



SPECIAL INSTITUTE ON

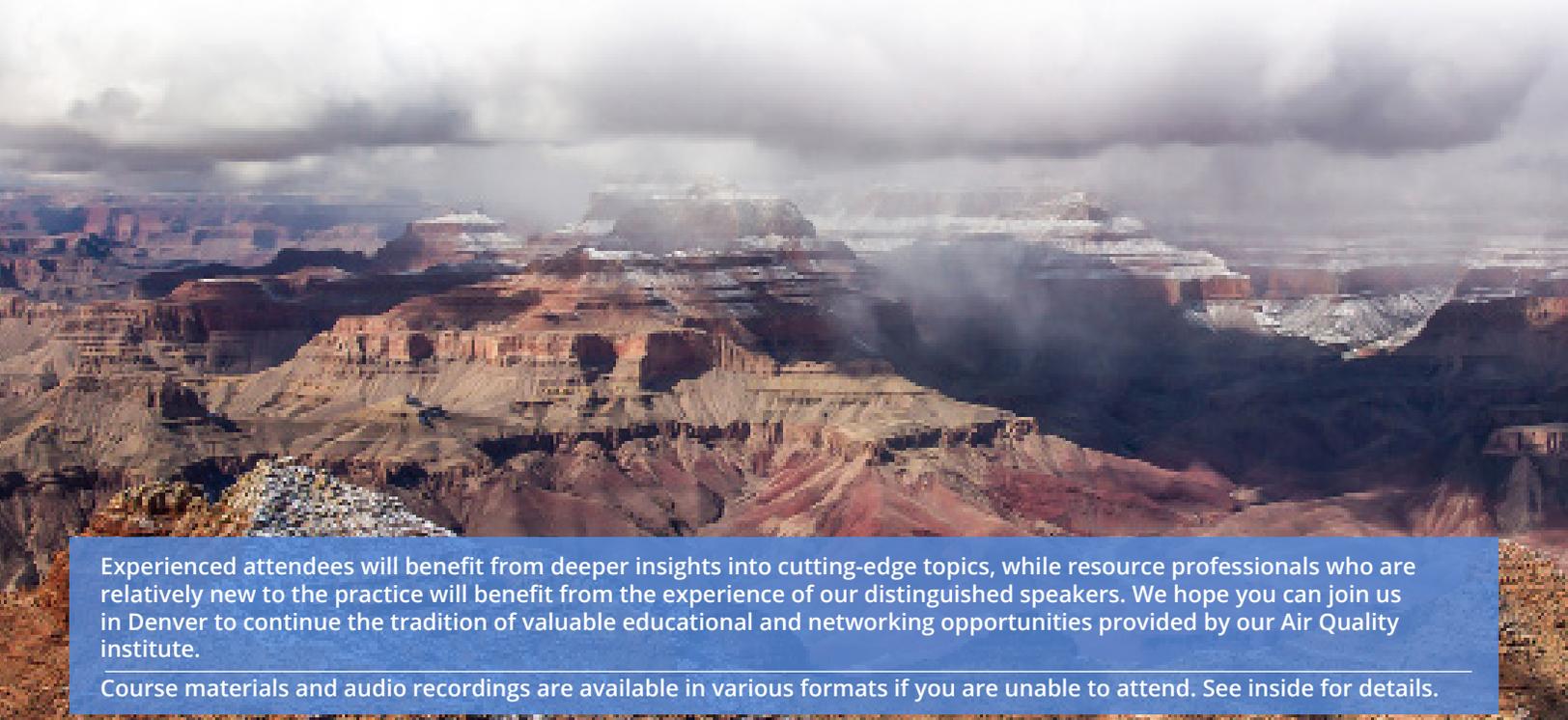
# Air Quality Issues Affecting Oil, Gas, and Mining Development and Operations

**February 6-7, 2018**

Grand Hyatt Hotel, Denver, CO

Air quality is the most active and evolving practice area in environmental law at both the federal and state level. The Environmental Protection Agency and other federal and state agencies have proposed and finalized new air quality regulations at a dizzying pace in recent years.

While under the Trump Administration this pace has slowed, states and environmental groups have intensified their efforts to shape the future of air quality and climate change law through the courts. Air quality laws and programs have most heavily affected the oil and gas industry, but these laws and programs also impact development and operations of other extractive and energy industries. The fourth in the Foundation's highly successful Air Quality series, this Special Institute will provide essential updates and critical insights for this fast-changing area of law.



Experienced attendees will benefit from deeper insights into cutting-edge topics, while resource professionals who are relatively new to the practice will benefit from the experience of our distinguished speakers. We hope you can join us in Denver to continue the tradition of valuable educational and networking opportunities provided by our Air Quality institute.

Course materials and audio recordings are available in various formats if you are unable to attend. See inside for details.

# Air Quality Issues Affecting Oil, Gas, and Mining

**DAY 1: Tuesday, February 6, 2018**

**7:00 am: Registration**

**7:50 am - 8:00 am: Introduction and Opening Remarks**

ALEX RITCHIE, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, CO

RANDY DANN, Program Co-Chair; Partner, Davis Graham & Stubbs LLP, Denver, CO

**8:00 am - 8:30 am: Keynote Address: Updates from the EPA Office of Air and Radiation**

MANDY GUNASEKARA, Principal Deputy Assistant Administrator, EPA Office of Air and Radiation, Washington, DC

**8:30 am - 9:20 am: The Changing Regulatory and Legal Landscape of Air Quality and Climate Change Law Under the Trump Administration**

In the short time since the Trump Administration began on January 20, 2017, the impact on air quality and climate change regulation, enforcement, and litigation has already been substantial. This presentation will assess the impact the Trump Administration has had on these issues at the federal and state level, as well as how it may evolve over the next few years. The panelists will address at a high level many of the topics that we will dive into in detail throughout the program.

CYNTHIA GILES, former Director, EPA's Office of Enforcement and Compliance Assurance, Washington, DC

CLAY TAYLOR, Attorney, Whiting Petroleum Corporation, Denver, CO

PETER ZALZAL, Special Projects Director and Lead Attorney, Environmental Defense Fund, Boulder, CO

**9:20 am - 10:10 am: Legal Impacts of Increased Public Availability of Air Quality Data**

From the Bucket Brigade's citizen science to EPA's Next Gen enforcement initiative and refinery requirements for fence line monitoring, more air quality data is available to the public (and coming to a smartphone near you). Despite change in administrations, technology marches forward. What are the ramifications of the increased availability of government-, facility-, and citizen-generated environmental data from a litigation, government agency, and community relations standpoint?

ADAM BABICH, Professor of Law, Tulane University School of Law, New Orleans, LA

**10:10 am - 10:20 am: Hosted Refreshment Break**

**10:20 am - 11:10 am: One Size Does Not Fit All: EPA's National Standards for Ozone and the Impacts to Western States—Panel Discussion**

This panel will discuss ozone challenges from a western state perspective. Topics will include background ozone, temperature inversions, ozone transport, and exceptional events. The panel will also discuss EPA's 2008 and 2015 national standards for ozone (i.e., the ozone National Ambient Air Quality Standards (NAAQS)), EPA's execution of the Clean Air Act NAAQS implementation process, and the related state roles and responsibilities.

COURTNEY TAYLOR, Air Quality Scientist and Project Manager, AECOM Environment, Fort Collins, CO

NANCY VEHR, Administrator, Air Quality Division, Wyoming Department of Environmental Quality, Cheyenne, WY

ROBYN L. WILLE, Assistant Attorney General, Air Quality Unit, Colorado Attorney General's Office, Denver, CO

**11:10 am - Noon: New Source Performance Standard OOOOa: Legal and Technical Implementation Issues and Lessons Learned Clean Air Risk Management Plan Issues and Enforcement**

From 1979 - 2012, EPA's efforts at regulating air emissions from the oil

and gas industry focused largely on natural gas processing plants. EPA's NSPS OOOO regulations, finalized in August 2012, ushered in a sea change in how emissions from industry were controlled. On the heels of NSPS OOOO, and in response to pressure to address greenhouse gases, in June 2016 EPA finalized amendments and revisions to NSPS OOOO known as NSPS OOOOa. The rule is complex and controversial in numerous respects, which have been compounded by the new Administration. Legal questions surround the scope of EPA's authority to issue the rule, including whether EPA was required to make a separate endangerment finding for methane from the source category prior to promulgation, and what these new source performance standards portend for future source performance standards under section 111(d) of the Clean Air Act. This presentation will explore some of the more challenging implementation issues, and discuss the future of emissions regulation for the oil and natural gas industry.

SHANNON S. BROOME, Partner, Hunton & Williams, San Francisco, CA & Washington, DC

JOEL MINOR, Associate Attorney, Earthjustice, Rocky Mountain Office, Denver, CO

**Noon - 1:30 pm: Lunch - On Your Own**

**1:30 pm - 2:20 pm: EPA's Authority to Delay/Postpone Enforcement of Its Regulations**

Under the Obama Administration, EPA developed and executed aggressive enforcement campaigns and initiatives against the energy and extractive industries. Under the Trump Administration, EPA's enforcement priorities have changed. And, in some cases, EPA has been delaying or postponing compliance (and hence enforcement) of existing regulations. This presentation will review EPA's authority to delay/postpone compliance with, and enforcement of, existing air quality regulations and the impacts on the regulated community.

WHIT SWIFT, Partner, Bracewell LLP, Austin, TX

**2:20 pm - 3:10 pm: Recent Events and Trends from the State Perspective**

The relationships between state and federal environmental regulators are evolving as federal policies change under the Trump Administration. Following the Administration's and EPA Administrator Pruitt's lead, the pace of federal regulation is expected to slow and existing regulations are being reconsidered. This presentation will address recent events and trends involving the regulation of air quality, ozone, and climate change. It will focus on the experience in Colorado, where (among other issues) state regulators have pursued innovative regulatory policies to reduce emissions while promoting economic growth. As states begin to enjoy increased flexibility long sought by some, they also face uncertainty from Washington and arguably must assume greater responsibility over environmental protection.

CHRIS COLCLASURE, Deputy Director, Air Pollution Control Division, Colorado Department of Public Health and Environment, Denver, CO

**3:10 pm - 3:30 pm: Hosted Refreshment Break**

**3:30 pm - 4:30 pm: Addressing Ethical Issues in Transactional Due Diligence**

Environmental liability and risk can pose difficult and unique concerns in the corporate transactional context. Often practitioners are forced to assess potential environmental risk with incomplete or outdated data. And almost always, the complex technical and legal reviews must be conducted in an extremely short time frame. This presentation will address some of the pitfalls commonly encountered during transactions with a focus on the energy-extraction industries, discuss several of the ethical issues that can arise during an energy-related transaction, and offer practical and legal approaches for addressing these concerns. Reference will be made, where applicable, to the ABA Model Rules.

RONALD R. LEVINE II, Partner, Arnold Porter Kaye Scholer LLP, Denver, CO

LUCY STARK, Partner, Holland and Hart LLP, Denver, CO

**4:30 pm - 5:20 pm: Upstream Oil and Gas Storage Tank Design Issues**

The design and operation of upstream storage tanks and vapor control systems has become one of the more prominent air quality issues facing the

oil and gas industry, at both the federal and state level. Several high-publicity federal and state consent decrees have related to this issue and resulted in significant civil penalties and injunctive relief. This presentation will address legal and technical issues in storage tank design, and provide operators with practical strategies and solutions to ensure compliance with state and federal laws on the subject.

SARAH BARTLETT, Sr. EHS Manager, PDC Energy, Inc., Denver, CO

CHELSEA GROSSI, Associate, Davis Graham & Stubbs LLP, Denver, CO

ADAM MEYER, Engineer, ZAP Engineering Services, Lakewood, CO

5:20 pm - 6:20 pm: Hosted Reception for Registrants, Speakers & Guests

## DAY 2: Wednesday, February 7, 2018

8:30 am - 8:40 am: Introduction to Day 2

IVAN L. LONDON, Program Co-Chair; Associate, Bryan Cave LLP, Denver, CO

8:40 am - 9:30 am: Preparing for Regional Haze Phase II: Nuts and Bolts for Mining and Other Non-EGU Emission Sources

As Phase I of the Regional Haze program wraps up in 2018, what are the lessons for new sources and industries that may feel the impacts of Phase II? EPA used Phase I to impose strict emission controls on electrical generating units, resulting in plant closures and fuel switching, costly control requirements, coal mine closures and bankruptcies, and job losses at mines and related EGU (electric generating unit) facilities. With rule changes for Phase II finalized just before the new Administration stepped in, and an EPA appeal of the federal court ruling requiring EPA to study job losses caused by its regulations, EPA has the regulatory authority to require analysis and emission reductions from a broader base of sources. Industrial sectors that may be impacted by Phase II regional haze SIPs include large mining facilities, processing facilities powered by their own boilers, oil and gas exploration and production facilities, and other industrial sources with sizable NO<sub>x</sub>, SO<sub>2</sub>, PM, and VOC emissions.

MARIE B. DURRANT, Of Counsel, Ray Quinney & Nebeker, Salt Lake City, UT

E. BLAINE RAWSON, Shareholder, Ray Quinney & Nebeker, Salt Lake City, UT

9:30 am - 10:20 am: Air Quality and Climate Change Impacts in the NEPA Process

On August 1, 2016, the Council on Environmental Quality (CEQ) directed federal agencies, as part of the NEPA review process, to consider the potential effects of a proposed action on climate change and the effects of climate change on a proposed action. Federal agencies have published and applied guidance and mitigation regarding these considerations, including the Social Cost of Carbon, which was developed to assess the carbon impacts associated with agency rulemaking but has also been utilized in a few NEPA analyses. However, on March 28, 2017, President Trump signed Executive Order 13785 ("Promoting Energy Independence and Economic Growth") rescinding the CEQ's GHG guidance document, and withdrew documents implementing the Social Cost of Carbon as a tool for assessing impact. How will GHG impacts be assessed in NEPA documents? What is the future of climate change as a part of the NEPA process?

ANDREW EMRICH, Partner, Holland and Hart LLP, Denver, CO

ERIK PETERSEN, Supervising Attorney General, Water and Natural Resources Division—Natural Resources Section, Wyoming Attorney General's Office, Cheyenne, WY

10:20 am - 10:40 am: Hosted Refreshment Break

10:40 am - 11:30 am: Air Quality Litigation Update

This presentation will provide an update and analysis of important and pending air quality and climate change related litigation in federal and state courts.

OLIVIA D. LUCAS, Counsel, Faegre Baker Daniels LLP, Denver, CO

JILL VAN NOORD, Of Counsel, Holland & Hart LLP, Denver, CO

11:30 am - 1:00 pm: Lunch - On Your Own

1:00 pm - 2:00 pm: Clean Air Risk Management Plan Issues and Enforcement

Hiding in plain sight, section 112(r) of the 1990 Clean Air Act Amendments required EPA to publish regulations and guidance for chemical accident prevention at facilities using extremely hazardous substances that posed a risk of harm from accidental releases. The resulting requirements—applicable to companies of all sizes—include development of a rigorous Risk Management Plan (RMP) that must be resubmitted every five years, implementation of RMP audit programs, and a "general duty" to identify hazards that may result from releases using appropriate hazard assessment techniques. EPA promulgated amendments to the RMP program to "modernize" existing regulations as required under Executive Order 13650, which are currently frozen by an administrative stay. EPA also has become increasingly active in section 112(r) enforcement efforts. This presentation will address the requirements of section 112(r), as well as the impacts (known and anticipated) of section 112(r) requirements for refineries and natural gas processing plants.

BRIAN NELSON, Manager, Environmental Health & Safety Commerce City, Suncor Energy Services Inc., Denver, CO

JACY T. ROCK, Legal Counsel—R&M U.S.A., Suncor Energy Services Inc., Denver, CO

2:00 pm - 2:15 pm: Hosted Refreshment Break

2:15 pm - 3:15 pm: Cooperative Federalism Under the Clean Air Act: New Horizons in State Regulatory and Enforcement Primacy Under a Trump EPA

EPA Administrator Scott Pruitt has stated that he intends to use the EPA to regulate through "cooperative federalism." Cooperative federalism—a partnership between states and EPA—is at the heart of many environmental statutes. However, Mr. Pruitt echoed his view that the EPA has overreached and over-regulated in relation to the states. For regulated entities, we will likely see a shift to the states in decision making on important air, water, and other environmental policy, regulatory, and enforcement matters. This presentation will discuss the legislative underpinnings of cooperative federalism and how the federal and state relationship is changing under a Trump Administration. How effective can states be in administering and enforcing environmental laws affecting the natural resource sectors? Companies will need to be prepared for a state-first regulatory framework.

COLIN G. HARRIS, Partner, Faegre Baker Daniels LLP, Boulder, CO

ALAN LINDSEY, Senior Legal Counsel, Hess Corporation, Houston, TX

MAGGIE OLSON, Assistant Attorney General, North Dakota Attorney General's Office, Bismarck, ND

3:15 pm - 4:05 pm: Complying with the Clean Air Act in Indian Country

Operating an emissions source in Indian Country involves a complex mix of tribal, federal, state, and technical considerations. EPA administers air permitting in almost all of Indian Country, and coordinating permitting, tribal expectations, technical feasibility, state laws, and unclear jurisdiction can be daunting. This panel brings together perspectives from EPA, industry, tribes, and states to explore the best practices for navigating compliance on tribal lands. The panel will discuss several complex problems that mining and oil and gas operators in Indian Country may face, including a potential permitting gap if the Uintah Basin is designated nonattainment, jurisdiction on checkerboard lands, and coordination of federal and state requirements. The panel will explore policy and administrative considerations to reduce the uncertainties of operating in Indian Country.

MARK A. HUTSON, Southern Ute Indian Tribe Air Quality Program Manager, Durango, CO

CLARA POFFENBERGER, Attorney, Clara Poffenberger Environmental Law and Policy LLC, Washington, DC

K.C. SCHEFSKI, Regional Counsel, EPA Region 8, Denver, CO

4:05 pm

Course Adjournment

# Can't attend? You can still order the course materials

## ORDER FORM



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*Course materials and audio for Air Quality will be available within 4 weeks after the program*

Title/Description	Qty.	Unit Price		Total
		Non-Member	RMMLF Member	
<b>Air Quality Issues</b>				
Looseleaf Manual only (AIR4M)		\$255	\$215	\$
Digital Manual only (AIR4D) <i>(no handling charge)</i>		\$255	\$215	\$
Audio CD (AIR4-ACD)		\$385	\$320	\$
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# Air Quality Issues Affecting Oil, Gas, and Mining Development and Operations

## PROGRAM COMMITTEE

RANDY DANN, Program Co-Chair; Partner, Davis Graham & Stubbs LLP, Denver, CO

IVAN L. LONDON, Program Co-Chair; Associate, Bryan Cave LLP, Denver, CO

MEGAN GARVEY, Senior Environmental Policy Advisor, QEP Resources, Inc., Denver, CO

GREG L. JOHNSON, Shareholder, Liskow & Lewis, New Orleans, LA

ERIC WAECKERLIN, Partner, Holland & Hart LLP, Denver, CO

TEMPLE STOELLINGER, Co-Director, Center for Law and Energy Resources in the Rockies; Assistant Professor, University of Wyoming College of Law, Laramie, WY

COLIN G. HARRIS, Partner, Faegre Baker Daniels LLP, Boulder, CO

MARIE DURRANT, Of Counsel, Ray Quinney & Nebeker, Salt Lake City, UT



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### Rocky Mountain Mineral Law Foundation

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Attendee Email \_\_\_\_\_

*(required for confirmations, advance registration list, and program updates)*

**Please check all that apply:**  Attorney  Landman  Management

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### 3. Materials Format

Select your course materials format:  **DOWNLOAD ONLY (\$0)** (Electronic materials only)  **HARD COPY (\$70)** (Receive manual at conference)

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# Air Quality Issues Affecting Oil, Gas, and Mining Development and Operations

February 6-7, 2018 Grand Hyatt, Denver, CO

## General Information

**Room Reservations:** The Grand Hyatt Denver, 1750 Welton St, Denver, CO, 80202, has blocked rooms for this Special Institute until January 16 at the rate of \$189 (single/double) per night. Ask for special rates for Rocky Mountain Mineral Law Foundation registrants. A limited number of government rate rooms are also available.

For reservations, contact the Hyatt at:

- Online <http://tinyurl.com/rockym126>
- Toll-Free 888-421-1442

Trouble making room reservations? Contact us at [info@rmmlf.org](mailto:info@rmmlf.org)

**Car Rental:** Hertz is offering special discounts by referencing Meeting CV#03NJ0013 and Rocky Mountain Mineral Law Foundation. Make reservations at <http://tinyurl.com/hertz2018> or call 800-654-2240 (U.S.); 800-263-0600 (Canada); or 405-749-4434 (International).

**Registration Fees:** Include course materials, refreshments, and hosted functions as listed in this brochure. These fees do not include hotel costs or transportation. Registrations will be accepted only when accompanied by a check, money order, government purchase order or training form, credit card information, or wiring information. No registrations can be processed without payment.

**Registration Cancellations:** Refunds, less a \$50 administrative fee, will be given for cancellations received by 3:00pm on Thursday, January 18, 2018. No refunds will be given thereafter, although substitution of attendees may be made by contacting the Foundation. Cancellations must be made in writing or email to [info@rmmlf.org](mailto:info@rmmlf.org). Registrants not entitled to a refund will receive a link to the written materials.

**CLE Credit:** This course consists of approximately 12 hours of continuing education, including 1 hour of ethics. You must let us know, at least 45 days in advance of the conference, the states or organizations for which you will need credit (see registration form). Credit hours for states will vary and are subject to each state's approval and credit rounding rules. Foundation conferences are typically accredited by all mandatory CLE states and Canadian provinces, NADOA and NALTA, and other professional organizations. Attorneys from certain states may be required to pay an additional fee. The Foundation is a State Bar of California MCLE-approved provider.

**Recording:** Audio and video recording, streaming, or other types of live or stored dissemination are not permitted without express authorization from the Foundation.

**Special Needs:** If you have special needs addressed by the ADA, please notify us at least two weeks before the program.