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VIA ELECTRONIC MAIL

Deb Thomas
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Dear Ms. Thomas and Mr. Starfield:

The Colorado Oil & Gas Association (COGA) respectfully submits this letter to request clarification for our members as to whether the EPA will suspend EPA Office of Enforcement and Compliance and Region 8's ongoing enforcement campaign against oil and gas operators in Colorado regarding alleged violations of *state air quality regulations* included in an approved State Implementation Plan regarding storage tank emissions and design.

For over 30 years, COGA has fostered and promoted the beneficial, efficient, responsible, and environmentally sound development, production, and use of Colorado's oil and natural gas resources. COGA members are committed to environmental compliance and operate under a comprehensive set of state regulations, which are among the most stringent in the nation. For example, the 2014 amendments to Colorado Regulation No. 7 ushered in arguably the most stringent oil and gas air quality control regime in the country. This includes a robust, statewide Leak Detection and Repair (LDAR) program,

stringent storage tank controls, storage tank emissions management requirements, and numerous other requirements designed to reduce emissions. These regulations are appropriately administered at the state level and the subject of numerous compliance discussions.

On March 2, 2017, EPA Headquarters Assistant Administrators (AAs) and Regional Administrators (RAs) were notified that the Administrator was retaining approval authority for actions having significant regulatory and enforcement effect.¹ Specifically, the electronic memo directed AAs and RAs to identify and send upward any proposed decisions or final agency actions for the Administrator’s review, those items that would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce or otherwise result in significant public attention on the proposed decisions.

Furthermore, President Trump’s March 28, 2017 Executive Order (Promoting Energy Independence and Economic Growth) states that “[i]t is in the national interest to promote clean and safe development of our Nation’s vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.” Consistent with that national policy, the President has ordered the heads of agencies to “review all existing regulations, orders, guidance documents, *policies*, and *any other similar agency actions . . .* that potentially burden the development or use of domestically produced energy resources, with particular attention to oil [and] natural gas.” Executive Order, Section 2(a) (emphasis added). In fact, in our view, the Executive Order *prohibits* the EPA from moving forward with its national enforcement initiative until it has undergone the review and approval contemplated in the Executive Order.

EPA’s enforcement campaign, which is based entirely on its enforcement of state air quality regulations contained in EPA approved SIPs, clearly meets the criteria laid out by the above-referenced memo and Executive Order and necessitates a review by the EPA Administrator before further action is taken. Thus, in light of the memo and Executive Order, and for the reasons outlined below, the EPA Administrator should discontinue this targeted enforcement campaign and allow Colorado operators to continue their proactive work with the Colorado Department of Public Health and Environment (CDPHE) to develop constructive and responsible solutions.

EPA’s National Enforcement Initiative and Ongoing Enforcement in Colorado

Since 2013, EPA Region 8 has issued numerous Clean Air Act Section 114 Information Requests to Colorado Operators regarding storage tank emission and design issues that ultimately resulted in millions of dollars in civil penalties, injunctive relief and mitigation. As time passed, the Obama Administration expanded its enforcement initiative to operators and ultimately issued approximately a dozen or more Section 114

¹ **Pruitt Withdraws Decision-Making Powers From Senior Officials** <https://insideepa.com/daily-news/pruitt-withdraws-decision-making-powers-senior-officials-email-shows>

Information Requests to other Colorado, North Dakota, and Texas operators requesting the same type of information sought from the agency's initial 2013 request and enforcement action. In fact, a 2016 Information Request ultimately led to an EPA consent decree with a North Dakota operator. That consent decree resulted in EPA enforcement of SIP approved *state air quality regulations*. Notably, North Dakota did not sign on to that consent decree and has instead been pursuing its own state-only consent agreements with many North Dakota operators on these storage tank issues.

Given the emphasis that the President and EPA Administrator have placed on "the important role of States in implementing the Nation's environmental laws" (see President's Budget Blueprint, p. 41), COGA questions whether EPA's continued enforcement of Colorado regulations is supported by the new Administration.

Additionally, EPA's enforcement campaign is a classic example of "rulemaking via enforcement," which doesn't appear to be supported by the new EPA Administrator. EPA is seeking injunctive relief that is arguably far outside the bounds of current regulatory requirements. This injunctive relief (and civil penalties and mitigation) in highly public and severe federal consent decrees with a limited number of operators is an attempt to add requirements outside of the formal rulemaking process. In many cases, the injunctive relief being sought is dangerously close to dictating how a company designs and operates its own facilities and manages its own employees. If left unchecked, EPA's actions 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.

In closing, please understand that our members do not expect any special treatment or exclusion from environmental laws and regulations. Our operators are committed to environmental compliance and, in fact, worked closely with the CDPHE to develop and implement the 2014 oil and gas air quality regulations, which are among the most stringent in the nation. COGA is merely asking that EPA discontinue its targeted enforcement campaign and return to the principle of "cooperative federalism" to allow Colorado operators to continue their proactive work with CDPHE to find responsible and constructive solutions.

Respectfully,



Dan Haley
President & CEO
Colorado Oil & Gas Association

cc: Scott Pruitt, EPA Administrator
Suzanne Bohan, Acting Deputy Regional Administrator, EPA Region 8
Samantha Dravis, Associate Administrator Office of Policy
Brittany Bolen, Deputy Associate Administrator Office of Policy