

# Distilling Efficiency

## Colorado's quest to refine its permitting process

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Colorado has made notable efforts to streamline its environmental permitting processes over the past few decades through initiatives like the Colorado Joint Review Process (CJRP), Colorado Coordination Council, and the Pits and Peeves program. However, challenges remain in establishing formal coordination mechanisms that are sufficiently attractive to potential users to ensure their utilization and longevity.

The 2015 Colorado Water Plan provided a roadmap for some further permit reforms, but the legislature has yet to act on these recommendations, representing a missed opportunity to address the state's pressing water infrastructure needs. Despite this, Colorado's executive agencies have demonstrated an ability to engage stakeholders using the "Lean methodology," as well as to apply process improvement tools, leverage technology, and coordinate with one another and with federal agencies using memoranda of understanding. These reforms have helped make progress ensuring the state's permitting system is efficient, transparent, and protective of public health and the environment.

Despite some advancements, however, recent legislative and regulatory changes aimed at the oil and gas industry have created a more onerous and costly permitting regime that risks hampering the development of certain energy resources. Continued focus on implementing the Water Plan's permit streamlining agenda, coupled with reforms based on lessons learned from previous red tape cutting efforts, could yield significant benefits for Colorado in the coming years.

### Colorado's Joint Review Process and Coordination Council

Colorado has a history of attempting to streamline and coordinate the complex environmental permitting process for projects in the state, particularly those related to natural resource development. Two notable efforts in this regard were the Colorado Joint Review Process (CJRP) and the Colorado Coordination Council. However, both initiatives struggled to achieve their intended goals and were ultimately allowed to sunset by the state legislature.

The CJRP was first created by the General Assembly in 1983 with the aim of improving the permitting process, primarily for large energy, water and mining projects.<sup>1</sup> It was a voluntary process that allowed project sponsors to submit information to the Colorado Department of Natural Resources (DNR), which would then work with



various federal, state, and local regulatory authorities to coordinate their permitting processes. The intent was to provide a more coordinated approach for development projects requiring multiple permits.

<sup>1</sup> State of Colorado, "2015: Colorado's Water Plan," 2015, p. 9-39, <https://dnrweblink.state.co.us/cwcbsearch/0/edoc/201074/CWPFinalPlan2016.pdf?searchid=515f53d7-aaff-4c6e-89c2-cd632d6915d2>.



However, a 1995 sunset review of the CJRP found that it was significantly underutilized.<sup>2</sup> While nine projects entered the process, most did not progress beyond the initial review stage, and none were seen through to completion under the CJRP framework. As a result, the legislature adopted the recommendation to sunset the CJRP in 1996.<sup>3</sup>

In 2003, House Bill 03-1323 resurrected the concept as the Colorado Coordination Council, envisioned as a “one-stop shop” for permit coordination.<sup>4</sup> Proponents argued that while the CJRP had been a good idea, it simply hadn’t been utilized effectively. The Council aimed to increase efficiency by coordinating public hearings and technical reviews to avoid duplication.

Like its predecessor, the Council was voluntary and only convened at the request of a project sponsor.<sup>5</sup> It was designed to bring together representatives from local, state and federal agencies that would be involved in permitting for a particular project. The Council would then establish a timetable, organize joint meetings, and facilitate timely decisions on permits and approvals. Costs were to be paid by the project sponsors.<sup>6</sup>

Despite these provisions, the Council process was never utilized between its creation in 2003 and a 2012 sunset review conducted by the Department of Regulatory Agencies (DORA). DORA found that very few stakeholders were even aware of the Council’s existence, and that the DNR had not conducted any outreach to inform potential sponsors about it. No project sponsor had ever requested to use the Council process.<sup>7</sup>

The review also revealed that a considerable amount of informal coordination was already occurring among state agencies outside the Council framework, particularly between DNR and the Colorado Department of Public Health and Environment (DPHE). To the extent possible, state agencies were also coordinating with federal and local counterparts.<sup>8</sup>

Given this lack of utilization and the evidence of informal coordination, DORA recommended sunsetting the Council in 2012. The legislature allowed the Council statutes to expire in 2013, effectively repealing the program.<sup>9</sup>

### Colorado’s water plan: An opportunity for permit reform

In May 2013, Colorado Governor John Hickenlooper issued an executive order directing the Colorado Water Conservation Board (CWCB) to commence work on a draft Colorado Water Plan.<sup>10</sup> The order came in response to growing concerns about the state’s projected water supply gap and the need for a comprehensive strategy to secure water for the state in the future.

The resulting 2015 Colorado Water Plan, released in final form in November 2015,<sup>11</sup> dedicated an entire subsection (Chapter 9.4) to the topic of creating a “Framework for a More Efficient Permitting Process.” This section acknowledged the complex, costly and time-consuming nature of obtaining the various federal, state and local permits required for water projects in Colorado. It also summarized the efforts discussed above to coordinate permitting, including the defunct CJRP and Colorado Coordination Council.

Chapter 9.4 of the Water Plan laid out several concrete ideas for permit reform. These included:

- Developing a permitting handbook.
- Hosting “Lean” events with permitting agencies and stakeholders to identify ways to eliminate redundancies and improve clarity.
- Having state agencies participate earlier in the process as cooperating agencies.
- Identifying lead state agencies where multiple agencies have overlapping jurisdiction.

<sup>2</sup> Department of Regulatory Agencies, “2012 Sunset Review: Colorado Coordination Council,” Office of Policy, Research and Regulatory Reform, October 15, 2012, p. 4, <http://hermes.cde.state.co.us/drupal/islandora/object/co:11832/datastream/OBJ/view>.

<sup>3</sup> Department of Regulatory Agencies, “2012 Sunset Review: Colorado Coordination Council,” p. 4.

<sup>4</sup> Department of Regulatory Agencies, “2012 Sunset Review: Colorado Coordination Council,” p. 4.

<sup>5</sup> Department of Regulatory Agencies, “2012 Sunset Review: Colorado Coordination Council,” p. 6.

<sup>6</sup> Department of Regulatory Agencies, “2012 Sunset Review: Colorado Coordination Council,” p. 5.

<sup>7</sup> State of Colorado, “2015: Colorado’s Water Plan,” p. 9-39.

<sup>8</sup> Department of Regulatory Agencies, “2012 Sunset Review: Colorado Coordination Council,” p. 8.

<sup>9</sup> State of Colorado, “2015: Colorado’s Water Plan,” p. 9-39.

<sup>10</sup> Governor John Hickenlooper, Colorado Executive Order D 2013-005, “Directing the Colorado Water Conservation Board to Commence Work on the Colorado Water Plan,” May 14, 2013, <https://spl.cde.state.co.us/artemis/goseerials/go4213internet/go42132013005internet.pdf>.

<sup>11</sup> State of Colorado, “2015: Colorado’s Water Plan,” pp. 9-34 – 9-52.

- Exploring additional staff and resources for state permitting.
- Working with local governments and stakeholders on how the state could express support for projects that have completed key permitting steps.
- Providing state facilitation services for stakeholder engagement prior to formal permit applications being submitted.

Some of these items were taken up. For example, the Lean process was utilized extensively by state agencies in subsequent years. Lean is a management system aimed at creating value for “customers” through bolstering efficiencies and eliminating waste. Lean process improvement events, also known as Kaizen events, are short-term, highly focused efforts to rapidly diagnose problems and redesign practices to eliminate backlogs and bottlenecks. Agencies identify a specific process or program need, convene a team of frontline employees and managers, intensively map the current state of play, and brainstorm solutions to be implemented within a relatively short timeframe.

Additionally, a handbook on water project permitting was created.<sup>12</sup> However, despite the constructive recommendations, the Colorado legislature did not act in the subsequent years to enact the permit streamlining reforms called for in the Water Plan. The lack of action was highlighted in an October 2023 letter from Colorado Attorney General Phil Weiser to the state’s Colorado River Drought Task Force.<sup>13</sup>

In his letter, the Attorney General noted that while the “2015 Colorado Water Plan identified permitting reform as a State priority,” in the eight years since the plan’s release, “the General Assembly has not acted on this matter.” He went on to recommend that the Task Force consider options for “responsible permitting reform that can streamline permitting and timeframes for water-related projects”.

## The Pits and Peeves initiative: Cutting red tape in environmental permitting

The Water Plan was not the only action Gov. Hickenlooper took with respect to permitting reform. Throughout his two terms in office, Hickenlooper’s administration undertook an effort dubbed the “Pits and Peeves” initiative to identify and eliminate unnecessary red tape and regulatory inefficiencies across Colorado state government.<sup>14</sup> The effort began with a series of roundtable discussions held around the state where the Governor and agency leaders met with over 100 business groups, local governments, advocacy organizations and citizens to hear first-hand about the regulatory burdens and roadblocks they encountered when interacting with the state bureaucracy.<sup>15</sup>

These sessions revealed widespread issues like a lack of customer service orientation in government agencies, delays in permitting and licensing, duplication between agencies, and outdated rules not reflective of current realities.<sup>16</sup> Participants also offered many constructive ideas for improvement, such as increasing the use of technology, instituting regular rule reviews, and breaking down silos between agencies.<sup>17</sup>

Armed with this feedback, the Hickenlooper administration went to work implementing both targeted fixes and systemic reforms to Colorado’s regulatory landscape. As of November 2016, state agencies had reviewed roughly 87% of all their rules—over 22,000 in total—and eliminated nearly 4,500 of them.<sup>18</sup> Six thousand rules were modified, with hundreds of policies streamlined and modernized.<sup>19</sup> Among other reforms, new online tools were launched to simplify license and permit applications and allow electronic filing of documents, and formal processes were established for ongoing periodic reviews of existing regulations to ensure they remain relevant and effective over time.<sup>20</sup>

<sup>12</sup> State of Colorado, *Handbook: Colorado Water Supply Planning and Permitting*, October 2017, <https://dnrweblink.state.co.us/cwcb/0/doc/204742/Electronic.aspx?searchid=6a096399-9602-4dad-953f-32e94af10fe6>.

<sup>13</sup> Colorado Office of the Attorney General, Letter from Phil Weiser to Kathy Chandler-Henry, October 25, 2023, <https://cprdroughttaskforce.com/Content/Resources/Additional/AG%20Letter%20to%20CO%20River%20Drought%20Taskforce%20-%2010%2025%202023.pdf>.

<sup>14</sup> James Broughel and Dustin Chambers, “Learning from State Regulatory Streamlining Efforts,” National Governors Association, July 1, 2022, <https://www.nga.org/publications/learning-from-statereregulatory-streamlining-efforts/>.

<sup>15</sup> Department of Regulatory Agencies, *Cutting Red Tape in Colorado State Government: Omnibus report to the Governor on the “Pits and Peeves” Roundtables Initiatives*, State of Colorado, December 2011, p. 2, <http://media.bizj.us/view/archive/denver/pdf/PitsAndPeevesReport.pdf>.

<sup>16</sup> Department of Regulatory Agencies, *Cutting Red Tape in Colorado State Government: Omnibus report to the Governor on the “Pits and Peeves” Roundtables Initiatives*, pp. 4-6.

<sup>17</sup> Department of Regulatory Agencies, *Cutting Red Tape in Colorado State Government: Omnibus report to the Governor on the “Pits and Peeves” Roundtables Initiatives*, pp. 15-19.

<sup>18</sup> Department of Regulatory Agencies, *Regulatory Reform in Colorado: 2017 Program Report*, 2017, p. 5, [https://drive.google.com/file/d/0BwxlmqrWo\\_SFdGx3OGExSHhBRTQ/view?resourcekey=0-kyBq3JWAPzmSxB4Cf9Sffw](https://drive.google.com/file/d/0BwxlmqrWo_SFdGx3OGExSHhBRTQ/view?resourcekey=0-kyBq3JWAPzmSxB4Cf9Sffw).

<sup>19</sup> Department of Regulatory Agencies, *Regulatory Reform in Colorado: 2017 Program Report*, pp. 5-6.

<sup>20</sup> Department of Regulatory Agencies, *Regulatory Reform in Colorado: 2017 Program Report*, p. 5.

The Pits and Peeves initiative yielded some notable successes in reforming Colorado’s environmental permitting processes. For example:

- The Division of Reclamation, Mining and Safety launched an e-permitting system to allow online submission and tracking of mine permit applications, improving timeliness, eliminating incomplete applications, reducing data entry errors, and saving staff time.<sup>21</sup> The e-permit portal also hosts a handbook with instructions for users.<sup>22</sup>
- The Department of Natural Resources established uniform procedures to reduce the time it takes to resolve alleged violations from the Oil and Gas Conservation Commission. A target goal of 90 days was set for resolving notices of alleged violations.<sup>23</sup>
- The Departments of Natural Resources and Public Health and Environment established a new process to coordinate their reviews of Fish and Wildlife Mitigation Plans and Clean Water Act Section 401 Water Quality Certifications, eliminating duplication and conflicting requirements that often drove up costs and caused delays for water utilities.<sup>24</sup>
- The Colorado DPHE utilized Lean process improvement to increase efficiency in its wastewater application process, design review process, and air permitting. The Air Pollution Control Division also took steps to hire additional permit engineers and modelers to address the backlog of permits, especially in oil and gas, with the goal of eliminating the oil and gas permit backlog entirely.<sup>25</sup>
- The Colorado Environmental Online Services system launched online applications and permitting for many programs in the Air Pollution Control Division, Hazardous Materials Waste Management Division, and Water Quality Control Division, with more planned in the future.<sup>26</sup>

## Streamlining at the Colorado Department of Public Health and Environment

In recent years, the Colorado DPHE has implemented several process improvements and tools to make its air permitting system more transparent and user-friendly for regulated entities.<sup>27</sup>

One resource is the Air Pollutant Emission Notice (APEN)/Permit Exempt Checklist. This online checklist allows businesses to determine if they qualify for an exemption from air permitting requirements, based on their facility’s characteristics.<sup>28</sup> By answering a short set of questions outlined on a single page,<sup>29</sup> businesses can ascertain whether they need to submit an APEN to the Air Pollution Control Division, providing upfront clarity and potentially saving time and money.

DPHE also maintains a spreadsheet on its website listing the appropriate agency contact person for each type of air permit.<sup>30</sup> This includes phone numbers and email addresses for different permit categories like construction permits, operating permits, oil and gas permits, and more. Having a detailed directory of program contacts enables permit applicants to reach the proper staff, reducing miscommunication and delays.

Finally, the Department has created an online searchable library of air permits issued.<sup>31</sup> Interested parties can query by company name, location, permit type, and date to locate and review documents. The portal enhances transparency by allowing stakeholders and the public to readily access permit records for industrial facilities in their area.

<sup>21</sup> Department of Regulatory Agencies, *Cutting Red Tape in Colorado State Government: Pits and Peeves 2.0 – Progress in Motion*, State of Colorado, 2014, p. 21, <https://drive.google.com/file/d/0B8bnvcf083ydVHdZM09QYUkVFE/view?resourcekey=0-gJ6vJ03VdQzLRCuYy7hLRw>; see also “ePermitting,” Colorado Division of Reclamation, Mining and Safety, accessed April 10, 2024, <https://drms.colorado.gov/information/epermitting>.

<sup>22</sup> Colorado Division of Reclamation, Mining and Safety, *User’s Manual for the Colorado Division of Reclamation, Mining and Safety ePermitting Program*, December 2020, [https://docs.google.com/document/d/1ywevyP\\_24Art7ozxwctS\\_gx11nAhbNRfwStgzoqJlc/edit](https://docs.google.com/document/d/1ywevyP_24Art7ozxwctS_gx11nAhbNRfwStgzoqJlc/edit).

<sup>23</sup> Department of Regulatory Agencies, *Regulatory Reform in Colorado: 2017 Program Report*, p. 11.

<sup>24</sup> Department of Regulatory Agencies, *Regulatory Reform in Colorado: 2017 Program Report*, p. 11.

<sup>25</sup> Department of Regulatory Agencies, *Cutting Red Tape in Colorado State Government: Omnibus report to the Governor on the “Pits and Peeves” Roundtables Initiatives*, p. 28.

<sup>26</sup> Department of Regulatory Agencies, *Regulatory Reform in Colorado: 2017 Program Report*, p. 15.

<sup>27</sup> The Environmental Council of the States, *ECOS Green Report – Streamlining Permitting: An Inventory of State Environmental Agency Online Tools and Resources*, August 2017, p. 6, <https://www.ecos.org/documents/ecos-green-report-streamlining-permitting-an-inventory-of-state-environmental-agency-online-tools-and-resources/>.

<sup>28</sup> “Common APEN or air permit exemptions,” Colorado Department of Public Health & Environment, accessed April 10, 2024, <https://cdphe.colorado.gov/apens-and-air-permits/common-apen-or-air-permit-exemptions>.

<sup>29</sup> Colorado Department of Public Health and Environment, “Air Pollutant Emission Notice (APEN)/Permit Exempt Checklist,” Air Pollution Control Division Form APCD-106, Ver. 12-Dec-2022, <https://cdphe.colorado.gov/apens-and-air-permits/common-apen-or-air-permit-exemptions>.

<sup>30</sup> “Clean water permitting sectors,” Colorado Department of Public Health & Environment, accessed April 10, 2024, <https://cdphe.colorado.gov/clean-water-permitting-sectors>.

<sup>31</sup> “Search,” Colorado Department of Public Health & Environment, accessed April 10, 2024, <https://oitco.hylandcloud.com/CDPHERMPublicAccess/index.html>.

## Memoranda of understanding: A best practice for permit streamlining

One strategy Colorado agencies have employed to streamline energy and environmental permitting is the use of memoranda of understanding (MOUs) between multiple state agencies or between state and federal entities. MOUs provide a structured framework for agencies to formalize cooperative arrangements, establishing binding procedures, and time frames. The process of developing MOUs also fosters inter-agency dialogue and helps build shared expectations.

Colorado has executed or drafted several significant MOUs in recent years aimed at making permitting more efficient and predictable. In response to a Lean event,<sup>32</sup> one MOU addresses intra-state coordination on water supply projects. In 2017, DNR and the Colorado DPHE finalized an agreement to harmonize their roles in the review of Fish and Wildlife Mitigation Plans and 401 Water Quality Certifications.<sup>33</sup> The MOU commits the agencies to early coordination on methodology, ongoing communication on water quality issues, joint document reviews where feasible, and collaborative problem-solving when conflicts arise.

The Colorado DNR and the US Forest Service signed an agreement to coordinate their respective authorities for projects on federal lands in the state.<sup>34</sup> DNR also has an MOU with the Federal Energy Regulatory Commission to cooperate on permitting for small hydropower projects.<sup>35</sup>

Additionally, DNR participated in an extended dialogue with the US Environmental Protection Agency and Army Corps of Engineers on better aligning federal and state reviews of water supply projects. Known as the Collaborative Approach to Water Supply (CAWS) Permit Evaluation, this process yielded a draft MOU specifying that water conservation would be factored into demands during the project purpose and need phase, rather than considered as an alternative.<sup>36</sup> While it appears the CAWS MOU was not finalized (based on a lack of information online), the inter-agency engagement that went into its development may nonetheless encourage future

cooperation amongst these agencies. This represents progress given the divisive nature of many water infrastructure projects.<sup>37</sup>

A final example comes from the Division of Reclamation, Mining and Safety (DRMS) within DNR. DRMS has entered into MOUs with the Bureau of Land Management, US Forest Service, US Department of Energy, and other state agencies to coordinate mine permitting, inspections, enforcement, and reclamation for coal operations. Like DPHE,<sup>38</sup> DRMS hosts its MOUs in a single online repository, where they are easily accessible to the public.<sup>39</sup> The DRMS MOUs spell out each agency's jurisdiction and commit them to joint consultations, information sharing, and minimizing duplication.

## Counterproductive oil & gas reforms

In recent years, Colorado has enacted a series of legislative and regulatory changes that have fundamentally altered the state's approach to oil and gas development, with significant implications for the industry's ability to efficiently obtain permits and operate. Senate Bill 19-181,<sup>40</sup> passed in 2019, marked a pivotal shift in the mission of the Colorado Oil and Gas Conservation Commission (COGCC), now known as the Energy and Carbon Management Commission (ECMC) as of 2023.<sup>41</sup> The law redirected the agency's focus from fostering responsible energy development to regulating the development and production of natural resources in the state and prioritizing public health, safety, welfare, and environmental protection.<sup>42</sup>

This philosophical reorientation has translated into a more complex and costly permitting regime for oil and gas operators. The ECMC and other state agencies have promulgated a litany of new regulations in the wake of SB19-181 that have dramatically increased compliance costs. Operators must now pay considerably more to obtain permits that are harder to secure. According to industry estimates, "mission change" rulemakings at the COGCC have saddled operators with an additional

<sup>32</sup> Department of Regulatory Agencies, Regulatory Reform in Colorado: 2017 Program Report, p. 11.

<sup>33</sup> The Colorado Department of Public Health and Environment and the Colorado Department of Natural Resources, "Memorandum of Understanding for Water Supply Projects," June 2017, <https://oitco.hylandcloud.com/cdphe/mpop/docpop/docpop.aspx?clienttype=activex&docid=22759824>.

<sup>34</sup> State of Colorado and U.S. Department of Agriculture, Memorandum of Understanding, n.d., <https://www.fs.usda.gov/sites/default/files/MOU-CO-USDA.pdf>.

<sup>35</sup> The Federal Energy Regulatory Commission and the State of Colorado through the Governor's Energy Office, "Memorandum of Understanding to Streamline and Simplify the Authorization of Small Scale Hydropower Projects," August 24, 2010, <https://www.ferc.gov/media/mou-2010-state-colorado>.

<sup>36</sup> State of Colorado, "2015: Colorado's Water Plan," p. 9-40.

<sup>37</sup> Mark Lorie, Bill Werick, and John Sanderson, "Collaborative Modeling for Water Supply Controversies in Colorado: Technical Challenges and Lessons Learned," in *World Environmental and Water Resources Congress 2010: Challenges of Change*, Apr 26, 2012, [https://doi.org/10.1061/41114\(371\)224](https://doi.org/10.1061/41114(371)224).

<sup>38</sup> "SB 89-181: Implementing agencies memoranda of agreement," Colorado Department of Public Health & Environment, accessed April 10, 2024, <https://cdphe.colorado.gov/sb-89-181-implementing-agencies-memoranda-of-agreement>.

<sup>39</sup> "Memorandum of Understanding Documents," Colorado Division of Reclamation, Mining and Safety, accessed April 10, 2024, <https://drms.colorado.gov/programs/minerals-regulatory-program/memorandum-of-understanding-documents>.

<sup>40</sup> Colorado S.B. 19-181 — Protect Public Welfare Oil And Gas Operations, 2019 Regular Session, <https://leg.colorado.gov/bills/sb19-181>.

<sup>41</sup> Colorado S.B. 23-285 — Energy And Carbon Management Regulation In Colorado, 2023 Regular Session, <https://leg.colorado.gov/bills/sb23-285>.

<sup>42</sup> Colorado Revised Statutes § 34-60-102(1)(a)(l).

\$260 million in annual costs.<sup>43</sup> Permitting fees have risen sharply, with the mill levy (a conservation fee placed on oil and gas production, based on production volume and price)<sup>44</sup> nearly doubling from 0.7 mills in 2018 to 1.5 by 2020.<sup>45</sup> A mill is equal to a tenth of a cent, meaning that 1.5 mills is 0.15% of the market value of production.

The introduction of further environmental justice considerations and enhanced public participation requirements in permitting decisions has created new avenues for project opponents to challenge development.<sup>46</sup> While some time constraints are being imposed on permit approvals, technical reviews now have a subjective element that may afford third parties greater influence over outcomes.<sup>47</sup>

More broadly, a raft of climate-oriented bills advanced by Colorado lawmakers in 2023 extends beyond oil and gas to impose mandates on numerous sectors of the economy, from agriculture to building codes to labor.<sup>48</sup> Consequently, Colorado’s oil and gas industry remains depressed as operators must navigate a gauntlet of requirements and reviews to secure approval to drill. At the heart of this process are Forms 2 and 2A. The Form 2, also known as the Application for Permit to Drill (APD), is the key permit needed before an operator can commence downhole well construction.<sup>49</sup> The Form 2A, or Location Assessment, is a prerequisite for building the well pad and associated facilities.<sup>50</sup> Depending on the well’s location, the ECOMC may attach special protective conditions to the Form 2A approval or use the information provided in the Form 2A to determine whether additional conditions should be added to the APD.

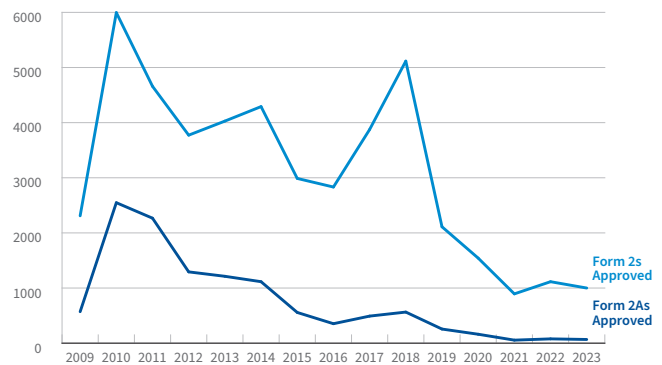
In recent years, the number of approved APDs has fallen precipitously as Colorado’s regulatory climate has grown more stringent (see figure 1). The slowing pace of permit approvals threatens to constrain the industry’s ability to maintain or grow production in the state, even as energy demand rises. While Colorado’s leaders profess a commitment to confronting climate change, the state’s increasingly onerous regulatory regime risks hampering the development of natural gas, a lower-carbon fuel that

can help reduce emissions in the near term as other technologies mature.

**Figure 1**

**Colorado Oil and Gas Well Permit Approvals**

Form 2As and 2s Approved, 2009 to 2023



Source: Colorado Energy & Carbon Management Commission

**Recommendations for future permit streamlining in Colorado**

Although Colorado has made important strides in reforming its environmental permitting processes, official government reports and stakeholder feedback suggest that outstanding issues exist with regard to public input, procedural complexities, permit timelines, and state-federal-local coordination, which could yield further improvements.<sup>51</sup>

Building on the progress that has been made over the past decade, Colorado has several opportunities to further advance its regulatory reform agenda. First, the Colorado General Assembly should act on the recommendations in the Colorado Water Plan and the recent advice from the state Attorney General to enact meaningful legislative reforms. Statutory changes could shorten water permitting timeframes, clarify agency roles, and establish firm deadlines for permit decisions. The Water Plan, developed through an extensive stakeholder

<sup>43</sup> “COGA Fact Sheet: Regulatory Costs,” Colorado Oil & Gas Association, accessed May 22, 2024, <https://www.coga.org/factsheets/regulatory-costs>. Note that the COGCC Financial Assurance Rulemaking was mandated as part of SB-181, which was the “mission change”-inducing legislation. Hence, it is included in this estimate.

<sup>44</sup> “Conservation Mill Levy,” Colorado Oil & Gas Association, accessed May 22, 2024, <https://www.coga.org/factsheets/colorado-taxes#:~:text=Conservation%20Mill%20Levy,-The%20third%20tax&text=The%20mill%20levy%20is%20assessed,of%20the%20COGCC%20annual%20budget>.

<sup>45</sup> Charles Ashby, “Oil, gas commission ups permit fees,” The Grand Junction Daily Sentinel, August 5, 2020 (Updated Sep 9, 2021), [https://www.gjsentinel.com/news/western\\_colorado/oil-gas-commission-ups-permit-fees/article\\_85d4fe68-d69e-11ea-a4fa-f7a78e03fd1e.html](https://www.gjsentinel.com/news/western_colorado/oil-gas-commission-ups-permit-fees/article_85d4fe68-d69e-11ea-a4fa-f7a78e03fd1e.html).

<sup>46</sup> Colorado H.B. 21-1266 — Environmental Justice Disproportionate Impacted Community, 2021 Regular Session, <https://leg.colorado.gov/bills/hb21-1266>.

<sup>47</sup> Ed Sealover, “Commission sets timeline for review of key permitting documents,” The Sum & Substance, May 16, 2024, <https://tssc.colorado.com/commission-sets-timeline-for-review-of-key-permitting-documents/>.

<sup>48</sup> Colorado Energy Office, Department of Public Health & Environment, Department of Agriculture, Department of Natural Resources, “Colorado continues to fight climate change with a series of newly signed laws,” press release, June 9, 2023, [https://drive.google.com/file/d/1yoh\\_knn-mGut7eB-FDHEbt-wVizJ4VHP/view](https://drive.google.com/file/d/1yoh_knn-mGut7eB-FDHEbt-wVizJ4VHP/view).

<sup>49</sup> Colorado Energy & Carbon Management Commission, “Regulatory Process for Permitting and Tracking an Oil or Gas Well,” accessed May 22, 2024, <https://ecmc.state.co.us/documents/about/general/RegProcessPermitandTrackingWell.pdf>.

<sup>50</sup> Colorado Energy & Carbon Management Commission, “Regulatory Process for Permitting and Tracking an Oil or Gas Well.”

<sup>51</sup> State of Colorado, “2015: Colorado’s Water Plan,” pp. 9-50 - 9-52.

process, provides a ready blueprint for common-sense improvements.<sup>52</sup>

Second, some stakeholders express a desire to revive a program akin to the CJRP that would facilitate early and concurrent state agency involvement in federal National Environmental Policy Act and Clean Water Act permitting. Establishing a joint review team to engage in federal permit processes from the outset, rather than sequentially, could reduce total review times. The state should work with federal partners to determine how to improve coordination and implement this model again, taking care to avoid past mistakes.

Third, and relatedly, state agencies should continue to expand the use of MOUs to better coordinate their regulatory and permitting processes. MOUs are often quicker and easier to implement than statutory changes, yet can still yield significant efficiencies. These agreements can create a culture of collaboration between different authorities and eventually lead to lasting culture change at varying levels of government.

Fourth, Colorado should expand its use of Lean process improvement events to streamline specific agency permitting functions. Lean events appear to generate innovative yet practical reforms and build a culture of continuous improvement. These were critical to successes achieved as part of the Pits and Peeves initiative.

Fifth, the state should reevaluate its approach to environmental justice considerations in oil and gas permitting. While addressing disproportionate impacts is important, the current framework risks creating too many veto points for energy developments. Policymakers should consider establishing clearer standards and parameters around environmental justice reviews to provide greater certainty to project applicants. Pragmatic limits should be placed on public participation so the process does not become open-ended.

Finally, a comprehensive process mapping exercise could shed light on further streamlining opportunities across state government. Cataloguing every permit requirement, procedural step, responsible agency, and review timeframe would provide a picture of the cumulative regulatory landscape that project proponents must navigate. Building on existing ePermitting efforts through online permit tracking tools could increase transparency and highlight areas of overlap, bottlenecks, and quick fixes. Such a mapping process proved valuable in other states that have successfully reformed permitting.<sup>53</sup>

## Conclusion

Colorado has made significant progress in reforming its regulatory processes over the past decade, but opportunities remain for continued improvement. The state appears to be moving in the wrong direction with recent changes targeting the oil and gas industry, which have created a more burdensome permitting environment. Enacting targeted legislative changes, institutionalizing interagency coordination through MOUs, limiting the scope of environmental justice reviews, reestablishing joint state-federal permitting teams, expanding the use of Lean process improvement, and comprehensively mapping current requirements could all help ensure Colorado's permitting system is efficient and protective of public health and the environment. The state should capitalize on the robust stakeholder engagement and momentum generated by previous reform efforts to implement the next generation of changes to state permitting.

## About the author

**Dr. James Broughel** is a Senior Fellow at the Competitive Enterprise Institute. He is an accomplished economist whose expertise lies in regulatory institutions and the impact of regulations on economic growth. Broughel is author of the book *Regulation and Economic Growth: Applying Economic Theory to Public Policy*. This research was conducted with the support of the Hoover Institution's State and Local Governance Initiative's Small Business Regulation Visiting Fellowship.

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<sup>52</sup> The most recent water plan is for 2023. "The Colorado Water Plan," Colorado Water Conservation Board, accessed April 10, 2024, <https://cwc.colorado.gov/colorado-water-plan>.

<sup>53</sup> James Broughel, *Transparency on Tap: Virginia's online permit revolution* Competitive Enterprise Institute, June 2024, <https://cei.org/studies/transparencyontap/>.



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