

CHAPTER 267

HEALTH AND ENVIRONMENT

SENATE BILL 96-188

BY SENATORS Ament, Norton, and L. Powers;

also REPRESENTATIVES Anderson, Sullivan, Sullivant, and Taylor.

AN ACT

CONCERNING AIR QUALITY RELATED VALUES IN CLASS I FEDERAL AREAS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Article 7 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 10

AIR QUALITY RELATED VALUES - CLASS I FEDERAL AREAS

25-7-1001. Legislative declaration. IN ORDER TO ESTABLISH A FAIR, PRACTICAL, AND COST-EFFECTIVE PROCESS FOR EVALUATING AND, WHERE APPROPRIATE, RESPONDING TO ASSERTIONS THAT AIR QUALITY RELATED VALUES WITHIN COLORADO'S CLASS I FEDERAL AREAS ARE BEING SIGNIFICANTLY AND ADVERSELY AFFECTED BY AIR POLLUTION, SUCH AS AIR POLLUTION THAT IS CAUSING BIOLOGICAL HARM, THE GENERAL ASSEMBLY HEREBY INSTITUTES THE PROCEDURES SET FORTH IN THIS PART 10.

25-7-1002. Air quality related values program. (1) IN ADDITION TO MAINTAINING A PROGRAM THAT COMPLIES WITH THE REQUIREMENTS OF THE FEDERAL ACT FOR PREVENTION AND REMEDIATION OF SIGNIFICANT DETERIORATION OF VISIBILITY IN CLASS I FEDERAL AREAS, THE COMMISSION, IN CONSULTATION WITH THE GENERAL ASSEMBLY, THE GOVERNOR, AND AFFECTED FEDERAL, STATE, AND LOCAL GOVERNMENTAL ENTITIES, SHALL MAINTAIN A STATE-RETAINED AUTHORITY PROGRAM IN CONFORMANCE WITH SECTION 25-7-105.1 FOR NONVISIBILITY AIR QUALITY RELATED VALUES, REFERRED TO IN THIS PART 10 AS THE "PROGRAM".

(2) THE COMMISSION SHALL DEVELOP A PROGRAM UNDER WHICH, EXCEPT FOR

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

GRANT FUNDS SECURED FROM OTHER SOURCES, THE FEDERAL GOVERNMENT UNDERTAKES THE RESPONSIBILITY FOR THE FUNDING OF AIR QUALITY RELATED VALUE BASELINE DATA COLLECTION AND THE VERIFICATION STUDIES NEEDED TO SUBSTANTIATE AN ASSERTION OF SIGNIFICANT IMPAIRMENT, AND THE COMMISSION IS ENCOURAGED TO CONDUCT THE ACTIVITIES SPECIFIED IN THIS PART 10 IN COORDINATION WITH INTERESTED STATE AND LOCAL GOVERNMENTAL ENTITIES AND AFFECTED CITIZENS AND BUSINESSES.

25-7-1003. Definitions. AS USED IN THIS PART 10:

(1) "AIR QUALITY RELATED VALUE (AQRV)" MEANS A FEATURE OR PROPERTY OF A CLASS I FEDERAL AREA OTHER THAN VISIBILITY THAT THE STATE OF COLORADO FINDS MAY BE AFFECTED BY AIR POLLUTION. GENERAL CATEGORIES OF AIR QUALITY RELATED VALUES INCLUDE ODOR, FLORA, FAUNA, SOIL, WATER, GEOLOGIC FEATURES, AND CULTURAL RESOURCES.

(2) "AIR QUALITY RELATED VALUE BASELINE DATA" MEANS RESEARCH DATA BASED ON SITE-SPECIFIC MEASUREMENTS AND SAMPLINGS OF AIR QUALITY RELATED VALUES WITHIN A CLASS I FEDERAL AREA NEEDED TO SUBSTANTIATE A DETERMINATION OF WHETHER OR NOT A PARTICULAR OBSERVATION IS WITHIN THE RANGE OF NATURALLY OCCURRING CHANGES OR FLUCTUATIONS.

(3) "BEST AVAILABLE RETROFIT TECHNOLOGY" MEANS A CONTROL STRATEGY FOR ADDRESSING EMISSIONS OF A STATIONARY SOURCE DEVELOPED ON A CASE-BY-CASE BASIS AFTER TAKING INTO CONSIDERATION THE COSTS OF COMPLIANCE, THE ENERGY AND NONAIR QUALITY ENVIRONMENTAL IMPACTS OF COMPLIANCE, ANY EXISTING POLLUTION CONTROL TECHNOLOGY IN USE AT THE SOURCE, THE REMAINING USEFUL LIFE OF THE SOURCE, AND THE DEGREE OF IMPROVEMENT IN THE AIR QUALITY RELATED VALUE THAT MAY REASONABLY BE ANTICIPATED TO RESULT FROM THE USE OF SUCH TECHNOLOGY.

(4) "PEER REVIEW" MEANS A REVIEW OF SCIENTIFIC OR TECHNICAL INFORMATION BY A BALANCED OBJECTIVE PANEL OF EXPERIENCED SCIENTISTS QUALIFIED TO REVIEW THE SUBJECT MATTER INVOLVED IN VERIFYING THE EXISTENCE OF OR ATTRIBUTING THE CAUSE OF AN AQRV IMPAIRMENT.

(5) "REASONABLY AVAILABLE CONTROL MEASURE" MEANS A CONTROL STRATEGY FOR ADDRESSING EMISSIONS OF A NONSTATIONARY SOURCE DEVELOPED ON A CASE-BY-CASE BASIS AFTER TAKING INTO CONSIDERATION THE OPTIONS AVAILABLE TO ACHIEVE EMISSION REDUCTIONS THAT A PARTICULAR SOURCE OR SOURCE CATEGORY IS CAPABLE OF MEETING AS APPROPRIATE TO AN AIR QUALITY RELATED VALUE IF SUCH STEPS MAY BE FEASIBLY AND PRACTICABLY TAKEN CONSIDERING TECHNICAL AND ECONOMIC CONSTRAINTS.

(6) "SIGNIFICANT IMPAIRMENT OF AN AIR QUALITY RELATED VALUE" MEANS A MEASURABLE CHANGE IN AN AIR QUALITY RELATED VALUE THAT IS OUTSIDE THE PROBABILITY OF NATURAL VARIABILITY, THAT IS CAUSED BY HUMAN ACTIVITIES, AND THAT IS CAUSING A SIGNIFICANT ADVERSE EFFECT TO FLORA, FAUNA, SOIL, GEOLOGIC FEATURES, CULTURAL RESOURCES, OR A BENEFICIAL USE OF WATER RECOGNIZED UNDER COLORADO LAW.

25-7-1004. Administration of the program by the division. (1) IN ADMINISTERING THE PROGRAM, THE DIVISION SHALL:

(a) CONDUCT OR OVERSEE PROGRAM ACTIVITIES AND SCIENTIFIC STUDIES AND DETERMINE AN APPROPRIATE SCOPE, SEQUENCE, AND TIMETABLE FOR SUCH STUDIES AND ACTIVITIES;

(b) SUBJECT ASSERTIONS BY A FEDERAL LAND MANAGER OF AIR QUALITY RELATED VALUE IMPAIRMENT IN A CLASS I FEDERAL AREA AND STUDIES CONCERNING SOURCE ATTRIBUTION AND SOURCE APPORTIONMENT TO PEER REVIEW;

(c) UTILIZE THE STUDY DESIGN AND DATA COLLECTION AND ANALYTICAL TECHNIQUES SET FORTH IN SECTION 25-7-211 THAT ARE RELEVANT AND APPROPRIATE TO THE ACTIVITY OR STUDY;

(d) ASSURE THAT STUDIES PROCEED AS EXPEDITIOUSLY AS SOUND SCIENCE WILL ALLOW IN ORDER TO MINIMIZE ANY DELAY IN THE PROCESS.

(2) AS NECESSARY OR APPROPRIATE, THE DIVISION MAY:

(a) ENTER INTO MEMORANDA OF UNDERSTANDING FOR PARTICIPATION IN THE STUDIES AND ACTIVITIES REQUIRED BY THIS PART 10;

(b) CREATE COOPERATIVE PUBLIC-PRIVATE PARTNERSHIPS WITH VARIOUS ENTITIES; AND

(c) PERFORM ANY OTHER APPROPRIATE ACTIVITY TO CARRY OUT THE INTENT OF THE PROGRAM.

(3) THE DIVISION SHALL NOT BE REQUIRED TO PAY THE COST OF ANY STUDIES THAT ARE DISCRETIONARY AS SET FORTH IN THIS PART 10 OTHER THAN AS SET FORTH IN THIS SECTION. IF THE DIVISION DETERMINES THAT AN AIR QUALITY RELATED VALUE OF A CLASS I FEDERAL AREA HAS THE POTENTIAL TO BE SIGNIFICANTLY THREATENED BY AIR POLLUTION, OR IS BEING IMPACTED BY AIR POLLUTION, THEN THE DIVISION SHALL APPLY FOR GRANTS OR ACT AS A CATALYST TO SECURE FINANCIAL SUPPORT FROM AVAILABLE FUNDING SOURCES IN FEDERAL, STATE, OR LOCAL GOVERNMENTS AND PRIVATE ENTITIES, TO IDENTIFY THE THREAT BY FUNDING THE NECESSARY AIR QUALITY RELATED VALUE BASELINE DATA COLLECTION, OR TO ASSIST IN REMEDYING THE THREAT BY FUNDING NECESSARY ATTRIBUTION OR APPORTIONMENT STUDIES. THE DIVISION IS ALSO AUTHORIZED TO ACT AS A CATALYST TO SECURE FINANCIAL SUPPORT FROM OTHER SOURCES FOR SUCH STUDIES. THE RESULTS OF SUCH STUDIES AND DATA COLLECTION SHALL BE MADE AVAILABLE TO THE APPROPRIATE FEDERAL LAND MANAGER AND INTERESTED MEMBERS OF THE PUBLIC TO ASSIST IN THE MANAGEMENT OF THESE SCENIC RESOURCES AND TO COOPERATE IN ANY NEEDED AIR QUALITY RELATED VALUES ASSESSMENTS.

25-7-1005. Verification of federal land manager's assertion of air quality related value impairment. (1) THE FEDERAL LAND MANAGER OF A CLASS I FEDERAL AREA MAY INITIATE THE PROCEDURES OF THIS PART 10 BY SUBMITTING TO THE GOVERNOR AND DIVISION AN ASSERTION OF SIGNIFICANT IMPAIRMENT OF AN AIR QUALITY RELATED VALUE, REFERRED TO IN THIS PART 10 AS AN "ASSERTION". TO BE

ADEQUATE TO SUPPORT A VERIFICATION OF IMPAIRMENT, THE ASSERTION SHALL BE SUPPORTED BY SUFFICIENT AIR QUALITY RELATED VALUE BASELINE DATA AND SITE-SPECIFIC EVIDENCE OF IMPAIRMENT. THE ASSERTION MAY BE SUPPORTED IN PART BY INFORMATION THAT CONCERNS OTHER AREAS WITH A SIMILAR ENVIRONMENT TO THE CLASS I FEDERAL AREA ASSERTED TO BE IMPAIRED, PROVIDED SUCH INFORMATION IS RELEVANT TO THE CLASS I FEDERAL AREA ASSERTED TO BE IMPAIRED AND SIGNIFICANT SITE-SPECIFIC DATA IS ALSO AVAILABLE.

(2) UPON RECEIPT OF AN ASSERTION, THE DIVISION SHALL INITIATE THE FOLLOWING ACTIONS CONCURRENTLY:

(a) INFORM THE COMMISSION AT ITS NEXT REGULARLY SCHEDULED MONTHLY MEETING OF THE RECEIPT OF AN ASSERTION, AT WHICH TIME THE COMMISSION SHALL SCHEDULE THE MATTER FOR A FORMAL REPORT FROM THE DIVISION AT THE REGULAR COMMISSION MEETING THAT IS SCHEDULED TO OCCUR SIX MONTHS SUBSEQUENT. ALL SUCH INFORMATIONAL BRIEFINGS AND FORMAL REPORTS ON THE SUBJECT SHALL BE NOTICED ON THE PUBLISHED AGENDA OF THE COMMISSION.

(b) WITHIN SIXTY DAYS OF RECEIPT OF THE ASSERTION, THE DIVISION SHALL CONVENE A PEER REVIEW PANEL TO REVIEW THE ASSERTION, ITS SUPPORTING DOCUMENTATION (INCLUDING THE ADEQUACY OF THE BASELINE DATA AND THE ADEQUACY OF THE SITE-SPECIFIC AND OTHER EVIDENCE OF IMPAIRMENT), AND ANY OTHER RELEVANT INFORMATION SUBMITTED TO THE DIVISION BY THE PUBLIC. THE REQUIREMENT FOR PEER REVIEW AS SPECIFIED IN THIS PARAGRAPH (b) IS WAIVED WITH RESPECT TO ANY PEER REVIEWER WHO HAS NOT SUBMITTED PEER REVIEW COMMENTS WITHIN SIXTY DAYS OF THE DATE ON WHICH THE DIVISION CERTIFIES THAT THE ASSERTION, DOCUMENTATION, AND OTHER INFORMATION HAS BEEN TRANSMITTED TO THE INDIVIDUAL PEER REVIEWERS.

(c) CONVENE A CONSULTATION PROCESS THAT IS OPEN TO THE PUBLIC IN ORDER TO APPRISE THE PUBLIC AND POTENTIALLY AFFECTED SOURCES AND SOURCE CATEGORIES OF ALL STAGES OF THE PROGRAM AND TO SOLICIT THE SCIENTIFIC, TECHNICAL, ECONOMIC, AND MANAGERIAL VIEWS AND ASSISTANCE OF THE PUBLIC AND THE POTENTIALLY AFFECTED SOURCES AND SOURCE CATEGORIES; AND

(d) INITIATE A REVIEW BY DIVISION STAFF OF THE ASSERTION AND THE SUPPORTING DOCUMENTATION SUBMITTED BY THE FEDERAL LAND MANAGER TO ASSESS WHETHER THE FEDERAL LAND MANAGER HAS DEMONSTRATED A SIGNIFICANT IMPAIRMENT OF AN AIR QUALITY RELATED VALUE IN A CLASS I FEDERAL AREA WITHIN COLORADO.

(3) AT THE COMMISSION MEETING REQUIRED BY PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, THE DIVISION SHALL REPORT TO THE COMMISSION. THE DIVISION'S REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, THE CONCLUSIONS OF THE PEER REVIEW PANEL CONCERNING VERIFICATION OF THE ASSERTION AND THE DIVISION'S DETERMINATION OF WHETHER THE FEDERAL LAND MANAGER HAS DEMONSTRATED A SIGNIFICANT IMPAIRMENT OF AN AIR QUALITY RELATED VALUE IN A CLASS I AREA WITHIN COLORADO. IF THE DIVISION DETERMINES THAT THE ASSERTION HAS NOT BEEN VERIFIED, IT SHALL SO NOTIFY THE COMMISSION AND THE FEDERAL LAND MANAGER OF ITS FINDINGS AND THE FACT THAT THE PROCEEDINGS AUTHORIZED UNDER THIS PART 10 HAVE BEEN COMPLETED. IF THE DIVISION DETERMINES THAT THE ASSERTION HAS BEEN VERIFIED, IT SHALL PROCEED IN

ACCORDANCE WITH THE PROVISIONS OF SECTION 25-7-1006.

25-7-1006. Source attribution and control strategy development. (1) IF THE DIVISION DETERMINES THAT THE ASSERTION HAS BEEN VERIFIED, IT SHALL:

(a) COMPILER A COMPREHENSIVE INVENTORY OF THE SOURCES OF THE POLLUTANTS THAT ARE SUSPECTED TO BE CAUSING THE IMPAIRMENT;

(b) SUBJECT THE DEVELOPMENT, CONDUCT, AND RESULTS OF THE ATTRIBUTION AND APPORTIONMENT STUDIES TO APPROPRIATE PEER REVIEW; AND

(c) PERFORM ATTRIBUTION AND APPORTIONMENT STUDIES TO THE EXTENT FEASIBLE IN ORDER TO DEVELOP FOR THE DIVISION AND THE COMMISSION THE IDENTITY AND RELATIVE CONTRIBUTION OF THE SIGNIFICANT CONTRIBUTORS TO AIR QUALITY RELATED VALUE IMPAIRMENT, INCLUDING, BUT NOT LIMITED TO, STATIONARY SOURCES, NATURAL SOURCES, WOOD SMOKE, AGRICULTURE, MINING, ROADS, MOBILE SOURCE CATEGORIES, AND OTHER AREA SOURCES. THE GENERAL ASSEMBLY RECOGNIZES THAT THE ABILITY TO ATTRIBUTE THE CAUSE OF AIR POLLUTION EFFECTS AND APPORTION THE AIR POLLUTION EFFECTS AMONG SOURCES AND SOURCE CATEGORIES IDENTIFIED BY ATTRIBUTION STUDIES IS AN AREA OF EVOLVING SCIENCE.

(2) (a) THE FUNDING OF SOURCE ATTRIBUTION AND APPORTIONMENT STUDIES SHALL BE DERIVED AS PROVIDED IN THIS SUBSECTION (2). CONTRIBUTIONS TO SUPPORT THE FUNDING OF SUCH STUDIES SHALL BE REQUESTED FROM SOURCES AND SOURCE CATEGORIES IDENTIFIED BY THE DIVISION AS POTENTIALLY CONTRIBUTING TO THE IMPAIRMENT.

(b) IF A POTENTIAL CONTRIBUTION TO IMPAIRMENT IS IDENTIFIED FROM FEDERAL LANDS OR STATE LANDS, THE DIVISION SHALL REQUEST A FUNDING CONTRIBUTION FOR SUCH STUDIES FROM THE APPROPRIATE FEDERAL OR STATE LAND MANAGER.

(c) IF A POTENTIAL CONTRIBUTION TO IMPAIRMENT IS IDENTIFIED FROM STATIONARY SOURCES OR SOURCE CATEGORIES, THE DIVISION SHALL REQUEST A FUNDING CONTRIBUTION FOR SUCH STUDIES FROM SUCH SOURCES OR SOURCE CATEGORIES.

(d) IF A POTENTIAL CONTRIBUTION TO IMPAIRMENT IS IDENTIFIED FROM MOBILE SOURCES, THE DIVISION SHALL SEEK AN APPROPRIATION BY THE GENERAL ASSEMBLY OF EXCESS FUNDS IN THE AIR ACCOUNT IN THE HIGHWAY USERS TAX FUND FOR FUNDING CONTRIBUTIONS TO SUCH STUDIES.

(e) THE DIVISION SHALL ANNUALLY REPORT TO THE LEGISLATIVE COUNCIL ON THE ADEQUACY OF FUNDING DERIVED PURSUANT TO THIS SUBSECTION (2). IF FUNDING DERIVED PURSUANT TO THIS SUBSECTION (2) IS INADEQUATE, THE LEGISLATIVE COUNCIL MAY RECOMMEND THAT THE GENERAL ASSEMBLY APPROPRIATE FUNDS FROM AVAILABLE SOURCES FOR PURPOSES OF THIS SECTION.

(3) FOLLOWING ITS REVIEW AND ANALYSIS OF THE REASONABLE ATTRIBUTION AND SOURCE APPORTIONMENT STUDIES AND THE REPORTS THEREON FROM THE MEMBERS OF THE PEER REVIEW PANEL, THE DIVISION SHALL IDENTIFY THOSE SOURCES AND SOURCE CATEGORIES WITHIN THE STATE AND REGION SIGNIFICANTLY CONTRIBUTING

TO AIR QUALITY RELATED VALUE IMPAIRMENT.

(4) THE DIVISION SHALL IDENTIFY THE SOURCES AND SOURCE CATEGORIES SIGNIFICANTLY CONTRIBUTING TO AIR QUALITY RELATED VALUE IMPAIRMENT THAT ARE LOCATED OUTSIDE THE STATE AND REPORT THIS LIST TO THE COMMISSION, GOVERNOR, AND GENERAL ASSEMBLY FOR THEIR CONSIDERATION IN IDENTIFYING OPTIONS FOR REMEDYING SUCH IMPACTS.

(5) THE DIVISION SHALL ISSUE AN ORDER TO THE SOURCES AND SOURCE CATEGORIES SIGNIFICANTLY CONTRIBUTING TO AIR QUALITY RELATED VALUE IMPAIRMENT LOCATED WITHIN THE STATE THAT HAVE NOT MADE A VOLUNTARY ENFORCEABLE COMMITMENT UNDER SECTION 25-7-1008.

(6) (a) AN ORDER ISSUED PURSUANT TO SUBSECTION (5) OF THIS SECTION SHALL REQUIRE:

(I) SUCH SOURCES AND SOURCE CATEGORIES TO SUBMIT A REPORT WITHIN A REASONABLE PERIOD OF TIME;

(II) A STATIONARY SOURCE TO IDENTIFY THE BEST AVAILABLE RETROFIT TECHNOLOGY; AND

(III) OTHER SOURCES AND SOURCE CATEGORIES TO IDENTIFY REASONABLY AVAILABLE CONTROL MEASURES.

(b) AFTER CONSIDERING THE RESPONSES TO AN ORDER ISSUED PURSUANT TO SUBSECTION (5) OF THIS SECTION, THE DIVISION SHALL ISSUE A PUBLIC REPORT TO THE COMMISSION CONCERNING ITS RECOMMENDATIONS ON AIR QUALITY RELATED VALUE IMPAIRMENT, SOURCE ATTRIBUTION, SOURCE APPORTIONMENT, AND CONTROL STRATEGY OPTIONS.

25-7-1007. Commission to consider control strategies in rule-making proceeding. (1) UPON RECEIPT OF A REPORT UNDER SECTION 25-7-1006 (6) (b) FROM THE DIVISION, AND AFTER THE DIVISION HAS MADE THE REPORT AVAILABLE TO ALL SIGNIFICANT SOURCE OR SOURCE CATEGORIES IDENTIFIED PURSUANT TO SECTION 25-7-1006, THE COMMISSION SHALL GIVE NOTICE THAT IT IS TO CONDUCT A RULE-MAKING HEARING CONCERNING THE IMPLEMENTATION OF CONTROL STRATEGIES RECOMMENDED IN THE REPORT.

(2) IN ADDITION TO OTHER APPLICABLE RULE-MAKING PROVISIONS, THE RULE-MAKING HEARING SHALL BE CONDUCTED:

(a) IN REASONABLE PROXIMITY TO THE AFFECTED CLASS I FEDERAL AREA;

(b) TO ALLOW SUFFICIENT TIME FOR COMMENT AND TESTIMONY BY ALL INTERESTED PERSONS; AND

(c) TO ALLOW REASONABLE DISCOVERY PURSUANT TO SECTION 24-4-103 (13) AND (14), C.R.S.

(3) (a) THE COMMISSION SHALL ORDER BY RULE IMPLEMENTATION WITHIN A

REASONABLE TIME OF A PRACTICAL AND COST-EFFECTIVE CONTROL STRATEGY OR STRATEGIES THAT WILL PROVIDE REASONABLE PROGRESS TOWARD REMEDYING THE IMPAIRMENT, IF THE COMMISSION FINDS THAT:

(I) THE EVIDENCE IN THE RECORD SHOWS THE EXISTENCE OF A SIGNIFICANT IMPAIRMENT OF AN AIR QUALITY RELATED VALUE IN A CLASS I FEDERAL AREA;

(II) AN IDENTIFIABLE SOURCE OR SOURCE CATEGORY IS RESPONSIBLE FOR SIGNIFICANTLY CAUSING OR CONTRIBUTING TO THE IMPAIRMENT;

(III) THE BEST AVAILABLE RETROFIT TECHNOLOGY EXISTS FOR ANY SUCH STATIONARY SOURCE;

(IV) REASONABLY AVAILABLE CONTROL MEASURES EXIST FOR ANY SUCH OTHER SOURCES OR SOURCE CATEGORIES;

(V) IMPLEMENTATION OF THE CONTROL STRATEGIES WOULD MAKE SIGNIFICANT IMPROVEMENT IN THE IMPAIRMENT;

(VI) TAKING INTO ACCOUNT THAT THE ABILITY TO ATTRIBUTE THE CAUSE OF AIR POLLUTION EFFECTS AND TO APPORTION THE AIR POLLUTION EFFECTS AMONG SOURCES AND SOURCE CATEGORIES IDENTIFIED BY ATTRIBUTION STUDIES IS AN AREA OF EVOLVING SCIENCE, A CORRELATION OF THE EXTENT OF IMPROVEMENT IN AIR QUALITY RELATED VALUE IMPAIRMENT THAT CAN REASONABLY BE EXPECTED TO RESULT FROM IMPOSITION OF A CONTROL STRATEGY OR STRATEGIES FOR EACH SIGNIFICANT SOURCE OR SOURCE CATEGORY IDENTIFIED BY THE DIVISION.

(b) WITHIN FOURTEEN DAYS AFTER HAVING RECEIVED THE DIVISION'S REPORT UNDER SECTION 25-7-1006 (6) (b), A SOURCE OR SOURCE CATEGORY MAY PETITION THE COMMISSION, AS PART OF ITS RULE-MAKING HEARING CONDUCTED PURSUANT TO THIS SUBSECTION (3), TO MAKE A DETERMINATION THAT THE BENEFITS OF PHASING, SEGMENTING, OR EXCUSING THE CONTROL STRATEGY OR STRATEGIES OUTWEIGH THE BENEFITS OF IMPOSING THE CONTROL STRATEGY OR STRATEGIES. IN MAKING SUCH DETERMINATION, THE COMMISSION SHALL CONSIDER ALL ECONOMIC AND RELATED COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THE CONTROL STRATEGY OR STRATEGIES INVOLVING THE SOURCE OR SOURCE CATEGORY. THE BURDEN OF PROOF SHALL BE ON THE PETITIONER.

25-7-1008. Voluntary agreements. (1) THE DIVISION MAY CONVENE, AT ANY APPROPRIATE TIME, AN INFORMAL VOLUNTARY NEGOTIATION PROCESS, WITH APPROPRIATE PUBLIC PARTICIPATION, TO SEEK VOLUNTARY ENFORCEABLE COMMITMENTS FROM SOURCES AND SOURCE CATEGORIES TO ACHIEVE EMISSIONS REDUCTIONS SUFFICIENT TO MAKE REASONABLE FURTHER PROGRESS IN REDUCING ANY PORTION OF THE IMPAIRMENT.

(2) A VOLUNTARY ENFORCEABLE COMMITMENT BECOMES ENFORCEABLE THROUGH A COMMISSION RULE, LOCAL ORDINANCE OR RESOLUTION, JUDICIALLY ENFORCEABLE CONSENT DECREE, OR DIVISION PERMIT CONDITION, AS APPROPRIATE TO THE CIRCUMSTANCES.

(3) IF SUBSEQUENT TO JANUARY 15, 1996, A SOURCE OR SOURCE CATEGORY

AGREES TO AN ENFORCEABLE COMMITMENT TO ADOPT A CONTROL STRATEGY THAT THE DIVISION DETERMINES IS AS EFFECTIVE OR IS MORE EFFECTIVE THAN BEST AVAILABLE RETROFIT TECHNOLOGY (FOR STATIONARY SOURCES) OR REASONABLY AVAILABLE CONTROL MEASURES (FOR NONSTATIONARY SOURCES), THE DIVISION SHALL EXEMPT THAT SOURCE OR SOURCE CATEGORY FROM THE IMPOSITION OF FURTHER CONTROLS PURSUANT TO THIS PART 10 FOR A PERIOD OF TEN YEARS FROM THE DATE ESTABLISHED FOR ACHIEVING THE EMISSION REDUCTIONS AS SPECIFIED IN THE VOLUNTARY ENFORCEABLE AGREEMENT.

(4) IF SUBSEQUENT TO JANUARY 15, 1996, AND PRIOR TO JANUARY 15, 1998, A SOURCE OR SOURCE CATEGORY AGREES TO AN ENFORCEABLE COMMITMENT CONTAINED IN A JUDICIALLY ENFORCEABLE CONSENT DECREE TO ADOPT A CONTROL STRATEGY THAT THE DIVISION DETERMINES PROVIDES BOTH FOR REASONABLE PROGRESS TOWARD THE NATIONAL VISIBILITY GOAL UNDER 40 C.F.R. PART 51, SUBPART P AND 5 CCR 1001-4 AND FOR REASONABLE PROGRESS IN REDUCING ANY PRESENT OR FUTURE IMPAIRMENT OF AN AIR QUALITY RELATED VALUE, THE DIVISION SHALL EXEMPT THAT SOURCE OR SOURCE CATEGORY FROM THE IMPOSITION OF FURTHER CONTROLS PURSUANT TO THIS PART 10 FOR A PERIOD OF TEN YEARS FROM THE DATE ESTABLISHED FOR ACHIEVING THE EMISSION REDUCTIONS AS SPECIFIED IN THE JUDICIALLY ENFORCEABLE CONSENT DECREE. THE PROVISIONS OF SECTION 25-7-133 SHALL NOT APPLY TO THAT PORTION OF AN AMENDMENT TO THE VISIBILITY COMPONENT OF THE STATE IMPLEMENTATION PLAN THAT IMPLEMENTS AND ENFORCES THE CONTROL STRATEGY COVERED BY THIS SUBSECTION (4).

(5) IF A SOURCE OR SOURCE CATEGORY AGREES TO AN ENFORCEABLE COMMITMENT TO ADOPT A CONTROL STRATEGY THAT THE DIVISION DETERMINES IS NOT AS EFFECTIVE AS BEST AVAILABLE RETROFIT TECHNOLOGY (FOR STATIONARY SOURCES) OR REASONABLY AVAILABLE CONTROL MEASURES (FOR NONSTATIONARY SOURCES), BUT THAT THE DIVISION DETERMINES WILL ASSIST IN MAKING REASONABLE FURTHER PROGRESS IN REDUCING IMPAIRMENT OF AN AIR QUALITY RELATED VALUE, THE COMMISSION MAY, AFTER PUBLIC HEARING, EXEMPT THAT SOURCE OR SOURCE CATEGORY FROM THE IMPOSITION OF FURTHER CONTROLS PURSUANT TO THIS PART 10 WITH RESPECT TO THOSE POLLUTANTS THAT THE SOURCE OR SOURCE CATEGORY HAS AGREED TO CONTROL FOR A PERIOD OF UP TO TEN YEARS FROM THE DATE ESTABLISHED FOR ACHIEVING THE EMISSION REDUCTIONS AS SPECIFIED IN THE VOLUNTARY ENFORCEABLE AGREEMENT.

(6) A SOURCE THAT, PRIOR TO THE EFFECTIVE DATE OF THIS PART 10, HAS RECEIVED A PERMIT UNDER THE FEDERAL PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM, 42 U.S.C. SECS. 7470 TO 7479 OR SECTIONS 25-7-201 TO 25-7-210, AND INSTALLED POLLUTION CONTROL MEASURES COMPARABLE TO THE BEST AVAILABLE CONTROL TECHNOLOGY PURSUANT TO THAT PROGRAM, SHALL NOT BE REQUIRED TO INSTALL ADDITIONAL CONTROL MEASURES PURSUANT TO THIS PART 10 FOR A PERIOD OF TEN YEARS FROM THE EFFECTIVE DATE OF THIS PART 10, BUT MAY BE REQUIRED TO OPERATE POLLUTION CONTROL EQUIPMENT TO ITS MAXIMUM EFFICIENCY. THIS SECTION SHALL NOT APPLY TO ANY SOURCE THAT IS NOT SUBJECT TO COMPLIANCE WITH THE REQUIREMENTS OF 42 U.S.C. SEC. 7651 (f), WHICH ESTABLISHES SCHEDULES AND EMISSION LIMITATIONS FOR THE CONTROL OF NITROGEN OXIDE EMISSIONS FROM CERTAIN STATIONARY SOURCES. NOTHING IN THIS SUBSECTION (6) SHALL BE CONSTRUED TO MODIFY THE TERMS OF ANY PERMIT APPLICABLE TO SUCH SOURCE OR EXCUSE COMPLIANCE WITH RESPECT TO ANY OTHER REQUIREMENT UNDER

THIS ARTICLE OR THE FEDERAL ACT. EXCEPT FOR THE EXEMPTION FOR A PERIOD OF TEN YEARS PROVIDED IN THIS SUBSECTION (6), NOTHING IN THIS SUBSECTION (6) SHALL EXCUSE SUCH SOURCES FROM RESPONDING TO REASONABLE REQUESTS BY THE DIVISION FOR INFORMATION REQUIRED TO COMPLETE INVENTORIES AND ATTRIBUTION AND APPORTIONMENT STUDIES.

SECTION 2. 25-7-114.7 (2) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25-7-114.7. Emission fees - fund - repeal. (2) (b) The moneys collected pursuant to this section shall be remitted to the state treasurer, who shall credit the same to the stationary sources control fund, which fund is hereby created. From such fund, the general assembly shall appropriate to the department of public health and environment, at least annually, such moneys as may be necessary to cover the division's direct and indirect costs required to develop and administer the programs established pursuant to parts 1 to 4 AND 10 of this article for the control of air pollution from stationary sources. Any permit fee moneys not appropriated by the general assembly and any appropriated funds not spent by the division shall remain in the stationary sources control fund and shall not revert to the general fund of the state at the end of any fiscal year. Any such moneys shall be separately accounted for and used to reduce the permit fees beginning in fiscal year 1996-97 to be assessed against sources pursuant to this article. Until June 30, 1994, any interest earned on moneys in the stationary sources control fund pursuant to this article shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year. Any such interest shall be separately accounted for and used to reduce the permit fees to be assessed against sources pursuant to this article. Beginning with fiscal year 1994-95 and thereafter, all interest earned on moneys in the stationary sources control fund shall revert to the general fund.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the stationary sources control fund not otherwise appropriated, to the department of public health and environment, for allocation to the division of air pollution control, for the fiscal year beginning July 1, 1996, the sum of fifteen thousand sixty-five dollars (\$15,065) and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 4. 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: June 1, 1996