
AIR QUALITY CONTROL COMMISSION, STATE OF COLORADO

In the Matter of Colorado's State Implementation Plan and Associated Regulations

PREHEARING STATEMENT OF THE COLORADO ASSOCIATION OF COMMERCE & INDUSTRY (CACI)

The Colorado Association of Commerce & Industry (CACI) submits this Prehearing Statement (Statement) in this proceeding to adopt revisions to Colorado's State Implementation Plan and Associated Regulations, as provided in the Notice of Rulemaking Hearing Before the Colorado Air Quality Control Commission (Commission) published in the Colorado Register on July 22, 2016 (Proposed Revisions), and pursuant to the Air Quality Control Commission's (Commission) procedural rules, 5 CCR 1001-1, § V.E.4.c, , and the Hearing Officer's Order dated August 29, 2016 in this matter.

I. Summary of Factual and Legal Issues with the Proposed Revisions to the Noticed Draft Rules

CACI supports many aspects of the Proposed Revisions, and appreciates the hard work of the RAQC and the Air Pollution Control Division (Division) in developing the Proposed Revisions; however, CACI has identified several factual and legal issues of concern to its members that may need to be resolved by the Commission after the record of the hearing is closed and deliberations begin. These issues include:

1. Major Source RACT provisions and the incorporation of existing major source permit limits into the SIP

CACI has serious concerns regarding any revised proposal that seeks to insert in the SIP the unit-specific emissions limits set forth in air permits simply in an effort to meet the RACT requirements for an ozone moderate nonattainment SIP. The Division originally provided in the Proposed Revisions to do that very thing for forty nine (49) major sources of NOx and VOC, many operated by CACI members. CACI members feel strongly that proceeding as the Division has (1) is unnecessary to meet RACT requirements or support the SIP's required ozone attainment demonstration, (2) will not improve air quality beginning January 1, 2017, and (3) does not make those limits more enforceable as a practical matter. Moreover, such action may become precedent for putting many more sources' permit limits in future SIPs with even greater adverse consequences.

The Division's last revised draft proposal circulated to the parties on September 30, 2016 (Revised Draft) has significantly reduced the number of facilities listed in Table 6 of Section

XIX, and CACI appreciates the efforts of its members, the Division and other parties in reducing the number of facilities listed in Table 6. Those facilities still being listed in Section XIX, Table 6 of the Revised Draft are all currently permitted major sources of VOC and/or NO_x for which there is no Control Techniques Guideline developed by EPA (hereafter “Non-CTG Major Sources”), ostensibly to meet a SIP requirement to impose reasonably available control technology (RACT) on such sources; however, RACT control measures for Non-CTG Major Sources for this SIP are not “reasonably available” for such sources because they cannot be adopted and implemented prior to January 1, 2017, i.e., they will not deliver any emissions reductions by virtue of their inclusion in this SIP revision package at this time. Accordingly, CACI does not believe that such listing is legally required by the Clean Air Act or its implementing regulations, as interpreted and applied in applicable case law.

2. Regulation No. 7, Section XVI.D., Combustion Process Adjustments:

The specific issues of concern to CACI regarding first-ever proposed combustion process adjustments provisions originally noticed by the Division include the proposed applicability threshold of one (1) ton/year of uncontrolled NO_x emissions, the inclusion of duct burners among the specific source types covered, the lack of organization and clarity of the actual requirements for combustion process adjustments, the initial compliance date of January 1, 2017; and the associated monitoring, record keeping and reporting requirements of the proposed rule. These issues have been largely, if not completely, resolved through stakeholder and Division exchange since this proceeding was initiated, such as through a revised 5 ton per year applicability threshold, which CACI specifically supports. Once again, CACI appreciates the proposed improvements to these provisions reflected in the Division’s Revised Draft as a result of CACI member, Division staff and other parties’ efforts through the extended stakeholder process.

3. Regulation No. 7, Section X.E., Industrial Cleaning Solvent Operations:

The Industrial Cleaning Solvent Operations provisions noticed in July do not conform to the 2006 Control Techniques Guideline (CTG) for this source category, because they failed to exclude aerospace cleaning operations which should instead be subject to an aerospace VOC control rule (which is not presently part of Regulation No. 7). CACI commented specifically on the need to revise these provisions in a number of important respects.

The Revised Draft Industrial Cleaning Solvent Operations provisions specific to area (non-major) sources within the aerospace sector are contained in Section X.E.4.c. of the September 30th draft last circulated by the Division. These Revised Draft provisions address the concerns of CACI’s members in the aerospace sector in appropriate ways, based on internal CACI member comment to date. CACI therefore supports the Division’s Revised Draft in this respect.

CACI also appreciates the Revised Draft's inclusion of exemptions in Regulation No. 7, Section X.E.4, and the expansion of those exemptions to include the cleaning of equipment and products, as well as the cleaning of inks, resins and adhesives from products and equipment in various source categories.

II. List of Issues to be Resolved by the Commission

1. Whether listing permit limits for non-CTG major sources of VOC and NO_x will deliver emission reductions or otherwise expedite attainment by January 1, 2017.
2. Whether, in light of the Commission's resolution of issue 1 above, RACT for Non-CTG Major Sources of VOC and NO_x listed on proposed Table 6 of Section XIX. in the Division's Revised Draft is "reasonably available" at this time.
3. Whether the Revised Draft provisions proposed by the Division and supported by CACI with respect to industrial cleaning solvent operations adequately impose work practice and recordkeeping requirements of the aerospace NESHAP for major sources on area (non-major) sources in the ozone nonattainment area while also exempting such facilities and operations from lower VOC and vapor pressure requirements otherwise required for solvents they utilize.
4. Whether the Revised Draft provisions proposed by the Division and supported by CACI with respect to industrial cleaning solvent operations adequately address the need for exempting the cleaning of equipment and materials, including the cleaning of equipment and materials used in testing for quality control or quality assurance purposes, consistent with the treatment of cleaning operations in other source categories.

III. List of Witnesses that may be Called at Hearing

1. Mr. Daniel O'Connell, the Government Affairs Director of CACI, will testify regarding CACI member concerns regarding the inclusion of Non-CTG Major Sources in Table 6, Section XIX of Regulation No. 7, when such action will not (1) deliver emission reductions, (2) strengthen the attainment demonstration to be submitted to EPA for approval, or (3) render the permit-based emission limits for such sources more enforceable as a practical matter. Mr. O'Connell may refer to the Proposed Revisions, the Revised Draft, to CACI letter comments previously submitted to the Division and the RAQC, to CACI Exhibits listed below, and to any Exhibit offered by the Division or other parties in this proceeding in the course of his testimony.
2. Mr. Adam Berig, an employee of CACI member company Encana Oil & Gas (USA), Inc., and CACI's current Air Quality Subcommittee Chair, may be called to testify in support of the Division's Revised Draft provisions regarding industrial cleaning

solvent operations affecting the cleaning of equipment and materials in various source categories in Colorado. Mr. Berig may refer to the Proposed Revisions, the Revised Draft, to CACI letter comments previously submitted to the Division and the RAQC, and to any Exhibit offered by the Division or other parties in this proceeding in the course of his testimony.

3. Mr. David Shanks, an employee of CACI member the Boeing Company (Boeing), may be called as a witness to provide written or verbal testimony in support of the Division's Revised Draft provisions regarding industrial cleaning solvent operations affecting the aerospace sector in Colorado. Because Mr. Shanks is employed by Boeing in St. Louis, MO, and likely is not able to attend the Hearing in person, his testimony may be provided in written form. To the extent Mr. Shanks may be able to participate remotely in the Hearing via telephone, he could be available to answer Commissioner questions regarding his written testimony, if any. Mr. Shanks may refer to the Proposed Revisions, the Revised Draft, to CACI letter comments previously submitted to the Division and the RAQC, to CACI's Exhibit 2 listed below (the aerospace NESHAP), and to any Exhibit offered by other parties in this proceeding in the course of his testimony.

IV. List of Exhibits that may be Presented at Hearing

1. Memorandum of Law regarding the RACT requirements for moderate non-attainment SIPs, and their basis in statute and regulation, as interpreted in relevant case law.
2. All or parts of the aerospace major source NESHAP, 40 CFR Part 63, Subpt. GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.
3. Comments of CACI's Energy and Environment Policy Council Chair, John Jacus, submitted to the RAQC, June 30, 2016.
4. Additional Comment of CACI on Proposed Ozone State Implementation Plan (SIP) Revisions, submitted to the Division, August 12, 2016.
5. Further Comment of CACI on Proposed Ozone State Implementation Plan (SIP) Revisions, submitted to the Division, September 22, 2016.
6. "RACT Q & As – Reasonably Available Control Technology (RACT): Questions and Answers," from Wm. Harnett, Director, Air Quality Policy Division, EPA, to Regional Air Division Directors, May 18, 2006.

7. Exhibits offered by CACI in rebuttal to the Division's or any other party's testimony or exhibits identified in pre-hearing submissions or offered at the hearing in this matter.

V. Text of Proposed Revision, Etc.

CACI proposes that the Commission adopt the Division's Revised Draft provisions and SIP application with the following additional revisions:

1. Delete proposed Section XIX. in its entirety and revise the SIP application narrative developed in conjunction with the RAQC as follows:
 - a. Revise SIP Chapter 6.1, Introduction, to succinctly state the requirements of Clean Air Act (CAA) §§ 172(c)(1) and 182(b)(2), as interpreted by the Court in *NRDC v. EPA*, 571 F.3d 1245, 1252-53 (D.C. Cir. 2009)(successfully challenging in part EPA's 8-hour ozone NAAQS implementation rule), and endorsed by EPA in that case. See CACI Exhibit 1.
 - b. Revise SIP Chapter 6.1, Introduction, to describe the timing constraints placed upon this SIP by the order of the Court in *NRDC v. EPA*, 777 F.3d 456 (D.C. Cir. 2014)(requiring moderate nonattainment area SIPs be prepared a year sooner than originally required by EPA and anticipated by the Division and other states' air quality regulatory agencies). See CACI Exhibit 1.
 - c. Retain SIP Chapter 6.2, CTG Source Categories Analysis, as proposed; and
 - d. Revise SIP Chapter 6.3 to (i) present the determination that RACT control measures for Non-CTG Major Sources (i.e., emissions reductions) are "not reasonably available" for this SIP because they cannot be adopted and implemented prior to January 1, 2017; (ii) clarify that while codifying existing, permitted emission limits was considered, it will not result in any incremental reductions that would expedite (or hasten) attainment; (iii) qualitatively describe the implementation of ongoing RACT, RACT-equivalent and/or beyond RACT control measures in place in the Denver/NFR non-attainment area for existing, Non-CTG Major Sources of NO_x and VOC; and (iv) conclude that, while RACT or RACT-equivalent measures have been and are instituted in the non-attainment area for numerous major sources of VOC and NO_x, under the present circumstances RACT measures for Non-CTG Major Sources are not "reasonably available" to be timely established for this SIP.

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These requested revisions are necessary to avoid listing permit limits and control requirements for Non-CTG Major Sources of VOC and NOx in Section XIX. of Regulation No. 7, as proposed by the Division in the Revised Draft provisions. The legal basis for these revisions is summarized in CACI Exhibit 1, and will be the subject of testimony by Mr. O'Connell and argument by the undersigned legal counsel for CACI.

CACI believes that the Division's Initial Economic Impact Analysis is adequate to support the Division's Revised Draft provisions as modified by these CACI-proposed revisions without further amendment, to satisfy Section V.E.6.c.(ix) of the Commission's Procedural Rules.

VI. Time Requested

CACI anticipates needing 45 minutes of time to provide affirmative witness testimony, including the presentation and discussion of exhibits, and for brief argument of counsel and rebuttal testimony at the Hearing, exclusive of Commission questions and possible cross-examination.

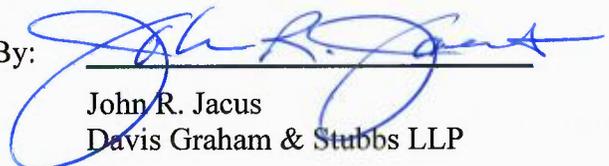
VI. Conclusion

CACI appreciates the opportunity to participate in this proceeding on behalf of its members, to better ensure that our next ozone SIP does not unnecessarily constrain or disadvantage Colorado businesses, especially if the cause of such constraint is not legally required and will not improve air quality, the strength of the Division's attainment demonstration or the enforceability of control requirements as a practical matter.

Dated this 13th day of October, 2016.

Respectfully submitted,

COLORADO ASSOCIATION OF COMMERCE &
INDUSTRY

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this __13th day of October, 2016, a true and correct copy of the foregoing **PREHEARING STATEMENT OF THE COLORADO ASSOCIATION OF COMMERCE & INDUSTRY (CACI)** was served electronically, via email, upon the following:

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