

**BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO**

IN THE MATTER OF PROPOSED REVISIONS TO REGIONAL HAZE STATE
IMPLEMENTATION PLAN, AQCC REGULATION NUMBERS 3 AND 23

PREHEARING STATEMENT—WILDEARTH GUARDIANS AND 350 COLORADO

WildEarth Guardians and 350 Colorado (“WG-350CO”) submit the following Prehearing Statement in the matter of proposed revisions to Air Quality Control Commission (“AQCC”) Regulation Number 3 and the adoption of Regulation Number 23.

EXECUTIVE SUMMARY

WG-350CO largely support the proposed revisions to AQCC Regulation No. 3 and the adoption of the Regulation No. 23 proposed by the Air Pollution Control Division (“APCD”). However, we remain concerned that the proposal falls significantly short of effectively assuring reasonable progress toward meeting regional haze goals, as well as in meeting Colorado’s greenhouse gas reduction goals pursuant to House Bill 19-1261 (“HB1261”) and Senate Bill 19-086 (“SB96”). Our specific issues are summarized below:

- **The Proposed Rule Should Establish a Closure Date for the Suncor Oil Refinery**

The APCD’s proposal would establish closure dates for 11 industrial facilities/units, including several coal-fired electric generating units and a coal mine. While closure of these facilities is an important step toward curbing haze and reducing greenhouse gas emissions, we request the Commission consider establishing closure dates for additional sources.

To this end, together with this Prehearing Statement, WG-350CO is submitting an alternate proposal that would establish a December 31, 2025 closure date for the Suncor oil refinery, located in Commerce City north of Denver. The alternate proposal would add a state-only closure date to the proposed Regulation No. 23, Section IV.F.

Closure of the Suncor oil refinery will yield enormous air quality benefits, including reduced haze forming emissions, reduced greenhouse gases, and reduced levels of other harmful and toxic pollutants. Furthermore, closure of the Suncor refinery stands to significantly benefit neighboring communities, which are comprised predominantly of low income households and people of color. The AQCC not only has the authority to adopt the proposed rule, but also a duty to ensure reductions of emissions in communities disproportionately impacted by harmful air pollution consistent with HB1261. We urge the AQCC to adopt our alternate proposal to ensure a more robust and just plan to control air pollution in Colorado.

- **The Proposed Rule Should Establish Closure Dates for Oil and Gas Exploration and Production Facilities**

We also urge the AQCC to also consider adopting closure dates for oil and gas exploration and production facilities sufficient to ensure a 10% annual reduction in such facilities and ultimately achieve a 100% phase out of such operations.

While we appreciate the APCD’s focus on coal-fired electric generating units, the reality is that reducing emissions from the oil and gas exploration and production sector is absolutely critical to fully achieving regional haze goals and Colorado’s greenhouse gas reduction targets under HB1261. We urge the AQCC to adopt rule language specifically calling for a level of facility closures sufficient to ensure a full and just phase out of oil and gas exploration and production in Colorado. Alternatively, we would urge the AQCC to direct the APCD via statement of basis language to address oil and gas exploration and production facility closures in a future rulemaking proposal.

- **The Proposed Closure Dates Should Not Extend Beyond 2028**

While we support the proposal to enshrine closure dates for the proposed electric generating units and the Colowyo coal mine, we are concerned the APCD has proposed closure dates that extend beyond 2028, which is the end of the regional haze program’s second implementation period, and has not considered whether all closure dates should occur on or before 2025. The AQCC should ensure that all closure dates occur within the second implementation period and strive to ensure that closures occur on or before 2025, which is when Colorado must meet a greenhouse gas reduction target of a 26% reduction below 2005 levels. This will not only assure compliance with reasonable progress requirements under the Clean Air Act’s regional haze program, but also assure effective progress in meeting statewide greenhouse gas reduction goals under HB1261.

- **While the Proposal Will Reduce Greenhouse Gas Emissions, the Proposed Rule Will Not Fully Meet HB1261 or SB96**

We support the APCD’s acknowledgement that the adoption of the proposed rule will aid in reducing statewide greenhouse gas emissions in order to meet the climate targets set forth in HB1261 and SB96. However, absent additional greenhouse gas reductions, the proposal does not assure Colorado will fully meet the greenhouse gas reduction targets established by HB1261. Further, the proposal does not fully satisfy SB96’s requirement that the AQCC adopt rules by July 1, 2020 to meet the HB1261 targets.

In sum, 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

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, effectively reduce greenhouse gas emissions, and attain and maintain the national ambient air quality standards. To this end, we overall urge the AQCC to adopt a stronger set of rules that fully comply with HB1261, and SB96, and that more effectively safeguard health, air quality and the climate throughout the State of Colorado.

TIME NEEDED FOR TESTIMONY

WG-350CO estimate they will need one hour to present testimony, any potential cross-examination, and rebuttal.

STATEMENT OF FACTUAL AND LEGAL ISSUES WITH THE PROPOSED RULES

Below we detail our factual and legal issues with the proposed rules.

I. The AQCC Should Adopt WG-350CO’s Alternate Proposal

We urge the AQCC to adopt WG-350CO’s alternate proposal, which would establish a closure date for the Suncor oil refinery of no later than December 31, 2025. Concurrent with submitting this Prehearing Statement, we are filing our alternate proposal, including a cover sheet, memorandum of notice, initial economic impact analysis, proposed regulatory text, and a draft statement of basis, specific statutory authority, and purpose.

As explained in our Memorandum of Notice, there are myriad justifications for establishing a December 31, 2025 closure date for the Suncor refinery, starting with the fact that the refinery is known to adversely impact visibility and has been identified by the APCD as a “subject to reasonable progress” source.¹

Similar to the closure dates proposed by the APCD, the closure of the Suncor refinery will eliminate large amounts of haze forming emissions, including nitrogen oxides and sulfur dioxide, thereby assuring reasonable progress toward meeting natural visibility conditions by the end of 2064. Consistent with the APCD’s approach to its proposed rule, we believe it is reasonable to presume that closure of a facility represents reasonable progress toward meeting regional haze goals under the Clean Air Act.

¹ See Draft State Implementation Plan (“SIP”), Revised Regional Haze Plan for the Second Implementation Period at PDF Page 6.

Emissions From Suncor Oil Refinery²

Pollutant	Tons/Year Emitted Based on 2017 National Emission Inventory
Total Hazardous Air Pollutants	52.62
Volatile Organic Compounds	588.28
Nitrogen Oxides	593.36
Sulfur Dioxide	195.89

We propose the December 31, 2025 closure date as a state-only requirement, but would urge the APCD to ultimately propose it be incorporated into the SIP as part of its Phase 2 haze rulemaking.

Not only is it reasonable and justified to close the Suncor oil refinery in order to meet the Clean Air Act’s regional haze requirements, but as the APCD acknowledges, it is reasonable and justified to close facilities in order to meet the Colorado’s greenhouse gas reduction targets and other air quality goals.

The Suncor refinery is also among the top industrial greenhouse gas emitters in Colorado. In 2018, the refinery emitted a total of 927,256 metric tons of carbon dioxide equivalent.³ Large amounts of volatile organic compounds, ozone precursor pollutants, are also released. According to the U.S. Environmental Protection Agency’s (“EPA’s”) Toxic Release Inventory data, the refinery releases a number of hazardous air pollutants, including hydrogen cyanide, benzene, mercury, propylene, hexane, nickel, hydrochloric acid, xylene, toluene, cobalt, lead, ethylene glycol, and more.⁴

The Suncor oil refinery also regularly violates its air quality permit and applicable clean air requirements. Even after settling with the APCD earlier this year over numerous air quality violations, the refinery continues to violate. As Adams County Commissioner Steve O’Dorisio commented in a recent news story, “The health and safety of our children depends ending this constant cycle of problem-apology-repeat.”⁵ The refinery is currently a high priority violator under the Clean Air Act due to extensive and ongoing violations of its permit and other applicable requirements.

² Based on the EPA’s 2017 National Emission Inventory and most recent Toxic Release Inventory Report, available at <https://echo.epa.gov/air-pollutant-report?fid=110032913024>.

³ See EPA Greenhouse Gas Reporting Data for the Suncor Energy—Commerce City Refinery, available at <https://ghgdata.epa.gov/ghgp/service/facilityDetail/2018?id=1007923&ds=E&et=&popup=true>.

⁴ See EPA Air Pollutant Report for Suncor Energy – Denver Refinery, available at <https://echo.epa.gov/air-pollutant-report?fid=110032913024>.

⁵ See Memorandum of Notice, Exhibit 2, Finley, B., “Suncor boiler fails, causing spike in air pollution at Commerce City oil refinery,” *Denver Post* (May 27, 2020), available at <https://www.denverpost.com/2020/08/13/suncor-refinery-boiler-failure-pollution-colorado/>.

The refinery’s emissions also disproportionately impact minority and low income communities. Within three miles of the refinery, more than 55% of the population lives below the poverty level and more than 75% are minority. Below is demographic data from the EPA’s Enforcement and Compliance History Online website documenting the fact that the communities near the refinery are predominantly low income and people of color.⁶

General Statistics	
Total Persons	53,327
Population Density	1,957/sq.mi.
Percent Minority	75%
Households in Area	16,699
Housing Units in Area	18,212
Households on Public Assistance	700
Persons Below Poverty Level	29,484

Geography	
Radius of Selected Area	3 mi.
Center Latitude	39.805556
Center Longitude	-104.944444
Land Area	97%
Water Area	3%

Income Breakdown - Households (%)	
Less than \$15,000	3,171 (19.13%)
\$15,000 - \$25,000	2,540 (15.32%)
\$25,000 - \$50,000	5,338 (32.2%)
\$50,000 - \$75,000	2,753 (16.61%)
Greater than \$75,000	2,777 (16.75%)

Age Breakdown - Persons (%)	
Children 5 years and younger	5,227 (10%)
Minors 17 years and younger	16,831 (32%)
Adults 18 years and older	36,496 (68%)
Seniors 65 years and older	4,353 (8%)

Race Breakdown - Persons (%)	
White	29,914 (56%)
African-American	4,628 (9%)
Hispanic-Origin	34,267 (64%)
Asian/Pacific Islander	404 (1%)
American Indian	1,057 (2%)
Other/Multiracial	17,324 (32%)

Education Level (Persons 25 & older) - Persons (%)	
Less than 9th Grade	5,851 (19.04%)
9th through 12th Grade	6,362 (20.71%)
High School Diploma	9,488 (30.88%)
Some College/2-year	6,269 (20.4%)
B.S./B.A. or More	2,755 (8.97%)

In support of its proposed rule, the APCD cites HB1261, which established greenhouse gas reduction targets for Colorado and directed the AQCC to promulgate rules to ensure reductions of emissions in communities disproportionately impacted by harmful air pollution. Closure of the Suncor oil refinery will serve to reduce greenhouse gas emissions and actually achieve these reductions in communities disproportionately impacted by harmful air pollution.

Eliminating the refinery’s emission stands to produce enormous economic benefits. A 2020 report by the Colorado Fiscal Institute found that benefits to the State of Colorado could be as much as \$35.4 million annually due to reduced levels of adverse health impacts and associated costs.⁷ The report states:

⁶ See Memorandum of Notice, Exhibit 3, EPA, Suncor Energy – Denver Refinery, Detailed Facility Report, Enforcement and Compliance History Online, available at <https://echo.epa.gov/detailed-facility-report?fid=110032913024>.

⁷ See Memorandum of Notice, Exhibit 4, Hetlage, R. and Albright, J., “COVID-19 and Reducing Air Pollution in Adams County Economic Value of Health Benefits from Improved Air Quality,” report by Colorado Fiscal Institute, available at <https://www.coloradofiscal.org/wp-content/uploads/2020/05/COVID-19-and-Reducing-Air-Pollution-in-Adams-County-5.18.2020-1-2.pdf>.

By eliminating pollutants from the oil refinery alone, Adams County could see health and economic benefits totaling between \$5.6 million and \$12.7 million, and the state could reap benefits totaling between \$15.7 million and \$35.4 million (Table 2). This is due to decreased mortality, hospital or emergency room visits, asthma-related events, and missed days of school and work.

Coupled with other co-benefits related to reduced pollution, including decreased ozone precursor emissions, decreased haze, and decreased air toxics, the economic benefits of closing the refinery stand to be tremendous. Consistent with the APCD's Initial Economic Impact Analysis for its proposed rule, we believe it is reasonable to presume that considering co-benefits and the cost of controlling emissions, that closure of the Suncor oil refinery will be the less costly option for dealing with the facility's harmful air pollution.

The proposed rule is consistent with the APCD's proposed Regulation Number 23, which would promulgate closure dates for a number of other industrial facilities in Colorado in order to assure reasonable progress toward meeting the state's regional haze goals. It is important to highlight that the APCD has proposed closure dates based on public statements rather than based on any firm commitments from sources. Indeed, during the status conference for this proceeding, some parties already suggested they would likely ask for later closure dates. In this sense, the APCD's proposed rule is not based on complete consensus and certainty. Nevertheless, the APCD's proposal is appropriate and within the authority of the AQCC.

Similarly, a proposal to establish a closure date for the Suncor oil refinery is also appropriate. While Suncor Energy may not have announced an explicit retirement date, it is reasonable for the AQCC to adopt a rule that incentivizes action by the company to effectively and timely address the emissions impacts of the refinery.

A closure date of December 31, 2025 ensures that the Suncor oil refinery is closed and emissions reduced in time to help meet Colorado's 2025 greenhouse gas reduction target. Under HB1261, Colorado must reduce greenhouse gas emissions 26% below 2005 levels by 2025. All indications are that the state is not currently on track to meet this goal and under the Division's proposal, only four electric generating units would actually close before December 31, 2025. It is critical that additional greenhouse gas reductions be locked in to ensure progress in meeting HB1261 and the moral mandate of confronting the climate crisis in Colorado.

The AQCC has the legal authority to promulgate WG-350CO's alternate rule pursuant to its authorities under the Colorado Air Pollution Prevention and Control Act ("Colorado Air Act").

The Colorado Air Act directs the AQCC to promulgate regulations consistent with the legislative declaration in section 25-7-102 C.R.S., and that are "necessary for the proper implementation and administration of Article 7," which mandates the "reduc[ti]on, prevent[i]on, and control [of] air pollution throughout the state of Colorado." §§ 25-7-102(1), 25-7-105(1), C.R.S. The Colorado Air Act defines "air pollutant" broadly to include most any gas emitted into the air, including NO_x, volatile organic compounds, carbon monoxide, methane, and other

hydrocarbons. *Id.* § 25-7-103(1.5). The Act provides the AQCC with broad authority to regulate air pollution in “each portion of the state,” finding that the prevention, abatement, and control of air pollution are “matters of statewide concern and are affected with a public interest.” §§ 25-7-102(1), 25-7-105, C.R.S.

The AQCC has “maximum flexibility in developing an effective air quality control program,” and it may promulgate regulations “as may be necessary or desirable to carry out that program.” § 25-7-106(1), C.R.S. In exercising this authority, the AQCC may adopt emission control regulations that apply to the entire state, specified areas or zones, or to a specified class of pollution. *Id.*

Additionally, to meet statewide greenhouse gas reduction goals under HB1261, the AQCC “shall timely promulgate implementing rules and regulations.” § 25-7-105(1)(e)(II), C.R.S. Under Colorado SB96, the AQCC was required to adopt rules to achieve the greenhouse gas reduction targets under HB1261 by “July 1, 2020.” § 25-7-140(2)(a)(III), C.R.S.

Regulations to reduce greenhouse gas emissions consistent with HB1261 “must include strategies designed to achieve reductions in harmful air pollution affecting [disproportionately impacted] communities.” § 25-7-105(1)(e)(II), C.R.S.

In this present rulemaking, the APCD is requesting the AQCC adopt a rule to establish closure dates for a number of industrial facilities in Colorado, which indicates the AQCC has authority to promulgate closure dates for stationary sources of air pollution.

WG-350CO’s alternate proposal is consistent with the scope of the notice of proposed rulemaking in this proceeding. The notice states that the Commission “will hold a rulemaking hearing to consider revisions to the Regional Haze SIP [state implementation plan] and Regulation Number 3 related to the control of NOx/SO2/PM emissions from certain Reasonable Progress sources identified as impacting Class I areas.” The Suncor oil refinery is a reasonable progress source that is documented to adversely impact visibility in Class I areas in Colorado.

Recommended Action: For the aforementioned reasons, we request the AQCC adopt WG-350CO’s alternate proposal and establish a state-only enforceable closure date for the Suncor oil refinery of December 31, 2025. We request the AQCC adopt the rule language proposed by WG-350CO as part of their alternate proposal.

II. The AQCC Should Establish Closure Dates for Oil and Gas Exploration and Production Facilities

In addition to the closure dates proposed by the APCD and WG-350CO’s alternate proposal, we urge the AQCC to consider adopting closure dates for oil and gas exploration and production facilities sufficient to ensure a 10% annual reduction in such facilities and ultimately achieve a 100% phase out of such operations.

While we appreciate the APCD’s focus on coal-fired electric generating units, the reality is that reducing emissions from the oil and gas exploration and production sector is absolutely critical to fully achieving regional haze goals and Colorado’s greenhouse gas reduction targets under HB1261. This was emphasized in a recent report prepared by Evolved Energy, GridLab, NRDC, and the Sierra Club, which found that for Colorado to achieve its near-term greenhouse gas reduction goals, oil and gas production would need to decline.⁸ The report explains, “It is inconsistent for the state to chart pathways to address climate-warming pollution while simultaneously proposing to expand oil and gas production for export to other states and countries.” This report is one of many underscoring the need for Colorado to phase out oil and gas production in order to meet its climate and clean air goals.

We urge the AQCC to adopt state-only rule language specifically calling for a level of facility closures sufficient to ultimately ensure a full and just phase out of oil and gas exploration and production in Colorado. To do this, we urge the AQCC to consider adopt rule language that requires a 10% reduction in oil and gas exploration and production facilities starting in 2021, with annual reductions demonstrated by December 31 of each calendar year.

Alternatively, we would urge the AQCC to direct the APCD via statement of basis language to address oil and gas exploration and production facility closures in a future rulemaking proposal.

We understand this proposal is aggressive, but it is necessarily so given Colorado’s significant climate and clean air challenges. We also understand there may be other policy options for fully addressing the impact of air pollution from oil and gas exploration and production sector to Class I areas in the state. To this end, we do not offer our suggestion as an alternate proposal, but rather a proposal meant to provoke meaningful action to address emissions from the oil and gas exploration and production sector.

Recommended Action: We urge the AQCC to add language to Regulation No. 23, Part A, Section IV.F. as proposed below in blue underline. For consistency, the proposal below also includes our alternate proposal in purple underline.

IV.F. Regional Haze Second Implementation Period

IV.F.1. The following sources will close on or before the associated date. The sources must comply with the applicable emission limits in Section IV. and monitoring, recordkeeping, and reporting requirements in Section V. until the closure date.

IV.F.1.a. Cherokee Unit 4 will close no later than December 31, 2028.

⁸ See Prehearing Statement, Exhibit 1, Evolved Energy, GridLab, NRDC, and Sierra Club, “Committing to Climate Action: Equitable pathways for meeting Colorado’s climate goals” (September 2020), available online at https://gridlab.org/wp-content/uploads/2020/09/GridLab_Committing-to-Climate-Action-1.pdf.

- IV.F.1.b. ColoWyo Coal Mine will close no later than December 31, 2029.
- IV.F.1.c. Comanche Unit 1 will close no later than December 31, 2022.
- IV.F.1.d. Comanche Unit 2 will close no later than December 31, 2025.
- IV.F.1.e. Craig Unit 2 will close no later than September 30, 2028.
- IV.F.1.f. Craig Unit 3 will close no later than December 31, 2029.
- IV.F.1.g. Hayden Unit 1 will close no later than December 31, 2030.
- IV.F.1.h. Hayden Unit 2 will close no later than December 31, 2036.
- IV.F.1.i. Martin Drake Units 6 and 7 will close no later than December 31, 2022.
- IV.F.1.j. Nixon Unit 1 will close no later than December 31, 2029.
- IV.F.1.k. Rawhide Unit 1 will close no later than December 31, 2029.
- [IV.F.1.l. \(state only\) Suncor oil refinery Plants 1, 2, and 3 will close no later than December 31, 2025.](#)
- [IV.F.1.m. \(state only\) Oil and gas exploration and production facilities shall close at a rate of 10% annually beginning in 2020 with annual reductions demonstrated by December 31 of each calendar year.](#)

III. The Proposed Closure Dates Should Not Extend Beyond 2028 and Should Strive to Ensure Closures on or Before 2025

We urge the AQCC to direct the APCD to establish closure dates for facilities and units that do not extend beyond 2028, which is when the second regional haze plan implementation period ends. We further urge the AQCC to direct the APCD to establish closure dates for facilities and units that do not extend beyond 2025.

Given that the rule proposed by the APCD is all about achieving reasonable progress during the second implementation period and about ensuring progress toward meeting greenhouse gas reduction requirements under HB1261, it makes sense to ensure all closure dates occur on or before the end of 2025, but no later than 2028, which is when Colorado’s next regional haze SIP submission is due.

Earlier closure dates will not only assure compliance with reasonable progress requirements under the Clean Air Act's regional haze program, but also assure effective progress in meeting statewide greenhouse gas reduction goals under HB1261. Achieving significant greenhouse gas reductions on or prior to 2025 will be critical for ensuring Colorado meets its 2025 goal of reducing emissions 26% below 2005 levels and its 2030 goal of reducing emissions 50% below 2005 levels.

Recommended Action: We urge the AQCC to adopt closure dates of no later than the end of 2025 for the facilities subject to the APCD's proposed Regulation No. 23.

ISSUES TO BE RESOLVED BY THE AQCC DURING THE HEARING

1. Whether the AQCC should adopt WG-350CO's alternate proposal establishing a state-only closure date for the Suncor oil refinery?
2. Whether the AQCC should adopt rule language ensuring the closure of oil and gas exploration and production facilities 10% annually to ultimately ensure a full phase out of oil and gas extraction in Colorado?
3. Whether the AQCC should ensure that all facility/unit closures under the APCD's proposed Regulation No. 23 occur by 2025, but no later than the end of 2028?

LIST OF WITNESSES

WG-350CO may call the following witnesses to testify at the hearing:

Sunni Benoit, Board President, 350 Colorado: Ms. Benoit is an attorney with extensive experience in representing oil refineries in environmental litigation and engaging in economic analysis of the oil industry.

Rayna Hetlage, MPH, Health Policy Analyst, Colorado Fiscal Institute: Ms. Hetlage may be called to testify on the health and economic impacts of air pollution from the Suncor oil refinery.

Jeremy Albright, MA, Research Manager, Colorado Fiscal Institute: Mr. Albright may be called to testify on the health and economic impacts of air pollution from the Suncor oil refinery.

Lorne Stockman, Senior Research Analyst, Oil Change International: Mr. Stockman may be called on to testify on the climate benefits of phasing out oil and gas extraction.

WG-350CO reserve the right to call additional witnesses if they become necessary for rebuttal.

LIST OF EXHIBITS

WG-350CO submit the following exhibits in support of this prehearing statement:

Exhibit	Description
WG-350CO_PHS_EX-001	Evolved Energy, GridLab, NRDC, and Sierra Club, “Committing to Climate Action: Equitable pathways for meeting Colorado’s climate goals” (September 2020), available online at https://gridlab.org/wp-content/uploads/2020/09/GridLab_Committing-to-Climate-Action-1.pdf .

Sincerely,

Jeremy Nichols
WildEarth Guardians

Micah Parkin, Michaela Mujica-Steiner, and Deb McNamara
350 Colorado

CERTIFICATE OF SERVICE

I certify that on October 8, 2020, I e-mailed a true and correct copy of WildEarth Guardians and 350 Colorado's Prehearing Statement to the following parties:

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