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May 13, 2019

Jill Hunsaker Ryan
Executive Director
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246

Re: Recommendations and Expectations, Senate Bill 19-181 Air Quality Rulemaking

Dear Director Hunsaker Ryan:

As the Colorado Department of Public Health and Environment, Air Pollution Control Division, and Air Quality Control Commission (“AQCC”) gear up to develop and adopt rules to meet Senate Bill 19-181 (“SB 181”), the undersigned organizations want to share with you our recommendations and expectations of the process.

We believe SB 181 provides enormous opportunities for the Department, Division, and Commission to get a complete handle on air pollution from the oil and gas industry, to make meaningful progress in protecting our clean air, and to ensure that public health is fully safeguarded. These opportunities, however, are yours to seize or yours to squander. We hope that under your leadership, the Department fully seizes the opportunity to do better for Colorado’s air quality than it has ever been done before.

The need to do better is paramount in the Denver Metro-North Front Range region. This nine county region, which includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and parts of Larimer and Weld Counties, is facing an inevitable “bump up” in its ozone nonattainment classification due to an ongoing failure to attain health-based ambient air quality standards.

This “bump up” from a moderate to a serious nonattainment area will trigger the need to adopt more stringent air quality regulations that achieve deeper emission cuts, as required under the Clean Air Act. It is critical that SB 181 rules be developed with a close eye toward meeting these rigorous planning requirements to ensure Colorado attains our ambient air quality standards and protects the health of all Coloradans.

As you move to implement SB 181, we strongly urge you to set and adhere to the following goals, which will ensure that the Department meets the intent of the legislation, achieves compliance with the Clean Air Act, and most importantly helps leave a legacy of healthy air for Coloradans.

- **Process**

We urge you to engage in an inclusive rulemaking process that strives to involve the general public. We urge that to the extent you conduct stakeholder meetings prior to rulemaking, that they be held at times and locations convenient to the working public and in areas that are impacted by air pollution from oil and gas development. We urge you to ensure that Air Division staff strive to present materials and information in plain English and plain Spanish so as to foster extensive engagement from the general public.

We also urge you to transition the Statewide Oil and Gas Hydrocarbon Emission Reductions Initiative (also referred to as the “SHER Initiative”). This Initiative arose out of direction from the AQCC for the Air Pollution Control Division to identify potential emission reductions from the oil and gas industry and to report on the results by January 2020. While the SHER Initiative has generated information that will be useful for the SB 181 rulemaking process, its purpose and function are now largely inconsistent with the mandate of SB 181. We believe it makes sense to transition the SHER process into the SB 181 rulemaking process as quickly as possible.

As for timing of rulemakings, we urge you to move as quickly as possible. We believe it may be worthwhile to bifurcate the rulemaking process. This would involve pursuing an initial rulemaking this fall with the aim of achieving “low hanging fruit” emission controls that can be mobilized quickly and achieve meaningful pollution reductions. Then in the spring of 2020, more aggressive and significant rulemakings should be pursued that may require more time to develop and deliberate.

- **Oil and Gas Air Permitting**

We urge you to immediately provide guidance clarifying that the 90-day “loophole” in the Colorado State Implementation Plan (“SIP”) has not applied and does not apply to major stationary sources. This loophole, which is set forth under AQCC Regulation No. 3, Part B allows oil and gas production facilities to submit applications for construction permits within 90-days after first producing oil and gas. It is clear that this provision only applies to non-major sources that are only required to obtain general construction permits under AQCC Regulation No. 3, Part B and does not apply to sources required to obtain major source permits under AQCC Regulation No. 3, Part D. It is important to note that the State of Wyoming has a similar “loophole” in its air quality regulations, but its provisions clearly state that they do not apply to major stationary sources of air pollution. *See* Wyo. Stat. Ann. § 35-11-801(e). This underscores that the intent of this SIP provision was to allow only non-major sources to delay submitting permit applications, not major sources.

We also urge you to eliminate the 90-day loophole as part of the SB 181 rulemaking process. While the loophole is contrary to the Clean Air Act, the first 90 days of production, as well as pre-production, are the time when emissions intensity is the highest. In other words, this is a period of time when scrutiny and control of air pollution should be at its highest.

We also urge you to develop systems and policy to guide the Division in the review of major stationary source permit applications. It is clear that virtually every new oil and gas well

facility is likely to trigger major source thresholds, particularly in the Denver Metro-North Front Range ozone nonattainment area. The Division can and must rise to the challenge of processing and taking appropriate action on these permit applications.

To this end, we urge you to direct the Division to: 1) Deny permit applications that are incomplete or otherwise fail to provide sufficient information to justify approval; 2) Consistent with AQCC Regulation No. 3, Part D, Section V.A.2, deny permit applications where sources are not in compliance with the SIP or other federally enforceable limits at any other major source they own, operate, or control; 3) Develop guidance to ensure enforceable emissions offsets are secured as a result of major source permitting; and 4) Establish presumptive lowest achievable emission rates (“LAER”) for key sources of VOC emissions at oil and gas production facilities. On this latter direction, we believe the SB 181 rulemaking process is a key path for establishing presumptive LAER.

We further request that as part of your obligation to consider alternative sites, sizes, production processes and environmental control techniques as part of permitting major sources and major modifications in the Denver Metro-North Front Range ozone nonattainment area, that you establish guidelines prohibiting the location of major sources within 2,500 feet of homes and other occupied buildings and areas where people regularly gather (e.g., parks). This will, in part, address the social costs imposed by the construction of major sources and major modifications, as required by AQCC Regulation No. 3, Part D, Section V.A.4.

- **Emissions Inventory**

We urge you to direct the Division to audit its statewide and Denver Metro-North Front Range oil and gas emission inventories using a panel of independent scientists. For several years now, scientists have called into question the accuracy of the Division’s oil and gas emission inventory, particularly in the Denver Metro-North Front Range ozone nonattainment area. A recent presentation by Detlev Helmig, an atmospheric scientist with the University of Colorado, indicates current inventories of oil and gas industry volatile organic compound (“VOC”) emissions are more than twice as low as actual emissions. In 2017, the Division reported total oil and gas industry VOC emissions of 56,200 tons per year, whereas scientific studies report the actual emissions were around 134,000 metric tons, or more than 147,000 tons. *See* Detlev Helmig’s most recent presentation to the Regional Air Quality Council, <https://raqc.egnyte.com/dl/dExSf3T2J1/BoulderAirQualityMonitoringStudy050319.pdf>.

We believe that given discrepancies over the oil and gas emissions inventory, the Division must subject its inventory data to an independent, third-party audit by scientists, including atmospheric, chemical, and/or other appropriate physical scientists. Given that baseline emissions data is critical for understanding whether we are making progress in reducing emissions, as well as critical for demonstrating compliance with the Clean Air Act, we believe this is a very sensible direction to take.

- **Emission Minimization**

A cornerstone of SB 181 is the duty for the AQCC to adopt rules to minimize emissions of methane, VOCs, and nitrogen oxides from oil and gas facilities, including natural gas processing, gathering, storage, and transmission facilities. We urge you to direct the Division and the AQCC to develop and implement rules that are guided by the following principles:

- Lowest Achievable Emission Rates: New and modified oil and gas production facilities and natural gas processing, gathering, storage, and transmission facilities should be required to meet lowest achievable emission rates, regardless of whether they are major sources or constitute major modifications. The Division should develop presumptive LAER for key oil and gas emission points, in particular condensate tanks, separators, loading, and compressor engines. In assessing presumptive LAER, the Division must consider prohibiting flaring and venting of natural gas at all times, as well as consider pneumatic controllers that do not vent gas.
- Pre-production Emissions: The Division must consider pre-production emissions when assessing sources' potential to emit, including emissions from stationary emission points, such as well completions, hydraulic fracturing, tanks used for drilling mud, cuttings, and other substances, and other points. Further, the Division must establish presumptive LAER for pre-production emissions.
- Leak Detection, Inspection, Maintenance, and Monitoring: The Division must prohibit hydrocarbon leaks at all oil and gas production facilities and natural gas processing, gathering, storage, and transmission facilities. The only way to effectively monitor and enforce around hydrocarbon leaks is to establish a blanket prohibition. To this end, the AQCC must adopt rules that ensure leak detection and inspections are conducted as frequently as possible, and that all leaks are immediately reported to the Division. As for continuous monitoring of methane emissions, the Division must require continuous monitoring for all horizontal wells given their large emissions potential. Further, continuous monitoring must be required at all well sites with more than one well and at all well sites within 2,500 feet of occupied dwellings.
- Offsets: We urge you to direct the Division to require enforceable VOC emission offsets for every new or modified oil and gas production facility and natural gas processing, gathering, storage, and transmission facility, regardless of whether the permitting action is for a major source or major modification. Overall, offsets should achieve at least a 1 to 1.1 reduction in VOC emissions. In the Denver Metro-North Front Range nonattainment area, offsets should achieve at least a 1 to 1.15 reduction in VOC emissions. For major stationary sources and major modifications in the nonattainment area, the legally required VOC offset in nonattainment areas will be 1 to 1.2 upon becoming a serious nonattainment area. However we urge you to direct the Division to ensure that new and modified major stationary sources in the nonattainment area having actual VOC emissions of more than 100 tons per year achieve an offset of 1 to 1.5.

We urge you to ensure the Division prioritizes offsets in the form of permanent elimination of emission sources. Offsets will ensure that oil and gas industry methane and VOC emissions are overall minimized.

- Contingency Measures: Contingency measures are required under the Clean Air Act for serious ozone nonattainment areas. *See* 42 U.S.C. § 7511a(c)(9). Given this, we urge you to take advantage of the SB 181 rulemaking process to develop and implement measures to ensure progress in minimizing oil and gas industry emissions if ozone ambient air quality standards continue to be exceeded in the Denver Metro-North Front Range ozone nonattainment area. We urge you to direct the Division to establish a goal of no new ozone exceedances by 2020 and to attain the ozone ambient air quality standards by the end of 2021. We further urge you to direct the Division to seek contingency measures that: 1) Ratchet up offsetting requirements for new and modified sources by at least 50% if ozone exceedances occur in 2020; 2) Prohibit the development of new and modified major stationary sources; and 3) If the ozone standards are not attained by the end of 2021, prohibit the construction of all new and modified oil and gas production facilities.

- **Federal Enforceability**

We urge you to ensure that any rulemaking undertaken under SB 181 is incorporated into the Colorado SIP and approved by the U.S. Environmental Protection Agency in order to ensure compliance with Clean Air Act nonattainment planning requirements. This will ensure that any rules adopted pursuant to SB 181 are enforceable by the federal government, as well as by citizens. Further, it will ensure that the rules contain sufficient monitoring, recordkeeping, and reporting to ensure their overall effectiveness and compliance with federal clean air law.

- **Climate Change**

In addition to the passage of SB 181, the Colorado Legislature this year also passed landmark climate legislation, HB 1261, requiring the AQCC to adopt rules that assure timely progress toward meeting aggressive statewide greenhouse gas reduction goals. While SB 181 will directly lead to further reductions in methane, which is a potent greenhouse gas, we also urge you to ensure that as SB 181 rules are developed with an eye toward indirectly limiting overall greenhouse gas emissions from the oil and gas sector in order to make progress toward meeting HB 1261. Requiring electrification of compressor engines and pumps, limiting flaring, and other strategies to meet HB 1261 should be considered under the SB 181 rulemaking.

We thank you for your leadership around the SB 181 rulemaking progress and your commitment to clean, healthy air. We look forward to working with you and your staff on these matters. Please contact us with any questions or concerns. Thank you.

Sincerely,



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