BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO

IN THE MATTER OF PROPOSED REVISIONS, REGULATIONS NUMBERS 3 AND 7

PREHEARING STATEMENT OF THE CLEAN AIR, CLIMATE, AND HEALTH COALITION

Pursuant to Air Quality Control Commission ("AQCC") procedural regulations, the Clean Air, Climate, and Health Coalition ("CACHC") hereby submits the following Prehearing Statement in the matter of proposed revisions to Air Quality Control Commission ("AQCC") Regulations Numbers 3 and 7.[1]

EXECUTIVE SUMMARY

CACHC supports many of the revisions to AQCC Regulations No. 3 and 7 proposed by the Air Pollution Control Division ("APCD"). However, the APCD's proposal can and must be strengthened both to ensure more effective and expeditious progress toward attaining the national ambient air quality standards ("NAAQS") for ground-level ozone and to fulfill the mandate of Senate Bill 19-181 ("SB181") that harmful emissions be minimized from the oil and gas sector to protect public health and the climate in Colorado. The APCD's proposal must be strengthened to ensure consistency with both the Clean Air Act and laws and regulations governing oil and gas operations in the State of Colorado. Additionally, the APCD proposal should address achieving progress toward House Bill 1261 ("HB1261"), which requires the AQCC to adopt rules that assure timely progress toward meeting aggressive statewide greenhouse gas reduction goals.

Accordingly, we urge the AQCC to closely scrutinize the APCD's proposed rules and strengthen them as part of this rulemaking process. Below in our Prehearing Statement, we detail key areas where we believe the AQCC could make small, yet significant, improvements to the APCD's proposal.

The AQCC has broad authority to adopt regulations that it believes are warranted, necessary, or otherwise appropriate in light of the rulemaking record. *See* AQCC Procedural Rules, Section V.F.10. The Colorado Air Quality Control Act makes clear that the AQCC must "foster the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state[.]" C.R.S. § 25-7-102. To that end, the AQCC must enact regulations to "achieve the maximum practical

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[1] The Clean Air, Climate, and Health Coalition includes the organizations WildEarth Guardians, Colorado Rising, 350 Colorado, Physicians for Social Responsibility—Colorado, Mothers Out Front—Colorado, The Lookout Alliance, Fort Collins Sustainability Group, and Larimer Alliance for Health, Safety and Environment.

degree of air purity in every portion of the state [and] attain and maintain the national ambient air quality standards[.]" *Id*.

Accordingly, the AQCC is not bound to adopt only proposed regulations presented by the APCD, but rather is bound to ensure that its rules fully safeguard clean air and attain the NAAQS. Given this, we urge the AQCC to adopt a stronger set of rules that fully comply with the Clean Air Act, SB 181 and HB1261, and that more effectively safeguard public health and air quality throughout the State of Colorado.

TIME NEEDED FOR TESTIMONY

CACHC estimates it will need 1.5 hours to present testimony, any potential cross-examination, and rebuttal.

STATEMENT OF FACTUAL AND LEGAL ISSUES WITH THE PROPOSED RULES

I. Introduction.

Colorado's health and air quality is at serious risk due to unchecked volatile organic compound ("VOC") and nitrogen oxide ("NOx") emissions from the oil and gas industry. As developed has ramped up considerably over the last several years, emissions have risen, fueling high ground-level ozone levels and increasingly threatening the health of Coloradans.

As a recent Colorado Department of Public Health and Environment-supported study has confirmed, significant public health risks exist for those who are within 2,000 feet of oil and gas development activities, particularly during flowback operations. *See* Exhibit 1, ICF, "Final Report: Human Health Risk Assessment for Oil and Gas Operations in Colorado" (Oct. 17, 2019). These risks exist due to emissions of VOCs. This study is the latest in a series of studies to confirm that acute and chronic health risks exist for those in proximity to oil and gas development operations in Colorado.

Worsening these risks, ground-level ozone levels continue to rise above the NAAQS in the Denver Metro/North Front Range ozone nonattainment area. According to the latest update by the Regional Air Quality Council, monitors throughout the nonattainment area continue to violate both the 2008 and the 2015 ozone NAAQS. As of September 30, 2019, eight monitoring sites registered violations of the 2015 NAAQS of 70 parts per billion and three monitoring site continued to register violations of the 2008 NAAQS of 75 parts per billion. *See* Exhibit 2, APCD Ozone Summary Table (Sept. 30, 2019).

2017-2019 Eight-Hour Ozone Design Values for Denver Metro/North Front Range Ozone Monitors.

Monitor	2017-2019 Design Value (in parts per billion)
Highland	74
Boulder Reservoir	73
Mines Peak	71
Chatfield State Park	78
Welch	71
Rocky Flats North	76
NREL	76
Fort Collins West	75

As a result of the region's failure to attain the 2008 ozone NAAQS, the U.S. Environmental Protection Agency to "bump up" the Denver Metro/North Front Range nonattainment area from a "moderate" to a "serious" nonattainment area. *See* 84 Fed. Reg. 41,674 (Aug. 15, 2019). While a reclassification to a serious nonattainment area will provide new and critical tools to the APCD to better control the region's air pollution, it also reflects that the oil and gas industry's emissions are not controlled at a level that is commensurate with confronting the region's public health crisis.

Worse, unless major VOC and NOx emission cuts are made very soon within the oil and gas sector, the Denver Metro/North Front Range nonattainment area's air quality only stands to significantly worsen. Based on current attainment deadlines imposed by the Clean Air Act and ongoing high ozone levels, it appears there is very little possibility the region will attain the 2015 NAAQS or the 2008 NAAQS by applicable deadlines.

To attain the 2008 NAAQS by July 2021, which is the next attainment date, will require maintaining eight-hour ozone concentrations at below 70 parts per billion over the next two years. To attain the 2015 ozone NAAQS by August 2021 will require maintaining eight-hour ozone concentrations at below 65 parts per billion for the next two years. Overall, in 2020 and beyond, eight-hour ozone concentrations must be consistently reduced to levels below 70 parts per billion at every monitor in the nonattainment area. To our knowledge, this has not been accomplished since the beginning of ozone monitoring in the Denver Metro/North Front Range region.

Denver Metro/North Front Range Ozone Nonattainment Classifications, Attainment Deadlines, and Likelihood of Attainment

Ozone NAAQS	Current Classification	Attainment Deadline	On Track to Attain?	Next Classification	Attainment Deadline	On Track to Attain?
2008	Moderate	July 20,2018	No	Serious	July 20, 2021	No
2015	Marginal	August 3, 2021	No	Moderate	August 3, 2024	??

Compounding the problem is that there is serious doubt over whether the APCD is relying on accurate emissions inventories to estimate oil and gas industry emissions and to model their impacts to air quality along the Front Range. A recent presentation by Detlev Helmig, an

atmospheric scientist with the University of Colorado, indicates current inventories of oil and gas industry VOC emissions in the Denver Metro/North Front Range region 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* Exhibit 3, Helmig, D., "Air Quality Impacts from Oil and Natural Gas Emissions in the Northern Colorado Front Range," presentation to the Regional Air Quality Council (May 3, 2019). Importantly, these studies found there is no support for any conclusion that oil and gas industry VOC or methane emissions have declined.

Coupled with the requirements of the Clean Air Act, SB181, and HB1261, it is clear that the AQCC must significantly strengthen air quality regulations for the oil and gas sector. To this end, we urge the AQCC to set a goal of minimizing emissions such that public health and the climate are fully protected.

II. Specific Provisions of the Proposed Rules That CACHC Supports

We support the APCD's overall proposal to strengthen air quality regulations related to the oil and gas sector. There is no question that emissions form the industry are significantly interfering with attainment of the ozone NAAQS in the Denver Metro/North Front Range ozone nonattainment area, as well as endangering public health and welfare throughout the State of Colorado. In most respects, the proposed rules are simply modernizing Colorado's system of regulating emissions from the oil and gas industry. Many rules currently on the books are outdated, do not address the current technological capabilities of the industry, and do not effectively respond to the air quality problems presented by the boom in horizontal drilling and hydraulic fracturing that has occurred over the past decade. The requirements of the Clean Air Act, coupled with the mandate of SB181, compel stronger, more robust, and effective regulation. We specifically support and urge the AQCC to adopt the following critical updates to regulations proposed by the APCD.

A. Eliminating the 90-day Loophole

The elimination of the 90-day loophole is a critical step toward ensuring Colorado's air quality regulations are consistent with the Clean Air Act and to ensure effective oversight and permitting of the oil and gas industry.

The Colorado SIP currently allows companies to forego submitting construction permit applications for oil and gas production facilities until no later than 90 days after first production. *See* AQCC Regulation No. 3, Part B, Section II.D.7.[2] There is no other industrial sector in the state that is allowed to delay submitting construction permit applications after constructing and beginning operation of a source of air pollution. What's more, these provisions were enacted many years ago when the air quality impacts of the oil and gas industry were far less intensive

[2] The exemption actually allows companies to delay submitting permitting applications until annual pollutant emission notices ("APENs") are required to be submitted. APENs for oil and gas production facilities must be submitted within 90 days after first production. *See* AQCC Regulation No. 3, Part A, Section II.D.1.lll. The APCD's proposed rule changes would not affect the timing of APEN submission.

and problematic. At the time, it was deemed that oil and gas production facilities had negligible emissions. We know now that this is not the case.

Importantly, the 90-day loophole is currently being misinterpreted and abused by the oil and gas industry. While the 90-day loophole applies in the context of general construction permitting requirements set forth under AQCC Regulation No. 3, Part B, it does not apply in the context of major source permitting requirements set forth under AQCC Regulation No. 3, Part D. The Colorado SIP is extremely clear that major sources must obtain permits prior to construction, stating "Any new major stationary source or major modification [] shall not begin actual construction in a nonattainment, attainment, or unclassifiable area unless a permit has been issued containing all applicable state and federal requirements." AQCC Regulation No. 3, Part D, Section I.A.1. Unfortunately, industry has interpreted the 90-day loophole to allow even major sources to delay submitting permit applications until after they have constructed and begun operation.

As we explained to the AQCC earlier this year, this misinterpretation and abuse of the 90-day loophole has allowed hundreds of oil and gas production facilities to evade major source permitting requirements and to release more air pollution than they would otherwise be allowed to emit.

This abuse and misinterpretation underscores that the 90-day loophole in the Colorado SIP is fundamentally contrary to the Clean Air Act. Although originally approved by the U.S. Environmental Protection Agency as part of the SIP, it is now clear that the 90-day loophole should never have been approved.

Under the Clean Air Act, a SIP revision shall not "interfere with any applicable requirements concerning attainment and reasonable further progress [] or any other applicable requirement of this chapter." 42 U.S.C. § 7410(l). Here, the 90-day loophole not only interferes with requirements concerning attainment, but also interferes with applicable preconstruction permitting requirements.

In allowing sources of air pollution to construct and begin operation prior to obtaining permits, the SIP explicitly allows sources of air pollution to operate (i.e., pollute) with no oversight of emissions. This means that in the context of oil and gas production facilities, there is no way to ensure emissions do not interfere with requirements concerning attainment or reasonable further progress.

Further, under the Clean Air Act, a SIP must include a permitting program regulating the modification and construction of stationary sources "to assure that national ambient air quality standards are achieved" and must include a major permitting program pursuant to parts C and D of the Clean Air Act. 42 U.S.C. § 7410(a)(2)(C). In allowing sources of air pollution to construct and begin operation prior to obtaining permits, the SIP explicitly fails to properly regulate the construction of stationary sources to assure achievement of the NAAQS. Further, if the 90-day loophole is interpreted in such a way as to allow major sources to avoid submitting permit applications prior to construction and operation, then the SIP plainly interferes with major source permitting requirements set forth under parts C and D of the Clean Air Act.

The oil and gas industry has taken the position that they are only able to accurately calculate emissions for permitting purposes after beginning production. However, this argument is simply not true. Companies are already submitting permit applications prior to beginning production using reliable and accurate emissions estimates. Crestone Peak, for example, submitted an application on April 2, 2019 for a production facility with a proposed startup date of December 1, 2019. *See* Exhibit 4, Crestone Peak Resources Operating, LLC, Facility Permit Application, Regnier Farms 19H-B268 (April 2, 2019). According to the company, the permit application was submitted "based on sampling conducted at a representative facility." This is one of many examples demonstrating that the oil and gas industry is more than capable of obtaining construction permits prior to constructing and operating sources of air pollution. The oil and gas industry must responsibly provide best estimates of emissions prior to constructing sources of air pollution, as is required by other emitting industries.

The elimination of the 90-day loophole doesn't just make good policy sense, it's legally compelled. We urge the AQCC to adopt the APCD's proposed elimination of AQCC Regulation No. 3, Part B, Section II.D.7. Although elimination of the loophole will not address past abuse of the 90-day loophole and any noncompliance with major source permitting requirements under the Colorado SIP, it will ensure that, moving forward, there is effective oversight and regulation of oil and gas production facility emissions to ensure protection of public health and attainment of the NAAQS.

B. Moving From Systemwide Tank Regulation to Tank-by-Tank Regulation in the Denver Metro/North Front Range Ozone Nonattainment Area

Under the APCD's proposed rules, the systemwide approach to regulating tank emissions in the Denver Metro/North Front Range ozone nonattainment area would be phased out by April 30, 2020. This is not only a good policy move, it is also compelled by the Clean Air Act as the current systemwide approach to regulating tank emissions, which has been incorporated into the SIP, does not assure effective regulation of emissions to assure achievement of the NAAQS.

The key concern with the systemwide approach to controlling tank emissions under AQCC Regulation No. 7 is that it fails to regulate specific sources of air pollution such that attainment of the NAAQS is assured in relation to the operation of every tank. Under the Clean Air Act, SIPs must include enforceable limitations "as may be necessary or appropriate to meet the applicable requirements of [the Clean Air Act]" and include a program for the enforcement of these limitations "to assure that national ambient air quality standards are achieved." 42 U.S.C. §§ 7410(a)(2)(A) and (a)(2)(C). With the systemwide approach, operators are free to pick and choose which tanks to control—or not control—even though operation of certain tanks may interfere with applicable requirements of the Clean Air Act or cause or contribute to exceedances of the NAAQS. The systemwide approach could allow the most polluting tanks to remain uncontrolled, potentially jeopardizing attainment of the ozone NAAQS in the Denver Metro/North Front Range nonattainment area or otherwise interfering with other Clean Air Act requirements. What's more, certain communities and residents are likely to be unduly impacted by air pollution. Fundamentally, the systemwide approach fails to assure compliance with applicable requirements of the Clean Air Act and to assure achievement of the NAAQS.

We support the APCD's move to a clearer, more consistent, and more specific approach to regulation of tank emissions. Not only does it assure compliance with the Clean Air Act, but it assures effective emission reductions from tanks.

C. Consistent Statewide Approach to Emission Regulation

We support the APCD's proposal to assure consistent emission reductions under AQCC Regulation No. 7, particularly from tanks, on a statewide basis. The need to assure consistent, statewide regulation is twofold:

First, there is a need to assure consistent safeguards for public health and air quality are in place across Colorado. Creating tiers of protection where certain parts of the state are held to weaker standards will only create further health risk for citizens within these areas. This is underscored by SB181, which applies statewide, clearly signaling the Legislature's intent that the AQCC's efforts to minimize emissions apply statewide.

There is no reason that Coloradans outside the Denver Metro/North Front Range ozone nonattainment area should be denied the same level of air quality protections being implemented within the nonattainment area. The AQCC must steer clear of endorsing approaches to air quality regulation that apply unequally and stand to leave Coloradans more vulnerable than necessary.

Second, there is a need to remain vigilant and proactive in safeguarding clean air across Colorado. As the AQCC knows, ozone levels outside the Denver Metro/North Front Range nonattainment area regularly exceed the NAAQS, particularly in areas of western Colorado impacted by oil and gas development. While current 8-hour ozone design values (i.e., three-year average of annual fourth maximum 8-hour concentration) still measure below the current NAAQS, theyare increasingly approaching nonattainment levels. In fact, six monitors in western Colorado have design values within 90% of the NAAQS and two within 95%. *See* Exhibit 2.

2017-2019 Eight-hour Ozone Design Values for Western Colorado Ozone Monitors.

Monitoring Site	2017-2019 Design Value (ppb)	% of 2015 NAAQS (70 ppb)
Rifle	59	84%
Palisade	65	93%
Cortez	62	89%
Gothic	67	96%
Ignacio	66	94%
Bondad	66	94%
Mesa Verde NP	67	96%
Rangely	65	93%

It's critical to highlight that the State of New Mexico requires new air quality regulations be adopted to curtail ozone-forming emissions whenever concentrations exceed 95% of the

NAAQS. See NMSA 1978 § 74-2-5.3.A.[3] It is informative that neighboring states are taking a proactive approach to curbing ozone forming emissions.

Enacting regulations should be inherently proactive. Air quality regulation and protection of public health, particularly within the oil and gas sector, should not come only when there is a crisis. The AQCC should be forward-looking and ensure consistent safeguards are in place to prevent exceedances of the ozone NAAQS and overall protect public health across Colorado, consistent with its legislative mandate to ensure "the maximum practical degree of air purity in every portion of the state." C.R.S. § 25-7-102

D. Oil and Gas Operations Emissions Inventory

We support the APCD's oil and gas industry emission inventory requirements proposed under AQCC Regulation No. 7, Part D, Section V. These inventory requirements will ensure the APCD and the AQCC have access to complete information necessary to inform future regulation and oversight of the oil and gas sector. While we are concerned the APCD may lack the resources and expertise to assure effective quality oversight of data reported by the oil and gas industry, we believe the proposed regulations set the stage for the agency to ultimately achieve a high level of oversight that assures the most accurate emissions data is submitted.

Although we support the proposed emission inventory requirements, we urge the APCD and the AQCC to ensure that reported emissions data are made readily available to the public. To this end, we strongly support APCD's commitment to make this data available online in an understandable and accessible format. Keeping the public informed of oil and gas industry emissions is critical for fostering broader understanding and awareness of the issues and for encouraging more informed public engagement.

III. Provisions of the Proposed Rules That the AQCC Must Strengthen

The draft rule language proposed by the Division represents an important step toward controlling oil and gas industry air pollution and assuring protection of health in Colorado. That said, the proposed rules can and must be improved and strengthened in a number of regards. Overall, we urge the AQCC to improve the following proposed rules, move further to effectively minimize emissions consistent with SB181, and assure full compliance with the Clean Air Act. Below we detail our concerns and our recommendations for AQCC action.

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[3] The New Mexico statute specifically says:

> If the environmental improvement board or the local board determines that emissions from sources within its jurisdiction cause or contribute to ozone concentrations in excess of ninety-five percent of a national ambient air quality standard for ozone, it shall adopt a plan, including regulations, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard.

NMSA 1978 § 74-2-5.3.A.

A. Definition of "Commencement of Operation"

1. AQCC Regulation No. 3 Definition of "Commencement of Operation"

The current definition of "Commencement of Operation" is incorporated into the SIP and it governs the timing of preliminary permit analyses prepared by the APCD and other notifications. The current definition states, "A new source commences operation when it first conducts the activity that it was designed and permitted for (i.e., producing cement or generating electricity)." AQCC Regulation No. 3, Part A, Section I.B.12.

The APCD is proposing to add an entirely new section to the definition of "Commencement of Operation" that is specific to oil and gas well production facilities. As drafted, the proposed definition is vague and unenforceable, and it fails to meet the intent of the current definition of "Commencement of Operation." It also appears contrary to SB181's intent that the AQCC minimize emissions from pre-production activities. As SB181 makes clear, the AQCC now has explicit authority to regulate emissions "during pre-production activities, drilling, and completion." C.R.S. § 25-7-109(10)(c).

Under the APCD's proposal, commencement of operation would occur when "permanent production equipment is in place and product is consistently flowing to sales lines, gathering lines or storage tanks from the first producing well[.]" Proposed AQCC Regulation No. 3, Part A, Section I.B.12. As written, the rule would allow sources to install less than complete permanent production equipment and claim that permanent production equipment is not in place and that commencement of operation had not occurred. The rule would also allow sources to inconsistently produce and claim that commencement of operation had not occurred.

We appreciate the APCD's intent to provide more specific direction related to when oil and gas production facilities commence operation. However, if a specific definition is to be provided for what "Commencement of Operation" means for the oil and gas industry, the AQCC should adhere to the intent of the current definition of "Commencement of Operation" under AQCC Regulation No. 3 and determine that commencement of operations at oil and gas well production facilities occurs when the facility first conducts the activity that it was designed and permitted for. This would mean that commencement of operation would occur when oil and/or gas is first extracted from a well.

***Recommended Action*:** The APCD's current proposal would add the following language to AQCC Regulation No. 3, Part A, Section I.B.12:

> For oil and gas well production facilities, commencement of operations is the date permanent production equipment is in place and product is consistently flowing to sales lines, gathering lines or storage tanks from the first producing well at the stationary source. Production occurring during well completion activities which is routed to temporary production equipment is considered to occur prior to commencement of operation. Commencement of operation is the date when production from the initial zones of the first producing well began consistently flowing to the permanent production equipment, even if more zones will be completed later.

We urge the AQCC to modify the language of the APCD's proposal as follows:

> For oil and gas well production facilities, commencement of operations is the date ~~permanent~~ production equipment is in place and product is ~~consistently~~ flowing to sales lines, gathering lines or storage tanks from ~~the first producing~~ any well at the stationary source. ~~Production occurring during well completion activities which is routed to temporary production equipment is considered to occur prior to commencement of operation. Commencement of operation is the date when production from the initial zones of the first producing any well began consistently flowing to the permanent production equipment, even if more zones will be completed later~~.

2. AQCC Regulation No. 7 Definition of "Commencement of Operation"

We have similar concerns with the APCD's proposed definition of "Commencement of Operation" in AQCC Regulation No. 7. *See* Proposed AQCC Regulation No. 7, Part D, Section I.B.7 and Part D, Section II.A.6. The APCD is proposing to add this definition both as part of the SIP and as part of its suite of state-only oil and gas regulations.

Under the APCD's proposed revisions to Regulation No. 7, "Commencement of Operation" would govern when pollution controls must be installed to control emissions from storage tanks and other sources at oil and gas production facilities. For instance, under the proposed revisions, new tanks would have to comply with emission control requirements "by commencement of operation." Proposed AQCC Regulation No. 7, Part D, Section I.D.3.a. The APCD's proposed definition is nearly identical to the definition proposed under AQCC Regulation No. 3.

Under the APCD's proposal, commencement of operation would occur when "permanent production equipment is in place and product is consistently flowing to sales lines, gathering lines or storage tanks form the first producing well[.]" Proposed AQCC Regulation No. 7, Part D, Section I.B.7. As written, the rule would allow sources to install less than complete permanent production equipment and claim that permanent production equipment is not in place and that commencement of operation had not occurred. The rule would also allow sources to inconsistently produce and claim that commencement of operation had not occurred. Overall, the language lacks clarity and enforceability.

With regards to the APCD's proposal to include the proposed definition into the SIP, this raises concerns that the definition, as proposed, is not enforceable under the Clean Air Act. Enforceability is a key element of SIPs. The Clean Air Act explicitly states that SIPs must contain, "***enforceable*** emissions limitations and other control measures." 42 U.S.C. § 7410(a)(2)(A) (emphasis added). In referring to section 110(a)(2), the EPA stated that "[m]easures are enforceable when they are duly adopted, and specify ***clear, unambiguous, and measurable requirements***." State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 Fed. Reg. 13,568 (April 16, 1992) (emphasis added). Here, the use of the terms "permanent" and "consistently" are not clear or unambiguous.

Regardless, the point at which the oil and gas industry must be required to control emissions from storage tanks and other sources should be the point at which tanks or other sources are installed and begin releasing air pollution, regardless of whether there is "consistent" production. If the point is to minimize emissions consistent with SB181, then the Division must ensure that controls are installed, operating, and effectively controlling emissions as soon as tanks or other sources begin releasing pollution. Especially given that SB181 provides the AQCC authority to minimize pre-production emissions, there is no reason for delaying the installation and operation of pollution controls at oil and gas production facilities.

We support the APCD's conclusion that there is a need to develop a more refined threshold for determining when operators must be required to control emissions from tanks and other sources at oil and gas production facilities. We also support the APCD's finding that the definition of "Commencement of Operation" must be incorporated into the SIP. However, we again urge the AQCC to adhere to the intent of the current definition of "Commencement of Operation" found in Regulation No. 3 and determine that commencement of operations at oil and gas well production facilities occurs when the facility first conducts the activity that it was designed and permitted for. This would mean that commencement of operation would occur when oil and/or gas is first extracted from a well.

***Recommended Action*:** The APCD's current proposal would add the following language to AQCC Regulation No. 7, Part D, Section I.B.7 and Part D, Section II.A.6.:

> "Commencement of Operation" for oil and gas well production facilities is the date permanent production equipment is in place and product is consistently flowing to sales lines, gathering lines or storage tanks from the first producing well at the stationary source. Production occurring during well completion activities which is routed to temporary production equipment is considered to occur prior to commencement of operation. Commencement of operation is the date when production from the initial zones of the first producing well began consistently flowing to the permanent production equipment, even if more zones will be completed later.

We urge the AQCC to modify the language of the APCD's proposal as follows:

> "Commencement of Operation" for oil and gas well production facilities is the date ~~permanent~~ production equipment is in place and product is ~~consistently~~ flowing to sales lines, gathering lines or storage tanks from ~~the first producing~~ any well at the stationary source. ~~Production occurring during well completion activities which is routed to temporary production equipment is considered to occur prior to commencement of operation. Commencement of operation is the date when production from the initial zones of the first producing any well began consistently flowing to the permanent production equipment, even if more zones will be completed later.~~

B. Inconsistent Storage Tank Emissions Regulation

We support the APCD's proposal to establish across-the-board control requirements for storage tanks. However, we are concerned the proposed control thresholds are arbitrarily inconsistent and will not serve to minimize emissions consistent with SB181.

As we understand the draft rule language, the APCD is proposing to revise the SIP and amend AQCC Regulation No. 7 to require controls for all storage tanks that have uncontrolled emissions of more than four tons/year of VOCs, and to establish a "state-only" rule that requires controls for all storage tanks that have uncontrolled emissions of two tons/year.

We oppose the APCD's attempt to establish two tiers of accountability around storage tank emissions. As we read the draft rule language, the four ton/year threshold for controls would become part of the Colorado SIP and therefore be federally enforceable (i.e., enforceable by the EPA and citizens). The two ton/year threshold would only be a part of state regulations and therefore not federally enforceable (i.e., only enforceable by the APCD).

The difference between federally enforceable and non-federally enforceable is not trivial. By incorporating standards into the SIP, the APCD empowers heightened oversight by enabling the EPA and citizens to play a role in scrutinizing and enforcing compliance. This gives a much-needed boost to the capacity of the APCD and also ensure a higher level of accountability.

To this end, we strongly urge the AQCC to establish an across-the-board SIP limit of two tons/year for tanks statewide. Given their impact to air quality and public health, and the need to minimize emissions under SB181, it is important and makes more sense to control emissions from all tanks that have uncontrolled VOC emissions of two tons/year. Clearly the two ton/year threshold is feasible and reasonable. And by incorporating it into the SIP, the AQCC ensures a high level of accountability and compliance, as well as effective minimization of emissions.

***Recommended Action*:** The APCD's current proposal would revise the Colorado SIP at AQCC Regulation No. 7, Part D, Section I.D.3 and Part D, Section I.D.3.c. as follows:

> Owners or operators of storage tanks with uncontrolled actual emissions of VOC equal to or greater than four (4) tons per year based on a rolling twelve-month total must collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves an average VOC control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for VOC.
> ….
>
> A storage tank not otherwise subject to Sections I.D.3.a. or I.D.3.b. that increases uncontrolled actual emissions to four (4) tons per year VOC or more on a rolling twelve month basis after March 1, 2020, must be in compliance within sixty (60) days of the first day of the month in which the storage tank VOC emissions exceeded four (4) tons per year on a rolling twelve-month basis.

We urge the AQCC to modify the language of the APCD's proposal as follows:

> Owners or operators of storage tanks with uncontrolled actual emissions of VOC equal to or greater than ~~four (4)~~ two (2) tons per year based on a rolling twelve-month total must collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves an average VOC control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for VOC.
>
> ….
>
> A storage tank not otherwise subject to Sections I.D.3.a. or I.D.3.b. that increases uncontrolled actual emissions to ~~four (4)~~ two (2) tons per year VOC or more on a rolling twelve month basis after March 1, 2020, must be in compliance within sixty (60) days of the first day of the month in which the storage tank VOC emissions exceeded ~~four (4)~~ two (2) tons per year on a rolling twelve-month basis.

We also urge the AQCC to consider striking all or portions of the APCD's proposal at AQCC Regulation No. 7, Part D, Section II.C.1.c. This section would establish the state-only two ton/year threshold for tanks. If the SIP is revised to establish a two ton/year threshold for tanks, then there would be no need for duplicative state-only regulation.

C. The Proposed Rules Should Explicitly Prohibit Flaring Unless Approved by the Colorado Oil and Gas Conservation Commission

We are concerned that the draft rules rely heavily on the use of flaring, or combustion, of gases to reduce emissions and in doing so may condone oil and gas production practices that are contrary to SB181 and existing oil and gas laws and regulations, and in contrast to the intent and requirements of HB1261.

Colorado law governing oil and gas development prohibits "waste" of oil and gas and to this end, Colorado Oil and Gas Conservation Commission ("COGCC") rules explicitly prohibit the "unnecessary or excessive" flaring of natural gas. COGCC Rule 912(a). In spite of this, the APCD's proposed revisions to AQCC Regulation No. 7 explicitly condone the use of flaring to reduce emissions. *See* AQCC Regulation No. 7, Part D, Section I.C.1.d.[4]

A combustion device is a flare in that its purpose is to burn off gases produced by oil and gas well facilities. Although these gases include VOCs, they also include natural gases, such as methane, that are subject to regulation by the COGCC. Indeed, the Colorado Oil and Gas Conservation Act defines "gas" broadly to mean "all natural gases and all hydrocarbons not defined in this section as oil." C.R.S. 34-60-103(5). Therefore, in allowing the use of combustion devices, or flares, to control emissions, the draft rule language is contrary to Colorado's prohibition on waste and COGCC regulations.

[4] Similar language is proposed under Part D, Section II.B.2.b.

The AQCC should modify any revision to Regulation 7 to provide that flaring, or the use of combustion devices, is prohibited except if that their operation is consistent with COGCC regulations. To this end, Regulation 7 should be modified to provide that the use of combustion devices can only be authorized by the Division if prior approval has been given by the COGCC and only under the timeframe approved by the COGCC. The AQCC should make these modifications in order to ensure the use of vapor recovery systems and to discourage oil and gas development that would otherwise rely on wasteful flaring to control VOC emissions.

Given SB181's mandate for the AQCC to ensure emissions from the oil and gas sector are minimized, Regulation No. 7 must be revised to disincentivize the use of flaring to reduce emissions and to require the capture and use of natural gas, rather than waste.

***Recommended Action*:** The APCD's current proposal expressly authorizes the use of flares, or combustion devices, to control emissions at AQCC Regulation No. 7, Part D, Section I.C.1.d. and Part D, Section II.B.2.b.

Proposed Section I.C.1.d states:

> If a flare or other combustion device is used to control emissions of volatile organic compounds to comply with Sections I.D., I.J., and I.K. it must be enclosed, have no visible emissions, and be designed so that an observer can, by means of visual observation from the outside of the enclosed flare or combustion device, or by other convenient means, such as a continuous monitoring device, approved by the Division, determine whether it is operating properly.

Proposed Section II.B.2.b states:

> If a combustion device is used to control emissions of VOCs and other hydrocarbons, it shall be enclosed, have no visible emissions during normal operation, and be designed so that an observer can, by means of visual observation from the outside of the enclosed combustion device, or by other means approved by the Division, determine whether it is operating properly.

We urge the AQCC to modify the language of the APCD's Proposed Section I.C.1.d as follows:

> If a flare or other combustion device is used to control emissions of volatile organic compounds to comply with Sections I.D., I.J., and I.K. it must be enclosed, have no visible emissions, and be designed so that an observer can, by means of visual observation from the outside of the enclosed flare or combustion device, or by other convenient means, such as a continuous monitoring device, approved by the Division, determine whether it is operating properly. The use of any combustion device to control emissions shall only be permitted upon prior approval by the Colorado Oil and Gas Conservation Commission in accordance with COGCC 900 Series rules, unless the owner or operator can demonstrate that the COGCC has determined the combustion device is not subject to COGCC 900 Series rules.

We further urge the AQCC to modify the language of the APCD's Proposed Section II.B.2.b as follows:

> If a combustion device is used to control emissions of VOCs and other hydrocarbons, it shall be enclosed, have no visible emissions during normal operation, and be designed so that an observer can, by means of visual observation from the outside of the enclosed combustion device, or by other means approved by the Division, determine whether it is operating properly. The use of any combustion device to control emissions shall only be permitted upon prior approval by the Colorado Oil and Gas Conservation Commission in accordance with COGCC 900 Series rules, unless the owner or operator can demonstrate that the COGCC has determined the combustion device is not subject to COGCC 900 Series rules.

D. The AQCC Must Consider Climate Impacts in Adopting New Rules

In addition to the passage of SB181, the Legislature this year also passed landmark climate legislation, HB1261 the Colorado Climate Action Plan, requiring the AQCC to adopt rules that assure timely progress toward meeting aggressive statewide greenhouse gas reduction goals. While SB181 should directly lead to further reductions in methane, which is a potent greenhouse gas, we also urge you to ensure that SB181 rules are developed with an eye toward further limiting overall greenhouse gas emissions from the oil and gas sector in order to make progress toward meeting HB1261's goal.

To this end, we strongly urge the AQCC to seize opportunities to advance climate progress as part of this rulemaking. Ensuring that emission controls are installed as early as possible, lowering the threshold for SIP-required tank emission controls, and limiting the use of flaring are all means of assuring greater greenhouse gas reductions as part of this rulemaking. We also urge the AQCC to consider other opportunities to further reduce greenhouse gas emissions, including a plan to phase out oil and gas permitting, in order to begin making progress toward meeting the goals of HB1261.

ISSUES TO BE RESOLVED BY THE COMMISSION DURING THE HEARING

1. Whether the proposed rules are consistent with the Clean Air Act, SB181, and HB1261?

2. Whether to modify the definition of "commencement of operation" in AQCC Regulations No. 3 and 7 to ensure oversight and emission controls are achieved as early as possible?

3. Whether the AQCC should revise the SIP to provide for a two tons/year uncontrolled emissions threshold for tank emission controls statewide?

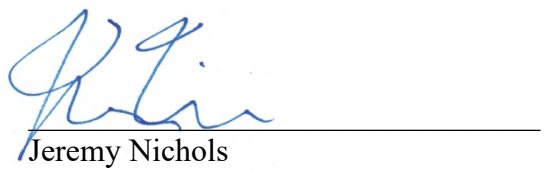
4. Whether the AQCC should modify the proposed rules to disallow the use of flaring to control emissions at oil and gas production facilities except when authorized by the COGCC?

5. Whether the proposed rules effectively advance HB1261's mandate of reducing greenhouse gas emissions in Colorado?

LIST OF WITNESSES

The CACHC does not intend to call witnesses, but reserves the right to cross-examine any witness and provide testimony and exhibits as rebuttal.

Submitted this 5th day of November 2019.



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CERTIFICATE OF SERVICE

The undersigned certifies that on November 5, 2019, a true and correct copy of CACHC's Prehearing Statement was delivered via electronic mail to the following parties:

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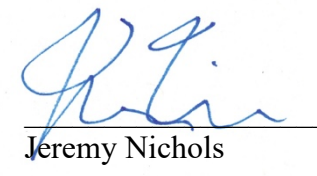

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