

**Snowmobiles Meeting Yellowstone and Grand Teton National Parks'
Proposed Best Available Technology (BAT) Requirements**

February 18, 2005

Snowmobile	Average Air Emissions (g/kW-hr)		Sound Emissions (dBA)
	Hydrocarbons	Carbon Monoxide	
Average 2-Stroke Snowmobile (Non-BAT)	150	400	No greater than 78*
BAT Requirements	Less than 15	Less than 120	73 or less
2002 Arctic Cat 4-Stroke Touring	6.20	79.95	71.3
2002 Arctic Cat 4-Stroke Trail	6.20	79.95	72.0
2002 Polaris Frontier Touring	3.19	79.15	74.6
2003 Arctic Cat 4-Stroke Touring	7.55	95.40	70.1
2003 Arctic Cat 4-Stroke Trail	7.55	95.40	72.2
2003 Bombardier Ski-Doo Legend Sport GT V1000, equipped with BAT Upgrade	6.12	92.93	72.3
2003 Polaris Frontier Classic	5.4	111.6	74.3
2003 Polaris Frontier Touring	5.4	111.6	73.3
2004 Arctic Cat T660 Touring	5.62	92.30	71.75
2004 Bombardier Ski-Doo Elite SE, equipped with the Elite BAT Upgrade	4.65	103.16	74.8
2004 Bombardier Ski-Doo Legend Sport GT V1000, equipped with BAT Upgrade	6.12	92.93	72.3
2004 Polaris Frontier Classic	5.4	111.6	73.2
2004 Polaris Frontier Touring	5.4	111.6	73.7
2005 Arctic Cat Bearcat W/T	5.62	92.30	73.7
2005 Arctic Cat T660	5.62	92.30	72.2
2005 Bombardier Ski-Doo Legend Sport GT V1000, equipped with BAT Upgrade	4.65	92.93	71.8
2005 Polaris Frontier Touring	5.4	111.6	73.7

* Society of Automotive Engineers testing procedures allow for a 2 dB tolerance over the sound level limit to provide for variations in test site, temperature gradients, wind velocity gradients, test equipment, and inherent differences in nominally identical vehicles. (It has been observed that under some test site conditions, variability in test results greater than 2 dB can be experienced.)

Notes

- Emission figures presented are Official Test Results, which constitute an average of actual engine emissions.
- The 2004 Bombardier Ski-Doo Elite SE and the 2003-2005 Legend Sport GT V1000 must be equipped with BAT upgrade kits in order to meet BAT requirements. The upgrade kits lowers emissions levels by controlling the maximum throttle body opening and use different software for the snowmobile's electronic control unit.

ARNOLD & PORTER LLP

Robert D. Rosenbaum
Robert.Rosenbaum@aporter.com

202.942.5862
202.942.5999 Fax

555 Twelfth Street, NW
Washington, DC 20004-1206

May 17, 2013

BY EMAIL AND FEDERAL EXPRESS

Mr. Daniel N. Wenk
Superintendent
Yellowstone National Park
Yellowstone National Park, WY 82190

Re: RIN/OMB Control Number 1024-AE15, National Park
Service's Proposed Winter Use Rule for Yellowstone
National Park

Dear Superintendent Wenk:

On behalf of National Parks Conservation Association ("NPCA"), I am writing to provide initial comments on the proposed winter use special regulation for Yellowstone National Park (the "Proposed Rule") published for comment by National Park Service ("NPS") on April 16, 2013 at 76 Fed. Reg. 22470 (the "Proposing Release").

NPCA has concerns about the Proposed Rule and will address those concerns in a future letter. This initial comment letter, however, addresses only the possible changes in the Proposed Rule suggested by some questions posed in the Proposing Release on which comments were sought, 78 Fed. Reg. at 22485, and the NEPA implications of those possible changes. Apart from NPCA's substantive concerns about some of the issues raised, there would be substantial NEPA issues presented if NPS decides to change the Proposed Rule in significant respects from the preferred alternative set forth in the supplemental environmental impact statement finalized in February 2013. We address below those NEPA issues.

It is useful first to consider the background to the Proposed Rule. Yellowstone, of course, is a crown jewel of the National Park System, and NPS must provide the maximum protection to its air quality and other resources. Since the 1990's, NPCA has worked to help NPS achieve a Yellowstone Winter Use Plan that met that standard while also providing appropriate access to visitors. NPCA has successfully challenged in court plans that failed that test, but has also successfully intervened in support of NPS when others have sought to block its efforts to develop better long term approaches to this highly contentious issue. The dispute has centered around the questions how many and what type of Over Snow Vehicles ("OSV") should be permitted in the park during the winter. Some groups have pushed for a plan permitting more snowmobiles, while others have pushed for greater environmental protection from the significant noise, air pollution and other adverse impacts those machines have had on wildlife and on other

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26, 2013, NPS published its Proposed Rule now open for comments. Each and every one of these NEPA documents and regulations and proposed regulations was based on alternatives and rules requiring that OSVs meet stated BAT specifications. And each and every one of the related environmental impact analyses was based on those BAT specifications.

Now, for the first time, NPS asks for comments on an approach that would apparently abandon New-BAT as the centerpiece of the rule, at least in part. The Proposing Release asks for comments, *e.g.*, on:

- Whether air quality goals can be attained more cost-effectively without making BAT requirements for CO more stringent and instead managing entry times and access?
- If so, what would be a feasible approach?
- Whether there are more cost-effective performance based approaches that could be used to meet emissions requirements, as opposed to prescribing certain design specifications?

With all due respect, it is too late for NPS to consider departing from the New-BAT specifications which are the center piece of the Winter Use Plan, as these questions suggest. Doing so would require that the entire NEPA process be reopened.

When an agency makes substantial changes in its proposed action relevant to environmental concerns after the NEPA analysis has been completed, Council on Environmental Quality ("CEQ") regulations require at least a supplemental environmental review. 40 C.F.R. § 1502.9(c)(1)(i)-(ii). NPS's own NEPA Handbook, said to be binding on all NPS personnel (Handbook at 2), imposes the same requirement. NPS NEPA Handbook §§ 4.6.E., 4.7. There is no question that at least a supplemental environmental analysis would be required if NPS were to abandon or change New-BAT as the heart of its rule. Almost by definition, such a change would be substantial and relevant to environmental concerns.

Moreover, it is doubtful that a mere supplement to the SEIS would be sufficient. That is so because the entire SEIS is based on the New-BAT requirements. All the resource impacts of transportation events were analyzed based on the New-BAT standards. Among other things, the ratios between the number of snowmobiles and the number of snowcoaches to be permitted were based on the ability of each type of machine to meet New-BAT standards. Moreover, the NEPA documents did not identify, analyze or seek public comment on any "performance-based" means of minimizing resource impacts. If New-BAT were to be discarded as the basis for the rule, at

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The SEIS sets forth modeling and other analyses of the environmental impacts of the preferred alternative, but each and every such analysis is based on Phase III. No analysis is provided of the impacts of adopting Phase II's "transportation event" approach to regulation without the application of New-BAT. The Phase III deadlines are already up to 4 years in the future, beginning in the winter of 2017-2018. During 3 of those years, Phase II would presumably be in effect.¹

Accordingly, if the New-BAT deadlines were delayed further, and assuming Phase II rules would continue in effect during the delayed period, NEPA, CEQ regulations and NPS's own NEPA Handbook would require that NPS prepare a supplement to the SEIS. In that supplement, an evaluation would be required of Phase II's environmental impacts, with its higher number of permitted OSVs but no New-BAT. Again, NPS would need to take a "hard look" at the Phase II impacts, issue the resulting supplement or new EIS for public comment, and then finalize those documents.

(3) Questions About "Not Making BAT Requirements More Stringent for the Non-Commercial Guided Program."

One question raises the issue whether non-commercially-guided groups of snowmobiles should be exempt from some BAT requirements. The SEIS preferred alternative provided that such groups would be treated as to BAT in the same manner as commercially-guided groups. The only explanation given in the Proposing Release for this question is that non-commercially-guided groups would comprise a "small number" of transportation events. But the SEIS's adaptive management plan provides that NPS could in the future increase the number of non-commercially guided-groups. *See* SEIS, at D-3. In any event, all the evaluations in the SEIS were based on the same BAT requirements' being applicable to all snowmobiles.

Exempting such groups from some BAT requirements would open the door to others seeking the same leeway. If non-commercially-guided groups were permitted to create more noise and emit more pollution than commercially-guided groups, it would only be a matter of time before NPS came under pressure from an outfitter seeking a similar exemption or delay in the New-BAT deadlines or other requirements. If any such request is granted, other outfitters would ask for equitable similar treatment. Before long, the entire preferred alternative would unravel.

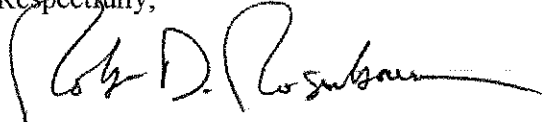
¹ If, instead of extending the period in which Phase II rules were in effect, Phase I rules were continued in effect, providing a lower number of permitted OSVs than under the later transition periods, this NEPA issue would not appear to be raised.

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change discussed above). NPCA knows of no good reason why this NEPA process should not now be brought to an end.

Respectfully,



Robert D. Rosenbaum

cc: The Honorable Sally Jewell
Secretary of the Interior

Rachel Jacobson, Principal Deputy Secretary for
Fish and Wildlife and Parks
Department of the Interior

Jon Jarvis, Director
National Park Service

John Wessels, Regional Director
Intermountain Region, National Park Service

Nancy Helen Sutley, Chair
Council on Environmental Quality

Horst Greczmiel, Associate Director for National
Environmental Policy Act Oversight
Council on Environmental Quality

Rohan Patel, Associate Director for Public Engagement
Council on Environmental Quality

Craig Crutchfield, Chief, Interior Branch
Office of Management and Budget

Stuart Levenbach, Program Examiner, Commerce Branch
Office of Management and Budget