Fenceline Monitoring/Clean Air Act: Colorado Department of Public Health & Environment and Commerce City Refinery Enter into Settlement

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The Colorado Department of Public Health & Environment ("CDPHE") issued a February 5th news release indicating it has entered into two settlement agreements with Suncor Energy ("Suncor").

The two agreements address a Suncor refinery in Commerce City, Colorado.

One of the agreements addresses air monitoring activities at the refinery. The other resolves a Clean Air Act enforcement action.

The United States Environmental Protection Agency ("EPA") promulgated rules requiring petroleum refineries to conduct continuous fenceline monitoring for certain air emissions. The federal agency had stated that the underlying reason for the fenceline monitoring requirement is not to establish a de facto ambient air quality standard.

Instead, EPA had concerns that petroleum refineries underestimate emissions from fugitive sources. Therefore, the agency believed that fenceline monitoring would help refiners to detect, identify, and address sources of excess emissions from fugitive sources. EPA will in the future will likely integrate fenceline monitoring requirements into rules for additional source categories with large fugitive source emissions.

CDPHE's settlement with Suncor is stated to include a requirement that doubles the number of air pollution monitors compared to the refinery's original fenceline monitoring plan. In addition, a December 24 deadline is set for the company to implement continuous monitoring of its entire fenceline.

The environmental organization Earthjustice, in commenting on the settlement, states:

The fenceline monitoring statute requires facilities to monitor for three pollutants but gives the division authority to monitor additional pollutants. However, while the division originally required Suncor to monitor for eleven additional pollutants, the new plan does not include any additional pollutants. In a side agreement, the state and Suncor have agreed that Suncor will monitor three other pollutants, but this requirement is not covered by the plan and if Suncor violates the requirement, it cannot be enforced as a violation of state law.

CDPHE in the February 5th news release also indicates that Suncor in a separate settlement is addressing alleged Clean Air Act violations through the payment of $10.5 million toward penalties. $8 million is

designated toward Suncor projects that will be implemented to minimize excess air pollution from recurrence due to power-related causes.

A copy of the CDPHE news release can be downloaded here.