August 28, 2023

Air Quality Control Commission (AQCC)  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246  
Sent via E-mail to: cdphe.aqcc-comments@state.co.us

RE: GEMM 2 Proposal

Commissioners,

We, the legislators who crafted and supported the Environmental Justice Act HB21-1266, along with our colleagues who support the goals and intent of the act, are writing to express our serious apprehension regarding the GEMM 2 proposal. It has come to our attention that the current draft deviates significantly from the intent of the law we worked to pass, jeopardizing the protection of Disproportionately Impacted Communities (DICs) and failing to prioritize co-pollutant reductions as explicitly mandated in the Environmental Justice Act. We urge you to consider the importance of precedent and adhere to the legislative direction to ensure the rule aligns with the intended goals.

The legislative intent of HB21-1266 is clear: the rules must include protections for DICs and prioritize emission reductions that will reduce co-pollutants affecting these communities adversely. However, the current rule draft prioritizes cheap reductions for facilities over achieving co-benefits for the surrounding communities. We observe several critical issues with this approach:

1. **Inadequate Protection of Disproportionately Impacted Communities and Co-pollutant Reductions**

   a) Lack of On-site Measures: The draft rule allows for off-site reductions away from the facilities without clearly requiring on-site measures. This results in co-pollutant reductions that do not benefit communities near GEMM 2 facilities adequately.

   b) Inequitable Cost Cap: The rule pegs the Social Cost of Greenhouse Gases (SCGHGs) to a low interim value for 2030, undervaluing the true cost of greenhouse gas emissions. This can lead to off-site projects that are significantly cheaper for facilities, compromising the intended co-pollutant reductions.

   c) Insufficient Protection for DICs: The rule's provisions for facilities in DICs are inadequate and dangerous. They allow for off-site reductions for projects between 100 and 150% of the low interim SCGHG value without a clear quantification of the impact on harmful air pollution for the communities. Moreover, the absence of limitations on trading for facilities in DICs or with a history of air pollution violations poses potential GHG and co-pollutant "hot spots" in these communities.
II. Failure to Achieve the Statutorily Required GHG Reduction Target for the Industrial and Manufacturing Sector

HB21-1266 explicitly mandates a reduction of at least 20% in statewide greenhouse gas emissions from the industrial and manufacturing sector by 2030 below the 2015 baseline. However, the current draft rule fails to ensure this reduction due to its approach to reductions and trading:

a) Crediting Direct Air Capture (DAC) and Carbon Capture and Storage (CCS): Allowing direct air capture and storage of carbon dioxide to be credited in the trading system, along with considering them as direct emissions reductions, undermines the reduction of co-pollutants, which are crucial for protecting public health and the environment and are especially important for DICs. Furthermore, Colorado has not established guardrails for storage that ensure the captured carbon remains stored indefinitely or to prevent new environmental injustices related to the transport and storage of carbon dioxide.

b) Counting Non-Industrial Sector Emissions: Allowing facilities to reduce emissions at other sites owned by the same operator, which are not part of the industrial sector, does not guarantee assured reductions of GHGs emitted from primary industrial processes as intended by the statute.

We recognize that numerous community, local government, and NGO stakeholders have voiced similar concerns to the Air Pollution Control Division in the past year without seeing sufficient changes in. As legislators, we share these concerns and request that you carefully consider and address these issues during the rulemaking process.

It is essential to protect the rights of the communities disproportionately affected by pollution and to prioritize the reduction of co-pollutants, which play a vital role in safeguarding public health and environmental well-being. We urge you to revise the GEMM 2 rulemaking in line with the original legislative intent of HB21-1266, ensuring a just and sustainable future for all Coloradans.

Thank you for your attention to this matter. We look forward to your thoughtful response and continued collaboration.

Sincerely,

Senator Janet Buckner
Senator Lisa Cutter
Senator Tony Exum
Senator Christopher Kolker
Senator Faith Winter
Representative Jennifer Bacon
Representative Andrew Boesenecker
Representative Meg Froelich
Representative Cathy Kipp
Representative Chris Kennedy
Representative Emily Sirota
Representative Brianna Titone
Representative Elizabeth Velasco
Representative Stephanie Vigil
Representative Jenny Willford
Representative Steven Woodrow