



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Interim Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

Air Quality Board
Erin Mendenhall *Chair*
Cassady Kristensen, *Vice-Chair*
L. Scott Baird
Kevin R. Cromar
Mitra Basiri Kashanchi
Randal S. Martin
John Rasband
Arnold W. Reitze Jr.
William C. Stringer
Bryce C. Bird,
Executive Secretary

UTAH AIR QUALITY BOARD MEETING

FINAL AGENDA

Wednesday, August 7, 2019 - 1:30 p.m.
195 North 1950 West, Room 1015
Salt Lake City, Utah 84116

- I. Call-to-Order
- II. Annual Election of Chair and Vice-Chair.
- III. Date of the Next Air Quality Board Meeting: September 4, 2019
- IV. Approval of the Minutes for June 24, 2019, Board Meeting.
- V. Propose for Public Comment: R307-405-2. Permits: Major Sources in Attainment or Unclassified Areas (PSD). Applicability; and R307-410. Permits: Emissions Impact Analysis. Presented by Mat Carlile.
- VI. Propose for Public Comment: R307-401. Permit New and Modified Sources. Presented by Mat Carlile.
- VII. Informational Items.
 - A. Open Meetings, Conflicts, Ethics, and Records Training. Presented by Craig Anderson, Attorney General's Office.
 - B. Air Toxics. Presented by Bob Ford.
 - C. Compliance. Presented by Harold Burge and Rik Ombach.
 - D. Monitoring. Presented by Bo Call.
 - E. Other Items to be Brought Before the Board.
 - F. Board Meeting Follow-up Items.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Larene Wyss, Office of Human Resources at (801) 536-4281, TDD (801) 536-4284 or by email at lwys@utah.gov.

ITEM 4



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UTAH AIR QUALITY BOARD MEETING

June 24, 2019 – 1:30 p.m.
195 North 1950 West, Room 1015
Salt Lake City, Utah 84116

DRAFT MINUTES

I. Call-to-Order

Erin Mendenhall called the meeting to order at 1:31 p.m. Because Ms. Mendenhall and Ms. Kristensen were attending by phone, Mr. Stringer was asked to Chair the remainder of the meeting.

Board members present: Erin Mendenhall (attendance by phone), Cassady Kristensen (attendance by phone), Kevin Cromar, Mitra Kashanchi, Randal Martin, Alan Matheson, John Rasband, Arnold Reitze, and William Stringer

Executive Secretary: Bryce Bird

II. Date of the Next Air Quality Board Meeting: August 7, 2019

III. Approval of the Minutes for June 5, 2019, Board Meeting.

- Erin Mendenhall motioned to approve the minutes. Arnold Reitze seconded. The Board approved unanimously. Kevin Cromar was not in attendance.

IV. Final Adoption: SIP Section XX.A. Regional Haze. Executive Summary; and Section XX.D(6). Regional Haze. Long-Term Strategy for Stationary Sources. Best Available Retrofit Technology (BART) Assessment for NO_x and PM. Presented by Jay Baker.

Jay Baker, Environmental Scientist at DAQ, first corrected that this agenda item is not addressing PM as noted in the title, it is just for the BART alternative for NO_x. Mr. Baker stated that the purpose of this state implementation plan (SIP) revision is to remove the analysis and the weight-of-evidence (WOE) test that was used in the 2015 Regional Haze SIP. This SIP only addressed the first planning period which ended in 2018. In addition, staff worked closely with EPA to calibrate and use the best analysis tool for evaluating visibility. The two-prong test prescribed by the regional haze rule states that any alternative to BART must show that visibility does not decline in any affected Class I area; and that there is an overall improvement in visibility, determined by comparing the average

differences between BART and the alternative over all the affected Class I areas. Based on the modeling, the BART alternative passes both prongs of the test.

Mr. Baker explained that prior to submitting the BART for the NO_x SIP in 2008, UDAQ led a stakeholder process to which all parties were in agreement on the controls in the 2008 SIP. However, in 2012 the EPA took issue with the BART analysis that was used. Subsequently, staff worked closely with EPA to correct that analysis. In 2015, the Board approved the SIP revision for an alternative for BART for both PM and NO_x. In 2016, the EPA did act on and approve the BART for PM, but they disapproved the BART alternative for NO_x because they felt the alternative did not show it was clearly better than BART. Utah appealed that decision in the courts, and the federal implementation plan (FIP) is currently stayed in the courts.

Kevin Cromar enters the meeting.

Mr. Baker explained that comments and responses most relevant to this SIP revision are listed first in staff's response to comments. Responses include those addressing the applicability of the two-prong test and the main technical comments related to technical merits of the model used to demonstrate conformity with the two-prong test. DAQ also responded to other comments related to health and environmental concerns not addressed by the regional haze program, cost of compliance, and the second regional haze planning period. Staff recommends that the Board approve SIP Section XX Parts A and D(6) as amended by removing the analysis and the WOE test from the 2015 Regional Haze SIP and using the new analysis and applying the two-prong test. Staff then responded to questions from the Board.

Ms. Mendenhall stated that it appears that the emissions reductions reflected from the equipment that was installed in the time period between 2003 and 2011 would result in double counting. Can you explain why that is not double counting? Mr. Baker responded that the 2011 modeling platform was used because it was the best available science to use. For the monitoring portion of the platform, DAQ first set up the domain for the area in which to run the model and then the model is run against a typical year to make sure it's performing as expected. In this case, it was the 2011 monitoring data. Once you know the model is working well, then three scenarios are plugged in. In this case, there was a baseline where we assumed no controls were installed either under the BART alternative or under the FIP, which was selective catalytic reduction (SCR). Then the scenarios were compared against one another, and at that point the monitoring data itself is not used. We just project out to 2018, in this case, to see what the difference between the three scenarios would be. So, even though we used the 2011 platform, the monitoring portion of it is independent of the three modeled scenarios.

Ms. Mendenhall stated that the EPA FIP proposal includes all emissions from the Carbon power plant that shut down in 2015. If the plant had continued to operate and it complied with the mercury and air toxics standards (MATS), then those reductions would have resulted in a significant reduction of sulfur dioxide (SO₂). Is it correct that if PacifiCorp's calculations are based off of the BACT, then based on comments we have received, and this error were corrected (taking into consideration MATS), then the EPA FIP would have demonstrated significant improvements in visibility? In other words, might the EPA's FIP have demonstrated significant improvement in visibility if PacifiCorp's calculations took into consideration MATS? Mr. Baker responded that there are two reasons why the Carbon emissions reductions were counted in our BART alternative and not the FIP. First of all, the emissions were included in the SIP as an enforceable closure where the permit was revoked. The second reason is that the Carbon unit is not a BART eligible unit and so we are actually precluded by the definition of BART from including it in the SCR scenario in this case or the EPA FIP.

Ms. Kashanchi asked if staff believes that the EPA is going to have any objections to how the state relied on the Carbon plant SO₂ reductions as part of the old year program to avoid BART for SO₂ at Hunter and Huntington, and now the state is supposedly relying the Carbon plant SO₂ reductions as part of the regional haze program to avoid BART on NO_x at Hunter and Huntington as well? Mr. Baker explained that the SO₂ milestones were a series of milestones that were set for the first planning period, in conjunction with other states that were part of the same program. At the time, closure was not necessarily part of that SO₂ milestone plan and so, the Carbon closure was actually seen as not part of that SO₂ milestone program per se. In order to make sure there was no double counting, we are requiring that those SO₂ emissions be included in the SO₂ milestone calculations. We are allowed to adjust the SO₂ milestone emissions reported based on enforcement actions, which is what this will be.

Mr. Cromar stated that staff mentioned a few times that this SIP wraps up the first planning period, and that all of the frustrations expressed in comments will be directly relevant in the second planning period. The planning periods are not the same, they are different. For example, the first planning period focused on BART subject sources. The second planning period will look at large sources of NO_x, SO₂, and PM, including the sources previously evaluated to BART. So, it is good that we will get another chance at this during the second planning period.

Mr. Cromar and Dr. Martin commented that responses to comments should focus on the subject of the comments and not on who the commenter is. We need to make sure that the correct message is being sent to the public by being both professional and reliable.

Mr. Reitze commented that if the Board disapproves this alternative, it creates a legal quandary because the alternative has already been complied with. Staff added, that if this SIP were disapproved then it would effectively be installing BART and the alternative BART.

Finally, staff was asked to give examples of feedback it received from the EPA in regards to the model. One example given was with the modeling domain. Staff and EPA had a lot of discussion on where the model should start geographically, and an agreement was reached to include additional Class I areas. Another was the concern in the amount of ammonia, and after discussion the boundary conditions for ammonia were adjusted. Staff also explained that for the record, EPA does not give approval until an item is officially posted in the Federal Register.

- Randal Martin motioned that the Board adopt SIP Section XX.A. Regional Haze. Executive Summary; and Section XX.D(6). Regional Haze. Long-Term Strategy for Stationary Sources. Best Available Retrofit Technology (BART) Assessment for NO_x alone, and not for PM as was listed. John Rasband seconded. The Board approved unanimously.

V. Final Adoption: Change in Proposed Rule R307-110-28. Regional Haze. Presented by Thomas Gunter.

Thomas Gunter, Rules Coordinator at DAQ, stated that the amendments to Section XX, Regional Haze, Parts A and D, just adopted by the Board will have to be incorporated into the Utah Air Quality Rules. R307-110-28 is the rule that incorporates those amendments. On March 6, 2019, the Board proposed an amended R307-110-28 for a 30-day public comment period. The public comment period was held from April 1, 2019, through May 1, 2019, and no comments were received. Staff recommends that the Board adopt the change in proposed rule R307-110-28 as amended.

- Kevin Cromar motioned that the Board adopt the change in proposed rule R307-110-28 as amended. Arnold Reitze seconded. The Board approved unanimously.

VI. Final Adoption: R307-150-3. Applicability. Presented by Thomas Gunter.

Thomas Gunter, Rules Coordinator at DAQ, stated that on March 6, 2019, the Board proposed an amended R307-150-3 for a 30-day public comment period. As you may recall, the Regional Haze SIP contains SO₂ milestones. R307-150-3 needed to be amended to ensure the SO₂ reductions being counted towards the BART alternative for NO_x are not being counted towards reductions in the SO₂ milestone program. Therefore, R307-150-3 was amended to state that DAQ will include the Carbon power plant SO₂ emission as 8,005 tons a year in the annual SO₂ milestone report to EPA. The public comment period was held from April 1, 2019, through May 1, 2019. DAQ received one comment letter containing four comments which are addressed in the Board memorandum. Based on staff's analysis and reasons outlined in their responses, no changes were made to the original proposed amendments. Staff recommends that the Board adopt R307-150-3 as amended.

Prior to the vote, Mr. Cromar acknowledged some of the commenter's frustration in how the Carbon plant was handled within this planning period. Although it may have not been straightforward, what was done was in line with what the EPA requires. It may not have been the way to handle Carbon if we were starting from scratch, and that it's okay to express frustrations during this process.

- Erin Mendenhall moved for adoption of R07-150-3, Applicability. Mitra Kashanchi seconded. The Board approved unanimously.

Public comment from Christopher Thomas of the Sierra Club was introduced. Mr. Thomas stated that the Sierra Club was disappointed with the Board's vote. It is their belief that if the two plans had been compared, that the plan requiring additional controls would have controlled NO_x emissions from the Hunter and Huntington coal plants, which would have been better in terms of visibility improvements. They do want to thank the Board and they look forward to working with the Board going into the next phase of regional haze.

VII. Other Items to be Brought Before the Board.

John Rasband was introduced as a new Board member representing the manufacturing sector. Mr. Rasband currently works at Petersen, Inc. as the Environmental Health and Safety Manager. He has over 22 years' experience working in the manufacturing industry.

Alan Matheson announced that he will be leaving the Department of Environmental Quality at the end of June to take a position overseeing the Point of the Mountain development area. Mr. Matheson acknowledged what a remarkable experience it has been to work with amazing people who are committed to doing the job well for the State of Utah. He particularly enjoyed the opportunity to work with the Air Quality Board and in their commitment to this state to improve air quality.

Mr. Bird announced that Thomas Gunter, DAQ Rules Coordinator, will be leaving state employment to work for a local law firm. Also, Ms. Susan Hardy of Mountainland Association of Governments has announced that she will retire at the end of June.

Mr. Cromar, who represents the Air Quality Board on the Wasatch Front Regional Council's Transportation Coordinating Committee (Trans Com), announced that every year the MPO for the Salt Lake area receives funding of about \$7 million to address air quality. In the past, this funding has been used as a supplementary fund for surface road projects. This year, Trans Com would like to

do a better job at being effective with congestions mitigation air quality (CMAQ) funding and so they will be working DAQ. DAQ's expertise will be helpful in advising cities and counties on what projects would get the biggest bang for the buck and to make sure funding is used more effectively to address air quality. Mr. Cromar will bring more information to the Board as it develops.

Meeting adjourned at 2:17 p.m.

DRAFT

ITEM 5



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DAQ-070-19

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Mark Berger, Air Quality Policy Section Manager

DATE: July 23, 2019

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amend R307-405-2. Permits: Major Sources in Attainment or Unclassified Areas (PSD). Applicability; and R307-410. Permits. Emissions Impact Analysis.

The Division of Air Quality has been working closely with the EPA to develop and eventually submit approvable infrastructure state implementation plans (ISIPs) for both the 2008 and 2015 ozone standards. As DAQ worked with EPA, they noted a deficiency in its rules that would prevent EPA from approving the ISIP submittals. 40 CFR Part 51, Appendix W, Guidelines on Air Quality Models was revised by the EPA on January 17, 2017. The notice, 82 FR 5182, stated that the EPA expected the revisions to be integrated into state regulatory processes by January 17, 2018.

These proposed rule changes update the parts of 40 CFR incorporated by reference in the rules to the July 1, 2018, versions. These changes will align the state regulatory process with the changes EPA made on January 17, 2017. EPA's January 17, 2017 action:

- Finalized enhancements to the scientific formulation of the preferred near-field (up to 50km from an emission source) dispersion model, AERMOD, to address technical concerns expressed by the stakeholder community and improve model performance in its regulatory applications.
- Streamlined resources necessary to conduct regulatory modeling with AERMOD by incorporating model algorithms from the Buoyant Line and Point Source (BLP) model and updating methods that address nitrogen dioxide chemistry.
- Replaced the model known as CALINE3 with AERMOD for refined mobile source applications, including fine particle pollution (PM_{2.5}, PM₁₀), and carbon monoxide (CO) hot-spot analyses. The

transition period for the use of AERMOD for these refined modeling applications was extended to three years and the use of CAL3QHC for CO screening analyses was retained.

- Provided more flexibility and improved the meteorological inputs used for regulatory modeling. The EPA finalized an allowance to use projected meteorological data in AERMOD where there is no representative National Weather Service NWS station and it is prohibitive or not feasible to collect adequately representative site-specific data.
- Updated modeling techniques to address the secondary chemical formation of fine particle and ozone pollution from direct, single source emissions of sulfur dioxide, oxides of nitrogen for fine particle formation, and volatile organic compounds and oxides of nitrogen for ozone formation. These compounds can react in the atmosphere to form fine particle and ozone pollution.
- In conjunction with the final Guideline, issued guidance on single-source modeling, “Guidance on the Use of Models for Assessing the Impacts of Emissions from Single Sources on the Secondarily Formed Pollutants: Ozone and PM_{2.5}.”
- For long-range (beyond 50km from an emissions source) air quality assessments, removed CALPUFF as a preferred model and considering it as a screening technique, along with other Lagrangian models, to be used in consultation with the appropriate reviewing authority.

Should these rules go through the regular administrative process, staff will bring them back to the Board after a 30-day public comment period in November for final adoption, which will allow the Governor to submit them in concert with the ozone ISIPs for EPA approval.

Recommendation: Staff recommends that the Board propose for public comment R307-405-2 and R307-410 as amended.

1 **Appendix 1: Regulatory Impact Summary Table***

Fiscal Costs	FY 2019	FY 2020	FY 2021	2
State Government	\$0	\$0	\$0	3
Local Government	\$0	\$0	\$0	4
Small Businesses	\$0	\$0	\$0	5
Non-Small Businesses	\$0	\$0	\$0	6 7
Other Person	\$0	\$0	\$0	8
Total Fiscal Costs:	\$0	\$0	\$0	9
Fiscal Benefits				
State Government	\$0	\$0	\$0	
Local Government	\$0	\$0	\$0	
Small Businesses	\$0	\$0	\$0	
Non-Small Businesses	\$0	\$0	\$0	
Other Persons	\$0	\$0	\$0	
Total Fiscal Benefits:	\$0	\$0	\$0	
Net Fiscal Benefits:	\$0	\$0	\$0	

10
11 *This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will
12 not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other
13 Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.
14

15 **Appendix 2: Regulatory Impact to Non-Small Businesses**

16
17 No non-small businesses are expected to be impacted by this
18 rulemaking because the rule is being updated to match
19 already-existing federal requirements.
20

21 The Interim Executive Director of the Department of Environmental
22 Quality, L. Scott Baird, has reviewed and approved this fiscal
23 analysis.
24

25 **R307. Environmental Quality, Air Quality.**

26 **R307-405. Permits: Major Sources in Attainment or Unclassified
27 Areas (PSD).**

28 **R307-405-2. Applicability.**

29 (1) All references to 40 CFR in R307-405 shall mean the version
30 that is in effect on July 1, [~~2011~~]2018.

31 (2) The provisions of 40 CFR 52.21(a)(2) are hereby incorporated
32 by reference.

33 (3) Notwithstanding the exemptions in R307-401, any source that
34 is subject to R307-405 is subject to the requirement to obtain an

1 approval order in R307-401-5 through 8.

2

3

4 **KEY: air pollution, PSD, Class I area, greenhouse gases**

5 **Date of Enactment or Last Substantive Amendment: February 4, 2016**

6 **Notice of Continuation: November 13, 2018**

7 **Authorizing, and Implemented or Interpreted Law: 19-2-104**

1 **Appendix 1: Regulatory Impact Summary Table***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

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*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

9 **Appendix 2: Regulatory Impact to Non-Small Businesses**

10 No non-small businesses are expected to be impacted by this rulemaking
11 because it is simply updating the rule to already-existing federal
12 requirements.
13

14 The Interim Executive Director of the Department of Environmental
15 Quality, L. Scott Baird, has reviewed and approved this fiscal
16 analysis.
17

18
19 **R307. Environmental Quality, Air Quality.**
20 **R307-410. Permits: Emissions Impact Analysis.**
21 ...
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23 **R307-410-3. Use of Dispersion Models.**

24 All estimates of ambient concentrations derived in meeting the
25 requirements of R307 shall be based on appropriate air quality models,
26 data bases, and other requirements specified in 40 CFR Part 51, Appendix
27 W, (Guideline on Air Quality Models), effective July 1, [2005]2018,
28 which is hereby incorporated by reference. Where an air quality model
29 specified in the Guideline on Air Quality Models or other EPA approved
30 guidance documents is inappropriate, the director may authorize the
31 modification of the model or substitution of another model. In meeting
32 the requirements of federal law, any modification or substitution will

1 be made only with the written approval of the Administrator, EPA.

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3 ...

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5 **R307-410-5. Documentation of Ambient Air Impacts for Hazardous Air**
6 **Pollutants.**

7 (1) Prior to receiving an approval order under R307-401, a
8 source shall provide documentation of increases in emissions of
9 hazardous air pollutants as required under (c) below for all
10 installations not exempt under (a) below.

11 (a) Exempted Installations.

12 (i) The requirements of R307-410-5 do not apply to installations
13 which are subject to or are scheduled to be subject to an emission
14 standard promulgated under 42 U.S.C. 7412 at the time a notice of intent
15 is submitted, except as defined in (ii) below. This exemption does
16 not affect requirements otherwise applicable to the source, including
17 requirements under R307-401.

18 (ii) The director may, upon making a written determination that
19 the delay in the implementation of an emission standard under
20 R307-214-2, that incorporates 40 CFR Part 63, might reasonably be
21 expected to pose an unacceptable risk to public health, require, on
22 a case-by-case basis, notice of intent documentation of emissions
23 consistent with (c) below.

24 (A) The director will notify the source in writing of the
25 preliminary decision to require some or all of the documentation as
26 listed in (c) below.

27 (B) The source may respond in writing within thirty days of
28 receipt of the notice, or such longer period as the director approves.

29 (C) In making a final determination, the director will document
30 objective bases for the determination, which may include public
31 information and studies, documented public comment, the applicant's
32 written response, the physical and chemical properties of emissions,
33 and ambient monitoring data.

34 (b) Lead Compounds Exemption. The requirements of R307-410-5
35 do not apply to emissions of lead compounds. Lead compounds shall be
36 evaluated pursuant to requirements of R307-410-4.

37 (c) Submittal Requirements.

38 (i) Each applicant's notice of intent shall include:

39 (A) the estimated maximum pounds per hour emission rate increase
40 from each affected installation,

41 (B) the type of release, whether the release flow is vertically
42 restricted or unrestricted, the maximum release duration in minutes
43 per hour, the release height measured from the ground, the height of
44 any adjacent building or structure, the shortest distance between the
45 release point and any area defined as "ambient air" under 40 CFR
46 50.1(e), effective July 1, [2005]2018, which is hereby incorporated
47 by reference for each installation for which the source proposes an
48 emissions increase,

49 (C) the emission threshold value, calculated to be the
50 applicable threshold limit value - time weighted average (TLV-TWA)
51 or the threshold limit value - ceiling (TLV-C) multiplied by the
52 appropriate emission threshold factor listed in Table 2, except in

1 the case of arsenic, benzene, beryllium, and ethylene oxide which shall
 2 be calculated using chronic emission threshold factors, and
 3 formaldehyde, which shall be calculated using an acute emission
 4 threshold factor. For acute hazardous air pollutant releases having
 5 a duration period less than one hour, this maximum pounds per hour
 6 emission rate shall be consistent with an identical operating process
 7 having a continuous release for a one-hour period.

8
 9 TABLE 2

10 EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
 11 (cubic meter pounds per milligram hour)

12
 13 VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

14
 15 DISTANCE TO

16 PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
17 20 Meters or less	0.038	0.051	0.017
18 21 - 50 Meters	0.051	0.066	0.022
19 51 - 100 Meters	0.092	0.123	0.041
20 Beyond 100 Meters	0.180	0.269	0.090

21
 22 VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

23
 24 DISTANCE TO

25 PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
26 50 Meters or less	0.154	0.198	0.066
27 51 - 100 Meters	0.224	0.244	0.081
28 Beyond 100 Meters	0.310	0.368	0.123

29
 30 (ii) A source with a proposed maximum pounds per hour emissions
 31 increase equal to or greater than the emissions threshold value shall
 32 include documentation of a comparison of the estimated ambient
 33 concentration of the proposed emissions with the applicable toxic
 34 screening level specified in (d) below.

35 (iii) A source with an estimated ambient concentration equal
 36 to or greater than the toxic screening level shall provide additional
 37 documentation regarding the impact of the proposed emissions. The
 38 director may require such documentation to include, but not be limited
 39 to:

40 (A) a description of symptoms and adverse health effects that
 41 can be caused by the hazardous air pollutant,

42 (B) the exposure conditions or dose that is sufficient to cause
 43 the adverse health effects,

44 (C) a description of the human population or other biological
 45 species which could be exposed to the estimated concentration,

46 (D) an evaluation of land use for the impacted areas,

47 (E) the environmental fate and persistency.

48 (d) Toxic Screening Levels and Averaging Periods.

49 (i) The toxic screening level for an acute hazardous air
 50 pollutant is 1/10th the value of the TLV-C, and the applicable averaging
 51 period shall be:

52 (A) one hour for emissions releases having a duration period

1 of one hour or greater,

2 (B) one hour for emission releases having a duration period less
3 than one hour if the emission rate used in the model is consistent
4 with an identical operating process having a continuous release for
5 a one-hour period or more, or

6 (C) the dispersion model's shortest averaging period when using
7 an applicable model capable of estimating ambient concentrations for
8 periods of less than one hour.

9 (ii) The toxic screening level for a chronic hazardous air
10 pollutant is 1/30th the value of the TLV- TWA, and the applicable
11 averaging period shall be 24 hours.

12 (iii) The toxic screening level for all carcinogenic hazardous
13 air pollutants is 1/90 the value of the TLV-TWA, and the applicable
14 averaging period shall be 24 hours, except in the case of formaldehyde
15 which shall be evaluated consistent with (d)(i) above and arsenic,
16 benzene, beryllium, and ethylene oxide which shall be evaluated
17 consistent with (d)(ii) above.

18 ...
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21 **KEY: air pollution, modeling, hazardous air pollutant, stack height**
22 **Date of Enactment or Last Substantive Amendment: [~~December 15,~~**
23 **2015]2019**

24 **Notice of Continuation: May 15, 2017**

25 **Authorizing, and Implemented or Interpreted Law: 19-2-104**

ITEM 6



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Interim Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQ-071-19

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Alan Humpherys, Minor New Source Review Section Manager

DATE: July 23, 2019

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amend R307-401. Permit: New and Modified Sources.

Utah Administrative Codes R307-401-15 and 16 exempt an owner or operator at a soil or groundwater remediation site from the new source review (NSR) permitting process as long as volatile organic compound emissions are under five tons per year and hazardous air pollutants are less than their threshold values in R307-410-5(1)(c)(i)(c). The rules require the owner or operator to test to demonstrate compliance with the exemption levels.

Proposed changes include new and updated definitions and updated testing requirements that are applicable in both R307-401-15 and 16. The proposed changes will allow sources to discontinue testing after three years of operation if testing demonstrates the emissions have consistently remained below exemption levels. The option to discontinue testing applies to R307-401-15.

Another proposed amendment to the rule is to exempt sub-slab vapor mitigation systems (VMS) from the testing requirements of the rule. Testing requirements are not necessary because sub-slab VMS are designed to mitigate vapor intrusion into an occupied or occupiable structure, not to remediate the contaminated soil or groundwater. In other words, vapors to be mitigated through a VMS would eventually enter ambient air through natural processes. A VMS simply moves vapors away from occupied or occupiable structures. The exemption for the VMS is in R307-401-15(5).

Staff consulted with an environmental remediation company as well as EPA while developing these proposed changes. During the rule development process, the EPA raised some questions. Those questions

and DAQ's responses are summarized below. At the end of the cooperative rule development process, EPA indicated that the DAQ's responses addressed their concerns and the rule appeared approvable.

EPA Question 1 – Why did DAQ remove the “any combination of” language from R307-401-15(1)(b) when defining notice of intent exemptions for soil vapor extraction remediation systems?

Staff Response: There is no defined “combined or combination HAPs” as listed in the limits from R307-401-15. Limits are based on single HAP thresholds.

EPA Question 2 – Why is the exemption for sub-slab VMS added to the rule?

Staff Response: VMS were unintentionally pulled into the rule in the existing definition. The systems are designed to prevent already-venting emissions from contaminated soil or groundwater from passing through inhabited buildings. The systems redirect emissions so that the building is circumvented from the vapors.

There is no increase in emissions from the addition of a VMS; it only helps to preserve indoor air quality before the emissions eventually pass to the atmosphere. The systems are not an active removal or treatment system. The new definition clarifies this and prevents discouragement of installation due to the rules testing requirements.

EPA Question 3 – Why is the reporting exemption in R307-401-16(3) added to the rule?

Staff Response: Landfills, solid waste management facilities, and third-party landfarms are exempt if the emissions unit is operating under an approval order. The emissions from the excavated soils are addressed in the approval order and are controlled through best available control technology (BACT). As such, this rule is not necessary to capture, control, or report emissions.

Recommendation: Staff recommends that the Board propose amended R307-401 for public comment.

1 **Appendix 1: Regulatory Impact Summary Table***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

2
3
4
5
6
*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

7 **Appendix 2: Regulatory Impact to Non-Small Businesses**

8
9 These amendments will result in an unknown savings to non-small
10 businesses. Information on how many instances the exemption will
11 apply to an owner or operator of sub-slab vapor mitigation systems
12 is not readily available. However, it is estimated that the savings
13 will range between \$2,800 and \$3,500 per sampling event for each vent
14 riser. Each system will have a specific vent riser count requirement.
15 Stacks can range from four to 10 per project. As currently written,
16 the rule requires each stack to be tested five times in the first
17 year and twice a year after the first year for the life of the project.
18 At a four stack site this could cost up to \$70,000 in the first year,
19 and up to \$28,000 each subsequent year. Testing would be required
20 for the life of the project.

21
22 The Interim Executive Director of the Department of Environmental
23 Quality, L. Scott Baird, has reviewed and approved this fiscal
24 analysis.

25
26
27 ****"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

1

2 **R307. Environmental Quality, Air Quality.**3 **R307-401. Permit: New and Modified Sources.**

4 ---

5

6 **R307-401-2. Definitions**

7

8 "Actual emissions" (a) means the actual rate of emissions of an
9 air pollutant from an emissions unit, as determined in accordance with
10 R307-401-2(b) through R307-401-2(d).

11 (b) In general, actual emissions as of a particular date shall
12 equal the average rate, in tons per year, at which the unit actually
13 emitted the air pollutant during a consecutive 24-month period which
14 precedes the particular date and which is representative of normal
15 source operation. The director shall allow the use of a different time
16 period upon a determination that it is more representative of normal
17 source operation. Actual emissions shall be calculated using the
18 unit's actual operating hours, production rates, and types of
19 materials processed, stored, or combusted during the selected time
20 period.

21 (c) The director may presume that source-specific allowable
22 emissions for the unit are equivalent to the actual emissions of the
23 unit.

24 (d) For any emissions unit that has not begun normal operations
25 on the particular date, actual emissions shall equal the potential to
26 emit of the unit on that date.

27 "Best available control technology" means an emissions
28 limitation (including a visible emissions standard) based on the
29 maximum degree of reduction for each air pollutant which would be
30 emitted from any proposed stationary source or modification which the
31 director, on a case-by-case basis, taking into account energy,
32 environmental, and economic impacts and other costs, determines is
33 achievable for such source or modification through application of
34 production processes or available methods, systems, and techniques,
35 including fuel cleaning or treatment or innovative fuel combustion
36 techniques for control of such pollutant. In no event shall
37 application of best available control technology result in emissions
38 of any pollutant which would exceed the emissions allowed by any
39 applicable standard under 40 CFR parts 60 and 61. If the director
40 determines that technological or economic limitations on the
41 application of measurement methodology to a particular emissions unit
42 would make the imposition of an emissions standard infeasible, a
43 design, equipment, work practice, operational standard or combination
44 thereof, may be prescribed instead to satisfy the requirement for the
45 application of best available control technology. Such standard

1 shall, to the degree possible, set forth the emissions reduction
2 achievable by implementation of such design, equipment, work practice
3 or operation, and shall provide for compliance by means which achieve
4 equivalent results.

5 "Air Strippers" are systems designed to pump groundwater to the
6 surface for treatment, usually by aeration.

7 "Building, structure, facility, or installation" means all of the
8 pollutant-emitting activities which belong to the same industrial
9 grouping, are located on one or more contiguous or adjacent properties,
10 and are under the control of the same person (or persons under common
11 control) except the activities of any vessel. Pollutant-emitting
12 activities shall be considered as part of the same industrial grouping
13 if they belong to the same Major Group (i.e., which have the same
14 two-digit code) as described in the Standard Industrial Classification
15 Manual, 1972, as amended by the 1977 Supplement (U.S. Government
16 Printing Office stock numbers 4101-0066 and 003-005-00176-0,
17 respectively).

18 "Construction" means any physical change or change in the method
19 of operation (including fabrication, erection, installation,
20 demolition, or modification of an emissions unit) that would result
21 in a change in emissions.

22 "Emissions unit" means any part of a stationary source that emits
23 or would have the potential to emit any air pollutant.

24 "Fugitive emissions" means those emissions which could not
25 reasonably pass through a stack, chimney, vent, or other functionally
26 equivalent opening.

27 "Indirect source" means a building, structure, facility, or
28 installation which attracts or may attract mobile source activity that
29 results in emission of a pollutant for which there is a national
30 standard.

31 "Potential to emit" means the maximum capacity of a stationary
32 source to emit an air pollutant under its physical and operational
33 design. Any physical or operational limitation on the capacity of the
34 source to emit a pollutant, including air pollution control equipment
35 and restrictions on hours of operation or on the type or amount of
36 material combusted, stored, or processed, shall be treated as part of
37 its design if the limitation or the effect it would have on emissions
38 is enforceable. Secondary emissions do not count in determining the
39 potential to emit of a stationary source.

40 "Secondary emissions" means emissions which occur as a result of
41 the construction or operation of a major stationary source or major
42 modification, but do not come from the major stationary source or major
43 modification itself. Secondary emissions include emissions from any
44 offsite support facility which would not be constructed or increase
45 its emissions except as a result of the construction or operation of

1 the major stationary source or major modification. Secondary emissions
2 do not include any emissions which come directly from a mobile source,
3 such as emissions from the tailpipe of a motor vehicle, from a train,
4 or from a vessel.

5 "Soil Aeration" is an ex-situ treatment process where excavated
6 soil from a remediation project is spread in a thin layer to encourage
7 biodegradation of soil contamination. Biodegradation may be
8 stimulated through aeration or the addition of minerals, nutrients,
9 and/or moisture.

10 "Soil Vapor Extraction", or SVE, is a system designed to extract
11 vapor phase contaminants from the subsurface. SVE systems are often
12 combined with other technologies, such as air sparging or
13 vacuum-enhanced recovery systems.

14 "Stationary source" means any building, structure, facility, or
15 installation which emits or may emit an air pollutant.

16 "Vapor Mitigation System", or VMS, is a sub-slab system whose
17 primary purpose is mitigating vapor intrusion into an occupied, or
18 occupiable, structure and is not intended or designed for the
19 remediation of contaminated soil or groundwater. This definition
20 includes both active and passive systems. Active systems use a blower
21 or fan to extract vapors from within or beneath a structure. Passive
22 systems consist of a venting layer installed under a structure to
23 divert vapor to the sides of a structure and vent vapors outdoors.

24
25 **R307-401-15. Air Strippers and Soil Vapor Extraction Systems[Venting**
26 **Projects].**

27 R307-401-15 applies to remediation systems with the potential to
28 generate air emissions, such as air strippers and soil vapor extraction
29 (SVE) as defined in R307-401-2.

30 (1) The owner or operator of an air stripper or SVE remediation
31 system~~[soil venting system that is used to remediate contaminated~~
32 ~~groundwater or soil]~~ is exempt from the notice of intent and approval
33 order requirements of R307-401-5 through R307-401-8 if the following
34 conditions are met:

35 (a) ~~[the estimated total air]~~actual emissions of volatile
36 organic compounds from a given project are less than 5 tons per year;
37 and~~[the de minimis emissions listed in R307-401-9(1)(a), and]~~

38 (b) emission rates of ~~[the level of any one hazardous air~~
39 ~~pollutant or any combination of]~~ hazardous air pollutants are~~[is]~~
40 below their respective threshold values contained~~[the levels listed]~~
41 in R307-410-5(1)(c)(i)(C).

42 (2) The owner or operator shall submit documentation to the
43 director that demonstrates the project meets the exemption
44 criteria~~[requirements]~~ in R307-401-15(1)~~[to the director prior to~~
45 beginning the remediation project]. Required documentation includes,

1 but is not limited to:

2 (a) project summary, including location, system description,
3 operational schedule, and schedule for construction;

4 (b) emission calculations and any laboratory sampling data used
5 in calculations; and

6 (c) plans and specifications for the system and equipment.

7 (3) After beginning the soil remediation project, the owner [or
8 operator shall submit emissions information to the director to verify
9 that the emission rates of the volatile organic compounds and hazardous
10 air pollutants in R307-401-15(1) are not exceeded.] or operator shall
11 conduct testing to demonstrate compliance with the exemption levels
12 in R307-401-15(1)(a) and (b). Monitoring and reporting shall be
13 conducted as follows:

14 (a) [Emissions estimates of volatile organic compounds shall be
15 based on test data obtained in accordance with the test method in the
16 EPA document SW 846, Test #8260c or 8261a, or the most recent EPA
17 revision of either test method if approved by the director.] Emissions
18 for air strippers shall be based on the following:

19 (i) influent and effluent water samples analyzed for volatile
20 organic compounds and hazardous air pollutants using the most recent
21 version of USEPA Test Method 8260, Method 8021, or other EPA approved
22 testing methods acceptable to the director; and

23 (ii) design water flow rate of the system or the water flow
24 rates measured during the sample period.

25 (b) [Emissions estimates of hazardous air pollutants shall be
26 based on test data obtained in accordance with the test method in EPA
27 document SW 846, Test #8021B or the most recent EPA revision of the
28 test method if approved by the director.] Emissions for SVE systems
29 shall be based on the following:

30 (i) Air samples collected from a sample port in the exhaust stack
31 of the SVE system and analyzed for volatile organic compounds and
32 hazardous air pollutants using USEPA test method TO-15, or other EPA
33 approved testing methods acceptable to the director.

34 (ii) Design air flow rate of the system or the air flow rates
35 measured at the outlet of the SVE system during the sample period.

36 (c) [Results of the test and calculated annual quantity of
37 emissions of volatile organic compounds and hazardous air pollutants
38 shall be submitted to the director within one month of sampling.]
39 Within one month of sampling, the owner or operator shall submit to
40 the director the sample results, estimated emissions of volatile
41 organic compounds, and estimated emission rates of hazardous air
42 pollutants.

43 (d) [The test samples shall be drawn on intervals of no less than
44 twenty eight days and no more than thirty one days (i.e., monthly) for
45 the first quarter, quarterly for the first year, and semi-annually

1 ~~thereafter or as determined necessary by the director.]~~ Samples shall
2 be collected at the following frequencies or more frequently as
3 determined necessary by the director:

4 (i) no less than twenty-eight days and no more than thirty-one
5 days (i.e., monthly) after startup for the first quarter;

6 (ii) quarterly for the remainder of the first year; and

7 (iii) semi-annually thereafter for the life of the project or as
8 allowed in R307-401-15(3)(f).

9 (e) If an SVE or air sparge system is restarted after
10 rehabilitation or an extended period of shutdown, the owner or operator
11 shall recommence the sampling schedule in R307-415(3)(d), unless
12 otherwise approved by the director.

13 (f) The owner or operator may request to discontinue sampling
14 after three years of operation. To discontinue sampling, the owner or
15 operator must submit to the director a request to discontinue
16 monitoring.

17 (i) The request must include documentation demonstrating
18 emissions have consistently remained below the exemption levels in
19 R307-401-15(1)(a) and (b) for the entirety of the project.

20 (ii) The request is subject to approval from the director upon
21 consultation with other regulatory agencies involved in the project,
22 such as Division of Environmental Response and Remediation or Division
23 of Waste Management and Radiation Control.

24 (4) The following control devices do not require a notice of
25 intent or approval order when used in relation to an air stripper or
26 soil vapor extraction system that is ~~venting project~~ exempted under
27 R307-401-15:

28 (a) thermodestruction unit with a rated input capacity of less
29 than five million BTU per hour using no other auxiliary fuel than
30 natural gas or LPG, or

31 (b) carbon adsorption unit.

32 (5) Exemption for Sub-slab Vapor Mitigation Systems (VMS): The
33 owner or operator of an active or passive VMS is exempt from the notice
34 of intent and approval order requirements of R307-401-5 through
35 R307-401-8 and the documentation and sampling requirements in
36 R307-401-15(2) and (3).

37
38 **R307-401-16. ~~[De minimis Emissions From]~~ **Soil Aeration Projects.****

39 R307-401-16 applies to soil aeration projects used to conduct
40 soil remediation. ~~[An owner or operator of a soil remediation project~~
41 ~~is not subject to the notice of intent and approval order requirements~~
42 ~~of R307-401-5 through R307-401-8 when soil aeration or land farming~~
43 ~~is used to conduct a soil remediation, if the owner or operator submits~~
44 ~~the following information to the director prior to beginning the~~
45 ~~remediation project:]~~

1 (1) [~~documentation that the estimated total air emissions of~~
 2 ~~volatile organic compounds, using an appropriate sampling method, from~~
 3 ~~the project are less than the de minimis emissions listed in~~
 4 ~~R307-401-9(1)(a);~~ The owner or operator of a soil aeration project is
 5 not subject to the notice of intent and approval order requirements
 6 of R307-401-5 through R307-401-8, if the following conditions are met:

7 (a) emissions of volatile organic compounds from a given soil
 8 aeration project are less than 5 tons per year; and

9 (b) emission rates of hazardous air pollutants are below their
 10 respective threshold values contained in R307-410-(1)(c)(i)(C).

11 (2) [~~documentation that the levels of any one hazardous air~~
 12 ~~pollutant or any combination of hazardous air pollutants are less than~~
 13 ~~the levels in R307-410-5(1)(d); and~~ The owner or operator shall submit
 14 documentation to the director demonstrating the project meets the
 15 exemption criteria in R307-401-16(1). The owner or operator shall
 16 receive approval from the director for the exemption prior to beginning
 17 the remediation project. Required documentation includes, but is not
 18 limited to:

19 (a) calculated emissions of volatile organic compounds and
 20 estimated emission rates of hazardous air pollutants from all soils
 21 to be treated from the soil aeration project.

22 (b) Emission calculations shall be based on soil samples of the
 23 soils to be remediated. Samples shall be analyzed for volatile organic
 24 compounds and hazardous air pollutants using the most recent version
 25 of USEPA Test Method 8260, Method 8021, or other EPA approved testing
 26 methods acceptable to the director.

27 (c) Location where soil aeration will occur and where the
 28 remediated material originated.

29 (3) [~~the location of the remediation and where the remediated~~
 30 ~~material originated.] The owner or operator is exempt from the
 31 reporting requirements in R307-401-16(2) if excavated soils are
 32 disposed of at a disposal or treatment facility, such as a landfill,
 33 solid waste management facility, or a landfarm facility, that is owned
 34 or operated by a third party and operates under an existing approval
 35 order.~~

36
 37
 38 ---

39
 40 **KEY: air pollution, permits, approval orders, greenhouse gases**
 41 **Date of Enactment or Last Substantive Amendment: [March 5, 2018]2019**
 42 **Notice of Continuation: May 15, 2017**
 43 **Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q);**
 44 **19-2-108**

ITEM 7

Air Quality Board

Open Meetings, Conflicts, Ethics & Records

Craig W. Anderson
Assistant Attorney General
August 7, 2019

Board Functions & Duties



- **Organization and function of Boards**
 - Management v. Policy & Rule Making
 - Membership and interests represented
- **Three basic duties of Board members**
 - **Duty of care**
 - ✦ Attend board meetings
 - ✦ Prepare and participate
 - **Duty of Loyalty**
 - ✦ Disclose conflicts of interest
 - ✦ Follow the R305-9 to resolve any conflicts
 - **Duty of Obedience**
 - ✦ Act in accordance with Boards powers & duties – UCA § 19-2-104

Roles of Board & Division



- **Senate Bill 21 Board Revisions (2012)**
- **UCA § 19-2-103 Organization**
 - UAC R305-8 attendance standards
- **UCA § 19-2-104 Powers**
 - Make rules
 - Establish air quality standards
- **UCA § 19-2-106 Director**
 - Functions
 - ✦ Executive secretary to Board
 - ✦ Technical support staff
 - ✦ Development of rules and standards
 - ✦ Implementation & enforcement of rules and standards

Role of AGO



- **“In House Counsel”**
 - Multiple roles
 - ✦ Attorney, advisor, negotiator
- **DEQ is agency “Client”**
 - RPC 1.13 Organization as client
 - UCA 19-1-204
 - UCA 19-2-117
- **No individual attorney-client relationship**
 - Employees
 - Individual Board Members

Board Rulemaking



- **Quasi Legislative Function**
 - UCA §§ 63G-3-101 *et seq.*
- **Proposed Rule**
 - Initiated by the staff, Board, or public
 - Considered by the Board and approved for public comment
 - Published in the State Bulletin
- **30 day (or more) public comment period**
 - Public hearing may be mandatory or discretionary
- **Staff reviews comments, may suggest rule changes**
- **Board discussion and action on rule**
- **Final rule published with an effective date**

Open Public Meetings



- UCA, Title 52, Chapter 4 - Open Meetings Act
- “...the legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the *people’s* business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

Open Meetings Act



- All Board business is conducted in an open public meeting
 - Meetings may be closed in limited circumstances
- An agenda must be posted at least 24 hours before a meeting, stating date, time and place of the meeting
- A “Meeting” is a convening of a quorum of the Board, including electronic meetings, workshops and executive sessions, for matters over which the Board has jurisdiction or advisory power.
- The Act does not apply to chance meetings

Open Meetings Act



- **Senate Bill 77 “Availability of Government Information”**
 - “State Public Body”
 - Audio recording – posted to Utah Public Notice Website within **3** days of meeting - § 63F-1-701
 - “Pending” minutes – available to public within **30** days after meeting - § 52-4-203(4)(a)(iii)
 - “Approved” minutes – posted to Utah Public Notice Website within **3** days of approval - § 52-4-203(4)(a)(i)
 - “Pending” and “Approved” minutes and audio recording *are* public records under GRAMA

Open Meetings Act



- Penalties & Remedies
 - UCA §52-4-303 action in violation
 - ✦ may be *set aside* on judicial review
 - ✦ costs and attorneys fees
 - UCA §52-4-304 release of minutes or record of a *closed* meeting.
 - UCA §52-4-305 criminal penalties for *knowing or intentional* violation.

Conflicts of Interest



- Boards are comprised of members who, by statute, are representatives of various interests and groups
 - Statutory Board selection criteria implicitly recognize a Member's interest may be impacted by Board action.
- Board Members are Subject to the *Utah Public Officers' and Employees' Ethics Act (Ethics Act)*
- UCA Title 67 Chapter 16
- UCA §19-1-201(1)(d)(i)(B) DEQ shall adopt rules regarding conflicts of interest.
- Failure to comply may jeopardize Board action

The Ethics Act



- Disclosure required when a Board member has a *substantial interest* in a business regulated by DEQ
 - Disclose position held and precise nature and value of the interest (n/a if the value is less than \$2,000).
 - ✦ Update if there is a significant change in position or value
 - ✦ Disclosure forms available from Attorney General's Office.
 - A “substantial interest” is:
 - ✦ Ownership (legal or equitable) of at least:
 - 10% of the outstanding capital stock of a corporation, or
 - 10% Interest in any other business entity
 - ✦ By an individual, individual's spouse or minor children

Ethics Act - Prohibitions



- The Board should be familiar with the prohibitions in the following sections of the ethics act:
- § 67-16-4 Improperly *disclosing* or *using* controlled information; *using* position to secure privileges
- § 67-16-5 Accepting gift, compensation or loan
- § 67-16-5.3 & 5.6 Requiring or offering donation, payment or service to agency in *exchange* for approval
- § 67-16-6 Receiving compensation for *assistance* in transaction involving agency

Identifying Conflicts



- It is incumbent on each Board member to disclose whether he or she may have a conflict of interest
- The Department has developed rules addressing conflicts of interest – R305-9
- R305-9-102 Disclosure of Interest Statements
- R305-9-103 Actual Conflict - Recusal
 - *Shall* be recused from voting
 - *May* be recused from participating in discussion
- R305-9-104 Potential Conflict
 - Ethics Act prohibitions, or
 - Due process

Conflict Procedures



- Call to Order.
- Recognition of Scott T. Anderson.
- Public Comments.
- **Declarations of Conflict of Interest.**
- [Approval of Meeting Minutes for the November 8, 2018 Board Meeting](#) (Board Action Item).
- [Underground Storage Tanks Update.](#)

- **Administrative Rules.**
 - [Approval of final adoption to Hazardous Waste Rules UAC R315-273, Standards for Universal Waste Management](#) (Board Action Item).
 - [Approval of final adoption to Radiation Control Rules UAC R313-28-31, Use of X-Rays in the Healing Arts, General and Administrative Requirements](#) (Board Action Item).
- [Approval of Mammography Imaging Medical Physicists \(MIMP\) in accordance with UCA 19-6-104\(2\)\(b\)](#) (Board Action Item).
- [Low-Level Radioactive Waste Section.](#)
 - EnergySolutions' request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to receive Cemented Uranium Extraction Process Residues for disposal (Board Action Item).
- **Other Business.**
 - Misc. Information Items
 - Scheduling of next Board meeting.
- **Adjourn.**

Conflict Procedures



- R305-9-105 Potential Conflict
 - Board member may recuse himself/herself from discussion and vote, or
 - Disclose the potential conflict and seek a determination by the Board about how to proceed.
- R305-9-106 Decision of the Board
 - Nature of the matter before the board
 - Nature of the potential conflict
 - Intent that the board reflect balanced viewpoints
 - Recuse from voting *or* recuse from discussion
- Consequences of a failure to comply
 - May void action taken by the Board

Records



- Government Records Access Management Act
 - UCA Title 63G Chapter 2
- All government “records” are generally open and available to the public with limited exceptions.
 - What is a record?
 - ✦ Documents, classification, retention
 - ✦ S.B. 77 “Public Information” notices, minutes & recordings
- **CAUTION!**
 - Texts
 - Email

Records Procedures



- Procedure
 - ✦ Written request, time for response
 - ✦ Appeals
- DEQ has adopted UAC R305-1 implementing the records access and management provisions of GRAMA.
- Each Division in DEQ has a designated records officer responsible for responding to records requests and any appeals.
- Penalties & Remedies
 - UCA §63G-2-802 - injunctive relief, costs & attorneys fees
 - UCA §63G-2-801 - Criminal penalties for *knowing or intentional* acts
 - Litigation Hold

Adjudicative Process



- UCA §19-1-301.5 Permit Review Proceedings
 - ALJ review of agency permit order & administrative record
 - “Recommended” Decision
 - UAC R305-7 – rules governing review process (amended)
 - Executive Director – “final” decision
 - Appeals – Utah Court of Appeals
- 2015 Amendments
 - Petition for review
 - Special adjudicative proceeding
 - Standard of review

Adjudicative Process



- UCA § 19-1-301 “Other” Proceedings
 - Request for Agency Action
 - Appointment of ALJ
 - Record review UAC R305-7
 - ALJ Recommended decision
 - Executive Director “Final Decision
 - Appeal – Utah Court of Appeals

Questions



craiganderson@agutah.gov

Air Toxics



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQA-496-19

MEMORANDUM

TO: Air Quality Board

FROM: Bryce C. Bird, Executive Secretary

DATE: June 7, 2019

SUBJECT: Air Toxics, Lead-Based Paint, and Asbestos (ATLAS) Section Compliance Activities – May 2019

Asbestos Demolition/Renovation NESHAP Inspections	16
Asbestos AHERA Inspections	15
Asbestos State Rules Only Inspections	1
Asbestos Notification Forms Accepted	168
Asbestos Telephone Calls	386
Asbestos Individuals Certifications Approved/Disapproved	72/0
Asbestos Company Certifications/Re-Certifications	3/5
Asbestos Alternate Work Practices Approved/Disapproved	11/0
Lead-Based Paint (LBP) Inspections	3
LBP Notification Forms Approved	0
LBP Telephone Calls	37
LBP Letters Prepared and Mailed	9
LBP Courses Reviewed/Approved	0
LBP Course Audits	0
LBP Individual Certifications Approved/Disapproved	12/0

LBP Firm Certifications	9
Notices of Violation Sent	0
Compliance Advisories Sent	15
Warning Letters Sent	15
Settlement Agreements Finalized	3
Penalties Agreed to:	
J-Corp Development/Raven Financial	\$4,373.75
Seagull Environmental Training	\$ 500.00
Benjamin Kjar	<u>\$1,385.00</u>
Total	<u>\$6,258.75</u>



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Interim Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQA-574-19

MEMORANDUM

TO: Air Quality Board

FROM: Bryce C. Bird, Executive Secretary

DATE: July 8, 2019

SUBJECT: Air Toxics, Lead-Based Paint, and Asbestos (ATLAS) Section Compliance Activities – June 2019

Asbestos Demolition/Renovation NESHAP Inspections	22
Asbestos AHERA Inspections	20
Asbestos State Rules Only Inspections	2
Asbestos Notification Forms Accepted	208
Asbestos Telephone Calls	377
Asbestos Individuals Certifications Approved/Disapproved	46/0
Asbestos Company Certifications/Re-Certifications	2/8
Asbestos Alternate Work Practices Approved/Disapproved	12/0
Lead-Based Paint (LBP) Inspections	7
LBP Notification Forms Approved	4
LBP Telephone Calls	42
LBP Letters Prepared and Mailed	3
LBP Courses Reviewed/Approved	0
LBP Course Audits	0
LBP Individual Certifications Approved/Disapproved	24/0

LBP Firm Certifications	13
Notices of Violation Sent	0
Compliance Advisories Sent	13
Warning Letters Sent	2
Settlement Agreements Finalized	3
Penalties Agreed to:	
K.R. Siding, Inc.	\$3,212.50
Blue Stone Development, LLC	\$2,266.25
Preserve Partners, Inc. / Tri-State Construction	<u>\$ 747.50</u>
Total	<u>\$6,226.25</u>

Compliance



State of Utah

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SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQC-0806-19

MEMORANDUM

TO: Air Quality Board
FROM: Bryce C. Bird, Executive Secretary
DATE: June 18, 2019
SUBJECT: Compliance Activities – May 2019

Annual Inspections Conducted:

Major..... 8
Synthetic Minor 14
Minor 41

On-Site Stack Test Audits Conducted: 2

Stack Test Report Reviews: 22

On-Site CEM Audits Conducted: 0

Emission Reports Reviewed: 24

Temporary Relocation Requests Reviewed & Approved: 11

Fugitive Dust Control Plans Reviewed & Accepted:..... 254

Open Burn Permit Applications Completed: 7

Soil Remediation Report Reviews: 0

¹Miscellaneous Inspections Conducted:..... 41

Complaints Received: 7

Breakdown Reports Received:.....	0
Compliance Actions Resulting From a Breakdown:.....	0
Warning Letters Issued:	0
Notices of Violation Issued:.....	0
Unresolved Notices of Violation:	
US Magnesium	08/27/2015
Western Water Solutions	05/02/2017
Geneva Rock Products.....	10/20/2017
Norbest.....	11/15/2017
Strang Excavating	01/17/2018
US Magnesium	03/02/2018
Pacific Energy & Mining	03/02/2018
Gordon Creek Compressor Station	05/16/2018
JRJ Services	06/21/2018
JRJ Services	09/07/2018
Compass Minerals.....	12/10/2018
US Magnesium	01/08/2019
Mel Clark Construction	01/11/2019
Picasso Shutters	02/13/2019
Sunroc	02/28/2019
Compliance Advisories Issued:.....	7
No Further Action Letters Issued:.....	2
Settlement Agreements Reached:	1
Finley Resources.....	\$359.00

¹Miscellaneous inspections include, e.g., surveillance, level I inspections, VOC inspections, complaints, on-site training, dust patrol, smoke patrol, open burning, etc.



State of Utah

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Department of
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L. Scott Baird
Interim Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQC-0941-19

MEMORANDUM

TO: Air Quality Board
FROM: Bryce C. Bird, Executive Secretary
DATE: July 15, 2019
SUBJECT: Compliance Activities – June 2019

Annual Inspections Conducted:

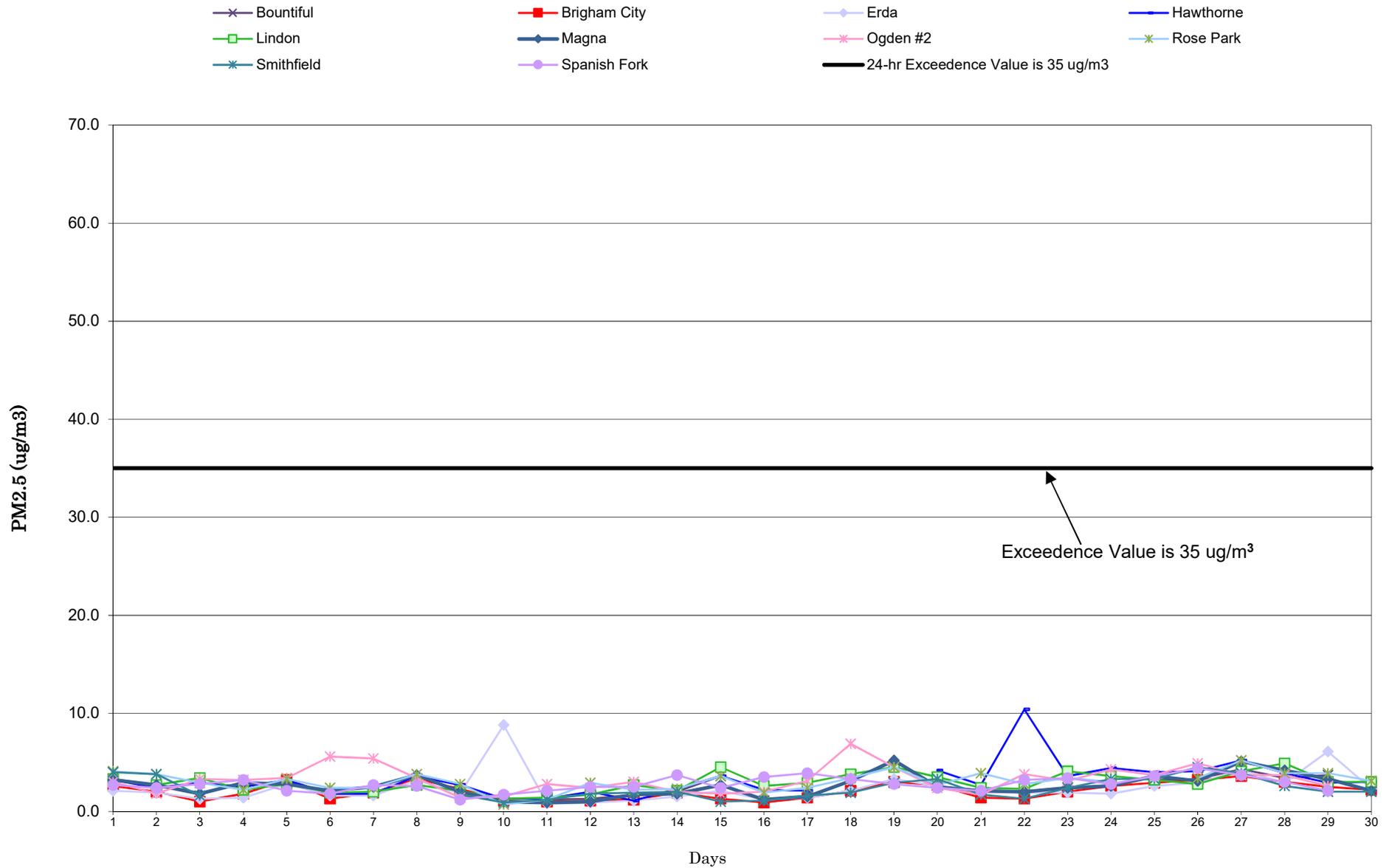
Major	9
Synthetic Minor	5
Minor	62
On-Site Stack Test Audits Conducted:	2
Stack Test Report Reviews:	11
On-Site CEM Audits Conducted:	0
Emission Reports Reviewed:	8
Temporary Relocation Requests Reviewed & Approved:	8
Fugitive Dust Control Plans Reviewed & Accepted:.....	199
Open Burn Permit Applications Completed	0
Soil Remediation Report Reviews:	0

¹ Miscellaneous Inspections Conducted:.....	18
Complaints Received:	7
Breakdown Reports Received:.....	2
Compliance Actions Resulting From a Breakdown.....	0
Warning Letters Issued:	0
Notices of Violation Issued:.....	0
Unresolved Notices of Violation	
US Magnesium	08/27/2015
Western Water Solutions	05/02/2017
Geneva Rock Products.....	10/20/2017
Norbest.....	11/15/2017
Strang Excavating.....	01/17/2018
US Magnesium	03/02/2018
Pacific Energy & Mining.....	03/02/2018
Gordon Creek Compressor Station.....	05/16/2018
JRJ Services	06/21/2018
JRJ Services	09/07/2018
Compass Minerals.....	12/10/2018
US Magnesium	01/08/2019
Mel Clark Construction	01/11/2019
Picasso Shutters	02/13/2019
Sunroc	02/28/2019
Compliance Advisories Issued:.....	5
No Further Action Letters Issued.....	0
Settlement Agreements Reached:	1
Pacific Energy and Mining.....	\$71,535.00

¹Miscellaneous inspections include, e.g., surveillance, level I inspections, VOC inspections, complaints, on-site training, dust patrol, smoke patrol, open burning, etc.

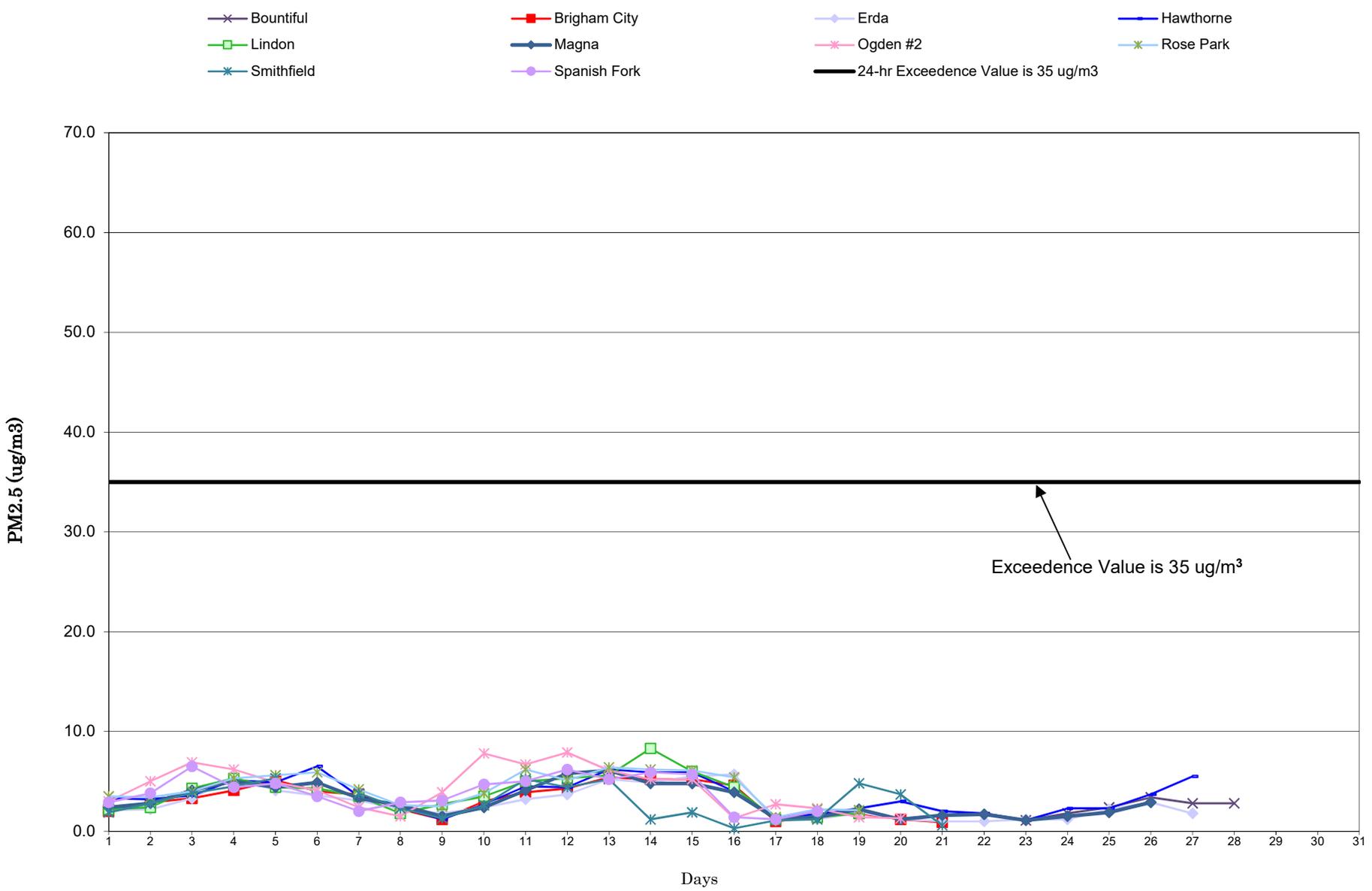
Air Monitoring

Utah 24-Hr PM2.5 Data April 2019



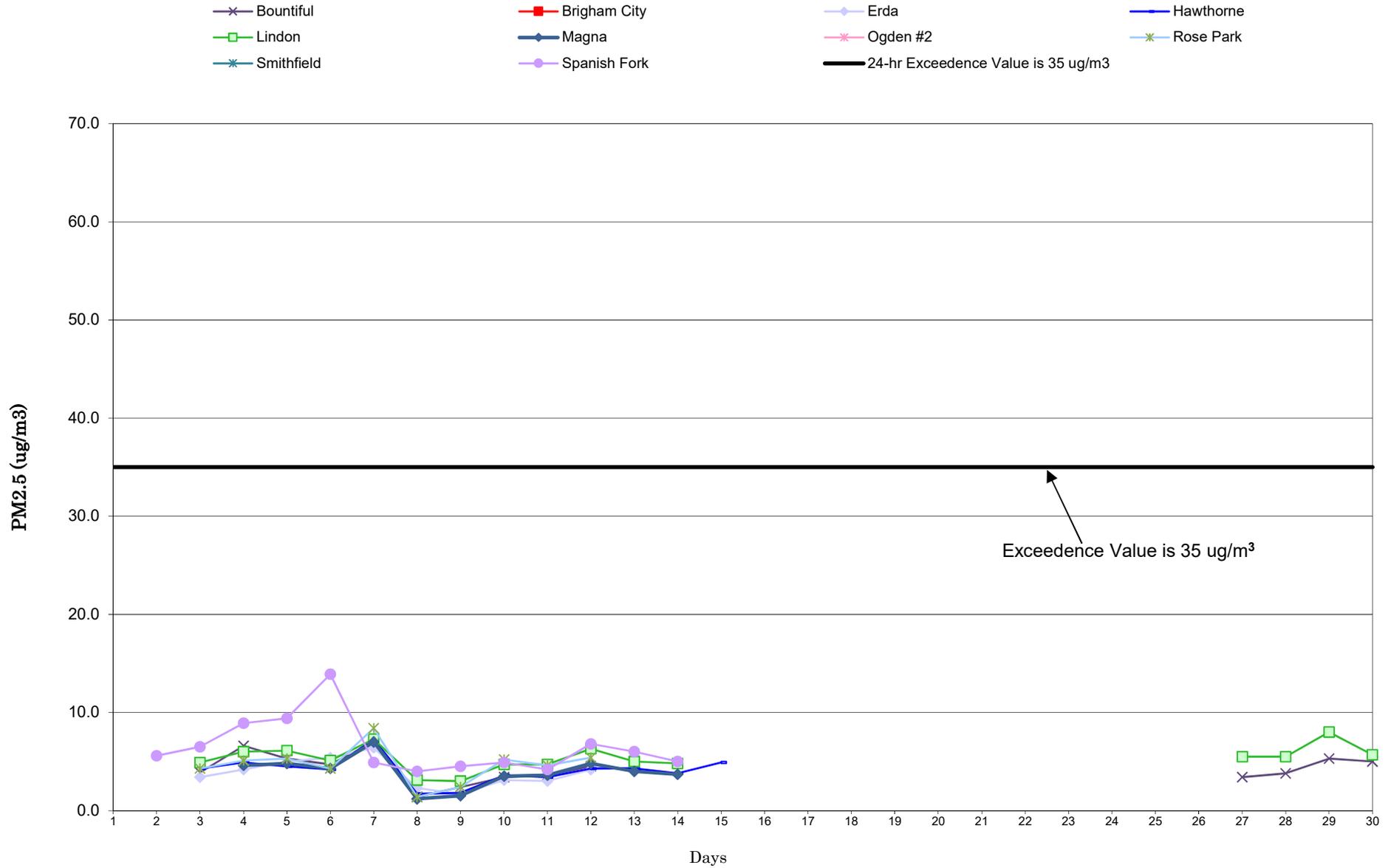
Exceedence Value is 35 ug/m³

Utah 24-Hr PM2.5 Data May 2019



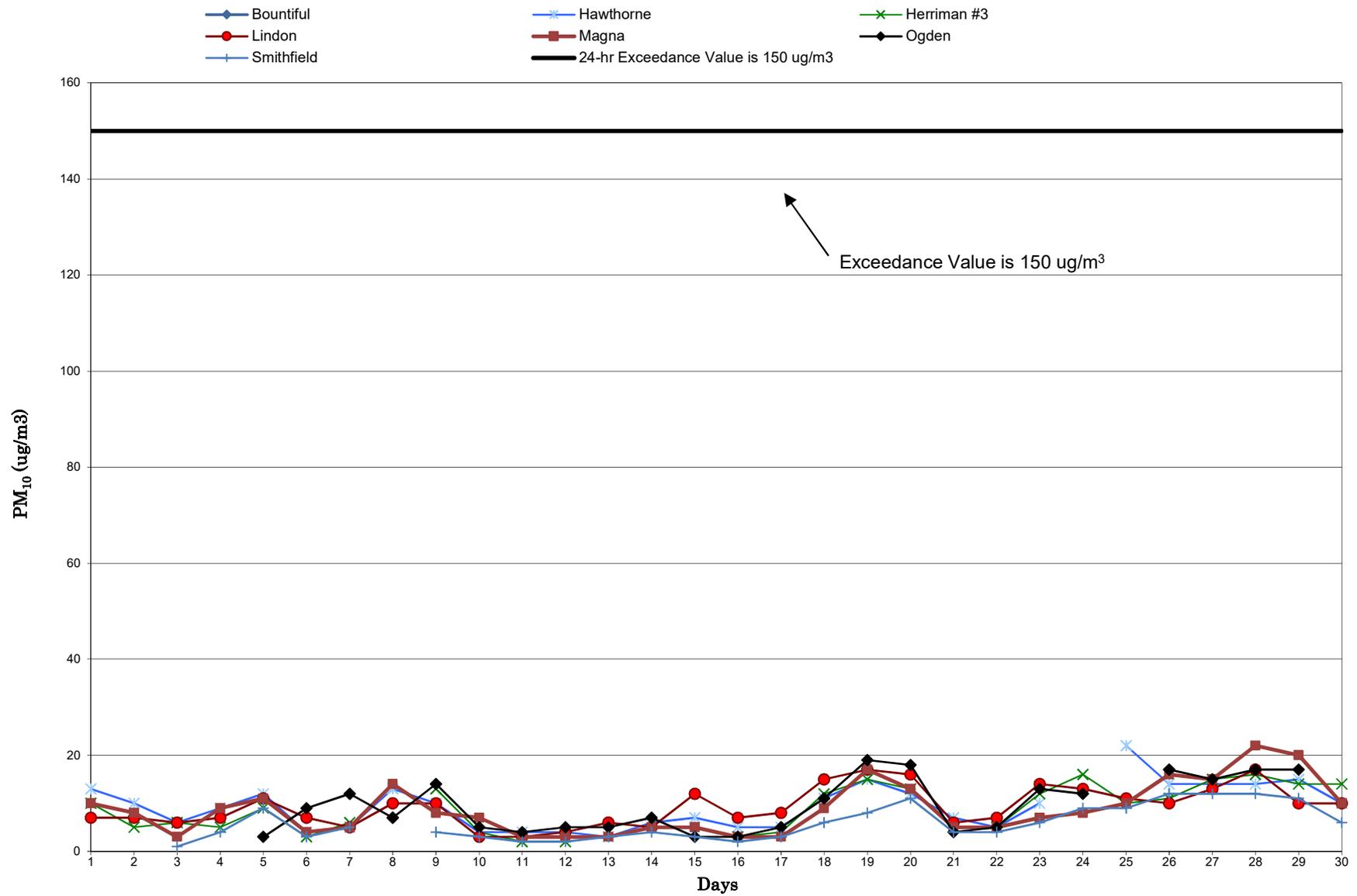
Exceedence Value is 35 ug/m³

Utah 24-Hr PM2.5 Data June 2019

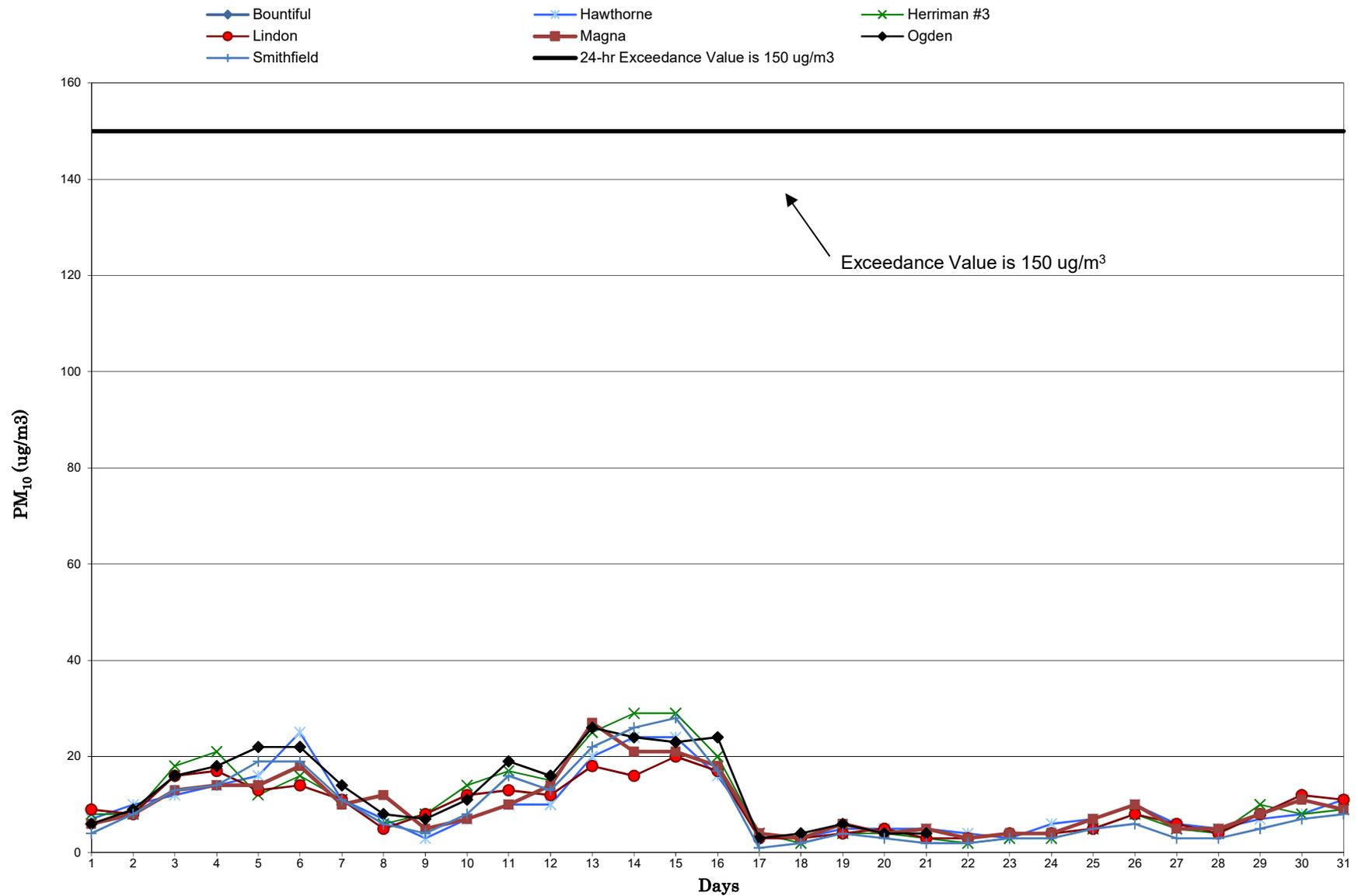


Exceedence Value is 35 ug/m³

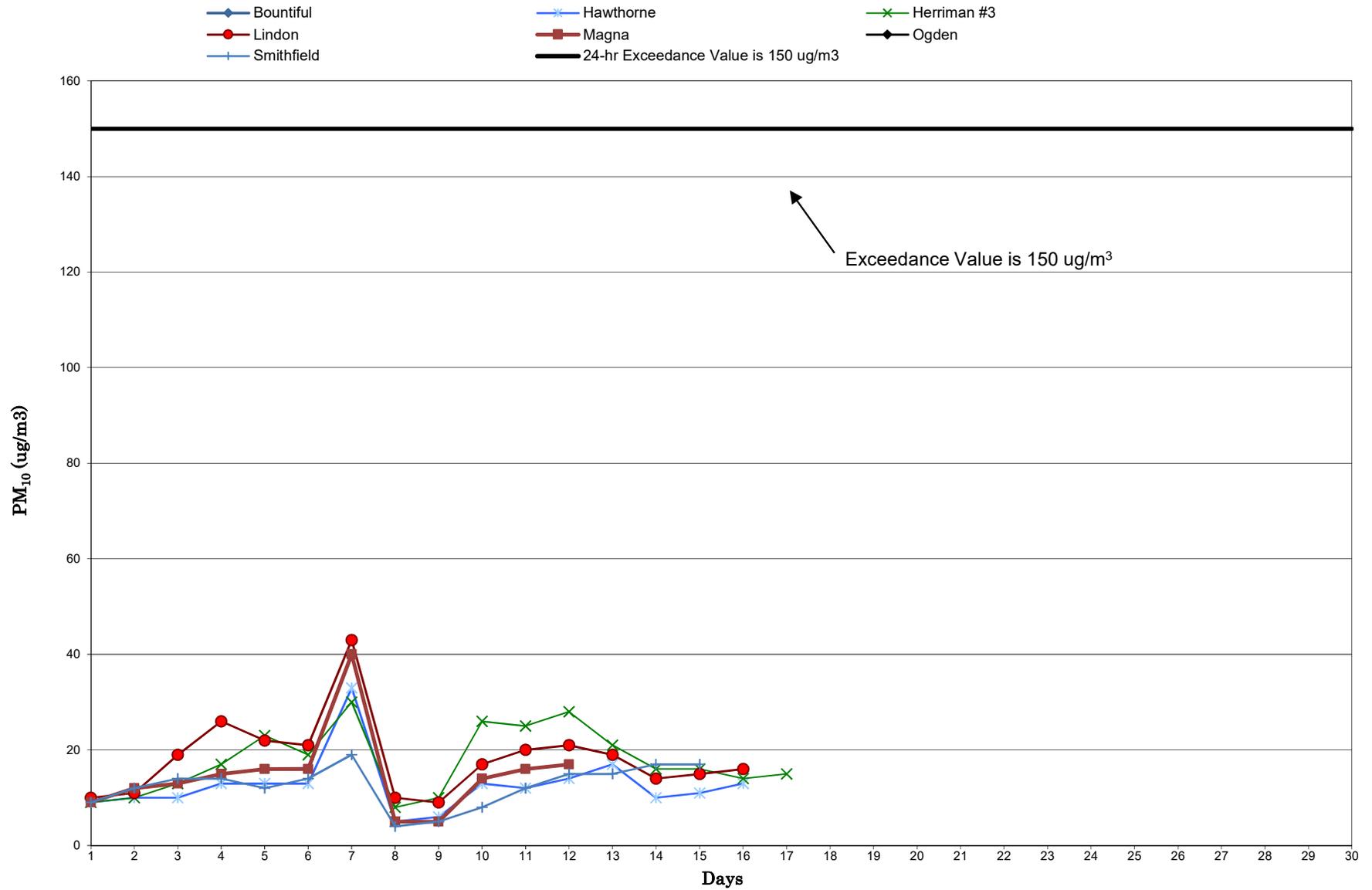
Utah 24-hr PM₁₀ Data April 2019



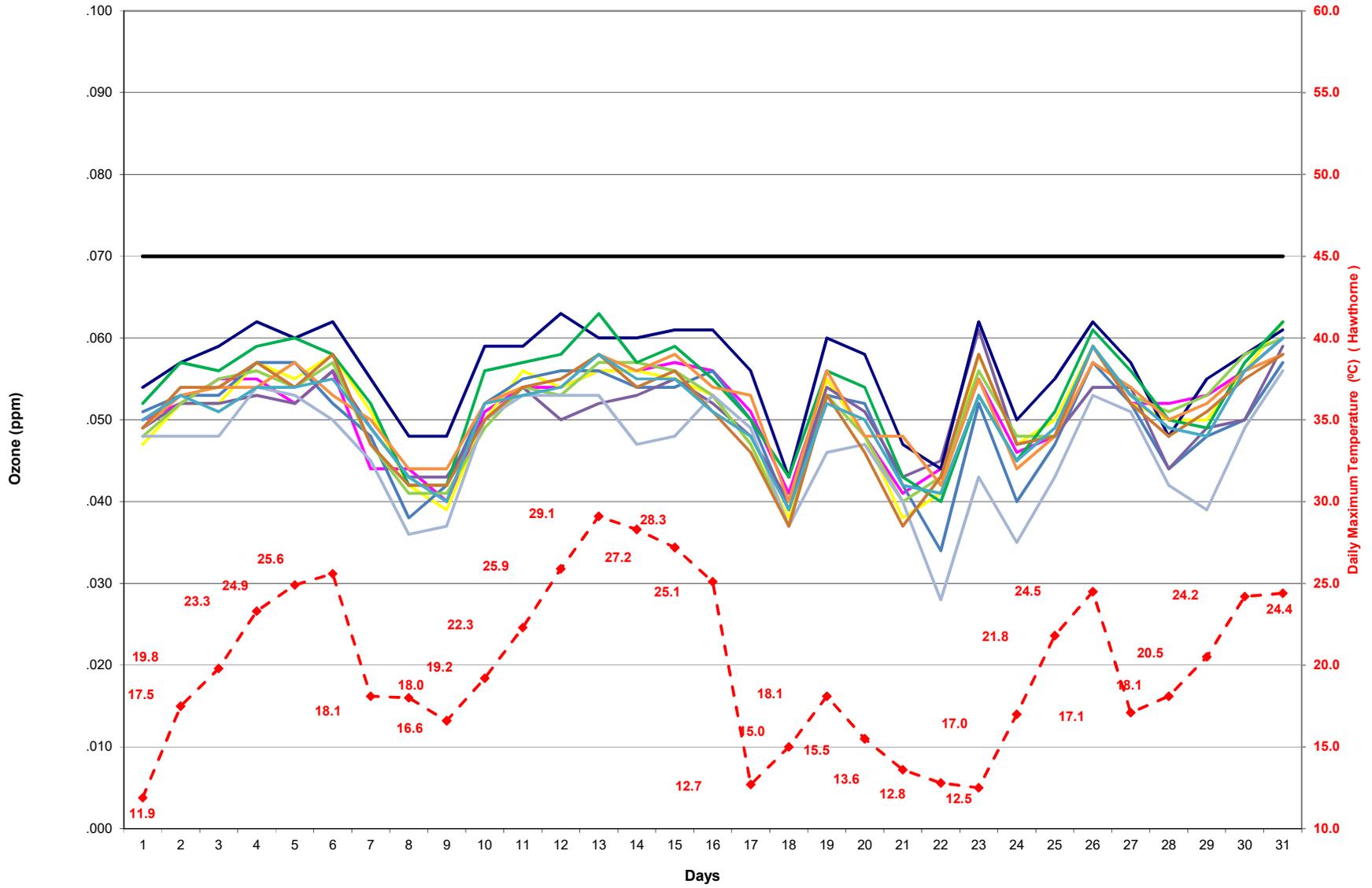
Utah 24-hr PM₁₀ Data May 2019



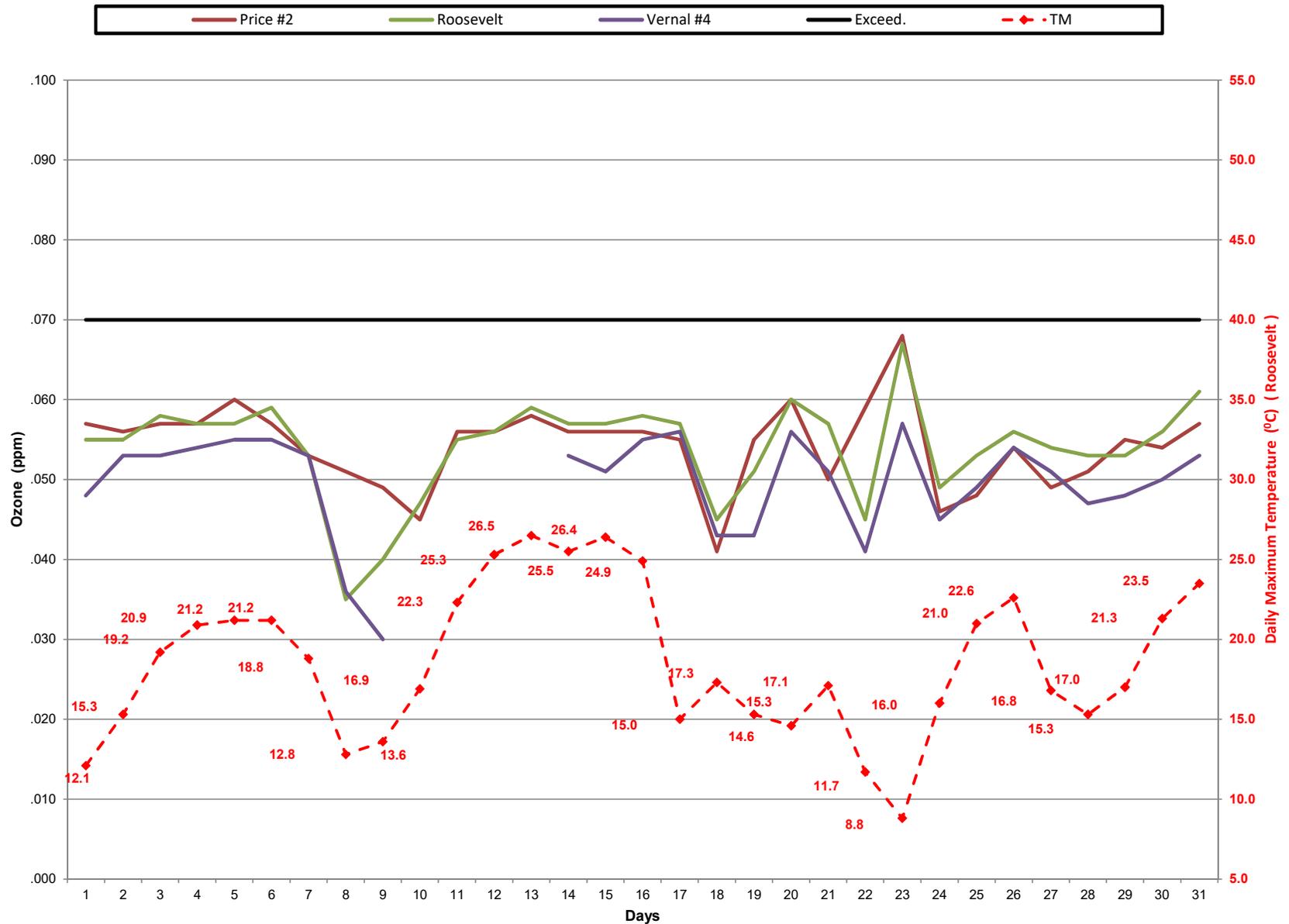
Utah 24-hr PM₁₀ Data June 2019



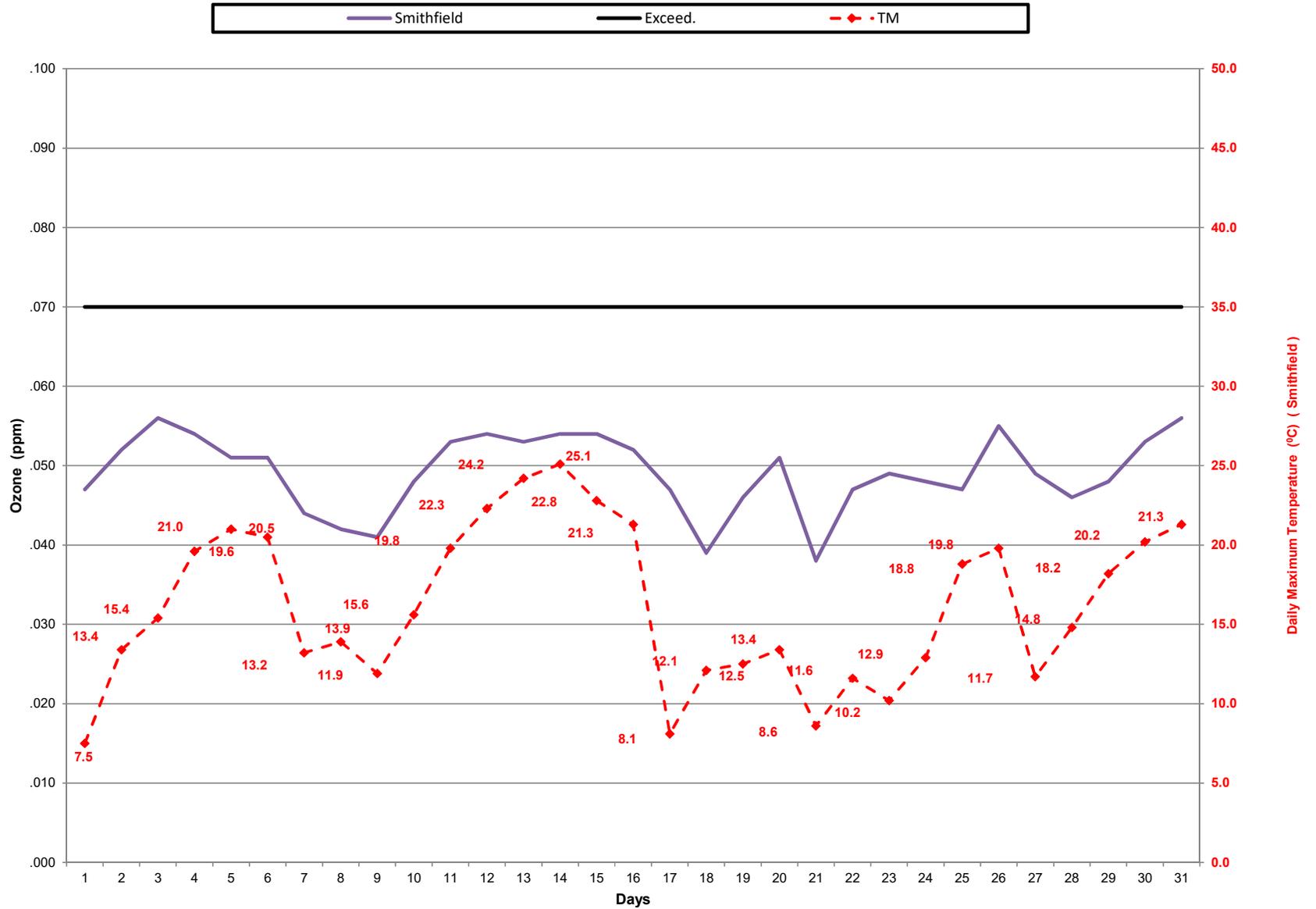
Highest 8-hr Ozone Concentration & Daily Maximum Temperature May 2019



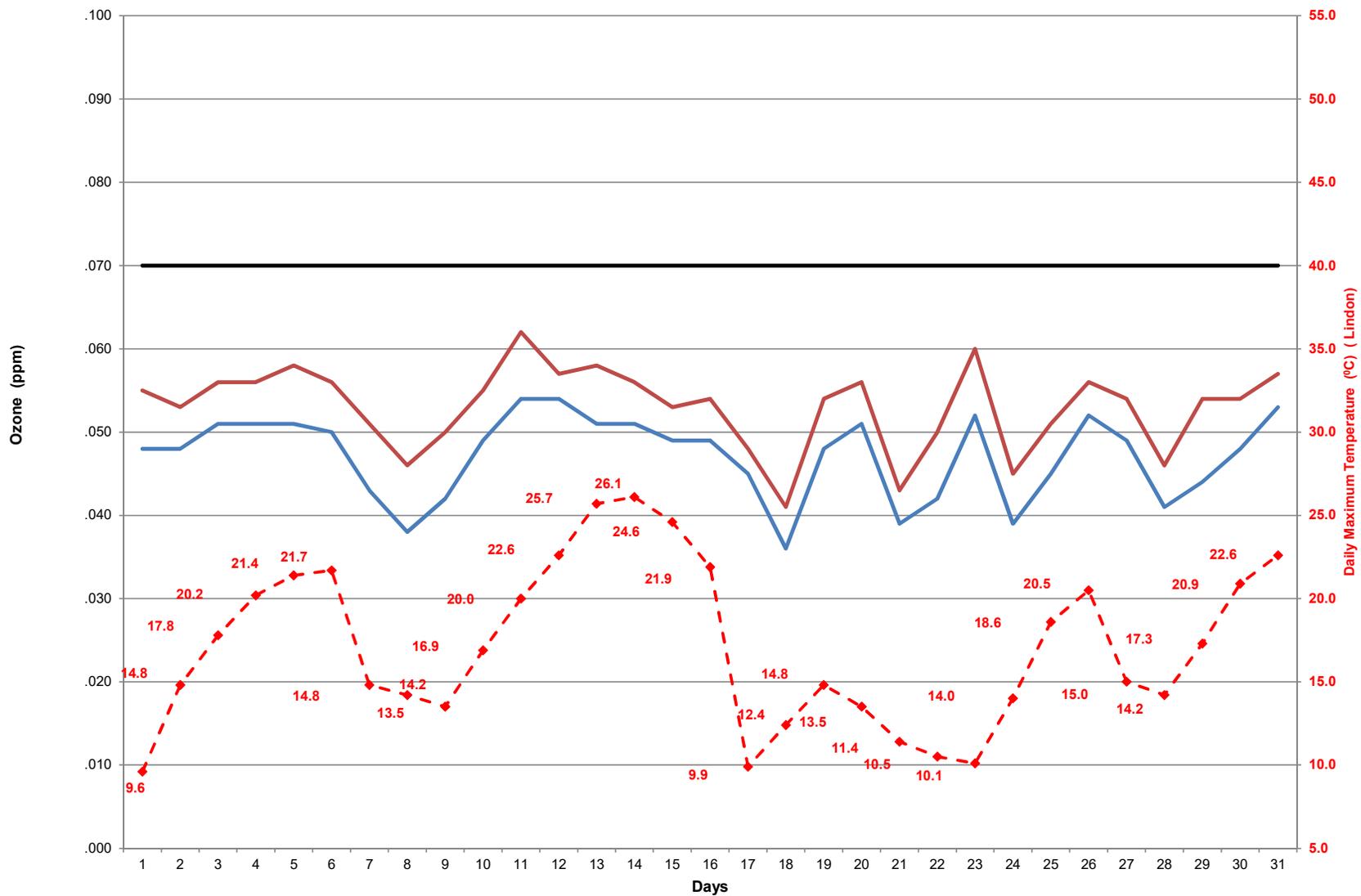
Highest 8-hr Ozone Concentration & Daily Maximum Temperature May 2019



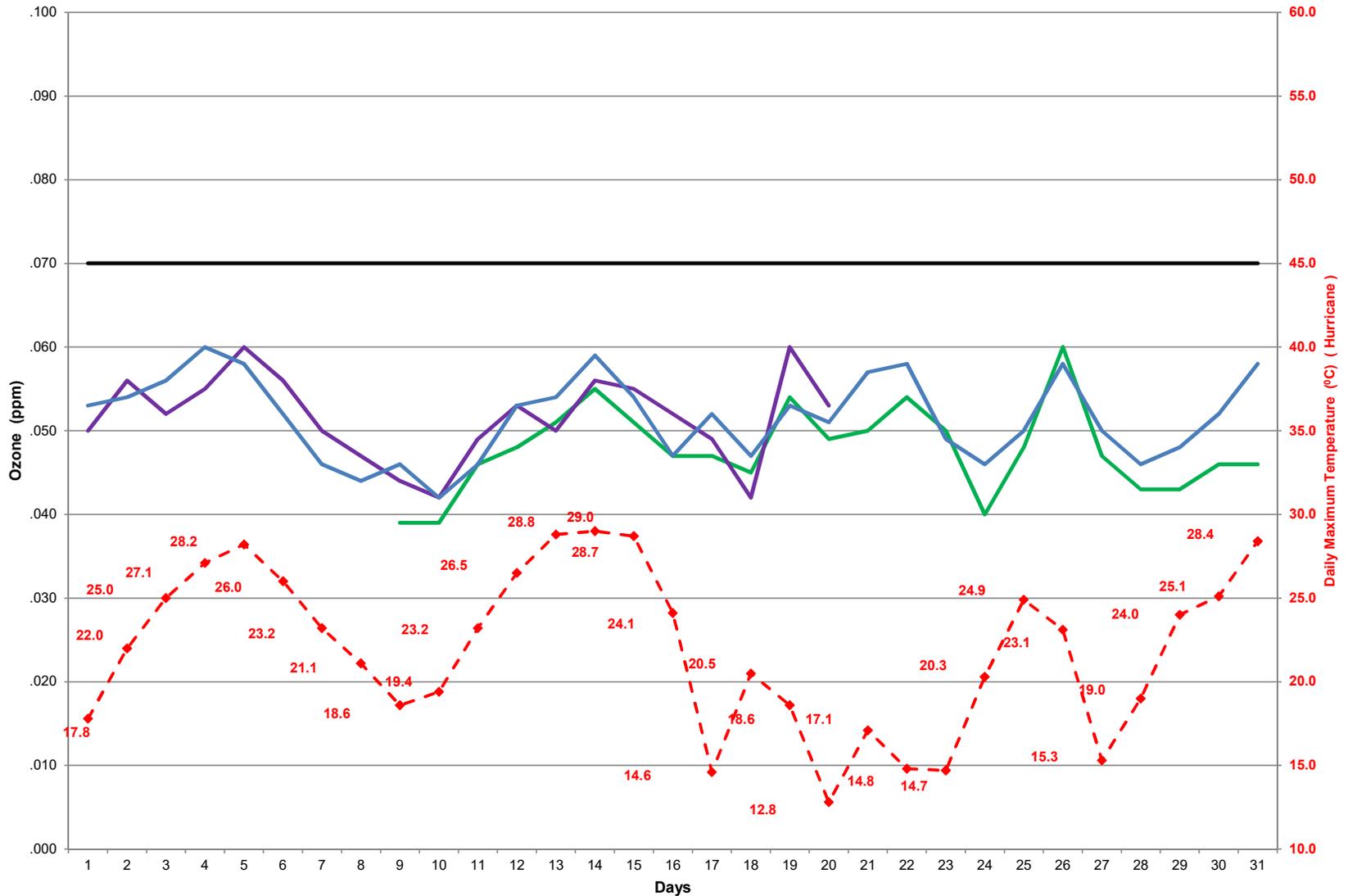
Highest 8-hr Ozone Concentration & Daily Maximum Temperature May 2019



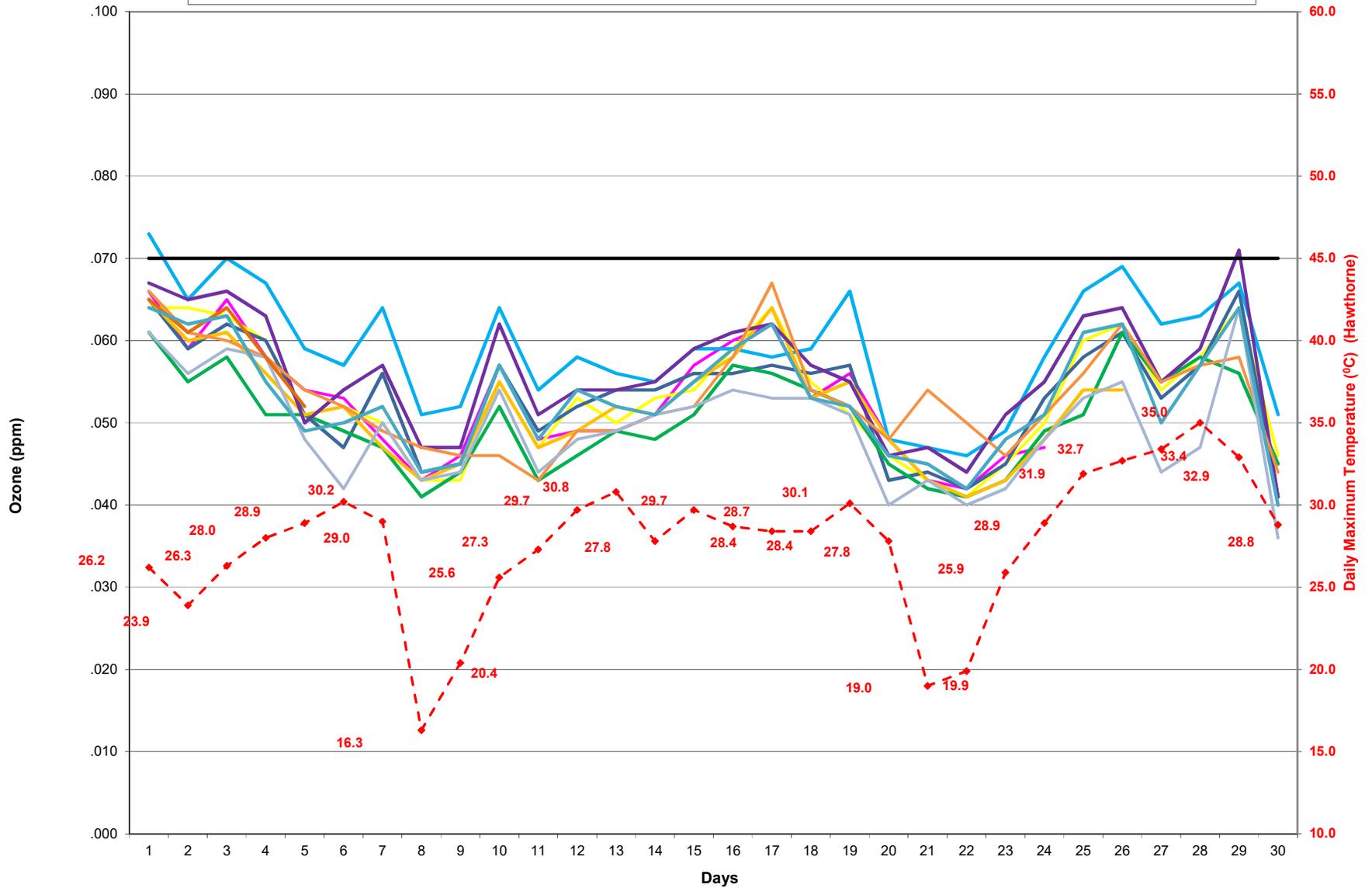
Highest 8-hr Ozone Concentration & Daily Maximum Temperature May 2019



Highest 8-hr Ozone Concentration & Daily Maximum Temperature May 2019

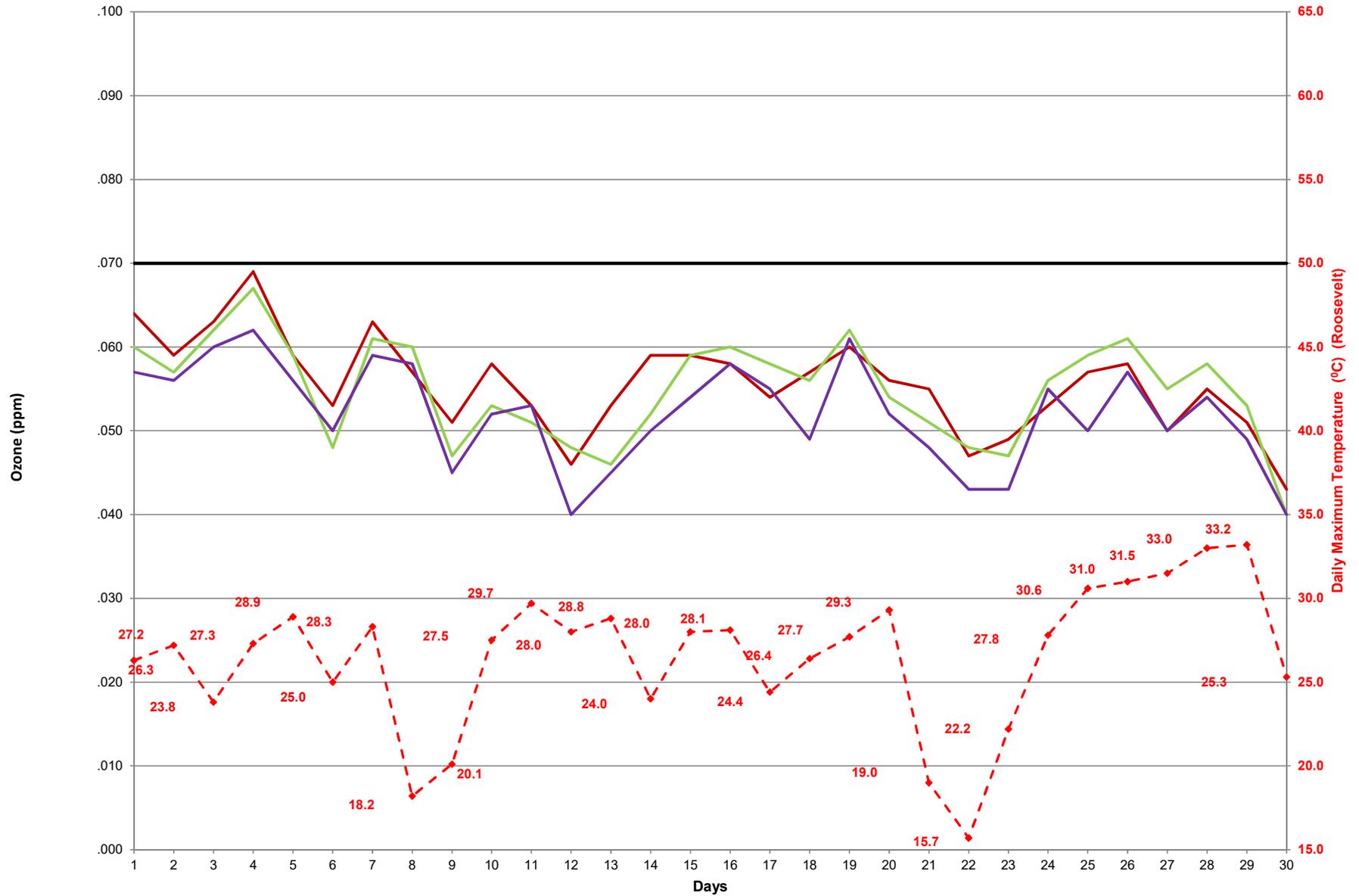


Highest 8-hr Ozone Concentration & Daily Maximum Temperature June 2019



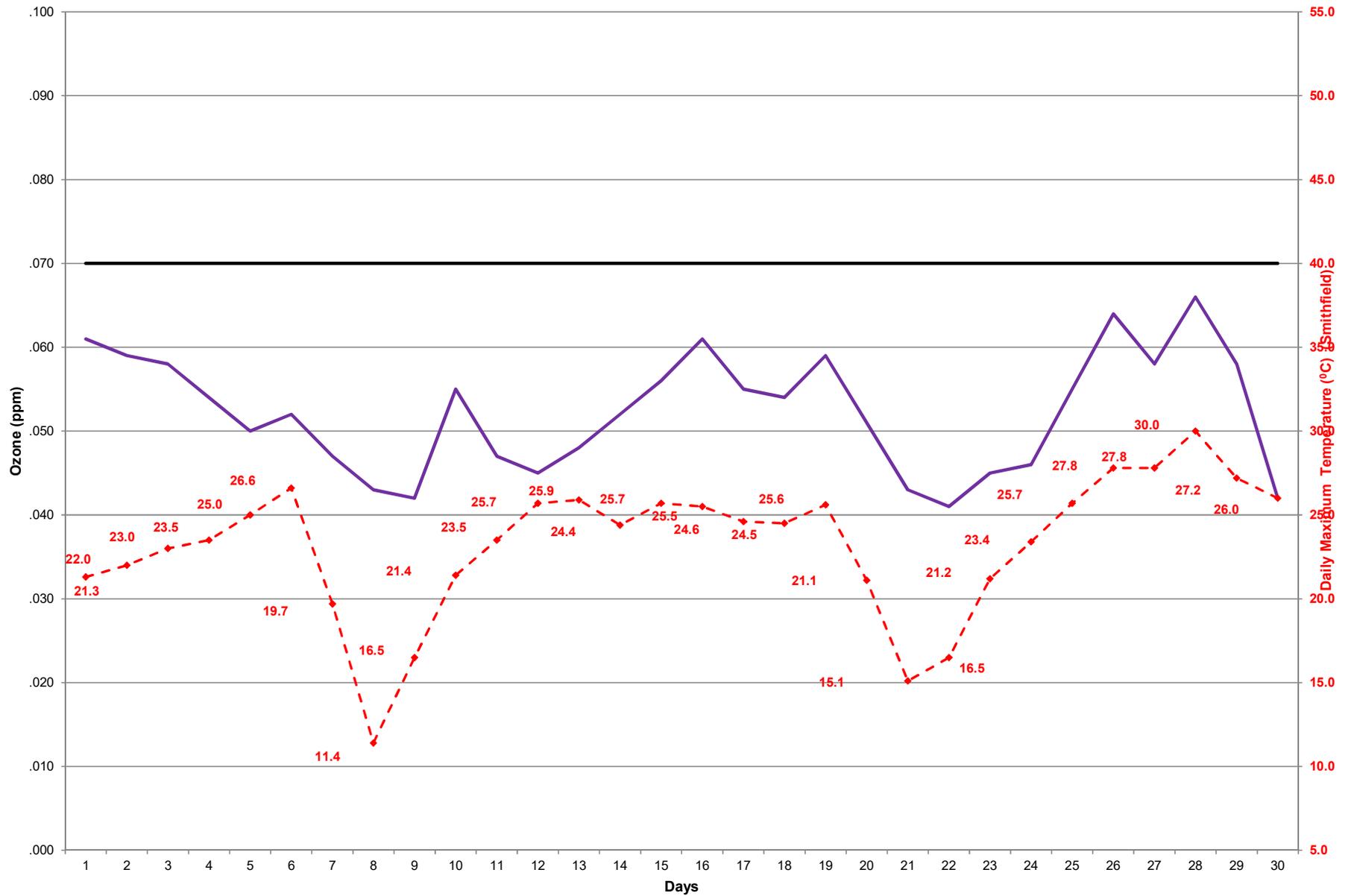
Highest 8-hr Ozone Concentration & Daily Maximum Temperature June 2019

Price #2 Roosevelt Vernal #4 Exceed. TM



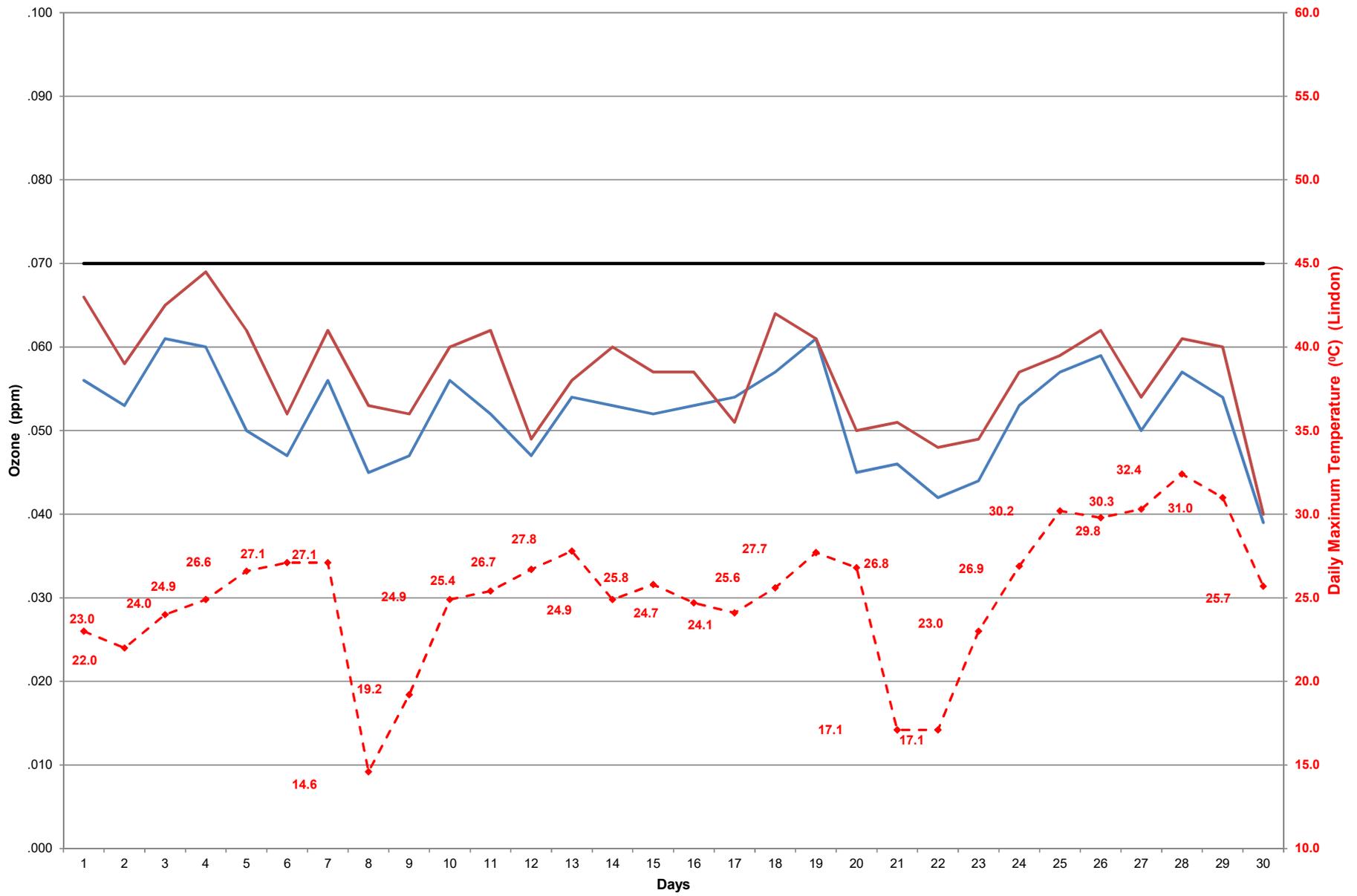
Highest 8-hr Ozone Concentration & Daily Maximum Temperature June 2019

Smithfield Exceed. TM



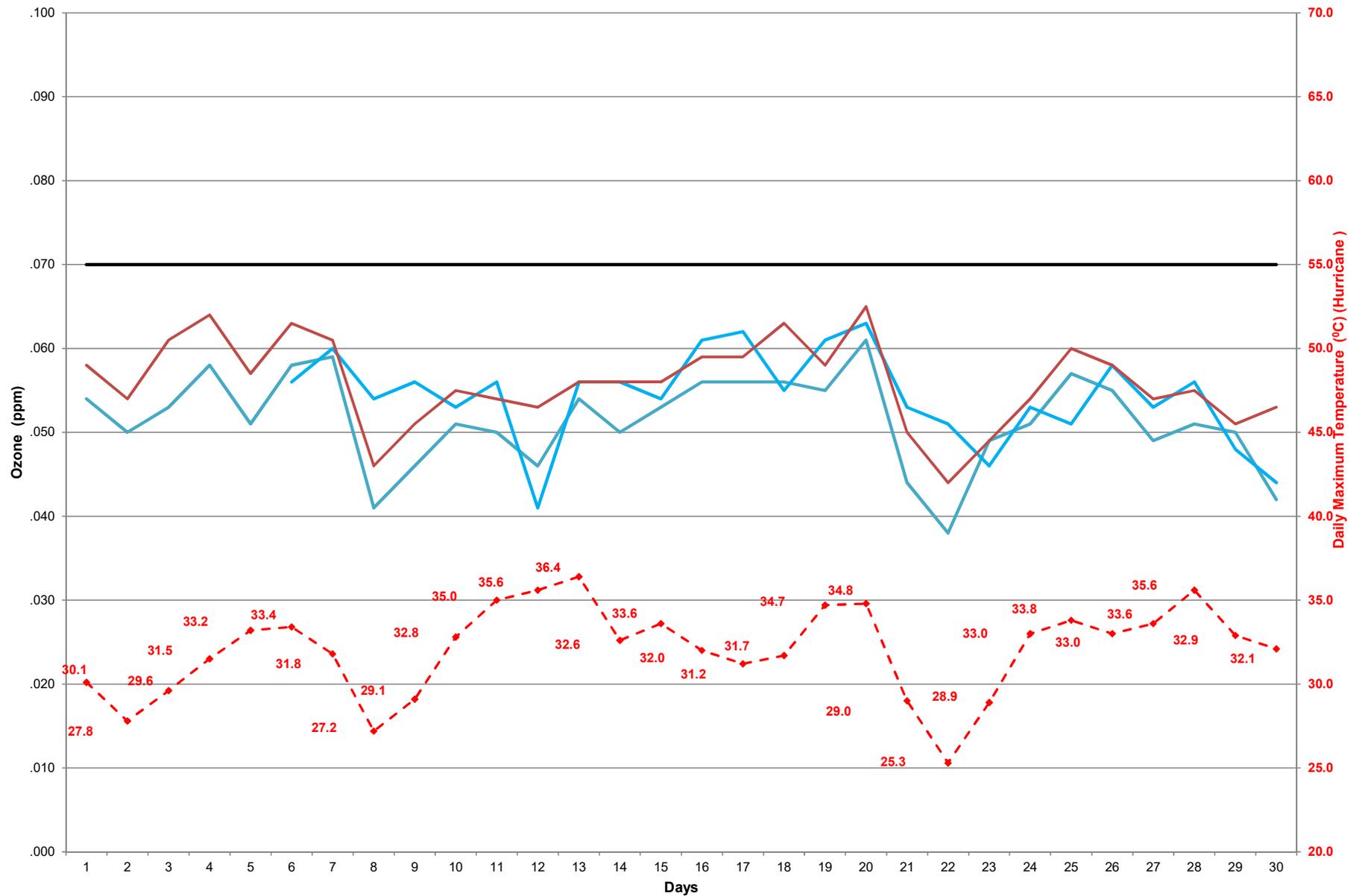
Highest 8-hr Ozone Concentration & Daily Maximum Temperature June 2019

— Lindon — Spanish Fork — Exceed. - - - TM

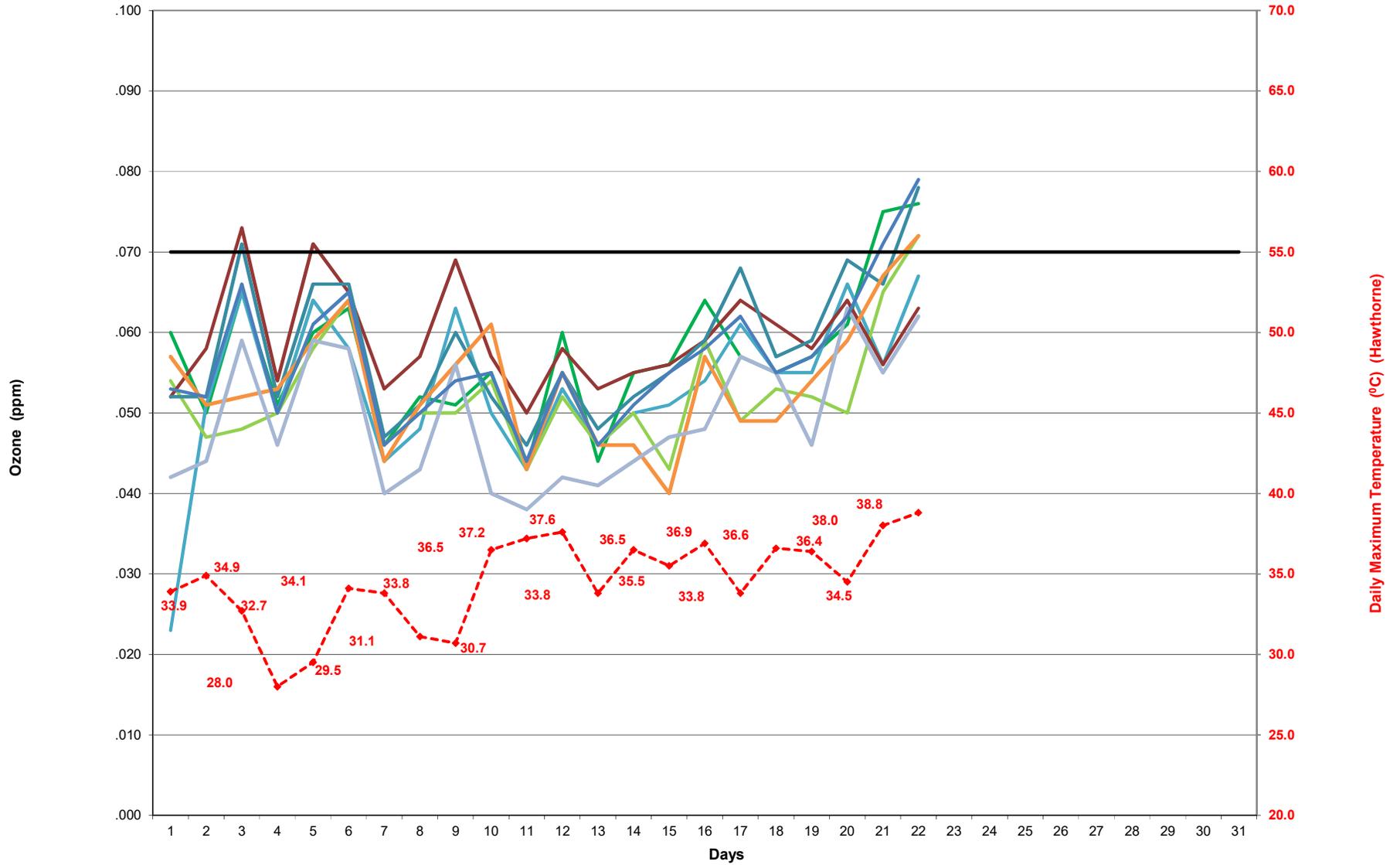


Highest 8-hr Ozone Concentration & Daily Maximum Temperature June 2019

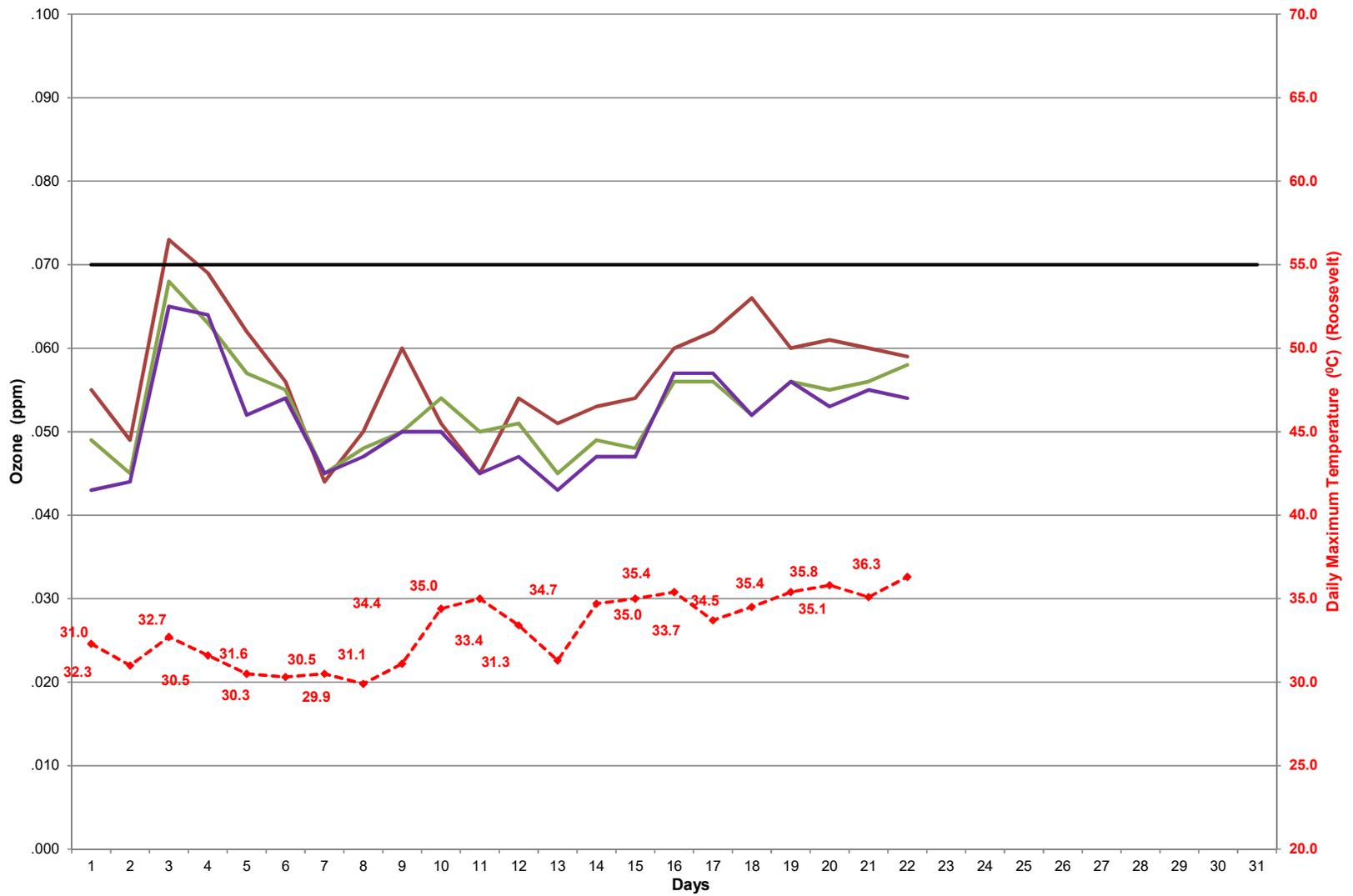
— Enoch — Escalante — Hurricane — Exceed. — ♦ — TM



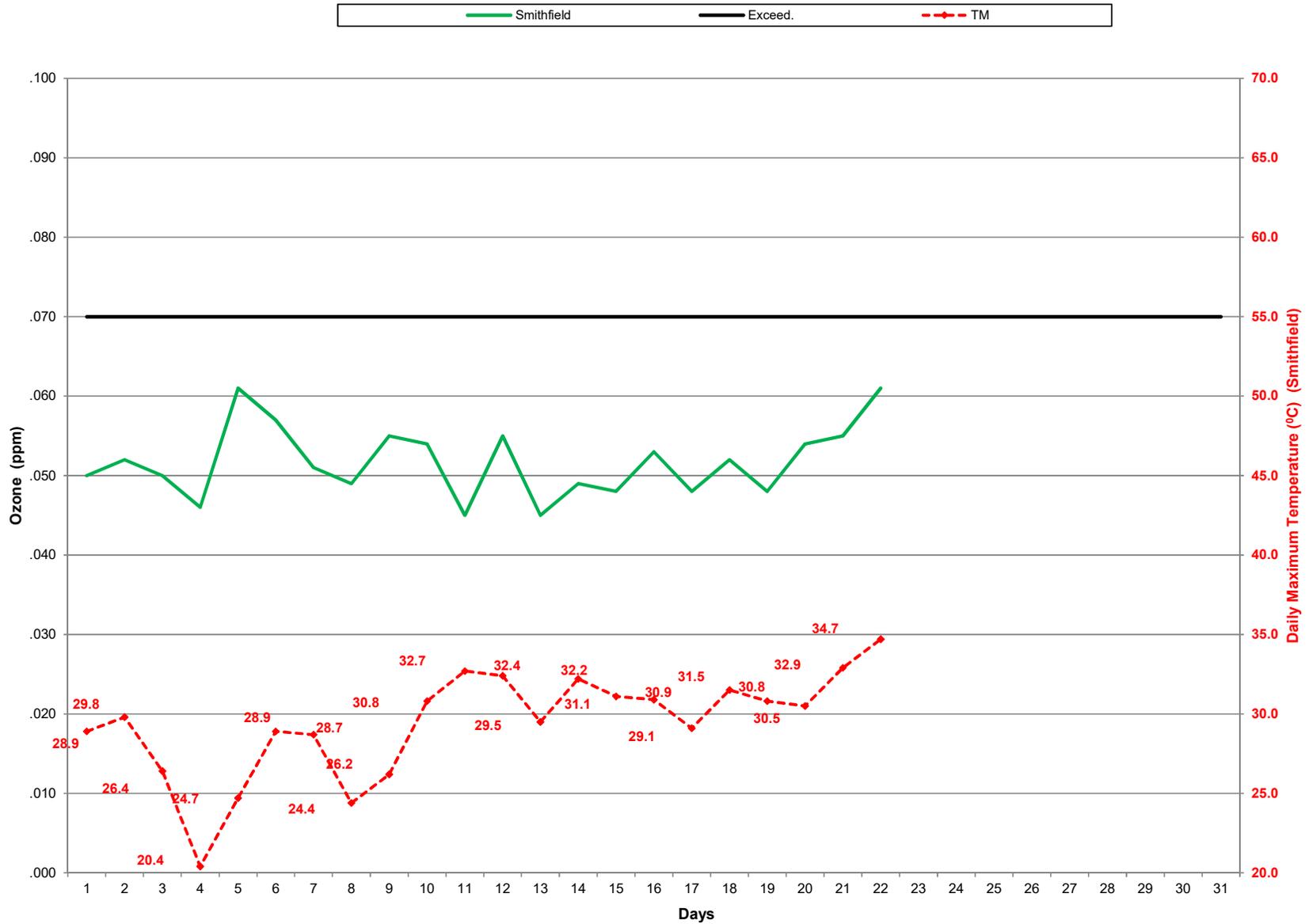
Highest 8-hr Ozone Concentration & Daily Maximum Temperature July 2019



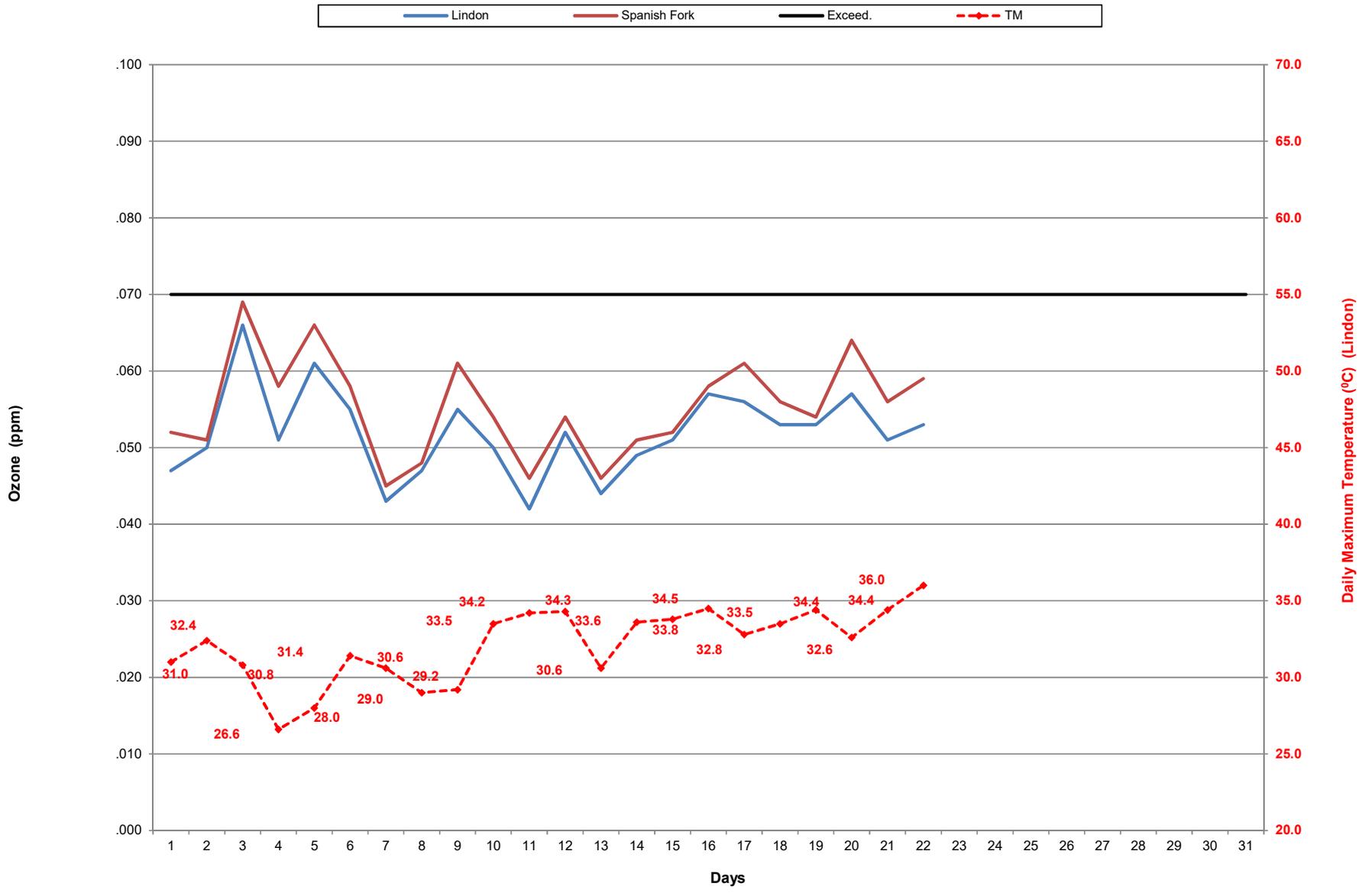
Highest 8-hr Ozone Concentration & Daily Maximum Temperature July 2019



Highest 8-hr Ozone Concentration & Daily Maximum Temperature July 2019



Highest 8-hr Ozone Concentration & Daily Maximum Temperature July 2019



Highest 8-hr Ozone Concentration & Daily Maximum Temperature July 2019

