BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO

PREHEARING STATEMENT
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION

REGARDING REVISIONS TO REGULATION 7
JULY 19, 2018 HEARING

The Colorado Department of Public Health and Environment, Air Pollution Control Division ("Division") hereby submits its Prehearing Statement in this matter pursuant to the Air Quality Control Commission's ("Commission") procedural rule 5 C.C.R.1001-1.V.E.6.c.

I. EXECUTIVE SUMMARY

On May 21, 2012, the Denver Metro North Front Range ("DMNFR") area was designated as a Marginal nonattainment area for the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"), effective July 20, 2012, with an attainment date of July 20, 2015 (77 Fed. Reg. 30088). On May 4, 2016, the U.S. Environmental Protection Agency ("EPA") published a final rule that determined that Colorado's Marginal ozone nonattainment area failed to attain the 2008 8-hour Ozone NAAQS and therefore reclassified the DMNFR area to Moderate, effective June 3, 2016, and required attainment of the NAAQS no later than July 20, 2018, based on 2015-2017 ozone season data.

Due to the reclassification, Colorado must submit revisions to its State Implementation Plan ("SIP") to address the Clean Air Act's ("CAA") Moderate nonattainment area requirements, as set forth in CAA § 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)). The SIP revision must include Reasonably Available Control Technology ("RACT") requirements for existing major sources of VOC and/or NO_x (i.e. sources that emit or have the potential to emit 100 tons per year ("tpy") or more). Although many newly constructed or modified emission units have been controlled to RACT levels since the adoption of Colorado's minor source RACT permitting requirements in 1981, as a Moderate nonattainment area Colorado must include provisions in the SIP implementing RACT.

In this rulemaking, the Division is proposing to add RACT requirements for stationary combustion equipment at major NO_x sources in the DMNFR ozone nonattainment area for inclusion in the SIP. Specifically, the Division is proposing RACT requirements in Regulation 7, Section XVI.D. for boilers, stationary combustion turbines, lightweight aggregate kilns, glass melting furnaces and compression ignition reciprocating internal combustion engines ("RICE") (collectively referred to as "stationary combustion equipment").

A. Estimate of Time for Presentation

The Division estimates that it will need thirty minutes for its direct presentation. The Division requests an additional thirty minutes should cross-examination and rebuttal be necessary.

B. Contents

In addition to the Executive Summary set forth above, the Division's Prehearing Statement includes a Statement of Factual and Legal Issues providing the basis for the Division's proposal along with a description of the process and parties involved.

Pursuant to the Commission's Procedural Rules, the Division's Prehearing Statement also identifies issues to be resolved by the Commission in this matter, a declaration regarding the intent to file exhibits and written testimony, a list of witnesses, the final Economic Impact Analysis, rule language and a statement of basis and purpose for the Division's proposal.

II. STATEMENT OF FACTUAL AND LEGAL ISSUES

A. Major source RACT

The CAA does not define RACT. However, EPA has defined RACT as the "lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 44 Fed. Reg. 53762 (Sept. 17, 1979). RACT can be adopted in the form of emissions limitations or work practice standards or other operation and maintenance requirements.

As a Moderate nonattainment area, Colorado must include in the SIP provisions to implement RACT for Colorado's existing major sources. In order to satisfy this requirement, the Commission adopted source specific RACT for a number of major sources of VOC and/or NO_x in the DMNFR on November 17, 2016. During that rulemaking, the Commission determined that little, if any, additional controls could be implemented by certain major sources by the SIP submittal deadline of January 1, 2017. The Commission also determined that not all existing major sources or major source emission points were subject to regulatory RACT requirements in Regulation Number 7 or federally enforceable emission limits in Colorado's approved SIP provisions. Therefore, the Commission required specific owners or operators to submit RACT analyses for certain facilities or specific emission points to the Division by December 31, 2017. In these RACT analyses, sources were required to identify potential options to reduce VOC and/or NO_x emissions from each facility or emission point(s), propose RACT for that facility or point(s), propose associated monitoring, propose a schedule for implementation, and include economic and technical information demonstrating why the proposal established RACT for the particular facility or emission point(s). The Division then broadly developed RACT for each source category specific to Colorado's source mix.

Based on the Division's in-depth review of: 1) information provided in these RACT analyses; 2) operations of the specific sources in the source categories that would be subject to the proposed rule; and 3) rules adopted by Moderate nonattainment areas in other jurisdictions and EPA guidance such as the RACT/BACT/LAER Clearinghouse, the Division proposes to adopt categorical RACT requirements in Section XVI.D. for stationary combustion equipment located at major sources of NO_x in the DMNFR.

B. Overview of the Proposed Rule

1. Applicability

The requirements of proposed Section XVI.D. apply to existing combustion equipment located at sources in the DMNFR that were major as of June 3, 2016 (i.e. the effective date of the moderate nonattainment reclassification), unless the facility obtains a federally enforceable permit limiting facility-wide VOC and/or NOx emissions below 100 tpy.

2. Exemptions

Since it would be technologically and economically infeasible to require certain stationary combustion equipment to comply with the emission limitations in Section XVI.D., the Division is proposing exemptions which are all supported and within the definition of RACT. Stationary combustion equipment that meets one of the exemptions in Section XVI.D.2. is exempt from complying with Section XVI.D.4. (emission limitations), Section XVI.D.5. (compliance demonstrations) and the related recordkeeping and reporting requirements contained in Sections XVI.D.7.a-f. However, even if stationary combustion equipment meets an exemption in Section XVI.D.2., it still must comply with the combustion process adjustment requirements in Section XVI.D.6. The combustion process adjustment requirements establish RACT and impose recordkeeping and reporting requirements for combustion equipment in Section XVI.D.7.g.

The Division is proposing an exemption for stationary combustion equipment with an annual capacity factor less than 20% over a 3-year rolling period. The Division determined 20% over a 3-year rolling period was appropriate for Colorado's source mix because: 1) limited operation dictates lower actual emissions and significantly impacts any RACT determination of $/ton emissions reduced; 2) manufacturer guarantees of controls do not typically apply for equipment operating at less than 25% capacity; 3) this exemption is reflective of a compilation of several exemptions approved by EPA in other areas' RACT SIPs; and 4) both the 20% threshold and the 3-year rolling period serve as an incentive for sources to reduce operation of less efficient combustion equipment in favor of newer, more efficient, well controlled and monitored combustion equipment units, thereby avoiding costs to control and comply for the older equipment. Prior to reviewing the Technical Support Document ("TSD"), EPA Region 8 raised a concern with 20% over a 3-year rolling period. However, as explained above and will be further explained in the TSD to be published on June 18, the Division determined there is sufficient support and justification for these criteria. Additionally, the Division is also proposing an exemption for stationary combustion equipment with total uncontrolled actual emissions less than 5 tpy NOx. This is the threshold that was used to determine whether a facility was required to submit a RACT analysis during the November 17, 2016 rulemaking.

Once stationary combustion equipment no longer qualifies for any exemption, the owner or operator must comply with the applicable requirements of Section XVI.D. as expeditiously as practicable, but no later than 36 months after any exemption no longer applies. Additionally, once stationary combustion equipment no longer qualifies for any exemption, the owner or operator must conduct a performance test using EPA test methods within 180 days and notify the Division of the results and whether emission controls will be required to comply with the emission limitations of Section XVI.D.4.

3. Definitions

In order to provide clarity and regulatory certainty, the definitions proposed by the Division are consistent with definitions used in rules in Moderate nonattainment areas in other states as well as applicable NSPS and NESHAP.

4. Emission limitations and operational requirements

The Division is proposing new categorical, numeric emission limitations, which vary based on fuel type and size of the stationary combustion equipment, where applicable. Affected stationary combustion equipment would be required to comply with these emission limitations no later than October 1, 2021. Prior to reviewing the TSD, EPA Region 8 also raised concerns with Section XVI.D.4.b(i) where turbines are required to comply with the emission limits in 40 CFR Part 60, Subpart GG. The Division determined this requirement to be appropriate for the turbine category and justified based on Colorado's source mix. While 40 CFR Part 60, Subpart KKKK is appropriate for newer turbines, the Division determined it to be unreasonable and not economically feasible to subject certain older turbines to Subpart KKKK. Most of the turbines in Colorado's source mix are older and therefore must comply with 40 CFR Part 60, Subpart GG standards, except for some grandfathered limited-use turbines, where the Division determined that additional dry-low NOx controls to meet the 40 CFR Part 60, Subpart GG standard may be technically feasible and cost effective but only if emissions are at potential-to-emit levels. Therefore, these grandfathered limited-use turbines would need to comply with 40 CFR Part 60, Subpart GG standard if operated above the 20% capacity factor threshold. This determination will also be further supported in the TSD.

5. Monitoring, recordkeeping and reporting requirements

Because the categorical emission limitations and operational requirements will be incorporated into Colorado's federally enforceable SIP, they must be practicably enforceable. In order for them to be practically enforceable, the Division is proposing that affected stationary combustion equipment comply with certain monitoring, recordkeeping and reporting requirements no later than October 1, 2021. In order to provide clarity and regulatory certainty, many of the monitoring requirements proposed by the Division incorporate by reference existing federal requirements and are consistent with rules in Moderate nonattainment areas in other states.

C. Rulemaking Parties and Regulatory Alternatives

The Division conducted an extensive stakeholder process between 2016 and 2018, inviting industry, local governments and environmental groups to participate. Subsequently, there are only three Parties to this rulemaking, including Colorado Energy Nations Company, Colorado

Utilities Coalition for Clean Air, and Metro Wastewater Reclamation District. Additionally, though not a party, the Division has consulted with EPA Region 8 throughout this rulemaking. No Party has suggested a regulatory alternative.

D. Justification for the Division's Proposed Revisions

All Parties have expressed support for the Division's current proposal. However, some minor revisions have been made for clarification purposes. The most prominent revisions to the proposal include setting an October 1, 2021 compliance date (to replace "no later than 36 months after the effective date of this rule" in Sections XVI.D.4 and XVI.D.5), and clarifying that exempt combustion equipment is still required to comply with combustion adjustment requirements and associated recordkeeping and reporting requirements. These revisions have been incorporated into the current rule language attached hereto.

III. STATEMENT OF ISSUES TO BE RESOLVED BY THE COMMISSION

A. Whether to adopt the Division's proposed rule language to Regulation 7, Sections XVI and XIX.

B. Whether the process and proceedings in this matter comply with all relevant requirements of the Colorado Air Pollution Prevention and Control Act as set forth in C.R.S. § 25-7-101 et. seq. and the State Administrative Procedures Act set forth C.R.S. 24-1-101 et. seq., and all other applicable laws.

IV. EXHIBITS AND WRITTEN TESTIMONY

The Division does not intend to have any separate exhibits or written testimony to be offered into evidence at the hearing. The Division will utilize documents already part of the record (*e.g.* proposed rule language, TSD, etc.). The Division will also utilize demonstratives, such as a PowerPoint presentation, as part of its presentation at hearing.

The Division may also utilize exhibits identified by other parties.

V. WITNESS LIST

The Division intends to utilize the following persons for its presentation. These potential witnesses are employees of the Division and should be contacted only through undersigned counsel. The Division reserves the right and may call additional witnesses, as necessary, for rebuttal.

A. **Chris Colclasure** – Planning & Policy Program Manager/Deputy Director of the Division. Mr. Colclasure may testify regarding the development, meaning, and implementation of the proposed revisions to Regulation 7. Mr. Colclasure may also testify regarding any alternative proposals submitted by other parties.

B. **Dena Wojtach** - Regulatory Compliance Support Unit Supervisor. Ms.Wojtach may testify regarding the development, meaning and implementation of the proposed revisions to Regulation 7. Ms. Wojtach may also testify regarding any alternative proposals submitted by other parties.

C. **Leah Martland** – Regulatory Compliance Support Unit. Ms. Martland may testify regarding the development, meaning, and implementation of the proposed revisions to Regulation 7. Ms. Martland may also testify regarding any alternative proposals submitted by other parties.

D. **Jeremy Neustifter** – SIP Technical Development Unit. Mr. Neustifter may testify regarding the development, meaning, and implementation of the proposed revisions to Regulation 7. Mr. Neustifter may also testify regarding the development of the TSD.

E. **Curt Taipale** – SIP Technical Development Unit Supervisor. Mr. Taipale may testify regarding the development, meaning, and implementation of the proposed revisions to Regulation 7. Mr. Taipale may also testify regarding the development of the TSD.

F. **Roland Hea** – Permitting Section Supervisor. Mr. Hea may testify regarding permit RACT, costs, controls, etc.

G. **Shannon McMillan** – Compliance and Enforcement Program Manager. Ms. McMillan may testify regarding applicability and enforcement issues related to the emission limitations, exemptions and compliance testing.

The Division may also call the following potential witnesses:

H. **Ken Lloyd** – RAQC Director. Mr. Lloyd may testify regarding the development, meaning, and implementation of the proposed revisions to Regulation 7.

I. **Amanda Brimmer** – RAQC Staff. Ms. Brimmer may testify regarding the development, meaning, and implementation of the proposed revisions to Regulation 7.

J. Witnesses identified by other parties.

VI. FINAL ECONOMIC IMPACT ANALYSIS

Pursuant to 5 C.C.R.1001-1V.E.6.c.(ix) of the Commission's rules of procedure, the Final Economic Impact Analysis for the Division's proposed revisions to Regulation 7 is submitted with this Prehearing Statement.

VII. REVISED RULE LANGUAGE AND STATEMENT OF BASIS

Revised proposed rule language and a revised Statement of Basis and Purpose are also submitted with this Prehearing Statement.

Respectfully submitted this 11th day of June, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2018, that a true and correct copy of the foregoing PREHEARING STATEMENT was served via electronic mail upon the following:

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