

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

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IN THE MATTER OF PROPOSED REVISIONS, REGULATION NUMBER 7

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**PREHEARING STATEMENT OF WILDEARTH GUARDIANS**

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WildEarth Guardians submits the following Prehearing Statement in the matter of proposed revisions to Air Quality Control Commission (“AQCC”) Regulation Number 7.

**EXECUTIVE SUMMARY**

WildEarth Guardians supports many of the revisions to AQCC Regulation No. 7 proposed by the Air Pollution Control Division (“APCD”), but we remain concerned that the proposal falls way short of effectively advancing the mandate of Senate Bill 19-181 (“SB181”), as well as advancing meaningful progress toward 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:

- **We support the proposed emission standards for natural gas-fired reciprocating internal combustion engines.**

We support the APCD’s proposal to adopt nitrogen oxide (“NOx”) and other emission limits for natural gas-fired reciprocating internal combustion engines greater than 1,000 horsepower and overall support the proposed revisions to AQCC Regulation No. 7, Part E. However, we also support alternate proposals that would further minimize emissions from natural gas-fired reciprocating internal combustion engines less than 1,000 horsepower. Given this, we believe the Hearing Officer’s determination that alternate proposals addressing engines less than 1,000 horsepower are beyond the scope of this rulemaking is misplaced. The plain language of the Notice of Rulemaking Hearing in this matter states that the AQCC will consider “control of emissions from natural gas-fired reciprocating internal combustion engines.”<sup>1</sup> We urge the AQCC to reject the arbitrarily narrow interpretation of the Notice of Rulemaking Hearing.

- **We support the proposal to limit emissions at class II disposal well facilities, but urge the AQCC to provide clarity to ensure the effectiveness of the proposed rule.**

<sup>1</sup> Additionally, the process leading up to the Hearing Officer’s determination was prejudicial, unfair, and contrary to due process. No specific alternate proposal was actually provided that would give the Hearing Officer a basis for concluding that it would be outside the scope of the rulemaking. Additionally, no motion was actually entered by any party to the rulemaking and no party was afforded any opportunity to meaningfully respond to the suggestion that any alternate proposal could be outside the scope of the rulemaking. The Hearing Officer’s determination was uninformed, premature, and outside the scope of the AQCC’s authority.

We also support the APCD's proposal to require owners or operators of class II disposal well facilities to control volatile organic compound ("VOC") emissions and to report emissions pursuant to AQCC Regulation No. 7, Part D, Section V. That said, there is a lack of clarity and understanding around the methodologies for consistently and accurately measuring, recording, and reporting emissions related to class II disposal well activities. To date, these facilities have not been subject to air quality regulation in Colorado, raising concerns that owners and operators may not fully understand how to characterize emissions. We urge the AQCC to ensure that methods of measuring, recording, and reporting emission are adopted to ensure that owners and operators of Class II disposal facilities are properly informed and that the APCD is provided accurate information from which to assess compliance.

- **We do not support the proposed pre-production and early production operations monitoring as the rules are vague and unenforceable and the urge the AQCC to reject APCD's proposal.**

After careful further review, we cannot support the APCD's proposed oil and natural gas pre-production and early production operations monitoring provisions. The Air Quality Monitoring requirements under proposed Regulation No. 7, Part D, Section VI.C. are completely vague and unenforceable. While the intentions of the APCD are noble, the monitoring requirements require no level of quality, accuracy, consistency, adherence to methodology, or substantive compliance that would ensure any useful emissions data is gathered in relation to pre-production and early production operations. They also fail to implement SB181's requirement that continuous methane monitoring occur at facilities with large emissions potential.

Further, although the APCD must approve pre-production monitoring plans, there are no criteria for approval. This means there is no process for disapproval, meaning the rules allow owners and operators to conduct pre-production activities without complying with the proposed pre-production monitoring requirements. It is telling that there is nothing in the proposed regulations that expressly prohibit pre-production activities unless and until owners or operators comply with the proposed monitoring.

To this end, we urge the AQCC to reject the proposed revisions. We urge the AQCC to direct the APCD to expeditiously propose new regulations for adoption that ensure effective and accurate monitoring and reporting of pre-production emissions consistent with the need to ensure the rules are enforceable, specific, and consistent with SB181.

- **We support the proposal to regulate emissions during pre-production flowback activities, but urge the AQCC to rewrite the proposed rule to ensure its effectiveness and consider extending pre-production emission control requirements to encompass drilling and hydraulic fracturing.**

While we support the proposal to control emissions from oil and gas pre-production flowback vessels, we are concerned that the rule needs further clarity to be fully effective.

Further, we are concerned that the APCD is not proposing to minimize emissions from other pre-production activities, including drilling and hydraulic fracturing. SB181 expressly directed the AQCC to reduce emissions from oil and gas operations and authorized the AQCC to reduce emissions from pre-production activities, including drilling and hydraulic fracturing.

- **We do not agree that the proposed rules advance greenhouse gas reductions consistent with HB1261 and SB96.**

We agree the proposed rules advance SB96's goal of ensuring accurate greenhouse gas reporting, but we take issue with the suggestion in the proposed Statement of Basis, Specific Statutory Authority, and Purpose that the rules would advance greenhouse gas reduction requirements under HB1261 and SB96. The APCD has neither prepared nor presented any analysis of the expected greenhouse gas reductions that could result from the adoption of the proposed rules. It is presumptuous to suggest that simply adopting additional emission control standards will reduce statewide greenhouse gas emissions, especially considering the APCD continues to regularly approve permits for numerous new sources of greenhouse gases.

Colorado is already way behind on effectively reducing greenhouse gases, having missed SB96's July 1, 2020 to propose new regulations to meet the reduction targets under HB1261. Absent actual analysis and data, it is inappropriate for the Statement of Basis, Specific Statutory Authority, and Purpose to suggest the proposed rules advance greenhouse gas reduction requirements under HB1261 and SB96.

In addition to the aforementioned concerns, we support the positions, concerns, and proposals raised by other parties in this rulemaking, including the Prehearing Statements of 350 Colorado, Climate Reality Denver-Boulder Chapter, Environmental Defense Fund, National Parks Conservation Association, and Conservation Colorado, LOGIC, and the Western Colorado Alliance.

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 and attain the NAAQS. To this end, we overall urge the AQCC to adopt a stronger set of rules that fully comply with SB181, HB1261, and SB96, and that more effectively safeguard health, air quality and the climate throughout the State of Colorado.

## **TIME NEEDED FOR TESTIMONY**

WildEarth Guardians estimates it 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 Proposed Engine Rules**

We support the APCD's proposal to adopt emission standards for natural gas-fired reciprocating internal combustion engines greater than 1,000 horsepower and overall support the proposed revisions to AQCC Regulation No. 7, Part E. However, as indicated in our introduction, we also support alternate proposals that would further minimize emissions from natural gas-fired reciprocating internal combustion engines less than 1,000 horsepower.

The need to consider alternate proposals is underscored by the plain language of SB181, which states the AQCC "shall" adopt rules to minimize emissions of "volatile organic compounds" and "oxides of nitrogen" from oil and gas production. C.R.S. § 25-7-109(10)(a). If an alternate proposal is presented that minimizes VOC and NO<sub>x</sub> emissions beyond what the APCD has proposed, SB181 compels the adoption of the rule through this proceeding. Coupled with the goal of reducing ozone pollution and achieving visibility goals, the AQCC would be remiss in rejecting any alternate proposal that goes further than the APCD's proposal.

***Recommended Action:*** We urge the AQCC to consider alternate proposals to further minimize emissions from natural gas-fired reciprocating internal combustion engines. Additionally, we urge the AQCC to adopt any presented alternate proposal that further minimizes emissions from natural gas-fired reciprocating internal combustion engines.

### **II. Class II Disposal Well Facility Rules**

We generally support the APCD's proposed revisions to require owners or operators of class II disposal well facilities to control volatile organic compound ("VOC") emissions from storage tanks and during loadout from storage tanks to transport vehicles.

However, we are concerned that there is a lack of clarity around what methodologies will be utilized to assess uncontrolled emissions from tanks and from loadout activities such that owners and operators of Class II disposal facilities accurately measure and report emissions, and ultimately comply with the proposed rule changes.

We are particularly concerned that the composition of waste fluids handled by class II disposal facilities may be extremely variable and that emissions are likely to be poorly characterized without regular testing and monitoring. AQCC Regulation No. 7 at Part D,

Sections I.B. and I.C currently require owners and operators to rely on Division-approved emission factors, including “basin-specific” emission factors, for estimating emissions from storage tanks and other activities. However, these factors relate to exploration and production facilities and do not appear to properly reflect emissions related to class II disposal facilities that handle waste product.

This is concerning as reports indicate not only that the oil and gas industry’s waste stream is highly variable, but that associated VOC emissions have not been comprehensively analyzed. In a recent report by the U.S. Environmental Protection Agency (“EPA”) on management of oil and gas industry waste, it was noted that “volatile emissions” from produced water waste were not “analyzed” and that “no conclusions” could be drawn about the magnitude or frequency of releases. See Exhibit 1, EPA, “Management of Exploration, Development and Production Wastes: Factors Informing a Decision on the Need for Regulatory Action” (April 2019) at 5-29 available online at [https://www.epa.gov/sites/production/files/2019-04/documents/management\\_of\\_exploration\\_development\\_and\\_production\\_wastes\\_4-23-19.pdf](https://www.epa.gov/sites/production/files/2019-04/documents/management_of_exploration_development_and_production_wastes_4-23-19.pdf).

This lack of information should not deter the AQCC from regulating VOC emissions from class II disposal facilities. Rather, it should compel the development of effective means to analyze and assess emissions to ensure effective regulation. This is necessary to ensure the practical enforceability of the proposed revisions. Accordingly, we urge the AQCC to direct the APCD to develop emission factors for VOC emissions released from storage tanks and loadout at class II disposal facilities and/or require regular testing and monitoring of emissions from tanks and loadout at class II disposal facilities.

**Recommended Action:** We recommend the AQCC modify the APCD’s proposed rule language and/or the Statement of Basis, Specific Statutory Authority, and Purpose to ensure that consistent and accurate factors for VOC emissions from class II disposal well facilities are developed compliance and/or require regular testing and monitoring of emissions from class II disposal facilities. At a minimum, we recommend the AQCC add two sentences to the Purpose section regarding class II disposal well facilities, as indicated in the redline below:

PART F. Statements of Basis, Specific Statutory Authority and Purpose

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Purpose

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Oil and Gas Operations

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*Class II disposal well facilities*

The Commission clarified that class II disposal well facilities are subject to the storage tank control requirements in Part D, Sections II.B and II.C. by adding a new definition for such facilities. The Commission also expanded the hydrocarbon liquids loadout requirements in Part D, Section II.5. to hydrocarbon liquids loadout at class II disposal well facilities. Operators inject fluids, primarily brines, associated with oil and natural gas production into class II wells. Current regulatory requirements in the Safe Drinking Water Act for class II wells relate to the construction, operation, and monitoring of the well. The Safe Drinking Water Act does not require emissions reporting or storage tank or loadout emissions controls at class II disposal well facilities. Therefore, the Commission clarified and expanded the storage tank and hydrocarbon liquids loadout requirements to class II disposal well facilities to reduce emissions from these operations. It is the Commission's expectation that accurate and consistent methodologies will be used to measure and report emissions to ensure owners and operators of class II disposal well facilities are properly informed and can comply with the proposed revisions. To ensure compliance and the practical enforceability of the revisions, the Commission directs the Division to expeditiously develop accurate emission factors and/or ensure regular testing and monitoring of emissions at class II disposal well facilities.

### **III. Pre-Production Monitoring**

We do not support the APCD's oil and natural gas pre-production and early production operations monitoring provisions proposed under Regulation No. 7, Part D, Section VI.C. The proposed regulations are vague and unenforceable, do not appear to actually assure compliance with any degree of monitoring, will not yield data that is scientifically based, consistent, accurate, informative, and useful, and raise due process concerns. While we support the APCD's intentions behind the proposed monitoring, we are greatly concerned that the adoption of the rule as currently written would give the erroneous impression that effective pre-production monitoring will be undertaken to meet SB181, protect public health, and address air quality concerns.

Our primary concern is that the proposed rules state that owners or operators must monitor ambient air quality, yet provide absolutely no clear standards or guidance on the methods that will be used, the frequency of monitoring, the level of accuracy and precision, the constituents of ambient air quality that will be measured, and in what form the data will be gathered and reported. The only specific requirements for the ambient air quality monitoring are that it must begin at least three days prior to pre-production operations, must continue for at least 60 days after commencement of operation, and that it must at least monitor "total VOCs or other indicator of hydrocarbon emissions." Regulation No. 7, Part D, Section VI.C.1.b.(v)(B). Given the lack of any additional specific standards or guidance, an owner or operator could claim to meet the monitoring requirements by simply having a person show up at a well site at least three days prior to pre-production operations to sniff the air for hydrocarbon odors, then show up every two weeks thereafter until 60 days after commencement of operation.

While the proposal would require the submission of a pre-production monitoring plan, the provisions of Section VI.C.b. actually do not establish specific substantive criteria that these plans must meet to assure adequate monitoring. For example, while the proposal requires a “description of the monitoring (pollutant and meteorological) equipment,” it does not actually require that any specific monitoring equipment be utilized. While the proposal requires a “siting plan,” it does not actually require that monitors be sited in any particular manner. While the proposal requires a description of the “frequency of measurements and data logging process,” it does not actually require any level of frequency or specific data logging requirements. While the proposal requires a description of “quality control and quality assurance procedures,” it does not actually require that an owner or operator adhere to any quality control and quality assurance procedures. While the requires a description of the “meteorological data (e.g., wind speed, wind direction, temperature) gathering protocol, it does not actually require any meteorological monitoring. We could go on.

The only substantive criteria set forth in the proposed rule is that a monitoring plan must ensure monitoring of “total VOCs or other indicator of hydrocarbon emissions.” Even then, the proposed rule sets no standards for how total VOCs or hydrocarbon indicators should be monitored or explain what indicators of hydrocarbon emissions would actually be acceptable to monitor. In light of this, it is reasonable to conclude that odors could be deemed an acceptable indicator of hydrocarbon emissions.

To be sure, Section VI.C.1.b. would require APCD approval of a monitoring plan, but even this approval process lacks sufficient clarity and specificity to assure a concrete and meaningful monitoring outcome. Aside from assuring that owners or operators disclose basic information, such as their name and contact, it is entirely unclear what criteria will guide APCD’s review of monitoring plans to ensure their effectiveness in obtaining accurate and useful data. Ultimately, we are concerned that given the ambiguity around the APCD review and approval process, that the proposed regulation is vague. This means the APCD would have no legitimate authority to actually deny a monitoring plan or otherwise request a revision or modification to a submitted plan.

If the APCD lacks authority to disapprove a monitoring plan, then this raises serious concerns that the proposed rules are overall completely unenforceable. This means they are not capable of assuring any level of compliance. More significantly, they are not capable of yielding the very monitoring data needed to better understand and effectively regulate pre-production emissions.

While the overall lack of specificity and enforceability is cause for concern from an air quality and health standpoint, it’s fundamentally a due process concern. For owners and operators who may be subject to the proposed regulations, the vagueness of the proposed rules fails to adequately and fairly explain what is ultimately required and expected by the APCD. In the interest of ensuring effective and durable regulation of air quality consistent with SB181 and other requirements, we cannot support the proposal as written.

We also have additional specific concerns regarding the proposed pre-production and early production monitoring, including:

1. The proposed monitoring fails to implement SB181's requirement that continuous methane monitoring occur at facilities with large emissions potential. SB181 specifically directs the AQCC to consider adopting "a requirement that oil and natural gas operators must install and operate continuous methane emissions monitors at facilities with large emissions potential, at multi-well facilities, and at facilities in close proximity to occupied dwellings[.]" C.R.S. § 25-7-109(10)(b)(I)(C). In requiring pre-production and early production monitoring, the proposed rule does not require continuous monitoring of methane at facilities with large emissions potential, at multi-well facilities, or at facilities in close proximity to occupied dwellings, contrary to the intent of SB181.
2. The proposed rules do not appear to apply to many pre-production operations. While the proposed rules apply to "[o]wners or operators of pre-production operations," the rules provide that monitoring can stop "six months after commencement of operation." This raises concerns around facilities with multiple wells in various stages of development and production, or for facilities with producing wells that are refractured at a later date. As written, an owner or operator of such facilities could avoid complying with pre-production monitoring provided that the facility has achieved "commencement of operation," which would occur after "any permanent production equipment is in use." In other words, if pre-production operations occur at a facility that has achieved "commencement of operation" for more than six months, the proposed monitoring requirements would not apply, even if pre-production operations occurred again at the facility.
3. Coupled with our concerns over the enforceability of the pre-production monitoring requirements, we are concerned that the proposed rules do not appear to actually prohibit pre-production operations that do not comply with pre-production monitoring requirements. We believe that in order to ensure the effectiveness of any pre-production monitoring, the rule must ensure that owners and operators are not allowed to undertake pre-production operations pending approval of a monitoring plan.
4. The proposed reporting requirements lack clarity. While Section VI.C.2.b. requires owners or operators to submit monthly reports, it is not clear what is actually required to be included in the reports. While Sections VI.C.2.b.(i)-(viii) seem to lay out the type of information that should be included, nothing in Section VI.C.2.b. states explicitly that owners or operators must actually submit the information in Sections VI.C.2.b.(i)-(viii) as part of their monthly reports.
5. The proposed reporting requirements provide for no public or local government notice or involvement in the review of monitoring plans. Given acknowledged concerns over the air quality and public health impacts of pre-production operations in proximity to homes, schools, businesses, and other occupied structures, as well as local government concerns over emissions, it is extremely worrisome that the APCD is not proposing to ensure any



notification or opportunity to comment on monitoring plans to the impacted public and to local governments.

**Recommended Action:** We recommend the AQCC refrain from adopting the APCD's proposed Regulation No. 7, Part D, Section VI.C. as currently proposed. We urge the AQCC to instead direct the APCD to expeditiously develop and present a revised Section VI.C. that is specific, enforceable, and unambiguous for adoption at the next soonest rulemaking hearing possible.

To this end, we urge the AQCC to direct the APCD to present proposed pre-production monitoring rules that, at a minimum:

- Require owners or operators utilize specific monitoring methods and adhere to specific monitoring protocol;
- Ensure that monitoring is conducted in such a manner as to produce data that accurately and meaningfully informs the public, local governments, and policymakers on potential health risks related to key pollutants of concern, including total VOCs, methane, benzene, and other hazardous air pollutants;
- Establish specific criteria for the siting of monitoring equipment, frequency of monitoring, and the pollutants and parameters to be monitored;
- Ensure adherence to specific established quality assurance/quality control procedures;
- Rely upon credible and reliable data acquisition systems;
- Ensure that monitoring is conducted by people with proper credentials and experience;
- Establish specific criteria for the denial of pre-production monitoring plans;
- Ensure continuous monitoring of methane consistent with SB181;
- Clarify that pre-production emissions monitoring is to occur during all pre-production operations for a discrete and sufficient period of time and not be contingent upon date of commencement of operation;
- Ensure that pre-production operations are prohibited unless and until a pre-production monitoring plan is approved;
- Ensure the rules explicitly require the monthly reporting of all data identified under Section VI.C.2.b.(i)-(viii); and
- Provide notice and an opportunity for the impacted public and local governments to review and comment on monitoring plans that may pose disproportionate impacts to people, communities, or other areas where health concerns related to pre-production emissions are heightened.

As part of this proceeding, we also strongly urge the AQCC to consider any other suggested revisions or modifications to Section VI.C. that other parties may offer.

#### **IV. Pre-Production Control of Emissions**

We support the APCD's proposal to control emissions from oil and gas pre-production flowback vessels under Section VI.D. However, we are concerned that the rule needs added clarity to be fully effective.

In particular, the proposed rule's overall applicability is unclear. The requirement to control flowback vessel emissions applies to “[o]wners or operators of a well with a commencement of operation date on or after May 1, 2021,” but then requires owners or operators to “collect and control emissions from each flowback vessel on and after the date flowback is routed to the flowback vessel[.]” It is not clear if the rule means that an owner or operator is required to control emissions from just the flowback vessels associated with a well that commences operation on or after May 1, 2021, or required to control emissions from all flowback tanks used after an owner or operators commences operation of a well after May 1, 2021.

Additionally, we are concerned that the proposed flowback vessel controls would not apply to a well that may have commenced operation prior to May 1, 2021, but where flowback activities may still occur at that well after May 1, 2021 as a result of refracturing, recompletion, or other operations at a well site. Given the APCD's intention to reduce pre-production tank emissions and to ensure owners and operators utilize closed flowback vessels, it would seem that all flowback vessels used at a well should be subject to controls after May 1, 2021, regardless of whether the well has achieved “commencement of operation.”

**Recommended Action:** We recommend the AQCC adopt modification to the proposed Regulation No. 7, Part D, Section VI.D.1.a. as follows:

VI.D.1.a. **On or after May 1, 2021,** Owners or operators of a well that has commenced operation or that will commence operation **with a commencement of operation date on or after May 1, 2021,** must collect and control emissions from each flowback vessel **used at that well** on and after the date flowback is routed to the flowback vessel by routing emissions to and operating air pollution control equipment that achieves a hydrocarbon control efficiency of at least 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons.

## **ISSUES TO BE RESOLVED BY THE COMMISSION DURING THE HEARING**


1. Whether the APCD's proposed revisions to Regulation No. 7 regarding natural gas-fired reciprocating engines should be adopted and whether and to what extent the AQCC should adopt alternate proposals that further minimize emissions in accordance with SB181?
2. Whether additional clarity and direction should be provided to ensure that emissions from class II disposal well facilities are properly characterized, accurately measured, and ultimately inform compliance?
3. Whether the proposed pre-production and early production emissions monitoring provisions are vague and unenforceable and should be rejected in favor of directing the APCD to develop more specific rules that properly inform owners and operators and ensure the collection of meaningful ambient air quality data?

4. Whether the proposed pre-production flowback vessel emission control requirements need modification to ensure clarity around their application and effectiveness in limiting emissions from flowback operations?

### **LIST OF WITNESSES**

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

Submitted this 30<sup>th</sup> day of July 2020.



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Jeremy Nichols  
Climate and Energy Program Director  
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## CERTIFICATE OF SERVICE

I certify that on July 30, 2020, I e-mailed a true and correct copy of WildEarth Guardians' Prehearing Statement to the following parties:

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