

## CHAPTER 214

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**HEALTH AND ENVIRONMENT**

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**SENATE BILL 99-145**

BY SENATORS Wattenberg, Anderson, Andrews, Arnold, Chlouber, Congrove, Epps, Evans, Hillman, Musgrave, Owen, Powers, Tebedo, and Teck;  
also REPRESENTATIVES Taylor, Alexander, Berry, Fairbank, Hoppe, Lee, McKay, Miller, Mitchell, Paschall, and Young.

**AN ACT**

CONCERNING THE APPLICATION OF STATE AIR QUALITY STANDARDS TO ACTIVITIES TAKING PLACE ON PUBLIC PROPERTY WITHIN THE STATE, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

**SECTION 1.** 25-7-106, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**25-7-106. Commission - additional authority.** (7) (a) WITH RESPECT TO FEDERAL PROPERTY AND FACILITIES AND ALL FEDERAL ACTIVITIES RESULTING, OR WHICH MAY RESULT, IN THE DISCHARGE OF AIR POLLUTANTS, THE COMMISSION IS SPECIFICALLY AUTHORIZED AND DIRECTED TO APPLY AND ENFORCE EVERY RELEVANT PROVISION OF THE STATE IMPLEMENTATION PLAN AND EVERY RELEVANT EMISSION CONTROL, INCLUDING THE IMPOSITION OF ANY FEE PURSUANT TO SECTIONS 25-7-114.1 AND 25-7-114.7 OR PENALTY PURSUANT TO SECTION 25-7-122, THAT APPLIES TO PRIVATE AND NONFEDERAL GOVERNMENTAL PROPERTY AND FACILITIES WITHIN THE STATE OF COLORADO, INCLUDING THE RECOVERY OF COSTS BY THE STATE FOR THE EVALUATION OF LAND MANAGEMENT PLANS PURSUANT TO SUBSECTION (8) OF THIS SECTION. THE PROVISIONS OF THIS SECTION AND SECTION 25-7-123 SHALL NOT APPLY TO UNITED STATES AND COLORADO MILITARY FACILITIES, PROPERTY, ACTIVITIES, AND INSTALLATIONS.

(b) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE RECOMMENDATIONS OF THE GRAND CANYON VISIBILITY TRANSPORT COMMISSION FOR IMPROVING WESTERN VISTAS IDENTIFIED NATURAL AND PRESCRIBED FIRES AS HAVING THE SINGLE GREATEST IMPACT ON VISIBILITY AT CLASS I AREAS THROUGH THE YEAR 2040 AND THAT OTHER SIGNIFICANT AMOUNTS OF VISIBILITY IMPAIRMENT RESULT FROM ACTIVITIES ON FEDERAL LANDS, FROM MOBILE SOURCES, AND FROM

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

MEXICO. THE ONLY MAJOR SOURCE OF VISIBILITY IMPAIRMENT OVER WHICH THIS STATE HAS JURISDICTION BUT HAS NOT YET DEVELOPED A COMPREHENSIVE PROGRAM TO REDUCE SUCH IMPAIRMENT IS THE EMISSIONS FROM ACTIVITIES MANAGED BY FEDERAL LAND MANAGEMENT AGENCIES; THEREFORE, THIS SUBSECTION (7) IS ADOPTED PURSUANT TO SECTION 118 OF THE FEDERAL ACT AND SHALL BE CONSTRUED TO EXERCISE THE FULL EXTENT OF THE STATE'S AUTHORITY AS GRANTED BY THE PROVISIONS OF SAID FEDERAL ACT WITH REGARD TO POLLUTION COMING FROM FEDERAL FACILITIES. THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT THE FEDERAL GOVERNMENT, AS THE ONLY LANDOWNER OF ITS SIZE IN THE STATE AND THE ONLY LANDOWNER IN THE STATE OTHER THAN THE STATE GOVERNMENT ITSELF THAT ROUTINELY PREPARES COMPREHENSIVE LAND MANAGEMENT PLANS INVOLVING THE CLEARING OF FOREST UNDERGROWTH BY FIRE, IS APPROPRIATELY SUBJECT TO THE REQUIREMENTS OF THIS SECTION PERTAINING TO REVIEW AND APPROVAL OF LAND MANAGEMENT PLANS. THE STATE, BY REVIEWING FEDERAL LAND MANAGEMENT PLANS, CAN ACHIEVE SIGNIFICANT PROGRESS TOWARDS COOPERATIVELY REDUCING EMISSIONS FROM THOSE LANDS WHICH IMPACT VISIBILITY IN COLORADO.

(c) AS USED IN THIS SUBSECTION (7) AND IN SUBSECTION (8) OF THIS SECTION, THE TERMS "FEDERAL PROPERTY AND FACILITIES" AND "FEDERAL ACTIVITIES" DO NOT INCLUDE PROPERTY, FACILITIES, OR ACTIVITIES OF NONFEDERAL PARTIES ON FEDERAL LANDS.

(8) (a) THE COMMISSION, IN EXERCISING THE POWERS CONFERRED BY SUBSECTION (7) OF THIS SECTION AND THIS SUBSECTION (8), SHALL REQUIRE ALL FEDERAL FACILITIES, INCLUDING ACTIVITIES DIRECTLY CONDUCTED BY OR ON BEHALF OF FEDERAL AGENCIES ON FEDERAL LANDS, TO MINIMIZE EMISSIONS USING ALL AVAILABLE, PRACTICABLE METHODS THAT ARE TECHNOLOGICALLY FEASIBLE AND ECONOMICALLY REASONABLE IN ORDER TO MINIMIZE THE IMPACT OR REDUCE THE POTENTIAL FOR SUCH IMPACT ON BOTH THE ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS AND THE ACHIEVEMENT OF FEDERAL AND STATE VISIBILITY GOALS.

(b) (I) IN ORDER TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (8), FEDERAL LAND MANAGERS WITH JURISDICTION OVER FEDERAL PROPERTIES AND FACILITIES WITHIN COLORADO SHALL SUBMIT LAND MANAGEMENT PLANS OR EQUIVALENT PLANNING DOCUMENTS TO THE COMMISSION. THE COMMISSION SHALL THEN CONDUCT A PUBLIC HEARING ON THOSE ELEMENTS OF THE LAND MANAGEMENT PLAN RELEVANT TO ACHIEVING THE GOAL OF MINIMIZING EMISSIONS AS SET FORTH IN SAID PARAGRAPH (a).

(II) AS USED IN THIS PARAGRAPH (b), "EQUIVALENT PLANNING DOCUMENTS" MEANS DOCUMENTS THAT SUMMARIZE THE ELEMENTS OF A LAND MANAGEMENT PLAN THAT ARE RELEVANT TO THE DISCHARGE OR RELEASE OF AIR POLLUTION AND DEMONSTRATE HOW COMPLIANCE WITH THE STATE STANDARD SHALL BE ACHIEVED.

(III) THE COMMISSION SHALL HAVE DISCRETION TO ADOPT RULES GOVERNING THE RESUBMISSION OF LAND MANAGEMENT PLANS OR EQUIVALENT PLANNING DOCUMENTS TO PREVENT SUCH PLANS FROM BECOMING OUTDATED.

(c) FOLLOWING A PUBLIC HEARING, THE COMMISSION SHALL COMMENT AND MAKE

RECOMMENDATIONS TO THE FEDERAL LAND MANAGER REGARDING ANY CHANGES TO ELEMENTS OF THE LAND MANAGEMENT PLAN RELATING TO THE DISCHARGE OR RELEASE OF AIR POLLUTANTS THAT THE COMMISSION FINDS NECESSARY TO COMPLY WITH THE STATE STANDARD.

**SECTION 2.** 25-7-114.7 (2) (a) (III), Colorado Revised Statutes, is amended to read:

**25-7-114.7. Emission fees - fund - repeal.** (2) (a) (III) Every owner or operator subject to the requirements of paying fees set forth in subparagraph (I) of this paragraph (a) shall also pay a processing fee for the costs of processing any application other than an air pollution emission notice under this article. EVERY FEDERAL FACILITY SUBMITTING A LAND MANAGEMENT PLAN OR AN EQUIVALENT PLANNING DOCUMENT TO THE COMMISSION PURSUANT TO SECTION 25-7-106 (8) (b) SHALL PAY A FEE FOR COSTS OF EVALUATING SUCH DOCUMENTS. The division shall assess a fee for work it performs up to a maximum of thirty hours at a rate of fifty dollars per hour. If the division requires more than thirty hours to process the application OR EVALUATE THE LAND MANAGEMENT PLAN OR EQUIVALENT DOCUMENTS, the fee paid by the applicant shall not exceed one thousand five hundred dollars, unless the division has informed the source that the respective billings may exceed one thousand five hundred dollars and has provided the source with an estimate of what the actual charges may be prior to commencing the work.

**SECTION 3.** 25-7-123 (1) (b), Colorado Revised Statutes, is amended, and the said 25-7-123 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**25-7-123. Open burning - penalties.** (1) (b) Open burning in the course of agricultural operations may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning. FOR PURPOSES OF THIS SECTION, "AGRICULTURAL OPERATIONS" DOES NOT INCLUDE FOREST MANAGEMENT OR HABITAT MANAGEMENT ACTIVITIES OF FEDERAL OR STATE LAND MANAGERS, AND SUCH ACTIVITIES SHALL BE DEEMED "COMMERCIAL PURPOSES" WITHIN THE MEANING OF PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION.

(c) NO PERMIT SHALL BE ISSUED BY THE DIVISION PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION AFTER JANUARY 1, 2001, UNLESS SUCH PERMIT IS CONSISTENT WITH THE COMMENTS AND RECOMMENDATIONS OF THE COMMISSION CONCERNING THE LAND MANAGEMENT PLAN OR EQUIVALENT PLANNING DOCUMENT, AS DEFINED IN SECTION 25-7-106 (8) (b) (II), APPLICABLE TO THE AREA TO BE BURNED; EXCEPT THAT PERMIT CONDITIONS MAY BE EXCLUDED FROM A PERMIT IF A FEDERAL LAND MANAGER ASSERTS THAT SUCH CONDITIONS ARE SPECIFICALLY PROHIBITED BY FEDERAL STATUTE AND IF THE DIVISION DETERMINES THAT SUCH ASSERTION IS CORRECT. THE DIVISION SHALL REPORT ALL SUCH EXCLUSIONS, WITHIN THIRTY DAYS AFTER THEY ARE GRANTED, TO THE GOVERNOR AND TO THE DIRECTOR OF THE LEGISLATIVE COUNCIL. IN NO EVENT SHALL A PERMIT BE ISSUED UNLESS A LAND MANAGEMENT PLAN OR EQUIVALENT PLANNING DOCUMENT FOR THE AREA TO BE BURNED HAS BEEN SUBMITTED ON OR BEFORE JULY 1, 2000, TO THE COMMISSION FOR REVIEW, PUBLIC HEARING, AND COMMENT IN ACCORDANCE WITH SECTION

25-7-106 (8). THE COMMISSION SHALL ADOPT RULES TO PROVIDE FOR EXCEPTIONS FROM THE REQUIREMENTS OF SAID SECTION WHERE IMMEDIATE ISSUANCE OF A PERMIT IS NECESSARY TO PROTECT THE PUBLIC HEALTH AND SAFETY.

**SECTION 4. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the stationary sources control cash fund, to the department of public health and environment, for the fiscal year beginning July 1, 1999, the sum of one hundred twenty-eight thousand six hundred sixty-nine dollars (\$128,669) and 1.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of cash exempt funds, to the department of law, for the fiscal year beginning July 1, 1999, the sum of twenty-eight thousand eight hundred dollars (\$28,800) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 5. 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: May 24, 1999