

CHAPTER 401

HEALTH AND ENVIRONMENT

HOUSE BILL 23-1294

BY REPRESENTATIVE(S) 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, Froelich, Herod, Mauro, McCormick, Sirota, Titone, Vigil, Snyder, Weissman;
also SENATOR(S) Winter F. and Gonzales, Bridges, Cutter, Danielson, Exum, Hansen, Jaquez Lewis, Kolker, Priola, Fenberg.

AN ACT

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

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

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

(f) "Minor" sources of pollution, including many oil and gas sources that are among the largest contributors to ozone, can cause and contribute to exceedances of federal standards and have a devastating cumulative impact on already overburdened, disproportionately impacted communities, yet they often escape air quality impact analyses in Colorado's permitting processes;

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

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

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

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

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

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

(c) It is imperative for members of the public to be meaningfully engaged as partners and stakeholders in Colorado's permitting processes and enforcement of permit violations once permits are issued; and

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

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

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

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

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

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

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

(3) THE COMMITTEE CONSISTS OF:

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

(b) SIX MEMBERS OF THE HOUSE OF REPRESENTATIVES, WITH FOUR MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND TWO MEMBERS APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

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

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

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

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

(8) THE COMMITTEE SHALL SEEK PRESENTATIONS AND COMMENTS FROM AFFECTED INDUSTRIES, WORKERS, LOCAL GOVERNMENTS, RELEVANT STATE AGENCIES, AND IMPACTED COMMUNITIES EXPERIENCING OZONE POLLUTION.

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

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

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

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

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

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

(c) (I) If the division investigation determines that any ~~such~~ violation or failure to comply exists, the division shall act expeditiously and within the period prescribed by law ~~in~~ TO formally ~~notifying~~ NOTIFY the owner or operator of ~~such~~ THE air pollution source after the discovery of the alleged violation or noncompliance. ~~Such~~ THE notice ~~shall~~ MUST specify the provision alleged to have been violated or not complied with and the facts alleged to constitute the violation or noncompliance.

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

(d) THE DIVISION SHALL ACCEPT AND CONSIDER ALL RELEVANT EVIDENCE IT RECEIVES OR ACQUIRES IN INVESTIGATING AND DETERMINING WHETHER A VIOLATION OR NONCOMPLIANCE OCCURRED, INCLUDING AUDIO, VIDEO, AND TESTIMONIAL EVIDENCE, UNLESS THE EVIDENCE IS, ON ITS FACE, FALSIFIED.

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

(II) IF A COMPLAINT IS FILED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION

ALLEGING THE VIOLATION OR NONCOMPLIANCE, THE DIVISION SHALL SEND THE ORDER TO THE COMPLAINANT.

(III) The order may:

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

(B) INCLUDE the assessment of civil penalties in accordance with section 25-7-122 and SUBSECTION (3)(b)(IV) OF THIS SECTION;

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

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

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

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

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

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

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

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

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

(D) A requirement of the state implementation plan;

(E) A provision of this article 7; or

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

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

(4) (a) (III) IF A HEARING IS REQUESTED PURSUANT TO SUBSECTION (4)(a)(I) OF THIS SECTION, THE COMMISSION SHALL PROVIDE AT LEAST FORTY-FIVE DAYS' NOTICE TO ANY COMPLAINANT THAT FILED A COMPLAINT PURSUANT TO SUBSECTION (2)(a)

OF THIS SECTION ALLEGING A VIOLATION OR NONCOMPLIANCE AT ISSUE IN THE HEARING. THE COMPLAINANT MAY PARTICIPATE AS A PARTY TO THE HEARING.

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

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

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

(VII) Malfeasance; ~~and~~

(VIII) Whether legal and factual theories were advanced for purposes of delay;
AND

(IX) THE SEVERITY OF THE VIOLATION OR NONCOMPLIANCE.

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

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

(b) Without expanding the statute of limitations contained in ~~paragraph (a) of this subsection~~ (1) SUBSECTION (1)(a) OF THIS SECTION, any action COMMENCED, INCLUDING THE ASSESSMENT OF CIVIL PENALTIES, pursuant to this ~~article~~ ARTICLE 7, except those commenced pursuant to section 25-7-122 (1)(d) or 25-7-122.1 (1)(c), ~~which~~ THAT IS NOT commenced within eighteen months ~~of~~ AFTER the date upon which the division discovers the alleged violation is time barred. For purposes of this section, the division discovers the alleged violation when it learns of the alleged violation or should have learned of the alleged violation by the exercise of reasonable diligence, including by receipt of actual or constructive notice.

(c) The ~~five-year period of limitation contained~~ PERIODS OF LIMITATION DESCRIBED in this section ~~does~~ DO NOT apply where THE ALLEGED VIOLATOR

KNOWINGLY OR WILLFULLY CONCEALS information regarding the alleged violation.
~~is knowingly or willfully concealed by the alleged violator.~~

SECTION 6. In Colorado Revised Statutes, 34-60-106, **add** (11)(d) as follows:

34-60-106. Additional powers of commission - rules - definitions - repeal.

(11) (d) (I) BY APRIL 28, 2024, THE COMMISSION SHALL PROMULGATE RULES THAT EVALUATE AND ADDRESS THE CUMULATIVE IMPACTS OF OIL AND GAS OPERATIONS. THE RULES SHALL INCLUDE A DEFINITION OF CUMULATIVE IMPACTS.

(II) THE COMMISSION SHALL PROVIDE RESOURCES TO SUPPORT COMMUNITY ENGAGEMENT IN THE PROCESS FROM AFFECTED COMMUNITIES, INCLUDING TRANSLATION, OUTREACH, AND OTHER STRATEGIES TO SUPPORT PUBLIC PARTICIPATION.

(III) IN PROMULGATING THE DEFINITION OF CUMULATIVE IMPACTS BY RULE PURSUANT TO SUBSECTION (11)(d)(I) OF THIS SECTION, THE COMMISSION SHALL REVIEW, CONSIDER, AND INCLUDE ADDRESSABLE IMPACTS TO CLIMATE, PUBLIC HEALTH, THE ENVIRONMENT, AIR QUALITY, WATER QUALITY, NOISE, ODOR, WILDLIFE, AND BIOLOGICAL RESOURCES, AND TO DISPROPORTIONATELY IMPACTED COMMUNITIES, AS DEFINED IN SECTION 24-4-109 (2)(b)(II).

(IV) AS USED IN THIS SUBSECTION (11)(d), "IMPACTS TO CLIMATE" MEANS QUANTIFICATION OF EMISSIONS OF GREENHOUSE GASES, AS DEFINED IN SECTION 25-7-140 (6), THAT OCCUR FROM SOURCES THAT ARE CONTROLLED OR OWNED BY THE OPERATOR AND REASONABLY FORESEEABLE TRUCK TRAFFIC AT AN OIL AND GAS LOCATION.

SECTION 7. In Colorado Revised Statutes, 34-60-121, **amend** (4) as follows:

34-60-121. Violations - investigations - penalties - rules - definition - legislative declaration.

(4) (a) ANY PERSON MAY SUBMIT A COMPLAINT TO THE COMMISSION ALLEGING THAT A VIOLATION OF THIS ARTICLE 60, ANY RULE OR ORDER OF THE COMMISSION, OR ANY PERMIT HAS OCCURRED. IF A COMPLAINT IS RECEIVED BY THE COMMISSION, THE COMMISSION OR THE DIRECTOR SHALL PROMPTLY COMMENCE AND COMPLETE AN INVESTIGATION INTO THE VIOLATION ALLEGED BY THE COMPLAINT UNLESS:

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

(II) THE COMPLAINANT WITHDRAWS THE COMPLAINT.

(b) IN INVESTIGATING A VIOLATION ALLEGED BY A COMPLAINT RECEIVED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, THE COMMISSION OR THE DIRECTOR SHALL ACCEPT AND CONSIDER ALL RELEVANT EVIDENCE IT RECEIVES OR ACQUIRES, INCLUDING AUDIO, VIDEO, OR TESTIMONIAL EVIDENCE, UNLESS THE EVIDENCE IS, ON ITS FACE, FALSIFIED.

(c) Whenever the commission or the director has reasonable cause to believe a violation of any provision of this ~~article~~ ARTICLE 60, any rule ~~regulation~~, or order

of the commission, or any permit has occurred, ~~written notice shall be given~~ INCLUDING BASED ON A WRITTEN COMPLAINT FROM ANY PERSON, THE COMMISSION OR THE DIRECTOR SHALL PROVIDE WRITTEN NOTICE to the operator whose act or omission allegedly resulted in ~~such~~ THE VIOLATION AND REQUIRE THAT THE OPERATOR REMEDY THE VIOLATION. The notice ~~shall~~ MUST be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and ~~shall~~ MUST state the provision alleged to have been violated, the facts alleged to constitute the violation, and any corrective action and abatement deadlines the commission or director elects to require of the operator.

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

SECTION 8. Appropriation. (1) For the 2023-24 state fiscal year, \$79,493 is appropriated to the department of public health and environment for use by the air pollution control division. This appropriation is from the general fund. To implement this act, the division may use this appropriation as follows:

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

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

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

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

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

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

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

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

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

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

SECTION 9. Applicability. This act applies to conduct occurring on or after the effective date of this act, including determinations of applications pending on the effective date.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 6, 2023