



2, and 3 and the City of Laramie's Exhibits 1 and 2 were admitted for purposes of the December 6, 2007 hearing. The Council has considered the evidence and argument of the parties, and makes the following:

## I. JURISDICTION

Wyo. Stat. Ann. § 35-12-106(a) (LEXIS 2007) provides that, "No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council."

"Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least one hundred sixty three million dollars (\$163,000,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2007).

Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2007) provides that upon receipt of an application for a permit, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations.

Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2007) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

Wyo. Stat. Ann. § 35-12-113(a) (LEXIS 2007) provides that within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate.

On September 19, 2007, Medicine Bow Fuel and Power filed an application with the Division for a permit to allow construction of a coal-to-liquids facility to be located in Carbon County, Wyoming, near the town of Medicine Bow. The total construction cost is estimated at approximately \$2.0 billion. Therefore, this Council has jurisdiction to hear and decide this matter.

## **II. STATEMENT OF THE CASE**

MBF&P filed its application for an industrial siting permit on September 19, 2007 requesting a permit to allow construction of a coal-to-liquid facility near Medicine Bow, Wyoming. The Division's staff thereafter determined that MBF&P's application was complete and in full compliance with Wyoming law and is ready to issue a permit. Nine separate entities filed notices to become a party to these proceedings and all nine parties appeared at the December 6, 2007 evidentiary hearing. Although all parties expressed various concerns about the impact of the project, all parties were in favor of issuing the permit.

### III. ISSUES AND CONTENTIONS

The sole issue in this case is whether MBF&P has proven, by a preponderance of the evidence, that the industrial siting permit application of MBF&P meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LEXIS 2006) and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing MBF&P's proposed coal-to-liquids facility. If so, the Council must decide what, if any, conditions to place on the industrial siting permit.

### IV. FINDINGS OF FACT

1. On September 19, 2007, MBF&P filed an application with the Division requesting issuance of a permit to allow construction of a coal-to-liquids facility near Medicine Bow, Wyoming. The total construction cost for the facility and coal handling operations is approximately \$2.0 billion. *MBF&P's Exhibit 1.*

2. The Division staff published notice of the contested case hearing on MBF&P's application for an industrial siting permit in the Casper Star Tribune on September 26 and 27, 2007 and in the Rawlins Daily Times on September 27 and 28, 2007.

3. The Division received nine requests to become parties in this matter. Those parties included the Wyoming Building and Construction Trades Council, Carbon County, Town of Medicine Bow, Carbon County School District Number 2, Town of Hanna, High Country Joint Powers Board, City of Laramie, Albany County School District Number 1 and the Albany County Planning Office.

4. The Council received one written statement from Homeland Security which was received at the hearing and considered by this Council.

5. Jude Rolfes (Rolfes), Senior Vice-President for engineering construction and asset management was instrumental in preparing the industrial siting permit application as reflected in MBF&P's Exhibit 1. According to Rolfes, MBF&P, in partnership with Arch Coal, intend to develop the first domestic green field coal-to-liquids plant to be located approximately 13 miles southwest of Medicine Bow, Wyoming and 10 miles north of Elk Mountain, Wyoming. The plant would convert coal and other hydrocarbons into liquid fuels, specifically, low sulfur gasoline. Other products produced include CO<sub>2</sub>, sulfur and slag. With regards to the coal resources, MBF&P entered into an option with Arch Coal to purchase the entire coal reserve and Carbon Basin Reserve, 180 million tons of coal. *Tr. of Proceedings, pp. 21, 23, 26 and 27.*

6. Construction of the project is scheduled to begin with some site clearing work in the second quarter of 2008 and full-time construction during the second quarter of 2009. The anticipated employment for construction of the project consists of a work force of approximately 2300 skilled laborers, including earth workers, steel workers, pipe welders, instrumentation controls and high quality, trained construction workers. A permanent operations work force for the project is anticipated at 450 personnel, including operators, supervisors, engineers, electrical workers, lab techs, heavy equipment operators, mechanics, miners, maintenance, health and safety, accounting, security and human resources personnel. *Tr. of Proceedings, pp. 28, 29, 37 and 38.*

7. MBF&P anticipates placing housing facilities very close to the construction site. The housing facility would have its own sewage, water, fire and emergency systems. MBF&P are also looking to the towns of Hanna, Medicine Bow and Rawlins to provide additional housing for families. MBF&P is working with entrepreneurs to build trailer parks and apartments and has agreed to build additional facilities as needed. The on site housing facility

would start with 200 units and an infrastructure to accommodate 1000 units. All of the rooms will have a WI-FI system, flat screen televisions, and cable. Residents of the housing facility would be provided three square meals per day, and recreation and medical facilities on site. *Tr. of Proceedings, pp. 30; 50; 114, 115; 122; 131.*

8. Both truck and rail transportation will be utilized to accommodate all construction deliveries. Charter buses will also be utilized to transport employees to the facility. Carbon County Roads 1 and 3 from Medicine Bow, approximately 13.2 miles, will be used to access the proposed facility. Carbon County is upgrading County Roads 1 and 3 through a Business Ready Grant paying 75 percent of the cost and MBF&P agreed to pay the remaining 25 percent. *Tr. of Proceedings, pp. 31 and 32; 235; 240.*

9. Water needs for the facility will be supplied by wells on site. The water analysis has been submitted to the State Engineer's Office who has agreed with MBF&P's analysis of the adequacy of water necessary for the project. MBF&P has also agreed to monitoring ground water prior to, during and after construction of the facility. *Tr. of Proceedings, p. 33; 40; 41.*

10. Because health and safety is MBF&P's number one priority, there will also be emergency response teams at the facility. *Tr. of Proceedings, p. 34.*

11. MBF&P, in collaboration with the Wyoming Game and Fish Department, will provide fish and wildlife orientation training, a presentation on hunting and fishing licensing requirements, appropriate behavior regarding living near wildlife, and hunter safety training to all people assigned to work at the construction site. *State's Exhibit 3; Tr. of Proceedings, p. 146.*

12. Environmental concerns from the proposed project were addressed by Joe Hammond (Hammond), Senior Project Manager. Hammond testified that environmental impacts and conditions were reviewed including the areas of air quality, noise, cultural resources,

geologic hazards, surface and ground water, wetland and water resources as well as archeological resources. As reflected in Section 6 of the application, none of the impacts posed a serious threat to the environment. *Tr. of Proceedings, p. 97.*

13. MBF&P also compiled a socioeconomic analysis of the proposed project. A four county region was studied, including Natrona, Sweetwater, Albany and Carbon Counties. Data was collected on population, economic conditions, housing, education, public safety, health care, municipal services and transportation. Both direct and indirect economic benefits were identified. As a result of the socioeconomic analysis, no serious threat to the environmental, social or economic welfare of the area was identified, other than to mitigation of the housing issue. *MBF&P's Exhibit 1; Tr. of Proceedings, pp. 98, 99, 102.*

14. The recommendation for the distribution of impact assistance funds is 75 percent to Carbon County and 25 percent to Albany County. The counties, themselves, distribute the monies to the municipalities. *See State's Exhibit 1, p. 87.*

15. Tom Schroeder (Schroeder), Program Principal for the Industrial Siting Program, Department of Environmental Quality, receives and processes applications for permits by the Siting Council. Schroeder reviewed and processed MBF&P's application. According to Schroeder, the proposed facility complied with the applicable law for Industrial Siting. Schroeder believed the facility did not pose a threat of serious injury to the environment or to the social and economic conditions of the area. The proposed facility also would not substantially impair the health, safety or welfare of the local inhabitants. Schroeder also presented a list of recommended permit conditions as reflected in *State's Exhibit 2*. Special Condition #2 on that document has been replaced with *MBF&P Exhibit 9*. Additionally, a third Special Condition was proposed and identified as *State's Exhibit 3*, dealing with the Game and Fish Department's

request that hunting and fishing training occurs with all new employees. The remainder of *State's Exhibit 2* reflects Special Condition #1 and Standard Conditions #1 through #13. Schroeder no longer recommended Standard Condition #6 as reflected in *State's Exhibit 2*, as it pertains to matters handled by the Department of Revenue. *Tr. of Proceedings, pp. 152 and 153*. A complete list of the conditions of the permit is attached to this Order.

16. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

## V. CONCLUSIONS OF LAW

### A. Principles of Law

17. MBF&P bears the burden of proof in the proceedings herein. "The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof." *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyoming Mental Health Prof. Licensing Board*, 120 P.3d 152, (Wyo. 2005).

18. Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2007) provides that an application for a permit shall be filed with the Division and contain the following information:

(i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;

(ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;

(iii) A description of the nature and location of the facility;

(iv) Estimated time of commencement of construction and construction time;

(v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;

(vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;

(vii) A statement of why the proposed location was selected;

(viii) A copy of any studies which may have been made of the environmental impact of the facility;

(ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;

(x) Inventory of estimated emissions and proposed methods of control;

(xi) Inventory of estimated solid wastes and proposed disposal program;

(xii) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;

(xiii) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which evaluations, plans and proposals shall cover the following:

(A) Scenic resources;

(B) Recreational resources;

(C) Archaeological and historical resources;

(D) Land use patterns;

(E) Economic base;

- (F) Housing;
- (G) Transportation;
- (H) Sewer and water facilities;
- (J) Solid waste facilities;
- (K) Police and fire facilities;
- (M) Educational facilities;
- (N) Health and hospital facilities;
- (O) Water supply;
- (P) Other relevant areas.

- (xiv) Estimated construction cost of the facility;
- (xv) What other state or federal permits and approvals are required;
- (xvi) Compatibility of the facility with state or local land use plans, if any;
- (xvii) Any other information the applicant considers relevant or required by council rule or regulation;
- (xviii) A brief description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility.

19. Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2007) provides the division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

- (i) Wyoming department of transportation;
- (ii) Public service commission;

\* \* \*

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

\* \* \*

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

\* \* \*

(xiv) The University of Wyoming;

(xv) Department of revenue; and

(xvi) The Wyoming business council.

20. Wyo. Stat. Ann. § 35-12-110(c) (LEXIS 2007) provides the information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefore, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

21. Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2007) provides that upon receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations. If the director determines that the application is incomplete, he shall within thirty (30) days of receipt of the application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

22. Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2007) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

23. Pursuant to Wyo. Stat. Ann. § 35-12-111 (a) (LEXIS 2007), the parties to a permit proceeding include:

(i) The applicant;

(ii) Each local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i) and any nonprofit organization with a Wyoming chapter, concerned in

whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

(b) Any party identified in paragraph (a)(iii) of this section waives his right to be a party if he does not participate orally at the hearing. Any party identified in paragraph (a)(ii) of this section waives its right to be a party unless the local government files a notice of intent to be a party with the office not less than twenty (20) days before the date set for the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

(d) No state agency other than the industrial siting division shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the industrial siting division or any party.

(e) Any person described in W.S. 35-12-111(a)(ii) or (iii) who participated in the public hearing under W.S. 35-12-107 may obtain judicial review of a council decision waiving all or part of the application requirements of this chapter.

24. Pursuant to Wyo. Stat. Ann. § 35-12-113 (LEXIS 2007), the council shall:

(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b), unless the other regulatory agency requests that conditions be imposed. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

- (i) The proposed facility complies with all applicable law;
  - (ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area; and
  - (iii) The facility will not substantially impair the health, safety or welfare of the inhabitants.
- (b) No permit shall be granted if the application is incomplete.
- (c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.
- (d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.
- (e) A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.
- (f) Within ten (10) days from the date of the council's decision, a copy of the findings and the council's decision shall be served upon the applicant, parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

25. The Industrial Siting Rules and Regulations, Chapter 1 provide:

**Section 7. Application information to be submitted.** In accordance with W.S. 35-12-109, the application shall contain the information required by the act with respect to

both the construction period and online life of the proposed industrial facility and the following information the council determines necessary:

(a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components;

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components of the proposed industrial facility such as boilers, steam generators, turbine generators, cooling facilities, production equipment, and dependent components.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands;

(ii) Products needed by facility operations and their source.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and the local governments primarily affected by the proposed industrial facility as defined in sections 2(b) and (c), respectively, of these regulations. The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) The estimated number of employees needed to complete the construction and operation of the facility by the applicant, its contractors and subcontractors to include job classifications by calendar quarter. The estimate should also include:

(i) Seasonal fluctuations and the peak employment during both construction and operation;

(ii) Annual payroll;

(iii) Expected benefits, if any, to be provided including housing allowances, transportation allowances, and per diem allowances.

(i) An evaluation of the social and economic conditions in the area of site influence. The social and economic conditions shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation may include, but is not limited to:

(i) Land use designation of the site location, including whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

- (A) Employment projections by major sector;
- (B) Economic bases and economic trends of the local economy;
- (C) Estimates of basic versus non-basic employment;
- (D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). An analysis of effects on transportation facilities including effects on service levels of roads, haul routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

- (A) Facilities required for the administrative functions of government;

- (B) Sewer and water distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and services;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of user-oriented community recreational facilities and programs and urban outdoor recreational opportunities including descriptions of recreational resources, locations of the recreational resources, and the types of recreational resources and an analysis of outdoor, resource-oriented recreational opportunities including locations and types of the recreational resources;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the industrial facility subject to sales and use taxes and expected payments by quarter for the construction period. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county. The estimate will also include projections of the impact assistance payments available under W.S. 39-6-411(c) and W.S. 39-6-512(d) generated by the proposed industrial facility through the sales and use tax payments;

(B) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts. The items shall be noted and evaluated as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the proposed facility, including:

(i) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;

(ii) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

#### B. Application of Principles of Law

26. MBF&P filed a completed application with the Division and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2007) and Chapter 1, Section 7 of the Rules and Regulations. *MBF&P Exhibit 1*.

27. MBF&P has shown that the proposed facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area.

28. MBF&P has demonstrated the proposed facility will not substantially impair the health, safety or welfare of the inhabitants.

## DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2007), the Council hereby grants the Industrial Siting Permit Application filed by Medicine Bow Fuel and Power, LLC to construct a coal-to-liquids facility near Medicine Bow, Wyoming in Carbon County, Wyoming. Also pursuant to its authority, the Council places the following terms and conditions on the facility as modified from *State's Exhibit #2*:

1. The Council shall consider requests by local government parties to change the distribution of impact assistance funds upon a showing of good cause and without any precondition that social or economic conditions have changed.
2. Before the end of one year from the service of this permit, the Permittee shall conduct a study of the ground water below the Project site, and file that study with the ISD for distribution to the Solid and Hazardous Waste Division. The study is described by Wyoming Water Quality Rules and Regulations Chapter 3, Section 17(b).
3. The Permittee commits to its housing plan as stated in the application and will construct the specified housing facilities at the construction site, the Town of Medicine Bow, and City of Rawlins subject to local government approval. Updates and improvement to the housing plan shall be made annually and the Director may authorize changes to the housing plan.
4. During the construction of the project, Permittee shall provide fish and wildlife orientation training, a presentation on fishing and hunting licensing requirements, appropriate behavior regarding living near wildlife, and hunter safety training to all people assigned to work at the construction site. This training shall be provided at least on a quarterly basis to workers both present and who have not attended a prior training

session. The sessions will include all materials and lesson plans provided by the Wyoming Game and Fish Department, and the Permittee will work in collaboration with appropriate Department personnel to ensure adequate information is disseminated and records are kept. Permittee shall keep adequate records; and report the number of attendees and dates of each training session on its quarterly reports to the Industrial Siting Council. The Director of the Department of Environmental Quality shall determine compliance by the Permittee. Permittee will not be responsible for any law enforcement activities. Permittee is not an agent of the Game and Fish Department.

5. Medicine Bow Fuel and Power, LLC (Permittee) will obtain and maintain all required State and local permits and approvals in accordance with W.S. 35-12-107(j)(iii), 35-12-113(a)(I) and 35-12-115 during the term of this permit.
6. Construction must commence within two years following the date of the award of this permit.
7. Before engaging in any activity over which the Industrial Siting Council (ISC) has jurisdiction which could significantly affect the environment external to Permittee's permit area, or the social and economic conditions of the area of site influence and which was not evaluated in the permit process, the Permittee or the ISD shall prepare and file an evaluation of such activity with the ISC. When in the opinion of the Director of the Department of Environmental Quality (Director), the evaluation indicates that such activity may result in significant adverse impacts that were not considered in the permit the Permittee shall file a permit amendment in accordance with W.S. 35-12-106.
8. Permittee shall develop a compliance program to ensure compliance with voluntary commitments of this Permit, testimony, agreements with local governments, and these

permit conditions. A compliance coordinator shall be designated and identified to the Industrial Siting Division (ISD) prior to the onset of construction. This individual shall present himself/herself and meet with the ISD staff before construction commences and review the permit requirements with the ISD staff. This coordinator shall assume the responsibility for assuring that contractors and subcontractors are aware of and meet all permit requirements.

9. The ISC may review any adverse social or economic impacts either within or outside the area primarily affected attributed to the Permittee:
- a. Which adversely affect the current level of facilities or services provided by the local community;
  - b. Which cannot be alleviated by financing through ordinary sources of revenue, given due consideration to bonding history and capacity of the jurisdiction involved;
  - c. Which were not evaluated or foreseen at the time the permit was granted and can be attributed in whole or in part to the permitted facility; and
  - d. Which are not or cannot be resolved by voluntary measures by industrial representatives in the community,

Then by order issued in accordance with the Wyoming Administrative Procedures Act, the ISC may require additional mitigation by Permittee in cooperation with other basic industries (existing and future) provided that:

- a. A local government has requested mitigation assistance; and
- b. Such adverse impacts were determined to be a result of the activities of the Permittee.

Permittee shall be required to assist in mitigating any impacts that result from construction or operation of the proposed Project, including those resulting from direct or indirect employment. For purposes of determining additional mitigation measures by the Permittee, consideration shall be given to previous mitigation efforts. However, in any event, Permittee shall not be required to provide mitigation in excess of the proportion that the Permittee's activities are contribution to the total impacts within the impacted area (as defined by W.S. 35-12-102).

10. The Permittee shall notify Industrial Siting Division when construction commences on the project.

11. The Permittee shall notify Industrial Siting Division when the physical components of the identified project are 90 percent complete.

12. As a means of adhering to W.S. 35-12-107(b)(viii) to provide preference for local and resident hiring, Permittee, contractors and subcontractors shall follow these hiring guidelines:

- a. Except as provided by (d) and (e) of this paragraph, the Permittee, contractors and subcontractors shall use the local Workforce Centers to screen all job applicants for skilled and unskilled labor. In addition, Permittee shall make available written descriptions for those skilled and unskilled positions that will be needed at the Project. The Permittee shall not hire by other means unless the Workforce Center is unable to provide qualified workers to fill job orders.
- b. Where the Workforce Center is used for hiring the Permittee, contractors and subcontractors shall be required to include the local and resident hiring procedures in all of their subcontractors. The Permittee shall monitor the hiring practices of contractors and subcontractors to assure compliance with local hiring provisions.
- c. To the extent reasonable and allowed by law, qualified Wyoming residents shall receive hiring preference over qualified non-Wyoming workers. A "resident" is defined as a person who has maintained continuous residency in Wyoming for a period of at least one year prior to hiring.
- d. In the case of the need for trade labor, a local union hall may be used as the source for hiring skilled and unskilled labor.
- e. The terms, "skilled and unskilled" labor as used in this condition shall not be construed as including administrative, managerial, supervisory or professional personnel. Provided, however, the Permittee, contractors and subcontractors shall maintain an active program for recruiting qualified local and Wyoming residents for these administrative, managerial, supervisory and professional positions.

13. The Permittee shall submit an annual report to ISC for the years or portion of a year that includes construction and again for the first year of operation of the facility. The annual report shall include:

- a. Efforts to assure compliance with voluntary commitments, mitigation agreements with local governments, and conditions contained in this permit;
- b. The extent to which construction has been completed in accordance with the application schedule; and
- c. Any revised time schedules or time tables for construction, operations, and reclamation, and a brief summary of the construction, reclamation, and other activities that will occur in the next one-year period.

14. In order that the ISD may monitor Permittee's performance, the Permittee shall institute the following monitoring program that shall be recorded on a monthly basis and reported to the ISD on a quarterly basis through the construction period and the first year of operation. Monthly data shall include:

- a. The average and peak number of employees for the Permittee, contractors and subcontractors.
- b. Employee city and state of residency at the time of hire and the employee city and state while employed and type of residence while employed.
- c. The number of new students enrolled by grade level and school district who are related to Permittee employees, identified as either local (no change of residence) and in-migrants.
- d. Wyoming resident versus non-resident mix of workforce.

15. The Permittee shall notify the ISD of proposed changes to the scope, purpose, size or schedule of the project. The Director may authorize such changes if he or she finds that:

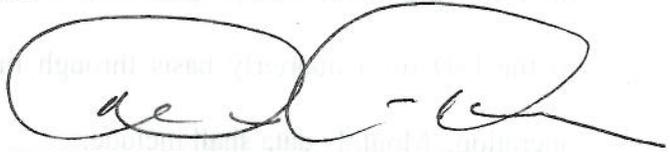
- a. The change should not result in any significant adverse environmental, social, and economic impacts in the area of site influence; and
- b. The Director has provided public notice of the proposed change and his intent to approve the request; and
- c. No party nor Council Member has requested that the matter be heard before the Council in accordance with the permit procedures of W.S. 35-12-106(c)(d).

16. The Permittee shall notify the ISC and provide an additional socio-economic analysis if actual hiring practices during construction exceed the peak number estimated in the application by more than fifteen percent (15%). If the Director determines that there is potential for significant adverse impacts, a permit amendment will be required.

**ORDER**

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application as submitted by Medicine Bow Fuel and Power, and as modified by this Council be and is hereby granted.

DONE this 16 day of January, 2008.



Dave Dunham, Chairman  
Industrial Siting Council  
Herschler Building, Fourth Floor West  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002  
(307) 777-7170

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Industrial Siting Council and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 18 day of January, 2008, addressed to the following:

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Cheyenne, Wyoming 82002

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Industrial Siting Council