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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	)	

MBFP'S RESPONSE TO SIERRA'S STATEMENTS OF FACT IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

COMES NOW Medicine Bow Fuel & Power (MBFP), by and through its attorneys, hereby submits its responses to Sierra Club's statement of facts:

In many instances below, the Sierra Club cites the Response to the Petition as support for its "facts," as if it were an Answer to a Complaint. MBFP objects to all statements relying on its Response to Appeal as support for facts in this matter. The Petition Response is not an Answer, as in civil litigation and as a result, cannot be used to provide evidence in support of a motion for summary judgment. The DEQ Rules of Practice and Procedure do not refer to the Response to the Petition as an Answer. To the extent the Sierra Club is relying on the Permittee's Response to Petition to support its factual assertions, the Council can disregard the reference.

MBFP also objects to any reliance on EPA's public comments to support statements of facts, as stated in detail below. EPA's comments are in the record as public comment, but cannot be used as evidence in support of the Sierra Club's claims. Neither are they law. Thus, they do not provide support for the Sierra Club's Motion.

1. DEQ admits it did not conduct or review a reasonableness inquiry of $PM_{2.5}$ for the Medicine Bow facility. Keyfauver Depo., Exhibit 1 at 89-92.

Response: Mr. Keyfauver's was not testifying for the DEQ, as an organization, pursuant Wyo. R. Civ. Proc. 30(b)(6). Therefore, his testimony cannot be attributed to the DEQ. In any event, Mr.Keyfauver did not make any statements about a "reasonableness inquiry," but testified the agency relied on EPA's PM_{10} surrogacy policy.

2. Nothing in the Permit Application, DEQ's Application Analysis, or its Response to Comments shows any correlation between PM_{10} and $PM_{2.5}$ emissions from the Medicine Bow Facility, nor any demonstration that the chosen PM_{10} controls will effectively control $PM_{2.5}$. See Application, December 31, 2007 (AR 78-1 to 382); DEQ Analysis, June 19, 2008 (AR 506-82); DEQ Decision Document, March 4, 2009 (AR 30-64)

Response: DEQ's analysis and the permit application establish that for a gas turbine, the only means of controlling the particulate emissions due to the small size of the particles is good combustion practices. Whether the emissions are characterized as $PM_{2.5}$ or PM_{10}, the DEQ record demonstrates, the control technology would not change if the DEQ had separately analyzed $PM_{2.5}$ for the turbines. Fugitive emissions (dust) from the haul roads is likely to be comprised of different sizes of particles. The particulate emissions will be controlled collectively—whatever the size. This is done through the application of water and dust suppressant if the emissions are evaluated as $PM_{2.5}$ or PM_{10}. MBFP Ex. G1.

3. Medicine Bow did not show any correlation between PM_{10} and $PM_{2.5}$ emissions from the Medicine Bow facility, nor any demonstration that the chosen PM_{10} controls will effectively control $PM_{2.5}$ in the record. See Application, December 31, 2007 (AR 78-1 to 382).

Response: At the time of the submission of the Application, MBFP complied with the surrogacy policy, consistent with DEQ direction. The Council's decision in *Basin Electric,* confirmed the application of the surrogacy policy remains appropriate in Wyoming. In response to this appeal, MBFP has provided affidavit testimony confirming PM_{10} represents a reasonable surrogate for $PM_{2.5}$. *See* MBFP Ex. G1 to its Motion for Summary Judgment. DEQ has also confirmed the technical infeasibility of implementing the $PM_{2.5}$ standard in a PSD permitting application. *See* WDEQ Aff. of Josh Nall.

STATEMENTS OF FACT RELEVANT TO SO_2 CLAIM

4. The Medicine Bow project design includes construction of two flares to release and combust syngas at startup, shutdown and upset events when the downstream units cannot accommodate the gas. Medicine Bow Resp. ¶36.

See Response to No. 5 Below, which is incorporated herein by this reference.

5. Normal operation of the flares is defined as including operation in connection with startup, shutdown, and malfunction (SSM) events. Id.

Response to 4 & 5: Medicine Bow's Response Par. 36 is below.

> MBFP admits the allegations in paragraph 36 that the project design includes construction of both a high pressure and a low pressure flare. MBFP denies the

remainder of the paragraph to the extent that it mischaracterizes the purpose of and the normal operation of the flares. The flares are emission control devices which will usually operate in standby mode with only a pilot flame. The flares will combust process emissions during ***infrequently*** startup, shutdown and maintenance events.
(emphasis added)

Sierra Club's description is a misrepresentation of paragraph 36, which does not refer to the "normal" operation of the flares, but explains they will operate ***infrequently*** as a control device. By definition, options of the flare is not normal but it is designated as a control device for startup/shutdown and malfunction events.

6. Medicine Bow's estimated SO_2 emissions are just under the 40 tons per year (tpy) major source significance threshold at 36.6 tpy, excluding SSM emissions from flares. Permittee Resp. to Appeal ¶ 43; DEQ Decision Document, March 4, 2009 at 10 (AR 39).

Response: Sierra Club mischaracterizes the Facility's emissions as "just under" the major source threshold of 40 tpy. The major source threshold is not a range, but a fixed number. Consequently, any number under "40" qualifies the facility as a minor source of sulfur dioxide. The 36.6 tpy of SO_2 includes emissions from startups and shutdowns associated with planned yearly and monthly maintenance as calculated in the November 11, 2008 letter from MBFP to WDEQ. MBFP Ex. H to Motion for Summary Judgment. This is confirmed in the WDEQ Decision Document at III.1.. MBFP Ex. D to Motion for Summary Judgment.

7. Medicine Bow estimates emissions of SO_2 from the flares during anticipated malfunctions will be 164.56 tpy. Medicine Bow Resp. ¶41-42; Application, December 31, 2007, Appendix B, p. 1 (AR 78-187).

Response: Malfunctions cannot be anticipated but may occasionally occur. The estimated emissions from these events are in the application and are expected to decrease with the life of the plant. Again, Sierra Club's reliance on Permittee's Response is inappropriate.

8. The Application and DEQ's Permit Application Analysis estimated SO_2 emissions of 256.69 tpy from cold starts and malfunctions, which they do not include in the potential to emit (PTE). Medicine Bow Resp. ¶¶41-42; Application, December 31, 2007, Appendix B, p. 1-2 (NR 78-187 to 88); DEQ Analysis, June 19, 2008, p. 7-9 (AR 5 12-14).

The cold start emissions include turbine emissions. This is the estimate for the initial year and represents the worst case emissions. Subsequent cold starts will have fewer emissions as well as less malfunction emissions during subsequent cold start years. MBFP Ex. H. The permit requires compliance with an SSEM plan for all startup/shutdown events. MBFP Ex. F, Appendix A. Any emissions from malfunctions or cold startup events will be excess emissions that must be justified under the permit.

9. Medicine Bow admits that if flare SSM emissions were considered, SO_2 emissions would exceed the PSD major source significance threshold. Permittee Resp. to Appeal¶¶ 43.

Response: Permittee's Response should not be deemed an admission. Moreover, the statement mischaracterizes the response.

10. DEQ admits that Medicine Bow's estimate of malfunction emissions means that malfunctions are likely to occur. Keyfauver depo., exhibit 1, at 23:11-17.

Again the testimony of Mr. Keyfauver cannot be attributed to the agency. The statement also misstates his testimony.

11. Medicine Bow admits that cold startups will occur at least every three or four years. DKRW letter to WYDEQ, November 11, 2008 (AR 1485).

MBFP states that cold starts **are expected** to occur at least every three to four years based on licensing design page. MBFP Ex. H.

12. On October 14, 2008, Medicine Bow stated, "[t]otal potential SO_2 emissions in the initial year of operation and also in following years, including normal startups, are both estimated to be 227.7 tons per year." DKRW Letter to DEQ Response to Public Comment, October 14, 2008 (AR 1529). MBFP acknowledged this (AR 1529).

Response: The information about SO_2 emissions in the October 14, 2008 letter was clarified in the November 11 letter, MBFP Ex. H. As described in the November 11 letter, startup/shutdown emissions from planned maintenance are included in the PTE, as they are normal emissions that will occur on an annual basis. Malfunction emissions will need to be justified under WAQSR Ch. 1, Section 5, or they may be subject to enforcement. Thus, malfunction emissions and cold start emissions were excluded by WDEQ. MBFP Ex. D at III.1

13. The United States Environmental Protection Agency (EPA) specifically addressed the applicability of PSD to SO_2 in its comments to WYDEQ on August 4, 2008. US EPA Region 8 Comments to DEQ, August 4, 2008 (AR 1656-67). EPA stated:

> More analysis needs to be provided explaining why the proposed facility has not been determined to be a major source of sulfur dioxide (SO_2). Table Va on page 8 of the Division's analysis, as well as page B-2 of Medicine Bow Fuel and Power's (MBFP's) application, indicate that the emission of sulfur dioxide (SO_2) during the initial cold startup year would be 256.9 tons per year (tpy). During any other cold startup year, SO_2 emissions would equal 227.74 tpy in addition to the tonnage emitted in normal operational mode for the remainder of the year. Both scenarios would cause the emission of greater than 40 tpy of SO_2, which is the significance threshold for Prevention of Significant Deterioration (PSD) applicability. The regulations do not provide exemptions

for excluding startup emissions from a facility's Potential To Emit (PTE). The current record appears to indicate that all PSD requirements should apply for SO_2, however, table VI on page 9 of the Division's analysis indicates that PSD requirements do not apply to the facility for SO_2.

Id. (AR 1658).

Response to Nos. 13, 14, 21-24: EPA submitted public comments which the WDEQ responded to in its Decision Document. There is no communication from EPA in the record regarding the final permit decision. EPA is not a party and no testimony from any EPA personnel has been provided. WDEQ met its obligation to respond to EPA's comments and public comments from any entity are not evidence in support of a summary judgment motion; nor do they establish a material fact. Ex. D at Section III.

14. EPA also stated concern over the additional flare SO_2 emissions from malfunctions and other events." Id. (AR 1658) (emphasis in original).

15. There was no BACT analysis for SO_2 from the flares in the Permit Application or DEQ's Application Analysis. Application, December 31, 2007 (AR 78-1 to 382); DEQ Analysis, June 19, 2008 (AR 506-82).

Response: The flares are emission control devices, required to achieve a 98% destruction efficiency under the permit and relevant regulations.

16. There was no BACT analysis for any other pollutant from the flares. DEQ Analysis, June 19, 2008 (AR 506-82).

Response: BACT was performed for the flare. MBFB Ex. D at III.1.

17. DEQ admits, "a top-down BACT analysis was not conducted for the flares.. ." Keyfauver Depo., exhibit 1, at 45:24-2 5.

Response: DEQ relies on the SSEM plan as BACT for the flares, as a work practice standard. Ex. D at IV.6.

18. DEQ applied the five-step BACT process to sulfur dioxide emissions from the turbines and to the sulfur recovery unit in the permit application analysis and listed one of the flares as a control for SO_2 emissions. DEQ Analysis, June 19, 2008 (AR 528-29).

Response: This is not material to the summary judgment motion.

19. DEQ admits it did not consider other options for the flares other than the proposed SSEM plan. Keyfauver Depo., exhibit 1, at 46:18-47:4: Id. at 51:11-15; See Id. at 5 7:20-22.

Response: The statement misstates Mr. Keyfauver's deposition and the record. Conditions 21-24 regulate the operation of the flare, in addition to the SSEM plan. MBFP Ex. F.

20. There is no determination in the record that an emissions limitation is technically infeasible for the flares. See Application, December 31, 2007 (AR 78) DEQ Analysis, June 19, 2008 (AR 506-82); DEQ Decision Document, March 4, 2009 (AR 30-64)

Response: This statement misstates the record. The WDEQ Decision Document states clearly that an emission limit is not feasible since there is no EPA reference method for determining compliance and therefore, work practice standards may be BACT. MBFP Ex. D at IV.35.

21. EPA requested DEQ set BACT limits on the flares and implement a SSEM plan. US EPA Region 8 Comments to DEQ, Aug. 4, 2008 (AR 1656-6 1).

Response: See general comment re EPA comments above.

22. EPA informed DEQ in its comments on the Application they did not conduct a proper BACT analysis. US EPA Region 8 Comments to DEQ, Aug. 4, 2008 (AR 1656-61).

Response: See general comment re EPA comments above.

23. EPA Comments on the DEQ Application Analysis specifically noted that limits had not been set for all emitting units, including the flares. Id. (AR 1659& 1661).

Response: See general response re EPA comments above.

24. EPA stated DEQ's BACT analysis needed to address the flares and include parameters such as operating hour limits as enforceable conditions in the Permit. Id. (AR 1660-6 1). "If the Plan is a meaningful tool, it should provide requirements rather than suggestions." Id. (AR 1666-67).

Response: See general response to EPA comments above.

25. DEQ issued Permit CT-5873 with no limit on flare emissions, flare hours of operation, or total SO_2 emissions. Air Quality Permit and SSEM Plan from DEQ, March 4, 2009 (AR 1409-24).

Response: This statement is not material and mischaracterizes the permit conditions for the operation of the flares. MBFP Ex. F, Conditions 21-24; MBFP Ex. D at IV.6 and IV.35. The flares are emergency flares and with the exception of planned maintenance, all emissions will have to be justified. They will be excess emissions, potentially subject to enforcement.

26. DEQ revised Condition 22 to require monitoring SO_2 emissions from the flares and added three other conditions related to the flares but none limit their use or emissions. Id. at 78 (AR 1415-16).

Response: See response to Number 25.

27. The SSEM plan attached to the Permit did not include any limits to the amount of syngas sent to the flares or the number of hours they could be used for flaring. Id. at Appendix A (AR 1420-24).

Response: See response to Number 25. In addition, rather than there being a limit on hours of operation, operation of the flare will need to be justified under the permit.

28. The DEQ Permit does not set forth the emissions reduction achievable by implementation of the SSEM plan, nor does it provide for compliance for work standard substitution. Id. at Appendix A (AR 1420-24)

Response: This statement is not material and is also confusing. The reference to a work standard substitution does not have any meaning. The SSEM plan is intended to minimize emissions from startup/shutdown events and does not require a specific number.

29. DEQ admits the SSEM plan contains a number of unenforceable provisions. Keyfauver Depo., Exhibit 1, 58:4-9; Id. at 59:8-60-9.

Response: This misstates Mr. Keyfauver's testimony, which, in any event, cannot be attributed to DEQ. Mr. Keyfauver stated enforcement was not part of his job description.

STATEMENTS OF FACT RELEVANT TO

HAZARDOUS AIR POLLUTANT CLAIMS

30. Major sources of hazardous air pollutants (RAPs) are those with the potential to emit (PTE) 10 tons per year (tpy) or more of any single regulated HAP, or 25 tpy or more of any combination of RAPs. 42 U.S.C. § 7412 (a)(1).

Response: This is a statement of law, although the PTE of only a single HAP, methanol, is at issue here.

31. Medicine Bow's final Application through May 2008 identified its facility as a major source of HAPs. Application 1-2 (AR 942) and 1-7 (AR 943).

Response: This is an incomplete statement of the record. Methanol emission estimates

were reduced due to an equipment change following which the WDEQ determined the Facility to be minor for HAPs. MBFP Ex. K; MBFP Ex. D at II.14.

32. In June 2008 DEQ accepted that the Medicine Bow Facility would be a major soarce of HAPs. DEQ Analysis, 7 (AR 512).

Response: This is immaterial, since it is based on an incomplete statement of the record.

33. In March 2009, DEQ concluded that the Medicine Bow Facility would be a minor source of HAP emissions, basing its reversal on "[revised emission calculations" that it had received from Medicine Bow.] DEQ Decision Document at 7(AR 36).

Response: The rationale for the change is found in MBFP Ex. K.

34. DEQ requires Medicine Bow, once its facility is built, to utilize the same methodology as Medicine Bow used in its permit application to report total annual total HAP and total speciated HAP emissions. DEQ Decision Document at 30 (AR 59).

Response: This is a statement from the permit, but is not material to any issue on this appeal.

35. DEQ accepted Medicine Bow's decision to not include in its PTE for HAPs those emissions stemming from flares during shutdown or startup for major maintenance or repair. DEQ Analysis, 7-8 (AR 512-13).

Response: MBFP presented emissions in its application and WDEQ made the final determination re PTE. Emissions from the flare resulting from planned, routine maintenance, occurring on an annual basis, are included in the PTE. Also, this statement is not material as there is no claim in the Petition related to emissions from the flare other than sulfur dioxide. MBFP Ex. D at III.1; MBFP Ex. H.

36. Medicine Bow's decision to not include in its Facility PTE calculations HAP and

other emissions stemming from flares during certain shutdown or startup events was made without consideration of whether any federal or state statute or rule supported the decision to exclude such emissions. Katrina Winborn Depo., exhibit 16, at 45: 1-18.

Response: This is a gross misrepresentation of Ms. Winborn's deposition and should be stricken. Sierra Club Counsel asked a series of questions about whether state or federal statute supported excluding such emissions from PTE. Ms. Winborn's testimony was that she was familiar with regulations for PTE in a number of jurisdictions and in her experience, such emissions are not included in PTE.

37. DEQ did not render its own accurate count of fugitive emission components and did not verify any of the component counts offered by Medicine Bow in the latter's VOC and HAP PTE calculations. Keyfauver Depo., exhibit 1, at 62: 10-22.

Response: This mischaracterizes Mr. Keyfauver's testimony, which is not the testimony of WDEQ. MBFP is bound by its commitments in the application. Ex. F. Condition 2.

38. DEQ did not verify whether the emission factors utilized by Medicine Bow were appropriate for use in its emission estimate for fugitive component leaks. Keyfauver Depo., Exhibit 1, at 72: 14-18.

Response: Again, this misstates Mr. Keyfauver's testimony. See response to 37.

39. DEQ accepted Medicine Bow's decision to utilize Synthetic Organic Chemical Manufacturing Industry (SOCMI). SOCMI averages as emission factors for VOC and HAP PTE determinations. Keyfauver Depo., Exhibit 1, at 72-74.

Response: This misstates Mr. Keyfauver's testimony, which did not call into question the selection of SOCMI. The facility is subject to SOCMI.

40. Medicine Bow did not independently assess whether it was appropriate to utilize

SOCMI average emission factors in its PTE calculations for VOC and HAP emissions at the facility. Winborn Depo., exhibit 16, at 105.

Response: This mischaracterizes the testimony. Ms. Winborn clarified in her deposition that the application explained the rationale for selecting SOCMI. The facility is not a refinery.

41. Medicine Bow did not utilize EPA's preferred method, requiring use of actual emissions data as opposed to average estimates, in its PTE calculations for estimating maximum fugitive VOC and HAP emissions. Winborn Depo., exhibit 16, at 103: 24.

Response: This mischaracterizes Ms. Winborn's testimony, as explained in detail in MBFP's response to summary judgment. Ms. Winborn testified that the data was not available to use correlation equations. Also, Sierra Club's reference to a "preferred method" is not supported by any evidence in the record.

42. DEQ and Medicine Bow did not calculate the likelihood that actual total HAP emissions would exceed 25 tons per year, and did not calculate the likelihood that actual methanol emissions would exceed 10 tons per year. Winborn Depo., exhibitl6, at 145-46

Response: This misstates Ms. Winborn's testimony. In any event it is immaterial to whether the emissions are properly estimated in the Permit.

43. Medicine Bow is a major source of VOC emissions required to utilize the best available control technology (BACT) to limit VOC emissions. Application 4-1 (AR 78-56).

Response: No response.

44. Fugitive sources are expected to account for 60 tons per year of VOC emissions, nearly a third of total VOC emissions. Application 4-1 and 4-27 (AR 78-56, -82).

Response: The application speaks for itself.

45. Fugitive VOC emissions, including HAP emissions, stem from leaks in valves, pumps, flanges, compressors, connectors, and other components. EPA Enforcement Alert, exhibit 17, at 1.

Response: MBFP objects to the reference to an EPA Enforcement Alert, which is not law or testimony in support of the motion for summary judgment. In any event, it is a reference to an EPA enforcement document, not a permitting document and, therefore, should be disregarded by the Council.

46. Poorly designed and implemented leak detection and repair (LDAR) programs can miss up to 90 percent of detectable, repairable leaks, while the use of adequate practices — including use of lower than required leak definitions — can improve the reliability of monitoring data and LDAR compliance." Id.

Response: See response to Number 45. The statement is not material. The permit requires MBFP to comply with 40 CFR Part 60 VVa.

47. Medicine Bow was required to undertake a top-down analysis of VOC emissions. Application 4-1 to 4-2 (AR 78-56 to 57).

Response: No response.

48. Medicine Bow's did not undertake a top-down analysis of fugitive VOC emissions because it identified only one fugitive VOC/HAP control technology, a Leak Detection and Repair (LDAR) program. Application 4-27 (AR 78-82).

Response: This misstates the record. The first step of top-down BACT as stated in the cited references, is to identify potential control technologies. In this instance, LDAR was identified as the technology, as stated in the application. Also, this statement is not material as it is not provide any evidence that LDAR, as selected, is not BACT.

49. Under Medicine Bow's proposed LDAR program, the obligation to replace or repair a valve or connector obtains when a leak is found at a rate equal to or exceeding 500 ppm; for pumps, the obligation obtains when a leak is found at a rate of at least 2,000 ppm. Application 4-27 (AR 78-82).

Response: The permit contains the leak detection requirements.

50. DEQ accepted Medicine Bow's LDAR program as BACT because its leak detection levels were based on federal performance standards for new sources. DEQ Analysis at 20 (AR 525); DEQ Decision Document at 16 (AR 1440). Keyfauver Depo., Exhibit 1 at 79:6-18.

Response: This statement is not material and misstates the record and the testimony. The Decision Document references that the LDAR program approved in the permit is consistent with NSPS and NESHAPs. In any case, the fact, if accurate, would not disprove that LDAR is BACT. MBFP Ex. D at IV.5.

51. DEQ did not conduct any top-down BACT analysis for fugitive VOC from the Medicine Bow plant, *Id.*; DEQ Analysis at 10 (AR 515).

Response: See Response to Number 48.

52. New source performance standards establish the floor, and not the ceiling, for BACT. NSR Workshop Manual at B.12, available at 40 C.F.R. parts 60 and 61.

Response: Reference to the NSR Workshop manual without testimony is improper. The Manual, standing alone, cannot be evidence to support summary judgment. In any event, the statement is immaterial since it does not go to whether the ultimate selection of LDAR as BACT was an error.

53. DEQ did not consider leakless component technology as a means of controlling fugitive VOC emissions from the Medicine Bow facility. Keyfauver Depo., Exhibit 1 at 80:14-17

STATEMENTS OF FACT RELEVANT TO FUGITIVE EMISSION CLAIM

57. The DEQ approved the issuance of a permit to Medicine Bow Fuel and Power, LLC for the construction of an underground coal mine and industrial liquefaction and gasification. DEQ Decision Document, March 4, 2009 at 29 (AR 58).

No Response.

58. The DEQ failed to require the use of short-term (24 hour) modeling of fugitive particulate matter in determining compliance with PSD increment and NAAQS/ WAAQS requirements. DEQ Decision Document, March 4, 2009 at 14 (AR 43).

Response: Short-term modeling of fugitive emissions of particulate has been found to be inaccurate by the WDEQ. WDEQ Nall Aff. at Par. 22-23. In any event, this is not a material fact as the WAQSR, Ch. 6, Sec. 2 does not require modeling to determine compliance with the NAAQS.

59. DEQ based their decision not to require short-term modeling of fugitive PM on a 1993 Memorandum of Agreement between EPA and DEQ. *Id.* See also Memorandum of Agreement on Procedures for Protecting PM10 NAAQS in the Powder River Basin, December 22, 1993 at 2 (AR 3571-73) (purporting to detail PM10 monitoring policy in the Powder River Basin).

Response: WDEQ has an agreement with EPA regarding short-term modeling. However, the technical basis for the policy is the inaccuracy of the available models. WDEQ Nall Aff. at Par. 22-23.

60. The proposed site of the Medicine Bow Facility is located approximately 100 miles southwest of the Powder River Basin. See Application, 1-2 (AR 78-23) (describing the proposed location of the facility).

Response: Carbon County is not in the Powder River Basin, but the cited distance is incorrect and in any case, not a material fact.

61. DEQ and other permitting authorities routinely include short-term (24 hour) modeling of fugitive emissions of particulate matter to demonstrate compliance with PSD increment and NAAQSI WAAQS requirements. *See* Dry Fork Generating Station, Gillette, Wyoming, Basin Electric Power Cooperative DEIS prepared in August 2007 (PMiO modeling on page 4-26). Available at: http://www.usda.gov/rus/water/ees/pdf/Basin_DF_DEIS/Basin%20Dry%20Ford%20DEIS%20Ch4-7%200907.pdf (describing the 24 hour PM1O impact including fugitive emissions).

Response: Documents issued under NEPA are irrelevant to a Wyoming Air Quality permitting action and do not represent the views of other "permitting agencies."

62. Other examples of facilities applying 24-hour modeling of fugitive emissions of particulate matter to demonstrate compliance with PSD increment and NAAQS/ WAAQS requirements include:

- Highwood Generating Station, Great Falls, Montana;[1]
- Ely Energy Center, Ely, Nevada;[2]
- White Pine Energy Station, Ely, Nevada;[3]
- Plant Washington, Sandersville, Georgia;
- Longleaf Energy Station, Hilton, Georgia;[5]
- Hyperion Energy Center, Union County, South Dakota;[6]

Response to 53: These statements misstate the testimony, as described in MBFP's Response to summary judgment. LDAR was identified as the only viable option.

54. Medicine Bow did not consider leakless component technology as a means of controlling fugitive VOC emissions from the Medicine Bow Facility. Winborn Depo, Exhibit 16 at 108-09.

Response to 54: See response to ¶ 53.

55. Enhanced LDAR programs are utilized by other facilities that incorporate leak detection rates to control fugitive emissions for valves and connectors to less than 200ppm. MARAMA Model Rule for Enhanced LDAR, exhibit 20 at 2-3, available at www. Marama.org/Projects/021907_ModelRule_EquipmentLeaks.pdf.

Response: This document cannot be used to support a motion for summary judgment, as there is no testimony to support it. The authenticity of this document has not been verified by an appropriate witness and thus, the document lacks foundation and cannot as a matter of law be considered on a summary judgment motion. The interpretation is simply that of the brief writers. It is not law that can be cited as binding on the agency and, indeed, appears to be only a model rule in any case. Sierra Club has no evidence this model rule represents BACT. The basis for the BACT selection is in the application, see Appl. At 4-27.

56. DEQ did not consider any alternatives to Medicine Bow's selected method for the control of fugitive VOC and HAP emissions. Keyfauver Depo., exhibit 1, at 75: 6-15.

Response: The Keyfauver deposition cited as testimony for the agency, as it was not conducted as a Rule 30(b)(6) deposition. MBFP and WDEQ followed the top-down BACT procedure. As discussed in the cited deposition pages, no alternative was considered since LDAR was the only choice. See also MBFP Ex. G1 at 19-22.

- Kentucky NewGas, Central City, Kentucky;[7]
- Advanced Supereritical Pulverized Coal (ASCPC) Project, Essexville, Michigan;
- Virginia City Hybrid Energy Center, Wise County, Virginia[9]

Response: Citation to these actions does not represent evidence that can support a summary judgment motion, as there is no testimony in the form of affidavits or depositions to justify or explain their application to this case. On their face, the documents do nothing to call into question the WDEQ's conclusion that modeling was not appropriate to demonstrate compliance with the short term NAAQS for fugitive emissions of particulate. Thus these references also cannot be used to establish a question of material fact on summary judgment.

63. The proposed Medicine Bow facility is a major source of PM emissions for PSD purposes. Application, 1-3, December 31, 2007 (AiR 78-23).

Response: No response.

Dated this 4th day of December 2009.

MEDICINE BOW FUEL & POWER, LLC
Permittee

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CERTIFICATE OF SERVICE

I, John A. Coppede, hereby certify that on this 4th day of December 2009 a true and correct copy of the foregoing **MEMORANDUM OF POINTS AND AUTHORITY IN SUPPORT OF MEDICINE BOW FUEL & POWER'S MOTION FOR SUMMARY JUDGMENT** was served by regular mail and electronic mail to:

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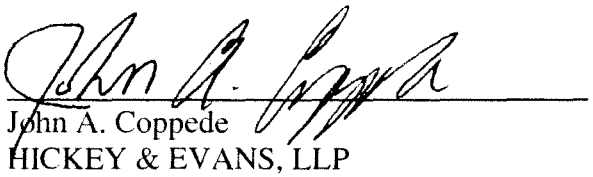

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