of this section, the Council may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(i) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The persons requesting that relief show that there is a substantial likelihood that they will prevail on the merits of the final determination of the proceeding;

(iii) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied by the Director, except that continuation under an existing permit may be allowed where the operation has a valid permit issued under W.S. § 35-11-406.

See DEQ Rules, Practice and Procedure, Chapter 1, § 8 (emphasis added).

Petitioners contend that § 8(c) authorizes the Council to stay the effectiveness of Arbor Works Tree Service's permit during the appeal because it authorizes the Council to grant temporary relief during an appeal. However, Petitioners are mistaken—Petitioners' reading of the rule requires the Council to disregard the plain and unambiguous language in § 8. Based upon the rules of statutory interpretation, subsection (c) does not apply to Petitioners' appeal. If "a statute is clear and unambiguous, we give effect to the plain language of the statute." *Powder River Coal Co., v. Wyoming State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002). We must respect "the ordinary and obvious meaning of the words employed" and give "effect to every word, clause, and sentence, and [] construe together all parts of the statute *in pari materia*." *Id.* "The rules of statutory interpretation [] apply to the interpretation of administrative rules[.]" *Id.*

Based upon the plain language in § 8, there are two different types of appeals to the Council. First, there is an appeal under subsection (a) which concerns appeals from final actions

of DEQ administrators or the DEQ director. Those appeals must be made within thirty days of notification of such action. *See* DEQ Rules, Practice and Procedure, Chapter 1, § 8(a).

Next, there is a second type of appeal under subsection (b) which concerns appeals from the DEQ director's decision following an informal conference governed by Chapter 9, Section 2. *See* DEQ Rules, Practice and Procedure, Chapter 1, § 8(b). Chapter 9 of DEQ's rules is titled "Director Review of Actions **Involving Surface Coal Mining Operations** and All Hearings Before the Department" and section 2 is titled "Requests for **Informal Conferences Involving Surface Coal Mining Operations.**" *See* DEQ Rules, Practice and Procedure, Chapter 9, § 2 (emphasis added). In this second type of appeal, the applicant or any person with an interest that is or may be adversely affected may appeal to the Council the director's decision following an informal conference involving a surface coal mining operation. That type of appeal requires the director to notify all persons who submitted timely public comments on the underlying application and requires the Council to start the hearing within thirty days of the request for a hearing.

Section 8(c) states that "[w]here a hearing is requested **under subsection (b) of this section**, the Council may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings[.]" *See* DEQ Rules, Practice and Procedure, Chapter 1, Section 8(c) (emphasis added). By its plain language, subsection (c) and the Council's authority to grant temporary relief only relates to appeals brought under subsection (b) and subsection (b) relates only to appeals from the "Director's decision following an informal conference governed by Chapter 9, Section 2 of these rules[.]"⁴

⁴ This interpretation concerning subsection (b) is confirmed by the transcript of the hearing proceedings for DEQ's practice and procedure rules where DEQ confirmed that subsection 8(b) only applies to appeals from informal conferences relating to surface coal mining permits. *See* the Multi-Panel Advisory Board, Transcript of Hearing Proceedings, pp. 14, 27-30, June 29, 2016, EQC Docket No. 16-1101. *See Solvay Chemicals, Inc. v. Wyoming Dep't. of Revenue*, 2022 WY 122, ¶ 25, 517 P.3d 1123, 1131-32 (Wyo. 2022)

Accordingly, the temporary relief outlined in § 8(c) only applies to appeals brought under § 8(b) which relates to the director’s decision following an informal conference involving surface coal mining operations. In this case, Petitioners appealed from DEQ’s decision to grant an air quality permit—Petitioners did not appeal from a director’s decision following an informal conference involving surface coal mining operations. It appears Petitioners were aware of this distinction between the types of appeals under subsections (a) and (b) because their appeal petition only refers to § 8(a). (See Petitioners’ Appeal, p. 3, ¶ 4).⁵ In fact, in their appeal petition, it appears Petitioners did not cite or refer to subsections 8(b) or (c).

In addition, there is no statute or rule that grants the Council the authority to stay (or suspend) this permit during the pendency of this appeal. See *Solvay Chemicals, Inc. v. Dep’t of Revenue*, 2018 WY 124, ¶ 13, 430 P.3d 295, 299 (Wyo. 2018) (quoting *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 673 (Wyo. 2000)) (“[a]n administrative agency is limited in authority to powers legislatively delegated. Administrative agencies are creatures of statute and their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim”). Petitioners contend that the Council has the inherent authority to grant a stay of the permit in this case even if that authority is not explicit, however, as the Wyoming Supreme Court has stated, an administrative body, such as the Council, has only the power and authority granted to it by the constitution or statutes creating it. *US West Commc’ns, Inc. v. Wyoming Pub. Serv. Comm’n*, 907 P.2d 343, 346 (Wyo. 1995). Those “statutes must be

(even if a statute is unambiguous, the Wyoming Supreme Court has explained that it is allowable to resort to extrinsic aids of interpretation to confirm an interpretation or determination).

⁵ In their separate motion for stay, Petitioners, for the first time, state “[a]s a threshold matter, Petitioners requested a hearing under subsection b of Chapter 1, Section 8 in their Appeal.” See Petitioners’ Motion For Stay, p. 4. This statement appears to be inconsistent with what Petitioners stated in their appeal petition. See Petitioners’ Appeal, p. 3, ¶ 4.

strictly construed” and “any reasonable doubt of existence of any power must be resolved against the exercise thereof.” *Id.* “A doubtful power does not exist.” *Id.*

Accordingly, the Council does not have the legal authority to stay the Arbor Works Tree Service permit during the pendency of Petitioners’ ongoing appeal. Ruling otherwise would be contrary to the Council’s authority.

IT IS HEREBY ORDERED that Petitioners’ motion to stay the effectiveness of Arbor Works Tree Service’s permit is denied.

DATED this 3 day of June, 2024

JD Radakovich
JD Radakovich (Jun 3, 2024 17:51 CDT)
Secretary JD Radakovich, Hearing Examiner
Environmental Quality Council

Motion to Suspend Air Permit CT-4631 Pending Resolution of Protestants' Appeal, *In the Matter of: Basin Electric Power Cooperative Dry Fork Station, Air Permit CT-4631, EQC Docket No. 07-2801*). In that case, several non-permittees appealed DEQ's decision to grant an air quality permit to Basin Electric. As part of the appeal, the non-permittees also requested the Council to stay or suspend the permit during the appeal. The Council ultimately concluded that it had no such legal authority and stated the following in its order:

Both Basin Electric and DEQ argued this Council has no statutory authority to suspend the air quality permit. Both argue that Protestants Motion to Suspend is merely an effort to "stay" the issuance of the permit and construction of the project. This Council agrees with the legal interpretation of Basin Electric's response and DEQ's response in that the effect of suspending the permit in this case is equivalent to "staying" the issuance of the permit. A permit "suspension" is the outcome of a contested case proceeding in which an existing permit is suspended as a consequence of a finding that the permittee has violated the terms of its permit. A "suspension" is not the temporary cessation or delay granted at the request of a third party. This Council does not have the authority to suspend a permit on the grounds that an appeal is pending. . .

Id. at ¶ 16, pp. 7-8 (underline in original). Although the Council issued that decision in 2008, the Council still agrees with it.

In support of its motion, Protect Our Water relies on *In the Matter of: Petitioner Big Horn LLC Permit No: WYW0027731, EQC Docket No. 21-3601*. However, *Big Horn* is different than this case. In *Big Horn*, the Council's hearing officer granted the stay because both parties agreed to it, including Big Horn, the permit holder (Big Horn actually requested the stay), the stay only applied to the renewed permit (the old permit was still in effect), and the Council did not conclude that it had the authority to suspend or stay a permit during an ongoing appeal when requested by a non-permittee—that issue was never before the Council.

Protect Our Water suggests that the Council's rules provide it with the legal authority to suspend or stay a permit during an appeal because the Council has adopted and incorporated Rule 65 of the Wyoming Rules of Civil Procedure into its rules. The Council disagrees—the Council

has not specifically adopted or incorporated Rule 65 into its rules. *See* DEQ rules, Practice and Procedure, Chapter 2, Sections 2, 26. Accordingly, Rule 65 does not apply to appeals before the Council.

Protect Our Water also suggests that Wyo. Stat. Ann. § 35-11-112(c)(ii) grants the Council the authority to suspend or stay the Basecamp permit during the appeal. Again, the Council disagrees. That statute does not provide the Council with the legal authority to suspend or stay the Basecamp permit during the ongoing appeal and before the final contested case. This conclusion and interpretation is consistent with the Council's 2008 decision in Basin Electric.

Accordingly, the Council concludes that it does not have the legal authority to suspend or stay the Basecamp permit during the pendency of Protect Our Water's ongoing appeal.

IT IS HEREBY ORDERED that Protect Our Water Jackson Hole's motion to suspend permit is denied.

DATED this 12 day of January, 2024

 
Vice Chairman Shane True, Hearing Examiner
Environmental Quality Council

FILED

AUG 21 2008

*Jim Ruby, Executive Secretary
Environmental Quality Council*

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF:)
BASIN ELECTRIC POWER COOPERATIVE)
DRY FORK STATION)
AIR PERMIT CT-4631)

EQC DOCKET NO. 07-2801

ORDER DENYING PROTESTANT'S MOTION TO SUSPEND AIR PERMIT CT-4631
PENDING RESOLUTION OF PROTESTANTS' APPEAL

THIS MATTER came before the Environmental Quality Council (EQC) on April 28, 2008, for oral argument on Protestants' February 8, 2008 Motion to Suspend Air Permit CT-4631 Pending Resolution of Protestants' Appeal, Basin Electric's Opposition to Protestant's Motion to Suspend Permit filed on March 12, 2008, Respondent Department of Environmental Quality's Response Opposing Protestants' Motion to Suspend Air Permit filed March 12, 2008 and Protestants' Reply in Further Support of Their Motion to Suspend Permit filed April 4, 2008. Council members present at the motion hearing included Dennis M. Boal, Chairman, F. David Searle, Vice-Chair and Presiding Officer in this case, Richard C. Moore, P.E., John N. Morris, Kirby L. Hedrick and Thomas Coverdale. Terri A. Lorenzon, Executive Director of EQC and Marion Yoder, Assistant Attorney General were also present. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner. The Protestants, Earthjustice, Powder River Resource Council, the Sierra Club and the Wyoming Outdoor Council appeared by and through counsel, Reed Zars. Basin Electric Power Cooperative (Basin Electric) appeared by and through counsel, Patrick Day. The Department of Environmental Quality, Air Quality Division (DEQ) appeared by and through Senior Assistant Attorney General, Nancy Vehr. The Council has considered the motion, written responses and argument of the parties, and makes the following:

I. JURISDICTION

“The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” Wyo. Stat. Ann. § 35-11-112(a) (LEXIS 2007).

The council shall, “Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act.” Wyo. Stat. Ann. § 35-11-112(a)(iv) (LEXIS 2007).

The Protestants disputed the Director of DEQ’s approval of Basin Electric’s Air Quality Permit CT-4631 for the Dry Fork Station and requested a hearing before the Environmental Quality Council (EQC). Therefore, the EQC has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

Pursuant to the Wyoming Environmental Quality Act (WEQA) and DEQ regulations, an air quality construction permit is needed before any person commences construction of any new facility or modifies any existing facility which may cause the issuance of air pollution in excess of the standards set by the DEQ. On November 10, 2005, Basin Electric submitted an air quality construction permit application to DEQ to construct a coal-fired power generating station, known as Dry Fork Station, near Gillette, Wyoming. On October 15, 2007, after nearly two years of technical review and analysis by the Air Quality Division, the Director of DEQ determined that Basin Electric’s application for the Dry Fork Station satisfied the applicable statutory and regulatory requirements and approved Basin Electric’s application to construct by issuing Air Quality Permit CT-4631.

Protestants filed a Protest and Petition for Hearing on November 1, 2007. On February 8, 2008, Protestants moved to suspend Air Quality Permit CT-4631 pending resolution of Protestant's Protest and Petition for Hearing. Protestants argued that once constructed and for decades thereafter, the Dry Fork Station will be a major source of air pollutants that are responsible for health problems, acid rain, haze and global warming. Basin Electric proceeded with construction of the Dry Fork Station plant immediately after DEQ issued its air permit and continued to pursue construction after Protestant's filed their appeal to this Council. Protestants argued that by commencing construction of Dry Fork Station, Basin Electric is undermining the role of this Council and potentially rendering the appeals process meaningless. Protestants also argued that Basin Electric will likely seek to influence the outcome of the appeal by relying on the financial loss the company will suffer if forced to redesign and reconstruct components. Protestants argued in order to protect the integrity of the process, the permit must be suspended before Basin Electric proceeds to the point where the company has started construction of the plant and paid for major pieces of equipment, in order to ensure that these arguments will not sway the Council's final decision in this matter.

Basin Electric argued there were no legal or practical grounds for permit suspension in this case.

DEQ argued the legislature has vested permit issuing authority with the DEQ. The DEQ reviews, analyzes and issues air quality construction permits, not the EQC. Additionally, DEQ argued that permit suspension is only available in DEQ enforcement actions or for failure to substitute acceptable surety bonds, following a contested case hearing. Finally, an EQC *de novo* hearing on appeal is limited to surface coal mine appeals.

III. ISSUES AND CONTENTIONS

The issue raised by Protestants in this motion is whether Protestants can prove that Basin Electric's Air Quality Permit CT-4631 should be suspended in order to protect the integrity of the appeals process.

IV. FINDINGS OF FACT

1. On November 10, 2005, Basin Electric submitted an air quality construction permit application to construct a coal-fired electric power generating plant, known as Dry Fork Station, near Gillette, Wyoming.

2. On February 26, 2007, DEQ provided notice to the public that it intended to issue an air quality permit to Basin Electric authorizing the construction of Dry Fork Station. The DEQ notice invited comments from the public and Protestants submitted lengthy comments in support of their position that the proposed permit violated Wyoming law. *Protestants Exhibits 1 and 2.*

3. On October 15, 2007, the Director of DEQ determined that Basin Electric's application for the Dry Fork Station satisfied the applicable statutory and regulatory requirements and issued Air Quality Permit CT-4631. By issuing the permit, the Director of DEQ determined the permit satisfied both New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements. *Protestants Exhibit 3 and 4.*

4. In Air Quality Permit CT-4631, DEQ states the appeal rights available as follows:

Any appeal of this permit as a final agency action of the Department must be made to the Environmental Quality Council within sixty (60) days of permit issuance per Section 16, Chapter 1, General Rules of Practice and Procedure, Department of Environmental Quality.

Protestants Exhibit 4.

5. In accordance with this guidance and the DEQ's Rules of Practice and Procedure, Protestants filed their Protest and Petition for Hearing on November 1, 2007 and the case was referred to the EQC. *Protestant's Exhibit 5*.

6. Upon receiving its air permit, Basin Electric commenced financial investment and construction of its Dry Fork Station project, which intended to generate electricity by 2011. Basin Electric's affidavits showed that the impacts of its \$1.35 billion dollar project, if suspended, would result in a \$124 million dollar loss if the permit was suspended. *Basin Electric's Exhibit A*.

7. Basin Electric also submitted affidavits that it would lose skilled workers and housing opportunities in the Gillette area during a time of suspension. *Basin Electric's Exhibit B*.

8. Affidavits on behalf of Basin Electric's opposition showed that Dry Fork Station is critical to meet Basin Electric's power obligations and needs in northeast Wyoming. *Basin Electric's Exhibit C*.

V. CONCLUSIONS OF LAW

A. Principles of Law

9. A presumption exists that members of this Council, **"are presumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances."** *Dorr v. Bd. Of Cert. Public Accountants*, 146 P.3d 943, 959 (Wyo. 2006), *citing Fallon v. Wyoming State Board of Medical Exam*, 441 P.2d 322, 329 (Wyo. 1968) (emphasis added).

10. All hearings before the Council, appeals or others, shall be held pursuant to these rules, the provisions of the Environmental Quality Act W.S. § 35-11-101 through 1104 and the

Wyoming Administrative Procedure Act. Department of Environmental Quality, Rules of Practice and Procedure, Chapter 1, Section 3.

11. The Wyoming Environmental Quality Act vests both the EQC and the DEQ with the authority to suspend permits in the following situations:

Wyo. Stat. Ann. § 35-11-306(k), authorizing the Director to suspend an oil field waste disposal facility upon failure of the operator to provide substitute bond surety;

Wyo. Stat. Ann. § 35-11-409, authorizing the Director to show cause why a mining permit should not be suspended for violations of the EQA and then authorizing the Council to suspend the mining permit after a hearing;

Wyo. Stat. Ann. § 35-11-420, authorizing the Director to suspend a mining permit if surety is not substituted on a bond;

Wyo. Stat. Ann. § 35-11-504, authorizing the Director to suspend a solid waste management permit for failure to substitute surety on a bond.

12. The Wyoming Administrative Procedures Act (WAPA) contains a specific provision addressing the requirement for a contested case hearing over a suspension of a license, which under the WAPA specifically includes permits:

No ... suspension ... of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail of the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for retention of the license.

Wyo. Stat. Ann. § 16-3-113(c) (LEXIS 2007).

13. “License” includes the whole or any part of any agency permit. Wyo. Stat. Ann. §16-3-101(b)(iii) (LEXIS 2007).

B. Application of Principles of Law

14. Protestants have not identified any legal standards or criteria that should be employed should this Council make the determination that it has the authority to suspend the permit in this case. Basin Electric argued there is no practical reason for this Council to suspend the permit because Basin Electric is proceeding with construction fully aware that a permit appeal could lead to changes that impact its project. This Council finds this argument persuasive. Basin Electric has fully admitted that it is aware of the risk of later changes and has decided to proceed while an appeal is pending. Basin Electric has carefully weighed the arguments raised on appeal, the costs of delay, the need for power, the possible expense of change and has concluded that it will proceed with construction. Basin Electric bears the consequences of any change required by an adverse decision on appeal.

15. Protestants' argument that this Council will somehow be influenced by the financial investment incurred by Basin Electric is not persuasive. Additionally, there are no conditions or rules in place setting forth the standards for this Council to suspend the issuance of the air quality permit. Protestants have asked this Council to take the responsibility of weighing the competing factors and decide whether or not to continue construction. This Council declines to do so and Basin Electric has accepted the full responsibility of the consequences of such decision.

16. Both Basin Electric and DEQ argued this Council has no statutory authority to suspend the air quality permit. Both argue that Protestants Motion to Suspend is merely an effort to "stay" the issuance of the permit and construction of the project. This Council agrees with the legal interpretation of Basin Electric's response and DEQ's response in that the effect of suspending the permit in this case is equivalent to "staying" the issuance of the permit. A permit

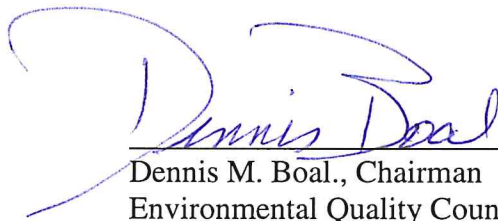
“suspension” is the outcome of a contested case proceeding in which an existing permit is suspended as a consequence of a finding that the permittee has violated the terms of its permit. A “suspension” is not the temporary cessation or delay granted at the request of a third party. This Council does not have the authority to suspend a permit on the grounds that an appeal is pending. No grounds to support a stay were presented.

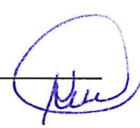
ORDER

IT IS THEREFORE ORDERED that:

1. The Protestant’s February 8, 2008 Motion to Suspend Air Permit CT-4631 Pending Resolution of Protestants’ Appeal is hereby DENIED.
2. The hearing remains set in this matter beginning November 17, 2008.

SO ORDERED this 21st day of August, 2008.


Dennis M. Boal., Chairman
Environmental Quality Council
122 West 25th Street
Herschler Bldg., Rm. 1714
Cheyenne, Wyoming 82002
(307) 777-7170



CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 21st day of August, 2008, I served a copy of the foregoing ORDER DENYING PROTESTANT'S MOTION TO SUSPEND AIR PERMIT CT-4631 PENDING RESOLUTION OF PROTESTANTS' APPEAL by electronic email to the following persons:

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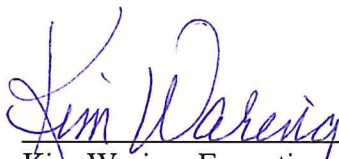
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