



# Finding a Better Way to Fix Utah's Air Quality Problems

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**A**cross the Wasatch Front and throughout the state of Utah, we face increasing challenges related to air quality. The question we should ask is “Are we going to continue to address these issues the same way we have, or can we do something better?”

Wasatch Front counties have long been constrained in their ability to grow economically due to restrictions imposed as a result of occasional exceedances of the federal National Ambient Air Quality Standards (NAAQS) for PM10 (fairly coarse particulate matter). As a result, decades ago, the State adopted PM10 State Implementation Plans (SIPs) to control PM10 emissions for most of the Wasatch Front. Fortunately, the State recently was able to propose revised, less-constraining SIPs, which SIPs are subject to approval by the federal Environmental Protection Agency (EPA), because Utah has been able to demonstrate attainment of the PM10 NAAQS through 2030. This was a tremendous achievement for Utah, and for the health and economic well-being of its citizens. There was also a tremendous economic cost, undoubtedly in the billions of dollars, and primarily borne by Utah industry (notably, Utah mining), associated with this achievement.

Meanwhile, the state recently adopted SIPs for PM2.5 (much finer particulate matter) for roughly the same areas impacted by PM10. PM2.5 is the primary pollutant of concern during

our wintertime inversions. It is unquestionably important to control PM2.5 emissions, both because of the direct health impacts during inversions and because of the indirect economic impacts caused by adverse public reaction to the inversions. Unfortunately, however, it seems unlikely that Utah will be able to attain compliance with the short-term PM2.5 NAAQS because of the unique physical conditions associated with the Wasatch Front and because of the low concentration set for attainment of the NAAQS. Moreover, in order to pencil in a compliance plan that eventually might theoretically lead to attainment, Utah needed to severely restrict both growth of existing operations across the Wasatch Front and the possibility of any new growth. Consequently, it seems likely that compliance costs will be high and that lost economic growth costs will be especially high.

Part of the reason for these high compliance costs and for the lost economic growth is the fact that Utah is hampered by the federal Clean Air Act and its implementing regulations as to how Utah can craft its SIPs. Under current law, there is little that Utah can do about this first problem. (Although, Utah recently engaged in some effective, creative legislative work to provide economic incentives for our refineries to produce Tier 3 gasoline precisely in order to work around one of the Clean Air Act's limitations and to thereby hasten the reduction of PM2.5

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emissions. Governor Herbert and the Legislature should be commended for this effort.)

There is, however, a second problem that Utah can and should address. There is a general lack of political will to do better. (Obviously, as evidenced by the Tier 3 gasoline legislation, it is not a universal lack of will. Indeed, that legislation is evidence that we can do better.) A prime example of the general lack of will arose in 2015 when Utah was considering significant bans on residential burning of wood and other solid fuels. To be clear, those proposed bans should have been enacted – they would have had immediate health benefits and they would have eased the economic burdens that we will now all need to share as part of the PM2.5 SIPs.

Initially, those bans were proposed by Utah's environmental non-governmental organizations (NGOs). The NGOs strongly argued the benefits of the bans and Utah's regulators agreed. Utah's industry also agreed (at least, privately). But, that's where the first failure of political will occurred: Utah's industry feared that if it vocally supported the bans then it would be accused of opportunism because it would economically benefit from the bans. And, it is true that industry would have benefitted, but so would have virtually all Utahns. So, industry stayed silent. Meanwhile, a small minority of homeowners, who would have been

directly impacted by the bans, as well as lobbyists for the businesses who supply the wood, solid fuel and home burners, began to loudly protest the proposed bans. That's where the second and third failures of political will occurred: the NGOs failed to continue their strong support for the bans, and so Utah's regulators and Legislature also gave up their support. Ultimately, while there was a small, loud opposition to the bans, there was no counter-balancing support even though the bans made good policy and were widely supported by a silent majority. Thus, the bans failed. Even worse, the apparent takeaway by Utah's NGOs, industry, regulators and Legislature is that there is no value in trying to craft targeted, effective air quality solutions.

But, if we are going to collectively address our air quality problems in Utah in a way that effectively reduces health risks while minimizing economic disruption, we are going to need to do better. We cannot afford failures of political will. We need to find ways to bridge the interests of industry and the NGOs without fear that cooperation will be viewed as weakness or that cooperation will be punished. (Meanwhile, we should encourage continued, creative legislative solutions to work around the limitations of the Clean Air Act.)

These issues are going to continue to grow for Utah. First, EPA has recently ratcheted

down the NAAQS for ozone. Huge swaths of Utah will be in nonattainment. There is significant reason to question whether the new ozone NAAQS concentrations can ever be met, or whether they are rapidly approaching background levels (at least, for high elevation Western states). Therefore, there is reason to believe that this new, questionable ozone NAAQS will be a permanent impediment to Utah's economic growth.

Second, EPA is attempting to use the antiquated shell of the Clean Air Act to regulate climate change because Congress has been unwilling to pass legislation that more directly addresses climate change. This has resulted in EPA targeting limited portions of the economy (primarily coal, oil and gas) because it believes it can best shoehorn those controls into the Clean Air Act's restrictions. In this regard, it is clear that the Clean Air Act was never intended to regulate climate change. The EPA has admitted that some of its proposed regulations are absurd, but it has argued that they are the best possible fit under its limited statutory authority. Just like Utah should find a better way to handle its localized air issues, our nation should find a better way to handle its regional and national air issues. For instance, an amended Clean Air Act could eliminate the constant ratcheting currently required for NAAQS, in favor of providing the EPA broader statutory authority to regulate climate change. In this way, perhaps we as a society could focus our efforts and financial resources much more effectively, maximizing health and environmental benefits while minimizing economic harm. ✨

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*The views in the article are the author's own and do not necessarily reflect the views of Snell & Wilmer or its clients.*