

September 22, 2026

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Michael Ogletree
Air Pollution Control Division Director
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Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
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Re: Request for Immediate and Full Enforcement of Clean Air Violations at the West Elk Coal Mine

Dear Executive Director Hunsaker-Ryan and Director Ogletree:

The undersigned organizations have become aware that on August 20, 2026, the Air Pollution Control Division (“Division”) issued a compliance advisory to Mountain Coal Company over serious clean air violations at the company’s West Elk Coal Mine in Gunnison County.¹ Although we support and appreciate the Division taking steps to enforce Colorado’s clean air laws, we are extremely concerned to see that the latest compliance advisory does not appear to address the full scope of unpermitted air pollution at the West Elk Coal Mine, nor does it appear poised to ensure Mountain Coal Company is brought into full compliance. **In particular, the compliance advisory does not appear to ensure that the West Elk Coal Mine is brought into compliance with stringent permitting requirements under the Clean Air Act.**

As the August 20, 2026 compliance advisory discloses, Mountain Coal Company has exceeded its permitted limit on volatile organic compound (“VOC”) emissions related to the company’s methane venting activities. Methane venting at the West Elk Coal Mine poses serious climate impacts and also leads to the venting of VOCs. VOCs include many gases known to be harmful to public health and the environment and known to react with sunlight to form ground-level ozone, the key ingredient of smog.

Based on an inspection conducted by the Division on June 30, 2026, it was determined the company exceeded its permitted VOC limit. Although the West Elk Coal Mine is legally permitted to emit up to 465 tons of VOCs annually when venting, since January 2026, the company has emitted far above this rate. **According to the August 20, 2026 compliance**

¹ In spite of intense public interest and concern over air pollution at the West Elk Coal Mine, the public was not provided notice of this compliance advisory or of the Division’s enforcement actions related to the mine. The Center for Biological Diversity only happened to discover a copy of the compliance advisory while searching the Division’s voluminous online database for compliance records related to other facilities.

advisory, as of May 2026, annual VOC emissions, based on a rolling 12-month total, were 1,723 tons per year. This is nearly four times the allowable limit. Based on the information in the compliance advisory, it appears the West Elk Coal Mine remains in violation of the annual VOC limit and will likely be in violation of this limit for months to come.²

These violations are confirmed by Mountain Coal Company's own emission reporting. In the company's June 30, 2026 semi-annual monitoring and deviation report submitted to the Division, it was acknowledged that between January 2026 and May 2026, the VOC limit for the West Elk Coal Mine was exceeded.³

While the compliance advisory identifies that Mountain Coal Company violated its permitted VOC limit, based on the reported emissions, it also appears the company has also violated Clean Air Act Prevention of Significant Deterioration ("PSD") permitting requirements. In spite of this, the compliance advisory makes no mention of a PSD violation or suggests that Mountain Coal Company is out of compliance with PSD permitting requirements.

Under the Clean Air Act, PSD permits are required for major sources of air pollution. These permits require polluters to meet stringent emission limits based on the use of best available control technology and must be based on a rigorous analysis of air quality and environmental impacts and consideration of alternatives. These permits ensure that largest and potentially the most dangerous sources of air pollution are subject to a high standard of pollution control and close oversight to ensure they do not undermine clean air, in order to protect public health and the environment.

PSD permitting requirements are set forth under Section 165 of the Clean Air Act, 42 U.S.C. § 7475; U.S. Environmental Protection Agency ("EPA") regulations at 40 C.F.R. § 50.166; and are also incorporated into Colorado's federally approved air quality regulations (known as the state implementation plan, or SIP) at Air Quality Control Commission ("AQCC") Regulation No. 3, Part D. Under the Clean Air Act, its implementing regulations, and AQCC Regulation No. 3, new major stationary sources of air pollution and major modifications of major sources of air pollution must comply with PSD permitting requirements. A major source of air pollution is generally one that has the potential to emit more than 250 tons per year of any regulated air pollutant, including VOCs. See AQCC Regulation No. 3, Part D, Section II.A.25. A major modification occurs where a physical change or change in the method of operation of a major

² As of May 2026, annual VOC emissions were 1,723 tons per year. Because annual VOC emissions are based on a rolling 12-month total, Mountain Coal would have had to curtail mining operations to ensure virtually no VOC emissions for several months after May 2026 in order to avoid further violations of the mine's annual limit. Coal production data reported to the U.S. Mine Safety and Health Administration indicates Mountain Coal Company has not curtailed mining operations since May 2026, meaning it is extremely likely the company also violated the annual VOC limit after May 2026.

³ The company disclosed this information in its most recent semi-annual monitoring and deviation report submitted pursuant to its Title V operating permit, Permit No. 20OPGU411. See <https://oitco.hylandcloud.com/CDPHERMPublicAccess/api/Document/AYlx3U069eIszv9o3aoYYCy29q6E6Pz3JhZgilgiÉrBOlr8ttj95YrÁOrkIZPwJvURDJgou0RIG3aPphb4BwCOQ%3D/>.

stationary source would result in a significant net emissions increase of any regulated air pollutant, including VOCs. *See* AQCC Regulation No. 3, Part D, Section II.A.23. Significant emissions increases vary by pollutant, but generally include increases of 40 tons per year of any regulated pollutant, including VOCs. *See* AQCC Regulation No. 3, Part D, Section II.A.44.

The West Elk Coal Mine is an existing major source of air pollution because it has the potential to emit more than 250 tons per year of VOCs. In spite of this, the Division has not required Mountain Coal to obtain a PSD permit because the agency has not determined the precise date on which the West Elk Coal Mine became a major source. However, because the mine is an existing major source, any major modification of the mine would trigger PSD permitting requirements. Based on the information in the August 20, 2026 compliance advisory, it appears that a major modification has occurred at the West Elk Coal Mine and that Mountain Coal Company must obtain a PSD permit to legally operate the mine.

As the compliance advisory discloses, VOC emissions at the West Elk Coal Mine exceeded permitted limits from January 2026 to May 2026 and reached 1,723 tons per year as of May 2026. This is 1,258 tons of VOCs more than what the mine is permitted to pollute and appears to represent a net increase in VOC emissions. These excess VOC emissions indicate a modification has occurred at the West Elk Coal Mine, namely that a physical change or change in the method of operations has occurred such that the mine now emits and has the potential to emit far more than the permitted, federally enforceable rate of 465 tons per year. This modification also appears to have led to a significant net increase in VOC emissions. Although a significant increase in VOC emissions occurs where a modification would lead to a net increase of 40 tons per year or more, the modification of the West Elk Coal Mine has led to an actual net increase of at least 70 tons of VOCs per year and up to 1,258 tons of VOCs per year.

The increase in VOC emissions at the West Elk Coal Mine was so significant that it exceeded the major source threshold of 250 tons per year. This further underscores that PSD permitting requirements have been triggered.

In spite of this, the August 20, 2026 compliance advisory does not allege that Mountain Coal Company has violated PSD permitting requirements or even mention PSD compliance concerns. In the meantime, Mountain Coal Company has not applied for and obtained a PSD permit to address outstanding noncompliance at the West Elk Coal Mine. This is all extremely concerning, particularly given the magnitude of the excess VOC emissions.

Given this, we request the Division take immediate enforcement action to address the outstanding PSD permitting violations at the West Elk Coal Mine and ensure protection of public health and the environment. Although we support the Division's efforts to enforce violations of the VOC limit at the mine, this enforcement will not ensure Mountain Coal Company is brought into compliance with PSD permitting requirements, where PSD is not even referenced in the compliance advisory. It is critical for the Division to explicitly address PSD permitting violations and ensure the West Elk Coal Mine is brought into full compliance with the Clean Air Act and Colorado's federally approved permitting regulations.

We urge the Division to act quickly to resolve these issues. As the Division's compliance advisory and Mountain Coal Company's own reports indicate, PSD violations are ongoing. Every day the mine vents methane without complying with best available control technology and other PSD permitting requirements is a day that Colorado is denied the clean air it deserves.

As you know, our organizations have a longstanding interest and deep engagement in clean air issues related to the West Elk Coal Mine. Please inform us as soon as possible as to your intentions regarding enforcement of PSD permitting at the West Elk Coal Mine. Additionally, please keep us apprised of any further actions related to enforcement of clean air laws at the West Elk Coal Mine. Thank you.

Sincerely,

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