

December 27, 1999

(AR-18J)

Jim Lincoln
Vice President of Facilities
Grand Casino Hinckley
777 Lady Luck Drive
Rt. 3, Box 15
Hinckley, Minnesota 55037

Dear Mr. Lincoln:

Thank you for your letter dated June 3, 1999, requesting a permit to construct and operate two 2000 kilowatt diesel generators at Grand Casino Hinckley. Grand Casino is located on the Mille Lacs Band of Ojibwe Tribal land. We understand that Grand Casino currently has an agreement to allow Great River Energy (formerly United Power Association), a utility, to use the proposed generators as peaking facilities during periods of high electricity demand. According to this agreement, Great River Energy agrees to pay Grand Casino for this service.

The United States Environmental Protection Agency's (USEPA) existing Indian Policy recognizes that Tribal governments are primarily responsible for carrying out environmental programs within the exterior boundaries of their reservations. However, under this policy, USEPA continues to retain its direct implementation responsibility for environmental protection until tribes are able to administer their own federally approved programs. Thus, USEPA will administer the air quality permitting programs in Indian country until the Tribe assumes responsibility for the program.

Based on the information in your request, and from additional information provided to USEPA from Great River Energy, we determined which permitting programs were applicable to the installation and operation of the proposed two diesel generators. We believe that this project is subject to the following programs under the Clean Air Act (CAA):

1. The Prevention of Significant Deterioration (PSD) program portion of the New Source Review (NSR) permitting program (Subchapter I, Part C of the CAA),
2. The Operating Permits program (Subchapter V of the CAA)("Title V"), and
3. The Acid Rain program (Subchapter IV of the CAA)("Title IV").

PSD permitting:

The PSD construction permitting program applies to new stationary sources that emit or have the potential to emit (PTE) 250 tons per year (tpy) or more of any criteria pollutant regulated under the CAA or as defined under Title 40 Code of Federal Regulations (C.F.R.) 52.21(b)(1)(i)(b). These sources are considered major stationary sources. The PSD program also applies to modifications to existing major stationary sources that result in a significant increase in any regulated criteria pollutant. These modifications are called major modifications.

The "PTE" is defined as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Because there are no physical or enforceable limitations to limit emissions or hours of operation, the PTE for the Grand Casino project is calculated based on the assumption that all emissions units (existing and proposed) at Grand Casino run 8760 hours per year. A spreadsheet showing these calculations for potential emissions for the existing and proposed units at Grand Casino is enclosed.

Based on the calculations of PTE, the Grand Casino facility as it currently exists is considered an existing major stationary source because the PTE from its existing emissions units are above 250 tpy for nitrogen oxides (NO_x). The existing units include 7 natural gas-fired boilers, 3 diesel generators, and a natural gas chiller.

The PTE of the proposed generators makes them subject to PSD permitting as a major modification because the PTE for NO_x and sulfur dioxide (SO₂) is above the 40 tpy significance threshold for these pollutants. The combined PTE from both generators is 587.1 tpy for NO_x and 100.7 tpy for SO₂. Therefore, Grand Casino is required to have a construction permit issued pursuant to the PSD program before it constructs the new generators.

The requirements for PSD, as defined under 40 C.F.R. 52.21, include a best available control technology (BACT) analysis for each pollutant subject to PSD, as well as other air quality

analyses and modeling to be completed before a PSD permit is issued.

Title V permitting:

Title V permitting generally applies, among other things, to any major stationary source that directly emits or has the potential to emit 100 tpy of any criteria pollutant regulated under section 302 of the CAA, a source subject to section 111 and/or 112 of the CAA, and any source subject to Title IV (Acid Rain program) of the CAA.

In this case, Title V currently applies to the Grand Casino because its PTE for NO_x, SO₂, and carbon monoxide (CO) are above 100 tpy for the existing emissions units, as well as for the new units. Title V also may apply because the generators are subject to the CAA's Acid Rain program.

The regulations governing Title V for permitting on Indian or Trust Land, when the Tribal authority does not have an approved Title V program of its own, are found under 40 C.F.R. part 71. Title V permits must include all applicable federal standards and requirements that apply to the Grand Casino units under the CAA. Title V permits must also include monitoring, recordkeeping, reporting, and other such conditions to assure compliance with the applicable requirements under the CAA.

On February 19, 1999, USEPA promulgated regulations for its part 71 Federal operating permits program on Tribal Lands. This program became effective on March 22, 1999. Part 71 applications for existing sources are due within a year, or sooner, of this date. To obtain a permit, Grand Casino would need to submit to the USEPA Regional office by February 1, 2000, an application for a Title V permit for its existing units. Grand Casino must submit its application for a Title V permit for the new units within 12 months after the new units commence operation. The application forms are located on the internet at:

<http://www.epa.gov/airprogm/oar/oagps/permits/p71forms.html>

Acid Rain Permitting:

The Acid Rain applicability regulations are listed under 40 C.F.R. part 72. The Acid Rain program applies to the proposed diesel generators because they will be fossil fueled-fired units that will potentially be used for utility purposes. For Acid Rain purposes, a utility is defined as any company or person that sells electricity.

According to the information provided to USEPA, the total combined capacity of the new units is 4 megawatt. These units may qualify for a new units exemption. You can find the regulations and information on the new units exemption at 40 C.F.R. 72.7. If it remains subject to the Acid Rain Program and can qualify for the new units exemption, Grand Casino must submit the form for a new units exemption to the regional office of USEPA. You can find this form on the internet at: <http://www.epa.gov/acidrain/forms.html> under Phase II SO₂.

For further questions on Acid Rain applicability, please contact Beth Valenziano at (312) 886-2703.

Other Options:

In a July 26, 1999, letter regarding the Grand Casino Hinckley's PSD and Title V applicability, Greg Raetz of Braun Intertec Corporation expressed Grand Casino's interest in limiting the potential emissions of the source to levels below the PSD and Title V thresholds. The letter states that the entire facility PTE could be limited to less than 100 tpy and would not be subject to Title V or PSD review. A spreadsheet showing how emissions from the existing emissions units and the proposed generator units would be limited accompanied this letter.

The letter stated that the Minnesota State air quality rules allow for synthetic minor permits and have specific permitting procedures, and asked whether a similar permitting option for smaller sources apply under the jurisdiction of the USEPA. The letter requested clarification about what USEPA requires for such situations.

The Minnesota State air quality rules do not apply to sources on Indian Land. The USEPA has the authority to directly implement the PSD program under 40 C.F.R. part 52 and the Title V program under 40 C.F.R. part 71, for major sources on Indian Land as defined under the individual programs. The USEPA does not currently have a program to directly limit PTE under PSD or Title V to less than PSD or Title V size. Although USEPA is considering development of a minor new source review program for Tribal lands, it will not be available in the immediate future.

The USEPA and Grand Casino discussed a number of construction permitting options over the course of the last several months. At this time, there are only two available options that can be used for permitting the proposed generator units: (1) PSD permitting, or (2) the emergency generator policy.

Under the first option, Grand Casino must obtain a permit before it can begin construction on the proposed project. However, the PSD application and issuance process can be very lengthy.

The second option is to have the two proposed emergency generators fall under the September 6, 1995, "Calculating Potential to Emit (PTE) for Emergency Generators" guidance policy. This policy allows the use of 500 hrs/year as a default assumption for calculating emissions from emergency generators, instead of 8760 hrs/yr (i.e., full-year operation). This assumes that the total emissions from the units will not exceed the emissions thresholds for PSD and Title V permitting. In order to be subject to this policy, the generators must meet the conditions in the policy. Among other things, the conditions preclude the application of the policy to units used (1) as peaking units for electric utilities, (2) as a generators that typically operate at low rates, but are not confined for emergency purposes, and (3) as standby generators that are used during time periods when power is available from the utility. Grand Casino must request this determination from the Regional Office to apply it to the proposed diesel generators.

Based on the facts as we understand them at the present time, USEPA finds that Grand Casino must obtain a PSD construction permit before installing the proposed diesel generators, as detailed above. It must also apply for a Title V permit for the existing units, and an Acid Rain permit, if necessary.

We hope that the information outlined in this letter is useful to you. If you have any questions on this letter, or wish to discuss this matter further, please contact Shaheerah Fateen at (312) 353-4779.

Sincerely yours,

/s/

Robert B. Miller, Chief
Permits and Grants Section

Enclosure

cc: Robert Benjamin, Mille Lacs Band of Ojibwe
Ryan Rupp, Mille Lacs Band of Chippewa
Patricia Burke, Mille Lacs Band of Chippewa
Harry Gallaher, Lockridge Grindal Nauen P.L.L.P, Attorneys
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