 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8**

1595 Wynkoop Street

Denver, CO 80202-1129

Phone 800-227-8917

www.epa.gov/region8

Ref: 8ARD-IO

Michael Ogletree, Director

Air Pollution Control Division

Colorado Department of Public Health and Environment

4300 Cherry Creek Drive South

Denver, Colorado 80246-1530

Re: EPA Comments on Phillips 66 Pipeline LLC – Denver Terminal Title V Operating Permit

Dear Mr. Ogletree:

This letter is in response to the Colorado Department of Public Health and Environment (CDPHE) submittal to our office of the proposed renewal of the title V permit for the Phillips 66 Pipeline LLC – Denver Terminal. EPA’s statutory 45-day period to review this permit began on February 17, 2023 and ends on April 3, 2023.

We have reviewed the proposed title V permit action, including CDPHE’s response to comments and its Technical Review Document (TRD). In accordance with Section 505(b)(1) of the federal Clean Air Act (CAA) and 40 CFR 70.8, EPA finds no basis to object to the issuance of this proposed title V permit. However, we have concerns related to this proposed permit, especially regarding disproportionate impacts on the communities near the facility. These concerns are enumerated in the Enclosure.

If you have questions or wish to discuss this further, please contact me at (720) 391-2147 or at [sandoval.adrienne@epa.gov](mailto:sandoval.adrienne@epa.gov).

Sincerely,



Enclosure

cc: Sergio Guerra, CDPHE – Air Pollution Control Division

cc: Joel Minor, CPDHE, Environmental Justice Program

**Enclosure**

**EPA Concerns Related to Colorado Department of Public Health and Environment’s Clean Air Act (CAA) Title V Permit**

**Phillips 66 Pipeline LLC – Denver Terminal**

EPA acknowledges and supports CDPHE’s engagement in advancing environmental justice (EJ) in Colorado. We concur with the narratives in the Response to Comments that recognize more work is needed to advance EJ in its title V permitting program. We hope that CDPHE’s anticipated update to its *Guidance for Incorporating Environmental Justice into State of Colorado Environmental Permitting Procedures* will inform future CAA title V permits*.* Similarly, we note that proposed revisions to Regulation Number 3 in response to directives established in House Bill (“HB”) 21-1266 (also known as the Environmental Justice Act) could apply to EJ concerns in this geographic area.

EPA is committed to advancing EJ and incorporating equity considerations into all aspects of our work. This commitment includes improving our assessment and consideration of the impacts of permits on communities overburdened by pollution. EPA welcomes CDPHE’s shared commitment as a co-regulatory partner in this important effort. EPA’s Principles for Addressing Environmental Justice Concerns in Air Permitting highlight the need to minimize and mitigate disproportionately high and adverse effects associated with permit actions to promote fair treatment. The principles go on to recommend that permitting authorities can promote fair treatment by fully examining all relevant statutory and regulatory authorities, including discretionary authorities, to develop permit terms and conditions to address or mitigate identified air quality impacts to the extent feasible when a permitting action may result in disproportionately high and adverse human health or environmental effects on a community, including one with EJ concerns.

EPA agrees with CDPHE and commenters that the proposed permit raises EJ concerns regarding cumulative impacts facing the communities located near the terminal. The neighborhoods within a three-mile radius of the facility have some of the highest levels in the State for most environmental indicators used by version 2.1 of EPA’s EJ mapping and screening tool, [EJScreen](https://www.epa.gov/ejscreen). The EJ Index for the following eleven (of the twelve) EJScreen indicators in the three-mile area around the Phillips 66 facility exceeds the 80th percentile in the state, and eight exceed the 90th percentile.

• Particulate matter of less than 2.5 microns in diameter

• Particulate matter of less than 2.5 microns in diameter

• Diesel particulate matter

• Air toxics cancer risk

• Air toxics respiratory hazard

• Traffic proximity

• Lead paint

• Superfund proximity

• Risk Management Plan facility proximity

• Hazardous waste proximity

• Underground storage tanks

• Wastewater discharge.

EJScreen analysis indicates that the population in the area around the proposed facility is disproportionately low income (38%, compared to 25% for the state), people of color (68% compared to 32% for the state) and includes persons with limited English proficiency. The Phillips 66 facility is in an area that is heavily populated by industrial facilities and transportation corridors and is close to residential housing and schools.

EPA has reviewed the proposed permit and associated permit files and has the following comments and recommendations:

1. Minor Modifications to the Phillips 66 Facility

This title V permit was originally issued on June 1, 1999 and renewed on August 1, 2011. It was set to expire in 2016. A renewal application was submitted by Phillips 66 in 2015, allowing the source to continue operation under the 2011 permit (last revised in June 2015). Title V permits are required to be renewed every 5 years; however, the state did not act on the 2015 renewal application until present. In the *Response to General Public Comments on the Draft Title V Operating Permit Renewal* (February 16, 2023), CDPHE “acknowledges that a significant period of time has passed since Phillips 66 submitted its renewal application and will strive to respond more quickly to permit renewal applications in the future.”

CDPHE has processed seven title V permit modifications, including six minor permit modifications, since the permit was last renewed in 2011. Many of the minor permit modifications have involved minor new source permits to construct or modify. However, the current permit renewal is the first opportunity since the renewal in 2011 that CDPHE has offered a notice and public comment opportunity for these permit modifications. In some instances, the minor NSR construction activities, processed through those minor modifications, occurred many years ago. EPA is concerned that the public was not given sufficient opportunity to meaningfully participate in the permitting process and evaluate, in real time, the impact of these modifications on emissions and health-based ambient air quality standards.

Recommendation: EPA recognizes that CDPHE has recently proposed actions to change the permitting process to remove the ability of title V sources located in disproportionately impacted communities to seek approval of minor NSR actions using the title V minor modification procedures. This revision is currently proposed before the Air Quality Control Commission of the State of Colorado at the May 16-19, 2023, hearing, EPA looks forward to working with CDPHE as it seeks to implement these proposed changes and increase the opportunities for meaningful public engagement. EPA acknowledges that many of these proposed changes would require changes to the State Implementation Plan and therefore require EPA approval prior to implementation of approved regulatory changes. EPA would support state program revisions that would provide for increased public notice and comment on all minor NSR permitting.

1. Cumulative Air Impacts Analysis and Monitoring

This Phillips 66 permit reinforces the need for CDPHE to, in conjunction with stakeholders, expedite a cumulative air impacts assessment for the Commerce City/North Denver area, and identify specific actions that can be taken to reduce air pollution. As stated in the response to comments, “The Division does acknowledge that the Commerce City/North Denver area where both the Phillips 66 facility and the Suncor Refinery are located is impacted by multiple sources of pollution, causing cumulative impacts on the air quality in affected communities. The Division understands that these cumulative impacts may contribute to health disparities among the residents of the area, who are predominantly low-income and people of color. The Division recognizes that this is an example of an environmental injustice” (CDPHE Response to General Public Comments, Public Comments and Division Response #4). The response to comments highlights the value in the Globeville/Elyria/ Swansea (GES) Health Study, the Cultivando Supplemental Environmental Project (SEP), and the Comparative Evaluation of Modeling and Monitoring Data in the Commerce City Area that are underway.

A cumulative impacts analysis provides the framework for decision making and prioritization. Comparing air monitoring data to dispersion models identifies where the regulatory process may fall short of protecting public health. Additionally, future modeling efforts may improve through the process of model validation. EPA concurs with, and advocates for, using air quality data and a health impact analysis to inform permitting decisions and improve air quality for the residents of Commerce City and surrounding neighborhoods. EPA notes, however, that the disproportionate impacts on this community are well-established and advocates for reducing these impacts while these studies are underway.

CDPHE has recently proposed revisions to Regulation Number 3 “to ensure that all Colorado communities have equal access to clean air and are not forced to bear disparate environmental health impacts.” (Prehearing Statement of The Colorado Department of Public Health and Environment, Air Pollution Control Division, March 16, 2023). The proposed revisions require that CDPHE “identify Disproportionately Impacted Communities, provide for enhanced modeling and monitoring requirements for new and modified sources of affected pollutants in Disproportionately Impacted Communities, and consider enhanced monitoring at existing sources of affected pollutants.” EPA supports this sentiment.

Recommendations: EPA supports CDPHE’s efforts to perform a cumulative air impact analysis to ensure CDPHE is advancing public health-based air quality standards. EPA would welcome the opportunity to engage on such an analysis and invites CDPHE to meet with EPA to develop strategies to more immediately reduce cumulative air pollutants and adverse health impacts in this overburdened area. EPA recommends that the cumulative air impacts analysis efforts underway inform air pollution control permitting decisions.

EPA recommends that the Phillips 66 title V permit include the Colorado HB21-1189 requirement, as applicable, and set forth at 25-7-141(5)(a)(II) that beginning on July 1, 2024, the facility shall conduct fenceline monitoring of covered air toxics in real time and disseminate all fenceline monitoring data to the public as described in subsection (5)(h). EPA further recommends that once the Phillips 66 fenceline monitoring plan is finalized and approved, the requirements be incorporated into this title V permit.

1. Title VI of the Civil Rights Act

As a recipient of federal financial assistance from EPA, CDPHE must ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination based on race, color, national origin (including limited English proficiency), age, disability or sex, under its programs or activities, consistent with Title VI of the Civil Rights Act and other federal civil rights laws.

The EPA appreciates CDPHE’s plans described in its Response to Comments to update its 2017 *Guidance for Incorporating Environmental Justice into State of Colorado Environmental Permitting Procedures.* As it works to update this Guidance, EPA encourages CDPHE to ensure that its permitting processes meet obligations under Title VI of the Civil Rights Act and other federal civil rights laws. The EPA encourages CDPHE to refer to related comments from EPA included in its Suncor Plants 1 and 3 title V Operating Permit Comment Letter, dated July 13, 2022.