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Issue Paper: General Conformity Ex. 5 - Deliberative Process **in the Upper Green River Basin**

A.) Background

General Conformity Background:

1.) The General Conformity program ensures that the actions conducted or sponsored by federal agencies in nonattainment and maintenance areas are consistent with state/tribal air quality plans established to protect human health and the environment.

2.) Established under CAA section 176(c), the General Conformity rule at 40 CFR 93, Subpart B, requires that federal agency projects "conform" to the state/tribal/federal implementation plan.

3.) Under the Rule, federal agencies must work with State, Tribal and local government in nonattainment and maintenance areas to ensure that emissions of air pollutants from planned federal activities do not:
   (1) Cause new violations of the NAAQS;
   (2) Increase the frequency or severity of NAAQS violations; or
   (3) Delay timely attainment of the NAAQS or any interim milestone.

4.) EPA's initial General Conformity rule was initially adopted in November, 1993, and revised in April, 2010. EPA regional and headquarters offices routinely work with other federal agencies to address questions that arise under the program.

5.) Federal agency actions that are subject to General Conformity must comply with any applicable General Conformity requirements prior to the Federal Agency providing financial assistance, licenses, permits, or approvals.

6.) We note that General Conformity requirements are separate from NEPA provisions. However, due to the similarity of information compiled and analyzed for a particular project's DEIS/FEIS, federal agencies often develop the conformity analysis information/determination as part of the NEPA process or in parallel to the NEPA process.

Wyoming General Conformity Background:

7.) In May, 2012, EPA designated the Wyoming Upper Green River Basin (UGRB) nonattainment for the 2008 8-hour ozone NAAQS. A one-year grace period, before the general conformity requirements would apply, began when the nonattainment designations became effective in July, 2012.

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8.) Wyoming DEQ (WDEQ) revised the State's general conformity rule to incorporate the latest EPA general conformity rule revisions (as promulgated by EPA in April, 2010). EPA approved Wyoming's general conformity SIP revision with a final rule that published on August 15, 2013; effective September 16, 2013.

9.) Our approval of the revisions to Wyoming's general conformity rule also included the provisions from EPA's rule that allow a federal agency to exempt the emissions from inclusion in a general conformity analysis and/or conformity determination from those stationary sources that obtain a WDEQ-issued major or minor NSR or PSD permit under WAQSR Chapter 6. We note that for stationary source permits in the UGRB, additional requirements apply as provided in the WDEQ's 2008 Interim Permit Policy. Ex. 5 - Deliberative Process

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10.) The State explained their interpretation of the permit exemption provision by way of their January 31, 2014 letter, from Steve Dietrich (WDEQ) to Charis Tuers (BLM), which specifically states the WDEQ's position on this issue:

- "*Sources with permits issued under the authority of Wyoming's EPA approved new source review permitting program (WAQSR Chapter 6, Section 2) are exempt from a general conformity determination.*"

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11.)

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12.)

B.) Key Issues for the NPL Project:

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5.) General conformity is key to assisting an area such as the UGRB to continue to attain the ozone NAAQS. We note there is no guiding SIP attainment plan demonstration for the UGRB nonattainment area nor is the State required by the CAA to provide one (ref. CAA section 182(a) requirements; areas classified as "Marginal").