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09-1101

State ment of Bruce Pendery on Behalf of the Petitioners, Environmental Quality Council, Rock Springs, June 3, 2009. Ozone Petition for Rulemaking, EQC Docket No. 09-1101.

Good afternoon. Thank you for allowing us to appear regarding the petition filed by citizens from Sublette County asking the EQC to establish a State standard for ozone that is more stringent than the national standard. The petitioners ask the State, through the EQC, to take the lead in ensuring the public health is protected by setting the primary and secondary Wyoming Ambient Air Quality Standards for ozone at 65 ppb rather than the national standard of 75 ppb.

There is overwhelming scientific evidence that the national standard is not set at a level sufficient to protect the public health. The EPA's Clean Air Scientific Advisory Committee (CASAC) stated to EPA that it "unanimously recommends a range of 0.060 to 0.070 ppm for the primary ozone NAAQS," that the 75 ppb national standard "fails to satisfy the explicit stipulations of the Clean Air Act that you ensure an adequate margin of safety for all individuals, including sensitive populations" and therefore "the members of the CASAC Ozone Review Panel do not endorse the new primary ozone standard as being sufficiently protective of public health." The qualifications of the CASAC are shown in Exhibit 1 to the petition which presents the credentials of these Clean Air Act-mandated expert advisors to EPA.

The need to establish a more stringent standard has particular relevance in Sublette County, and the petitioners ask that this standard be established in Sublette County, not statewide. Sublette County has seen very high ozone levels during the winter in three recent years. In 2008 ozone levels spiked as high as 122 ppb at the Boulder monitor, far in excess of any standard and clearly a level that can threaten public health, and the three-year average ozone level at the Boulder monitor has reached 80 ppb, well in excess of the national standard. Sublette County also has unique ozone formation conditions—namely ozone formation during the winter. The petitioners are from Sublette County and the Governor recommended that this area be designated in nonattainment with the national standard while the rest of the state would be considered in attainment. The level of oil and gas development—and thus the level of emissions contributing to high ozone levels—is particularly great in this area. For these reasons the petitioners feel it is appropriate to focus this rulemaking on Sublette County due to the unique elements present there. The Wyoming Environmental Quality Act allows that air quality standards "may vary from area to area."

Before moving on, I would like to introduce the petitioners to you. [Introduce the petitioners]. We presented background on the petitioners and their concerns about ozone pollution in the petition. These are real people representing the interests of many people in Sublette County. There is strong community support and concern regarding this issue.

The question of whether public health is adequately protected by the current national standard, particularly in an area experiencing very high ozone levels, has broad significance. The significance of this issue is also highlighted by the attention being given to ozone pollution in Sublette County reflected by the extensive efforts of the DEQ, EPA, BLM, the University of Wyoming, and National Oceanic and Atmospheric Administration. Likewise, there has been significant media attention focused on the ozone pollution problems in the Upper Green River

Valley, the DEQ has held several public meetings in the area to address the ozone problems, and the UW's Ruckelshaus Institute held a Ozone Forum in Pinedale where national experts came to Wyoming to speak. There is broad public interest and concern about this issue.

Furthermore, the Town of Pinedale adopted a resolution supporting the petition we filed and I would like to present that to you. The Town of Pinedale resolved "that the Town of Pinedale hereby approves and supports that certain Petition to Establish Primary and Secondary Wyoming Ambient Air Quality Standards for Ozone that are Stricter than the National Ambient Air Quality Standards to be filed with the Wyoming Environmental Quality Council by the Petitioners set out above." Several of the petitioners worked closely with the Town on this resolution. This resolution reemphasizes the significance of this problem.

There is also broad medical and scientific support for the action we have requested. I would like to present to you further documentation of the breadth of support for lowering the current national standard. As you can see on the last page of this document, entities supporting lowering the current national standard include the American Medical Association, American Heart Association, and National Association of City and County Health Officials. The science underlying decision-making that would occur here is available and strong.

We believe full consideration of this matter by the Council would further the purposes and policies of the Wyoming Environmental Quality Act. It is the policy and purpose of the Act to prevent, reduce, and eliminate pollution and to preserve and enhance the air. The Wyoming Supreme Court has agreed with this. Setting this matter for a full hearing would help ensure these policies are met.

Wyoming has a history of leadership in issues related to air pollution and not necessarily accepting Federal standards as sufficient. Petitioner Mary Lynn Worl pointed out in a perspective in the Casper Star Tribune, clean air is a Wyoming value we cherish and there is a history of protecting it. I would like to give you Mary Lynn's guest editorial so you can consider it. Two of Wyoming's standards for sulfur dioxide are more stringent than the national standards. Until recently Wyoming was essentially unique in regulating minor source emissions and its BACT requirements for minor sources are still almost unique. Wyoming recently adopted legislation for carbon sequestration and in so doing Wyoming became the first State to adopt comprehensive sequestration legislation. Given this history we believe it would be appropriate to again consider setting a more stringent standard. The State assertively, even aggressively, guards its primacy on air quality regulation, so we do not feel the State should allow potential revisions of the national standard by EPA to stop it from showing leadership on this issue.

Wyoming also has precedent for air quality provisions focused on specific geographic areas. The Wyoming Air Quality Standards and Regulations define "ambient air" for the particulate matter standard uniquely for the coal-producing region in the Powder River Basin. The DEQ's "Natural Events Action Plan" for particulate matter is also confined to this unique area. So establishing an ozone WAAQS for Sublette County would not be an unprecedented course of action.

Air quality in Wyoming, especially in Sublette County, is not getting better, so there is a need for State government to weigh in on these issues. We need the expertise and guidance of the Council on this issue.

The petitioners want to make sure we set the right target. Unless we set the right target there is little hope the public health will be adequately protected. And as pointed in the petition, setting the target at this lower level will not be draconian. It may present challenges and it will require hard work to achieve, but the Environmental Quality Act specifies that the Air Quality Division Administrator can “grant such time as he shall find to be reasonable and necessary for owners and operators of air contaminant sources to comply with applicable standards or requirements.” There is flexibility in how a more stringent standard is achieved so implementation challenges should not dissuade this Council from fully considering this matter.

Additionally, the fact that in 2009 we did not see ozone levels in Sublette County reaching the levels seen in 2008 should not dissuade this Council from having a full hearing. After high ozone levels in 2005 and 2006, 2007 was also a low ozone year, but then ozone levels roared back in 2008. While certainly progress has been made in dealing with ozone pollution in this area—there is no doubt that DEQ has done a great deal of work and we applaud them for it—I doubt anyone would claim we are out of the woods yet just because 2009 was a better year.

When the Governor recommended Sublette County and portions of Sweetwater and Lincoln Counties be designated in nonattainment with the national standard, the State in its supporting report said the ozone problems in Sublette County are locally created. The DEQ unequivocally found that the ozone problems are “primarily due to local emissions from oil and gas . . . development activities: drilling, production, storage, transport, and treating.” Given the homegrown nature of this problem, it is appropriate for this Council to fully consider this ozone problem. The highest ozone levels have been monitored near the town of Boulder, and there are other communities in Sublette County, like the Town of Pinedale. So we feel it is clear the health of a number of people could be threatened by high ozone levels in this area.

We would now like to make several other short presentations to you. First, we would like to show you some brief “clips” from two of the presentations at the Ruckelshaus Institute Ozone Forum in Pinedale last fall. We present parts of the presentations of Drs. Fred Miller and Rogene Henderson. Dr. Miller is an expert on the health effects of ozone. He is from Sheridan and got his B.A. and M.S. degrees at UW. Dr. Henderson in addition to being a health expert was the chair of the EPA’s CASAC during the most recent revision of the national ozone standard. We presented the resumes for these two scientists in Exhibit 2 to our petition. After these short films, we would then like to present to you the brief comments of Dr. Michael Kramer, a physician who lives in Pinedale. Following that we would like to present comments from Mr. Jared Rogerson, who lives in Pinedale and suffers from asthma. These remaining presentations are short and should be completed with adequate time for questions you may have. Thank you.