

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0131.02 Sarah Lozano x3858

HOUSE BILL 23-1294

HOUSE SPONSORSHIP

Bacon and Willford, Amabile, Boesenecker, Brown, deGruy Kennedy, Dickson, English, Epps, Garcia, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lindsay, Lindstedt, Mabrey, Marshall, Michaelson Jenet, Ortiz, Parenti, Ricks, Sharbini, Story, Valdez, Velasco, Woodrow

SENATE SPONSORSHIP

Winter F. and Gonzales,

House Committees

Energy & Environment
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO PROTECT COMMUNITIES FROM**
102 **POLLUTION, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

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 2 of the bill removes the requirement that the air quality control commission (AQCC) promulgate rules setting the conditions and limitations for periods of start-up, shutdown, or malfunction of a source of air pollution (source) that justify temporary relief from an emission control regulation.

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.

HOUSE
Amended 2nd Reading
April 29, 2023

Current law provides that a person shall not permit the emission of air pollutants at a nonresidential structure unless an air pollution emission notice has been filed with the division of administration in the department of public health and environment (division). **Section 5** adds the requirements that any:

- Relevant permits have been approved by the division; and
- Applicable period of review by the federal environmental protection agency has been completed.

Section 6 removes the prohibition against the AQCC adopting rules covering indirect sources that are more stringent than applicable federal law.

Section 6 also requires the division, in evaluating a construction permit application for a source that includes new oil and gas operations, to:

- Aggregate emissions from a proposed or modified oil and gas system; and
- Consider emissions from exploration and preproduction activities if a proposed or modified oil and gas system is in an ozone nonattainment area and if the activities will be conducted beginning May 1 and ending August 31 of any year (ozone season).

Section 8 clarifies that only the filing of a renewable operating permit application can operate as a defense to an enforcement action for operating without a permit during the time period that the division or the AQCC is reviewing the permit application.

Current law requires the division or the AQCC to give public notice of certain construction permit applications or renewable operating permit applications and of certain public hearings through a newspaper publication or another method that ensures effective public notice. Current law also requires the division to maintain a copy of a construction permit application and applicable preliminary analysis or a notice of public hearing with the county clerk and recorder of the county where the applicable project is located. **Section 8** also removes the newspaper publication option and the county clerk and recorder filing requirements and provides for alternative methods of giving public notice, including posting information about the application or any public hearings on the division's or the AQCC's website.

Current law requires the division or AQCC to make a finding that a source or activity will meet all applicable emission control regulations, including ambient air quality standards (AAQS), before granting a permit for the source or activity. **Section 8** also requires that, beginning January 1, 2024, for at least any source or activity that has the potential to emit levels of air contaminants above certain modeling thresholds, the division or AQCC must base any finding that the source or activity will not cause or contribute to an exceedance of applicable AAQS on air quality

modeling.

Section 8 also allows the division, after an investigation into whether an activity meets the requirements of a construction permit, to propose additional terms and conditions of the construction permit.

With respect to a complaint alleging or the division's own belief regarding a violation or noncompliance (violation), **section 9** requires the division to:

- Cause a diligent investigation into the violation to be made unless the complaint clearly appears to be frivolous or trivial or the complainant withdraws the complaint;
- Notify the owner or operator of the applicable air pollution source of the complaint or the division's belief of an alleged violation within 30 days after the complaint was filed or the division discovered the alleged violation;
- Consider all relevant evidence that it acquires when investigating the alleged violation; and
- Determine whether a violation occurred within 90 days after the division gives notice that it has commenced an investigation on the matter.

If the division determines that a violation has occurred, current law requires the division to issue a compliance order unless the responsible party gives timely notice that the violation occurred during a period of start-up, shutdown, or malfunction. **Section 9** removes the exception for periods of start-up, shutdown, or malfunction.

Section 9 also requires, if a hearing is requested after the receipt of a compliance order, the commission to provide at least 45 days' notice to any complainant that submitted a complaint alleging the applicable violation.

Section 9 also allows a complainant to submit a request for a hearing within 20 calendar days after receipt of a determination by the division that no violation occurred.

Current law provides that any noncompliance that occurs during a period of start-up, shutdown, or malfunction exempts the owner or operator of a source from the duty to pay penalties related to that noncompliance. **Section 9** removes this provision.

Section 9 also allows a person, with respect to certain clean air regulations, to commence a civil action (action) against an alleged violator for a current or past violation of the regulation. 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, 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.

Current law requires the division to consider certain factors in determining the amount of a civil penalty to assess for a violation.

Section 10 requires the division to also consider the impact of the violation on safety and wildlife and biological resources and the severity of the violation.

Current law provides that any action related to an alleged violation of air quality laws that is not commenced within 5 years after the occurrence of the alleged violation is time barred. **Section 11** excludes actions commenced to address a failure to obtain a permit from this statute of limitation.

Section 12 creates new electrification requirements and emissions standards for stationary engines used in oil and gas operations.

Section 13 creates new control measures that must be included in any state implementation plan for ozone adopted by the AQCC until a serious, severe, or extreme ozone nonattainment area in the state is redesignated as a maintenance area by the federal environmental protection agency.

Section 15 requires the district court, in a suit against a person that has violated a state law, rule, or order related to oil and gas, 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.

Section 16 allows any person to submit a complaint to the oil and gas conservation commission (COGCC) alleging a violation of a state law, rule, or order related to oil and gas. Upon receipt of the complaint, the COGCC or the director of the COGCC is required to promptly commence and complete an investigation into the violation alleged by the complaint, unless the complaint clearly appears on its face to be trivial or the complainant withdraws the complaint.

Section 17 requires the COGCC to evaluate and address adverse cumulative impacts on the environment and disproportionately impacted communities for each permit application for a new or substantially modified oil and gas location through a cumulative impact analysis.

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

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

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

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

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

14 (d) Although Colorado has an ongoing ozone crisis that will
15 worsen with climate change, the state has repeatedly failed to meet
16 federal ozone standards established to protect public health and welfare
17 in the Denver metro/North Front Range nonattainment area where a
18 majority of Coloradans live, which was downgraded to a severe
19 nonattainment area in 2022 and has been consistently ranked among the
20 worst areas in the nation for ozone pollution by the American lung
21 association;

22 (e) The federal "Clean Air Act" requires that Colorado have
23 enforceable procedures in place to assess the air quality impacts of new
24 sources and modifications and to prevent the construction of new sources
25 and modifications that would cause or contribute to a violation of federal
26 standards;

27 (f) "Minor" sources of pollution, including many oil and gas

1 sources that are among the largest contributors to ozone, can cause and
2 contribute to exceedances of federal standards and have a devastating
3 cumulative impact on already overburdened, disproportionately impacted
4 communities, yet they often escape air quality impact analyses in
5 Colorado's permitting processes;

6 (g) Impacted Coloradans across the state face significant barriers
7 and a lack of transparency when filing complaints and submitting
8 evidence of permit violations and action is necessary to ensure that
9 agencies are empowered to respond to complaints appropriately; and

10 (h) Because industrial operations also support many jobs in
11 Colorado, impacts on workers associated with air quality control
12 measures should be considered.

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

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

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

23 (b) Extraordinary air quality measures should be included in the
24 state implementation plan for ozone when the federal environmental
25 protection agency classifies a nonattainment area in the state as a serious,
26 severe, or extreme nonattainment area;

27 (c) It is imperative for members of the public to be meaningfully

1 engaged as partners and stakeholders in Colorado's permitting processes
2 and enforcement of permit violations once permits are issued; and

3 (d) This act is necessary to ensure that Colorado addresses the
4 disproportionate cumulative impacts of pollution, including
5 environmental and health impacts, that communities across the state
6 experience.

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

9 **25-7-145. Legislative interim committee on ozone air quality**
10 **- created - members - repeal.** (1) NOTWITHSTANDING SECTION
11 2-3-303.3, THE LEGISLATIVE INTERIM COMMITTEE ON OZONE AIR QUALITY,
12 REFERRED TO IN THIS SECTION AS THE "COMMITTEE", IS CREATED.

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

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

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

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

22 (3) THE COMMITTEE CONSISTS OF:

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

26 (b) SIX MEMBERS OF THE HOUSE OF REPRESENTATIVES, WITH FOUR
27 MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF

1 REPRESENTATIVES AND TWO MEMBERS APPOINTED BY THE MINORITY
2 LEADER OF THE HOUSE OF REPRESENTATIVES.

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

7 (5) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
8 DESIGNATE THE CHAIR OF THE COMMITTEE. IN THE CASE OF A TIE VOTE,
9 THE CHAIR OF THE COMMITTEE SHALL CAST AN ADDITIONAL DECIDING
10 VOTE.

11 (6) THE CHAIR OF THE COMMITTEE SHALL SCHEDULE THE FIRST
12 MEETING OF THE COMMITTEE NO LATER THAN SIXTY DAYS AFTER JUNE 30,
13 2023. THE COMMITTEE MAY MEET UP TO SIX TIMES DURING THE 2023
14 INTERIM, WHICH MAY INCLUDE FIELD TRIPS.

15 (7) THE COMMITTEE MAY INTRODUCE UP TO A TOTAL OF FIVE
16 BILLS, JOINT RESOLUTIONS, AND CONCURRENT RESOLUTIONS IN THE 2024
17 LEGISLATIVE SESSION. BILLS RECOMMENDED BY THE COMMITTEE ARE
18 EXEMPT FROM THE FIVE-BILL LIMITATION SPECIFIED IN JOINT RULE 24
19 (b)(1)(A). THE COMMITTEE SHALL REPORT TO THE LEGISLATIVE COUNCIL
20 BY THE DATE SPECIFIED IN JOINT RULES 24 (b)(1)(D) AND 24 (A)(d)(8).
21 ANY BILLS RECOMMENDED BY THE COMMITTEE ARE SUBJECT TO THE
22 APPLICABLE DEADLINES, BILL INTRODUCTION LIMITS, AND ANY OTHER
23 REQUIREMENTS IMPOSED BY THE JOINT RULES OF THE GENERAL ASSEMBLY
24 AND MUST BE APPROVED BY A MAJORITY VOTE OF THE COMMITTEE.

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

27 (9) THE COMMITTEE SHALL SEEK PRESENTATIONS AND COMMENTS

1 FROM AFFECTED INDUSTRIES, WORKERS, LOCAL GOVERNMENTS, RELEVANT
2 STATE AGENCIES, AND IMPACTED COMMUNITIES EXPERIENCING OZONE
3 POLLUTION.

4 (10) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2024.

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

7 **25-7-115. Enforcement - civil actions - definitions.** (2) (a) If a
8 written ~~and verified~~ complaint is filed with the division alleging that, or
9 if the division itself has cause to believe that, any person is violating or
10 failing to comply with any ~~regulation~~ RULE of the commission issued
11 pursuant to parts 1 to 4 of this ~~article~~ ARTICLE 7, order issued pursuant to
12 section 25-7-118, requirement of the state implementation plan, OR
13 provision of parts 1 to 4 of this ~~article~~ ARTICLE 7, including any term or
14 condition of a permit required pursuant to this ~~article~~ ARTICLE 7, the
15 division shall cause a prompt AND DILIGENT investigation to be made ~~and~~,
16 UNLESS:

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

19 (II) THE COMPLAINANT WITHDRAWS THE COMPLAINT WITHIN THE
20 TIME ALLOTTED FOR THE COMPLAINT TO BE INVESTIGATED.

21 (b) WITHIN THIRTY DAYS AFTER RECEIPT OF A COMPLAINT FILED
22 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION, THE DIVISION SHALL
23 RESPOND TO A COMPLAINANT TO OUTLINE THE STEPS OF THE COMPLAINT
24 INVESTIGATION.

25 (c) (I) If the division investigation determines that any ~~such~~
26 violation or failure to comply exists, the division shall act expeditiously
27 and within the period prescribed by law ~~in~~ TO formally ~~notifying~~ NOTIFY

1 the owner or operator of ~~such~~ THE air pollution source after the discovery
2 of the alleged violation or noncompliance. ~~Such~~ THE notice ~~shall~~ MUST
3 specify the provision alleged to have been violated or not complied with
4 and the facts alleged to constitute the violation or noncompliance.

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

10 (d) THE DIVISION SHALL ACCEPT AND CONSIDER ALL RELEVANT
11 EVIDENCE IT RECEIVES OR ACQUIRES IN INVESTIGATING AND DETERMINING
12 WHETHER A VIOLATION OR NONCOMPLIANCE OCCURRED, INCLUDING
13 AUDIO, VIDEO, AND TESTIMONIAL EVIDENCE.

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

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

24 (III) The order may:

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

27 (B) INCLUDE the assessment of civil penalties in accordance with

1 section 25-7-122 and SUBSECTION (3)(b)(IV) OF THIS SECTION;

2 (C) In addition to civil penalties, INCLUDE a requirement to
3 perform one or more projects to mitigate violations related to excess
4 emissions; ~~The order may also~~ AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **SECTION 4.** In Colorado Revised Statutes, 25-7-122, **amend**
23 (2)(a) introductory portion, (2)(a)(VII), and (2)(a)(VIII); and **add**
24 (2)(a)(IX) as follows:

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

1 (VII) Malfeasance; and
2 (VIII) Whether legal and factual theories were advanced for
3 purposes of delay; AND
4 (IX) THE SEVERITY OF THE VIOLATION OR NONCOMPLIANCE.

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

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

1 ~~alleged violator.~~

2 **SECTION 6.** In Colorado Revised Statutes, 34-60-103, **add** (4.1)
3 as follows:

4 **34-60-103. Definitions.** As used in this article 60, unless the
5 context otherwise requires:

6 (4.1) "CUMULATIVE IMPACTS" MEANS THE EFFECTS OF OIL AND
7 GAS OPERATIONS ON THE ENVIRONMENT, INCLUDING EFFECTS ON AIR
8 QUALITY, WATER QUALITY, CLIMATE, NOISE, ODOR, WILDLIFE, BIOLOGICAL
9 RESOURCES, OR PUBLIC HEALTH THAT ARE CAUSED BY THE INCREMENTAL
10 IMPACT THAT A NEW OR EXPANDED OIL AND GAS FACILITY HAS WHEN
11 ADDED TO THE IMPACTS FROM OTHER PAST, PRESENT, AND REASONABLY
12 FORESEEABLE FUTURE DEVELOPMENT OF ANY TYPE ON THE RELEVANT
13 AREA, INCLUDING AN AIRSHED OR WATERSHED AREA OR A
14 DISPROPORTIONATELY IMPACTED COMMUNITY, AS DEFINED IN SECTION
15 24-4-109 (2)(b)(II).

16 **SECTION 7.** In Colorado Revised Statutes, **amend** 34-60-114 as
17 follows:

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

26 (I) ANY PROVISION IN THIS ARTICLE 60;

27 (II) A SUIT BY OR AGAINST THE COMMISSION;

1 (III) A VIOLATION CHARGED OR ASSERTED AGAINST ANY PERSON
2 UNDER THIS ARTICLE 60; AND

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

4 (b) Any person ~~so~~ damaged by ~~the~~ A violation DESCRIBED IN
5 SUBSECTION (1)(a) OF THIS SECTION may sue for and recover ~~such~~
6 damages as ~~he~~ THE PERSON otherwise may be entitled to receive.

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

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

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

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

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

26 (3) IN ISSUING ANY FINAL JUDGMENT, RULING, OR ORDER IN A
27 LAWSUIT DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION, THE DISTRICT

1 COURT SHALL AWARD THE COMPLAINING PARTY ANY COSTS OF LITIGATION
2 INCURRED BY THE COMPLAINING PARTY IN LITIGATING THE LAWSUIT,
3 INCLUDING REASONABLE ATTORNEY FEES, EXPERT WITNESS FEES, AND
4 OTHER RELATED COSTS IF THE COURT DETERMINES THAT THE AWARD IS
5 APPROPRIATE. AN AWARD IS APPROPRIATE IF:

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

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

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

13 **SECTION 8.** In Colorado Revised Statutes, 34-60-121, **amend**
14 (4) as follows:

15 **34-60-121. Violations - investigations - penalties - rules -**
16 **definition - legislative declaration.** (4) (a) ANY PERSON MAY SUBMIT A
17 COMPLAINT TO THE COMMISSION ALLEGING THAT A VIOLATION OF THIS
18 ARTICLE 60, ANY RULE OR ORDER OF THE COMMISSION, OR ANY PERMIT
19 HAS OCCURRED. IF A COMPLAINT IS RECEIVED BY THE COMMISSION, THE
20 COMMISSION OR THE DIRECTOR SHALL PROMPTLY COMMENCE AND
21 COMPLETE AN INVESTIGATION INTO THE VIOLATION ALLEGED BY THE
22 COMPLAINT UNLESS:

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

25 (II) THE COMPLAINANT WITHDRAWS THE COMPLAINT.

26 (b) IN INVESTIGATING A VIOLATION ALLEGED BY A COMPLAINT
27 RECEIVED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, THE

1 COMMISSION OR THE DIRECTOR SHALL ACCEPT AND CONSIDER ALL
2 RELEVANT EVIDENCE IT RECEIVES OR ACQUIRES, INCLUDING AUDIO, VIDEO,
3 OR TESTIMONIAL EVIDENCE.

4 (c) Whenever the commission or the director has reasonable cause
5 to believe a violation of any provision of this ~~article~~ ARTICLE 60, any rule
6 ~~regulation~~, or order of the commission, or any permit has occurred,
7 ~~written notice shall be given~~ INCLUDING BASED ON A WRITTEN COMPLAINT
8 FROM ANY PERSON, THE COMMISSION OR THE DIRECTOR SHALL PROVIDE
9 WRITTEN NOTICE to the operator whose act or omission allegedly resulted
10 in ~~such~~ THE violation AND REQUIRE THAT THE OPERATOR REMEDY THE
11 VIOLATION. The notice ~~shall~~ MUST be served personally or by certified
12 mail, return receipt requested, to the operator or the operator's agent for
13 service of process and ~~shall~~ MUST state the provision alleged to have been
14 violated, the facts alleged to constitute the violation, and any corrective
15 action and abatement deadlines the commission or director elects to
16 require of the operator.

17 (d) AS USED IN THIS SUBSECTION (4), "DIRECTOR" MEANS THE
18 DIRECTOR OF THE COMMISSION.

19 **SECTION 9. Appropriation.** (1) For the 2023-24 state fiscal
20 year, \$79,493 is appropriated to the department of public health and
21 environment for use by the air pollution control division This
22 appropriation is from the general fund. To implement this act, the division
23 may use this appropriation as follows:

24 (a) \$71,473 for personal services related to stationary sources,
25 which amount is based on an assumption that the division will require an
26 additional 0.9 FTE; and

27 (b) \$8,020 for operating expenses related to stationary sources.

1 (2) For the 2023-24 state fiscal year, \$820,697 is appropriated to
2 the department of natural resources. This appropriation is from the oil and
3 gas conservation and environmental response fund created in section
4 34-60-122 (5), C.R.S. To implement this act, the department may use this
5 appropriation as follows:

6 (a) \$725,531 for use by the oil and gas conservation commission
7 for program costs, which amount is based on an assumption that the
8 commission will require an additional 6.0 FTE; and

9 (b) \$95,166 for use by the executive director's office for the
10 purchase of legal services.

11 (3) For the 2023-24 state fiscal year, \$95,166 is appropriated to
12 the department of law. This appropriation is from reappropriated funds
13 received from the department of natural resources under subsection (2)(b)
14 of this section and is based on an assumption that the department of law
15 will require an additional 0.5 FTE. To implement this act, the department
16 of law may use this appropriation to provide legal services for the
17 department of natural resources.

18 (4) For the 2023-24 state fiscal year, \$61,616 is appropriated to
19 the legislative department. This appropriation is from the general fund. To
20 implement this act, the department may use this appropriation as follows:

21 (a) \$26,180 for use by the legislative council, which amount is
22 based on an assumption that the council will require an additional 0.3
23 FTE;

24 (b) \$18,452 for use by the committee on legal services, which
25 amount is based on an assumption that the committee will require an
26 additional 0.2 FTE; and

27 (c) \$16,984 for use by the general assembly.

1 **SECTION 10. Applicability.** This act applies to conduct
2 occurring on or after the effective date of this act, including
3 determinations of applications pending on the effective date.

4 **SECTION 11. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, or safety.