



PEER

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY • ROCKY MOUNTAIN

May 2, 2021

Director Jill Hunsaker Ryan
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Dear Director Ryan,

Thank you for your letter of April 13, 2021 regarding the three CDPHE employees who have come forward and filed a complaint with the EPA Office of Inspector General (OIG). The complaint identified the Air Pollution Control Division's (APCD) illegal minor source permitting program and the significant impacts to public health. In that letter you stated that, "PS Memo 10-01 has been retired."

Currently the APCD is process of issuing an operating permit for the Suncor Refinery in Commerce City, one of the most polluted areas of the country. We know that you take your responsibility in this permitting process seriously and we want to ensure that you are aware that for the current renewal, the APCD is relying on PS Memo 10-01 to justify not modeling Suncor.

The Technical Review Document for renewal of the Suncor Operating Permit states,

Therefore, a modeling analysis was not conducted for the 1-hr SO₂ and NO₂ NAAQS. With respect to the short-term CO, PM₁₀ and PM_{2.5} NAAQS, it is not expected that the short-term increases in CO, PM₁₀ and PM_{2.5} emissions would be above the modeling thresholds as the anticipated increases in throughput to the flares from routing MPVs to them are low and are not expected to occur all at one time (i.e., all increases vent to a flare in an hour or day). Therefore, modeling was not warranted for short-term CO, PM₁₀ and PM_{2.5} NAAQS.¹

This document appears to have been completed in February 2021. However, we wrote to you on September 10, 2020 about the illegal use of Memo 10-01. On September 14, 2020 Mark McMillian from CDPHE wrote an email to PEER in regard to Memo 10-01. He stated, "In fact, the Colorado Air Pollution Control Division ("Division") has been re-assessing this memo, though we have not yet come to any conclusions. Please allow the Division a couple of weeks to review in more detail your request and circle back with you." After five months, on February 23, 2021 we followed up with another letter regarding Memo 10-01. At that time, we provided

¹ TECHNICAL REVIEW DOCUMENT for RENEWAL / MODIFICATIONS TO OPERATING PERMIT 95OPAD108, Suncor Energy (USA), Inc. – Commerce City Refinery, Plant 2 (East Plant), Adams County, Source ID 0010003 at p. 82. See also pp. 93, 177, and Memo 10-01 attached as reference at p. 153.

results of a facility that was modeled privately to demonstrate how CDPHE by relying on Memo 10-01, can grant a permit even though the facility emissions violate the NAAQS. That is all to say, that the CDPHE was aware of the illegalities of Memo 10-01 at the time that the Technical Review Document for Suncor Refinery was prepared.

Regardless, the APCD should revise the Suncor Refinery Technical Review Document now that Memo 10-01 is no longer valid. It would be highly irresponsible to rely on a discredited rule to evaluate a permit that will impact a community already experiencing so many sources of pollution.

The APCD has a history of ignoring the environmental justice issues in Commerce City. After filing the OIG complaint, we were contacted by former employees from the APCD who informed us about illegalities in the Cherokee operating permit. The Cherokee power plant is just two miles from the Suncor Refinery in Commerce City. It was granted a permit without modeling despite the fact that the Modeling Unit raised multiple red flags about the permitting process. See the attached notes to the Cherokee power plant permit. In this chain of emails, the experts specifically cite the environmental justice issues as a reason to require modeling for the permit, yet management chose to ignore them.

The nearby residents of Commerce City are impacted by the combined effect of all the emission sources in the area, not just by Suncor or by the Cherokee power plant alone. By assessing each of these facility's emissions separately, as if they exist in isolation, and then exempting each of them from complying with the NAAQS, CDPHE is ignoring the science behind air pollution dispersion and is perpetuating environmental injustice. An adequate science-based NAAQS impact analysis would involve modeling the Suncor refinery along with the Cherokee power plant and other relevant sources in the area, and not just the dogmatic use of a 40 tpy annual emissions threshold that has been proven to be ineffective to protect the hourly NAAQS.

Additionally, we wanted to let you know that a sixth public employee has come to PEER in support of the complaint to the Office of Inspector General.

We believe that an investigation by the Office of Inspector General and a Special Assistant to the Attorneys General will go a long way to restoring public trust in the agency. A transparent, comprehensive and accurate permitting process for Suncor Refinery is essential.

We note that in your letter your office stated that you hoped to respond to us within 30 days of our April 13, 2021 letter. We look forward to hearing more details on the CDPHE approach to address the concerns of the public.

Sincerely,

Chandra Rosenthal
Rocky Mountain Director

Kevin Bell
Staff Attorney

Att: Cherokee Permit File Documents