

NOTICE OF INTENT TO ISSUE AN
AIR POLLUTION CONTROL
PERMIT TO CONSTRUCT

Take notice that the North Dakota Department of Health (“Department”) proposes to issue an Air Pollution Control Permit to Construct (“Permit to Construct”) to Minnkota Power Cooperative, Inc. (“Minnkota”), in accordance with the North Dakota Air Pollution Control Act and the North Dakota Air Pollution Control Rules. *See* North Dakota Century Code section 23-25-04.1 and the N.D. Administrative Code Section 33-15-14-02. The proposed Permit to Construct involves existing pollution control devices, known as Selective Non-Catalytic Reduction (“SNCR”) plus advanced separated overfire air, installed on Units 1 and 2 at Minnkota’s Milton R. Young Station (“MRYS”) located in Oliver County. Minnkota installed the SNCRs pursuant to a July 27, 2006 Consent Decree (“Consent Decree”) entered by the United States District Court for the District of North Dakota in the case of United States of America, State of North Dakota v. Minnkota Power Cooperative, Inc. and Square Butte Power Cooperative, Civil Action No. 1:06-CV-034.

The Consent Decree settled a civil action brought by the United States Environmental Protection Agency (“EPA”) and North Dakota against Minnkota and Square Butte Power Cooperative, which alleged Minnkota violated provisions of the federal Clean Air Act and North Dakota’s State Implementation Plan (SIP) as a result of unauthorized major modifications at the MRYS, including failing to install Best Available Control Technology (“BACT”). *See* Civil Action No. 1:06-CV-034. Under the terms of the Consent Decree, Minnkota was required to provide the Department with a Top-Down BACT Analysis within six months after entry of the Consent

Decree for each existing coal-fired unit at the MRYS so that a pollution control device to control nitrogen oxides (NO_x) could be selected and installed at the MRYS units. *See* Consent Decree paragraph 65. The Consent Decree also required the Department to develop and issue a BACT determination for the MRYS. *See* Consent Decree paragraph 65.

On November 18, 2010, after a thorough review of Minnkota's Top-Down BACT Analysis, information available to the Department, and an extensive public notice and comment process, the Department issued its BACT determination. *See* Findings of Fact for Best Available Control Technology Determination for Control of Nitrogen Oxides for M.R. Young Station Units 1 and 2. Specifically, the Department determined that the NO_x emission limits proposed by Minnkota, which are set forth in the proposed Permit to Construct, and the installation of SNCR, represent BACT for the MRYS. The Department determined that BACT at MRYS could not be selective catalytic control ("SCR") technology as SCR is technically infeasible for cyclone boilers, like those in operation and use at MRYS, which operate on North Dakota lignite coal. *See* Findings of Fact for Best Available Control Technology Determination for Control of Nitrogen Oxides for M.R. Young Station Units 1 and 2. The emission limits for NO_x contained within the proposed Permit to Construct were developed based on requirements specified in the Consent Decree. *See* Consent Decree paragraph 72.

On May 12, 2011, the United States as permitted under paragraph 147 of the Consent Decree, appealed the Department's BACT determination to the U.S. District Court for the District of North Dakota. *See* United States' Motion Petitioning the Court for Dispute Resolution Under the 2006 Consent Decree, Civil Action No. 1:06-CV-034. North Dakota opposed the U.S. EPA's

appeal of the Department's BACT determination. *See* State of North Dakota's Memorandum in Opposition to United States' Petition for Dispute Resolution Under the 2006 Consent Decree, Civil Action No. 1:06-CV-034. On December 21, 2011, the U.S. District Court issued an Order concluding that the Department acted reasonably and within its lawful discretion and authority under the federal Clean Air Act when it made its BACT determination for MRYS. *See* Order Denying Plaintiff's Motion to Stay and Motion for Dispute Resolution.

Pursuant to the Consent Decree, Minnkota is required to achieve and maintain compliance with the NO_x emission rates for MRYS Unit 2 no later than December 31, 2010, and for Unit 1 no later than December 31, 2011. *See* Consent Decree paragraph 67. The Consent Decree requires that within one year from the commencement of operation of the BACT emission control technologies at MRYS, Minnkota shall submit to the Department an application to include the requirements and limitations of the Consent Decree in a federally enforceable permit. *See* Consent Decree paragraph 152. Accordingly, on December 9, 2011, Minnkota applied for a Permit to Construct to establish various emissions limits and other requirements at the MRYS. The Department has incorporated applicable provisions of the Consent Decree into the proposed Permit to Construct.

A 30-day public comment period for the proposed Permit to Construct will begin on February 2, 2012 and end on March 3, 2012. Please direct all comments, in writing, to the North Dakota Department of Health, Division of Air Quality, 918 E. Divide Avenue, Bismarck, ND 58501-1947. Comments must be received during the public comment period to be considered in the final Permit determination.

A public meeting regarding issuance of the Permit to Construct will be held if a significant degree of public interest exists as determined by the Department. Requests for a public meeting must be received in writing by the Department before the end of the public comment period. The application, draft Permit to Construct, copy of the Consent Decree, Findings of Fact for Best Available Control Technology Determination for Control of Nitrogen Oxides for M.R. Young Station Units 1 and 2, and all other documents cited herein, are available for review at the above address and at the Oliver County Auditor's office in Center, North Dakota. A copy of these documents may be obtained by writing to the Division of Air Quality or contacting Tom Bachman at (701)328-5188 or by email at tbachman@nd.gov.

Dated this 27th day of January 2012.

Terry L. O'Clair, P.E.
Director
Division of Air Quality