



EARTHWORKS

November 26, 2024

Earthworks appreciates the opportunity to provide comments on the proposed revisions to Regulations 7, 25, 26, and 27 in regards to achieving legislatively mandated reductions in greenhouse gas (GHG) emissions from the midstream oil and gas sector.

Earthworks is a nonprofit organization committed to working with frontline communities to address the adverse impacts of mining and energy development on public health and the environment while promoting sustainable solutions. For more than 20 years, Earthworks staff have worked on the ground with local partners across the US and the world to expose harmful pollution and to engage local, state, and federal regulators and lawmakers to reform policies and adopt stricter rules that put the lives of people before the interests of industry. In Colorado, Earthworks' optical gas imaging (OGI) thermographers have conducted nearly 1900 surveys of oil and gas facilities using FLIR G-Series OGI cameras¹ designed to detect hydrocarbon gasses and have documented numerous leaks, equipment malfunctions, and other compliance issues that have been reported to compliance staff at the Air Pollution Control Division (APCD) as well as at the Energy and Carbon Management Commission.

Our comments will be limited to a discussion of why APCD's proposed rule must ensure that emissions reductions from the midstream sector result in emissions reductions of GHGs or co-pollutants in disproportionately impacted communities (DICs).

Failure to Guarantee Emissions Reductions in DICs

In comments on the Midstream Steering Committee's (MSC) recommendations,² we outlined some of our concerns regarding how the recommended approach to emissions reductions from the midstream sector did not offer adequate protections for DICs. While the proposed rule differs from the MSC's recommendations - and addresses some of those previous concerns³ - we likewise see the rule failing to offer adequate protections for DICs as mandated by HB 21-1266.⁴

Our primary concern is that the rule does not specifically require that emissions reductions occur in DICs and does not prohibit any increase in emissions from midstream sources in DICs. In other words, the structure of the proposed program for

¹ <https://www.flir.com/products/flir-g-series/>

² https://drive.google.com/file/d/14U_nwXk6vkb8xTHlq72v9M80ggiR5Bck/view?usp=sharing

³ The draft rules do not create specific protections for a subset of DICs for instance

⁴ <https://leg.colorado.gov/bills/hb21-1266>

Dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

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achieving emissions reductions from the sector means that an operator with midstream facilities located both within and outside of DICs could theoretically comply with the rule while potentially increasing rather than reducing emissions at the facilities located within DICs.

In this way, we are largely in agreement with the arguments outlined by Environmental Defense Fund in its Prehearing Statement (PHS)⁵ and rebuttal⁶ and with GreenLatinos in its PHS⁷ that highlight the inadequacy of the proposed rule in prioritizing emissions reductions in DICs.

Furthermore, even in the absence of a legislative mandate to achieve greater protections for DICs in agency rulemaking, we would still view required emissions reductions in DICs as a necessary outcome of the present rule given our findings from OGI surveys of midstream facilities.

Earthworks OGI Surveys of Midstream Facilities

Since 2014, Earthworks thermographers in Colorado have conducted 166 OGI surveys of 58 different midstream facilities.⁸ 69 emissions events⁹ were identified at 27 of those facilities¹⁰ over the course of those surveys. Earthworks reported 40 of those emissions events at 19 facilities to regulatory staff at APCD.¹¹

Of the 27 facilities where we have observed at least one emission event during a survey, 14 are located in or directly adjacent to¹² a census block designated as a DIC.¹³ Importantly, these 14 facilities account for 51 of the 69 emissions events we have observed at these types of facilities. In other words, of the midstream facilities where we have observed emissions, only half are located in or next to DICs and yet these facilities account for close to 75% of our observations of emissions events from these types of facilities overall.

Similarly, of the 19 facilities where we have reported our observations of emissions events to APCD, nine are located in or immediately adjacent to a DIC. Those nine facilities account for 27 of the 40 emissions events we have reported from these types of facilities. So once again, the half of the sample located in or next to DICs is accounting for close to 70% of the reported events. Our OGI survey data is therefore illustrative of the potential impact of emissions from midstream

⁵ <https://drive.google.com/file/d/1f8EpJktm3tw3cdT4JH2Z1-ulhV84qszf/view?usp=sharing>

⁶ <https://drive.google.com/file/d/17kdW1ugJc3ePZowEB3rPEZZ-6D37qD-a/view?usp=sharing>

⁷ <https://drive.google.com/file/d/1ceLk1AXpc6i0BUK6muadD6Ox75uBRq2i/view?usp=sharing>

⁸ Including compressor stations, storage facilities, and gas processing facilities

⁹ Including emissions due to incomplete combustion in flares or other combusted sources, uncontrolled emissions from storage tanks or other sources, and, in some cases, emissions due to blowdowns or other maintenance activities

¹⁰ A number of facilities account for multiple, discrete observations of emissions events. We often prioritize repeat visits to facilities where we have previously observed emissions events

¹¹ A variety of factors influence whether we share observations with regulatory agencies including quality of video/documented evidence, assessment of whether observation represents a potential compliance issue, etc.

¹² Within a mile of the census block boundary

¹³ Based on EnviroScreen 2.0 (<https://www.cohealthmaps.dphe.state.co.us/DICCommunity/>)

facilities on DICs and serves to inform our stance that the proposed rule should do more to ensure that reductions of emissions from these facilities will be prioritized in these communities.

The Spirit of HB 21-1266

That being said, our data is by no means comprehensive. It is necessary to note that our survey methodology, which prioritizes repeat surveys of facilities that nearby community members have asked us to survey and of facilities where we have observed emissions or possible violations of air quality regulations in the past, could result in some facilities being overrepresented in the data due merely to a greater number and frequency of surveys.¹⁴

However, since the designation of census blocks as DICs only occurred following the passage of HB 21-1266 in 2021 - and recent revisions this year with the launch of EnviroScreen 2.0 have already changed the designations of certain census blocks - whether a facility is located in or near a DIC has not to date been a significant factor in determining which facilities we prioritize for surveys. This means that in so much as our findings may single out certain facilities in DICs, it is because nearby residents have shared their concerns and/or experiences of impacts in regards to these facilities with us, not because the facilities are located in or near a DIC. In other words, we would still advocate strongly for reducing emissions from many of the midstream facilities we have surveyed located in or near DICs based solely on our knowledge of community impacts and concerns along with our observations of emissions events and findings of possible compliance issues.

Since the designation of census blocks as DICs takes into account a host of environmental, demographic, and socioeconomic factors, this process can sometimes obscure a simple fact: the existence of a polluting industry located in or near these communities as opposed to other communities is a primary justification for our concern about reducing the impacts of pollution on these communities. This is what communities across Colorado have fought for and continue to fight for regardless of the mandate prescribed by HB 21-1266.

The State is mandated to enact a rule that offers more protections to these communities than the proposed rule, but more than that, the State has an obligation to these communities that is, as of yet, unfulfilled. So long as the proposed rule prioritizes flexibility for operators over guaranteed protections for these communities, that obligation will remain unfulfilled.



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¹⁴ For instance, one such facility is a gas plant in Garfield County where we have conducted repeated surveys with community members since 2021 and documented repeated emissions events from a malfunctioning flare: <https://earthworks.org/blog/one-step-forward-one-step-back/>