

DISTRICT COURT, DENVER COUNTY COLORADO 1437 Bannock Street Denver, CO 80202 (303) 606-2300	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: Div:
Plaintiffs: CENTER FOR BIOLOGICAL DIVERSITY and SIERRA CLUB, v. Defendant COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION	
Robert Ukeiley, # 26747 Michael Saul, # 30143 CENTER FOR BIOLOGICAL DIVERSITY 1536 Wynkoop St., Ste. 421 Denver, CO 80202 Telephone: (720) 496-8568 E-mail: rukeiley@biologicaldiversity.org msaul@biologicaldiversity.org Counsel for Plaintiffs	
COMPLAINT	

PLAINTIFFS, through counsel, submit the following Complaint:

INTRODUCTION

1. Plaintiffs Center for Biological Diversity and Sierra Club [collectively “Public Interest Groups”] bring this suit to overturn Defendant’s, the Colorado Department of Public Health and Environment Air Pollution Control Division (Division), granting of an air pollution General Permits 09 and 10 Version 2 for Oil and Gas Well Production Facilities (“General Permits 09 and 10” or “The Permits”), contrary to the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101 *et seq.*, and applicable regulations.

2. General Permits 09 and 10 cover “routine or predictable” gas venting emissions and numerous other points of air pollution emissions from the oil and methane gas industry throughout Colorado including in the Denver Metro / North Front Range area, which for 16 years

has violated the national health and welfare-based standards for the air pollutant ozone. This violation is currently rated as “serious” by the United States Environmental Protection Agency although Defendant has admitted that the pollution rating will be downgraded to severe in the near term.

3. Ground level ozone, which people commonly refer to as smog, can kill people. Ozone also causes a variety of other health impacts, like asthma attacks, decreases agricultural crop yields, damage to native trees and flowers such as aspens and ponderosa pines, and injury to wildlife. Ozone is not the only pollutant of concern covered by General Permits 09 and 10. Rather the permits cover a whole host of air pollutants including cancer-causing benzene and nitrogen oxides. This situation is even worse during the COVID-19 pandemic. Air pollution results in worst outcomes, including increased death, for people afflicted with COVID-19. *See e.g. Xiao Wu et al., Exposure to air pollution and COVID-19 mortality in the United States.*

4. Pollution from oil and gas wells and related operations is responsible for a large, if not a majority, of our ozone problem on days when ozone levels are most dangerous.

5. General Permits 09 and 10 claim to set emission limits on oil and methane gas industry emissions of ozone precursors and other pollutants. However, the Permits do not require any testing to see if the oil and methane gas facilities emissions actually comply with those emission limits. While people have to get their gas burning cars’ tailpipes tested to ensure they are not putting out too much ozone precursor pollution, General Permits 09 and 10 do not require oil and methane gas industry facilities to test their smokestacks. Nor do General Permit 09 and 10 require, or even allow for a determination of whether the permitted oil and methane gas industry facilities will cause or contribute to violations of science-based national ambient air quality standards set by the U.S. Environmental Protection Agency.

6. Because the emission limits in General Permits 09 and 10 are not enforceable as a practical matter and because General Permits 09 and 10 allow oil and methane gas industry facilities to pollute even if that pollution will cause or contribute to violations of national ambient air quality standards, the Division’s issuance of General Permits 09 and 10 was arbitrary and capricious and contrary to law.

PARTIES

7. Plaintiff **CENTER FOR BIOLOGICAL DIVERSITY** is a non-profit conservation organization with an office in Denver, Colorado. The Center for Biological Diversity’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for

Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

8. Plaintiff **SIERRA CLUB** is a non-profit conservation organization with an office in Denver, Colorado. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club performs this mission through advocacy, litigation, and educational outreach to its members and state chapters. Sierra Club and its members are greatly concerned about the effects of air pollution on human health and the environment and have a long history of involvement in activities related to air quality.

9. The Center for Biological Diversity submitted comments on the Division's draft version of General Permits 09 and 10 during the public comment period.

10. Thus, as participants in the public comment process, they having standing for purposes of seeking review of the Division's final Permit. C.R.S. § 25-7-114.5(11).

11. The Public Interest Groups' members live, work, recreate, and conduct educational, research, and other activities, which are legally protected interests, in areas where pollution from General Permits 09 and 10 facilities harm these activities. The Public Interest Groups' members have concrete plans to continue living in these areas and engaging in these activities. The Defendant's issuance of General Permit 09 and 11 causes the Public Interest Groups and their members continuing, reasonable concern about exposure to harmful pollution. The Public Interest Groups and their members' interests have been, are being, and will continue to be irreparably harmed by the Defendant's issuance of General Permit 09 and 10.

12. The violations alleged in this Complaint have injured and continue to injure the legally protected interests of the Public Interest Groups and their members.

13. Defendant **COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT** ("CDPHE") is the Colorado regulatory Department with jurisdiction and authority to implement the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101, *et. seq.* CDPHE's mission is to protect and preserve the health and environment of the people of Colorado. CDPHE includes the Air Quality Control Division ("Division"), which administers the State's air quality programs. The Division has the authority and duty to grant or deny air pollution permits.

JURISDICTION AND VENUE

14. This Court has jurisdiction under C.R.S. § 24-4-106 (State Administrative Procedure Act), C.R.S. § 25-7-120 (judicial review provision of the Colorado Air

Pollution Prevention and Control Act), and as a Court of general jurisdiction under the Colorado Constitution.

15. Venue is proper pursuant to C.R.S. § 25-7-120(3), because the air pollution sources affected by the Defendant's final permit actions are or can be located in this district.

LEGAL BACKGROUND

16. Colorado's statutory and regulatory requirements regarding the permitting of sources of air pollution derive, in part, from the federal Clean Air Act.

17. The Clean Air Act aims "to protect and enhance the quality of the Nation's air resources." 42 U.S.C. § 7401(b)(1). To help meet this goal, the Clean Air Act requires States to have a permitting program to authorize the construction of sources of air pollution.

18. Under this permitting regime, there are different types of permits with different requirements.

19. Proposed sources of air pollution which have a potential to emit over 50 tons per year of a pollutant for which an area is designated as in violation of a national ambient air quality standard, that is a "nonattainment area," must obtain a major source construction permit called a nonattainment new source review permit.

20. If a proposed source of air pollution has a potential to emit and actual pollution below 50 tons per year, then it may obtain a minor source construction permit, which is less protective, and has less requirements, than a nonattainment new source review permit for a major source.

21. A proposed source of air pollution with the potential to emit above 50 tons per year may accept permit conditions which will limit its pollution to below 50 tons per year. These sources are called synthetic minor sources.

22. However, the permit conditions which limit a synthetic minor source's pollution must be federally enforceable and enforceable as a practical matter. 5 CCR §§ 1001-5:Part A.I.A; I.B.7; I.B.37; Part B.II.A.4.

23. Furthermore, Colorado Regulation Number 3, Part B, Section III.I.1 provides that "any general construction permit shall comply with all applicable requirements[.]" Similarly, Colorado Regulation Number 3, Part B, Section III.I.4 provides: "General construction permits shall include conditions necessary to ensure the sources will meet all applicable requirements."

24. One of the applicable requirements that a general permit must ensure is that the Division is only allowed to issue a Construction Permit if the source or activity will meet any applicable ambient air quality standard. C.R.S. § 25-7-114.5(7)(a)(III); 5 CCR §§ 1001-5:3b:III.D.1; F.1. 42 U.S.C. § 7410(a)(2)(C). More specifically, the Clean Air Act's central

purpose is to protect public health and welfare. 42 U.S.C. § 7401(b)(1). A key driver for achieving the Act’s goal is the requirement that all areas in the country comply with primary (health-based) and secondary (public welfare-based) national ambient air quality standards (NAAQS), which reflect the maximum permissible levels of common pollutants in the ambient air. *Id.* §§ 7401, 7409.

25. The ambient air quality standard for nitrogen oxides (NO_x), for example, has become increasingly stringent over time as scientific understanding of its health impacts has increased. Evidence has mounted linking short bursts of air pollution with severe health impacts. In January 2010, EPA established an additional one-hour primary standard for nitrogen oxides at 100 ppb after many studies established connections between short-term exposure to nitrogen oxides and adverse respiratory effects, increased visits to emergency departments, and hospital admissions for respiratory issues, especially asthma.¹

26. Compliance with the NAAQS is at the core of the Clean Air Act’s preconstruction permitting program for both major and minor sources of air pollution. Section 110(a)(2)(C) provides that state minor source programs must “include ... regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved.” Thus, EPA cannot approve a state’s minor source program if that program “would interfere with any applicable requirement concerning attainment” of NAAQS.

27. EPA’s minor source permitting regulations, set forth in 40 C.F.R. sections 51.160 through 51.164, require that the state minor source program must enable the permitting agency to reject any permit application if it will interfere with attainment.

Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in...

....

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

[and]

¹ US EPA, *Primary National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide*, <https://www.epa.gov/no2-pollution/primary-national-ambient-air-quality-standards-naaqs-nitrogen-dioxide> (last visited March 15, 2021).

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

...

(2) It will interfere with the attainment or maintenance of a national standard.

40 C.F.R. § 51.160(a)-(b) (emphasis added). This requires the prevention of construction which is not possible with General Permits 09 and 10 which allow construction to commence once the registration/application is submitted and thus before the Division has evaluated it.

28. The Colorado statute states that the Division shall grant a permit application if, among other requirements, “[f]or construction permits, the source or activity will meet any applicable ambient air quality standards and all applicable regulations.” Colo. Rev. Stat. Ann. § 25-7-114.5(7)(a)(III). The Colorado regulations further provide that the Division shall grant the permit if, among other requirements,

c. The proposed source or activity will not cause an exceedance of any National Ambient Air Quality Standards;

d. The source or activity will meet any applicable ambient air quality standards and all applicable regulations;

5 CCR § 1001-5:3b:III.D.1. Additionally, if the source cannot comply with these provisions, the Division shall deny the permit.

If the Division determines that a source cannot comply with the provisions of Part B, Section III.D., of this regulation, the Division shall issue its written denial of the permit application stating the reasons for such denial.

5 CCR § 1001-5:3b:III.F.1.

FACTS

29. General Permit 09 and 10 are General Air Pollution Construction Permits for Oil and Methane Gas Industry Routine or Predictable Gas Venting Emissions and Other Points of Emissions. The Permits cover the following polluting activities:

I.A.1 Natural gas-fired reciprocating internal combustion engines

I.A.2. Storage tanks used to store condensate, crude oil, intermediate hydrocarbon

liquids, or produced water

I.A.3. Hydrocarbon liquid loading from storage tanks to transport trucks

I.A.4. Separators

I.A.5. Fugitive component leak emissions

I.A.6. Natural gas-driven pneumatic controllers

I.A.7. Natural gas-driven diaphragm pneumatic pumps

I.A.8. Well maintenance and well unloading activities

I.A.9. Natural gas fired turbines

I.A.10. Included Emission Activities: The following emitting activities may register for these general permits:

I.A.10.a. Fixed roof storage tank-related routine or predictable gas venting emissions events that are not separately permitted:

- releasing emissions from a fixed-roof storage tank through a storage tank thief hatch, blowdown valve, venting point, or other access point for any routine or predictable activity, including for liquid level measurement, sampling, truck loadout, well unloading, equipment maintenance, repair, decommissioning, or other routine or predictable activity; and

- tank hot oil treatments or other tank cleaning activities.

I.A.10.b. Well-related routine or predictable gas venting emissions events that are not separately permitted, including but not limited to:

- well liquids unloading;
- downhole well maintenance, including well workovers, recompletion, restimulation, reperforating, paraffin/scale removal, swabbing, and installation of artificial lift;
- well equipment maintenance at the surface;
- well plugging;
- bradenhead gas venting;
- casinghead gas venting; and

- other well-related routine or predictable gas venting emissions activities.

I.A.10.c. Pigging-related routine or predictable gas venting emissions that are not separately permitted, including, but not limited to:

- pig launchers; and
- pig receivers.

I.A.10.d. Routine or predictable blowdowns of facility equipment or piping that are not separately permitted, including but not limited to:

- pipeline venting within the facility boundary when such venting is routine or predictable;
- compressor and turbine blowdowns;
- scrubber and strainer blowdowns;
- blowdowns resulting from facility-wide (plant) and/or equipment shutdowns;
- blowdown of all other equipment (including pipelines, compressor case or cylinders, manifolds, suction bottles, discharge bottles, and vessels); and
- desiccant dehydration unit blowdowns.

I.A.1.d.(i) Emissions resulting from blowdowns from facility equipment or piping where the physical volume between isolation valves is less than 50 cubic feet and that are not required to be tracked and reported for the purposes of Regulation 7, Part D, Section V.C.2.d. are not required to be reported or permitted with this category.

I.A.10.e. Combustion devices, vapor recovery units, catalysts, or other division-approved air pollution control equipment used to reduce emissions (from the emitting activities registered under this general permit) below the limits specified in Section III.

I.A.10.f. This category DOES NOT include:

- Emissions at a storage tank that are not listed in Section 1.A.10.a. of this general permit.
- Venting emissions from a storage tank that are prohibited by Regulation Number 7, Part D, Section II.C.2.a.

30. Although General Permits 09 and 10 claims to be a general permits, they actually allow the creation of individual emission limits for individual polluting facilities. However, General Permit 09 and 10 shield the setting of these individual emission limits from public notice

and comment and thus, effectively, from judicial review. General Permits 09 and 10 allow people to be exposed to air pollution which can kill them, or cause other serious harm, without giving people any due process.

A. GENERAL PERMITS 09 AND 10 ARE NOT ENFORCEABLE AS A PRACTICAL MATTER

31. The Permits claim to be synthetic minor permits to allow sources to avoid having to obtain a major source permit. However, the quantitative pollution limits established in the permits, or pursuant to a closed-door process, are not enforceable as a practical matter and federally enforceable. Thus, the Permits are invalid as synthetic minor permits because these permits must be enforceable as a practical matter and federally enforceable.

32. The Permits do not require any testing or monitoring of actual emissions from almost all of the point of emissions.

33. The sample APEN attached to the preliminary analysis for the Permits indicated that sources can just assume that their combustion devices achieve 95% control efficiency every second they operate for their entire lives. Section V.A.3, for example, contains the same assumption. This assumption is not enforceable as a practical matter. There is no testing, monitoring or reporting to establish 95% control efficiency.

34. The Permits do set opacity limit, without any opacity testing or monitoring, and compliance with an operation and maintenance plan. Even if there was opacity testing, opacity testing provides no quantitative information about VOC emissions.

35. Similarly, compliance with an operation and maintenance plan provides no quantitative information about compliance with the quantitative limits in the permits.

36. If a combustion device is emitting from day one at a rate that results in emissions over the qualitative limits in the permits and the emission factors used to calculate “actual emission” and it is perfectly maintained for its entire lifetime, it will still be emitting over those values. Even if the emissions on day one were below the rate at which annual emissions would be below the permits limits, the Division has no generic, much less site specific data, about how much a combustion device’s perform degrades over time. An assumption that there is no degradation in performance when following an operation and maintenance plan, much less this specific operation and maintenance plan, is baseless and thus arbitrary.

37. There is also no reporting to the Division of compliance with the operation and maintenance plan. This makes the operation and maintenance plan requirement not enforceable as a practical matter because the public cannot access onsite records and thus does not know if there is compliance with the plan. And the Division, EPA and the public will not know what the emission rate of the enclosed combustion device is on day one, or any other day, because the permit does not require any testing or monitoring of emissions.

38. In order to make the emission limits in the permit enforceable as a practical matter, the permits must require continuous emission monitoring systems (CEMs) of the mass inlet and outlet VOCs for combustion devices. There are several reasons for this.

39. First, flares are not actually VOC emission control device. One of the key problems is that VOC destruction efficiency is controlled by residence time and temperate. However, a flare does not ensure consistency for these two parameters and thus cannot deliver a consistent destruction efficiency.

40. Second, there are numerous variables at the permitted facilities such as weather, altitude, installation of equipment, damage during shipping, improper construction of the particular device (i.e. is it a lemon?), wear and tear over time, variabilities in the fuel and waste streams, and different temperatures needed for different VOCs which can impact destruction efficiency of the combustion devices. No quantitative assumptions can rationally be made about the impacts these many variables in total have on the mass emission from an enclosed combustion device. Rather, only testing will provide the data needed to ensure compliance.

41. The Division may claim that enclosed flares are “designed” to achieve 98% destruction efficiency. But there is no evidence in the record or requirement in the Permits that the vendor of the combustion device guaranteed 98%, or any level of, destruction efficiency at any point, much less over the lifetime of device.

42. In any event, the fact that one unit of the model of a combustion device which the facility may use was tested by the manufacturer does not make these Permits enforceable as a practical matter. As explained above, there are many variables which the Division has not considered which differentiate a 98% design of a particular model of a flare and the actual performance of a specific flare at a specific location, day in and day out, over years of use.

43. The Division may respond that it has a “safety” factor because the combustion devise is designed for 98% removal and the permitting is only based on assuming 95% destruction efficiency. Again, this is literally and legally speaking arbitrary. The Division has no data to support this assumption and provides no basis for the decision to use 95% rather than any other number.

44. A useful analogy is miles per gallon for automobiles. There is an MPG printed on a car’s label in the showroom. Everyone knows that the actual mileage will be less because the MPG on the label is based on idealized conditions and does not reflect many of the variables listed above such as weather, fuel variables, wear and tear, and altitude. However, no one can rationally claim that their actual mileage will be three percent below the MPG listed on the label. Yet, that is what the Permits attempt to do.

45. Furthermore, gas composition exiting a well and separator influence actual emissions from all of the emission points at a facility. However, the Permits are based on the assumption that this gas composition will stay the same over the lifetime of the facility. This is arbitrary.

46. The Division is well aware that gas composition varies. The Division used the unpredictability of gas composition from oil and gas wells to justify its recently withdrawn 90 day permitting exemption for oil and gas wells, and its use of General Permits GP-09 and GP-10.

47. In addition, the West Elk mine recently provided data to the Division showing a “hydrocarbon” event, where emissions of VOCs were higher than “average” during a 61 day period. The variability in the gas effects emissions from all the emission points at the facility but General Permits 09 and 10 fail to consider this important aspect of the problem.

48. Thus, in order to have a synthetic minor permit, rather than rely on an arbitrary assumption that the gas composition and liquids stays the same over the lifetime of the facility, the Permits must require periodic testing, record keeping and reporting of the gas and liquids analysis.

49. The Permits do not have any testing, monitoring, and reporting requirements to ensure that the processing rates in the “application,” that is the registration, are not exceeding in the real world.

50. Likewise, conditions III.B.1 and 2, for example, are not enforceable as a practical matter because they wholly lack any testing, monitoring, and reporting to ensure compliance with the maximum allowable emission limits.

51. Condition V does not change this. Because there is no testing or monitoring of actual emissions from almost all of the emission points, the emissions calculations, based on generic emission facts, do not reflect actual emissions or potential to emit.

52. Furthermore, even if the emission calculations were actual emissions, which they are not, the Permits are not enforceable as a practical matter or federally enforceable pursuant to citizen suits because the compliance records are only required to be kept “on-site or at a local field office with site responsibility for division review.” Since, the public does not have authorization to inspect these records on-site or at a local field office, they cannot enforce even self-admitted violations of the emission limits.

53. Condition I.A.10.d says that covered emissions do not include emissions resulting from blowdowns from equipment piping where the physical volume of the piping between isolation valves is less than 50 cubic feet. This provision is not enforceable as a practical matter or federal enforceable because there is no way for the EPA, the state, and the public, or perhaps even the permittee, to know the physical volume of piping between isolation valves. The permits must include a requirement to provide enough information for everyone, including the public, to determine the physical volume of piping between isolation values.

54. Condition II.B creates a one-minute exemption to the “no visible emissions” limit. The no visible emissions limit in this condition is not enforceable as a practical matter. While the permits provide that EPA Method 22 must be used when measuring opacity, there is no requirement to measure opacity. The permits must require the routine measuring of opacity, along with record keeping and reporting that ensures the public access to the reporting,

to make this enforceable.

55. Similarly, Condition II.C is not enforceable as a practical matter and is not federally enforceable. There is no testing, monitoring or reporting to ensure compliance with the 20% and 30% opacity limits and no record keeping required of startup, process modifications, or adjustment of control equipment to determine if the 20% or the 30% opacity limit was applicable at a particular time.

56. Further, the public does not know which devices at a particular facility are subject to the no visible emission limit versus the 20% and 30% opacity limits. The permits must require identification in the application of which limit applies to which device. They must then require periodic opacity testing of opacity for those units subject to the opacity limit and record keeping and reporting, so that the public has access to them, of periods of startup, process modification, or adjustment or occasional cleaning of control equipment, so that all know whether the 20% or 30% opacity limit is applicable at any given time.

57. For example, a member of the public who is a certified in EPA Method 9 could go to a facility regulated by this permit and take an opacity reading while on public land. However, that member would no know of the 20% or 30% limit applied unless there were publicly available records of periods of startup, process modification, or adjustment or occasional cleaning of control equipment. These requirements are also necessary to make condition II.D.4, which uses the term “normal operations,” federally enforceable and enforceable as a practical matter.

58. The permits are based on the premise that combustion devices achieve 95% control efficiency for their entire lives. However, there is no testing, monitoring, recordkeeping, or reporting to establish 95% control efficiency is actually occurring or that the actual mass emissions are below the limits in the permits.

59. The permits do set opacity limits or no visible emissions limits, except one minute out of 15. But as explained above, it lacks any opacity or visible emission testing or monitoring, recordkeeping and publicly accessible reporting. Even if there was opacity or visible emission testing, opacity testing provides no quantitative information about VOC emissions.

60. Similarly, compliance with an operation and maintenance plan provides absolutely no quantitative information about compliance with the quantitative limits in the permits. If a combustion device is emitting from day one at a rate that results in emissions over the qualitative limits in the permits and the emission factors used to calculate “actual emission” and it is perfectly maintained for its entire lifetime, it will still be emitting over those values.

61. Even if the emissions on day one were below the rate at which annual emissions would be below the permits limits, the Division has no generic, much less site specific data, about how much an enclosed combustion device’s perform degrades over time. An assumption that there is no degradation in performance when following an operation and maintenance plan, much less the specific operation and maintenance plan that a source may develop, is baseless and thus arbitrary.

62. There is also no reporting to the Division of compliance with the operation and maintenance plan. This makes the operation and maintenance plan requirement not enforceable as a practical matter because the public cannot access onsite records and thus does not know if there is compliance with the plan. And the Division, EPA and the public will not know what the emission rate of the enclosed combustion device is on day one, or any other day, because the permits does not require any testing or monitoring of emissions.

63. It is for these same reasons that Condition II.D.5's requirement that the combustion device must be "operating properly" does not make the quantitative synthetic minor or other limits enforceable as a practical matter or federally enforceable. In addition, Condition II.D.5 is so vague as to be meaningless. The public and a judge in an enforcement case would have an impossible time of determining what "operating properly" means.

64. Condition II.D.3's requirement that the auto-igniter by "operational" is not enforceable as a practical matter or federally enforceable. The permits must add a requirement for a device to determine if the auto-igniter is operational at all times and report when it is not, with the public being given access to those reports.

B. THE PERMIT DOES NOT ENSURE THAT FACILITIES WHICH CAN CAUSE OR CONTRIBUTE TO A VIOLATION OF A NATIONAL AMBIENT AIR QUALITY STANDARD WILL NOT BE CONSTRUCTED OR PERMITTED.

65. There is no mechanism to determine if a source registered or permitted under General Permit 09 or 10 will cause or contribute to a violation of a national ambient air quality standard (NAAQS). Even if a member of the public, for example, had evidence that a source permitted or registered under GP09 or 10 could cause or contribute to a violation of a NAAQS, there is no mechanism for the Division to deny the permit prior to the source commencing construction, as General Permit 09 and 10 are effective at the time of submission of the registration.

66. Nor is there a public comment period for an individual source's registration under General Permit 09 or 10. Thus, there is no way for a member of the public to submit evidence of a source causing or contributing to a violation of a NAAQS so as to get that evidence into the record to then challenge the registration of a General Permit 09 or 10. In fact, it is not clear that a member of the public could even challenge a General Permit 09 or 10 permit registration. There is no public notice of permit registrations so certainly a member of the public would not know of a permit registration.

67. This is not a just a theoretical concern. For example, attached as exhibit 1 to the Center for Biological Diversity's comments was a modeling analysis of a well facility. The source is under the emission caps in General Permits 09 and 10 and yet the modeling demonstrates that the source will cause violations of the nitrogen oxides national ambient air quality standard.

68. Another example is El Paso County. The Division's pollution monitors in El Paso County showed ozone above the 2015 ozone NAAQS of 70 parts per billion yet the area is designated attainment. So a source that adds volatile organic compound pollution to El Paso County will, at a minimum, contribute to an ozone NAAQS violation. Yet, that source could still be permitted by registering under General Permit 09 or 10, even though that would be in violation of C.R.S. § 25-7-114.5(7)(a)(III); 5 CCR §§ 1001-5:3b:III.D.1; F.1. 42 U.S.C. § 7410(a)(2)(C), and 40 C.F.R. § 51.160(a)-(b).

CLAIMS FOR RELIEF

CLAIM ONE

(Issuing a Synthetic Minor Permit With Emission Limits Which are Not Enforceable as a Practical Manner)

69. Plaintiffs reallege the previous paragraphs and incorporate them by reference as if fully set forth herein.

70. Emission limits and other requirements in synthetic minor permits must be federally enforceable and enforceable as a practical matter.

71. The Permits include emission limits and other requirements which are not federally enforceable and not enforceable as a practical matter.

72. Therefore, the Division's issuance of the Permit was arbitrary and capricious and contrary to law.

CLAIM TWO

(Issuing permits for sources which can cause or contribute to a violation of a national ambient air quality standard)

73. Plaintiffs reallege the previous paragraphs and incorporate them by reference as if fully set forth herein.

74. The Division cannot issue a permit which will allow the construction of a source which can cause or contribute to a violation of a national ambient air quality standard.

75. General Permits 09 and 10 allow the construction of sources which cause or contribution to a violation of a national ambient air quality standard.

76. Therefore, the Division's issuance of the Permit was arbitrary and capricious and contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Vacate General Permits 09 and 10;
- B. Remand the matter to the Division with instructions to require the Division to not issue a General Permit unless the permit includes testing, monitoring and reporting requirements which make the emission limits federally enforceable and enforceable as a practical matter and ensures no facility covered by the General Permits will be permitted to begin construction if the facility can cause or contribute a violation of a national ambient air quality standard; and
- C. Grant such other relief as the Court deems just and proper

Respectfully submitted,

/s/ Robert Ukeiley
Robert Ukeiley, #26747
Senior Attorney – Environmental Health
Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Telephone: (720) 496-8568
rukeiley@biologicaldiversity.org

Counsel for Plaintiffs

Dated: March 16, 2021

Address of Plaintiffs:

Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202

Sierra Club
1536 Wynkoop St.
Denver, CO 80202