

DISTRICT COURT, ADAMS COUNTY, COLORADO 1100 Judicial Center Dr., Brighton, CO 80601 Phone: (303) 659-1161	
Plaintiffs: CENTER FOR BIOLOGICAL DIVERSITY and 350 COLORADO v. Defendants: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION	
<i>Counsel for Plaintiffs</i> Roberta Mooney, no. 43906 350 Colorado PO Box 607, Boulder, CO 80306 Bobbie@350Colorado.org Phone: 303-601-5645	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: Div: Crtm:
COMPLAINT	

PLAINTIFFS Center for Biological Diversity and 350 Colorado, through counsel, submit the following Complaint:

INTRODUCTION

1. Plaintiffs Center for Biological Diversity and 350 Colorado bring this suit to compel Defendant to comply with its mandatory duty to grant or deny without delay air pollution operating permits for two large sources of toxic air pollution located in Adams County.

2. Air pollution operating permits are required by Title V of the federal Clean Air Act. The United States Environmental Protection Agency authorized Colorado's Air Pollution Control Division to issue Title V operating permits in accordance with the Colorado Air Pollution Prevention and Control Act ("Colorado Air Act"). Under the federal Clean Air Act and the Colorado Air Act, large sources of air pollution can only pollute after applying for, obtaining, and operating in compliance with an up-to-date operating permit. Under the Colorado Air Act, Defendant is required to grant or deny operating permit applications within 18 months of receipt.

3. Defendant is currently unlawfully overdue in taking final action on operating permit applications for two facilities in Adams County: Magellan Pipeline Terminals, LLC's Aurora Terminal ("Magellan Aurora Terminal"), a large petroleum products handling and storage facility; and Crestone Peak Resources Operating, LLC's Mustang Booster Station ("Mustang Booster Station"), an oil and gas compressor station facility.

4. These facilities are sources of harmful air pollution and in particular release large amounts of volatile organic compounds ("VOCs"). VOCs include toxic gases, such as benzene, a known carcinogen, and also react with sunlight to form ground-level ozone, the key ingredient of smog. The Denver Metro region, including Adams County, is currently violating health standards for ground-level ozone and has been declared a "severe" ozone nonattainment area by the U.S. Environmental Protection Agency ("EPA").

5. Magellan's Aurora Terminal and Crestone Peak's Mustang Booster Station are currently polluting without up-to-date operating permits.

6. Pursuant to the Colorado Air Act, Defendant's failure to grant or deny a permit application is "final permit action" for purposes of obtaining judicial review and enforcement to require that Defendant take final action on such applications "without additional delay." C.R.S. § 25-7-114.5(7)(b). Plaintiffs bring this suit to compel the Defendant to perform their mandatory duties.

PARTIES

7. Plaintiff **CENTER FOR BIOLOGICAL DIVERSITY** is a non-profit conservation organization with an office in Denver, Colorado. The Center has over 93,000 members throughout the United States and the world and over 3,000 members in Colorado. The Center brings this action on its own behalf and on behalf of its adversely affected members.

8. 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.

9. Plaintiff **350 COLORADO** is a Colorado-based non-profit organization with over 18,000 members throughout the state. 350 Colorado is an independent state affiliate of 350.org, a global organization with about 490 affiliates focused on building a world powered by clean, accessible, and affordable renewable energy. 350 Colorado brings this action on its own behalf and on behalf of its adversely affected members.

10. 350 Colorado's mission is to build the local grassroots movement to solve the climate crisis and transition to a sustainable future.

11. Plaintiffs' members live, work, recreate, travel, and engage in other activities throughout Adams County where the Magellan Aurora Terminal and Crestone Peak Mustang Booster Station facilities are located and will continue to do so. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiffs' members, as well as their ability to engage in and enjoy activities.

12. Pollution from these facilities negatively impacts Plaintiffs' members' ability to engage in outdoor activities in Adams County and the broader Denver Metro area. Plaintiffs' members enjoy outdoor recreational activities such as walking, biking, hiking, and playing with their children in these affected areas. These facilities release pollutants that contribute to regional ozone pollution in an area that is not meeting federal health-based ozone air quality standards, which interferes with Plaintiffs' members enjoyment of outdoor activities.

13. Defendant's failures also harm Plaintiffs' members' welfare interest in using and enjoying the natural environment. Ground-level ozone damages plant and animal life and natural ecosystems, thus harming Plaintiffs' members' recreational and aesthetic interests in the areas at issue in this complaint.

14. The violations alleged in this Complaint have injured and continue to injure the interests of the Center for Biological Diversity, 350 Colorado, and their members through ongoing exposure to harmful air pollution.

15. The Air Pollution Control Division's ongoing failure to act deprives Plaintiffs of the administrative safeguards and information they are entitled to under the Colorado Air Act.

16. Plaintiffs' injuries are traceable to the Defendant's failure to act, which is considered final agency action under the Colorado Air Act. Granting the requested relief would redress these injuries by compelling Defendant to take action as required by the Colorado Air Act.

17. Defendant AIR POLLUTION CONTROL DIVISION is a division within the Colorado Department of Public Health and Environment that administers the State air quality programs. The Department of Public Health and Environment is the Colorado regulatory agency with jurisdiction and authority to implement the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101, *et. seq.* The Department's mission is to protect and preserve the health and environment of the people of Colorado. The Air Pollution Control Division has the jurisdiction, authority, and duty to grant or deny applications for operating permits under the Colorado Air Act. *See* C.R.S. § 25-7-114.4(2). The Department's stated mission is to advance Colorado's health and protect the places where Coloradans live, work, and play.

JURISDICTION AND VENUE

18. The Court has jurisdiction under C.R.S. § 24-4-106 (the State Administrative Procedure Act), C.R.S. § 25-7-120 (the judicial review provision of the Colorado Air Pollution Prevention and Control Act), and C.R.S. § 25-7-114.5(7)(b) (providing for judicial review for failure to act on permit applications).

19. Venue is proper pursuant to C.R.S. § 25-7-120(3) because the two air pollution sources affected by the Defendant's inaction are located in this district.

20. This Complaint is timely filed because under federal regulations applicable to Colorado's administration of air pollution operating permits, "[i]f the final permit action being challenged is the permitting authority's failure to take final action, a petition for judicial review may be filed any time before the permitting authority denies the permit or issues the final permit." 40 C.F.R. § 70.4(b)(3)(xii).

21. Under Colorado's air pollution operating permit program, Defendant's failure to approve or deny permit applications is a final agency action for the purpose of obtaining judicial review to require that Defendant take action on the applications "without additional delay." C.R.S. § 25-7-114.5(7)(b).

LEGAL BACKGROUND

22. The federal Clean Air Act aims "to protect and enhance the quality of the Nation's air resources." 42 U.S.C. § 7401(b)(1). Colorado's statutory and regulatory responsibilities and requirements regarding the permitting of sources of air pollution derive from the federal Clean Air Act.

23. In the 1990 amendments to the Clean Air Act, Congress developed Title V, which established a nationwide stationary source air pollution operating permit program, often referred to as Title V permitting. 42 U.S.C. §§ 7661–7661f. The goal of the Title V program is "[i]ncreased source accountability and better enforcement." Operating Permit Program, 57 Fed. Reg. at 32,250, 32,251 (July 21, 1992).

24. All "major" stationary sources of air pollution must obtain and operate in accordance with a Title V operating permit. *See* Clean Air Act Amendments of 1990, Pub.L. No. 101-549, §§ 501–507, 104 Stat. 2399, 2635–48 (codified at 42 U.S.C. §§ 7661–7661f (2000)) ("The intent of Title V is to consolidate into a single document (the operating permit) all of the clean air requirements applicable to a particular source of air pollution."). Major sources cannot discharge pollutants until they have a valid Title V operating permit. 42 U.S.C. §§ 7661a(a), 7661c(c).

25. Title V operating permits are legally enforceable permits that permitting authorities grant to air pollution sources after the source has begun to operate. *Id.* Once Title V operating permits are issued, they are enforceable by states, as well as by the EPA and the public. *See* 40 C.F.R. § 70.6(b)(1).

26. Title V operating permits ensure that major sources adequately monitor and limit their pollution, and operate in compliance with the Clean Air Act. 42 U.S.C. § 7661c(c). Major sources of air pollution are prohibited from discharging air pollutants unless they have a valid Title V operating permit. 42 U.S.C. § 7661a(a).

27. Title V operating permits must be renewed every five years. *See* 40 C.F.R. § 70.6(a)(2). Where a source of pollution submits a timely and complete application for a permit, including a permit renewal, that source may continue operating even if it does not have a permit or if its current permit has expired. *See* 40 C.F.R. 70.7(b).

28. The terms of the Title V operating permits must contain all air quality legal requirements as well as a schedule of compliance that ensures the facility continues to meet emissions limits. 42 U.S.C. § 7661c(a). In their applications, owners or operators of major sources must demonstrate an adequate plan for inspection, monitoring, and reporting on the facility's air pollution. 42 U.S.C. § 7661c(c).

29. The Administrator of EPA granted full approval for Colorado to administer its Title V operating permit program in 2000. EPA, "Clean Air Act Full Approval of Operating Permit Program; Approval of Expansion of State Program Under Section 112(l); State of Colorado," 65 Fed. Reg. 49,919 (August 16, 2000). Therefore, Defendant is responsible for issuing Title V operating permits in Colorado.

30. Colorado incorporated the requirements of the Clean Air Act and its implementing regulations into the Colorado Air Act and accompanying regulations. *See* C.R.S. § 25-7-114, *et seq.*; 5 CCR § 1001-5, Regulation No. 3, Part C.

31. The federal Clean Air Act requires that the state permitting authority must approve or deny permit applications within 18 months of receiving a complete application. *See* 42 U.S.C. § 7661b; 40 C.F.R. § 70.7(a)(2). Accordingly, the Colorado Air Act requires the Air Pollution Control Division to grant or deny applications for Title V operating permits within 18 months after receipt of the completed permit application. C.R.S. § 25-7-114.5(4).

32. Before final action can be taken on an operating permit application, the Division must at least provide for a 30-day public comment period. *See* 5 C.C.R. § 1001-5, Part C, Section VI.B.8. The Division must also provide the public an opportunity to request a hearing before the Air Quality Control Commission. *See* 5 C.C.R. § 1001-5, Part C, Section VI.B.10. After responding to comments and before taking final action, the Division must also provide the EPA with a 45-day period to object to a proposed permit. *See* 5 C.C.R. § 1001-5, Part C, Section VI.H. If the EPA does not object, the Division may subsequently grant or deny the permit. Further, if the EPA does not object, any person may petition the EPA Administrator to object within 60 days following the agency's 45-day review period. 40 C.F.R. § 70.8(d).

33. Under the federal Clean Air Act, state Title V operating permit programs must

provide for judicial review in state court when permitting authorities fail to act on a permit application after 18 months. 42 U.S.C. § 7661a(b)(7). Accordingly, the Colorado Air Act provides for judicial review of the failure to timely act on a complete permit application. *See* C.R.S. § 25-7-114.5(7)(b).

34. Although no prior notice is required before filing an action under C.R.S. § 25-7-114.5(7)(b), Plaintiffs reached out to the Colorado Air Pollution Control Division in an attempt to discuss this matter prior to filing this action. The agency did not respond to Plaintiffs request to discuss this matter.

FACTUAL BACKGROUND

A. Magellan Aurora Terminal

35. Magellan's Aurora Terminal is located in Aurora in Adams County, Colorado. It is a bulk petroleum products storage and distribution terminal located at the southwest corner of Smith Road and Chambers Road. The facility is located along Sand Creek and within 1000 feet of residential development.

36. The Aurora Terminal handles and stores refined petroleum products, such as gasoline, kerosene jet fuel, and fuel oil that are delivered to the Terminal via pipeline and trucks. The petroleum products are stored at the facility in numerous above ground storage tanks and loaded and unloaded at the Terminal into transport vehicles.

37. The Aurora Terminal's tanks and other equipment are a source of numerous harmful air pollutants, including volatile organic compounds (VOCs). As a major source of air pollution, the Terminal is subject to the Title V operating permit requirements of the Colorado Air Act, as well as the federal Clean Air Act. The Terminal is within the Denver Metro "severe" ozone nonattainment area and is located within a Disproportionately Impacted Community (DIC), meaning Coloradans living in the area experience higher environmental and health burdens as identified by the Colorado Department of Public Health and Environment.

38. The Aurora Terminal emits the following air pollutants:

- a. Volatile Organic Compounds;
- b. Nitrogen Oxides;
- c. Carbon Monoxide; and
- d. Hazardous Air Pollutants (HAPs), including:
 - i. Benzene;
 - ii. Toluene;
 - iii. Ethylbenzene;
 - iv. Xylene;
 - v. n-Hexane; and

vi. 2,2,4 Trimethylpentane.

39. The Aurora Terminal was first issued an air pollution operating permit on January 1, 2020. This permit was numbered 17OPAD399. This permit expired on January 1, 2025.

40. On December 19, 2023, Magellan submitted to the Air Pollution Control Division an application to renew its air pollution operating permit. The Division acknowledged receipt on December 21, 2023.

41. Defendant's 18-month deadline to grant or deny the permit application was June 19, 2025.

42. Defendant has yet to issue a draft permit for public comment.

43. Due to submitting a timely and complete permit renewal application, Magellan has been allowed to continue operating the Aurora Terminal even though its original permit has expired.

B. Mustang Booster Station

44. Crestone Peak's Mustang Booster Station is located east of Aurora in Adams County, Colorado. It is a methane gas compression station and is located just north of I-70 near the town of Watkins, Colorado.

45. The Mustang Booster Station consists of two (2) pig receivers, three (3) natural gas-fired compressor engines, two (2) natural gas-fired emergency generators, two (2) natural gas dehydration units, two (2) fixed roof storage tanks, one (1) smokeless enclosed combustor, one (1) emergency flare, and a submerged fill truck loadout using a vapor balance system. At this facility, natural gas is received, compressed, dehydrated, stored, and loaded into transport vehicles.

46. The Mustang Booster Station's engines, tanks and other equipment are a source of numerous harmful air pollutants, including VOCs. As a major source of air pollution, the Station is subject to the operating permit requirements of the Colorado Air Act, as well as the federal Clean Air Act. The Station is within the Denver Metro "severe" ozone nonattainment area and is located within a Disproportionately Impacted Community (DIC), meaning Coloradans living in the area experience higher environmental and health burdens as identified by the Colorado Department of Public Health and Environment.

47. The Mustang Booster Station emits the following air pollutants:

- a. Particulate Matter ("PM");
- b. Sulfur Dioxide;
- c. Nitrogen Oxides;
- d. Volatile Organic Compounds;

- e. Carbon Monoxide; and
- f. Hazardous Air Pollutants (HAPs), including:
 - i. Formaldehyde;
 - ii. Acetaldehyde;
 - iii. Acrolein;
 - iv. Benzene;
 - v. Toluene;
 - vi. Ethylbenzene;
 - vii. Xylene;
 - viii. n-Hexane;
 - ix. Methanol; and
 - x. 2,2,4 Trimethylpentane.

48. The Mustang Booster Station has yet to obtain a Title V operating permit. On October 27, 2023, Crestone Peak submitted to the Air Pollution Control Division an application for an initial air pollution operating permit. This application was assigned permit number 23OPAD524. The Division acknowledged receipt on December 7, 2023.

49. Defendant's 18-month deadline to grant or deny the permit application was April 27, 2025.

50. Defendant have yet to issue a draft permit for public comment.

51. Due to submitting a timely and complete permit application, Crestone Peak has been allowed to continue operating the Mustang Booster Station without an approved air pollution operating permit.

C. Negative Health Effects of Pollutants

52. Many of the pollutants emitted by Magellan's Aurora Terminal and Crestone Peak's Mustang Booster Station are defined under the Clean Air Act as "criteria pollutants" which can endanger public health and welfare. Criteria pollutants are subject to regulation and federal air quality standards that limit the amount of the pollutant that is legally allowed in the air. Relevant criteria pollutants are 1) ground-level ozone, 2) carbon monoxide, 3) sulfur dioxide, 4) nitrogen oxides, and 5) particulate matter.

53. Ground-level ozone, commonly referred to as smog, is a "criteria pollutant" under the federal Clean Air Act. Nitrogen oxides, volatile organic compounds, and carbon monoxide are precursor emissions that contribute to the formation of ground-level ozone.

54. Increased ozone exposure causes various respiratory illnesses, aggravates lung disease, increases the frequency and severity of asthma attacks, and can cause premature death. Ozone exposure causes more than one million premature deaths globally each year.

55. Carbon monoxide (CO) is a criteria pollutant. High levels of CO can cause dizziness, confusion, unconsciousness, and death. It can also exacerbate some types of heart disease.

56. Sulfur dioxide and nitrogen oxides are criteria pollutants. They are known to harm the respiratory system. People with asthma, especially children, are particularly vulnerable.

57. Particulate matter is also a criteria pollutant. Two sizes of particulate matter, PM10 and PM2.5, are especially harmful to human health and welfare. Exposure to these fine particles suspended in the air can affect both the lungs and heart, causing nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, increased respiratory problems, and premature death.

58. Magellan's Aurora Terminal and Crestone Peak's Mustang Booster Station also emit Hazardous Air Pollutants (known as "HAPs"), including benzene; toluene; ethylbenzene, and xylene. Hazardous Air Pollutants are toxic air pollutants known or suspected to cause cancer or other serious health effects and are regulated separately from criteria pollutants under the federal Clean Air Act.

CLAIM FOR RELIEF

FIRST CLAIM

(Failure to Approve or Deny Title V Operating Permit Application for the Magellan Aurora Terminal within Legal Deadline)

59. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.

60. The Division has not taken final action to issue or deny the air pollution operating application for the Magellan Aurora Terminal, Permit No. 17OPAD399, within 18 months after receiving the application in accordance with C.R.S. § 25-7-114.5(4). Defendant was required to take action by June 19, 2025, because they received the application on December 19, 2023. Defendant's failure to take final action on the permit application for the Magellan Aurora Terminal violates the Colorado Air Act.

61. The Division's failure to grant or deny an air pollution operating permit for the Magellan Aurora Terminal within the 18 months prescribed by statute is final permit action subject to this Court's review. *See* C.R.S. § 25-7-114.5(7)(b). This Court must therefore require that the Defendant grant or deny this permit renewal application "without additional delay." *Id.*

SECOND CLAIM

(Failure to Approve or Deny Title V Operating Permit Application for the Crestone Peak Mustang Booster Station within Legal Deadline)

62. Plaintiffs incorporate the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.

63. The Division has not taken final action to issue or deny the air pollution operating permit application for Crestone Peak's Mustang Booster Station, Permit No. 23OPAD524, within 18 months after receiving the application in accordance with C.R.S. § 25-7-114.5(4). Defendant were required to take action by April 27, 2025, because they received the application on October 27, 2023. Defendant's failure to take final action on the permit application for the Mustang Booster Station violated the Colorado Air Pollution Prevention and Control Act.

64. The Division's failure to grant or deny an air pollution operating permit for the Mustang Booster Station within the 18 months prescribed by statute is final permit action subject to this Court's review. See C.R.S. § 25-7-114.5(7)(b). This Court must therefore require that the Defendant grant or deny this permit renewal application "without additional delay." Id.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that Defendant violated the Colorado Air Pollution and Prevention Act by failing to act on the Title V operating permit applications for Magellan Pipeline Terminals, LP's Aurora Terminal and Crestone Peak Resources Operating LLC's Mustang Booster Station within 18 months after receiving each application;
- B. Order Defendant to act on the air pollution operating permit renewal application for Magellan Pipeline Terminals, LP's Aurora Terminal by issuing or denying the permit without delay, but no later than 90 days after a final order in this matter;
- C. Order Defendant to act on the air pollution operating permit application for Crestone Peak Resources Operating LLC's Mustang Booster Station by issuing or denying the permit without delay, but no later than 90 days after a final order in this matter;
- D. Grant such other relief as the Court deems appropriate or necessary.

Respectfully submitted on September 3, 2025,

s/ Roberta Mooney -
Roberta Mooney, no. 43906

*Counsel for Plaintiffs The Center for Biological
Diversity and 350 Colorado*