



Emily Schilling

Partner
801.799.5753
Salt Lake City
ecschilling@hollandhart.com

Utah Air Quality Board Rejects Three Petitions For Rulemaking, Filed In Anticipation Of Development Of PM2.5 Serious Nonattainment SIP

Insight — 4/20/2016

On March 21, 2016, the Utah Air Quality Board (AQB or Board) issued a formal, written denial of three petitions for rulemaking which had been directed at all stationary sources operating in the PM2.5 nonattainment area along the Wasatch Front.

In January of 2016, three petitioners, Western Resource Advocates, HEAL Utah, and Utah Physicians for a Healthy Environment, submitted a petition for rulemaking to the Air Quality Board requesting that the Board adopt a rule directing the Division of Air Quality to:

1. adopt a minor source offset rule that would broaden the existing offset requirements in serious PM2.5 nonattainment areas to include any existing or new stationary source and to reduce the thresholds for modifications triggering offsets at existing major stationary sources;
2. adopt an averaging rule which would require that any emission limit or standard imposed on any source under the PM2.5 SIP be averaged over a period no longer than 24 hours in order to “prevent[] short-term spikes in emissions from individual stationary sources identified in the PM2.5 [State Implementation Plans];” and
3. adopt a monitoring rule requiring Continuous Emission Monitoring Systems for any emission limit or standard imposed on any source under the PM2.5 SIP, unless there is a formal determination of infeasibility.

On March 2, 2016, the AQB held a two-hour hearing on the three petitions. At the end of the hearing, the Board voted to deny each of the petitions. The Board's denial of the petitions is only the beginning of what could be an extended process – in addition to the possibility of challenging the Board's denial of the petitions in state court, the petitioners will likely raise these same issues again as part of the Division of Air Quality's consideration of the PM2.5 serious nonattainment area State Implementation Plan, which is expected to commence upon the formal designation of the counties of Cache, Box Elder, Weber, Davis, Salt Lake, Tooele, and Utah Counties as in serious nonattainment with the PM2.5 standard. Once those counties have been re-classified as in serious

nonattainment, the Division of Air Quality will be required to submit a new “serious nonattainment” State Implementation Plan, identifying the control strategies which would need to be re-evaluated. The date the new SIP would be due to EPA is dependent on a number of uncertainties, but could be required as early as 2017.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.