

CHAPTER 251

---

**HEALTH AND ENVIRONMENT**

---

HOUSE BILL 95-1326

BY REPRESENTATIVE Schauer;  
also SENATORS Mutzebaugh, Norton, Tebedo, and Wattenberg.

**AN ACT**

**CONCERNING PROCEDURES RELATED TO THE FORMULATION OF STATIONARY SOURCE AIR POLLUTION POLICIES BY THE AIR QUALITY CONTROL COMMISSION, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

**SECTION 1. Legislative declaration - types of sources covered by act.** The general assembly intends that the air quality control commission apply all of the required analyses of proposed air quality rules in section 25-7-110.5, Colorado Revised Statutes, and the additional requirements of sections 25-7-110.7, 25-7-110.8, and 25-7-119, Colorado Revised Statutes, to proposed rules for all sources of air pollution.

**SECTION 2.** Part 1 of article 7 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**25-7-110.5. Required analysis of proposed air quality rules - repeal.** (1) IN ADDITION TO THE REQUIREMENTS OF SECTION 25-7-110.8, WHENEVER THE COMMISSION PROPOSES A RULE WITH RESPECT TO STATIONARY SOURCES, THE TECHNICAL SECRETARY OF THE COMMISSION SHALL PROVIDE TO THE PUBLIC UPON REQUEST AT COST, AT THE TIME THE NOTICE FOR PUBLIC RULE-MAKING IS PUBLISHED, A PROPOSED RULE-MAKING PACKET CONTAINING:

- (a) A MEMORANDUM OF NOTICE, AS REQUIRED BY SUBSECTION (3) OF THIS SECTION;
- (b) THE ACTUAL LANGUAGE OF THE PROPOSED RULE;
- (c) A STATEMENT DESCRIBING THE FISCAL AND ECONOMIC IMPACT OF THE

---

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

PROPOSED RULE, AS REQUIRED BY SUBSECTION (4) OF THIS SECTION;

(d) A STATEMENT DESCRIBING THE POTENTIAL JUSTIFICATION FOR TERMS DIFFERING FROM FEDERAL REQUIREMENTS, AS REQUIRED BY SUBSECTION (5) OF THIS SECTION;

(e) ON OR BEFORE JULY 1, 1997, A STATEMENT DESCRIBING THE RISK ANALYSIS, IF REQUIRED BY THE GENERAL ASSEMBLY UNDER SUBSECTION (6) OF THIS SECTION;

(f) THE RANGE OF REGULATORY ALTERNATIVES, INCLUDING THE NO-ACTION ALTERNATIVE, TO BE CONSIDERED IN ADOPTING THE PROPOSED RULE; AND

(g) ANY OTHER CONCISE BACKGROUND MATERIAL THAT WOULD ASSIST THE INTERESTED AND AFFECTED PUBLIC IN UNDERSTANDING THE IMPACT OF THE PROPOSED RULE.

(2) THE REQUIREMENTS OF SUBSECTIONS (1) (c) TO (1) (f), (3) (g), AND (4) OF THIS SECTION SHALL NOT APPLY TO ANY RULE-MAKING PACKET FOR ANY COMMISSION RULE, AND THE REQUIREMENTS OF SUBSECTIONS (3) (g) AND (4) OF THIS SECTION SHALL NOT APPLY TO ANY COMMISSION RULE, WHICH ADOPTS BY REFERENCE APPLICABLE FEDERAL RULES OR WHICH RULE IS ADOPTED TO IMPLEMENT PRESCRIPTIVE STATE STATUTORY REQUIREMENTS, WHERE THE COMMISSION IS ALLOWED NO SIGNIFICANT POLICY-MAKING OPTIONS, OR WHICH RULE WILL HAVE NO REGULATORY IMPACT ON ANY PERSON, FACILITY, OR ACTIVITY.

(3) WHENEVER THE COMMISSION PROPOSES A RULE WITH RESPECT TO STATIONARY SOURCES, THE TECHNICAL SECRETARY OF THE COMMISSION, IN COOPERATION WITH THE PROPONENT OF THE RULE, SHALL PROVIDE A MEMORANDUM OF NOTICE CONTAINING:

(a) AN EXPLANATION OF THE PROPOSED RULE;

(b) A DISCLOSURE OF MATERIALS CONTAINED IN THE PROPOSED RULE;

(c) A PRELIMINARY PLAN FOR MEETINGS WITH THE COMMISSION STAFF ON THE PROPOSED RULE;

(d) AN EXPLANATION OF THE PROBLEM SOUGHT TO BE REMEDIED BY THE PROPOSED RULE;

(e) AN ANALYSIS OF HOW THE PROPOSED RULE SOLVES THE PROBLEM DELINEATED IN PARAGRAPH (d) OF THIS SUBSECTION (3);

(f) AN EXPLANATION OF THE PROCESS THAT WAS USED TO DEVELOP THE PROPOSED RULE;

(g) AN INITIAL ANALYSIS OF THE ECONOMIC EFFECTS OF THE PROPOSED RULE PURSUANT TO SUBSECTION (4) OF THIS SECTION;

(h) AN EXPLANATION OF THE SUBSTANTIVE DIFFERENCES WITH FEDERAL REQUIREMENTS AND THE REQUIREMENTS OF UTAH, ARIZONA, AND NEW MEXICO,

WHERE RELEVANT;

(i) AN EXPLANATION OF HOW THE PROPOSED RULE MAY BE IMPLEMENTED;

(j) WHETHER THERE WILL BE ANY TIME CONSTRAINTS ON THE REGULATED COMMUNITY AND STATE AGENCIES AS A RESULT OF IMPLEMENTATION OR A DELAY IN IMPLEMENTATION OF THE PROPOSED RULE;

(k) A CONTACT PERSON OR PERSONS WHO MAY PROVIDE ADDITIONAL INFORMATION ON THE PROPOSED RULE TO INTERESTED PERSONS; AND

(l) A NO-ACTION ANALYSIS.

(4) (a) BEFORE ANY PERMANENT RULE IS PROPOSED PURSUANT TO THIS SECTION, AN INITIAL ECONOMIC IMPACT ANALYSIS SHALL BE CONDUCTED IN COMPLIANCE WITH THIS SUBSECTION (4) OF THE PROPOSED RULE OR ALTERNATIVE PROPOSED RULES. SUCH ECONOMIC IMPACT ANALYSIS SHALL BE IN WRITING, DEVELOPED BY THE PROPONENT, OR THE DIVISION IN COOPERATION WITH THE PROPONENT AND MADE AVAILABLE TO THE PUBLIC AT THE TIME ANY REQUEST FOR HEARING ON A PROPOSED RULE IS HEARD BY THE COMMISSION. A FINAL ECONOMIC IMPACT ANALYSIS SHALL BE IN WRITING AND DELIVERED TO THE TECHNICAL SECRETARY AND TO ALL PARTIES OF RECORD FIVE WORKING DAYS PRIOR TO THE PREHEARING CONFERENCE OR, IF NO PREHEARING CONFERENCE IS SCHEDULED, AT LEAST TEN WORKING DAYS BEFORE THE DATE OF THE RULE-MAKING HEARING. THE PROPONENT OF AN ALTERNATIVE PROPOSAL WILL PROVIDE, IN COOPERATION WITH THE DIVISION, A FINAL ECONOMIC IMPACT ANALYSIS FIVE WORKING DAYS PRIOR TO THE PREHEARING CONFERENCE. THE ECONOMIC IMPACT ANALYSES SHALL BE BASED UPON REASONABLY AVAILABLE DATA. EXCEPT WHERE DATA IS NOT REASONABLY AVAILABLE, OR AS OTHERWISE PROVIDED IN THIS SECTION, THE FAILURE TO PROVIDE AN ECONOMIC IMPACT ANALYSIS OF ANY NOTICED PROPOSED RULE OR ANY ALTERNATIVE PROPOSED RULE WILL PRECLUDE SUCH PROPOSED RULE OR ALTERNATIVE PROPOSED RULE FROM BEING CONSIDERED BY THE COMMISSION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT THE COMMISSION'S AUTHORITY TO CONSIDER ALTERNATIVE PROPOSALS AND ALTERNATIVE ECONOMIC IMPACT ANALYSES THAT HAVE NOT BEEN SUBMITTED PRIOR TO THE PREHEARING CONFERENCE FOR GOOD CAUSE SHOWN AND SO LONG AS PARTIES HAVE ADEQUATE TIME TO REVIEW THEM.

(b) BEFORE ANY EMERGENCY RULE IS ADOPTED, ANY PERSON MAY REQUEST THAT A REGULATORY ANALYSIS, AS DEFINED IN SECTION 24-4-103 (4.5), C.R.S., BE PREPARED, AND MADE AVAILABLE TO THE PUBLIC FIVE WORKING DAYS PRIOR TO THE HEARING, UNLESS THERE IS AN IMMINENT AND SERIOUS HAZARD TO HEALTH, WELFARE, OR THE ENVIRONMENT.

(c) THE PROPONENT AND THE DIVISION SHALL SELECT ONE OR MORE OF THE FOLLOWING ECONOMIC IMPACT ANALYSES. THE COMMISSION MAY ASK AFFECTED INDUSTRY TO SUBMIT INFORMATION WITH REGARD TO THE COST OF COMPLIANCE WITH THE PROPOSED RULE, AND IF IT IS NOT PROVIDED, IT SHALL NOT BE CONSIDERED REASONABLY AVAILABLE. THE ECONOMIC IMPACT ANALYSIS REQUIRED BY THIS SUBSECTION (4) SHALL BE BASED UPON REASONABLY AVAILABLE DATA AND SHALL CONSIST OF ONE OR MORE OF THE FOLLOWING:

(I) COST-EFFECTIVENESS ANALYSES FOR AIR POLLUTION CONTROL THAT IDENTIFY:

(A) THE CUMULATIVE COST INCLUDING BUT NOT LIMITED TO THE TOTAL CAPITAL, OPERATION, AND MAINTENANCE COSTS OF ANY PROPOSED CONTROLS FOR AFFECTED BUSINESS ENTITY OR INDUSTRY TO COMPLY WITH THE PROVISIONS OF THE PROPOSAL;

(B) ANY DIRECT COSTS TO BE INCURRED BY THE GENERAL PUBLIC TO COMPLY WITH THE PROVISIONS OF THE PROPOSAL;

(C) AIR POLLUTION REDUCTIONS CAUSED BY THE PROPOSAL;

(D) THE COST PER UNIT OF AIR POLLUTION REDUCTIONS CAUSED BY THE PROPOSAL;  
AND

(E) THE COST FOR THE DIVISION TO IMPLEMENT THE PROVISIONS OF THE PROPOSAL;  
OR

(II) INDUSTRY STUDIES THAT EXAMINE THE DIRECT COSTS OF THE PROPOSAL ON DIRECTLY AFFECTED ENTITIES THAT MAY BE EITHER IN THE FORM OF A BUSINESS ANALYSIS (THE REGULATORY IMPACTS ON THE GENERAL BUSINESS CLIMATE OR SUBSETS THEREOF) OR AN INDUSTRY ANALYSIS (THE REGULATORY IMPACTS ON SPECIFIC INDUSTRIES), INCLUDING:

(A) THE CHARACTERISTICS AND CURRENT ECONOMIC CONDITIONS OF THE IMPACTED BUSINESS OR INDUSTRY SECTOR; AND

(B) THE PROJECTED IMPACTS ON THE GROWTH OF THE AFFECTED INDUSTRY SECTORS WITH AND WITHOUT IMPLEMENTATION OF THE PROPOSAL; AND

(C) HOW THE PROPOSAL MAY EFFECT OR ALTER THE GROWTH OF THE AFFECTED INDUSTRY SECTOR; AND

(D) THE DIRECT COST OF THE PROPOSAL ON THE AFFECTED INDUSTRY SECTOR; OR

(III) AN ECONOMIC IMPACT ANALYSIS THAT:

(A) IDENTIFIES THE INDUSTRIAL AND BUSINESS SECTORS THAT WILL BE IMPACTED BY THE PROPOSAL; AND

(B) QUANTIFIES THE DIRECT COST TO THE PRIMARY AFFECTED BUSINESS OR INDUSTRIAL SECTOR; AND

(C) INCORPORATES AN ESTIMATE OF THE ECONOMIC IMPACT OF THE PROPOSAL ON THE SUPPORTING BUSINESS AND INDUSTRIAL SECTORS ASSOCIATED WITH THE PRIMARY AFFECTED BUSINESS OR INDUSTRY SECTORS.

(d) CUMULATIVE ECONOMIC ANALYSES OF ALL AIR POLLUTION CONTROL MEASURES ON STATIONARY SOURCES SHALL BE PERFORMED BY THE OFFICE OF REGULATORY REFORM IN COORDINATION WITH THE DIVISION AFTER PUBLIC COMMENT AND REVIEW. THE CUMULATIVE ECONOMIC ANALYSES SHALL BE PERFORMED EVERY FIVE YEARS BEGINNING IN THE YEAR 2000.

(e) THE ECONOMIC IMPACT ANALYSIS REQUIRED BY THIS SUBSECTION (4) SHALL NOT CONSIST OF AN ANALYSIS OF ANY NONMARKET COSTS, OR EXTERNAL COSTS ASSERTED TO OCCUR NOTWITHSTANDING COMPLIANCE BY A SOURCE WITH APPLICABLE ENVIRONMENTAL REGULATIONS.

(5) (a) WHENEVER THE COMMISSION PROPOSES ANY RULE WITH RESPECT TO STATIONARY SOURCES THAT IS NOT REQUIRED BY THE FEDERAL ACT, EXCEEDS THE REQUIREMENTS OF THE FEDERAL ACT, OR DIFFERS FROM THE FEDERAL ACT OR RULES THEREUNDER, THE COMMISSION SHALL MAKE AVAILABLE IN WRITING A COPY OF ANY SUCH PROPOSED RULE AND A DETAILED, FOOTNOTED EXPLANATION OF THE DIFFERENCES BETWEEN THE RULE AND THE FEDERAL REQUIREMENTS.

(b) THE WRITTEN EXPLANATION REQUIRED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL CONTAIN AN EXPLANATION OF THE FOLLOWING INFORMATION:

(I) ANY FEDERAL REQUIREMENTS THAT ARE APPLICABLE TO THIS SITUATION WITH A COMMENTARY ON THOSE REQUIREMENTS;

(II) WHETHER THE APPLICABLE FEDERAL REQUIREMENTS ARE PERFORMANCE-BASED OR TECHNOLOGY-BASED AND WHETHER THERE IS ANY FLEXIBILITY IN THOSE REQUIREMENTS, AND IF NOT, WHY NOT;

(III) WHETHER THE APPLICABLE FEDERAL REQUIREMENTS SPECIFICALLY ADDRESS THE ISSUES THAT ARE OF CONCERN TO COLORADO AND WHETHER DATA OR INFORMATION THAT WOULD REASONABLY REFLECT COLORADO'S CONCERN AND SITUATION WAS CONSIDERED IN THE FEDERAL PROCESS THAT ESTABLISHED THE FEDERAL REQUIREMENTS;

(IV) WHETHER THE PROPOSED REQUIREMENT WILL IMPROVE THE ABILITY OF THE REGULATED COMMUNITY TO COMPLY IN A MORE COST-EFFECTIVE WAY BY CLARIFYING CONFUSING OR POTENTIALLY CONFLICTING REQUIREMENTS (WITHIN OR CROSS-MEDIA), INCREASING CERTAINTY, OR PREVENTING OR REDUCING THE NEED FOR COSTLY RETROFIT TO MEET MORE STRINGENT REQUIREMENTS LATER;

(V) WHETHER THERE IS A TIMING ISSUE WHICH MIGHT JUSTIFY CHANGING THE TIME FRAME FOR IMPLEMENTATION OF FEDERAL REQUIREMENTS;

(VI) WHETHER THE PROPOSED REQUIREMENT WILL ASSIST IN ESTABLISHING AND MAINTAINING A REASONABLE MARGIN FOR ACCOMMODATION OF UNCERTAINTY AND FUTURE GROWTH;

(VII) WHETHER THE PROPOSED REQUIREMENT ESTABLISHES OR MAINTAINS REASONABLE EQUITY IN THE REQUIREMENTS FOR VARIOUS SOURCES;

(VIII) WHETHER OTHERS WOULD FACE INCREASED COSTS IF A MORE STRINGENT RULE IS NOT ENACTED;

(IX) WHETHER THE PROPOSED REQUIREMENT INCLUDES PROCEDURAL, REPORTING, OR MONITORING REQUIREMENTS THAT ARE DIFFERENT FROM APPLICABLE FEDERAL REQUIREMENTS AND IF SO, WHY, AND WHAT THE "COMPELLING REASON" IS FOR

DIFFERENT PROCEDURAL, REPORTING, OR MONITORING REQUIREMENTS;

(X) WHETHER DEMONSTRATED TECHNOLOGY IS AVAILABLE TO COMPLY WITH THE PROPOSED REQUIREMENT;

(XI) WHETHER THE PROPOSED REQUIREMENT WILL CONTRIBUTE TO THE PREVENTION OF POLLUTION OR ADDRESS A POTENTIAL PROBLEM AND REPRESENT A MORE COST-EFFECTIVE ENVIRONMENTAL GAIN; AND

(XII) WHETHER AN ALTERNATIVE RULE, INCLUDING A NO-ACTION ALTERNATIVE, WOULD ADDRESS THE REQUIRED STANDARD.

(6) (a) THE EXECUTIVE DIRECTOR SHALL APPOINT A TASK FORCE TO STUDY HOW THE COMMISSION SHOULD USE RISK COST-BENEFIT ANALYSES AS PART OF ITS PROCEDURES FOR ADOPTING SOME OR ALL OF ITS RULES. THE RISK COST-BENEFIT TASK FORCE SHALL BE COMPRISED OF NINE MEMBERS WITH REPRESENTATION FROM THE SCIENTIFIC COMMUNITY, BUSINESS AND INDUSTRY, CITIZENS WITH EXPERIENCE IN RISK ANALYSIS, ENVIRONMENTAL SCIENCES, OR ECONOMICS. THE MAJORITY OF THE TASK FORCE SHALL BE FROM THE BUSINESS AND ECONOMIC COMMUNITY. THE TASK FORCE SHALL REPORT ITS RECOMMENDATIONS TO THE GOVERNOR, THE COMMITTEES OF REFERENCE AND GENERAL ASSEMBLY, THE EXECUTIVE DIRECTOR, AND THE COMMISSION NO LATER THAN FEBRUARY 1, 1996, FOR AN INTERIM/FINAL REPORT AND NO LATER THAN AUGUST 1, 1996, FOR THE FINAL REPORT.

(b) THE TASK FORCE SHALL CONSIDER THE FOLLOWING:

(I) IDENTIFYING THE POLICY ISSUES RELATED TO THE USE AND APPLICATION OF RISK COST-BENEFIT ANALYSIS TO BE DETERMINED BY THE GENERAL ASSEMBLY;

(II) WHAT TYPE OF DATA AND MODELS ARE NECESSARY FOR RELIABLE RISK COST-BENEFIT ANALYSIS;

(III) THE COST OF CONDUCTING RISK COST-BENEFIT ANALYSES FOR VARIOUS TYPES OF REGULATORY PROPOSALS VERSUS THE BENEFIT OF THE INFORMATION GAINED;

(IV) REGIONAL ECONOMIC IMPACT (REI) ANALYSES SHALL BE INVESTIGATED TO DETERMINE WHETHER AN REI SHOULD BE USED TO DECIDE HOW PROPOSED AIR POLLUTION CONTROLS OR RULES AFFECT THE REGIONS'S TOTAL ECONOMY.

(c) THE TASK FORCE MAY, IN ADDITION TO THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (6), PROVIDE RECOMMENDATIONS ON:

(I) PROCEDURES FOR INCORPORATING RELEVANT SCIENTIFIC AND OTHER INFORMATION INTO THE ANALYSES;

(II) PROCEDURES FOR ESTABLISHING AN OPEN PUBLIC PROCESS REGARDING USE OF RELEVANT DATA;

(III) GUIDELINES FOR CONDUCTING RISK BENEFIT ANALYSES INCLUDING WHEN AND WHETHER SUCH ANALYSIS IS APPROPRIATE;

(IV) PROCEDURES FOR SCIENTIFIC REVIEW OF RESULTS;

(V) METHODS FOR IDENTIFYING UNCERTAINTIES ASSOCIATED WITH EXPERIMENTAL MEASUREMENT ERRORS AND UNCERTAINTIES ASSOCIATED WITH SPECIFIC MODELS AND OPTIONS;

(VI) THE PROCEDURES THAT MAXIMIZE THE FLEXIBILITY FOR ACHIEVING THE DESIRED RISK REDUCTION BY GIVING PREFERENCE TO PERFORMANCE-ORIENTED, VOLUNTARY, AND MARKET-BASED APPROACHES; AND

(VII) RISK COMMUNICATION.

(d) THE GENERAL ASSEMBLY SHALL REVIEW THE TASK FORCE'S REPORT AND PROVIDE GUIDANCE TO THE COMMISSION TO INCORPORATE THE TASK FORCE'S RECOMMENDATIONS AS APPROPRIATE INTO ITS PROCEDURAL RULES. SUCH RULES SHALL BE PROMULGATED ON OR BEFORE JULY 1, 1997. AS PART OF ITS REVIEW, THE GENERAL ASSEMBLY SHALL CONSIDER ADDITIONAL APPROPRIATIONS THAT MAY BE NECESSARY TO IMPLEMENT THE TASK FORCE'S RECOMMENDATIONS.

(e) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 1997.

**25-7-110.8. Additional requirements for commission to act under section 25-7-110.5.** (1) IN ISSUING ANY FINAL RULE WITH RESPECT TO ANY STATIONARY SOURCE INTENDED TO REDUCE AIR POLLUTION, EXCEPT FOR ANY RULE WHICH ADOPTS BY REFERENCE APPLICABLE FEDERAL RULES, IF THE COMMISSION HAS NO DISCRETION UNDER STATE LAW NOT TO ADOPT THE RULES OR TO ADOPT ANY ALTERNATIVE RULE, THE COMMISSION SHALL MAKE A DETERMINATION THAT:

(a) ANY RULE PROMULGATED UNDER SECTION 25-7-110.5 IS BASED ON REASONABLY AVAILABLE, VALIDATED, REVIEWED, AND SOUND SCIENTIFIC METHODOLOGIES AND THAT ALL VALIDATED, REVIEWED, AND SOUND SCIENTIFIC METHODOLOGIES AND INFORMATION MADE AVAILABLE BY INTERESTED PARTIES HAS BEEN CONSIDERED. SUCH REVIEW MAY INCLUDE INTERNAL ORGANIZATIONAL REVIEW AND NOT PEER REVIEW.

(b) EVIDENCE IN THE RECORD SUPPORTS THE FINDING THAT THE RULE SHALL RESULT IN A DEMONSTRABLE REDUCTION IN AIR POLLUTION TO BE ADDRESSED BY THE RULE UNLESS SUCH RULE IS ADMINISTRATIVE IN NATURE;

(c) ON AND AFTER JULY 1, 1997, AND IN CONFORMANCE WITH GUIDANCE FROM THE GENERAL ASSEMBLY TO INCORPORATE THE RECOMMENDATIONS OF THE TASK FORCE ESTABLISHED IN SECTION 25-7-110.5 (6), EVIDENCE IN THE RECORD SUPPORTS THE FINDING THAT THE RULE SHALL BRING ABOUT REDUCTIONS IN RISKS TO HUMAN HEALTH OR THE ENVIRONMENT OR PROVIDE OTHER BENEFITS THAT WILL JUSTIFY THE COST TO GOVERNMENT, THE REGULATED COMMUNITY, AND TO THE PUBLIC TO IMPLEMENT AND COMPLY WITH THE RULE;

(d) THE COMMISSION SHALL CHOOSE AN ALTERNATIVE THAT IS THE MOST COST-EFFECTIVE UNDER THE ANALYSIS REQUIRED BY SECTION 25-7-110.5 (4), PROVIDES THE REGULATED COMMUNITY FLEXIBILITY, AND WHICH ACHIEVES THE NECESSARY REDUCTION IN AIR POLLUTION. THE COMMISSION MAY REJECT THE MOST

COST-EFFECTIVE ALTERNATIVE AND SHALL PROVIDE FINDINGS OF FACT DETAILING WHY THE MOST COST-EFFECTIVE ALTERNATIVE IS UNACCEPTABLE.

(e) THE SELECTION OF THE REGULATORY ALTERNATIVE BY THE COMMISSION WILL MAXIMIZE THE AIR QUALITY BENEFITS OF REGULATION PURSUANT TO THIS ARTICLE IN THE MOST COST-EFFECTIVE MANNER. FOR PURPOSES OF THE REQUIRED ANALYSES UNDER THIS SECTION, PRIOR TO THE COMPLETION OF THE RULE-MAKING REQUIRED PURSUANT TO SECTION 25-7-110.5, NO BENEFIT (EXCEPT FOR AIR POLLUTION REDUCTIONS) CAN BE ATTRIBUTED TO REGULATING A FACILITY ALREADY OPERATING IN COMPLIANCE WITH A PERMIT ISSUED PURSUANT TO APPLICABLE LAW.

(2) IN THE EVENT THAT THE COMMISSION AND DIVISION FAIL TO REASONABLY COMPLY WITH REQUIREMENTS OF SECTION 25-7-110.5 OR THIS SECTION, THE RULE SHALL BE VOID AND UNENFORCEABLE. JUDICIAL REVIEW OF AGENCY ACTION UNDER THIS SECTION OR SECTION 25-7-110.5 MAY ONLY BE OBTAINED BY PARTIES TO THE RULE-MAKING HEARING AND CAN ONLY BE BROUGHT REGARDING DEFICIENCIES OR ISSUES ALLEGING A FAILURE TO COMPLY WITH THE REQUIREMENTS IN SECTION 25-7-110.5 OR THIS SECTION RAISED DURING OR BEFORE THE HEARING TO AFFORD THE COMMISSION, ITS STAFF, OR INTERESTED PARTIES AN OPPORTUNITY TO ADDRESS THE DEFICIENCIES OR ISSUES RAISED.

**SECTION 3.** 25-7-114.4, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**25-7-114.4. Permit applications and contents.** (4) FOR ANY PERMITTED SAND AND GRAVEL OPERATION OR CRUSHED STONE QUARRY OR OIL AND GAS WELL OPERATION, IF A BREAKDOWN OF EQUIPMENT OR CHANGES IN MARKET CONDITIONS REQUIRE ANY ADDITIONAL CRUSHER OR SCREEN OR SKID-MOUNTED COMPRESSOR OR GLYCOL DEHYDRATOR TO BE BROUGHT ONTO A SITE, THE AIR POLLUTANT EMISSION NOTICE FILED UNDER SECTION 25-7-114.1 SHALL ALSO SERVE AS AN APPLICATION FOR A PERMIT UNDER THE PROVISIONS OF THIS SECTION TO CONTINUE OPERATIONS AT SUCH A SITE WITH ALTERNATIVE OR ADDITIONAL EQUIPMENT UNTIL SUCH PERMIT IS ISSUED STATING EMISSION LIMITATIONS.

**SECTION 4.** 25-7-119, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**25-7-119. Hearings.** (2.5) THE DIVISION OR THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY, OR BOTH, MAY APPEAR AS PARTIES PURSUANT TO SUBSECTION (5) OF THIS SECTION IN ANY HEARING BEFORE THE COMMISSION. THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY IS ENCOURAGED TO PARTICIPATE IN THE HEARING PROCESS EARLY AND OFTEN SO THAT ITS INTERPRETATIONS ARE HEARD. IF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY DOES NOT COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (2.5), THE COMMISSION MAY NOT RECEIVE EVIDENCE FROM SUCH AGENCY IN ANY HEARING RELATED TO STATIONARY SOURCES CONDUCTED PURSUANT TO THIS SECTION, AND ANY SUBSEQUENT OPINIONS BY SUCH AGENCY SHALL CARRY NO WEIGHT BEFORE THE COMMISSION OR IN ANY JUDICIAL PROCEEDING.

**SECTION 5.** 24-34-904 (1), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:



**24-34-904. Powers and duties - repeal.** (1) The office has the following powers and duties:

(p) BEGINNING IN THE YEAR 2000, TO CONDUCT, EVERY FIVE YEARS, IN COORDINATION WITH THE AIR POLLUTION CONTROL DIVISION IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AFTER PUBLIC COMMENT AND REVIEW, CUMULATIVE ECONOMIC ANALYSES OF ALL AIR POLLUTION CONTROL MEASURES ON STATIONARY SOURCES, PURSUANT TO SECTION 25-7-110.5 (4), C.R.S.

**SECTION 6. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the stationary sources control fund not otherwise appropriated, to the department of public health and environment for allocation to the air quality control division, for the fiscal year beginning July 1, 1995, the sum of eighty-one thousand six hundred forty-six dollars (\$81,646), or so much thereof as may be necessary, for the implementation of this act.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 1995