

July 28, 2008

Mr. David A. Finley
Administrator, Division of Air Quality
Wyoming Department of Environmental Quality
122 W. 25th St., Herschler Building
Cheyenne, Wyoming 82002

Re: AP-5873

Dear Mr. Finley:

Please accept these comments on behalf of the Wyoming Outdoor Council and the Wyoming Chapter of the Sierra Club regarding the Chapter 6 Section 2 air pollution construction permit that has been applied for by Medicine Bow Fuel & Power, LLC (a subsidiary of DRKW Advanced Fuels). This company proposes to build a coal-to-liquids plant near Medicine Bow that would convert coal mined at the site into transportation fuels using coal-to-liquids conversion technology to produce 18,500 barrels per day of gasoline and 42 tons per day of sulfur. In the process, the plant will also produce sulfur dioxide, nitrogen oxides, volatile organic compounds, particulate matter, and other air pollutants.

Construction of this plant raises a number of significant air quality concerns that we urge the Department of Environmental Quality (DEQ) to fully consider and make provision for prior to issuing this permit. Not the least of our concerns is that according to the Public Notice supplied by the DEQ this plant would apparently consume 85 percent of the allowable increment in a prevention of significant deterioration (PSD) Class II area for PM₁₀ on an annual basis. While this increment consumption may be below that which is permissible we ask the DEQ to fully consider the ramifications of this deterioration in air quality before granting the permit, and to ensure that all possible means to reduce air pollution are required before the plant can be constructed.

Beyond any technical issues of what technology may be possible and required, what Wyoming rules specifically require, etc. is a far more fundamental question that we ask the DEQ to consider before granting this permit. And that is, what is Wyoming becoming in terms of air quality and is this condition what the State wants? Is Wyoming's policy to go from being a "clean air state" with some of the cleanest air in the country to one with widespread significant air pollution? This is not hyperbole.

Wyoming would already be nonattainment for PM₁₀ in the Powder River Basin were it not for the escape hatch created by EPA's "natural events" action plan policy. But that does not change the fact the Powder River Basin has real problems with dust pollution from development (coal mining) that has reached a level that exceeds that which is "requisite to protect the public health," 42 U.S.C. § 7409(b)(1), but for the escape hatch created by EPA policy. And as you yourself stated to the Air Quality Advisory Board in Casper in June, you anticipate the Sublette County area moving towards nonattainment designation for the ozone 8-hour National Ambient Air Quality Standard (NAAQS) when you make your recommendation to EPA next March. And now south-central Wyoming will closely approach noncompliance with a Clean Air Act standard, the allowable consumption of PM₁₀ increment on an annual basis in a Class II area.

It seems clear that this issue needs to be addressed and recognized for what it is: a disturbing statewide trend of degrading air quality. And we ask the DEQ to approach this permitting decision from that perspective. The implication of these growing violations or near-violations is that public health is increasingly threatened by air pollution throughout wide areas of Wyoming, and permitting this plant would contribute to that trend. Is this what Wyoming wants? Do the various statutes and rules encourage this trend even if they do not prohibit it (yet); does allowing consumption of 85 percent of an increment in a PSD area comply with the policy of the Clean Air Act and the Wyoming Environmental Quality Act and related regulations? Again, we ask the DEQ to address these overarching policy questions in an open and public manner before it grants this permit.

It seems apparent to us that if this facility were allowed to consume 85 percent of the PM₁₀ Class II area annual increment, it would "cause significant deterioration of existing ambient air quality in the Region," which is prohibited by the Wyoming Air Quality Standards and Regulations (WAQSR). WAQSR ch. 6 § 2(c)(iii). Furthermore, and perhaps more importantly, what does the consumption of 85 percent of an increment mean for other potential development in Carbon and Albany Counties? If 85 percent of the increment is consumed so that we can produce modest amounts of transportation fuels, is that worth the tradeoff that may limit other development from occurring, development which could have far more value to the counties (and Wyoming) as a whole?¹ Will any other coal mines be possible in this area? Could any hydrocarbon-fueled power plant be built in the future? Are there going to be limitations on road building or other construction so that dust (PM₁₀) is not produced? Is producing a small amount of transportation fuels really in Wyoming's interest if that precludes any number of other possible future options? These kinds of questions should be openly and publically discussed prior to granting this permit so as to ensure it is appropriately conditioned in a way that reflects the broader goals and needs of this area, and the State.

¹ Furthermore, we assume that at least some of the allowable increment for PM₁₀ has already been consumed since the baseline date and we ask that DEQ present and consider what the existing increment consumption is already so that a full understanding of this issue is possible. If even only 5 percent of the allowable increment has already been consumed before the DKRW plant is even built, obviously we would be moving very close to having consumed the full increment. And if much more than that has already been consumed, almost no additional development that creates PM₁₀ will be permissible in the Carbon and Albany County areas. This implication of permitting this plant needs to be fully considered in this permitting decision.

In addition to concerns over the high level of increment consumption (besides the consumption of the PM₁₀ annual increment, several other increments have a high level of consumption according to the Public Notice) we also have the following concerns:

- We feel that before granting this permit there needs to be assurance the company has the financial resources and backing to pursue this project to completion. It has been widely reported this company does not have the finances to actually construct this project. We feel that permits should not be issued based on speculative possibilities or expressions of interest, and unless the company has demonstrated sufficient financial resources it may not be able to fully comply with permit conditions on a timely or continuing basis.
- The plant will impact air quality of neighboring public lands, such as the Medicine Bow National Forest. These public lands should be protected for their phenomenal recreational and biological values. Air pollution could harm visibility, contribute to acid rain, and cause fertilization of forest ecosystems. The permit should ensure that such impacts do not occur. The plant could also impact public health in nearby communities and cities, such as Medicine Bow and Laramie. Volatile organic compounds and nitrogen oxides are precursors to ozone formation, which has very negative effects on human health, and which is an increasing problem in rural areas.

The Western Regional Air Partnership (WRAP) has just released a report regarding compliance with the new ozone NAAQS. We believe this report has many important points and areas of discussion the DEQ should consider before issuing this permit. The report states, "In contrast to EPA's national ozone modeling predictions, broad regions throughout the west are predicted to exceed and/or violate the new ozone NAAQS." The DEQ should ensure this plant does not contribute to this growing problem, which could lead to Wyoming being in nonattainment with the new ozone NAAQS not only in the Pinedale area, but in other areas of the state as well. This report can be viewed at: http://www.wrapair.org/forums/toc/meetings/080729m/Revised_8hrO3_NAAQS_draft_7_15_08.pdf.

- DEQ needs to appropriately analyze impacts from carbon dioxide and other global warming pollution that could be emitted from this plant. Coal-to-Liquids plants produce more carbon dioxide than even traditional oil refineries. The plant will produce over 4 million tons per year of carbon dioxide, which will contribute to global climate change. The DEQ should squarely address this issue, including in the context of the developing and evolving policies of the Western Climate Change Initiative, which Wyoming is an observing participant in. Furthermore, given that the State is moving to permit other large emitters of carbon dioxide (e.g., Dry Fork power plant), the cumulative impacts of these additive sources of greenhouse gases should be fully considered.
- DEQ needs to set limits for mercury and other hazardous air pollutant emissions. Mercury emissions would impact local and regional water bodies. Fishing advisories have been issued for nearby Pathfinder and Seminoe Reservoirs for dangerous levels of mercury and this plant will only exacerbate those problems. Furthermore, given the decision by the court of appeals in the District of Columbia invalidating the EPA's

mercury cap and trade rule (and by implication Wyoming's companion rule), we feel the DEQ should approach the question of ensuring needed limits on mercury emissions from this plant from the standpoint of what is likely to be required in the near future (regulation of mercury under the Clean Air Act's section 112 hazardous air pollutant provisions (i.e., requirements for Maximum Available Control Technology (MACT)) rather than Wyoming's now likely-invalid rules.

Thank you for considering these comments and please keep us informed as this permitting decision moves forward.

Sincerely,

Bruce Pendery

cc: Governor Dave Freudenthal
John Corra, DEQ