

DISTRICT COURT, WELD COUNTY, COLORADO 901 9th Ave. Greeley, CO 80631 Phone: (970) 475-2400	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: CENTER FOR BIOLOGICAL DIVERSITY</p> <p>v.</p> <p>Defendant: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION</p>	
<p>Attorneys for Plaintiff:</p> <p>Wyatt G. Sassman, no. 51890 Gregory Smith (Student Attorney) Helen Snow (Student Attorney) Michaela Krause (Student Attorney)</p> <p>Environmental Law Clinic University of Denver Sturm College of Law 2255 E. Evans Avenue Denver, CO 80208</p> <p>Phone: (303) 871-6140 wyatt.sassman@du.edu greg.smith@du.edu helen.snow@du.edu michaela.krause@du.edu</p>	<p>Case Number:</p> <p>Div: Ctrm.:</p>
<p>COMPLAINT</p>	

INTRODUCTION

1. Plaintiff Center for Biological Diversity brings this suit to compel Defendant, the Air Pollution Control Division (the Division) of the Colorado Department of Public Health and Environment, to grant or deny the initial Title V operating permit application for Swift Beef Company's Greeley Integrated Rendering Plant located in Weld County, Colorado.
2. Title V of the federal Clean Air Act requires certain large sources of air pollutants to obtain air pollution operating permits. The United States Environmental Protection Agency (EPA) authorized Colorado's Air Pollution Control Division to issue Title V operating permits in Colorado in accordance with the Colorado Air Pollution Prevention and Control Act.
3. The Greeley Integrated Rendering Plant emits both criteria air pollutants and hazardous air pollutants that endanger public health and welfare. These pollutants contribute to chronic and acute health effects including respiratory, cardiovascular, and nervous system problems as well as an increased risk of premature death.
4. The Colorado Air Pollution Prevention and Control Act requires the Air Pollution Control Division to grant or deny permit applications within eighteen months of a facility submitting a complete application.
5. The Air Pollution Control Division has exceeded the eighteen-month statutory deadline to act on the initial permit application for the Greeley Integrated Rendering Plant. The Division received a complete initial permit application for the Greeley Integrated Rendering Plant on April 20, 2022. The Division has failed to grant or deny this initial permit application for more than forty-seven months since receiving it.
6. Defendant must take timely action on this initial operating permit application to ensure adequate protection of air quality and public health in Colorado and to provide for public participation in, and scrutiny of, the regulation of air pollution from this facility. Plaintiff requests that this Court require the Division to take final action on the permit application without additional delay.

PARTIES

7. Plaintiff Center for Biological Diversity is a nonprofit 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 protect public health and air quality, 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.
9. Plaintiff's members live, work, recreate, travel, and engage in other activities throughout Weld County and the Denver Metro/North Front Range Nonattainment Area where the Greeley Integrated Rendering Plant is located and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health

and welfare of Plaintiff's members, as well as their ability to engage in and enjoy activities.

10. Pollution from the Greeley Integrated Rendering Plant negatively impacts Plaintiff's members' ability to engage in outdoor activities in Weld County and the Denver Metro/North Front Range Nonattainment Area. Plaintiff's members enjoy outdoor recreational activities such as walking, biking, hiking, and playing with their children in these affected areas. Plaintiff's members conduct research, educational activities, and advocacy programs in these affected areas.
11. Air pollution from the Greeley Integrated Rendering Plant also harms Plaintiff's members' interests in using and enjoying the natural environment. Ground-level ozone, which the air pollution emitted by the facility causes, harms human health, and damages plant and animal life and natural ecosystems, thus harming Plaintiff's members' recreational and aesthetic interests in the areas at issue in this Complaint.
12. Air pollution from the Greeley Integrated Rendering Plant—including volatile organic compounds, carbon monoxide, particulate matter, nitrogen dioxide, ammonia, toluene, benzene, hexane, and formaldehyde—directly contributes to the Plaintiff's members' injuries.
13. The Air Pollution Control Division's ongoing failure to act causes the Plaintiff and its members continuing injury and threats from, and ongoing concern about, exposure to harmful air pollution.
14. The Air Pollution Control Division's ongoing failure to act deprives Plaintiff and its members of the administrative safeguards and information they are entitled to under the Colorado Air Pollution Prevention and Control Act.
15. Plaintiff's members' injuries are traceable to Defendant's failure to act. Failure to timely act on such a permit application is considered final agency action under the Colorado Air Pollution Prevention and Control Act. Granting the requested relief would redress Plaintiff's members' injuries by compelling the Defendant to act as required by the Colorado Air Pollution Prevention and Control Act.
16. Defendant Air Pollution Control Division is the division within the Colorado Department of Public Health and Environment that grants or denies Title V operating permit applications under the Colorado Air Pollution Prevention and Control Act. C.R.S. § 25-7-114.5(2), (4). The Colorado Department of Public Health and Environment is the state agency in Colorado charged with implementing the Colorado Air Pollution Prevention and Control Act. *See* C.R.S. §§ 25-7-104, -105. The Department's stated mission is to advance Colorado's health and protect the places where Coloradans live, work, and play. The Division's stated mission is to protect Coloradans' health and well-being by enforcing the state's air pollution laws and improving air quality.

JURISDICTION AND VENUE

17. The Court has jurisdiction under C.R.S. § 24-4-106 (judicial review provision of the State Administrative Procedure Act), C.R.S. § 25-7-120 (judicial review provision of the Colorado Air Pollution Prevention and Control Act), and C.R.S. § 25-7-114.5(7)(b) (provision of the Colorado Air Pollution Prevention and Control Act stating that failure to timely grant or deny a permit application is final agency action for the purpose of obtaining judicial review).

18. Venue is proper under C.R.S. § 25-7-120(3) and C.R.S. § 25-7-114.5(7)(b) because the air pollution source affected by the Defendant's inaction, the Greeley Integrated Rendering Plant, is located in this district.
19. This action is timely filed because C.R.S. § 25-7-114.5(7)(b) provides that "judicial review of the division's failure to grant or deny a renewable operating permit required by Title V . . . is available until the division grants or denies the permit." This provision aligns with the federal requirement that, "[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).

LEGAL BACKGROUND

20. The federal Clean Air Act was enacted "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare." 42 U.S.C. § 7401(b)(1).
21. In 1990, Congress amended the Clean Air Act to create the Title V permit program. *See* 42 U.S.C. §§ 7661-7661f.
22. The Title V permit program consolidates all air pollution standards for a pollution source into one document to promote "[i]ncreased source accountability and better enforcement." Operating Permit Program, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). Title V operating permits also ensure that major sources adequately monitor and limit their pollution, as well as operate in compliance with the Clean Air Act. 42 U.S.C. § 7661c(c).
23. When promulgating the Title V program, the EPA stated its expectation that the program would promote "[p]ollution [p]revention" by "lead[ing] air pollution sources and regulatory agencies to evaluate their air pollution control strategies" and "present[ing] an opportunity to pursue strategies that avoid pollution, rather than control it, and that eliminate pollution, rather than shift it from one medium to the other." 57 Fed. Reg. at 32,252.
24. Under the program, all major sources of pollution must obtain a Title V operating permit to continue or begin operation. Major sources cannot discharge pollutants until they have a valid Title V operating permit. 42 U.S.C. § 7661a(a).
25. Title V operating permits are legally enforceable documents and are granted to facility owners or operators by permitting agencies. *See id.* § 7661c(a).
26. Operating permits must contain all air quality requirements, including a schedule of compliance to ensure the permitted facility meets emissions limits. *Id.* Permits must also include provisions for inspection, monitoring, and reporting on a facility's air pollution. *Id.* § 7661c(c).
27. If a facility has submitted a timely and complete initial permit application, it is granted an "application shield" to operate under existing permit conditions until the permitting authority takes final action on the initial Title V permit application. 40 C.F.R. § 70.7(b); C.R.S. § 25-7-114.5(4), (7)(c); 5 C.C.R. § 1001-5:3C(II.B). This application shield does not apply to allow a facility to operate without a Title V permit if a complete application is not timely filed. *See, e.g.*, 40 C.F.R. § 70.7(b).
28. The federal Clean Air Act provides that the Administrator of the EPA must approve or disapprove state Title V permit programs. 42 U.S.C. § 7661a(d)(1). EPA can only approve a

state program if it meets requirements in the federal Clean Air Act and relevant federal regulations. *Id.*

29. The EPA granted full approval for Colorado to administer its Title V operating permit program in 2000. 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 (Aug. 16, 2000).
30. Colorado incorporated the requirements of the Clean Air Act and its implementing regulations into the Colorado Air Pollution Prevention and Control Act. C.R.S. § 25-7-101 *et seq.*; 5 C.C.R. § 1001-5:3C.
31. The Colorado Air Pollution Prevention and Control Act assigns responsibility for issuing Title V operating permits to the Air Pollution Control Division of the Colorado Department of Public Health and Environment. *See* C.R.S. § 25-7-114.5.
32. The Clean Air Act requires state permitting authorities to grant or deny completed permit applications within eighteen months of receipt. 42 U.S.C. § 7661b(c); 40 C.F.R. § 70.7(a)(2).
33. Accordingly, the Colorado Air Pollution Prevention and Control Act requires the Air Pollution Control Division to grant or deny applications for operating permits within eighteen months after receipt of the completed permit application. C.R.S. § 25-7-114.5(4).
34. Before final action can be taken on an operating permit application, the Division must provide a thirty-day public comment period. *See* 5 C.C.R. §1001-5:3C(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. § 1001-5:3C(VI.B.10).
35. After responding to comments and before taking final action, the Division must also provide the EPA with a forty-five-day period to object to a proposed permit. *See* 5 C.C.R. § 1001-5:3C(VI.H). If the EPA does not object, the Division may subsequently grant or deny the permit.
36. Further, if the EPA does not object, any person may petition the EPA Administrator to object within sixty days following the EPA's forty-five-day review period. *See id.*; 40 C.F.R. § 70.8(d). The EPA Administrator "shall" object within sixty days if a petition demonstrates that a permit is not in compliance with the Clean Air Act. 42 U.S.C. § 7661d(b)(2).
37. If the EPA Administrator objects, the Division must revise the permit within ninety days to address the objection. 42 U.S.C. § 7661d(c). If it fails to do so, the EPA Administrator must issue or deny the permit. *Id.*
38. Under the federal Clean Air Act, state Title V permit programs must provide for judicial review in state court when permitting authorities fail to act on a permit application within eighteen months. 42 U.S.C. § 7661a(b)(7).
39. Accordingly, the Colorado Air Pollution Prevention and Control Act provides for judicial review of the Division's failure to grant or deny a permit application within eighteen months in order to "require that action be taken on such application . . . without additional delay." C.R.S. § 25-7-114.5(7)(b).

FACTUAL BACKGROUND

A. Greeley Integrated Rendering Plant

40. The Greeley Integrated Rendering Plant is located in Weld County at 800 North 8th Avenue, Greeley, Colorado 80631.
41. The Greeley Integrated Rendering Plant is a cattle slaughter and beef processing facility.
42. The Greeley Integrated Rendering Plant is operated by Swift Beef Company, one of over three hundred subsidiaries of JBS N.V., the world's largest beef producer.
43. The facility is a major source of harmful air pollution.
44. As a major source of air pollution, the Greeley Integrated Rendering Plant is subject to the operating permit requirements of the Colorado Air Pollution Prevention and Control Act and the federal Clean Air Act.
45. The Greeley Integrated Rendering Plant emits the following air pollutants, among others:
 - a. PM10;
 - b. PM2.5;
 - c. Nitrogen Oxides;
 - d. Volatile Organic Compounds;
 - e. Carbon Monoxide;
 - f. Ammonia; and
 - g. Hazardous Air Pollutants (HAPs):
 - i. Benzene;
 - ii. Toluene;
 - iii. Hexane; and
 - iv. Formaldehyde.

B. Negative Health Effects of Pollutants

46. Of the pollutants emitted by the Greeley Integrated Rendering Plant, particulate matter, carbon monoxide, nitrogen oxides, and ground-level ozone are regulated 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. Of the pollutants emitted by the Greeley Integrated Rendering Plant, toluene, formaldehyde, benzene, and hexane are regulated under the Clean Air Act as "hazardous air pollutants." 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.
47. Particulate matter is a criteria pollutant. Two categories of particulate matter, PM10 and PM2.5, are harmful to human health and welfare. Exposure to those fine particles can affect both the lungs and heart, causing heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, increased respiratory problems, and premature death.
48. Ammonia is regulated in Colorado as a Toxic Air Contaminant. Exposure to ammonia can irritate the eyes, throat, skin, lungs, and cause coughing and burns.
49. Carbon monoxide is a criteria pollutant. High levels of carbon monoxide can cause dizziness,

confusion, unconsciousness, and premature death. It can also exacerbate some types of heart disease.

50. Nitrogen oxides are a criteria pollutant. Short-term exposure to nitrogen dioxide, EPA's indicator pollutant for nitrogen oxides, can aggravate respiratory diseases such as asthma, while long-term exposure may contribute to the development of asthma and increase susceptibility to respiratory infections. Nitrogen oxides contribute to the formation of ground-level ozone.
51. Ground-level ozone, commonly referred to as smog, is a criteria pollutant. Nitrogen oxides, volatile organic compounds, and carbon monoxide are precursor emissions that contribute to the formation of ground-level ozone.
52. 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.
53. Hexane is a hazardous air pollutant. Hexane is known to cause dizziness, nausea, and headaches after short-term exposure, and long-term exposure can cause neurotoxicity, numbness, muscular weakness, blurred vision, and fatigue.
54. Toluene is a hazardous air pollutant. Acute exposure to toluene is known to cause headaches, nausea, central nervous system depression, and heart arrhythmia. Chronic exposure can cause impaired speech, hearing, and vision as well as developmental defects in children of pregnant women exposed to toluene.
55. Formaldehyde is a hazardous air pollutant. Formaldehyde is known to cause nausea, a burning sensation in the eyes and throat, and difficulty breathing. Formaldehyde may cause cancer.
56. Benzene is a hazardous air pollutant. Acute exposure to benzene can cause headaches, unconsciousness, eye and throat irritation. Chronic exposure can cause chromosomal aberrations, blood disorders, anemia, excessive bleeding, damage to the immune system, and cancer.

C. Greeley Integrated Rendering Plant Permitting and Compliance History

57. The Division has identified multiple violations of Colorado air pollution laws and regulations at the Greeley Integrated Rendering Plant since at least 2019. The Division's identified violations include, among others, exceeding opacity limits on the facility's emissions, processing dried blood in excess of limits, and failing to adequately maintain and monitor equipment.
58. The Division has identified violations of both state construction permit conditions and the Colorado Air Pollution Prevention and Control Act's Title V operating permit requirements at the Greeley Integrated Rendering Plant.
59. The Greeley Integrated Rendering Plant became subject to the Title V operating permit requirement on January 27, 2020. The facility was required to submit an application for that permit no later than January 27, 2021, twelve months after that date, under the Colorado Air Pollution Prevention and Control Act.
60. In May 2021 and again in March 2022, the Division noted that the facility was out of compliance for failing to timely submit an operating permit application, operating without an operating permit, and violating the opacity conditions of the applicable construction permit.

61. The Division received an initial Title V operating permit application for the Greeley Integrated Rendering Plant on April 20, 2022, fourteen months after the statutory deadline.
62. Because the Greeley Integrated Rendering Plant did not submit a timely application, it is not protected under the application shield provision at 5 C.C.R. § 1001-5:3C(II.B).
63. The Greeley Integrated Rendering Plant has been operating without a Title V operating permit or the protection of the application shield in violation of the Clean Air Act and the Colorado Air Pollution Prevention and Control Act since January 27, 2021.
64. Under the Colorado Air Pollution Prevention and Control Act, the Division was required to grant or deny the Greeley Integrated Rendering Plant's initial operating permit application within eighteen months of receipt, by October 20, 2023.
65. The Division has not yet granted or denied the Greeley Integrated Rendering Plant's initial permit application.

CLAIM

(Failure to Grant or Deny Title V Operating Permit Application for
Greeley Integrated Rendering Plant within Legal Deadline)

66. Plaintiff incorporates the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.
67. C.R.S. § 25-7-114.5(4) requires that the Division grant or deny a Title V operating permit application within eighteen months of receiving a complete application.
68. The Division received a complete initial Title V operating permit application for the Greeley Integrated Rendering Plant on April 20, 2022.
69. The Division was required by law to grant or deny the Greeley Integrated Rendering Plant's initial Title V operating permit application by October 20, 2023.
70. As of the date of filing of this Complaint, twenty-nine months after this deadline, the Division has neither granted nor denied the Greeley Integrated Rendering Plant's initial Title V operating permit application.
71. The Division is therefore in violation of C.R.S. § 25-7-114.5(4).

REQUEST FOR RELIEF

Plaintiff respectfully requests that this Court:

- A. Declare that the Division violated the Colorado Air Pollution Prevention and Control Act by failing to act on the Greeley Integrated Rendering Plant's initial Title V operating permit application within eighteen months of receiving the complete application;
- B. Order the Division to grant or deny the Greeley Integrated Rendering Plant's initial Title V operating permit application without additional delay, but no later than ninety days after a final order on this matter;
- C. Retain jurisdiction over this matter to ensure compliance with this Court's order; and
- D. Award such other relief as this Court deems just and proper.

Respectfully submitted on April 7, 2026.

/s/ Wyatt Sassman

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