PROOF OF PUBLICATION

STATE OF IOWA

COUNTY OF WOODBURY

The undersigned, of said County, being duly sworn, on oath states the undersigned is an employee of the SIOUX CITY JOURNAL printed and published by the Sioux City Newspapers, Inc., in Sioux City in said County and issued daily and Sunday and that the annexed printed notice of

Hyperion Permit

#28.0701-PSD

in said newspaper for one consecutive

Thurs. issues,

the first publication thereof being on the 6 day

of Nov., 2008

Patti McAvoy

Patti McAvoy

Subscribed and sworn before me in Sioux City, in said County,

this 13 day of Nov., 2008

Denise Bryce Notary Public

DENISE BRYCE
Commission Number 191358
My Commission Expires
July 28, 2011

In and for Woodbury County.

354 Lines 1 Times, $ 184.43

NOTICE OF
PREVENTION OF SIGNIFICANT DETERIORATION PRE-CONSTRUCTION
AIR QUALITY PERMIT APPLCIATION
OF
HYPERION ENERGY CENTER – HYPERION REFINING LLC
BEFORE THE
BOARD OF MINERALS AND ENVIRONMENT
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
Permit #28.0701-PSD
IN THE MATTER OF THE PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AIR QUALITY PERMIT APPLICATION OF HYPERION ENERGY CENTER
HYPERION REFINING LLC
Draft Permit Issued: 9-08
Final Proposed Permit Issued:
Not Yet Issued
NOTICE OF:
(1) FILING OF PETITION FOR CONTESTED CASE HEARING;
(2) DESCRIPTION OF HEARING PROCESSES;
(3) NOTICE OF PUBLIC COMMENT MEETING AT DATE TO BE DETERMINED;
(4) REQUIREMENT FOR PERSONS DESIRING TO PARTICIPATE AS PARTIES TO FILE MOTION TO INTERVENE OR PETITION FOR CONTESTED CASE;
(5) PREHEARING CONFERENCE;
(6) CONTESTED CASE HEARING AT DATE TO BE DETERMINED;
(7) APPOINTMENT OF HEARING CHAIRMAN;
(8) REQUIREMENT THAT CORPORATIONS, ASSOCIATIONS, AND SIMILAR ENTITIES BE REPRESENTED BY AN ATTORNEY;
(9) ESTABLISHMENT OF CASE HEADING;
(10) PLEADINGS FILING PROCEDURE;
AND
(11) CURRENT PARTY SERVICE LIST
THIS IS A LEGAL DOCUMENT; PLEASE REVIEW ITS CONTENTS CAREFULLY AND CONSULT WITH YOUR ATTORNEY IF YOU HAVE QUESTIONS
NOTICE IS HEREBY GIVEN OF THE FOLLOWING:
1. NOTICE THAT A PETITION FOR A "CONTESTED CASE HEARING" IN THE ABOVE-ENTITLED MATTER HAS BEEN FILED.
A Petition for Contested Case Hearing in the above entitled matter has been filed by Hyperion Refining, LLC in accordance with ARSD 74:09:01:01. The filing of this Petition initiates the "Contested Case Hearing" procedures of SDCL ch. 1-26 and ARSD art. 74:09 for the application described above.
2. DESCRIPTION OF THE "CONTESTED CASE HEARING" AND "PUBLIC COMMENT MEETING" PROCESSES.
State law requires permit proceedings to be conducted in accordance with the "Contested Case Hearing" provisions of SDCL ch. 1-26. A Contested Case Hearing is a formal adversarial proceeding that is conducted in a manner similar to a trial before a Judge. Interested persons, corporations, associations, and entities may participate in this Contested Case Hearing by filing a Motion to Intervene or a Petition for Contested Case as described further below. Parties have the right to be present, to present evidence through the testimony of witnesses and the offering of exhibits and documents, and to be represented by an attorney during the Contested Case Hearing. Parties may participate in discovery, including depositions. Parties must make themselves and their witnesses available for depositions if requested, and must respond to written discovery as required by law.
It is anticipated that the Contested Case Hearing on the above entitled application will involve several weeks of testimony. Dates for the Contested Case Hearing have not yet been determined. The Contested Case Hearing will most likely be held in Pierre, South Dakota. All Parties participating in the Contested Case Hearing must be present during the entirety of the proceeding or they will waive their rights to object to evidence and testimony, and to cross-examine witnesses.
In addition, the Board of Minerals and Environment will hear oral public comment at a "Public Comment Meeting" on the permit application. This Public Comment Meeting will be scheduled before the Contested Case Hearing and may occur near the proposed location of the facility. Persons, corporations, associations, and entities who are not Parties to the Contested Case Hearing may appear and provide oral or written comment on the application at the Public Comment Meeting. The Board of Minerals and Environment will determine the date, time and place of the Public Comment Meeting. Notice to the public will be given at least twenty (20) days prior to the public comment meeting.
3. NOTICE THAT PERSONS DESIRING TO SUBMIT PUBLIC COMMENT WILL BE HEARD AT THE PUBLIC COMMENT MEETING AT A DATE, TIME AND PLACE TO BE DETERMINED.
NOTICE IS HEARBY GIVEN that the Board of Minerals and Environment will hold a Public Comment Hearing on the above-entitled application. Persons, corporations, associations or entities who are not participating as a Party in the Contested Case Hearing may appear and submit public comment on the application at the Public Comment Meeting. Corporations, associations and entities need not be represented by an attorney to participate in the Public Comment Meeting.
The date, time and location of the Public Comment Meeting will be determined by the Board of Minerals and Environment, and notice of the Public Comment Meeting will be published in local newspapers and placed on the DENR website at least twenty (20) days prior to the Public Comment Meeting. The Public Comment Meeting may be held near the location of the proposed facility or another location named by the Board of Minerals and Environment.
4. NOTICE THAT ALL PERSONS DESIRING TO PARTICIPATE AS PARTIES IN THE CONTESTED CASE HEARING MUST FILE A PETITION TO INTERVENE OR A PETITION FOR CONTESTED CASE.
Persons, corporations, associations or entities who desire to participate as a Party in the Contested Case Hearing on the above-entitled application must file either a Petition to Intervene or a Petition for Contested Case. The deadline for filing these Petitions is thirty days following issuance of the Department of Environment and Natural Resource's Final Proposed Permit.
A Petition to Intervene must comply with the provisions of ARSD 74:09:01:04. A Petition for a Contested Case must comply with the provisions of ARSD 74:09:01:01. Petitions that do not comply with the regulations may be subject to denial.
All Petitions for a Contested Case regarding this application will be consolidated absent good cause being shown to maintain separate proceedings.
The Hearing Chair for the Board of Minerals and Environment will grant or deny the Petitions. Once the Hearing Chair grants a Petition, the petitioning person, corporation, association, or entity is deemed to be a Party to the Contested Case Hearing.
When granting a Petition, the Hearing Chair shall determine whether and when the petitioning Party is required to file an Answer to the Petition for Contested Case filed by Hyperion Refining LLC. The Hearing Chair may, based on the statements and allegations contained in the Petition, determine that an Answer to the Petition filed by Hyperion Resources is not required to be made by that Party.
5. NOTICE OF DATE OF PREHEARING CONFERENCE FOR PARTIES AND PERSONS WHO INTEND TO PARTICIPATE AS PARTIES TO THE CONTESTED CASE PROCEEDING.
NOTICE IS HEREBY GIVEN that a Prehearing Conference in the above entitled matter has been scheduled before the Board of Minerals and Environment on Thursday, November 20, 2008, beginning at 9:00 a.m., or as soon thereafter as this matter can be heard, in the Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, S.D. 57501.
The matters to be determined in the Prehearing Conference are:
(a) Establishment of Current Parties.
(b) Motion for a Scheduling Order filed by Hyperion Resources, LLC.
(c) Other procedural matters.
The Prehearing Conference will not address any substantive matters concerning the application.
Parties shall be heard at the Prehearing Conference concerning the procedural matters identified above. Persons who presently intend to file a Petition and participate as a Party in the Contested Case Hearing, but who do not desire to file their Petition prior to the deadline set forth above, may participate at this Prehearing Conference by filing a "Notice of Request to Be Heard at Prehearing Conference". This Notice shall be filed with the Board's Counsel, identified below, on or before November 14, 2008.
All Parties and all persons requesting to be heard at the Prehearing Conference are required to be present in person or through counsel.
The Prehearing Order may be amended from time to time by the Hearing Chair after notice and hearing to address Motions filed by the Parties.
6. CONTESTED CASE HEARING TO BE HELD AT A DATE TO BE DETERMINED.
The Contested Case Hearing on this Application will be held before the South Dakota Board of Minerals and Environment. The nature of the hearing is to determine whether the above-referenced application should be granted, granted with conditions, or denied. The legal authority and jurisdiction under which the hearing is to be held appear at SDCL 1-26-27 and 34A-1-21, and ARSD 74:36:09:03(6). The substantive statutes and rules involved appear in the provisions of SDCL ch. 34A-1 (Air Pollution Control) and ARSD art. 74:36 (Air Pollution Control Program), including particularly ARSD ch. 74:36:09 (Prevention of Significant Deterioration). The hearing will be conducted pursuant to SDCL ch. 1-26 (SD Administrative Procedures Act) and ARSD art. 74:09 (Contested Case Procedure).
The location, date, and time of the Contested Case Hearing will be determined by the Board of Minerals and Environment. A Notice of Contested Case Hearing Date will be issued stating the location, time and date of the hearing.
As a result of the evidence presented at the hearing, the Board of Minerals and Environment may grant the permit application, grant the permit application subject to terms and conditions, or deny the permit application.
This Contested Case Hearing is an adversarial proceeding. Any Party has the right at the hearing to be present, to be represented by an attorney, to present testimony and evidence, to cross examine witnesses and to participate at the Contested Case Hearing as a party to the proceeding. These and other due process rights will be forfeited if they are not exercised at the Contested Case Hearing. If the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the Contested Case Hearing may require that the hearing be held before the Office of Hearing Examiners by giving notice of this request to the Board's Counsel no later than ten days after service of this Notice of Hearing.
Any decision based on this contested case hearing may be appealed to the circuit court and the State Supreme Court as provided by law.
7. NOTICE OF APPOINTMENT OF HEARING CHAIR.
NOTICE IS HEREBY GIVEN that the Board of Minerals and Environment has appointed Lee M. McCahren, its Vice-Chairman, Vermillion, S.D. 57069 to act as Hearing Chair for this proceeding. This appointment is made pursuant to the provisions of ARSD 74:09:01:08.
The Hearing Chair, pursuant to ARSD 74:09:01:10, may hold prehearing conferences, decide prehearing motions, establish discovery schedules, grant continuances, and handle any other issue properly discussed at a pretrial conference under the Rules of Civil Procedure. The hearing chair may issue subpoenas pursuant to ARSD 74:09:01:12. The hearing chair shall act as the chair of the Board during the Contested Case Hearing and shall make all necessary evidentiary rulings during the hearing, in accordance with ARSD 74:09:01:13. All service and contact should be via Board Counsel unless otherwise authorized.
8. NOTICE OF REQUIREMENT THAT CORPORATIONS, ASSOCIATIONS, AND SIMILAR ENTITIES BE REPRESENTED BY AN ATTORNEY.
A Contested Case Hearing is a formal legal proceeding. All corporations, associations, and similar entities must be represented by an attorney in this proceeding as required by state law. Persons may represent themselves pro se at the "Contested Case Hearing", but may not by state law represent others.
9. NOTICE OF ESTABLISHMENT OF CASE HEADING.
The proper heading and title of this proceeding appears at the top of this document. This heading and title shall be used by all Parties when filing pleadings.
10. NOTICE OF PLEADINGS FILING PROCEDURE.
All pleadings in the Contested Case Hearing shall be filed with the Board's Counsel in paper format. Documents may not be filed by electronic mail. Documents may be filed by facsimile transmission only if the document consists of less than 25 pages in total, and if an original signature page is immediately sent by U.S. mail, postage prepaid, to the Board's Counsel.
All pleadings filed in the Contested Case Hearing are required to be served on all other Parties to this proceeding. Parties may by agreement allow service to be performed by electronic mail. The Current Party Service List appears below, and shall be updated during the course of this proceeding
11. NOTICE OF CURRENT PARTY SERVICE LIST.
The Service List for this proceeding as of this date is as follows:
Board's Counsel:
Charles D. McGuigan
Chief Deputy Attorney General
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501
Parties:
Air Quality Program, DENR:
Roxanne Giedd
Deputy Attorney General
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501
Applicant:
Todd Meierhenry
Meierhenry & Sargent LLP
315 S. Phillips Ave.
Sioux Falls, SD 57104
Frederick W. Addison, III
Munsch, Hardt, Koph & Harr, PC
3800 Lincoln Plaza
500 N. Akard Street
Dallas, TX 75201-6659
Persons Evidencing Intent to Participate as Parties:
Save Union County, Citizens Opposed to Oil Pollution, and Sierra Club:
Robert L. Graham
Jenner & Block LLP
330 N. Wabash Ave.
Chicago, IL 60611
John H. Davidson
c/o Robert L. Graham
Jenner & Block LLP
330 N. Wabash Ave.
Chicago, IL 60611
12. PUBLICATION OF THIS NOTICE.
This Notice shall be published as follows: (1) by service on the Current Service List established above, as set forth in the attached Certificate of Service; (2) by publication on the DENR website; (3) by DENR's publication of this Notice in newspapers of general circulation in the area of the proposed facility; and (4) by mailing this Notice along with DENR's Final Proposed Permit upon all persons who submit comments on the Draft Permit.
Dated this 21st day of October, 2008.
Lee M. McCahren
Hearing Chair
Board of Minerals and Environment
Published in the Sioux City Journal Nov 6, 2008.
Legal #13355.