



# PEER

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY • ROCKY MOUNTAIN

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Environmental Justice Action Task Force  
Colorado Department of Public Health and the Environment  
Email: [cdphe\\_ej@state.co.us](mailto:cdphe_ej@state.co.us)

RE: PUBLIC PETITION FOR THE EJ ACTION TASK FORCE TO REQUEST POLLUTION CONTROL STRATEGY IN DISPROPORTIONATELY IMPACTED COMMUNITY

February 15, 2022

Dear Task Force Member,

Commerce City, just north of metro Denver, Colorado, is one of the most polluted areas in the country and is the home to a disproportionately low-income, community of color. The state has a history of ignoring the environmental justice issues in this area including the extensive air and water pollution that this community is forced to endure.<sup>1</sup> PEER has received information regarding the illegal permitting of the Xcel Cherokee power station located in this region and have attached the project permit notes for your review.

While there are air quality monitoring stations in the area, they were installed many years ago without an analysis to find the best locations that would capture the highest pollution concentrations caused by the largest nearby emissions sources.

**We request that you directly and immediately intervene and request that the Colorado Department of Public Health and the Environment perform a long-overdue comprehensive air quality modeling analysis to identify where the Cherokee power station and other large emission sources are causing the highest cumulative impacts, and from there, design an adequate monitoring plan for this area. This will enable the state to take effective actions to control the air pollution caused by these facilities.**

**Attachment 1 is a proposed Directive for the Action Task Force.**

The Cherokee power station applied for a permit to convert some of the facility to natural gas in 2012. This was done without verifying compliance with the National Ambient Air Quality

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<sup>1</sup> See 3/30/21 Colorado Sun [article](#) “Colorado air pollution control managers ordered staff to falsify data and approve permits “at all costs,” whistleblowers say”; 5/5/21 Denver Post [article](#) “Battle over Suncor oil refinery intensifies as state weighs permit renewal, metro Denver residents demand closure”; 4/23/21 Denver Post [article](#) “Growing spotlight on environmental justice focuses on Colorado’s energy future.”; 8/19/20 [4CBS news](#) “History Of Abusing This Community’: Commerce City Mayor Expresses Frustration With Suncor.”

Standards (NAAQS) as required by law. This was done despite the fact that *all* of the modelers then working in the Colorado Department of Public Health and Environment (CDPHE) Modeling Unit raised multiple red flags indicating that checking for compliance with all of the NAAQS was required. In the attached chain of emails, the state experts anticipated that the agency would once again ignore pollution impacts to the community to issue a permit and so laid out their dissents for future policymakers to rely upon. The Environmental Justice Action Task Force now has the opportunity to act on those dissents.

One employee, Jackie Joyce, stated,

...should the higher ups decide that no modeling is required:...if we get comments related to environmental justice (the area in which Cherokee is located is an environmental justice area), past responses have pointed to **[requiring]** the NAAQS analysis.

A second employee, Chuck Machovec, wrote to his supervisor 13 reasons why the state is required to model this area, (including because it is required by the Clean Air Act and the Colorado State Implementation Plan) and:

4. There may be Environmental Justice issues in areas impacted by this plant....
7. The area where the source is located has some of the worst air quality (Commerce City) in Colorado.

Later, after Mr. Machovec found that management disregarded the state's own experts, he wrote,

I believe an impact analysis is warranted...this management decision on a technical item is surprising and inconsistent with existing guidance, practices, and applicable rules.

Following that, a third expert, Doris Young, wrote to management,

- ...modeling for all NO<sub>2</sub> NAAQS is warranted.
- ...modeling for all CO NAAQS is warranted.
- ...modeling for all PM<sub>10</sub> NAAQS is warranted.
- ...modeling for all PM<sub>2.5</sub> NAAQS is warranted.
- ...modeling for all SO<sub>2</sub> NAAQS is warranted.

These are a handful of the concerns expressed by the state's expert employees. All three of these employees, all experienced air pollution control experts, were ignored in favor of issuing the permit expeditiously.

Currently CDPHE is in the process of issuing an operating permit for an oil refinery, the Suncor Refinery, also in Commerce City and just one mile away from the Cherokee Power Station and its unjustly impacted surrounding community. The state is also issuing the Suncor permit without modeling for 1-hr NAAQS for NO<sub>2</sub> and SO<sub>2</sub>. See Attached PEER letter to CDPHE

Director Ryan and the Divisions' response sent 9 months later, which states that this is in fact its' final decision.<sup>23</sup>

Commerce City residents are disproportionately suffering from the combined effect of *all* of the emission sources in the area, not just the Suncor Refinery or the Cherokee Power Station 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 the cumulative effect that is perpetuating environmental injustice on a vulnerable community.** This practice perpetuates environmental injustice and is an affront to the Task Force's charge to develop a model environmental equity analysis for CDPHE to follow when issuing permits. Please see the recent Sierra Club [study](#) which lays out much of the harm that Cherokee has on the neighboring communities of color. <sup>4</sup>

Furthermore, the CDPHE has the authority to address NAAQS outside of the permitting process, yet it is choosing to turn a blind eye. An adequate science-based NAAQS impact analysis would involve modeling the Suncor Refinery along with the Cherokee Power Station and other relevant sources in the area with a complete assessment that will inform CDPHE where exactly the NAAQS have the potential to be exceeded, which facilities are responsible for those impacts, and where additional ambient air monitors should be located to allow the agency to be able to monitor in real time the impact that these facilities are causing to the population in the area.

Currently, there is no assurance that the existing monitors in the area are capturing the highest pollution concentrations which the Cherokee power station, the Suncor Refinery, and others inflict upon the people of Commerce City; and the operation of these monitors is being financed by taxpayers. An exhaustive monitoring plan incorporated as additional requirements in the permits of these facilities is essential to quantify the real exposure of the adjacent communities to the air pollutants emitted by these sources, and in developing effective strategies to prevent further dangerous health effects.

**The Action Task Force has the ability to act.** Pursuant to the Environmental Justice Act (House Bill 21-1266), this action falls within the CDPHE Air Pollution Control Division's ability to reopen permits.<sup>5</sup> A cumulative impact modeling analysis would indicate with a high degree of

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<sup>2</sup> PEER letter to CDPHE, May 2, 2021, regarding the 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.

<sup>3</sup> Jacqueline Joyce, Air Pollution Control Division, Colorado Department of Health and the Environment, letter to PEER, Feb. 8, 2022,

<sup>4</sup> Anna McDevitt, Sierra Club <https://www.sierraclub.org/articles/2021/11/xcel-energys-gas-plants-disproportionately-threaten-health-and-safety-denvers>.

<sup>5</sup> **HB 21-1266, Section 9**, 25-7-114.5. Application review - public participation. (12.5) (a) (I) Except for sources involved in agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding, or pesticide application, upon determination by the division that the criteria set forth in paragraph (b) of this subsection (12.5) SUBSECTION (12.5)(b) OF THIS SECTION applies to a source that is not required to obtain a renewable operating permit, the division may reopen such construction permit for the purpose of imposing any or all of the following additional terms and conditions:

(C) Operating and maintenance requirements; and

accuracy, the extent to which each facility is contributing to the air pollution concentrations in the area. This would enable CDPHE to reopen the corresponding permits and impose additional monitoring requirements and/or additional restrictions to their emissions or operations to mitigate the negative health effects on the surrounding population. In this context, recommending that the state model cumulative impacts is part of the purposes of the General Assembly in convening this Task Force as well as within the Draft Scope of Work the Action Task Force is developing.<sup>6, 7</sup>

After decades of failing to protect this community, we believe that the Action Task Force's intervention will go a long way to restoring public trust in the government. A community already experiencing so many sources of pollution deserves a transparent, comprehensive and accurate permitting process.

We look forward to hearing from you.

Sincerely,

Chandra Rosenthal  
Rocky Mountain Director

Kevin Bell  
Staff Attorney

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(D) Emission control requirements pursuant to section 25-7-109.3; AND  
(E) ADDITIONAL MONITORING REQUIREMENTS FOR SOURCES AFFECTING DISPROPORTIONATELY IMPACTED COMMUNITIES.  
(12.5) SUBSECTION (12.5)(a) OF THIS SECTION only upon a determination by the division that the location of the source is significant in terms of its proximity to residential or business areas OR A DISPROPORTIONATELY IMPACTED COMMUNITY, and one or more of the following criteria apply to the permitted source:  
(V) The emissions from the source will threaten public health, as determined pursuant to section 25-7-109.3; OR  
(VI) THE EMISSIONS FROM THE SOURCE WILL AFFECT A DISPROPORTIONATELY IMPACTED COMMUNITY.

<sup>6</sup> Colorado Environmental Justice Act established the Environmental Justice Action Task Force to “recommend and promote strategies for incorporating environmental justice and equity into how state agencies discharge their responsibilities.” (CRS 25-1-133 (1) (a))

<sup>7</sup> **ENVIRONMENTAL JUSTICE ACTION TASK FORCE SCOPE OF WORK**

The Environmental Justice Act directs the Environmental Justice Action Task Force to consider proposing recommendations concerning the following topics. *See* C.R.S. § 25-1-133(3):

- (1) Developing a state agency-wide environmental justice strategy and plan to implement that strategy, which could include:
- (C) A potential requirement that for any state action that may cause adverse environmental or public health impacts to a disproportionately impacted community, the adverse environmental or public health impacts must be avoided, and if the effects cannot be avoided, they must be minimized and mitigated;  
(<https://cdphe.colorado.gov/environmental-justice>)

Cc:

Regional Administrator KC Becker, Region 8, EPA, [BeckerKC@epa.gov](mailto:BeckerKC@epa.gov)  
Colorado Environmental Justice Advisory Board, [cdphe\\_ej@state.co.us](mailto:cdphe_ej@state.co.us)  
Colorado Health Equity Commission, [cdphe\\_healthequity@state.co.us](mailto:cdphe_healthequity@state.co.us)

Att:

Proposed EJ Action Task Force Directive, 22-01.

Cherokee Power Plant - combined cycle turbine facility, file documents.

PEER letter to CDPHE Director Hunsaker Ryan, 5/2/21.

CDPHE response to PEER, 2/8/22.

Sierra Club, Anna McDevitt, Xcel Energy's Gas Plants Threaten the Health and Safety of Denver's Communities of Color, 11/2021.



Suncor Refinery, Image at [suncor.com](http://suncor.com)





Cherokee Power Plant, photo by Gregor Tokarski 1/19



Main Street Commerce City, photo by City of Commerce City Cultural Council  
Commerce City is the 18th most populous municipality in Colorado as of 2019.