



To: Scott Pruitt, Administrator, Environmental Protection Agency
From: CACI Energy Committee
cc: Brittany Bolen, Environmental Protection Agency
Samantha Dravis, Environmental Protection Agency
Date: April 24, 2017
Re: EPA's Ongoing Enforcement in Colorado

The Colorado Association of Commerce & Industry (CACI) is the state chamber of commerce, representing hundreds of businesses across the state, as well as trade associations, economic development organizations, and local chambers of commerce. CACI respectfully submits this memo requesting clarification for our members as to whether the new EPA Administrator supports the continuation of EPA Headquarters' and Region 8's ongoing and unprecedented enforcement campaign against oil and gas operators in Colorado regarding alleged violations of *state air quality regulations* regarding storage tank emissions and design.

For over 50 years, CACI has fostered and promoted the beneficial, efficient, responsible, and environmentally sound development, production, and use of Colorado's oil and natural gas resources. CACI members are committed to environmental compliance and operate under a comprehensive set of state regulations, which are among the most stringent in the nation. For example, the 2014 amendments to Colorado Regulation No. 7 ushered in arguably the most stringent oil and gas air quality control regime in the country. This includes a robust, statewide Leak Detection and Repair (LDAR) program, stringent storage tank controls, storage tank emissions management requirements, and numerous other requirements designed to reduce emissions. These regulations are appropriately administered at the state level and the subject of numerous compliance discussions.

On March 2, 2017, EPA Headquarters Assistant Administrators (AAs) and Regional Administrators (RAs) were notified that the Administrator was retaining approval authority for actions having significant regulatory and enforcement effect.¹ Specifically, the electronic memo directed AAs and RAs to identify and send upward any proposed decisions or final agency actions for the Administrator's review, those items that would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce or otherwise result in significant public attention on the proposed decisions.

EPA's enforcement campaign, which is based entirely on its enforcement of state air quality regulations, clearly meets the criteria laid out by the above-referenced memo and necessitates a review by the EPA Administrator before further action is taken. Thus, in light of the memo, and for the reasons outlined below, the EPA Administrator should discontinue this targeted enforcement campaign and allow Colorado operators to continue their proactive work with the Colorado Department of Health and Environment to develop constructive and responsible solutions.

EPA's National Enforcement Initiative and Ongoing Enforcement in Colorado

In 2013, EPA Region 8 issued a Clean Air Act (CAA) Section 114 Information Request to Noble Energy, Inc. regarding storage tank emission and design issues. That Information Request ultimately led to a May 2015 federal consent decree with Noble that EPA estimated to include approximately \$75 million in civil penalties, injunctive relief, and mitigation. The alarming nature of this settlement was not necessarily the dollar amount, but that EPA's enforcement action was predicated entirely on its interpretation and enforcement of *Colorado air quality regulations*. Indeed, the entire enforcement action was based primarily on EPA's enforcement of Colorado Air Quality Control Commission Regulation No. 7, § XII.C.1.b. ("All condensate collection, storage,

¹ **Pruitt Withdraws Decision-Making Powers From Senior Officials** <https://insideepa.com/daily-news/pruitt-withdraws-decision-making-powers-senior-officials-email-shows>

processing and handling operations, regardless of size, shall be designed, operated and maintained so as to minimize leakage of volatile organic compounds to the atmosphere to the maximum extent practicable.”).

Since the Noble consent decree, EPA expanded its enforcement initiative to certain other operators in Colorado and other states (i.e., North Dakota and Texas). Indeed, EPA sent out approximately a dozen or more CAA Section 114 Information Requests to other Colorado, North Dakota, and Texas operators requesting the same type of information sought from Noble in 2013. In 2016, one of these Information Requests ultimately led to an EPA consent decree with a North Dakota operator. That consent decree followed primarily the same pattern—i.e., EPA enforcement of *state air quality regulations*. Notably, North Dakota did not sign on to that consent decree and has instead been pursuing its own state-only consent agreements with many North Dakota operators on these storage tank issues.

Despite the new priorities and focus of the President and Administrator, EPA is continuing to seek federal consent decrees from just a select few Colorado operators. In our view (and we believe the Administrator’s view), EPA enforcement of state only air quality regulations is rarely justified, particularly in Colorado where the Colorado Department of Public Health and Environment (“CDPHE”) is one of the most aggressive enforcement agencies in the country. Again, CDPHE is now actively engaged in its own enforcement discussions *with nearly every other Colorado/DJ Basin operator on this very issue*. Moreover, in 2014, CDPHE developed first-of-their-kind oil and gas industry regulations that are among the most stringent in the nation and directly address this issue of storage tank emissions. See Colorado Storage Tank Emission Management (STEM) program and related regulations in Regulation No. 7, § XVII.C. Yet, EPA Region 8 continues to single out just a few operators for federal enforcement.

Given the emphasis that the President and EPA Administrator have placed on “the important role of States in implementing the Nation’s environmental laws” (see President’s Budget Blueprint, p. 41), we question whether EPA’s continued enforcement of Colorado regulations is supported by the new Administration, especially where, as in this case, Colorado is participating in discussions and actively engaged in its own state-only enforcement proceedings regarding these storage tank issues with nearly every other operator in the Denver Julesburg (DJ) Basin.

Additionally, EPA’s enforcement campaign is a classic example of “rulemaking via enforcement,” which we understand is not supported by the new EPA Administrator. EPA is seeking injunctive relief that is arguably far outside the bounds of current regulatory requirements. And EPA is seeking to include such injunctive relief (and civil penalties and mitigation) in highly public and severe federal consent decrees with a limited number of operators in an attempt to force broader industry change, outside of the normal rulemaking process. In many cases, the injunctive relief being sought is dangerously close to dictating how a company designs and operates its own facilities and manages its own employees. If left unchecked, the injunctive relief and mitigation being sought by EPA could force companies to permanently plug and abandon many wells for which it would not be economic to operate under an onerous and unduly burdensome federal consent decree.

In closing, please understand that our members do not expect any special treatment or exclusion from environmental laws and regulations. Our operators are committed to environmental compliance and, in fact, worked closely with the CDPHE to develop and implement the 2014 oil and gas air quality regulations, which are among the most stringent in the nation. We are merely asking that EPA return to the principle of “cooperative federalism” at the core of the Clean Air Act and allow Colorado operators to continue their proactive work with CDPHE to find more constructive solutions that benefit both the environment and keep intact the industry’s ability to operate in Colorado.

Thank you in advance for your consideration of the above comments and questions. If you have any questions or require additional information concerning this submittal, please contact Bill Skewes at bill@skewesga.com.



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