

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

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| In the Matter of: |) | |
| Citation Oil & Gas Corp. |) | |
| Air Quality Permit No. P0027427 |) | EQC Docket No. 20-2601 |
| Through Permit No. P00274233 |) | |
| |) | |

**ORDER GRANTING THE DEPARTMENT OF
ENVIRONMENTAL QUALITY’S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Environmental Quality Council (“Council”) upon Citation Oil & Gas Corp.’s (“Citation”) appeal of the Department of Environmental Quality’s (“Department”) decision to include certain conditions imposing fugitive emission monitoring requirements (*see* conditions 7 through 13, and 22) in the following seven minor air source permits issued to Citation: P0027427, P0027428, P0027429, P0027430, P0027431, P0027432, and P0027433.

In early 2018, Citation conducted a voluntary environmental audit under Wyo. Stat. Ann. § 35-11-1105 through -1106 and discovered areas of noncompliance at its facilities. Citation created a plan to fix those deficiencies and subsequently submitted minor air source permit applications to the Department. During the review of the permit applications, the Department discovered that Citation had previously modified each facility by addition, recompletion, workover, or fracture treatment of certain wells without seeking a permit. Accordingly, the Department reviewed the applications for “a demonstration that the applicant will apply the best available control technology to the oil and gas production and exploration

activity.” Wyo. Stat. Ann. 35-11-801(e). Citation failed to make such a demonstration for these modifications. The Department subsequently, as part of each permit, placed conditions within Citation’s permits requiring it to follow the “presumptive best available control technology” or “PBACT.”

Citation challenges the Department’s decision by contending that it did not modify its facilities, and even if it did, the Department must apply the PBACT guidance in effect at the time of those modifications, rather than the Department’s current PBACT guidance. Citation contends that the Department acted outside its statutory and regulatory authority and failed to follow the applicable process and procedures in adopting those permit conditions.

The parties asked the Council to decide this case through summary judgment because they agreed that there were no genuine issues of material fact—leaving only legal issues to be decided. The Department filed a motion for summary judgment asserting that the Department’s action of placing the conditions in the permits was proper, appropriate, and in compliance with law. Conversely, Citation filed a motion for summary judgment asking the Council to vacate those permit conditions because the Department acted outside its authority.

After this matter was fully briefed by the parties, the Council held a hearing on the motions on February 25, 2021 via Zoom video conference.

After hearing and considering the parties’ motions and arguments and otherwise being fully advised, the Council voted 7 to 0 to grant the Department’s motion for summary judgment. The Council finds that there are no genuine issues as to any material fact, and concludes that the Department is entitled to judgment as a matter of law. The Council hereby finds, concludes, and orders as follows:

I. LEGAL BACKGROUND

The Department, through its Air Quality Division (“Division”), is the agency of Wyoming state government responsible for administering and enforcing the air quality title of the Wyoming Environmental Quality Act (“Act”), the Air Quality Rules, and related permits. Wyo. Stat. Ann. §§ 9-2-2013 and 35-11-104, -109, and -110. The State of Wyoming is charged with the primary responsibility for achieving and maintaining the national primary and secondary ambient air quality standards within the state. 42 U.S.C. § 7407; *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 2. The Act establishes a statutory scheme that is designed in part to enable the State of Wyoming to prevent, reduce, and eliminate pollution; to preserve and enhance the State of Wyoming’s air, water, and land resources; and to allow the State of Wyoming to plan the development, use, reclamation, and enhancement of its air, land, and water resources. Wyo. Stat. Ann. § 35-11-102. The Division’s authority to regulate sources of air pollution is governed by the Act. Wyo. Stat. Ann. § 35-11-201 through -214. The air quality article of the Act states that “[n]o person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the [Environmental Quality C]ouncil.” Wyo. Stat. Ann. § 35-11-201. The Division implements the Act through the Air Quality Rules.

A. Permitting Requirement

Chapter 6 of the Air Quality Rules establishes the permitting requirements for all sources constructing and operating within Wyoming. *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 6, § 1(a). Chapter 6, Section 2 outlines permit requirements for construction and modification as well as minor source permits, and it requires operators to submit permit

applications if the changes they propose to make at a facility have the potential to increase emissions. Chapter 6, Section 2(a)(i) states 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.” *Id.*, ch. 6, § 2(a)(i). If the applicant can demonstrate in its application that the proposed change will not increase emissions or that the new emissions will be insignificant, a permit is not required. The Air Quality Rules provide that “[a]pproval to construct or modify shall not be required for ... [s]uch other minor sources which the Administrator determines to be insignificant in both emission rate and ambient air quality impact.” *Id.*, ch. 6 § 2(k)(viii).

When granting permits, “the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards.” Wyo. Stat. Ann. § 35-11-801(a). Similarly, “[t]he Administrator of the Division of Air Quality may impose any reasonable conditions upon an approval to construct, modify, or operate[.]” *Id.*, ch. 6, § 2(f).

A permit application must follow the application requirements in § 35-11-801 and Chapter 6 of the Air Quality Rules. *See* Wyo. Stat. Ann. § 35-11-801(e); *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 6, § 2. The Air Quality Rules provide that “[t]he application shall be made on forms provided by the Division of Air Quality and each application shall be accompanied by site information, plans descriptions, specifications, and drawings showing the

design of the source, the nature and amount of the emissions, and the manner in which it will be operated and controlled.” *Id.*, ch. 6, § 2(b)(i).

Under the Act, permit applications for oil and gas exploration or production wells must contain, at a minimum, “a demonstration that the applicant will apply the best available control technology to the oil and gas production and exploration activity.” Wyo. Stat. Ann. § 35-11-801(e). The Air Quality Rules also specify that “[n]o approval to construct or modify shall be granted unless the applicant shows, to the satisfaction of the Administrator of the Division of Air Quality that: . . . [t]he proposed facility will utilize the Best Available Control Technology with consideration of the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility.” *Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 6, § 2(c)(v).

Chapter 6, Section 2 does not define best available control technology (“BACT”) for purposes of minor source permitting, but states that BACT must include “consideration of the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility.” *Id.*, ch. 6, § 2(c)(v). BACT is defined for purposes of major source permitting as “an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each pollutant subject to regulation . . . which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application or production processes and available methods, systems, and techniques[.]” *Id.*, ch. 6, § 4(a). According to the *2018 Oil and Gas Production Facilities Chapter 6, Section 2 Permitting Guidance* (“2018 Guidance”), “BACT is a process, not an

emission limit. Regulations do not set a minimum emission threshold below which BACT does not need to be considered.” (See Ex. 1 at 9, attached to the Department’s memorandum in support of its cross motion for summary judgment (“Dept.’s Mem.”). The BACT process results in an emission limit and operational requirements.

The Division created a guidance document to advise owners and operators of its current understanding of BACT. (*Id.*, at 1). The 2018 Guidance is the current version of the guidance document initially published by the Division in 1997 and revised nine times since. (*Id.*) The Division regularly updates this guidance document to reflect the Division’s constantly changing understanding of BACT for oil and gas production facilities. (See Ex. 5 at ¶¶ 22-23, attached to Dept.’s Mem.). The 2018 Guidance also provides an overview of the most recent PBACT guidance for new sources or sources that are recently modified. (*Id.*)

PBACT applies in two scenarios: (1) when an operator starts using the facility or modifies a facility prior to issuance of the permit (if specific control requirements are met); or (2) when the applicant does not complete a BACT analysis in the application submitted to the Division. (See Ex. 1 at 9, attached to Dept.’s Mem.). If an applicant does not include a BACT analysis with its permit application the Division applies PBACT. (Ex. 5 at ¶ 41, attached to Dept.’s Mem.). Some companies choose to utilize PBACT rather than complete a BACT analysis because it is more economic and efficient for companies to follow PBACT than to expend their resources to conduct a site-specific BACT analysis. (Ex. 5 at ¶ 25, attached to Dept.’s Mem.). When it updates PBACT, the Division conducts an economic reasonableness and technical practicability analysis with public input. (Ex. 5 at ¶ 24, attached to Dept.’s Mem.). The 2018 Guidance states that PBACT “permitting requirements under this Guidance

apply 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**.” (Ex. 1 at 2, attached to Dept.’s Mem.) (emphasis in original).

As a part of its PBACT provisions, the 2018 Guidance requires monitoring for fugitive Volatile Organic Compound (“VOC”) emissions for new and modified sources located in the statewide area (“SWA”). The 2018 Guidance calls for new or modified facilities located in the SWA to conduct semiannual monitoring for fugitive VOC emissions from production sites in accordance with 40 CFR part 60, Subpart OOOOa (as published in 81 Fed. Reg. 35824-941 (June 3, 2016)). (Ex. 1 at 18, attached to Dept.’s Mem.).

This section of the Code of Federal Regulations is usually referred to as Quad Oa. Some facilities are specifically required to comply with Quad Oa, while others, like the facilities at issue here, are not. However, some facilities that are not required to follow Quad Oa, may be required to follow specific portions of Quad Oa where it represents PBACT. Such is the case here with regard to the fugitive emissions monitoring provisions of Quad Oa.

B. Modifications

Chapter 6, Section 2 of the Air Quality Rules states “[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). The Air Quality Rules define a modification as “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. 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. (Ex. 5 at ¶ 18, attached to Dept.’s Mem.). Some changes by their very nature increase emissions or they have the potential to increase emissions. (Ex. 5 at ¶ 29, attached to Dept.’s Mem.). In the 2018 Guidance, the Division has described “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.” (Ex. 1 at 55, attached to Dept.’s Mem.). 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.*)

C. Environmental Audit

An owner or operator has the ability to conduct an environmental audit under Wyo. Stat. Ann. § 35-11-1105. An environmental audit is a “voluntary, internal and comprehensive evaluation of one (1) or more facilities or an activity at one (1) or more facilities regulated under this act, or of management systems related to the facility or activity, that is designed to identify and prevent noncompliance and to improve compliance with this act.” Wyo. Stat. Ann. § 35-11-1105(a)(i). The audit must be completed within 180 days after being initiated. *Id.* As part of the environmental audit process, companies must create an audit implementation plan “that corrects past noncompliance, improves current compliance and prevents future noncompliance.” *Id.* at (a)(ii)(C).

An environmental audit report is usually privileged. *Id.* at (c). An owner or operator who conducts a voluntary environmental audit is shielded from the Department seeking civil penalties for the violations reported. Wyo. Stat. Ann. § 35-11-1106(a). However, the environmental audit privilege does not shield an owner or operator from coming into compliance with the current laws. Wyo. Stat. Ann. §§ 35-11-1105 and -1106. Nor does it grandfather past noncompliance. *Id.* Instead, if an environmental audit reveals past noncompliance, the owner or operator must bring its operations into compliance.

II. STATEMENT OF FACTS

Citation conducted a voluntary environmental audit in March 2018. (*See* Citation’s petitions for review and requests for hearing (“Petitions”); *see also* Ex. A, Declaration of Robert J. Redweik, at ¶ 14, attached to Citation’s response to the Department’s cross motion for summary judgment (“Citation’s Resp.”)). In accordance with Wyo. Stat. Ann. § 35-11-1105(a)(ii), Citation submitted an environmental audit report to the Division that outlined the noncompliance that was discovered at its facilities and created a plan to fix those deficiencies. (*See* Petitions). Subsequently, Citation submitted minor source air permit applications for the facilities subject to this appeal. (*Id.*; *see also* Ex. A, at ¶¶ 14-18, attached to Citations’ Resp.). Citation noted that it was submitting the applications “based on operations as existing today; no construction applications or modification to existing permits are being proposed.” (*Id.*) Citation did not include a BACT analysis in any of its permit applications.¹ (Ex. 5 at ¶ 40 and Ex. 2, attached to Dept.’s Mem.).

¹ Citation did not submit a BACT demonstration after the issuance of the permits. (Ex. 5 at ¶ 40, attached to Dept.’s Mem.).

The Division conducted permit application analyses on the seven permit applications. (Ex. 5 at ¶ 34, attached to Dept.'s Mem.; *see also* Ex. A, attached to Citation's Resp.). During its review of the applications, the Division discovered that Citation had previously modified all seven of the facilities but did not go through the required permit application process at the time of these modifications. (Ex. 5 at ¶ 34, attached to Dept.'s Mem.). Citation modified its oil and gas facilities by adding wells, recompleting wells, working over wells, or fracture treating wells. (*Id.* at ¶¶ 34-36). Specifically, these modifications were:

- Dallas Dome Tank Battery: “This facility was modified on October 1, 2014 with the addition of the Barber 89 well and again on November 1, 2014 with the addition of the Barber 49R and 88 wells. An application for these modifications was never submitted.”
- Embar 1 Tank Battery: “This facility was modified on September 20, 2008 with the addition of the LBB 386 well; however, an application for the modification was never submitted.”
- Embar 3 Tank Battery: “This facility was modified on November 29, 2005 with the recompletion of the LBB DSU 211 well and on July 25, 2011 with the workover of the LBB DSU 211 well. An application for the modifications was never submitted.”
- NWD 1 Tank Battery: “This facility was modified on May 31, 2014 with the addition of the NWD 42 well; however, an application for the modification was never submitted.”

- NWD 2 Tank Battery: “This facility was modified on March 24, 2014 with the addition of the NWD 43 well; however, an application for the modification was never submitted.”
- Tensleep 1 Tank Battery: “This facility was modified on September 2, 2012 with the workover of the LBB 178H well; however, an application for the modification was never submitted.”
- Tensleep 2 Tank Battery: “This facility was modified on August 10, 2010 with the fracture treating of the LBB DSU C-052236 172 well; however, an application for the modification was never submitted.”

(Ex. 5 at ¶¶ 35-36, attached to Dept.’s Mem.; *see also* Ex. A, attached to Citation’s Resp.).

The Division provided written notice to Citation explaining that the proposed permits would go out for public comment, as required by the Air Quality Rules. (Ex. 5 at ¶ 44 and Ex. 4, attached to Dept.’s Mem.). The letters explained that the Division had completed its initial evaluation of Citation’s permit applications and recommended that Citation review the proposed permit conditions. (*Id.*) These letters were sent by certified mail to Citation with links to the application analysis documents which set forth the proposed conditions. (*Id.*) The Division did not receive any comments on the proposed conditions during the public comment period, including from Citation. (Ex. 5 at ¶ 45, attached to Dept.’s Mem.). Citation did not comment on the proposed permits at any time until after the final permits had been issued. (Ex. 5 at ¶ 46, attached to Dept.’s Mem.).

In June 2020, after the close of the public comment period, the Division issued seven final minor air source permits to Citation. (*See* Petitions; *see also* Ex. 5 at ¶¶ 44-48, attached

to Dept.’s Mem.). The seven permits contained conditions requiring Citation’s compliance with current PBACT requirements for new or modified sources pursuant to the 2018 Guidance. (Ex. 5 at ¶¶ 47-48, attached to Dept.’s Mem.; *see also* Petitions). It is common practice for the Division to apply the current requirements and standards at the time a permit application is submitted—other operators around the State who have taken advantage of PBACT have been subject to the guidelines in place when their permit application was submitted. (Ex. 5 at ¶ 49, attached to Dept.’s Mem.).

III. CONCLUSIONS OF LAW

The Council may resolve contested cases through summary disposition under Rule 56 of the Wyoming Rules of Civil Procedure. *Rules Wyo. Dep’t of Env’tl. Quality, Practice and Procedure*, ch. 2, § 17. Under Rule 56, a court or agency “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter for law.” Wyo. R. Civ. P. 56(a). “A material fact is one which, if proved, would have the effect of establishing or refuting an essential element of the cause of action or defense asserted by the parties.” *Thornock v. PacifiCorp*, 2016 WY 93, ¶ 10, 379 P.3d 175, 179 (Wyo. 2016) (citation omitted). The materiality of facts must be determined in reference to “the pertinent legal standard[s] for the asserted claim and for the corresponding defense to that claim.” *Roussalis v. Wyo. Med. Ctr., Inc.*, 4 P.3d 209, 228 (Wyo. 2000) (internal quotation marks and citation omitted). In deciding whether genuine issues of material fact are present, the Council must review the record “from the vantage point most favorable to the party opposing the motion” and “give that party the benefit of all favorable inferences that may fairly be drawn from the record.” *Thornock*, ¶ 10, 379 P.3d at 179 (citation omitted). “If the

evidence leads to conflicting interpretations or if reasonable minds might differ, summary judgment is improper.” *Abraham v. Great W. Energy, LLC*, 2004 WY 145, ¶ 12, 101 P.3d 446, 452 (Wyo. 2004).

“The party requesting summary judgment bears the initial burden of establishing a prima facie case that no genuine issue of material fact exists and that summary judgment should be granted as a matter of law.” *Little Medicine Creek Ranch, Inc. v. D’Elia*, 2019 WY 103, ¶ 14, 450 P.3d 222, 227-28 (Wyo. 2019) (citation omitted). Once the moving party makes this showing, “the burden shifts to the party opposing the motion to present evidence showing that there are genuine issues of material fact.” *Id.* “The party opposing the motion must present specific facts; relying on conclusory statements or mere opinion will not satisfy that burden, nor will relying solely upon allegations and pleadings.” *Id.*

In this case, the parties agree that no genuine issues of material fact exist and that only legal issues remain. The Council agrees.

A. Legal Analysis

The Division imposed proper permit conditions on the seven minor air source permits issued to Citation in June 2020. The Division correctly determined that Citation previously modified its facilities. As a result, Citation was required by statute and the Air Quality Rules to demonstrate that it would apply BACT to the modified facilities or be subject to PBACT. The Division also properly imposed PBACT requirements from the 2018 Guidance based on these modifications. The Council has found no law that authorizes the Division to apply old control technology retroactively. Instead the law mandates that the Division must require the best available control technology at the time it issues the permit.

I. Citation's facilities were modified.

During its review of the permit applications, the Division discovered that Citation had previously added wells, recompleted, worked-over, or fracture treated certain wells at its facilities. Citation does not dispute that it made these changes to its facilities. The Division presumes that these actions increase emissions because they have the potential to increase oil and gas production. (Ex. 5 at ¶ 37 and Ex. 1 at 55, attached to Dept.'s Mem.). Wells indisputably emit or have the potential to emit pollution and, therefore, adding a well generally increases or has the potential to increase emissions. (Ex. 5 at ¶ 38, attached to Dept.'s Mem.). The same is true for the other activities. (*Id.*) The 2018 Guidance points to these specific activities as examples of modifications. (Ex. 1 at 55, attached to Dept.'s Mem.).

Citation asserts that the Division erred because it presumed, in conformity with the definition of "Modified Facility" in the 2018 Guidance, that the changes made at the facilities would increase emissions rather than making a specific assessment of each change. Specifically, Citation contends that the Division "premised its determination that Citation's facilities were 'modified' solely on the assertion that either an addition, recompletion, workover, or fracture treatment of certain well(s) occurred at the production sites." However, Citation misplaces the burden of demonstrating the effect of a proposed change.

Chapter 6, Section 2(a) 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). 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). Neither the 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 this case, Citation failed to demonstrate the nature and amount of the emissions associated with the changes it previously made in its permit applications. Absent such information, the Division properly determined that Citation had modified its facilities.

Citation contends that by acting on the presumption that certain activities by their very nature generally increase emissions, the Division has unilaterally expanded the definition of "modification" in Chapter 1 § 3 of the Air Quality Rules. However, the definition of "modification" remains exactly as it exists in the rules. The Division has simply determined over many years of experience that certain activities, as a matter of fact, increase emissions. It is this factual determination, which Citation has not attempted to rebut, that certain activities presumptively meet the definition of "modification" that is memorialized in the 2018 Guidance.

The Air Quality Rules define a modification as "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. As is apparent from

the use of the word “which” linking the change at issue to the increase, it is the effect of the specific change to the facility that dictates whether a modification has occurred, not whether other changes at the facility that might be made concurrently result in an overall reduction in emissions. 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. (Ex. 5 at ¶¶ 18 and 28, attached to Dept.’s Mem.).

Here the only physical or operational changes at the various facilities revealed during the Division’s analysis were the modifications at issue. Citation claims that production at the facilities has been steadily decreasing, but its Director of Environmental Health Safety, Mr. Redweik, admits that the changes at issue here increased production (albeit for a limited duration) and emissions track production. (Ex. A, at ¶¶ 5-12, attached to Citation’s Resp.). In spite of this acknowledgement, Mr. Redweik asserts that these production increases were insignificant. (Ex. A, at ¶ 9, attached to Citation’s Resp.). Citation suggests that emission increases of limited duration or intensity may not be a modification, however, the Air Quality Rules provide that any increase in emissions qualifies as a modification for minor sources—significance is not the test for a modification. If emissions increased as a result of the specific change, then that change is a modification under the Air Quality Rules.

This emissions information was not provided to the Division at the time it was analyzing Citation’s permit applications. (Ex. 5 at ¶ 39, attached to Dept.’s Mem.). At the time of its application submittal, Citation did not submit anything to the Division to rebut the presumption that the prior facility modifications did not increase emissions. (Ex. 5 at ¶ 39 and Ex. 2, attached to Dept.’s Mem.). The Division can only make decisions based on the

information provided by the permit applicant. Absent any information from Citation to the contrary in the permit applications, or in response to draft permits, the Division reasonably determined that increased emissions from specific facility changes were modifications under the Air Quality Rules.

Citation asserts that its permit applications were “for the approval of an existing site. As a result of Citation’s audit and the State of Wyoming’s approval, this application authorizes the site based on operations as existing today; no construction applications or modifications to existing permits are being proposed.” Regardless of what the cover letter to a permit application states, the Division has a responsibility to review the permit application in full. *See Rules Wyo. Dep’t of Env’tl. Quality, Air Quality*, ch. 6, § 2(c). After reviewing Citation’s applications, the Division discovered Citation’s unpermitted additions, recompletions, workovers, and fracture treatments of wells. (Ex. 5 at ¶¶ 34-36, attached to Dept.’s Mem.). Citation cannot avoid applicable requirements by simply asserting that it did not intend to reveal that it had modified its facilities.

Citation is being subjected to appropriate regulatory burdens arising from its own decisions to modify its facilities and its failure to seek a permit for those modifications when they were made. It had the opportunity and the burden to show the Division that its modifications did not increase emissions when it submitted its permit applications or during the public comment period and it simply failed to do so. Accordingly, the Department is entitled to judgment as a matter of law confirming the Division’s determination that the facilities were modified and thereby subject to the permitting requirements of the Air Quality Rules.

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

Citation maintains that if the Division treats Citation's facilities as modified, then pursuant to the Division's own guidance, it must apply prior years' guidance and associated PBACT requirements. However, Citation points to no rule of law which allows the Division to require less than the best available control technology at the time the permit application is granted. In fact, the opposite is true.

Permit applications for oil and gas exploration or production wells must contain, at a minimum, "a demonstration that the applicant will apply the best available control technology to the oil and gas production and exploration activity." Wyo. Stat. Ann. § 35-11-801(e). The Air Quality Rules also specify that "[n]o approval to construct or modify shall be granted unless the applicant shows, to the satisfaction of the Administrator of the Division of Air Quality that: [t]he proposed facility will utilize the Best Available Control Technology with consideration of the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility." *Rules Wyo. Dep't of Env'tl. Quality, Air Quality*, ch. 6, § 2(c)(v). The Division cannot grant a permit unless the facility will utilize the control technology that is both the "best" and "available." The Division cannot ignore available control technologies because the applicant failed to seek a permit for many years—doing so would violate the plain language of the statute and the rule.

What qualified as BACT a decade ago, in 2010, is not the same as what qualifies as BACT today. (Ex. 5 at ¶ 42 and Ex. 3, attached to Dept.'s Mem.). Emission thresholds have lowered, required controls have changed, and controls needed today are at 6 ton per year VOC

threshold instead of double digits back in 2010. (*Id.*; Ex. 3 at 6, attached to Dept.’s Mem.). The Division’s current guidance document outlines its current understanding of what is the “best” and “available” control technologies. The Division provides this guidance 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. (Ex. 5 at ¶ 23, attached to Dept.’s Mem.). Citation chose not to conduct a BACT analysis. (Ex. 5 at ¶ 40 and Ex. 2, attached to Dept.’s Mem.). As a result, Citation placed the burden on the Division to decide what the best available control technology would be for the modified facilities. The Division has done the work to make that decision and it published that work in the 2018 Guidance for the benefit of Citation and other companies. Citation has made no effort to demonstrate that PBACT is not the “best” control technology or that it is not “available” for these facilities.

Citation contends that applying the current PBACT is inconsistent with the 2018 Guidance, which provides that “[p]resumptive BACT permitting requirements under this Guidance apply 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.**” (Ex. 1 at 2, attached to Dept.’s Mem.) (emphasis in original). However, the 2018 Guidance is merely guidance and it is not binding on the agency or the public at large. More importantly, the applicability date in the 2018 Guidance cannot preempt the Division’s statutory and regulatory duty to ensure the operator will apply the best available control technology at the facility when the permit is granted.

Pursuant to Wyo. Stat. Ann. § 35-11-1105(a)(ii)(C), if a company conducts an environmental audit and finds potential noncompliance, the company is required to correct past noncompliance, improve current compliance, and prevent future noncompliance. After conducting its audit, Citation submitted permit applications to the Division. While Citation's environmental audit protects the company from civil penalties under Wyo. Stat. Ann. § 35-11-1106 for its past noncompliance, it does not grant the company permission to avoid compliance today. Nor does it in any way grandfather noncompliant practices or facilities. The Division properly determined based on the Act, the Air Quality Rules, and the 2018 Guidance that current compliance with the best available control technology requirement, in the absence of a BACT demonstration, is PBACT.

Accordingly, the Department is 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.

IV. CONCLUSION

The Department has demonstrated that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter for law. The Council finds and concludes that the Department properly determined that Citation's facilities were modified and that the Department appropriately applied the 2018 PBACT Guidance to the modifications.

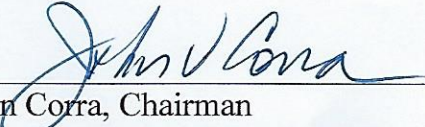
V. ORDER

IT IS HEREBY ORDERED that the Department's motion for summary judgment is granted.

IT IF FURTHER ORDERED that all the conditions in each minor air source permit are affirmed and upheld in their entirety.

IT IS FURTHER ORDERED that Citation's motion for summary judgment is denied.

DATED this 2/5 day of April, 2021



John Corra, Chairman
Environmental Quality Council