BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO

IN THE MATTER OF PROPOSED REVISIONS TO REGULATION NUMBER 7, EMISSIONS OF VOLATILE ORGANIC COMPOUNDS

REBUTTAL STATEMENT OF ROCKY MOUNTAIN CLEAN AIR ACTION

Pursuant to Colorado Air Quality Control Commission regulations, Rocky Mountain Clean Air Action hereby submits the following rebuttal statement in the matter regarding proposed revisions to Regulation No. 7 to address increased emissions of volatile organic compounds ("VOCs") from oil and gas exploration and production activities in the Denver 8-hour ozone control region, or the Early Action Compact ("EAC") area (hereafter "Denver ozone reductions"), and to require emission controls for oil and gas operations on a statewide basis (hereafter "statewide ozone reductions").

REBUTTAL OF COLORADO OIL AND GAS ASSOCIATION, KERR-MCGEE, NOBLE ENERGY, WELD COUNTY, AND WILLIAMS PRODUCTION AND WILLIAMS FIELD SERVICES PREHEARING STATEMENTS

1. Colorado Oil and Gas Association, Kerr-McGee, Noble Energy, Weld County Prehearing Statements, Denver EAC Regulation 7 Revision

The Colorado Oil and Gas Association, Kerr-McGee Onshore LP, and Noble Energy, Inc., along with the echo of Weld County, (hereafter "the industry parties") collectively are asking this Commission to adopt an alternative rule to that proposed by the Colorado Air Pollution Control Division ("Division") for the EAC area. The alternative rule not only calls for the retention of the current system-wide approach to reducing flash emissions of VOCs in the EAC area, but calls for less frequent monitoring and recordkeeping than is currently required. Although the industry parties are calling for a higher level of system-wide VOC reductions, a 65% systemwide reduction, what they propose is simply beyond the scope of this rulemaking.

Before enumerating the flaws with the industry parties' alternative rule, it is important to reiterate just how precarious of a position we are in with regards to ozone pollution in the EAC area. If ozone levels in the summer of 2007 are at, near, or above levels reported this year, we could see yet another violation of the 8-hour ozone National Ambient Air Quality Standard ("NAAQS"). A violation of the NAAQS could lead to the dissolution of the EAC, the imposition of a nonattainment designation, more strict transportation conformity requirements, and far-reaching effects on industry, including more stringent permitting requirements for major sources and major modifications. **Most importantly, however, a violation of the NAAQS would place hundreds of thousands of people, especially children and seniors, at grave risk.** This is an outcome we can ill-afford.

Despite the ramification of a nonattainment designation, the industry parties have put forth an alternative rule that, in many ways, maintains the status quo. Not only do the industry parties propose to retain the burdensome and ineffective systemwide approach to reducing flash emissions, but they propose to weaken existing monitoring and recordkeeping requirements. On the balance, this alternative rule seems to propose little, if any, change from the existing and inadequate Regulation 7.

The industry parties' alternative rule is fatally flawed, however, given that its basis is outside the scope of this rulemaking. The industry parties' prehearing statement and statements made during the last prehearing conference on October 27th clearly show that their proposed 65% systemwide reduction in VOCs from flash emissions achieves a target VOC reduction of only 124.5 tons/day, **over 30 tons/day higher than the existing 91.3 tons/day target that formed the basis for demonstrating the EAC would attain the 8-hour ozone NAAQS**. By proposing a revised target of 124 tons/day through their alternative rule, the industry parties are proposing a revision to the modeling done in support of the EAC, including a revision to the emission inventory and allocations supporting the ability of the EAC to attain the 8-hour ozone NAAQS. **Such a proposal is far beyond the scope of the Public Notice for this rulemaking.**

In the Final Prehearing Order ("Order") signed by Commissioner Brady on October 29, 2006, the scope of this rulemaking was clarified. Commissioner Brady made clear that, "The Public Notice for this rulemaking hearing does not include a specific reference to potentially revising the model, the inventory, or any factor, including RVP [Reid Vapor Pressure], in the model that was relied upon to support the Ozone Action Plan of the Ozone Early Action Compact." Order at 5. By proposing an alternate rule that is based on meeting a revised 124.5 ton/day target, as opposed to the existing 91.3 ton/day target, the industry parties have proposed a rule that concurrently proposes to revise the model and the inventory relied upon to support the EAC**. The alternate rule is thus, outside the scope of the Public Notice for this rulemaking**.[1]

At the heart of this matter are the Air Quality Control Commission's procedural rules, which state that that an alternate proposal "may only be considered by the Commission if the subject matter of the alternative proposal is consistent with and fits within the scope of the notice for the particular rule-making hearing." AQCC Procedural Rules, § 1.5.5(3)(b). As already explained, the alternate rule submitted by the industry parties is not within the scope of the notice for this rulemaking. In accordance with Air Quality Control Commission procedural rules, the alternative rule submitted by the industry parties may not be considered during this rulemaking as it is inconsistent with and is outside of the scope of the notice for this rulemaking.

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[1] As the ozone Action Plan of the Ozone EAC states on page III-5 and III-6, the VOC emission inventories "are a part of the technical basis for the attainment demonstration." By proposing to revise the existing 91.3 ton/day target for VOC reductions from flash emissions to 124.5 tons/day, the industry parties are also proposing to revise the technical basis for the attainment demonstration for the EAC area. If the industry parties' alternate rule is adopted, it would require that a revised technical basis be completed and that the existing attainment demonstration be revised. **The Public Notice for this rulemaking makes no mention of a revised technical basis and/or revised attainment demonstration.**

Although the industry parties may claim that their alternate rule is based on other considerations, such as a prediction of higher rule effectiveness and lower growth projections than those relied upon by the Division, **these considerations do not offset the fact that the alternate rule aims to meet a 124.5 tons/day target reduction in flash emissions of VOCs**, rather than the existing 91.3 ton/day target. Indeed, the industry parties' have not attempted to justify the validity of their alternate rule independent of meeting their revised 124.5 tons/day target.

Besides that, the industry parties' have failed to show that rule effectiveness will be higher than the Division's proposed 80%. In fact, based on compliance records from 2005 and 2006, it seems that rule effectiveness should be lower than 80%. As stated in Rocky Mountain Clean Air Action's Final Prehearing Statement, only 42% of companies operating in the EAC area met the required average 37.5% systemwide reduction in flash emissions in 2005. See, RMCAA Final Prehearing Statement at 16. And, as noted in the Division's Final Prehearing Statement, six of 26 companies—or 23%—failed to reduce average flash emissions of VOCs by 47.5% as of July 31, 2006. See, Division Final Prehearing Statement, Exhibit 17. That means only 77% of companies achieved reductions in flash emissions of VOCs that averaged 47.5% or more. Further, of the companies that averaged a 47.5% reduction or higher, nine companies failed to consistently reduce daily flash emissions of VOCs by 47.5%. Id. Noble Energy failed to meet required flash emission reductions on 15 days, or half a month. In total, data from the Division up to July 31, 2006 shows that a total of 15 companies failed to meet the required 47.5% reduction in VOCs from flash emissions on a daily and/or average basis, leading to a compliance rate of 43%.

Rocky Mountain Clean Air Action does not propose that a lower level of rule effectiveness be instituted for the purposes of this rulemaking. What we submit, however, is that given widespread noncompliance among companies operating in the EAC area, there is absolutely no support for relying upon a higher rule effectiveness value, as proposed by the industry parties. A rule effectiveness of 80% appears to remain appropriate in light of widespread noncompliance.

Finally, in relation to growth assumptions, Rocky Mountain Clean Air Action submits that industry's projected rate of 3.7-7.7% is suspect, at best. For one thing, the industry parties' growth projection do not take into account the recent the Colorado Oil and Gas Conservation Commission decision to allow well densities to increase from one well per 40 acres to one well per 5 acres. See, **Ex. 1**.

Additionally, according to the industry parties' Exhibit 6, the estimate of the number of future drilling, recompletion, and re-fracing projects were obtained from Noble Energy and Anadarko Petroleum (i.e., Kerr-McGee). Although we have serious doubts that Noble Energy and Anadarko Petroleum would provide objective and accurate estimates of future growth for the purposes of this rulemaking, the fact that only Noble Energy and Anadarko Petroleum were queried raises doubts as to whether the industry parties' growth figures can rightfully be applied to every other company in the EAC area.

Indeed, Noble Energy and Anadarko are two of at least 26 companies operating in the EAC area.

Collectively, the issues presented by the industry parties' are severely, if not fatally, flawed and do not serve to justify their position that the Division's proposed changes to Regulation 7 to address increases in VOC emissions in the EAC area should not be adopted by this Commission. The industry parties' alternate rule is outside the scope of the Public Notice for this rulemaking, as enumerated by the Commission itself, and the industry parties' assertions relating to rule effectiveness and growth assumptions appear unsupported at best.

2. Kerr-McGee, Noble Energy, Colorado Oil and Gas Association, Williams Prehearing Statement, Statewide Regulation 7 Revision

Kerr-McGee, Noble Energy, the Colorado Oil and Gas Association, and Williams Production and Williams Field Services (collectively "COGA and Williams") claim that the Division's proposal to require the installation of pollution controls on all new and reocmpleted wells for the first 90 days of production (hereafter "90 day requirement") is unnecessary. Williams et al. claims this requirement "ignores the issue of whether a new well or refrac is actually producing significant volumes of condensate." COGA Final Prehearing Statement at 7 (see also, Williams Final Prehearing Statement at 2).

While COGA and Williams. oppose the proposal to require new and recompleted wells to have pollution controls installed for the first 90 days, they provide very limited information or analysis supporting their contention that new wells or refracs do not produce significant volumes of condensate. While Williams provides limited information regarding condensate production in portions of western Colorado (COGA provides none whatsoever), it is unclear how this information supports the contention that variable condensate production corresponds to lower VOC emissions during the first 90 days of production and justifies the elimination of the 90 day requirement.

Regardless, the argument of COGA and Williams makes little sense. If the 90 day requirement is eliminated altogether, areas with high volumes of condensate production, such as in the Rulison Field (see Williams Final Prehearing Statement at 2), would have correspondingly significant uncontrolled VOC emissions during the first 90 days of production. This would defeat the purpose of the proposed revisions to Regulation 7, which is to proactively reduce increasing VOC emissions form oil and gas exploration and production activities outside the EAC area.

Contrary to COGA and Williams, Rocky Mountain Clean Air Action feels that wholesale elimination of the 90 day requirement is not entirely supported. Williams' Final Prehearing Statement shows that condensate production can be significant, particularly in areas of western Colorado. The 90 day requirement should be retained or refined to ensure that increasing VOC emissions are reduced in areas with high condensate production.

Respectfully submitted this 6h day of November

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Jeremy Nichols
Director
Rocky Mountain Clean Air Action

This is to certify that I have served by electronic mail and hand delivery this final prehearing statement upon all parties identified below this 6th day of November 2006, addressed as follows:

Air Quality Control Commission
Colorado Department of Public Health and Environment
Theresa L. Martin
EDO-AQCC-A5
4300 Cherry Creek South Drive
Denver, Colorado 80246
(original and 20 copies)

Air Pollution Control Division
Garry Kaufman
APCD-B1
4300 Cherry Creek South Drive
Denver, Colorado 80246

Steve Brown, Attorney for the Commission
Natural Resources Section
Attorney Generals Office
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

Tom Roan, Attorney for the Division
Natural Resources Section
Attorney Generals Office
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

I also certify that electronic copies of this prehearing statement have been sent via electronic mail to all parties to this rulemaking.

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Jeremy Nichols