



June 7, 2021

Acting Regional Administrator Deb Thomas
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: May 24, 2021 response from the EPA’s Office of the Inspector General regarding a request for review of non-enforcement of National Ambient Air Quality Standards by the Colorado Department of Public Health & Environment pursuant to State Implementation Plan under the Clean Air Act, 42 U.S.C. §§7401 *et seq.*

Dear Acting Administrator Thomas,

On March 30, 2021, three employees (“complainants”) of the Colorado Department of Public Health & Environment (CDPHE), sent the enclosed letter to the EPA’s Office of the Inspector General (EPA-OIG) requesting review of several instances of violations of law, mismanagement, and abuse of authority by CDPHE management. The letter included allegations of suppression of information demonstrating that pending permits would lead to modeled violations of the National Ambient Air Quality Standards (NAAQS) established and enforced by CDPHE under its delegated authority under the Clean Air Act, approval of air quality permits that violate the NAAQS, management ordering modeling staff to ignore modeled NAAQS violations that would conflict with nonbinding agency guidance documents, and intentionally neglecting to enforce the NAAQS when implementing Colorado’s permitting program as outlined in Colorado’s relevant State Implementation Plan (SIP) approved by EPA.

On May 24, 2021, the EPA-OIG responded to this complaint indicating that this matter would be referred to your office, and that the EPA-OIG might elect to review those allegations, your office’s response, or both in the future.

As counsel for the complainants, we are writing you for two reasons. First, we request that you investigate these allegations. We are also writing to inform you that since filing the complaint with the EPA-OIG, two additional whistleblowers, both former CDPHE employees and air quality modeling experts, have contacted PEER to substantiate the allegations of the original complainants and assist the investigation which will follow their OIG complaint. We have also been contacted by one current state employee who has direct knowledge of one or more of these matters.

In the months following the initial complaint, new information and testimony has become available to support the original claims raised to EPA-OIG about CDPHE’s intentional non-enforcement of the NAAQS, and to show that there have been additional irregular and disturbing activities of non-enforcement of the NAAQS that appear to involve intentional manipulation and misrepresentation of

data, hiding critical information from your agency, writing false reports, preferential treatment of some facilities, disregard of environmental justice concerns raised by staff to the detriment of already disproportionately impacted communities, approving monitoring data that did not comply with EPA's requirements; all to support the false conclusion and narrative that there were no NAAQS compliance problems in situations in which modeled concentrations of criteria pollutants exceeded the corresponding standards or had a strong potential to do so.

In light of this new information, we are requesting that you expand the scope of any investigation conducted by your office to include the original items in the March 30, 2021 letter to EPA-OIG, also CDPHE's involvement in the following activities:

- Misleading the EPA by failing to provide technical analyses that showed that the meteorological data used in the 1-hr SO₂ NAAQS designation modeling of the Comanche, Hayden, and Craig Power Generating Stations did not meet requirements established in federal regulations and EPA guidance.¹ There is documentation and testimony showing that these meteorological data sets were used with full knowledge that they were in many ways deficient for modeling these facilities, and also showing that these actions were undertaken intentionally with the purpose of helping these generating stations to avoiding setting up meteorological towers to collect the required amount of data per federal regulations, and with the ultimate purpose of avoiding potential non-attainment designations for these areas.²
- Misleading the EPA by including false interpretations of data in the 1-hr SO₂ NAAQS designation modeling reports of the Pawnee and Drake Power Generating Stations, mischaracterizing lower SO₂ emission rates used in the modeling as federally enforceable allowable emission rates, in order to obtain results that would comply with the corresponding NAAQS. CDPHE defends these actions with the narrative that EPA approved those lower emission rates as being federally enforceable rates, yet there is no documentation from your office supporting such interpretation that doesn't conform to the language in applicable regulations.³
- Misleading the EPA and risking the public health of the people of Colorado by proposing the designation of some areas of the state as "unclassifiable" or "attainment" with the 1-hr SO₂ NAAQS, by basing the modeling analyses on inadequate meteorological data and emission rates, that did not comply with requirements of federal regulations and EPA guidance.⁴
- Downplaying and discrediting information that showed modeled violations of the 1-hr SO₂ NAAQS caused by the Pawnee and Drake Power Generating Stations, and thus leading the EPA and the public to believe that there were no SO₂ air pollution problems in the Fort Morgan

¹ 40 CFR 51 Appendix W §§8.4.3.2.f, 8.4.4.2.a, and 8.4.4.2.c (2017); "Use of ASOS meteorological data in AERMOD dispersion modeling", §§4.1 and 4.3, March 08, 2013 EPA memorandum; "Meteorological Monitoring Guidance for Regulatory Modeling Applications." §§ 5.3.2 and 6.8, US EPA, 2000; and EPA's Modeling Technical Assistance Document, US EPA 2016.

² Data Requirements Rule, 40 CFR 51 Subpart BB §51.1203.(d)(2).

³ 40 CFR § 51.166(b)(16) and (17).

⁴ Data Requirements Rule, 40 CFR 51 Subpart BB §51.1203.(d)(2) and 51.1201; 40 CFR 51 Appendix W §8.4.3.2.f, §8.4.4.2.a, and §8.4.4.2.c (2017); "Use of ASOS meteorological data in AERMOD dispersion modeling", Sections 4.1 and 4.3, March 08, 2013 EPA memorandum; "Meteorological Monitoring Guidance for Regulatory Modeling Applications." Sections 5.3.2 and 6.8, US EPA, 2000; and EPA's Modeling Technical Assistance Document, US EPA 2016.

and Colorado Springs areas, both of which should have been designated as non-attainment based on that information.

- Intentionally disregarding the requirement to demonstrate compliance with the NAAQS when issuing a permit to the Cherokee Power Generating Station, despite overwhelming evidence presented by CDPHE's subject matter experts showing the potential for this facility to cause or contribute to NAAQS violations.
- Engaging in systemic environmental racism towards the residents of Commerce City, a disproportionately environmentally impacted community, by refusing to comply with Clean Air Act requirements and by enforcing compliance with the NAAQS when issuing a permit to the Cherokee Power Generating Station, and by disregarding concerns of environmental justice expressed by CDPHE staff when discussing the permit application.⁵
- Engaging in preferential treatment and non-public arrangements with some permit applicants when agreeing to not verify NAAQS compliance for the Cherokee Power Generating Station.
- Since filing the EPA Office of Inspector General complaint, we have assembled additional evidence of wrong doing in the permitting process of the Newmont Cripple Creek & Victor Gold Mine which includes evidence of intentionally approving the use of NO₂ monitoring data collected with methods that did not comply with minimum quality control/quality assurance requirements, that did not comply with the minimum required length of data collection, for the purpose of artificially lowering the 1-hr NO₂ background concentration used in the modeling of the Newmont Cripple Creek & Victor Gold Mine. Lowering the background concentrations has the effect of inappropriately reaching the conclusion that this facility had demonstrated compliance with the 1-hr NO₂ NAAQS.
- Writing a report that intentionally manipulated modeling data and falsely misinterpreted it, downplaying or hiding information that showed modeled violations of the 24-hr PM₁₀ NAAQS, to inappropriately concluded that the Newmont Cripple Creek & Victor Gold Mine complied with all applicable NAAQS in order to illegally issue a permit to this facility.

There is considerable evidence and testimony to support these claims, and we are including enclosed to this letter, some of the documents that PEER has already sent to CDPHE and to your office, as well as other documents that have been made available to public officials in protected disclosures under the Colorado Whistleblower Act, CRS 24-50.5-103.

In light of the above, we respectfully request that you investigate the original allegations and expand the scope of your investigation to include the additional issues referenced in this letter: the 1-hr SO₂ NAAQS non-attainment designation process; the Commerce City Cherokee facility permitting process; and new information about the Newmont Cripple Creek & Victor Mine.

The NAAQS are standards were established for the purpose of protecting the health of the population and by ignoring them CDPHE has allowed unfettered growth of emissions in the Denver-North Front Range area, which is soon to be designated as "severe nonattainment" for the ozone NAAQS. This very populated area, and additional areas in the state, may also be in nonattainment situation for other criteria pollutants, like the 1-hr SO₂ NAAQS. We believe that Colorado's steady decline in air quality over the last decade was likely a preventable situation.

⁵ 42 U.S.C. § § 7410(a)(1) and (a)(2), §§ 7410(a)(2)(E) and (2)(K); 40 C.F.R. §§ 51.160(a)(2), and (b)(2).

Sincerely,



Kevin H. Bell, Staff Counsel

Public Employees for Environmental Responsibility (PEER)

962 Wayne Ave, Suite 610

Silver Spring, MD 20910

List of attachments

1- 2_2_21_Let-to-R8-EPA-CO-SO2.PDF with 5 attachments of its own:

1.1 Comanche met data representativeness MMEIU.PDF

1.2 Craig met data representativeness MMEIU.PDF

1.3 EMAIL 23-SEPT-2015 METEOROLOGICAL DATA.PDF

1.4 Hayden met data representativeness MMEIU.PDF

1.5 Met determination – Colorado Springs Drake.pdf

2- SO2 CDPHE CT LET FINAL 06_21_20.PDF

3- CHEROKEE 1 – Notes Report.pdf

4- CHEROKEE 2 – Notes Report.pdf

5- CHEROKEE 3 – Notes Report.pdf

6- CHEROKEE 4 – Notes Report.pdf

7- CHEROKEE 5 – Notes Report.pdf

8- CHEROKEE 6 – Notes Report.pdf

9- EMAIL Pawnee Emission Rate 09-08-16.pdf

10- EMAIL Drake Modeling 11-22-19.pdf

11- DRAKE EMAIL 1.pdf

12- DRAKE EMAIL 2.pdf

13- CC&V FALSE MODELING REPORT 06-20-11.PDF

14- Monitoring memo CCV NO2 background Oct 2015.pdf

15- EMAIL to EPA R8 – request for feedback 03-17-16.pdf

16- EMAIL meeting CC&V.pdf

17- EMAIL CC&V NO2 raw data.pdf

18- EMAIL CC&V.PDF

19- EPA OIG Letter.pdf with one attachment of its own

20.1 Appendix_Redacted.pdf

Link to SO2 press release

<https://www.peer.org/call-for-federal-intervention-into-colorado-air-pollution/>