

CHAPTER 267

HEALTH AND ENVIRONMENT

SENATE BILL 98-142

BY SENATORS Wattenberg, Dennis, Phillips, Chlouber, Hernandez, Johnson, Powers, Reeves, Rupert, and Weddig;
also REPRESENTATIVES Schauer, George, Hagedorn, Kaufman, Taylor, Tool, Bacon, Gordon, Nichol, Reeser, Sullivant, and Udall.

AN ACT

CONCERNING THE REDUCTION OF AIR POLLUTANT EMISSIONS, AND, IN CONNECTION THEREWITH,
PROVIDING FOR THE VOLUNTARY REDUCTION OF STATIONARY SOURCE EMISSIONS AND RECOVERY
OF EMISSION REDUCTION COSTS.

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

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

PART 12
VOLUNTARY EMISSION LIMITATIONS

25-7-1201. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT VOLUNTARY EMISSION LIMITATIONS ARE AN EFFECTIVE AND EFFICIENT WAY TO REDUCE EMISSIONS OF AIR POLLUTANTS. HOWEVER, THE UNCERTAINTY OF FUTURE CONTROL REQUIREMENTS IMPEDES AN OWNER OR OPERATOR OF A STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES FROM MAKING THE INVESTMENTS NECESSARY TO VOLUNTARILY REDUCE EMISSIONS. THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHOULD ENCOURAGE ALL OWNERS AND OPERATORS OF STATIONARY SOURCES OR GROUPS OF STATIONARY SOURCES TO VOLUNTARILY REDUCE EMISSIONS BY PROVIDING, TO THE EXTENT POSSIBLE, CERTAINTY WITH RESPECT TO FUTURE CONTROL REQUIREMENTS.

25-7-1202. Definitions. THE DEFINITIONS CONTAINED IN SECTION 25-7-103 SHALL APPLY TO THIS PART 12. IN ADDITION, THE FOLLOWING DEFINITIONS SHALL APPLY TO THIS PART 12:

(1) "ACTUAL EMISSIONS" MEANS THE AVERAGE AMOUNT OF EMISSIONS, CALCULATED IN TONS PER YEAR, THAT THE STATIONARY SOURCE OR GROUP OF

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

STATIONARY SOURCES EMITTED DURING THE THREE-YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE THE PROPOSED VOLUNTARY AGREEMENT WAS SUBMITTED TO THE DIVISION FOR REVIEW SO LONG AS THE THREE-YEAR TIME PERIOD IS REPRESENTATIVE OF NORMAL UNIT OPERATION. A DIFFERENT TIME PERIOD MAY BE USED TO CALCULATE ACTUAL EMISSIONS IF SUCH TIME PERIOD IS MORE REPRESENTATIVE OF NORMAL UNIT OPERATION THAN THE THREE-YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE THE PROPOSED VOLUNTARY AGREEMENT WAS SUBMITTED TO THE DIVISION.

(2) "ACTUAL EMISSION RATE" MEANS THE AVERAGE RATE OF EMISSIONS, CALCULATED IN POUNDS PER MILLION BTU OR A COMPARABLE MEASURE OF THE MASS OF EMISSIONS PER UNIT OF PRODUCTION, THAT THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES EMITTED DURING THE THREE-YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE THE PROPOSED VOLUNTARY AGREEMENT WAS SUBMITTED TO THE DIVISION FOR REVIEW SO LONG AS THE THREE-YEAR TIME PERIOD IS REPRESENTATIVE OF NORMAL UNIT OPERATION. A DIFFERENT TIME PERIOD MAY BE USED TO CALCULATE THE ACTUAL EMISSION RATE IF SUCH TIME PERIOD IS MORE REPRESENTATIVE OF NORMAL UNIT OPERATION THAN THE THREE-YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE THE PROPOSED VOLUNTARY AGREEMENT WAS SUBMITTED TO THE DIVISION.

25-7-1203. Voluntary agreements. (1) THE OWNER OR OPERATOR OF ANY STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES MAY OBTAIN REGULATORY ASSURANCE, AS DESCRIBED IN SECTION 25-7-1204, BY ENTERING INTO A VOLUNTARY AGREEMENT PURSUANT TO THIS PART 12. THE PARTIES TO THE PROPOSED VOLUNTARY AGREEMENT SHALL NEGOTIATE IN GOOD FAITH TO REACH A VOLUNTARY AGREEMENT AS EXPEDITIOUSLY AS POSSIBLE. THE OWNER OR OPERATOR SHALL PROVIDE THE DIVISION WITH ANY INFORMATION NECESSARY TO EVALUATE THE TERMS AND CONDITIONS OF THE PROPOSED VOLUNTARY AGREEMENT. THE PARTIES TO THE PROPOSED VOLUNTARY AGREEMENT SHALL STRUCTURE THE EMISSION LIMITATIONS OR EMISSION REDUCTIONS CONTAINED IN A VOLUNTARY AGREEMENT SO AS TO MINIMIZE COSTS AND MAXIMIZE THE OPERATIONAL FLEXIBILITY AVAILABLE TO THE OWNER OR OPERATOR OF THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES BY USING, AMONG OTHER THINGS, NUMERIC EMISSION LIMITS, ANNUAL EMISSION LIMITS, OR EMISSIONS AVERAGING ACROSS SEVERAL EMISSION POINTS OR SOURCES, AS APPROPRIATE.

(2) THE DIVISION SHALL EVALUATE THE EMISSION LIMITATIONS CONTAINED IN A PROPOSED VOLUNTARY AGREEMENT TO DETERMINE WHETHER THEY WILL RESULT IN REDUCTIONS IN ACTUAL EMISSIONS OR ACTUAL EMISSION RATES, WILL RESULT IN EMISSION REDUCTIONS EARLIER THAN WOULD BE REQUIRED BY EXISTING LAWS OR REGULATIONS, WILL RESULT IN EMISSION REDUCTIONS SIGNIFICANTLY GREATER THAN REQUIRED BY EXISTING LAWS OR REGULATIONS, AND WILL PROTECT HUMAN HEALTH OR THE ENVIRONMENT. THE DIVISION SHALL ALSO EVALUATE THE ASSURANCE PERIOD PROPOSED IN THE VOLUNTARY AGREEMENT BASED ON THE FOLLOWING FACTORS:

- (a) THE ENVIRONMENTAL BENEFITS OF THE EMISSION LIMITATIONS AND THEIR SIGNIFICANCE;
- (b) THE TIME NECESSARY TO ACHIEVE THE EMISSION LIMITATIONS;
- (c) THE CAPITAL, OPERATING, AND OTHER COSTS ASSOCIATED WITH ACHIEVING THE EMISSION LIMITATIONS; AND

(d) THE ENERGY IMPACTS AND ENVIRONMENTAL IMPACTS NOT RELATED TO AIR QUALITY OF ACHIEVING THE EMISSION LIMITATIONS.

(3) AFTER CONDUCTING THE EVALUATION REQUIRED IN SUBSECTION (2) OF THIS SECTION, THE DIVISION MAY REJECT ANY PROPOSED VOLUNTARY AGREEMENT THAT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION. IF THE DIVISION REJECTS THE PROPOSED VOLUNTARY AGREEMENT, THE OWNER OR OPERATOR OF THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES MAY PETITION THE COMMISSION FOR REVIEW OF THE PROPOSED VOLUNTARY AGREEMENT AND THE DIVISION'S REJECTION THEREOF IN ACCORDANCE WITH THE RULES PROMULGATED BY THE COMMISSION.

(4) IF THE DIVISION FINDS THAT THE EMISSION LIMITATIONS AND THE ASSURANCE PERIOD PROPOSED IN A VOLUNTARY AGREEMENT MEET THE REQUIREMENTS OF THIS SECTION, THE DIVISION SHALL SUBMIT THE PROPOSED VOLUNTARY AGREEMENT TO THE COMMISSION FOR APPROVAL. THE COMMISSION SHALL PROVIDE THE PUBLIC WITH NOTICE AND AN OPPORTUNITY TO COMMENT ON THE PROPOSED VOLUNTARY AGREEMENT. THE COMMISSION SHALL ACT UPON THE VOLUNTARY AGREEMENT AS EXPEDITIOUSLY AS POSSIBLE. THE COMMISSION SHALL APPROVE THE VOLUNTARY AGREEMENT UNLESS IT FINDS BY SUBSTANTIAL EVIDENCE THAT THE PROPOSED VOLUNTARY AGREEMENT IS INCONSISTENT WITH THE REQUIREMENTS OF THIS PART 12. IN NO EVENT SHALL THE COMMISSION ADOPT EMISSION LIMITATIONS OR AN ASSURANCE PERIOD DIFFERENT THAN PROPOSED IN THE VOLUNTARY AGREEMENT WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE OWNER OR OPERATOR OF THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES SUBJECT TO THE AGREEMENT.

(5) IF THE COMMISSION APPROVES THE PROPOSED VOLUNTARY AGREEMENT, THE EMISSION LIMITATIONS AND OTHER PROVISIONS CONTAINED IN THE VOLUNTARY AGREEMENT SHALL BE ENFORCEABLE UNDER THIS ARTICLE AGAINST THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES IN ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE VOLUNTARY AGREEMENT. SUCH ENFORCEMENT MAY INCLUDE ANY APPROPRIATE MECHANISM, INCLUDING RULE, PERMIT CONDITION, OR CONSENT ORDER.

(6) NO VOLUNTARY AGREEMENT OR THE UNDERLYING EMISSION LIMITATIONS UNDER SUBSECTION (1) OF THIS SECTION SHALL BE MADE FEDERALLY ENFORCEABLE WITHOUT THE WRITTEN CONSENT OF THE OWNER OR OPERATOR OF THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES.

(7) EXCEPT AS PROVIDED IN THIS PART 12 OR OTHER APPLICABLE LAW, NO VOLUNTARY AGREEMENT ENTERED INTO UNDER THIS PART 12 SHALL ALTER ANY EXISTING FEDERAL OR STATE REQUIREMENT OTHERWISE APPLICABLE TO THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES SUBJECT TO SUCH AGREEMENT.

(8) THE COMMISSION MAY ADOPT ANY RULES, PROCEDURES, OR COMBINATION THEREOF NECESSARY TO IMPLEMENT THIS PART 12. NOTWITHSTANDING THIS AUTHORITY, THE DIVISION MAY NEGOTIATE AND EVALUATE PROPOSED VOLUNTARY AGREEMENTS, AND THE COMMISSION MAY APPROVE PROPOSED VOLUNTARY AGREEMENTS AND REVIEW THE DIVISION'S REJECTION OF A PROPOSED VOLUNTARY AGREEMENT AS OF JULY 1, 1998.

25-7-1204. Regulatory assurances. (1) EXCEPT AS PROVIDED IN THIS SECTION AND IN SECTION 25-7-1205, THE OWNER OR OPERATOR OF A STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES WHO ENTERS INTO A VOLUNTARY AGREEMENT PURSUANT TO SECTION 25-7-1203 SHALL BE GRANTED THE REGULATORY ASSURANCES PROVIDED IN THIS SECTION. FOR THE ASSURANCE PERIOD SET FORTH IN THE VOLUNTARY AGREEMENT, NOT TO EXCEED FIFTEEN YEARS, A STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES SUBJECT TO THE VOLUNTARY AGREEMENT SHALL NOT BE REQUIRED TO INSTALL ADDITIONAL POLLUTION CONTROL EQUIPMENT OR IMPLEMENT ADDITIONAL POLLUTION CONTROL STRATEGIES TO REDUCE EMISSIONS OF THE AIR POLLUTANT SUBJECT TO THE EMISSION LIMITATIONS CONTAINED IN THE VOLUNTARY AGREEMENT IN ORDER TO COMPLY WITH:

(a) STATE REGULATORY REQUIREMENTS THAT ARE BASED EXCLUSIVELY ON STATE AUTHORITY AND THAT, EITHER DIRECTLY OR INDIRECTLY, NECESSITATE REDUCTIONS IN THE AIR POLLUTANT SUBJECT TO THE VOLUNTARY AGREEMENT; OR

(b) FEDERAL REGULATORY REQUIREMENTS THAT:

(I) EITHER DIRECTLY OR INDIRECTLY NECESSITATE REDUCTIONS IN EMISSIONS OF THE AIR POLLUTANT SUBJECT TO THE VOLUNTARY AGREEMENT;

(II) ESTABLISH GENERALLY APPLICABLE GOALS FOR THE REDUCTIONS OF AMBIENT CONCENTRATIONS OF THE AIR POLLUTANT SUBJECT TO THE VOLUNTARY AGREEMENT OR ITS CHEMICAL PRODUCTS; AND

(III) DO NOT ESTABLISH REQUIREMENTS THAT APPLY SPECIFICALLY TO THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE OWNER OR OPERATOR OF THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES MAY BE REQUIRED TO COMPLY WITH FEDERAL REGULATORY REQUIREMENTS IF:

(a) THE OWNER OR OPERATOR HAS AGREED IN WRITING TO ABIDE BY THE REQUIREMENTS; OR

(b) THE COMMISSION PROMULGATES THE REQUIREMENTS IN REGULATIONS THAT FIRST REQUIRE ALL OTHER SOURCES, INCLUDING MOBILE SOURCES, OF THE AIR POLLUTANT WITHIN THE AFFECTED REGION WITHIN COLORADO TO IMPLEMENT ALL AVAILABLE COST-EFFECTIVE MEASURES TO REDUCE EMISSIONS OF THE AIR POLLUTANT. SUCH REGULATIONS, INCLUDING THE REQUIREMENTS CONTAINED THEREIN APPLICABLE TO THE STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES SUBJECT TO THE VOLUNTARY AGREEMENT, SHALL NOT APPLY TO ANY STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES UNLESS AND UNTIL THE GENERAL ASSEMBLY ACTS TO POSTPONE THE EXPIRATION OF THE REGULATIONS IN ACCORDANCE WITH SECTION 24-4-103, C.R.S.

25-7-1205. Exceptions. (1) THE REGULATORY ASSURANCES PROVIDED IN SECTION 25-7-1204 SHALL NOT APPLY TO THE FOLLOWING PERMIT REQUIREMENTS, EMISSION CONTROL REQUIREMENTS, OR EMISSION LIMITATIONS:

(a) ADDITIONAL REQUIREMENTS PROVIDED UNDER SECTION 111 OF THE FEDERAL

ACT, AS DEFINED IN SECTION 25-7-103 (12), OR PARTS 2 AND 3 OF THIS ARTICLE BY ANY MODIFICATION OR RECONSTRUCTION OF A STATIONARY SOURCE AFTER THE DATE OF THE VOLUNTARY AGREEMENT;

(b) EMISSION LIMITATIONS ESTABLISHED FOR HAZARDOUS AIR POLLUTANTS IDENTIFIED IN SECTION 112 OF THE FEDERAL ACT;

(c) REQUIREMENTS ESTABLISHED TO IMPLEMENT TITLE VI AND SECTION 112 (r) OF THE FEDERAL ACT; AND

(d) REQUIREMENTS APPLICABLE TO MOBILE SOURCES.

25-7-1206. Coal-fired power plants. (1) (a) IF THE OWNER OR OPERATOR OF A COAL-FIRED POWER PLANT OR GROUP OF COAL-FIRED POWER PLANTS REDUCES THE UNCONTROLLED SULFUR DIOXIDE EMISSION RATE, MEASURED IN EITHER POUNDS PER MILLION BTU OR TONS PER YEAR, BY AN AVERAGE OF AT LEAST SEVENTY PERCENT AND THE ACTUAL EMISSION RATE OF SULFUR DIOXIDE BY AN AVERAGE OF AT LEAST FIFTY PERCENT FROM ONE OR MORE UNITS LOCATED WITHIN THE SAME AIRSHED, REGARDLESS OF WHETHER THE UNITS ARE LOCATED ON THE SAME PLANT SITE, AND SUCH REDUCTIONS ARE PURSUANT TO A VOLUNTARY AGREEMENT ENTERED INTO UNDER SECTION 25-7-1203, THE ASSURANCE PERIOD FOR SUCH UNITS SHALL BE A PERIOD ENDING FIFTEEN YEARS AFTER THE DATE ESTABLISHED FOR ACHIEVING THE VOLUNTARY EMISSION LIMITATIONS UNDER THE AGREEMENT.

(b) IF THE OWNER OR OPERATOR OF ANY COAL-FIRED POWER PLANT THAT INCLUDES ONE OR MORE UNITS, EACH OF WHICH ALREADY HAS EMISSION CONTROL TECHNOLOGIES IN PLACE TO REDUCE SULFUR DIOXIDE EMISSIONS BY AT LEAST SIXTY-FIVE PERCENT FROM UNCONTROLLED LEVELS, SIGNIFICANTLY REDUCES THE ACTUAL EMISSION RATE OF SULFUR DIOXIDE AND SUCH REDUCTION IS PURSUANT TO A VOLUNTARY AGREEMENT ENTERED INTO UNDER SECTION 25-7-1203, THE ASSURANCE PERIOD FOR SUCH UNITS SHALL BE NO MORE THAN FIFTEEN YEARS FROM THE DATE THE EMISSIONS REDUCTIONS ARE ACHIEVED. SUCH A COAL-FIRED POWER PLANT THAT IS THE SUBJECT OF A CERTIFICATION OF VISIBILITY IMPAIRMENT IN A FEDERALLY DESIGNATED CLASS 1 AREA AS OF JULY 1, 1998, MAY NOT ENTER INTO A VOLUNTARY AGREEMENT ADDRESSING THE POLLUTANTS SUBJECT TO THE CERTIFICATION OF VISIBILITY OF IMPAIRMENT UNDER SECTION 25-7-1203 UNLESS:

(I) THE OWNER OR OPERATOR OF THE PLANT HAS NEGOTIATED A SETTLEMENT WITH THE DIVISION THAT RESOLVES ALL MATTERS RELATED TO SUCH CERTIFICATION OF VISIBILITY IMPAIRMENT; AND

(II) THE VOLUNTARY AGREEMENT IS FULLY CONSISTENT WITH THE TERMS AND CONDITIONS OF THE NEGOTIATED SETTLEMENT.

(c) A COAL-FIRED POWER PLANT OR GROUP OF PLANTS MAY ACHIEVE THE EMISSION REDUCTIONS REQUIRED BY THIS SECTION THROUGH A VOLUNTARY AGREEMENT THAT ALLOWS THE PLANT OR GROUP OF PLANTS TO CONTROL EMISSIONS BY METHODS OTHER THAN THE INSTALLATION AND OPERATION OF POLLUTION CONTROL EQUIPMENT. SUCH METHODS MAY INCLUDE BUT ARE NOT LIMITED TO BURNING LOW-SULFUR COAL, REDUCING THE OPERATION OF UNITS, RETIRING UNITS, AND CHANGING FUELS. IF SUCH METHODS ARE INCLUDED IN A VOLUNTARY AGREEMENT,

THE AGREEMENT SHALL INCLUDE THE PROCEDURE BY WHICH THE DIVISION SHALL CALCULATE THE EMISSION REDUCTIONS TO BE OBTAINED BY SUCH METHODS.

(2) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE COMMISSION SHOULD CONSIDER ANY COAL-FIRED POWER PLANT OR POWER PLANTS LOCATED WITHIN THE SAME AIRSHED THAT ARE ACHIEVING THE EMISSION LIMITATIONS DESCRIBED IN THIS SECTION UNDER A VOLUNTARY AGREEMENT TO BE IN COMPLIANCE WITH ANY EMISSION LIMITATION THAT IS BASED ON A TECHNOLOGY REQUIREMENT IN THE FEDERAL ACT. SUCH CONSIDERATION SHOULD CONTINUE FOR A PERIOD OF FIFTEEN YEARS AFTER THE DATE ESTABLISHED IN THE VOLUNTARY AGREEMENT FOR ACHIEVING THE EMISSION LIMITATIONS THAT ARE CONTAINED IN THE VOLUNTARY AGREEMENT. DURING THE FIFTEEN-YEAR PERIOD, THE COMMISSION, BY RULE, MAY REQUIRE THE COAL-FIRED POWER PLANT TO MEET A DIFFERENT EMISSION LIMITATION BASED ON A TECHNOLOGY REQUIREMENT IN THE FEDERAL ACT IF:

(a) THE COMMISSION FINDS THAT A DIFFERENT EMISSION LIMITATION IS NECESSARY TO COMPLY WITH THE FEDERAL ACT; AND

(b) THE OWNER OR OPERATOR OF THE COAL-FIRED POWER PLANT IS NOT REQUIRED TO BEGIN INSTALLATION OF THE REQUIRED EMISSION CONTROL TECHNOLOGY UNLESS AND UNTIL THE GENERAL ASSEMBLY HAS ACTED TO POSTPONE THE EXPIRATION OF THE COMMISSION'S RULE IN ACCORDANCE WITH SECTION 24-4-103, C.R.S.

(3) THE GENERAL ASSEMBLY FURTHER INTENDS THAT NOTHING IN SUBSECTION (2) OF THIS SECTION SHALL BE CONSTRUED TO CREATE A PRECEDENT FOR THE APPLICATION OR INTERPRETATION OF EITHER THE "COLORADO AIR POLLUTION PREVENTION AND CONTROL ACT", ARTICLE 7 OF TITLE 25, C.R.S., OR THE FEDERAL ACT IN ANY CIRCUMSTANCE OTHER THAN THE EXECUTION OF VOLUNTARY AGREEMENTS BETWEEN THE STATE OF COLORADO AND THE OWNERS AND OPERATORS OF COAL-FIRED POWER PLANTS IN ACCORDANCE WITH THIS PART 12.

25-7-1207. Allowances. NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 12, NO OWNER OR OPERATOR OF A STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES SHALL LOSE THE BENEFITS OF REGULATORY ASSURANCES GRANTED UNDER THIS PART 12 BY TRANSFERRING, SELLING, BANKING, OR OTHERWISE USING ALLOWANCES ESTABLISHED UNDER TITLE IV OF THE FEDERAL ACT OR BY ANY OTHER FEDERALLY REQUIRED TRADING PROGRAM OF REGIONAL OR NATIONAL APPLICABILITY AS A RESULT OF ENTERING INTO A VOLUNTARY AGREEMENT.

25-7-1208. Economic or cost-effectiveness analyses not required. NOTWITHSTANDING SECTION 25-7-110.5, THE COMMISSION SHALL NOT CONDUCT AN ECONOMIC IMPACT ANALYSIS, COST-EFFECTIVENESS ANALYSIS, OR ANY OTHER ANALYSES REQUIRED BY SECTION 25-7-110.5 IN CONSIDERING A VOLUNTARY AGREEMENT OR THE EMISSION LIMITATIONS CONTAINED THEREIN.

SECTION 2. 25-7-114.7 (2) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

25-7-114.7. Emission fees - fund. (2) (a) (VI) NOTWITHSTANDING SUBPARAGRAPH (III) OF THIS PARAGRAPH (a), THE DIVISION SHALL NOT ASSESS A FEE FOR WORK PERFORMED TO NEGOTIATE A VOLUNTARY AGREEMENT UNDER PART 12 OF

THIS ARTICLE ABOVE A MAXIMUM OF ONE HUNDRED HOURS AT A RATE OF FIFTY DOLLARS PER HOUR UNLESS THE OWNER OR OPERATOR PROPOSING THE VOLUNTARY AGREEMENT CONSENTS TO A GREATER FEE IN WRITING.

SECTION 3. Title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 3.2
Air Quality Improvement Costs

40-3.2-101. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT PROVIDING A FUNDING MECHANISM TO ENCOURAGE COLORADO'S PUBLIC UTILITIES TO REDUCE EMISSIONS OR AIR POLLUTANTS IS A MATTER OF STATEWIDE CONCERN. THE GENERAL ASSEMBLY FURTHER FINDS THAT THE PUBLIC INTEREST IS SERVED BY PROVIDING SUCH FUNDING MECHANISM. SUCH REDUCTION WILL RESULT IN AN IMPROVEMENT IN THE QUALITY OF LIFE AND HEALTH OF COLORADO CITIZENS AND AN INCREASE IN THE ATTRACTIVENESS OF COLORADO AS A PLACE TO LIVE AND CONDUCT BUSINESS.

40-3.2-102. Recovery of air quality improvement costs. (1) A PUBLIC UTILITY SHALL BE ENTITLED TO FULLY RECOVER FROM ITS RETAIL CUSTOMERS THE AIR QUALITY IMPROVEMENT COSTS THAT IT PRUDENTLY INCURS AS A RESULT OF A VOLUNTARY AGREEMENT ENTERED INTO PURSUANT TO PART 12 OF ARTICLE 7 OF TITLE 25, C.R.S., AFTER JULY 1, 1998, EXCEPT AS PROVIDED IN SUBSECTION (7) OF THIS SECTION.

(2) FOR THE PURPOSES OF THIS ARTICLE, "AIR QUALITY IMPROVEMENT COSTS" MEANS THE INCREMENTAL LIFE-CYCLE COSTS INCLUDING CAPITAL, OPERATING, MAINTENANCE, FUEL, AND FINANCING COSTS INCURRED OR TO BE INCURRED BY A PUBLIC UTILITY AT ELECTRIC GENERATING FACILITIES LOCATED IN COLORADO. TO ACCOUNT FOR THE TIMING DIFFERENCES BETWEEN VARIOUS COSTS AND REVENUE RECOVERY, LIFE-CYCLE COSTS SHALL BE CALCULATED USING NET PRESENT VALUE ANALYSIS.

(3) UPON APPLICATION BY A PUBLIC UTILITY FOR COST RECOVERY, THE COMMISSION SHALL DETERMINE AN APPROPRIATE METHOD OF COST RECOVERY THAT ASSURES FULL COST RECOVERY FOR THE PUBLIC UTILITY. THE AIR QUALITY IMPROVEMENT COSTS RECOVERED BY THE PUBLIC UTILITY SHALL NOT CAUSE AN AVERAGE RATE IMPACT GREATER THAN THE EQUIVALENT OF ONE AND ONE-HALF MILLS PER KILOWATT HOUR IN ANY PERIOD, NOR SHALL SUCH COSTS EXCEED A TOTAL OF TWO HUNDRED ELEVEN MILLION DOLLARS CALCULATED USING 1998 NET PRESENT VALUE DOLLARS. THE AIR QUALITY IMPROVEMENT COSTS FOR A GENERATING FACILITY SHALL BE RECOVERED OVER A PERIOD OF FIFTEEN YEARS OR LESS.

(4) ANY REVENUES A PUBLIC UTILITY RECEIVES FROM TRANSFERRING, SELLING, BANKING, OR OTHERWISE USING ALLOWANCES ESTABLISHED UNDER TITLE IV OF THE FEDERAL "CLEAN AIR ACT" OR UNDER ANY OTHER TRADING PROGRAM OF REGIONAL OR NATIONAL APPLICABILITY SHALL BE CREDITED TO THE PUBLIC UTILITY'S CUSTOMERS TO OFFSET AIR QUALITY IMPROVEMENT COSTS IF SUCH REVENUES ARE A RESULT OF A VOLUNTARY AGREEMENT ENTERED INTO UNDER PART 12 OF ARTICLE 7 OF TITLE 25, C.R.S.

(5) TO THE EXTENT THAT A VOLUNTARY AGREEMENT ENTERED INTO UNDER PART 12 OF ARTICLE 7 OF TITLE 25, C.R.S., DOES NOT INCREASE THE PUBLIC UTILITY'S ELECTRIC GENERATING CAPACITY, THE VOLUNTARY AGREEMENT SHALL NOT BE SUBJECT TO ANY RESTRICTIONS THAT ARISE FROM THE COMMISSION'S INTEGRATED RESOURCES PLANNING RULES.

(6) THE COMMISSION SHALL ASSURE THAT ANY FUTURE INDUSTRY RESTRUCTURING DOES NOT ADVERSELY AFFECT THE ABILITY OF THE PUBLIC UTILITY TO RECOVER ITS AIR QUALITY IMPROVEMENT COSTS. NOTHING IN THIS SECTION SHALL PREVENT THE COMMISSION FROM CONSIDERING THE APPROPRIATE VALUE, INCLUDING MARKET VALUE, OF A PUBLIC UTILITY'S GENERATION ASSETS IN ANY FUTURE INDUSTRY RESTRUCTURING PROCEEDING.

(7) (a) IF A PUBLIC UTILITY'S WHOLESALE SALES ARE SUBJECT TO REGULATION BY THE FEDERAL ENERGY REGULATORY COMMISSION AND THE PUBLIC UTILITY SELLS POWER ON THE WHOLESALE MARKET FROM GENERATING FACILITIES THAT ARE SUBJECT TO A VOLUNTARY AGREEMENT UNDER PART 12 OF ARTICLE 7 OF TITLE 25, C.R.S., THE PUBLIC UTILITIES COMMISSION SHALL DETERMINE WHETHER TO ASSIGN A PORTION OF THE AIR QUALITY IMPROVEMENT COSTS TO BE RECOVERED FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. THE PUBLIC UTILITIES COMMISSION MAY ASSIGN A PORTION OF THE AIR QUALITY IMPROVEMENT COSTS TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS TO THE EXTENT THAT SUCH PORTION OF SUCH COST RECOVERY DOES NOT CONFLICT WITH THE PUBLIC UTILITY'S WHOLESALE CONTRACTS ENTERED INTO PRIOR TO APRIL 1, 1998.

(b) IF THE PUBLIC UTILITIES COMMISSION ASSIGNS A PORTION OF THE PUBLIC UTILITY'S AIR QUALITY IMPROVEMENT COSTS TO BE RECOVERED FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY MAY APPLY TO THE FEDERAL ENERGY REGULATORY COMMISSION FOR RECOVERY, EFFECTIVE ON THE DATE OF FILING, OF THE PORTION OF COSTS ASSIGNED TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. THE PUBLIC UTILITIES COMMISSION SHALL PERMIT THE PUBLIC UTILITY TO RECOVER THE PORTION OF COSTS ASSIGNED TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS FROM ITS RETAIL CUSTOMERS PENDING THE FEDERAL ENERGY REGULATORY COMMISSION'S APPROVAL OF RECOVERY FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS.

(c) NOTWITHSTANDING PARAGRAPH (b) OF THIS SUBSECTION (7), IF THE PUBLIC UTILITY FAILS TO APPLY TO THE FEDERAL ENERGY REGULATORY COMMISSION WITHIN SIX MONTHS AFTER THE PUBLIC UTILITIES COMMISSION'S FINAL ORDER ASSIGNING A PORTION OF THE AIR QUALITY IMPROVEMENT COSTS TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS OR FAILS TO MAKE A DILIGENT, GOOD FAITH EFFORT TO PERSUADE THE FEDERAL ENERGY REGULATORY COMMISSION TO APPROVE THE COST RECOVERY FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY SHALL NOT BE ENTITLED TO RECOVER SAID PORTION OF THE COSTS FROM ITS RETAIL CUSTOMERS.

(d) ALL REVENUES THAT A PUBLIC UTILITY RECEIVES FROM ITS WHOLESALE CUSTOMERS FOR AIR QUALITY IMPROVEMENT COSTS SHALL BE CREDITED AS AN OFFSET TO THE AIR QUALITY IMPROVEMENT COSTS CHARGED TO THE PUBLIC UTILITY'S RETAIL CUSTOMERS.

SECTION 4. Effective date. This act shall take effect July 1, 1998.

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 27, 1998