

BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO

PREHEARING STATEMENT OF THE COLORADO CHAMBER OF COMMERCE

IN THE MATTER OF PROPOSED REVISIONS TO REGULATION NUMBER 3

The above-captioned entity, the Colorado Chamber of Commerce, submits this Prehearing Statement pursuant to Section V.E.6.c of the Procedural Rules of the Air Quality Control Commission (“Commission”) and the Commission’s Notice of Rulemaking Hearing, dated March 16, 2023.

Executive Summary:

The Colorado Chamber of Commerce (“The Colorado Chamber”) represents hundreds of businesses of all sizes statewide, over 50 local chambers of commerce, 48 trade associations & many economic development organizations. Among the Colorado Chamber’s membership are major operators in Colorado’s energy sector, operators in numerous heavy industries, major manufacturers, and many members whose businesses and operations are actively engaged in air quality and the reduction of emissions.

The Colorado Chamber and its members support reducing emissions to achieve attainment and is willing to work with the Air Pollution Control Division (“Division”) and the Air Quality Control Commission (“Commission”) to develop reasonable provisions for the protection of air quality. The Colorado Chamber also supports the Division’s efforts to address environmental justice concerns pursuant to House Bill 21-1266. With respect to the Division’s proposed revisions, the Colorado Chamber requests additional clarity on the definition of disproportionately impacted (DI) community, and criteria for enhanced monitoring and modeling.

Summary of Factual and Legal Issues

Definition of a Disproportionately Impacted Community

The Division proposes to use the state of statutory definition of “disproportionately impacted community” as the regulatory definition in this rule. The Colorado Chamber is concerned that, under this definition, a disproportionately impacted community may include large rural areas with small populations that are not within close proximity of a source. The Colorado Chamber has concerns about the extent of enhanced monitoring, modeling, or permitting requirements in such remote areas.

The Colorado Chamber suggests that the Division define remote facilities as facilities that do not lie within 100 yards (91 meters) of occupied areas. As defined in Colorado Regulation

Number 7, an occupied area means (1) a building structure designed for use as a place of residency by a person, a family, or families. The term includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes; (2) indoor or outdoor spaces associated with a school that students use commonly as part of their curriculum or extracurricular activities; (3) five thousand (5,000) or more square feet of building floor area in commercial facilities that are operating and normally occupied during work hours and (4) outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of outdoor assembly.

The Chamber believes there is justification for the 100 yards due to this being the same distance cited in 40 CFR Part 63 Subpart ZZZZ definition of a remote facility. This would be an opportunity to align Colorado regulations with a federal definition.

The Chamber suggests that facilities with remote status would not be subject to Reg 3 Part B III.B.4 enhanced modeling and Reg 3 Part B II.E.1 enhanced monitoring. Due to the remote nature of the facility, there is a small likelihood of the facility negatively impacting human health and the environment. The facility would document their remote status in the environmental justice summary as part of the permit application.

Additional EnviroScreen Concerns

EnviroScreen is a very new model, which we understand is still under development with a new version coming out soon, perhaps even before the conclusion of this rulemaking. We are aware that EnviroScreen, for example, draws arbitrary lines that cut through the center of manufacturing operations, identifies communities near ski resorts as “disproportionately impacted,” includes rural areas with no manufacturing operations or emissions anywhere nearby, and generally paints with too broad a brush. Nevertheless, the proposed rule places significant importance on the outputs of the model in defining disproportionately impacted communities.

The new version of EnviroScreen should be reviewed and refined to assure that greater emphasis is placed on identifying communities where actual environmental impacts are occurring. No new areas of the State should be added, the initial version is already overbroad, and facilities who did not participate in this rulemaking should not later be subject to the rule.

In general, the policy goal of the Air Commission should be to focus on the communities most in need. Federal and State resources will quickly be spread too thin if EnviroScreen criteria are too broad and lead to grant money and resources bypassing those most in need. The policy goals of the legislation were very clear that certain select communities in Colorado were in need of assistance, and EnviroScreen turns that policy goal on its head by designating wide swaths of Colorado as DI communities. The new version of the model should be refined to avoid this outcome.

Construction Permit Application and Processing Requirements

The Division proposes to require new and modified sources of affected pollutants in DI communities to include an environmental justice summary with permit applications and provides the Division with authority to establish enhanced modeling requirements. House Bill 21-1266

allows the Commission to adopt thresholds of affected pollutants to which enhanced modeling (and enhanced monitoring) requirements do not apply. C.R.S. § 25-7-114.4(5)(a)(II). The Colorado Chamber requests that modeling emission thresholds be included in the regulation. Including emission thresholds will allow businesses to plan for expenses and evaluate their projects prior to submitting permitting requests to the Division.

Enhanced Monitoring in Disproportionately Impacted Communities

The proposed regulation requires enhanced monitoring in disproportionately impacted communities (both for construction permits and certain Title V operating permits) and also requires implementation of Reasonably Achievable Control Technologies (RACT) for certain pollutants even in attainment areas. The Division does not define “enhanced monitoring” in the proposed rule nor does the Division clarify what the measurement objectives for enhanced monitoring are. The Colorado Chamber is concerned that the lack of clear measurement objectives will create uncertainty about the types of enhanced monitoring that may be required for a certain source and seeks revisions to clarify the enhanced monitoring requirements.

The Colorado Chamber proposes that the Division include guidelines in the regulation to determine when enhanced monitoring will be required by evaluating:

- (1) technical feasibility – Is the proposed monitoring requirement commercially available.
- (2) control effectiveness - A review of the control effectiveness (percent pollutant removed) and expected emissions reduction (tons per year) for each proposed requirement.
- (3) cost – An economic impacts analysis of implementing new monitoring requirements.
- (4) non-air environmental impact. Would the proposed monitoring requirement cause environmental impacts such as emissions of toxic and hazardous air emissions.

By including concrete guidelines in the regulation this will allow the business community to plan for anticipated costs while still driving emissions reductions in the communities they serve.

The Colorado Chamber also proposes that there be a sunset provision for monitoring requirements. Meaning that enhanced monitoring requirements would expire after 24 months when the facility demonstrates its commitment to environmental compliance. The sunset provision would apply to any of the monitoring requirements listed in the proposed rule such as, source testing and reporting, continuous emissions or parameter monitoring, community notifications, facility fence line air monitoring or participation in community air monitoring programs.

Conclusion

The Colorado Chamber has been actively engaged on hundreds of proposed rules through stakeholder meetings and rulemaking hearings for decades and has worked with the AQCC to find a balance between the interests of the Division, employers/operators and other stakeholders,

including the EPA. As outlined above, the Colorado Chamber supports reducing emissions to achieve attainment. With respect, regulatory uncertainty can have an unforeseen impact and make it difficult for businesses to forecast. The Chamber supports well defined monitoring and modeling requirements in Regulation 3 and believes these are necessary to facilitate emission reductions and business planning and growth.

List of Exhibits

The Colorado Chamber is not submitting any exhibits at this time. The Chamber reserves the right to use exhibits submitted by the Division and other parties at the hearing in this matter, and to submit rebuttal exhibits with its Rebuttal Statement.

LIST OF WITNESSES TO BE CALLED

1. Shannon Polmiller, Chair of Colorado Chamber Air Quality Subcommittee
2. Loren R. Furman, President and CEO, The Colorado Chamber of Commerce

TEXT OF ALTERNATE PROPOSED RULE

Not applicable.

ESTIMATE OF TIME NECESSARY FOR PRESENTATION

The Colorado Chamber requests 10 minutes for its affirmative presentation and rebuttal testimony, exclusive of Commissioner questions, and any cross-examination of Division or other Party witnesses.

Respectfully submitted this 16th day of March, 2023.



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