



**UTAH MANUFACTURERS**  
ASSOCIATION

July 17, 2023

**Delivered Via E-mail and Hand Delivery**

Bryce Bird, Director (bbird@utah.gov)  
Utah Division of Air Quality  
195 N. 1950 West  
Salt Lake City, UT 84116

**Re: Utah Manufacturers Association Comments on the State Implementation Plan: 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area and Emission Limitations and Operating Practices**

Director Bird,

The Utah Manufacturers Association (UMA) submits these comments on the following inter-related proposed rules: revisions to *R307-110-13, Incorporation of Utah State Implementation Plan, Section IX.D.11: 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area*, and revisions to *R307-110-17, Incorporation of Utah State Implementation Plan, Section IX.H.31 and Section IX.H.32: Emission Limitations and Operating Practices* (hereinafter Proposed Part H).<sup>1</sup>

UMA is a century-old trade association representing more than 1,000 Utah companies that form the backbone of Utah's robust manufacturing industry. As such, UMA and its members are acutely aware of the significance of the current revisions to the State Implementation Plan (SIP) for the Northern Wasatch Front Ozone Nonattainment Area (the NAA). Moreover, and more importantly, numerous UMA's members are directly regulated by Proposed Part H of the SIP.

UMA appreciates the efforts that the Utah Division of Air Quality's (UDAQ) staff has put into analyzing and preparing the current proposed Moderate Ozone SIP and we acknowledge that solving the northern Wasatch Front air quality issues is not a simple task as the region is impacted by a myriad of local, national, and international sources of ozone and has unique and complex topography and meteorology that complicates UDAQ's work. UMA and its members are committed to working with UDAQ as partners to find solutions to the complex issues underlying the region's air quality issues.

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<sup>1</sup> UMA refers to the two proposed rules collectively as the "proposed Moderate Ozone SIP."

With that said, UMA is concerned by several elements of the currently proposed SIP. Most notably, UMA was surprised by UDAQ's decision to propose "beyond RACT" controls as part of the proposed Moderate Ozone SIP. In its decades-long history of implementing the Clean Air Act (CAA) through state implementation plans, UDAQ has never proposed controls beyond what the CAA requires.<sup>2</sup> Moreover, UMA is concerned with UDAQ's process for evaluating beyond RACT as UDAQ's process was not as transparent as we would have expected. We think such transparency is particularly necessary considering UDAQ's decision to propose beyond BACT controls as we have little insight into how UDAQ selected sources or units for beyond RACT controls, how UDAQ selected emission reduction levels, and whether (and how) economic feasibility was considered. UMA believes that UDAQ's beyond RACT determination is not allowed by the CAA and, even if it were, is not supported by a fair process that analyzed the need for such controls. In other words, the beyond RACT elements of the proposed Moderate Ozone SIP are neither lawful nor imposed in a non-arbitrary way.

Given these flaws, UMA requests that UDAQ remove the controls that it identified as beyond RACT in the proposed Moderate Ozone SIP as outlined in the sections below.

But UMA also comments in support of UDAQ's evaluation of the ozone issues impacting the Northern Wasatch Front Ozone NAA in a holistic manner. Given the complex sources of ozone impacting the nonattainment area, UDAQ's analysis appropriately considers the impact that international sources of ozone have on the area's ozone concentrations. UMA asks that UDAQ continue to include an evaluation under CAA section 179B in this and any future SIP planning processes.

#### **I. Comments Related to UDAQ's Proposal to Impose "Beyond RACT" Controls as Part of the Moderate Ozone SIP**

In the proposed SIP, UDAQ correctly points to CAA section 182(b)(2) as requiring the state to impose RACT on existing major sources of VOCs and NOx. UMA's members accept that RACT is required for the current SIP planning. Furthermore, UMA's members engaged with UDAQ to evaluate what controls were, in fact, reasonably available that would be incorporated into the proposed Moderate Ozone SIP by relying on the traditional multi-step approach that identified potential controls, evaluated technical feasibility of each of those controls, followed by an analysis of the economic feasibility of those controls.

Our members support this process and have for years – even decades in the case of sources regulated under the PM10 and PM2.5 SIPs – implemented the results of similar RACT analyses. But, for the first time, UDAQ elected to evaluate and implement beyond RACT controls for certain sources.

While UDAQ's beyond RACT determinations applied to a limited number of sources, UMA's members are collectively concerned with the foundation and bases for these controls, the technical support for these controls, and how it appears UDAQ arbitrarily selected sources for beyond RACT controls. Due to the lack of process and transparency, UMA believes that beyond

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<sup>2</sup> The term RACT or reasonably available control technology originates in CAA section 172(c)(1) (general nonattainment plan provisions) and 182(b)(2) (SIP requirements for Ozone nonattainment areas).

RACT controls should be removed from the proposed Moderate Ozone SIP. UMA also requests that UDAQ establish and communicate a process for future consideration of controls necessary to meet attainment.

- **What is the CAA basis for UDAQ’s determination that beyond RACT controls may be imposed as part of the SIP?**

UMA requests that UDAQ explain the legal authority underlying UDAQ’s decision – and that of the Utah Air Quality Board (AQB), which will vote on the SIP package, making it an enforceable regulation – to impose beyond RACT controls as part of the proposed Moderate Ozone SIP.

The rule currently proposed is based on section 182 of the CAA. Under subparagraph (b), which applies to moderate areas, the

State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 7502(c)(2) of this title with respect to the following:

...

(C) All other major stationary sources of VOC that are located in the area.<sup>3</sup>

The result of this language is unmistakable. Because EPA reclassified the Northern Wasatch Front Ozone Nonattainment Area as moderate, Utah is obligated to evaluate and implement RACT for major sources located in the nonattainment area. Section 182(b) does not direct – or, more importantly, authorize – beyond RACT.

To put this issue into context, one can ask what exactly is beyond RACT, as contemplated by UDAQ in the proposed Moderate Ozone SIP?

RACT is not defined in the CAA. But EPA has interpreted RACT to mean, “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.”<sup>4</sup> UDAQ’s use of beyond RACT translates into controls that are **beyond the lowest emission limitation** that a source is capable of meeting by use of controls that are **beyond what is reasonably available** considering technological and economic feasibility.<sup>5</sup> In other words, UDAQ’s interpretation of

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<sup>3</sup> CAA § 182(b)(2); *see also* CAA § 172(c)(1) (“Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology).”).

<sup>4</sup> 45 Fed. Reg. 59329, 59331/1 (Sept. 9 1980).

<sup>5</sup> Not only are beyond RACT controls beyond what is reasonably available, but these controls are beyond Best Available Control Technology (BACT), which are more stringent requirements than RACT. This is so as UDAQ has previously implement BACT for several of the sources that have proposed beyond RACT controls. As UDAQ should be able to see, UDAQ’s use of beyond RACT is an absurd concept that converts uses the SIP planning

beyond RACT is a shorthand way of UDAQ proposing controls that are **not reasonably available**.

But UDAQ's interpretation is in conflict with the CAA. The CAA directs UDAQ to impose "reasonably available control technology." By definition, the controls must be reasonably available considering technological and economic feasibility. By labeling controls as being beyond RACT, UDAQ cannot dismiss that the controls must be reasonably available.

EPA has provided a more-clear explanation of what beyond RACT means. The phrase appears to have originated in EPA's **2008 Ozone Implementation Rule**.<sup>6</sup> In that rule, EPA did refer to the concept of beyond RACT. At best, EPA's discussion was truly passing as the federal agency simply stated that it believed beyond RACT was available without providing any discussion of the basis for beyond RACT. But EPA provided further clarification when it adopted the subsequent **2015 Ozone Implementation Rule**.<sup>7</sup>

In the 2015 Ozone Implementation Rule, EPA discussed "other control measures" that may be implemented under the authority of section 172(c)(6).

CAA section 172(c)(6) requires that SIP provisions include enforceable emission limitations and other control measures, means or techniques as may be necessary or appropriate to attain a standard by the applicable attainment date. The EPA interprets this provision to include "*additional reasonable measures*," which are measures and technologies that can be applied to any emissions sources within the state's jurisdiction, including those outside of the nonattainment area.<sup>8</sup>

EPA codified this interpretation in 40 CFR § 51.1312(c), which states that the "SIP revision shall include, as applicable, other control measures on sources of emissions of ozone precursors *located outside* of the nonattainment areas, or portion thereof, located within the state if doing so is necessary or appropriate to provide for attainment of the applicable ozone NAAQS in such area by the applicable attainment date."<sup>9</sup>

In the 2015 Ozone Implementation Rule, EPA made it clear that the concept of beyond RACT does not vest a state with broad discretion to impose controls that are not reasonably available. Rather, the concept allows the state to impose additional reasonable measures, with those reasonable measures being imposed on sources located outside of the nonattainment area. At the core of all this, the controls must remain reasonably available.

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process to undermine the careful balance that the CAA struck between imposing controls that must be reasonable and meeting the NAAQS.

<sup>6</sup> 80 Fed. Reg. 12264, 12279 (March 6, 2015) (hereinafter the 2008 Ozone Implementation Rule).

<sup>7</sup> See 83 Fed. Reg. 62988 (December 6, 2018) (adopting the 2015 Ozone Implementation Rule for a new, lower 0.070 ppm standard). To be clear, UDAQ proposed the proposed Moderate Ozone SIP pursuant to the 2015 Ozone Implementation Rule, meaning that the 2015 version – and not the 2008 – is the applicable regulation governing the current proposed rule. See Proposed Moderate SIP, Memorandum to the Air Quality Board ("On August 3, 2018, [EPA] designated Utah's Northern Wasatch Front as a marginal [NAA] for the **2015 National Ambient Air Quality Standards for 8-hour ozone concentrations**." (emphasis added)).

<sup>8</sup> 83 Fed. Reg. 623015/1-2 (emphasis added).

<sup>9</sup> (Emphasis added).

With EPA's explanation from the 2015 Ozone Implementation Rule, it is clear that, as drafted, the proposed Moderate Ozone SIP stretches the concept of beyond RACT past what EPA contemplated. Moreover, as explained in greater detail below, UMA is further confused by UDAQ's efforts to impose beyond RACT as part of the proposed Moderate Ozone SIP with the proposed beyond RACT controls that were not used in the modeling to support proposed Moderate Ozone SIP and, as such, didn't benefit Utah's attainment demonstration.

Given the myriad of issues undermining the implementation of beyond RACT controls, UMA requests that UDAQ remove those provisions from the proposed Moderate Ozone SIP.

- **What is the process for determining when beyond RACT is necessary?**

If UDAQ elects to proceed with its current proposal to impose beyond RACT controls as part of the proposed Moderate Ozone SIP, UMA requests that UDAQ provide an explanation of how the agency determines when beyond RACT will be imposed.

In preparing the proposed Moderate Ozone SIP, UDAQ cited EPA's 2008 Ozone Implementation Rule as authorizing states to impose beyond RACT controls.<sup>10</sup> Setting aside UMA's comment regarding the lack of legal authority for imposing beyond RACT controls and EPA's clarification that came in the 2015 Ozone Implementation Rule, EPA's interpretation of the CAA did not read the Act as creating unfettered authority to impose controls that were beyond reasonably available. Even in EPA's cursory explanation found in the 2008 Ozone Implementation Rule, EPA found that the discretion to impose beyond RACT was necessarily tied to the NAAQS. For example, EPA stated,

The EPA is finalizing the proposed approach to provide states with the discretion to require beyond-RACT reductions from any source, and that states have an obligation to demonstrate attainment as expeditiously as practicable. We believe it may be necessary in some cases for states to achieve "beyond RACT" reductions in order to demonstrate attainment as expeditiously as practicable.<sup>11</sup>

Presuming that this "discretion" is valid under the CAA,<sup>12</sup> UMA requests that UDAQ provide an explanation of how it determined that beyond RACT would be applied as part of the proposed Moderate Ozone SIP. Furthermore, we request that UDAQ provide an explanation of the parameters and limitations of the discretion to impose beyond RACT.

These explanations are particularly important to the current rulemaking because UDAQ has disclosed that for the purposes of the proposed Moderate Ozone SIP, UDAQ is deriving no benefit from imposing beyond BACT controls as they are not included in the modeling underlying the attainment demonstration. Furthermore, the emission reductions associated with the beyond RACT controls are not included in the 179B demonstration, which shows the

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<sup>10</sup> Proposed Moderate SIP, p. 33 (citing the Ozone Implementation Rule); *see also* footnote 7 for discussion of the relationship between the 2008 Ozone Implementation Rule and the 2015 Ozone Implementation Rule.

<sup>11</sup> 80 Fed Reg. 12279/3.

<sup>12</sup> By making this comment, UMA does not concede that UDAQ has authority to impose beyond RACT as part of the Proposed Moderate SIP.

Northern Wasatch Front NAA attained the NAAQS but for the influence of international ozone emissions.

As a result of these issues, UMA questions how UDAQ can justify exercising the discretion EPA identified in the Ozone Implementation Rule for the proposed Moderate Ozone SIP.

- **What is UDAQ's process for evaluating beyond RACT?**

It appears from the draft of the proposed Moderate Ozone SIP – and re-enforced at the April 4, 2023 presentation to the AQB – that UDAQ believes labeling controls as beyond RACT gives the agency broad discretion to impose costly controls arbitrarily and without any connection to attainment. But even if one were to assume that a beyond RACT interpretation is valid under the CAA, it does not create the level of discretion that UDAQ has applied to the proposed Moderate Ozone SIP. As EPA stated in the 2008 Ozone Implementation Rule (as quoted above), application of beyond RACT is tied to the obligation to demonstrate attainment as expeditiously as practicable. Furthermore, the 2015 Ozone Implementation Rule also tied any additional reasonable measures that the state would apply through a SIP to an attainment demonstration.<sup>13</sup> In other words, EPA tied the application of beyond RACT to showing that the controls are needed, and actually provide, for attainment.

How would an agency go about making a connection between beyond RACT controls and an attainment demonstration? It would accomplish this by, very simply, adding the emission reductions generated by the beyond RACT controls to the modeling analysis that UDAQ developed for the SIP.

From UDAQ's discussion with the AQB on April 4, 2023, we know that UDAQ has not included the emission reductions from the beyond RACT controls in the modeling. As opposed to a formal modeling effort, UDAQ refers to the effectiveness of NO<sub>x</sub> emission reductions in section 7.4.1 of the proposed Moderate Ozone SIP. However, the information provided in section 7.4.1 is a desktop review of information and does not reflect the complexity of ozone formation in the airshed. In contrast to UDAQ's desktop review, the NO<sub>x</sub> emissions reductions summarized in Section 8.3.4 could be highlighted to show 15.75 tons per day of NO<sub>x</sub> have been removed from the airshed previously as part of a PM<sub>2.5</sub> SIP. Yet the Salt Lake airshed continues to record ozone above the NAAQS. Both desktop analyses are insufficient to represent the changes that reflect ozone in the atmosphere and how emissions reductions will perform. A photochemical modeling analysis of controls is what is necessary to demonstrate that the controls impact attainment of the airshed.<sup>14</sup> But the modeling analysis excludes the beyond RACT controls from UDAQ's evaluation.

Without a quantitative analysis, UDAQ's selection of beyond RACT controls is arbitrary.

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<sup>13</sup> 83 Fed. Reg. 623015/1-2.

<sup>14</sup> We understand from the April 4, 2023 presentation of the Moderate Ozone SIP that UDAQ generally believes that the model responds to NO<sub>x</sub> reductions. For the costs associated with beyond RACT controls – some of which came in as high as \$25,000 per ton – UDAQ must rely on more than a vague suspicions that further NO<sub>x</sub> reductions will help the area attain the Ozone NAAQS.

In addition to the modeling that must support any beyond RACT controls, we request that UDAQ disclose the process that it used to determine beyond RACT. For example, we request disclosure of how UDAQ selected:

- 1) the sources that would be subject to beyond RACT;
- 2) what emission units would be subject to beyond RACT;
- 3) what pollutants would be subject to beyond RACT; and
- 4) the economic thresholds that governed UDAQ's analysis.

As currently drafted, sources have very little insight into UDAQ's process for evaluating and imposing beyond RACT controls, which sources appear to have been arbitrarily selected as to whom install controls but no tie to attainment.<sup>15</sup>

## **II. UDAQ Must Provide Reasonable Time to Respond to Information Requests**

As we commented above, the process UDAQ used to evaluate the proposed Moderate Ozone SIP was not transparent. UMA (and its individual members) still does not understand how UDAQ selected the sources that would be subject to beyond RACT controls, how UDAQ evaluated the technological or economic feasibility of the controls, and how the reductions will impact the airshed. In addition to those substantive issues that undermine the current rule, UMA also has concerns with the process UDAQ used to collect information from sources. We think these procedural issues call into question the current rulemaking process, and we request that UDAQ cure this issue before the next SIP planning process so that all sources are treated fairly and have a reasonable opportunity to respond to UDAQ's information needs.

UMA understands that UDAQ initially intended to rely on RACT/BACT submissions made as part of prior SIP packages for the proposed Moderate Ozone SIP. In early to mid-December 2022, UDAQ notified sources that they could submit updated RACT analyses that focused on NOx and VOC emissions. But before such an analysis could be submitted, sources were required to meet with UDAQ staff to discuss the anticipated submission. Ultimately, UDAQ set a January 31 submission deadline for sources that opted to provide updated RACT analyses. Then on the evening of February 22 (after normal business hours had concluded), UDAQ notified certain sources that UDAQ had completed its RACT analysis and that these sources would be required to install new controls as part of the Moderate Ozone SIP. As part of the notification, UDAQ set a February 28 deadline for each of these companies to respond with construction and implementation schedules for these controls.

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<sup>15</sup> The lack of clarity of UDAQ's process is stark when you consider UDAQ's process for evaluating RACT as part of the Moderate Ozone SIP. For example, UDAQ began the RACT analysis by indicating that it intended to rely on its previous RACT and BACT determinations. Later, UDAQ allowed sources to submit updated RACT analyses focusing on ozone precursor emissions. A small fraction of sources submitted updated RACT analyses. It appears that only those sources that submitted updated RACT analyses were tabbed with having to install beyond RACT controls. Effectively, sources that provided current information were singled out for further regulations, which, again exposes the arbitrary application of beyond RACT controls.

UMA is concerned with the entirety of this process as it did not allow sources adequate time to prepare updated RACT analyses and did not give those sources that were subject to beyond RACT determinations sufficient time to respond to UDAQ's requests. A RACT analysis is a complex, technical analysis. The four to six weeks that UDAQ gave to sources was inadequate. Furthermore, six total days and four business days is simply an unreasonable time period for businesses to work through an internal process to both evaluate and approve a construction schedule for the controls that UDAQ identified. We appreciate that UDAQ has limited staff and resources and is under pressure to complete the SIP package by the deadlines imposed in the CAA. But UDAQ also must recognize that the controls they identified as RACT require significant investment and study on the part of a business.

We request that UDAQ give those entities impacted by this compressed time period an opportunity to fully evaluate the implementation schedule before UDAQ proceeds with the current rule. Additionally, we ask that UDAQ ensure that it does not repeat this compressed schedule on any future SIP effort.

### **III. UDAQ Should Continue to Evaluate the Entirety of the Ozone Issue Impacting the Northern Wasatch Front, which Certainly Includes International Emissions**

UMA appreciates the tremendous undertaking that a SIP, particularly an Ozone SIP, involves. The Northern Wasatch Front NAA, with the unique topography and meteorology, only makes this task more complex. We commend UDAQ for analyzing the nonattainment area's ozone issues in a holistic manner as UDAQ not only grappled with the variety of local emission sources (point, area, mobile) but undertook an analysis to understand sources of ozone and ozone precursors that originate from outside of the Utah. This, of course, included emissions that come from outside of the United States, which UDAQ has no authority or ability to control or curtail.

UMA supports UDAQ's decision to include a CAA section 179B(a) prospective demonstration, which shows that the Northern Wasatch Front NAA would have attained the Ozone NAAQS by August 3, 2024 but for the presence of international emissions.<sup>16</sup> This demonstration should be retained as part of the proposed Moderate Ozone SIP package.

Furthermore, UMA requests that UDAQ continue to evaluate the ozone issues that confront the nonattainment area holistically, which certainly includes the significant contributions from international sources. The simple truth is that international emissions are part of the Northern Wasatch Front Nonattainment airshed which emissions ought to be accounted for in UDAQ's planning process.

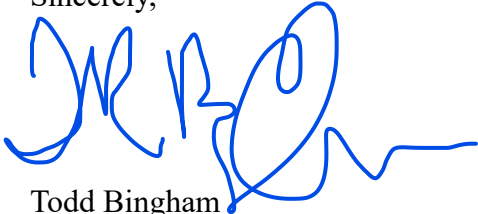
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<sup>16</sup> Moderate Ozone SIP, Chapter 9.



UMA appreciates UDAQ considering these comments as part of the Moderate Ozone SIP. Should you have any questions or request any additional information regarding these comments or any other issues related to the Moderate Ozone SIP, please contact me at 801-363-3885 or at [todd@umaweb.org](mailto:todd@umaweb.org).

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Bingham', with a long horizontal flourish extending to the right.

Todd Bingham  
President, Utah Manufacturers Association