



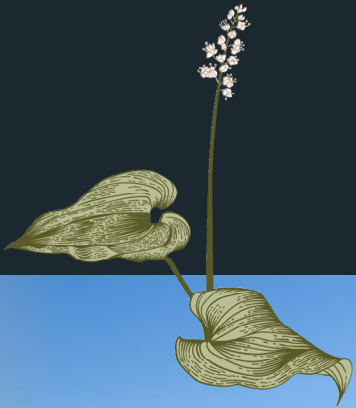
MINOR SOURCE PERMITTING

PREPARED FOR THE LEGISLATIVE INTERIM COMMITTEE ON

OZONE
RYAN MAHER

CENTER FOR BIOLOGICAL DIVERSITY

NOVEMBER 8, 2023



TOPICS

I. Permitting Background

II. No Major Permits

III. Weak Minor Permits

I. PERMITTING BACKGROUND

N A A Q S & S I P S



Clean Air Act (1970)

As amended in
1977 & 1990

Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again.”

H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1, 1, 1970 U.S. Code Cong. & Admin.
News 5356, 5356



National Ambient Air Quality Standards

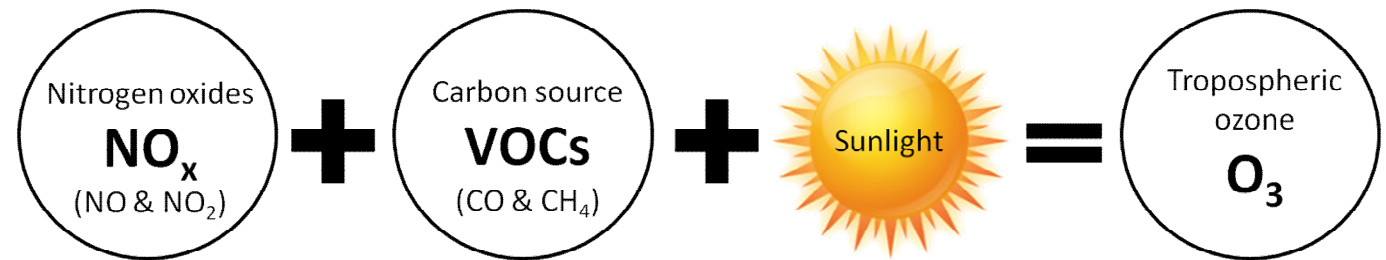


- Maximum allowable concentration of specific “criteria” pollutants
- Ozone, particulate matter, NO_x, SO_x, carbon monoxide, lead
- Nationwide network of monitoring stations



Ozone

- ▶ Reducing ozone requires reducing Volatile Organic Compounds and Nitrogen Oxides

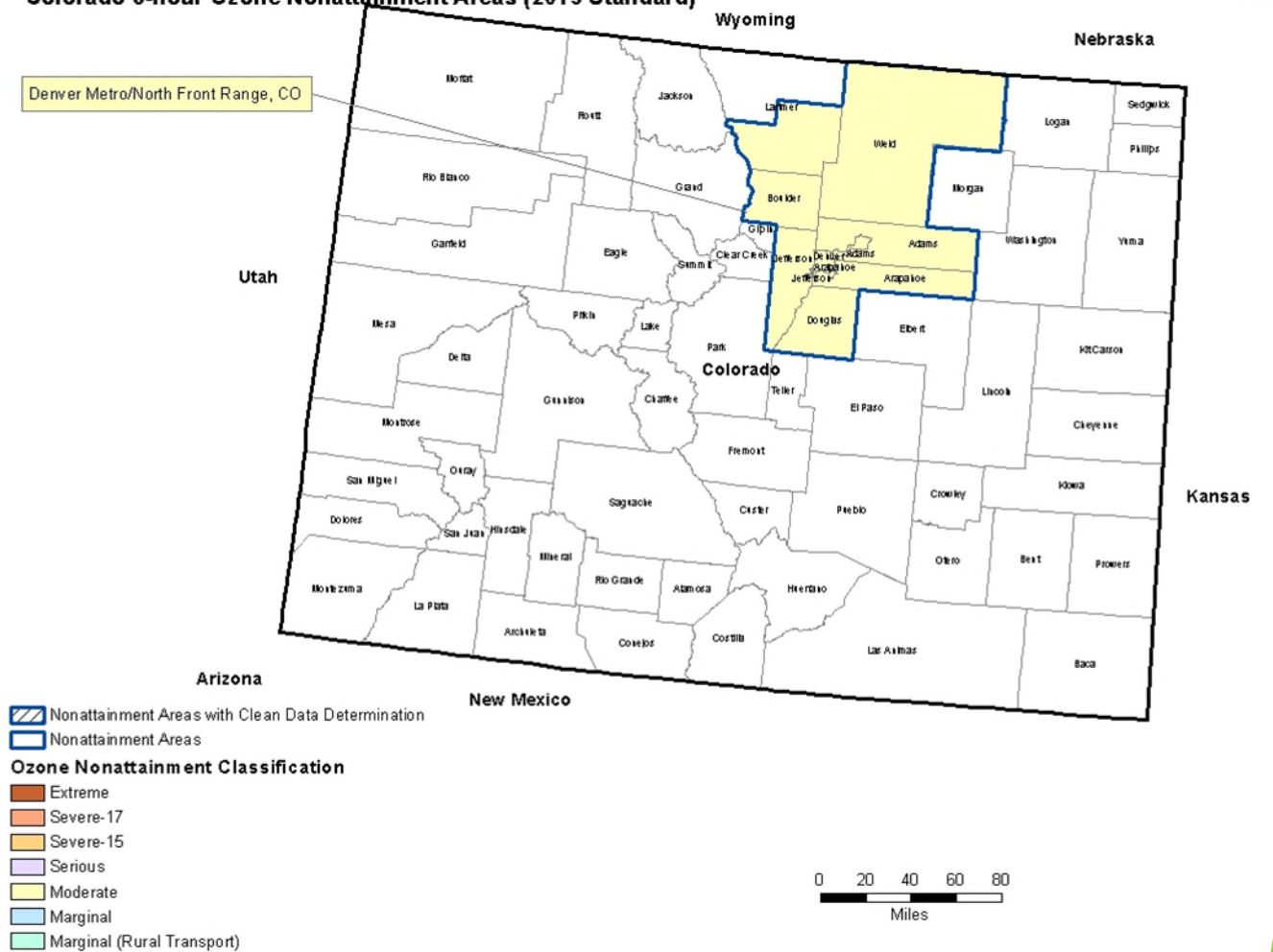


Nonattainment Areas

- ▶ “Attainment” versus “Nonattainment” areas
- ▶ Nonattainment area “classification”
 - ▶ Marginal
 - ▶ Moderate
 - ▶ Serious
 - ▶ Severe***
 - ▶ Extreme
- ▶ Tighter restrictions with worse classifications

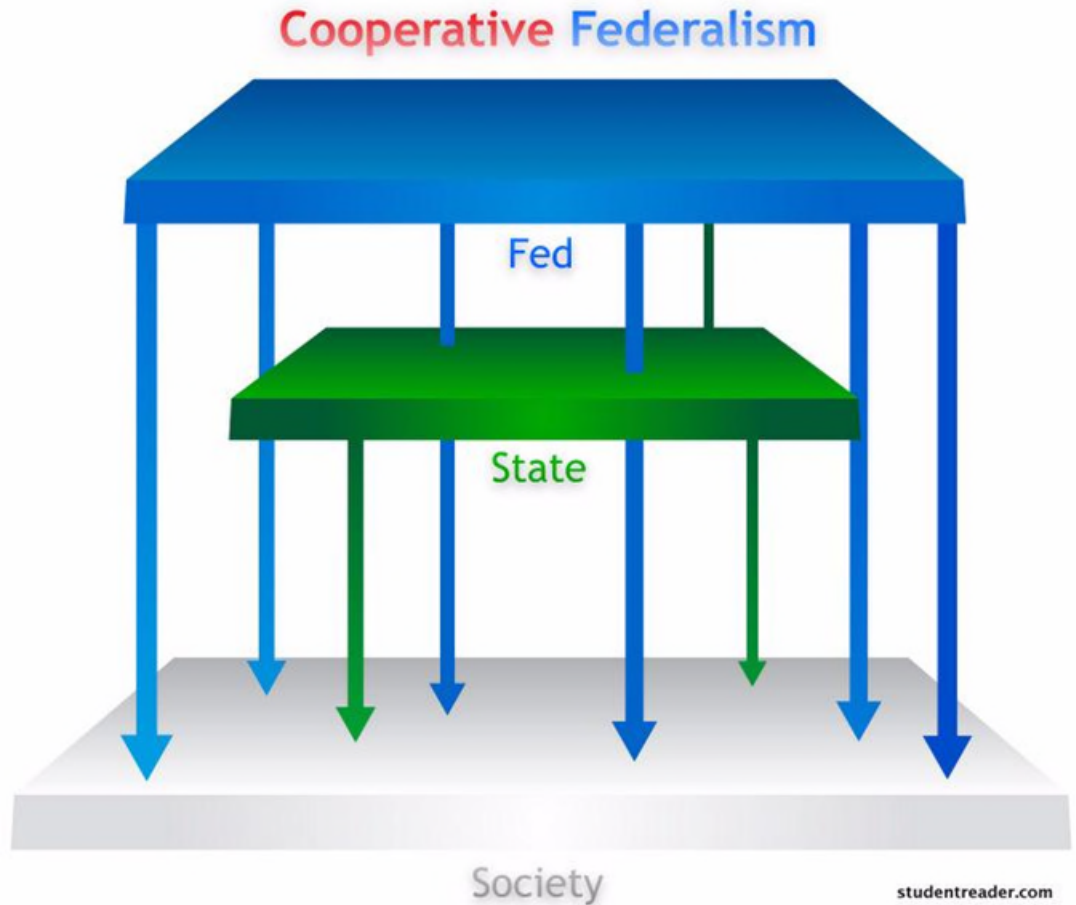
Colorado 8-hour Ozone Nonattainment Areas (2015 Standard)

12/31/2022



State Implementation Plans

- ▶ Cooperative federalism
- ▶ EPA approvals as backstop
- ▶ Federal requirements represent the minimum



New Source Review Permitting

- ▶ Required part of a state's SIP
- ▶ Stationary sources
- ▶ New and modified sources



New Source Review Permitting

Major vs. Minor
Sources

Emissions
Thresholds
(tons per year)

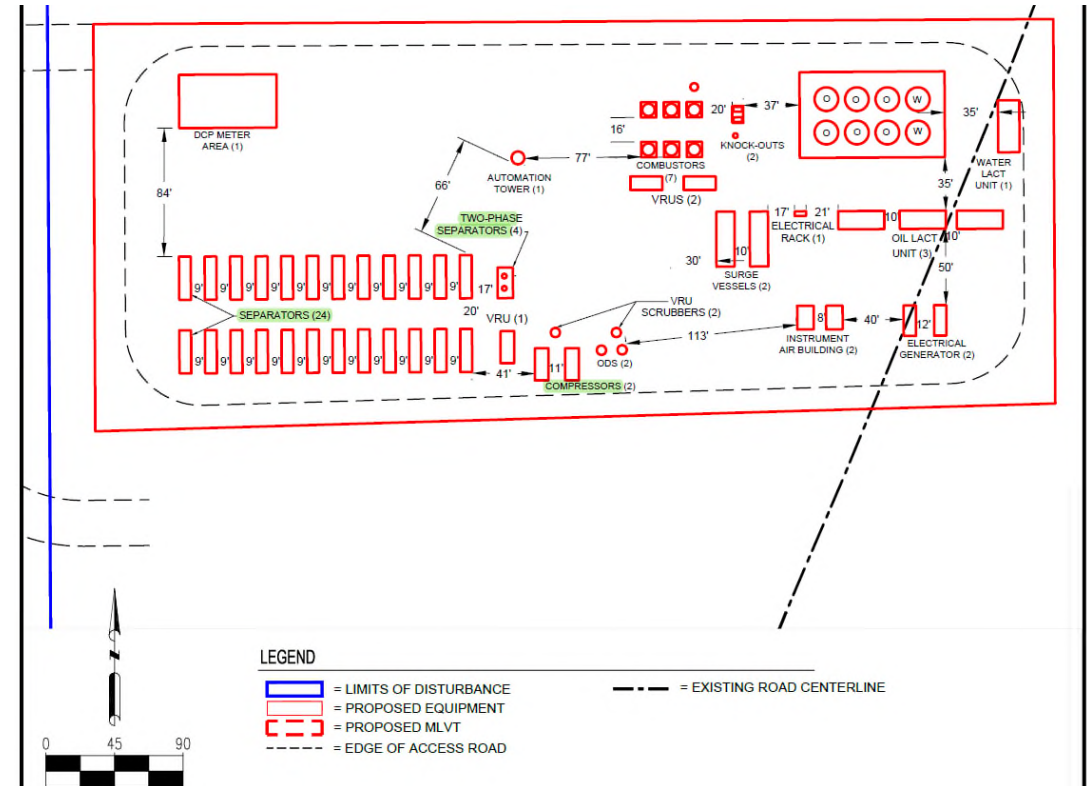
Lower
Thresholds for
Worse
Classifications

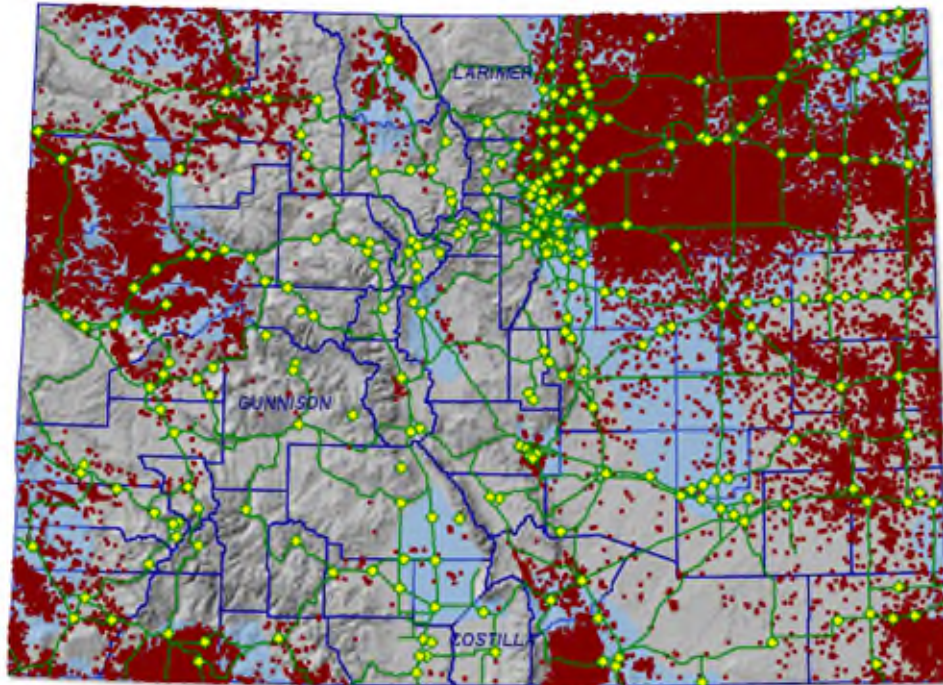
II. NO MAJOR PERMITS

AVOIDED AT THE COST OF
HEALTH AND WELFARE

Benefits of Major Source Permits

- ▶ Offsetting of new pollution
- ▶ Lowest Achievable Emissions Rate
- ▶ Stronger emissions analyses





COLORADO OIL AND GAS PRODUCTION

WHY?

A. Inadequate testing & enforcement



FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS

September 18, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

CENTER FOR BIOLOGICAL
DIVERSITY,

Petitioner,

v.

No. 22-9546

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; MICHAEL S.
REGAN, Administrator, United States
Environmental Protection Agency,

Respondents.

AMERICAN PETROLEUM INSTITUTE;
COLORADO OIL AND GAS
ASSOCIATION,

Amici Curiae.

**Petition for Review of an Order from the
Environmental Protection Agency
(EPA No. EPA-R08-OAR-2020-0644)**

Robert Ukeiley (Ryan Maher, with him on the briefs) of the Center for Biological Diversity, Denver, Colorado, for Petitioner-Appellant.

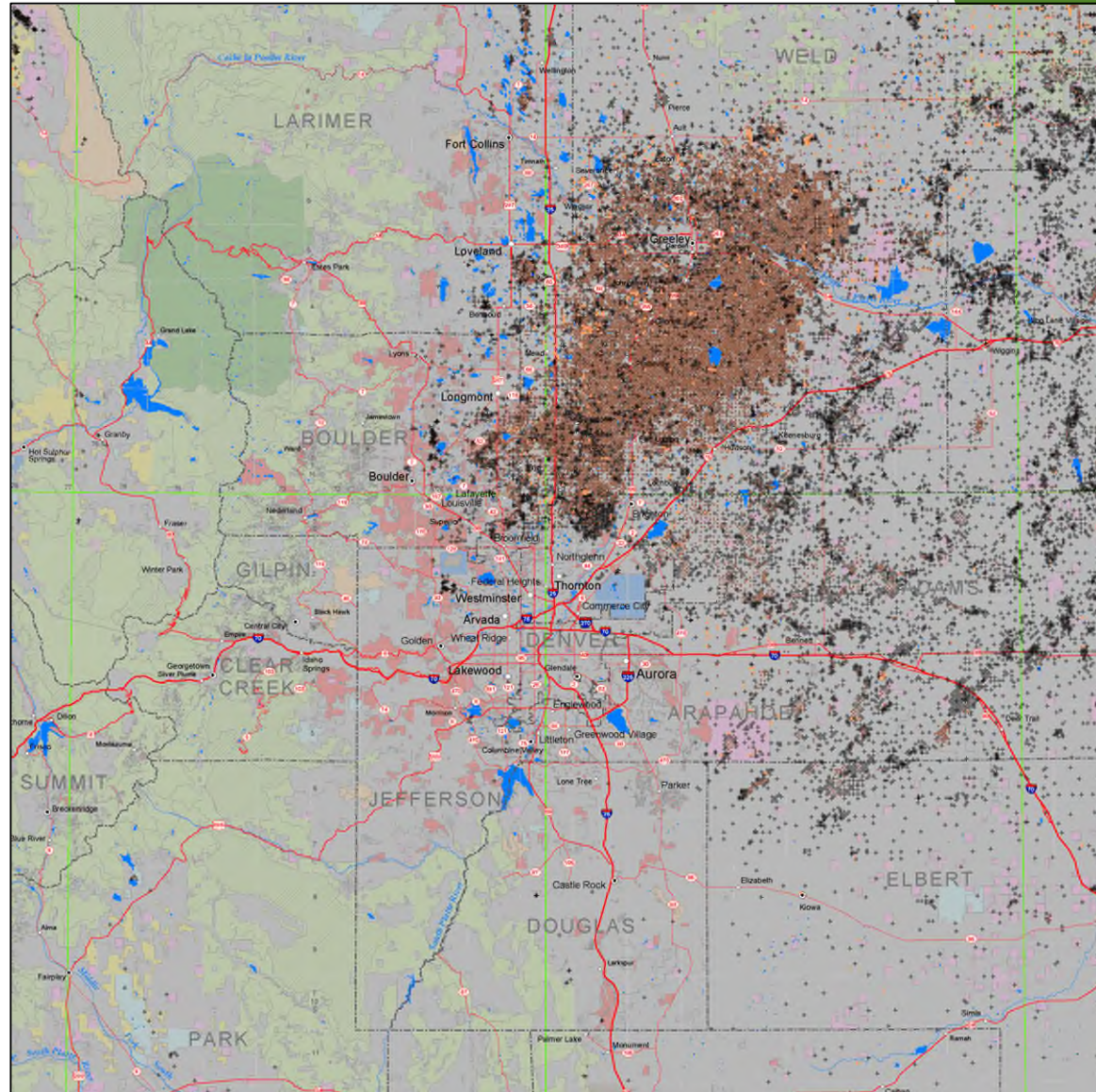
Alan D. Greenberg, Attorney (Todd Kim, Assistant Attorney General, with him on the brief), Environment and Natural Resources Division, United States Department of Justice, Denver, Colorado, for Respondents-Appellees.

WHY?

B. Failure to account for drilling, fracking, and well completion emissions

WHY?

C. Failure to aggregate



<https://coloradogeologicalsurvey.org/wp-content/uploads/MS-44-cover-1200.png>

III. WEAK MINOR PERMITS

CONTAINING “ONLY THE
BAREST OF REQUIREMENTS”

- *SIERRA CLUB V. EPA*

(10TH CIR. 2020)



Report from the independent investigation of the state Air Pollution Control Division released

Sept. 24, 2021 (DENVER)—The Colorado Department of Law today released a report from the independent investigation into allegations that staff at the Air Pollution Control Division of the Colorado Department of Public Health and Environment did not properly enforce federal air quality standards. The Department of Law appointed the law firm of Troutman Pepper Hamilton Sanders LLP to conduct this independent investigation.

“My department launched this independent investigation because Coloradans need to know that state regulators are properly enforcing air pollution standards to protect air quality. With the conclusion of the investigation, we are releasing this report to apprise the public of the findings of this inquiry and to give CDPHE the information it needs to address concerns raised about the state’s compliance with federal air quality standards and efforts to protect the public health and environment,” Attorney General Phil Weiser said.

The full report can be found [here](#).

The report appendices can be found [here](#).

###



NAAQS COMPLIANCE

- No meaningful analysis
- Refusal to reexamine prior, defective NAAQS decisions
 - *Sierra Club v. EPA*, No. 18-9507 (10th Cir. 2020)

NOT PRACTICALLY ENFORCEABLE

| Operator Name | Facility Name/AIRS | Permit Number | Performance Test | | Model | Types of Emission Sources Controlled | VOC DRE Average |
|---------------|---|------------------------------|------------------|---------|------------|---|-----------------|
| | | | Date | Make | | | During Test (%) |
| Bonanza Creek | Mustang 12-26 - 123/9FDC | | 9/10/2020 | Crimson | CE1000 | 3 Condensate Tanks, 1 PW Tank, 1 Loadout | 99.99% |
| Bonanza Creek | Mustang 44-22 | 18WE0808 | 9/9/2020 | Crimson | CE1000 | 3 Condensate Tanks, 1 PW Tank, 1 Loadout | 99.99% |
| Bonanza Creek | Mustang Y-34 | 18WE1022 | 9/15/2020 | Crimson | CE1000 | 3 condensate tanks, 1 PW Tank, 1 loadout | 99.96% |
| Bonanza Creek | Mustang Y-34 Load-out Run | 18WE1022 | 9/15/2020 | Crimson | CE1000 | 3 condensate tanks, 1 PW Tank, 1 loadout | 99.98% |
| Bonanza Creek | Mustang U-22 | 18WE0824 | 11/30/2020 | Crimson | CE1000 | 3 condensate tanks, 1 PW Tank, 1 loadout, seperator gas | 99.07% |
| Bonanza Creek | Mustang U-22 Load-out Run | 18WE0824 | 11/30/2020 | Crimson | CE1000 | 3 condensate tanks, 1 PW Tank, 1 loadout, seperator gas | 99.57% |
| Bonanza Creek | North Platte 24-34 | 12WE3163 | 12/2/2020 | GCO | Beast 3100 | 8 tanks, load-out, 2 water tanks, Dehy | 99.83% |
| Extraction | Johnsons Corner | 18WE0614 | 12/2/2020 | Questor | Q5000 | Separators and VRT | 99.92% |
| Extraction | Triple Creek | 18WE0048 and 18WE0049 | 12/1/2020 | Questor | Q5000 | Separators and VRT | 99.90% |
| Bonanza Creek | Wetco Farms A-4 ECD-1 | 13WE2521 | 10/21/2020 | Crimson | CE1000 | 6 condensate tanks, 1 PW Tank, 1 loadout | 76.50% |
| Bonanza Creek | Wetco Farms A-4 ECD-1 Load-out | 13WE2521 | 10/21/2020 | Crimson | CE1000 | 6 condensate tanks, 1 PW Tank, 1 loadout | 68.61% |
| Bonanza Creek | Wetco Farms A-4 ECD-2 | 13WE2521 | 10/21/2020 | Crimson | CE1000 | 6 condensate tanks, 1 PW Tank, 1 loadout | 90.73% |
| Bonanza Creek | Wetco Farms A-4 ECD-2 Load-out | 13WE2521 | 10/21/2020 | Crimson | CE1000 | 6 condensate tanks, 1 PW Tank, 1 loadout | 92.17% |
| Bonanza Creek | Wetco Farms A-4 Retest | 13WE2521 | 12/4/2020 | Crimson | CE1000 | 6 condensate tanks, 1 PW Tank, 1 loadout | 99.51% |
| Bonanza Creek | Wetco Farms A-4 Load-out Retest | 13WE2521 | 12/4/2020 | Crimson | CE1000 | 6 condensate tanks, 1 PW Tank, 1 loadout | 99.82% |
| Bonanza Creek | North Platte 14-36 | 13WE1092 | 10/22/2020 | Crimson | CE1000 | 10 condensate tanks, load-out, dehy, separator, 2 water tanks | 99.70% |
| Bonanza Creek | North Platte 14-36 Load-out | 13WE1092 | 10/22/2020 | Crimson | CE1000 | 10 condensate tanks, load-out, dehy, seperator, 2 water tanks | 97.51% |
| SandRidge | Bighorn Pad - Ashcor HCVC 1000 (sn: 93-005) | 16JA1055 | 12/17/2020 | Ashcor | HCVC 1000 | Produced gas from four heater-treaters | 100.00% |
| SandRidge | Bighorn Pad - Ashcor HCVC 1000 (sn: 93-007) | 16JA1055 | 12/16/2020 | Ashcor | HCVC 1000 | Produced gas from four heater-treaters | 100.00% |
| SandRidge | Open Range Pad (sn: SD-1418) | 19JA0736 | 9/15/2020 | Crimson | CE1000 | Produced gas from five three-phase separators | 99.80% |
| SandRidge | Open Range Pad (sn: SD-1718) | 19JA0736 | 9/16/2020 | Crimson | CE1000 | Produced gas from five three-phase separators | 99.90% |
| SandRidge | Open Range Pad (sn: SD-1818) | 19JA0737 | 9/17/2020 | Crimson | CE1000 | Produced gas from five three-phase separators | 99.90% |
| Extraction | Milkshake 31W Production Facility | 18WE1091, 19WE0975, 19WE0976 | 6/16/2020 | Questor | Q5000 | Produced gas from 23 LP separators and two VRTs | 100.00% |
| PDC | Bost Farm 5-7 Pad NE | 19WE0976, 19WE0975, 19WE0975 | 3/22/2021 | IES | 96" | Eight condensate tanks and two produced water tanks | 99.71% |
| PDC | Bost Farm 5-7 Pad SE | 19WE0976, 19WE0975, 19WE0975 | 3/22/2021 | IES | 96" | Eight condensate tanks and two produced water tanks | 99.88% |
| PDC | Bost Farm 5-7 Pad ME | 19WE0976, 19WE0975, 19WE0975 | 3/22/2021 | IES | 96" | Eight condensate tanks and two produced water tanks | 99.94% |
| PDC | Bost Farm 5-7 Pad SW | 19WE0976, 19WE0975, 19WE0975 | 3/22/2021 | IES | 96" | Eight condensate tanks and two produced water tanks | 99.93% |
| PDC | Bost Farm 5-7 Pad MW | 19WE0976, 19WE0975, 19WE0975 | 3/22/2021 | IES | 96" | Eight condensate tanks and two produced water tanks | 99.95% |
| PDC | Bost Farm 5-7 Pad NW | 19WE0976, 19WE0975, 19WE0975 | 3/22/2021 | IES | 96" | Eight condensate tanks and two produced water tanks | 99.95% |

- No testing
- Reliance on inaccurate & outdated “emission factors”

A summary of the comments and the EPA's responses are provided in the Response to Comments document, which is in the docket for this action.

III. Final Action

This final action includes approvals, limited approvals and limited disapprovals, and a limited conditional approval and limited disapproval. Below we will explain which type of action we are taking on each of the submitted measures that is the subject of this action. First, though, we note that we are further evaluating the comments received related to the submitted revisions to the State's RACM demonstration and RACT emission limits for refinery gas fueled process heaters. Therefore, in this final action, the EPA is not acting on the following: Reg. 7, Part E, section II.A.4.g.(i) (NO_x emission limit for refinery fuel gas heaters) from the May 20, 2022 submittal for process heaters, and RACM from the March 22, 2021 submittal. The EPA proposed to approve these portions of the respective SIP submittals in our November 9, 2022 proposal. These portions of the SIP submittals will be acted on at a later date. This final action also does not address the submitted attainment demonstration, enhanced monitoring, RACM, or contingency measures.

Below is our explanation of the different elements of this final action.

Approvals

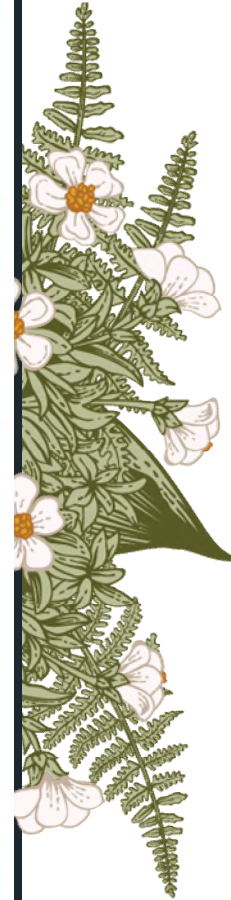
The EPA is approving portions of the 8-Hour Ozone Attainment Plan submitted by the State of Colorado for the DMNFR Area on March 22, 2021,

vehicle emissions budgets¹⁰ for NO_x and volatile organic compounds (VOCs) for 2020 in the DMNFR area, as well as the northern and southern sub-areas of the DMNFR area, submitted with the RFP demonstration in the March 22, 2021 SIP submittal, are adequate for transportation conformity purposes. Under CAA section 176(c), transportation conformity requires that federally supported highway and transit project activities conform to the applicable SIP; EPA's transportation conformity regulations establish the criteria and procedures for determining whether projects conform.¹¹ Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.¹² The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).¹³ As a result of our approval of the budgets and our adequacy finding, the DMNFR area, and the area's northern and southern sub-areas, must use the budgets from the submitted RFP demonstration for future transportation conformity determinations.

Limited Approvals and Limited Disapprovals

After evaluating comments received on the proposal for this action, we are finalizing a limited approval and limited disapproval of the rules submitted by the State on May 14, 2018, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022, as shown in

the applicable requirements of the CAA. Specifically, these rules do not include sufficient reporting requirements to ensure that citizens will be able to enforce the SIP requirements, as is necessary under the CAA and EPA regulations.¹⁴ That is, the regulations in Table 2 require facilities to maintain records necessary to establish compliance with these rules for a certain period of time and to make them available to the state on request. But if there is no requirement for these records to be submitted to the state absent a request, then unless the state requests the compliance records and then makes them publicly available, no parties other than the state or the EPA under its CAA section 114 authority will have practical access to the basic information necessary to determine compliance by the regulated entities under these rules. This undermines citizens' ability to participate in the enforcement of the SIP as allowed by CAA section 304. As EPA has repeatedly stated, to be enforceable, a CAA SIP rule must be legally and practically enforceable.¹⁵ We find that a requirement to provide records to the state only on request, without any required periodic reporting to the state, is inconsistent with CAA and regulatory requirements for enforceability. Therefore, due to the lack of adequate reporting requirements (or some equivalent means of ensuring enforceability), the EPA is simultaneously finalizing a limited approval and disapproval of these rules, as authorized under sections 110(k)(3) and (4) and 301(a). This action incorporates the submitted rules into the Colorado SIP.



INADEQUATE REPORTING

- No public access to compliance data
- Public enforcement is required
- How is the state enforcing without reviewing these records?

SUMMARY

- Permitting is a critical tool in the fight against air pollution – it is drastically under-utilized in Colorado
- Colorado does not issue major source permits
- Colorado issues weak minor source permits



Matthew Jonas / Longmont Times-Call

Thank you!

Ryan Maher

Center for Biological Diversity

rmaher@biologicaldiversity.org

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