BEFORE THE UTAH AIR QUALITY BOARD

In the Matter of Petition for Rulemaking by
Sierra Adler, et al.

July 18, 2011

Denial of Petition for Rulemaking

I. Introduction

On May 4, 2011, Jamie Pluene of Mohrman and Schofield PC, on behalf of twenty
named individuals ("Petitioners"), filed with the Executive Secretary of the Air Quality Board
("Board") a "Petition for a Rule Change" to address climate change. Specifically, the
Petitioners requested the Board take the following action:

1. Compile an inventory of greenhouse gas (GHG) emissions and publish an annual
   emissions report by December 1 each year of the GHG emissions of Utah by
   source category.

2. Develop and adopt a binding GHG reduction plan that will reduce total GHG
   emissions by 6% annually until 2050, to be published and be effective by January
   1, 2012.

3. Compile and publish annually on January 1 an effectiveness report comparing the
   actual GHG emissions from the past year by source category to the emissions
   targets set by the GHG reduction plan.

4. Take corrective action if the effectiveness report shows that actual GHG
   emissions from the year exceed the GHG reduction plan so that Utah’s emissions
   return to 1990 levels by 2050, with the ultimate goal of achieving an atmospheric
   concentration of 350 ppm CO₂ by 2100.

5. Evaluate and propose any statutory changes necessary to achieve 6% annual GHG
   emission reduction from sources if the Board determines it does not have
   adequate authority to adopt or enforce a binding GHG reduction plan.

Petition for Rulemaking at 41-42.
As more fully described below, the Board voted at its July 6, 2011 meeting to deny the petition.

II. Legal Standard

The Utah Rulemaking Act provides: “An interested person may petition an agency to request the making, amendment, or repeal of a rule.” Utah Code Ann. § 63G-3-601(2). A rulemaking petition is to be accompanied by a statement “demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.” Id. § 63G-3-601(4).

Once a rulemaking petition has been filed, the Board has limited time to take action on it. First, “within 45 days of the submission of the petition, [the Board must] place the petition on its agenda for review,” and second, within 80 days of the petition filing date either “deny the petition in writing stating its reasons for denial” or “initiate rulemaking proceedings.” Id. § 63G-3-601(6). Rulemaking proceedings are initiated by filing the text of the proposed rule and a rule analysis form with the Division of Administrative Rules for publication in the next edition of the Utah State Bulletin. Id. § 63G-3-301(4).

III. Discussion

The Board has met the procedural requirements of the Utah Administrative Rulemaking Act. The May 4 petition for rulemaking was first placed on the agenda for the June 1, 2011 Board meeting, the petition having been circulated to the Board in advance of the meeting. At the June 1 Board meeting, the Board was presented a general overview of the legal procedures applicable to a petition for rulemaking and counsel for the petitioners and one of the petitioners
were given the opportunity to address the Board.

The petition for rulemaking was placed as an action item on the Board’s agenda for the July 6, 2011 Board meeting. Prior to the July 6, 2011 meeting, a memorandum from the Division of Air Quality (DAQ) staff and a response to that memorandum by Ms. Pleune on behalf the Petitioners was circulated to the Board.

The Division of Air Quality staff reviewed the petition and, in a memorandum dated June 23, 2011, recommended the Board deny the petition for the following reasons: 1) Over the past 30 years, when DAQ has implemented new programs, it has obtained legislative approval and funding to do so. This point is particularly important because, 2) DAQ does not have the resources to develop Petitioners’ proposal and to do so would cause DAQ to default in meeting near term legal obligations under the federal Clean Air Act (such as meeting time critical State Implementation Plan deadlines and implementing new air quality standards). 3) The State is following the phased approach the U.S. Environmental Protection Agency (EPA) is using to regulate GHG emissions, and, in addition, some of the other programs the State is implementing have a beneficial effect on reducing GHG emissions. 4) The staff noted that climate change is national if not global in scope, and requires federal leadership. If the State moves out in front of EPA GHG regulations it could be counterproductive and result in conflicting GHG requirements that are later imposed on sources within the State through EPA delegated programs under the Clean Air Act.

On July 5, 2011, Petitioners responded to the staff’s memorandum, first recognizing that the Division of Air Quality has several challenges to meet in the coming years in attaining air quality standards in the State but asserting that a GHG reduction plan would assist in DAQ
meeting those obligations. Second, Petitioners maintain that adopting a GHG reduction plan would not conflict with EPA’s current or future regulatory measures because EPA’s phased approach will only affect major sources or new sources, leaving other sources unregulated; an effective GHG reduction plan would avoid emissions, rather than rely on technology solutions that could be rejected by EPA; and many of the measures Petitioners propose fall outside EPA’s authority and within that of the State. Third, there are innovative solutions and local measures the Board could take to reduce GHG emissions, such as improving land use and transportation planning; improving building codes and providing incentives for renewables; and addressing mobile sources by imposing fleet requirements, adopting an anti-idling policy and reducing the speed limit.

At the July 6, 2011 Board meeting, DAQ staff made a presentation to the Board, as did counsel for the Petitioners. Members of the Board had the opportunity to question both the DAQ staff and the attorney for the petitioners at length. Individual petitioners and members of the public were given the opportunity to address the Board.

IV. Denial of the Petition

After reviewing the written materials and listening to presentations by DAQ staff and counsel for the petitioners and their response to questions, as well as comments from individual petitioners and the public, the Board voted to deny the petition, eight members voting in favor of denial and one opposed to denial.

The reasons for the Board's denial are: 1) that this petition is premature, in so far as the EPA and the State are taking a phased approach to regulating GHG emissions and since GHG emissions are of a national and global concern, leadership on this issue should come from the
federal government to ensure consistent measures are taken in all States; 2) that the petition, in part, requests action by other State agencies and, as such, is beyond the control of the Utah Air Quality Board; 3) the petition sets inventory requirements and a binding annual reduction target without approval or funding from the Utah legislature to implement the petition as proposed; and 4) DAQ currently lacks adequate staff and resources to implement the petition as proposed.

DATED this 18th day of July 2011.

UTAH AIR QUALITY BOARD

[Signature]
Stephen C. Sands II
Board Chair
CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2011, I caused a copy of Denial of Petition for Rulemaking to be mailed, postage prepaid, and emailed to counsel for the Petitioners, and a copy emailed to the members of the Utah Air Quality Board as follows:

Ms Jamie Pleune
Mohrman & Schofield PC
175 S Main Street suite 900
Salt Lake City UT 84111
jpleune@mohrmanandschofield.com
Counsel for Petitioners

Bryce Bird
Executive Secretary
Utah Air Quality Board
bbird@utah.gov

Utah Air Quality Board Members:
Dale Ipson - dalei@datstrucking.com
Nan Bunker - hay4u2@frontiernet.net
Joel Elstein - joel.elstein@bigwestoil.com
Kerry Kelly - kelly@eng.utah.edu
Robert Paine - robert.paine@hsc.utah.edu
Craig Petersen - craig.petersen@usu.edu
Steve Sands - sandss@kennecott.com
Amanda Smith - amandasmith@utah.gov
Darrell Smith - darrell.smith@draper.ut.us
Kathy Van Dame - dvd.kvd@juno.com
Michael Smith -michaelsmith@imftech.com

[Signature]
Denise Chancellor
Counsel to the Utah Air Quality Board