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November 30, 2018

DELIVERED VIA E-MAIL

Bryce Bird, Director
Utah Division of Air Quality
195 N. 1950 West
Salt Lake City, Utah 84116
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RE: Utah Petroleum Association's Comments on the Notice of Change in Proposed Rule: Revisions to Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and R307-110-17; Utah State Bulletin Number 2018-21, Rule 307-110-17, Notice of Change in Proposed Rule

Dear Mr. Bird and UDAQ staff,

The Utah Petroleum Association (UPA) submits the following comments on the Notice of Change in Proposed Rule: Revisions to Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and R307-110-17, Section IX, Control Measures and Utah State Bulletin Number 2018-21, Rule 307-110-17, Notice of Change in Proposed Rule, DAR File No. 42976.

UPA was founded in 1958 and its members comprise every segment of the petroleum industry in Utah. UPA's members include four companies that own and operate refineries – i.e., Big West Oil LLC, Chevron Products Company, HollyFrontier Woods Cross Refining LLC, and Tesoro Refining & Marketing Company LLC – that are identified as major stationary sources subject to the emission limitations and other requirements proposed in this rulemaking. In addition to these associational comments, individual member companies may also submit comments addressing specific issues related to their operations.

In summary, these comments make the following points:

- In view of the procedural history of the Part H rulemaking, UPA understands that the entirety of the revisions being proposed to Part H as part of the PM2.5 SIP BACT rulemaking – including those initially noticed for public comment in the July 1, 2018 Utah State Bulletin – are properly subject to comment during the current comment period.
- Consistent with the previous bullet, we request that UDAQ respond to comments made by UPA on the original Part H rulemaking that it appears were inadvertently overlooked by the Agency. The comments are identified more specifically below.
- In view of UDAQ’s undertaking of an evaluation to independently assess the appropriateness of a precursor demonstration (and the time that will be required to complete such an evaluation including public review and comment), UPA urges the Agency to postpone final action on Part H until it has completed the prerequisite precursor demonstration. However, to the extent that UDAQ determines, for administrative or other reasons, to proceed with a final rulemaking on the proposed Part H rulemaking, we urge the Agency to do so provisionally, making a revised Part H effective contingent upon the outcome of a final decision on the precursor demonstration.

UPA appreciates the expertise and professionalism that the Utah Division of Air Quality (UDAQ) brings to its work in addressing the Salt Lake City Nonattainment Area’s PM2.5 nonattainment issues. We would be pleased to engage in further discussions with UDAQ on these comments.

PROCEDURAL COMMENT

Scope of Comment

This constitutes the second time that the Board has requested comment on the proposed Part H rulemaking. UDAQ originally took comment on the proposed Part H rulemaking pursuant to the notice published in the Utah State Bulletin on July 1, 2018.¹ UPA submitted comments on that proposal and, by this reference, incorporates those comment as part of this submission.²

¹ 2018-13 Utah Bull., p. 34 (July 1, 2018) (R307-110-17, Section IX, Control Measures for Area and Point Sources,

² See Utah Petroleum Association, Comments on the Proposed Rulemaking Revisions to Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits & Amend R307-110-17, August 15, 2018. UPA submitted a second set of comments in response to UDAQ’s proposed attainment demonstration and the UPA precursor demonstration. See Utah Petroleum Association, Utah Petroleum Association, Comments on “UPA’s Major Stationary Source Precursor Demonstration for NOx, Sox, and NH3 in the Salt Lake City 24-hour PM2.5 Serious Nonattainment Area” and Proposed Rulemaking, Section IX, Control Measures for Area and Point Sources,

At the October Board meeting, UDAQ presented the Board with suggested, additional revisions to Part H based on comments that it received during the public comment period. In addition, Board Member Cromar proposed, and the Board approved for public comment, several further revisions to Part H.

During the discussion on the Part H rulemaking, the board raised the question of the scope of the public comment to be received. In the discussion that ensued, and after some initial uncertainty, UDAQ staff clarified that (i) the Board was not being asked to take final action on any part of Part H and (ii) public comment would be taken on the original amendments offered at the June Board meeting as well as the additional revisions being made in response to public comment and Board Member Cromar's proposal.³

The notice published in the November 1st State Bulletin identifies the purpose of the rulemaking as amending the effective date in R307-110-17 to match the anticipated date of the AQB's approval date of the Part H amendments. The State Bulletin notice does not otherwise address the scope of the Part H amendments that are subject to public comment.

The broad scope of the public comment indicated at the October Board meeting (that is, to allow for comment on the original proposed amendments as well as the newly offered revisions) is contradicted by a statement that was added to UDAQ's website that suggests a narrower scope.⁴

In view of the importance of the rulemaking and the direction at the October Board meeting that the original proposed amendments would remain open for public comment during the instant comment period (concluding on November 30, 2018 at 5:00 pm), UPA and its member companies understand that comment on the entirety of Part H is appropriate. This conclusion is further supported by the Utah Administrative Rulemaking Act procedures, Utah Code Ann. 63G-3. This conclusion is also necessitated by the need for the Agency to account for comments previously submitted by UPA but not heretofore responded to. This is addressed in the next section of these comments.

Previously Submitted Comments

UPA's August 15, 2018 comment submittal on the Original Part H proposed rulemaking consisted of two principal enclosures as follows:

Part A, Fine Particulate Matter and Amend R307-110-10, October 30, 2018. We also incorporate those comments by this reference.

³ See Audio Recording of the October 3, 2018 Utah Air Quality Board meeting, available at the Utah Public Notice Website.

⁴ See Utah Department of Environmental Quality, Air Quality Rule and Plan Changes Open for Public Comment, Subject: Revisions to Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits, available at <https://deq.utah.gov/air-quality/air-quality-rule-plan-changes-open-public-comment> ("The only portions of this Revision open to public comment are highlighted in Red."). It is not clear exactly when this limitation was added to UDAQ's website.

Enclosure 1. UPA Comments, Revisions to Section IX, Control Measures for Area and Point Sources, Part H. Emission Limits, Major Stationary Source Precursor Demonstration & BACM for Residential Wood Combustion.

Enclosure 2. UPA Comments, Revisions to Section IX, Control Measures for Area and Point Sources, Part H. Emission Limits, Specific Comments on Parts H.1, H.2, H.11 & H.12

While UDAQ response to comments generally responded to the comments offered by UPA in Enclosure 1, the response did not address the comments offered in Enclosure 2.⁵ We understand that this may have been due to an oversight.

Because of the importance of the issues raised in Enclosure 2, we request that the Agency evaluate and respond to those comments. As noted above, we have incorporated those comments by reference. This request is consistent with the preceding section of these comments addressing the appropriate scope of public comment on the proposed Part H rulemaking.

PROVISIONAL ADOPTION OF PART H SUBJECT TO COMPLETION OF PRECURSOR DEMONSTRATION

In our previously submitted comments we noted the importance of the Board determining that the Part H controls are necessary for achieving attainment of the PM_{2.5} NAAQS. This is, of course, a requirement of the Utah Air Conservation Act.^{6,7}

As part of the UPA August Comments, UPA submitted a report by Ramboll that discusses the results of major stationary source precursor demonstrations performed for all four PM_{2.5} precursors.⁸ The precursor demonstrations are based on the same modeling tool that UDAQ is using to support its attainment demonstration. These demonstrations show that controlling any of these precursors from “major” sources would have an insignificant effect on PM_{2.5} levels. As explained more fully in previously submitted comments, UPA believes that

⁵ See UDAQ Memorandum to the Air Quality Board, from Bill Reiss through Bryce C. Bird Board, *PROPOSE FOR PUBLIC COMMENT: Amend SIP Subsection IX. Part H: Emission Limits and Operating Practices. Specifically Proposed for Amendment are Requirements in Subparts H. 1, 2, 11, and 12* (Sept. 24, 2018) (hereafter, *September Memo to the Board*), Attachment B, Response to Comments Received During the Previous SIP Subsection IX, Part H Comment Period.

⁶ Utah Code Ann. § 12-2-109(2)(a).

⁷ Likewise, UDAQ has identified this foundational requirement underlying the Board’s decision on Part H. See Memorandum by Bill Reiss to the UAQB, at p. 2, August 27, 2018, attached in Item 7 of the agenda/packet for the September 5, 2018 UAQB meeting (hereinafter the “September Memo to the Board”).

⁸ See Major Stationary Source Precursor Demonstration for NO_x, SO_x, VOC, and NH₃ in the Salt Lake City 24-hour PM_{2.5} Serious Nonattainment Area.

these precursor demonstrations show that *additional* precursor controls on major stationary sources are not necessary.⁹

In its response to the Ramboll precursor demonstrations, UDAQ has indicated its intention to complete its own analysis before approval of any precursor demonstration.¹⁰ To this end, we understand that UDAQ has initiated a precursor demonstration and is continuing with that effort at the time that these comments are being submitted. We appreciate UDAQ's efforts in this regard. We understand that this is a significant undertaking and that UDAQ is seeking input from EPA and it is likely that it will be several months before UDAQ can reach a definitive conclusion on its precursor demonstration efforts.

The importance of UDAQ concluding its own precursor demonstration cannot be overstated. The precursor demonstration represents an analytical approach utilizing the best tools available to making an informed assessment of precursor contributions. In this way, quantitatively grounded, it avoids speculation and provides a framework for the State to make consistent determinations about attainment demonstrations and control needs.¹¹

We also note that public comment of UDAQ's precursor demonstration will be required in order to comport with state and federal rulemaking procedures. In discussing the importance of public review and input pertaining to precursor demonstrations, EPA explained that:

[A]s required under any rulemaking process, the state ha[s] to consider and provide a response in the rulemaking record to any information or evidence brought forward by commenters during the state's SIP planning, development and review process. By ensuring that this important issue [submission of a precursor demonstration] [is] explicitly addressed and supported in any attainment plan ... submitted to the EPA, the EPA [can] better evaluate the precursor demonstration in accordance with its obligations under the CAA. The EPA believes these are sound procedural steps for a state rulemaking process, and the final rule includes similar language requiring public review of any proposed precursor demonstration.¹²

Accordingly, as a matter of Utah rulemaking law and the federal SIP requirements, UDAQ's completed precursor demonstration should be subject to public review and comment.

⁹ We emphasize *additional* because the adoption and ultimate approval by EPA of a precursor demonstration will address only whether additional controls on major stationary sources will be required for applicable precursors; current control requirements will remain in place and will not be unaffected by an approved precursor demonstration.

¹⁰ *September Memo to the Board*, Attachment B, Response to H-10, page 7, lines 41-42.

¹¹ While UDAQ has identified several concerns with the model's utility in assessing the significance of precursor contributions, we understand that the Agency continues to evaluate those concerns as it conducts its own precursor demonstration. Indeed, resolving such concerns has direct implications for the validity of the companion attainment demonstration which relies on the same modeling tool as the precursor demonstration.

¹² 81 Fed. Reg. 58024/3. In exercising its rulemaking authority, the Board is obligated to take action that "meet[s] the requirements of federal air pollution laws." Utah Code Ann. § 19-2-104(3)(b)(iii).

However, at the same time that UDAQ is working toward completing its own precursor demonstration, the Agency has expressed the need to continue with the rulemaking process required to implement BACT in the event that such additional controls are ultimately deemed necessary.¹³ UPA acknowledges that much effort has been undertaken to date in evaluating potential additional BACT control measures and we acknowledge the need for all necessary rulemaking to be completed timely. UPA believes that these efforts – UDAQ’s completion of its precursor demonstration and continued development of potential BACT – can and should proceed on parallel tracks.

Optimally, we believe it would be most appropriate for the Agency to have entirely completed its precursor demonstration – including notice and public comment – prior to making any decision on the Part H rulemaking. *However, to the extent that UDAQ determines, for administrative or other reasons, to proceed with a final rulemaking on the proposed Part H rulemaking, we urge the Agency to do so provisionally, making a revised Part H effective contingent upon the outcome of a final decision on the precursor demonstration.*

The Agency could follow an approach similar to that taken when the Board provisionally adopted an alternative offset requirement as part of the PM₁₀ SIP rulemaking. In adopting an alternative, more stringent PM₁₀ offsetting provision, the Board included a “transition provision” that provided that, “[the new] rule will become effective ... on the day that the EPA redesignates the county to attainment for PM₁₀. The [existing] PM₁₀ nonattainment area offset provisions in R307-403 will continue to apply until the EPA redesignates each county to attainment for PM₁₀.”¹⁴

For Part H, a similar transition provision could be used to make additional controls contingent upon final action taken on the precursor demonstration by the Board and, in turn, EPA (should the Board submit a precursor demonstration to EPA for approval). Following is an example of rule language that could be used to address the contingent nature of the proposed Part H revisions:

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as amended by the Utah Air Quality Board on *December 7, 2016*, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules, and shall remain in effect until such time as the Utah Air Quality Board or EPA takes final action to disapprove a precursor demonstration made in accordance with 40 CFR 51.1006, in which case The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as amended by the Utah Air Quality Board on *January 2, 2019*,

¹³ *September Memo to the Board* (“UDAQ recommends that the Board move forward with the BACM/BACT provisions by approving UDAQ’s recommendation in this memorandum. In addition to the procedural reasoning that the SIP is already behind the statutory due date for submittal, 2019 is the attainment year identified in the SIP.”)

¹⁴ See Utah Admin. Code R307-421-5.

pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

This, or some similar transitional approach, would accommodate the Utah Air Conservation Act, the Utah Administrative Rulemaking Act, and the CAA and federal SIP rulemaking requirements, should the Agency determine to conclude a final rulemaking on Part H prior to UDAQ completing its precursor demonstration including attendant public notice requirements.

UPA appreciates UDAQ's and the AQB's consideration of these comments. UPA and its members are available to discuss these comments with you and your staff.

Regards,

A handwritten signature in cursive script, appearing to read "Jennette King". The signature is written in black ink and is positioned above the printed name and title.

Jennette King,
Administrative Assistant

cc: Bill Reiss
Dave McNeill
Thomas Gunter