

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY - FOR TOMORROW

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**POWDER RIVER BASIN**  
*Resource Council*

December 14, 2007

David A. Finley  
Administrator, DEQ/Air Quality Division  
122 W. 25<sup>th</sup> St., Herschler Bldg., 2<sup>nd</sup> Fl.  
Cheyenne, WY 82002

Terri A. Lorenzon, Director  
Environmental Quality Council

**FILED**

JAN 09 2008



**RE: The Wyoming Department of Environmental Quality Air Quality Division Proposal to Adopt Rules and Regulations for Consideration by the Environmental Quality Council**

Dear Mr. Finley,

The Powder River Basin Resource Council is submitting these comments in response to a *Notice of Intent to Adopt Rules and Regulations* posted on the Department of Environmental Quality's (DEQ) website. We appreciate the opportunity to submit these comments on behalf of our members.

The Powder River Basin Resource Council (PRBRC) is a membership-based resource conservation organization located in Northeast Wyoming. PRBRC was formed in 1973 by ranchers and concerned citizens of Wyoming to address the impacts of mineral development on rural people and communities. The organization works for the preservation and enrichment of our agricultural heritage and rural lifestyle; the conservation of our unique land, mineral, water, and clean air resources, consistent with the responsible use of those resources to sustain the livelihood of present and future generations; and the education and empowerment of our citizens to raise a coherent voice in the decisions that will impact their environment and lifestyle.

PRBRC has approximately 1,000 members, most of who live in Northeast Wyoming, an area that is heavily impacted by coal and other industrial development.

Air quality is of utmost importance to people who live, work, and travel in Wyoming. Children, the elderly, hunters, and outdoor workers alike are greatly impacted by air quality. Our open spaces and clear skies are trademarks of our great state that draw people from around the country and the world to Devil's Tower, Bighorn National Forest, the Black Hills, Thunder Basin National Grassland, and other public lands. Moreover, livestock and wildlife that graze in open prairies depend on pollution free environments.

Unfortunately, industrial activities, such as coal-fired power generation, have negative impacts for Wyoming families and our economy. Air pollution affects tourist destinations and the ability of visitors to enjoy spectacular views and recreational opportunities. Pollution can also harm

soils and vegetation species, which are the lifeblood of Wyoming farmers and ranchers. It also brings critical health impacts to people who live and work in our state.

For these reasons, we appreciate the DEQ's efforts in making the Air Quality Division's regulations stronger and more effective.

The Clean Air Act is based on the concept of cooperative federalism. This system allows states to carry-out regulatory authority granted to the Environmental Protection Agency in the Act so long as states meet minimum federal requirements. Wyoming has a State Implementation Plan (SIP), which allows the DEQ to follow state regulations when conducting New Source Review (NSR) and other permitting activities under the Clean Air Act. We applaud DEQ's efforts to come into compliance with new federal regulations by incorporating them into the Wyoming rules. DEQ's proposed actions are an important step in maintaining a proper system of cooperative federalism and are vital to protecting Wyoming's air quality.

Nevertheless, we feel that the proposed regulations do not go far enough. It is often said that Wyoming has some of the strongest air quality regulations in the nation. For that to be true, Wyoming must not just meet federal requirements, but exceed them. We encourage the DEQ to design ways for Wyoming to be a leader in regulating air quality.

Additionally, we believe this substantial revision to the regulations presents the perfect opportunity to take the time to look at other potential regulations that DEQ could implement in Wyoming. For instance, in light of the Supreme Court's decision in *Massachusetts v. EPA*, DEQ should be seriously considering the regulation of carbon dioxide and other greenhouse gas emissions.

In *Massachusetts v. EPA*, the Supreme Court held that carbon dioxide (CO<sub>2</sub>) and other greenhouse gases are "pollutants" within the definition of the Clean Air Act.<sup>1</sup> Accordingly, the Court held that EPA (and delegated states) must regulate greenhouse gas emissions if they endanger public health, welfare or the environment. Well-documented research from the Intergovernmental Panel on Climate Change (which recently won a Nobel Prize for its work) and scientists from around the world<sup>2</sup> clearly demonstrate that greenhouse gases, including CO<sub>2</sub>, endanger public health, welfare, and the environment.<sup>3</sup> According to *Massachusetts v. EPA*, that means the EPA and delegated states like Wyoming must regulate greenhouse gas emissions under the Clean Air Act.

<sup>1</sup> 549 U.S. 1438 (2007). See also the March 27, 2007, comment letter from Powder River Basin Resource Council, et al. to David A. Finley, section II, pages 3-8, regarding Basin Electric Power Cooperative's Dry Fork Station.

<sup>2</sup> See Naomi Oreskes, *Beyond the Ivory Tower: the Scientific Consensus on Climate Change*, Science, Dec. 3, 2004, available at <http://www.sciencemag.org/cgi/reprint/306/5702/1686.pdf>: "[A]nalysis shows that scientists publishing in the peer-reviewed literature agree with the IPCC, the National Academy of Sciences, and the public statements of their professional societies."

<sup>3</sup> The Intergovernmental Panel on Climate Change has released four assessment reports, which are available on its website at <http://www.ipcc.ch/>. The summary of the Fourth Assessment Report details that "In terrestrial ecosystems, earlier timing of spring events and poleward and upward shifts in plant and animal ranges are with very high confidence linked to recent [global] warming." (emphasis in original). Additionally, "hydrological systems have also been affected."

Furthermore, W.S. § 35-11-213 cannot prohibit DEQ from regulating CO<sub>2</sub>. DEQ has an overly broad and incorrect reading of the statute, and we urge the Department to correct this view. The statute provides that neither DEQ nor the Environmental Quality Council "shall propose or promulgate any new rule or regulation intended . . . to reduce emissions as called for by the Kyoto Protocol." It is obviously intended to prohibit state agencies in Wyoming from complying with the Kyoto Protocol absent express ratification of the treaty by the federal government. However, the statute does not specifically prohibit regulation of greenhouse gases; it merely states that no regulation shall be proposed for the purpose of complying with the Kyoto Protocol. Moreover, a state statute cannot trump Wyoming's requirements to comply with federal law,<sup>4</sup> so the Clean Air Act and federal court opinions that interpret the Clean Air Act, including *Massachusetts v. EPA*, clearly dictate Wyoming's authority and responsibility to regulate the emissions of carbon dioxide and other greenhouse gases.

We appreciate your time and consideration of these issues.

Sincerely,

A handwritten signature in black ink that reads "Shannon Anderson". The signature is written in a cursive style and is followed by a long horizontal line that extends to the right.

Shannon Anderson

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<sup>4</sup> The Supremacy Clause of the United States Constitution (Article VI, section 2) states, "...the laws of the United States... shall be the supreme law of the land." Well-established Constitutional doctrine regarding federal preemption holds that where it is impossible to comply with both the federal and state law, the federal statute must be followed.