

Utah Asks for an Exemption from the Clean Air Act
This is UPHE White Paper Response
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In 2018 EPA designated the Northern Wasatch Front (NWF) airshed (which includes Salt Lake, Davis, and parts of Weber and Tooele Counties) and the Uinta Basin “nonattainment,” i.e. in violation of EPA’s national standard for ozone (which is currently 70 ppb, based on a three-year average of the annual 4th highest daily eight-hour average concentration). Consequently, the EPA would normally require a state to develop a plan to reduce ozone enough to achieve “attainment.”

However, an obscure section of the Clean Air Act (CCA) allows a community to appeal to EPA for retrospective “relief” from non-attainment designation, and therefore avoid having to develop a strategy to reduce ozone, if it can show that a significant component of their ozone originates outside their borders, i.e. in a foreign country. Utah is making what appears to be the first ever attempt by a state to invoke this section of the CCA, 179B, by asking the EPA to accept evidence that a significant portion of our ozone, and/or ozone precursors, originates outside our borders, especially in Asia. If the EPA buys Utah’s sales pitch, it will open the door for higher levels of ozone on the Wasatch Front from any and all sources, including the inland port.

Public documents show that Utah Division of Air Quality (UDAQ) acknowledges that they made this appeal to EPA on behalf of the Utah Petroleum Association (UPA). Yet UDAQ’s 2020 report undermines the premise of their own appeal, stating, “The preliminary data shows that the Wasatch Front is not, in fact, significantly impacted by international emissions on high ozone summer days.” A letter from Utah Dept. of Environmental Quality’s Executive Director, Kimberly Shelly, to EPA further undermines their appeal, stating “local photochemical production of ozone resulting from nearby anthropogenic precursor emissions are the dominant driver of exceedance days in the NWF.” The letter also acknowledged UPA and the Utah Mining Association (UMA) paid for extensive computer modeling to help make this sales pitch.

Another public letter to EPA from Governor Spencer Cox and Senate President, Stuart Adams, and House Speaker Brad Wilson, asked EPA to grant this section 179B waiver, based on a vague, unsupported insinuation that to refuse would have adverse economic consequences. A realistic reading of all this evidence suggests that UDAQ and their staff were “hijacked” by our most powerful politicians to serve the agenda of UPA and UMA, our largest industrial polluters.

A maneuver like this by the state that would result in even higher levels of ozone, must be looked at in the context of the latest medical research. Ozone is a much greater public health hazard than what was known even ten years ago. Two studies illustrate the point. Following over 7,000 patients for 18 years, from areas with typically less ozone than in Utah, researchers found that exposure to an increase of just 3 ppb ozone for ten years was associated with as much loss of lung function and lung tissue as smoking a pack a day of cigarettes for 29 years. Another study looked at chronic and acute exposure to air pollution for 230,000 deliveries in twelve clinical locations over six years. Researchers found that ozone pollution alone was responsible for 8,000 still births a year, or one third of all still births in the United States. Modest increases in ozone exposure just in the several days prior to delivery increased the risk of still births by about 20%.

UDAQ's "sales pitch" to EPA wasn't cheap. Thousands of hours from experts were required, and hundreds of thousands of dollars were likely spent. Consultants were hired by UMA and UPA, but a lot of tax payer-funded UDAQ staff time was also involved. Utah taxpayers have a right to know how much of their money was spent on this scheme.

This is an alarming saga of our state agency being exploited for the benefit of our largest industrial polluters, at the expense of our own citizens. It is being mischaracterized to the EPA as an economic necessity by our top elected officials. If indeed it stimulates any economic growth, it is the wrong kind of growth, and will undermine cleaner economic activity, Wasatch Front quality of life, and the health, well-being, and longevity of Utah citizens.