



February 21, 2019

Colorado Air Quality Control Commission
4300 Cherry Creek Drive South
Denver, CO 80246

Re: Extensive Clean Air Permitting Violations Among Oil and Gas Industry in Denver Metro-North Front Range Ozone Nonattainment Area

Dear Air Quality Control Commissioners:

We are writing to inform you of what appears to be chronic noncompliance with state and federal permitting requirements among the oil and gas industry in the Denver Metro-North Front Range ozone nonattainment area. We are also concerned that there appears to be a chronic lack of enforcement over these violations by the Air Pollution Control Division.

At issue is the industry's apparent practice of constructing production facilities, putting them into operation, and producing oil and gas for months, if not years, before ever obtaining permits required under state and federal clean air laws and regulations, including the Colorado State Implementation Plan ("SIP").

While this is of concern for any source of air pollution, we are particularly concerned that oil and gas production facilities that are major sources of volatile organic compounds ("VOCs") and located in the ozone nonattainment area are being allowed to construct and operate without ever obtaining nonattainment new source review permits. In many cases, major sources of hazardous air pollutants are being constructed and put into operation without facilities complying with applicable maximum achievable control technology requirements.

The Colorado State Implementation Plan ("SIP") allows oil and gas production facilities to forego submitting annual pollutant emission notices and construction permit applications until no later than 90 days after first production. *See* AQCC Regulation No. 3, Part A, Section II.D.1.III and Part B, Section II.D.7. However, nothing in these provisions or the Colorado SIP allows an oil and gas production facility to operate for months, if not years, with no actual enforceable limits established via permit.

Furthermore, the 90-day delay for submitting a construction permit application under the Colorado SIP does not allow sources to avoid compliance with nonattainment new source review or applicable maximum achievable control technology requirements.

We believe currently there are dozens, if not hundreds, of oil and gas production facilities in the Denver Metro-North Front Range region operating and producing oil and gas with no valid

construction permits. With no permits in place, there are no enforceable emission limits in place to keep pollutants in check, there is ineffective oversight and scrutiny of operations, and overall no real assurance that these facilities are controlling emissions.

Importantly, many oil and gas production facilities that are major sources of VOC emissions have been constructed and are operating without permits. Without permits, these facilities have no federally enforceable VOC limits in place. With no federally enforceable VOC limits, there is no basis for concluding these sources are not major under the Colorado SIP. This means they are subject to nonattainment new source review requirements.

Under the Colorado SIP, any stationary source in an ozone nonattainment area that emits or has the potential to emit 100 tons per year or more of VOCs must obtain a nonattainment new source review permit. *See* AQCC Regulation No. 3, Part D. The potential to emit of a stationary source of air pollution is defined in the Colorado SIP as “The maximum capacity of a stationary source to emit a pollutant under its physical and operational design.” AQCC Common Provisions Regulation, Section I.G. Although emission controls can be considered to be part of a source’s “operational design,” they can only be considered part of a source’s design “if the limitation or the effect it would have on emissions is state enforceable *and federally enforceable*.” *Id.* (emphasis added).

Nonattainment new source review is a stringent permitting process that ultimately assures the most rigorous oversight and control of pollution from stationary sources in nonattainment areas. Among other things, the Colorado SIP requires new major stationary sources to achieve “the lowest achievable emission rate,” certify compliance at “all other existing major stationary sources owned, operated, or controlled by the applicant,” achieve emission offsets, include an analysis of alternative sites, sizes, production processes, and environmental control techniques, and demonstrate that emissions will not adversely impact visibility in Class I areas. AQCC Regulation No. 3, Part D, Section V.A.

What we are seeing is oil and gas production facilities that are major sources are being constructed and put into operation. In many cases, the potential to emit for these facilities is hundreds of tons of VOCs annually and sometimes more than 1,000 tons. It is only after months of operation that companies are submitting applications for synthetic minor permits to establish federally enforceable limits on emissions. However, they continue to operate with no valid permits in place, even as their potential to emit exceeds major source thresholds.

The reality is, given their potential to emit, these oil and gas production facilities are subject to nonattainment new source review. After constructing a major source and putting it into operation, companies cannot then apply for synthetic minor permits. Under the Colorado SIP, these sources are subject to nonattainment new source review. **Their failure to comply or their desire to become synthetic minor sources does not absolve them of their duty to meet nonattainment new source review requirements under the Colorado SIP in light of their current major source status.**¹

¹ The time to apply for synthetic minor status is prior to construction. After the issuance of a synthetic minor permit, a source may then construct and operate under the auspices of permit that imposes federally enforceable emission limits.

Unfortunately, the Division appears to be condoning this widespread noncompliance with SIP permitting requirements. Seemingly without fail, the Division regularly processes and issues synthetic minor permits for oil and gas production facilities that have been constructed and put into operation as major sources.

Currently, several such permits are out for public comment at this moment. One facility, a PDC Energy facility, called McGlathlin 9 Sec HZ and located in Weld County, was constructed and put into production in April 2018. The company later submitted a synthetic minor application for 22 condensate tanks in which the Division acknowledges in its preliminary analysis that the facility has the potential to emit more than 1,400 tons of VOCs annually.² Even though this facility is a major source given that it was constructed and has been operating with no permit and no federally enforceable limits on VOC emissions, the Division has proposed to look the other way and permit the facility as a synthetic minor source of emissions. Even though PDC Energy must comply with nonattainment NSR, the Division is doing nothing to assure compliance.

Although PDC and other companies may claim they are constructing oil and gas production facilities with controls in place, the Colorado SIP is clear that unless the controls are subject to federally enforceable limits, they cannot serve to limit a source's potential to emit. In these situations, companies are offering nothing more than a promise of controls. Under the Clean Air Act, promises cannot substitute for permits.

In light of this chronic noncompliance and the Division's failure to properly implement and enforce its SIP, WildEarth Guardians notified seven companies this week of its intent to file citizen enforcement actions to confront permitting violations at 15 oil and gas production facilities in the Denver Metro-North Front Range ozone nonattainment area.³

Attached to this letter is one of our notifications, which was sent to Noble Energy over three of the company's facilities in Weld County. These facilities all have the potential to emit hundreds of tons of VOCs, yet they are currently operating without permits or any federally enforceable limits in place. While Noble may claim it is utilizing emission controls, the reality is, there are no federally enforceable limits in place to assure these controls are operating as part of the sources' design capacities.

All of the targeted facilities were constructed in 2018 and put into production. The companies involved, including Noble Energy, Crestone Peak Resources, Mallard Exploration, Bonanza Creek Energy, Extraction Oil and Gas, PDC Energy, and Great Western Operating, operated their facilities for months before submitting permit applications. Their submittals demonstrate that every facility is currently a major source of VOCs, meaning they should have applied for nonattainment new source review permits prior to construction. However, the

² This preliminary analysis is on the Division's website at https://drive.google.com/file/d/169HCV4aGwNJCEQXmp9Kr2gi_p001W38O/view.

³ More background information, as well as links to WildEarth Guardians' notice letters, is available at <https://wildearthguardians.org/press-releases/wildearth-guardians-to-file-suit-against-oil-and-gas-industry-for-extensive-clean-air-violations-along-colorados-front-range/>.

companies are applying for synthetic minor permits. The Division has yet to fully process these companies' permits. This means they continue to operate as major sources without applying for, obtaining, and complying with nonattainment new source review permits.

In our notifications, we have urged the companies involved to cease operations and apply for and comply with proper permits. If they do not, our intention is to file suit in federal court to secure appropriate relief.

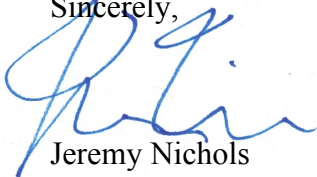
The Clean Air Act's citizen suit provision is a powerful backstop when state and federal regulators choose not to enforce. However, in this case, we would much prefer the Division step up and take responsibility for confronting this widespread permitting noncompliance. Unfortunately, that is not happening. Here, this does not appear to be a matter of the Division choosing not to enforce. Rather, it appears to be a matter of the Division choosing to regulate in a manner that is inconsistent with the Colorado SIP and the Clean Air Act.

While the Air Quality Control Commission weighs stronger emission standards for the oil and gas industry, both within and outside of the Denver Metro-North Front Range nonattainment area, it is critical to act upon this situation. By allowing oil and gas companies to avoid nonattainment new source review requirements, the Division seems to have given industry a major break. Unfortunately, this break has come at the expense of our clean air and public health. By failing to enforce nonattainment new source review, the Division has foreclosed opportunities to secure significant emission reductions, greater transparency, and rigorous assurances of compliance among the industry.

Given this situation, the Commission must ensure that any new rules assure greater transparency, accountability, and more importantly, assurances of significant emission reductions among the oil and gas industry. Further, new rules must be written in such a way as to limit the discretion of the Air Pollution Control Division in order to assure consistent and effective implementation. It is simply not appropriate that dozens, if not hundreds, of oil and gas production facilities are operating without permits. It reflects the Division's willingness to exercise its discretion in a manner that undermines our clean air and public health. This discretion must be curtailed.

Thank you for your attention to this matter.

Sincerely,



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