

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

IN THE MATTER OF:)
BASIN ELECTRIC POWER COOPERATIVE) Docket No. 07-2801
DRY FORK STATION,)
AIR PERMIT CT-4631)
_____)

**RESPONSE TO THE ANNEX TO THE WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Protestants submits the following in response to WYDEQ’s annex of facts:

1. Protestants do not dispute the asserted facts as they relate to the process undertaken by Basin Electric and DEQ in this case.
2. Protestants do not dispute that CH2M Hill conducted a cumulative increment consumption analysis at the Northern Cheyenne Indian Reservation in southern Montana, located within 300km of the Dry Fork Station.
3. Undisputed, except that Protestants note that the cited documents do not fully support the facts as alleged.
4. Undisputed.
5. Undisputed.
6. Undisputed, except that Protestants note that DEQ required that Colstrip Units #3 and #4 be modeled at maximum allowable emissions, and did not merely “request” that such modeling be undertaken. See Protestants’ Exh. 42.
7. Undisputed.
8. Undisputed.
9. Undisputed.

10. Protestants do not dispute that DEQ decided to overlook Dry Fork's contribution to modeled increment violations in the NCIR because Dry Fork's impact was less than 0.2 SO₂.

Protestants dispute the last sentence in this paragraph because it is unclear.

11. Undisputed.

12. Protestants dispute this paragraph because the cited authority does not support it.

13. Undisputed.

14. Undisputed.

15. Protestants do not dispute the first sentence. Protestants dispute the second sentence because it is vague. Protestants also note that the cited authority only supports the proposition that DEQ has used Class I SILs as a screening tool to determine whether to conduct cumulative modeling. This authority does not support the proposition that DEQ has used Class I SILs after cumulative modeling to excuse modeled increment violations.

16. Undisputed.

17. Undisputed.

18. Protestants dispute that Protestants' expert witness admitted that DEQ properly considered all sources of SO₂ for the SO₂ increment calculation. Protestants state that Protestants' expert witness only admitted that he saw no errors in the modeling "given the inputs."

19. Protestants dispute that Protestants' expert witness admitted that DEQ did not improperly rely on revised modeling results supplied by the applicant. Protestants state that Protestants' expert witness only admitted that he saw no errors in the modeling "given the inputs."

20. Protestants do not dispute that DEQ/AQD drove their BACT analysis and the range of emission limits and control measures by the definition of the facility proposed by Basin Electric. Protestants dispute that this BACT analysis was legally sufficient. Protestants do not dispute that BACT is determined on a case-by-case basis. Protestants do not dispute that Basin Electric proposed a mine-mouth 422 MW (gross)/385 MW (net) pulverized coal-fired (PC) electric power generating unit. Protestants do not dispute that DEQ/AQD conducted a site-specific BACT analysis for the Dry Fork Station, but Protestants note that a site-specific BACT analysis does not preclude consideration of other production processes.

21. Protestants dispute DEQ's legal conclusion that subcritical pulverized coal-fired electric power generating units, CFB, supercritical, ultra-supercritical, and IGCC sources are not control technologies, but are examples of various types of major source facilities that generate electric power. Protestants assert that these are all production processes that use coal to generate electricity. Protestants' Exh. 13 at 5-6; Protestants' Exh. 15 at 4-5; Protestants' Exh. 17 at 12-13, 17-18; Protestants' Exh. 26 at 38, 39 & 48; Protestants' Exh. 29 at 5; Protestants' Exh. 30 at 2-3.

22. Protestants dispute that DEQ's policy is to not require a redefinition of the source in the BACT analysis to the extent that Protestants are not aware of any official policy to this effect.

23. Protestants do not dispute that the NSR Manual states that a BACT analysis does not require redefinition of the source. Protestants note, however, that DEQ is not bound by any EPA policy to this effect.

24. Protestants do not dispute that the EQC did not require DEQ to redefine the source in the cited permit. Protestants dispute that this is EQC precedent that binds DEQ's BACT analysis in this case.

25. Protestants do not dispute that DEQ followed EPA's PM₁₀ Surrogate Policy in this case. Protestants dispute the legality of this policy, and note that DEQ is not bound by this policy. Protestants' Exh. 33 at 22; Protestants' Exh. 34 at 4.

26. Protestants dispute that the cited authority contains the referenced modeling results.

Dated September 12, 2008.

/s/ Andrea Zaccardi
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CERTIFICATE OF SERVICE

I certify that on this day of September 12, 2008, I served a copy of the foregoing PROTESTANTS' RESPONSE TO THE ANNEX TO THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION FOR PARTIAL SUMMARY JUDGMENT via e-mail and Federal Express addressed to:

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