

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE CASE OF
NEBRASKA PUBLIC POWER DISTRICT,
SHELDON STATION,

Respondent.

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Case No. 3336

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality ("NDEQ") and Respondent Nebraska Public Power District ("NPPD") Sheldon Station, Facility # 33563, voluntarily enter into this Consent Order. This Consent Order establishes a schedule for changes to NPPD's Sheldon Station facility necessary to attain compliance with the 2010 National Ambient Air Quality Standard ("NAAQS") for one-hour sulfur dioxide ("one-hour SO₂") promulgated by the Environmental Protection Agency ("EPA") pursuant to 42 U.S.C. §7409.

II. JURISDICTION

2. The NDEQ is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) (Reissue 2014) of exercising exclusive general supervision, administration and enforcement of the Nebraska Environmental Protection Act. This Consent Order is issued under the authority vested in the Director of the NDEQ by Neb. Rev. Stats. §81-1504(25) and §81-1507(1).
3. NPPD agrees to undertake all actions required by the terms and conditions of this Consent Order. NPPD agrees that it will not contest the basis or validity of this Consent Order in any proceedings by the NDEQ to enforce this Consent Order.
4. NPPD waives its rights to receipt of a complaint and all notice and hearing requirements provided in Neb. Rev. Stat. § 81-1507.



III. PARTIES

5. This Consent Order is binding on the NDEQ and NPPD and their successors and assigns.
6. NPPD shall ensure that any contractors, sub-contractors and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. NPPD shall be responsible for its noncompliance with this Consent Order.
7. NPPD admits to the jurisdictional allegations and agrees not to contest, but does not admit to, the findings of fact and conclusions of law referenced within Section V herein.

IV. LIABILITY

8. Nothing in this Consent Order shall be construed as an admission of liability or acknowledgement of any liability, wrong doing or unlawful conduct by NPPD.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Clean Air Act

9. The federal Clean Air Act ("CAA") requires EPA to publish regulations prescribing a NAAQS for specified pollutants. 42 U.S.C. §7409(a).

One-Hour SO₂ Status

10. EPA revised the NAAQS for SO₂ on June 22, 2010. 75 Fed. Reg. 35520 (June 22, 2010).
11. States were directed to submit their designations by June 2, 2011. 75 Fed. Reg. at 35585.
12. Nebraska Governor Dave Heineman submitted Nebraska's designation recommendation for the 1-hour Sulfur Dioxide (SO₂) NAAQS on June 1, 2011. Governor Heineman recommended an *unclassifiable* designation for the entire state of Nebraska.
13. EPA did not initially promulgate a designation for any areas in Nebraska.

14. Pursuant to Neb. Rev. Stat. 81-1505(1) and (12), the Nebraska Environmental Quality Council adopted the revised NAAQS for SO₂ in Title 129, Nebraska Air Quality Regulations, Chapter 4, Section 002, effective December 9, 2013.
15. On May 13, 2014, EPA proposed the Data Requirements Rule for the 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS) ("Data Requirements Rule"). 79 Fed. Reg. 27446 (May 13, 2014). The Data Requirements Rule contained timeframes and processes for promulgation of designations.
16. EPA released a Memo ("Memo") which contains interim deadlines for states to provide updated recommendations and supporting information to assist EPA in its designations. Memo from Stephen D. Page to Regional Air Division Directors, Regions 1-10, Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard (March 20, 2015).
17. Due to the abbreviated timeframes allowed for designations under the EPA Memo, areas that do not currently have SO₂ monitors installed must base their designations on air quality modeling conducted pursuant to a draft protocol, SO₂ NAAQS Designations Modeling Technical Assistance Document issued by EPA in March 2011 and supplemented in December 2013 ("Modeling TAD").

Sheldon Station

18. NPPD's Sheldon Station is a coal-fired electric generating unit ("EGU") located near Hallam, Nebraska. Sheldon Station has two units with a combined generation capacity of approximately 225 megawatts.
19. Sheldon Station is a major source of air emissions under the Title V program and currently holds a Class I Operating Permit issued by Lincoln-Lancaster County Health

Department (LLCHD). Sheldon Station emits or may emit air pollutants including but not limited to SO₂.

20. NPPD's Sheldon Station is one of the specified sources for which EPA requires promulgation of a designation by July 2, 2016.

21. NPPD intends to conduct air modeling pursuant to the Modeling TAD.

NDEQ Authority

22. Neb. Rev. Stat. 81-1506(2)(b) makes it unlawful to emit air pollutants that cause or contribute to a violation of an air quality standard established by the Nebraska Environmental Quality Council.

23. The Director of NDEQ is authorized pursuant to Neb. Rev. Stat. §81-1504(7) to issue this Consent Order requiring changes at NPPD's Sheldon Station to attain the NAAQS for one-hour SO₂ by the dates set forth in Paragraph 26.

24. This Consent Order sets out a schedule for NPPD to make changes to its Sheldon Station units to meet the NAAQS.

25. This Consent Order shall have the force and effect of a final order of the Director of the NDEQ issued pursuant to the Nebraska Environmental Protection Act.

VI. COMPLIANCE ORDER

26. NPPD agrees to attain compliance with the 2010 one-hour SO₂ NAAQS by performing the following activities at Sheldon Station:

- a. Sheldon Station Unit 1: NPPD agrees to sufficiently extend the stack height to the extent necessary to model attainment with the 2010 one-hour SO₂ NAAQS based on actual hourly emission rates while burning fuel under the existing permit, such project to be completed by July 2, 2016, subject to Section VIII.
- b. Sheldon Station Unit 2: NPPD retains an option to switch coal fuel for Unit 2 to hydrogen and other gaseous fuel. In such case, NPPD shall exercise said option

by informing NDEQ in writing by July 1, 2016, of its decision and will also present information that it entered into binding and enforceable contracts to construct the necessary changes to Unit 2 to accommodate the switch to hydrogen and other gaseous fuel, which fuel switch will be completed on or before December 31, 2021, subject to Section VIII.

In the event NPPD elects not to exercise the above option, NPPD shall inform the NDEQ on or before July 1, 2016, that NPPD will sufficiently extend the stack height to the extent necessary to model attainment with the 2010 one-hour SO₂ NAAQS based on actual hourly emissions rates while burning fuel under the existing permit. Such project will be completed on or before July 2, 2017, subject to Section VIII.

27. NPPD shall submit a report by July 1, 2016, describing the then current status of its performance of activities under Paragraph 26, above.
28. In consideration of this Order, NDEQ shall provide a copy of this Consent Order to the Environmental Protection Agency and request that the area around Sheldon Station remain "unclassifiable" for one hour SO₂ NAAQS while and until this Order has been completely and satisfactorily performed by NPPD.
29. NPPD shall conduct base-case modeling scenario in accordance with EPA's Modeling TAD associated with the Data Requirements Rule after completion of the project to ensure compliance with the standards. Based on the NDEQ's guidance and protocol approval specifically for the Sheldon SO₂ modeling, NPPD will run the AERMOD model and prepare a summary of results, along with spreadsheets and figures that convey the concentrations predicted by the model, and add the maximum 1-hour design concentration (maximum 99th percentile average over 3 years of meteorology, of any receptor) to the background concentration of 9 µg/m³ agreed upon by NDEQ and EPA Region 7.

30. All terms and references used in this Consent Order shall have the same meaning as in NPPD's current Construction and Operating Permits. No other terms or conditions of the Permits are affected by this Consent Order.

31. Information required to be submitted under this Consent Order shall be sent to:

For NPPD:

Joseph L. Citta
P.O. Box 499
1414 15th Street
Columbus, NE 68602
(402) 563-5355
jlcitta@nppd.com

For NDEQ:

Air Quality Division
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922
(402) 471-4210

VII. COMPLIANCE WITH OTHER LAWS

32. NPPD shall perform all actions required by this Consent Order in accordance with all applicable local, state and federal laws, regulations and permits.

VIII. FORCE MAJEURE, EXCUSABLE DELAY

33. Force majeure for purposes of this Consent Order is as set forth in NPPD's various contracts related to any NPPD activity described in paragraph 26, above. In addition, NPPD shall be excused from any delays in its performance hereunder, or failure to perform, caused in whole or in part by any act of God, the order of any court or agency having jurisdiction, or caused in whole or in part by any of NPPD's contractors, suppliers or vendors. NPPD shall exercise best efforts to anticipate any potential force majeure

events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable..

34. If any event occurs that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, NPPD shall notify the NDEQ by telephone within three business days of learning of the event. Within 10 business days of learning of the event, NPPD shall provide in writing the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.
35. In addition to force majeure, NDEQ, in its discretion, may agree to an extension of the time for performance of any obligation under this Consent Order caused by any other event.

IX. RESERVATION OF RIGHTS

36. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEQ to take or order any action necessary to protect public health, welfare or the environment, or to enforce any provision of the Nebraska Environmental Protection Act and any rules, regulations, orders or permits issued pursuant to the Nebraska Environmental Protection Act.

X. NEGATION OF AGENCY RELATIONSHIP

37. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the NDEQ and NPPD.

XI. REOPENING, AMENDING AND MODIFYING

38. This Consent Order may be modified and amended in writing by mutual agreement of the NDEQ and NPPD.

XII. EFFECTIVE DATE

39. This Consent Order shall become effective on the date it is signed by the Director of the NDEQ or his designee.

XIII. SEVERABILITY

40. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XIV. SIGNATURES

For NPPD: The undersigned representative of NPPD certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and bind NPPD.

A handwritten signature in dark ink, appearing to read "Thomas J. Kent", is written over a solid horizontal line.

By: Thomas J. Kent

Title: Vice President & Chief Operating Officer

Date: September 18, 2015

For NDEQ: IT IS SO ORDERED and agreed to on this 18th day of September, 2015.

By: _____

Jim Macy

Director, Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

The undersigned certifies that on the 18th day of September, 2015, she caused an exact copy of the attached Consent Order to be sent by regular United State Mail, first class, postage prepaid, to the following:

Harold Hadlund
1414 15th St.
PO Box 499
Columbus, NE 68602-0499

Annette Kovar
Annette Kovar