

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

April 20, 2023
Date

Committee on Energy & Environment.

After consideration on the merits, the Committee recommends the following:

HB23-1294 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 **"SECTION 1. Legislative declaration.** (1) The general
4 assembly finds that:

5 (a) All people have the right to breathe clean air, yet poor air
6 quality frequently puts public health at risk in communities across
7 Colorado, particularly in disproportionately impacted communities that
8 are subjected to adverse cumulative impacts from multiple pollution
9 sources;

10 (b) In particular, Coloradans have long suffered from high levels
11 of ground-level ozone pollution, which is connected to severe health
12 impacts including respiratory problems, cardiovascular disease, adverse
13 birth outcomes, and premature death and poses a significant threat to
14 vulnerable populations including children, the elderly, people with
15 respiratory ailments, the outdoor workforce, and otherwise healthy
16 individuals who recreate outdoors;

17 (c) The threats posed by ozone pollution are even more
18 devastating for communities of color and low-income communities that
19 bear outsized environmental burdens due to past and present
20 discriminatory environmental policies, endure higher health risks from
21 exposure, experience systemic injustice, and have faced exclusion from
22 government decision-making and enforcement efforts;

23 (d) Although Colorado has an ongoing ozone crisis that will
24 worsen with climate change, the state has repeatedly failed to meet
25 federal ozone standards established to protect public health and welfare,
26 particularly in the Denver metro/North Front Range nonattainment area
27 where a majority of Coloradans live, which was downgraded to a severe

1 nonattainment area in 2022 and has been consistently ranked among the
2 worst areas in the nation for ozone pollution;

3 (e) The federal "Clean Air Act" requires that Colorado have
4 enforceable procedures in place to assess the air quality impacts of new
5 sources and modifications and to prevent the construction of new sources
6 and modifications that would cause or contribute to a violation of federal
7 standards;

8 (f) "Minor" sources of pollution, including many oil and gas
9 sources that are among the largest contributors to ozone, can cause
10 exceedances of federal standards and have a devastating cumulative
11 impact on already overburdened, disproportionately impacted
12 communities, yet they often escape air quality impact analyses in
13 Colorado's permitting processes;

14 (g) An independent investigation by the Colorado attorney general
15 found the state's permitting processes "inadequate" to ensure that minor
16 sources would not exceed federal air quality standards, and the federal
17 environmental protection agency has verified that Colorado has issued air
18 emission permits that violate the federal "Clean Air Act";

19 (h) Impacted Coloradans across the state face significant barriers
20 and a lack of transparency when filing complaints and submitting
21 evidence of permit violations and action is necessary to ensure that
22 agencies are empowered to respond to complaints appropriately; and

23 (i) Because industrial operations also support many jobs in
24 Colorado, impacts on workers associated with air quality control
25 measures should be considered.

26 (2) The general assembly determines that state action to reduce
27 pollution is necessary to achieve environmental justice, and the state can
28 and should act to lower ozone and precursor levels to address the serious
29 health impacts experienced by communities across Colorado, especially
30 as the impacts of the climate crisis intensify.

31 (3) Therefore the general assembly determines and declares that:

32 (a) State agencies have a duty and a responsibility to collaborate
33 to protect Coloradans from harmful pollution and to comply with federal
34 health-based standards, which are essential steps in achieving
35 environmental justice and health equity for all communities;

36 (b) Colorado has an obligation to increase air quality analyses in
37 its permitting processes and to assess the impacts of potential new sources
38 before permits are approved in order to avoid emissions increases that
39 would cause or contribute to violations of federal air quality standards;

40 (c) Extraordinary air quality measures should be included in the
41 state implementation plan for ozone when the federal environmental
42 protection agency classifies a nonattainment area in the state as a serious,
43 severe, or extreme nonattainment area;

1 (d) It is imperative for members of the public to be meaningfully
2 engaged as partners and stakeholders in Colorado's permitting processes
3 and enforcement of permit violations once permits are issued; and
4 (e) This act is necessary to ensure that Colorado addresses the
5 disproportionate cumulative impacts of pollution, including
6 environmental and health impacts, that communities across the state
7 experience.

8 **SECTION 2.** In Colorado Revised Statutes, **add 25-7-145** as
9 follows:

10 **25-7-145. Legislative interim committee on ozone air quality**
11 **- created - members - repeal.** (1) NOTWITHSTANDING SECTION
12 2-3-303.3, THE LEGISLATIVE INTERIM COMMITTEE ON OZONE AIR QUALITY,
13 REFERRED TO IN THIS SECTION AS THE "COMMITTEE", IS CREATED.

14 (2) THE PURPOSE OF THE COMMITTEE IS TO STUDY OZONE AIR
15 QUALITY IN THE STATE WITH A FOCUS ON:

16 (a) INVESTIGATING THE FACTORS THAT CONTRIBUTE TO OZONE
17 POLLUTION IN THE STATE, INCLUDING ANY SCIENTIFIC CONSENSUS AROUND
18 THE ISSUE OF OZONE POLLUTION;

19 (b) ANALYZING STRATEGIES TO ADDRESS AND IMPROVE
20 GROUND-LEVEL OZONE ISSUES; AND

21 (c) DEVELOPING POLICY, TECHNICAL, AND FINANCIAL SOLUTIONS
22 TO IMPROVE OZONE AIR QUALITY IN THE STATE.

23 (3) THE COMMITTEE CONSISTS OF:

24 (a) SIX MEMBERS OF THE SENATE, WITH FOUR MEMBERS APPOINTED
25 BY THE PRESIDENT OF THE SENATE AND TWO MEMBERS APPOINTED BY THE
26 MINORITY LEADER OF THE SENATE; AND

27 (b) SIX MEMBERS OF THE HOUSE OF REPRESENTATIVES, WITH FOUR
28 MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF
29 REPRESENTATIVES AND TWO MEMBERS APPOINTED BY THE MINORITY
30 LEADER OF THE HOUSE OF REPRESENTATIVES.

31 (4) THE APPOINTING AUTHORITIES SHALL APPOINT THE MEMBERS
32 OF THE COMMITTEE NO LATER THAN JUNE 30, 2023. IF A VACANCY ARISES
33 ON THE COMMITTEE, THE APPOINTING AUTHORITY SHALL APPOINT A
34 MEMBER TO FILL THE VACANCY AS SOON AS POSSIBLE.

35 (5) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
36 DESIGNATE THE CHAIR OF THE COMMITTEE. IN THE CASE OF A TIE VOTE,
37 THE CHAIR OF THE COMMITTEE SHALL CAST AN ADDITIONAL DECIDING
38 VOTE.

39 (6) THE CHAIR OF THE COMMITTEE SHALL SCHEDULE THE FIRST
40 MEETING OF THE COMMITTEE NO LATER THAN SIXTY DAYS AFTER JUNE 30,
41 2023. THE COMMITTEE MAY MEET UP TO SIX TIMES DURING THE 2023
42 INTERIM, WHICH MAY INCLUDE FIELD TRIPS.

43 (7) THE COMMITTEE MAY INTRODUCE UP TO A TOTAL OF FIVE

1 BILLS, JOINT RESOLUTIONS, AND CONCURRENT RESOLUTIONS IN THE 2024
2 LEGISLATIVE SESSION. BILLS RECOMMENDED BY THE COMMITTEE ARE
3 EXEMPT FROM THE FIVE-BILL LIMITATION SPECIFIED IN JOINT RULE 24
4 (b)(1)(A). THE COMMITTEE SHALL REPORT TO THE LEGISLATIVE COUNCIL
5 BY THE DATE SPECIFIED IN JOINT RULES 24 (b)(1)(D) AND 24 (A)(d)(8).
6 ANY BILLS RECOMMENDED BY THE COMMITTEE ARE SUBJECT TO THE
7 APPLICABLE DEADLINES, BILL INTRODUCTION LIMITS, AND ANY OTHER
8 REQUIREMENTS IMPOSED BY THE JOINT RULES OF THE GENERAL ASSEMBLY
9 AND MUST BE APPROVED BY A MAJORITY VOTE OF THE COMMITTEE.

10 (8) THE LEGISLATIVE COUNCIL AND THE OFFICE OF LEGISLATIVE
11 LEGAL SERVICES SHALL PROVIDE STAFF ASSISTANCE TO THE COMMITTEE.

12 (9) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2024.

13 **SECTION 3.** In Colorado Revised Statutes, 25-7-109.3, **amend**
14 (3)(c) as follows:

15 **25-7-109.3. Colorado hazardous air pollutant control and**
16 **reduction program - rules - repeal.** (3) (c) The commission shall
17 designate by ~~regulation~~ RULE those classes of ~~minor or~~ insignificant
18 sources of emissions of hazardous air pollutants ~~which~~ THAT are exempt
19 from the requirements of this section because their emissions of
20 hazardous air pollutants will result in an inconsequential risk to public
21 health.

22 **SECTION 4.** In Colorado Revised Statutes, 25-7-114, **amend** the
23 introductory portion; and **add** (3.3) as follows:

24 **25-7-114. Permit program - definitions.** As used in sections
25 ~~25-7-114~~ THIS SECTION AND SECTIONS 25-7-114.1 to 25-7-114.7, unless
26 the context otherwise requires:

27 (3.3) "MODIFICATION" OR "MODIFY" MEANS ANY PHYSICAL
28 CHANGE IN, OR CHANGE IN THE METHOD OF OPERATION OF, A STATIONARY
29 SOURCE THAT:

30 (a) INCREASES THE AMOUNT OF ANY AIR POLLUTANT EMITTED BY
31 THE SOURCE BY ANY AMOUNT ON AN ANNUAL OR HOURLY BASIS; OR

32 (b) RESULTS IN THE EMISSION OF ANY AIR POLLUTANT NOT
33 PREVIOUSLY EMITTED BY THE SOURCE.

34 **SECTION 5.** In Colorado Revised Statutes, 25-7-114.4, **amend**
35 (1) introductory portion, (1)(j), (1)(k), (1)(n), and (2) as follows:

36 **25-7-114.4. Permit applications - contents - rules - definitions.**
37 (1) The commission shall promulgate ~~such regulations~~ RULES as may be
38 necessary and proper for the orderly and effective administration of
39 construction permits and renewable operating permits. ~~Such regulations~~
40 ~~shall~~ THE RULES MUST be in conformity with ~~the provisions of this article~~
41 THIS ARTICLE 7 and with federal requirements, ~~shall~~ MUST be in
42 furtherance of the policy contained in section 25-7-102, and ~~shall~~ MUST
43 implement, where applicable, permit and permit application contents,

1 procedures, requirements, and restrictions with respect to the following:
2 (j) Duration of the permit and renewal procedures. ~~The duration~~
3 ~~of Construction permits shall be~~ REMAIN IN EFFECT until the renewable
4 operating permit is issued, IF A RENEWABLE OPERATING PERMIT IS
5 REQUIRED UNDER SECTION 25-7-114.3. The duration of renewable
6 operating permits is five years.
7 (k) Procedures to:
8 (I) Terminate, ~~modify~~ ALTER, or revoke and reissue permits for
9 cause; ~~procedures to~~ AND
10 (II) Revise permits prior to renewal or termination to incorporate:
11 (A) Applicable standards and regulations adopted after the
12 issuance of ~~such~~ THE permit as expeditiously as practicable, but not later
13 than eighteen months after promulgation of the applicable requirement;
14 or ~~to incorporate~~
15 (B) Otherwise applicable standards and regulations in the permit;
16 except that: ~~no such~~ A revision shall NOT be required PRIOR TO RENEWAL
17 OR TERMINATION OF THE PERMIT if the effective date of the standards or
18 regulation occurs after the permit term expires; ~~such~~ ANY revision ~~shall~~
19 INCORPORATING A STANDARD OR REGULATION WITH AN EFFECTIVE DATE
20 AFTER THE PERMIT TERM EXPIRES MUST be treated as a permit renewal;
21 and the defense established under subsection (3) of this section ~~shall~~
22 ~~apply~~ APPLIES until the permit amendment is complete;
23 (n) (I) Procedures for ~~modifying~~ ALTERING or amending permits,
24 and procedures for authorizing any change within a permitted facility
25 without requiring a permit revision, so long as:
26 (A) ~~Any such~~ THE change is not a modification under any
27 provision of subchapter I of the federal act ~~and any such~~ OR A
28 MODIFICATION AS DEFINED IN SECTION 25-7-114 (3.3);
29 (B) THE change does not ~~exceed~~ INCREASE the emissions
30 allowable under the permit; and
31 (C) Advance notice is given to the division and the administrator.
32 (II) ~~Such~~ THE advance notice ~~shall~~ DESCRIBED IN SUBSECTION
33 (1)(n)(I)(C) OF THIS SECTION MUST be GIVEN no earlier than ~~that~~ THE
34 NOTICE PERIOD required under regulations promulgated pursuant to the
35 federal act. Failure of the division to respond by the day following the last
36 day of ~~such~~ THE advance notice period allows the source to proceed with
37 any ~~such~~ change DESCRIBED UNDER SUBSECTION (1)(n)(I) OF THIS
38 SECTION.
39 (2) The division shall examine applications for and may issue,
40 suspend, revoke, ~~modify~~ ALTER, deny, and otherwise administer all
41 permits required under this ~~article~~. ~~Such~~ ARTICLE 7. THE DIVISION'S
42 administration OF ALL PERMITS REQUIRED UNDER THIS ARTICLE 7 shall be
43 CONDUCTED in accordance with ~~the provisions of this article and~~

1 ~~regulations~~ THIS ARTICLE 7 AND RULES promulgated by the commission.
2 **SECTION 6.** In Colorado Revised Statutes, 25-7-114.5, **amend**
3 (4), (5), (6)(a) introductory portion, (6)(a)(II), and (6)(b) as follows:
4 **25-7-114.5. Application review - public participation -**
5 **definitions - rules.** (4) (a) The division shall prepare its preliminary
6 analysis regarding compliance, as set forth in subsection (2) of this
7 section, and regarding the impact on attainment or nonattainment areas,
8 as set forth in subsection (3) of this section, as expeditiously as possible.
9 (b) (I) For construction permits not subject to part 2 of this ~~article;~~
10 ~~such~~ ARTICLE 7, THE preliminary analysis ~~shall~~ MUST be completed no
11 later than sixty calendar days after receipt of a completed permit
12 application. Applicants must be advised within sixty calendar days after
13 receipt of any application, or supplement ~~thereto~~ TO ANY APPLICATION, if
14 and in what respects the subject application is incomplete. Upon failure
15 of the division to ~~so~~ notify the applicant within sixty calendar days ~~of~~
16 AFTER its filing, the application ~~shall be~~ IS deemed complete.
17 (II) Applications for construction permits subject to part 2 of this
18 ~~article shall~~ ARTICLE 7 MUST be approved or disapproved within twelve
19 months ~~of~~ AFTER receipt of a complete application.
20 (c) Applications for renewable operating permits ~~shall~~ MUST be
21 approved or disapproved within eighteen months after the receipt of the
22 completed permit application. ~~except that those applications submitted~~
23 ~~within the first year after the effective date of the operating permit~~
24 ~~program shall be subject to a phased schedule for acting on such permit~~
25 ~~applications established by the division. The phased schedule shall assure~~
26 ~~that at least one-third of such permits will be acted on by the division~~
27 ~~annually over a three-year period.~~ The commission may establish a
28 phased schedule for acting on applications for which a deferral has been
29 granted pursuant to the federal act.
30 (d) A timely and complete RENEWABLE OPERATING permit
31 application operates as a defense to AN enforcement action for operating
32 without a permit for the period of time during which the division or the
33 commission is reviewing the application and until such time as the
34 division or the commission makes a final determination on the permit
35 application; except that this defense to an enforcement action ~~shall~~ IS not
36 ~~be~~ available to an applicant ~~which~~ THAT files a fraudulent application.
37 (5) (a) For those types of projects or activities for which a
38 construction permit application has been filed AND THAT HAVE BEEN
39 defined or designated by the commission as warranting public comment
40 with respect ~~thereto~~ TO THE CONSTRUCTION PERMIT APPLICATION, the
41 division shall, within fifteen calendar days after it has prepared its
42 preliminary analysis PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION:
43 (I) Give public notice of the proposed project or activity by at

1 ~~least one publication in a newspaper of general distribution in the area in~~
2 ~~which the proposed project or activity, or a part thereof, is to be located~~
3 ~~or by such other method that is reasonably designed to ensure effective~~
4 ~~general public notice; The division shall also during such period of time~~
5 ~~maintain in the office of the county clerk and recorder of the county in~~
6 ~~which the proposed project or activity, or a part thereof, is located AND~~

7 (II) POST ON THE DIVISION'S WEBSITE a copy of its preliminary
8 analysis and a copy of the application with all accompanying data for
9 public inspection.

10 (b) The division shall receive and consider public comment
11 ~~thereon~~ ON THE CONSTRUCTION PERMIT APPLICATION for a period of AT
12 LEAST thirty calendar days ~~thereafter~~ AFTER THE PUBLIC NOTICE AND
13 POSTING OF A COPY OF THE PRELIMINARY ANALYSIS AND PERMIT
14 APPLICATION ON ITS WEBSITE PURSUANT TO SUBSECTION (5)(a) OF THIS
15 SECTION. IF THE LAST DAY OF THE PUBLIC COMMENT PERIOD FALLS ON A
16 WEEKEND OR STATE HOLIDAY, THE PUBLIC COMMENT PERIOD ENDS ON THE
17 FOLLOWING BUSINESS DAY.

18 (6) (a) For any construction permit application subject to the
19 requirements of a new or modified major source in a nonattainment area,
20 ~~or~~ for prevention of significant deterioration as provided in part 2 of this
21 ~~article~~ ARTICLE 7, or for any application for a renewable operating permit,
22 within fifteen calendar days after the issuance of its preliminary analysis
23 PREPARED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, the division
24 shall:

25 (II) Give public notice of the proposed source or modification and
26 the division's preliminary analysis ~~thereof~~ APPLICABLE TO THE PROPOSED
27 SOURCE OR MODIFICATION by at least one ~~publication in a newspaper of~~
28 ~~general distribution in the area of the proposed source or modification, or~~
29 ~~by such other method that is reasonably designed to ensure effective~~
30 ~~general public notice. Such~~ THE PUBLIC notice ~~shall~~ MUST advise of the
31 opportunity for a public hearing for interested persons to appear and
32 submit written or oral comments to the commission on the air quality
33 impacts of the source or modification, the alternatives to the source or
34 modification, the control technology required, if applicable, and other
35 appropriate considerations. ~~Any such notice shall be printed prominently~~
36 ~~in at least ten-point bold-faced type.~~ The division shall receive and
37 consider any comments submitted.

38 (b) (I) If within thirty calendar days ~~of~~ AFTER publication of ~~such~~
39 THE public notice PURSUANT TO SUBSECTION (6)(a)(II) OF THIS SECTION
40 the applicant or an interested person submits a written request for a public
41 hearing to the division, the division shall transmit ~~such~~ THE request to the
42 commission, along with the application, the division's preliminary
43 analysis PREPARED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, and

1 any written comments received by the division, within five calendar days
2 of AFTER the end of ~~such thirty-day~~ THE PUBLIC COMMENT period.

3 (II) The commission shall, within sixty calendar days after receipt
4 of the application, comments, and analysis, unless ~~such~~ A greater time is
5 agreed to by the applicant and the division, hold a public hearing to elicit
6 and record the comment of any interested person regarding the
7 sufficiency of the DIVISION'S preliminary analysis and whether the permit
8 application should be approved or denied. At least thirty calendar days
9 prior to ~~such~~ THE public hearing, ~~notice thereof shall be mailed by the~~
10 commission SHALL:

11 (A) MAIL THE NOTICE OF THE PUBLIC HEARING to the applicant;
12 ~~printed in a newspaper of general distribution in the area of the proposed~~
13 ~~source or modification, and submitted for public review with the county~~
14 ~~clerk and recorder of the county wherein the project or activity is~~
15 ~~proposed.~~ AND

16 (B) POST THE NOTICE OF THE PUBLIC HEARING ON THE
17 COMMISSION'S WEBSITE.

18 **SECTION 7.** In Colorado Revised Statutes, 25-7-115, **amend** (2),
19 (3)(a), (3)(b), and (7)(b); and **add** (4)(a)(III) and (4)(c) as follows:

20 **25-7-115. Enforcement - civil actions - definitions.** (2) (a) If a
21 written ~~and verified~~ complaint is filed with the division alleging that, or
22 if the division itself has cause to believe that, any person is violating or
23 failing to comply with any ~~regulation~~ RULE of the commission issued
24 pursuant to parts 1 to 4 of this ~~article~~ ARTICLE 7, order issued pursuant to
25 section 25-7-118, requirement of the state implementation plan, OR
26 provision of parts 1 to 4 of this ~~article~~ ARTICLE 7, including any term or
27 condition of a permit required pursuant to this ~~article~~ ARTICLE 7, the
28 division shall cause a prompt AND DILIGENT investigation to be made ~~and;~~
29 ~~if the division investigation determines that any such violation or failure~~
30 ~~to comply exists;~~ UNLESS:

31 (I) THE COMPLAINT CLEARLY APPEARS ON ITS FACE TO BE
32 FRIVOLOUS OR TRIVIAL; OR

33 (II) THE COMPLAINANT WITHDRAWS THE COMPLAINT WITHIN THE
34 TIME ALLOTTED FOR THE COMPLAINT TO BE INVESTIGATED.

35 (b) (I) The division shall act expeditiously ~~and within the period~~
36 ~~prescribed by law in~~ WITHIN THIRTY DAYS AFTER RECEIPT OF A COMPLAINT
37 FILED, OR AFTER THE DISCOVERY OF THE ALLEGED VIOLATION OR
38 NONCOMPLIANCE, PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION, TO
39 formally ~~notifying~~ NOTIFY the owner or operator of ~~such~~ THE air pollution
40 source after the discovery of the alleged violation or noncompliance.
41 ~~Such~~ THE notice ~~shall~~ MUST specify the provision alleged to have been
42 violated or not complied with and the facts alleged to constitute the
43 violation or noncompliance.

1 (II) IF THE DIVISION IS ACTING IN RESPONSE TO A COMPLAINT, THE
2 DIVISION SHALL NOTIFY THE COMPLAINANT THAT AN INVESTIGATION HAS
3 COMMENCED AT THE TIME THAT THE DIVISION PROVIDES NOTICE TO THE
4 OWNER OR OPERATOR OF THE AIR POLLUTION SOURCE PURSUANT TO
5 SUBSECTION (2)(b)(I) OF THIS SECTION.

6 (c) IN INVESTIGATING A COMPLAINT PURSUANT TO SUBSECTION
7 (2)(a) OF THIS SECTION, THE DIVISION SHALL ACCEPT AND CONSIDER ALL
8 RELEVANT EVIDENCE IT RECEIVES OR ACQUIRES, INCLUDING AUDIO, VIDEO,
9 AND TESTIMONIAL EVIDENCE.

10 (3) (a) (I) Within thirty calendar days after notice has been given
11 PURSUANT TO SUBSECTION (2)(b)(I) OF THIS SECTION, the division shall
12 confer with the owner or operator of the source to determine whether a
13 violation or noncompliance ~~did or did not occur~~ OCCURRED and, if such
14 violation or noncompliance occurred, whether a noncompliance penalty
15 must be assessed under subsection (5) of this section. The division shall
16 provide THE OWNER OR OPERATOR an opportunity ~~to the owner or operator~~
17 ~~at such~~ AT THE conference, and may provide further opportunity,
18 ~~thereafter~~ NOT TO EXCEED THIRTY ADDITIONAL CALENDAR DAYS AFTER
19 THE CONFERENCE, to submit data, views, and arguments concerning the
20 alleged violation or noncompliance or the assessment of any
21 noncompliance penalty.

22 (II) NO LATER THAN NINETY DAYS AFTER NOTICE HAS BEEN GIVEN
23 PURSUANT TO SUBSECTION (2)(b)(I) OF THIS SECTION, THE DIVISION SHALL
24 DETERMINE WHETHER A VIOLATION OR NONCOMPLIANCE OCCURRED. IF A
25 COMPLAINT WAS FILED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION
26 ALLEGING THE VIOLATION OR NONCOMPLIANCE, THE DIVISION SHALL
27 PROMPTLY NOTIFY THE COMPLAINANT OF THE DIVISION'S DETERMINATION.

28 (b) (I) If, after ~~any such~~ THE conference PURSUANT TO
29 SUBSECTION (3)(a)(I) OF THIS SECTION, THE DIVISION DETERMINES THAT
30 a violation or noncompliance ~~is determined to have~~ HAS occurred, the
31 division shall issue an order requiring the owner or operator or any other
32 responsible person to comply. ~~unless the owner or operator demonstrates~~
33 ~~that the violation occurred during a period of start-up, shutdown, or~~
34 ~~malfunction and timely notice was given to the division of the condition.~~

35 (II) IF A COMPLAINT IS FILED PURSUANT TO SUBSECTION (2)(a) OF
36 THIS SECTION ALLEGING THE VIOLATION OR NONCOMPLIANCE, THE
37 DIVISION SHALL SEND THE ORDER TO THE COMPLAINANT.

38 (III) The order may:

39 (A) Include THE termination, ~~modification~~ ALTERATION, or
40 revocation and reissuance of the subject permit;

41 (B) INCLUDE the assessment of civil penalties in accordance with
42 section 25-7-122 and SUBSECTION (3)(b)(IV) OF THIS SECTION;

43 (C) In addition to civil penalties, INCLUDE a requirement to

1 perform one or more projects to mitigate violations related to excess
2 emissions; ~~The order may also~~ AND

3 (D) Require the calculation of a noncompliance penalty under
4 subsection (5) of this section.

5 (IV) IN DETERMINING THE AMOUNT TO ASSESS FOR A CIVIL
6 PENALTY FOR A VIOLATION OR NONCOMPLIANCE, THE DIVISION SHALL:

7 (A) CONSIDER THE FACTORS DESCRIBED IN SECTION 25-7-122
8 (2)(a); AND

9 (B) NOT ASSESS A PENALTY FOR A VIOLATION OR NONCOMPLIANCE
10 THAT IS LESS THAN THE ECONOMIC BENEFIT THAT THE OWNER OR
11 OPERATOR DERIVED FROM THE VIOLATION OR NONCOMPLIANCE.

12 (V) Unless enforcement of its order has been stayed as provided
13 in subsection (4)(b) of this section, the division may seek enforcement, IN
14 THE DISTRICT COURT FOR THE DISTRICT WHERE THE AFFECTED AIR
15 POLLUTION SOURCE IS LOCATED, OF:

16 (A) Pursuant to section 25-7-121 or 25-7-122, ~~of the~~ AN
17 applicable rule of the commission;

18 (B) AN order issued pursuant to section 25-7-121 or 25-7-122 or
19 the applicable rule of the commission;

20 (C) AN order issued pursuant to section 25-7-118;

21 (D) A requirement of the state implementation plan;

22 (E) A provision of this article 7; or

23 (F) THE terms or conditions of a permit required pursuant to this
24 article 7. ~~in the district court for the district where the affected air~~
25 ~~pollution source is located.~~

26 (VI) The court shall issue an appropriate order, which may include
27 a schedule for compliance by the owner or operator of the source.

28 (4)(a)(III) IF A HEARING IS REQUESTED PURSUANT TO SUBSECTION
29 (4)(a)(I) OF THIS SECTION, THE COMMISSION SHALL PROVIDE AT LEAST
30 FORTY-FIVE DAYS' NOTICE TO ANY COMPLAINANT THAT FILED A
31 COMPLAINT PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION ALLEGING
32 A VIOLATION OR NONCOMPLIANCE AT ISSUE IN THE HEARING. THE
33 COMPLAINANT MAY PARTICIPATE AS A PARTY TO THE HEARING.

34 (c) (I) WITHIN TWENTY CALENDAR DAYS AFTER RECEIPT OF A
35 DETERMINATION BY THE DIVISION THAT NO VIOLATION OR
36 NONCOMPLIANCE OCCURRED PURSUANT TO SUBSECTION (3)(a)(II) OF THIS
37 SECTION OR AN ORDER PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION,
38 ANY COMPLAINANT THAT FILED A COMPLAINT ALLEGING THE VIOLATION
39 OR NONCOMPLIANCE MAY FILE WITH THE COMMISSION A WRITTEN
40 PETITION REQUESTING A HEARING TO DETERMINE ANY OF THE FOLLOWING:

41 (A) WHETHER THE ALLEGED VIOLATION OR NONCOMPLIANCE
42 EXISTS OR DID EXIST;

43 (B) WHETHER A REVISION TO THE STATE IMPLEMENTATION PLAN

1 OR REVISION OF A REGULATION OR STANDARD THAT IS NOT PART OF THE
2 STATE IMPLEMENTATION PLAN SHOULD BE IMPLEMENTED WITH RESPECT
3 TO THE ALLEGED VIOLATION OR NONCOMPLIANCE; OR

4 (C) WHETHER THE OWNER OR OPERATOR IS SUBJECT TO CIVIL
5 PENALTIES PURSUANT TO SECTION 25-7-122 OR NONCOMPLIANCE
6 PENALTIES UNDER SUBSECTION (5) OF THIS SECTION, OR WHETHER THE
7 CIVIL OR NONCOMPLIANCE PENALTIES WERE ASSESSED INCORRECTLY.

8 (II) THE HEARING DESCRIBED IN SUBSECTION (4)(c)(I) OF THIS
9 SECTION MUST:

10 (A) ALLOW THE PARTIES TO PRESENT EVIDENCE AND ARGUMENT
11 ON ALL ISSUES AND TO CONDUCT CROSS-EXAMINATION AS REQUIRED FOR
12 FULL DISCLOSURE OF THE FACTS; AND

13 (B) BE CONDUCTED IN ACCORDANCE WITH SECTION 25-7-119.

14 (III) THE COMPLAINANT SHALL SEND A COPY OF THE PETITION
15 DESCRIBED IN SUBSECTION (4)(c)(I) OF THIS SECTION TO THE ALLEGED
16 VIOLATOR AT THE TIME OF FILING THE PETITION WITH THE COMMISSION.

17 (7) (b) The division may, after notice and opportunity for a public
18 hearing, exempt THE OWNER OR OPERATOR OF any stationary source from
19 the duty to pay a noncompliance penalty pursuant to this section with
20 respect to a particular instance of noncompliance if it finds that ~~such~~ THE
21 instance of noncompliance is inconsequential in nature and duration. ~~Any~~
22 ~~instance of noncompliance occurring during a period of start-up,~~
23 ~~shutdown, or malfunction shall be deemed to be inconsequential.~~ If a
24 public hearing is requested by an interested person, the request ~~shall~~ MUST
25 be transmitted to the commission within twenty calendar days ~~of~~ AFTER
26 its receipt by the division. The commission shall, within sixty calendar
27 days ~~of~~ AFTER its receipt of the request, hold a public hearing, ~~with~~
28 ~~respect thereto~~ and within thirty calendar days ~~of such~~ AFTER THE hearing,
29 issue its decision.

30 **SECTION 8.** In Colorado Revised Statutes, 25-7-122, **amend**
31 (2)(a) introductory portion, (2)(a)(VI), (2)(a)(VII), and (2)(a)(VIII); and
32 **add** (2)(a)(IX) as follows:

33 **25-7-122. Civil penalties - rules - definitions.** (2) (a) In
34 determining the amount of any civil penalty, the ~~following factors~~
35 DIVISION shall ~~be considered~~ CONSIDER THE FOLLOWING FACTORS:

36 (VI) AS A RESULT OF THE VIOLATION OR NONCOMPLIANCE, THE
37 impact on or threat to: ~~the~~

38 (A) Public health; ~~or~~

39 (B) SAFETY;

40 (C) Welfare; ~~or~~

41 (D) The environment; ~~as a result of the violation~~ AND

42 (E) WILDLIFE AND BIOLOGICAL RESOURCES;

43 (VII) Malfeasance; ~~and~~

1 (VIII) Whether legal and factual theories were advanced for
2 purposes of delay; AND

3 (IX) THE SEVERITY OF THE VIOLATION OR NONCOMPLIANCE.

4 **SECTION 9.** In Colorado Revised Statutes, 25-7-123.1, **amend**
5 (1) as follows:

6 **25-7-123.1. Statute of limitations - penalty assessment -**
7 **criteria.** (1) (a) EXCEPT WITH RESPECT TO AN ACTION COMMENCED TO
8 ADDRESS A FAILURE TO OBTAIN A PERMIT REQUIRED BY THIS ARTICLE 7,
9 any action COMMENCED, INCLUDING FOR THE ASSESSMENT OF CIVIL
10 PENALTIES, pursuant to this ~~section~~ ARTICLE 7 THAT IS not commenced
11 within five years ~~of~~ AFTER THE occurrence of the alleged violation is time
12 barred.

13 (b) Without expanding the statute of limitations contained in
14 ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION,
15 any action COMMENCED, INCLUDING THE ASSESSMENT OF CIVIL PENALTIES,
16 pursuant to this ~~article~~ ARTICLE 7, except those commenced pursuant to
17 section 25-7-122 (1)(d) or 25-7-122.1 (1)(c), ~~which~~ THAT is not
18 commenced within eighteen months ~~of~~ AFTER the date upon which the
19 division discovers the alleged violation is time barred. For purposes of
20 this section, the division discovers the alleged violation when it learns of
21 the alleged violation or should have learned of the alleged violation by the
22 exercise of reasonable diligence, including by receipt of actual or
23 constructive notice.

24 (c) ~~The five-year period of limitation contained~~ PERIODS OF
25 LIMITATION DESCRIBED in this section ~~does~~ DO not apply where THE
26 ALLEGED VIOLATOR KNOWINGLY OR WILLFULLY CONCEALS information
27 regarding the alleged violation. ~~is knowingly or willfully concealed by the~~
28 ~~alleged violator.~~

29 **SECTION 10.** In Colorado Revised Statutes, **add** 25-7-146 as
30 follows:

31 **25-7-146. Emissions standards for stationary engines -**
32 **definitions - rules.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
33 OTHERWISE REQUIRES:

34 (a) "INFEASIBLE" MEANS ELECTRIFICATION OF OIL AND GAS
35 OPERATIONS IS INFEASIBLE BECAUSE THERE IS NO REASONABLE ACCESS, OR
36 OPPORTUNITY TO CREATE ACCESS, TO THE ELECTRICAL POWER GRID.

37 (b) "OIL AND GAS OPERATIONS" HAS THE MEANING SET FORTH IN
38 SECTION 34-60-103 (6.5).

39 (c) "OPERATOR" HAS THE MEANING SET FORTH IN SECTION
40 34-60-103 (6.8).

41 (d) "STATIONARY ENGINE" MEANS ANY RICH AND LEAN BURN
42 RECIPROCATING INTERNAL COMBUSTION ENGINE USED IN OIL AND GAS
43 OPERATIONS.

1 (2) NO LATER THAN JANUARY 1, 2025, THE COMMISSION SHALL
2 ADOPT RULES THAT REQUIRE THE ELECTRIFICATION OF ALL STATIONARY
3 ENGINES UNLESS THE OPERATOR OF THE OIL AND GAS OPERATIONS CAN
4 DEMONSTRATE TO THE DIVISION'S SATISFACTION THAT ELECTRIFICATION
5 OF THE STATIONARY ENGINES IS INFEASIBLE.

6 (3) IF AN OPERATOR MAKES THE DEMONSTRATION PURSUANT TO
7 SUBSECTION (2) OF THIS SECTION, THE DIVISION SHALL REQUIRE THAT ANY
8 EXISTING, NEW, MODIFIED, OR RELOCATED STATIONARY ENGINES MEET
9 THE FOLLOWING NITROGEN OXIDE EMISSIONS LIMITS OR CONTROL
10 REQUIREMENTS:

11 (a) FOR ENGINES OF ONE HUNDRED TO FIVE HUNDRED
12 HORSEPOWER:

13 (I) COMPLIANCE WITH A ONE-QUARTER GRAM PER
14 HORSEPOWER-HOUR NITROGEN OXIDE EMISSIONS LIMIT; OR

15 (II) INSTALLATION OF NONSELECTIVE CATALYTIC REDUCTION AND
16 AIR FUEL RATIO CONTROLLERS; AND

17 (b) FOR ENGINES LARGER THAN FIVE HUNDRED HORSEPOWER,
18 COMPLIANCE WITH A TWO-TENTHS GRAM PER HORSEPOWER-HOUR
19 NITROGEN OXIDE EMISSIONS LIMIT.

20 **SECTION 11.** In Colorado Revised Statutes, **add 25-7-302.5** as
21 follows:

22 **25-7-302.5. State implementation plan requirements for**
23 **serious, severe, and extreme nonattainment areas - definitions - rules.**

24 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES:

26 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
27 AND ENVIRONMENT CREATED IN SECTION 24-1-119 (1).

28 (b) "NONATTAINMENT AREA" MEANS, FOR ANY AIR POLLUTANT, AN
29 AREA THAT THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY
30 DESIGNATES AS "NONATTAINMENT" WITH RESPECT TO THAT AIR
31 POLLUTANT PURSUANT TO THE FEDERAL ACT.

32 (c) "OIL AND GAS LOCATION" HAS THE MEANING SET FORTH IN
33 SECTION 34-60-103 (6.4).

34 (d) "OIL AND GAS OPERATIONS" HAS THE MEANING SET FORTH IN
35 SECTION 34-60-103 (6.5).

36 (2) UNTIL A SERIOUS, SEVERE, OR EXTREME OZONE
37 NONATTAINMENT AREA IN THE STATE IS REDESIGNATED AS A
38 MAINTENANCE AREA PURSUANT TO THE NATIONAL AMBIENT AIR QUALITY
39 STANDARDS FOR OZONE UNDER THE FEDERAL ACT, ANY STATE
40 IMPLEMENTATION PLAN THAT THE COMMISSION ADOPTS MUST INCLUDE
41 THE FOLLOWING CONTROL MEASURES, EFFECTIVE ON OR BEFORE JUNE 1,
42 2024, FOR THE SEVERE OZONE PLAN:

43 (a) THE MOST STRINGENT, NEW HEAVY-DUTY, OFF-ROAD

1 COMPRESSION-IGNITION ENGINE STANDARDS AND LARGE, OFF-ROAD
2 SPARK-IGNITION ENGINE STANDARDS AVAILABLE FOR THE STATE TO ADOPT
3 UNDER THE FEDERAL ACT;

4 (b) A REQUIREMENT TO USE GRID-POWERED ELECTRIC DRILL RIGS
5 AND GRID-POWERED HYDRAULIC ELECTRIC FRACTURING ENGINES AT OIL
6 AND GAS LOCATIONS IN THE OZONE NONATTAINMENT AREA; EXCEPT THAT,
7 IF ELECTRIFICATION IS NOT POSSIBLE, AS DETERMINED BY THE
8 DEPARTMENT, THE STATE IMPLEMENTATION PLAN MUST REQUIRE OFFSETS
9 OF ONE AND ONE-THIRD TONS FOR EVERY ONE TON OF NITROGEN OXIDES
10 OR VOLATILE ORGANIC COMPOUNDS EMITTED FROM THOSE ENGINES; AND

11 (c) ZERO-EMITTING RETROFITS FOR ALL EXISTING PNEUMATIC
12 DEVICES USED IN OIL AND GAS OPERATIONS.

13 **SECTION 12.** In Colorado Revised Statutes, 34-60-103, **add**
14 (4.1) as follows:

15 **34-60-103. Definitions.** As used in this article 60, unless the
16 context otherwise requires:

17 (4.1) "CUMULATIVE IMPACTS" MEANS THE EFFECTS OF OIL AND
18 GAS OPERATIONS ON THE ENVIRONMENT, INCLUDING EFFECTS ON AIR
19 QUALITY, WATER QUALITY, CLIMATE, NOISE, ODOR, WILDLIFE, BIOLOGICAL
20 RESOURCES, OR PUBLIC HEALTH THAT ARE CAUSED BY THE INCREMENTAL
21 IMPACT THAT A NEW OR EXPANDED OIL AND GAS FACILITY HAS WHEN
22 ADDED TO THE IMPACTS FROM OTHER PAST, PRESENT, AND REASONABLY
23 FORESEEABLE FUTURE DEVELOPMENT OF ANY TYPE ON THE RELEVANT
24 AREA, INCLUDING AN AIRSHED OR WATERSHED AREA OR A
25 DISPROPORTIONATELY IMPACTED COMMUNITY, AS DEFINED IN SECTION
26 24-4-109 (2)(b)(II).

27 **SECTION 13.** In Colorado Revised Statutes, **amend** 34-60-114
28 as follows:

29 **34-60-114. Action for damages.** (1) (a) ~~Nothing in this article,~~
30 ~~and no suit by or against the commission, and no violation charged or~~
31 ~~asserted against any person under any provisions of this article, or any~~
32 ~~rule, regulation, or order issued under this article,~~ THE FOLLOWING shall
33 NOT impair, abridge, or delay any cause of action for damages ~~which~~
34 THAT any person may have or assert against ~~any~~ ANOTHER person
35 violating any provision of this ~~article~~ ARTICLE 60, or any rule ~~regulation,~~
36 or order issued under this ~~article~~ ARTICLE 60:

- 37 (I) ANY PROVISION IN THIS ARTICLE 60;
38 (II) A SUIT BY OR AGAINST THE COMMISSION;
39 (III) A VIOLATION CHARGED OR ASSERTED AGAINST ANY PERSON
40 UNDER THIS ARTICLE 60; AND

41 (IV) ANY RULE OR ORDER ISSUED UNDER THIS ARTICLE 60.

42 (b) Any person ~~so~~ damaged by ~~the~~ A violation DESCRIBED IN
43 SUBSECTION (1)(a) OF THIS SECTION may sue for and recover ~~such~~

1 damages as ~~he~~ THE PERSON otherwise may be entitled to receive.

2 (2) (a) ~~In the event~~ IF the commission fails to bring suit to enjoin
3 any actual or threatened violation of this ~~article~~ ARTICLE 60, or of any rule
4 ~~regulation~~, or order made under this ~~article~~, ~~then~~ ARTICLE 60, any person
5 or party in interest adversely affected ~~and~~ BY THE ACTUAL VIOLATION OR
6 THREATENED VIOLATION who has notified the commission in writing of
7 ~~such violation or threat thereof~~ THE ACTUAL VIOLATION OR THREATENED
8 VIOLATION and has requested the commission to sue may, to prevent any
9 ~~or~~ further violation, bring suit for that purpose in the district court of any
10 county in which the commission could have brought suit.

11 (b) If, in ~~such suit~~ A LAWSUIT DESCRIBED IN SUBSECTION (2)(a) OF
12 THIS SECTION, the court holds that injunctive relief should be granted,
13 ~~then the commission shall be made~~ THE COURT SHALL:

14 (I) MAKE THE COMMISSION a party ~~and shall be substituted~~ TO THE
15 SUIT;

16 (II) IF REQUESTED BY THE COMPLAINING PARTY, SUBSTITUTE THE
17 COMMISSION for the ~~person who brought the suit~~, COMPLAINING PARTY;
18 ~~and the injunction shall be issued~~

19 (III) ISSUE THE INJUNCTION as if the commission had at all times
20 been the complaining party.

21 (3) IN ISSUING ANY FINAL JUDGMENT, RULING, OR ORDER IN A
22 LAWSUIT DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION, THE DISTRICT
23 COURT SHALL AWARD THE COMPLAINING PARTY ANY COSTS OF LITIGATION
24 INCURRED BY THE COMPLAINING PARTY IN LITIGATING THE LAWSUIT,
25 INCLUDING REASONABLE ATTORNEY FEES, EXPERT WITNESS FEES, AND
26 OTHER RELATED COSTS IF THE COURT DETERMINES THAT THE AWARD IS
27 APPROPRIATE. AN AWARD IS APPROPRIATE IF:

28 (a) THE COMPLAINING PARTY OR THE COMMISSION, IF THE
29 COMMISSION HAS BEEN SUBSTITUTED FOR THE COMPLAINING PARTY
30 PURSUANT TO SUBSECTION (2)(b)(II) OF THIS SECTION, PREVAILS ON ONE
31 OR MORE OF ITS CLAIMS;

32 (b) THE LAWSUIT IS SUBSTANTIALLY RESPONSIBLE FOR STOPPING
33 A VIOLATION OR BRINGING AN ALLEGED VIOLATOR INTO COMPLIANCE; OR

34 (c) THE LAWSUIT HAS SERVED THE PUBLIC INTEREST.

35 **SECTION 14.** In Colorado Revised Statutes, 34-60-121, **amend**
36 (4) as follows:

37 **34-60-121. Violations - investigations - penalties - rules -**
38 **definition - legislative declaration.** (4) (a) ANY PERSON MAY SUBMIT A
39 COMPLAINT TO THE COMMISSION ALLEGING THAT A VIOLATION OF THIS
40 ARTICLE 60, ANY RULE OR ORDER OF THE COMMISSION, OR ANY PERMIT
41 HAS OCCURRED. IF A COMPLAINT IS RECEIVED BY THE COMMISSION, THE
42 COMMISSION OR THE DIRECTOR SHALL PROMPTLY COMMENCE AND
43 COMPLETE AN INVESTIGATION INTO THE VIOLATION ALLEGED BY THE

1 COMPLAINT UNLESS:
2 (I) THE COMPLAINT CLEARLY APPEARS ON ITS FACE TO BE
3 FRIVOLOUS OR TRIVIAL; OR
4 (II) THE COMPLAINANT WITHDRAWS THE COMPLAINT.
5 (b) IN INVESTIGATING A VIOLATION ALLEGED BY A COMPLAINT
6 RECEIVED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, THE
7 COMMISSION OR THE DIRECTOR SHALL ACCEPT AND CONSIDER ALL
8 RELEVANT EVIDENCE IT RECEIVES OR ACQUIRES, INCLUDING AUDIO, VIDEO,
9 OR TESTIMONIAL EVIDENCE.
10 (c) Whenever the commission or the director has reasonable cause
11 to believe a violation of any provision of this ~~article~~ ARTICLE 60, any rule
12 ~~regulation~~, or order of the commission, or any permit has occurred,
13 ~~written notice shall be given~~ INCLUDING BASED ON A WRITTEN COMPLAINT
14 FROM ANY PERSON, THE COMMISSION OR THE DIRECTOR SHALL PROVIDE
15 WRITTEN NOTICE to the operator whose act or omission allegedly resulted
16 in ~~such~~ THE violation AND REQUIRE THAT THE OPERATOR REMEDY THE
17 VIOLATION. The notice ~~shall~~ MUST be served personally or by certified
18 mail, return receipt requested, to the operator or the operator's agent for
19 service of process and ~~shall~~ MUST state the provision alleged to have been
20 violated, the facts alleged to constitute the violation, and any corrective
21 action and abatement deadlines the commission or director elects to
22 require of the operator.
23 (d) AS USED IN THIS SUBSECTION (4), "DIRECTOR" MEANS THE
24 DIRECTOR OF THE COMMISSION.
25 **SECTION 15. Applicability.** This act applies to conduct
26 occurring on or after the effective date of this act, including
27 determinations of applications pending on the effective date.
28 **SECTION 16. Safety clause.** The general assembly hereby finds,
29 determines, and declares that this act is necessary for the immediate
30 preservation of the public peace, health, or safety."

** ** ** ** **