



June 28, 2024

Colorado Department of Public Health and Environment
Air Pollution Control Division
4300 Cherry Creek Drive South
Denver, Colorado 80246

Submitted Via Online Form Portal - <https://cdphe.commentinput.com/?id=feWkQ5c8T>

RE: Colorado Chamber of Commerce Comment on CDPHE [Enhanced Air Monitoring Guidance](#)

To Whom it May Concern:

The Colorado Chamber of Commerce serves as a unifying voice for business and champions a healthy economic climate to secure Colorado's future. The Chamber leads Colorado to be a preferred place, nationally and internationally, where dynamic business leaders choose to invest and innovate, creating opportunities and prosperity for Coloradans. Our members appreciate the opportunity to comment on the Enhanced Air Monitoring Guidance ("Guidance") released by the Air Pollution Control Division ("Division") on May 31, 2024.

The Chamber's overarching concern is that the Guidance appears to have components that are inconsistent with, and go well beyond, the adopted rule language and the intent of Regulation 3. This Guidance also contains a lot of repetition and is confusing for regulated entities to implement. Additional stakeholder engagement and work need to be done before it can be adequately implemented. While we acknowledge that the Regulation 3 monitoring provisions apply to certain permit applications submitted on or after July 15, 2024, much additional conversations and work are needed for this to be implementable. We believe sufficient time still exists for the Division to do so, before a monitoring plan would likely need to be submitted, or before the Division will need to review and approve a monitoring plan.

We also have concerns about the stakeholder process leading up to this Guidance. The Air Quality Control Commission's ("Commission" or "AQCC") Regulation 3, Part F, Section I.HHH., May 18, 2023, Statement of Basis and Purpose ("SBAP") contemplated a "robust and collaborative" public process to develop a guidance document over the course of a year. The subject matter expert panel did not have any representation from the Regulated Community, and needs to consider the concerns of the regulated community as well as the public and disproportionately impacted

communities *in Colorado* and specifically the intent and language in Regulation 3. Our observation of this process was that it consisted of several discussions by a group of subject matter experts discussing community monitoring wholistically; however, it was far from robust and far from collaborative and certainly not transparent as to the development of this document itself. We are also concerned that the panel discussions did not adequately account for the rule language and SBAP adopted by the Commission which should have been the guideposts governing the panel's recommendations and this Guidance.

The SBAP required the Division to create guidance to address six items:

- a) Document criteria for the design and operation of an approvable monitoring plan;
- b) Explain how the division will evaluate “best available monitoring technology that is reasonably available”;
- c) Provide a framework for assessing requests to discontinue monitoring;
- d) Specify data quality assurance protocols;
- e) Specify data standardization requirements;
- f) Specify reporting frequency.

This Guidance falls short on creating certainty for the regulated community for items b, c and d.

Generally, we have the following concerns with the Guidance as drafted and have attempted to give only a few discrete examples related to each.

- For item b above - any review of the Guidance is incomplete without the referenced “monitoring plan template”. It is our understanding that this template will rank technologies; however, without this template being released at this time, it is difficult to access the true implementation of the Guidance. Further ranking of monitoring technologies, while not contemplated in rulemaking or the Regulation, is impossible to comment on without the release of the template and does not provide certainty or guidance on how the regulated community should work with the Division to obtain an approvable plan.
- Item c above, it is only marginally addressed, the Guidance states that the regulated community “should expect some back-and-forth with the Division as the Division assess information for the petition”, while not unreasonable, this isn't a framework for an approvable plan. For example, the same section suggests that monitors can be removed if concentrations are below predicted thresholds but does not address what to do in the extremely likely event that facilities emit below their PTE for the monitoring period.
- The Guidance also doesn't address item d listed above. The monitoring technologies suggested may require slightly different quality assurance protocols and there might not be a one size fits all approach. For example, Continuous Emissions Monitoring Systems (“CEMS”) have a well-documented quality assurance plan (QAP) in 40 CFR Part 75. The Chamber recommends that owners/operators be allowed to propose quality assurance protocols specific to the monitoring method selected and that operators be allowed to utilize existing EPA approved plans when feasible and appropriate.

- The Guidance implies that emissions from regulated entities impact communities and conflates monitoring information with community impact. It does this without consideration of the standard air toxics modeling, assessment and analysis that would be required to make such an analysis. Monitoring alone will not assess community impact, much additional analysis and consideration would be required to assess community impact and Regulation 3 does not require that to be done by the regulated community.
- For community monitoring, the Guidance “strongly recommends” at least three (3) monitors to be placed, which is not consistent with the regulation. The regulation only requires one monitor (there may be several if there are several “hotspots” of maximum concentration). This section addresses how to locate “logistically practical locations”. Should a permittee document their search for such a location, and if so, how? The Guidance presumes inappropriately that property owners will allow their industrial neighbors access to their property. This may not be the case and should not be presumed or presupposed. Page 20 says “sensors must be placed near occupied areas”. By regulation, this is only true if the area of highest concentration is within 0.25 miles of an occupied area.
- Much repetition exists between the fence line, community or stack monitoring, and the suggestion that a combination of these *would be required* is not in the regulation, and it was not contemplated during rulemaking. The regulated community needs flexibility to design monitoring systems that are adequate and appropriate to their operation. The rule contemplates “best available monitoring technology that is reasonably available.” Much dialogue exists from the Division, the Commission and Parties to the 2023 Rulemaking regarding this terminology; however, the Guidance uses less specific and potentially inconsistent terms like “most suitable” and “most optimal”. The Chamber believes that the intent of the regulation, and therefore, this Guidance should allow regulated entities the flexibility to select technologies by looking at the factors in the regulation when selecting these technologies.

In an effort to have a robust stakeholder process, this Guidance should not be published as final by July 15. More discussions – including with regulated entities and other stakeholders – and additional work is needed to make this Guidance consistent with the intent and language in Regulation 3. The Chamber would welcome an opportunity for additional review and comment and a meeting with the Division for any future reiteration of the Guidance before it is issued as final.

Sincerely,

Esigned/ *Christy Woodward*

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