

CHAPTER 304

HEALTH AND ENVIRONMENT

SENATE BILL 01-214

BY SENATOR(S) Dyer (Durango), Dyer (Arapahoe), Hillman, May, Reeves, and Taylor;
also REPRESENTATIVE(S) Hoppe, Alexander, Rippy, and Young.

AN ACT

CONCERNING THE APPLICATION OF STATE AIR QUALITY STANDARDS TO THE USE OF PRESCRIBED FIRE FOR
MANAGEMENT ACTIVITIES WITHIN THE STATE, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 25-7-106 (7) and (8), Colorado Revised Statutes, are amended to read:

25-7-106. Commission - additional authority. (7) (a) ~~With respect to federal property and facilities and all federal activities resulting, or which may result, in the discharge of air pollutants,~~ The commission is specifically authorized and directed to DEVELOP A PROGRAM TO apply and enforce every relevant provision of the state implementation plan and every relevant emission control ~~including~~ STRATEGY TO MINIMIZE EMISSIONS, INCLUDING THE IMPACTS OF ACTIONS BY SIGNIFICANT USERS OF PRESCRIBED FIRE, INCLUDING FEDERAL, STATE, AND LOCAL GOVERNMENT, AND PRIVATE LAND MANAGERS THAT ARE SIGNIFICANT USERS OF PRESCRIBED FIRE. THE PROGRAM DEVELOPED BY THE COMMISSION UNDER THIS SUBSECTION (7) SHALL INCLUDE, BUT NOT BE LIMITED TO, the imposition of any ~~fee pursuant to sections 25-7-114.1 and 25-7-114.7 or penalty pursuant to section 25-7-122, that applies to private and nonfederal governmental property and facilities within the state of Colorado,~~ FEES NECESSARY TO ADMINISTER THE PROGRAM, including the recovery of costs by the state for the evaluation of ~~land management plans~~ PLANNING DOCUMENTS pursuant to subsection (8) of this section, ~~The provisions of this section and section 25-7-123 shall not apply to United States and Colorado military facilities, property, activities, and installations~~ AND THE IMPOSITION OF PENALTIES PURSUANT TO SECTION 25-7-122.

(b) The general assembly hereby finds, determines, and declares that the ~~recommendations of the Grand Canyon visibility transport commission~~ COMMISSION'S

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

RECOMMENDATIONS for improving western vistas REPORT identified ~~natural~~ THE EMISSIONS FROM FIRE, BOTH WILDFIRE and prescribed fires, as ~~having~~ LIKELY TO HAVE the single greatest impact on visibility at class I areas through the year 2040. ~~and that other~~ THE EMISSIONS FROM FIRE, BOTH WILDFIRE AND PRESCRIBED FIRE, ARE AN IMPORTANT EPISODIC CONTRIBUTOR TO VISIBILITY IMPAIRING AEROSOLS. THE GRAND CANYON VISIBILITY TRANSPORT COMMISSION REPORT IDENTIFIED THAT significant amounts of visibility impairment result from activities on federal lands, from mobile sources, and from Mexico.

(c) ~~The only major source of visibility impairment~~ GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT EMISSIONS FROM GRASSLAND AND FOREST FIRES HAVE SUBSTANTIAL EPISODIC IMPACTS ON AMBIENT AIR QUALITY THROUGHOUT THE STATE AND ARE A MAJOR SOURCE OF VISIBILITY IMPAIRMENT over which this state has jurisdiction but has not yet developed a comprehensive program to reduce such impairment. ~~is the emissions from activities managed by federal land management agencies; therefore,~~

(d) THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT THE STANDARD IN ITS STATEMENT OF LEGISLATIVE PURPOSE IN SECTION 25-7-102 OF THE "COLORADO AIR POLLUTION PREVENTION AND CONTROL ACT" REQUIRING THE USE OF ALL PRACTICAL METHODS THAT ARE TECHNOLOGICALLY FEASIBLE AND ECONOMICALLY REASONABLE SO AS TO REDUCE, PREVENT, AND CONTROL AIR POLLUTION IS AN APPROPRIATE STANDARD TO APPLY IN RELATION TO AIR POLLUTION EMISSIONS RESULTING FROM THE USE OF PRESCRIBED FIRE IN GRASSLAND AND FOREST MANAGEMENT.

(e) This subsection (7) ~~is~~ AND SUBSECTION (8) OF THIS SECTION ARE adopted pursuant to section 118 of the federal act and shall be construed to exercise the full extent of the state's authority as granted by the provisions of said federal act. ~~with regard to pollution coming from federal facilities. The general assembly further finds, determines, and declares that~~ The federal government, as the only landowner of its size in the state and the only landowner in the state other than the state government itself that routinely prepares ~~comprehensive land management~~ plans involving the ~~clearing of forest undergrowth by~~ MANAGEMENT OF GRASSLAND AND FOREST LANDS USING PRESCRIBED fire, is appropriately subject to the requirements of this section pertaining to review and approval of ~~land management plans~~ PLANNING DOCUMENTS.

(f) PERSONS OWNING OR MANAGING LARGE PARCELS OF LAND WHO SIGNIFICANTLY USE PRESCRIBED FIRE AS A GRASSLAND OR FOREST MANAGEMENT TOOL SHALL PREPARE PLANS ADDRESSING THE USE AND ROLE OF PRESCRIBED FIRE AND THE AIR QUALITY IMPACTS RESULTING THEREFROM, AND THAT SUCH PLANS ARE APPROPRIATELY SUBJECT TO THE REVIEW REQUIREMENTS OF THIS SECTION. The state, by reviewing ~~federal land management~~ THESE TYPES OF plans, can achieve significant progress towards cooperatively reducing emissions from those lands ~~which~~ THAT impact visibility in Colorado.

~~(e)~~(g) As used in this subsection (7) and in subsection (8) of this section, the ~~terms "federal property and facilities" and "federal activities" do not include property, facilities, or activities of nonfederal parties on federal lands.~~ TERM "SIGNIFICANT USER OF PRESCRIBED FIRE" MEANS A FEDERAL, STATE, OR LOCAL AGENCY OR SIGNIFICANT MANAGEMENT UNIT THEREOF OR PERSON THAT COLLECTIVELY MANAGES OR OWNS

MORE THAN TEN THOUSAND ACRES OF GRASSLANDS OR FOREST LANDS WITHIN THE STATE OF COLORADO AND THAT USES PRESCRIBED FIRE. THE ADOPTION OF A FIRE MANAGEMENT PLAN BY A LOCAL OR COUNTY UNIT OF GOVERNMENT PURSUANT TO SECTION 30-11-124, C.R.S., DOES NOT CONSTITUTE MANAGEMENT FOR PURPOSES OF THIS SECTION UNLESS THE COUNTY OR LOCAL UNIT OF GOVERNMENT OWNS OR MANAGES MORE THAN TEN THOUSAND ACRES AND IS A SIGNIFICANT USER OF PRESCRIBED FIRE. "PRESCRIBED FIRE" MEANS FIRE THAT IS INTENTIONALLY USED FOR GRASSLAND OR FOREST MANAGEMENT, REGARDLESS OF WHETHER THE FIRE IS CAUSED BY NATURAL OR HUMAN SOURCES. PRESCRIBED FIRE DOES NOT INCLUDE OPEN BURNING IN THE COURSE OF AGRICULTURAL OPERATIONS AND DOES NOT INCLUDE OPEN BURNING FOR THE PURPOSE OF MAINTAINING WATER CONVEYANCE STRUCTURES, UNLESS THE COMMISSION ACTS PURSUANT TO SECTION 25-7-123. THE COMMISSION SHALL BY RULE EXEMPT FROM THE PROGRAM DEVELOPED PURSUANT TO THIS SUBSECTION (7) THOSE SOURCES THAT HAVE AN INSIGNIFICANT IMPACT ON VISIBILITY AND AIR QUALITY.

(8) (a) The commission, in exercising the powers conferred by subsection (7) of this section and this subsection (8), shall require all ~~federal facilities~~, SIGNIFICANT USERS OF PRESCRIBED FIRE, including FEDERAL AGENCIES FOR activities directly conducted by or on behalf of federal agencies on federal lands, to minimize emissions using all available, practicable methods that are technologically feasible and economically reasonable in order to minimize the impact or reduce the potential for such impact on both the attainment and maintenance of national ambient air quality standards and the achievement of federal and state visibility goals.

(b) (I) In order to ensure compliance with the requirements of paragraph (a) of this subsection (8), ~~federal land managers with jurisdiction over federal properties and facilities within Colorado~~ SIGNIFICANT USERS OF PRESCRIBED FIRE shall submit ~~land management plans or equivalent~~ planning documents to the commission. The commission shall then conduct a public hearing ~~on those elements of the land management plan~~ TO REVIEW EACH PLANNING DOCUMENT SUBMITTED relevant to achieving the goal of minimizing emissions AND IMPACTS as set forth in ~~said~~ paragraph (a) OF THIS SUBSECTION (8). ONLY ONE HEARING SHALL BE HELD FOR EACH PLANNING DOCUMENT. THE COMMISSION SHALL HOLD A HEARING AND COMPLETE ITS REVIEW OF THE PLANNING DOCUMENTS SUBMITTED BY ANY SIGNIFICANT USER OF PRESCRIBED FIRE WITHIN FORTY-FIVE DAYS OF THEIR RECEIPT BY THE COMMISSION, UNLESS OTHERWISE AGREED TO BY THE SIGNIFICANT USER OF PRESCRIBED FIRE.

(II) As used in this paragraph (b), "~~equivalent~~ planning documents" means documents that summarize the ~~elements of a land management plan that are relevant to the~~ USE OF PRESCRIBED FIRE AS A GRASSLAND OR FOREST MANAGEMENT TOOL AND THE ASSOCIATED discharge or release of air pollution and THAT demonstrate how compliance with the state standard EXPRESSED IN SECTION 25-7-102 shall be achieved. "PLANNING DOCUMENTS" SHALL INCLUDE LAND MANAGEMENT PLANS OR A SUMMARY OF THE EQUIVALENT INFORMATION THAT EXPLAINS AND SUPPORTS THE LAND MANAGEMENT CRITERIA EVALUATED AND THE DECISION TO USE PRESCRIBED FIRE AS THE FUEL TREATMENT METHOD. PLANNING DOCUMENTS SHALL INCLUDE A DISCUSSION OF THE ALTERNATIVES CONSIDERED AND A DISCUSSION OF HOW PRESCRIBED FIRE, IF SELECTED, MINIMIZES THE RISK OF WILDFIRE.

(III) The commission shall have discretion to adopt rules governing the

resubmission of ~~land management plans or equivalent~~ planning documents to prevent such plans from becoming outdated.

(c) Following a public hearing, the commission shall comment and make recommendations to the ~~federal land manager~~ SIGNIFICANT USER OF PRESCRIBED FIRE regarding any changes to elements of the ~~land management~~ plan relating to the discharge or release of air pollutants that the commission finds necessary to comply with the state standard EXPRESSED IN SECTION 25-7-102.

SECTION 2. 25-7-114.7 (2) (a) (III), Colorado Revised Statutes, is amended to read:

25-7-114.7. Emission fees - fund. (2) (a) (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 SIGNIFICANT USER OF PRESCRIBED FIRE, INCLUDING federal ~~facility~~ FACILITIES, 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 per hour. If the division requires more than thirty hours to process the application or evaluate the ~~land management plan or equivalent~~ PRESCRIBED FIRE-RELATED PLANNING documents, the fee paid by the applicant shall not exceed one thousand five hundred dollars, unless the division has informed the source that the respective billings may exceed one thousand five hundred dollars and has provided the source with an estimate of what the actual charges may be prior to commencing the work.

SECTION 3. 25-7-123 (1) (b) and (1) (c), Colorado Revised Statutes, are amended to read:

25-7-123. Open burning - penalties. (1) (b) Open burning in the course of agricultural operations may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning. For purposes of this section, "agricultural operations" does not include GRASSLAND, forest, ~~management~~ or habitat management activities of ~~federal or state land managers and such~~ SIGNIFICANT USERS OF PRESCRIBED FIRE CONDUCTED ON LANDS THE PRIMARY PURPOSE OF WHICH IS NONAGRICULTURAL, UNLESS A PERSON ASSERTS AND THE COMMISSION FINDS THAT THE ABSENCE OF REGULATION WOULD SUBSTANTIALLY IMPEDE THE OBJECTIVES OF THIS ARTICLE. SUCH activities shall be deemed "commercial purposes" within the meaning of paragraph (b) of subsection (3) of this section.

(c) No permit shall be issued by the division pursuant to paragraph (a) of subsection (2) of this section after ~~January 1, 2001~~; JULY 1, 2002, unless such permit is consistent with the comments and recommendations of the commission concerning the ~~land management plan or equivalent~~ planning document, as defined in section 25-7-106 (8) (b) (II), applicable to the area to be burned; except that permit conditions may be excluded from a permit if a ~~federal land manager asserts~~

SIGNIFICANT USER OF PRESCRIBED FIRE DEMONSTRATES AND THE STATE FINDS that such conditions are ~~specifically prohibited by federal statute and if the division determines that such assertion is correct~~ INCONSISTENT WITH APPLICABLE LAW. The division shall report all such exclusions, within thirty days after they are granted, to the governor and to the director of the legislative council. In no event shall a permit be issued unless a ~~land management plan or equivalent~~ planning document for the area to be burned has been submitted ~~on or before July 1, 2000~~, to the commission for review, public hearing, and comment in accordance with section 25-7-106 (8). The commission shall adopt rules to provide for exceptions from the requirements of ~~said section where~~ SECTION 25-7-106 (8) WHEN immediate issuance of a permit is necessary to protect the public health and safety.

SECTION 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the stationary sources control cash fund, to the department of public health and environment, for allocation to the division of administration and support, for the fiscal year beginning July 1, 2001, the sum of fifty thousand eight hundred sixty-eight dollars (\$50,868) and 0.4 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2001, the sum of twenty-five thousand six hundred seventy-three dollars (\$25,673) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from cash funds exempt received from the department of public health and environment out of the appropriation made in subsection (1) of this section.

SECTION 5. Effective date. This act shall take effect 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: June 5, 2001