

DISTRICT COURT, CITY AND COUNTY OF DENVER 1437 Bannock Street, Room 256 Denver, CO 80202	DATE FILED November 24, 2025 6:16 PM FILING ID: A98B5D3B9791C CASE NUMBER: 2025CV34245
AMERICAN CHEMISTRY COUNCIL, INC.,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, JILL HUNSAKER RYAN, in her official capacity as Executive Director of the Colorado Department of Public Health and Environment, and TRACIE M. WHITE, in her official capacity as Director of the Hazardous Materials and Waste Management Division,  <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>ATTORNEYS FOR PLAINTIFF:</b> Keith Bradley, #50453 SQUIRE PATTON BOGGS (US) LLP 717 17th Street, Suite 1825 Denver, CO 80202 Telephone: (303) 830-1776 Fax: (303) 894-9239 Email: keith.bradley@squirepb.com  Samuel Ballingrud, #52077 SQUIRE PATTON BOGGS (US) LLP 2550 M Street NW Washington, D.C. 20037 Telephone: (202) 457-6000 Fax: (202) 457-6315 Email: samuel.ballingrud@squirepb.com	Case No.: _____  Division:
<b>COMPLAINT</b>	

American Chemistry Council, Inc. (“ACC” or “Plaintiff”) contests the action of the Colorado Department of Public Health and Environment (“CDPHE” or “Department”); its Executive Director, Jill Hunsaker Ryan (“Director Ryan”), in her official capacity; and the Director

of the Hazardous Materials and Waste Management Division (“Division”) at CDPHE, Tracie M. White (“Director White”), also in her official capacity, to order the removal of sensible allocation methodologies from industry recycling plans.

### **PRELIMINARY STATEMENT**

1. Colorado leads the nation by most metrics. Abounding in natural beauty, centrally located in the Mountain West with excellent transport connections, Colorado industry leads the nation across a diverse array of industries, and its people are among the healthiest, safest, and best educated in the nation. Any state ranking of desirable attributes has Colorado near the top.

2. But not recycling. Colorado has long struggled to reach even average levels of recycling. A 2023 study ranked Colorado 41st in the nation for recycling, a drop of six spots from the previous ranking.

3. In 2016, Colorado set ambitious targets for recycling. But it soon became clear the state would fall well short of these goals; Colorado recycled less than half the national average in 2020.

4. In 2022, the General Assembly responded by passing the Producer Responsibility Program for Statewide Recycling Act, H.B. 22-1355. This ambitious act sought to significantly expand recycling rates by mandating a new “producer responsibility program” to systematize and standardize recycling standards and practices.

5. Under the Act, the “producer responsibility organization” has proposed a statewide recycling plan for 2026-2030, which is poised to significantly expand the rate at which Colorado recycles.

6. This plan has run headlong into the CDPHE’s inexplicable hostility to tertiary recycling (also known as advanced or chemical recycling), a recycling technique that *expands* what goods can be recycled compared to traditional recycling.

7. This October, the Department issued a memorandum prohibiting the use of a particular kind of accounting method that promotes the use of tertiary recycling, relying on unfounded assumptions, facts contrary to the record, and factors which the General Assembly did not allow it to consider.

8. As a result, Colorado is poised to yet again struggle with its recycling rates.

#### **JURISDICTION AND VENUE**

9. This action arises under the Colorado Administrative Procedure Act (“APA”), C.R.S. § 24-4-106(4), and the 2022 Producer Responsibility Program for Statewide Recycling Act, H.B. 22-1355, codified at C.R.S. §§ 25-17-701 *et seq.* The APA states that an action for review of an agency action may be commenced “in the district court.” C.R.S. § 24-4-106(4). Jurisdiction is also provided by C.R.S. § 25-1-113(1), which authorizes judicial review of decisions of the Executive Director. Venue is appropriate in Denver District Court because CDPHE is headquartered in this District, C.R.C.P. 98(c)(1), and because § 25-1-113(1) provides for judicial review “in the district court ... of the city and county of Denver.”

#### **PARTIES**

10. Plaintiff ACC is a non-profit trade association, headquartered in Washington, D.C. that represents its members—over 190 leading companies engaged in the business of chemistry. ACC advocates for the people, policy, and products of chemistry that make the United States the global leader in innovation and manufacturing. ACC’s Plastics Division represents the leading

resin manufacturers, partners in the United States' plastics value chain and tertiary recyclers. The Plastics Division is an industry leader in promoting innovative plastics recycling and recovery programs.

11. Defendant CDPHE is a cabinet-level department regulating public health and environmental services. Among other roles, CDPHE has certain (though limited) oversight authorities for the Producer Responsibility Program established by H.B. 22-1355 ("the Program" or "PRP").

12. Defendant Jill Ryan ("Director") is the Executive Director of CDPHE. She is sued in her official capacity.

13. Defendant Tracie M. White ("Director White") is the Director of the Hazardous Materials and Waste Management Division ("Division") at CDPHE. She is sued in her official capacity as the Director of the Division, which is a component within CDPHE that deals with the PRP.

### **STATUTORY BACKGROUND**

14. On June 3, 2022, Governor Polis signed the 2022 Producer Responsibility Program for Statewide Recycling Act, HB 22-1355, into law. Under the Act, companies which sell products in qualifying packaging (generally, "producers") must fund and set up an independent non-profit "Producer Responsibility Organization" ("PRO") to establish recycling programs and payments, as well as rules and regulations governing all sorts of packaging, from small plastic containers for fresh fruit to paper cups for a morning cup of coffee. If that organization meets statutory criteria, CDPHE must designate it as the State's PRO. (CDPHE is also allowed to designate one or more alternate PROs.)

15. On May 1, 2023, CDPHE appointed Circular Action Alliance (“CAA”) as the PRO for paper and packaging. Producer participation in the PRO’s program became mandatory as of July 1, 2025.

16. Under the Act, CAA is tasked with drafting a five-year plan addressing certain aspects of residential recycling. C.R.S. § 25-17-705(4). Critically, the plan must describe how CAA will “verify minimum postconsumer-recycled-content rates and how postconsumer-recycled-content rates will be calculated using weight and other metrics.” *Id.* § 705(4)(r).

17. Once CAA drafts the plan, it submits it to an Advisory Board “created in [CDPHE]” by the Act, § 25-17-704(1). The Advisory Board’s fifteen members (13 voting, 2 non-voting) are all appointed by CDPHE’s Executive Director. *Id.* § 704(2)(a).

18. The Advisory Board reviews the draft plan submitted by the PRO and has 90 (ninety) days in which it must either provide recommended amendments or forward the plan on to CDPHE’s Executive Director with a recommendation to approve. *Id.* § 705(5)(a). If the Board requests amendments, the PRO has sixty (60) days to respond. *Id.*

19. Once the Executive Director receives a plan from the Advisory Board that is recommended for approval, she has 120 days to approve or reject the plan. *Id.* § 705(5)(a). This 120-day period must include a period for public comment. *Id.* If the Executive Director rejects the plan, the PRO must submit a new proposal within 60 days. *Id.*, § 705(5)(b)(II). Any rejection “must be based on the failure of the plan proposal or amended plan proposal to comply with the requirements specified in [§ 705(4)].” *Id.*

## RECYCLING BASICS

20. In passing the Act, the General Assembly responded to the State's impending failure to meet statewide recycling goals set in 2016. C.R.S. § 25-17-702(1)(d). In 2020, Colorado only recycled fifteen percent of its waste, less than half of the national average. *Id.* § 702(1)(c).

21. Broadly speaking, there are three primary methods of recycling plastic. **Primary Recycling** refers to reprocessing plastic for the same use, typically near-pristine plastic of known origin. For example, when a soda manufacturer cuts plastic sheets into rings for a six-pack holder, the leftovers from the cutting can be collected and reused in the plastic-sheet molding process.

22. **Secondary Recycling** is familiar to most consumers. This method involves capturing used materials such as plastic bottles used for consumer beverages, and other such everyday items one might leave in a curbside recycling bin. Secondary recycling physically breaks used plastic into small pieces, which are melted and remade into new plastic material to be used again. Secondary recycling presents limitations and challenges for complex packaging such as film and flexible packaging, pouches, and tubes.

23. **Tertiary Recycling** addresses these limitations. Materials which are too complex for secondary recycling, and secondary recycling residuals themselves, can be recycled in this process. Tertiary recycling opens up entirely new recycling systems and significantly increases the efficiency and resiliency of the recycled-materials supply chain. C.R.S. § 25-17-702(g)(IV), (VII). Materials which would otherwise be destined for landfills can, using tertiary recycling, be reprocessed and placed back into the manufacturing loop.

24. Tertiary recycling describes a variety of technologies, but one of the more common technologies is pyrolysis, a chemical process where the plastics feedstock is heated and thermally

decomposed in an oxygen-free environment, which creates a vapor which, when cooled, forms pyrolysis oil.

25. Pyrolysis oil can be further processed as a raw material, which directly replace virgin feedstocks, in various manufacturing processes, including plastic manufacturing.

### **RECYCLING ACCOUNTING**

26. Tracking the use of recycled materials in the supply chain, and verifying that producer claims of recycled content are accurate, is a complex endeavor. There are several widely accepted models for verifying and tracking the chain-of-custody. In general, the International Standards Organization (ISO) provides an accepted framework for private entities and government bodies.

27. The ISO model, however, does not purport to address every situation and every use. It is too general to be applied without an industry-specific supplement. In this, a separate body of third-party accreditors and auditors fills the gap to ensure that claims of recycled content are based on sound science, accepted industry standards, and are consistently applied across the value chain. One of the most prominent and respected such organizations is the International Sustainability and Carbon Certification System (“ISCC”), a German association with over 340 members across the globe.

28. Resins manufactured with recycled pyrolysis oil may be used as any other plastic resin—that is, anywhere plastic is used. Naturally that is highly variable and unpredictable, involving any number of separate companies and processes. Verifying claims of recycled content at the end-user packaging stage can be a complex process. Imagine you and 99 other people filled

a pool by pouring in one-gallon buckets and someone draws a bucket directly from the pool. Which of that water is “your” water?

29. The mass balance methodology answers that question. Mass balance is a chain-of-custody model which provides manufacturers with a consistent and verifiable methodology to track the materials along the value chain and attribute the inputs of a production process, like recycled plastic, to outputs.

30. Mass balance is widely adopted in a variety of industries, including cocoa, cotton, aluminum, wood and plastic. Major international sustainability initiatives use mass balance in one form or another. Mass balance is also recognized by third parties like the ISCC, which incorporate it in their “ISCC PLUS” certification designed to validate sustainability characteristics of alternative feedstocks.

31. Within mass balance, there are several different attribution methods, one of which is “free allocation.” As its name suggests, free allocation allows a manufacturer to attribute recycled content claims to a given output. This allows a manufacturer to match recycled content to demand—if a manufacturer has two customers, one of them makes public-facing goods and the other does not, free allocation allows the manufacturer to attribute the recycled content to the customer that places value on the use of recycled materials.

32. There are significant limits. Mass balance/free allocation, like all attribution methods, requires (1) all mass inputs must be tracked and accounted for in the value chain, and (2) process loss must be deducted. These are basic requirements common to any verification scheme—all inputs are tracked and process loss (e.g., in some processes feedstock is combusted as fuel and so lost in the manufacturing process) deducted.

33. Critically, the allocation determination “sticks” with the output throughout the value chain. Secondary users or processors are not permitted to ‘reallocate’ that initial distribution. This ensures consistency across the value chain.

### **THE 2025 CAA PLAN**

34. Consistent with the requirements of the Act, CAA proposed its Colorado Program Plan for 2026-2030 in June 2025.

35. Consistent with the requirement that CAA “describe how the organization will verify minimum postconsumer-recycled-content rates and how postconsumer-recycled-content rates will be calculated using weight and other metrics,” § 25-17-705(4)(r), the Plan proposed a verification framework which authorized the use of mass balance/free allocation (fuel excluded).

36. Some third parties objected to the use of mass balance/free allocation. One advocacy organization, GreenLatinos, submitted a letter to CDPHE expressing its concerns.

37. CDPHE responded to GreenLatinos on July 22, 2025, stating its position that mass balance/free allocation was consistent with the requirements of the Act and that the benefits of the proposed Plan outweighed any drawbacks from the use of mass balance.

38. Just one month later, however, CDPHE abruptly changed its tune in an August 20, 2025 memorandum after the Advisory Board recommended the Plan for the Executive Director’s approval. Now, CDPHE expressed concern that mass balance/free allocation “creates an uneven playing field” and claims using that methodology could not be “verified.” At the time, CDPHE was still considering the June 2025 Program Plan, and this memorandum did not itself take any action beyond stating the Department’s concerns.

39. On September 14, 2025, ACC submitted a detailed comment explaining how the Department misunderstood the nature of mass balance/free allocation. Contrary to the Department's concerns, the robust ISCC PLUS framework does ensure verification across the value chain, and the requirement that the initial allocation 'sticks' with the output good actually ensures consistency and fairness while promoting recycling, rather than enabling gamesmanship as the Department feared. Mass balance is globally recognized and well-established, and approved by both CAA and the Advisory Board with members appointed by CDPHE itself, yet the Department treated it with deep and unwarranted suspicion divorced from the facts.

40. Unfortunately, the Department did not reckon with these facts. Instead, on October 20, 2025, the Division issued a letter demanding that CAA remove free allocation as an accepted method. CDPHE asserted that free allocation "do[es] not verify the actual PCR contained within the material" and "create[s] a competitive advantage for chemical recycling in comparison to mechanical recycling." CDPHE made its conditions clear and framed its instruction as a requirement with which CAA must comply.

41. CDPHE's requirement will slow the adoption of established tertiary recycling methods, reduce the volume of plastics recycled in Colorado, and harm Colorado businesses and consumers.

42. In particular, Colorado's refusal to recognize free allocation will harm ACC's members. The plastics recycling and manufacturing processes are complex and interconnected. Verification protocols like the ISCC PLUS model, and others, rely on close cooperation throughout the value chain. Restrictions on the amount of recycled content claimed in Colorado reverberate throughout this chain. ACC's members rely on their ability to make claims about recycled material

and recycled content when contracting across the value chain. Colorado’s refusal to accept a recognized methodology used in other jurisdictions harms them by restricting the claims they—and their customers by extension—can make and imposes additional administrative and compliance costs.

**FIRST CLAIM FOR RELIEF**  
**(Arbitrary and Capricious Rejection of Free Allocation)**  
*All Defendants*

43. Plaintiff repeats and realleges the allegations set forth above.

44. CDPHE is an “agency” under the APA. C.R.S. § 24-4-102(3).

45. CDPHE’s October 20, 2025 memorandum is final agency action. C.R.S. § 24-4-106(2). It states the Department’s final position on the use of free allocation and directs the CAA to remove it from an amended plan. That the Department used CAA as a cat’s paw does not prevent this from being final agency action—the Memorandum stated the agency’s definitive position and has legal effect.

46. The memorandum is arbitrary and capricious in that it is based on an irrational and incorrect assessment of the record. Free allocation is no more or less capable of “verification” than other accounting methodologies of which the Department approves. Further, the agency abruptly changed its position from that taken in the GreenLatinos letter referenced above, and failed to offer a reasonable or reasonably explained basis for doing so. Finally, the agency’s professed concerns about use of recycled material as a fuel are inconsistent with the record. The memorandum is further arbitrary and capricious in additional ways that will be revealed by review of the administrative record.

47. ACC participated in the administrative process to the extent available, including by submitting a detailed comment explaining the legal and factual deficiencies in the Department’s approach to mass balance/free allocation.

48. Defendants’ rejection of free allocation causes harm to ACC’s members which are involved in the recycling and plastics manufacturing process. ACC members manufacture plastic resins from both pyrolysis oil and virgin feedstock (generally oil or gas or biobased feedstock); they purchase and sell goods which are accounted for in a given recycling accounting methodology. The Department’s rejection of free allocation affects the claims that they can make when marketing their goods to their customers—claims that they can purchase their resins and make a specific claim about recycled content in the goods their customers produce with their resins. Colorado’s rejection of free allocation directly harms these members which are engaged in the nationwide purchasing and sale of recycled goods and resins, some of which is destined for the Colorado market.

**SECOND CLAIM FOR RELIEF**  
**(Consideration of Competitive Advantage)**  
***All Defendants***

49. Plaintiff repeats and realleges the allegations set forth above.

50. The Act states that CDPHE’s review, and potential rejection, of CAA’s proposed plan must be based on the factors identified in Section 705(4). By restricting the scope of the Department’s analysis, the Assembly prevented CDPHE from considering other factors.

51. Nonetheless, the Division’s October Memorandum rejected the use of free allocation in part because it, wrongly, believed that it created a “competitive advantage for chemical recycling in comparison to mechanical recycling.”

52. Ensuring competitive advantage between methods of recycling is not one of the factors under Section 705(4). It was therefore inappropriate for the Division to base its decision on this perception.

53. In addition, the Memorandum's conclusions about competitive advantage are arbitrary and capricious. Tertiary recycling does not "compete" with secondary recycling. The primary benefit of tertiary recycling is that it can recycle what secondary recycling cannot.

54. CDPHE also had no evidentiary basis to make this claim in the record, nor does the Division have the economic expertise to render the kind of assessment of the economics of the recycling industry this judgment would require. No other method of accounting or allocation was subject to this amorphous competitiveness standard.

55. It is also illogical—the General Assembly's goal is to promote recycling. Nowhere does the Assembly indicate any preference for one type of recycling over another, and it is contrary to law for the Department to read such a requirement into the statute.

56. ACC participated in the administrative process to the extent available.

57. ACC is a membership organization and protecting its members' interests in matters of state regulation is germane to its mission. Its members have been injured by the Department's Memorandum as illustrated above.

**THIRD CLAIM FOR RELIEF**  
**(Review under Section 113)**  
*All Defendants*

58. Plaintiff repeats and realleges the allegations set forth above.

59. Title 25, Article 1, Section 113(1) provides for judicial review of "a decision of ... the executive director" of CDPHE. A reviewing court "may reverse or modify" any decision which

is, inter alia, “in excess of the statutory authority or jurisdiction”; “affected by any error of law;” “unsupported by substantial evidence in view of the entire record as submitted; or arbitrary or capricious.”

60. The CDPHE’s decision to reject free allocation is unsupported by substantial evidence, arbitrary and capricious, and in excess of the Department’s statutory authority as discussed above.

61. ACC participated in the administrative process to the extent available.

62. ACC is a membership organization and protecting its members’ interests in matters of state regulation is germane to its mission. Its members have been injured by the Department’s Memorandum as illustrated above.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests judgment against Defendants as follows:

1. Judgment setting the October memorandum aside pursuant to the State Administrative Procedure Act as contrary to law and/or arbitrary and capricious;
2. Judgment reversing or modifying in relevant part the October memorandum pursuant to Section 113 as contrary to law and/or arbitrary and capricious;
3. Attorney fees and other reasonable costs of the action; and
4. An order concluding that the Defendants’ actions and interpretation of the Act are arbitrary and capricious and contrary to law.
5. Such other relief as the court deems just and proper.

Dated: November 24, 2025

SQUIRE PATTON BOGGS (US) LLP

s/ Keith Bradley

Keith Bradley, #50453  
717 17th Street, Suite 1825  
Denver, CO 80202  
Telephone: (303) 830-1776  
Fax: (303) 894-9239  
keith.bradley@squirepb.com

Samuel Ballingrud, #52077  
2550 M Street NW  
Washington, D.C. 20037  
Telephone: (202) 457-6000  
Fax: (202) 457-6315  
Email: samuel.ballingrud@squirepb.com

*ATTORNEYS FOR PLAINTIFF*