

**BEFORE THE
BOARD OF MINERALS AND ENVIRONMENT
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

IN THE MATTER OF THE)	
PREVENTION OF SIGNIFICANT)	
DETERIORATION (PSD) AIR)	
QUALITY PERMIT APPLICATION)	PERMIT #28.0701-PSD
OF HYPERION ENERGY CENTER -)	
HYPERION REFINING LLC)	
)	
)	
Draft Permit Issued: 9-08)	
Final Proposed Permit Issued: 12-08)	

FINAL DECISION OF BOARD OF MINERALS AND ENVIRONMENT

On Thursday, August 20, 2009, this matter came to the attention of the Board for final oral arguments of the parties and Board consideration.

The Applicant Hyperion Energy Center, Hyperion Refining LLC, appeared by and through its attorneys, Frederick W. Addison, III (pro hac vice) and Amy Rickers (pro hac vice) of the Dallas, Texas based Munsch Hardt Kopr & Harr, PC law firm, as well as Todd Meierhenry of the Sioux Falls, South Dakota based Meierhenry Sargent, LLP firm. The Department of Environment and Natural Resources appeared by and through its attorneys Deputy Attorney General Roxanne Giedd and Assistant Attorney General Scott R. Swier. Citizens Opposed to Oil Pollution, Save Union County, and Sierra Club appeared by and through their attorneys Robert L. Graham (pro hac vice), Allison A. Torrence (pro hac vice), Jennifer L. Cassel (pro hac vice) and Gabrielle Sigel (pro hac

vice) of the Chicago, Illinois based Jenner & Block lawfirm, as well as John H. Davidson of Vermillion, South Dakota.

The Board heard the arguments and comments of counsel, considered the briefs and the proposed findings of fact and conclusions of law submitted by the parties, and considered the evidence admitted in the contested case hearings.

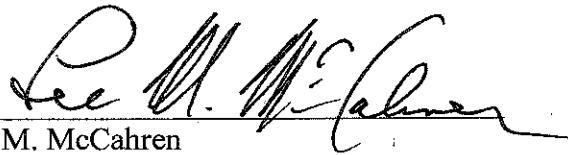
Based on the foregoing, the Board: (1) adopts the findings of fact and conclusions of law proposed by the Applicant Hyperion Energy Center as amended by the Department of Environment and Natural Resources (DENR) in its August 12, 2009 DENR Proposed Findings of Fact and Conclusions of Law, and as further amended by the Board during the August 20, 2009 hearing, and incorporates them by this reference as if set forth herein; (2) rejects the findings of fact and conclusions of law submitted by Applicant Hyperion Energy Center that were amended by those proposed by DENR on August 12, 2009 or were amended by the Board during the August 20, 2009 hearing; (3) rejects the findings of fact and conclusions of law submitted by Citizens Opposed to Oil Pollution, Save Union County, and Sierra Club; (4) authorizes and directs DENR to issue the PSD permit in the name of the Board consistent with the Findings of Fact and Conclusions of Law that have been adopted by the Board; and (5) denies Citizens Opposed to Oil Pollution, Save Union County, and Sierra Club's request for an Environmental Impact Statement, and grants DENR Motion for Partial Summary Judgment Concerning Affirmative Defense #4, Regarding Issue of Environmental Impact Statement, filed May 5, 2009.

The Board acknowledges that both Applicant Hyperion Energy Center, and Citizens Opposed to Oil Pollution, Save Union County, and Sierra Club, object to the

Findings of Fact and Conclusions of Law entered by the Board where the Findings and Conclusions differ from those they proposed, and said objections are hereby acknowledged.

Dated this 20th day of August, 2009.

BOARD OF MINERALS AND ENVIRONMENT

A handwritten signature in black ink, appearing to read "Lee M. McCahren", written over a horizontal line.

Lee M. McCahren
*Hearing Chair of Board of Minerals and
Environment*