

DISTRICT COURT, MORGAN COUNTY, COLORADO 400 Warner St. Fort Morgan, CO 80701 Phone: (970) 542-5200	<div></div> <div>▲ COURT USE ONLY ▲</div>
<b>Plaintiff:</b> CENTER FOR BIOLOGICAL DIVERSITY  v.  <b>Defendant:</b> COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION	
Attorneys for Plaintiff:  Wyatt G. Sassman, no. 51890 Gregory Smith (Student Attorney) Helen Snow (Student Attorney) Michaela Krause (Student Attorney)  Environmental Law Clinic University of Denver Sturm College of Law 2255 E. Evans Avenue Denver, CO 80208  Phone: (303) 871-6140 wyatt.sassman@du.edu greg.smith@du.edu helen.snow@du.edu michaela.krause@du.edu	Case Number:   Div:                      Ctrm.:
<div>COMPLAINT</div>	

## **INTRODUCTION**

1. Plaintiff Center for Biological Diversity brings this suit to compel Defendant, the Air Pollution Control Division of the Colorado Department of Public Health and Environment, to grant or deny the Title V operating permit renewal application for the Cargill Meat Solutions facility located in Fort Morgan, 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 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.
4. The Air Pollution Control Division has exceeded the eighteen-month statutory deadline to act on the permit renewal application for the Cargill Meat Solutions facility. The Division received a complete permit renewal application for the Cargill Meat Solutions facility on December 30, 2022. The Division has failed to grant or deny this permit renewal application for more than thirty-five months since receiving it.
5. Defendant must take timely action on this operating permit renewal application to ensure adequate protection of air quality and public health, 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 without additional delay.

## **PARTIES**

6. 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.
7. 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.
8. Plaintiff's members live, work, recreate, travel, and engage in other activities throughout Morgan County where the Cargill Meat Solutions facility 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.
9. Pollution from the Cargill Meat Solutions facility negatively impacts Plaintiff's members' ability to engage in outdoor activities in Morgan County. Plaintiff's members enjoy outdoor recreational activities such as walking, biking, hiking, birdwatching, and playing with their children in these affected areas.

10. Pollution from the Cargill Meat Solutions facility also harms Plaintiff's members' interests in using and enjoying the natural environment. Ground level ozone 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.
11. Air pollution from the Cargill Meat Solutions facility—including particulate matter, nitrogen oxides, volatile organic compounds, carbon monoxide, sulfur dioxide, hydrogen sulfide, and hexane—directly contributes to the Plaintiff's members' injuries.
12. The Air Pollution Control Division's ongoing failure to act causes the Plaintiff and its members continuing injury from, and concern about, exposure to harmful air pollution.
13. 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.
14. Plaintiff's members' injuries are traceable to Defendant's failure to act. Failure to 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.
15. 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 Air Pollution Control 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**

16. This 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).
17. 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 Cargill Meat Solutions facility, is located in this district.
18. 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**

19. 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).
20. In 1990, Congress amended the Clean Air Act to create the Title V permit program. *See* 42 U.S.C. §§ 7661–7661f.
21. The Title V permit program consolidates all air pollution standards for a pollution source into one document to promote “increased 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).
22. When promulgating the Title V program, the EPA stated its expectation that the program would promote “pollution prevention” 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.
23. 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).
24. Title V operating permits are legally enforceable documents and are granted to facility owners or operators by permitting agencies. *See id.* § 7661c(a).
25. Operating permits must contain all air quality requirements, including a schedule of compliance to ensure the facility meets emissions limits. *Id.* § 7661c(a). The permit must also include provisions for inspection, monitoring, and reporting on a facility’s air pollution. *Id.* § 7661c(c).
26. A permitting authority may only issue a permit for up to five years. *Id.* § 7661a(b)(5)(B).
27. Once a facility has submitted a timely and complete permit renewal application, it is granted a “shield” to operate under the expired Title V permit until the permitting authority takes final action on the permit renewal application. 40 C.F.R. § 70.7(b); C.R.S. § 25-7-114.5(4); 5 C.C.R. § 1001-5(C)(II.B).
28. The federal Clean Air Act provides that the Administrator of the EPA may approve state Title V permit programs. 42 U.S.C. § 7661a(d). The 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(C).

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(C)(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(C)(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(C)(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 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 after 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. Cargill Meat Solutions Facility**

40. The Cargill Meat Solutions facility is located in Morgan County at 1505 E. Burlington Avenue, Fort Morgan, CO 80701.
41. The Cargill Meat Solutions facility slaughters beef cattle and conducts the fabrication and processing of beef.
42. The Cargill Meat Solutions facility in Fort Morgan is one of eight similar Cargill facilities across North America, which together produce eleven billion pounds of beef products annually.
43. The Cargill Meat Solutions facility is a major source of harmful air pollutants.

44. As a major source of air pollution, the Cargill Meat Solutions facility is subject to the operating permit requirements of the Colorado Air Pollution Prevention and Control Act and the federal Clean Air Act.
45. The Cargill Meat Solutions facility emits the following air pollutants:
  - a. Volatile Organic Compounds
  - b. Nitrogen Oxides
  - c. Carbon Monoxide;
  - d. Sulfur Dioxide;
  - e. Particulate Matter (including both PM<sub>10</sub> and PM<sub>2.5</sub>);
  - f. Hydrogen Sulfide; and
  - g. Hazardous Air Pollutants (HAPs) including:
    - i. Hexane.

**B. Negative Health Effects of Pollutants**

46. Of the pollutants emitted by the Cargill Meat Solutions facility, volatile organic compounds, nitrogen oxides, carbon monoxide, sulfur dioxide, and particulate matter 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 Cargill Meat Solutions facility, hexane is regulated under the Clean Air Act as a “hazardous air pollutant.” 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. Ground-level ozone, commonly referred to as smog, is a criteria pollutant regulated under the federal Clean Air Act. Nitrogen oxides and volatile organic compounds are precursor emissions that contribute to the formation of ground-level ozone.
48. 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.
49. Nitrogen oxides are a criteria pollutant. Short-term exposure to 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. Children and the elderly are particularly vulnerable.
50. Carbon monoxide is a criteria pollutant. High levels of carbon monoxide can cause dizziness, confusion, unconsciousness, and death. It can also exacerbate some types of heart disease.
51. Sulfur dioxide is a criteria pollutant. It is known to harm the respiratory system, and people with asthma, especially children, are particularly vulnerable.
52. Particulate matter is a criteria pollutant. Two sizes of particulate matter, PM<sub>10</sub> and PM<sub>2.5</sub>, are especially harmful to human health and welfare. Exposure to these 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.

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 numbness, muscular weakness, blurred vision, and fatigue.
54. Hydrogen sulfide is regulated under the Clean Air Act's Risk Management Program. Hydrogen sulfide exposure can cause eye irritation and headaches and has the potential to cause more serious effects such as unconsciousness and death.

**C. Cargill Meat Solutions Title V Permitting History**

55. In August 1998, the Cargill Meat Solutions facility received a Notice of Violation from the Division that the facility was operating as a major source without a Title V operating permit.
56. The Cargill Meat Solutions facility applied for an initial Title V operating permit on May 19, 1999.
57. The Cargill Meat Solutions facility received its initial Title V operating permit, identified as Operating Permit No. 99OPMR210, on January 1, 2002.
58. Since the Cargill Meat Solutions facility received its initial Title V permit, inspectors have detected permit violations at the facility on at least twelve different occasions.
59. Past Cargill Meat Solutions facility permit violations include exceeding emissions limits, incorrectly calculating emissions, and failing to comply with monitoring and reporting requirements.
60. The Cargill Meat Solutions facility's most recent Title V operating permit was issued on January 1, 2019, and expired on January 1, 2024.
61. Defendant Air Pollution Control Division received a Title V permit renewal application for the Cargill Meat Solutions facility on December 30, 2022.
62. Because the Cargill Meat Solutions facility submitted its complete Title V permit renewal application between twelve and eighteen months before the expiration of its existing Title V operating permit, the facility is allowed to continue operating under the application shield provision of 5 C.C.R. § 1001-5(C)(II.B).
63. Under the Colorado Air Pollution Prevention and Control Act, the Division was required to grant or deny the Cargill Meat Solutions facility's permit renewal application within eighteen months of receipt, by June 30, 2024.
64. The Division has not yet granted or denied the Cargill Meat Solutions facility's permit renewal application.

**CLAIM**

(Failure to Grant or Deny Title V Operating Permit Application for the  
Cargill Meat Solutions Facility within Legal Deadline)

65. Plaintiff incorporates the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.
66. 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.

67. The Division received a complete Title V operating permit renewal application for the Cargill Meat Solutions facility on December 30, 2022.
68. The Division was required by law to grant or deny the Cargill Meat Solutions facility's operating permit renewal application by June 30, 2024.
69. As of the date of filing of this Complaint, the Division has neither granted nor denied the Cargill Meat Solutions facility's permit renewal application.
70. 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 Title V operating permit renewal application for the Cargill Meat Solutions facility within eighteen months of receiving the application;
- B. Order the Division to grant or deny the Cargill Meat Solutions facility's Title V operating permit renewal application without additional delay, but no later than ninety days after a final order in this matter;
- C. Retain jurisdiction over this matter to ensure compliance with the Court's order; and
- D. Award such other relief as the Court deems just and proper.

Respectfully submitted on December 11th, 2025.

/s/ Wyatt Sassman

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