



IPAMS
Independent
Petroleum
Association
of
Mountain
States

410 Seventeenth Street ♦ Suite 700 ♦ Denver, Colorado 80202 ♦ 303/623-0987 ♦ FAX: 303/893-0709 ♦ www.ipams.org

August 12, 2009

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

Attn: Docket # 09-1101

Dear Mr. Boal:

The Independent Petroleum Association of Mountain States (IPAMS) represents over 400 companies engaged in environmentally responsible exploration and production of natural gas and oil in the Rocky Mountain West. Many of IPAMS members are based in Wyoming or operate in Wyoming. We welcome the opportunity to present to the Environmental Quality Council (Council) our comments regarding the proposed Crumpley, et al. Citizen 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 for Responsible Energy Development and Upper Green River Valley Coalition (Petitioners). IPAMS has reviewed the Petition, and our members are concerned that the proposed changes, as applied to the varying production scenarios across Wyoming, would create undue burdens and complexities for industry. For this reason and the reasons offered below, IPAMS respectfully requests that the Council deny the petition.

Proceedings to Date

Petitioners ask the Council to establish primary and secondary state ambient air quality standards (WAAQS) for ozone in Sublette County that are more stringent than the national ambient air quality standards (NAAQS) for ozone. The NAAQS are set at 0.075 parts per million (ppm), and Petitioners request that the Council set the WAAQS for Sublette County at 0.065 ppm.

On June 3, 2009 the Council held a public meeting to discuss the Petition, and on August 18, 2009 will hold another hearing during which the Council will consider whether to -grant the Petition and commence the rulemaking process. IPAMS offers the following comments opposing acceptance of the Petition.

IPAMS members believe that the requested ozone WAAQS would create debilitating regulatory and policy complexities for industry, as well as the State of Wyoming's ability to address ozone compliance in Southwest Wyoming. Consequently, IPAMS members would be substantially impacted in their ability to permit operations in Southwest Wyoming.

The Council Should Defer to EPA on Setting Lower Ozone Ambient Air Quality Standards

As the Petitioners acknowledge, litigation is currently pending in the D.C. Court of Appeals challenging the 0.075 ppm ozone NAAQS, lowered from 0.08 ppm by EPA in November 2007. At the request of EPA, the court is holding the matter in abeyance while EPA determines whether the ozone NAAQS should be maintained, modified, or otherwise reconsidered. EPA is to notify the court by September 16, 2009 of actions it has taken or will take. The Council should wait until EPA has decided which approach it will take. If EPA decides it will lower the ozone NAAQS, the Council should defer to EPA in setting the new standard. Likewise, if EPA decides to keep the current 0.075 ppm ozone NAAQS, the Council should defer to EPA.

The Clean Air Act requires that EPA review all NAAQS every five years. EPA's establishment and review of NAAQS is a comprehensive process involving health care scientists, in addition to EPA policy staff, whereby recommendations are made to the EPA Administrator regarding any changes that are needed in the NAAQS to protect public health and the environment, with an adequate margin of safety. In fact, the EPA has already begun the required five-year review of the lowered ozone NAAQS, in addition to its decision to reevaluate the lower NAAQS of 0.075 ppm established under the prior Administration. The EQC should rely on and defer to EPA's thorough review process for setting ambient air quality standards, and its ongoing reevaluation of the last NAAQS revision.

It should also be noted that setting a NAAQS is a complex undertaking, requiring enormous commitments of time and resources. When adopting the current NAAQS, EPA considered huge amounts of scientific data, particularly with regard to health effects. Such an undertaking involved large amounts of staff time. Furthermore, EPA involved in it discussions the expertise of its Clear Air Science Advisory Committee (CASAC) and considered hundreds of public comments. Resetting the ozone WAAQS for Sublette County would require another similar time-consuming assessment. The Council does not employ a scientific staff and must rely on Wyoming Department of Environmental Quality (WYDEQ) staff for scientific expertise and input. This burden on WYDEQ's Air Quality Division (AQD) can only detract from its performance of other high priority tasks, including ozone state implementation plan (SIP) development for ozone, among other things.

Nonattainment Status Has Been Recommended for Sublette County

In March 2009, Governor Fruedenthal submitted a recommendation pursuant to Section 107 of the Clean Air Act, 42 U.S.C. 7407, to EPA designating as nonattainment parts of Lincoln and Sweetwater counties and all of Sublette County for not meeting the new primary and secondary ozone NAAQS. The WYDEQ has been proactive in working with industry to develop control

strategies to address the issues that led to the nonattainment recommendation. The WYDEQ is currently further developing these strategies in connection with its ozone SIP development work. The SIP process is mandated by the Clean Air Act in order to bring nonattainment areas back into compliance with the NAAQS. The ongoing SIP process, combined with industry cooperation and proactive industry measures, is the best way to resolve Wyoming's ozone issues, not by taking resources away from the SIP process to selectively establish a more stringent standard for Sublette County.

Petitioners have not Addressed Wyoming State Law Requirements for Revised Air Standards

The decision to grant or deny the Petition is entirely within the discretion of the Council, and is not subject to judicial review. Wyoming Administrative Procedure Act (APA), Wyo. Stat. 16-3-106. IPAMS also urges the Council to exercise this discretion to deny the Petition because it does not address the factors to be considered by the WYDEQ-AQD Administrator when recommending air quality standard revisions. Of course, reference to and reliance on such factors is entirely reasonable, and promotes consistency in decision making.

The Petitioners have cited the case of Tri-State Generation and Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324, 1332 (Wyo. 1979) for the proposition that there is no express statutory requirement that the Council's decision conform to the requirements applicable to the AQD Administrator's consideration of new or revised air quality standards. Petition at 53. However, Tri-State bears on the question of how much explanation the Council must provide *after* adopting a standard in a non-contested case to comply with statute and to enable judicial review. We are not at that point, of course, and the Wyoming Supreme Court in Tri-State specifically acknowledges that "the Council may find it advantageous to refer to the factors listed in s 35-502.17." At this stage of considering whether to grant or deny the Petition, it can and should be viewed by the Council with reference to the factors which must apply to the AQD Administrator's decisions under Wyo. Stat. 35-11-202. After all, the Administrator's decisions are necessarily supported by the advocacy of AQD staff, and the Council shares and relies on AQD staff as well in considering the adoption of revised air quality standards. And even if Tri-State does not compel this approach, it is clearly within the Council's discretion to require the same quality of support from a petitioner as would be required of the Administrator. Accordingly, the Petition should be denied for failure to address the Wyoming statutory factors for the Administrator's proposed revisions to air quality standards.

Conclusion

IPAMS members have aggressively and consistently reduced ozone precursor emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) by voluntarily working with the WYDEQ. IPAMS members remain committed to reducing emissions while continuing to serve in their critical capacity as developers of our domestic energy resources.

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IPAMS believes that EPA is the proper entity to address the ozone NAAQS. EPA has the necessary resources and has been given the directive to evaluate and revise the ozone NAAQS, and is already doing so. Wyoming's agencies have finite resources that are better employed developing an effective SIP, and that is where real progress must be made in reducing ambient levels of ozone. And if Wyoming is to establish a lowered ozone or other criteria pollutant WAAQS, IPAMS urges the Council to evaluate the petitions for such standards against the factors applicable to AQD Administrator recommendations for air standards, to promote uniformity and transparency in decision making, and to aid in their possible judicial review.

In summary, IPAMS respectfully requests that the Crumpley, et al. Citizen Petition for Air Quality Rulemaking be denied. IPAMS members wish to let the EPA process take its course while preserving the WYDEQ's limited resources and avoiding the regulatory complexity and uncertainty that would surely follow a decision to grant the Petition. IPAMS members appreciate the opportunity to comment on this petition and thank you for your consideration of these comments and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. M. Sgamma', with a horizontal line underneath.

Kathleen M. Sgamma
Director of Government Affairs