

DISTRICT COURT, ADAMS COUNTY, COLORADO		
Court Address: 1100 JUDICIAL CENTER DRIVE, BRIGHTON, CO, 80601		DATE FILED: December 2, 2022 10:48 PM
Plaintiff(s) CENTER FOR BIOLOGICAL DIVERSITY et al.		CASE NUMBER: 2022CV30476
v.		
Defendant(s) COLORADO DEPT OF PUBLIC HEALTH AND ENVT et al.		
		△ COURT USE ONLY △
		Case Number: 2022CV30476
		Division: W Courtroom:
Order re Plaintiffs' Motion for Summary Judgment		

This matter is before the Court on Plaintiffs' Motion for Summary Judgment, filed August 17, 2022. Defendants filed their Response on September 7, and Plaintiffs filed their Reply September 21. Having reviewed the briefs and relevant legal authority, the Court finds and orders as follows:

The parties agree Defendants are in violation of the Colorado Air Pollution Prevention and Control Act, specifically under C.R.S. § 25-7-114.5(4), which provides, "Applications for renewable operating permits shall be approved or disapproved within eighteen months after the receipt of the completed permit application...."

The parties also agree Plaintiffs have standing to seek judicial review in this Court regarding Defendants' failure to comply under C.R.S. § 25-7-114.5(7)(b), which provides, "Failure of the division or commission, as the case may be, to grant or deny the permit application or permit renewal application within the time prescribed shall be treated as a final permit action for purposes of obtaining judicial review in the district court in which the source is located...."

Due to Defendants' lack of compliance, Plaintiffs contend the Court should enter a forthwith order with strict timeframes for compliance. Defendants do not challenge this proposal conceptually, but request more lenient timeframes to account for the complexities of the permitting and review process and difficulties with staffing.

The Court recognizes that air quality and the environmental impact from the businesses that require permitting are of utmost concern to the legislature and the citizens of Colorado. Colorado prides itself on the natural environment and beauty surrounding us. With the enactment of the Colorado Air Pollution Prevention and Control Act (Air Control Act) the legislature set lofty goals for air quality. See C.R.S. § 25-7-102.

Plaintiffs seek to uphold Defendants' responsibilities and accountability in implementing and administering the Air Control Act permit program. The timeframes outlined in the statute are clear and definitive, and Defendants clearly are violating them. While Defendants concede they are in violation, they state, "The work required to renew the permits for the Wattenberg Gas Processing Plan, Sinclair Denver Products Terminal, Phillips 66 Denver Terminal, and East Regional Landfill (collectively "Four Facilities"), however, is not simple or straightforward.

Administering an operating permit for each of the Four Facilities is among the most complex permitting work accomplished by air quality regulators under one of the more complex regulatory schemes in state or federal law." Further, Defendants note they struggle with obtaining and maintaining staffing for the permitting process and have a significant backlog.

Actual implementation of ambitious environmental goals surely may be more complicated than setting them forth in writing. This does not excuse Defendants' admitted failure to meet their obligations, but it is understandable and, to some extent, recognized within the Air Control Act. "[T]he purpose of this article 7 to require the use of all available practical methods which are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution throughout the state of Colorado...." C.R.S. § 25-7-102.

Briefs on the motion concede Defendants are in violation of the statute. The dispute between the parties is the appropriate remedy (in their Joint Proposed Trial Management Order filed December 1, 2022, the parties reinforce that the sole issue is of remedy). The purpose of judicial review in this instance is, "...to require that action be taken on such application by the commission or division, as appropriate, without additional delay." C.R.S. § 25-7-114.5(7)(b). The Court finds that it can address remedy on the Motion and briefs, and without further delay for purposes of trial.

In determining the appropriate remedy, the Court must balance Plaintiffs' desire and that of the citizens of Colorado to have the Air Control Act implemented with Defendants' concerns about feasibility.

For each location, Plaintiffs submit that the proposed permit should be delivered to the EPA for review within 90 days of the Court's order (or within 30 days for the East Regional Landfill, only), and the final permit should be issued within 15 days of the EPA's 45-day review, if there is no objection.

For the Wattenberg Gas Processing Plan, Defendants submit, "On August 3, 2007, the Division received a Title V permit renewal application for the Wattenberg Gas Processing Plant. The Division is currently evaluating and reviewing the permit renewal application and estimates that its draft permit will be finalized and delivered to EPA for review and comment by March 1, 2024."

For the Sinclair Denver Products Terminal, Defendants submit, "The Denver Products Terminal submitted its most recent operating permit renewal application on May 15, 2015. The Division is currently evaluating and reviewing the 8 permit renewal application and estimates that its draft permit will be finalized and delivered to EPA for review and comment by April 1, 2023."

For the Phillips 66 Denver Terminal, Defendants submit, "On July 1, 2015, the Division received Title V permit renewal application for the Phillips 66 Denver Products Terminal. The Division is currently evaluating and reviewing the permit renewal application and estimates that its draft permit will be finalized and delivered to EPA for review and comment by April 1, 2023."

For the East Regional Landfill, Defendants submit, "The Division is currently reviewing and responding to public comments received during the public comment period and anticipates submitting the draft permit to EPA by September 15, 2022." In the Joint Proposed Trial Management Order, Defendants suggest this permit is resolved and no further action is needed.

CONCLUSION AND ORDER:

The Court finds Defendants are in violation of the Air Protection Act and that, except for the Wattenberg Gas Processing Plan, the parties' competing deadlines for the submission of proposed permits are not significantly different. Defendants have not articulated a persuasive reason for delaying the proposed permit for the Wattenberg Gas Processing Plan for 11 months longer than the other permits. The Court further finds and orders:

1. Defendants have not complied with their obligations under the Clean Air Act and the timelines put in place for the permitting process. Defendants are in violation of state law (C.R.S. § 25-7-114.5(4)).
2. The proposed permits for the Wattenberg Gas Processing Plant, the Denver Products Terminal, and the Phillips 66 Denver Terminal shall be delivered to the EPA for review by April 1, 2023, and final permit shall be issued within 15 days after the EPA's 45-day review, if no objection.
3. Defendants have represented that the East Regional Landfill proposed permit would be filed by September 15, 2022. If so, the EPA 45 day review period should also be complete. Defendants shall issue the final permit within 15 days of this Order, if not objected to by the EPA.
4. Should the EPA object to any of Defendants' proposed permit actions for the Wattenberg Gas Processing Plant, the Denver Products Terminal, the Phillips 66 Denver Terminal, or the East Regional Landfill, the parties shall promptly confer and, within 28 days of the EPA's objection, shall file a joint motion to govern further proceedings.

5. The Court anticipates this Order resolves all matters in dispute for purposes of the one-day court trial set for January 6, 2023, and that this case may be closed at this time. If the parties agree, they shall file a stipulation to vacate trial and pretrial conferences and to close the case. Otherwise, the trial management conference set for December 8, 2022, will proceed and the parties can address outstanding issues at that time.

Issue Date: 12/2/2022

A handwritten signature in black ink, appearing to read 'Kyle Seedorf', written in a cursive style.

KYLE SEEDORF
District Court Judge