



request the EPA require the Colorado SIP to be revised to require reporting of emissions from drill rig engines and to require that drill rig engines be subject to preconstruction review and permitting requirements, also known as construction permitting requirements, as required by the CAA, to ensure protection of clean air and human health in the face of increasing oil and gas development throughout the state.

## **PETITIONERS**

Rocky Mountain Clean Air Action is dedicated to protecting clean air for healthy children and healthy communities in Colorado and the surrounding region. Rocky Mountain Clean Air Action has members throughout the state of Colorado, many of whom are suffering from the effects of increased air pollution associated with booming oil and gas drilling. Rocky Mountain Clean Air Action is located at 1536 Wynkoop, Suite 302, Denver, CO 80202.

Center for Native Ecosystems is dedicated to protecting healthy ecosystems in the Greater Southern Rockies. Center for Native Ecosystems is working to protect rare and imperiled wildlife, fish, and plants from booming oil and gas drilling. Center for Native Ecosystems is located at 1536 Wynkoop, Suite 303, Denver, CO 80202.

Grand Valley Citizens Alliance works to protect the quality of life in Garfield County for all residents by promoting best practices and responsible development. Many Grand Valley Citizens Alliance members live in the midst of rampant oil and gas drilling in Garfield County and are suffering from the effects of air pollution. Grand Valley Citizens Alliance is located at PO Box 2601, Glenwood Springs, CO 81602.

Western Colorado Congress is a grassroots, democratic organization dedicated to challenging injustice by organizing people to increase their power over decisions that affect their lives. Western Colorado Congress' community groups and members work together to create

healthy, sustainable communities, social and economic justice, environmental stewardship and a truly democratic society. Members of Western Colorado Congress live throughout Colorado in areas experiencing heavy oil and gas drilling and are suffering from the effects of air pollution. Western Colorado Congress is located at PO Box 1931, Grand Junction, CO 81502.

Western Organization of Resource Councils works to advance the vision of a democratic, sustainable, and just society through community action. The Western Organization of Resource Councils is a regional network of seven grassroots community organizations that include 9,500 members and 45 local chapters. Members of the Western Organization of Resource Councils and their member organizations are experiencing the harmful effects of air pollution from drill rig engines. Western Organization of Resource Councils is located at 60584 Horizon Drive, Montrose, CO 81401.

San Juan Citizens Alliance is dedicated to social, economic, and environmental justice in the San Juan Basin of southwestern Colorado and northwestern New Mexico. San Juan Citizens Alliance has members throughout the San Juan Basin of Colorado, many of whom are suffering from the effects of increased air pollution associated with booming oil and gas drilling in that region. San Juan Citizens Alliance is located at 1022 ½ Main Ave., Durango, CO 81302.

Do It Right Las Animas is a group of citizens in Las Animas County, Colorado safeguarding the health of local communities from booming coal-bed methane drilling in southeastern Colorado. Do It Right Las Animas is located in Las Animas County.

The Endocrine Disruption Exchange is a nonprofit organization working to facilitate the exchange of knowledge and information about chemicals that interfere with development and function. The Endocrine Disruption Exchange is located at 211 Grand Avenue, Paonia, CO 81428.

Wilderness Workshop is a nonprofit membership organization whose mission is to protect and conserve the wilderness and natural resources of the Roaring Fork Watershed, the White River National Forest, and adjacent public lands. Members of Wilderness Workshop use and enjoy wildlands throughout Colorado, many of which are being degraded from air pollution emanating from oil and gas development in western Colorado. Wilderness Workshop is located at PO Box 1442, Carbondale, CO 81623.

### **PROCEDURAL AUTHORITY**

Rocky Mountain Clean Air Action petitions the EPA pursuant to the APA. See, 5 USC § 551, *et seq.* The APA specifically requires that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 USC § 553(e).

The SIP is a living document which the State and EPA can, from time to time, revise as necessary. See, Approval and Promulgation of Air Quality Implementation Plans; Vermont, 68 Fed. Reg. 34,808-34813 (June 11, 2003) (codified at 40 CFR Part 52) (final rule; notice of administrative change). EPA is authorized pursuant to the CAA to initiate rulemaking proceedings and to call for SIP revisions when a SIP is inadequate or fails to meet the requirements of the CAA. See, 42 USC § 7410. Further, EPA can “**require** the State to revise the SIP as necessary to correct such inadequacies.” 42 USC § 7410(k)(5) (emphasis added).

The APA requires EPA to conclude the matter raised in this petition within a reasonable time. See, 5 USC § 555(b). Petitioners request the EPA expedite resolution of this matter to ensure that air pollution from drill rig engines is regulated and controlled as required by the CAA. As will be discussed in more detail, portable drill rig emissions are a significant source of nitrogen oxide (“NO<sub>x</sub>”) and other pollutants in the state of Colorado and must be regulated under the CAA to ensure protection of National Ambient Air Quality Standards (“NAAQS”) and

Prevention of Significant Deterioration (“PSD”) increments. Should the EPA fail to require revision of AQCC Regulation 3 with regards to drill rig engines within sixty days, Petitioners will consider such delay unreasonable.

## **BACKGROUND**

The Colorado SIP at AQCC Regulation 3 currently exempts reporting and preconstruction review and permitting of emissions from drill rig engines across the entire state. Part A § II.D.1.1 states that, “Internal combustion engines powering portable drilling rigs” are exempt from the requirement to file Air Pollutant Emission Notices (“APENs”) because “cumulatively as a category, they are deemed to have a negligible impact on air quality.” Part B § II.D.1.c.(i) states that stationary internal combustion engines that “power portable drilling rigs” are exempt from permitting requirements because “cumulatively as a category, [they] are deemed to have a negligible impact on air quality.” These exemptions were adopted March 10, 1983, and subsequently approved by the EPA and incorporated into the Colorado SIP in 1986.<sup>1</sup> See, 51 Fed. Reg. 31125

While these exemptions may have been consistent with the CAA in 1983, they currently are not. The reason is due to a significant increase in oil and gas drilling throughout the state of Colorado, which in turn has led to massive increase in the use of drill rig engines and massive increases in NOx emissions. The assertion that drill rig engines “have a negligible impact on air quality” today is flatly erroneous.

In 1983, the Air Pollution Control Division estimated that drill rig engines released 1.3 tons of NOx per well drilled. At the time, the Division estimated NOx emissions from drill rig

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<sup>1</sup> Regulation Number 3, Part C, Section II.E.3.1 also exempts sources comprised solely of drill rig engines from operating permit requirements because emissions from such engines are considered to be “insignificant.” Although this petition does not request changes to this provision, Petitioners’ request the EPA review the provision to ensure it is consistent with the CAA.

engines could be as high as 2,200 tons per year. See, Statement of Basis and Purpose of Revisions to Regulation No.3, Part F, Section I.D.V.

Today, total NOx emissions from drill rig engines are much higher. According to a recent report prepared by ENVIRON for the Western Regional Air Partnership (“WRAP”), NOx emissions from drill rig engines in Colorado totaled 5,734 tons in 2002, **over 150% higher than 1983 levels**. See, **Ex. 1**, Russell, J. and A. Pollock, “Oil and Gas Emission Inventories for the Western States,” Report Prepared by ENVIRON for Western Governor’s Association (December 27, 2005). Furthermore, although the Division stated in 1983 that drill rig engines release 1.3 tons of NOx per well drilled, the recent ENVIRON report shows 2002 emissions from drill rig engines in Colorado averaging 4.6 tons of NOx per well drilled. However, the report estimates that emissions could be as much as 13.5 tons of NOx per well drilled. See, **Ex. 1 at 2-5**. **This emission rate is 10 times higher than the Division reported in 1983**. Emissions from drill rig engines have clearly increased dramatically since 1983.

Additionally, the pace of oil and gas drilling in Colorado continues to increase, leading to increasing NOx pollution. According to the Colorado Oil and Gas Conservation Commission (“COGCC”), a record 5,904 Applications for Permits-to-Drill (“APDs”) were issued in 2006. See, **Ex. 2**;COGCC, “Staff Report” (January 8, 2007). Most of these permits were issued to drill oil and gas wells in Garfield, Weld, Yuma, Las Animas, and Rio Blanco Counties. See, **Table 1**. The COGCC states, “This represents a 35% increase over the previous record high of 4,373 APDs approved in 2005, which was over double the 2,915 APDs approved in 2004.” **Ex. 2 at 1**. Assuming all 5,904 APDs issued in 2006 led to the drilling of as many oil and gas wells, **NOx emissions from drill rig engines ranged from 27,158 tons, based an emission rate of 4.6 tons/well drilled, to 79,704 tons, based on an emission rate of 13.5 tons/well drilled**. In either

event, the amount of NOx released by drill rig engines has clearly skyrocketed since 1983. With the pace of drilling increasing in Colorado, NOx emissions will surely continue to climb.

Although the Division’s assertion in 1983 that 2,200 tons of NOx posed “negligible” impacts to air quality in Colorado was questionable, drill rig engines were nevertheless exempted from reporting and preconstruction review and permitting requirements. Today, it cannot be denied that NOx emissions from drill rig engines are significant and do not pose “negligible” impacts to air quality. On the contrary, NOx emissions not only appear to currently pose significant impacts, but appear to pose ever-increasing threats to air quality. Especially in areas experiencing increasing oil and gas drilling, such as Garfield and Yuma Counties, NOx emissions from drill rig engines could represent a significant proportion of actual emission inventories. See, Table 1. Despite the dramatic increase in NOx emissions from drill rig engines, the Colorado SIP continues to exempt such engines from reporting and preconstruction review and permitting requirements. **This exemption must be eliminated.**

**Table 1. Number of APDs Issued by Year in Top Five Oil and Gas Producing Counties in Colorado (Data COGCC)**

<b>County</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>
Garfield	1844	1509	796
Weld	1418	901	830
Yuma	798	785	237
Las Animas	500	416	332
Rio Blanco	360	161	154

## **1. THE DRILL RIG ENGINE EXEMPTION FAILS TO COMPLY WITH THE CLEAN AIR ACT**

The CAA regulates emissions of NO<sub>x</sub>, as well as other pollutants, in relation to the protection of NAAQS and PSD increments. Emissions of NO<sub>x</sub> contribute to a variety of public health and welfare problems. NO<sub>x</sub> emissions are a precursor of ground-level ozone and particulate matter pollution. NO<sub>x</sub> emissions also play a role in the accumulation of excess nitrates in drinking water, the eutrophication of aquatic ecosystems and nitrification of soils, global climate change, increases in toxic pollutant levels, and the depletion of the ozone layer. See, 70 Fed. Reg. 8888-8889. Research has also linked NO<sub>x</sub> to incidences of sudden infant death syndrome. See, **Ex. 3**, Robert et al., “Air Pollution and Sudden Infant Death Syndrome.” *Pediatrics*, 113:628-31 at 629 (2004).

NAAQS have been established for NO<sub>x</sub>, which is measured as NO<sub>2</sub>, as well as for ozone and particulate matter, to ensure protection of human health and welfare. See, 61 Fed. Reg. 52852 (NO<sub>2</sub>), 62 Fed. Reg. 38856 (ozone), and 71 Fed. Reg. 61144 (particulate matter). PSD increments have also been established for NO<sub>2</sub>, which ensure that areas currently meeting NAAQS do not slide into violation of NAAQS. See, 70 Fed. Reg. 59582.

In relation to meeting NAAQS and PSD increments, the CAA is clear that SIPs shall ensure absolute compliance. See, 42 USC § 7407(a); 42 USC § 7410(a)(1). In other words, SIPs cannot allow pollution levels to exceed NAAQS and/or PSD increments. SIPs achieve this through, among other things, the regulation of stationary sources of air pollution. In relation to stationary sources, the EPA has explained:

Air quality planning requirements for new and modified stationary sources of air pollution are an integral part of the PSD program. States must develop, adopt, and submit to EPA for approval a State Implementation Plan (SIP) that contains emission limitations and other control measures to attain and maintain the NAAQS and to meet



other requirements of section 110(a) of the [Clean Air] Act. Each SIP must contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained.

70 Fed. Reg. 59583-59584. Thus, SIPs must ensure that stationary sources of air pollution do not jeopardize NAAQS or PSD increments through a preconstruction review program for the construction or modification of such sources.

Accordingly, the Colorado SIP ensures protection of NAAQS and PSD increments by requiring polluters to submit APENs and to obtain permits for the construction of stationary sources. APENs are required by the state of Colorado to keep emissions inventories current.

See, Statement of Basis and Purpose of Revisions to Regulation No.3, Part F, Section I.A.

“APEN information is to be used to achieve the most accurate and complete inventory possible, and to provide for the most accurate enforcement program achievable based upon that inventory.” Statement of Basis and Purpose of Revisions to Regulation No.3, Part F, Section I.K. And as the EPA has already explained, construction permits are required to ensure that air pollutants emitted from stationary sources achieve and maintain NAAQS and PSD increments.

**Because the Colorado SIP exempts drill rig engines from APEN and preconstruction review and permitting requirements, it fails to comply with the CAA because it fails to ensure that emissions from these stationary sources achieve and maintain NAAQS and PSD increments. As a practical matter, the Colorado SIP fails to prevent NOx emissions from drill rig engines from causing or contributing to violations of NAAQS and/or PSD increments. Accordingly, the EPA must require the state of Colorado to revise its SIP.**

As already explained, NOx emissions from drill rig engines have increased significantly and are continuing to rise. It cannot be denied that drill rig engines no longer have a “negligible”

impact on air quality. Even under the 2002 WRAP inventory, drill rig engine NOx emissions in Colorado were reported at 5,734 tons, over 150% higher than 1983 levels reported by the Division. It is now reported that drill rig engines may emit anywhere between 4.6 and 13.5 tons of NOx per well drilled, perhaps more, and that annual NOx emissions may be as high as 79,704 tons.

In light of the dramatic increase in NOx emissions, drill rig engines must be subject to APEN requirements to ensure accurate emission inventories and to ensure protection of NAAQS and PSD increments. Currently, because drill rig emissions are not reported and not inventoried, NOx emissions for Colorado, particularly in areas experiencing heavy oil and gas drilling, such as Garfield and Weld Counties, are not accurately inventoried. The result is that the Colorado SIP currently fails to maintain, implement, and enforce NAAQS for NOx, as well as for ozone and particulates, and fails to ensure protection of NOx PSD increments across the state.

Under the current Colorado SIP, any stationary source that emits two tons/year or more of NOx must submit an APEN. As a threshold matter, the recent WRAP inventory and data regarding APDs strongly indicates that drill rig engines release NOx in excess of two tons/year. In any event, drill rig engines must be subject to APEN reporting requirements to ensure accurate inventories and to ensure that this source of air pollution protects NAAQS and PSD increments now and in the future.

Furthermore, drill rig engines must be subject to preconstruction review and permitting requirements under the Colorado SIP to ensure protection of NAAQS and PSD increments related to NOx. As the EPA has explained, SIPs “must contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained.” 70 Fed. Reg. 59584. In light of the significant

increase in NOx emissions from drill rig engines, there is no question that emissions may threaten NAAQS and PSD increments. If a single engine drills several wells in a given year, emissions may well be over 100 tons/year, in which case Title V Operating Permit requirements and possibly PSD permitting requirements may be triggered. Preconstruction review is needed to assure compliance with Title V of the CAA, with PSD permitting requirements, and to ensure protection of NAAQS. At the least, drill rig engines cannot be exempted entirely from preconstruction review and permitting requirements.

Although the Statement of Basis for AQCC Regulation No. 3 states that “an APEN or permit exemption may not be used if taking the exemption would allow a source to avoid any air quality regulation requirements,” this provision does not remedy the situation. This “Override” provision, which is spelled out only in the Statement of Basis and Purpose of Revisions to Regulation No. 3, Part F, Section I.K, lacks any practical effect. Without an accurate inventory of emissions from drill rig engines, it is impossible to know whether the APEN and permit exemptions for such engines allow these sources to avoid air quality regulation requirements. This “Override” provision is meaningless and unenforceable due to the fact that polluters are not required to report emissions from drill rig engines under the Colorado SIP, and the EPA must require the state of Colorado to revise its SIP.

## **2. THE FINDING OF “NEGLIGIBLE IMPACTS” IS INVALID**

Regardless of what the CAA requires, the EPA cannot deny the fact that NOx emissions from drill rig engines no longer pose “negligible impacts” to air quality, as originally claimed by the state of Colorado. As already discussed in detail, 2002 estimates indicate that drill rig engines released 5,784 tons of NOx. The amount of NOx released by drill rig engines today is

undoubtedly higher due to increasing oil and gas drilling, as evidenced by the record number of APDs issued by the COGCC in 2006.

The Colorado SIP states that drill rig engines pose “negligible impacts” to air quality in the state. This statement no longer holds true and cannot serve to govern implementation of the Colorado SIP. The EPA must require the state of Colorado to revise its SIP to address the fact that drill rig engines no longer pose “negligible impacts” to air quality in Colorado.

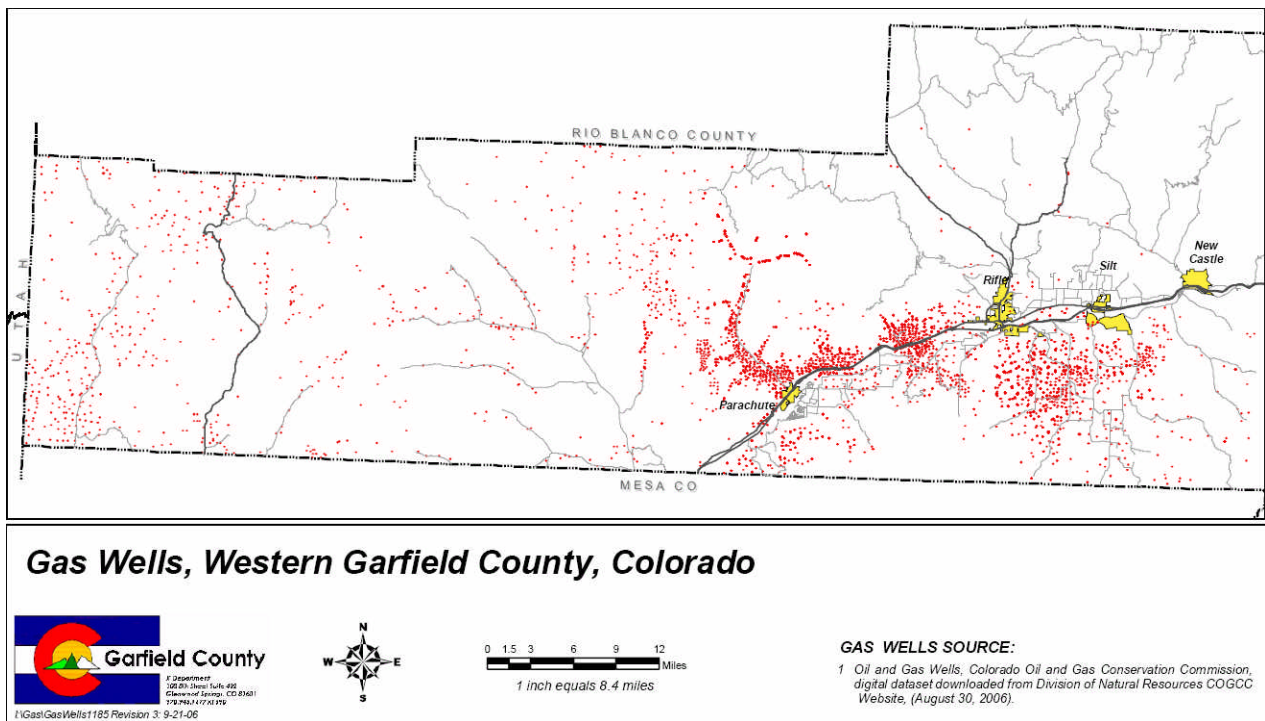
### **3. NO<sub>x</sub> IMPACTS IN CONTEXT—A LOOK AT GARFIELD COUNTY**

The need for APEN reporting and preconstruction review and permitting for drill rig engines in the Colorado SIP is especially evident when looking at Garfield County, Colorado, a rural western Colorado County that is nearly 3,000 square miles in size. Garfield County has experienced a significant increase in natural gas drilling and gas wells are scattered across the landscape. See, Figure 1. As already discussed, Garfield County has been leading the state in terms of oil and gas drilling activity, with nearly 2,000 APDs issued in 2006. More wells are forecast to be drilled in the coming years.

According to the most recent emission inventory compiled by the Division, oil and gas point and area sources already release 4,304 tons of NO<sub>x</sub> per year in the county, or 77% of all NO<sub>x</sub> released by anthropogenic sources. Sources of air pollution related to oil and gas development are thus the largest anthropogenic source of NO<sub>x</sub> emissions in the county. Emission inventory data for Garfield County, however, does not include drill rig engine emissions.

While the fact that oil and gas developments already release 77% of all NO<sub>x</sub> emissions released by anthropogenic sources is worrisome, it is further disconcerting given that NO<sub>x</sub>

emissions from drill rig engines are not accounted for under the SIP. Assuming that all 1,844 APDs issued in Garfield County led to completed wells, and that NO<sub>x</sub> emissions averaged 4.6 tons/well drilled, this would amount to 8,282 tons of NO<sub>x</sub> released by drill rig engines just in Garfield County. This would amount to a nearly 200% increase in total NO<sub>x</sub> emissions released by oil and gas point and area sources, and a total oil and gas NO<sub>x</sub> inventory of 12,586 tons. **Even if just half the APDs issued in Garfield County in 2006, or 922 APDs, led to completed wells, this would amount to 4,241 tons of NO<sub>x</sub> released by drill rig engines, a nearly 100% increase in the current total oil and gas NO<sub>x</sub> inventory.**



**Figure 1. Natural Gas Wells in Garfield County, Colorado (Garfield County).**

Regardless, the fact that emissions from drill rig engines are not reported means that the Division has greatly underestimated NO<sub>x</sub> emissions from oil and gas development in Garfield County. Even if just 922 wells were drilled in 2006, total NO<sub>x</sub> emissions from oil and gas would

amount to 8,545 tons, **meaning the Division's current inventory underestimates NOx emissions from oil and gas by nearly 50%. If more wells were drilled in Garfield County, the underestimation of NOx emissions would be even greater.**

Given that the Colorado SIP fails to require APEN reporting for drill rig engines, the NOx emission inventory for Garfield County is woefully inadequate. We cannot know whether NAAQS and PSD increments are and/or will remain protected in accordance with the CAA in Garfield County. Furthermore, we cannot know whether human health is and/or will remain protected. This problem is compounded by the lack of preconstruction review and permitting requirements for drill rig engines in the Colorado SIP and further compounded given that no NOx monitoring stations are located in Garfield County. According to the EPA, only four NOx monitors exist in Colorado, two in the Denver metro area and two in La Plata County. See, <http://iaspub.epa.gov/airsdata/adaqs.monvals?geotype=st&geocode=CO&geoinfo=%3Fst%7ECO%7EColorado&pol=NO2&year=2006&fld=monid&fld=siteid&fld=address&fld=city&fld=county&fld=stabbr&fld=regn&rpp=25>.

As the situation in Garfield County shows, the EPA must require revision of the Colorado SIP in relation to drill rig engines. The SIP must be revised to ensure that drill rig engines are subject to APEN reporting and preconstruction review and permitting requirements. This revision is needed to ensure, among other things, that NAAQS, PSD increments, and human health are fully protected as required by the CAA, both in Garfield County and the rest of Colorado.

#### **4. EVEN IF DRILL RIG ENGINES ARE NOT STATIONARY SOURCES, THE EPA HAS A DUTY TO PROTECT NAAQS AND PSD INCREMENTS**

It has been suggested by the Division, but not substantiated, that engines powering portable drilling rigs may not be stationary sources of air pollution. Although the Colorado SIP

expressly identifies drill rig engines as stationary sources, nevertheless if the EPA determines that drill rig engines are nonroad engines, the agency continues to have a duty to ensure protection of the NAAQS and PSD increments with regards to these engines.

Specifically, the Clean Air Act authorizes the EPA to make a finding that a SIP is substantially inadequate to meet Clean Air Act requirements. See, 42 USC 7410(k)(5). A SIP is substantially inadequate if, among other things, any provision would interfere with attainment of the NAAQS. See, 42 USC § 7410(l). If EPA makes a determination of substantial inadequacy, it must require the state to submit a SIP revision to correct the inadequacy or inadequacies. See, 63 Fed. Reg. 57360.

As we have explained, drill rig engine emissions are far greater than previously reported, rendering current SIP provisions relating to drill rig engines—adopted in 1983—incapable of ensuring protection of NAAQS and PSD increments now and into the future. Projected NO<sub>x</sub> emissions promise only to increase according to most recent reports, indicating that current SIP provisions do not ensure protection of NAAQS and PSD increments. Compounding this is the failure of the Colorado SIP to impose any emission reporting requirements for drill rig engines. At the least, current SIP provisions related to drill rig engines interfere with the attainment of the NAAQS.

The duty to protect NAAQS and PSD increments is not limited solely to the regulation of stationary sources of air pollution. See, 42 USC § 7407(a) and 42 USC 7410(a)(1). Thus, if drill rig engines are determined to not be stationary sources, the EPA continues to have a duty to require the state of Colorado to revise its SIP to ensure protection of the NAAQS and PSD increments with regards to NO<sub>x</sub> emissions from drill rig engines. Furthermore, if the EPA

determines that drill rig engines are not stationary sources, the agency must explain its rationale and reasoning in any response to this petition.

## **CONCLUSION**

EPA is authorized to require states to revise their SIPs to correct for inadequacies. Section 110(k)(5) of the CAA states: “Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, . . . or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct for such inadequacies.” 42 USC § 7410(k)(5). The Colorado SIP is substantially inadequate and fails to comply with the CAA because it exempts drill rig engines from APEN reporting and preconstruction review and permitting requirements, and fails to protect the NAAQS and PSD increments from drill rig engine emissions. Accordingly, it must be revised. Should the EPA fail to require revision of the Colorado SIP with regards to drill rig engines within sixty days, Petitioners will consider such delay unreasonable.



Dated this \_\_\_\_\_ day of May, 2007

Respectfully submitted,

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## EXHIBITS TO PETITION

1. Russell, J. and A. Pollock, "Oil and Gas Emission Inventories for the Western States," Report Prepared by ENVIRON for Western Governor's Association (December 27, 2005).
2. COGCC, "Staff Report" (January 8, 2007).
3. Robert et al., "Air Pollution and Sudden Infant Death Syndrome." *Pediatrics*, 113:628-31 at 629 (2004).