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DEPT. OF ENVIRONMENT AND
NATURAL RESOURCES,
SECRETARY'S OFFICE

Steven M. Pirner, P.E.
Department Secretary
South Dakota Department of Environment & Natural Resources
523 East Capitol
Pierre, SD 57501

RE: Comment on the Draft Prevention of Significant Deterioration
Pre-Construction Air Quality Permit for the Hyperion Energy Center

Dear Mr. Pirner:

I am writing to request that the Department of Environment and Natural Resources (DENR) require preparation of an environmental impact statement (EIS) detailing the full range of environmental impacts of the entire Hyperion Energy Center proposal, before any further action is taken on any single permit application. The EIS should be prepared by an independent consulting firm with the very finest qualifications, and the cost of preparation should be paid by the applicant as provided by statute.

I write in support of Scott Heidepriem's letter dated July 17, 2008, and in response to your letter to Minority Leader Heidepriem dated August 1, 2008, both obtained from your website.

The intense scrutiny required by our state's permitting process is absolutely essential to in-depth analysis of a proposed project's impact on specific portions of the environment, such as air, water or hazardous waste, and is sufficient in ordinary cases. In fact, I thank you and your staff for the care that you take with these very complicated, technically challenging permit applications. I am not suggesting that you substitute an EIS for the permitting process. I am requesting that you complete your permitting process only after an EIS has been prepared. Therefore, the fact that "these individual regulatory reviews are more detailed and specific than an EIS," or that "the public has the right to contest environmental permits recommended by DENR," does not support your position that an EIS is unnecessary.

You state that "[B]ecause DENR is authorized to function as a central, one-stop environmental permitting agency, there has never been a state EIS completed for DENR pursuant to SDCL 34A-9." Your statement implies that DENR's centralized permitting authority is entirely sufficient in all cases to a consideration of all values that must be balanced in the public interest. However, statutory history indicates that, even though the legislature had already enacted the initial permitting statutes governing air and water, it anticipated circumstances, such as this massive project, which may have such significant effects on the environment that the permitting statutes alone would not be sufficient to identify and analyze the full range of environmental impacts. For those proposed actions, it provided the EIS to supplement the permitting process.

The legislature enacted the Air Pollution Control Act in 1970, and the Water Pollution Control Act in 1973. In its public policy statement for Air Pollution Control, the legislature stated its intention "to provide a framework within which all values may be balanced in the public interest." SDCL 34A-1-1. However, by 1974, the legislature had already recognized that, in certain cases, the framework provided in the permitting process would fail to consider many important values that must be balanced in the public interest. In 1974, it enacted the Environmental Policy Act, SDCL 39A-9, providing the environmental impact statement as an additional tool for decision-making and a worthy supplement to the permitting process.

SDCL 34A-9-4 authorizes state agencies to obtain "an environmental impact statement on any major action they propose or approve which may have a significant effect on the environment." Obviously, this is a major action. The scale of Hyperion's petrochemical complex is immense by any standards – whether state, regional, national or international. The potential effects to the environment are as complex, far-reaching and significant as any in our state's history.

You state that "[W]e are confident the environmental permitting processes authorized by state law will provide the most complete, detailed, and best information for making those decisions." If so, please identify which of your permits details the full range of the project's potential impacts on the "environment," as defined by SDCL 34A-9-1(4): "the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character."

Using this definition of "environment," please identify which of your permits provides the equivalent of the contents of the environmental impact statement provided by SDCL 34A-9-7, which "shall include, at a minimum, a detailed statement setting forth the following:

- (1) A description of the proposed action and its environmental setting;
- (2) The environmental impact of the proposed action including short-term and long-term effects;
- (3) Any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (4) Alternatives to the proposed action;
- (5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
- (6) Mitigation measures proposed to minimize the environmental impact; and
- (7) The growth-inducing aspects of the proposed action."

I agree with you that "to make the best and most informed decisions as the project proceeds, both DENR and the public need to know as much as possible about the proposed Hyperion Energy Center." I believe this goal is best achieved by preparation of an EIS covering the full range of environmental impacts of all aspects of this unparalleled industrial development.

While the compartmentalized approach of the normal permitting process remains necessary, it is not sufficient to the comprehensive analysis required of the interrelated impacts of this massive multifaceted proposal. The whole is greater than the sum of its parts. To understand the nature, extent and significance of this project's impacts, the environment must be analyzed both in whole and in part, and Hyperion Energy Center must be analyzed both in whole and in part. If it becomes necessary to wait until all separate permit applications are submitted before an EIS can be fully developed for the entire project, then so be it. These are big decisions with far-reaching impacts. They should not be made in haste or undertaken in a fragmented manner.

Precisely because of your centralized authority, DENR is uniquely responsible for protecting the health and well-being of the citizens of South Dakota and of all who are affected by your actions. You are uniquely responsible for protecting our environment. You have an exceedingly useful tool at your disposal, and you are uniquely positioned to benefit from the broadly inclusive approach available only by using the environmental impact statement.

We need all the information-gathering tools we have available, and we need all the comprehensive analysis we can muster. An EIS would contribute immeasurably to a better understanding of this project by both the department and the general public, and it would result in better, more informed decisions regarding the full impact of Hyperion's proposals. If this enormous, unprecedented development with its stunning complexities fails to trigger the need for an environmental impact statement, then what type of project could the legislature possibly have had in mind when it enacted this law? If not now, when?

Sincerely,
Cindy Kirkeby