

Colorado's air-monitoring settlement with Suncor is flawed prioritizes energy company's interests, environmentalists say

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Six environmental groups on Feb. 27 filed a legal brief saying they do not support a recent settlement between Colorado and Suncor Energy

over an air-quality monitoring program at the company's Commerce City oil refinery.

The six groups said the agreement is flawed and they were not given enough time to review and respond before the settlement was filed earlier this month.

The agreement will cause more delays in getting the fenceline air-monitoring program started and it will not cover the entire boundary of Suncor's property, according to the groups' response to a settlement motion filed in Adams County District Court. The groups also questioned whether the Colorado Department of Public Health and Environment will be able to enforce the agreement, particularly a new requirement for Suncor to monitor for six pollutants rather than three.

"The [settlement agreement](#) adopts a fenceline monitoring plan that is imperfect, prioritizing Suncor's interests over the communities' concerns," said Robert Rigonan, an associate attorney with Earthjustice's Rocky Mountain Office, who represented the six groups in court.

"While it is a modest stride toward the accountability promised to these communities by the Colorado legislature, more must be done to ensure the plan makes a meaningful impact on the ground."

The lawsuit settlement was announced on Feb. 5 as a part of an agreement that also brought a \$10.5 million penalty for Suncor for spewing excessive amounts of toxic chemicals into the air.

Michael Ogletree, director of the state's Air Pollution Control Division, said the division worked hard to get the best possible outcome through a settlement rather than wait for litigation to unfold in the courts.

"These new fenceline monitoring requirements mean [local communities](#)

surrounding Suncor will have access to more information on air quality than ever before," Ogletree said. "The Air Pollution Control Division prioritized getting communities the information they need without further delay."

The Colorado legislature in 2021 required Suncor and three other [industrial facilities](#) to install an air monitoring system around their borders to measure for hydrogen sulfide, hydrogen cyanide and benzene.

Suncor was the first company to put a fence-line monitoring program in place, but the Canadian oil and gas company did not like the plan the state health department wrote for the refinery because it went above the minimum state requirements for pollution monitoring. So Suncor sued Colorado's environmental regulators in 2022..

The six environmental groups—GreenLatinos, Elyria Swansea Neighborhood Association, Healthy Air and Water Colorado, Sierra Club and Womxn from the Mountain—signed on the lawsuit as intervenors, which would give them the right to file briefs and bring evidence to trial. They were represented by Earthjustice.

The settlement lacks enforcement teeth because some conditions were written into the agreement, but not the actual air monitoring plan, said Ian Coghill, an Earthjustice lawyer who worked on the case. Because of that, the state would have to sue Suncor for breach of contract should the company decide to ignore parts of the deal.

"That's a very different world than enforcing under the laws," he said.

People who live around the Suncor refinery want the air monitoring so they can understand what pollutants they breathe and how much they are breathing. There are multiple air monitoring programs in place around the property.

The environmental groups also criticized a gap in coverage along Brighton Boulevard, saying that would make the air monitoring data incomplete. But Ogletree said structural engineers determine it would not be possible to build the air monitoring platforms on the north side of the road because of the geography.

"We're taking a comprehensive approach to holding Suncor accountable and protecting clean air for people who live and work near the facility," Ogletree said. "We'll continue working on more ways to better understand and reduce Suncor's air pollution, and we welcome community input as we create a path forward."

Coghill said the six groups were disappointed that they were left out of key moments in settlement talks. Early on, the state health department would have conversations with them, he said, but the [environmental groups](#) had not heard much about negotiations in the months leading up to the settlement.

They were sent a massive [monitoring](#) plan and legal agreement 24 hours before the deal was finalized and had no time to weigh in, Coghill said.

"We wanted to make sure our concerns with the process and the way the settlement happened were put on the record," he said of the court filing. "But it's unlikely it will have any real impact on the settlement itself."

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