

**BEFORE THE  
COLORADO AIR QUALITY CONTROL COMMISSION**

**Regarding proposed revisions to:  
AMBIENT AIR QUALITY STANDARDS REGULATION,**

**REGULATION 3  
STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION  
NOTICE REQUIREMENTS,**

**REGULATION 7  
CONTROL OF OZONE VIA PRECURSORS  
(EMISSIONS OF VOLATILE ORGANIC COMPOUNDS AND NITROGEN OXIDES),**

**REGULATION 11  
MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM**

**FOR THE DENVER METROPOLITAN & NORTH FRONT RANGE AREA  
OZONE ACTION PLAN**

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**PREHEARING STATEMENT OF THE  
COLORADO OIL & GAS ASSOCIATION**

**I. EXECUTIVE SUMMARY & RECOMMENDATIONS**

The Colorado Oil & Gas Association (“COGA”) submits its prehearing statement in the above-referenced matter, and endorses and joins in the prehearing statements, comments, testimony, and exhibits submitted by several of its member companies, including, but not limited to, Anadarko Petroleum Corporation, Noble Energy, Inc., and Williams Production RMT. COGA wishes to address specifically the following major areas in this Prehearing Statement:

**A. The Ozone Action Plan Should be Based on the Best Available Science and Implement Regulations that Provide the Greatest Possible Ozone Benefits**

COGA and the oil and gas industry companies it represents have always stressed the overriding importance of basing Colorado’s ozone control strategy on the best available science. To assist in the development of the best possible scientific evidence essential to ozone control, COGA funded and conducted a 2001 study of condensate tank emissions that provided the scientific evidence underpinning the adoption of default emission factors for northeast and northwest Colorado. The 2001 study and its resulting emissions factors facilitated the new requirement for oil and gas producers to file APENs, and allowed the state to assess, for the first time, the magnitude and effect of condensate tank emissions. This effort has informed all following source apportionment modeling and ozone control plans.

More recently, the oil and gas industry, acting through the Independent Petroleum Association of Mountain States and in conjunction with the Western Regional Air Partnership, evidenced its continued commitment to basing ozone strategies on sound science by beginning ongoing efforts to better inventory the extent of oil and gas emissions in western producing basins. This work has informed the modeling for the pending Ozone Action Plan, and will be important as Colorado turns towards regional haze rulemaking in 2009.

Accordingly, COGA once again stresses the importance of basing the Ozone Action Plan on sound science incorporating the best available data. In this regard, COGA notes that the following conclusions drawn by Air Pollution Control Division of the Colorado Department of Public Health and Environment (“Division”), based on the ozone source apportionment results (Morris, et al, 2008a), should underpin this rulemaking:

- Regional ozone transport into the 12 km domain is the largest contributor to ozone in the nonattainment area, often accounting for more than two-thirds of the total ozone;
- At the Denver Metropolitan monitors the largest contributors are ... metro area motor vehicles and non-road sources;
- At the Fort Collins and Greeley monitors, the largest contributors tend to be Larimer and Weld County motor vehicles, non-road sources, oil and gas sources, and Denver Metropolitan sources;
- The majority of the ozone formed is attributable to anthropogenic NOx emissions.

*DRAFT* – State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act Section 110(a)(2)(D)(i) – Interstate Transport Regarding 8-Hour Ozone, at p. 16.

These scientific conclusions call into question the overall direction and efficacy of the Division’s proposed Ozone Action Plan (“Plan”) and its costs, relative to the minimal ozone benefits it produces. Instead of aggressive regulation of mobile source emissions, such as early implementation of a Northern Front Range inspection and maintenance program, the Plan instead focuses once again on more of the same – oil and gas emission controls. Namely, it ratchets up the control requirements for condensate tank emissions and adds an expensive electronic surveillance requirement that is unnecessary because it is redundant and does not, by itself, produce any reduction in emissions. The Plan also features other objectionable elements, such as the deletion of the default emission factor from the regulations and applying its new restrictions to existing condensate tanks that are “modified” by recompleting the associated wells – even when such modification does not cause a net emission increase.

As Exhibit 1 to this Prehearing Statement demonstrates, there is no correlation between drilling activity, as reflected in well permits issued in the Wattenberg Field of the Northern Front Range, and corresponding ozone levels. This fact is further demonstrated by Exhibit 2, which also shows the significant decrease in VOC flashing emissions already achieved under the Ozone Early Action Plan, as revised. In fact, existing controls (75% systemwide reduction) have reduced flash emissions from the field to the equivalent of 1974 production levels. In other words, these controls have effectively wiped-out more than three decades of drilling activity.

Despite the expenditure of over \$30,000,000 by the industry to install some 3000+ control devices, the ozone reduction benefit has been negligible. Modeled improvements from even more stringent controls are in the 0.1 ppb range.<sup>1</sup> It is time for Colorado to focus its efforts to reduce ozone on the major contributors to ozone formation. In particular, given the finding that “the majority of the ozone formed is attributable to anthropogenic NOx emissions,” it is time for the state to fundamentally re-examine its strategy. Such reconsideration should include the NOx disbenefits from a requirement that will double the number of combustion devices in the Wattenberg Field, as well as the parallel CO<sub>2</sub> disbenefits as Colorado addresses greenhouse gases.<sup>2</sup>

### **B. A Systemwide Approach, as Opposed to the Threshold Approach Proposed in the Ozone Action Plan, Constitutes a More Efficient and Effective Method to Control Condensate Tank Flash Emissions**

COGA advocates retention of the existing systemwide approach to controlling condensate tank flash emissions because the systemwide approach has been proven to be effective in reducing emissions. The systemwide approach is favored because it provides operators with flexibility in meeting control requirements, including an incentive to “over-control” in order to maintain a compliance buffer. As a result, the major operators in the Wattenberg Field are currently achieving a more than 80% field wide reduction in emissions, exceeding the existing 75% control requirement. Moving to a threshold above which every individual tank must be controlled to a certain level takes away the operator’s ability to make strategic decisions regarding location and selection of emissions controls appropriate for particular tanks.

Another emissions reduction benefit from the systemwide approach occurs as older, marginal wells are packaged by larger companies and transferred to new operators. The new operator may acquire a set of wells and tanks with few or no controls because the previous operator was able to meet its systemwide requirement by controlling only its higher producing facilities. However, the new operator will be required to install controls on this set of previously uncontrolled wells to meet its own, separate systemwide requirement. COGA is aware of real world examples of this outcome, and requests that the Commission, by rule or policy, direct the Division to provide an appropriate grace period for such new operators to order, acquire and install the necessary emission controls.

Additionally, the threshold approach greatly increases the administrative and recordkeeping burden on both the Commission and the operators in at least two ways. First, it turns every instance of a control device outage into a potential enforcement event. Transforming every control device outage into a potential enforcement event will create an onerous burden for the Division and operators with no perceptible ozone reduction benefit. The threshold approach also changes the recordkeeping requirements for operators. Operators have invested in

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<sup>1</sup> Dixie Lee Ray, the former Governor of Washington and once head of the Atomic Energy Commission, had a favorite metaphor to illustrate what 1 ppb means: Governor Ray would explain that it is equivalent to one drop of vermouth in two railroad tank cars of gin – a very dry martini indeed.

<sup>2</sup> Noble Energy and Anadarko Petroleum Company presented detailed information regarding the CO<sub>2</sub> disbenefits at the July 8, 2008 Ozone Stakeholders Meeting. A summary of the disbenefits is available at the following link: <http://www.cdphe.state.co.us/ap/ozone/RegDevelop/GHGOzoneStakeholder.pdf> (last visited November 13, 2008).

developing systems and spreadsheets under the systemwide approach, and should not be forced into a new system that shows no ozone reduction benefit.

While COGA questions the necessity,<sup>3</sup> efficacy and cost-benefit of any increase in the required level of flash emission reductions, it is prepared to support a modest increase to 85% for 2010. COGA notes that, in conjunction with the removal of the existing 5 TPY APEN exemption, the universe of condensate tanks included in this enhanced control requirement would increase accordingly (all tanks > 1 TPY). The increase to an 85% standard, coupled with the increase in the universe of condensate tanks covered by the new standard, produces the same or greater reductions in emissions than the proposed Plan's 2010 results. The greater benefits of the 85% systemwide approach are demonstrated by the supplemental modeling on "Effects of Alternate Controls" conducted by ENVIRON and Alpine Geophysics, dated November 3. According to ENVIRON and Alpine Geophysics, the modeling shows both that an 85% systemwide control requirement generates "more VOC reductions" than the Plan's 2010 results and that the 85% systemwide control requirement "achieves the same ... 2010 ozone Design Values at the key RFNO and FTCW monitoring sites."<sup>4</sup>

***COGA urges the Commission to retain the existing systemwide control approach and to set the required reduction at 85% for 2010.***

### **C. Applicability to condensate tank "modifications."**

The current version of Section XII.B.11 in both the SIP and state-only versions of Regulation 7, states that "re-completing, re-fracturing or otherwise completing new wells" is a modification. Section XII.D.2.A requires installation of emissions controls for the first 90 days following re-fracing. The Division clearly proposes to capture "modified" condensate tanks under its threshold approach.

As an initial matter, COGA asserts that this requirement should only apply when such recompletion or re-fracing results in a net increase in tank emissions above its APEN level. While it is true that re-fracing or recompletion is generally done to increase production on the well, the increased production, and its correlated emissions increase, if any, is nearly always below the initial production of the well. Thus, only in rare cases will re-fracing or recompletion result in a net increase in emissions above what is already permitted to the well.

More importantly, should the Division agree to maintain the systemwide approach, or should the Commission retain it, this issue disappears as current production levels are always taken into account by the operators when making decisions regarding the number and placement of control devices to maintain compliance with the field wide requirement.

***COGA urges the Commission to adopt the systemwide approach that moots this issue.***

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<sup>3</sup> The state's base case modeling show ozone compliance without the necessity of any new controls. [Ken—did you have a document you wanted to cite here?]

<sup>4</sup> The scientific experts who conducted the analysis and modeling of the 85% systemwide standard are the same experts relied on to create the Emissions Inventory dated October 29, 2008. A summary of the modeling and conclusions on the 85% systemwide approach was presented to the Division staff on November 5, 2008. The summary was circulated to all parties by e-mail from Davis Graham & Stubbs, also on November 5, 2008.

**D. Electronic Surveillance is Expensive, Unnecessary, and Produces no Emissions Benefits.**

In its current draft, the Division proposes to require electronic surveillance in addition to auto-igniters on flares used to combust condensate tank emissions. The required electronic surveillance requirements do not contribute to any emissions control or reduction; rather, the electronic surveillance “continuously monitors the pilot flame presence in a combustion device.” Regulation 7, Section XII.B.6. In other words, the sole purpose of the electronic surveillance requirement is to monitor the operation of the auto-igniter, which is the device that provides the actual emissions benefit.

The auto-igniters are not prone to failure and are highly effective. Moreover, the Division proposes to require weekly inspection of the auto-igniters, thus minimizing any downtime in the rare event that an auto-igniter fails. See Section X.II.E. In addition to being redundant (because auto-igniters rarely fail) and unnecessary (because they do not deliver any emissions benefits), the electronic surveillance devices are expensive.<sup>5</sup> The increased cost per tank, significant for the large operators, will be potentially crippling for smaller operators who will not be able to negotiate for the same discounts in purchase, installation, and maintenance costs. This proposal represents regulatory overkill and does not meet any rational cost-benefit test.

The redundant electronic surveillance requirement is also ill-advised because it will generate mountains of data to be reported by producers and recorded by the Division. The Division has never fully explained how it will meet that administrative burden or what, precisely, it intends to do with all the data produced and reported. Finally, it has been suggested in stakeholder meetings that downtime of electronic surveillance equipment could, alone, result in compliance issues, even where the flare was actually functioning. COGA recognizes the Division’s concern that significant emissions might result if an auto-igniter on a large condensate tank fails, but electronic surveillance requirement is far too costly a solution to its concern. In lieu of this excessive and expensive requirement, COGA would support a daily inspection requirement for the largest condensate tank battery emitters (> 100TPY).

*COGA urges the Commission to reject the requirement for electronic surveillance.*

**E. Pneumatic Devices.**

COGA supports the requirement that “high-bleed” valves and pneumatic devices be replaced with low-bleed replacements or retrofits. However, COGA agrees with the Division’s proposal to make this a “state-only” requirement so as to reduce the inspection and recordkeeping burden that may result from inclusion in the SIP.

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<sup>5</sup> AnadarkoPetroleum estimates that its cost to install the electronic surveillance devices will exceed \$8 million. Noble Energy estimates that its annual maintenance costs will increase by \$4.66 million if auto-igniters and electronic surveillance are required. See Comments of Anadarko Petroleum, et al, at A-3 and Tab A-2, submitted July 21, 2008. The comments are available on the Division’s website, or at the following link: [http://www.cdphs.state.co.us/ap/ozone/RegDevelop/CommentResponses/Anadarko\\_Noble\\_Williams\\_Whiting\\_Comments\\_7-21-08.PDF](http://www.cdphs.state.co.us/ap/ozone/RegDevelop/CommentResponses/Anadarko_Noble_Williams_Whiting_Comments_7-21-08.PDF) (last visited November 13, 2008).

*COGA supports a state-only requirement for replacement of high-bleed pneumatic devices.*

**F. Statewide RICE.**

The Division proposes to extend the control requirements applicable to existing RICE in the non-attainment area statewide. No modeling support exist for this extension, and COGA opposes it.

*COGA urges the Commission to defer consideration of statewide RICE controls for future ozone and/or regional haze rulemaking, and in doing so, to address all RICE, not just those employed in the oil and gas sector.*

**G. Retention of Emission Factor.**

The Division proposes to remove the default condensate tank emission factor adopted pursuant to Commission rulemaking from the regulations. The stated purpose of providing flexibility to adopt a different emission factor for other basins makes no sense in the context of adopting a plan to control ozone in the non-attainment area. Aside from the issue of whether such removal is proper under the rulemaking notice for the Ozone Action Plan, no evidence has been provided during the course of stakeholder discussions supporting this proposal. Moreover, the EPA has expressed its objection to such removal. In comments submitted to the Division on November 4, 2008, the EPA stated “[Section XII.C.2.A.] deletes the 13.7 factor which was a significant compromise, resulting from many hours of negotiations between EPA and the State, and substitutes a factor to be established by the Division. As currently structured, this change is not acceptable to the EPA.” EPA Comments at 2, submitted November 4, 2008, available at <http://www.cdphe.state.co.us/ap/ozone/RegDevelop/CommentResponses/EPAComments10-08.pdf> (last visited November 13, 2008).

*COGA agrees with the EPA and urges the Commission to retain the existing emission factor for the Wattenberg Field in its regulations.*

**II. Witnesses, Time for Presentation**

COGA does not intend to sponsor witnesses apart from its member companies who are parties to this rulemaking. COGA requests ten minutes to make a statement through its undersigned counsel.

**II. Conclusion.**

COGA welcomes opportunity to submit its concerns and suggestions for consideration by the Commissioners. It also appreciates the work of the Division staff and looks forward to continued participation in the these proceedings.

Respectfully submitted this 13<sup>th</sup> day of November, 2008

*/s/ Ken Wonstolen*

Fulbright & Jaworski L.L.P.  
Attorneys for the Colorado Oil & Gas Association.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Prehearing Statement of the Colorado Oil & Gas Association in the Matter of Proposed Revisions to Ambient Air Quality Standards Regulation, Regulation Numbers 3, 7, and 11 for the Denver Metropolitan & North Front Range Area Ozone Action Plan was emailed to the following on the 13<sup>th</sup> day of November, 2008.

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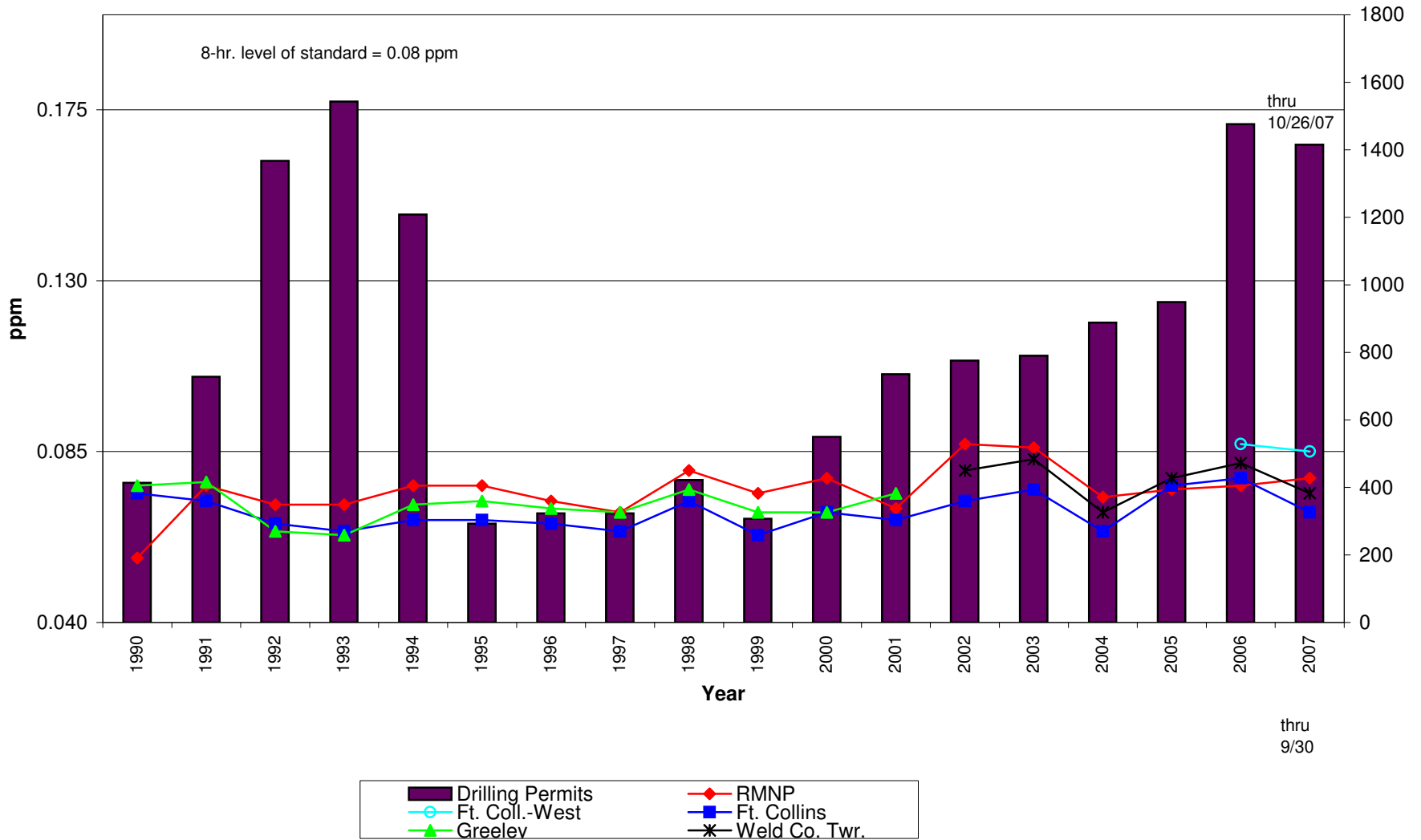
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I further certify that a true and exact copy of the foregoing Prehearing Statement of the Colorado Oil & Gas Association in the Matter of Proposed Revisions to Ambient Air Quality Standards Regulation, Regulation Numbers 3, 7, and 11 for the Denver Metropolitan & North Front Range Area Ozone Action Plan was served by email and regular U. S. mail upon the following on the 13<sup>th</sup> day of November, 2008.

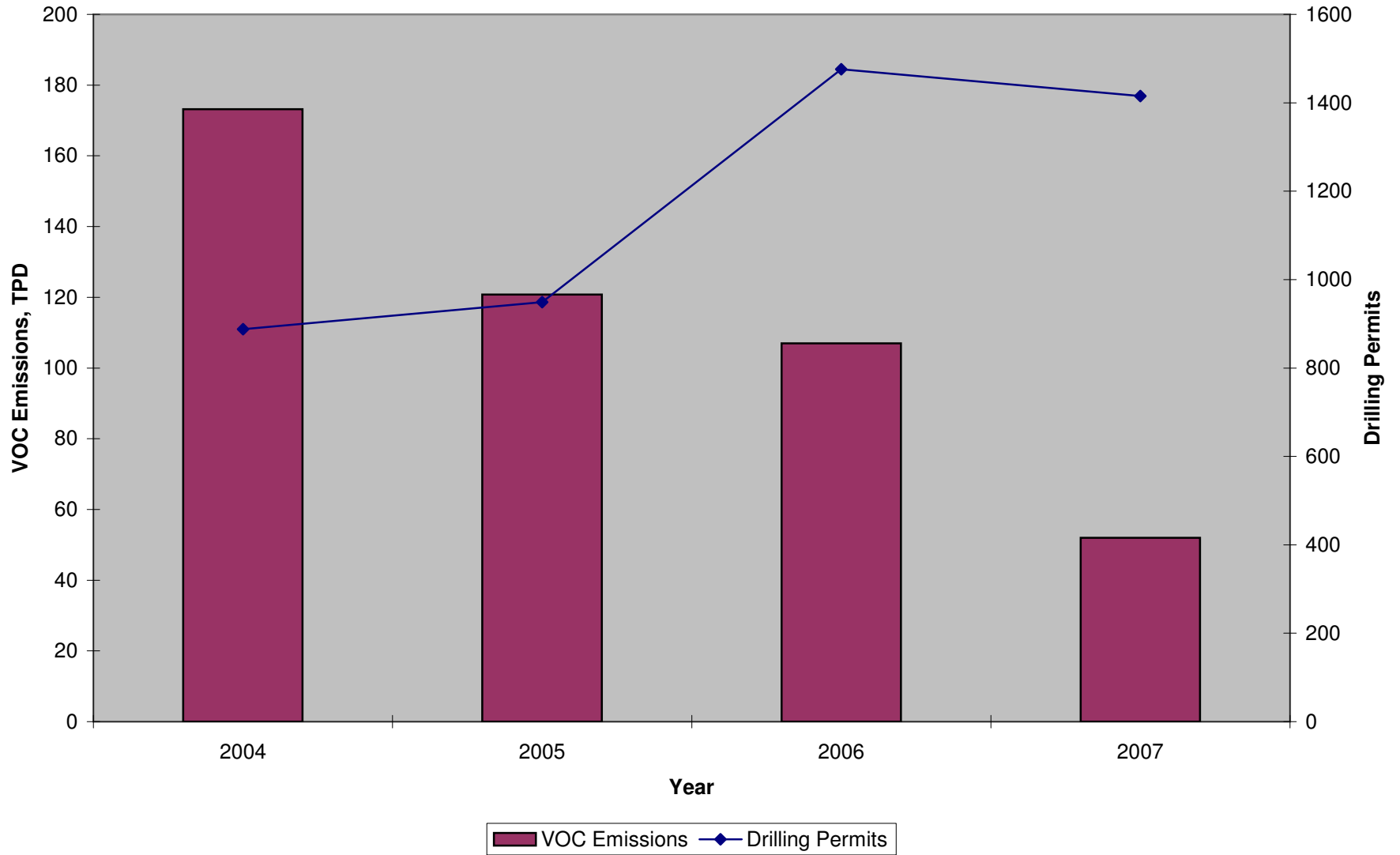
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*/s/ Ken Wonstolen*

### Historic Drilling Permits (Adams, Boulder, Larimer & Weld) and 8-hour Ozone --- 4th Maximum, Northern Colorado



### Drilling Permits<sup>1</sup> vs. VOC Flashing Emissions



<sup>1</sup>Drilling permits for Adams, Boulder, Larimer Weld counties