

# Putting the Public First

How CDPHE can overcome its legacy of prioritizing oil and gas industry interests ahead of public health, safety, welfare and the environment

MARCH 2020



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Report available at [earthworks.org/CDPHE-transparency](https://earthworks.org/CDPHE-transparency)

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## PUTTING THE PUBLIC FIRST

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# 1 Introduction

Over generations the state of Colorado built and perpetuated a regulatory system and culture prioritizing oil and gas industry interests ahead of all others. The Colorado Department of Public Health and Environment (CDPHE) was no exception.

The 2019 passage of Senate Bill 19-181<sup>1</sup> signaled a landmark change: it directed state agencies to prioritize public health and safety. Consequently, the system created to foster Colorado's oil and gas industry must be rebuilt to serve the public first.

"Rebuilt" is not hyperbole. This report illustrates the inadequacy and opacity of CDPHE's current procedures to protect the public.

Bolstered by recent Air Quality Control Commission (AQCC) rulemaking decisions, the time is ripe for CDPHE to remake its approach to oil and gas oversight – prioritizing transparency, community voices and industry accountability for the pollution and harm it causes.





## 2 AQCC Decisions Mark a New Era Centered on Protecting People

How the state agencies carry out their mandates under SB-181 can be seen in the recent and ongoing rulemakings for both the Colorado Oil & Gas Conservation Commission (COGCC) and CDPHE. While the COGCC will implement the most sweeping changes, CDPHE is responsible for issuing and enforcing oil and gas air permits, and for protecting residents living near oil and gas operations. Fortunately, the AQCC recently adopted two provisions responding directly to public health and safety concerns.

1. **To increase transparency and accountability, the Commission further directs that in 2020 the Division explore options for developing a publicly accessible and searchable oil and gas complaint filing and tracking tool, and to accept public input on the development of this tool. The Division will report back to the Commission on its progress in 2020.**<sup>2</sup>
2. **Beginning calendar year 2020, owners or operators of well production facilities with estimated uncontrolled actual VOC [Volatile Organic Compound] emissions greater than or equal to two (2) tons per year, based on a rolling twelve-month total, and located within 1,000 feet of an occupied area must inspect components for leaks [on a quarterly or monthly basis].**<sup>3</sup>

**CDPHE should carry out its mandate by creating public tools, services and information ordinary Coloradans can use and trust.** Ordinary Coloradans must include the stressed parent juggling a full-time job, child-care, and after school activities. They must include the retiree who sees something at a well pad and seeks information about VOC exposures. They must include every Coloradan who wants to breathe clean air.

**An effective oil and gas regulatory regime—one that both combats pollution and protects the public—requires a transparent and easily accessible oil and gas complaint system. Such a robust complaint system is central to measuring progress and success in:**

- Minimizing methane and Volatile Organic Compound (VOC) pollution
- Protecting public health, safety, welfare and the environment
- Providing a way for the public to hold agencies accountable to their mandates
- Fostering greater trust in agencies that work with industry and serve the public
- Being responsive to community concerns
- Increasing government efficiency



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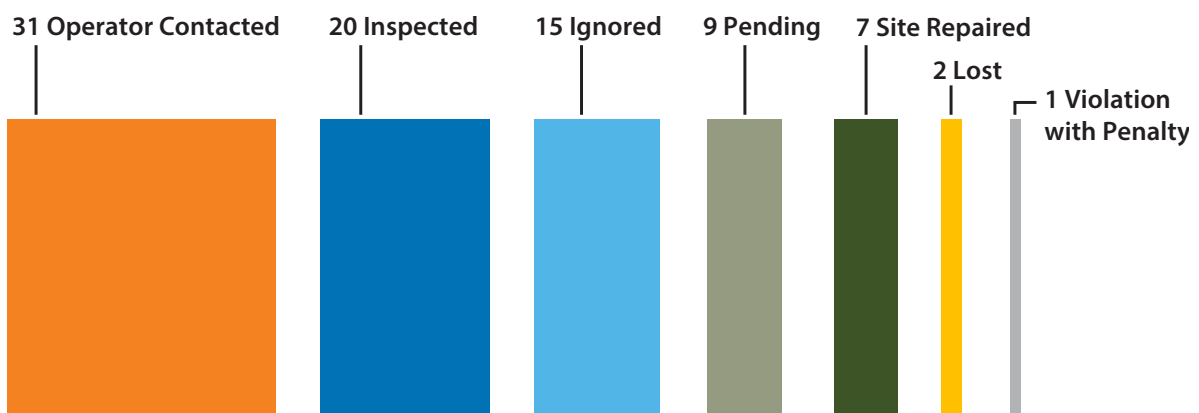
# 3 Confusing and Inefficient Complaint Tools Hamstring Protection of Public Health

## Impacted residents must cope with three oil and gas complaint systems

- COGCC online complaint tool.<sup>4</sup>
- CDPHE Oil & Gas Health Information and Response program (OGHIR).<sup>5</sup>
- CDPHE – direct email to CDPHE's Air Pollution Control Division (APCD) Oil & Gas Enforcement Team.<sup>6</sup>

**Since January 2018, Earthworks has filed 65 complaints for oil and gas pollution in Colorado.** As the COGCC and CDPHE complaint systems are not integrated and track different types of information, Earthworks filed each complaint in two or three places, depending on whether our staff noted odors and / or health impacts when they were in the field. This redundancy is necessary in order to:

- Create a transparent public-facing and publicly searchable complaint record (using the COGCC online complaint system)
- Address and record health impacts to a specific zip code (using the CDPHE OGHIR online system)
- Ensure the most swift and site-specific response possible from the Division's oil and gas inspection team (by emailing the CDPHE Oil & Gas inspection team directly)



## CDPHE Response to 65 Oil & Gas Complaints

Complaints filed by Earthworks over the last two years (most filed with multiple departments). The total number of responses exceeds 65 because some complaints had more than one CDPHE response.



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The scorecard below outlines different ways for Colorado communities to voice oil and gas related concerns and highlights critical gaps in CDPHE's transparency and accountability.

| <b>SCORECARD</b><br><b>How Well Do Colorado's Oil &amp; Gas Complaint Tools Respond to and Inform the Public?</b> |   |   |  |
|---|---|---|--|
| Public tools and information  | CDPHE Oil and Gas Health Information and Response program (OGHIR) | CDPHE APCD Oil & Gas Enforcement Team   | COGCC on-line Complaint tool           |
| <b>GENERAL CHARACTERISTICS OF COMPLAINT SUBMISSION TOOLS</b>  |   |   |  |
| Centralized complaint database  | <b>Yes</b> – for health-related complaints                        | <b>No</b>   | <b>Yes</b>                             |
| Publicly facing   | <b>Yes</b>  | <b>No</b>   | <b>Yes</b>                             |
| FAQ / how-to guide  | Health / non-health concern is confusing <sup>7</sup>             | <b>No</b>   | <b>Yes</b> <sup>8</sup>                |
| Searchable by public  | With limitations <sup>9</sup>                                     | <b>No</b>   | <b>Yes</b> <sup>10</sup>               |
| Frequency of updates  | Irregularly <sup>11</sup>   | <b>N/A</b> (upon request)   | <b>Instantly</b>                       |
| <b>INFORMATION TRACKED AND PUBLICLY AVAILABLE FOR EACH COMPLAINT SUBMITTED</b>                                    |   |   |  |
| Operator name   | <b>No</b>   | <b>Yes</b> (in response to email or open records request, CORA <sup>12</sup> )            | <b>Yes</b>                             |
| Site name   | <b>No</b>   | <b>Yes</b> (in response to email or CORA request)   | <b>Yes</b>                             |
| Name of complainant   | <b>No</b> <sup>13</sup>   | <b>No</b>   | <b>Yes</b>                             |
| Date the complaint was filed  | <b>No</b>   | <b>Yes</b> (in response to email or CORA request)   | <b>Yes</b>                             |
| Description of the emissions / full complaint text submitted  | <b>No</b> (type of health symptom may be included)                | <b>No</b>   | <b>Yes</b>                             |
| Does the complaint include a health-related concern? (Y / N)  | <b>Yes</b>  | <b>No</b>   | <b>No</b>                              |
| Complaint tracking #  | <b>No</b>   | <b>No</b>   | <b>Yes</b>                             |
| Regulator response recorded / tracked   | <b>No</b>   | <b>Partially</b> (in response to email or CORA request)                                   | <b>Yes</b>                             |
| Inspection report (if available)  | <b>No</b>   | <b>No</b>   | <b>Yes</b>                             |
| Inspector name  | <b>No</b>   | <b>Yes</b> (in response to email or CORA request)   | <b>Yes</b>                             |
| Response from operator  | <b>No</b>   | <b>Partially</b> (in response to email or CORA request)                                   | <b>Yes</b>                             |
| Status of the complaint (is it pending or closed)   | <b>No</b>   | <b>No</b>   | <b>Yes</b>                             |
| Date of closure of the complaint (if applicable)  | <b>No</b>   | <b>Partially</b> (in response to email or CORA request)                                   | <b>Yes</b>                             |
| Outcome (did the complaint result in a violation or penalty?)   | <b>No</b>   | <b>Partially</b> (in response to email or CORA request)                                   | <b>Yes</b>                             |
| <b>REGULAR ENFORCEMENT REPORTS (ANNUAL / REGULAR)</b>   |   |   |  |
| Agency Annual Complaint report  | Not since Nov 2017 <sup>14</sup>                                  | <b>No</b> summary of complaints filed / outcomes in annual report <sup>15</sup>           | <b>Yes</b> <sup>16</sup>               |
| All annual reports available on-line  | Two annual reports from 2016 and 2017 available <sup>17</sup>     | <b>No</b> – only current year <sup>18</sup> ; previous years available upon email request | <b>Yes</b> – until 2018. <sup>19</sup> |



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## Colorado Oil & Gas Growth Exceeds CDPHE Enforcement Capacity

While the number of oil and gas facilities and air emissions permits continues to grow in Colorado, the agency in charge of enforcing air permits and protecting public health and safety has not adequately expanded its capacity.

The scorecard on the previous page highlights the significant differences in the treatment of public complaint information regarding oil and gas concerns. The lack of integration of the oil and gas complaint tools leaves community members without information about oil and gas facilities in their neighborhoods, and fails to adequately or consistently respond to complaints if they are filed.

The proposed CDPHE APCD Enforcement Budget increase for 2020 is a critical opportunity for CDPHE to build a stronger oil and gas complaint system that will increase transparency, responsiveness to the public, and accountability of the industry. Most importantly, a strengthened CDPHE complaint tool will better protect public health and safety from the known dangerous health impacts of living in proximity to oil and gas facilities.<sup>20</sup>

The number of COGCC and CDPHE field inspectors are out-numbered and out-resourced by the growing number of active well sites and oil and gas emissions sources operating in Colorado. The challenge of CDPHE's oil and gas inspection capacity below highlights the gap between the number of inspections conducted annually and the total number of emissions sources. Additional resources are needed to increase CDPHE's capacity to respond to the public with information and hold the industry accountable.

| COLORADO 2019 OIL & GAS INSPECTION CAPACITY |  |  |   |                                    |   |
|---|--|--|---|------------------------------------|---|
|   | # of permits   | # of inspectors                                      | ratio of wells and emission sources per inspector | # of inspections per inspector     | # of inspections conducted annually   |
| COGCC                                       | 52,010<br>Drilling permits <sup>21</sup>   | 26<br>(including regional supervisors) <sup>22</sup> | 2,154<br>wells per inspector                      | 1,505<br>inspections per inspector | 39,138 <sup>23</sup>  |
| CDPHE                                       | 28,433<br>Air permits, <sup>24</sup><br>individual oil and gas emissions sources | 10 <sup>25</sup>                                     | 2,843<br>air emissions sources per inspector      | 187<br>inspections per inspector   | 1,867<br>(includes 199 Full Compliance Evaluations + 1,668 Optical Gas Imaging inspections) <sup>26</sup> |



# 4

## Earthworks' Community Empowerment Project

In 2014, Earthworks started the Community Empowerment Project (CEP) because oil and gas pollution puts people and the climate at risk, and regulators and industry have consistently minimized or ignored legitimate community complaints.

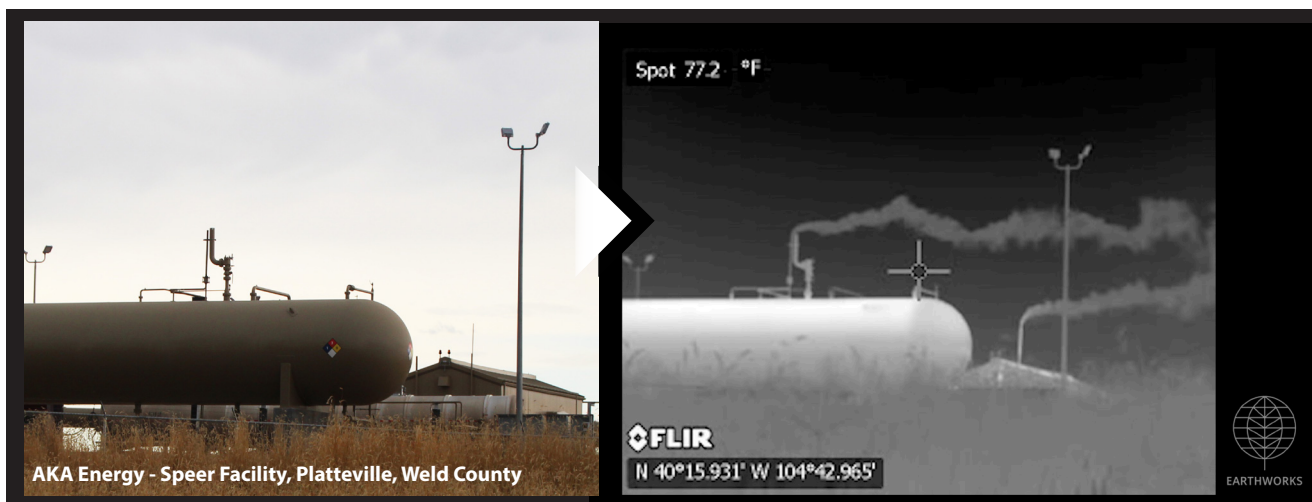
Methane pollution released by oil and gas facilities is 86 times more damaging to our climate than carbon dioxide over a 20-year time frame – longer than established climate science gives us to avoid the most catastrophic effects of climate change.

Oil and gas operations also release VOCs that cause a range of health problems, including carcinogens like benzene and toluene. This directly threatens the nearly 13 million US residents who live within a half mile radius of more than one million active oil and gas facilities.<sup>27</sup>

CEP makes the invisible visible by capturing Optical Gas Imaging footage of oil and gas pollution, files complaints with regulatory agencies nationwide to drive industry and government accountability, and supports impacted community voices.

**86x**

**Methane is 86 times more damaging to the climate than carbon dioxide**



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## Earthworks' Request for 2019 Oil & Gas Complaints Received by CDPHE

In an effort to request a status update on Earthworks' pending complaints, on September 13, 2019 we filed a CORA (Colorado Open Records Act)<sup>28</sup> request for a list and status update on all complaints filed in 2019.<sup>29</sup> We immediately received a list of 205 health-related complaints filed with CDPHE OGHIR. The list of complaints includes city, zip code, complainant age and some descriptions of the symptoms experienced. However, in order to receive the full scope of the CORA request submitted, we would need to pay \$242.24 to cover the staff time necessary to pull together the information. We submitted the \$242.24 to CDPHE and received a complaint summary of 49 complaints (apparently different complaints from the list of 205 complaints we received previously). The summary spreadsheet was incomplete, inconsistent and non-responsive to the complete CORA request. The scanned-in complaint documents were difficult to navigate and inconsistently redacted personal information of the complainants.

**A high price to pay for minimal CDPHE response: \$242.24 for Colorado Open Records Act request for 2019 oil and gas complaints regarding air emissions.**

### What we learned:

- 18 of the 49 of the complaints were from Earthworks
- The complaint status (pending or closed) was not available
- Complaint details were incomplete and inconsistently redacted
- CDPHE does not have a tracking system for use even by its own staff
- CDPHE does not track the final outcome of complaints





# 5 Conclusion and Recommendations

## Incremental Changes are Not Enough – It is time to end CDPHE's legacy of protecting polluters at the expense of public health and safety

Because CDPHE oil and gas oversight systems were built without prioritizing protection of impacted residents, the public:

- Finds it difficult to engage CDPHE on their behalf
- Sees inaction from CDPHE in response to complaints filed
- Does not trust CDPHE to protect their health
- Has lost their patience with CDPHE
- Is scared of the health harms they face living near fracking
- Does not know who to turn to for help when they have a health concern about an oil and gas site
- Is not provided any information following oil and gas fires near their homes

## Key Recommendations to Protect Coloradans from Oil & Gas

### Allocate resources to CDPHE in order to

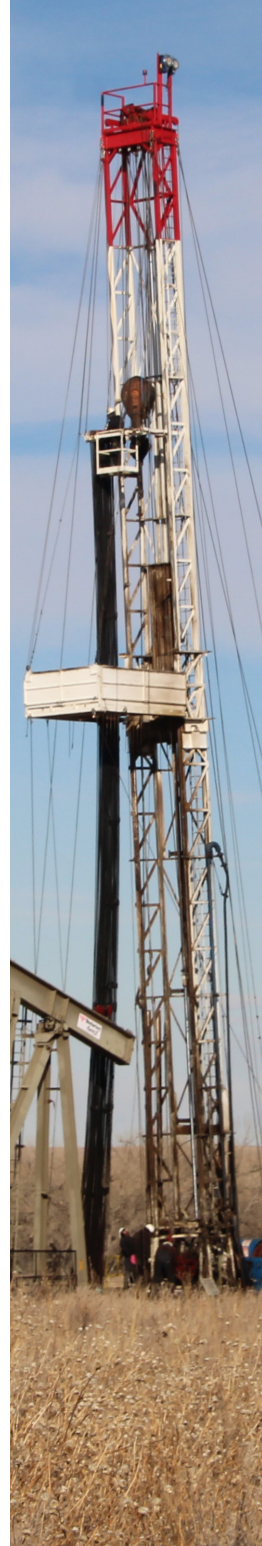
- Transform the CDPHE oil and gas complaint system
- Hire an oil and gas community liaison

### Keep the public informed about the investigation and outcome of every oil and gas complaint

- Proactively respond to complainants so the concerned public is automatically informed and updated on the status of each complaint
- Create a publicly accessible map of all oil and gas complaints (with an option to download and search the data)
- Track the outcome of each complaint
- Release a summary report of all complaints, inspections and findings on a regular (at least quarterly) basis

### Integrate Colorado's oil and gas complaint systems

- Create a single complaint number that travels with the complaint regardless of the agency



“ The [Air Pollution Control Division, APCD] needs this to make sure we can produce health benefits for Colorado residents.”<sup>30</sup>

— Governor Jared Polis in reference to the CDPHE proposed budget increase

“ My philosophy is that we hold polluters accountable. I think our enforcement actions, in general, need to be meaningful enough so that the industry has an incentive to put whatever controls are available to them in place to ensure [violations don't] happen.”<sup>31</sup>

— Jill Hunsaker Ryan, Executive Director, CDPHE



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# Endnotes

- 1 Senate Bill 19-181, "Protect Public Welfare Oil and Gas Operations," as adopted, <https://leg.colorado.gov/bills/sb19-181>. Accessed 2/27/20.
- 2 5 C.C.R. 1001-9 Air Quality Control Commission, Reg. 7, SBAP.
- 3 5 C.C.R. 1001-9 Air Quality Control Commission, Reg. 7, Part D, Section II.E.4.d.
- 4 COGCC complaint tool. <http://cogcc.state.co.us/complaints.html#/complaints>. Accessed 2/7/20.
- 5 CDPHE: Oil and Gas Health Information and Response (OGHIR) - "Oil and gas and your health." <https://oag-health.colorado.gov>. Accessed 2/13/20.. Accessed 2/13/20.
- 6 Complainants can submit both health-related and non-health related concerns via email ([cdphe\\_ogheath@state.co.us](mailto:cdphe_ogheath@state.co.us)) or using the on-line complaint tool (<https://oag-health.colorado.gov>). Accessed 2/27/20.
- 7 A basic Google search of "CDPHE oil and gas complaint" or of "CDPHE air oil and gas complaint" does not direct the public to the OGHIR "Oil and gas and your health" webpage. Also, if an impacted community member gets to the OGHIR complaint page, it is not immediately obvious that oil and gas concerns that are either health related or non-health related can both be filed. The public must click on "Report your health concern," and then begin filling out a concern to discover that there is a "report a non-health concern" option. <https://oag-health.colorado.gov/>. Accessed 2/27/20.
- 8 A basic Google search for "COGCC complaint" directs the public to the COGCC complaint tool. "File your complaint here" appears in large, blue font and a simple on-line form is available to file complaints. In support of the complaint process, COGCC provides a Fact Sheet on the COGCC Public complaint process (<https://cogcc.state.co.us/documents/complaints/Complaint%20Fact%20Sheet.pdf>) as well as guidance on how to file a COGCC complaint ([https://cogcc.state.co.us/documents/complaints/Filing\\_a\\_Complaint\\_Guidance.pdf](https://cogcc.state.co.us/documents/complaints/Filing_a_Complaint_Guidance.pdf)). COGCC complaint tool. <http://cogcc.state.co.us/complaints.html#/complaints>. Accessed 2/27/20.
- 9 CDPHE: Oil and Gas Health Information and Response (OGHIR) - "Oil and gas health concern data." <https://www.colorado.gov/pacific/cdphe/oil-and-gas-health-concern-data>. Accessed 2/7/20. Reported concerns by zip code and oil and gas activity can be downloaded as an Excel spreadsheet. The downloadable data is summarized by zip code and is limited in that it does not include (1) the description of the health impact, (2) the date the health concern was filed, or (3) the operator and site name of the closest oil and gas facility.
- 10 A basic Google search for "COGCC complaint search" directs the public straight to the COGCC complaint search tool. The public can search by many filters, including by county, complainant, operator, site name, and date. <https://cogcc.state.co.us/complaints2.html>. Accessed 2/27/20.
- 11 CDPHE: Oil and Gas Health Information and Response (OGHIR) - "Oil and gas health concern data." <https://www.colorado.gov/pacific/cdphe/oil-and-gas-health-concern-data>. Accessed 2/27/20. The CDPHE Oil and gas health concern map was last updated over 3 months ago on 12/4/19. When Earthworks filed public comments on 9/4/19, we noted that the map had not been updated for over six months (3/1/19).
- 12 Colorado Open Records Request (CORA) provides a process by which the public may request information from public agencies. CDPHE's APCD offers directions on how to submit requests regarding air matters. <https://environmentalrecords.colorado.gov/HPRMWebDrawer/Record-View/1147880>. Accessed 2/27/20.
- 13 The zip code of the complainant is available on the CDPHE OGHIR "Oil and Gas Health Concern Data" map and downloadable data. <https://www.colorado.gov/pacific/cdphe/oil-and-gas-health-concern-data>. Accessed 2/27/20.
- 14 CDPHE Oil and Gas Health Information and Response Program Update. Nov. 1, 2017. <https://drive.google.com/file/d/1MozmlsLw9APNGrEp7pc0A2Ql0BsqjF8/view>. Accessed 2/27/20.
- 15 CDPHE APCD Enforcement Action Reports - Quarterly Reports of all APCD Enforcement Actions (including oil and gas and other sources of air pollution). <https://www.colorado.gov/pacific/cdphe/enforcement-action-reports>. Accessed 2/27/20.
- 16 COGCC reporting recently changed in May 2019. After May 2019, detailed COGCC Staff Reports were no longer available. The shorter COGCC Staff Reports provide statistics on well permits, and COGCC organizational charts. Example of the detailed COGCC Monthly Staff Report: [https://cogcc.state.co.us/documents/library/Staff\\_Reports/2019/201901\\_StaffReport.pdf](https://cogcc.state.co.us/documents/library/Staff_Reports/2019/201901_StaffReport.pdf). Accessed 2/27/20. Example of shorter COGCC Staff Report: [https://cogcc.state.co.us/documents/library/Staff\\_Reports/2020/202002\\_StaffReport.pdf](https://cogcc.state.co.us/documents/library/Staff_Reports/2020/202002_StaffReport.pdf) (Feb. 26, 2020). Accessed 2/27/20.
- 17 CDPHE Oil and Gas Health Information and Response Program Update. Status Reports to Colorado State Legislature: 2015-2016 <https://drive.google.com/file/d/0B0tmPQ67k3NVRUtsNUVYUGFTT1E/view> & 2016-2017 <https://drive.google.com/file/d/1MozmlsLw9APNGrEp7pc0A2Ql0BsqjF8/view>. Accessed 2/27/20.
- 18 CDPHE APCD Report to the Public 2018-2019. <https://www.colorado.gov/pacific/cdphe/aqcc-report-public>. Accessed 2/27/20.
- 19 COGCC Staff Report. [https://cogcc.state.co.us/documents/library/Staff\\_Reports/2019/201901\\_StaffReport.pdf](https://cogcc.state.co.us/documents/library/Staff_Reports/2019/201901_StaffReport.pdf). Accessed 2/15/20. Much of the summary information previously included in the monthly COGCC Staff Reports is available in the COGCC's publicly searchable database called the "Daily Activity Dashboard (DAD)." <https://cogcc.state.co.us/dashboard.html#/dashboard>. Accessed 2/17/20.
- 20 ICF, Final Report: Human Health Risk Assessment for Oil & Gas Operations in Colorado, Oct. 17, 2019, [https://drive.google.com/file/d/1pO41DJMxw9sD-1NjR\\_OKyBJP5NCb-AO0l/view](https://drive.google.com/file/d/1pO41DJMxw9sD-1NjR_OKyBJP5NCb-AO0l/view). Accessed 2/27/20.
- 21 COGCC Daily Activity Dashboard (DAD). <https://cogcc.state.co.us/dashboard.html#/dashboard>. Accessed 2/17/20.
- 22 COGCC Staff Report - January 29, 2020. [https://cogcc.state.co.us/documents/library/Staff\\_Reports/2020/202001\\_StaffReport.pdf](https://cogcc.state.co.us/documents/library/Staff_Reports/2020/202001_StaffReport.pdf). Accessed 2/17/20.
- 23 COGCC Daily Activity Dashboard (DAD). <https://cogcc.state.co.us/dashboard.html#/dashboard>. Accessed 2/17/20.
- 24 Per CDPHE information request submitted 8/5/19, 28,433 indicates the number of sources of oil and gas emissions for which CDPHE APCD issued air permits. As most permitted oil and gas sites include several APCD permitted sources of emissions, the number of individual oil and gas facilities is lower than 28,433.
- 25 2019 number of CDPHE APCD inspectors received from CDPHE staff with the APCD Oil and Gas Team. 2/10/20.
- 26 2019 inspection totals received from CDPHE staff with the APCD Oil and Gas Team. 2/10/20.
- 27 Oil & Gas Threat Map. <https://oilandgasthreatmap.com/threat-map/>. Accessed 2/10/20.
- 28 Colorado Open Records Request (CORA) provides a process by which the public may request information from public agencies. CDPHE's APCD offers directions on how to submit requests regarding air matters. <https://environmentalrecords.colorado.gov/HPRMWebDrawer/Record-View/1147880>. Accessed 2/27/20.
- 29 For each public complaint filed with CDPHE regarding oil and gas emissions in 2019, we requested the following information: (1) Operator name, (2) Site name, (3) Name of complainant, (4) Date the complaint was filed, (5) Description of the emissions, (6) Did the complaint include a health-related concern? (Y / N), (7) Response from APCD, (8) Inspection report (if available), (9) Inspector name, (10) Status of the complaint (is it pending or closed), (11) Date of closure of the complaint (if applicable), and (12) Outcome (did the complaint result in a violation or penalty?).
- 30 Herrick, John. "Gov. Jared Polis pitches budget that aims to tackle emissions with more state inspectors," *The Colorado Independent*, Nov. 1, 2019.
- 31 Herrick, John. "Jill Hunsaker Ryan, public health and environment department head, talks environmental justice and air quality," *The Colorado Independent*, Dec. 27, 2019.



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