

5.0 REGULATORY COMPLIANCE

5.1 FEDERAL REQUIREMENTS

This Environmental Assessment was prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA regulations, and the DOE's NEPA Implementing Procedures. A brief summary of key Federal laws, regulations, executive orders, permits, and licenses that may be applicable to the proposed project is provided in the following paragraphs. Air quality and water quality management for compliance with the Federal Clean Air and Clean Water Acts, as amended, is provided by the State of South Dakota; State requirements are identified in Section 5.2.

5.1.1 Environmental Policy

The NEPA of 1969 (42 United States Administrative Code [U.S.C.] p. 4321 *et seq.*) establishes a national policy to encourage harmony between man and his environment and to promote efforts to prevent, mitigate, or eliminate damage to the environment and stimulate the health and welfare of man. NEPA procedures ensure that environmental information related to Federal action is made available to public officials and citizens, and that the environmental information, along with public input, is considered in the Federal decision-making process.

Executive Order 11514, Protection and Enhancement of the Environmental Quality, as amended by Executive Order 11991, sets policy for directing the Federal government in providing leadership in protecting and enhancing the quality of the Nation's environment. The CEQ Regulations (40 CFR 1500 to 1508) implement the procedural provisions of the NEPA. DOE's NEPA Implementing Procedure (10 CFR 1021) establishes the specific procedural requirements for DOE implementation of NEPA.

5.1.2 Biological Resources

The Endangered Species Act (16 U.S.C. 1531 – 1544) requires Federal agencies to determine the effects of their actions on threatened or endangered species of fish, wildlife, and plants, and their critical habitats and to take steps to conserve and protect these species. Executive Order 11990, Protection of Wetlands, requires Federal agencies to take action to avoid or minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands.

5.1.3 Public Health

Executive Order 12088, Federal Compliance with Pollution Control Standards, directs Federal agencies to comply with Federal, state and local laws and regulations concerning air, water, noise pollution, and hazardous materials and substances to the same extent as any private party.

5.1.4 Environmental Justice

Executive Order 12898, requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low income populations.

5.1.5 National Historic Preservation Act – Section 106 Compliance

Cultural resources (archaeological and historical sites and structures) must be examined according to Section 106 of the National Historic Preservation Act and implementing regulations at 36 CFR 800, in addition to review under NEPA. Significant historical and archaeological properties and sites that may be impacted by a proposed action or alternatives must be identified. Significant sites are defined as those listed on, or determined eligible for listing on, the National Register of Historic Places (NRHP).

The South Dakota State Historic Preservation Officer (SHPO) must be consulted regarding impacts to significant resources and means to mitigate the impact, if necessary. If significant resources are identified and potential impacts defined, any necessary mitigation measures are stipulated in a Memorandum or Agreement. Depending on the resources encountered, Native American Indian groups may also be consulted.

5.1.6 Toxic Substances Control Act

The Toxic Substances Control Act mandates EPA approval of manufactured or imported chemical substances that could potentially pose an environmental or human health hazard.

5.1.7 Resource Conservation and Recovery Act

This Act provides authority for EPA to control hazardous substances from “cradle to grave.” Regulatory requirements under the Act cover generation, transportation, treatment, storage, and disposal of hazardous waste, and management of non-hazardous waste.

5.2 STATE REQUIREMENTS

The State of South Dakota mandates the following permit requirements for Electric Generating Plants:

- **Air Quality Permit**
Varied permit application forms are required depending on the characteristics of the planned emission source. Based on discussions between Otter Tail Power Company and representatives from the South Dakota Department of Environment and Natural Resources, installation of the AHPC system would require submittal of an application for a minor emission source. An Air Quality Permit Application for installation of a baghouse may also be required.
- **Ground Water Permit**
- **NPDES Surface Water Permit**
- **Solid Waste Permit**
For operation of the Big Stone Power Plant, Otter Tail Power Company has received permits for on-site disposal of a maximum of 250,000 tons per year of ash and for disposal of up to 100 tons per year of non-malodorous solid waste in an on-site Restricted Use Landfill.
- **Water Rights Permit**
Otter Tail Power Company possesses a water appropriation permit for withdrawal of a maximum of 7,000 acre-feet of water per year from Big Stone Lake.