



D a v i s G r a h a m & S t u b b s L L P

MEMORANDUM

TO: Andrew Spielman, Ken Lloyd and Members of the Regional Air Quality Council
FROM: John R. Jacus on behalf of Anadarko, Noble, Williams and Whiting
CC: Paul Tourangeau, APCD
DATE: September 8, 2008
RE: Additional comment on elements of proposed draft State Implementation Plan (SIP) for Ozone Attainment and related Ozone Action Plan

I am writing on behalf of our clients Anadarko Petroleum Corporation, Noble Energy, Inc., Williams Production RMT, and Whiting Petroleum Company (the “Commenting Parties”) to provide you with additional comments regarding the proposed draft SIP that you will evaluate for recommendation to the Air Quality Control Commission at your meeting later today. We appreciate this opportunity to comment and hope to make a number of additional comments at the meeting, as well.

As you may recall, apart from our comments on the draft Scope of Work and Protocol for Modeling submitted late last year, some of the earliest written comments we have provided on the ozone SIP development process were in a memo identifying a number of “guiding principles” for ozone SIP development. We remain committed to those guiding principles identified last March, and based upon those principles we believe certain aspects of the proposed draft SIP should be revised to reflect the latest photochemical modeling and source apportionment results. Those aspects of the draft SIP that we do not support and suggest revising, and our rationale for doing so, are set forth more specifically below.

Among the most important of the identified guiding principles are the commitment to using the best available data and awaiting the results of source apportionment and modeling sensitivity analyses to select control strategies. This has not been done in certain important respects with the development of the current draft SIP. We are certainly sympathetic to the scheduling constraints and resource constraints of this effort, but to now recommend a SIP which is at odds in certain very important ways with the source apportionment and sensitivity analyses is entirely avoidable, and ultimately will yield a less effective ozone SIP.

In particular, we note that source apportionment results only made available last Thursday, September 4, 2008, at the last ozone stakeholder meeting¹, revealed that the vast majority of ozone attributed to identified source categories within the non-attainment area (“NAA”) is derived from NO_x rather than from VOCs. This is a very significant discovery, and one that is not properly reflected in the mix of ozone control strategies proposed for inclusion in

¹ We again thank RAQC and APCD staff and their contractors for preparing and hosting these important meetings.

the 2010 ozone SIP or related Ozone Action Plan for possible adoption of state-only controls. The presentation given at this meeting is attached for your reference.

For example, as reported to the RAQC and stakeholders in the modeling contractors' August 20, 2008, presentation, VOC reductions dominate this SIP, and NOx reductions are modest, at best. The modeling results indicate that more local (within the NAA) NOx reductions, coupled with additional VOC reductions, is the more effective control mix for ozone attainment. The RAQC's contractor, Dennie McNally, has also noted that reducing precursors in a lopsided fashion would inject more uncertainty into the use of modeling results in this effort. Thus, although we support many aspects of the draft SIP we do not support the following:

- 95% threshold control of condensate tanks within the non-attainment area: Ninety percent systemwide control would achieve much the same result, provide operator flexibility, and does not run the risk, unaddressed by RAQC and APC staff, of trading VOC reductions for NOx increases as smaller and smaller condensate tank emissions are subject to rigid flaring requirements. Staff has also not addressed the greenhouse gas disbenefit of this approach, since the composition of condensate in the Wattenberg field is uniformly less than 30% mole weight of methane.
- Adoption of a state-only requirement to control natural gas fired reciprocating internal combustion engines ("RICE"): This is the least likely control strategy to produce NOx benefits in the non-attainment area. If NOx emission reductions are to be obtained within the SIP or the Ozone Action Plan, they should be focused upon the most significant contributors of NOx emissions to ozone formation, as shown by the source apportionment results from photochemical modeling, not the least significant. We suggest that non-road engines in the NAA, across all source categories, now be considered for additional controls. We also suggest the computer chip "reflash" of 90's era diesel motor vehicles be examined as an additional control strategy for delivering local (within the NAA) NOx reductions from a major source category that is likely to better match the SIP's control strategies to the source apportionment results. See the attached Wisconsin DOT report on its Diesel Reflash Program. We also urge the RAQC to defer any recommendation regarding statewide RICE controls until other statewide sources of NOx are evaluated. The RAQC's focus on NOx emission reductions for ozone attainment should be entirely within the non-attainment area, since the purpose of its recommendation is to demonstrate attainment with the 8-hour ozone NAAQS.
- The Commenting Parties also oppose the Division's approach to condensate controls as unnecessarily complex and cumbersome, creating existing, modified and new sources in order to accommodate the proposed threshold approach to regulation. We also continue to object to any revision of the definition of modified source with respect to condensate tanks to include a well frac or refrac as modifying an existing well or condensate tank serving

that well unless such fracing or refracing results in a net increase in emissions above the originally permitted or APENed emissions level. This latter qualification is protective of the environment because it requires the original registration and/or permitting of condensate tanks to reflect the highest levels of production when a well is initially brought into production, and does not exempt condensate tanks from being considered “modified” if future modifications of a well result in a net emissions increase above those initial permitted or registered levels. Well reworking and fracing that do not result in emissions above initially permitted or registered levels should not be considered a modification, as this will only generate lots of paperwork and results in no benefit to the environment.

- The Commenting Parties also endorse the comments of certain members of the North Front Range Metropolitan Planning Organization (“NFRMPO”), in urging APCD and the RAQC to bring about more rapid implementation of the high-emitter motor vehicle enforcement program both in the Denver Metropolitan Area and in the North Front Range program area to deliver more significant NOx, VOC and CO emission reduction benefits relative to ozone formation, especially given the significant contributions from the on-road mobile source sector to ozone formation in the non-attainment area.

The Commenting Parties have previously requested the opportunity to work with RAQC staff, APCD staff and their contractors and to fund additional modeling analyses of these alternatives to elements of the proposed draft SIP. We remain interested in performing this work in cooperation with RAQC and APCD staff and their contractors, but have not wanted to interfere with the important ongoing work of those contractors to deliver information necessary to begin the rulemaking process. We remain hopeful that we will be able to provide comparable photochemical modeling analyses to support these recommendations and comments in a timely fashion to the Air Quality Control Commission, the RAQC, APCD, the NFRMPO and other interested stakeholders and parties to the rulemaking.

We appreciate, once again, the opportunity to submit these comments, and also thank the RAQC’s council members for their thoughtful attention to these issues.