

CHAPTER 159

HEALTH AND ENVIRONMENT

HOUSE BILL 04-1147

BY REPRESENTATIVE(S) Hall, Brophy, Briggs, Hoppe, Johnson R., King, McCluskey, Rose, Cadman, Crane, Decker, Frangas, Hefley, Miller, Mitchell, Rippey, Welker, Williams T., and Young;
also SENATOR(S) Hillman, Evans, Fitz-Gerald, Groff, Grossman, Hanna, Isgar, Keller, Lamborn, Phillips, Reeves, Sandoval, Tapia, Taylor, Teck, and Veiga.

AN ACT

CONCERNING THE CREATION OF AN ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PILOT PROGRAM.

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

SECTION 1. Title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 6.6**Environmental Management System Permit Program**

25-6.6-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PROGRAM".

25-6.6-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT WHILE COLORADO'S EXISTING ENVIRONMENTAL LAWS PLAY AN IMPORTANT ROLE IN PROTECTING THE ENVIRONMENT, ENVIRONMENTAL PROTECTION COULD BE FURTHER ENHANCED BY AUTHORIZING INNOVATIVE ADVANCES IN ENVIRONMENTAL REGULATORY METHODS AND APPROACHES. THE GENERAL ASSEMBLY FINDS THAT COLORADO SHOULD PROMOTE AND DEVELOP ENVIRONMENTAL REGULATORY APPROACHES THAT:

(a) ENCOURAGE FACILITY OWNERS AND OPERATORS TO ASSESS THE ENVIRONMENTAL IMPACT OF THEIR OPERATIONS;

(b) ENCOURAGE INNOVATION BY AND MEASURE SUCCESS THROUGH FACILITY OWNERS AND OPERATORS SETTING MEASURABLE GOALS;

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

(c) PROVIDE FACILITY OWNERS AND OPERATORS WITH FLEXIBILITY TO IMPLEMENT THE MOST EFFECTIVE POLLUTION PREVENTION, SOURCE REDUCTION, OR OTHER POLLUTION REDUCTION STRATEGIES FOR THEIR PARTICULAR FACILITIES, WHILE COMPLYING WITH VERIFIABLE AND ENFORCEABLE POLLUTION LIMITS;

(d) ENCOURAGE SUPERIOR ENVIRONMENTAL PERFORMANCE, CONTINUOUS IMPROVEMENT TOWARD SUSTAINABLE LEVELS OF RESOURCE USAGE, AND MINIMAL LEVELS OF POLLUTION DISCHARGES, EMISSIONS, AND RELEASES;

(e) RECOGNIZE FACILITY OWNERS AND OPERATORS THAT ARE CONSIDERED ENVIRONMENTAL LEADERS AND THAT REDUCE POLLUTION TO LEVELS BELOW WHAT IS REQUIRED BY APPLICABLE LAW, THROUGH PARTICIPATION IN THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PROGRAM;

(f) CONSOLIDATE ENVIRONMENTAL REQUIREMENTS INTO ONE PERMIT, WHILE RESPECTING LOCAL AGENCY JURISDICTION AND ENCOURAGING LOCAL AGENCIES TO PARTICIPATE, AND ALLOW FACILITY OWNERS AND OPERATORS TO MAKE ENVIRONMENTAL DECISIONS BASED UPON ALL ENVIRONMENTAL CONSIDERATIONS;

(g) REDUCE THE TIME AND MONEY SPENT BY AGENCIES AND FACILITY OWNERS AND OPERATORS ON PAPERWORK AND OTHER ADMINISTRATIVE TASKS THAT DO NOT BENEFIT THE ENVIRONMENT, INCLUDING STREAMLINING PERMIT, RECORD-KEEPING, AND REPORTING REQUIREMENTS;

(h) INCREASE PUBLIC PARTICIPATION AND ENCOURAGE STAKEHOLDER CONSENSUS IN THE DEVELOPMENT OF INNOVATIVE ENVIRONMENTAL REGULATORY APPROACHES AND METHODS FOR MONITORING THE ENVIRONMENTAL PERFORMANCE OF PROJECTS PURSUANT TO THIS TITLE;

(i) ENCOURAGE GROUPS OF FACILITIES AND COMMUNITIES TO WORK TOGETHER TO REDUCE POLLUTION TO LEVELS BELOW WHAT IS REQUIRED BY APPLICABLE LAW;

(j) PROVIDE REASONABLE ASSISTANCE TO FACILITATE MEANINGFUL STAKEHOLDER PARTICIPATION; AND

(k) INCREASE UNDERSTANDING AND TRANSPARENCY OF ENVIRONMENTAL LAWS AND PROMOTE COMMUNICATION AMONG AGENCIES, REGULATED ENTITIES, AND THE PUBLIC.

25-6.6-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(2) "ENVIRONMENTAL PERMIT" MEANS A PERMIT ISSUED PURSUANT TO ARTICLE 20.5 OF TITLE 8, C.R.S., ARTICLES 7, 8, 11, AND 15 OF THIS TITLE OR ARTICLE 20 OF TITLE 30, C.R.S., OR RULES PROMULGATED UNDER SUCH PROVISIONS, AND MAY ALSO INCLUDE PERMITS ISSUED PURSUANT TO LOCAL GOVERNMENT AUTHORITY, WITH THE CONSENT OF SUCH LOCAL GOVERNMENT AUTHORITY.

(3) "ENVIRONMENTAL REQUIREMENT" MEANS A REQUIREMENT IN A LAW ADMINISTERED BY THE DEPARTMENT, A RULE ADOPTED BY A STATUTORILY DESIGNED STATE BOARD OR COMMISSION, A PERMIT OR ORDER ISSUED BY THE DEPARTMENT, OR AN AGREEMENT ENTERED INTO WITH THE DEPARTMENT.

25-6.6-104. Powers and duties of the department. (1) THE DEPARTMENT IS AUTHORIZED TO IMPLEMENT A VOLUNTARY ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PROGRAM, WHICH SHALL BE A PILOT PROGRAM UNTIL MAY 15, 2007, THAT ALLOWS A LIMITED NUMBER OF PARTICIPANTS AS DETERMINED BY THE DEPARTMENT TO OBTAIN AN ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT. THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT SHALL ALLOW PARTICIPANTS TO MEET EXISTING ENVIRONMENTAL STANDARDS OF A LAW, RULE, ORDER, OR PERMIT RELATED TO THE CONTROL OR ABATEMENT OF POLLUTION THROUGH THE USE OF ALTERNATIVE METHODS AND PROCEDURES WHILE ENSURING COMPLIANCE WITH AN ESTABLISHED AMBIENT AIR OR WATER STANDARD. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE A PARTICIPANT TO EXCEED AN ESTABLISHED AMBIENT AIR OR WATER STANDARD.

(2) NOTWITHSTANDING THE PROVISIONS OF SECTION 25-1-102, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT HAS THE SOLE AUTHORITY TO PROMULGATE AND AMEND RULES, TO THE EXTENT THAT SUCH RULES AND AMENDMENTS TO THE RULES ARE CONSISTENT WITH FEDERAL LAW, IN ORDER TO SPECIFY THE PROCEDURES AND OTHER NECESSARY REQUIREMENTS FOR ISSUING, IMPLEMENTING, REVOKING, AND ENFORCING AN ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT AND TO ESTABLISH ALTERNATIVE METHODS OR PROCEDURES FOR MEETING ENVIRONMENTAL STANDARDS. THE PROCEDURES OUTLINED IN THE RULES SHALL INCLUDE THE OPPORTUNITY FOR PUBLIC NOTICE AND COMMENT.

(3) THE DEPARTMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING ELEMENTS IN THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT:

- (a) THE ELEMENTS OF AN ENVIRONMENTAL MANAGEMENT SYSTEM;
- (b) A REQUIREMENT AND CRITERIA FOR AUDITS OF THE ENVIRONMENTAL MANAGEMENT SYSTEM;
- (c) A REQUIREMENT AND CRITERIA FOR ENVIRONMENTAL COMPLIANCE AUDITS;
- (d) A REQUIREMENT AND CRITERIA FOR REPORTING A SUMMARY OF THE RESULTS OF THE ENVIRONMENTAL COMPLIANCE AUDITS;
- (e) ENVIRONMENTAL PERFORMANCE STANDARDS AND LIMITS;
- (f) A REQUIREMENT THAT PROGRAM PARTICIPANTS COMMIT TO MEASURABLE ENVIRONMENTAL BENEFITS AND CONTINUAL ENVIRONMENTAL IMPROVEMENT;
- (g) MONITORING, REPORTING, AND RECORD-KEEPING REQUIREMENTS;
- (h) THE ABILITY FOR AN ANALYSIS AND CONSIDERATION OF ALL ENVIRONMENTAL IMPACTS IN DEVELOPING ENVIRONMENTAL REQUIREMENTS;

(i) A REQUIREMENT FOR COMMUNITY INVOLVEMENT AND A COMMUNICATIONS PLAN; AND

(j) PROCEDURES THAT REDUCE OTHERWISE REQUIRED PERMIT MODIFICATION PROCEDURAL REQUIREMENTS.

(4) THE DEPARTMENT SHALL ESTABLISH THE MINIMUM CRITERIA THAT AN ENTITY SHALL MEET IN ORDER FOR THE ENTITY TO BE CONSIDERED FOR PARTICIPATION IN THE PROGRAM. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, AN IDENTIFIED NUMBER OF YEARS WITH NO SERIOUS ENVIRONMENTAL CIVIL NONCOMPLIANCE, AN IDENTIFIED NUMBER OF YEARS WITHOUT ANY ENVIRONMENTAL CRIMINAL NONCOMPLIANCE, AND A DEMONSTRATION THAT THE PARTICIPATING ENTITY IS AN ENVIRONMENTAL LEADER IN COLORADO.

(5) THE DEPARTMENT SHALL DEVELOP AND MAKE AVAILABLE TO THE PUBLIC INFORMATION ON ANY ALTERNATIVE MONITORING, RECORD KEEPING, REPORTING, METHOD, OR CONDITION THAT THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PRESCRIBES AND ANY OTHER INCENTIVE PROVIDED TO THE APPLICANT WITHIN THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT.

(6) AN ENTITY SUBJECT TO AN ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT SHALL BE SUBJECT TO THE SAME FEE PROVISIONS AS OTHER EXISTING PERMITS, UNLESS THE DEPARTMENT REDUCES THE FEE AS AN OPERATIONAL FLEXIBILITY INCENTIVE. THE DEPARTMENT IS AUTHORIZED TO EXERCISE SUCH FLEXIBILITY.

(7) THE DEPARTMENT SHALL ESTABLISH PERFORMANCE MEASURES, INCLUDING PUBLIC NOTICE AND COMMENT, TO ASSESS THE PILOT PROGRAM'S PERFORMANCE AFTER PUBLIC NOTICE AND COMMENT.

25-6.6-105. Enforcement - self-audit - review. (1) THE DEPARTMENT IS AUTHORIZED TO ENTER AND INSPECT ANY PROPERTY, PREMISES, OR PLACE, AND ALL FACILITIES, ON- OR OFF-SITE, THAT IS OR ARE COVERED BY AN ENVIRONMENTAL MANAGEMENT PERMIT OR WHERE RELEVANT DOCUMENTS MAY BE LOCATED, FOR THE PURPOSE OF INVESTIGATING ANY ACTUAL, SUSPECTED, OR POTENTIAL SOURCE OF POLLUTION OR ASCERTAINING COMPLIANCE OR NONCOMPLIANCE WITH ANY REQUIREMENT OF THIS ARTICLE, ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE, OR ANY PERMIT ISSUED PURSUANT TO THIS ARTICLE. THE DEPARTMENT MAY, AT REASONABLE TIMES, HAVE ACCESS TO AND COPY ANY RECORD, INSPECT ANY MONITORING EQUIPMENT OR METHOD, OR SAMPLE ANY EMISSIONS OR WASTES, INCLUDING MIXTURES OF WASTE WITH ENVIRONMENTAL MEDIA OR OTHER MATERIALS REQUIRED PURSUANT TO THIS ARTICLE; EXCEPT THAT, IF THE PERMIT HOLDER DENIES OR DOES NOT CONSENT SUCH ENTRY OR INSPECTION, THE DEPARTMENT HAS THE AUTHORITY TO SEEK A WARRANT FROM A COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY, PREMISES, OR PLACE IS LOCATED PRIOR TO INSPECTION. THE COURT SHALL ISSUE SUCH A WARRANT UPON A PROPER SHOWING OF THE NEED FOR SUCH ENTRY AND INSPECTION. ANY TRADE SECRETS AND PROPRIETARY INFORMATION OBTAINED IN THE COURSE OF THE INSPECTION OR INVESTIGATION SHALL BE KEPT CONFIDENTIAL UNLESS THE PERMIT HOLDER CONSENTS TO THE RELEASE OF THE INFORMATION; EXCEPT THAT INFORMATION REQUIRED TO BE MADE AVAILABLE TO THE DEPARTMENT PURSUANT TO ANY OTHER LAW SHALL NOT BE CONFIDENTIAL. THE DEPARTMENT SHALL PROVIDE A PERMIT HOLDER WITH A DUPLICATE OF ANY

ANALYTICAL REPORT OR OBSERVATION OF A POLLUTANT MADE BY THE DEPARTMENT. IF SAMPLES ARE TAKEN, THE PERMITTEE SHALL BE ENTITLED TO A RECEIPT FOR SUCH SAMPLES. UPON REQUEST OF THE PERMIT HOLDER, THE DEPARTMENT SHALL PROVIDE THE PERMIT HOLDER WITH A SUFFICIENT SAMPLE SO THAT THE PERMIT HOLDER MAY PERFORM ITS OWN TEST.

(2) IN ADDITION TO THE RIGHTS OF ENTRY AND INSPECTION BY THE DEPARTMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE TERMS AND CONDITIONS OF THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT SHALL BE ENFORCED IN ANY MANNER PROVIDED BY LAW FOR THE ENFORCEMENT OF PERMITS ISSUED PURSUANT TO DEPARTMENT RULES. APPEALS OF INITIAL DETERMINATIONS SHALL BE MADE TO THE EXECUTIVE DIRECTOR OR A DESIGNATED HEARING OFFICER IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S.

(3) THIS SECTION SHALL NOT BE INTERPRETED TO EXCLUDE A PARTICIPANT IN THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PROGRAM THAT PERFORMS AN AUDIT AS REQUIRED BY THE PROGRAM FROM EXERCISING OR APPLYING ANY RIGHTS OR PRIVILEGES GRANTED IN SECTION 13-25-126.5, C.R.S., AND SECTIONS 25-1-114.5 AND 25-1-114.6.

(4) THE DEPARTMENT, IN CONSULTATION WITH INTERESTED PARTIES, INCLUDING APPLICABLE ENVIRONMENTAL BOARDS AND COMMISSIONS, SHALL REVIEW THE PILOT PERMIT PROGRAM TO ASSESS ITS EFFECTIVENESS IN IMPROVING, ENHANCING, AND PROTECTING THE ENVIRONMENT OF THE STATE, GARNERING RESOURCE EFFICIENCIES, AND DECREASING ADMINISTRATIVE BURDENS. THE DEPARTMENT SHALL REPORT THE RESULTS OF THE REVIEW TO THE GENERAL ASSEMBLY AND THE GOVERNOR ON OR BEFORE JANUARY 1, 2007. THE REPORT SHALL INCLUDE RECOMMENDATIONS CONCERNING WHETHER THE PILOT PROJECT SHOULD BE ALLOWED TO CONTINUE, AND, IF SO, THE RECOMMENDED FORM AND STRUCTURE OF THE PROGRAM.

25-6.6-106. Repeal of article. THIS ARTICLE 6.6 IS REPEALED, EFFECTIVE JULY 1, 2007. PRIOR TO SUCH REPEAL, THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PROGRAM SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

SECTION 2. 24-34-104 (38), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (38) The following agencies, functions, or both, shall terminate on July 1, 2007:

(h) THE ENVIRONMENTAL MANAGEMENT SYSTEM PERMIT PROGRAM CREATED IN ARTICLE 6.6 OF TITLE 25, C.R.S.

SECTION 3. 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: April 19, 2004