

**Wyoming Mining Association – Air Quality Issues  
August 16, 2018**

**WMA’s August 16, 2018 Meeting Agenda**

August 6<sup>th</sup> email from Travis Deti with the Wyoming Mining Association (WMA) to Patrick Davis. Listed below are the attendees and the Agenda for the Air Quality Issues.

Air Quality Issues Attendees

Phil Dinsmoor, Chairman of WMA Regulatory Affairs Committee (Peabody Energy)

Lecia Craft (Thunder Basin Coal Company)

Kevin Chartier (Inter Mountain Labs)

Travis Deti and Pat Joyce (Wyoming Mining Association)

Also invited from Wyoming Department of Environmental Quality Air Quality Division:

Nancy Vehr (Administrator, WDEQ Air Quality Division)

Darla Potter (WDEQ-AQD)

Cara Keslar (WDEQ-AQD)

**Agenda**

**Meeting between:**

**Environmental Protection Agency Region VIII (EPA),  
Wyoming Department of Environmental Quality Air Quality Division (AQD), Wyoming  
Mining Association (WMA)**

**Date: August 16, 2018**

**Time: 1:00-3:00 PM**

**Location: Little America Motel, Cheyenne Wyoming**

1. WMA Introductory Remarks 10 minutes  
Orientations and Safety Contact  
Introductions
2. Review Agenda 5 minutes
3. Exceptional Events - Discuss the position of EPA with respect to taking action on Exceptional Event demonstration packages from Wyoming?
  - a. Background – Exceedances can have regulatory significance beyond the control of EPA. Action on demonstration packages is important.
  - b. Examples where inaction by EPA affected a regulatory action.
    - i. A smoke-related PM2.5 exceedance was required to be used in a permitting action in the calculation of background for modeling. This caused the model to show noncompliance.
    - ii. BLM and other federal agencies use the EPA air data in NEPA assessments and documents, leading to misrepresentations of actual compliance record.
    - iii. If exceptional event data is not flagged, it can be used it to challenge industry actions.
    - iv. Wyoming Air Quality Division relies on monitoring to show compliance with 24-hour NAAQS when issuing permits, under the Memorandum of Agreement with EPA. Review and exclusion of exceedances due to exceptional events, as appropriate, is critical to show compliance with short-term NAAQS.

4. Part 58 Monitoring Rules – How is EPA planning to implement the PQAQO program for industrial monitors. Can the authority for the program be returned to the Wyoming AQD?
  - a. It is not clear why the rule was promulgated or what it will accomplish, nor why certain authorities previously delegated to Wyoming were rescinded. What can EPA Region 8 do in order to return authorities to the State, and reduce the burdens of this program for which a need has never been demonstrated?
  - b. Quality System approval by two agencies (State and Federal) is inefficient and can result in conflicting determinations and conflicting requests of the operator of an industrial monitor.
  - c. Numerous quality systems for Wyoming industrial monitoring organizations have received concurrence from AQD for Quality System documents, but will be waiting for months before receiving EPA review. This leaves the PQAQOs in limbo as to how to comply today.
  - d. WMA requests EPA Region 8 to support the transfer of authority for Technical Systems Audits and Quality System approval as proposed in *Wyoming Ambient Air Monitoring Network Plan 2018*.

### **Talking Points Organized by Agenda Topics 3 and 4**

3. Exceptional Events - Discuss the position of EPA with respect to taking action on Exceptional Event demonstration packages from Wyoming?

***EPA Response:* The 2016 Exceptional Events rule is applicable to “rulemaking activities.” The EPA Administrator must determine if violations or exceedance of the NAAQS exist before taking the following regulatory actions:**

**Designating or redesignating an area;  
 Classification of nonattainment areas;  
 Determination of attainment finding;  
 Attainment date extensions;  
 Determination a state plan is inadequate; and  
 Other rulemaking determined by the Administrator.**

**As a result of the 2016 Exceptional Events rule, EPA will only be formally acting on demonstrations that have a regulatory use.**

**As for the Exceptional Event demonstration packages from Wyoming, during an April 13, 2018 meeting, the Region 8 Air Program and Nancy Vehr and her staff discussed an approach that includes the following:**

- a) **Upon submittal of an initial notification letter, the EPA Region 8 Air Program would provide a written response either confirming an exceptional event package is needed, because the exceptional event will have a regulatory use, or indicating that an exceptional event package is not needed at this time.**
- b) **For packages that are not needed, the Air Program would acknowledge in the response that EPA does not see a regulatory use for the exceptional event, but that EPA recognizes the significance the exceptional event has for the Wyoming Air Quality Division (AQD) and that it preliminarily appears that the data is affected by an exceptional event.**

- c) Wyoming AQD would note in the Air Quality System (AQS) EPA’s response and the date of the response.
- d) Region 8 would draft a response to the October and November 2017 PM<sub>10</sub> Powder River Basin initial notification letters and share this draft language with Nancy and her staff for review and input prior to EPA sending a formal response on these initial notification letters.

The Air Program sent draft response language to Nancy and her staff on May 14<sup>th</sup> for review regarding these initial notification letters. **\*\*We have not yet received any input from the state.**

- a. Background – Exceedances can have regulatory significance beyond the control of EPA. Action on demonstration packages is important.

*EPA Response:* EPA promulgated the 2016 Exceptional Events Rule to allow states and the EPA to conserve resources by avoiding the Exceptional Events processing for data not being used in a regulatory action.

**EPA is committed to timely action on exceptional event demonstrations that have a regulatory use. Region 8 does not plan to act on exceptional event demonstrations that do not have a regulatory use.**

- b. Examples where inaction by EPA affected a regulatory action.
  - i. A smoke-related PM<sub>2.5</sub> exceedance was required to be used in a permitting action in the calculation of background for modeling. This caused the model to show noncompliance.

*EPA Response:* Appendix W of 40 CFR Part 51, section 8.3.2.c.i addresses the use of exceedances related to permit modeling. It states that “There may be other circumstances which would necessitate modifications to the ambient data record. Such cases could include removal of data from specific days or hours when a monitor is being impacted by activities that are not typical or not expected to occur again in the future (e.g., construction, roadway repairs, forest fires, or unusual agricultural activities).” This provision allows permitting authorities, such as the WDEQ, to modify the data record used for permit modeling to account for exceptional events.

**If you have a specific permit example that you can share, it would be helpful for us to see it, so this issue can be avoided in the future.**

- ii. BLM and other federal agencies use the EPA air data in NEPA assessments and documents, leading to misrepresentations of actual compliance record.

*EPA Response:* EPA consistently recommends that design values used to disclose background concentrations in NEPA documents be developed in consultation with the appropriate state agency with primacy for the regulation of air quality, in this case Wyoming AQD. We are unaware of any instances where publicly accessible data retrieved from EPA’s Air Data website has resulted in misrepresentations of existing air quality disclosed by a NEPA document (EIS in particular, as EPA does not review all EA’s).

**Any specific information that could be shared might help us understand the issue so that it can be avoided in the future. Wyoming regularly participates in the NEPA process adding great value and we hope this continues to be the case.**

- iii. If exceptional event data is not flagged, it can be used it to challenge industry actions.

*EPA Response:* **High concentration data can be used to challenge industry actions even if EPA has concurred on exceptional event claims. The facts associated with an event can be and have been used to address the challenge to explain that it was not routine mine emissions causing the high value (such as high winds, controls in place, etc.).**

- iv. Wyoming Air Quality Division relies on monitoring to show compliance with 24-hour NAAQS when issuing permits, under the Memorandum of Agreement with EPA. Review and exclusion of exceedances due to exceptional events, as appropriate, is critical to show compliance with short-term NAAQS.

*EPA Response:* **Background for Doug - The Memorandum of Agreement (MOA) states Wyoming can rely on ambient air monitoring instead of modeling to demonstrate permit condition adequacy of fugitive dust controls for mining activities in the Powder River Basin (PRB) and to have data to address any public concerns.**

**The MOA allows Wyoming to use both application of Best Available Work Practices and enforcement actions (including enforcement discretion) as appropriate responses to NAAQS violations. This system has been successful and EPA's action on non-regulatory events would not change the success of this approach.**

- 4. Part 58 Monitoring Rules – How is EPA planning to implement the PQAQO program for industrial monitors. Can the authority for the program be returned to the Wyoming AQD?

*EPA Response:* **We have paused our implementation of the PQAQO (Primary Quality Assurance Organization) monitoring program for the industrial monitors, as we have been in discussions with Nancy and her staff (the Wyoming Air Quality Division) for the past several months about the state assuming the role of the PQAQO for the industrial monitors. The PQAQO program authority can be returned to the state for the industrial monitors.**

- a. It is not clear why the rule was promulgated or what it will accomplish, nor why certain authorities previously delegated to Wyoming were rescinded. What can EPA Region 8 do in order to return authorities to the State, and reduce the burdens of this program for which a need has never been demonstrated?

*EPA Response:* **The 2016 monitoring rule revisions made Part 58's quality assurance requirements applicable to industrial monitors whose data are intended to be used to determine compliance with the NAAQS. The industrial monitors were not previously subject to Part 58. We recognize the state required the industrial monitors to generally meet the Part 58 requirements.**

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**Part 58 requires that a PQA's quality management plan (QMP) be approved by the Regional Administrator or the EPA Quality Assurance Officer. This approval function cannot be delegated to a state.**

**Currently, Wyoming's PQA QMP does not include the industrial monitors; it includes the non-industrial monitors located throughout the state. Therefore, each of the 30+ industrial monitoring entities is its own PQA and thus, has its own QMP that EPA is required to approve.**

**In order to return the air monitoring quality assurance oversight to the state, 1) the state needs to include the industrial monitors under its QMP and take on the role of PQA for these monitors or 2) determine that the industrial monitoring data is not intended to be used to determine compliance with the NAAQS. It is our understanding that the state wants the data to be able to determine compliance with the NAAQS.**

**The industrial monitoring entities could create a single PQA and all monitors consolidate under that PQA. Then EPA could approve the one QMP for the industrial monitoring PQA and one quality assurance project plan (QAPP).**

**The Region and our Headquarter's office have been working with Wyoming to determine what the state would have to do to take on the PQA role for the industrial monitors. At this point, Wyoming is evaluating the potential additional responsibilities and resources that the state would need to take on in order to be the PQA for the industrial monitors.**

- b. Quality System approval by two agencies (State and Federal) is inefficient and can result in conflicting determinations and conflicting requests of the operator of an industrial monitor.

*EPA Response:* **EPA Region 8 agrees that it is an inefficient use of state and federal resources for both government entities to review and approve the quality management plans (QMPs) (this also includes the quality assurance project plans (QAPPs)) for each of the 30+ industrial monitoring entities.**

**If (or once) the state consolidates the industrial monitoring entities under the state's overarching PQA QMP, then EPA would only need to approve the state's revised PQA QMP and the state could approve the QAPPs for each industrial monitoring entity. Then there would be no duplication of effort or conflicting requests from Wyoming or EPA.**

- c. Numerous quality systems for Wyoming industrial monitoring organizations have received concurrence from AQD for Quality System documents, but will be waiting for months before receiving EPA review. This leaves the PQAs in limbo as to how to comply today.

*EPA Response:* **In order to avoid a duplication of effort by Wyoming and EPA, Region 8 has temporarily paused its processing of the QMP/QAPP documents submitted by the industrial monitoring entities. We want to continue to work with the state, so we can transfer the PQA monitoring oversight of the industrial monitors to the Air Quality Division.**

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**We understand there is a potential vulnerability for the industrial monitor PQAOs when EPA reviews are not performed timely. However, under the current process the state has requested that EPA work through the state on revisions we need to the QMPs/QAPPs and that EPA not work directly with each industrial monitoring PQAo. This additional coordination adds time to our approval process.**

**If it is determined that EPA needs to restart its processing of the industrial monitor QMPs/QAPPs, then we would propose to work directly with the industrial monitoring entities.**

- d. WMA requests EPA Region 8 to support the transfer of authority for Technical Systems Audits and Quality System approval as proposed in *Wyoming Ambient Air Monitoring Network Plan 2018*.

*EPA Response:* **Region 8 supports the transfer of authority to Wyoming for approval of the QAPPs and for conducting the audits. (We do not have the resources to timely approve the 30+ QMP/QAPPs and conduct the technical system audits (TSAs)).**

**Based on the revised (40 CFR) Part 58 requirements, only EPA is authorized to approve a QMP or combined QMP/QAPP for a PQAo, if the monitoring data is intended to be used to determine compliance with the NAAQS.**

**Should the state consolidate the industrial monitoring entities under the state's overarching PQAo QMP, then EPA would approve the state PQAo QMP and the state could approve the QAPPs for each industrial monitoring entity. In addition, EPA would only perform the TSA (which is required every 3 years for PQAos) on just the state's PQAo and not on each of the 30+ industrial monitoring entities.**

ATTACHMENT – Historic Exceptional Events and Draft Letter to WDEQ

**NOT ON THE AGENDA – IF NEEDED**

**46 Historic Exceptional Events from 2011-2014**

- In an April 2016 letter to Wyoming DEQ, Region 8 deferred action on 46 exceptional events that occurred during 2011-2014, because the data was not needed for any pending regulatory EPA rulemakings. EPA considers deferred demonstrations to be “closed out” (*i.e.*, no longer pending). If at some point in the future the data flagged as an EE were to be needed for a regulatory decision, the EPA would then undertake a full review of the submitted demonstrations and make a concurrence/nonconcurrence decision at that time.
- These 46 exceptional events were brought to the attention of the Administrator in Senator Barrasso’s January 19, 2018 letter and again during EPA’s testimony to the Senate Committee on Environment and Public Works.
- Per a late April 2018 meeting with Doug and Todd Parfitt, Todd requested that the Region identify those historic exceptional events that EPA would review for a regulatory use and send Wyoming a letter regarding those exceptional events that would not warrant our review and concurrence.
- The historic exceptional events were discussed again at the RA’s June 7<sup>th</sup> meeting with Todd and Nancy.
- **Monica Morales sent a draft letter on June 7, 2018 to Nancy Vehr for Wyoming’s review that confirms that none of the 46 EEs from 2011-2014 have an EPA regulatory use and that EPA determines that our review of the demonstration packages to be complete. (See Attachment of unsigned draft letter).**
- **\*\*We have not yet received any input from the state on the draft letter.**

DRAFT LETTER

Nancy Vehr, Administrator  
Air Quality Division  
Wyoming Department of Environmental Quality  
200 West 17<sup>th</sup> Street  
Cheyenne, Wyoming 82002

Re: Wyoming Department of Environmental Quality (WDEQ) 2011-2014 Exceptional Event Demonstration Packages

Dear Ms. Vehr:

This letter is a followup to the U.S. Environmental Protection Agency Region 8’s April 2016 letter, WDEQ’s May 2016 letter and a late April 2018 meeting between WDEQ’s Director, Todd Parfitt, and Region 8’s Regional Administrator, Doug Benevento, regarding 46 exceptional events WDEQ has requested the EPA concur on (see Enclosure). WDEQ submitted the 46 demonstrations for PM<sub>10</sub>, PM<sub>2.5</sub>

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and ozone data that the state flagged as having been influenced by possible exceptional events for calendar years 2011-2014.

Regulations provided in 40 CFR 50.14(a)(1) indicate that the EPA will undertake review and concurrence decisions on exceptional event claims when they impact data that will be used for the following EPA actions:

- (A) An action to designate an area, pursuant to Clean Air Act (CAA) section 107(d)(1), or redesignate an area, pursuant to CAA section 107(d)(3), for a particular national ambient air quality standard;
- (B) The assignment or re-assignment of a classification category to a nonattainment area where such classification is based on a comparison of pollutant design values, calculated according to the specific data handling procedures in 40 CFR part 50 for each national ambient air quality standard, to the level of the relevant national ambient air quality standard;
- (C) A determination regarding whether a nonattainment area has attained the level of the appropriate national ambient air quality standard by its specified deadline;
- (D) A determination that an area has data for the specific National Ambient Air Quality Standard (NAAQS), which qualify the area for an attainment date extension under the CAA provisions for the applicable pollutant;
- (E) A determination under CAA section 110(k)(5), if based on an area violating a national ambient air quality standard, that the state implementation plan is inadequate under the requirements of CAA section 110; and
- (F) Other actions on a case-by-case basis as determined by the Administrator.

You have indicated that you would ask the EPA to review the requests under category (F) above, covering other actions not otherwise identified. It is the EPA's intent that category (F) apply to EPA rulemaking activities not otherwise covered in categories (A) through (E).

The EPA has not identified rulemaking activities that the 46 flagged exceptional events, which occurred during 2011-2014, would affect. Therefore, the EPA is determining our review of the WDEQ 2011-2014 packages to be complete. If any of the flagged data becomes relevant for an EPA rulemaking action in the future, the EPA will revisit the relevant submitted demonstration.

We are committed to continuing to work with the WDEQ on initial notifications related to exceptional events within Wyoming. If you have questions, please feel free to contact Monica Morales, Air Program Director, at (303) 312-6936.

Sincerely,

Martin Hestmark  
Assistant Regional Administrator  
Office of Partnerships and Regulatory Assistance

Enclosure

## ENCLOSURE

EE Date	Year	Location	Monitor ID	Parameter	Monitored Value
5/30/2011	2011	South Pass	56-013-0099-1	O <sub>3</sub>	81 ppb
1/11/2012	2012	Naughton	56-023-0820-2	PM <sub>10</sub>	312 µg/m <sup>3</sup>
1/12/2012	2012	Naughton	56-023-0820-2	PM <sub>10</sub>	167 µg/m <sup>3</sup>
1/13/2012	2012	Naughton	56-023-0820-2	PM <sub>10</sub>	325 µg/m <sup>3</sup>
1/16/2012	2012	Naughton	56-023-0820-2	PM <sub>10</sub>	179 □g/m <sup>3</sup>
1/18/2012	2012	Naughton	56-023-0820-2	PM <sub>10</sub>	174 □g/m <sup>3</sup>
		Mountain Cement	56-001-0800-3	PM <sub>10</sub>	170 □g/m <sup>3</sup>
1/21/2012	2012	School Creek - 3	56-005-0086-1	PM <sub>10</sub>	226 □g/m <sup>3</sup>
		School Creek - 2	56-005-0087-1	PM <sub>10</sub>	223 □g/m <sup>3</sup>
		N Antelope/ Rochelle RO-1	56-005-0869-2	PM <sub>10</sub>	200 □g/m <sup>3</sup>
3/26/2012	2012	Mountain Cement	56-001-0800-3	PM <sub>10</sub>	204 □g/m <sup>3</sup>
4/12/2012	2012	Buckskin Mine N	56-005-1899-1	PM <sub>10</sub>	180 □g/m <sup>3</sup>
6/5/2012	2012	Wyodak	56-005-0901-1	PM <sub>10</sub>	237 □g/m <sup>3</sup>
		Bridger Coal JB-4	56-037-0860-1	PM <sub>10</sub>	215 □g/m <sup>3</sup>
6/6/2012	2012	Thunder Basin	56-005-0123-1	O <sub>3</sub>	88 ppb
6/26/2012	2012	Pinedale	56-035-0101-1	PM <sub>2.5</sub>	47.0 □g/m <sup>3</sup>
6/28/2012	2012	Big Piney	56-035-0700-1	PM <sub>2.5</sub>	53.8 □g/m <sup>3</sup>
6/29/2012	2012	Lander	56-013-1003-1	PM <sub>2.5</sub>	41.8 □g/m <sup>3</sup>
		Casper	56-025-0001-1	PM <sub>2.5</sub>	36.5 □g/m <sup>3</sup>
		Big Piney	56-035-0700-1	PM <sub>2.5</sub>	110.6 □g/m <sup>3</sup>
6/30/2012	2012	Big Piney	56-035-0700-1	PM <sub>10</sub>	190 □g/m <sup>3</sup>
		Big Piney	56-035-0700-1	PM <sub>2.5</sub>	143.7 □g/m <sup>3</sup>
7/1/2012	2012	Big Piney	56-035-0700-1	PM <sub>2.5</sub>	85.4 □g/m <sup>3</sup>
7/2/2012	2012	Big Piney	56-035-0700-1	PM <sub>2.5</sub>	97.4 □g/m <sup>3</sup>
7/3/2012	2012	Big Piney	56-035-0700-1	PM <sub>2.5</sub>	74.7 □g/m <sup>3</sup>
7/4/2012	2012	Gillette Col.	56-005-0800-1	PM <sub>2.5</sub>	56.5 □g/m <sup>3</sup>
		Belle Ayr BA-4	56-005-0892-1	PM <sub>2.5</sub>	55.3 □g/m <sup>3</sup>
		Antelope 3	56-009-0819-1	PM <sub>2.5</sub>	47.0 □g/m <sup>3</sup>
		Big Piney	56-035-0700-1	PM <sub>2.5</sub>	68.4 □g/m <sup>3</sup>
7/5/2012	2012	Big Piney	56-035-0700-1	PM <sub>2.5</sub>	38.6 □g/m <sup>3</sup>
9/18/2012	2012	Wyoming Range	56-035-0097-1	PM <sub>2.5</sub>	39.1 □g/m <sup>3</sup>
9/20/2012	2012	Wyoming Range	56-035-0097-1	PM <sub>2.5</sub>	52.3 □g/m <sup>3</sup>
		Pinedale	56-035-0101-1	PM <sub>2.5</sub>	44.8 □g/m <sup>3</sup>
9/21/2012	2012	Rock Springs	56-037-0007-1	PM <sub>2.5</sub>	37.6 □g/m <sup>3</sup>
		Jackson Hole	56-039-1006-1	PM <sub>2.5</sub>	39.2 □g/m <sup>3</sup>
12/2/2012	2012	Buckskin Mine N	56-005-1899-1	PM <sub>10</sub>	167 □g/m <sup>3</sup>
12/20/2012	2012	N Antelope/ Rochelle RO-1	56-005-0869-2	PM <sub>10</sub>	188 □g/m <sup>3</sup>
3/4/2013	2013	Black Thunder	56-005-0891-2	PM <sub>10</sub>	166 □g/m <sup>3</sup>
3/17/2013	2013	Black Butte #10	56-037-0868-2	PM <sub>10</sub>	261 □g/m <sup>3</sup>

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EE Date	Year	Location	Monitor ID	Parameter	Monitored Value
		Black Butte I-80	56-037-1868-1	PM <sub>10</sub>	432 $\mu\text{g}/\text{m}^3$
6/13/2013	2013	Kemmerer Mine	56-023-0800-1	PM <sub>10</sub>	273 $\mu\text{g}/\text{m}^3$
1/13/2014	2014	Black Butte #10	56-037-0868-2	PM <sub>10</sub>	166 $\mu\text{g}/\text{m}^3$
2/21/2014	2014	Black Butte Lucite Hills	56-037-0852-1	PM <sub>10</sub>	204 $\mu\text{g}/\text{m}^3$
3/17/2014	2014	Black Butte #10	56-037-0868-2	PM <sub>10</sub>	202 $\mu\text{g}/\text{m}^3$
		Black Butte Lucite Hills	56-037-0852-1	PM <sub>10</sub>	242 $\mu\text{g}/\text{m}^3$
4/28/2014	2014	Black Butte Lucite Hills	56-037-0852-1	PM <sub>10</sub>	219 $\mu\text{g}/\text{m}^3$
7/14/2014	2014	Black Butte Lucite Hills	56-037-0852-1	PM <sub>10</sub>	294 $\mu\text{g}/\text{m}^3$

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