



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

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

May 7, 2021

Office of the Colorado Attorney General Phil Weiser
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

Re: Request to Expand Scope of Investigation by Special Assistant Attorneys General into Non-Enforcement of National Ambient Air Quality Standards by the CO Department of Public Health and Environment, Air Pollution Control Division.

Dear Attorney General Weiser,

We write to follow up on our letter of April 25, 2021 regarding your office's request for information from a law firm to serve as Special Assistant Attorneys General to investigate improper non-enforcement of the National Ambient Air Quality Standards (NAAQS) and issuing of unlawful permits by the Colorado Department of Public Health and Environment (CDPHE), Air Pollution Control Division (APCD). Thank you again for your decision to conduct an investigation via impartial and expert Special Assistant Attorneys General. The investigation could be a major step in restoring public trust in CDPHE.

As referenced in the letter, PEER has filed a request for investigation on behalf of three current CDPHE employees with the US Environmental Protection Agency's Office of Inspector General (EPA-OIG) with claims that CDPHE has for many years engaged in:

- Suppressing information demonstrating that pending permits would lead to modeled violations of the National Air Quality Standards (NAAQS);
- Approving air quality permits which violate NAAQS; and
- Ordering modeling staff to ignore modeled NAAQS violations which would conflict with nonbinding agency guidance documents.

As explained in that letter, since filing the complaint with the EPA-OIG, two additional whistleblowers, both former CDPHE employees and air quality modeling experts, have reached out to PEER to support the three current employees and assist them in their OIG complaint. Since our last letter we have heard from an additional state employee with knowledge of one of these matters.

As such, we have learned additional information supporting the original claims raised to EPA-OIG about CDPHE's intentional non-enforcement of the NAAQS, and also indicating additional irregular and concerning non-enforcement of the NAAQS in select instances. The information related to us indicates apparent intentional manipulation and misrepresentation of data, hiding critical information from a federal agency, editing of reports to include false information, preferential treatment of certain facilities, disregard of environmental justice concerns raised by staff further harming already disproportionately impacted communities, and approving monitored data that did not comply with EPA's requirements. All of these actions were undertaken to support a narrative that there were no NAAQS compliance problems in Colorado as its air quality continued to deteriorate.

CDPHE engaged in the following activities:

- Misleading the EPA and the people of Colorado by ordering modeling staff not to disclose certain modeling analyses to EPA and to not contact EPA without prior authorization. Those undisclosed technical analyses showed that meteorological data used in the 1-hr SO₂ NAAQS designation modeling of the Comanche, Hayden, and Craig Power Generating Stations did not meet requirements established in federal regulations and EPA guidance.¹
- Misleading the EPA and the people of Colorado by including false interpretations of data in the 1-hr SO₂ NAAQS designation modeling reports of the Pawnee and Drake Power Generating Stations, mischaracterizing lower SO₂ emission rates used in the modeling as federally enforceable allowable emission rates, in order to obtain results that would comply with the corresponding NAAQS.
- Misleading the EPA and risking the public health of the people of Colorado by proposing the designation of some areas of the state as "unclassifiable" or "attainment" with the 1-hr SO₂ NAAQS, by basing the modeling analyses on inadequate meteorological data and emission rates, that did not comply with requirements of federal regulations and EPA guidance².
- Downplaying and discrediting information submitted to CDPHE by environmental groups that showed modeled violations of the 1-hr SO₂ NAAQS caused by the Pawnee and Drake Power Generating Stations, and thus leading the public to believe that there were no SO₂ air pollution problems in the Fort Morgan and Colorado Springs areas,

¹ 40 CFR 51 Appendix W §§ 8.4.3.2.f, 8.4.4.2.a, and 8.4.4.2.c (2017); "Use of ASOS meteorological data in AERMOD dispersion modeling", §§ 4.1 and 4.3, March 08, 2013 EPA memorandum; "Meteorological Monitoring Guidance for Regulatory Modeling Applications." §§ 5.3.2 and 6.8, US EPA, (2000); and EPA's Modeling Technical Assistance Document, US EPA (2016).

² Data Requirements Rule, 40 CFR 51 Subpart BB §51.1203.(d)(2) and 51.1201; 40CFR51 Appendix W §8.4.3.2.f, §8.4.4.2.a, and §8.4.4.2.c (2017); "Use of ASOS meteorological data in AERMOD dispersion modeling", Sections 4.1 and 4.3, March 08, 2013 EPA memorandum; "Meteorological Monitoring Guidance for Regulatory Modeling Applications." Sections 5.3.2 and 6.8, US EPA, 2000; and EPA's Modeling Technical Assistance Document, US EPA 2016.

both of which should have been designated as non-attainment areas based on that information.

- Intentionally disregarding the requirement to demonstrate compliance with the NAAQS when issuing a permit to the Cherokee Power Generating Station, despite overwhelming evidence presented by CDPHE's subject matter experts showing the potential for this facility to cause or contribute to NAAQS violations.
- Engaging in systemic environmental racism towards the residents of Commerce City, a disproportionately environmental impacted community, by refusing to comply with Clean Air Act requirements³ by enforcing compliance with the NAAQS when issuing a permit to the Cherokee Power Generating Station, and by disregarding concerns of environmental justice expressed by CDPHE staff concerning that permit application.
- Engaging in preferential treatment and non-public arrangements with some permit applicants when agreeing to not verify NAAQS compliance for the Cherokee Power Generating Station.
- Since filing the EPA Office of Inspector General complaint, we have also assembled additional evidence of wrong doing in the permitting process of the Newmont Cripple Creek & Victor Gold Mine which includes approving the use of NO₂ monitoring data collected using substandard methodologies that EPA has never approved, did not comply with minimum quality control/quality assurance requirements, and did not comply with the minimum required length of data collection, for the purpose of artificially lowering the 1-hr NO₂ background concentration used in the modeling of the Cripple Creek & Victor Gold Mine. Lowering the background concentrations had the effect of lowering the results of the ultimate modeling analysis to reach the incorrect conclusion that this facility had demonstrated compliance with the 1-hr NO₂ NAAQS.
- -Approving a report that intentionally manipulated modeling data and falsely represented information showing modeled violations of the 24-hr PM₁₀ NAAQS to inappropriately conclude that the Cripple Creek & Victor Gold Mine complied with all applicable NAAQS in order to issue an unlawful permit to this facility.

There is considerable evidence and testimony to support these claims, and we are including enclosed to this letter, some of the documents that PEER has already sent to CDPHE and to EPA's Region 8 Office, as well as other documents that have been made available to members of the state assembly in protected disclosures under the Colorado Whistleblower Act, CRS 24-50.5-103.

In light of the above, we hereby request that you expand the scope of your investigation to include these additional issues: the 1-hr SO₂ NAAQS non-attainment designation process; the Commerce City Cherokee facility permitting process; and new information about the

³ 42 U.S.C. § 7410(a)(1), § 7410(a)(2), § 7410(a)(2)(E), and § 7410(a)(2)(K); 40 C.F.R. § 51.160, § 51.160(a)(2) and § 51.160(b)(2).

Newmont Cripple Creek & Victor Mine. By doing so, public officials responsible can be held accountable, giving CDPHE an opportunity to restore its integrity and credibility.

The NAAQS are standards that were established for the purpose of protecting the health of the people of Colorado. With its actions, CDPHE has not only done a disservice to Colorado's public, but has unnecessarily endangered their health and wellbeing by exposing them to high levels of air pollution that could and should have been prevented.

Sincerely,



Kevin H. Bell, Staff Counsel

Chandra Rosenthal, Rocky Mountain Director

List of attachments

1- 2_2_21_Let-to-R8-EPA-CO-SO2.PDF with 5 attachments of its own:

- 1.1 Comanche met data representativeness MMEIU.PDF
 - 1.2 Craig met data representativeness MMEIU.PDF
 - 1.3 EMAIL 23-SEPT-2015 METEOROLOGICAL DATA.PDF
 - 1.4 Hayden met data representativeness MMEIU.PDF
 - 1.5 Met determination - Colorado Springs Drake.pdf
- 2- SO2 CDPHE CT LET FINAL 06_21_20.PDF
- 3- CHEROKEE 1 - Notes Report.pdf
- 4- CHEROKEE 2 - Notes Report.pdf
- 5- CHEROKEE 3 - Notes Report.pdf
- 6- CHEROKEE 4 - Notes Report.pdf
- 7- CHEROKEE 5 - Notes Report.pdf
- 8- CHEROKEE 6 - Notes Report.pdf
- 9- EMAIL Pawnee Emission Rate 09-08-16.pdf
- 10- EMAIL Drake Modeling 11-22-19.pdf
- 11- DRAKE EMAIL 1.pdf
- 12- DRAKE EMAIL 2.pdf

13- CC&V FALSE MODELING REPORT 06-20-11.PDF

14- Monitoring memo CCV NO2 background Oct 2015.pdf

15- EMAIL to EPA R8 - request for feedback 03-17-16.pdf

16- EMAIL meeting CC&V.pdf

17- EMAIL CC&V NO2 raw data.pdf

18- EMAIL CC&V.PDF

Link to SO2 press release

<https://www.peer.org/call-for-federal-intervention-into-colorado-air-pollution/>