



Air Update: Changes to Colorado Air Quality Regulations May Have Significant Impacts on Oil and Gas Operators

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Colorado is already known for stringent air quality regulations, especially in the Denver Metro/North Front Range ozone nonattainment area, which covers much of the Denver-Julesburg Basin and Greater Wattenberg Area. Two recent developments are likely to make those regulations even stricter.

First, Colorado's ozone rules will become more stringent if the EPA reclassifies this region as a Serious nonattainment area—a likely event due to exceedances of federal standards in 2018.

If reclassified, air quality permits will take longer to issue and will impose additional emission limits. Operators may wish to design and operate new facilities differently to avoid permitting delays and burdensome regulations.

In addition to potential reclassification, Colorado is also increasing its fees for air emissions and permits, as allowed by a 2018 statutory change.

Permitting Requirements in a Serious Ozone Nonattainment Area

Between 2011 and 2017, the oil and gas industry reduced its emissions of volatile organic compounds, which are ozone precursors, in the Denver Metro/North Front Range area by 45%. Ozone levels improved but exceeded federal standards during the 2018 ozone season. As a result, by January 2020, EPA will likely be required to change the area's classification from Moderate to Serious. Colorado may avoid reclassification if it demonstrates that it would have attained the ozone standard but for the impact of international emissions, but it is not clear whether Colorado will pursue this relief or whether it would succeed.

Most or all well production facilities in the ozone area are minor sources of air emissions. Operators may develop new minor source well production facilities and wait until 90 days after first production to apply for a minor source construction permit. Many minor sources receive General Permits, which contain standard terms and conditions for condensate tanks and other common equipment. Major sources of air emissions must obtain a New Source Review permit before commencing construction of a new facility or making major modifications to an existing facility. By statute, the Colorado Department of Public Health and Environment, Air Pollution Control Division ("Division") is allowed up to 12 months to issue major New Source Review permits. Major sources must also apply for a Clean Air Act Title V operating permit within 12 months.

If the ozone area is reclassified as a Serious nonattainment area, the major source threshold will decrease from 100 to 50 tons per year of volatile organic compounds or nitrogen oxides. New facilities must either limit their potential to emit to less than 50 tons per year, or delay construction by 12 months (or more) until a major New Source Review permit is issued. Existing facilities with the potential to emit between 50 and 100 tons per year must reduce their allowable emissions or apply for a Title V Operating Permit.

The Division is conducting outreach with industry to streamline its permitting process. Among other things, the Division intends to lower the allowable emission rates in its General Permits, which would affect both new and existing facilities. The Division seeks input from the regulated community regarding permit streamlining.

Air Permit and Emission Fees Rising 25%

On October 18, 2018, the Air Quality Control Commission adopted revisions to AQCC Regulation No. 3 to implement Colorado H.B. 18-1400. The Air Pollutant Emission Notice filing fee, hourly permit processing fees, and fees per ton of pollutant emitted all increased by 25%. These fees were last revised in 2008.

As required by H.B. 18-1400, the Division convened a stakeholder group to assess measures to improve billing practices, increase transparency, and assess potential efficiency improvements. The Division holds biweekly meetings with industry associations including the Colorado Association of Commerce and Industry, Colorado Oil and Gas Association, Colorado Petroleum Association and Colorado Petroleum Council. The trade associations are soliciting input to identify projects to improve efficiency and the permitting process. The Division and stakeholders will meet on November 19, 2018 to prioritize the projects.

For more information on these changes and other potential changes to Colorado's air quality regulations and permitting requirements, please contact [Chris Colclasure](#) or [Jim Martin](#).