STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES

RE: Petition of Kim Twist and Kids vs Global Warming VASG to the Rhode Island Department of Environmental Management and the Office of Air Resources for the promulgation of a rule to strictly limit and regulate fossil fuel carbon dioxide emissions, and to establish an effective emissions reduction strategy that will achieve an atmospheric concentration no greater than 350 ppm of carbon dioxide by 2100

ANSWER

I. INTRODUCTION

On or about May 4, 2011, the Rhode Island Department of Environmental Management ("DEM") Office of Air Resources ("OAR") received a Petition for rulemaking regarding carbon dioxide emissions and a strategy to reduce carbon dioxide emissions. The Petition was submitted by Kim Twist and Kids vs Global Warming (the "Petitioner"), a Rhode Island citizen and a non-profit organization.

The Petition was submitted to DEM pursuant to R.I.G.L. §42-35-6, which states, "[a]ny interested person may petition an agency requesting the promulgation, amendment, or repeal of any rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Upon submission of a petition, the agency within thirty (30) days shall either deny the petition in writing (stating its reasons for the denials) or initiate rule-making proceedings in accordance with § 42-35-3."

DEM reviewed the Petition in accordance with Rule 3.00 of the Administrative Rules of Practice and Procedure for the Department of Environmental Management (the "Administrative Rules"), which requires that DEM issue a decision to deny the request or begin promulgation of the requested regulations. Pursuant to R.I.G.L. 42-35-6 and Rule 3.00 of the Administrative Rules, DEM hereby denies the Petition.
II. THE PETITION

The Petitioner requested that DEM promulgate a rule that requires DEM to "protect the integrity of Earth's climate by adequately protecting our atmosphere, a public trust resource upon which all Rhode Island residents rely for their health, safety, sustenance, and security," to:

1. Ensure that carbon dioxide emissions from fossil fuels peak in the year 2012;

2. Adopt a carbon dioxide emissions reduction plan that, consistent with the best available science as described in the attached report, reduces state-wide fossil fuel carbon dioxide emissions by at least 6% annually until at least 2050, and expands Rhode Island's capacity for carbon sequestration;

3. Establishes a state-wide greenhouse gas emissions accounting, verification and inventory and issues annual progress reports so that the public has access to accurate data regarding the effectiveness of Rhode Island's efforts to reduce fossil fuel carbon dioxide emissions; and

4. Adopt any necessary policies or regulations to implement the greenhouse gas emissions reduction plan, as detailed in sections (1) and (2) above.

III. DECISION

The aforementioned Petition has not stated sufficient grounds to support its contention that DEM and OAR "have the authority as trustees of the public trust resources of the State of Rhode Island and pursuant to statutory authority to adopt the proposed rule." Based on the statutes and authorities cited in the Petition, DEM is not persuaded that the public trust doctrine extends to the State's air resources. The public trust doctrine has long been recognized in Rhode Island courts insofar as navigable waters are concerned. The statute giving rise to such recognition is R.I.G.L. §46-1-2, titled Waters and Navigation, which states that "[t]he director [DEM] shall have the general care and supervision of all the public harbors and tidewaters within the state..."
The statute cited by the Petitioner, R.I.G.L. §23-23-5, the Rhode Island Air Pollution Control Act, does not contain specific authority that would allow DEM to adopt the rule proposed by the Petitioner. That act states that "the director shall have and may exercise the following powers and duties:...(2) To develop comprehensive programs, for the prevention, control, and abatement of new or existing pollution of the air resources of this state on the basis of air quality standards adopted by the environmental standards board;... (4) To promulgate standards of air quality adopted by the environmental standards board;...(6) To encourage and conduct studies and research on air pollution and to collect and disseminate this information..." R.I.G.L. §23-23-5 (emphasis added).

The Rhode Island Air Pollution Control Act does not create a conceptual bridge between the atmosphere and the long-standing and recognized public trust resource in the State, its navigable waters. The Rhode Island Air Pollution Control Act authorizes the Director of DEM only to assure that Rhode Island complies with the terms and policies of the federal Clean Air Act generally. To meet that mandate, DEM promulgated forty-eight (48) different sets of regulations that govern the use of the State’s air resources. The Petition states that DEM has authority to adopt a proposed rule because DEM and OAR are the trustees of the state’s air resource, which the Petitioner declares to be a public trust resource. However, there is no statute in Rhode Island that supports such a suggestion.

IV. CONCLUSION

In accordance with Rule 3.00(b) of the Administrative Rules, DEM considered the Petition and all documents submitted in support or opposition thereof, and hereby denies said Petition.
The public file containing the Petition and all relevant and non-privileged information is available for review at the DEM offices at 235 Promenade Street, Providence, RI 02908, with the Office of Air Resources.

RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Office of Air Resources
By its Acting Chief,

[Signature]

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CERTIFICATION

I hereby certify that I caused a true copy of the within Answer to be forwarded via regular mail, postage prepaid on this 24th day of June, 2011, to:

Kim Twist
Alec Loorz and Victoria Loorz
Kids vs Global Warming
331 Prospect Street
Oak View, CA 93022

[Signature]