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Mr. Dennis Boal
Chairman, Environmental Quality Council
122 West 25th Street
Herschler Building, Room 1714
Cheyenne, Wyoming 82002

Attn: Docket # 09-1101

FILED
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Jim Ruby, Executive Secretary
Environmental Quality Council

Dear Mr. Boal:

BP America Production Company (BP) welcomes this opportunity to present to the Environmental Quality Council (Council) comments regarding the Petition for Air Quality Rulemaking entitled "Petition to Establish Primary and Secondary Wyoming Ambient Air Quality Standards for Ozone that are more stringent than the National Ambient Air Quality Standards" (Petition) filed with the Council by Elaine Crumpley, Mary Lynn Word, Tina Rock, Citizens United for Responsible Energy Development and Upper Green River Valley Coalition (Petitioners).

The Petitioner asks the Council to establish primary and secondary state ambient air quality standards (WAAQS) for ozone in Sublette County, Wyoming that are more stringent than the national ozone ambient air quality standards (NAAQS). The ozone NAAQS are set at 0.075 parts per million (ppm). Petitioner asks the Council to set the ozone WAAQS at 0.065 ppm. On June 3, 2009 the Council held a public hearing to discuss the Petition. The Council scheduled a further hearing for August 18, 2009 to consider whether to accept the Petition and commence a rulemaking proceeding.

BP requests the Council deny the Petition and take appropriate future actions as necessary to comply with applicable federal regulations.

Specifically, BP has reviewed the Petition and maintains that the Council should deny the Petition to lower the ozone WAAQS below the NAAQS because: 1) the United States Environmental Protection Agency (EPA) is currently considering the identical issue raised in the Petition—whether to reconsider adopting an ozone NAAQS that would be more stringent than the 0.075 ppm standard; 2) the consideration and adoption by EPA of the ozone NAAQS took six years, involved thousands of hours of time of EPA staff and EPA's advisory committee, thousands of pages of analysis and deliberation, and consideration of hundreds or thousands of

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scientific studies, and neither the Council nor the WDEQ has adequate resources to meaningfully review and consider this scope of information and make an informed judgment regarding the Petition; 3) acceptance of the Petition would create numerous regulatory and policy complexities that may detract the State of Wyoming from addressing ozone compliance in Southwest Wyoming and could have a substantial impact on BP's ability to permit operations in Southwest Wyoming; and

I. The Council Should Defer to EPA on Setting Lower Ozone Ambient Air Quality Standard

One reason the Council should not grant the Petition is the litigation currently pending in the D.C. Court of Appeals challenging the 0.075 ppm ozone NAAQS. The court in that litigation is holding the matter in abeyance at EPA's request while EPA determines whether the ozone NAAQS should be maintained, modified or reconsidered. EPA must notify the court by September 16th what action it has taken or will be taking. If EPA decides to reconsider the existing NAAQS, it would be wasteful and redundant for the Council to be conducting a parallel proceeding, and doing so without the benefit of the resources available to the EPA. On the other hand, if EPA under the new administration decides to retain the existing NAAQS it will strongly affirm that the NAAQS adopted by the EPA during the previous administration was reasonable and adequately protective of public health and welfare. In either case, there would be no reason for this Council to accept the Petition and the literally unmanageable task of sifting through the huge volume of scientific data that would be required to make an informed decision.

II. The Council Does Not Have Access to the Extensive Resources Needed to Review the Vast Amount of Data and Make an Informed Judgment

Setting a NAAQS is an incredibly complex scientific undertaking. Adoption of the current ozone NAAQS required EPA to consider huge volumes of scientific data regarding health effects, involved a huge amount of EPA staff time, involved the Clean Air Science Advisory Committee (CASAC) (a panel of national experts), and required EPA to consider hundreds of comments.

The EPA uses a rigorous and detailed health effects review as part of the process for reviewing NAAQS that is established as part of the Clean Air Act. The EPA begins with the development of a criteria document by the EPA Office of Research and Development that includes an "evaluation of the latest scientific knowledge useful in assessing the health and welfare effects of the air pollutant" that must consider the advice of the CASAC. The members of CASAC include leading health care professionals that review the health effects from various air pollutants. Then, using the criteria document, EPA's Office of Air Quality Planning and Standards develops a staff paper "that helps translate the science into terms that can be used for making policy decisions." The staff paper includes "recommendations to the EPA

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Administrator about any revisions to the standards needed to ensure that they protect public health with an adequate margin of safety, and that they protect the environment and the public welfare." The criteria document and the staff paper undergo review by the scientific community, industry, public interest groups, the general public, and CASAC before being used for making policy decision. Based on the criteria document and the staff paper, "the EPA Administrator determines whether it is appropriate to propose revisions to the standards." (<http://www.epa.gov/ttn/naaqs/standards/basic.html>)

As acknowledged in the Petition, EPA's Criteria Document, an extensive technical review of the scientific literature, was considerable in size, exceeding 2,000 pages, went through two drafts before the final, and cited more than 1000 scientific references. EPA's Staff Paper, intended to analyze the scientific data in the Criteria Document and help facilitate the decision on the ozone NAAQS, was "also a kind of magnum opus" at 855 pages in length, and went through two prior drafts. (<http://www.epa.gov/ttn/naaqs/standards/basic.html>). EPA's responses to the hundreds of public comments on its proposed ozone NAAQS was more than 200 pages long. Resetting the ozone NAAQS would require a similar amount of resources and effort. The EQC has no scientific staff and must rely on Wyoming Department of Environmental Quality (WYDEQ) staff for scientific input. Unlike EPA, the WYDEQ does not have staff available to dedicate themselves to such a daunting effort. As discussed below, accepting the Petition would clearly draw considerable resources away from WYDEQ implementation of the State Implementation Plan (SIP) process for ozone nonattainment and other WYDEQ work.

The Clean Air Act requires that EPA review all NAAQS every five years. As illustrated above, the EPA setting of the ozone ambient air quality standard is a comprehensive process by health care scientists and EPA policy staff, based on the current understanding of ozone health effects data. The EQC should rely on the rigorous review process and efforts of the EPA for setting ambient air quality standards. In addition to its pending reconsideration of the existing ozone NAAQS, EPA has already begun the process for the next five-year review of the ozone NAAQS.

III. Wyoming Has Recommended Nonattainment Status in Sublette County and Will be Undertaking an Intensive Effort to Develop a State Implementation Plan to Comply with the Ozone NAAQS

As you are aware, in March 2009 the Governor of Wyoming submitted a recommendation pursuant to Section 107 of the Clean Air Act, 42 U.S.C. §7407, to EPA to designate as nonattainment parts of Lincoln, Sweetwater and all of Sublette counties for not meeting the new primary and secondary ozone NAAQS. The Governor's recommendation was based on extensive scientific study. The WYDEQ has been at the forefront of developing control strategies with the industries that provide state revenues and have responsibility in addressing the issues that led to the nonattainment designation. The WYDEQ is now working to further develop those control strategies and start the State Implementation Plan (SIP) process to bring these areas back into attainment with the ozone NAAQS. The SIP process is extremely

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comprehensive and allows for extensive public participation. Because the ozone NAAQS is far more stringent than the previous NAAQS, development of a SIP to meet the new NAAQS will be very challenging and require a huge effort on the part of the WYDEQ staff as well as industry and the public. The ongoing SIP process the state is coordinating, combined with industry partnership and proactive measures, is the best way to solve our state's ozone issues. That should be the priority for use of WYDEQ resources. Shifting resources to the rulemaking requested by the Petition, on an issue already being addressed by the EPA, would be detrimental to pursuit of that priority. .

Finally, BP incorporates herein the comments made by the Petroleum Association of Wyoming in this proceeding.

In summary, BP believes that the EPA has the necessary resources, has been given the directive, and is the correct regulatory agency to evaluate and revise the ozone NAAQS. Furthermore, WYDEQ staff resources and EQC resources are finite and better spent developing an effective SIP. Finally, the fact that Sublette County has been nominated by Wyoming for designation as a nonattainment area for ozone is no reason to consider a special ozone standard for Sublette County. The EQC should deny the Petition and take appropriate future actions as necessary to comply with applicable federal regulations.

BP appreciates this opportunity to provide comments related to the Petition.

Sincerely,



Dana Wood
Air Advisor