

**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 | ) |                     |

**HYPERION REFINING, LLC'S MOTION FOR PROTECTIVE ORDERS AND TO  
LIMIT JURISDICTION, AND REQUEST FOR EXPEDITED HEARING**

Hyperion Refining, LLC ("Hyperion") hereby files its Motion for Protective Orders and to Limit Jurisdiction, and Request for Expedited Hearing, and would respectfully show as follows:

**INTRODUCTION**

Hyperion proposes to construct a petroleum refinery and power plant known as the Hyperion Energy Center ("HEC") in Union County, South Dakota. On December 15, 2008, Hyperion received a Draft Prevention of Significant Deterioration ("PSD") Permit authorizing it to construct the HEC.

Hyperion's Draft PSD Permit is the subject of a contested case hearing scheduled to begin before the Board of Minerals and Environment (the "Board") on May 19, 2009. Intervenor in the contested case hearing, Citizens Opposed to Oil Pollution, Save Union County, and Sierra Club (collectively, "Intervenors"), seek discovery regarding, or otherwise seek to litigate, matters that are far beyond the scope of matters appropriate for the contested case hearing.

The contested case process is directed to the action of the South Dakota Department of Environment and Natural Resources ("SDENR") in issuing the revised, Draft PSD Permit. *See generally* S.D. Codified Laws § 34A-1-21 ("The [B]oard . . . shall provide for the issuance . . . of any permits . . . . Procedures shall provide for a recommendation on such a permit matter by the [secretary of environment and natural resources] *with an opportunity for a contested case hearing . . . .*") (emphasis added). It consequently is SDENR's decision that is the basis for the Board's review. Intervenors nevertheless seek to expand the hearing into an omnibus proceeding on an expansive range of improper issues, despite limitations imposed by South Dakota law.<sup>1</sup>

Intervenors also (currently) seek to elicit deposition testimony from Hyperion on a date and at a place that will cause Hyperion undue burden and expense. Hyperion therefore files this Motion for Protective Orders and to Limit Jurisdiction, and further requests an expedited hearing on these matters.

#### A. Procedural Background

1. On December 20, 2007, Hyperion filed an application for a PSD Permit with SDENR.
2. After the required public comment period, which was extended by SDENR to ensure a thorough review, SDENR issued Hyperion's Draft PSD Permit on September 11, 2008 and issued a revised, Draft Permit on December 15, 2008.
3. On October 6, 2008, Hyperion requested a contested case hearing in this matter. The hearing is scheduled to begin on May 19, 2009, and the December 15, 2008 Draft PSD Permit will be the subject of the hearing.

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<sup>1</sup> As discussed in detail below, Intervenors seek discovery regarding unrelated environmental, financial worthiness, profitability, and public relations issues that have no bearing on the matters that properly can be considered in the contested case hearing.

4. Intervenor petitioned to intervene in the contested case hearing on January 8, 2009, and by Order dated February 11, 2009, the Board granted the Petition to Intervene.

5. Intervenor since have served Hyperion with the following discovery:

- a. a First Request for Production of Documents, served January 21, 2009 and attached hereto as Exhibit A;
- b. a First Set of Interrogatories, served January 21, 2009 and attached hereto as Exhibit B;
- c. a Second Amended Notice of 15-6-30(b)(6) Deposition, served January 23, 2009 and attached hereto as Exhibit C (Intervenor noticed the deposition to proceed on March 4, 2009 before conferring with Hyperion, and noticed the deposition at their counsel's office in Chicago, Illinois, although Hyperion, Hyperion's counsel, and several potential witnesses are located in Texas);<sup>2</sup>
- d. a Second Request for Production of Documents, served February 13, 2009 and attached hereto as Exhibit D; and
- e. a Second Set of Interrogatories, served February 13, 2009 and attached hereto as Exhibit E.

6. Intervenor's various discovery requests seek, and Intervenor otherwise are attempting to litigate, matters that are well beyond the proper scope of the contested case hearing. The current date and place of Intervenor's proposed 15-6-30(b)(6) deposition moreover will subject Hyperion to undue burden and expense. Hyperion therefore:

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<sup>2</sup> The parties currently are attempting to come to terms regarding the 15-6-30(b)(6) deposition.

- a. requests a protective order limiting the scope of permissible discovery;
- b. seeks an order from the Board limiting the scope of the contested case hearing to those matters SDENR was required to address to issue the revised, Draft PSD Permit, and dismissing any other claims or issues; and
- c. unless the parties reach an agreement regarding the terms of the 15-6-30(b)(6) deposition, requests a protective order establishing that any 15-6-30(b)(6) deposition of Hyperion or its representatives shall occur on a mutually agreeable date, in the offices of Munsch, Hardt, Kopf & Harr, P.C., 3800 Lincoln Plaza, 500 N. Akard Street, Dallas, Texas 75201-6659.

**B. Intervenors Seek Discovery and To Litigate Matters Beyond the Scope of the Contested Case Hearing**

7. South Dakota or federal law establishes interrelated procedural and substantive limitations on matters that properly can be addressed in contested case hearings.

Procedural Limitations

8. Contested case hearings are conducted in accordance with procedures dictated by South Dakota Codified Laws Chapter 34A-1 and the "Administrative Procedure and Rules" found in South Dakota Codified Laws Chapter 1-26.

9. South Dakota Codified Laws Chapter 34A-1 places the following procedural constraints on the Board's powers in a contested case hearing: "the [B]oard shall have power to hold hearings *relating to any aspect of or matter in the administration of this Chapter*" (i.e. any aspect of or matter related to the statutory provisions in Chapter 34A-1 regarding "Air Pollution Control"). See S.D. Codified Laws § 34A-1-43 (emphasis added).

10. There are two additional limitations under Chapter 1-26. South Dakota Codified Laws § 1-26-19(1) provides: "*Irrelevant, incompetent, immaterial, or unduly repetitious*

evidence *shall be excluded*[]" from a contested case hearing. (emphasis added). Additionally, South Dakota Codified Laws § 1-26-19.2 provides: "Each agency and the officers thereof . . . shall have power to cause the deposition of witnesses . . . to be taken or other discovery procedure to be conducted . . . in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted *in civil actions pending in circuit court . . .*" (emphasis added). The South Dakota "Rules of Procedure in Circuit Courts" in turn dictate: "Parties may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved* in the pending action . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears *reasonably calculated to lead to the discovery of admissible evidence.*" S.D. Codified Laws § 15-6-26(b)(1) (emphasis added).

11. In short, South Dakota Codified Laws §§ 34A-1-43, 1-26-19(1), 1-26-19.2, and 15-6-26(b)(1) dictate that matters within the procedural scope of a contested case hearing are matters that are relevant, material to, relate to, or are reasonably calculated to lead to the discovery of admissible evidence regarding the substantive issues fairly within the scope of a contested case hearing. The relevant substantive limitations are dictated by South Dakota and federal law.

#### Substantive Limitations

12. On October 21, 2008, Board Hearing Chair Lee M. McCahren issued an order expressly defining the substantive authorities that should control in the contested case hearing: "The substantive statutes and rules involved appear in the provisions of [South Dakota Codified Laws] ch. 34A-1 (Air Pollution Control) and [South Dakota Administrative Rule] art. 74:36 (Air Pollution Control Program), including particularly [South Dakota Administrative Rule] ch. 74:36:09 (Prevention of Significant Deterioration)."

13. Intervenor similarly have conceded this dispute is subject to the “provisions of South Dakota’s air pollution control laws and regulations, S.D. Codified Laws § 34A-1-1 *et seq.*, [South Dakota Administrative Rule] 74:36:09 *et seq.*, as well as the federal Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 *et seq.*, and its implementing regulations, 40 C.F.R. § 52.21.” See Intervenor’s Petition to Intervene, dated January 8, 2009, p. 1.

14. These statutory and regulatory provisions (by Judge McCahren’s directive and Intervenor’s concession) establish the boundaries of the substantive considerations that properly can be considered in the contested case hearing. Although it would be impractical for Hyperion to list exhaustively the contents of each statutory provision or regulation, Hyperion notes that as a general matter, the relevant provisions govern matters related to emissions from CAA facilities like the HEC and procedures to obtain, or requirements of, PSD permits to construct such facilities. These are precisely the matters addressed in the December 15, 2008 Draft PSD Permit.

15. By way of example, South Dakota Administrative Rule 74:36:09:02 specifies that with certain exceptions, “[f]or the purposes of [South Dakota’s PSD rules], the state’s definitions and *requirements* for the prevention of significant deterioration are those in 40 C.F.R. § 52.21 . . .” (emphasis added), which is the federal regulation that implements the CAA’s PSD construction permit program.

16. These authorities consequently define the substantive scope of the contested case hearing, and the various procedures the parties or Board may employ regarding discovery for the hearing, or for other purposes, must be constrained by these substantive considerations. Intervenor nevertheless seek discovery and to litigate matters that are neither relevant, material, related to, nor reasonably calculated to lead to the discovery of admissible matters regarding emissions from the HEC or the procedures to obtain, or requirements of, Hyperion’s PSD Permit.

17. A protective order limiting the scope of discovery and order otherwise defining the proper jurisdictional scope of these proceedings is appropriate.

### C. Motion for Protective Order Regarding Discovery

18. South Dakota Codified Laws § 15-6-16(c) provides:

Upon motion by a party or by the person from whom discovery is sought or has been taken . . . the court in which the action is pending, on matters relating to a deposition, interrogatories, or other discovery, . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .

19. Such an order may direct, *inter alia*, that the discovery not be had, that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters. *See* S.D. Codified Laws § 15-6-26(c).

20. Hyperion requests a protective order directing that Intervenors' requested discovery, regarding certain matters set forth below, be denied and preventing Intervenors from inquiring into those matters. Narrowing the scope of Intervenors' discovery is appropriate, because Intervenors request information or testimony in the following areas, all of which are well outside the scope of matters appropriate for the contested case hearing, will result in enlarging and prolonging the hearing, and will result in unneeded, additional expense:

- a. The source and amount of any and all funds being utilized, or which have been sought, by Hyperion to finance the HEC, including but not limited to efforts and/or actions undertaken by Hyperion to obtain federal or state funding for the construction and/or operation of the HEC. *See* Intervenors' First Request for Production of Documents, nos. 5, 9; Intervenors' First Set of Interrogatories, no. 4; Intervenors' Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 3.
- b. All other sites Hyperion considered or is considering for the HEC, including: (1) the location of those sites; (2) why those sites were considered or are under consideration as sites for the HEC; (3) whether they are still under consideration as possible sites for the HEC; (4) if they are no longer under consideration as possible sites for the HEC, why they are no longer under consideration; and (5) whether, or why not, the environmental impact of any alternative sites were

considered. *See* Intervenor's First Request for Production of Documents, no. 10; Intervenor's First Set of Interrogatories, no. 8; Intervenor's Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 4.

- c. Any communications Hyperion has had with any third party relating to any (prospective, past, or presumably current) sale, transfer, assignment or other conveyance of any part of the HEC or any permits or licenses granted to Hyperion for the HEC. *See* Intervenor's First Request for Production of Documents, nos. 1, 2; Intervenor's First Set of Interrogatories, no. 5; Intervenor's Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 5.
- d. The crude oil to be refined at the HEC, including, *inter alia*, the type of crude, the method of extraction of the raw material that becomes the crude, the source of the crude, the composition of the crude, the manner by which the crude will be transported to the HEC, and the cost related to the crude. *See* Intervenor's First Request for Production of Documents, nos. 44, 45, 46; Intervenor's Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 6.
- e. The prices and market conditions that will need to exist for Hyperion to make a profit from the HEC. *See* Intervenor's First Request for Production of Documents, no. 8; Intervenor's First Set of Interrogatories, no. 7; Intervenor's Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 8.
- f. Hyperion and its officers, directors, and employees' prior experience constructing or operating a petroleum refinery in the United States. *See* Intervenor's First Set of Interrogatories, no. 11; Intervenor's Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 9.
- g. All documents relating to any business relationships between Hyperion and other entities relating to the use of pipelines to transport raw materials, including but not limited to Tar Sands Crude, to the proposed location of the HEC. *See* Intervenor's First Request for Production of Documents, no. 6.
- h. Information relating to the following statements made by Todd Meierhenry at the November 20, 2008 prehearing conference for the contested case hearing and which are included in the transcript from that proceeding:
  1. that "the magnitude of the [HEC] project [is] \$10 billion." *See* Transcript ("Tr.") at p. 8.
  2. "we have estimated that this could cost Hyperion \$500 million of increased project costs to the bottom line." *See* Tr. at p. 9.
  3. "this refinery will generate \$50 million or cause the generation of \$50 million worth of sales tax revenue for the state." *See* Tr. at p. 8.

4. "The state would experience, in our estimate, \$25 million of lost revenue if [HEC is] delayed the six months." *See* Tr. at p. 8.

*See* Intervenors' First Request for Production of Documents, no. 7; Intervenors' First Set of Interrogatories, no. 6; Intervenors' Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 2(d).

- i. Information relating to communications and/or agreements with electric utility power providers and/or electric transmission line companies addressing the planned interconnect between HEC electrical generation systems and the area electric grid. *See* Intervenors' First Request for Production of Documents, no. 30.
- j. Information relating to the configuration and methods of control planned for containment areas of oil tanks to control entry of oily wastewater to groundwater beneath storage tanks. *See* Intervenors' First Request for Production of Documents, no. 33.
- k. Information relating to standards, specifications, and plans for site lighting and process equipment noise control at the HEC. *See* Intervenors' First Request for Production of Documents, no. 34.
- l. Information relating to the physical, elemental, and contaminant analysis of the planned petroleum coke generated by the HEC refinery and the planned coal for use at the HEC IGCC power plant, including, but not limited to analyses for heavy metals, percent sulfur and percent chlorine. *See* Intervenors' First Request for Production of Documents, no. 35.
- m. Information showing all site roads and road networks for the HEC. *See* Intervenors' First Request for Production of Documents, no. 38.
- n. Information relating to the location of the HEC in relation to existing or planned crude oil pipeline networks. *See* Intervenors' First Request for Production of Documents, no. 41.
- o. Information relating to the construction of the proposed HEC, including, but not limited to, Requests for Bids by Hyperion to construct or operate all or part of the HEC, and bids Hyperion received to construct or operate all or part of the HEC. *See* Intervenors' First Request for Production of Documents, no. 42.
- p. Information relating to any wetland areas, intermittent streams, permanent streams, wells, concentrated flow lines and other water features of the site where Hyperion proposes to construct the HEC and other water demands, including, but not limited to any changes planned by Hyperion for any of the listed water features and any mitigation plans, permit applications for water feature changes, other environmental reviews relating to the impact of the HEC on those water features, and the amount, use, source, and agreements regarding use of water HEC will require for continuous operations. *See* Intervenors' First Request for Production of Documents, nos. 47, 48; Intervenors' First Set of Interrogatories,

no. 10; Intervenor's Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 7.

- q. Information regarding environmental impacts related to HEC, which exceed the impacts analyses contemplated under PSD rules and regulations. *See* Intervenor's First Set of Interrogatories, no. 12; Intervenor's Second Amended Notice of 15-6-30(b)(6) Deposition, "Topic" no. 10.
- r. Information regarding all officers, directors, or shareholders of Hyperion and for each person identified:
1. his or her title at Hyperion;
  2. his or her duties at Hyperion;
  3. to whom he or she reports at Hyperion; and
  4. the period of time he or she has been an officer, director, and/or shareholder of Hyperion.

*See* Intervenor's First Set of Interrogatories, no. 2.

- s. Information regarding any parent or subsidiary corporation, or any other entities that Hyperion has a joint venture or partnership relationship with, or with which Hyperion is associated, and with regard to each such entity:
1. its name;
  2. its place of incorporation;
  3. its primary place of business;
  4. its officers, directors, and shareholders; and
  5. the nature of its relationship with Hyperion.

*See* Intervenor's First Set of Interrogatories, no. 3.

- t. Information relating to any current, pending or prospective federal, state, county and local permits which Hyperion has applied for, or plans to seek, for the construction or operation of the HEC. *See* Intervenor's First Request for Production of Documents, no. 11.
- u. Matters relating to work purportedly performed by Saint Consulting Group ("Saint") in connection with HEC, including, but not limited to the following purported work or information:

1. All databases compiled or created in connection with the HEC;
2. All documents referring or relating to South Dakota residents compiled or created in connection with the HEC;
3. All documents referring or relating to any party to this proceeding, including Intervenors, SDENR, any person associated with or employed by any of the foregoing, and any attorney representing any of the foregoing;
4. All documents referring or relating to any member of the Board;
5. All documents relating to the work done by Saint to obtain zoning approval for the HEC;
6. All documents relating to payments made to Saint for work performed relating to the HEC;
7. All documents relating to any messages developed by Saint to advance the HEC;
8. Any newsletter, pamphlets, and/or advertisements circulated by Saint relating to the HEC;
9. All documents relating to any and all communications between Hyperion and Saint.

See Intervenors' Second Request for Production of Documents, no. 1; Intervenors' Second Set of Interrogatories, no. 8.

- v. Information relating to a Forbes.com article: *Nimby Wars*, by Emily Lambert, dated February 16, 2009 and the Sioux City Journal.com article: *Forbes reveals Hyperion consulting firm's methods*, by Michele Linck, dated February 12, 2009, including any communications regarding these articles. See Intervenors' Second Request for Production of Documents, no. 2.
- w. Information relating to the engagement and retention of Saint, including billings and payments Hyperion purportedly made to Saint. See Intervenors' Second Request for Production of Documents, no. 3.
- x. Information related to Saint regarding any photographs, video or audio recordings, observations, surveillance, information collection, public meeting attendance, information distribution, additional activities or materials, including those referenced in the Forbes and Sioux City Journal articles mentioned above. See Intervenors' Second Set of Interrogatories, nos. 1-9.
- y. Information relating to any other investigator or consultant purportedly hired by Hyperion in relation to purported research or influence over political, agency,

and/or public sentiment or support for the HEC. *See* Intervenors' Second Request for Production of Documents, no. 4; Intervenors' Second Set of Interrogatories, no. 10.

21. The foregoing information and testimony sought by Intervenors goes far beyond the proper bounds for a hearing on whether to approve Hyperion's revised, Draft PSD Permit, because the information and testimony are not relevant or material to, do not relate to, and are not reasonably calculated to lead to the discovery of admissible evidence regarding any matters related to emissions from the HEC or procedural or substantive requirements related to Hyperion's Draft PSD Permit. Indeed, Intervenors seek to convert the focused objectives of South Dakota's PSD air permitting process into an omnibus environmental, financial worthiness, profitability, and public relations trial. There simply is no authority under South Dakota law authorizing Intervenors to extend so radically the scope of the PSD air permitting process or a related contested case hearing.

22. Intervenors' above categories of requested information and testimony therefore will complicate unnecessarily resolution of the relevant issues and subject Hyperion to undue burden, expense, and harassment. Whatever Intervenors' motive for requesting information or testimony regarding the above-discussed matters, the matters have no bearing on, will not assist the parties with presentation of, nor assist the Board with its consideration and resolution of the matters properly at issue in these proceedings.

23. Hyperion therefore requests a protective order pursuant to South Dakota Codified Laws § 15-6-26(c) prohibiting Intervenors from conducting discovering regarding the above-discussed matters or attempting to illicit testimony regarding such matters.

#### **D. Motion to Limit Jurisdiction**

24. Hyperion moreover respectfully requests that the Board issue an order: (a) directing that the subject matter areas, set out above, are beyond the jurisdictional scope of the

contested case hearing; (b) prohibiting Intervenors from attempting to introduce evidence or otherwise raise arguments or contentions related to such matters, in relation to the contested case hearing; and (c) dismissing any claims or issues related to the subject matter areas.

25. Hyperion further requests that the Board limit the jurisdictional scope of the hearing to only those matters related to PSD permitting specified under South Dakota Codified Laws ch. 34A-1 (related to Air Pollution Control), South Dakota Administrative Rule art. 74:36 (also related to Air Pollution Control), South Dakota Administrative Rule ch. 74:36:09 (related to Prevention of Significant Deterioration permits), and those provisions of the federal CAA or related regulations that have been incorporated under, or that apply notwithstanding, South Dakota law.

**E. Motion for Protective Order Regarding the Deposition Date and Place**

26. South Dakota Codified Laws § 15-6-26(c)(2) authorizes a court to issue a protective order directing “[t]hat . . . discovery may be had only on specified terms and conditions, including a designation of the time and place . . . .”

27. As discussed above, Intervenors noticed a 15-6-30(b)(6) deposition of Hyperion and its representatives for March 4, 2009, although Intervenors had not conferred with Hyperion’s counsel to determine whether Hyperion or its representatives are available for deposition on March 4th.

28. The inconvenience this will cause has been magnified considerably, because Intervenors noticed the deposition at their counsel’s Chicago, Illinois office, although Hyperion, Hyperion’s counsel, and several potential witnesses are located in Texas (whereas none of Hyperion’s anticipated witnesses are located in Chicago or Illinois).

29. Hyperion and its representatives consequently will incur undue burden and expense if they are forced to, *inter alia*, incur lodging and travel expense related to, transport

materials that may be needed during, and secure facilities to prepare for, the deposition; all of which can be avoided, or at least greatly minimized, if the 15-6-30(b)(6) deposition is conducted in Dallas, Texas.

30. The parties currently are attempting to resolve this issue. In the event these efforts are unsuccessful, Hyperion respectfully requests that the Board issue an order: (a) establishing a mutually agreeable date for Hyperion's 15-6-30(b)(6) deposition, and (b) setting the deposition in the Dallas offices of Hyperion's counsel, Munsch, Hardt, Kopf & Harr, P.C., 3800 Lincoln Plaza, 500 N. Akard Street, Dallas, Texas 75201-6659.

#### **F. Request for Expedited Hearing**

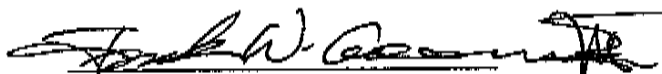
31. The discovery period in this matter closes on March 19, 2009, and the Intervenor (as of now) have noticed the 15-6-30(b)(6) deposition, under the conditions, and regarding several of the disputed subject matters, for March 4, 2009. Based on these timeframes, Hyperion respectfully requests an expedited hearing on the matters raised in this Motion to be set, before the Board, as soon as possible.

#### **PRAYER**

For the above stated reasons, Hyperion respectfully requests that the Board issue protective orders pursuant to South Dakota Codified Laws § 15-6-26(c), and otherwise limit the jurisdictional scope of the contested case hearing, as specified herein. Hyperion further requests that the Board grant all other relief, at law or in equity, to which Hyperion may be entitled.

Dated this 20th day of February 2009.

Respectfully submitted,



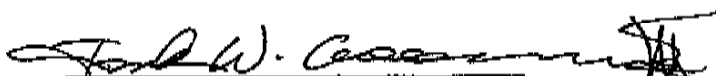
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**CERTIFICATE OF CONFERENCE**

I hereby certify that on February 19 and 20, 2009, counsel for Hyperion conferred, by E-mail, and in good faith, with counsel for each affected party in an effort to resolve this dispute without the Board's intervention. SDENR is not opposed to the relief requested in this Motion. Intervenors are opposed to Hyperion's request for a protective order to limit the scope of discovery and for an order limiting jurisdiction, but the parties are attempting to reach a compromise regarding the date and location of Hyperion's 15-6-30(b)(6) deposition.

  
Frederick W. Addison, III

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served via facsimile (without Exhibits) and United States Mail, postage prepaid (with Exhibits), on this 20th day of February 2009, to:

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