

CHAPTER 194

HEALTH AND ENVIRONMENT

HOUSE BILL 01-1326

BY REPRESENTATIVE(S) Mitchell, Ragsdale, Scott, Swenson, and Williams S.;
also SENATOR(S) Hagedorn.

AN ACT

CONCERNING REGULATION OF AIR POLLUTION EMISSIONS FROM STATIONARY SOURCES, AND, IN CONNECTION THEREWITH, AMENDING THE FEE STRUCTURE FOR AIR POLLUTANT EMISSION NOTICES, CHANGING THE APPLICABLE DATES FOR CUMULATIVE ECONOMIC ANALYSES, AND MAKING AN APPROPRIATION.

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

SECTION 1. 25-7-110.5 (4) (d), Colorado Revised Statutes, is amended to read:

25-7-110.5. Required analysis of proposed air quality rules - repeal.

(4) (d) Cumulative economic analyses of all air pollution control measures shall be performed by the executive director of the department of public health and environment after public comment and review. The cumulative economic analyses shall be performed every five years beginning ~~in the year 2000~~ JULY 1, 2003.

SECTION 2. 25-7-114.1 (2), (5), and (6) (a), Colorado Revised Statutes, are amended to read:

25-7-114.1. Air pollutant emission notices (APEN). (2) All sources existing on or before December 31, 1992, shall file an updated air pollutant emission notice with the division on or before December 31, 1992. ~~except that, with respect to such December 31, 1992, requirement, a source may notify the division prior to December 31, 1992, that it intends to file an amendment to such air pollutant emission notice with respect to the source's emissions of hazardous air pollutants. Such amendment shall be filed on or before December 31, 1993. The source shall at the time of filing such amendment pay an annual fee pursuant to section 25-7-114.7 (2) (a) (I) (B) for any emissions of hazardous air pollutants not reported in 1992 of one hundred dollars per ton, or fraction thereof. No penalty shall be imposed for any failure to report emissions of hazardous air pollutants in the updated air pollutant emission notice~~

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

required to be filed on December 31, 1992, if a source utilizes the air pollutant emission notice amendment process set forth in this subsection (2) and pays the fee prescribed in this subsection (2). The division shall notify all such existing sources at least six months prior to December 30, 1992, of the requirement to file updated air pollutant emission notices and of the availability of the amendment process set forth in this subsection (2). IN ADDITION, a revised emission notice shall be filed whenever a significant change in emissions, in processes, or in the facility is anticipated or has occurred. The revised air pollutant emission notice shall be valid for five years or until the underlying permit expires. The commission shall exempt those sources or categories of sources which it determines to be of minor significance from the requirement that an air pollutant emission notice be filed.

~~(5) (a) Upon filing the updated air pollution emission notice required in subsection (1) of this section on or before December 31, 1992, the owner or operator of the subject source shall be deemed to be in compliance with said subsection (1), and no penalty shall be imposed upon such owner or operator for any prior violation identified by the updated air pollution emission notice except as provided in paragraph (b) of this subsection (5):~~

~~(b) If the information contained in such updated notice reveals that:~~

~~(I) The source is a major source or subject to a new source performance standard or a synthetic minor source whose actual emission removes it from synthetic minor source status; and~~

~~(II) The owner or operator of such source failed to obtain or to operate within the limits of an emission permit in violation of this article as it existed prior to the submission of the updated air pollution emission notice, such owner or operator shall be subject to all applicable civil penalties for such previous noncompliance unless on or before December 31, 1992, the owner or operator of such source:~~

~~(A) Files the updated air pollution emission notice as required in subsection (1) of this section; and~~

~~(B) Files a complete permit application with the air pollution emission notice with the division as required by this article; and~~

~~(C) Files a proposed compliance schedule to bring the source in compliance with this article within two years from the date the updated air pollution emission notice is filed; and~~

~~(D) Does not object to the imposition of the penalty as set forth in paragraphs (c) and (d) of this subsection (5):~~

~~(e) The determination of any civil penalty shall be consistent with a policy of leniency and the goals of section 25-7-102 and the factors listed in section 25-7-122 (2) (a) (I) and (2) (a) (II) and (2) (b) (I) to (2) (b) (III) shall be given considerable weight:~~

~~(d) If the owner or operator of the source complies with the requirements of paragraph (b) of this subsection (5), then the division may, after applying the criteria~~

set forth in section 25-7-122 (2) (a) (I) and (2) (a) (II) and (2) (b) (I) to (2) (b) (III); impose a penalty on the owner or operator up to a maximum amount of two hundred thousand dollars:

(6) (a) The fee for filing an air pollutant emission notice or amendment thereto under this section shall be ~~seventy-five dollars for fiscal year 1992-93 and one hundred dollars for fiscal year 1993-94 and thereafter~~ ONE HUNDRED NINETEEN DOLLARS AND NINETY-SIX CENTS. The moneys collected pursuant to this section shall be transmitted to the state treasurer who shall credit the same to the stationary sources control fund.

SECTION 3. 25-7-114.7 (2) (a) (I) (A), (2) (a) (I) (B), (2) (a) (III), (2) (a) (VI), (2) (b), and (2) (c), Colorado Revised Statutes, are amended to read:

25-7-114.7. Emission fees - fund. (2) (a) (I) The commission shall designate by rule and regulation those classes of sources of air pollution which are exempt from the requirement to pay an annual emission fee. Every owner or operator of an air pollution source not otherwise exempt in accordance with such commission rules and regulations shall pay an annual fee as follows:

(A) For fiscal years ~~1996-97~~ 2001-02 and thereafter, ~~fourteen dollars and ninety-eight cents~~ SEVENTEEN DOLLARS AND NINETY-SEVEN CENTS per ton of regulated pollutant reported in the most recent air pollution emission notice on file with the division; ~~Such fee may be increased by the executive director for fiscal year 1997-98 by an amount equal to the annual authorized increase in the division's direct personnel salary costs for the regulation of stationary sources for such fiscal year as incorporated and enacted in the annual general appropriation act for such fiscal year.~~

(B) FOR FISCAL YEARS 2001-02 AND THEREAFTER, in addition to the annual fee set forth in sub-subparagraph (A) of this subparagraph (I), for hazardous air pollutants, including ozone depleting substances, an annual fee of ~~fifty dollars per ton in fiscal year 1992-93, seventy-five dollars per ton in fiscal year 1993-94, and one hundred dollars per ton in fiscal year 1994-95 and thereafter~~ ONE HUNDRED NINETEEN DOLLARS AND NINETY-SIX CENTS PER TON;

(III) Every owner or operator subject to the requirements of paying fees set forth in subparagraph (I) of this paragraph (a) shall also pay a processing fee for the costs of processing any application other than an air pollution emission notice under this article. Every federal facility submitting a land management plan or an equivalent planning document to the commission pursuant to section 25-7-106 (8) (b) shall pay a fee for costs of evaluating such documents. The division shall assess a fee for work it performs up to a maximum of thirty hours at a rate of ~~fifty dollars~~ FIFTY-NINE DOLLARS AND NINETY-EIGHT CENTS per hour. If the division requires more than thirty hours to process the application or evaluate the land management plan or equivalent documents, the fee paid by the applicant shall not exceed ~~one thousand five hundred~~ THREE THOUSAND dollars, unless the division has informed the source that the respective billings may exceed ~~one thousand five hundred~~ THREE THOUSAND dollars and has provided the source with an estimate of what the actual charges may be prior to commencing the work.

(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~~ FIFTY-NINE DOLLARS AND NINETY-EIGHT CENTS per hour unless the owner or operator proposing the voluntary agreement consents to a greater fee in writing.

(b) (I) 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 REMAIN IN THE FUND AND SHALL NOT revert to the general fund OR TO ANY OTHER FUND.

(II) OF THE PORTION OF FEE REVENUE ATTRIBUTABLE TO THE INCREASES ENACTED DURING THE FIRST REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY, THE DEPARTMENT SHALL ALLOCATE ONE HUNDRED FIFTY THOUSAND DOLLARS PER YEAR FOR THE PURPOSE OF MODERNIZING AND MAINTAINING THE COMPUTER SYSTEM USED FOR THE ADMINISTRATION OF THE STATIONARY SOURCE PROGRAMS SO AS TO MAKE THE OVERALL SYSTEM MORE EFFICIENT, AND SEVENTY THOUSAND DOLLARS FOR THE PURPOSE OF ENHANCING LOCAL HEALTH DEPARTMENT PARTICIPATION IN AIR QUALITY CONTROL ACTIVITIES. THE DEPARTMENT MAY REALLOCATE MONEYS BETWEEN THESE TWO PURPOSES AS REASONABLY NECESSARY SO LONG AS THE TOTAL AMOUNT DEVOTED TO SUCH PURPOSES REMAINS AT TWO HUNDRED TWENTY THOUSAND DOLLARS ANNUALLY.

(c) The general assembly by bill ~~shall~~ MAY annually adjust the fees established in this section AND IN SECTION 25-7-114.1 as necessary to cover the reasonable costs, both direct and indirect, of the stationary source program and to assure that adequate personnel and funding will be available to administer the permit program.

SECTION 4. Appropriation - adjustments in long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the stationary sources control fund created in section 25-7-114.7 (2) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for allocation to the air pollution control division, for the fiscal year beginning July 1, 2001, the sum of two hundred twenty thousand dollars (\$220,000), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made from the stationary

sources control fund created in section 25-7-114.7 (2) (b), Colorado Revised Statutes, to the department of public health and environment, in the annual general appropriation act for the fiscal year beginning July 1, 2001, shall be adjusted as follows:

(a) The appropriation to administration and support, personal services, is increased by six thousand one hundred seventy-four dollars (\$6,174).

(b) The appropriation to laboratory and radiation services, chemistry and microbiology, is increased by one thousand eight hundred seventy-nine dollars (\$1,879).

(c) The appropriation to laboratory and radiation services, director's office, is increased by two thousand nine hundred seventy-six dollars (\$2,976).

(d) The appropriation to air quality control division, administration, personal services, is increased by seven thousand seventeen dollars (\$7,017).

(e) The appropriation to air quality control division, technical services, air quality monitoring, personal services, is increased by four thousand eight hundred fourteen dollars (\$4,814).

(f) The appropriation to air quality control division, technical services, air quality monitoring, local contracts, is increased by six hundred ninety-five dollars (\$695).

(g) The appropriation to air quality control division, technical services, modeling and analysis, personal services, is increased by four thousand three hundred seventy-four dollars (\$4,374).

(h) The appropriation to air quality control division, technical services, modeling and analysis, operating expenses, is increased by eight hundred twenty-six dollars (\$826).

(i) The appropriation to air quality control division, technical services, visibility and risk assessment, personal services, is increased by twelve thousand five hundred one dollars (\$12,501).

(j) The appropriation to air quality control division, stationary sources, inventory and support services, personal services, is increased by fifty-four thousand six hundred twenty-five dollars (\$54,625).

(k) The appropriation to air quality control division, stationary sources, inventory and support services, operating expenses, is increased by sixteen thousand three hundred twenty dollars (\$16,320).

(l) The appropriation to air quality control division, stationary sources, permits and compliance assurance, personal services, is increased by one hundred thirty thousand eight hundred twenty-five dollars (\$130,825).

(m) The appropriation to air quality control division, stationary sources, permits and compliance assurance, operating expenses, is increased by two thousand one

hundred thirty-eight dollars (\$2,138).

(n) The appropriation to air quality control division, stationary sources, permits and compliance assurance, local contracts, is increased by six thousand three hundred fifty-three dollars (\$6,353).

(o) The appropriation to air quality control division, stationary sources, hazardous and toxic control, personal services, is increased by thirty-five thousand two hundred forty dollars (\$35,240).

(p) The appropriation to air quality control division, stationary sources, hazardous and toxic control, operating expenses, is increased by one thousand seven hundred eighty dollars (\$1,780).

(q) The appropriation to air quality control division, stationary sources, hazardous and toxic control, preservation of the ozone layer, is increased by two thousand one hundred forty-three dollars (\$2,143).

SECTION 5. Effective date - applicability. This act shall take effect upon passage and shall apply to fees that are due on or after July 1, 2001.

SECTION 6. 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 30, 2001