

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0833.01 Sarah Lozano x3858

SENATE BILL 24-166

SENATE SPONSORSHIP

Winter F., Priola

HOUSE SPONSORSHIP

Froelich and Velasco,

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES TO INCREASE THE ENFORCEMENT OF
102 VIOLATIONS THAT IMPACT THE ENVIRONMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill defines a "repeat violator" as a person that, in a 3-year period, has committed 5 or more violations of certain air quality laws (repeat violator).

Section 1 also defines a "high-priority repeat violator" as a repeat violator that, in a 3-year period, has committed 5 or more exceedances (emission exceedance) of the allowable emissions of an air pollutant in

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

a permit (high-priority repeat violator).

Section 2 requires the division of administration in the department of public health and environment (division), in the case of a violation by a repeat violator, to issue an order of compliance (order) for the violation instead of issuing a warning letter or compliance advisory or taking another informal action. The order must assess civil penalties and, in the case of a high-priority repeat violator, must require the high-priority repeat violator to conduct and submit to the division a root cause analysis for the violation, which must be submitted to the division within 90 days after the order. In connection with an order and in the case of a high-priority repeat violator, the division must require a reduction in emissions of any air pollutant applicable to an emission exceedance from any emission unit where a violation occurred in accordance with certain standards.

Section 2 also clarifies that the division may assess civil penalties for air quality violations without instituting an action in district court.

Section 2 also allows a person, with respect to air quality laws, to commence a civil action (action) against an alleged violator. A person shall not commence an action until at least 60 days after a notice has been provided to the executive director of the department of public health and environment, the director of the division, and the alleged violator. Except for violations of an ongoing or recurring nature, any action that is not commenced within 5 years after the discovery of the alleged violation is time barred.

Section 2 also requires the division, on or before February 1, 2025, and on or before each February 1 thereafter, to prepare and post on the division's website an air quality enforcement report, which must contain certain air quality enforcement information from the previous calendar year.

Section 3 requires that:

- In the case of a repeat violator, the division or a district court assess a civil penalty that is at least 50% of the maximum civil penalty applicable to the violation under applicable state air quality laws; and
- In the case of a violation by a repeat violator in a disproportionately impacted community, the division or a district court assess a civil penalty that is at least 75% of the maximum civil penalty applicable to the violation under applicable state air quality laws.

On or before December 31, 2024, **section 4** requires owners and operators of stationary sources to submit any reports or records that the owner or operator is required to create, maintain, or submit pursuant to federal or state law. The division must make any reports or records received available on the division's website within 30 days after receipt.

Current law provides that a person that violates a local

government's air quality regulations is subject to a maximum civil penalty of \$300. **Section 5** raises the maximum civil penalty to the amount provided by state air quality laws.

Section 6 requires a district court, in a suit against a person that has violated a state law related to energy and carbon management, to award the initial complaining party any costs of litigation incurred by the initial complaining party if the court determines that the award is appropriate.

Current law exempts damage awards from the state constitutional definition of "fiscal year spending", which counts toward the state's annual spending limit pursuant to state constitutional law. **Section 7** adds civil penalties assessed by a state agency to the statutory definition of "damage awards".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 25-7-103, **add** (13.5)
3 and (19.7) as follows:

4 **25-7-103. Definitions.** As used in this article 7, unless the context
5 otherwise requires:

6 (13.5) (a) "HIGH-PRIORITY REPEAT VIOLATOR" MEANS A REPEAT
7 VIOLATOR IN THE INDUSTRIAL AND MANUFACTURING SECTOR, AS DEFINED
8 IN SECTION 25-7-105 (1)(e)(XI)(B.5), THAT, IN A THREE-YEAR PERIOD, HAS
9 HAD FIVE OR MORE EXCEEDANCES OF THE ALLOWABLE EMISSIONS OF AN
10 AIR POLLUTANT IN A PERMIT.

11 (b) AS USED IN THIS SUBSECTION (13.5), "VIOLATION" INCLUDES
12 NONCOMPLIANCE, FAILING TO COMPLY, OR A FAILURE TO COMPLY, AS
13 DESCRIBED IN SECTION 25-7-115.

14 (19.7) (a) "REPEAT VIOLATOR" MEANS A PERSON THAT, IN A
15 THREE-YEAR PERIOD, HAS COMMITTED FIVE OR MORE VIOLATIONS, WHICH
16 INCLUDE VIOLATIONS THAT ONLY RESULT IN THE ISSUANCE OF A WARNING
17 LETTER, COMPLIANCE ADVISORY, OR OTHER INFORMAL ACTION, OF:

18 (I) AN EMISSION CONTROL REGULATION;

- 1 (II) THE REQUIREMENTS OF THE STATE IMPLEMENTATION PLAN;
2 (III) THIS PART 1 OR PART 2, 3, 4, OR 11 OF THIS ARTICLE 7;
3 (IV) THE TERMS OR CONDITIONS OF A PERMIT REQUIRED PURSUANT
4 TO THIS ARTICLE 7; OR
5 (V) ANY ORDER ISSUED BY THE DIVISION, INCLUDING A
6 COMPLIANCE ORDER ON CONSENT OR A SETTLEMENT AGREEMENT.

7 (b) "REPEAT VIOLATOR" INCLUDES A HIGH-PRIORITY REPEAT
8 VIOLATOR.

9 (c) AS USED IN THIS SUBSECTION (19.7), "VIOLATION" INCLUDES
10 NONCOMPLIANCE, FAILING TO COMPLY, OR A FAILURE TO COMPLY, AS
11 DESCRIBED IN SECTION 25-7-115.

12 **SECTION 2.** In Colorado Revised Statutes, 25-7-115, **amend**
13 (3)(b)(IV) introductory portion; and **add** (3)(b)(III.3), (3)(b)(III.5), (3)(d),
14 (12), and (13) as follows:

15 **25-7-115. Enforcement - civil actions - reports - definitions.**

16 (3) (b) (III.3) IF THE OWNER OR OPERATOR OR ANY OTHER RESPONSIBLE
17 PARTY IS A REPEAT VIOLATOR, WITHIN SIX MONTHS AFTER ANY VIOLATION
18 OR NONCOMPLIANCE OCCURS, THE DIVISION SHALL ISSUE AN ORDER FOR
19 THE VIOLATION OR NONCOMPLIANCE AND SHALL NOT ISSUE A WARNING
20 LETTER OR COMPLIANCE ADVISORY FOR, OR TAKE OTHER INFORMAL
21 ACTION IN REGARD TO, THE VIOLATION OR NONCOMPLIANCE. THE ORDER,
22 AT A MINIMUM, MUST:

23 (A) IF THE OWNER OR OPERATOR OR ANY OTHER RESPONSIBLE
24 PARTY IS A HIGH-PRIORITY REPEAT VIOLATOR, REQUIRE THE
25 HIGH-PRIORITY REPEAT VIOLATOR TO CONDUCT AND SUBMIT TO THE
26 DIVISION A ROOT CAUSE ANALYSIS THAT DOCUMENTS THE REASONS FOR
27 THE VIOLATION AND IDENTIFIES TECHNOLOGICAL AND OPERATIONAL

1 METHODS TO ELIMINATE FUTURE EMISSIONS IN EXCESS OF ALLOWABLE
2 EMISSIONS, WHICH ROOT CAUSE ANALYSIS SHALL BE SUBMITTED TO THE
3 DIVISION NO LATER THAN NINETY DAYS AFTER THE DIVISION'S ORDER; AND

4 (B) INCLUDE THE ASSESSMENT OF CIVIL PENALTIES IN
5 ACCORDANCE WITH SECTION 25-7-122 (1) AND (1.5).

6 (III.5) IF AN OWNER OR OPERATOR OR OTHER RESPONSIBLE PARTY
7 IS A HIGH-PRIORITY REPEAT VIOLATOR, AS PART OF ANY ORDER DESCRIBED
8 IN SUBSECTION (3)(b)(III.3) OF THIS SECTION, THE DIVISION SHALL ALSO
9 REQUIRE A REDUCTION IN EMISSIONS OF ANY AIR POLLUTANT APPLICABLE
10 TO THE EMISSION EXCEEDANCE FROM ANY EMISSION UNIT WHERE THE
11 EMISSION EXCEEDANCE OCCURRED IN ACCORDANCE WITH ONE OF THE
12 FOLLOWING STANDARDS:

13 (A) A REQUIREMENT FOR A MASS-BASED REDUCTION IN TOTAL
14 EMISSIONS OF THE AIR POLLUTANT APPLICABLE TO THE EMISSION
15 EXCEEDANCE FROM THE APPLICABLE EMISSION UNIT OVER THE
16 SUBSEQUENT CALENDAR-YEAR PERIOD;

17 (B) IF THE SAME EMISSION EXCEEDANCE FROM THE SAME EMISSION
18 UNIT OCCURS IN MULTIPLE CALENDAR YEARS, A REQUIREMENT FOR ONE
19 CALENDAR YEAR OF REDUCTION IN EMISSIONS OF THE AIR POLLUTANT
20 APPLICABLE TO THE EMISSION EXCEEDANCE FOR EACH YEAR OF
21 VIOLATION;

22 (C) A REQUIREMENT FOR MASS-BASED REDUCTION OF FIVE
23 PERCENT OF THE LESSER OF EITHER THE EMISSION UNIT'S EMISSIONS OF THE
24 AIR POLLUTANT APPLICABLE TO THE EMISSION EXCEEDANCE OR THE
25 ANNUAL LIMIT OF THE AIR POLLUTANT APPLICABLE TO THE EMISSION
26 EXCEEDANCE AT THE EMISSION UNIT FOR THE APPLICABLE YEAR;

27 (D) IF THE EMISSION UNIT IS NOT SUBJECT TO AN ANNUAL LIMIT

1 FOR THE AIR POLLUTANT APPLICABLE TO THE EMISSION EXCEEDANCE, THE
2 DIVISION MUST CALCULATE AN ANNUAL LIMIT FOR THE AIR POLLUTANT BY
3 AGGREGATING ANY OTHER RELEVANT LIMITS OVER A CALENDAR-YEAR
4 PERIOD; OR

5 (E) IF A VIOLATION CONCERNS AN AIR POLLUTANT PROXY, THE
6 DIVISION MUST USE ITS BEST PROFESSIONAL JUDGMENT TO CALCULATE
7 EMISSION REDUCTIONS FOR THE AIR POLLUTANT APPLICABLE TO THE
8 EMISSION EXCEEDANCE.

9 (IV) EXCEPT IN ASSESSING A CIVIL PENALTY AGAINST A REPEAT
10 VIOLATOR, in determining the amount to assess for a civil penalty for a
11 violation or noncompliance, the division shall:

12 (d) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
13 CONTRARY, THE DIVISION MAY ASSESS CIVIL PENALTIES PURSUANT TO THIS
14 SUBSECTION (3) WITHOUT INSTITUTING AN ACTION IN A DISTRICT COURT
15 PURSUANT TO SECTION 25-7-122 (1).

16 (12) (a) NOTWITHSTANDING THE DIVISION'S ENFORCEMENT DUTY
17 PURSUANT TO THIS ARTICLE 7, A PERSON MAY COMMENCE A CIVIL ACTION
18 AGAINST AN ALLEGED VIOLATOR FOR A CURRENT OR PAST ALLEGED
19 VIOLATION OF OR NONCOMPLIANCE WITH:

- 20 (I) AN EMISSION CONTROL REGULATION;
- 21 (II) THE REQUIREMENTS OF THE STATE IMPLEMENTATION PLAN;
- 22 (III) THIS PART 1 OR PART 2, 3, 4, OR 11 OF THIS ARTICLE 7;
- 23 (IV) THE TERMS OR CONDITIONS OF A PERMIT REQUIRED PURSUANT
24 TO THIS ARTICLE 7; OR

25 (V) ANY ORDER ISSUED BY THE DIVISION, INCLUDING A
26 COMPLIANCE ORDER ON CONSENT OR A SETTLEMENT AGREEMENT WITH
27 THE ALLEGED VIOLATOR.

1 (b) A PERSON SHALL NOT COMMENCE AN ACTION UNTIL AT LEAST
2 SIXTY DAYS AFTER NOTICE OF THE ALLEGED VIOLATION OR
3 NONCOMPLIANCE HAS BEEN PROVIDED TO:

4 (I) THE EXECUTIVE DIRECTOR;

5 (II) THE DIRECTOR OF THE DIVISION; AND

6 (III) EACH PERSON ALLEGED TO HAVE COMMITTED ONE OR MORE
7 VIOLATIONS OR INSTANCES OF NONCOMPLIANCE.

8 (c) (I) A PERSON MAY COMMENCE AN ACTION PURSUANT TO THIS
9 SUBSECTION (12) IN A DISTRICT COURT WHERE:

10 (A) THE ALLEGED VIOLATION OR NONCOMPLIANCE OCCURRED;

11 (B) THE ALLEGED VIOLATOR RESIDES OR IS LOCATED;

12 (C) THE PERSON RESIDES; OR

13 (D) THE DIVISION IS HEADQUARTERED.

14 (II) ONCE AN ACTION IS COMMENCED, THE PLAINTIFF SHALL
15 PROMPTLY SERVE A COPY OF THE COMPLAINT TO THE ATTORNEY GENERAL
16 AND THE EXECUTIVE DIRECTOR.

17 (III) A DISTRICT COURT HEARING AN ACTION MAY:

18 (A) ENJOIN THE ALLEGED VIOLATION OR NONCOMPLIANCE AND
19 COMPEL COMPLIANCE;

20 (B) IMPOSE CIVIL PENALTIES IN ACCORDANCE WITH SECTION
21 25-7-122;

22 (C) COMPEL THE DIVISION TO ORDER THE REDUCTION OF
23 EMISSIONS IN ACCORDANCE WITH SUBSECTION (3)(b)(III.5) OF THIS
24 SECTION; AND

25 (D) GRANT ANY OTHER MONETARY OR INJUNCTIVE RELIEF THAT
26 IT FINDS JUST, EQUITABLE, AND IN THE PUBLIC INTEREST.

27 (IV) A PERSON SHALL NOT COMMENCE AN ACTION IF, AT THE TIME

1 OF THE FILING OF THE ACTION:

2 (A) THE DIVISION IS ACTIVELY SEEKING ENFORCEMENT OF AN
3 ISSUED COMPLIANCE ORDER RELATED TO THE ALLEGED VIOLATION OR
4 NONCOMPLIANCE THROUGH A HEARING PURSUANT TO SECTION 25-7-119;
5 OR

6 (B) THE DIVISION IS DILIGENTLY PROSECUTING A CIVIL ACTION
7 RELATED TO THE ALLEGED VIOLATION OR NONCOMPLIANCE IN DISTRICT
8 COURT OR AN APPELLATE COURT.

9 (V) NOTWITHSTANDING SECTION 25-7-123.1 (1), ANY ACTION
10 THAT IS NOT COMMENCED WITHIN FIVE YEARS AFTER THE EXISTENCE OF
11 THE ALLEGED VIOLATION COULD HAVE REASONABLY BEEN DISCOVERED BY
12 A MEMBER OF THE PUBLIC IS TIME BARRED, EXCEPT FOR VIOLATIONS OR
13 NONCOMPLIANCE OF AN ONGOING OR RECURRING NATURE.

14 (VI) THE DIVISION MAY INTERVENE AS A MATTER OF RIGHT IN ANY
15 ACTION.

16 (VII) (A) IN AN ACTION THAT THE STATE IS NOT A PARTY TO, A
17 PLAINTIFF SHALL PROVIDE A COPY OF ANY PROPOSED CONSENT JUDGMENT
18 TO THE ATTORNEY GENERAL AND THE EXECUTIVE DIRECTOR. THE
19 ATTORNEY GENERAL AND THE EXECUTIVE DIRECTOR MAY SUBMIT
20 COMMENTS TO THE PROPOSED CONSENT JUDGMENT TO THE DISTRICT
21 COURT OR INTERVENE IN THE ACTION AS A MATTER OF RIGHT.

22 (B) A DISTRICT COURT SHALL NOT ENTER A CONSENT JUDGMENT
23 UNTIL AT LEAST FORTY-FIVE DAYS AFTER THE ATTORNEY GENERAL AND
24 THE EXECUTIVE DIRECTOR RECEIVE A COPY OF THE PROPOSED CONSENT
25 JUDGMENT PURSUANT TO SUBSECTION (12)(c)(VII)(A) OF THIS SECTION.

26 (VIII) IN ISSUING A FINAL JUDGMENT, RULING, OR ORDER IN AN
27 ACTION, THE DISTRICT COURT SHALL AWARD THE PLAINTIFF ANY COSTS

1 THAT THE PLAINTIFF INCURS IN LITIGATING THE ACTION, INCLUDING
2 REASONABLE ATTORNEY FEES, EXPERT WITNESS FEES, AND OTHER
3 RELATED COSTS, IF THE DISTRICT COURT DETERMINES THAT THE AWARD
4 IS APPROPRIATE. AN AWARD IS APPROPRIATE IF, AS DETERMINED BY THE
5 DISTRICT COURT:

6 (A) THE PLAINTIFF PREVAILS ON ONE OR MORE CLAIMS;

7 (B) THE ACTION IS SUBSTANTIALLY RESPONSIBLE FOR STOPPING A
8 VIOLATION OR BRINGING AN ALLEGED VIOLATOR INTO COMPLIANCE; OR

9 (C) THE ACTION HAS SERVED THE PUBLIC INTEREST.

10 (d) AS USED IN THIS SUBSECTION (12), UNLESS THE CONTEXT
11 OTHERWISE REQUIRES:

12 (I) "ACTION" MEANS A CIVIL ACTION COMMENCED BY A PERSON
13 AGAINST AN ALLEGED VIOLATOR PURSUANT TO SUBSECTION (12)(a) OF
14 THIS SECTION.

15 (II) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
16 THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

17 (13) (a) ON OR BEFORE FEBRUARY 1, 2025, AND ON OR BEFORE
18 EACH FEBRUARY 1 THEREAFTER, THE DIVISION SHALL PREPARE AND POST
19 ON THE DIVISION'S WEBSITE AN AIR QUALITY ENFORCEMENT REPORT,
20 WHICH REPORT MUST INCLUDE THE FOLLOWING STATEWIDE INFORMATION
21 FOR THE PREVIOUS CALENDAR YEAR:

22 (I) THE TOTAL NUMBER OF INFORMAL ACTIONS COMMENCED BY
23 THE DIVISION AND THE STATUS OF THOSE ACTIONS, INCLUDING THE TOTAL
24 NUMBER OF INFORMAL ACTIONS THAT ARE STILL ONGOING;

25 (II) THE TOTAL NUMBER OF FORMAL ACTIONS COMMENCED BY THE
26 DIVISION AND THE STATUS OF THOSE ACTIONS, INCLUDING THE TOTAL
27 NUMBER OF FORMAL ACTIONS THAT ARE STILL ONGOING;

1 (III) THE TOTAL AGGREGATE NUMBER OF DAYS OF VIOLATIONS OR
2 NONCOMPLIANCES FOR ALL FACILITIES;

3 (IV) THE TOTAL NUMBER OF VIOLATORS THAT WERE ASSESSED A
4 CIVIL PENALTY;

5 (V) THE TOTAL NUMBER OF REPEAT VIOLATORS THAT WERE
6 ASSESSED A CIVIL PENALTY;

7 (VI) THE TOTAL NUMBER OF HIGH-PRIORITY REPEAT VIOLATORS
8 THAT WERE ASSESSED A CIVIL PENALTY;

9 (VII) THE TOTAL NUMBER OF PERMITS THAT WERE ALTERED BY
10 THE DIVISION PURSUANT TO SUBSECTION (3)(b)(III.5)(A) OF THIS SECTION;

11 (VIII) THE TOTAL AMOUNT OF CIVIL PENALTIES ASSESSED;

12 (IX) THE TOTAL AMOUNT OF CIVIL PENALTIES WAIVED BY THE
13 DIVISION;

14 (X) THE AVERAGE AMOUNT OF CIVIL PENALTIES ASSESSED;

15 (XI) THE HIGHEST CIVIL PENALTY ASSESSED;

16 (XII) THE LOWEST CIVIL PENALTY ASSESSED;

17 (XIII) THE MEDIAN AMOUNT OF CIVIL PENALTIES ASSESSED; AND

18 (XIV) FOR EACH INDIVIDUAL OWNER OR OPERATOR THAT WAS
19 SUBJECT TO A FORMAL OR AN INFORMAL ACTION BY THE DIVISION IN THE
20 PREVIOUS CALENDAR YEAR, THE FOLLOWING INFORMATION:

21 (A) THE NAME OF THE OWNER OR OPERATOR;

22 (B) WHETHER THE OWNER OR OPERATOR IS A REPEAT VIOLATOR;

23 (C) WHETHER THE OWNER OR OPERATOR IS A HIGH-PRIORITY
24 REPEAT VIOLATOR;

25 (D) THE TOTAL NUMBER OF INFORMAL ACTIONS TAKEN AGAINST
26 THE OWNER OR OPERATOR DURING THE PREVIOUS CALENDAR YEAR,
27 INCLUDING ANY CASE NUMBER FOR THE ACTIONS;

1 (E) THE TOTAL NUMBER OF VIOLATIONS AND NONCOMPLIANCES
2 INCLUDED IN EACH CASE NUMBER FOR EACH INFORMAL ACTION TAKEN
3 AGAINST THE OWNER OR OPERATOR, INCLUDING THE START DATES AND
4 END DATES FOR EACH VIOLATION AND NONCOMPLIANCE;

5 (F) THE TOTAL NUMBER OF FORMAL ACTIONS TAKEN AGAINST THE
6 OWNER OR OPERATOR DURING THE PREVIOUS CALENDAR YEAR, INCLUDING
7 ANY CASE NUMBER FOR THE ACTIONS;

8 (G) THE TOTAL NUMBER OF VIOLATIONS AND NONCOMPLIANCES
9 INCLUDED IN EACH CASE NUMBER FOR EACH FORMAL ACTION TAKEN
10 AGAINST THE OWNER OR OPERATOR, INCLUDING THE START DATES AND
11 END DATES FOR EACH VIOLATION AND NONCOMPLIANCE; AND

12 (H) THE TOTAL AGGREGATE NUMBER OF DAYS IN THE PREVIOUS
13 CALENDAR YEAR WHEN AN INDIVIDUAL FACILITY OF THE OWNER OR
14 OPERATOR CAUSED A VIOLATION OR NONCOMPLIANCE.

15 (b) THE REPORT PREPARED PURSUANT TO SUBSECTION (13)(a) OF
16 THIS SECTION MUST ALSO INCLUDE THE INFORMATION DESCRIBED IN
17 SUBSECTION (13)(a) OF THIS SECTION, SEPARATED BY EACH
18 NONATTAINMENT AREA AND DISPROPORTIONATELY IMPACTED
19 COMMUNITY IN THE STATE.

20 **SECTION 3.** In Colorado Revised Statutes, 25-7-122, **add** (1.5)
21 and (2)(d) as follows:

22 **25-7-122. Civil penalties - rules - definitions.**

23 (1.5) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY:

24 (a) THE DIVISION OR A DISTRICT COURT SHALL ASSESS A CIVIL
25 PENALTY AGAINST A REPEAT VIOLATOR FOR EACH VIOLATION THAT IS AT
26 LEAST FIFTY PERCENT OF THE MAXIMUM CIVIL PENALTY APPLICABLE TO
27 THE VIOLATION PURSUANT TO SUBSECTION (1) OF THIS SECTION; AND

1 (b) IF A REPEAT VIOLATOR COMMITS A VIOLATION IN A
2 DISPROPORTIONATELY IMPACTED COMMUNITY, THE DIVISION OR A
3 DISTRICT COURT SHALL ASSESS A CIVIL PENALTY FOR EACH VIOLATION
4 THAT IS AT LEAST SEVENTY-FIVE PERCENT OF THE MAXIMUM CIVIL
5 PENALTY APPLICABLE TO THE VIOLATION PURSUANT TO SUBSECTION (1) OF
6 THIS SECTION.

7 (2) (d) THIS SUBSECTION (2) DOES NOT APPLY TO A CIVIL PENALTY
8 ASSESSED AGAINST A REPEAT VIOLATOR.

9 **SECTION 4.** In Colorado Revised Statutes, 25-7-105, **add** (21)
10 as follows:

11 **25-7-105. Duties of commission - technical secretary - rules -**
12 **report - legislative declaration - definitions - repeal.** (21) (a) AN
13 OWNER OR OPERATOR OF A STATIONARY SOURCE SHALL SUBMIT THE
14 FOLLOWING DOCUMENTS TO THE DIVISION:

15 (I) ANY REPORT THAT THE OWNER OR OPERATOR IS REQUIRED TO
16 SUBMIT TO AN ENTITY PURSUANT TO FEDERAL OR STATE LAW; AND

17 (II) ANY RECORD THAT THE OWNER OR OPERATOR IS REQUIRED TO
18 CREATE OR MAINTAIN PURSUANT TO FEDERAL OR STATE LAW OR ANY
19 CONDITION OF A PERMIT.

20 (b) AN OWNER OR OPERATOR OF A STATIONARY SOURCE SHALL
21 SUBMIT THE DOCUMENTS DESCRIBED IN SUBSECTION (21)(a) OF THIS
22 SECTION PURSUANT TO A TIMELINE SPECIFIED BY RULE BY THE
23 COMMISSION, WHICH TIMELINE MUST BE NO LONGER THAN SIX MONTHS
24 AFTER THE DOCUMENT IS GENERATED.

25 (c) THE DIVISION SHALL POST ANY DOCUMENT RECEIVED BY THE
26 DIVISION PURSUANT TO THIS SUBSECTION (21) ON THE DIVISION'S WEBSITE
27 WITHIN THIRTY DAYS AFTER THE DIVISION RECEIVES THE DOCUMENT.

1 **SECTION 5.** In Colorado Revised Statutes, 25-7-128, **amend** (8)
2 as follows:

3 **25-7-128. Local government - authority - penalty.** (8) Any
4 person who violates any emission standard or emission control regulation
5 adopted by a local governmental entity, where ~~such~~ THE local government
6 has not submitted its standards or regulations as revisions to the state
7 implementation plan, ~~shall be~~ IS subject to a civil penalty of not more than
8 ~~three hundred dollars~~ THE CIVIL PENALTY AMOUNTS DESCRIBED IN
9 SECTION 25-7-122 (1) AND (1.5). Each day ~~during which such~~ a violation
10 occurs ~~shall be deemed~~ IS a separate offense.

11 **SECTION 6.** In Colorado Revised Statutes, **amend** 34-60-114 as
12 follows:

13 **34-60-114. Action for damages.** (1) (a) ~~Nothing in this article,~~
14 ~~and no suit by or against the commission, and no violation charged or~~
15 ~~asserted against any person under any provisions of this article, or any~~
16 ~~rule, regulation, or order issued under this article,~~ THE FOLLOWING shall
17 NOT impair, abridge, or delay any cause of action for damages ~~which~~
18 THAT any person may have or assert against ~~any~~ ANOTHER person
19 violating any provision of this ~~article,~~ ARTICLE 60 or any rule ~~regulation,~~
20 or order issued under this ~~article.~~ ARTICLE 60:

- 21 (I) ANY PROVISION OF THIS ARTICLE 60;
- 22 (II) A SUIT BY OR AGAINST THE COMMISSION;
- 23 (III) A VIOLATION CHARGED OR ASSERTED AGAINST ANY PERSON
- 24 UNDER THIS ARTICLE 60; AND
- 25 (IV) ANY RULE OR ORDER ISSUED UNDER THIS ARTICLE 60.

26 (b) ~~Any~~ A person ~~so~~ damaged by ~~the~~ A violation DESCRIBED
27 UNDER 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 A 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 THAT THE
24 COMPLAINING PARTY INCURS IN LITIGATING THE LAWSUIT, INCLUDING
25 REASONABLE ATTORNEY FEES, EXPERT WITNESS FEES, AND OTHER
26 RELATED COSTS IF THE COURT DETERMINES THAT THE AWARD IS
27 APPROPRIATE. AN AWARD IS APPROPRIATE IF, AS DETERMINED BY THE

1 DISTRICT COURT:

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

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

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

9 **SECTION 7.** In Colorado Revised Statutes, 24-77-102, **amend**
10 (2) as follows:

11 **24-77-102. Definitions.** As used in this article 77, unless the
12 context otherwise requires:

13 (2) (a) "Damage award" means any pecuniary compensation
14 received by the state as a result of any judgment or allowance in favor of
15 the state.

16 (b) "DAMAGE AWARD" INCLUDES A CIVIL PENALTY ASSESSED BY
17 A STATE AGENCY FOR VIOLATION OF A STATE LAW.

18 **SECTION 8. Applicability.** (1) This act applies to:

19 (a) With respect to repeat violators, a fifth or subsequent violation
20 occurring on and after the effective date of this act; and

21 (b) Enforcement actions occurring on or after the effective date of
22 this act, including enforcement actions pending on or after the effective
23 date of this act.

24 **SECTION 9. Safety clause.** The general assembly finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, or safety or for appropriations for

- 1 the support and maintenance of the departments of the state and state
- 2 institutions.