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FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

JAN 29 2009

Stephan Harris, Clerk
Cheyenne

Sanjay Narayan (CA Bar No. 183227)
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(Pro Hac Vice Applications Pending)
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

SIERRA CLUB)
Plaintiff,)
)
v.)
)
TWO ELK GENERATION)
PARTNERS,)
LIMITED PARTNERSHIP,)
Defendant.)
_____)

CIVIL ACTION NO. 09-cv-22-D

COMPLAINT

INTRODUCTION

1. In order to ensure that permits for new sources of air pollution are based on reasonably current information, the Clean Air Act's implementing regulations impose strict limits on the validity of such permits. A permit-holder must promptly begin construction of the permitted facility, and continue construction of the facility without substantial interruption; if the permit-holder fails to do so, the permit is no longer valid.

2. More than ten years ago, in February 1998, Two Elk Generation Partners, Limited Partnership ("Two Elk"), a subsidiary of the North American Power Group, received a permit allowing it to construct a coal-fired electric generating station, the Two Elk Unit 1 Power Plant ("Power Plant") in Campbell County. Two Elk has neither begun nor continued construction of the Power Plant, and the terms of its permit are based on information that is badly outdated. Indeed, the most recent version of the permit states that it is based on the information in applications submitted by Two Elk in 1996 and 1999. Nevertheless, Two Elk proposes to construct the Power Plant and is currently taking steps to prepare for that construction.

3. Plaintiff Sierra Club brings this citizen suit against Two Elk, under the Clean Air Act, 42 U.S.C. §§ 7604(a)(1) and (a)(3). This action seeks a declaration that Two Elk lacks a valid permit to construct the Power Plant, and an order enjoining Two Elk from constructing the Power Plant without a valid Prevention of Significant Deterioration ("PSD") permit.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 1331 and 1355.

5. Venue is proper in this District pursuant to 42 U.S.C. § 7604(c)(1) because the planned site for the Power Plant is located in this District.

6. On May 6, 2008, Plaintiff sent a notice letter to Defendant and to all appropriate state and federal agencies listing the violations alleged herein and indicating its intent to sue to Defendant. More than sixty (60) days have passed since notice was given and neither the U.S. Environmental Protection Agency nor the State of Wyoming has commenced action in a court of the United States or Wyoming to redress the violation listed in this Complaint.

PARTIES

7. Plaintiff Sierra Club brings this action on behalf of itself and its members. The Sierra Club was founded in 1892 and is the nation's oldest grass-roots environmental organization. The Sierra Club is a non-profit, membership organization incorporated in California, and has its headquarters in San Francisco, California. It has approximately 750,000 members nationwide, including over 1,000 in Wyoming. The Sierra Club is dedicated to the protection and preservation of the natural and human environment in Wyoming. Plaintiff's members reside in, work in, or regularly visit and use the resources of Campbell County and the Thunder Basin Grasslands, the airsheds that would be most immediately impacted by emissions from the Power

Plant. The air quality of these areas affects the recreational, educational, environmental, aesthetic, and economic interests of Plaintiff's members. The interests of Plaintiff's members will be adversely affected by Two Elk's action at issue in this case— i.e., constructing the Power Plant without a valid PSD permit— because the level of pollutants to be discharged from the Power Plant will degrade air quality, injuring and/or damaging wildlife, vegetation, water quality, and real estate in areas used by Plaintiff's members, and harm the aesthetic enjoyment of these areas by Plaintiff's members. Construction of the Power Plant without a valid PSD permit will also adversely affect the health of Plaintiff's members. An order of this Court directing Defendant to obtain a new PSD permit prior to constructing the Power Plant will redress the injuries to Plaintiff's members by precluding construction of the Two Elk Plant until such time as Two Elk obtains a valid permit, which permit must, if issued, include state-of-the-art pollution controls, and an opportunity for public comment and participation.

8. Defendant Two Elk is a limited partnership organized under the laws of Wyoming. Defendant owns and operates the proposed Power Plant in Campbell County, Wyoming.

LEGAL BACKGROUND

9. The Clean Air Act ("CAA" or "Act") is designed to "protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).

10. Part C of the CAA sets forth requirements for the prevention of significant deterioration in areas where air quality is attaining national ambient air quality standards (the PSD program). 42 U.S.C. §§ 7470-7492. Those requirements protect public health and welfare, assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. 42 U.S.C. §§7470-7492.

11. Part C of the Act requires, among other things, that “no major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which the [PSD program] applies unless a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part.” 42 U.S.C. § 7475(a).

12. Pursuant to the federal PSD regulations, no “new major stationary source” can “begin actual construction” without a permit meeting the requirements of the PSD program. 40 C.F.R. § 52.21(a)(2)(iii). *See also* Wyoming Air Quality Standards & Regulations, Ch. 6, § 4(b).

13. The Clean Air Act allows states to implement the above-described PSD provisions, by enacting a State Implementation Plan (“SIP”) that effectively incorporates the Act’s requirements. Following approval by the U.S. Environmental Protection Agency (EPA), a state applies the rules of its SIP to, *inter alia*, proposed new sources of air pollution. In order to secure

EPA approval, the State's rules must be at least as stringent as the federal Clean Air Act requirements.

14. The EPA has approved the PSD provisions of Wyoming's State Implementation Plan., which are contained in Wyoming's Air Quality Standards and Regulations ("WAQSR"). Accordingly, in Wyoming, the Wyoming Department of Environmental Quality ("WDEQ") is charged with issuing PSD permits to major emitting facilities, pursuant to the requirements set forth in those Standards and Regulations.

15. EPA has designated Campbell County, Wyoming as either unclassifiable or in attainment under the CAA for sulfur dioxide, carbon monoxide, ozone, PM-2.5, PM-10, and nitrogen dioxide. 40 C.F.R. § 81.351. As such, new major sources proposed in Campbell County are subject to the PSD program.

16. The two central purposes of Clean Air Act's PSD regime are to ensure that new sources of air pollution incorporate the latest, state-of-the-art pollution controls, and that new sources do not contribute to air pollution in excess of air quality standards. Those purposes demand that PSD permits be based on reasonably current information. Accordingly, the Act's implementing regulations limit the life span of older, "stale" permits, which may be based on outdated pollution-control technologies, or fail to address current air-quality conditions.

17. The federal regulations provide that PSD permit approval to construct a major emitting source shall become invalid if:

construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time.

40 C.F.R. § 52.21(r)(2).

18. Chapter 6, section 2(h) of the WAQSR provides:

[A]n approval to construct or modify shall become invalid if construction is not commenced within 24 months after receipt of such approval or if construction is discontinued for a period of 24 months or more.

WAQSR, Ch. 6 § 2(h). The Wyoming State Implementation Plan (“SIP”) under the CAA includes this provision. The United States Environmental Protection Agency has approved the Wyoming SIP although the 24-month deadline in the Wyoming SIP is inconsistent with the 18-month deadline set forth in federal regulations.

19. Under the CAA and the WAQSR, Chapter 6, Section 4(a), to “commence” construction of a major stationary source means that the owner or operator has obtained the necessary preconstruction permits, and either has:

(i) Begun or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or (ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

42 U.S.C. § 7479(2)(A); 40 C.F.R. § 52.21(b)(9) (emphasis added).

20. The relevant regulation defines “begin actual construction” as:

[I]n general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground

pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

40 C.F.R. § 52.21(b)(11).

21. Under federal regulations and Chapter 6, Section 4(a) of the WAQSR, “construction”

means:

any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in emissions.

40 C.F.R. § 52.21(b)(8); WAQSR, Ch. 6 § 4(a).

FACTS

22. Two Elk intends to construct a 280-megawatt power plant fired by waste coal from a nearby mine.

23. Two Elk originally applied for a permit to construct the Power Plant more than a decade ago, in October 1996. The Wyoming Department of Environmental Quality (“WDEQ”) issued air quality construction permit CT-1352 in February 1998.

24. In 1999, Two Elk applied to the WDEQ to modify the Power Plant and change its location. In response, WDEQ issued air quality construction permit CT-1352A in February 2000, which required Two Elk to start construction no later than February 2002.

25. In February 2002, Two Elk had not yet commenced construction. Two Elk requested, and was granted, an extension of time to commence construction until August 2002.

26. In September 2002, the WDEQ advised Two Elk that permit CT-1352A was no longer valid because Two Elk had not commenced construction of the plant in accordance with its permit and with Wyoming law.

27. Two Elk appealed this determination to the Wyoming Environmental Quality Council.

28. On May 29, 2003, as a result of the settlement of the appeal, WDEQ issued Air Quality Permit CT-1352B (“the PSD Permit”). The PSD Permit is attached hereto as Exhibit 1.

29. The Power Plant is a major stationary source under the PSD provisions of the Clean Air Act, because it will include a fossil-fuel boiler that has the potential to emit more than 100 tons per year of sulfur dioxide, nitrogen dioxide, particulate matter less than 10 microns in diameter, and carbon monoxide, all of which are regulated pollutants under the CAA. 40 C.F.R. §§ 52.21(b)(1)(i)(a), 50.4, 50.8, 50.11.

30. Condition 4 of the PSD Permit provides that if Two Elk fails to commence construction on the Power Plant by May 29, 2005, or “[i]f . . . construction is discontinued for a period of 24 months or more, in accordance with WAQSR Chapter 6, Section 2(h), the permit will become invalid.”

31. Condition 4 of the PSD Permit further provides that, in order to satisfy the condition:

[Two Elk] shall, within 24 months:

a) complete on-site construction of any one (1) of the following foundations:

i) Main Boiler

- ii) Main Stack
- iii) Steam Turbine, or
- iv) Air-Cooled Condenser, and

b) enter into a binding written contract to purchase a site-specific main boiler or steam turbine, which is not contingent upon any additional notice to proceed or exercise of an option, etc.

32. WDEQ has consistently interpreted the definition of “construction” in WAQSR Chapter 6, Section 2(h) as requiring construction of a “site specific emission unit.” DEQ stated in a letter to Two Elk dated August 2, 2002: “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 ultimate structures.”

33. On information and belief, Two Elk did not “commence construction” on the Power Plant on or before May 29, 2005, as the phrase “commence construction” is defined in the CAA and state regulations.

34. On information and belief, Two Elk did not complete on-site construction of any of the components listed in Condition 4 of the PSD Permit.

35. On information and belief, Two Elk did not receive an extension of the PSD Permit from WDEQ to construct the Power Plant.

36. In May 2005, Defendant poured a solitary concrete stack foundation in the prairie at the Two Elk site.

37. In June 2007, more than 24 months after Two Elk completed pouring the stack foundation, Two Elk had not performed any further construction related to that stack foundation and had not otherwise begun “construction” as that term is defined in federal regulations and WAQSR Chapter 6, Section 4(a).

38. On June 7, 2007, WDEQ conducted an inspection of the Two Elk site and discovered that there had been no additional physical, on-site construction since WDEQ inspected the site more than 24 months prior. An official photograph taken by the WDEQ inspector, showing the lone stack foundation, is attached hereto as Exhibit 2.

39. On information and belief, there has been no “continuous program of on-site construction” of the Power Plant since 2005.

40. On information and belief, Two Elk has not entered into binding agreements or contractual obligations, which cannot be cancelled or modified without suffering a substantial loss, to undertake a program of “actual construction” of the Power Plant.

41. On August 22, 2007, David A. Finley, Air Quality Division, WDEQ, issued Two Elk a letter concluding that Two Elk’s PSD Permit had become invalid. The letter concluded: “Because construction has been discontinued for a period of 24 months or more, DEQ/AQD Construction Permit No. CT-1352B has become invalid by operation of permit condition No. 4 and Chapter 6, Section 2(h) of the WAQSR.”

42. On October 19, 2007, Two Elk filed with the Environmental Quality Council (“EQC”) a Petition for Review and Request for Immediate Stay of WDEQ’s August 22, 2007 determination. EQC Docket No. 07-2601. The EQC is an independent citizen board appointed by the governor to hear and determine all cases or issues arising under laws, standards, rules, regulations or orders issued or administered by WDEQ.

43. Two Elk and WDEQ entered into a settlement agreement dated November 21, 2007 (“Settlement”). The Settlement provided, among other things, that Two Elk would withdraw its appeal pending before the EQC, and that WDEQ would withdraw its August 22, 2007 letter notifying Two Elk of its invalid permit. WDEQ based its conclusions in the Settlement on “review of confidential business information and other documentation provided by Two Elk.” WDEQ “found that such confidential business information and other documentation collectively demonstrated that Two Elk had not discontinued construction for a period of 24 months or more. . . .” WDEQ stated that “DEQ/AQD does not, by entering into this Agreement, warrant or aver that TEGP’s completion of any aspect of this Agreement will result in compliance with the WEQA, WAQSR or permits issued thereunder.”

44. Without requesting or reviewing the purported “confidential information” on which the Settlement was based, and without issuing any findings of fact or conclusions of law, the EQC issued an order approving the Settlement on December 3, 2007.

45. Sierra Club, *inter alia*, filed a petition seeking judicial review of the EQC's December 3, 2007 Order pursuant to the Wyoming Administrative Procedure Act and other state statutes. *Sierra Club et al. v. Wyoming Environmental Council*, First Judicial District Court of Wyoming, Laramie County, Dkt. No. 171-041 (filed Dec. 20, 2007).

46. In the above state court proceeding, WDEQ asserted that Sierra Club did not have standing to comment on the Settlement or participate in proceeding before the EQC and does not have standing to challenge the EQC Order approving the Settlement.

47. In October 2007 and January 2008, Two Elk submitted applications to WDEQ requesting that the PSD Permit be modified to reflect reduced emission limits for certain pollutants. The WDEQ has not incorporated these reduced emission limits into the PSD Permit.

48. Subsequent to the Settlement, Two Elk and/or its contractors undertook certain activities related to physical construction of the proposed plant. Such activities were limited to:

(a) Design, permitting, and bidding activities related to drilling of one or more "construction wells" to provide water during construction, and future conversion of a construction well to a potable well.

(b) Completion of the Two Elk Main Access Road from Wyoming State Highway 450 (also known as, the "State Highway 450 interconnection approach" for the Two Elk plant).

(c) Solicitation of proposals for and/or coordination with contractors regarding construction of plant equipment.

(d) Scheduling and evaluation of future construction and mechanical activities.

49. The PSD Permit is outdated. It no longer accounts for current air quality and no longer requires modern pollution control equipment and pollution limits. In the five years that have passed since WDEQ issued the PSD Permit, technologies to reduce emissions at coal-fired power plants have significantly improved, as evidenced by Two Elk's October 2007 and January 2008 applications admitting it can achieve lower emissions than those permitted in 2003. Yet, the PSD Permit does not take into account these new technologies. Nor does it consider current ambient air quality in the area despite the fact that it has recently approved other new sources of air pollution that will affect the same airshed.

COUNT I

(Constructing or Proposing to Construct a Power Plant without a Valid PSD Permit)

50. Sierra Club realleges paragraphs 1 to 48 as if fully alleged herein.

51. The CAA provides that "any person may commence a civil action on his own behalf . . . against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality)[.]" 42 U.S.C. § 7604(a)(3).

52. The Power Plant is required to have a valid PSD permit under part C of subchapter I of the Clean Air Act.

53. Two Elk did not “commence” construction prior to May 29, 2005 within the meaning of federal and state regulations and as required by the PSD Permit.

54. In the alternative, to the extent Two Elk commenced construction prior to May 29, 2005, Two Elk discontinued construction for a period of 24 months or more after that time.

55. Two Elk does not have a valid PSD permit for the Power Plant.

56. Two Elk has begun ancillary activities, such as grading, to prepare for actual construction of the Power Plant.

57. Two Elk has indicated its intent to proceed imminently with actual construction of the Power Plant. For example, its parent company, North American Power Group, has publicly stated that the Power Plant is under construction, to be completed by 2010. *See* <http://www.napg-ltd.com/projects.html> (last visited January 14, 2008).

58. Two Elk proposes to construct a major emitting facility without a valid PSD permit in violation of 42 U.S.C. § 7604(a)(3).

59. To the extent that Two Elk began actual construction after May 2005, any such construction was without a valid PSD permit in violation of 42 U.S.C. § 7604(a)(3) because Two Elk did not “commence” construction within 24 months of the issuance of its permit.

60. In the alternative, to the extent that Two Elk began actual construction after May 2007, any such construction was without a valid PSD permit in violation of 42 U.S.C. § 7604(a)(3) because Two Elk discontinued construction for 24 months or more after the issuance of its permit.

PRAYER FOR RELIEF

Wherefore, Sierra Club requests that the Court grant the following relief:

61. A declaration that Two Elk lacks a valid PSD permit for the Power Plant;

62. A declaration that any construction of the Power Plant by Two Elk after May 29, 2005 was illegal; or, in the alternative, a declaration that any construction of the Power Plant by Two Elk after May 29, 2007 was illegal.

63. A preliminary and permanent injunction to stop actual construction of the Power Plant until Two Elk obtains a valid PSD permit;


64. An order imposing penalties under 42 U.S.C. § 7604(g) for each violation of the Clean Air Act described above.

65. An order requiring Two Elk to pay Sierra Club's costs of litigation, including attorney and expert witness fees; and

66. All other relief that the Court deems just and proper.

Dated this 29th day of January, 2009

Respectfully submitted,



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Attorneys for Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2009, a true and correct copy of the foregoing document was served via first class mail, postage prepaid and addressed to:

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The State
of Wyoming

Dave Freudenthal, Governor

Department of Environmental Quality

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May 29, 2003

JUN 02 2003

Mr. Daniel D. Yueh
 Two Elk Generation Partners, Limited Partnership
 8480 East Orchard Road, Suite 4000
 Greenwood Village, CO 80111

Terri A. Lorenzon, Director
 Environmental Quality Council

Permit No. CT-1352B

Dear Mr. Yueh:

By Order of the Environmental Quality Council (EQC) in *In the Matter of the Appeal Involving Air Quality Permit No. CT-1352A Corrected, Docket No. 02-2601*, the Division of Air Quality of the Wyoming Department of Environmental Quality issues Air Quality Permit CT-1352B authorizing construction of a nominal 280 Mw coal fired power plant, known as the Two Elk Power Plant, located in Section 36 of T43N, R70W adjacent to the Black Thunder Mine approximately fifteen (15) miles southeast of Wright, in Campbell County, Wyoming.

Based on the EQC Order in Docket No. 02-2601 and the information contained in applications for Permits CT-1352 and CT-1352A, approval to construct the Two Elk Power Plant is hereby granted pursuant to Chapter 6, Section 2 and Section 4 of the Wyoming Air Quality Standards and Regulations with the following conditions:

1. That authorized representatives of the Division of Air Quality be given permission to enter and inspect any property, premise or place on or at which an air pollution source is located or is being constructed or installed for the purpose of investigating actual or potential sources of air pollution, and for determining compliance or non-compliance with any rules, regulations, standards, permits or orders.
2. That all substantive commitments and descriptions set forth in the application for this permit, unless superseded by a specific condition of this permit, are incorporated herein by this reference and are enforceable as conditions of this permit.
3. For a major source, as defined by WAQSR Chapter 6, Section 3(b)(xvii), an application for an operating permit, in accordance with WAQSR Chapter 6, Section 3(c)(i)(A), is required within 12 months of commencing operation.

Attachment A

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Two Elk Power Generation
Air Quality Permit CT-1352B
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Terri A. Lorenzon, Director
Environmental Quality Council

4. The date of commencement of construction shall be reported to the Administrator within 30 days of commencement. If construction or modification does not commence within 24 months of the date of the Council's Order approving the stipulated modification of this permit or construction is discontinued for a period of 24 months or more, in accordance with WAQSR Chapter 6, Section 2(h), the permit will become invalid. To satisfy the condition that construction commence within 24 months, Two Elk Generation Partners, Limited Partnership (TEGP) shall, within 24 months:
- a) complete on-site construction of any one (1) of the following foundations:
 - i) Main Boiler
 - ii) Main Stack
 - iii) Steam Turbine, or
 - iv) Air-Cooled Condenser, and
 - b) enter into a binding written contract to purchase a site-specific main boiler or steam turbine, which is not contingent upon any additional notice to proceed or exercise of an option, etc.
5. Written notification of the anticipated date of initial start-up of each source, in accordance with WAQSR Chapter 6, Section 2(i), is required 60 days prior to such date. Notification of the actual date of initial start-up is required 15 days after start-up.
6. Required performance tests shall be conducted, in accordance with WAQSR Chapter 6, Section 2(j), within 30 days of achieving maximum design rate but not later than 90 days after initial start-up. Two copies of the written report shall be submitted to the Division within 30 days of testing. A test protocol shall be submitted to this office for review and approval prior to testing, and the Division shall be given at least 15 days notice prior to the test. If a maximum design production rate is not achieved within 90 days of start-up, the Administrator may require testing be done at the rate achieved and again when a maximum rate is achieved.
7. That allowable pollutant emission rates shall be assigned as follows.

Two Elk Allowable Emissions			
PC Boiler Emissions - Main Stack (2960 MMBtu/hr)			
Pollutant	lb/MMBtu	lb/hr¹	TPY
PM ₁₀	0.018	53.3	233.4
SO ₂	0.15 (3-hr fixed) 0.132 (30-day rolling) 70% minimum removal efficiency (30 day rolling)	444.0 (3-hr fixed) 390.7 (30-day rolling)	1,711.4
NO _x	0.09 (30-day rolling)	266.4 (30-day rolling)	1,166.8
CO	0.135	399.6	1,750.2
VOCs	0.0135	40.1	175.6

¹ Based on lb/MMBtu emission rate and 2,960 MMBtu/hr heat input.

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Two Elk Power Generation
Air Quality Permit CT-1352B
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Auxiliary Boiler Emissions (180 MMBtu/hr)			
Pollutant	lb/MMBtu	lb/hr	TPY¹
NO _x	0.05	9.0	2.3

¹ Based on 500 hours per year operation

Natural Gas Turbine Emissions			
Pollutant	ppm	lb/hr	TPY
NO _x	25.0 @ 15% O ₂ (1-hr)	62.6	24.1
CO	25.0 @ 15% O ₂ (1-hr)	38.1	NA

2,200 hp Diesel Emergency Generator Sets (Allowables for Each of Two Units)			
Pollutant	g/hp-hr	lb/hr	TPY¹
NO _x	6.9	33.5	8.4
CO	8.5	41.2	10.3

¹ - Based on 500 hours of operation

600 hp Diesel Fire Pump			
Pollutant	g/hp-hr	lb/hr	TPY¹
NO _x	8.8	11.7	2.9
CO	1.9	2.5	0.6

¹ - Based on 500 hours of operation

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 Environmental Quality Council

Two Elk Allowable PM Emissions Material Handling Collectors			
Source	gr/dscf (dscfm)	lb/hr¹	TPY²
Dump Pocket & Crusher Baghouse	0.01 (6,000)	0.5	2.3
Coal Barn & Handling Facilities Baghouse	0.01 (13,200)	1.1	5.1
Plant Coal Boiler Silo Baghouse	0.01 (8,500)	0.7	3.2
Lime Silo Baghouse	0.01 (850)	0.1	0.3
Fly Ash Building Silo Baghouse	0.01 (1,000)	0.1	0.4
Fly Ash Product Silo Baghouse "A"	0.01 (2,200)	0.2	0.8
Fly Ash Product Silo Baghouse "B"	0.01 (2,200)	0.2	0.8
¹ Emissions based on 0.01 gr/dscf.			
² Based on 8,760 operating hours per year.			

8. That initial performance tests to determine compliance with the above listed permit limits shall consist of the following:

PC Boiler

- A) Particulate - Testing shall follow 40 CFR 60.48a.
- B) SO₂ - EPA Method 6C or equivalent shall be employed to determine initial compliance with the SO₂ 3 hour emission limit. Tests shall consist of 3 runs of 3 hours each.
- C) SO₂/NO_x 30-day rolling average/Sulfur Percent Reduction Requirements - Initial testing and compliance determination shall follow methodologies established in NSPS 40 CFR Part 60, Subpart Da, 60.46a, 60.47a, and 60.48a.
- D) CO - EPA Reference Method 10 shall be employed to determine initial compliance with the CO emission limit established by this permit.
- E) VOCs - EPA Reference Method 18 and Reference Method 25 or equivalent shall be employed to determine initial compliance with the VOC emission limits established by this permit.

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Two Elk Power Generation
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Terri A. Lorenzon, Director
Environmental Quality Council

- F) Opacity -EPA Method 9 and the procedures in WAQSR, Chapter 5, Section 2(i) shall be employed to determine initial compliance with opacity limits established by this permit.
- G) NH₃ -EPA Conditional Method 27 (CTM-027) or equivalent methods. Results of the tests shall be reported in units of lb/hr and ppm, on a dry basis corrected to 3% O₂.

Auxiliary Boiler

- A). Compliance with the NO_x limits for the shall be determined by EPA Reference Methods 1-4 and 7E, Appendix A, 40 CFR Part 60 consisting of 3-1 hour tests.

Natural Gas Turbine

- A) NO_x: EPA Reference Methods 1-4 and 20 and the requirements of 40 CFR 60, Subpart GG. Compliance with the lb/hr emissions limits shall be determined with three 1 hour tests conducted while the turbine is operating near full load.
- B) CO: EPA Reference Methods 1-4 and 10. Testing on a ppm basis shall follow the testing methodology in 40 CFR 60, Subpart GG. Compliance with the lb/hr emissions limits shall be determined with three 1 hour tests conducted while the turbine is operating near full load.

Emergency Generators and Pump Engines

- A) NO_x: EPA Reference Methods 1-4 and 7E consisting 3-1 hour tests.
- B) CO: EPA Reference Methods 1-4 and 10 consisting of 3-1hour tests.

Coal Handling Baghouses

- A) Particulate - EPA Reference Methods 1-5, front half only, shall be employed to determine initial compliance with the particulate emission limits established by this permit.
- B) Opacity -EPA Method 9 and the procedures in WAQSR, Chapter 5, Section 2(i) shall be employed to determine initial compliance with opacity limits established by this permit.

9. That prior to any performance testing or monitor certification testing required by this permit, a test protocol be submitted to the Division for approval, at least 30 days prior to testing.

10. Opacity shall be limited as follows:

- A) Visible emissions from the PC boiler shall be limited to 20% opacity (6-minute average) except for one 6-minute period per hour of not more than 27 percent opacity in accordance with NSPS, Subpart Da, 40 CFR 60.42a(b).
- B) Opacity shall be limited to less than 20% from all coal processing and conveying equipment (including breakers and crushers), coal storage systems, truck dump and coal transfer and loading systems in accordance with NSPS, Subpart Y, 40 CFR 60.252(c) as determined by 40 CFR Part 60, Appendix A, Method 9.

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Environmental Quality Council**

C) Opacity from any other source of emissions at this facility shall be limited to 20% opacity in accordance with WAQSR, Chapter 3, Section 2(a) as determined by 40 CFR Part 60, Appendix A, Method 9.

11. That the stalling shed for the truck dump shall be maintained and operated to minimize fugitive dust emissions. Repair measures must be initiated by the operator in an expeditious manner when the control device is determined to be improperly maintained or operated.

12. TEGP shall use the following in-stack continuous emission monitoring (CEM) equipment on the PC Boiler stack to demonstrate continuous compliance with the emission limits set forth in this permit:

A) TEGP shall install, calibrate, operate, and maintain a monitoring system, and record the output of the system, for measuring NO_x emissions discharged to the atmosphere in units lb/MW-hr, lb/MMBtu and lb/hr. The NO_x monitoring system shall consist of the following:

- i) A continuous emission NO_x monitor located in the PC boiler stack
- ii) A continuous flow monitoring system for measuring the flow of exhaust gases discharged into the atmosphere.
- iii) A watt meter to measure gross electrical output in megawatt-hours on a continuous basis.
- iv) An in-stack oxygen or carbon dioxide monitor for measuring oxygen or carbon dioxide content of the flue gas at the location NO_x emissions are monitored.

B) TEGP shall install, calibrate, operate, and maintain a SO₂ monitoring system, and record the output of the system, for measuring emissions discharged to the atmosphere in units of lb/MMBtu, lb/hr and measuring the control efficiency of the SO₂ control device. The SO₂ monitoring system shall consist of the following:

- i) Continuous emission SO₂ monitors located at the inlet and outlet to the SO₂ control device.
- ii) A continuous flow monitoring system for measuring the flow of exhaust gases discharged into the atmosphere.
- iii) An in-stack oxygen or carbon dioxide monitor for measuring oxygen or carbon dioxide content of the flue gas at the location of each SO₂ monitor.

C) TEGP shall install, calibrate, operate, and maintain a monitoring system, and record the output of the system, for measuring the opacity of the emissions discharged to the atmosphere.

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- D) Each continuous monitor system listed in this condition shall comply with the following:
- i) NSPS Subpart Da, Standards of Performance for Electric Utility Steam Generating Units (40 CFR 60.47a).
 - ii) Monitoring requirements of WAQSR, Chapter 5, Section 2(j) including the following:
 - a) 40 CFR 60, Appendix B, Performance Specification 1 for opacity, Performance Specification 2 for NO_x and SO₂, and Performance Specification 3 for O₃ or CO₂. The monitoring systems must demonstrate linearity in accordance with Division requirements and be certified in both concentration (ppm) and units of the standard (lb/MMBtu, lb/MW-hr and lb/hr).
 - b) Quality Assurance requirements of 40 CFR 60, Appendix F.
 - c) TEGP shall develop and submit for the Division's approval a Quality Assurance plan for the monitoring systems listed in this condition.
13. Following the initial performance tests, compliance with the limits set forth in this permit for the PC boiler shall be determined with data from the continuous monitoring systems required by Condition 12 of this permit as follows:
- A) Exceedances of the limits shall be defined as follows:
- i) Any 30-day rolling average of NO_x emissions which exceeds the lb/MW-hr output-based standard or lb/MMBtu limit calculated in accordance 40 CFR Part 60, Subpart Da, 60.46a, 60.47a, and 60.48a. Any 30-day rolling average which exceeds the lb/hr NO_x limit as calculated following the methodology in Subpart Da for the lb/MMBtu emission limit.
 - ii) Any calculated 3-hour block average of SO₂ emissions as measured by the PC Boiler stack SO₂ outlet CEM which exceeds the lb/MMBtu or lb/hr limit established in this permit. The 3-hour average emission rate shall be determined at the end of each 3-hour operating block, and calculated as the arithmetic average of the previous three operating hours SO₂ stack emission rates.
 - iii) Any 30-day rolling average which exceeds the lb/MMBtu SO₂ limit and the percent reduction requirements calculated in accordance 40 CFR Part 60, Subpart Da, 60.46a, 60.47a, and 60.48a. Any 30-day rolling average which exceeds the lb/hr SO₂ limit as calculated following the methodology in Subpart Da for the lb/MMBtu emission limit.
 - iv) Any 6-minute average opacity, except for one 6-minute period per hour of not more than 27 percent opacity, in excess of 20 percent in accordance with NSPS, Subpart Da, 40 CFR 60.42a(b).

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- B) TEGP will comply with all reporting and record keeping requirements as specified in WAQSR, Chapter 5, Section 2(g) and 40 CFR Part 60, Subpart Da. Reporting and record keeping requirements for the 30-day rolling lb/hr NO_x and SO₂ and 3-hour fixed SO₂ emission rates shall follow the same requirements as the NSPS lb/MMBtu standards.
14. TEGP shall install, operate, and maintain a telescoping loading spout designed to minimize fugitive dust from unloading flyash and desulfurization byproducts from the silo and while loading the trucks. The loading spout shall have an outer sleeve for dust withdrawal or equivalent and shall be connected to a baghouse to minimize fugitive dust from the system.
15. That to minimize transport emissions, the flyash and desulfurization byproducts will be entirely enclosed in the haul trucks. Haul road routes will be treated with suitable chemical dust suppressants in addition to water to control fugitive dust emissions. All treated roads will be maintained on a continuous basis to the extent that the surface treatment remains viable as a control measure.
16. That the design documents for the ammonia feed system shall be maintained on site and available to Division personnel during facility inspections.
17. The emergency coal stockpile will only be used in the event the coal supply is temporarily interrupted. The pile will not exceed the capacity of 25,000 tons of coal. The stockpile will be covered at all times except during the emergency use. Dust control chemicals will be used to limit the fugitive dust emissions during construction and reclamation of the stockpile.
18. That the natural gas turbine shall comply with all applicable requirements of Chapter 5, Section 2, WAQSR, NSPS, Subpart GG, "Standards of Performance for Stationary Gas Turbines." TEGP shall monitor the sulfur and nitrogen contents of the fuel(s) being fired and record the values daily in accordance with 40 CFR 60.334(b)(2) using the test methods and procedures in 40 CFR 60.335 unless a custom fuel monitoring schedule or waiver from fuel monitoring requirements is obtained from EPA Region VIII.
19. That the natural gas turbine shall only be fired with pipeline quality natural gas with a sulfur content less than 0.04 grains per dry standard cubic foot.
20. The following continuous emission monitoring (CEM) equipment shall be used to demonstrate continuous compliance with the NO_x emission limits set forth in this permit for the natural gas turbine:
- A) TEGP shall install, calibrate, operate, and maintain a CEM system, and record the output, for measuring NO_x emissions discharged to the atmosphere in units of ppm, and lb/hr. The CEM system shall consist of the following:
- i) A continuous emission NO_x monitor located in the turbine stack.
 - ii) An in-stack monitor for measuring oxygen content of the flue gas at the location NO_x emissions are monitored.
 - iii) A continuous flow monitoring system for measuring the flow of exhaust gases discharged into the atmosphere.

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- B) The continuous monitor system listed in this condition shall comply with the monitoring requirements of WAQSR, Chapter 5, Section 2(j) including the following:
- i) 40 CFR 60, Appendix B, Performance Specification 2 for NO_x and Performance Specification 3 for O₂. The monitoring systems must demonstrate linearity in accordance with Division requirements and be certified in both concentration (ppm_v) and units of lb/hr and lb/MMBtu.
 - ii) Quality Assurance requirements of 40 CFR 60, Appendix F.
 - iii) TEGP shall develop and submit for the Division's approval a Quality Assurance plan for the monitoring systems listed in this condition.
21. Following the initial performance tests, compliance with the limits set forth in this permit for the natural gas turbine shall be determined with data from the CEM systems required by Condition 20 of this permit as follows:
- A) Exceedances of the limits shall be defined as follows:
- i) Any calculated 1-hour average of NO_x emissions which exceeds the ppm_v or lb/hr limits established in this permit using data meeting the requirements of WAQSR, Chapter 5, Section 2(j). Data (and associated monitoring data hours) which do not meet the requirements of WAQSR, Chapter 5, Section 2(j) shall not be included.
 - ii) Any calculated calendar year average of NO_x emissions as measured by the turbine stack NO_x CEM which exceeds the TPY limit established in this permit. All 1-hour averages meeting the requirements of WAQSR, Chapter 5, Section 2(j) shall be included in the average. The allowable hourly NO_x emission rate shall be used for all periods of monitor downtime during turbine operation.
- B) TEGP shall comply with all reporting and record keeping requirements as specified in Chapter 5, Section 2(g). Excess NO_x emissions shall be reported in units of ppm_v, lb/hr, and TPY. Quarterly excess emission reports are required per Chapter 5, Section 2(g). The quarterly report shall include an hourly summation of the NO_x emissions and a year to date summation of NO_x emissions to determine compliance with the TPY limitation on the turbine.
22. The Auxiliary Boiler shall be limited to 500 hours per year of operation, and its usage shall be limited to incidents when the PC Boiler is out of service. Hours of operation for the Auxiliary Boiler shall be submitted with the quarterly NO_x report for the gas turbine.
23. The two (2) 2,200 hp diesel fired emergency generators and one (1) 600 hp diesel fired emergency fire pump shall each be limited to 500 hours of operation per year. Hours of operation for the emergency generators and fire pump shall be submitted with the quarterly NO_x report for the gas turbine.
24. TEGP shall comply with all acid rain programs as defined by Chapter 11, Section 2 of the WAQSR.
25. TEGP shall comply with all applicable requirements of 40 CFR 60 Subparts Da and Y.

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26. Records required by any applicable regulation or permit condition shall be maintained for a minimum period of 5 years and shall be readily accessible to Division representatives.

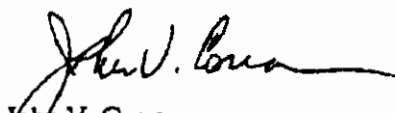
It must be noted that this approval does not relieve you of your obligation to comply with all applicable county, state, and federal standards, regulations or ordinances. Special attention must be given to Section 21 of the Wyoming Air Quality Standards and Regulations, which details the requirements for compliance with conditions 3, 4, 5 and 6.

If we may be of further assistance to you, please feel free to contact this office.

Sincerely,



Dan Olson
Administrator
Air Quality Division



John V. Corra
Director
Dept. of Environmental Quality

cc: Mike Warren



Wyoming Department of Environmental Quality Air Quality Division *Official Photographs*



Company: Two Elk Generation Partners, LP
Two Elk Power Plant

County: Campbell

Subject: Foundation for Main Stack (Facing SE)

Date/Time: 6/7/07 10:00 a.m.

Photographer: Mike Warren

Witness:

Location of Negative: Sheridan AQD Server



Company: Two Elk Generation Partners, LP
Two Elk Power Plant

County: Campbell

Subject: Foundation for Main Stack (Facing E)

Date/Time: 6/7/07 10:00 a.m.

Photographer: Mike Warren

Witness:

Location of Negative: Sheridan AQD Server

