



The State  
of Wyoming



## Department of Environmental Quality

Jim Geringer, Governor

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August 2, 2002

Mr. Daniel D. Yuch, Vice President  
North American Power Group, Ltd  
8480 E. Orchard Rd, Suite 4000  
Greenwood Village, CO 80111-5027

**FILED**

APR 24 2014

Re: Two Elk Generating Station - Unit 1  
Permit No. CT-1352A(Corrected)

Jim Ruby, Executive Secretary  
Environmental Quality Council

Dear Mr. Yuch:

I am in receipt of your letter of July 30, 2002, wherein you state that Two Elk Generation Partners, Limited Partnership (TEGP) is providing "Notice of Commencement of Construction" pursuant to the requirements of the referenced permit issued by the Wyoming Department of Environmental Quality on February 17, 2000.

As you are aware, Wyoming Air Quality Standards and Regulations(WAQSR) at Chapter 6, Section 2(a)(i) allows no actual work on any new source prior to issuance of a construction permit for the facility. Chapter 6, Section 2(e)(h) also provides that an approval to construct becomes invalid if construction has not commenced within 24 months unless such time period has been extended by the Administrator. My letter of March 15, 2002, granted an extension of the referenced permit for a period of six months to August 20, 2002, on a one time basis only. On that basis TEGP is allowed to begin actual work on the facility, however, I cautioned in my March 15, 2002, letter that any construction on a "major emitting facility" initiated by August 20, 2002, must also meet the regulatory definition of "commenced construction" for the permit to remain valid. That definition is contained at Chapter 6, Section 4(a)(ii) of the WAQSR and at 40 CFR Part 51.166(b)(9) of the Federal Regulations. At our meeting on May 1, 2002, in my offices I provided you with clarification and guidance relative to the long standing regulatory interpretation of that definition.

To reiterate, the pertinent section of that definition is that the owner or operator has... "(i) begun, or caused to begin, a continuous program of **actual on-site construction** of the facility or (ii) entered into binding agreements or **contractual obligations**, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a **reasonable time**."

Mr. Daniel D. Yueh, Vice President  
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Page Two

1. **Actual on-site construction** refers to physical on-site construction activities on a site specific emissions unit which are of a permanent nature such as placement of footings, pilings and other materials and equipment needed to support the ultimate structures. There must be clear evidence (through contracts or otherwise) that construction of the entire facility will definitely go forward in a continuous manner. Activities such as site clearing, excavation work and road building will generally not satisfy the commence construction requirements.

2. **Contractual obligations** to undertake a program of construction refers to a contractual obligation which is site specific as referenced above and which cannot be cancelled or modified without substantial loss. Contracts for non site specific equipment, such as boilers, will typically not suffice. The criteria for substantial loss is generally considered to be one which would exceed 10% of the total project cost.

3. **Reasonable time** in the regulatory definition is intended to assure the permitting authority that the approval to go forward with construction, having been "commenced" as defined above, in a continuous manner is implemented. If construction is not "commenced" (in this case by August 20, 2002) or if there is a break in construction of 24 months or more after construction has "commenced", the permit to construct is invalid.

I appreciate the fact that you desire confirmation that the requirements for commencement of construction have been achieved by your planned activities. Before that assurance can be provided, I must have documentation of activities ( such as a binding contract and detailed construction schedule for on site support structures) or binding contracts for site specific equipment that meet the specifics outlined above prior to August 20, 2002.

Sincerely,



Dan Olson  
Administrator  
Air Quality Division

cc: Dennis Hemmer  
Bernie Dailey