



Whistle Blowers Claim Colorado Air Pollution Control Division Violates the Law

Three air quality modeling staff ask the EPA Inspector General to investigate

In a letter to the U.S. Environmental Protection Agency (EPA) dated March 30, 2021, three self-styled “whistle blowers” who serve as air quality modelers working in the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE) asked EPA’s Inspector General, Sean W. O’Donnell, to open an investigation into policy decisions made by the agency. See letter [here](#).

The request is based on the APCD’s policy decision on March 15, 2021 which prohibits air quality modeling staff from reviewing compliance with National Ambient Air Quality Standards (NAAQS) related to hourly Nitrogen Dioxide (NO_2) and Sulfur Dioxide (SO_2) limits, 3-hour standards for SO_2 , and daily standards for particulate matter smaller than 2.5 micrometers ($\text{PM}_{2.5}$).

The air modeling employees have responsibility for conducting modeling of emissions from new or modified stationary sources of NAAQS criteria pollutants and were ordered by their management to **not** perform what the whistle blowers refer to as “legally required duties.”

They have asked the Inspector General to review alleged violations of law including:

1. Suppressing information demonstrating that pending permits would lead to modeled violations of NAAQS;
2. Approving air quality permits which violate NAAQS; and

3. Ordering modeling staff to ignore modeled NAAQS violations which would conflict with nonbinding agency guidance documents.

The letter states:

In short, under this policy, permit applicants in Colorado no longer have to demonstrate that their proposed sources or modifications comply with these standards in order to get an air permit from CDPHE. In fact, numerous permits have already been issued over our [staff] objections that the new or modified sources did not comply with one or more NAAQS.

BACKGROUND

On March 15, 2021 Director Garry Kaufman of the APCD informed the air quality modeling unit that the policy of the APCD that **NAAQS compliance in air permit applications will no longer be verified for the 1-hr NO₂, 1-hr SO₂, 3-hr SO₂, and 24-hr PM_{2.5} NAAQS.**

The whistle blowers letter emphasizes that NO₂ is one of the two main precursors of ozone, and that the Denver-North Front Range ozone nonattainment area has deteriorated from a designation of **“Marginal”** nonattainment in **2012** for the 2008 ozone NAAQS, to a designation of **“Serious”** nonattainment in **2020**, and that it is expected to soon deteriorate to a designation of **“Severe.”**

The staff claims that the new policy will enable “unfettered growth of NO₂ sources in the nonattainment area and elsewhere in the state at precisely the time when CDPHE should be making efforts to achieve exactly the opposite.”

ALLEGED SECRECY AND PATTERN OF UNLAWFUL CONDUCT

The letter also states:

In addition to violating the aforementioned regulatory provisions, **this policy is also being implemented essentially in secret.** This policy was **not** brought to the Air Quality Control Commission, has **not** received public scrutiny, was implemented internally without notice, and as such violates Colorado’s Administrative Procedure Act.

These cases are a small sample demonstrating CDPHE's ongoing failure to enforce its SIP and its minor source permitting program. The March 15, 2021 policy prohibiting modeling of these NAAQS is the latest and most concrete instance of a **pattern of unlawful conduct** which is directly responsible for Colorado's precipitous decline in air quality in the last decade. Consequently, we request that EPAOIG take immediate action to investigate the CDPHE NAAQS program and permits issued under it.

This post was drafted by [John Watson](#). He is an attorney in the Denver, CO office of Spencer Fane. For more information, visit www.spencerfane.com.