

Petition for
Rulemaking: Emission
Limits, Offsets, Testing
Frequency, and Public
Participation

To: The Air Quality Board and the Division of Air Quality

From: HEAL Utah, Western Resource Advocates and Utah Physicians for a Healthy Environment

Re: **"Petition for Rulemaking: Emission Limits, Offsets, Testing Frequency and Public Participation."**

Date: September 22, 2015

We wanted to start by thanking each of you for taking the time to meet with us over the last few months. Sharing our rule proposals with you has been an educational experience: Your questions, comments and feedback have given us a lot to think about and has resulted in clearer and stronger proposals.

We are on the verge of completing our petition for rulemaking and rule language, as indicated by Utah Administrative Code R15-2. Public Petitioning for Rulemaking.¹ However, we had not completed these efforts by the time the Board packet needed to be put together. So, at least we wanted to share with you a brief summary of our proposed rules, similar to what we brought to our recent meetings with Board members.

Thank you again for your time – and we look forward to another chance to discuss these important proposals on October 7.

Context

In late 2014, Utah finalized a critical document – its State Implementation Plan (SIP) to control PM_{2.5}, the fine particles that can reach such dangerously high levels during our wintertime inversions. The plan included a wide range of strategies to control pollution, targeting everything from consumers to small businesses to industry.

As the plan was developed in 2013, several key stakeholders urged the state Division of Air Quality (DAQ) to make changes to strengthen parts of the SIP that focused on point sources.

One such voice was the U.S. Environmental Protection Agency (EPA), which offered a detailed series of suggestions to Utah officials on how they could improve their plan and bring the Wasatch Front into attainment with the PM_{2.5} standard more quickly. Similar suggestions came from Utah-based environmental organizations, such as HEAL Utah, Western Resource Advocates and Utah Physicians for a Healthy Environment.

The Division did incorporate several central parts of stakeholder feedback in the 2014 SIP, addressing SSM (startup, shutdown and malfunction) emissions and accelerating RACT deadlines.

¹ <http://www.rules.utah.gov/publicat/code/r015/r015-002.htm>

However, the state chose not to implement several other key recommendations that EPA and environmentalists had urged.

The environmental groups who have been part of the SIP process for years have thus decided to petition the Air Quality Board to pass several key rules. We believe these proposals will improve our emissions control regimen and boost public faith and participation in the SIP and the permitting of the point sources which contribute to our failure to attain the PM_{2.5} standards.

Below are brief descriptions of each of our proposed rules. To clarify, the first three are intended to apply to “SIP sources,” those point sources which the Division and Board addressed in the 2014 SIP. As Utah develops its “serious SIP,” these three provisions will also apply to all the point sources encompassed by that plan.

Rule 1: Prevent Emissions Spikes

- Many of our permits do not seek to limit emissions during 24-hour periods, even though Utah’s PM_{2.5} control challenge is of course a “short term” problem.
- EPA repeatedly raised this issue in its comments, wondering “how averaging times longer than 24 hours can represent RACT in a plan that is intended to attain 24-hour NAAQS.”
- Our rule, simply, imposes a 24-hour emissions limit on SIP emission units by requiring that emission limits be averaged over a 24-hour (or shorter) period, in addition to current, longer averaging periods.
- We foresee that more frequent stack testing and use of CEMs (see Rule 3) plus heightened record-keeping, will allow the Division to ensure that point sources meet a 24-hour emissions limit.
- Our rule exempts limitations on fugitive emissions.

Rule 2: Lower “Offset” Threshold

- The Clean Air Act requires “offsets” for emissions increases in out of attainment areas to ensure that overall emissions do not increase in an airshed where air pollution reaches unhealthy levels.
- Utah years ago lowered the “thresholds” at which offsets are required for PM₁₀, recognizing that a failure to do so would lead to creeping growth in emissions.
- We modeled this rule after the current rules for PM₁₀ offsets
- For modifications at *existing* facilities, our rules lowers the offset threshold to:
 - 5 tpy for PM_{2.5}
 - 20 tpy for precursors
- For *new* facilities, our rules lowers the offset threshold to:
 - 25 tpy for PM_{2.5}
 - 40 tpy for precursors

- Our rule also clarifies the mechanism for trading offsets among pollutants

Rule 3: Boost Stack Testing Frequency

- Utah statute (R307-165-2) requires stack testing “at least once every five years”
- Practice varies and can be more frequent, such as every three years
- However, the EPA repeatedly questioned whether this was sufficient: “We are concerned with stack test frequencies longer than one year. Please explain why these test frequencies are sufficient to ensure continuous compliance with the limits.”
- Our rule:
 - Requires CEMs (Continuous Emission Monitoring systems) where feasible, UNLESS the source, with DAQ approval and public input, can establish that CEMs is infeasible.
 - Requires stack testing at least once a year UNLESS the source, with DAQ approval and public input, provides a monitoring plan that establishes that proposed testing is adequate to ensure continuous compliance with the emission limitation.
 - Spells out criteria that a SIP source can point to make its case that either CEMs or annual stack testing is not necessary to ensure continuous compliance

Rule 4: Improve Air Quality Participation

- To ensure timely, detailed feedback from public, this rule
 - Requires that key documents such as a “Notice of Intent”, “Engineering Review” and/or the Intent to Approve be made available promptly. **If** a commenter requests those documents, the 30-day comment period clock starts anew as soon as they are made available.
 - Provides a brief automatic comment period extension for intents to approve or draft permits. Automatically extend by 30 or 15 days (if you request the extension in the first two weeks, you get an additional 30 days; if you request it in the third week, you get 15.)

We again appreciate your attention to these proposals – and look forward to a full discussion as to their merits in the months to come. We will provide you with formal petitions and rule language in the coming weeks.



Petition for Rulemaking: Emission Limits, Offsets, Testing Frequency, and Public Participation.

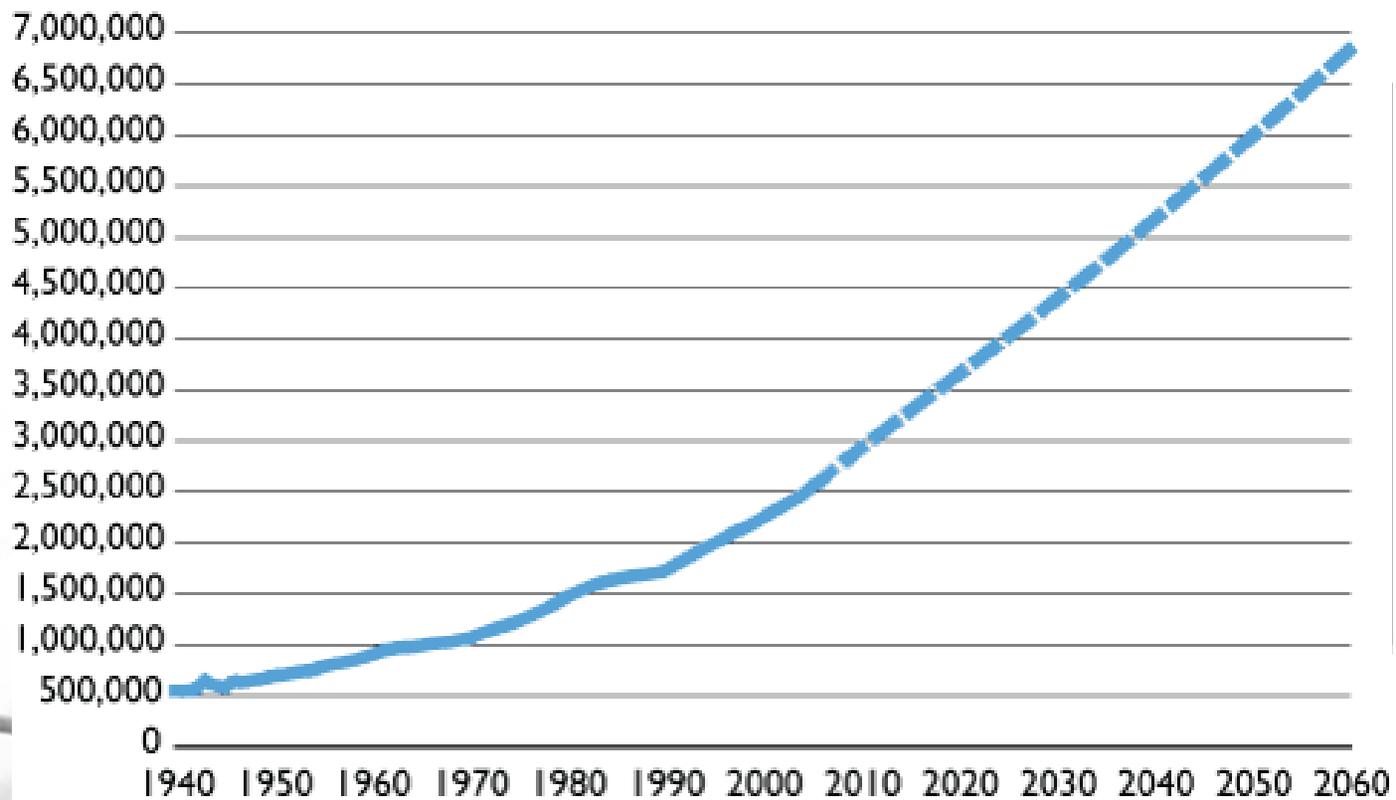
Presented by HEAL Utah, Western
Resource Advocates, and Utah
Physicians for a Healthy
Environment.

Rule Development Chronology

- Review History of 2014 SIP
- Advocates' Concerns Shared by EPA
- Decided to Propose
- Hired Expert
- Thorough Stakeholder Meeting Process
- Led to Changes

Why Not Wait?

Figure 1: Utah's Population, 1940-2060



v.

Why Not Wait?

- To allow for robust discussion on individual recommendations
- SIPs are so voluminous, debating individual proposals very difficult
- Clean Air Act compels us to take all “reasonably available” measures
- Must secure attainment with PM_{2.5} NAAQS “as expeditiously as possible”
- EPA itself suggested two of these

Why Only Focus on Industry?

- We don't!
- Groups working on these rules also push proposals to:
 - Limit hazard of wood smoke
 - Enact up-to-date building codes
 - Expand transit funding
 - Promote EVs and other alternative fuel vehicles
- It's not A or B or C.
- All of the above!

Rule #1: Enact Short-Term Emissions Limits

- Spikes in emissions contribute to bad air days
- Our rule
 - Prevents spikes by imposing a 24-hour limit (averaging time)
 - Applies to state-identified industrial SIP pollution sources

Rule #1: Enact Short-Term Emissions Limits

EPA assumes that 24-hour limits are necessary to attain with a 24-hour standard.

EPA in its SIP comments repeatedly asked:

“how averaging times longer than 24 hours can represent RACT in a plan that is intended to attain 24-hour NAAQS”

Rule #1: Enact Short-Term Emissions Limits

Examples of Industrial SIP Pollution Sources without Short-Term Emission Limits:

- Kennecott's Smelter Main Stack: **annual** average for NO_x
- PacifiCorp Gadsby Power Plant: **annual** average for PM_{10} : **monthly** average for NO_x
- Nucor Steel Electric Arc Furnace: **annual** average for NO_x

Rule #2: Increase Monitoring

- Current practice is to stack test every three to five years
- The proposed rule requires:
 - Continuous emissions monitoring and annual stack tests where feasible
 - Grants Division Director, with public input, discretion to determine feasibility
- We believe this rule will:
 - Improve data state uses to ensure compliance
 - Offer the public greater confidence in the regulation of industry.

Rule #2: Increase Monitoring

EPA requires a showing that monitoring is adequate to ensure continuous compliance with SIP limits

EPA in its SIP comments stated:

“We are concerned with stack test frequencies longer than one year. Please explain why these test frequencies are sufficient to ensure continuous compliance with the limits.”

EPA has determined increased monitoring frequency reduces emissions

Rule #3: Offset Substantial Emissions Increases

- Current rule allows many “minor” pollution increases that can add up to substantial pollution additions
- Our rule
 - lowers the offset threshold for PM_{2.5}, NO_x, SO₂ and VOCs
 - Prevents many “minor” increases from adding to our air pollution problem at the time we need to have emission reductions
- Modeled after current PM₁₀ rule

Rule #3: Offset Substantial Emissions Increases

Major Source PM _{2.5} NA (Serious)	Federal Baseline Definition of Major Modification for Serious PM _{2.5} NA	Proposed PM _{2.5} Offset Rule Definition of Modification
PM _{2.5}	10 tpy	5 tpy
NO _x	40 tpy	20 tpy
SO _x	40 tpy	20 tpy
VOCs	40 tpy	20 tpy
Total PM _{2.5} + NO _x + SO ₂ + VOCs	n/a	30 tpy
Ammonia	case-by-case	n/a

Rule #3: Offset Substantial Emissions Increases

Major Source PM _{2.5} NA (Serious)	Proposed Federal Baseline Definition of Major Source for Serious PM _{2.5} NA	Proposed PM _{2.5} Offset Rule Definition of Applicable New Source
PM _{2.5}	70 tpy	25 tpy
NO _x	70 tpy	40 tpy
SO _x	70 tpy	40 tpy
VOCs	70 tpy	40 tpy
Total PM _{2.5} +NO _x +SO _x +VOCs	—	50 tpy
Ammonia	70 tpy	70 tpy

Rule #4: Improve Public Participation

- **Currently critical permitting documents are sometimes unavailable**
- **Current short public comment periods can hinder meaningful participation**
- **The Proposed Rule**
 - **Requires DAQ to provide critical documents on request**
 - **Automatically extends the public comment period by 15 to 30 days on request**

Conclusion

- We believe these rules can serve to:
 - Strengthen Utah's SIP
 - Show the EPA how seriously authorities take our PM2.5 problem
 - Produce more accurate data
 - Reduce emissions
 - Help with other criteria pollutants as well
 - Boost public confidence in point source regulation
- Petition for rulemaking and proposed rule language will be filed soon
- Please let us know if you have any questions
- We look forward to a robust discussion on these issues in the months to come



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