

**BEFORE THE EXECUTIVE DIRECTOR  
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF AIR QUALITY**

<p><b>In re: Intent to Approve: Waxy Crude Processing Project: N10335-0058 (UDAQEIN103350058-12) and Gasoline Loading Limit at TLR: N10335-059 (UDAQEIN103350059-12)</b></p> <p><b>Tesoro Refining and Marketing Company</b></p>	<p><b>ORDER ADOPTING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED DISPOSITIVE ACTION</b></p> <p>November 17, 2014</p>
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**BACKGROUND**

On September 9, 2014, the administrative law judge issued *Findings of Fact, Conclusions of Law, and Proposed Dispositive Action* pursuant to Utah Code Ann. §19-1-301.5 and Utah Admin. Code R305-7 in a permit review adjudication proceeding concerning the following Division of Air Quality approval orders:

1. DAQE-AN103350058-12; Approval Order: Waxy Crude Processing Project.
2. DAQE-AN103350059-12; Approval Order: Removal of gasoline loading limit at Transfer Loading Rack under the Waxy Crude Processing Project.

When an administrative law judge submits a proposed dispositive action, the Executive Director may adopt, adopt with modifications, or reject the proposed dispositive action; or return the proposed dispositive action to the administrative law judge for further action as required. Utah Code Ann. § 19-1-301.5(13)(a). The Executive Director is required to uphold all factual, technical, and scientific agency determinations that are supported by substantial evidence taken from the record as a whole. Utah Code Ann. § 19-1-301.5(13)(b).

Having reviewed the *Findings of Fact, Conclusions of Law, and Proposed Dispositive Action* and the accompanying record, I am satisfied that the factual, technical, and scientific agency determinations are supported by substantial evidence taken from the record as a whole. The opportunity for EPA's review and comment added an additional layer of protection. As stated in the *Findings of Fact, Conclusions of Law, and Proposed Dispositive Action* at p. 40: "In this permit review adjudicative proceeding, we have a somewhat unusual situation in administrative law where not one but two regulatory agencies [EPA and DAQ] with significant technical expertise and concurrent (and somewhat overlapping) legal jurisdiction have been involved in the procedural and substantive process that led to the issuance of the permits. This situation provides a second layer of regulatory oversight to ensure that the applicable procedural and substantive requirements of the CAA [Clean Air Act], as adopted and enforced through the Utah Air Conservation Act in the spirit of "cooperative federalism," have been met." *Id.*

I am also satisfied that Petitioners failed to carry their burden of proof to demonstrate that the factual, technical, and scientific agency determinations are *not* supported by substantial evidence taken from the record as a whole because the Petitioners failed to marshal the evidence. I am bound by the same standard of review as the appellate court concerning factual determinations. See Utah Code Ann. § 19-1-301.5(14)(c)(ii). Therefore the appellate court's marshaling requirement is pertinent. I am satisfied that the marshaling standard adopted by the administrative law judge did not result in a procedural default upon failure to marshal the evidence "because the requirement to marshal is 'a natural extension of an appellant's burden of persuasion' and 'a party who fails to identify and deal with supportive evidence will never persuade an appellate court to reverse under the deferential standard of review that applies 'to challenges to the sufficiency of the evidence supporting a factual finding. *Id.* . . . ." *Findings of Fact, Conclusions of Law, and Proposed Dispositive Action* at p. 13, 14 quoting *State v.*

Nielsen, 2014 UT 10 at ¶¶ 40–41 326 P.3d 645 (released April 29, 2014). I am also satisfied that the Petitioners have not met their burden of proof as they fail to show that the Division of Air Quality's determinations were not rational based on evidence in the record. The Petitioners' reliance on categorical arguments, not tied to the specific facts of the case, is not persuasive and not substantiated by facts as to these particular permits

**ORDER**

WHEREFORE, I adopt the *Findings of Fact, Conclusions of Law, and Proposed Dispositive Action*. For the reasons stated therein, I affirm the Division of Air Quality's decision to issue the approval orders described above and I order the dismissal with prejudice of each of the Petitioners' arguments.

**NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Judicial review of this final order may be sought in the Utah Court of Appeals in accordance with Sections 63G-4-401, 63G-4-403, and 63G-4-405 of the Utah Code Ann. and the Utah Rules of Appellate Procedure by filing a proper petition within thirty days after the date of this order.

DATED this 17 day of November, 2014.



AMANDA SMITH  
Executive Director  
Utah Department of Environmental Quality

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of November, 2014, I caused a copy of the *Order Adopting Findings of Fact, Conclusions of Law, and Proposed Dispositive Action* to be sent by electronic mail to the following:

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