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**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. P00274233** )

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**AFFIDAVIT OF NANCY VEHR**

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Nancy Vehr, being first duly sworn, deposes and states of her own knowledge:

1. I am the Air Quality Division (Division) Administrator for the Wyoming Department of Environmental Quality (Department). I have knowledge of the facts set forth herein either from my own personal knowledge, or from the records of the Department, and am competent to testify thereto.

**Education, and Relevant Experience**

2. I graduated with a Bachelor’s of Science Degree in Nursing from Creighton University in 1984. I worked as a nurse until after I graduated from law school. I continue to maintain my Colorado RN License.

3. In 1999, I graduated with a Juris Doctorate from the University of Wyoming, College of Law. I have been licensed to practice law in Colorado and Wyoming since 1999. I have also been admitted to practice before several federal District and Appellate Courts, including the Districts of Colorado, Wyoming, Ninth, Tenth, and D.C. Circuits.

4. Since 1999, I have been or currently am a member of several legal or air quality associations including the Wyoming State Bar; the Laramie County Bar; American Bar Association, Section of Environment, Energy and Resources; Rocky Mountain Mineral Law Foundation; and Ewing T. Kerr Inns of Court. In addition to membership, I have served in leadership roles for the Wyoming State Bar as the Secretary /Treasurer for the Energy and Natural Resources Section (2015-2016); for the Ewing T. Kerr Inns of Court as Vice-President and President (2016-2018); for the Western States Air Resources Council (WESTAR) as Treasurer, Vice-President, and President (2016-2019); and for the Association of Air Pollution Control Agencies (AAPCA) as Vice-President, President, and Past-President (2017-2020).

5. Also in 1999, I started work at the Wyoming Attorney General's Office as an Assistant Attorney General. In 2006, I was promoted to Senior Assistant Attorney General and remained in that position until June, 2013. Over the course of fourteen years, I represented a variety of State agencies including the Office of Medicaid (1999-2001); the Board of Land Commissioners, the State Loan and Investment Board, and the Office of State Lands and Investments (2001-2003); and the Wyoming Department of Environmental Quality, Air Quality Division (WDEQ/AQD) (2003-2013).

6. As an Assistant Attorney General representing the WDEQ/AQD, I provided

day-to-day legal advice; reviewed and analyzed agency rules, regulations, and policies; brought administrative and civil judicial enforcement actions on the State's behalf; engaged in settlement negotiations; represented the State's interests in NEPA (National Environmental Policy Act) cases before the Interior Board of Land Appeals (IBLA) and in Federal District Court; and brought or defended agency actions before the Wyoming Environmental Quality Council (EQC) and in State and Federal District Courts. Some of those actions involved oil and gas air quality rules, regulations, permit appeals, and enforcement matters. During the period of time that I represented the WDEQ/AQD, the agency also revised its Oil and Gas Presumptive Best Available Control Technology (PBACT) guidance on three occasions – 2004, 2007, and 2010.

7. In June of 2013, I entered private practice, joining the Wyoming law firm of Hickey & Evans as Special Counsel. While at Hickey & Evans, I represented clients on a variety of issues, including but not limited to environmental and air quality matters, and appeared before administrative agencies, state and federal trial and appellate courts.

8. In November of 2015, I was hired as and continue to be the Administrator of the WDEQ/AQD. In this capacity, I oversee and manage Division operations and personnel, including site inspections, compliance and enforcement activities; environmental audits; air quality planning, monitoring, and emission inventories; stationary source construction and operating permitting; development and implementation of air quality rules, regulations, and state plans; and review and comment on proposed federal regulations affecting air quality. I also interact with other state and federal agencies that regulator or impact the energy industry including, but not limited to, the Wyoming Oil



and Gas Conservation Commission (WOGCC), the Wyoming Public Service Commission (PSC), the Environmental Protection Agency (EPA), the U.S. Forest Service, and the Bureau of Land Management (BLM). Specifically, I advise the Director of the Department on air quality issues associated with energy development that may affect the agency, the State, and Wyoming industry.

9. Additionally, I have been a speaker, presenter, or have provided congressional testimony on several air quality environmental topics including: Air Quality Challenges Facing the Natural Resources Industry in the Western United States, Review of State Minor Source Permitting Programs (RMMLF 2007); Clean Air Act Update – Key Enforcement and Regulatory Developments in US EPA Region 8 (American Bar Association Section of Environment, Energy, and Resources 2009); Air Quality Issues Affecting Oil, Gas, and Mining Development in the West, State Air Program Developments (RMMLF 2013); Defending Wyoming’s Primacy and Energy Industry in the U.S. Supreme Court and the D.C. Circuit Court of Appeals (Laramie County Bar 2014); Is EPA’s Denial of State Developed Plans Backdoor Greenhouse Gas Regulation (University of Wyoming College of Law’s Center for Law and Energy Resources in the Rockies 2014); The Balance of Power – Hot Topics in Environmental Regulation and Cooperative Federalism (Wyoming State Bar Annual Meeting 2014); What Wyoming Practitioners Need to Know About Recent Energy & Environmental Regulations (Wyoming State Bar Annual Meeting 2016); H.R. 806, Ozone Standards Implementation Act of 2017 (House Committee on Energy and Commerce, Subcommittee on Environment, March 22, 2017); State Perspectives on Air Quality Planning and Enforcement (Davis

Graham and Stubbs' Air Quality Summit 2017); Ozone in the West: Do We Have the Right Tools in Our Toolbox? (RMMLF 2018); Cooperative Federalism Under the Clean Air Act: State Perspectives (Senate Committee on Environment and Public Works, April 10, 2018); EPA and State Environmental Policies to Address Environmental Compliance During the COVID-19 Pandemic (RMMLF 2020); and Wildfires – Air Quality and Policy Updates (Council of State Governments 2020).

10. Since November 2015, I have participated in, reviewed, and/or approved various matters developed or analyzed by the Division's New Source Review (NSR) Construction Permitting Program including the development and issuance of the Division's PBACT Guidance.

11. Since 2015, I have participated in, reviewed, and/or approved various matters specific to Citation, including, but not limited to:

- Notice of Violation Docket No. 5776-17 issued by DEQ/AQD to Citation.
- Environmental Audits conducted and submitted by Citation to the DEQ/AQD denoted as Compliance Report Nos. CRPT029707, CRPT029732, CRPT029736, CRPT029737, CRPT029738, CRPT029741, CRPT029742, and CRPT029743.
- Permit Applications submitted by Citation including:
  - A0009803/P0027427 for the Dallas Dome Tank Battery (F003333)
  - A0008234/P0027433 for the Embar 1 Tank Battery (F004573)
  - A0008253/P0027428 for the Embar 3 Tank Battery (F006413)

- A0008256/P0027429 for the NWD 1 Tank Battery (F004577)
- A0008260/P0027430 for the NWD 2 Tank Battery (F004576)
- A0008248/P0027431 for the Tensleep 1 Tank Battery (F004571)
- A0008249/P0027432 for the Tensleep 2 Tank Battery (F004572)

### **NSR Permitting**

12. Air pollution emissions associated with producing oil and natural gas wells are subject to regulation under the Wyoming Air Quality Standards and Regulations (Air Quality Rules), including air quality permitting.

13. The permitting requirements are contained in Chapter 6 of the Air Quality Rules. All new and modified oil and gas production facilities are subject to these permitting requirements.

14. Chapter 6, Section 2 outlines permit requirements for construction, modification, and operation of minor sources, and it requires operators to submit permit applications if the changes they propose to make at a facility have the potential to increase emissions.

15. The permitting requirements contained in Chapter 6, Section 2(a)(i) of the Air Quality Rules prescribe that “Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality before any actual work is begun on the facility.” *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 6, § 2(a)(i).

16. The Air Quality Rules also prescribe that permit applications be submitted on forms provided by the Division, contain certain information, and may require additional information to be submitted. *See Id.*, ch. 6, § 2(b)(i).

17. The permitting requirements contained in Chapter 6 Section 2(c) of the Air Quality Rules require that the applicant satisfy eight conditions before approval to construct or modify may be granted, namely that the facility:

- (i) will comply with the Air Quality Rules and intent of the Wyoming Environmental Quality Act;
- (ii) will not prevent the attainment or maintenance of any ambient air quality standard;
- (iii) will not cause significant deterioration of existing ambient air quality;
- (iv) will be located in accordance with proper land use planning;
- (v) will utilize the Best Available Control Technology;
- (vi) will have provisions for measuring emissions;
- (vii) will achieve its performance; and
- (viii) will not emit air pollution that prevents other states from attaining or maintaining air quality standards.

18. When the Division evaluates a proposed change to an emission unit at a minor source facility to ascertain whether it will increase emissions, it only considers the change itself. If the applicant wanted to get credit for potential emission reductions from other units at the facility, the application would need to include that information so that the



Division could amend the permit accordingly.

### **BACT and PBACT**

19. Pursuant to Wyo. Stat. Ann. § 35-11-801(e) and Chapter 6, Section 2(c)(v) of the Air Quality Rules, an applicant must demonstrate that the proposed action will utilize the best available control technology (BACT).

20. The process to determine BACT evaluates and requires permittees to use technology that is cost effective to control emissions. There are two BACT process options for oil and gas production facilities located in Wyoming.

21. The first BACT process option is a case-by-case BACT evaluation that requires the owner or operator of the new or modified oil and gas production well and equipment to apply for an air quality permit in accordance with Chapter 6, Section 2(a) of the Air Quality Rules. Under this option, the owner or operator must submit a permit application prior to commencing construction of the new or modified oil and gas production well and equipment.

22. The second BACT process option is commonly known as the Presumptive BACT or PBACT process. This process includes interpretive guidance – *Oil and Gas Production Facilities Chapter 6, Section 2 Permitting Guidance* – that sets out the Division’s current understanding of BACT for the purpose of assisting owners and operators who choose to construct or modify oil and gas production facilities prior to initiating the permitting process. Both the regularity and public comment process by which the Division has evaluated and updated the Guidance reflects the BACT foundation: a process to evaluate and require the use of the best available control technology that is cost



effective to control emissions.

23. The most recent version of this guidance document is the 2018 Guidance. The 2018 Guidance outlines the Division's current understanding of BACT to assist those owners and operators who choose to construct or modify oil and gas production facilities prior to initiating the permitting process, or who do not complete a BACT analysis as part of the permit application. A copy of the 2018 Guidance is attached hereto as DEQ Exhibit 1.<sup>1</sup>

24. Whether or not a piece of equipment, operating procedure or emission control device meets BACT depends on technical feasibility and economic reasonableness. When the Division updated the 2018 PBACT Guidance, it conducted an economic reasonableness and technical practicability analysis to determine what emission limits or operational requirements result from the BACT process; and sought, received, and considered public input.

25. Some companies choose to utilize PBACT rather than complete a BACT analysis because it is more economic and efficient for them to follow PBACT than to expend their time and resources to conduct a site-specific BACT analysis.

### **Modifications**

26. The Air Quality Rules define "modification" as "any physical change in, or change in the method of operation of, an affected facility which increases the amount of

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<sup>1</sup> The 2018 Guidance can also be accessed through the Department's website at [http://deq.wyoming.gov/media/attachments/Air%20Quality/New%20Source%20Review/Guidance%20Documents/FINAL\\_2018\\_Oil%20and%20Gas%20Guidance.pdf](http://deq.wyoming.gov/media/attachments/Air%20Quality/New%20Source%20Review/Guidance%20Documents/FINAL_2018_Oil%20and%20Gas%20Guidance.pdf)

any air pollutant (to which any state standards applies) emitted by such facility or which results in the emission of any such air pollutant not previously emitted.” *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 1, § 3.

27. Consistent with the regulatory definition of modification, the 2018 Guidance recognizes that a modification is triggered based on emissions. And, when any physical or operational change occurs at a facility that may cause the issuance of or an increase in the issuance of air emissions, the operator must submit a permit application and supporting information.

28. When analyzing whether a modification to a minor source facility occurred using the definition provided in Chapter 1, Section 3 of the Air Quality Rules, the Division looks at the specific change to the facility and whether that change caused an increase in the amount of any air pollutant.

29. Some changes by their very nature increase emissions or have the potential to increase emissions.

30. The Division considers the introduction of production streams from new wells or additional wells to be a modification of an existing facility that would trigger PBACT. (*See* 2018 Guidance at 50; DEQ Ex. 1 at 50).

### **Citation’s Applications**

31. On January 30, 2020, the Division received seven permit applications from Citation for the facilities listed in paragraph 11 above. Each application included a cover letter noting that the applications were being submitted pursuant to Citation’s audit disclosure. *See* Citation Applications A0008234, A0008248, A0008249, A0008253,

A0008256, A0008260, and A0009803. A copy of Citation's Permit Applications is attached hereto as DEQ Exhibit 2. Each application also listed the air pollution emissions from those facilities as: carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub>), sulfur dioxide (SO<sub>2</sub>), volatile organic compounds (VOC), and various hazardous air pollutants (HAPs).

32. On February 3, 2020, the Division acknowledged receipt of those seven permit applications.

33. On February 24, 2020, the Division deemed those seven permit applications to be complete.

34. Division personnel proceeded to review Citation's permit applications. A copy of the Division's Permit Application Analysis Documents are attached as Exhibit A to Citation's Memo in Support of its Motion for Summary Judgment. During the review of Citation's permit applications, the Division discovered that Citation previously modified the seven facilities at issue in this appeal. However, Citation did not go through the permit application process required pursuant to Chapter 6, Section 2 of the Air Quality Rules at the time these modifications occurred.

35. During that review, the Division discovered that Citation added wells to four of the seven facilities at issue. Citation added the Barber 89 well to the Dallas Dome Tank Battery on October 1, 2014 and added the Barber 49R and 88 wells on November 1, 2014. Citation added the LBB 386 well to the Embar 1 Tank Battery on September 20, 2008. Citation added the NWD 42 well to the NWD 1 Tank Battery on May 31, 2014. Citation added the NWD 43 well to the NWD 2 Tank Battery on March 24, 2014.

36. Also during that review, the Division also discovered that Citation conducted a recompletion of the LBB DSU 211 well at the Embar 3 Tank Battery on November 29, 2005 and conducted a workover of the LBB DSU 211 well on July 25, 2011. Citation conducted a workover of the LBB 178H well at the Tensleep 1 Tank Battery on September 2, 2012. Citation fracture treated the LBB DSU C-052236 172 well at Tensleep 2 Tank Battery on August 10, 2010.

37. The Division presumes these types of activities will increase emissions because they have the potential to increase oil and gas production.

38. Wells indisputably emit or have the potential to emit pollution and, therefore, adding a well inevitably increases or has the potential to increase emissions. The same is true for the other activities. This is so well known and accepted that the 2018 Guidance defines “Modified Facility” by pointing to these specific activities as examples of modifications. An existing oil and gas facility becomes modified once production streams or production equipment associated with another well or wells is added to or tied into it. Existing oil and gas facilities may also be modified by increasing the production rate by fracturing, recompletion of a current or additional production zone, or introducing artificial lift methods such that uncontrolled emissions exceed certain thresholds. For changes at existing facilities not involving new wells or added production from other wells, operators have 30 days to evaluate production/emissions and 60 days to install controls if the change triggered a modification. If a facility is already controlled, then it is not considered a modification.

39. Citation did not submit any emissions information to the Division as part of



its permit applications to rebut the presumption or demonstrate that the prior modifications did not increase emissions.

40. Citation did not include a BACT analysis in any of its permit applications. *See* Citation Applications A0008234, A0008248, A0008249, A0008253, A0008256, A0008260, and A0009803. Citation also declined to submit a BACT demonstration after the issuance of the permits.

41. If an applicant does not include a BACT analysis with its permit application the Division applies Presumptive BACT (PBACT).

42. The Division applies current PBACT requirements because what qualified as BACT a decade ago no longer qualifies as BACT today. BACT changes with changes in technology and costs. Additionally, emission thresholds have lowered and required controls for facilities have changed over the last ten years. Controls needed today are at a 6 ton per year Volatile Organic Compound (VOC) threshold instead of an allowed double digit ton per year threshold in 2010. The changes in required ton per year VOC is illustrated in the Division's 2018 Guidance Technical Support Document that was published for public input in August of 2018. A copy of the 2018 Technical Support Document is attached hereto as DEQ Exhibit 3.

43. In April of 2020, the Division completed its permit application analyses for those seven permit applications, requested that the applicable County Clerk (Park or Fremont County) post notice, and had notices published in the newspaper as required by Chapter 6, Section 2(m) of the Air Quality Rules. Each notice indicated that the permit application, the Division's analysis, and the public notice were available for online public

inspection; and provided Division contact information and instructions for submitting comments to be considered in the final determination on the application.

44. The Division notified Citation, via letters, dated April 24, 2020 for each of the seven applications that the Division had completed its initial evaluation of the application, provided directions for accessing the Division's evaluation, recommended that Citation review the proposed permit conditions associated with the Division's proposed approval, and noted that the Division would make a final decision on the application after the close of the comment period. The letters were sent to Citation by certified mail and included links to the application analysis documents. A copy of the letters the Division sent to Citation are attached hereto as DEQ Exhibit 4.

45. The permit application analyses included the proposed conditions that were ultimately encompassed in Citation's final permits. Sometimes these conditions change based on comments provided to the Division during the public comment period. However, that was not the case here because the Division did not receive any comments from the public or Citation on any of the proposed permit conditions.

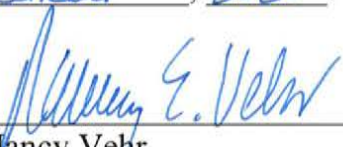
46. Citation did not comment on the proposed permits during the public comment period, or at any time, until after the final permits had been granted. Nor did Citation submit an alternative monitoring program to the Division or ask to use an alternative monitoring method.

47. On June 3, 2020, the Division issued permit P0027427 to Citation for the Dallas Dome Tank Battery application A0009803. A copy of permit P0027427 is included in Citation's Petition for hearing on P0027427.

48. On June 9, 2020, the Division issued permits P0027433 to Citation for the Embar 1 Tank Battery application A0008234; P0027428 for the Embar 3 Tank Battery application A0008253; P0027429 for the NWD 1 Tank Battery application A0008256; P0027430 for the NWD 2 Tank Battery application A0008260; P0027431 for the Tensleep 1 Tank Battery application A0008260; and P00274432 for the Tensleep 2 Tank Battery application A0008249. These permits contained conditions (specifically conditions 7 through 13) requiring Citation to comply with current PBACT requirements for new or modified sources pursuant to the 2018 Guidance. Copies of permits P0027428 through P0027433 are included in Citation's respective petitions for hearing.

49. Other operators who have used PBACT have been subject to the guidelines in place when their permit application was submitted.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief and that this declaration was executed in Laramie County, Wyoming on this 21<sup>st</sup> day of December, 2020.

  
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Nancy Vehr  
Air Quality Division Administrator  
Wyoming Department of Environmental Quality

The foregoing AFFIDAVIT OF Nancy Vehr was subscribed and sworn to me this 21<sup>st</sup> day of November, 2020.

Witness my hand and official seal.

Cheryl F. Lobb  
Notary Public

My Commission Expires:

