

November 16, 2007

Dear Director Opper,

For the past 16 months, we have been honored to serve as members of the Climate Change Advisory Committee (CCAC). Global warming stands as the most pressing environmental threat facing us today, and we commend the Governor and yourself for engaging on the topic.

We think our soon-to-be-released report constitutes an important first step in reducing Montana's emissions of global warming pollution. We are especially proud of the meaningful, statewide greenhouse gas reduction goals established by the report:

- that Montana should return to 1990 emission levels by the year 2020;
- that Montana should reduce its emissions to 80% below 1990 levels by the year 2050;
- that state government should "lead by example" with accelerated, and deeper cuts.

In developing these goals, the CCAC drew extensively upon the expertise of its Scientific Advisory Panel. The goals reflect the minimum that needs to be done, on a global basis, in order to stabilize the climate and avoid catastrophic harm.¹ As such, they should be thought of as a nonnegotiable "floor" of what needs to happen if we are to avert the worst consequences of a changing climate.

We know that it is one thing to make recommendations and another thing to put those recommendations into action. We appreciate that there is much work that remains to be done to implement the recommendations and, where appropriate, adopt even stronger and more effective measures to reduce Montana's contribution to climate change. We pledge our continued commitment to this effort and hope that you and the Schweitzer Administration generally will embrace these recommendations with the same level of support as you have provided to the work of the CCAC.

We are, however, concerned that some CCAC members are now retracting their support for recommendations they originally approved, or worse, generally undermining the credibility of the report. This was a consensus-driven exercise. For our part, we modified our views so that a recommendation would receive consensus support. In this, we were highly successful. According to the Executive Summary, ". . . of the 54 policy recommendations adopted by the

¹ The goals were informed by the consensus position of the international community of scientists, as relayed to the group by SAP member Dr. Steven Running. Dr. Running serves on the Intergovernmental Panel on Climate Change, in which capacity he shares in this year's Nobel Peace Prize.

CCAC, all received unanimous consent except for one, and that one had only one dissenting member for a portion of the recommendation.” For participants to now be saying negative things about the report (including some objections not previously stated in committee deliberations) is a disservice to the process and all of our efforts.

This is not a trivial matter. For example, committee action in the area of coal-based electricity generation was difficult and contentious. The eventual recommendation adopted by the CCAC (with unanimous support) was the product of a negotiation, and was heavily influenced by the views of the members now calling the report into question. This recommendation was a bitter pill for some of us to swallow, as it is not particularly strong. Indeed, the report notes that it will “not significantly reduce emissions from the electricity that is currently produced in Montana and exported out of state.”

In summary, we appreciate having had the opportunity to work with you, the Center for Climate Strategies, and the other members of the CCAC and SAP, and stand by the report’s recommendations as the necessary first steps of an effective climate strategy. We are confident that this administration will work tirelessly to achieve deep and meaningful reductions in greenhouse gas emissions and protect Montana’s future. We are ready and willing to assist.

Sincerely,

Patrick Judge, Montana Environmental Information Center

Chuck Magraw, Natural Resources Defense Council / Renewable Northwest Project

Rep. Sue Dickenson, HD 25

Commissioner Bob Raney, Montana PSC

Peggy Beltrone, Cascade County Commissioner

Steve Loken, Center for Resourceful Building Technology

Dave Ryan, National Center for Appropriate Technology

Gloria Flora, Sustainable Obtainable Solutions

Mary Fitzpatrick

Trudi Peterson

Robert Boettcher

November 19, 2007

The Honorable Brian Schweitzer
Governor, State of Montana
Montana State Capitol
PO Box 200801
Helena, MT 59620

Governor Schweitzer,

As representatives of the Montana Climate Change Advisory Committee (CCAC), we wanted to provide you with our perspectives on some of the recommendations that were approved at the Committee's final meeting on July 9, 2007. You will receive a final report on the recommendations from the Center for Climate Strategies (CCS) and the Montana Department of Environmental Quality. The document we attached to this letter provides background information on some of the recommendations and offers our perspectives on their feasibility and costs. We believe some of the recommendations require further analysis before they should be implemented or made into policy or legislation.

As you know, the three of us represented the interests of Montana's industries before the 18-member CCAC. We distributed a draft copy of the CCAC recommendations to a variety of Montana industries that were not represented on the panel to ensure their concerns were addressed.

The CCS was contracted to facilitate the CCAC meetings. Many of their staff displayed considerable expertise in a variety of the sectors we evaluated (agriculture, forestry, energy supply, transportation, residential, construction). Yet, we are concerned about the accuracy of some of the information in the final report—particularly as it relates to expected costs.

The CCS used a template of categories with possible greenhouse gas reduction options and associated costs that were adopted in other states. This helped give us some ideas about possible options, but may have led us to some conclusions that are not appropriate for Montana. It may also have caused us to overlook some options. The attachment explains our concerns about these issues in more detail.

Despite some healthy debates throughout a year's worth of meetings, emails and conference calls, we found the CCAC experience to be worthwhile and productive. Many of the recommendations you will be provided could very well help Montana address climate change and Montana's energy future and should be implemented.

Governor Schweitzer
Page 2
November 19, 2007

Thank you for the opportunity to serve on this important committee. We all learned a great deal about climate change and its importance to Montana during the past year.

With best regards,

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attachment: CCAC recommendations

Categories:

Cross Cutting Issues
Energy Supply
Residential, Commercial, Institutional and Industrial
Agriculture, Forestry and Waste Management
Transportation and Land Use

Overall Goals (from Cross Cutting Issues)

CCAC Recommendation #1: Reduce greenhouse gas emissions in Montana to 1990 levels by 2020 and an additional 80 percent reduction by 2050.

Industry Position: This recommendation requires a thorough assessment of the impacts on the economy and technological feasibility. This is one of the most ambitious greenhouse gas reduction goal in the nation. While it's admirable to aim for such a high standard, it's difficult to imagine that all of the steps necessary to achieve it could be implemented. Montana should certainly set the bar high and work to achieve significant greenhouse gas reductions. But reductions of this magnitude in this timeframe may not be achievable and may very well result in economic harm. Studies conducted by the Electric Power Research Institute and the Massachusetts Institute of Technology concluded that technologies to reduce greenhouse gas emissions to the levels required by this recommendation have not yet been developed. Moreover, there was no economic or technological assessment of the validity of this goal or its consequences. We should not set targets without a solid understanding of the potential to achieve them or the consequences to the state's economy.

CCAC Recommendation #2: The State of Montana will develop a rigorous, standardized, mandatory greenhouse gas reporting protocol that will apply to all sectors.

Industry Position: Montana should first study the current major greenhouse gas emissions and emission reductions protocols now in use and implement the best one. This will increase the probability that Montana's data will be consistent with expected federal GHG regulations and other major market carbon credit cap and trade systems (including international systems like the European Union's). This approach also will allow Montana to keep its emissions inventory updated efficiently and minimize administrative and regulatory costs while maximizing the benefits and value of the Montana data.

CCAC Recommendation #3: Montana will participate in the Climate Registry, a 30 state-member organization to track and encourage greenhouse gas reductions.

Industry Position: As you know, Montana has already joined this organization. Sources of greenhouse gas emissions will be required to hire third party consultants to verify and report all of their greenhouse gas emissions. Many Montana industries already utilize continuous emissions monitors and already record carbon dioxide emissions according to federal EPA emission regulations. This recommendation may result in redundant reporting from some industries and may represent a very difficult and expensive endeavor for others that have multiple emission points and fugitive emissions.

Energy Supply

CCAC Recommendation #1: Environmental Portfolio Standard (Renewables and Energy Efficiency). Utilities should be required to supply 20 percent of their load from renewable sources of energy by 2020 and 25 percent of 2025.

Industry Position: This recommendation requires a thorough assessment of the impacts on the economy and technological feasibility. Montana already has a renewable portfolio standard requiring utilities to purchase 15 percent of their load by 2015. Ramping up this standard by ten percent only ten years later represents a very difficult and arbitrary goal. Development of renewable generation sources such as wind, solar, geothermal and others has proven to be economically and technologically challenging. Even if Montana's utilities are able to acquire 25 percent of their load from renewable sources of energy by 2025, we expect that those sources will still require reliable back-up electric power from fossil fuel sources.

The CCAC approved a request to allow increased electricity production at existing hydroelectric facilities through installation of efficient equipment to be considered eligible for the renewable standard. We support this provision and propose evaluation of how close such increases will get the state to the new RPS level. If increased production at existing hydroelectric facilities cannot get us close to the RPS standard, Montana should evaluate which technologies at which magnitude would need to be implemented in order to meet the RPS.

CCAC Recommendation #2: Advanced Fossil Fuel Generation and Carbon Capture and Storage. Montana should establish a requirement that all fossil fuel-fired power plants meet a technology/fuel-neutral emissions level expressed in tCO₂/MWh—and as needed to achieve this level—file a plan with the MT Department of Environmental Quality that details the facility's commitment to capture CO₂ and implement terrestrial and/or geologic sequestration as an attribute of operating plans and permits. The specific requirement would be established through rule making by the Montana BER.

- CCAC recommends that MT DEQ petition for such a rule.
- CCAC recommends that the MT Legislature approve supporting language.
- CCAC recommends a CO₂ emissions capture goal of 0.5 tCO₂/MWh (or 1100 lbs./MWh) increasing commensurate with the implementation of best available control technology.

Industry Position: This recommendation requires a thorough assessment of the impacts on the economy and the technological feasibility. This recommendation represents a compromise of sorts but much uncertainty about its feasibility remains. The CCAC was prepared to recommend a moratorium on development of new coal-fired electrical generating units in Montana unless they could capture and sequester 90 percent of their carbon dioxide emissions. There is no commercially available technology to capture 90 percent of the CO₂ from a new coal-fired power plant at this time. It's expected to be even more difficult to retrofit an existing coal-fired power plant to capture CO₂. Several technologies have shown high capture rates in laboratory tests, but none have yet done so on a full size plant.

There are other important considerations that must be addressed before carbon capture and storage is ready to be implemented at Montana's coal-fired power plants.

- Nearly all of the developing technologies include an “energy penalty” of nearly 30 percent—requiring 30 percent of the megawatts produced at a plant be directed to operating the CO2 capture equipment.
- The feasibility and costs of CO2 transport and geologic sequestration have not yet been determined.
- Liability for transport and geologic sequestration has not yet been assigned. The CCAC declined to recommend which entity should assume liability for geologic sequestration—a must for any company that wishes to store large volumes of CO2 underground. Montana has no statute to assign liability and requests for Montana to indemnify companies for geologic sequestration were rejected by the CCAC.
- Equipment costs for carbon capture equipment may be as high as \$430 million for a large coal-fired power plant and an additional \$900 million in annual operations and maintenance costs.
- Montana should establish a streamlined regulatory permit system that treats the captured, transported and geologically disposed CO2 as a manufacturing process by-product or recycled waste rather than as a hazardous waste, especially if some of the CO2 can be used for other purposes.

There are, however, positive aspects to this recommendation—particularly flexibility. This recommendation would provide electric generating companies the flexibility to comply with the 50 percent standard by implementing a combination of strategies, including carbon capture and sequestration, terrestrial sequestration (offsets), use of natural gas or LNG as a power plant fuel and participation in CO2 emission allowance trading.

Some assessment should be made on the level of electricity demand, the amount of generation available and the technology availability to verify that such goals are achievable without the state running short on electricity—stunting economic development. Energy efficiency initiatives will help this but how much can that delay the need for new generation and when will new technologies be available to reliably capture and store CO2 emissions? Where is the technology and economic assessment that should accompany this type of recommendation?

CCAC Recommendation #3: Efficiency Improvements at Power Plants. The State should provide incentives to encourage emissions reductions at power plants through increased efficiency and co-firing.

Industry Position: This recommendation was addressed to a certain degree during the 2007 Montana Legislative Special Session with House Bill 3—which provided a 50 percent tax reduction for equipment installed to capture, compress, transport and sequester CO2. Incentives such as a permanent or temporary tax holiday for this equipment or for other equipment that leads to emissions reductions could help foster their development and implementation.

CCAC Recommendation #4: Carbon Tax/Cap and Trade. Montana should join the Western Regional Climate Action Initiative.

Industry Position: This recommendation may place Montana at an economic disadvantage with other states. The CCAC was prepared to recommend implementation of an industry-specific

carbon tax. We believe a carbon tax certainly has merit for encouraging behavior that leads to greenhouse gas emissions reductions—but it must be implemented nation-wide and economy-wide to encourage consistent behavior across all economic sectors, including energy generation, petroleum refining, manufacturing, agriculture, consumers and most importantly—transportation.

We prefer implementation of a national carbon emissions cap and trade program instead of joining the Western Regional initiative. Nation-wide trading systems worked well for reducing sulfur dioxide emissions and would lead to lower cost greenhouse gas emission reductions as well. Regional trading would be difficult to implement—especially in Montana’s region because it has few industries that could participate when compared to other regions.

A national system would also be more economic—the larger the allowances market, the more effective it would be. Regional systems can also have implementation issues that arise in circumstances where some states do not participate in the system, particularly those with generation resources that serve loads in states that are party to the regional system. For example, these states would have to figure out how to account for emissions associating with “imported” power. This could also lead to disparate regulatory treatment of generation resources/emission sources in different states. There may also be interstate commerce problems. For instance, how would a collection of states enforce their agreement on each other absent Congressional recognition of the interstate agreement?

CCAC Recommendation #5: Generation Performance Standards. The State should require utilities to acquire electricity only from generation sources that capture and sequester CO₂ to a level equivalent to that accomplished by a natural gas combined cycle plant (about 50 percent of that of a new coal-fired power plant).

Industry Position: This recommendation would prevent load serving entities from using reliable, affordable electricity produced from Montana’s coal-fired power plants. Rather, Montana should participate in any national program that is expected to be adopted within the next few years. This standard—which has already been approved by California and Washington—would seriously threaten the competitiveness of Montana’s utilities, industries and small businesses. Requiring load serving entities to purchase power only from generation sources that can capture CO₂ at a level that is neither technologically nor economically feasible would place them in competition with California and Washington for hydroelectric power contracts that will be available only at the highest possible price—if at all.

Some assessment should be made on the level of electricity demand, the amount of generation available and the technology available to verify that such goals are achievable without the state running short on electricity – stunting economic development. Energy efficiency initiatives will help but how much can they delay the need for new generation? When will new technologies be available to reliably capture and store CO₂ emissions? Where is the technology and economic assessment that should accompany this type of recommendation?

CCAC Recommendation #6: Methane and CO₂ Reductions in Oil and Gas Operations. Best Management Practices, including the EPA Natural Gas STAR program should be implemented in Montana.

Industry Position: The EPA Natural Gas STAR program should be encouraged rather than mandated. The Natural Gas STAR program is designed as a voluntary partnership to encourage companies in the natural gas and oil industries to implement cost effective technologies and practices that both improve operational efficiency and reduce methane emissions, thus benefiting

both the operator and the environment. The program's voluntary nature warrants encouraged or incentive driven participation rather than mandated participation.

CCAC Recommendation #7: Greenhouse Gas Reductions in Refinery Operations. Montana should require that any future coal-to-liquids refineries capture and store CO₂ from the start of operations and co-fire some fraction of biomass.

Industry Position: Carbon dioxide can be stored in terrestrial sinks by drilling and piping gas into suitable formations. Petroleum geologists and engineers are best equipped to carry out this task. In order for petroleum companies to use this solution for economic advantage, they need to flood formations in existing oil fields. This translates to terrestrial storage primarily in eastern Montana. This process requires that carbon dioxide be captured at a location near the storage site or that it be piped to such a location. Otherwise, storage needs to be viewed as part of a refinery operating cost at the site of capture with no recoverable economic benefits (i.e. selling CO₂ to petroleum companies for enhanced oil recovery). There will also be liability issues to address for containment of stored CO₂. However, containment risks can be accurately estimated and predicted by petroleum engineers and geologists.

Residential, Commercial, Institutional and Industrial

CCAC Recommendation #9: Carbon Tax.

Industry Position: We believe a carbon tax certainly has merit for encouraging behavior that leads to greenhouse gas emissions reductions—but it must be implemented nation-wide and economy-wide to encourage consistent behavior across all economic sectors, including energy generation, petroleum refining, manufacturing, agriculture, consumers and most importantly—transportation.

We prefer implementation of a national carbon emissions cap and trade program. Nation-wide trading systems worked well for reducing sulfur dioxide emissions and would lead to lower cost greenhouse gas emission reductions as well.

Transportation and Land Use

CCAC Recommendation #4: Financial and market incentives for low GHG vehicle ownership. Labeling for buyer information, excise taxes for high emitting vehicles, rebates for low emitting vehicles.

Industry Position: Industry representatives who reviewed this document support financial and market incentives and labeling but do not support excise taxes.

CCAC Recommendation #8: Heavy duty vehicle and locomotive idle reduction.

This CCAC recommendation includes a goal to encourage local ordinances to mandate reduction of locomotive idling by an arbitrary 50 percent. The rail industry is actively engaged with the Environmental Protection Agency and through voluntary actions to reduce emissions, conserve fuel and operate in the most environmentally-sound manner possible. Rail industry initiatives include acquisition of new generation locomotives and the remanufacturing of existing locomotives to achieve fuel savings and reduce emissions. Railroads continue to invest in idle-reduction technology and a variety of other technologies, including on-board computers, distributed power, reducing aerodynamic drag, and installing low-friction bearings, to improve

fuel efficiency and reduce emissions. Montana's Class I railroads are among many freight transportation companies and shippers who currently participate in the EPA's Smartway Transport Partnership. The rail industry is committed to continue improving fuel efficiency.

This document was completed with input from the following industries and organizations:

PPL Montana, LLC
Southern Montana Electric
Nance Petroleum
NorthWestern Energy
Puget Sound Energy
PacifiCorps
Avista Corporation
Montana Petroleum Association
Western Environmental Trade Association
Burlington Northern Santa Fe Railway
Montana Coal Council
Montana Wood Products Association

Nowakowski, Sonja

From: Buck Buchanan [buck3@imt.net]
Sent: Saturday, January 12, 2008 9:03 AM
To: Nowakowski, Sonja
Subject: Input and discussion of the CCAC report

Sonja,

Thank you for informing me of the meeting on the 14th in Helena. Unfortunately, I will not be able to attend this meeting. I do wish to send this email as my input to the process.

The report and its recommendations are to be taken as a whole, and were not intended to be a series of stand alone parts. It took a lot of time, effort and compromise from all sectors, to craft this document. None of the parties are completely thrilled with all of the recommendations, which is a good indicator of a document crafted by compromise.

My input is to keep the CCAC report and recommendations intact, and base legislation on the complete package. Thank you for this chance to have input to the legislative process.

Buck Buchanan
CCAC member

To: Environmental Quality Council
From: Mary E. Fitzpatrick
January 10, 2008

Re: Climate change Advisory Committee Report

I was privileged to serve on the CCAC whose report you are addressing on January 14, 2008. I want to emphasize four things about the report as you consider implementing legislation.

- 1) Although our charge was to find ways to reduce Montana's greenhouse gas emissions, we sought always to recommend measures which were most cost-effective in meeting that goal, and which carried ancillary benefits for Montana. Taken as a whole, the measures we recommend represent a net financial savings for the state and for consumers, Montana's businesses and citizens. It might be tempting to cherry-pick only those that represent savings-however, some of those savings can be achieved only by also implementing measures that have a net positive cost. For instance, the large benefits available to businesses and consumers will not happen without consumer education, which is not quantified, but which clearly will not independently save money. Further, the more expensive option in the AFW and ES sectors are necessary for Montana to reach the goal of 1990 emission levels by 2020. Although we did not recommend measures to reach the goal of 80% reductions below 1990 by 2050, the 2020 goal is a necessary first step. Saving money is secondary to actually reducing emissions; our goals can be met only by implementing all the recommendations. In particular, it is important that some savings, or other resources, be directed to reducing the excessive home energy and transportation burdens borne by our poorest citizens.

As for ancillary benefits, these include new business and work opportunities-especially small entrepreneurships, cleaner air and water, more frugal use of Montana's resources, fresher food, revitalized rural economies, some buffer against global volatility in fuel and food prices and availability, and the excitement and creativity unleashed by a civic challenge in which the whole citizenry can participate.

- 2) Full citizen participation cannot happen without an extensive and sustained public education effort. We have made many recommendations about how this can be done; it will require resources from the legislature and coordination and support from Helena, but ideally Helena will identify and support those local groups that can do the education and implementation in their area. Shortchanging this set of recommendations will undermine efforts in all the other sectors.

3) We were not able to reach consensus on measures which would allow us to reach the 1990-levels-by-2020 goal when emissions are viewed from the production side. I hope the EQC and the legislature can find further ways to reduce emissions in electricity production for export, or find further reductions in in-state consumption of electricity. For instance, a surcharge for emissions, such surcharge to be dedicated to renovation and retrofitting of low-income housing, beyond the winterization program and at an accelerated rate over what is currently being achieved, would both reduce consumption and encourage emission reductions on the production side.

4) Beyond the 2020 goal of 1990 levels of emissions, the IPCC warns us that we need at least an 80% reduction *below* that by 2050 if we are to avoid the more extreme effects of climate change. I hope the EQC and the 2009 legislature will ensure that another study process will begin in nine or ten years, to develop a plan for 2050. Ten years from now, the challenges and solutions will be clearer than they are now. We can be sure, however, that those challenges will be less, and the solutions less costly and disruptive, if we fully implement the plan you are considering today.

Thank you for the opportunity to put my thoughts before you.

Nowakowski, Sonja

From: Buck Buchanan [buck3@imt.net]
Sent: Saturday, January 12, 2008 9:03 AM
To: Nowakowski, Sonja
Subject: Input and discussion of the CCAC report

Sonja,

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My input is to keep the CCAC report and recommendations intact, and base legislation on the complete package. Thank you for this chance to have input to the legislative process.

Buck Buchanan
CCAC member

RE: Climate Change

Soliciting written comments from: CCAC and TWIG members

To: EQC members

Received from: TWIG member

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----- Original Message -----

From: <press-release@i-sis.org.uk>

To: <boettrae@ttc-cmc.net>

Sent: Wednesday, December 05, 2007 12:17 PM

Subject: Mitigating Climate Change through Organic Agriculture

The intended recipient for this message is boettrae@ttc-cmc.net. The Institute of Science in Society Science Society Sustainability <http://www.i-sis.org.uk>

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> ISIS Press Release 05/12/07

> Mitigating Climate Change through Organic Agriculture

Dr. Mae-Wan Ho and Lim Li Ching

Modern industrial agriculture of the "Green Revolution" contributes a great deal to climate change. It is the main source of the potent greenhouse gases nitrous oxide and methane; it is heavily dependent on the use of fossil fuels, and contributes to the loss of soil carbon to the atmosphere [1] (Feeding the World under Climate Change, SiS 24), especially through deforestation to make more land available for crops and plantations. Deforestation is predicted to accelerate as bio-energy crops are competing for land with food crops [2] (Biofuels: Biodevastation, Hunger & False Carbon Credits, SiS 33).

But what makes our food system really unsustainable is the predominance of the globalised commodity trade that has resulted in the integration of the food supply chain and its concentration in the hands of a few transnational corporations. This greatly increases the carbon footprint and energy intensity of our food consumption, and at tremendous social and other environmental costs. A UK government report on food miles estimated the direct social, environmental, and economic costs of food transport at over £9 billion each year, which is 34 percent of the £26.2 billion food and drinks market in the UK [3] (Food Miles and Sustainability, SiS 28).

Consequently, there is much scope for mitigating climate change and reversing the damages

through making agriculture and the food system as a whole sustainable, and this is corroborated by substantial scientific and empirical evidence (see below). It is therefore rather astonishing that the Intergovernmental Panel on Climate Change should fail to mention organic agriculture as a means of mitigating climate change in its latest 2007 report [4]; nor does it mention localising food systems and reducing long distance food transport [5].

> Read the rest of this article here

> <http://www.i-sis.org.uk/mitigatingClimateChange.php>

> Or read more articles about climate change

> <http://www.i-sis.org.uk/climateglobalwarming.php>

> =====

> This article can be found on the I-SIS website at

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COUNCIL STAFF
TODD EVERTS, Lead Staff

January 11, 2008

To: Environmental Quality Council
Fr: Sonja Nowakowski, staff
Re: Board of Environmental Review hearing on carbon dioxide controls

This memo is intended to update the Environmental Quality Council on a matter before the Montana Board of Environmental Review (BER) that relates to climate change, greenhouse gases, and the potential regulation of those emissions. The BER is considering an appeal of an air-quality permit issued for a proposed coal-fired power plant based in part on whether carbon dioxide emissions should be treated as a regulated air pollutant.

The Department of Environmental Quality (DEQ) in May issued an air-quality permit to developer Southern Montana Electric (SME) Generation & Transmission Cooperative for the proposed Highwood Generating Station east of Great Falls. SME intends to operate a 250-megawatt coal-fired power plant. The plant would produce electricity for five cooperatives and serve about 60,000 Montana customers and some in Wyoming. The Montana Environmental Information Center (MEIC) and the Great Falls-based Citizens for Clean Energy appealed the permit. Burning coal to produce electricity produces carbon dioxide, which contributes to climate change, according to those appealing the permit. The Highwood plant would emit about 2.8 million tons of carbon dioxide on an annual basis, according to a joint state/ federal analysis of the project. The petitioners asked that the decision to issue the permit be reversed based, in part, on the argument that the state should have considered CO₂ emissions under its Best Available Control Technology (BACT) analysis for the project.

Based on the appeal, on December 21, 2007, the BER heard arguments for summary judgement in the case. On Jan. 11, 2008 the BER granted both the DEQ and SME's request for summary judgement, in effect denying the petitioner's request for CO₂ regulation under BACT. A full hearing on the issue of an analysis for particulate matter that is equal to or less than 2.5 microns is pending, and this brief summary focuses only on the CO₂ discussion before the BER. That hearing is scheduled to commence on Jan. 22 and be completed by Jan. 25.

MEIC and Citizens for Clean Energy argue that the state did not require Highwood to use BACT to limit carbon dioxide emissions and particulate matter that is equal to or less than 2.5 microns in diameter. It is the first case in Montana to challenge an air-quality permit based on failure to

regulate carbon dioxide emissions under the Clean Air Act of Montana. The MEIC argued that a 1990 Congressional mandate that requires utilities to track carbon dioxide emissions and the April 2007 Massachusetts vs. EPA decision, a case involving automobiles and CO₂ emissions, requires the state to regulate carbon dioxide. The Supreme Court majority report noted, "greenhouse gases fit well within the Clean Air Act's capacious definition of air pollutant." An attorney for the petitioners in the Montana case argued that carbon dioxide must be regulated under the BACT process, and that the BER has an opportunity "to set a national example that would engender change."

Attorneys for the DEQ and Highwood Generating Station argued that carbon dioxide is not a regulated pollutant subject to BACT. In Massachusetts vs. EPA, which involved regulation of CO₂ emitted from motor vehicles, the Supreme Court found that there is authority to regulate CO₂, but the case neither set a standard for CO₂ nor required an analysis for CO₂ under BACT. The DEQ argued that the department is not authorized by law to make a BACT determination for greenhouse gases, like carbon dioxide, because those emissions are not subject to regulation under the Federal Clean Air Act or the Clean Air Act of Montana. While CO₂ is a pollutant, it is not a regulated pollutant, and required monitoring of a pollutant does not amount to limitation of that pollutant, according to the agency.

Both sides agreed that no other state currently regulates carbon dioxide through air-quality permits. Although in October 2007, based on a Kansas statute, the Kansas Department of Health and Environment was the first government agency to cite carbon dioxide emissions as the reason for rejecting an air quality permit for a proposed coal-fired electricity generating plant in Kansas. That permitting decision also is expected to be challenged in the courts.

In addition to granting summary judgement to DEQ and SME on Jan. 11, the BER also requested Tim Gregori with SME submit an affidavit to the BER as to how carbon controls will be used at Highwood Generating Station. Several BER members also discussed the potential for BER-initiated rulemaking on CO₂ regulations in the future. The BER's next meeting is January 22, and I will at the council's next meeting provide any updates.

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