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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)

**DEPARTMENT OF ENVIRONMENTAL QUALITY'S
REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

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Statutes

Wyo. Stat. Ann. § 35-11-801 1, 6, 7

Rules

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Rules Wyo. Dep't of Envtl. Quality, Air Quality, ch. 6, § 2..... 2, 3, 6, 7

INTRODUCTION

This case is very simple. During the Division's review of Citation's minor source permit applications, it discovered that Citation had previously modified all seven of its facilities by adding wells, recompleting wells, working over wells, or fracture treating wells. Citation did not submit the required permit applications at the time it made these modifications. By their very nature these changes increase or have the potential to increase emissions and Citation had the burden under the Air Quality Rules to demonstrate that these changes did not increase emissions. It never made any attempt to do so. Because Citation modified these facilities, the Division, as it must under Wyo. Stat. Ann. § 35-11-801(e), reviewed the applications for "a demonstration that the applicant will apply the best available control technology [BACT] to the oil and gas production and exploration activity." Citation did not include a BACT analysis in its permit applications, so the Division required Citation to follow the applicable portions of the current presumptive BACT (PBACT).

Citation could have done many things differently to avoid this outcome. It could have submitted permit applications when the modifications were made. It could have supplied a BACT analysis with its permit applications. It could have sought a permit waiver by showing that the increased emissions arising from the modifications were insignificant. Or it could have asked the Division to use an alternative method for monitoring fugitive emissions. Even now, Citation could take steps to avoid the monitoring requirements that it finds onerous by submitting new permit applications showing the emissions associated with the modifications are insignificant, or providing a BACT analysis, or offering an

alternative method for monitoring fugitive emissions. Having undertaken none of these options, Citation should not now be heard to complain about permit conditions that would be imposed on any other company submitting similar permit applications today.

Because the Division properly determined that Citation modified its facilities and properly conditioned Citation's permits, the Council should affirm the permit conditions and dismiss Citation's petitions with prejudice.

ARGUMENT

I. The Division correctly determined that Citation's facilities were modified.

Citation contends that the Division arbitrarily relied on guidance to presume that the activities at issue *per se* resulted in an increase in emissions, without defining what constitutes an emissions increase or assessing the actual change in emissions at individual facilities. (Citation Resp. and Reply at 2, 4). Citation asserts that Division should not be able to rely on "unwritten policy" instead of formally articulated rules. (*Id.* at 2, 9). But this result was compelled by the existing rules as they are currently written and facts commonly known in the industry and set forth in writing in the 2018 Guidance.

Chapter 6, Section 2 of the Air Quality Rules provides that "[a]ny 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) (emphasis added). Accordingly, when a company plans to make a change at a facility which may cause an

increase in emissions, it has to apply for a permit. It is then the applicant's burden to submit information in its permit application showing "**the nature and amount of the emissions,** and the manner in which it will be operated and controlled." *Rules Wyo. Dep't of Env'tl. Quality, Air Quality*, ch. 6, § 2(b) (emphasis added). Notably, neither the Environmental Quality Act nor the Air Quality Rules require the Division to conduct an investigation in response to a permit application. Thus, where a change at a facility may increase emissions the applicant, not the Division, must show that it does not.

In the absence of such a showing, the Division can rely on facts so commonly known in the industry that they actually define a "Modified Facility." In the 2018 Guidance, the Division defines a "Modified Facility" by providing examples of the types of changes to an existing facility that qualify as modifications. For example, "[a]n existing facility becomes modified once production streams or production equipment associated with another well or wells is added to or tied into it." (DEQ Ex. 1 at 55). A facility may also be modified by "[i]ncreasing the production rate by fracturing, recompletion of a current production zone or additional production zones, or the introduction of artificial lift methods[.]" *Id.* These were exactly the changes discovered at Citation's facilities, and Citation had the burden of showing that they did not increase emissions.

Citation asserts that a legally binding determination that certain activities always trigger construction permitting must be made pursuant to a rule. (Citation Resp. and Reply at 8). First, changes that may increase emissions do in fact trigger construction permitting pursuant to Chapter 6, Section 2 of the Air Quality Rules as they exist today. *Rules Wyo. Dep't of Env'tl. Quality, Air Quality*, ch. 6, § 2(a)(i). Even so, the Division did not establish

an “irrebuttable presumption” that certain activities always result in an emissions increase. (See Citation Resp. and Reply at 9). Instead, the Division correctly acknowledged that Citation had the burden to show that changes that increased production did not increase emissions. Citation simply made no effort to make such a showing.

Citation is correct that on February 24, 2020, the Division deemed the permit applications complete. (Citation Resp. and Reply at 5; Redweik Dec. at ¶¶ 19-20). Citation suggests that the Division, should have “question[ed] the adequacy of these applications,” rather than finding them complete. (See Citation Resp. and Reply at 7). But the Division should be able to expect that when a company submits an application it made conscious choices about what information to present to the Division. It is unreasonable to expect the Division to call every company in relation to every permit application to confirm that the company purposefully choose not to submit a BACT analysis or that the company is seeking a Chapter 6, Section 2(k) permit waiver for an insignificance determination.

Citation also asserts the Division’s actions were arbitrary and capricious because the Air Quality Rules do not specify how much of an emission increase will turn a facility change into a “modification.” (Citation Resp. and Reply at 2, 10). But a “modification” is clearly defined to mean “any physical change in, or change in the method of operation of, an affected facility **which increases the amount of any air pollutant[.]**” *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 1, § 3 (emphasis added). The rule does not set a threshold and, therefore, any increase is considered a modification that should go through the permitting process. If the Division determines that the emissions are low enough then the Division can issue the company a permit waiver under Chapter 6, Section 2(k), instead of

a permit. However, in order to take advantage of this option, the company must submit a permit application with appropriate emissions information for the Division to review. It was Citation's burden to show with appropriate data that the increases were insignificant in its permit applications, but it did not do so.

Citation claims the production increases due to the workover, fracture treating, recompletion, or addition of wells lasted a matter of weeks or months and increases were not sustained over a period of time approaching a year. (Citation Resp. and Reply at 12; Redweik Dec. at ¶¶ 9-11). Citation suggests that emission increases of limited duration or intensity may not be a "modification" under Wyoming's major source permitting rules, or the rules for minor source permitting in other states. (Citation Resp. and Reply at 10-11). But these standards are irrelevant because the existing Air Quality Rules provide that **any** increase in emissions qualifies as a modification for minor sources. Citation could have made a showing to the Division that the actions performed at its facilities did not increase emissions, or that they were so insignificant that a Chapter 6, Section 2(k) permit waiver was appropriate, but Citation did not make those showings in its permit applications. It was Citation's burden to do so during the permitting process, not after the fact on appeal to this Council.

Absent any information from Citation to the contrary in the permit applications, or in response to the draft permits, the Division reasonably determined that increased emissions from specific facility changes were modifications under the Air Quality Rules. Citation's statement that it attempted to make a demonstration to the Division after the issuance of the final permits, *see* Citation Resp. and Reply at 6; Redweik Dec. at ¶ 25, is

immaterial because Citation admits that the actions performed at its facilities resulted in an increase in emissions. (*See* Citation Resp. and Reply at 12; Redweik Dec. ¶¶ 9-11).

Accordingly, the Division appropriately determined these facilities had been previously modified.

II. The Division appropriately applied PBACT from the 2018 Guidance to Citation’s permits.

Citation asserts that it is improper for the Division to apply PBACT on the date the Division receives a permit application, and that by doing so, the Division is making an “ad hoc determination.” (Citation Resp. and Reply at 13, 15). This decision is not ad hoc. The Division is required by statute and the Air Quality Rules to ensure that the **best available** control technology is utilized at the time a permit application is granted. *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 6, § 2(c)(v); Wyo. Stat. Ann. § 35-11-801(e). What qualified as BACT over a decade ago is no longer applicable or appropriate based on today’s standards and available technology.

Citation contends that the Division is selectively enforcing the provisions in the 2018 Guidance by applying it to modifications that were made before the applicability date. (Citation Resp. and Reply at 13-15). But the guidance was not promulgated with noncompliant companies in mind, it was designed for compliant companies who submit applications on time. The applicability date only makes sense for and can only be fairly applied to compliant companies. Companies who get behind still must abide by the statutory requirement that they apply the best available technology when they submit their applications. The applicability date cannot preempt the Division’s statutory and regulatory

duty to ensure that operators apply the best available control technology at the facility when the permit is granted.

Citation also asserts that it applied for operating permits, not construction permits because the facilities had permits and waivers. (Citation Resp. and Reply at 4-5; Redweik Dec. at ¶ 16). It may be true that these facilities had previous permits or permit waivers issued to them, but the Division still had a responsibility to review the entirety of the applications when Citation submitted them. When the Division reviewed the applications it found modifications which required permitting under Chapter 6, Section 2(a). Citation cannot avoid applicable requirements by simply titling its applications in a certain way.

Citation further contends that it did not need to submit a BACT analysis because “only construction permits include the time- and cost-intensive demonstrations (including BACT) found at WAQSR Chapter 6, Section 2(c)” and it was disingenuous for the Division to claim Citation bore the burden to conduct a BACT analysis. (Citation Resp. and Reply at 6-7; *See* Redweik Dec. at ¶¶13-14, 17-18). When there is a modification at a facility, a BACT analysis is required. Wyo. Stat. Ann. § 35-11-801(e); *Rules Wyo. Dep't of Env'tl. Quality, Air Quality*, ch. 6, § 2(c)(v). The Division did not place an additional burden on Citation, it just required Citation to follow the Air Quality Rules and permitting procedure. Citation’s permit applications showed that modifications occurred, and that fact should have been apparent to Citation just as it was to the Division.

According to Citation, the Administrator should have taken “into account energy, environmental, and economic impacts and other costs” when determining the BACT, or in this case the PBACT. (Citation Resp. and Reply at 16). Of course, the company needs to

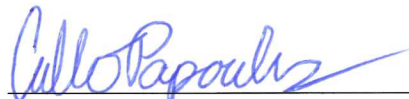
provide this information for the Division to be able to consider it. Citation could have provided the Division with the information needed to do something different than PBACT, but Citation did not provide any such information to the Division.

Accordingly, the Department and the Division are entitled to judgment as a matter of law confirming the Division's determination that the current PBACT represents the best available control technology for these modified facilities.

CONCLUSION

The Division appropriately determined that Citation's facilities were modified and appropriately applied the 2018 PBACT Guidance to these modifications. For these reasons, the Department and the Division request that the Council grant its motion for summary judgment, deny Citation's motion for summary judgment, affirm the permit conditions, and dismiss Citation's petition with prejudice.

Dated this 20th day of January, 2021.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Department of Environmental Quality's Reply to Citation's Motion for Summary Judgment* was served upon the persons listed below, on this 20th day of January, 2021, addressed as follows:

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