

Matt J. Micheli, P.C., WY Bar No. 6-3839  
Macrina M. Jerabek, WY Bar No. 7-5757  
HOLLAND & HART LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175  
mjmiceli@hollandhart.com  
mmjerabek@hollandhart.com

ATTORNEYS FOR PETITIONER  
CITATION OIL & GAS CORP.

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

In the Matter of: )  
Citation Oil & Gas Corp. ) Docket No. 20-2601  
Air Quality Permit No. P0027427 )  
Through Permit No. P0027433 )

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**CITATION OIL & GAS CORP.'S MOTION TO TEMPORARILY  
STAY PERMIT CONDITIONS**

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Petitioner Citation Oil & Gas Corp. (“Citation”), by and through undersigned counsel, hereby requests that the Wyoming Environmental Quality Council (the “Council”) temporarily stay the permit conditions at issue in Citation’s Petition for Review of Permit Nos. P0027427 through Permit No. P0027433 and extend the associated compliance deadlines pending final resolution of this matter. Citation has requested an administrative stay of these permit conditions from the Wyoming Department of Environmental Quality (the “DEQ”), Air Quality Division (“AQD”), and sought AQD’s position on this motion. To date, AQD has not granted an administrative stay and stated through counsel that it will oppose this motion.

In support of this motion, Citation states as follows:

## INTRODUCTION

The sole question before the Council is whether Citation's facilities must comply with one category of permit conditions contained in seven minor source air permits issued by the AQD.<sup>1</sup> The Wyoming Environmental Quality Act affords Citation the right to bring this appeal. Wyo. Stat. Ann. § 35-11-208(a). The Act also grants this Council the authority to hear and decide the appeal. *Id.* § 35-11-112(a). If the Council finds for Citation, it is authorized to grant the relief requested by modifying the permits and vacating the contested conditions. *Id.* § 35-11-112(c)(ii). That is the design of the Act. It affords a process through which adversely impacted individuals may seek relief, and the Council may intervene when it determines the DEQ, through AQD, acted improperly in the issuance of air quality permits.

Contrary to the mandates of the statute, however, AQD appears to suggest that Citation has no right to a meaningful appeal and this Council has no authority to protect operators like Citation from AQD's unlawful agency action during the pendency of an appeal. AQD's suggestion is rooted in its demand that, despite Citation's appeal of the legality of the contested permit conditions and the ongoing nature of this appeal, Citation must achieve compliance with these conditions before the Council has an opportunity to decide whether the law requires compliance. If AQD has its way, Citation will be forced to suffer the exact irreparable harm it is seeking to avoid through this appeal *before* it is afforded an opportunity to be heard. Accordingly, absent this Council's immediate intervention, Citation will be denied an avenue for relief and deprived of its fundamental right to due process. Citation, therefore, requests a limited stay of the contested permit conditions in the seven permits at issue and an extension of

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<sup>1</sup> Citation is requesting a stay of Conditions 7 through 13 of Permit Nos. P00275427, P00275428, P00275429, P00275430, P00275431, P002754232, and P00275433.

associated compliance dates by the number of days between the filing date of the petitions for review and a final decision in this appeal.

## **BACKGROUND**

Citation's Motion for Summary Judgment, submitted contemporaneously herewith and incorporated herein, provides a robust description of the factual background and issues in dispute. Accordingly, Citation provides herein only a brief overview of the relevant facts and issues presented.

In July 2020, Citation petitioned this Council to review seven minor source permits which include permit conditions mandating Citation comply with Presumptive Best Available Control Technology ("PBACT") requirements for new or modified sources pursuant to AQD's 2018 Oil and Gas Production Facilities Chapter 6, Section 2 Permitting Guidance ("2018 Guidance"). As such, the permits impose strict federal New Source Performance Standard requirements for Leak Detection and Repair ("LDAR") on existing facilities owned and operated by Citation that would not otherwise be subject to such requirements.

Subpart OOOOa requires fugitive emissions components to be monitored on a semi-annual basis utilizing optical gas imaging or Method 21. Critically, the number of pieces of equipment required to be inspected under Subpart OOOOa is substantial, as "fugitive emissions components" are:

[A]ny component that has the potential to emit fugitive emissions of methane or VOC at a well site or compressor station, including but not limited to valves, connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems . . . thief hatches or other openings on a controlled storage vessel.

40 CRF § 60.5430a. In addition to requirement to comply with the federal Subpart OOOOa requirements, the permits also purport to impose separate, quarterly LDAR inspections. *See* Permit Nos. P0027427 through P0027433, Conditions 7-12. The burden of implementing these

monitoring requirements is substantial. In addition to identifying thousands of individual fugitive components and developing and implementing LDAR plans to monitor these components, Citation must purchase equipment, hire and/or train employees or contractors, visit discrete or remote locations, establish new recordkeeping systems, perform continuing field audits, and incur costs associated with repair or replacement of any leaking components.

Absent a stay, Citation will be required to shoulder that burden and spend hundreds of thousands of dollars complying with permit conditions that—as detailed in Citation’s Motion for Summary Judgment—as a matter of law, do not apply to Citation’s facilities. DEQ, through its AQD, acted outside its authority and in violation of the Wyoming Administrative Procedure Act (“WAPA”) by imposing these permit conditions. Accordingly, there is a likelihood that this Council will modify the permits and vacate the improper conditions. To require that Citation comply with the permit conditions during the pendency of this appeal undermines this entire administrative process and will cause Citation significant and irreparable harm.

#### **STANDARD OF REVIEW**

There are two relevant considerations in determining whether to stay agency action pending appeal: (1) the likelihood that the moving party will prevail on the merits; and (2) the prospect of irreparable injury to the moving party if relief is withheld. *See The Tavern, LLC v. Town of Alpine*, 395 P.3d 167, 177 (Wyo. 2017); *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.*, 215 P.3d 1054, 1057–58 (Wyo. 2009).<sup>2</sup> Such equitable relief is intended to “preserve the status quo until the merits of an action can be determined,” and “rests upon an alleged existence

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<sup>2</sup> Unlike the federal standard, which requires the added assessment of possible harm to other parties if relief is granted and an evaluation of public interest, *see Greater Yellowstone Coalition v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003), Wyoming law only requires an evaluation of the two primary factors. *Weiss*, 434 P.2d at 762. However, even under the more expansive federal standard, Citation is entitled to the relief it seeks as discussed below.

of an emergency, or a special reason for such an order, before the case can be regularly heard.” *Weiss v. State*, 434 P.2d 761, 762 (Wyo. 1967). These same principles apply to the Council. In order to preserve its own authority to hear appeals and issue meaningful orders, the Council must have the authority to “preserve the status quo” while the appeal is pending.

## ARGUMENT

### I. Citation Is Likely to Prevail on the Merits

Citation is likely to succeed on the merits of this appeal. As fully articulated in Citation’s Motion for Summary Judgment, AQD’s imposition of 2018 PBACT requirements and thus fugitive emissions monitoring requirements on Citation’s facilities is, as a matter of law, improper. Citation articulates two primary arguments in its Motion for Summary Judgment. Both are discussed briefly below. For a more complete discussion on the merits of the case, the Council can turn to the Motion for Summary Judgment previously filed.

#### A. AQD’s expansion of “modification” is arbitrary and capricious and cannot be enforced through non-binding guidance.

AQD relies exclusively on non-binding, interpretive guidance to expand the definition of “modification” under DEQ’s current standards and impose additional regulatory burdens on operators like Citation. A “modification” under Wyoming Air Quality Standards and Regulations (“WAQSR”) requires there be a “physical change in, or change in the method of operation of, an affected facility **which increases the amount of any air pollutant.**” WAQSR Ch. 1 § 3 (emphasis added). As such, the current rules unequivocally require there be an increase in emissions for a facility to qualify as modified. Despite that clear requirement, in its 2018 Guidance, AQD establishes a new definition of “modification” that simply omits the requirement

for an increase in emissions.<sup>3</sup> AQD relies on that new definition to now arbitrarily impose fugitive emissions monitoring requirements on Citation.

Nothing in the law allows an agency to use interpretive guidance to circumvent the Wyoming Administrative Procedure Act (“WAPA”) and impose added regulatory burdens on regulated entities. A general statement of policy (such as the 2018 Guidance) is not a binding rule and is not “valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed with the registrar of rules and made available for public inspection as required by” WAPA. Wyo. Stat. §§ 16-3-102(b), 103. Under the appropriate definition of modification—the definition contained in DEQ’s current rules and regulations—the contested permit conditions simply cannot apply.

Instead, the data illustrates that after each of the physical changes, production increases never approached historic levels and production quickly declined over a matter of months. **Exhibit A**, Redweik Dec. ¶ 5; *see also* **Exhibit B**. Emissions necessarily track production; therefore, emissions on a year-over-year basis did not exceed previous annual emissions associated with the historic oil production. Redweik Dec. ¶ 6. Ultimately, absent the requisite increase in emissions, these events cannot constitute “modifications” as defined under Wyoming Air Quality Regulations. The permit conditions are, as a matter of law, inapplicable and AQD acted outside the confines of its statutory authority when it included them in the seven minor source permits. AQD’s decision is per se arbitrary and capricious, contrary to law, and cannot stand.

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<sup>3</sup> The 2018 Guidance defines modification as: “[O]nce production streams or production equipment associated with another well or wells is added to or tied into it. The date modification occurs to an existing facility is the First Date of Production for the added well or the date the production streams associated with an additional well or wells are tied into equipment at the existing facility.” 2018 Guidance, p. 50.

**B. Even if the facilities were modified, the 2018 Guidance is nevertheless inapplicable.**

Even if the facilities had been modified as AQD alleges, which they were not, the 2018 Guidance's PBACT permitting requirements are nevertheless inapplicable. Per its own terms, the 2018 Guidance applies *only* to "facilities with associated wells that have a first date of production (FDOP) on/after **February 1, 2019** and to facilities with a modification occurring on/after **February 1, 2019**." 2018 Guidance, p. 2 (emphasis in original). Yet, none of the facilities at issue here were modified or had a first date of production on or after February 1, 2019. See *Permit Application Analysis Documents*, Permit Nos. P0027427-33. The appropriate prior years' guidance must, therefore, apply to these facilities.

There are significant differences between the requirements contained in each years' guidance. Notably, the 2018 Guidance is the only guidance document containing fugitive emissions monitoring requirements for sources located in the statewide area under the proscribed PBACT. AQD's arbitrary application of its 2018 Guidance to these facilities appears to be based on an unwritten, internal "policy" to utilize the guidance document in effect at the time AQD receives an application—not based on the time a modification actually occurred. AQD then mandates operators comply with the PBACT requirements articulated in that most current document.

AQD is simply not at liberty to rely on unwritten, internal policy to arbitrarily impose PBACT requirements at its sole discretion. Administrative law is designed to prevent that exact type of inherently arbitrary, ad hoc determination. See *Morton v. Ruiz*, 415 U.S. 199, 232, 94 S. Ct. 1055, 1073 (1974).<sup>4</sup> AQD is obligated to give operators fair warning of the conduct it

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<sup>4</sup> "In situations where the Wyoming Administrative Procedure Act contains provisions similar to those of the federal Administrative Procedure Act, we have recognized the persuasive authority of federal precedent." *Mountain Reg'l Servs.*, 326 P.3d at 184, n.2.

prohibits or requires. The failure to do so, and the attempt to impose additional regulatory burdens<sup>5</sup> on regulated entities absent any notice, violates the most basic tenets of due process.

AQD's subjective application of these requirements is the exact type of unconstrained power that the law precludes. Any attempt to exercise such unfettered power is per se arbitrary and capricious. For these reasons, and those fully articulated in Citation's Motion for Summary Judgment, Citation is likely to prevail on the merits of this appeal.

## **II. Citation Will Suffer Irreparable Harm if a Stay is Not Granted and the Compliance Deadlines are Not Extended**

If the challenged permit conditions are not stayed, and compliance deadlines are not extended, Citation will be forced to undertake immediate actions and expend hundreds of thousands of dollars during the course of this appeal to comply with the challenged permit conditions. Redweik Dec. ¶¶ 9, 12-14, 16. Those efforts and resources, in turn, will be completely wasted if the Council ultimately decides AQD's actions were arbitrary and capricious and vacates the contested permit conditions. *Id.* ¶ 18.

Citation cannot wait until the completion of this appeal to begin the work associated with ensuring compliance. *Id.* ¶ 9. Timely compliance requires that Citation immediately hire technical support to begin identifying fugitive emissions components at each of the subject facilities, developing an emissions monitoring plan, and undertaking site visits. *Id.* ¶ 10. Fugitive emissions components encompass "any component that has the potential to emit fugitive emissions of methane or VOC" at a facility, and include any and all "valves, connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems . . . thief hatches or other openings on a controlled storage vessel." 40 C.F.R § 60.5430a. These facilities

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<sup>5</sup> Burdens that, if not complied with, will result in civil penalties.



and associated wells contain thousands of individual fugitive emissions components, including valves, connectors, flanges, and pressure relief valves. Redweik Dec. ¶ 11.

The burden associated with even identifying, let alone implementing monitoring protocols for each applicable component, will be substantial. In order to identify each component, Citation will be required to hire a consultant to undertake a separate multi-day review of each facility. Citation anticipates that creating an inventory of fugitive emissions components would cost approximately \$20,000 per facility for a total of approximately \$140,000. *Id.* ¶ 12.

Once identified, Citation must develop an emissions monitoring plan as set forth in Subpart OOOOa, including a comprehensive database to track each component. Citation will be required to develop and implement monitoring schedules, training programs, and recordkeeping at each of these facilities. Citation anticipates this effort will cost approximately \$25,000 in total and would need to be completed during the pendency of this appeal. *Id.* ¶ 13.

Citation will also be forced to expend significant time and resources training or hiring employees or contractors, obtaining additional equipment, and visiting discrete or remote locations during the winter months. Citation anticipates each site visit to perform monitoring at each separate facility would cost approximately \$4,500 for a total of \$31,500 and that site visits would be necessary during the pendency of this appeal. *Id.* ¶ 14. At the ground level, to the extent that emissions leaks are identified, Citation must physically tag the components with unique identification numbers and repair or replace the leaking components. *Id.* ¶ 15. Once the monitoring program is established, Citation will carry continuing costs associated with required quarterly field audits of all fugitive components at each facility. *Id.* ¶ 16. Ultimately, the burdens associated with compliance are significant and will be exacerbated by the ongoing COVID-19

pandemic, which is resulting in difficulties in managing resources necessary to achieve compliance. *Id.* ¶ 17. Yet, if Citation takes these measures and ultimately prevails in this appeal, all its resources spent achieving compliance will have been for nothing.

Citation will have no recourse to recover its significant losses. AQD, as a sovereign agency, will bear none of the cost. *See, e.g., Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 220- 21 (1994) (“complying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs”) (Scalia, J., concurring) (emphasis in original); *Chamber of Commerce v. Edmonson*, 594 F.3d 742, 770-71 (10th Cir. 2010) (“[i]mposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury”). Ultimately, Citation will be left irreparably harmed, without any available recourse. That outcome is far from what the Wyoming Environmental Quality Act contemplates and should not be allowed by this Council.

### **III. Addition Considerations**

Unlike the federal standard for determining whether a stay is appropriate, Wyoming law does not require the Council to evaluate public interest considerations or the relative harm to the nonmoving party. *Weiss*, 434 P.2d at 762. Even if the more expansive federal standard were applied, however, all possible factors still weigh in Citation’s favor.

First, the facilities at issue in this appeal are each oil tank batteries and associated equipment that service vertical wells drilled as early as 1900. Redweik Dec. ¶ 5. The wells that produce to these facilities are generally referred to as stripper wells based on their individual low production volumes, typically less than 15 barrels of oil per day. *Id.* A review of Citation’s historic oil production data for these facilities clearly demonstrates that these wells are in decline and production has not increased on a year-over-year basis in decades. *Id.*; *see also* Ex. B

(Historic Oil Production Data). The emissions associated with these wells are also comparatively low, and emissions of Volatile Organic Compounds do not exceed 7 tons per year for any of the facilities at issue in this appeal. Redweik Dec. ¶ 6.

Second, if AQD's allegations are taken as true, the "modifications" at issue occurred as much as twelve years ago.<sup>6</sup> Yet under the federal regulatory scheme that AQD seeks to impose upon Citation, these wells have been neither "modified" nor "reconstructed" and therefore the fugitive monitoring requirements would not be applicable to these facilities *but for* AQD's imposition of illegal permit conditions. If federal New Source Performance Standards do not apply to facilities such as those subject to this appeal, the harm of staying a Wyoming mandate to comply with these requirements should not outweigh the harm to Citation.

Finally, Citation is not requesting a stay of the entirety of the permits at issue or a significant extension of compliance deadlines in the event the Council denies Citation's petitions for review. If Citation does not prevail, the stay will be lifted, and Citation will be required to comply with the permit conditions. Such a brief extension imposes no harm on DEQ, nor its AQD, and the possible harm to Citation far outweighs any possible harm to the State.

This proceeding is the *only* procedural safeguard available to operators like Citation. There is no alternative; the Council is the only body entitled to hear this matter and render the relief requested. The public has an interest in ensuring fairness in the administrative process and protecting oil and gas operators, or other impacted individuals, from suffering significant harm as a result of unlawful agency action. The public also has an undeniable interest in ensuring

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<sup>6</sup> Significantly, if these facilities were modified as AQD asserts, they nevertheless complied with PBACT at the time of those "modifications." Each facility was equipped with flares, serving as the appropriate control technology under the previous years' guidance. As such, the question here centers on agency policy and permitting timelines, not environmental harm. If environmental harm were the focus, the absence of any overall increase in emissions as discussed above and reflected in Exhibit B continues to support Citation's position.

continued energy production for the state of Wyoming. Simply put, no matter the standard applied, Citation is entitled to the relief it requests.

#### CONCLUSION

For these reasons, Citation respectfully requests the Council temporarily stay permit conditions 7 through 13 of Permit Nos. P00275427, P00275428, P00275429, P00275430, P00275431, P002754232, and P00275433 and extend associated compliance deadlines for each day until the Council is able to resolve this matter on its merits.

Dated December 2, 2020.



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Matt J. Micheli, P.C., WY Bar No. 6-3839  
Macrina M. Jerabek, WY Bar No. 7-5757  
HOLLAND & HART LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175  
mjmicheli@hollandhart.com  
mmjerabek@hollandhart.com

ATTORNEYS FOR PETITIONER CITATION  
OIL & GAS CORP.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this December 2, 2020, in accordance with the requirements of Chapter 2, Section 4(a) of the Department of Environmental Quality Rules of Practice and Procedure, this Citation Oil Corp.'s Motion for Summary Judgment was filed via hand delivery on:

Chairman of the Environmental Quality Council,  
2300 Capitol Ave.  
Hathaway Bldg. 1st, Room 136  
Cheyenne, WY 82002

and served via registered mail, return receipt requested, on the following, and delivered by hand as well:

Todd Parfitt  
Director of the Department of Environmental Quality  
200 West 17th Street  
Cheyenne, WY 82002

Nancy E. Vehr  
Administrator of the Air Quality Division  
Department of Environmental Quality  
200 West 17th Street  
Cheyenne, WY 82002

James Kaste  
Callie Papoulas  
Deputy Attorney General State of Wyoming  
123 Capitol Building  
Cheyenne, WY 82002



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