

Prepared Remarks for the Public Hearing on the
Federal Proposed Final Implementation Plans for Regional Haze

Docket ID No. EPA-R08-OAR-2012-0026

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State of Wyoming

My name is Matt Mead, and I am the Governor of the State of Wyoming. This is the first public hearing at which I have provided testimony during my tenure as Governor. I feel compelled to testify today because the actions of the Environmental Protection Agency (EPA) have gone so far astray.

By way of background, Wyoming has been working on regional haze implementation planning for more than a decade. In January 2011, Wyoming submitted its most recent regional haze implementation plan to EPA. The state's plan complied with EPA's Regional Haze Rule when submitted, and it still does.

A year and a half later, EPA proposed to partially approve and partially disapprove Wyoming's plan and to impose a federal implementation plan for certain facilities. Another year passed and on June 10, 2013, EPA issued another proposed federal implementation plan for Wyoming. Chucking its 2012 proposal aside, EPA under its 2013 proposal would impose more control requirements on more Wyoming facilities at much greater cost. And yet this new proposal, which is the subject of today's hearing, would result in no meaningful improvement in visibility over Wyoming's plan.

So Wyoming faces this onerous federal proposal – one which will have drastic economic consequences but, ironically, will have no effect on regional haze; and I am here to voice my concerns. I will summarize and then briefly discuss each of them. I will submit written comments before the due date. Others from the State will also testify today and submit written comments.

First and foremost, EPA's proposed federal plan for Wyoming for regional haze harms rate payers, including the most economically vulnerable people – that alone is unconscionable.

Second, EPA's proposal is not reasoned or reasonable. Third, the federal proposal has not been developed in a cooperative manner between EPA and the State of Wyoming. Fourth, it turns a blind eye to Congressionally-mandated state primacy.

Fifth, the motive seems questionable. This proposal – particularly in light of the scores of other existing, proposed and pending EPA rules – looks designed ultimately to demote coal as a fuel source. EPA should not be picking energy winners and losers but that is exactly what it is doing through over regulation. The way our country uses its abundant energy resources, including coal, is a major decision – one that belongs to the people and their elected representatives, not an unaccountable administrative agency like EPA.

Congress created the Regional Haze program within the Clean Air Act to address visibility at national parks and wilderness areas. The program is not about health or climate change – it is about clear skies in these special areas. The goal of the program is good. We all want clear skies in these areas and, for that matter, everywhere else. In Wyoming, we are proud of our environment, including clear skies, clean water, and vast open spaces. These things are part of our high standard of living and part of our state's indelible image.

Those of us who live here care deeply about this state. We want to pass on a legacy to future generations better than the one passed to us. We have more of a stake in Wyoming than EPA ever could and that brings me back to Wyoming's plan for regional haze. The EPA should rethink its proposal and approve Wyoming's plan in its entirety.

The EPA proposal harms rate payers.

EPA's new proposal will cost Wyoming utilities approximately \$180 million more in capital costs and \$60 million more in annualized costs than Wyoming's plan. Projected over 20 years, EPA's proposal will cost \$1.2 billion more than Wyoming's plan. To put this cost into perspective, the earlier federal proposal, which we protested last year and EPA jettisoned, cost \$360 million more than Wyoming's plan. That was bad, and this is much worse. The costs are tremendous and – it bears repeating – they result in no perceptible difference in visibility.

Who pays for this costly plan with no net benefit? The answer is rate payers in Wyoming and several other states in the West and Midwest. There are 4.6 million customers between Basin

Electric and PacifiCorp. The costs will cascade down to them. Those on fixed incomes or struggling to get by will be most adversely affected. Their skies will be no clearer, but their standard of living will be hazier. It is baffling that EPA's cost/benefit analyses are not applied to those who will bear the brunt of the cost and will not benefit. At a time when the federal government is pressed to find ways to provide affordable insurance, health care, infrastructure, and education for the neediest, the EPA designs rules to strain the pocketbooks of that same population.

The EPA proposal is unreasonable.

EPA's proposal is a product of selective public comments – a plan developed behind closed doors or at least doors closed to the State of Wyoming and the expertise at the Wyoming Department of Environmental Quality (DEQ). The proposal includes a dubious assessment of the associated costs and ignores key factors to be considered in making determinations about retrofitting. This is not reasonable rulemaking.

EPA has neither acknowledged nor responded to comments submitted last year by me and the DEQ. The EPA seems to have considered only one-sided comments – those that support EPA or believe the EPA should impose even greater costs on Wyoming. That is certainly not appropriate. Given the substantial impact of EPA's proposal, I am dismayed that EPA is providing such an abbreviated public participation process here.

The EPA was supposed to make a final determination on Wyoming's plan in December 2012 based on a consent decree with environmental groups, including WildEarth Guardians. Delay followed delay with EPA saying there would be "substantial new cost and visibility analyses". The new proposal is the result, but at no time during this period was the State of Wyoming or DEQ contacted or consulted.

The "substantial new cost" analysis, which supposedly justified EPA's new proposal, now appears to be a consultant's unconvincing assumptions of costs based on bird's eye view pictures from the internet and generic suppositions about retrofit costs. This is not a reasoned approach. In comparison, Wyoming conducted on-the-ground analyses.

EPA brushes aside Presidential Executive Orders that require objectivity in rulemaking, flexibility, and comprehensive cost/benefit analyses.

Wyoming's plan is reasonable. The Regional Haze rule requires states to establish goals "that provide for reasonable progress toward achieving natural visibility conditions" by 2064. Those goals must provide for visibility improvements on the worst days, while also ensuring no deterioration on the best days for the duration of the planning period. To establish these goals, states must "[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration." Wyoming considered *all* these factors; the EPA did not. The EPA has failed to substantiate that Wyoming's plan is not a reasonable one.

Wyoming's plan sets reasonable progress goals, a long-term strategy, and best available retrofit technology determinations in compliance with EPA's Regional Haze Rule. Wyoming proposes a reduction of annual emissions of nitrogen oxide by roughly 63,000 tons per year. EPA proposes an additional annual reduction of 2,900 tons of emissions – a negligible amount that will result in imperceptible improvements to visibility. By the year 2022, EPA's plan and Wyoming's plan achieve essentially identical results for air visibility. But the two competing plans differ vastly in their consequences along the way.

The EPA proposal has not been a cooperative effort and does not give deference to states as Congress mandated.

Typically, EPA and DEQ work together to resolve differences and fulfill environmental goals. This has not been the case for regional haze. Wyoming has not had opportunity to discuss EPA's proposal with EPA except through the rushed public hearings and public comment period. Usually, in instances where EPA and DEQ disagree, DEQ is afforded the opportunity to discuss the issues with EPA and a resolution is reached cooperatively.

Under the Clean Air Act, including the regional haze program, Congress divided power between the states and EPA. Congress made it clear that states, not EPA, are the primary regulators of air quality. EPA's role is limited to stepping in only when a state has failed to carry out its

responsibilities. Congress and the states understand EPA's limited role and state primacy, even if EPA does not.

Winners and Losers

EPA has developed - behind doors closed to most of us - an extremely restrictive, extremely costly plan that achieves no benefit. This appears to be agenda-driven – one more regulatory tool in the EPA arsenal to kill coal.

Consider that EPA's proposal appears to be just the start of a process that ends up before a Public Service Commission where a utility requests permission to install required technologies under a proposal like EPA's and groups intervene in opposition to urge for a cheaper alternative – renewable generation or natural gas generation. That is, groups supporting the harsher EPA plans will then fight them in another forum to pick energy winners and losers.

Over the past 40 years, EPA has developed measured rules and regulations to improve air quality from coal generation. These regulations have by-and-large worked. The utility industry has made huge investments to reduce emissions. Emissions have dropped by 63% since the 1980s. A new coal-fueled power plant today emits 70 to 90 percent fewer emissions than the typical plant it replaces.

However, recent regulatory pressure from the EPA is not balanced or reasoned; rather, it is unrelenting and often unachievable in terms of timing, cost and technology. With EPA's proposed federal plan for regional haze in Wyoming, non-beneficial is added to that list.

Closing

On a final note, I believe EPA's proposal is legally flawed and this will be covered further in my written comments. As you can tell, I have many problems with EPA's proposal – it does nothing to improve the clarity of the skies beyond the State's plan and does nothing to address the chief cause of haze – smoke from wild fires.

I ask EPA to approve Wyoming's plan in its entirety and withdraw its proposal.