



December 11, 2022

Jonathan Brickey, P.E.
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, APCD-SS-B1
Denver, Colorado 80246-1530
cdphe_apcd_airpermitcomments@state.co.us

RE: Construction Permit 98TE0545 for the Cripple Creek & Victor Gold Mining Company, 1 ½ miles north of Victor, Teller County, CO.

Dear Mr. Brickey:

On behalf of Public Employees for Environmental Responsibility we are writing this letter to provide comments on the proposed construction permit 98TE0545 for the Cripple Creek & Victor Gold Mine. We thank CDPHE for enabling public participation and allowing the opportunity to review and comment on this case.

The Cripple Creek & Victor Gold Mine, owned by multinational mega corporation, Newmont Corporation, is one of the largest, active, open-pit gold mines in the world. It is located near the town of Victor, Colorado in Teller County.

According to state and federal regulations, prior to issuing an air permit the Air Pollution Control Division (APCD) must assess the impact of the source on air quality and ensure that this source will not “interfere with the maintenance or attainment” of the National Ambient Air Quality Standards (NAAQS) and that the source will comply with these standards.

40 CFR §§51.160 through 51.164, require that the state permitting program must enable the permitting authority to reject any permit if it finds that the proposed project will cause or contribute to an exceedance of the NAAQS.

Colorado Regulation 3 Part B § III.D.1 indicates that the Division shall grant the permit if the proposed source or activity will not cause an exceedance of any NAAQS and will meet all applicable NAAQS. Furthermore, Part B § III.F.1 states that if the source cannot comply with the above requirements the Division shall issue a written denial of the permit application.

For the proposed modification to permit 98TE0545 the APCD has concluded in the 09/23/2022 Modeling Review Comments document (i.e. Modeling Review Report) that “... making the identified amendment with respect to the silos will not adversely impact ambient air quality.”

According to the Draft Preliminary Analysis document and the Modeling Review Comments document, the state's conclusion is based on a modification and re-run of the 2018 modeling analysis. However, the APCD 2018 modeling report clearly indicates that there are modeled NAAQS violations for the 1-hr NO₂ standards, and that compliance with the rest of the NAAQS cannot be determined until critical errors in the modeling analysis are corrected.¹

The 2018 report explains in detail in Appendix C², the critical errors made when calculating the emissions from mobile sources, which constitute the bulk of the total particulate matter emissions at this facility. Furthermore, the subsequent 01/29/2019 Addendum to the Final Modeling Review Report³ explains when referring to the PM_{2.5} modeling results:

“While the results are numerically below the corresponding NAAQS, compliance with such standards cannot be determined. The emission rates used by CC&V are based on emission factors that have not been adjusted with a deterioration factor to account for the increase in emissions resulting from usage as the engine ages, and also with a transient adjustment factor to account for the change in emissions due to transient demands of the engine.

Both adjustment factors are included in the data base of EPA's mobile sources emissions model MOVES, and the resulting emission rates are higher after they are applied. However, CC&V did not use MOVES and instead used what appear to be only zero-hour steady state factors, thus adding another layer of error in the calculation of mobile engine emissions. More details on this topic can be found in Appendix 2 of this document.

Considering that the modeled concentrations for 24-hr and annual PM_{2.5} are at 92.6% and 94.6% respectively of their corresponding NAAQS, it is very feasible that once these adjustments are applied the resulting concentrations could reach or exceed the standards.”

A similar explanation is provided for the PM₁₀ results indicating that the design modeled concentration is at 98.7% of the corresponding NAAQS,⁴ and that once the corrections are applied it will be very likely that the resulting concentrations could reach or exceed the standard.

Under these circumstances, the modeling results cited in the preliminary analysis to support the issuance of this permit do not indicate NAAQS compliance, especially when the contribution of the permitted sources to the total impacts is unknown.

This proposed modification to permit 98TE0545 will be issued under the assumption that the 2018 modeling results are accurate and that the changes to AIRS points 040 and 041 won't alter those

¹ Modeling Review Comments – Cripple Creek & Victor Gold Mine. CDPHE 06/26/2018.

² Final Modeling Review Report – List of Outstanding Issues. CDPHE June 26, 2018.

³ Addendum to the Final Modeling Review Report – Cripple Creek & Victor Gold Mining Company. CDPHE 01/29/2019.

⁴ Note that the modeling results listed in the Preliminary Analysis and 2022 Modeling Report do not include background concentrations. Once the background concentrations are added those results almost reach the corresponding NAAQS.

results enough to cause a modeled NAAQS violation. However, a modeled violation of the 24-hr and annual PM_{2.5} NAAQS and of the PM₁₀ NAAQS might already exist, with points 040 and 041 contributing as part of the required cumulative impact analysis.

In 2022 EPA reviewed, among other permits issued by APCD, the previous issuance of permit 98TE0545 for CC&V, which includes the 2018 modeling analysis. As part of its findings EPA concluded in the corresponding report that the issues flagged in the 2018 modeling report had not been addressed and consequently no demonstration had been included in the record to show that the proposed project, of which points 040 and 041 are part of, will not cause a modeled NAAQS violation.⁵ Specifically, EPA indicated when referring to the CC&V permit:

*“Due to the lack of information addressing the concerns that MEIU raised with the air quality analysis and the decisions to split the project into multiple permits, **the permit record did not demonstrate that the proposed project and the allowable emission increases from the proposed source would not cause or contribute to violations for all the ambient air quality standards.** While we offered the opportunity for CDPHE to provide additional information on this permit action during our call with CDPHE management on November 18, 2021, no additional information was provided to address our concerns. As a result, APCD did not sufficiently document their decision to issue this permit in the permit record.” [Emphasis added]*

In addition, EPA also stated:

“Overall, the permits reviewed by EPA Region 8 lacked relevant supporting information and did not provide a sufficient demonstration to ensure that the approved permit actions would not cause a NAAQS violation. EPA Region 8 did request additional information from CDPHE to address our findings and demonstrate that these permit actions at the four facilities would not cause violations of the NAAQS. However, CDPHE was unable to supply pertinent supporting information. CDPHE management and staff acknowledged that the permit records may lack documentation demonstrating how potential modeled NAAQS violations were addressed before issuing the permits, and the analyses or other data to support the permit conditions and decisions for the final permits.” [Emphasis added]

Furthermore, in the same report EPA also raised concerns about the CC&V project being split into multiple smaller projects and indicated that by doing so, there was the potential of the air quality impacts of the larger project not being adequately assessed. In its report EPA stated:

“... the permit record did not provide information to indicate whether the process to split the larger project into smaller projects ensured that the proper permitting and compliance requirements were applied to this permit action. In particular, failure to adequately justify splitting a project into more than one permit has the potential to lead to circumvention of major source permit program requirements. This approach could

⁵ EPA Region 8 Review of Issues Raised in PEER Complaint Concerning New Source Review Permitting by the Colorado Department of Public Health and Environment. EPA Region 8 Review of EPA’s Office of Inspector General Hotline Complaint No. 2021-0188 Report. July 2022.

also result in the air quality impacts of a larger project not being sufficiently assessed during the permitting process.”

Based on EPA’s statements, evaluating the impacts of points 040 and 041 alone could result in the air quality impacts of the facility and the larger project of which they were originally part of, not being sufficiently assessed, meaning that the impacts of the entire project should be evaluated in a cumulative impact analysis.

Given that the 2018 modeling analysis is deficient as indicated in the 2018 modeling report and confirmed by EPA, those results cannot be relied upon as a demonstration of NAAQS compliance to support the proposed 2022 issuance of permit 98TE0545.

The previous issuance of this permit was illegal as the permit applicant had not met all the regulatory requirements to obtain a permit from the APCD. Moreover, irregular actions were taken to ensure that the permit would be issued despite the legal requirements not being met. The 2019 Addendum to the Final Modeling Review Report includes a table of results showing modeled violations of the NAAQS, and also show emails from an APCD manager arbitrarily requesting the change of those results for lower values that would comply with the NAAQS.⁶ EPA acknowledged this situation and expressed concerns about it in the July 2022 report stating:

“One of the additional submittals we received from PEER after the original complaint (see discussion in Introduction, above) was a memorandum with 35 exhibits concerning the Cripple Creek and Victor Gold Mine, provided in August 2021...”

Accordingly, we relied primarily on the permit documents we received from CDPHE in July 2021 for our review, and did not thoroughly review the new information PEER submitted to us and the OIG in August 2021. Based on our limited review of this information, however, we had concerns about allegations that CDPHE managers pressured staff to approve analyses which staff felt were based on false information, and potential conflicts of interest on the part of a CDPHE manager involved in the permit actions related to this facility. We viewed these concerns primarily as personnel matters that would best be addressed by the Colorado Attorney General’s office and shared this with the OIG in October 2021.”

By issuing the proposed modification to permit 98TE0545, CDPHE and the APCD would be relying on a previous permit issued illegally and on a severely deficient modeling analysis that was tampered with to lower the results, and that warrants another revision of this case by the Colorado Attorney General’s Office as recommended by EPA.

By issuing this permit APCD would also be disregarding the concerns and recommendations of the EPA Region 8 Office and the EPA Office of the Inspector General.

⁶ Addendum to the Final Modeling Review Report – Cripple Creek & Victor Gold Mining Company, Appendix C. CDPHE 01/29/2019.

Most importantly, by issuing this permit the APCD would continue to disregard the health and well-being of the population of the town located immediately adjacent to the CC&V mine. Colorado's [Environmental Justice Act](#) (HB21-1266), defines a "disproportionately impacted community as one in which more than 40% of the population is classified as low-income."⁷ Consider the EPA EJScreen, in which 42% of the town of Victor block group is classified as Low Income, meeting the definition of a disproportionately impacted community. The EJScreen states that the ozone pollution for the block group is 94% when compared to the USA. The community surrounding the enormous open pit mine should be a priority for EPA and the agency.⁸

In compliance with the law, CDPHE must deny the proposed modification to permit 98TE0545 until it has been demonstrated that the Cripple Creek & Victor Gold Mine does not interfere with the attainment of any NAAQS. Currently the records do not provide sufficient information to demonstrate that the permitted action will not cause modeled violations of the NAAQS.

All the above are sufficient reasons for not approving this permit until the problems are resolved and the mine can demonstrate that it is complying with the NAAQS and with all the other legal requirements. As a state agency CDPHE should have the public's best interest in mind, and so far, that is not what is reflected when proposing to issue this permit despite the many documented problems.

Sincerely,

Chandra Rosenthal
Rocky Mountain Director

⁷ (II) "DISPROPORTIONATELY IMPACTED COMMUNITY" MEANS A COMMUNITY THAT IS IN A CENSUS BLOCK GROUP, AS DETERMINED IN ACCORDANCE WITH THE MOST RECENT UNITED STATES CENSUS, WHERE THE PROPORTION OF HOUSEHOLDS THAT ARE LOW INCOME IS GREATER THAN FORTY PERCENT, THE PROPORTION OF HOUSEHOLDS THAT IDENTIFY AS MINORITY IS GREATER THAN FORTY PERCENT, OR THE PROPORTION OF HOUSEHOLDS THAT ARE HOUSING COST-BURDENED IS GREATER THAN FORTY PERCENT; OR IS ANY OTHER COMMUNITY AS IDENTIFIED OR APPROVED BY A STATE AGENCY, IF: THE COMMUNITY HAS A HISTORY OF ENVIRONMENTAL RACISM PERPETUATED THROUGH REDLINING, ANTI-INDIGENOUS, ANTI-IMMIGRANT, ANTI-HISPANIC, OR ANTI-BLACK LAWS; OR THE COMMUNITY IS ONE WHERE MULTIPLE FACTORS, INCLUDING SOCIOECONOMIC STRESSORS, DISPROPORTIONATE ENVIRONMENTAL BURDENS, VULNERABILITY TO ENVIRONMENTAL DEGRADATION, AND LACK OF PUBLIC PARTICIPATION...

⁸ See attached EPA EJScreen Report, 12/11/22.