

EXHIBIT 2

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OCT 14 2004



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Environmental Protection Division

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RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

JIM NORTON
DIRECTOR

October 8, 2004

Mr. Gerardo Rios
Chief, Permits Office
AIR-3
USEPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Rios:

The New Mexico Environment Department ("NMED") received a copy of the Prevention of Significant Deterioration ("PSD") permit application for the Steag Power, LLC's Desert Rock Energy Facility ("Desert Rock"). I understand that the USEPA has ruled this application administratively complete and initiated its technical review. This letter details our technical comments on the application. Because Desert Rock will significantly impact New Mexico, NMED would appreciate your consideration of our comments during your technical review.

I. BACT Analysis

STEAG's best available control technology ("BACT") analysis is incomplete and its adoption would result in an *indefensible* BACT determination. In particular, STEAG fails to evaluate integrated gasification combined cycle (IGCC) combustion systems as a part of its BACT analysis even though such systems are currently available and technically feasible. IGCC technology effectively reduces sulfur dioxide, nitrogen oxides, and particulate matter from coal-fired power plants. In a recent BACT analysis in Illinois, SFA Pacific, Inc. evaluated the availability and technical feasibility of IGCC technology, stating "at least three oxygen-blown, pressurized entrained-flow gasification process options (from three different developers) are *now available* for large-scale IGCC applications" and "IGCC demonstrations ... have been largely successful and have shown that *IGCC is technically feasible*" (emphasis added). SFA Pacific's position is supported by NMED's recent permitting action for a proposed coal-fired power plant in McKinley County, New Mexico, in which NMED determined that IGCC is both available and

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technically feasible for that high altitude site burning low rank coal. Other states have required similar analyses. As a result, STEAG's failure to include IGCC in steps 1 and 2 of its "top-down" BACT analysis renders that analysis both incomplete and technically flawed.

NMED is aware that EPA may decline to consider IGCC in the BACT analysis because it would require "redefinition" of the source. NMED respectfully disagrees with such a decision. Both the language and legislative history of BACT under the Clean Air Act ("Act") reflects the Congress' intent to require consideration of innovative fuel combustion techniques like IGCC during the BACT analysis (see e.g., the comments of Senator Huddleston in 123 Cong. Rec. S9434-35). NMED encourages the USEPA to thoroughly evaluate the language and legislative history of BACT under the Act in evaluating the completeness and technical merit of STEAG's BACT analysis.

2. PSD Increment Analysis

STEAG's emissions inventory for the PSD increment analysis includes some increment expansion from reductions at the APS Four Corners Power Plant and San Juan Generating Station in the early 1980's. We urge USEPA to verify whether this expansion is creditable. NMED's records indicate that the reductions did occur following adoption of regulations for power plants into the New Mexico State Implementation Plan. These regulations ensured that power plant emissions did not cause impacts in violation of National Ambient Air Quality Standards. If reductions were made to comply with federal standards, it is questionable whether these same reductions can be used to expand the available increment.

Further, it does not appear that STEAG has correctly identified the minor source baseline dates or correctly compiled the increment inventories for the affected Class I areas. USEPA-OAQPS's April 5, 1999 memorandum to USEPA Region 6 (attached) clarifies that the minor source baseline date for the baseline area in which a Class I area is located must be identified and the inventory analysis must be compiled with respect to that date. Thus, STEAG must identify the minor source baseline date for each Class I area affected by Desert Rock and compile the applicable emission inventory corresponding to that date. As a result, it is possible that STEAG will have to compile several different emissions inventories to adequately analyze Class I increment consumption for the affected Class I areas.

3. Visibility Analysis

STEAG's visibility analysis raises several questions regarding the appropriateness of STEAG's conclusion that a cumulative visibility analysis is not required. STEAG's preliminary modeling analysis predicts that Desert Rock's emissions alone will cause changes in extinction greater than 10% at Bandelier National Monument and San Pedro Parks Wilderness, both Class I areas. STEAG's preliminary modeling also predicts that Desert Rock's emissions will cause extinction greater than 10% at Chaco Culture National Historic Park. Although Chaco is not a Class I area, it is an area where visibility is important to the park visitor's experience. For Class I areas, the

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FLAG guidance recommends the applicant conduct a cumulative visibility analysis whenever the source's emissions would cause changes in extinction greater than 5%. STEAG dismisses its own modeling results - and justifies its conclusion that a cumulative visibility analysis is not required - through a series of "refinements" that NMED believes require further discussion and research. For example, STEAG's use of Santa Fe observations and Bandelier transmissometer data to infer weather conditions at San Pedro Parks Wilderness and the Pecos Wilderness may not be valid because of the distance between the data-gathering locations and these Class I areas. This methodology is questionable because New Mexico meteorology is influenced significantly by local terrain and weather conditions vary widely over short distances, particularly in mountainous areas. NMED urges USEPA to closely examine the validity and appropriateness of STEAG's assumptions and refinements to the visibility analysis. NMED believe that after this examination, it is probable that STEAG would be required to conduct a cumulative visibility analysis to accurately determine Desert Rock's impact on Class I areas in New Mexico.

In summary, NMED has serious concerns regarding the BACT, increment and visibility analyses for the Desert Rock application. The decision as to which control options are appropriate and feasible becomes particularly important when considering the large amount of emissions proposed to be added to the Four Corners air shed. New Mexico's parks and wilderness areas are state treasures that NMED seeks to preserve and protect. Scenic vistas in our state attract visitors from all over the world. A cumulative visibility analysis is the only way that we can reasonably determine how Class I areas will be affected. We appreciate your consideration of our comments on the permit application. If you have questions or would like to discuss any of our comments, please contact Mary Uhl at (505) 955-8086.

Sincerely,



Jim Norton
Director, Environmental Protection Division

MU:JWN:elf

CC: Stephen Etsitty, Executive Director, Navajo Nation EPA
Arvin Trujillo, Executive Director, Navajo Nation Division of Natural Resources
Calvert Curley, Environmental Department Director, Navajo Nation EPA
Air and Toxics Dept.



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RON CURRY
SECRETARY

JIM NORTON
DIRECTOR

October 12, 2006

Robert Baker, Air-3
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

RE: Desert Rock Energy Facility Proposed Air Permit

Dear Mr. Baker,

The New Mexico Environment Department (NMED) reviewed the draft Prevention of Significant Deterioration (PSD) permit for the Sithe Global Power, LLC (Sithe) Desert Rock Energy Facility (Desert Rock). The following comments from NMED focus on two serious technical flaws in the proposed permit. The Desert Rock Energy Facility's emissions will significantly impact New Mexico's air quality. NMED appreciates your consideration of our comments before finalizing the permit.

The first serious flaw is that EPA Region 9 incorrectly rejected integrated gasification combined cycle (IGCC) as a viable air pollution control technology method for a coal-fired power plant. A few years ago, EPA ruled Sithe's permit application for the Desert Rock Energy Facility "complete" despite the application's deficient best available control technology (BACT) analysis. As stated in NMED's October 8, 2004 letter to USEPA Region 9, the permit application was deficient because of Sithe's failure to evaluate IGCC combustion systems in the BACT analysis. Subsequently, IGCC was included in the analysis, but rejected by USEPA Region 9 in the analysis of the application because the inclusion of IGCC would "redefine the source". This determination by EPA Region 9 conforms with EPA's December 2005 letter to E3 Consulting stating that IGCC need not be part of the BACT analysis for a supercritical pulverized coal unit because it would "redefine the source". NMED disagrees with this decision. The Congressional record is clear that Congress intended to require the consideration of innovative fuel combustion techniques like IGCC during the BACT analysis. The IGCC technology is currently available and technologically feasible as evidenced in part by the proposed construction of numerous plants around the country including the recent Xcel Energy announcement proposing a new 300-350 MW IGCC electrical generating facility in Colorado. Since the IGCC technology was not considered in EPA Region 9's top down BACT analysis, it will never be known whether IGCC is BACT for Desert Rock or not.

The Clean Air Act requires the assessment of "impacts other than impacts on air quality standards due to emissions of the regulated pollutant in question, such as solid or hazardous waste generation, discharges of polluted water from a control device, visibility impact, or emissions of unregulated pollutants" in the BACT analysis. EPA failed to consider carbon dioxide emissions from Desert Rock in the BACT analysis. Although carbon dioxide emissions are currently unregulated, the impacts of these emissions are significant and result in undesirable impacts to our state, nation and world. Governor Richardson has established state-wide greenhouse gas emission reduction goals. The emissions from Desert Rock as proposed will require more reductions from other sectors of industry and the public to meet the New Mexico goals. NMED strongly urges EPA to consider the impacts of carbon dioxide emissions and available control technologies for these emissions in issuing a final air quality permit.

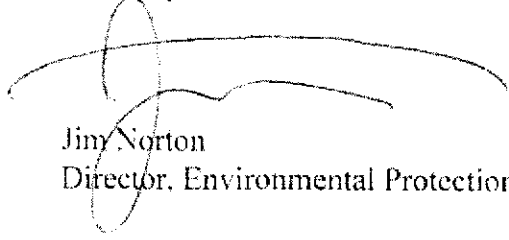
The second serious flaw in the proposed permit is the omission of any permit conditions relating to mitigation measures for adverse visibility and deposition impacts at Class I and Class II areas in the southwest due to the proposed construction. During the permit application review process, the federal land managers identified potentially adverse impacts that could occur with the construction of the Desert Rock Energy Facility. The federal land managers worked with Sithe, EPA and the Navajo Nation to develop a mitigation plan so that an adverse impact determination would not be made. In fact, Sithe proposed a mitigation strategy that would effectively offset impacts to visibility and deposition. The federal land managers have agreed that the strategy would eliminate the necessity of an adverse impact determination. NMED concurs with the agreement and believes that it is necessary for the plan to be implemented in order for the state to reach its reasonable progress goals under the regional haze rules and generally protect the pristine nature of our state and region's national parks and wilderness areas. This strategy, however, must be made federally enforceable through inclusion of related conditions in the final air quality permit for Desert Rock. Unfortunately, the draft permit fails to include any conditions related to the mitigation plan that was negotiated over a period of two years. The rationale behind the lack of inclusion by EPA Region 9 is unclear; however, the end result is that there is no assurance that the plan will be completed as agreed upon without enforceability through permit conditions. Must the permitting authority have an adverse impact determination to include enforceable conditions in a permit related to visibility and deposition in the permit? This policy would seem to discourage resolution of issues prior to permit issuance and encourage resolution through more formal processes. NMED has found that dispute resolution early in the permitting process results in a much less complicated and open permitting process where the public participation is more easily facilitated and meaningful. NMED urges EPA Region 9 to include enforceable conditions related to the Sithe mitigation plan in the final air quality permit.

In November 2005, a Memorandum of Understanding was signed by several governmental agencies, laying the ground work for a Task Force on Air Quality and Visibility to address air quality issues in the Four Corners Region. Air quality in the region is very close to exceeding the 8-hour ozone national ambient air quality standard. An EIS analysis of visibility impairment due to proposed oil and gas exploration in the Four Corners region showed that it may be difficult for states in the area to meet the reasonable progress goals of the federal regional haze rule in the future. The Task Force is in the process of working over a two year period making its final report available by December 2007. The mitigation options in the final Task Force Report will be seriously considered by the air quality regulating agencies, who will decide which options to recommend for implementation. By creating a

uniform approach to mitigating air quality impacts for a regional area, the issues of state, tribal, and federal boundaries will be opened up to creating more of a one air basin approach to dealing with air pollution. Air quality in the region is already seriously compromised. The proposed Desert Rock facility will be adding to this existing problem.

In conclusion, NMED has serious concerns about the draft permit for the Desert Rock Energy Facility, particularly the deficiencies of the BACT analysis and the lack of enforceable conditions to address adverse visibility and deposition impacts. The emissions from Desert Rock could adversely affect much of the state and Four Corners region. A comprehensive and technically sound permitting process for this facility is essential to preserving and protecting New Mexico's scenic vistas, parks and wilderness areas. We appreciate your consideration of our comments as you finalize this air quality permit.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Norton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jim Norton
Director, Environmental Protection Division

cc: Mary Uhl, Chief, Air Quality Bureau



State of New Mexico

BILL RICHARDSON
Governor

GARY K. KING
Attorney General

June 19, 2008

Mr. Stephen L. Johnson, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Mr. Wayne Nastri, Regional Administrator
Region 9
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

RE: MACT Determination for Proposed Desert Rock Energy Facility

Messrs. Johnson and Nastri:

As the chief protectors of New Mexicans' health and environment, we have grave concerns about the proposed Desert Rock Energy Facility ("Desert Rock") currently before the U.S. Environmental Protection Agency ("EPA"). The EPA's recent proposal to fast track the permitting decision for this potential new source of Hazardous Air Pollutants ("HAPs") without conducting required environmental analyses could have severe negative impacts on the air New Mexicans breathe. Pollutants emitted by coal-fired power plants like Desert Rock including mercury, lead and arsenic have well-documented detrimental impacts on human health, especially on children. The EPA must do a complete and thorough analysis before reaching any conclusions on this air permit.

In particular, we write to ensure that the U.S. Environmental Protection Agency conducts a proper maximum achievable control technology ("MACT") determination for the emission of hazardous air pollutants prior to the construction of Desert Rock. The Clean Air Act prohibits the construction of Desert Rock unless and until EPA makes a proper MACT determination. 42 U.S.C. §7412(g)(2)(B). To date, EPA has neither made a MACT determination, nor has it announced when that determination will be made or the procedures that will be followed.

EPA's obligation to make a pre-construction MACT determination for Desert Rock is beyond dispute. Pursuant to Section 112(c) of the Act, EPA listed coal-fired power plants as a major source category for HAPs in 2000. 65 Fed. Reg. 79825 (Dec. 20, 2000). For each major source category, the Act requires the EPA to "promulgate regulations establishing emission standards." 42 U.S.C. §7412(d)(1).

These standards must reflect the “maximum degree of reduction in emissions that is deemed achievable.” 42 U.S.C. §7412(d)(3).

Despite this unambiguous requirement, EPA has not promulgated HAPs emission standards for coal-fired power plants. Instead, EPA issued a rule that purported to remove coal-fired power plants from the list of major sources. 70 Fed. Reg. 15994 (Mar. 29, 2005). Earlier this year, the D.C. Circuit Court of Appeals invalidated EPA’s delisting rule, *New Jersey v. EPA*, D.C. Cir. Case No. 05-1097 (decided Feb. 8, 2008), and subsequently issued an expedited vacatur of that rule. More recently, the D.C. Circuit rejected EPA’s request for a rehearing on the matter.

In the wake of the *New Jersey* vacatur, and in the absence of a MACT standard for coal-fired power plants, the EPA must conduct a site-specific MACT determination for Desert Rock. The Act plainly requires that “where no applicable emission limitations have been established by the Administrator”, the permitting authority—the EPA, in the case of Desert Rock—must make a “case-by-case” determination whether a proposed major source would meet the “maximum achievable control technology emission limitation” for hazardous air pollutants. 42 U.S.C. § 7412(g)(2)(B). The case-by-case MACT determination must be completed before the major source may begin construction. *Id.*¹

In addition, the EPA must make the MACT determination for all listed HAPs to be emitted by Desert Rock. *National Lime Assoc. v. EPA*, 233 F.3d 625, 633-34 (D.C. Cir. 2000). Desert Rock will emit approximately 166 tons per year of hydrogen chloride and 13.3 tons per year of hydrogen fluoride. *Application for Prevention of Significant Deterioration Permit*, May 7, 2004, at p. 5-3. Desert Rock is also expected to emit substantial amounts of mercury, arsenic, lead, dioxins, and other HAPs.

The EPA must acknowledge its obligation to make the MACT determination for Desert Rock and identify the procedure that it will follow.² The regulations provide EPA with two alternative procedures for making a MACT determination for Desert Rock. 40 CFR §63.43(c). Specifically, the EPA can make the determination in response to an application for a “Notice of MACT Approval,” or through “any other administrative procedures for preconstruction review.” 40 CFR §63.43(c)(2)(i)-(ii). The best option is for EPA to make the MACT determination as part of the PSD permitting process—the only existing “administrative procedure for preconstruction review.” Regardless of the approach EPA selects, however, the MACT determination should be made before the issuance of the PSD permit, and incorporated into that permit. Doing so provides for enforceability of the MACT requirements while ensuring the compatibility of those requirements with the design parameters specified in the PSD permit. Further, no matter which route it takes, the EPA must provide adequate notice and an opportunity for public review and comment on the MACT determination. See 40 CFR § 63.43(c)(2)(ii) and 40 CFR §63.43(f)-(h).

¹ Sithe Global, the project proponent, acknowledges its obligation to obtain the MACT determination before commencing construction of Desert Rock. See *Application for Prevention of Significant Deterioration Permit*, May 7, 2004, at p. 3-12 (“If a MACT standard has not yet been promulgated for the source category, the applicant must secure case-by-case MACT approval.”)

² EPA is solely responsible for making the MACT determination. The EPA suggested in a presentation in September of 2006 that the Navajo Nation would conduct the MACT determination when it issued the Title V permit, but the Navajo Nation will not require Sithe Global to submit a permit application until twelve (12) months after it commences construction of Desert Rock. 40 C.F.R. §71.5(a)(ii). Moreover, EPA has never delegated to the Navajo Nation the authority pursuant to Section 112(l) of the Act to conduct a case-by-case MACT determination.

We have serious concerns about the environmental impacts of constructing Desert Rock in a region already impaired by other large coal-fired power plants. Mercury contamination from Desert Rock poses a particular concern. Nearly every reservoir in New Mexico and stretches of the San Juan River already suffer from high levels of mercury contamination, and the addition of another significant source of mercury will set back our efforts to correct this situation.

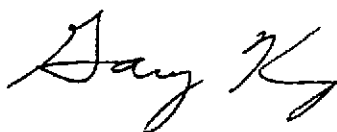
In view of these concerns, and to address the issues raised herein, we request that the EPA provide the following information:

- Confirmation that the EPA will not authorize the construction of Desert Rock unless and until a site-specific MACT determination for each applicable HAP has been made;
- Confirmation that the EPA is responsible for making this MACT determination;
- Identification of the specific procedure, including the requirements for public notice and comment, that the EPA will follow to make the MACT determination. We strongly believe that, in addition to conducting the MACT determination before the issuance of the PSD permit, the EPA should incorporate the MACT determination into the PSD permit. If, however, the EPA does not complete the MACT determination before the issuance of the PSD permit, the EPA must confirm that it will reopen the PSD permit to incorporate the modifications necessitated by the MACT determination.

We appreciate your timely response to this request. Please contact Seth T. Cohen, Assistant Attorney General (505.827.6000), or New Mexico Environment Department Secretary Ron Curry at (505.827.2855), if you have questions or would like additional information.

Sincerely,


BILL RICHARDSON
Governor


GARY K. KING
Attorney General

cc: The Honorable Joe Shirley, President, Navajo Nation
The Honorable Bill Ritter, Governor, State of Colorado
The Honorable Ron Curry, Secretary, New Mexico Environment Department



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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Received
2008 AUG 11 PM 5:05
OFFICE OF THE GOVERNOR
AIR AND RADIATION

The Honorable Bill Richardson
Governor of New Mexico
State Capital
Santa Fe, New Mexico 87501

Dear Governor Richardson:

Thank you for your letter of June 19, 2008, regarding the responsibility of the U.S. Environmental Protection Agency (EPA) to conduct a case-by-case maximum achievable control technology (MACT) determination for the Desert Rock Energy Facility.

EPA takes its obligations seriously under the Clean Air Act (CAA) with regard to sources on tribal lands. Under CAA section 112(g), no person may construct or reconstruct any major source of hazardous air pollutants "unless the Administrator (or the State) determines that the MACT emissions limitation for new sources will be met." 42 U.S.C. 7412(g)(2)(B). Section 112(g) provides that such determinations will be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator. The Desert Rock facility is located on tribal lands, and the Navajo Nation has not adopted a section 112(g) program. Therefore, EPA intends to make a case-by-case MACT determination consistent with CAA section 112(g) and the regulations implementing that section, including the public participation requirements set out in the regulations. (See 40 CFR 63.40 - 63.44.)

The requirements set forth in 40 CFR Part 63 identify several review processes that can be used to make section 112(g) case-by-case MACT determinations. (See 40 CFR 63.42(b); 40 CFR 63.43(c).) As you have noted, one option is through "any other administrative procedures for preconstruction review." However, this option does not require a section 112(g) case-by-case MACT determination to be made as part of or before issuance of a Prevention of Significant Deterioration (PSD) permit. While the regulations provide the option of combining the section 112(g) determination process with other permit processes, the PSD permit itself may not include emissions limits for hazardous air pollutants, because section 112(b)(6) of the Clean Air Act exempts hazardous air pollutants listed under section 112(b)(1) from the PSD requirements in Part C. Because the public comment period has closed on the PSD permit application for the Desert Rock facility, and EPA's review of this application is nearly complete, we have decided against a combined process here. However, I assure you that a section 112(g) case-by-case MACT determination will be completed for this facility and that the public will have an opportunity to review and comment on the section 112(g) MACT determination before it becomes final. If the MACT determination produces inconsistencies with PSD permit

conditions, EPA will assess whether revisions to the PSD permit are necessary and can propose revisions to the relevant parts of the PSD permit at that time if there is cause to do so.

Again, thank you for your letter. If you have further questions, please contact me, or your representative may call Mayor Randy Kelly, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-3126.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Meyers". The signature is written in a cursive style with a large, sweeping initial "R".

Robert J. Meyers
Principal Deputy Assistant Administrator

**USEPA Region 9 and NMED Meeting
July 16, 2008**

I. Introductions:

In attendance from EPA: Wayne Nastri (Regional Administrator), Deborah Jordan (Air Division Director), Nancy Marvel (Regional Counsel), Ann Lyons (Attorney-Advisor), and Karina Lallande (Law Clerk). Colleen McKaughan (Air Division Associate Director) by telephone.

In attendance from New Mexico: Ron Curry (New Mexico Secretary of Environment), Sarah Cottrell (Environment and Energy Policy Coordinator to the Governor), Sandra Ely (Environment and Energy Policy Coordinator), Marissa Stone (Communications Director), and Tracy Hughes (General Counsel).

II. Opening remarks: Nancy Marvel explained that this is a "listening meeting" for EPA because of the status of the permit. We will not be responding to any substantive comments, but will listen to New Mexico's concerns and consider everything that is said in considering the issuance of the Desert Rock PSD permit. Karina Lallande will take notes for the administrative record.

III. Background: Ron Curry explained that New Mexico has been very involved in this process and has been involved in consultations with the tribe on this issue over the past few years. Tracy Hughes explained that New Mexico has an interest in the health of its citizens and environment. Sandra Ely explained that there are seven Class I areas in New Mexico. She emphasized that there is a large amount of gas and oil development in the area, as well as two existing, dirty power plants- San Juan and Four Corners. They are concerned with what the impact of added emissions of an additional power plant in the area may be on several aspects of the environment, such as air quality, ozone attainment, visibility, and mercury levels.

IV. Permit Issues Presented by New Mexico(Outlined in PowerPoint slides):

A. Hazardous Air Pollutants: Sandra Ely explained that New Mexico has the highest mercury concentrations in the United States, and every lake in the area has a mercury fish advisory. Wayne asked whether the fish advisory standard was local, state, or federal, and NM replied that it was a federal standard. Tracy Hughes said that the Clean Air Act requires that a CAA 112(g) analysis be complete prior to PSD permit issuance. She stated that emissions of mercury, arsenic, dioxins, HCl and HF must be addressed and that section 110(j) requires the analysis to be complete prior to permit issuance. Additionally, she said that it was important to do a MACT determination at the same time as BACT.

B. CO₂: New Mexico Outlined both what it is doing in the way of reducing GHG and their concerns with the effect Desert Rock will have on that.

1. Sandra Ely said that in 2005 the Governor formed an advisory group on how to reduce greenhouse gases ("GHG"). The group came up with 60 recommendations and they have begun implementing approximately 40 of them. The group's analysis of the effects of climate change in New Mexico showed: an increase in mean temperatures, increase in forest fires, increase in winter temperatures over the past 30 years, snowpack volume decrease, early melt of snowpack, and increases in ozone concentrations. While New Mexico acknowledged that there are other contributing factors to this, the power plants are large contributors. In ranking the contributors of GHG, power plants are first, oil and gas, second, and transportation, third. The Governor has set GHG emission targets, including: reaching the 2000 levels by 2012, 10% below 2000 levels by 2020, and 75% below 2000 levels by 2050. They are a part of the Western Climate Initiative, and are very supportive of a regional cap and trade program.
2. Sandra Ely expressed concern over the amount of GHG that the Desert Rock facility will add to the state inventory. To them, this means that NM will have to seek more reductions from other sectors. Sarah Cottrell discussed what the Governor has done to try to work with the Navajo Nation to address GHG. She said that the Governor offered his support of the permit if the Nation would reduce GHG emissions. New Mexico has suggested that there be a formal BACT analysis of IGCC (there was an analysis, but not a formal one) and that the Nation consider sequestration. They stated that New Mexico has tried to provide regulatory, financial, and technical assistance, but the Nation uses economics as a reason for not rethinking the project and the Governor cannot support this project as it is now.
3. Tracy Hughes explained that New Mexico believes that a CO₂ BACT analysis should be done prior to the issuance of the permit. They mention the Deseret Bonanza case, and state that in light of that decision, EPA should be cautious in issuing a PSD permit prior to a CO₂ BACT analysis.

C. Ozone: Sandra Ely explained that New Mexico was likely to exceed the ozone standard in San Juan County by the end of the ozone season. She went on to say that it is the goal of New Mexico to have as much of the state in attainment as possible. She expressed concern that the added NO_x from the Desert Rock facility would contribute to the problem and encouraged EPA to consider whether NO_x emissions are appropriately minimized.

D. PM2.5: They state that the Clean Air Act requires EPA to do a BACT analysis and evaluate modeled impacts of PM2.5 and that PM10 is not a sufficient surrogate.

E. Regional Haze: Sandra Ely expressed concern over whether EPA fully analyzed the effect that Desert Rock would have on visibility in the area and the New Mexico's ability to meet the federal Regional Haze Rule? They emphasize the beauty of New Mexico, but state that you can see the plumes of the other power plants when standing on-site. They again state that there are already two dirty power plants in the area, and although Desert Rock would be much cleaner than these existing plants, they are afraid it will exacerbate the problem. They claim that they are working on cleaning up the existing plants in the area. Wayne asked about the land on which the power plants and oil drilling are on and if they are private, public, or government? Ron responded that they are all of the above.

F. ESA Consultation Process: They said that the Biological Assessment and ESA Consultation are not complete, and EPA may not issue the permit before the consultation process is complete.

G. Environmental Justice: Ron Curry explained that in 2005, the Governor signed an executive order to form a tribal liaison to deal with certain environmental issues. There are a large number of minorities in this area, not only on Native American, but Hispanics as well. Although the power plant is being requested by the tribe, they stated that they have received petitions with hundreds of signatures of tribal members who oppose the Desert Rock facility. There are already two coal-fired power plants and oil and gas exploration underway in the area.

H. Public Comments: They mention that they know EPA has received a large number of public comments and want to know if they will be addressed. Ann explained that 40 C.F.R. Part 124 requires that we respond to all public comments that we receive and that we will issue the response to comments and the final decision simultaneously.

I. Consent Decree: They raised a question over the consent decree and the requirement that EPA make a decision. They urge EPA to deny the permit and state that if it were under their jurisdiction the permit would not be approved. Ann explained to them that a consent decree is only binding if entered, and in this case the consent decree has yet to be entered.

V. Closing Remarks: Wayne explained that we are required to follow the Clean Air Act and we will certainly do so. Additionally, we will consider their comments. Ann asked if they were familiar with our website and regulations and how to access the consent decree and other materials, and they said that they were.