

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0069.01 Thomas Morris x4218

HOUSE BILL 20-1265

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A BILL FOR AN ACT

101 **CONCERNING INCREASED PUBLIC PROTECTIONS FROM EMISSIONS OF**
102 **AIR TOXICS.**

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>.)

The bill creates a new program to regulate emissions of a subset of hazardous air pollutants, referred to as "covered air toxics", which are defined as hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, benzene, and other hazardous air pollutants specified by the air quality control commission by rule. A stationary source of air pollutants that reported in its federal toxics release inventory filing at least one of the

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

following amounts of a covered air toxic in one year is defined as a "covered facility":

- ! For hydrogen cyanide, 10,000 pounds;
- ! For hydrogen fluoride, 10,000 pounds;
- ! For hydrogen sulfide, 5,000 pounds; and
- ! For benzene, 1,000 pounds.

At least every 5 years beginning in 2026, the commission will review the best available science and adjust, as necessary to protect public health, the list of covered air toxics and their associated emission levels.

The commission will:

- ! Regulate covered air toxics more strictly than is required by the federal clean air act;
- ! Require covered facilities to monitor their emissions of covered air toxics;
- ! Set health-based emission limits for covered air toxics if no such limit exists under state or federal law; and
- ! Establish a real-time community alert system for "incidents", which are unauthorized emissions of an air pollutant from a covered facility.

The division of administration in the department of public health and environment will:

- ! Consider and prevent adverse cumulative impacts from covered facilities' emissions of hazardous air pollutants when processing air pollution permits for covered facilities that are located in or near disproportionately impacted communities, as determined by the commission by rule;
- ! Approve a new or amended permit for a covered facility only if there is no net increase in the adverse cumulative impacts of hazardous air pollutant emissions above existing levels in each disproportionately impacted community affected by the emissions; and
- ! If existing emissions of hazardous air pollutants exceed the health-based emission limits or have unacceptable adverse cumulative impacts on any disproportionately impacted community, require a decrease or cessation in the applicable emissions over the shortest practicable time until the emissions comply with the health-based emission limits and no longer have unacceptable adverse cumulative impacts on any disproportionately impacted community.

Covered facilities will:

- ! Monitor their covered air toxics emissions and make the monitoring data widely available, including to the public; and
- ! Promptly disseminate information regarding an incident pursuant to the commission's real-time community alert

system to the public, affected local governments and other community entities, and local emergency planning and response organizations.

The bill specifies violations for a covered facility that is covered by specified federal regulations based on the unauthorized emission of an air pollutant from a flare or pressure relief device and any uncontrolled atmospheric release of an air pollutant from an organic hazardous air pollutant pressure relief device. The commission will review its rules for these facilities and specifically consider adopting more stringent provisions, including:

- ! A requirement that leak detection and repair inspections occur at these facilities on, at a minimum, a semiannual basis or that an alternative approved instrument monitoring method is in place pursuant to existing rules; and
- ! Reductions in fugitive emissions from equipment leaks and wastewater at these facilities.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-7-109.3, **amend**
3 (1) and (2) as follows:

4 **25-7-109.3. Colorado hazardous air pollutant control and**
5 **reduction program - rules.** (1) The commission shall promulgate
6 appropriate ~~regulations~~ RULES pertaining to hazardous air pollutants ~~as~~
7 ~~defined in section 25-7-103 (13) which~~ THAT are consistent with this
8 section OR SECTION 25-7-109.5 and the requirements of and emission
9 standards promulgated pursuant to section 112 of the federal act,
10 including any standard required to be imposed under section 112 (r) of the
11 federal act. The commission shall monitor the progress and results of the
12 risk studies performed under section 112 of the federal act to show that
13 Colorado's hazardous air pollutant control and reduction program is
14 consistent with the national strategy.

15 (2) (a) The commission may ~~only~~ promulgate ~~regulations~~ RULES
16 pertaining to:

1 (I) Hazardous air pollutants ~~as defined in section 25-7-103 (13)~~
2 ONLY in accordance with this section; OR

3 (II) COVERED AIR TOXICS, AS THAT TERM IS DEFINED IN SECTION
4 25-7-109.5 (1)(a), IN ACCORDANCE WITH SECTION 25-7-109.5.

5 (b) In order to minimize additional regulatory and compliance
6 costs to the state's economy, any program created by the commission
7 pursuant to this section ~~shall~~ MUST contain a provision ~~which~~ THAT
8 exempts those sources or categories of sources ~~which~~ THAT it determines
9 to be of minor significance from the requirements of the program.
10 Consistent with ~~the provisions of~~ section 25-7-105.1, the commission
11 shall authorize synthetic minor sources of hazardous air pollutants by the
12 issuance of construction permits or prohibitory rules or other ~~regulations~~.
13 ~~Such~~ RULES. THE permits OR rules ~~or regulations shall only~~ MUST be ONLY
14 as stringent as necessary to establish synthetic minor status. The
15 commission shall expeditiously implement this subsection (2), OTHER
16 THAN SUBSECTION (2)(a)(II) OF THIS SECTION, to assure that all sources
17 may be able to timely qualify as a synthetic minor source, thereby
18 avoiding the costs of the operating permit program.

19 **SECTION 2.** In Colorado Revised Statutes, **add** 25-7-109.5 as
20 follows:

21 **25-7-109.5. Air toxics - covered facilities - health-based**
22 **emission limits - monitoring - cumulative impacts - public notice of**
23 **incidents - refinery requirements - rules - definitions - repeal.**

24 (1) **Definitions.** AS USED IN THIS SECTION, SUBJECT TO SUBSECTION (2)
25 OF THIS SECTION:

26 (a) "COVERED AIR TOXIC" MEANS:

27 (I) HYDROGEN CYANIDE, HYDROGEN FLUORIDE, HYDROGEN

1 SULFIDE, AND BENZENE; AND

2 (II) ANY OTHER HAZARDOUS AIR POLLUTANT THAT THE
3 COMMISSION LISTS, BY RULE, PURSUANT TO SUBSECTION (2) OF THIS
4 SECTION.

5 (b) (I) "COVERED FACILITY" MEANS A STATIONARY SOURCE THAT
6 REPORTED AT LEAST ONE OF THE FOLLOWING AMOUNTS OF A COVERED AIR
7 TOXIC IN ITS FEDERAL TOXICS RELEASE INVENTORY FILING PURSUANT TO
8 42 U.S.C. SEC. 11023 FOR THE YEAR 2017 OR LATER:

9 (A) FOR HYDROGEN CYANIDE, TEN THOUSAND POUNDS;

10 (B) FOR HYDROGEN FLUORIDE, TEN THOUSAND POUNDS;

11 (C) FOR HYDROGEN SULFIDE, FIVE THOUSAND POUNDS; AND

12 (D) FOR BENZENE, ONE THOUSAND POUNDS; AND

13 (II) "COVERED FACILITY" INCLUDES A STATIONARY SOURCE THAT
14 EMITS AN AIR TOXIC LISTED BY RULE PURSUANT TO SUBSECTION (2)(a) OF
15 THIS SECTION IF THE FACILITY HAS REPORTED AN AMOUNT THAT IS AT
16 LEAST THE AMOUNT SPECIFIED BY THE RULE BASED ON ITS FEDERAL
17 TOXICS RELEASE INVENTORY FILINGS PURSUANT TO 42 U.S.C. SEC. 11023
18 FOR THE TEN CALENDAR YEARS BEFORE THE EFFECTIVE DATE OF THE RULE.

19 (III) A STATIONARY SOURCE REMAINS A COVERED FACILITY UNTIL
20 BOTH THE FOLLOWING EVENTS OCCUR:

21 (A) THE FACILITY HAS NOT EXCEEDED ANY HEALTH-BASED
22 EMISSION LIMIT STANDARD PURSUANT TO SUBSECTION (3) OF THIS SECTION
23 DURING THE PREVIOUS TEN YEARS; AND

24 (B) THE EMISSION DATA DISSEMINATED PURSUANT TO SUBSECTION
25 (4)(a)(IV) OF THIS SECTION DEMONSTRATE THAT THE FACILITY NO LONGER
26 POSES A RISK TO PUBLIC HEALTH, AS DETERMINED BY THE DIVISION AFTER
27 OPPORTUNITY FOR NOTICE AND COMMENT AND A PUBLIC HEARING IN THE

1 **AFFECTED COMMUNITY.**

2 (c) "CUMULATIVE IMPACTS" MEANS THE EFFECTS OF:

3 (I) ALL HAZARDOUS AIR POLLUTANT EMISSIONS CONSIDERED
4 CUMULATIVELY, NOT JUST INDIVIDUALLY; AND

5 (II) ALL EXISTING AND REASONABLY FORESEEABLE FUTURE
6 SOURCES OF HAZARDOUS AIR POLLUTANT EMISSIONS WITHIN THE
7 RELEVANT AREA.

8 (d) "DISPROPORTIONATELY IMPACTED COMMUNITY" MEANS A
9 COMMUNITY DESCRIBED IN SECTION 25-7-105 (1)(e)(III).

10 (e) "FENCELINE MONITORING" MEANS EQUIPMENT THAT MEASURES
11 AND RECORDS AIR POLLUTANT CONCENTRATIONS AT OR ADJACENT TO A
12 COVERED FACILITY AND THAT MAY BE USEFUL FOR DETECTING OR
13 ESTIMATING THE QUANTITY OF FUGITIVE EMISSIONS, GAS LEAKS, AND
14 OTHER AIR EMISSIONS FROM THE COVERED FACILITY.

15 (f) "INCIDENT" MEANS THE EMISSION BY A COVERED FACILITY OF
16 AN AIR POLLUTANT AT A RATE OR QUANTITY THAT EXCEEDS ALLOWABLE
17 EMISSIONS AS A RESULT OF ANTICIPATED OR UNANTICIPATED
18 CIRCUMSTANCES, INCLUDING A MALFUNCTION, START-UP, SHUTDOWN,
19 UPSET, OR EMERGENCY.

20 (g) "NEAR-SOURCE MONITORING" MEANS MONITORING EQUIPMENT
21 WITHIN THE PERIMETER OF A COVERED FACILITY THAT MEASURES AND
22 RECORDS AIR POLLUTANT CONCENTRATIONS WITHIN THE PERIMETER OF A
23 COVERED FACILITY AND THAT MAY BE USEFUL FOR DETECTING OR
24 ESTIMATING THE QUANTITY OF FUGITIVE EMISSIONS, GAS LEAKS, AND
25 OTHER AIR EMISSIONS FROM THE COVERED FACILITY.

26 (2) **Review of covered air toxics and emission thresholds for**
27 **covered facilities.** (a) IN ORDER TO BETTER PROTECT PUBLIC HEALTH, THE

1 COMMISSION SHALL:

2 (I) AT LEAST EVERY FIVE YEARS BEGINNING IN 2026, OR MORE
3 FREQUENTLY IF IT DEEMS IT APPROPRIATE TO DO SO, INCLUDING PURSUANT
4 TO A REQUEST BY ANY INTERESTED PERSON, REVIEW THE BEST AVAILABLE
5 SCIENCE, THE LIST OF COVERED AIR TOXICS, AND THE EMISSION
6 THRESHOLDS FOR COVERED FACILITIES TO DETERMINE WHETHER
7 ADDITIONAL HAZARDOUS AIR POLLUTANTS SHOULD BE LISTED AS COVERED
8 AIR TOXICS, THE APPROPRIATE EMISSION THRESHOLD FOR COVERED
9 FACILITIES REGARDING EACH ADDITIONAL COVERED AIR TOXIC, AND
10 WHETHER ANY EMISSION THRESHOLD FOR EXISTING COVERED FACILITIES
11 SHOULD BE LOWERED; AND

12 (II) BASED ON ITS REVIEW, ADJUST THE LISTS OF COVERED AIR
13 TOXICS AND COVERED FACILITIES AND THE EMISSION THRESHOLDS FOR
14 COVERED FACILITIES BY RULE.

15 (b) IN CONDUCTING A REVIEW PURSUANT TO THIS SUBSECTION (2),
16 THE COMMISSION SHALL PROVIDE PUBLIC NOTICE AND AN OPPORTUNITY TO
17 COMMENT ON THE COMMISSION'S PROPOSED ADDITIONS AND ADJUSTMENTS
18 TO THE LISTS OF COVERED AIR TOXICS AND COVERED FACILITIES AND THE
19 EMISSION THRESHOLDS FOR COVERED FACILITIES.

20 (3) **Health-based emission limits.** (a) THE COMMISSION SHALL:

21 (I) REGULATE COVERED AIR TOXICS MORE STRINGENTLY THAN THE
22 FEDERAL ACT;

23 (II) REQUIRE FENCELINE MONITORING AND NEAR-SOURCE
24 MONITORING OF COVERED AIR TOXICS BY COVERED FACILITIES PURSUANT
25 TO RULES PROMULGATED UNDER SUBSECTION (4)(h) OF THIS SECTION.

26 (b) (I) (A) IF THERE IS NO EXISTING HEALTH-BASED EMISSION LIMIT
27 AT THE STATE OR FEDERAL LEVEL FOR A COVERED AIR TOXIC, THE

1 COMMISSION SHALL SET, BY RULE, A HEALTH-BASED EMISSION LIMIT FOR
2 EACH COVERED AIR TOXIC. ONCE ESTABLISHED BY RULE, THE COMMISSION
3 SHALL REEVALUATE EACH HEALTH-BASED EMISSION LIMIT EVERY FIVE
4 YEARS BEGINNING IN 2026 AND REVISE THE LIMITS TO ENSURE THAT THEY
5 PROTECT PUBLIC HEALTH.

6 (B) BY JANUARY 1, 2021, THE COMMISSION SHALL SUBMIT A
7 REPORT TO THE GENERAL ASSEMBLY REGARDING THE ESTIMATED
8 RESOURCES NEEDED TO PROMULGATE THE RULES ESTABLISHING
9 HEALTH-BASED EMISSION LIMITS PURSUANT TO THIS SUBSECTION (3). THIS
10 SUBSECTION (3)(b)(I)(B) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2022.

11 (II) THE COMMISSION SHALL NOT:

12 (A) REVISE A HEALTH-BASED EMISSION LIMIT THAT HAS BEEN
13 INCORPORATED INTO A COVERED FACILITY'S PERMIT UNLESS THE REVISION
14 IS MORE PROTECTIVE OF PUBLIC HEALTH THAN THE PREVIOUS LIMIT; OR

15 (B) SOLELY CONSIDER COST OR TECHNICAL FEASIBILITY IN SETTING
16 A LIMIT.

17 (III) THE DIVISION SHALL REVISE A COVERED FACILITY'S PERMIT TO
18 INCLUDE THE MOST UP-TO-DATE HEALTH-BASED STANDARDS FOR
19 COVERED AIR TOXICS. THE REVISED STANDARDS MUST BE THOSE THAT ARE
20 THE MOST PROTECTIVE OF PUBLIC HEALTH, INCLUDING FOR BOTH
21 SHORT-TERM AND LONG-TERM RELEASES.

22 (IV) THE HEALTH-BASED EMISSION LIMITS MUST:

23 (A) CONTAIN A NUMERICAL LIMIT;

24 (B) REQUIRE THE MAXIMUM DEGREE OF REDUCTION IN EMISSIONS;

25 (C) PROVIDE AN AMPLE MARGIN OF SAFETY TO PROTECT PUBLIC
26 HEALTH, CONSIDERING EFFECTS TO VULNERABLE SUBPOPULATIONS,
27 INCLUDING FETAL AND CHILDREN'S HEALTH OVER AN EXTENDED PERIOD

1 OF CONTINUOUS EXPOSURE, AND, FOR ANY UNCERTAIN OR UNKNOWN
2 RISKS, ERR ON THE SIDE OF PROTECTING HUMAN HEALTH;

3 (D) CONSIDER CUMULATIVE EFFECTS FROM MULTIPLE
4 POLLUTANTS, SOURCES OF POLLUTION, AND PATHWAYS OF EXPOSURE,
5 BASED ON THE BEST AVAILABLE SCIENCE;

6 (E) CONSIDER EXPOSURE DATA OF NEARBY POPULATIONS AND
7 EMPLOYEES AT COVERED FACILITIES ACCORDING TO AVAILABLE
8 FENCELINE MONITORING AND NEAR-SOURCE MONITORING DATA;

9 (F) INCLUDE CONSIDERATION OF BOTH CANCER AND NONCANCER
10 HEALTH RISKS, WITH AN ACCEPTABLE CANCER RISK NOT TO EXCEED ONE
11 EXTRA CANCER CASE PER EVERY ONE HUNDRED THOUSAND PEOPLE; AND

12 (G) CONSIDER THE EFFECTS OF THE EMISSIONS OF COVERED AIR
13 TOXICS ON DISPROPORTIONATELY IMPACTED COMMUNITIES AND
14 EMPLOYEES AT COVERED FACILITIES.

15 (V) THE COMMISSION SHALL MAKE ALL RESEARCH, STUDIES, AND
16 OTHER UNDERLYING SUPPORT FOR THE HEALTH-BASED EMISSION LIMITS
17 READILY AVAILABLE TO THE PUBLIC.

18 (VI) THE HEALTH-BASED EMISSION LIMITS MAY INCLUDE A SET,
19 BUT PROMPT, PHASE-IN PERIOD FOR COVERED FACILITIES' COMPLIANCE.

20 (4) **Monitoring.** (a) EACH COVERED FACILITY SHALL, BY MAY 1,
21 2021, SUBMIT A FENCELINE MONITORING AND NEAR-SOURCE MONITORING
22 PLAN TO THE DIVISION. A PLAN MUST IDENTIFY:

23 (I) THE EQUIPMENT TO BE USED TO CONTINUOUSLY MONITOR,
24 RECORD, AND REPORT EMISSION DATA FOR EACH COVERED AIR TOXIC IN
25 REAL TIME, AT OR NEAR THE COVERED FACILITY BOUNDARY, INCLUDING
26 EQUIPMENT TO CONTINUOUSLY RECORD WIND SPEED AND WIND DIRECTION
27 DATA;

- 1 (II) SITING AND EQUIPMENT SPECIFICATIONS;
- 2 (III) PROCEDURES FOR AIR MONITORING EQUIPMENT MAINTENANCE
3 AND FAILURES, MAINTENANCE PLANS AND SCHEDULES, TEMPORARY
4 BACK-UP MEASURES TO IMPLEMENT DURING EQUIPMENT FAILURES, DATA
5 MANAGEMENT, QUALITY ASSURANCE, AND QUALITY CONTROL;
- 6 (IV) METHODS FOR DISSEMINATING MONITORING DATA TO THE
7 PUBLIC, LOCAL GOVERNMENTS, AREA SCHOOLS, AND THE DIVISION IN REAL
8 TIME; AND
- 9 (V) OTHER AIR POLLUTANTS THAT THE MONITORS ARE CAPABLE OF
10 MEASURING.

11 (b) WITHIN TWO YEARS AFTER INITIATION OF THE MONITORING
12 PLAN, ALL DATA DISSEMINATION MUST BE IN THE TWO MOST PREVALENT
13 LANGUAGES SPOKEN IN THE AFFECTED COMMUNITY, AS IDENTIFIED IN THE
14 LATEST AMERICAN COMMUNITY SURVEY PUBLISHED BY THE FEDERAL
15 CENSUS BUREAU, AND MUST BE AVAILABLE ONLINE ON THE DIVISION'S
16 WEBSITE.

17 (c) THE REPORTING OF MONITORING DATA MUST INCLUDE OTHER
18 AIR POLLUTANTS MEASURED BY THE MONITORS, EVEN IF THOSE AIR
19 POLLUTANTS ARE NOT A COVERED AIR TOXIC.

20 (d) COVERED FACILITIES SHALL SUBMIT DRAFT MONITORING PLANS
21 TO THE DIVISION IN THE TWO MOST PREVALENT LANGUAGES SPOKEN IN
22 THE AFFECTED COMMUNITY, AS IDENTIFIED IN THE LATEST AMERICAN
23 COMMUNITY SURVEY PUBLISHED BY THE FEDERAL CENSUS BUREAU. THE
24 DIVISION SHALL POST DRAFT PLANS ON THE DIVISION'S WEBSITE PROMPTLY
25 UPON SUBMISSION.

26 (e) (I) ALL DRAFT MONITORING PLANS, INCLUDING PLANS THAT
27 ARE RESUBMITTED PURSUANT TO SUBSECTION (4)(g) OF THIS SECTION, ARE

1 SUBJECT TO AT LEAST NINETY DAYS OF PUBLIC COMMENT.

2 (II) THE DIVISION SHALL HOLD AT LEAST TWO PUBLIC HEARINGS
3 REGARDING A DRAFT MONITORING PLAN AT A LOCATION NEAR THE
4 COVERED FACILITY. INTERPRETATION SERVICES AS NECESSARY FOR THE
5 TWO MOST PREVALENT LANGUAGES SPOKEN IN THE AFFECTED
6 COMMUNITY, AS IDENTIFIED IN THE LATEST AMERICAN COMMUNITY
7 SURVEY PUBLISHED BY THE FEDERAL CENSUS BUREAU, MUST BE PROVIDED
8 AT THE HEARINGS, ONE OF WHICH MUST BE HELD DURING THE EVENING
9 AND ONE OF WHICH MUST BE HELD DURING A WEEKEND.

10 (III) THE DIVISION AND THE COVERED FACILITY SHALL CONSULT
11 WITH AFFECTED LOCAL GOVERNMENTS ABOUT EACH VERSION OF A DRAFT
12 MONITORING PLAN SUBMITTED TO THE DIVISION FOR APPROVAL DURING
13 THE COMMENT PERIOD.

14 (IV) THE DIVISION SHALL RESPOND, IN WRITING, TO ALL WRITTEN
15 AND ORAL PUBLIC COMMENTS RECEIVED BEFORE APPROVING A
16 MONITORING PLAN.

17 (V) ALL MONITORING PLANS APPROVED BY THE DIVISION MUST BE
18 AVAILABLE IN THE TWO MOST PREVALENT LANGUAGES SPOKEN IN THE
19 AFFECTED COMMUNITY, AS IDENTIFIED IN THE LATEST AMERICAN
20 COMMUNITY SURVEY PUBLISHED BY THE FEDERAL CENSUS BUREAU, AND
21 MUST BE POSTED ON THE DIVISION'S WEBSITE PROMPTLY UPON APPROVAL.
22 THE DIVISION SHALL MAKE A HARD COPY OF THE APPROVED PLAN
23 PUBLICLY AVAILABLE AT THE DIVISION. A COVERED FACILITY SHALL MAKE
24 HARD COPIES OF THE APPROVED PLAN PUBLICLY AVAILABLE AT LIBRARIES
25 IN THE AFFECTED COMMUNITIES, AS DETERMINED BY THE COMMISSION BY
26 RULE.

27 (f) A COVERED FACILITY SHALL PAY A PROCESSING FEE

1 CALCULATED PURSUANT TO SECTION 25-7-114.7 (2)(a)(III) TO COVER THE
2 DIVISION'S INDIRECT AND DIRECT COSTS OF REVIEWING AND APPROVING
3 THE PLAN.

4 (g) A COVERED FACILITY SHALL UPDATE AND RESUBMIT FOR
5 DIVISION APPROVAL ITS MONITORING PLAN EVERY FIVE YEARS; EXCEPT
6 THAT THE DIVISION MAY REQUIRE AN UPDATED PLAN BEFORE THE
7 EXPIRATION OF FIVE YEARS BASED ON:

8 (I) ITS OWN DETERMINATION THAT THERE HAS BEEN A
9 SUBSTANTIAL CHANGE IN THE COVERED FACILITY'S OPERATIONS OR
10 EMISSIONS; OR

11 (II) A WRITTEN REQUEST SUBMITTED BY A MEMBER OF THE PUBLIC
12 THAT THE DIVISION DETERMINES JUSTIFIES AN UPDATED PLAN.

13 (h) THE COMMISSION SHALL PROMULGATE RULES REQUIRING
14 FENCELINE MONITORING AND NEAR-SOURCE MONITORING BY JANUARY 1,
15 2021. THE DIVISION MUST APPROVE MONITORING PLANS BY NOVEMBER 1,
16 2021. COVERED FACILITIES SHALL BEGIN TO COLLECT MONITORING DATA
17 BY JANUARY 1, 2022.

18 (i) A FACILITY THAT HAS INSTALLED MONITORING EQUIPMENT
19 PURSUANT TO A MONITORING PLAN SHALL CONTINUE TO DISSEMINATE
20 EMISSION DATA PURSUANT TO SUBSECTION (4)(a)(IV) OF THIS SECTION
21 IRRESPECTIVE OF WHETHER IT REMAINS A COVERED FACILITY.

22 (5) **Cumulative impacts.** WHEN APPLYING FOR OR PROCESSING
23 AIR POLLUTION PERMITS FOR COVERED FACILITIES THAT ARE LOCATED IN
24 OR NEAR DISPROPORTIONATELY IMPACTED COMMUNITIES, AS DETERMINED
25 BY THE COMMISSION BY RULE:

26 (a) THE DIVISION SHALL CONSIDER AND PREVENT ADVERSE
27 CUMULATIVE IMPACTS OF COVERED FACILITIES' EMISSIONS OF HAZARDOUS

1 AIR POLLUTANTS;

2 (b) A COVERED FACILITY SHALL CONDUCT A CUMULATIVE IMPACTS
3 ANALYSIS AND SUBMIT THE ANALYSIS AS PART OF ITS AIR POLLUTION
4 PERMIT APPLICATION;

5 (c) THE DIVISION MAY APPROVE A NEW OR AMENDED PERMIT FOR
6 A COVERED FACILITY ONLY IF THERE IS NO NET INCREASE IN THE ADVERSE
7 CUMULATIVE IMPACTS OF HAZARDOUS AIR POLLUTANT EMISSIONS ABOVE
8 LEVELS EXISTING AT THE TIME OF APPLICATION IN EACH
9 DISPROPORTIONATELY IMPACTED COMMUNITY AFFECTED BY THE
10 EMISSIONS; AND

11 (d) (I) IF THE DIVISION DETERMINES THAT EXISTING EMISSIONS OF
12 HAZARDOUS AIR POLLUTANTS EXCEED THE HEALTH-BASED EMISSION
13 LIMITS ESTABLISHED PURSUANT TO SUBSECTION (3) OF THIS SECTION OR,
14 PURSUANT TO STANDARDS DETERMINED BY THE COMMISSION BY RULE,
15 HAVE UNACCEPTABLE ADVERSE CUMULATIVE IMPACTS ON ANY
16 DISPROPORTIONATELY IMPACTED COMMUNITY, THE DIVISION:

17 (A) SHALL, PURSUANT TO RULES PROMULGATED BY THE
18 COMMISSION, REQUIRE A DECREASE OR CESSATION IN THE APPLICABLE
19 EMISSIONS FROM THE PARTICULAR EMISSION UNIT IN THE COVERED
20 FACILITY OVER THE SHORTEST PRACTICABLE TIME, IN NO EVENT TO
21 EXCEED NINETY DAYS, UNTIL THE EMISSIONS COMPLY WITH THE
22 HEALTH-BASED EMISSION LIMITS AND NO LONGER HAVE UNACCEPTABLE
23 ADVERSE CUMULATIVE IMPACTS ON ANY DISPROPORTIONATELY IMPACTED
24 COMMUNITY; AND

25 (B) MAY PROCEED PURSUANT TO SECTION 25-7-112 OR 25-7-113.

26 (II) THE COMMISSION MAY MODEL ITS EMISSION REDUCTION RULES
27 PROMULGATED PURSUANT TO SUBSECTION (5)(d)(I) OF THIS SECTION ON

1 THE REGIONAL HAZE REQUIREMENTS OF THE FEDERAL ACT, 42 U.S.C. SEC.
2 7491, AS AMENDED, AND IMPLEMENTING REGULATIONS, 40 CFR 51.308
3 (d)(1) AND (f)(2) AND SHALL CONSIDER THE FOLLOWING:

4 (A) REQUIRING THAT A BASELINE EMISSIONS INVENTORY BE
5 DEVELOPED FOR EACH DISPROPORTIONATELY IMPACTED COMMUNITY;

6 (B) ESTABLISHING A HEALTH-BASED CUMULATIVE AIR POLLUTION
7 TARGET AND AN EXPEDITIOUS DEADLINE FOR ATTAINING THAT TARGET
8 FOR EACH DISPROPORTIONATELY IMPACTED COMMUNITY THAT ARE BASED
9 ON THE BEST AVAILABLE SCIENCE WITH AN ADEQUATE MARGIN OF SAFETY
10 TO PROTECT VULNERABLE SUBPOPULATIONS AND AFTER CONSULTATION
11 WITH COMMUNITY MEMBERS;

12 (C) CREATING A MONITORING PLAN FOR EACH
13 DISPROPORTIONATELY IMPACTED COMMUNITY, SUBJECT TO PUBLIC
14 COMMENT AND HEARING, AND MONITORING PROGRESS TOWARD
15 ATTAINING HEALTH-BASED CUMULATIVE AIR POLLUTION TARGETS;

16 (D) REQUIRING THAT THE HEALTH-BASED CUMULATIVE AIR
17 POLLUTION TARGET, RELATED DEADLINE, AND IMPLEMENTATION AND
18 MONITORING PLANS FOR EACH DISPROPORTIONATELY IMPACTED
19 COMMUNITY BE PERIODICALLY REVIEWED AND REVISED BASED ON THE
20 BEST AVAILABLE SCIENCE AT LEAST EVERY FIVE YEARS WITH AN
21 OPPORTUNITY FOR PUBLIC COMMENT AND HEARING; AND

22 (E) REQUIRING THAT ALL BASELINE INVENTORIES, HEALTH-BASED
23 CUMULATIVE AIR POLLUTION TARGETS, IMPLEMENTATION AND
24 MONITORING PLANS, AND MONITORING DATA BE AVAILABLE TO THE PUBLIC
25 ON THE DIVISION'S WEBSITE AND AT THE DIVISION'S HEADQUARTERS.

26 (6) **Public notice of incidents.** (a) THE COMMISSION SHALL, BY
27 RULE, ESTABLISH A REAL-TIME COMMUNITY ALERT SYSTEM FOR

1 INCIDENTS. THE RULES MUST SPECIFY DEADLINES FOR INITIATION OF THE
2 ALERT SYSTEM AND THE TYPES OF INFORMATION THAT MUST BE
3 DISSEMINATED. THE COMMISSION MAY MODEL THE ALERT SYSTEM ON
4 ANALOGOUS PROGRAMS ESTABLISHED PURSUANT TO THE FEDERAL ACT OR
5 THE HAZARDOUS SUBSTANCE INCIDENTS PROGRAM ESTABLISHED IN
6 ARTICLE 22 OF TITLE 29.

7 (b) INFORMATION DISSEMINATED BY THE ALERT SYSTEM MUST:

8 (I) BE IN THE TWO MOST PREVALENT LANGUAGES SPOKEN IN THE
9 AFFECTED COMMUNITY, AS IDENTIFIED IN THE LATEST AMERICAN
10 COMMUNITY SURVEY PUBLISHED BY THE FEDERAL CENSUS BUREAU;

11 (II) BE AVAILABLE:

12 (A) THROUGH OPT-OUT TEXT MESSAGES AND REVERSE 911 CALLS;

13 (B) TO LOCAL EMERGENCY PLANNING AND RESPONSE
14 ORGANIZATIONS AND AREA HEALTH AGENCIES, CLINICS, AND HOSPITALS;

15 (C) TO LOCAL GOVERNMENTS AND THE PUBLIC; AND

16 (D) TO SCHOOL ADMINISTRATORS AND PARENTS OF SCHOOL
17 CHILDREN.

18 (c) WHEN AN INCIDENT OCCURS, A COVERED FACILITY SHALL:

19 (I) IMMEDIATELY CALL THE EMERGENCY TELEPHONE NUMBER SET
20 UP FOR THE REPORTING OF INCIDENTS AND NOTIFY THE DIVISION AND THE
21 DEPARTMENT OF PUBLIC SAFETY OF EACH INCIDENT PURSUANT TO THE
22 PARAMETERS ESTABLISHED BY THE COMMISSION BY RULE; AND

23 (II) DISSEMINATE THE TYPES OF INFORMATION SPECIFIED IN
24 SUBSECTION (6)(a) OF THIS SECTION TO THE ENTITIES SPECIFIED IN
25 SUBSECTION (6)(b)(II) OF THIS SECTION.

26 (d) THE DEPARTMENT OF PUBLIC SAFETY SHALL WORK WITH LOCAL
27 EMERGENCY PLANNING AND RESPONSE ORGANIZATIONS TO DEVELOP A

1 MODEL MEMORANDUM OF UNDERSTANDING BETWEEN ADJACENT
2 JURISDICTIONS FOR INTEGRATION OF THE ALERT SYSTEMS THAT OPERATE
3 ACROSS JURISDICTIONAL BOUNDARIES. THE LOCAL EMERGENCY PLANNING
4 AND RESPONSE ORGANIZATIONS SHALL ENSURE THAT APPROPRIATE
5 AGREEMENTS ARE EXECUTED BETWEEN OR AMONG ADJACENT
6 JURISDICTIONS TO COORDINATE ALERTS, NOTIFICATIONS, AND MESSAGING
7 WHEN EMISSIONS FROM AN INCIDENT CROSSES OR THREATENS TO CROSS
8 JURISDICTIONAL BOUNDARIES.

9 (e) A COVERED FACILITY SHALL:

10 (I) COORDINATE WITH LOCAL FIRST RESPONDERS AT LEAST
11 ANNUALLY;

12 (II) PROVIDE FIRST RESPONDERS RELEVANT INFORMATION TO
13 PREPARE FOR INCIDENTS;

14 (III) PROVIDE TO LOCAL EMERGENCY PLANNING AND RESPONSE
15 ORGANIZATIONS:

16 (A) THE COVERED FACILITY'S EMERGENCY RESPONSE PLAN IF ONE
17 EXISTS;

18 (B) THE COVERED FACILITY'S EMERGENCY ACTION PLAN;

19 (C) THE COVERED FACILITY'S UPDATED EMERGENCY CONTACT
20 INFORMATION; AND

21 (D) ANY OTHER INFORMATION THAT LOCAL EMERGENCY PLANNING
22 AND RESPONSE ORGANIZATIONS IDENTIFY AS RELEVANT TO LOCAL
23 EMERGENCY RESPONSE PLANNING; AND

24 (IV) CONSULT WITH LOCAL EMERGENCY RESPONSE OFFICIALS TO
25 ESTABLISH APPROPRIATE SCHEDULES AND PLANS FOR FIELD AND TABLETOP
26 EXERCISES REQUIRED UNDER 40 CFR 68.96 (b). A COVERED FACILITY
27 SHALL REQUEST AN OPPORTUNITY TO MEET WITH THE LOCAL EMERGENCY

1 PLANNING COMMITTEE, ITS EQUIVALENT, OR THE LOCAL FIRE
2 DEPARTMENT, AS APPROPRIATE, TO REVIEW AND DISCUSS THE DOCUMENTS
3 AND INFORMATION SPECIFIED IN THIS SUBSECTION (6)(e).

4 (7) **Additional requirements.** (a) A COVERED FACILITY THAT IS
5 COVERED BY ONE OR MORE OF THE EXEMPTIONS SPECIFIED IN 40 CFR
6 63.648 (j)(4) OR (j)(5) OR THAT IS COVERED BY 40 CFR 63.670 (o)(7),
7 REFERRED TO IN THIS SUBSECTION (7) AS A "SUBSECTION (7) FACILITY", IS
8 SUBJECT TO THIS SUBSECTION (7). THE COMMISSION SHALL PROMPTLY
9 PROMULGATE RULES TO IMPLEMENT THIS SUBSECTION (7).

10 (b) ONCE THE RULES PROMULGATED PURSUANT TO SUBSECTION
11 (7)(a) OF THIS SECTION BECOME EFFECTIVE, THE FOLLOWING CONDUCT
12 VIOLATES THIS SUBSECTION (7):

13 (I) ANY EMISSION OF AN AIR POLLUTANT FROM A FLARE OR
14 PRESSURE RELIEF DEVICE AT A SUBSECTION (7) FACILITY THAT IS NOT AN
15 ALLOWABLE EMISSION, NOTWITHSTANDING SECTION 25-7-109 (5) AND
16 REGARDLESS OF WHETHER THE EMISSION WAS CAUSED BY AN INCIDENT;
17 AND

18 (II) ANY UNCONTROLLED ATMOSPHERIC RELEASE OF AN AIR
19 POLLUTANT FROM A PRESSURE RELIEF DEVICE AT A SUBSECTION (7)
20 FACILITY THAT IS IN ORGANIC HAZARDOUS AIR POLLUTANT SERVICE.

21 (c) THE COMMISSION SHALL REVIEW ITS RULES FOR SUBSECTION (7)
22 FACILITIES AND SPECIFICALLY CONSIDER ADOPTING MORE STRINGENT
23 PROVISIONS, INCLUDING:

24 (I) A REQUIREMENT THAT LEAK DETECTION AND REPAIR
25 INSPECTIONS OCCUR AT ALL SUBSECTION (7) FACILITIES ON, AT A
26 MINIMUM, A SEMIANNUAL BASIS OR THAT AN ALTERNATIVE APPROVED
27 INSTRUMENT MONITORING METHOD IS IN PLACE PURSUANT TO EXISTING

1 RULES; AND

2 (II) REDUCTIONS IN FUGITIVE EMISSIONS FROM EQUIPMENT LEAKS
3 AND WASTEWATER AT ALL SUBSECTION (7) FACILITIES.

4 **SECTION 3.** In Colorado Revised Statutes, 25-7-114.7, **amend**
5 (2)(a)(I)(B) as follows:

6 **25-7-114.7. Emission fees - fund - rules - definition - repeal.**

7 (2) (a) (I) The commission shall designate by rule those classes of
8 sources of air pollution that are exempt from the requirement to pay an
9 annual emission fee. Every owner or operator of an air pollution source
10 not otherwise exempt in accordance with such commission rules shall pay
11 an annual fee as follows:

12 (B) For fiscal years 2018-19 and thereafter, in addition to the
13 annual fee set forth in subsection (2)(a)(I)(A) of this section, for
14 hazardous air pollutants, including ozone-depleting compounds, a
15 maximum annual fee of one hundred ninety-one dollars and thirteen cents
16 per ton; except that, on each January 1 from 2019 to 2028, the maximum
17 fee is automatically adjusted based on the annual percentage change in the
18 United States department of labor, bureau of labor statistics, consumer
19 price index for Denver-Aurora-Lakewood for all items and all urban
20 consumers, or its successor index, AND BY AN AMOUNT DETERMINED BY
21 THE COMMISSION BY RULE TO COVER THE DIVISION'S AND COMMISSION'S
22 INDIRECT AND DIRECT COSTS IN ADMINISTERING SECTION 25-7-109.5. The
23 commission shall set the actual fee by rule. Beginning on July 1, 2018, the
24 commission, by rule, may periodically adjust the fee up to the maximum
25 fee.

26 **SECTION 4. Applicability.** This act applies to conduct occurring
27 on or after the effective date of this act.

1 **SECTION 5. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, or safety.