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Date: March 27, 2017 at 8:56:23 AM MDT
To: "davis.patrick@epa.gov" <davis.patrick@epa.gov>
Subject: Summary of Region 8 Enforcement Actions

Hello Patrick,

Thank you for the call today. As promised, attached is a summary of how Region 8 persists with Obama-era enforcement actions, despite general direction from HQ. Thank you for looking into the matter.

Regards,
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**ONGOING EPA ENFORCEMENT CAMPAIGN AGAINST OIL AND GAS OPERATORS
IN COLORADO, NORTH DAKOTA, AND TEXAS**

Since 2013, EPA Region 8 has been executing (at the direction of EPA Headquarters under the Obama Administration) a national enforcement campaign under the Clean Air Act against oil and gas operators in Colorado and North Dakota to address alleged upstream storage tank emissions and design issues. EPA's campaign, which is based almost entirely on its enforcement of *state-only air quality regulations* is at its core an attempt to require implementation of design and operational changes that are otherwise not required by any federal or state regulation. In sum, EPA has effectively been engaging in "rulemaking via enforcement" by seeking highly-public and severe federal consent decrees with only a handful of operators in an attempt to force broader industry change, outside of the normal rulemaking process.

North Dakota has refused to cooperate and engage with EPA in this enforcement campaign and has instead cooperated with industry to enter into individual consent agreements to address these issues. Colorado is actively engaged in its own state-only enforcement proceedings on these issues with nearly every operator in the Denver-Julesburg Basin. Yet EPA's enforcement campaign continues in flagrant disregard of the concept of "cooperative federalism" at the core of the Clean Air Act. We respectfully ask that the new EPA Administration halt this enforcement campaign, which is a remnant from the Obama Administration, and return primary control and enforcement of state-only air quality regulations to the states, as intended under the Clean Air Act.

EPA's National Enforcement Campaign

In 2013, EPA Region 8 issued a Clean Air Act 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 totaled 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, 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."). EPA's action was based on an aggressive and arguably unsupported interpretation of Regulation No. 7, § XII.C.1.b. EPA alleged that, because Noble's vapor control systems were allegedly not designed to accommodate worst-case vapor flow conditions to the tanks (which may rarely, if ever, occur under normal operating conditions), they were in violation of Regulation No. 7, § XII.C.1.b. This particular Colorado regulation has been in existence for many years; however, the State of Colorado had never, until EPA over-filed, similarly interpreted the regulation or taken a similar enforcement action against an oil and gas operator.

After EPA Region 8 obtained the first-of-its-kind consent decree from Noble in 2015, it then sent out approximately a dozen or more Section 114 Information Requests to Colorado and North Dakota 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 Slawson Exploration Company, Inc. That consent decree included, in part, EPA enforcement of North Dakota air quality regulations. Although invited by EPA, the State of North Dakota refused to be a party to that Consent Decree. It's

also our understanding that EPA Region 6 has recently issued a number of similar 114 Information Requests to Texas operators. No federal consent decree has yet been made public regarding these EPA Region 6 Information Requests.

EPA Region 8 Ongoing Enforcement in Colorado

EPA Region 8 is continuing to seek onerous Noble-style consent decrees from just a select few Colorado operators. In many cases, the injunctive relief being sought is dangerously close to dictating to companies how to design and operate their facilities and manage their employees. If left unchecked, the injunctive relief and mitigation being sought by EPA could force companies to permanently plug and abandon many wells at which it would not be economic to operate under an onerous and unduly burdensome federal consent decree.

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. Indeed, 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, presumably to make an example of them with an onerous and high-profile federal consent decree.