



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

962 Wayne Ave • Suite 610 • Silver Spring, MD 20910

March 30, 2021

Dear Director Hunsaker-Ryan,

We are writing to you on behalf of three whistleblowers who currently work at the Colorado Department of Health and Environment (CDPHE) Air Pollution Control Division: Bradley Rink, DeVondria Reynolds, and Rosendo Majano. These brave individuals are standing up to management that has asked them to take actions that would violate the Clean Air Act (CAA) and the Colorado Air Pollution Prevention and Control Act and approve air permits without critical review of compliance with National Ambient Air Quality Standards (NAAQS). These three employees represent the entire air permit modeling team for the state of Colorado. Public Employees for Environmental Responsibility (PEER) requests that they receive protection under the Colorado Whistleblower Protection Act and that the state act to bring the air permitting program into compliance with the Clean Air Act and the Colorado Air Pollution Prevention and Control Act.

On March 15, 2021, CDPHE's Air Division Director banned air quality modeling staff from conducting any review of NAAQS compliance whatsoever for hourly nitrogen dioxide (NO₂) and Sulfur Dioxide (SO₂), 3-hour standards for SO₂, and daily standards for particulate matter smaller than 2.5 micrometers (PM_{2.5}). Review of previous permit applications revealed that a shocking number of permits have been approved by the Air Division even though air quality modeling analyses showed NAAQS violations.¹ So rather than have a record of these violations in the permit file, Air Pollution Control Division Director, Garry Kaufman, ordered staff to simply stop modeling for these standards. *See Attachment 1, Email of March 15, 2021.* CDPHE's Air Director also unceremoniously deleted the Air Quality Modeling Guidelines, which stated the legal necessity of demonstrating compliance with those standards, from their website. *See Attachment 2, a 3/17/21 screen shot of the CDPHE website.*

¹ In many cases, permits were issued despite information indicating that there could be potential modeled NAAQS violations, or even despite clear and conclusive evidence of such violations. Below is a list with some examples permits issued under those circumstances:

- Williams Willow Creek Gas Plant, in Rio Blanco County, CO. AIRS ID 103-0360. Issued with modeled violations of the 1-hr SO₂ NAAQS.
- ColoWyo Coal Mine, in Moffat and Rio Blanco Counties, CO. AIRS ID 103-0327. A lawsuit was filed challenging the issuance of this permit with 1-hr NO₂ NAAQS modeled violations and then changes were made to reduce emissions which allegedly resolved the violations.
- Asphalt Specialties Central Plant in Weld County, CO. AIRS ID 123-A023. Issued with modeled violations of the 1-hr NO₂ NAAQS and with suspected violations of the PM₁₀, and both PM_{2.5} NAAQS.
- Martin Marietta Monaghan Facility in Adams County, CO. AIRS 001-2193. Issued with modeled violations of the 1-hr NO₂ NAAQS.
- Aggregate Industries Oxford Asphalt Plant in Arapahoe County, CO. AIRS ID 005-0116. Issued with modeled violations of the 1-hr NO₂ NAAQS.
- Cripple Creek & Victor Gold Mine in Teller County, CO. AIRS ID 119-001. Issued with modeled violations of the 1-hr NO₂ NAAQS and with suspected violations of the PM₁₀, and both PM_{2.5} NAAQS.
- Bighorn Pad in Jackson County, CO. AIRS ID 057-0051. Issued with modeled violations of the 1-hr NO₂ NAAQS.
- Martin Marietta Materials Highway 34 Facility in Weld County, CO. Issued with modeled violations of the 1-hr NO₂ NAAQS.
- JBS Swift Beef Company in Weld County, CO. AIRS ID 123-0018. Issued with modeled violations of the 1-hr NO₂ NAAQS.

Some of these cases are recent, others date back to 2012. CDPHE's failure to enforce its minor source permitting program is not an isolated one-time event, but rather a widespread, chronic situation.

The Colorado Front Range, the nine counties around Denver, has a well-known problem with ground level ozone. The state has not met federal standards since 2012 due in part to proliferation of oil and gas facilities in the ozone nonattainment area. Many of these facilities have been permitted without any NAAQS compliance verification, especially for NO₂, which is a known ozone precursor. In 2020 the Governor's office facilitated a downgrade from "moderate" nonattainment to "serious" nonattainment. This bold action was a welcome signal to many at the CDPHE that the state was going to begin the real work of imposing stricter permitting requirements for polluting entities to finally provide Coloradoans with clear, healthy air.

PEER and a coalition of conservation groups have attempted, multiple times, over the past year and half, to reach out to you and CDPHE about the illegal lack of enforcement of the Environmental Policy Act (EPA)-approved minor source Air Permitting Program. *See Attachment 3 and 4, Letters from PEER and the conservation community to CDPHE of 2/23/21 & 9/10/20 requesting that the state address this issue.* Since 2010, minor sources with nitrogen oxides and sulfur dioxides air pollution emissions below a threshold of 40 tons per year are exempted arbitrarily and illegally from the requirement of demonstrating compliance with the 1-hr NO₂ and 1-hr SO₂ NAAQS of the CAA.²

Despite vigorous insistence by their own employees and conservation groups that this policy (known as PS Memo 10-01) is illegal, the APCD continued to defend the policy of non-enforcement. CDPHE has allowed air pollution to proliferate in the state.³ There are entrenched employees that have been working at CDPHE with a seeming mindset to serve only the polluting industry and they are rubber-stamping air permits.⁴

On March 15, 2021 management took it to another level. If this action goes unchallenged, it will be as if the NAAQS are not in effect in Colorado, an egregious decision with long lasting negative consequences.

Another critical issue is the fact that this new policy is being implemented completely behind the scenes, in a way that conceals it from EPA and from the public. The only evidence of this policy that we have seen is an email exchange between two managers referencing a meeting with Director Kaufman. The latest unilateral decision was made without input from the permit modelers that will be asked to implement these illegal changes.

Furthermore, without a formal policy, only verbal direction, Director Kaufman and the managers are pushing accountability to the permit engineers and permit modelers. They will be the individuals signing permits and air quality modeling analyses with the implication that they have verified NAAQS compliance, when in fact they have not. The employees that were asked to implement these illegal actions courageously came forward and requested whistleblower status. We are

² See this recent letter in the Daily Camera remarking on the illegal policy, <https://www.dailycamera.com/2021/03/22/letters-to-the-editor-cu-south-federal-judges-covid-vaccine-air-pollution-and-covid-library-funding/>

³ Because CDPHE has failed to correct illegal SO₂ issues, we have reached out to the EPA. PEER, the Center for Biological Diversity, Colorado Latino Forum, Colorado Sierra Club, and Colorado Jewish Climate Action on February 2, 2021 requested that EPA bring CDPHE into compliance with SO₂ standards. See the joint Press Release with details here: <https://www.peer.org/call-for-federal-intervention-into-colorado-air-pollution/>

⁴ See Attachment 5, letter from PEER, the Center for Biological Diversity and the Information Network for Responsible Mining opposing the proposed air permit for the Newmont Mine- Cripple Creek and Victor. Director Kaufman, former legal representative for the Mine, many times, over many years granted at least six "enforcement discretion" letters allowing the mine to operate without meeting legal requirements.

March 30, 2021

Page 3

reaching out to you so that you will be a champion for those employees on the front line and to the public.⁵

Under the Colorado Whistleblower Act, CRS 24-50.5-103 "an employee who wishes to disclose information under protection of this article is obligated make a good-faith effort to provide to his or her supervisor ... the information to be disclosed prior to the time of its disclosure." These employees have raised the issue with their supervisors' numerous times in emails and in conversations over the last ten years, since the adoption of Memo 10-01. These employees that refuse to violate the CAA and the Colorado Air Pollution Prevention and Control Act and have disclosed violations of law for the public benefit, deserve protection from retaliation. They have put their careers at risk. We request that you support them in their stand for compliance.

The minor source air permitting program deserves immediate attention and reform. PEER and these employees will be filing the attached complaint with the EPA Office of Inspector General denouncing the State of Colorado's failure to enforce the EPA-approved State Implementation Plan and the Minor Source Permitting Program. See Attachment 6.

We request that you require the state to meet all Clean Air Act and Colorado Air Pollution Prevention and Control Act requirements and prohibit the implementation of CDPHE's new policy that would effectively and illegally revoke several federal air quality standards.

Please be in touch. Let us know if you would like us to forward you any of the many attachments that correspond to the letters and complaint. We can provide you with independent modeling on facilities that that correspond to our letters. We can provide you with emails that document the multiple protected disclosures that the Air Modelers have made to management. We would like to meet with you to discuss the issues they are raising.

Sincerely,

Chandra Rosenthal
Rocky Mountain Director

Kevin Bell
Staff Counsel

Attachments:

- 1: Email of 3/15/21 ordering Air Modelers to not model criteria pollutants.
- 2: Screen shot of Rule Removal from CDPHE website.
- 3: Letter of 9/10/20 requesting CDPHE stop using illegal Memo 10-01 to justify air modeling thresholds, with an independently modeled facility demonstrating how the Memo is illegal. Please see the graphic which shows the number of facilities that are permitted under the minor source program and demonstrates the cumulative impact.
- 4: Letter of 2/21/21 requesting CDPHE stop using Memo 10-01, with a second independently modeled facility that again demonstrates how Memo 10-01 is illegal and also EPA guidance

⁵ Another whistleblower from the air quality monitoring office made similar allegations in 2019. He left the agency with the perception that the entire management of the APCD and CDPHE are totally uninterested in actually regulating emissions: <https://www.coloradoindependent.com/2019/04/16/colorado-oil-gas-emissions-regulation/>

March 30, 2021

Page 4

requiring compliance to pollution standards in the face of the cumulative impacts from minor sources.

5. Letter of 8/19/19 to CDPHE opposing the Cripple Creek and Victor Mine air permit.

6. *EPA OIG complaint*