

## VIA Electronic and Regular Mail

October 2, 2012

Colorado Air Quality Control Commission  
4300 Cherry Creek Drive South  
EDO-AQCC-A5  
Denver, Colorado 80246-1530

Re: Proposed revisions to Regulation No. 6, Pt. A., Standards of Performance for New Stationary Sources

Dear Commissioners:

Thank you for accepting these comments on behalf of the Environmental Defense Fund, Earthjustice, Earthworks' Oil & Gas Accountability Project, Colorado Conservation Voters, Colorado Environmental Coalition, High Country Citizens' Alliance, San Juan Citizens Alliance, and Western Resource Advocates. Our members are deeply concerned about the pollution emitted from oil and natural gas sources.

Oil and natural gas operations emit a variety of air pollutants, including pollutants that contribute to ground-level ozone or “smog;” toxic air pollutants including known human carcinogens; and methane, a potent climate-disrupting pollutant. Ozone pollution is linked to serious health problems, including premature mortality, heart failure, increased hospital admissions and emergency room visits for respiratory causes among children and adults with pre-existing respiratory disease, and possible long-term damage to the lungs.<sup>1</sup> Children, the elderly, and people with existing respiratory conditions are the most at risk from ozone pollution.<sup>2</sup> Air toxics emitted from oil and gas activities include benzene and formaldehyde, both known human carcinogens.<sup>3</sup> Hydrogen sulfide, a pollutant that is found in certain types of natural gas (“sour” gas), causes nausea, headaches, delirium, disturbed equilibrium, poor memory, loss of consciousness, tremors, and convulsions.<sup>4</sup> Methane, the primary constituent of natural gas, is a potent greenhouse gas with a warming potential seventy-two times that of carbon dioxide over the short term (twenty years) and twenty-five times that of carbon dioxide over a longer time-

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<sup>1</sup> EPA, AIR QUALITY CRITERIA FOR OZONE AND RELATED PHOTOCHEMICAL OXIDANTS (2006); Michelle L. Bell, Roger D. Peng & Francesca Dominici, The Exposure-Response Curve for Ozone and Risk of Mortality and the Adequacy of Current Ozone Regulations, 114 ENVTL. HEALTH PERSPS. 532 (2006); Jonathan I. Levy et al., Ozone Exposure and Mortality: An Empiric Bayes Metaregression Analysis, 16 EPIDEMIOLOGY 458 (2005).

<sup>2</sup> See EPA, Ground-Level Ozone Health Effects, <http://www.epa.gov/glo/health.html>; EPA, Nitrogen Dioxide, Health, <http://www.epa.gov/air/nitrogenoxides/health.html>.

<sup>3</sup> See, e.g., NATIONAL TOXICOLOGY PROGRAM, REPORT ON CARCINOGENS, 12TH ED. 195 (2011), available at <http://ntp.niehs.nih.gov/ntp/roc/twelfth/profiles/Formaldehyde.pdf>.

<sup>4</sup> AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, TOXICOLOGICAL PROFILE FOR HYDROGEN SULFIDE 104 (July 2006), available at <http://www.atsdr.cdc.gov/toxprofiles/tp114.pdf>.

frame (one-hundred years).<sup>5</sup> In addition to its climate impacts, methane contributes to higher global background concentrations of ozone pollution.<sup>6</sup>

EPA's New Source Performance Standards for Oil and Natural Gas Production, Transmission and Distribution ("NSPS") will reduce harmful air toxics, ozone precursors, and methane as a co-benefit using proven, cost-effective control technologies. Overall, the NSPS will remove 190,000 tons of VOCs, 1.0 million tons of methane and 11,000 tons of HAPs from the atmosphere in 2015 when all standards will be fully implemented.<sup>7</sup> Notably, the bulk of these reductions come from the reduced emission completion ("REC") requirement which will remove approximately 22 tons of VOCs from the atmosphere during each well completion<sup>8</sup> for a total of 88, 300 tons once fully implemented, while also achieving significant methane and HAPs co-benefits.<sup>9</sup> In addition, the requirements to combust rather than vent emissions from those gas wells exempt from the REC (i.e. low-pressure, delineation and wildcat wells) and during the initial period prior to January 1, 2015 when RECs are not required, will reduce VOCs by an additional 30,000 tons.<sup>10</sup>

The NSPS builds on many clean air measures already in place in Colorado aimed at reducing pollution from the over 46,000 wells and additional associated facilities in the state. These measures include requirements to use low or no-bleed pneumatic devices, install controls on condensate tanks and utilize "green completion" practices on oil and gas wells. EPA's NSPS reflects many of these requirements while also ensuring additional reductions from sources not covered by existing state standards. For example, the requirement that all new reciprocating compressors replace aging rod-packing every 26,000 hours or three years, and that all new compressors equipped with wet seals control emissions by 95%, add important requirements not in place in Colorado. While individually, fugitive emissions from compressors may be small, cumulatively they represent a significant amount of pollution. EPA estimates national baseline emissions from new reciprocating compressors to equal 9, 286 tpy of methane, 2,420 tons per year ("tpy") of VOCs, and 91 tpy of HAPs.<sup>11</sup> EPA's NSPS will reduce these emissions by over

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<sup>5</sup> The values of 25 and 72 are methane's global warming potential (GWP); GWP is a commonly used concept to compare the radiative forcing of GHGs relative to that of CO<sub>2</sub>. The Intergovernmental Panel on Climate Change (IPCC) typically uses a 100-year time horizon for the calculation of GWP; but a 20-year horizon is sometimes used.

<sup>6</sup> J. Jason West et al., Global Health Benefits of Mitigating Ozone Pollution with Methane Emission Controls, 103 PROC. NAT'L ACAD. SCI. 3988, 3989 (2006).

<sup>7</sup> EPA Final Rule, Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 77 Fed. Reg. 49492 (Aug. 16, 2012).

<sup>8</sup> EPA, Oil and Natural Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution. Background Final Technical Support Document for the Final Rules, Table 4-2 (April 2012).

<sup>9</sup> *Id.* at Table 4-3. EPA's Final TSD does not quantify methane and HAPs reductions from the REC requirement.

<sup>10</sup> *Id.*

<sup>11</sup> EPA, "Oil and Natural Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution. Background Technical Support Document for the Proposed Rules s, Table 6-5 (August 2011). Colorado specific emissions information is not available because fugitive leaks from individual compressors do not meet Colorado's Air Pollution Emission Notice emission thresholds and available inventories do not list compressor leaks separately from other sources of fugitive emissions.

50%.<sup>12</sup> The new wet seal compressors requirement will reduce by 95% methane, VOC and HAP emissions from new compressors, resulting in reductions of 2,810 tpy of methane, 254 tpy of VOCs and 9 tpy of HAPs.<sup>13</sup> In addition, while the AQCC currently requires controls on condensate tanks, EPA's rule expands protections to other storage vessels, such as crude oil and produced water tanks, which are likely to increase as oil production picks up in the Niobrara.

We are pleased that the Air Pollution Control Division is recommending incorporation by reference of EPA's NSPS to the AQCC's Regulation 6. EPA's standards represent much-needed protections for human health and the environment that will significantly reduce pollution associated with the briskly expanding oil and gas development in Colorado. Unfortunately, however, the Division's proposal falls short of adopting in full the critical protections afforded by the NSPS at this time. The Division has proposed to delay adoption of the gas well provisions and to adopt the other provisions only in so far as emissions from affected facilities meet state reporting and permitting thresholds. We are heartened that the Division recently committed to convening a stakeholder process in 2013 to consider adoption of the well provisions.<sup>14</sup> The gas well provisions in the NSPS ensure critical protections for human health and the environment and state delegation over these standards is necessary to ensure adequate compliance and enforcement. However, we are concerned that the partial delegation approach for the other standards creates a more complex framework for implementing and enforcing the NSPS that we believe may have an unintended adverse effect on human health and the environment. Specifically, we are concerned that the complexities inherent in partial delegation may lead to duplicative efforts on the parts of regulatory agencies with oversight over the NSPS and state rules, create gaps in enforcement and decrease the effectiveness of, or deter, citizen complaints. We outline our concerns below and suggest some potential ways to minimize the risks we identify.

#### I. Colorado's Efforts to Reduce Pollution Associated with Oil and Gas Development.

Under the leadership of the Air Quality Control Commission ("AQCC") and the Air Pollution Control Division ("Division"), Colorado has proven itself a leader in clean air measures. Almost a decade ago the AQCC promulgated its first measures to reduce harmful emissions of ozone precursors, volatile organic compounds ("VOCs") and oxides of nitrogen ("NOx") in an effort to prevent exceedances of the 8-hour national health-based standards ("NAAQS") for ozone and avoid a nonattainment designation for a significant portion of the Denver metropolitan area known as the 8-Hour Ozone Control Area.<sup>15</sup> These measures included provisions aimed at

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<sup>12</sup> *Id.* at Table 6-6. The reciprocating compressor requirements will achieve a total of 5,329 tpy of methane, 1,482 tpy of VOCs and 55.9 tpy of HAPs once fully implemented.

<sup>13</sup> EPA, Oil and Natural Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution. Background Final Technical Support Document for the Final Rules, Table 6-2 (April 2012).

<sup>14</sup> Statement by Stephanie Rucker, APCD, Sept. 24 stakeholder meeting.

<sup>15</sup> Colorado AQCC Reg. No. 7, §§ XII, XVI (March 2004).

reducing VOCs from condensate tanks, gas processing plants, glycol dehydrators, and reciprocating internal combustion engines (“RICE”).<sup>16</sup> Nearly all of the measures adopted in 2004, including a requirement that ageing gas plants, i.e., those constructed prior to January 20, 1984, institute a leak detection and repair program for leaky equipment went beyond any federal air requirements. By extending the EPA leak detection and repair program for leaky equipment at new gas plants to older plants the AQCC demonstrated an acute understanding of the need to control “existing” as well as “new” sources.

Despite these measures, only two years later in 2006 the AQCC adopted additional requirements. These measures were necessary to reduce pollution from the “rapidly growing emissions from oil and gas operations throughout the state.”<sup>17</sup> At that time, oil and gas sources accounted for 47% of VOC (455 tons per day) and 19% of NOx (164 tons per day) emissions statewide.<sup>18</sup> VOC emissions from permitted condensate tanks in the Denver Julesburg Basin alone equaled 53,410 tons per year.<sup>19</sup> To address these pollution sources the AQCC strengthened the condensate tank requirements by committing to reduce VOCs from condensate tanks located in the 8-Hour Ozone Control Area to 91.3 tons per day (“tpd”) by May 1, 2007 and to 100.9 tpd by May 1, 2012, and extended requirements for glycol dehydrators and RICE in the 8-Hour Ozone Control Area to sources located statewide.<sup>20</sup>

Despite the additional measures, the 8-Hour Ozone Control Area violated the 1997 8-hr ozone NAAQS as of November 20, 2007.<sup>21</sup> In 2008 the AQCC adopted additional oil and gas measures aimed both at achieving compliance with the 1997 8-hr ozone standard and ensuring attainment with the 2008 8-hr standard. As in prior years the AQCC focused on securing additional reductions from condensate tanks and reciprocating internal combustion engines.<sup>22</sup> The Commission also added new control requirements for new and existing pneumatic devices located in the 8-hr Ozone Nonattainment Area.<sup>23</sup> At that time the oil and gas industry was responsible for 100,622 tpy VOCs and 22,165 tpy NOx.<sup>24</sup> Of these, condensate tanks accounted for 73,992 Tpy, followed by venting from wells during completions and re-completions (23,351 tpy) and pneumatic devices (16,594 tpy).<sup>25</sup>

At the same time the Oil and Gas (“OGCC”) Commission added important requirements to control odors and emissions from oil and gas wells, pneumatic devices, storage vessels and

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at §§ XII, XVII (December 17, 2006).

<sup>18</sup> Curtis Taipale, CDPHE, APDC, “Denver Metro/North Front Range 2008 Base Case Emission Inventory,” Slide 24, presented at the Aug. 9, 2012 Regional Air Quality Council Ozone Modeling Forum.

<sup>19</sup> ENVIRON Final Emissions Technical Memorandum No. 4a (June 7, 2012).

<sup>20</sup> CDPHE, AQCC Reg. No. 7, Statement of Basis, Specific Statutory Authority and Purpose (Dec. 17, 2006).

<sup>21</sup> *Id.*

<sup>22</sup> AQCC Reg. No. 7 §§ XII, XVII, XVIII (December 12, 2008).

<sup>23</sup> *Id.*

<sup>24</sup> ENVIRON Final Emissions Technical Memorandum No. 4a (June 7, 2012).

<sup>25</sup> *Id.*

pits.<sup>26</sup> These rules were in direct response to the receipt of over 200 citizen complaints of odors emanating from oil and gas facilities in Garfield County between 2004-2008 alone.<sup>27</sup> Like the AQCC's provisions for oil and gas facilities contained in Regulation No. 3, the OGCC requirements similarly laid the groundwork for EPA's NSPS.

Despite Colorado's leadership and perseverance, serious air quality challenges persist. Colorado is now home to over 45,000 oil and gas wells and the copious equipment associated with such wells. The Denver metropolitan area remains out of attainment with the 1997 8-hr ozone NAAQS and despite expectations, is also in violation of the 2008 8-hr ozone standard.<sup>28</sup> According to the latest inventory, oil and gas sources accounted for 47% of all statewide anthropogenic VOC emissions.<sup>29</sup> While data on current emissions is not available, a recent study suggests that methane and benzene emissions in the Denver-Julesberg Basin are significantly higher than previously thought.<sup>30</sup> In those parts of the state with air quality that meets national standards for ozone, monitors have measured ozone concentrations of up to 80 parts per billion (exceeding the NAAQS)<sup>31</sup> and models have demonstrated that rapid expansion of oil and gas activities in northern New Mexico and Colorado are negatively impacting air quality in many of the state's pristine wilderness areas and National Parks.<sup>32</sup> Clearly, there is more work to be done in order to protect human health and our state's spectacular natural resources from air pollution associated with oil and gas facilities.

## II. Adoption of EPA's Gas Well Provisions is Critical to Ensuring Coloradans Realize the Full Benefits of EPA's NSPS.

In its hearing notice the Division requested that the Commission delay adoption of the provisions that apply to natural gas wells "to allow time to determine how best to implement these provisions and whether or not any revision to Colorado's current reporting and permitting framework are necessary."<sup>33</sup> Since then, the Division has indicated an intent to convene a stakeholder process to consider adoption of the gas well provisions in early 2013. We are very pleased by this announcement and look forward to working with the Division in this process. The NSPS gas well provisions provide much-needed reductions of ozone-forming, climate

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<sup>26</sup> Colorado Oil and Gas Conservation Commission, R. 805(b)(3).

<sup>27</sup> COGCC, Statement of Basis, Specific Statutory Authority and Purpose, New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1, 53.

<sup>28</sup> EPA, 2008 Ground-level Ozone Standards-Region 8 Final Designations, April 2012, available at <http://www.epa.gov/ozonedesignations/2008standards/final/region8f.htm>.

<sup>29</sup> 2008 Base-Anthropogenic VOC Emissions, prepared for EDF by M.J. Bradley. On file with author.

<sup>30</sup> Pétron, G., *et al.*, Hydrocarbon emissions characterization in the Colorado Front Range: A pilot study, 117 *J. Geophysical Research*, D04304, D04304 (2012).

<sup>31</sup> McKenzie, L.M.; Witter, R.Z.; Newman, L.S.; Adgate, J.L., Human Health Risk Assessment of Air Emissions from Development of Unconventional Natural Gas Resources, 424 *Science of the Total Environment*, 79, 86 (2012).

<sup>32</sup> Rodriguez, M.A.; Barna, M.G.; & Moore, T., Regional Impacts of Oil and Gas Development on Ozone Formation in the Western United States, 59 *J. Air & Waste Mgmt. Ass.*, 1111, 1111 (2009).

<sup>33</sup> Notice of Written Comment Only Public Rulemaking Hearing Before the Colorado Air Quality Control Commission, Proposed Statements of Basis, Specific Statutory Authority and Purpose (For Part A).

disrupting and toxic air pollutants. For the reasons detailed below, we believe these reductions will best be achieved if the Division adopts the provisions in full as expeditiously as possible.

As noted above, EPA's REC will remove thousands of tons of VOCs, as well as methane and HAPs, from the atmosphere once fully implemented. However, these reductions are unlikely to be realized if the Division does not take full delegation over this requirement. This is in part due to concerns related to economies of scale and agency resources discussed below in Section III and IV. In short, it is more efficient and effective for one agency to implement and enforce the NSPS than two. In addition, the Division is a proven expert at reducing air pollution from oil and gas sources in Colorado as demonstrated by its rigorous efforts to do so over the past eight years. Due to its experience implementing Regulation No. 7, and permitting other oil and gas sources not subject to these rules, the Division has gained intimate knowledge of the characteristics of state oil and gas basins, operators, and company practices. This knowledge is critical to effective implementation and enforcement of oil and gas standards.

We acknowledge that the differences between EPA's gas well provisions and the OGCC's green completion requirement, as well as similarities, requires careful consideration prior to full delegation adoption. To that end we wish to highlight certain aspects of EPA's rule that we believe provide additional protections to human health and the environment.

First, EPA's rule lessens the instances when an operator can vent, rather than flare or capture, gas from a gas well. EPA's rule requires that operators of wildcat, delineation and low-pressure wells that are excepted from the REC requirement must combust, rather than vent, emissions.<sup>34</sup> The OGCC on the other hand simply requires that operators use best management practices ("BMPs") whenever green completions are not technically feasible or not required.<sup>35</sup> These BMPs may include venting. The result is that adoption of EPA's rule should reduce the amount of pollution that is vented to the atmosphere in instances where gas is not captured during completions. Moreover, while EPA clearly delineates those wells that are not required to utilize reduced emission completions (i.e. wildcat, delineation and low-pressure wells) the OGCC provides a number of additional exceptions. Under the OGCC rule green completions are not required for exploratory wells; where the wells are not sufficiently proximate to sales line; or where green completions are otherwise not technically and economically feasible.<sup>36</sup> This latter exception does not exist in EPA's rule.

Second, EPA limits venting during reduced emission completions to very limited circumstances. Under EPA's rule venting is permitted only "in conditions that may result in a fire hazard or explosion, or where high heat emissions from a completion combustion device may negatively

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<sup>34</sup> 40 C.F.R. § 60.5375(f)(1).

<sup>35</sup> COGCC R. 805(b)(3)(A),(D).

<sup>36</sup> COGCC R. 805(b)(3)(A),(D).

impact tundra, permafrost or waterways.”<sup>37</sup> The OGCC rules contains no such specific limitation on venting, creating the possibility that many more tons of pollutants escape to the atmosphere during green completion practices than should be allowed.

Third, EPA requires combustion with a completion device equipped with a reliable continuous ignition source. A completion device is “any ignition device, installed horizontally or vertically, used in exploration or production operations to combust otherwise vented emissions from completions.”<sup>38</sup> Operators may not use electronic ignition devices because such devices may not be able to combust VOC portions of low BTU gas.<sup>39</sup> The OGCC does not require the use of a reliable continuous ignition source for flares and therefore does not specify whether electronic ignition devices may be used or not. Assuming proper operating conditions, EPA’s rule should result in greater destruction of pollutants during completion combustion than OGCC’s rule due to the requirement that operators use reliable continuous ignition sources during combustion.<sup>40</sup>

We fully support the Division’s decision to convene a stakeholder process in 2013 to consider adoption of EPA’s gas well provisions. These critical provisions will significantly aid Colorado in cleaning up pollution from the myriad gas wells in the state.

### III. Complete Adoption of the NSPS is Necessary for Colorado to Realize the Full Benefits of EPA’s Standards.

The Division has proposed to adopt the NSPS provisions for all affected facilities, except gas wells, “only to the extent that they already trigger the combination of existing reporting and permitting requirements in Colorado.”<sup>41</sup> Part of the basis for this approach is a concern that permitting and inspecting small emission sources that do not meet state reporting and permitting thresholds will overburden the state’s already strained permit writers and inspectors. While we recognize the Division’s resource constraints, we are concerned that the partial adoption approach creates uncertainties and inefficiencies that are likely to reduce the protections promised by the NSPS with concomitant adverse impacts for public health and the environment.

First, partial adoption institutes a split jurisdictional system which adds a layer of complexity that can hinder the utility of citizen complaints and regulatory responses to such complaints. Facilities which do not trigger the combination of existing reporting and permitting requirements

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<sup>37</sup> 40 C.F.R. § 60.5375(a)(3).

<sup>38</sup> 40 C.F.R. § 60.5430.

<sup>39</sup> EPA Response to Public Comments on Proposed Rule, 76 FR 52738, p. 58-59 (August 23, 2011).

<sup>40</sup> We point out these differences only to make sure that the Division is aware of them. To the extent there are differences between the OGCC’s rule and EPA’s, the more stringent rule applies. *See* 60 C.F.R. § 60.5375(a) (requiring that operators of hydraulically fractured gas wells capture and direct flowback emissions to a combustion device other than when venting is required for safety or explicit environmental welfare reasons “unless a more stringent state or local emission control requirement is applicable”).

<sup>41</sup> Notice of Written Comment Only Public Rulemaking Hearing Before the Colorado Air Quality Control Commission, Proposed Statements of Basis, Specific Statutory Authority and Purpose (For Part A).

in Colorado will remain under EPA's exclusive jurisdiction. Such facilities will submit monitoring, recordkeeping and compliance reports to EPA and EPA, not the state, will have the responsibility of inspecting these facilities and bringing any requisite enforcement actions. Companies with facilities subject to the Division's jurisdiction, on the other hand, will report to the Division and the Division, not EPA, will be required to inspect these facilities and bring enforcement actions for violations. As a result, it will not be clear to members of the public which agency has jurisdiction over any particular piece of equipment and therefore to whom to report complaints of suspected violations. This is likely to lead to a number of "incorrect" reports, whereby citizens contact the wrong agency. Agency personnel will then need to either pass along the complaint information to the correct jurisdictional entity, or request that the citizen do so. This uncertainty and inter-agency juggling of complaints is likely to lead to delay in responding to complaints which in some cases may have an immediate adverse effect on human health. The additional time it may take for members of the public to contact the correct agency, and possibly get a response, may also create a disincentive to public participation as some members of the public may get frustrated if the process for reporting complaints seems confusing or cumbersome.

Second, partial adoption is likely to result in duplicative and less efficient agency inspections. Under the current proposal both EPA and the Division may be required to visit the same facility to inspect different pieces of equipment. For example, the Division may be responsible for inspecting a compressor station at which exists an engine subject to the Division's RICE standards. EPA, on the other hand, may have jurisdiction over the compressors if emissions from those compressors do not reach air pollution emission notice limits. The result will be two separate inspections of the same facility by two agencies both of whom are severely understaffed. In addition, inspectors will not have access to records or permit requirements of all equipment at a site. This will make identifying potential permit or rule violations more difficult and increases the likelihood that some problems will not be identified as expeditiously.

Lastly, full adoption is likely to increase the accuracy and effectiveness of penalties. An important component of the NSPS reporting requirements is the requirement that facility owners or operators certify compliance annually and document any periods of non-compliance. These annual compliance reports provide an important record of a company's compliance history which both EPA and the Division may consider when assessing penalties.<sup>42</sup> However, under the partial delegation approach neither agency enforcement personnel will have access to a company's complete compliance history (i.e., a record of compliance with applicable state and federal air standards). This is likely to diminish the likelihood that enforcement personnel will take a company's compliance record into account when assessing fines, which will lead to insufficient penalties.

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<sup>42</sup> C.R.S. § 25-7-122(2)(a)(I). 42 U.S.C. § 7413(e).



One way to ameliorate some of these concerns is to require dual reporting whereby companies copy both the EPA and the Division on any annual reports. Sharing of information is important to improving regulatory efficiency, reducing redundancies and ensuring that the public reaps the benefits promised by the NSPS. For example, dual reporting will ensure that inspectors are aware of all applicable requirements at a facility and can easily identify potential permit or rule violations. Similarly, when a citizen complaint is received, agency personnel can immediately notify the correct agency if the complaint is reported to the wrong agency which should enhance agency response time. And lastly, fines are more likely to reflect accurately a company's willingness to comply with air rules, thereby providing a greater incentive for future compliance or deterrence from future non-compliance. To ensure such sharing of information occurs, we strongly urge the AQCC to work with EPA to set up a process whereby operators must submit notices and reports to both agencies.

IV. The Division's Proposal Underscores the Need for Additional State Resources to Ensure Compliance with State and Federal Air Measures.

The Division notes that resource constraints are a primary driver behind its partial adoption proposal. We heartily agree that adequate resources to permit and enforce the requirements contained in Subpart 0000 is vitally important to the realization of the air protections promised by the standards and recognize the resource constraints that the Division currently faces. However, we believe the answer is additional monitoring requirements, in particular continuous air quality monitoring at natural gas production sites, rigorous self-certification requirements, greater transparency and additional inspectors, rather than partial delegation. EPA's NSPS adds an important self-certification requirement that will greatly enhance accountability. However, agency resources are still necessary both to verify information contained in the reports and conduct physical inspections.<sup>43</sup>

The oil and natural gas industry is unique in that it consists of thousands of remotely located "facilities" spread out throughout the state. These facilities range from individual and multi-well sites to booster stations, gas processing plants and compressor stations. No one well site or compressor station is necessarily identical to another in terms of size or the types of individual pieces of equipment that may be located at it and company practices with respect to operations differ significantly. The sheer multitude of facilities presents a significant challenge to adequate inspections. The Division is in the process of staffing up to eight full time oil and gas inspectors. We note this is a doubling of inspectors since last year and we commend the Division on its efforts to secure additional staff. Despite this improvement, however, the ratio of Division air inspectors to wells alone is still at best 5,625 wells to inspector. This ratio is even lower for EPA

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<sup>43</sup> The NSPS requires operators to submit annual reports that "include a signed certification by a senior company official that attests to the truth, accuracy and completeness of the report." 40 C.F.R. § 60.5420(b)(iv).

Region 8 who we understand has less than five full-time oil and gas air inspectors for all six of the state and 27 tribal nations within its jurisdiction.

The remote, sometimes difficult to access, location of many of these facilities poses another challenge both to inspectors making routine inspections or responding to citizen complaints. This weighs heavily in favor of full adoption since one inspection by a state inspector can check for compliance with all federal and state air requirements, rather than requiring an EPA and a state inspector to visit the same site at different times.

We are aware that the Division is under pressure to increase the time in which permits are issued. While we support efforts to increase the Division's resources, we strongly object to any future proposals to shift agency resources from inspectors and enforcement personnel to permit writers. Rather, we believe the better policy is to hire additional inspectors and if necessary permit writers and to require additional monitoring at oil and gas sites which will reduce the burden on inspectors and likely lead to greater compliance.

#### V. Adoption of the NSPS Must Not Weaken State Standards

Lastly, the Division noted possible conflicts between the NSPS and existing AQCC rules in its hearing notice. We support the Divisions' intention to form a stakeholder process to determine how best to implement the NSPS well provisions and believe that a similar process is necessary prior to any substantive changes to existing AQCC requirements. As noted above, despite its best efforts, Colorado continues to face significant air quality challenges related to the ever-increasing emissions from the natural gas and oil industry. In light of these challenges, we strongly oppose any efforts to weaken existing state standards. For example, Regulation No. 7 currently contains a number of provisions to limit emissions from condensate tanks. These provisions differ from EPA's NSPS requirements in terms of the structure of the requirements and the definition of the source to which they apply. For example, Regulation No. 7 requires system-wide controls on condensate tanks under common control whose cumulative emissions equal 30 tpy or more in the Denver ozone nonattainment area as well as controls on new or modified condensate tanks at exploration and production sites during the first 90 days of production.<sup>44</sup> To meet these requirements operators must control emissions at tanks manifolded together, rather than on individual basis. EPA, on the other hand, requires 95% control of VOCs from individual storage tanks. While there are differences between EPA's NSPS and the AQCC's Reg. No. 7, we believe these differences are compatible and no changes are necessary to Reg. No. 7 at this time. Operators can comply with both sets of requirements.

#### VI. Request to Submit Oral Testimony

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<sup>44</sup> Reg. No. 7, § XII.D.1, D.2.

Full adoption of the NSPS is necessary to ensure that Colorado reaps the entire benefits of EPA's new rules. As demonstrated above, compliance monitoring and enforcement both by the public and the state will be more effective and the use of constrained agency resources more efficient under a full adoption approach. We acknowledge the Division's concerns regarding resource constraints and are eager to work with the AQCC and the Division to address these needs. However, as noted above, EPA's resources are equally if not more limited and the likely unintended effect of the Division's proposal is under-enforcement of the NSPS. Because of the seriousness of these concerns we respectfully request the opportunity to address the Commission orally at the hearing scheduled for October 18, 2012.

Thank for the opportunity to submit these comments.

Sincerely,

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