



PEER

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY • ROCKY MOUNTAIN

Director Lilian S. Dorka
Environmental Protection Agency
External Civil Rights Compliance Office
Office of General Counsel

May 9, 2022

RE: Review of Civil Rights Compliance – EPA No. 01CR-22-R8

Dear Director Dorka, Mr. Hoang and Ms. Leisner,

We are hopeful to learn that EPA's External Civil Rights Compliance Office (ECRCO) is taking steps to ensure that the Colorado Department of Public Health and Environment (CDPHE), a recipient of EPA federal financial assistance, understands its obligations under the federal civil rights laws and EPA's implementing regulations and are in full compliance with those provisions.

We wanted to take this opportunity to outline our concern with the state of Colorado's air permitting program with regard to EPA's nondiscrimination regulation and the current review. We request that the state be required to revisit air permits and perform air modeling for the Xcel Cherokee Power Station and the facilities in the three-mile area surrounding the power plant. This area just north of metro Denver is home to a disproportionately low-income community of color.

EPA and CDPHE should focus on the permit for Xcel Cherokee Power Station because it –

- Lacks verified compliance with the National Ambient Air Quality Standards as required by law;
- Relies on air quality monitoring stations installed many years ago without any analysis as to whether they are capable of capturing the highest pollution concentrations; and
- Has never been modeled to determine its cumulative pollution impacts.

At the time of permitting in 2012, the proposed permits were identified by state employees and whistleblowers as overly permissive and improperly issued.

The facility applied for a permit to convert some of the facility to natural gas, and the permit was issued without verifying compliance with the National Ambient Air Quality Standards (NAAQS) as required by law. This was done even though *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 on the community to issue a permit and so laid out their dissents for future

policymakers to rely upon. The state of Colorado's 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 was 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 NO2 NAAQS is warranted. ...modeling for all CO NAAQS is warranted.
...modeling for all PM10 NAAQS is warranted. ...modeling for all PM2.5 NAAQS is warranted.
...modeling for all SO2 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. Please see the attached series of emails.

The state of Colorado has had many opportunities to act to remedy this failure and has yet to act.

- See the May 7, 2021 PEER letter to the Colorado Attorney General, on which the CDPHE was copied, in which the deficiencies at the Xcel Cherokee Power Station were pointed out. PEER requested that they be incorporated into the Attorney General's investigation of the CDPHE minor source program. However, the Attorney General elected not to include this additional information.¹
- See the May 10, 2021 PEER letter to EPA Administrator Michael Regan, on which the CDPHE was copied, in which we requested oversight on this issue.²

¹ https://peer.org/wp-content/uploads/2021/05/Colorado_AG_SAAG_Letter_5_7_21.pdf

² https://peer.org/wp-content/uploads/2021/05/Let-EPA-EJ-Cherokee-5_10_21.pdf

- Though the CDPHE has said that it is committed to reforming the minor source air permitting process, in November 2021, the CDPHE denied the whistleblowers, the only three modeling experts currently employed by the state of Colorado, the opportunity to participate in the newly created Minor Source Modeling Panel.³
- Most recently, on February 15, 2022, PEER requested that pursuant to the newly enacted Environmental Justice Act in Colorado, the state Environmental Justice Action Task Force request that the CDPHE perform long-overdue comprehensive air quality modeling. We hope that the Task Force would request that the state identify the cumulative impacts that Cherokee and other large emission sources like the Suncor Oil Refinery are causing so that CDPHE can build an accurate monitoring plan.⁴

After decades of the state and EPA failing to protect this community, we believe that EPA's current intervention will go a long way to restoring a sense that someone in government actually cares what happens to the people of Commerce City. I welcome the opportunity to discuss this issue with you and look forward to hearing more.

Best,

s/ Chandra Rosenthal
Rocky Mountain Office Director
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CC: Executive Director Jill Hunsaker Ryan, CDPHE, jill.hunsakerryan@state.co.us
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³ <https://cdphe.colorado.gov/air-pollution-control-division-minor-source-permit-modeling>

⁴ <https://peer.org/wp-content/uploads/2022/02/Letter-EJ-Task-Force-2-15-2022.pdf>