

CHAPTER 252

HEALTH

HOUSE BILL 94-1264

BY REPRESENTATIVES Fleming, Dyer, Eisenach, Foster, Jerke, June, Lawrence, Moellenberg, Owen, Ratterree, and Schauer;
also SENATORS Ament, Bishop, Johnson, Lacy, Norton, R. Powers, Schroeder, and Traylor.

AN ACT

CONCERNING THE REGULATION OF AIR POLLUTION IN A MANNER CONSISTENT WITH THE FEDERAL REQUIREMENTS UNDER THE FEDERAL "CLEAN AIR ACT", AS AMENDED.

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

SECTION 1. 25-7-109, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25-7-109. Commission to promulgate emission control regulations.
(9) (a) THE COMMISSION SHALL ADOPT A PROCEDURE CONSISTENT WITH THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY REQUIREMENTS FOR DETERMINING WHEN THERE HAS BEEN A NET SIGNIFICANT EMISSIONS INCREASE WHICH RESULTS IN A MAJOR MODIFICATION THAT SUBJECTS A SOURCE TO THE PERMITTING REQUIREMENTS OF THE PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM OR THE NONATTAINMENT AREA NEW SOURCE REVIEW. THE COMMISSION'S PROCEDURE SHALL ALSO PROHIBIT SOURCES FROM CIRCUMVENTING THE NEW SOURCE REVIEW REQUIREMENTS IN A MANNER CONSISTENT WITH THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY GUIDANCE. SUCH PROCEDURE SHALL BE THE SAME FOR BOTH THE PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM AND THE NONATTAINMENT NEW SOURCE REVIEW PROGRAM AND SHALL NOT APPLY TO HAZARDOUS AIR POLLUTANTS. SUCH NET EMISSIONS INCREASE PROCEDURE SHALL BE AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (9), UNLESS AND UNTIL THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY REQUIRES OTHERWISE OR UNLESS AFTER JANUARY 1, 1998, THE COMMISSION:

(I) UNDERTAKES A COLLABORATIVE PROCESS WITH THE AFFECTED INDUSTRIES TO DETERMINE THE COST AND EMISSION IMPACTS ASSOCIATED WITH ANY PROPOSED CHANGES IN THIS PROCEDURE;

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

(II) REVIEWS AT LEAST THREE YEARS OF EMISSIONS INCREASES AND DECREASES UNDER THE PROCEDURES DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (9);

(III) DELIVERS REPORTS ON THE MATTERS REQUIRED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (a) TO THE GENERAL ASSEMBLY FOR ITS REVIEW;

(IV) DETERMINES THROUGH RULE-MAKING THAT AN APPLICABILITY PROCEDURE FOR MAJOR MODIFICATIONS MORE STRINGENT THAN THAT DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (9) IS EQUITABLE WHEN CONSIDERING MINOR, AREA, AND MOBILE SOURCE CONTROLS; AND

(V) DETERMINES THROUGH RULE-MAKING THAT SUCH MORE STRINGENT APPLICABILITY PROCEDURE IS NECESSARY TO ATTAIN AND TO MAINTAIN THE NATIONAL AMBIENT AIR QUALITY STANDARDS.

(b) THE PROCEDURE FOR DETERMINING WHEN THERE HAS BEEN A NET SIGNIFICANT EMISSIONS INCREASE SHALL BE CONSISTENT WITH REQUIREMENTS OF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND:

(I) SUCH REQUIREMENTS SHALL APPLY ONLY IF THERE IS, IN THE FIRST INSTANCE, A SIGNIFICANT EMISSIONS INCREASE FROM AN INDIVIDUAL PROPOSED PROJECT OR MODIFICATION. IF THE INDIVIDUAL PROPOSED PROJECT OR MODIFICATION WILL NOT RESULT IN A SIGNIFICANT EMISSIONS INCREASE, IT SHALL BE EXEMPT FROM THE PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM AND THE NONATTAINMENT AREA NEW SOURCE REVIEW REQUIREMENTS.

(II) IF A PROJECT OR MODIFICATION IS NOT EXEMPT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), EACH POLLUTANT FOR WHICH THE PROJECT RESULTS IN A SIGNIFICANT EMISSIONS INCREASE SHALL BE SUBJECT TO THE PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM OR THE NONATTAINMENT AREA NEW SOURCE REVIEW REQUIREMENTS ONLY IF THE SUM OF ALL SOURCE-WIDE, NON-DE MINIMIS, CONTEMPORANEOUS, AND CREDITABLE EMISSIONS INCREASES AND DECREASES OF THAT POLLUTANT OR THAT REGULATED PRECURSOR EXCEED APPLICABLE SIGNIFICANCE LEVELS. EACH SPECIFIC REGULATED PRECURSOR SHALL BE CONSIDERED INDEPENDENTLY IN DETERMINING APPLICABLE SIGNIFICANCE LEVELS.

(III) IN DETERMINING THE NON-DE MINIMIS NET EMISSIONS INCREASE DURING THE CONTEMPORANEOUS PERIOD, THE COMMISSION'S PROCEDURES SHALL BE CONSISTENT WITH THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY'S REVIEW PROCEDURE FOR DETERMINING NET EMISSIONS INCREASES AND DECREASES. NON-DE MINIMIS INCREASES SHALL EXCLUDE ALL INCREASES WHICH WOULD BE EXEMPT UNDER COMMISSION RULES FROM A REQUIREMENT TO OBTAIN A CONSTRUCTION PERMIT UNDER SECTION 25-7-114.2.

SECTION 2. 25-7-109.3 (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25-7-109.3. Colorado hazardous air pollutant control and reduction program. (2) The commission may only promulgate regulations pertaining to hazardous air pollutants as defined in section 25-7-103 (13) in accordance with this

section. In order to minimize additional regulatory and compliance costs to the state's economy, any program created by the commission pursuant to this section shall contain a provision which exempts those sources or categories of sources which it determines to be of minor significance from the requirements of the program. CONSISTENT WITH THE PROVISIONS OF SECTION 25-7-105.1, THE COMMISSION SHALL AUTHORIZE SYNTHETIC MINOR SOURCES OF HAZARDOUS AIR POLLUTANTS BY THE ISSUANCE OF CONSTRUCTION PERMITS OR PROHIBITORY RULES OR OTHER REGULATIONS. SUCH PERMITS, RULES, OR REGULATIONS SHALL ONLY BE AS STRINGENT AS NECESSARY TO ESTABLISH SYNTHETIC MINOR STATUS. THE COMMISSION SHALL EXPEDITIOUSLY IMPLEMENT THIS SUBSECTION (2) TO ASSURE THAT ALL SOURCES MAY BE ABLE TO TIMELY QUALIFY AS A SYNTHETIC MINOR SOURCE, THEREBY AVOIDING THE COSTS OF THE OPERATING PERMIT PROGRAM.

SECTION 3. The introductory portion to 25-7-112 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended, and the said 25-7-112 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25-7-112. Air pollution emergencies endangering public health anywhere in this state. (1) Whenever the division determines, after AN investigation INITIATED EITHER INDEPENDENTLY BY THE DIVISION OR UPON THE REQUEST OF AN AFFECTED MEMBER OF THE PUBLIC LIVING OR WORKING IN THE VICINITY OF A SUSPECTED DISCHARGE, that any person is either engaging in any activity involving a significant risk of air pollution or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air pollutants and such activity or discharge constitutes a clear, present, and immediate danger to the environment or to the health of the public, or that any such activity or discharge of air pollutants, if permitted to continue unabated, will result in a condition of clear, present, and immediate danger to the health of the public, the division shall:

(1.5) (a) IF, UPON THE REQUEST OF A MEMBER OF THE PUBLIC AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE DIVISION CHOOSES TO INVESTIGATE A SUSPECTED DISCHARGE, THE DIVISION SHALL REPORT THE RESULT OF ITS INVESTIGATION TO THE PERSON WHO MADE THE REQUEST AND SHALL MAKE SUCH RESULT PUBLIC NO LATER THAN SIXTY DAYS AFTER THE COMPLETION OF THE INVESTIGATION. IF THE PERSON WHO MADE THE REQUEST IS DISSATISFIED WITH THE RESULT OF THE INVESTIGATION, OR IF NO INVESTIGATION WAS MADE, SUCH PERSON MAY COMPLAIN TO THE COMMISSION BY PETITION.

(b) UPON RECEIPT OF A PETITION FILED UNDER PARAGRAPH (a) OF THIS SUBSECTION (1.5), THE COMMISSION SHALL PROMPTLY GIVE NOTICE OF RECEIPT OF THE PETITION TO THE OWNER OR OPERATOR OF THE SOURCE OF THE ALLEGED DISCHARGE, AND, AFTER CONSIDERING THE PETITION, THE RESPONSE, IF ANY, OF SUCH OWNER OR OPERATOR, AND THE RESPONSE OF THE DIVISION, THE COMMISSION SHALL RESPOND TO THE PETITION WITHIN FORTY-FIVE DAYS AFTER RECEIPT BY:

(I) ORDERING THE DIVISION TO PROCEED WITH A NEW OR FURTHER INVESTIGATION UNDER THIS SECTION OR SECTION 25-7-113; OR

(II) DENYING THE PETITION AND STATING THE REASONS FOR DENIAL, WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, THE LACK OF A SUBSTANTIAL FACTUAL BASIS, THE ALLEGATION OF FACTS SUBSTANTIALLY SIMILAR TO THOSE AT ISSUE IN A PREVIOUS OR

CURRENTLY PENDING INVESTIGATION, OR A FINDING THAT THE PETITION WAS INTERPOSED FOR PURPOSES OF HARASSMENT OR DELAY; OR

(III) PROVIDING AN OPPORTUNITY TO SUBMIT ADDITIONAL FACTUAL INFORMATION IN SUPPORT OF, OR IN RESPONSE TO, THE PETITION. THE COMMISSION MAY REQUIRE ANY NEW INFORMATION TO BE SUBMITTED IN WRITING, OR IT MAY CONVENE AN INFORMAL HEARING AS SOON AS IS PRACTICABLE.

(c) A HEARING HELD PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS SUBSECTION (1.5) SHALL BE SUBJECT TO THE FOLLOWING PROCEDURAL REQUIREMENTS:

(I) THE HEARING SHALL BE CONDUCTED AS AN INFORMAL HEARING, AND, IN PARTICULAR, NO SWORN TESTIMONY SHALL BE TAKEN EXCEPT AS THE COMMISSION DEEMS NECESSARY TO CLARIFY THE FACTUAL BASIS OF THE PETITION;

(II) PARTIES MAY REPRESENT THEMSELVES OR BE REPRESENTED BY AGENTS WHO NEED NOT BE ATTORNEYS;

(III) NOTICE OF SUCH HEARING SHALL BE GIVEN AT LEAST TWENTY DAYS PRIOR TO THE HEARING;

(IV) THE PURPOSE OF THE HEARING SHALL BE TO ENABLE THE COMMISSION TO DECIDE WHETHER TO ORDER AN INVESTIGATION AS PROVIDED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (1.5); AND

(V) TO PRESERVE THE COMMISSION'S ROLE AS AN APPELLATE BODY, THE HEARING SHALL NOT BE USED AS A FORUM FOR DETERMINING THE MERITS OF THE PETITION.

SECTION 4. 25-7-114 (6), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25-7-114. Permit program - definitions. As used in sections 25-7-114 to 25-7-114.7, unless the context otherwise requires:

(6) "Synthetic minor source" means, for purposes of this article, any source which would otherwise meet the definition of major source for ~~criteria~~ ANY pollutants ~~only~~ but for the existence of enforceable emission limitations contained in the permit OR REGULATION applicable to that source.

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 25, 1994