

CHAPTER 183

HEALTH AND ENVIRONMENT

SENATE BILL 24-229

BY SENATOR(S) Winter F. and Priola, Buckner, Coleman, Cutter, Exum, Fenberg, Hansen, Jaquez Lewis, Marchman, Michaelson Jenet, Gonzales, Hinrichsen, Kolker;
also REPRESENTATIVE(S) Bacon and Willford, Amabile, Boesenecker, Brown, Clifford, deGruy Kennedy, Daugherty, English, Froelich, Garcia, Hernandez, Herod, Jodeh, Joseph, Kipp, Lindsay, Lindstedt, Marvin, McCluskie, McCormick, Ortiz, Ricks, Rutinel, Story, Titone, Valdez, Velasco, Vigil, Weissman, Woodrow, Bird, Epps, Hamrick, Lukens, Mabrey, Marshall, Parenti, Sirota, Snyder.

AN ACT

CONCERNING MEASURES TO MITIGATE OZONE POLLUTION IN THE STATE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds and determines that:

(a) Emissions of ozone precursors, such as oxides of nitrogen (NO_x) and volatile organic compounds, contribute to the formation of ozone and to public health impacts for individuals exposed to higher levels of air pollution;

(b) Oil and gas activities are among the largest anthropogenic contributors to ozone precursor emissions in the ozone nonattainment area;

(c) Sources of NO_x from upstream oil and gas operations present significant opportunities to reduce ozone precursors and improve public health;

(d) Residents of disproportionately impacted communities in the ozone nonattainment area may be exposed to higher levels of NO_x than other Coloradans;

(e) The air quality control commission adopted rules in December 2023 designed to achieve a thirty percent reduction in NO_x emissions generated by upstream oil and gas operations, including preproduction operations, by 2025;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(f) Despite efforts to reduce ozone precursor emissions in the ozone nonattainment area, more work is necessary to protect public health;

(g) State agencies cannot improve air quality through regulations alone and need more permitting and enforcement authority to ensure compliance with the state's environmental statutes and rules; and

(h) Transparency for the public regarding the state's efforts is critical.

(2) Therefore, the general assembly declares that:

(a) Both the Colorado department of public health and environment and the energy and carbon management commission need to do more, both together and individually, to address the state's ozone problems;

(b) More accountability for sources of pollution and for the state will build public trust and improve air quality;

(c) The Colorado department of public health and environment's air pollution control division should consider more stringent approaches in the process of conducting dispersion modeling of proposed sources of increased NO_x to better protect residents of disproportionately impacted communities in the ozone nonattainment area;

(d) Further action needs to be taken to require steady, measurable emission reductions from upstream oil and gas operations, including preproduction operations, to ensure the oil and gas industry adequately contributes to ozone precursor pollution reductions; and

(e) The energy and carbon management commission should encourage and facilitate the plugging, abandonment, and remediation of marginal wells to address emissions of ozone precursors from production activities, especially in disproportionately impacted communities.

SECTION 2. In Colorado Revised Statutes, 25-7-109, **add** (10)(d) as follows:

25-7-109. Commission to promulgate emission control regulations.

(10) (d) ON OR BEFORE AUGUST 31, 2026, THE DIVISION SHALL PROPOSE RULES DESIGNED TO REDUCE EMISSIONS OF OXIDES OF NITROGEN (NO_x) GENERATED BY UPSTREAM OIL AND GAS OPERATIONS, AS DEFINED BY THE COMMISSION BY RULE, INCLUDING PREPRODUCTION OPERATIONS, BETWEEN MAY 1 AND SEPTEMBER 30 IN THE EIGHT-HOUR OZONE CONTROL AREA AND NORTHERN WELD COUNTY, AS THOSE TERMS ARE DEFINED BY THE COMMISSION BY RULE, BY FIFTY PERCENT BY 2030 RELATIVE TO 2017 NO_x EMISSION LEVELS. NO_x EMISSION LEVELS ARE CHARACTERIZED BY THE MOST RECENT STATE INVENTORY OF NO_x EMISSIONS FOR 2017 THAT THE COMMISSION ADOPTED FOR THE PURPOSE OF INCLUSION IN THE STATE IMPLEMENTATION PLAN FOR THE 2015 EIGHT-HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARD, OR AS PUBLISHED CONCURRENTLY WITH PROPOSED RULES CONSISTENT WITH THIS SUBSECTION (10)(d) IN A NOTICE OF PROPOSED RULE-MAKING PUBLISHED IN ACCORDANCE WITH SECTION 25-7-110 (1).

SECTION 3. In Colorado Revised Statutes, 25-7-115, **amend** (3)(b)(III) introductory portion and (3)(b)(III)(C); and **add** (3)(b)(III)(C.5), (12), and (13) as follows:

25-7-115. Enforcement - civil actions - definitions - reporting - repeal.
(3) (b) (III) The order ISSUED IN ACCORDANCE WITH SUBSECTION (3)(b)(I) OF THIS SECTION may:

(C) In addition to civil penalties, include a requirement to perform one or more projects to mitigate violations related to excess emissions; **and**

(C.5) IN ADDITION TO CIVIL PENALTIES, INCLUDE A REQUIREMENT TO PERFORM ONE OR MORE PROJECTS TO REDUCE THE POTENTIAL FOR A RECURRENCE OF A VIOLATION FOR WHICH THE DIVISION COMMENCED ENFORCEMENT PURSUANT TO SUBSECTION (2)(c)(I) OF THIS SECTION; AND

(12) (a) (I) ON OR BEFORE DECEMBER 31, 2024, THE DIVISION SHALL PREPARE AN AIR QUALITY ENFORCEMENT BENCHMARK REPORT AND POST THE REPORT ON THE DIVISION'S WEBSITE. THE REPORT MUST COVER THE FEDERAL FISCAL YEARS FROM OCTOBER 1, 2019, THROUGH SEPTEMBER 30, 2023, AND INCLUDE THE FOLLOWING STATEWIDE INFORMATION:

(A) THE TOTAL NUMBER OF ENFORCEMENT ACTIONS THAT THE DIVISION COMMENCED PURSUANT TO SUBSECTION (2)(c)(I) OF THIS SECTION;

(B) THE TOTAL NUMBER OF DECISIONS NOT TO IMPOSE A PENALTY FOR AN ENFORCEMENT ACTION THAT THE DIVISION COMMENCED PURSUANT TO SUBSECTION (2)(c)(I) OF THIS SECTION;

(C) THE TOTAL NUMBER OF ENFORCEMENT ACTIONS THAT THE DIVISION RESOLVED PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION; AND

(D) WITH RESPECT TO CIVIL PENALTIES ASSESSED PURSUANT TO SECTION 25-7-122 (1)(b), THE TOTAL AMOUNT OF CIVIL PENALTIES, THE AVERAGE CIVIL PENALTY, THE MEDIAN CIVIL PENALTY, THE HIGHEST CIVIL PENALTY, AND THE LOWEST CIVIL PENALTY.

(II) THIS SUBSECTION (12)(a) IS REPEALED, EFFECTIVE JULY 1, 2025.

(b) ON OR BEFORE APRIL 1, 2025, AND ON OR BEFORE FEBRUARY 1 OF EACH YEAR THEREAFTER, THE DIVISION SHALL PREPARE AN AIR QUALITY ENFORCEMENT REPORT AND POST THE REPORT ON THE DIVISION'S WEBSITE. THE FIRST REPORT MUST COVER THE FEDERAL FISCAL YEAR STARTING OCTOBER 1, 2023, THROUGH SEPTEMBER 30, 2024, AND EACH SUBSEQUENT REPORT MUST COVER THE FEDERAL FISCAL YEAR PERIOD OF OCTOBER 1 THROUGH SEPTEMBER 30 PRECEDING THE ISSUANCE OF THE REPORT. THE REPORTS PREPARED PURSUANT TO THIS SUBSECTION (12)(b) MUST INCLUDE THE FOLLOWING STATEWIDE INFORMATION:

(I) THE TOTAL NUMBER OF ENFORCEMENT ACTIONS THAT THE DIVISION COMMENCED PURSUANT TO SUBSECTION (2)(c)(I) OF THIS SECTION;

(II) THE NUMBER OF COMPLAINTS RECEIVED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION THAT RESULTED IN AN ENFORCEMENT ACTION THAT THE DIVISION COMMENCED UNDER SUBSECTION (2)(c)(I) OF THIS SECTION AND THE IDENTIFYING CASE NUMBER;

(III) THE TOTAL NUMBER OF DECISIONS NOT TO IMPOSE A PENALTY FOR AN ENFORCEMENT ACTION THAT THE DIVISION COMMENCED PURSUANT TO SUBSECTION (2)(c)(I) OF THIS SECTION;

(IV) THE TOTAL NUMBER OF FORMAL ENFORCEMENT ACTIONS THAT THE DIVISION RESOLVED PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION AND THE TOTAL NUMBER OF ACTIONS THAT INCLUDED VIOLATIONS WITHIN AREAS OF CONCERN, SUCH AS:

(A) THE AREA THAT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS DESIGNATED AN OZONE NONATTAINMENT AREA; AND

(B) AN AREA THAT IS IN A DISPROPORTIONATELY IMPACTED COMMUNITY; AND

(V) WITH RESPECT TO CIVIL PENALTIES ASSESSED PURSUANT TO SECTION 25-7-122 (1)(b), THE TOTAL AMOUNT OF CIVIL PENALTIES, THE AVERAGE CIVIL PENALTY, THE MEDIAN CIVIL PENALTY, THE HIGHEST CIVIL PENALTY, THE LOWEST CIVIL PENALTY, AND THE TOTAL AMOUNT OF CIVIL PENALTIES ASSESSED FOR EACH ACTION THAT INCLUDES VIOLATIONS IN AREAS OF CONCERN, SUCH AS:

(A) THE AREA THAT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS DESIGNATED AN OZONE NONATTAINMENT AREA; AND

(B) AN AREA THAT IS IN A DISPROPORTIONATELY IMPACTED COMMUNITY.

(13) THE DIVISION SHALL IMPLEMENT AN AIR QUALITY ENFORCEMENT E-MAIL MAILING GROUP OR A SIMILAR COMMUNICATION FUNCTION TO SHARE ENFORCEMENT-RELATED UPDATES WITH INTERESTED PARTIES THAT OPT IN TO THE E-MAIL MAILING GROUP OR SIMILAR COMMUNICATION FUNCTION. THE DIVISION MAY SHARE INFORMATION THROUGH THE E-MAIL MAILING GROUP OR SIMILAR COMMUNICATION FUNCTION THAT INCLUDES:

(a) A NOTICE OF VIOLATION OR NONCOMPLIANCE SENT PURSUANT TO SUBSECTION (2)(c)(I) OF THIS SECTION;

(b) A SETTLEMENT OR OTHER ORDER ISSUED PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION TO RESOLVE A CASE; AND

(c) A LINK TO THE ANNUAL AIR QUALITY ENFORCEMENT BENCHMARK REPORT THAT THE DIVISION PREPARES PURSUANT TO SUBSECTION (12) OF THIS SECTION.

SECTION 4. In Colorado Revised Statutes, **amend** 25-7-121 as follows:

25-7-121. Injunctions. (1) In the event any person fails to comply with a final order of the division or the commission that is not subject to stay pending administrative or judicial review or in the event any person violates any emission

control regulation of the commission, the requirements of the state implementation plan, or any provision of OR COMMISSION RULE ADOPTED PURSUANT TO parts 1 to 4 of this ~~article~~ ARTICLE 7, including any term or condition contained in any permit required under this ~~article~~ ARTICLE 7, the division or the commission, as the case may be, may request the district attorney for the district in which the alleged violation occurs or the attorney general to bring, and if so requested it is ~~his or her~~ THE DISTRICT ATTORNEY'S OR THE ATTORNEY GENERAL'S duty to bring, a suit for an injunction to:

(a) Prevent any further or continued violation;

(b) REDUCE THE POTENTIAL FOR A RECURRENCE OF A VIOLATION FOR WHICH THE DIVISION HAS PREVIOUSLY COMMENCED ENFORCEMENT PURSUANT TO SECTION 25-7-115 (2)(c)(I); OR

(c) OBTAIN ANY PERMIT REQUIRED TO CONSTRUCT OR OPERATE.

~~(2) In any proceedings brought pursuant to this section to enforce an order of the division or the commission, a temporary restraining order or preliminary injunction, if sought, shall not issue if there is probable cause to believe that granting such temporary restraining order or preliminary injunction will cause serious harm to the affected person or any other person and:~~

~~(a) That the alleged violation or activity to which the order pertains will not continue or be repeated; or~~

~~(b) That granting such temporary restraining order or preliminary injunction would be without sufficient corresponding public benefit.~~

~~(3) Notwithstanding any other provision in this section, no action for injunction may be taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section 25-7-114.4(3).~~

SECTION 5. In Colorado Revised Statutes, 25-7-122, **amend** (1)(b) introductory portion, (1)(c), (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(VIII), (2)(a)(IX), (2)(b) introductory portion, and (2)(b)(IV); **repeal** (2)(b)(V) and (3); and **add** (2)(a)(X) as follows:

25-7-122. Civil penalties - rules - definitions. (1) Upon application of the division, the division may collect penalties as determined under this article 7 by instituting an action in the district court for the district in which the air pollution source affected is located, in accordance with the following provisions:

(b) Any person who violates any requirement or prohibition of A FINAL ORDER OF THE DIVISION OR COMMISSION, an applicable emission control regulation of the commission, the state implementation plan, a construction permit, any provision for the prevention of significant deterioration under part 2 of this article 7, any provision related to attainment under part 3 of this article 7, or ANY PROVISION OF OR COMMISSION RULE ADOPTED PURSUANT TO section 25-7-105, 25-7-106, 25-7-106.3, 25-7-108, 25-7-109, **25-7-109.5**, 25-7-111, 25-7-112, 25-7-113,

25-7-114.2, 25-7-114.5, 25-7-118, ~~25-7-141~~, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414 is subject to a civil penalty of not more than forty-seven thousand three hundred fifty-seven dollars per day for each day of the violation; except that:

(c) Any person failing to comply with the provisions of section 25-7-114.1 shall be subject to a civil penalty of not more than ~~five hundred~~ ONE THOUSAND dollars PER DAY PER VIOLATION.

(2)(a) In determining the amount of any civil penalty, the division shall consider the following factors:

(I) The violator's compliance history, INCLUDING THE COMPLIANCE HISTORY OF THE VIOLATOR'S CORPORATE AFFILIATES, SUBSIDIARIES, AND PARENT ORGANIZATIONS;

(II) LACK OF good faith efforts on behalf of the violator to comply;

~~(III) Payment by the violator of penalties previously assessed for the same violation~~ WHETHER THE VIOLATOR PREVIOUSLY COMMITTED THE SAME OR A SIMILAR VIOLATION, REGARDLESS OF WHETHER THE DIVISION OR COMMISSION COMMENCED AN ENFORCEMENT ACTION PURSUANT TO SECTION 25-7-115 FOR ANY SUCH VIOLATION;

(VIII) Whether legal and factual theories were advanced for purposes of delay; ~~and~~

(IX) The severity of the violation or noncompliance; AND

(X) WHETHER THE VIOLATION OCCURRED WITHIN OR IMPACTED A DISPROPORTIONATELY IMPACTED COMMUNITY.

(b) In addition to the factors set forth in ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, THE DIVISION SHALL CONSIDER the following circumstances ~~shall be considered~~ as grounds for reducing or eliminating civil penalties:

(IV) Substantial economic impact of a penalty on the violator; AND

(V) Nonfeasance; and

~~(3) Notwithstanding any other provision in this section, no action for civil enforcement of this article may be taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section 25-7-114.4 (3).~~

SECTION 6. In Colorado Revised Statutes, 25-7-122, **amend** (1)(b) introductory portion, (1)(c), (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(VIII), (2)(a)(IX), (2)(b) introductory portion, and (2)(b)(IV); **repeal** (2)(b)(V) and (3); and **add** (2)(a)(X) as follows:

25-7-122. Civil penalties - rules - definitions. (1) Upon application of the division, the division may collect penalties as determined under this article 7 by instituting an action in the district court for the district in which the air pollution source affected is located, in accordance with the following provisions:

(b) Any person who violates any requirement or prohibition of A FINAL ORDER OF THE DIVISION OR COMMISSION, an applicable emission control regulation of the commission, the state implementation plan, a construction permit, any provision for the prevention of significant deterioration under part 2 of this article 7, any provision related to attainment under part 3 of this article 7, or ANY PROVISION OF OR COMMISSION RULE ADOPTED PURSUANT TO section 25-7-105, 25-7-106, 25-7-106.3, 25-7-108, 25-7-109, ~~25-7-109.5~~, 25-7-111, 25-7-112, 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, ~~25-7-141~~, ~~25-7-146~~, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414 is subject to a civil penalty of not more than forty-seven thousand three hundred fifty-seven dollars per day for each day of the violation; except that:

(c) Any person failing to comply with the provisions of section 25-7-114.1 shall be subject to a civil penalty of not more than ~~five hundred~~ ONE THOUSAND dollars PER DAY PER VIOLATION.

(2)(a) In determining the amount of any civil penalty, the division shall consider the following factors:

(I) The violator's compliance history, INCLUDING THE COMPLIANCE HISTORY OF THE VIOLATOR'S CORPORATE AFFILIATES, SUBSIDIARIES, AND PARENT ORGANIZATIONS;

(II) LACK OF good faith efforts on behalf of the violator to comply;

~~(III) Payment by the violator of penalties previously assessed for the same violation~~ WHETHER THE VIOLATOR PREVIOUSLY COMMITTED THE SAME OR A SIMILAR VIOLATION, REGARDLESS OF WHETHER THE DIVISION OR COMMISSION COMMENCED AN ENFORCEMENT ACTION PURSUANT TO SECTION 25-7-115 FOR ANY SUCH VIOLATION;

(VIII) Whether legal and factual theories were advanced for purposes of delay; ~~and~~

(IX) The severity of the violation or noncompliance; AND

(X) WHETHER THE VIOLATION OCCURRED WITHIN OR IMPACTED A DISPROPORTIONATELY IMPACTED COMMUNITY.

(b) In addition to the factors set forth in ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, THE DIVISION SHALL CONSIDER the following circumstances ~~shall be considered~~ as grounds for reducing or eliminating civil penalties:

(IV) Substantial economic impact of a penalty on the violator; AND

(V) ~~Nonfeasance; and~~

(3) ~~Notwithstanding any other provision in this section, no action for civil enforcement of this article may be taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section 25-7-114.4 (3).~~

SECTION 7. In Colorado Revised Statutes, 25-7-114.5, **amend** (3) as follows:

25-7-114.5. Application review - public participation. (3) The division shall also determine whether applications are for a new source activity that may have an impact upon areas which, as of the projected new source start-up date, are in compliance with national ambient air quality standards as of the date of the permit application, or for new source activity that may have an impact upon areas which, as of the projected new source start-up date, are not in compliance with national ambient air quality standards as of the date of the permit application. IN IMPLEMENTING THIS SUBSECTION (3), THE DIVISION MAY CONSIDER MORE STRINGENT METHODS FOR NEW SOURCES OF OXIDES OF NITROGEN IN DISPROPORTIONATELY IMPACTED COMMUNITIES IN THE AREA DESIGNATED NONATTAINMENT FOR OZONE BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

SECTION 8. In Colorado Revised Statutes, 34-60-103, **add** (8) as follows:

34-60-103. Definitions. As used in this article 60, unless the context otherwise requires:

(8) "DISPROPORTIONATELY IMPACTED COMMUNITY" HAS THE MEANING SET FORTH IN SECTION 24-4-109 (2)(b)(II).

SECTION 9. In Colorado Revised Statutes, 34-60-104.5, **amend** (2)(d)(I); and **add** (2)(d)(III) as follows:

34-60-104.5. Director of commission - duties. (2) The director of the commission shall:

(d)(I) Appoint, pursuant to section 13 of article XII of the state constitution, such clerical and professional staff and consultants as may be necessary for the efficient and effective operation of the commission, including ~~at least one and up to~~ OR two deputy directors; ~~and~~

(III) APPOINT AT LEAST TWO COMMUNITY LIAISONS TO SERVE AS DEDICATED RESOURCES FOR DISPROPORTIONATELY IMPACTED COMMUNITIES REGARDING COMMISSION REGULATION. THE COMMUNITY LIAISONS SHALL PERFORM DUTIES INCLUDING:

(A) SERVING AS AN ADVOCATE FOR DISPROPORTIONATELY IMPACTED COMMUNITIES IN A NONLEGAL CAPACITY AND, WHILE TAKING INTO CONSIDERATION THE ENGAGEMENT PRACTICES DESCRIBED IN SECTION 24-4-109 (3)(b), ACTING AS A LIAISON BETWEEN DISPROPORTIONATELY IMPACTED COMMUNITY MEMBERS AND THE COMMISSION, INCLUDING WITH RESPECT TO COMMUNICATIONS REGARDING THE PERMITTING PROCESS;

(B) PROVIDING COMMUNITY MEMBERS WITH RELEVANT INFORMATION REGARDING THIRD-PARTY RESOURCES SUCH AS LEGAL ASSISTANCE TO ASSIST COMMUNITY MEMBERS IN PRESENTING THEIR VIEWS TO THE COMMISSION;

(C) WORKING TO IMPROVE THE RELATIONSHIPS AND INTERACTIONS BETWEEN DISPROPORTIONATELY IMPACTED COMMUNITIES AND THE COMMISSION;

(D) ACTING AS A RESOURCE FOR SHARING INFORMATION BETWEEN THE COMMISSION AND DISPROPORTIONATELY IMPACTED COMMUNITIES;

(E) ENGAGING IN OUTREACH TO DISPROPORTIONATELY IMPACTED COMMUNITIES;
AND

(F) ORGANIZING AND ATTENDING IN-PERSON MEETINGS WITHIN DISPROPORTIONATELY IMPACTED COMMUNITIES.

SECTION 10. In Colorado Revised Statutes, 34-60-106, **amend** (1)(f)(I)(B), (3), and (11)(c)(I); and **add** (1)(f)(I.5), (11)(c)(III), and (20.5) as follows:

34-60-106. Additional powers of commission - rules - definitions - repeal.
(1) The commission also shall require:

(f) (I) That no operations for the drilling of a well for oil and gas shall be commenced without first:

(B) Obtaining a permit from the commission, under rules prescribed by the commission; ~~and~~

(I.5) THAT OIL AND GAS OPERATIONS SHALL NOT OCCUR WITHOUT THE OPERATOR OBTAINING AND MAINTAINING ANY NECESSARY PERMITS AND A LICENSE TO CONDUCT OIL AND GAS OPERATIONS FROM THE COMMISSION, IN ACCORDANCE WITH RULES PROMULGATED BY THE COMMISSION; AND

(3) The commission also has the authority to:

(a) Limit the production of oil or gas, or both, from any pool or field for the prevention of waste, and to limit and to allocate the production from such pool or field among or between tracts of land having separate ownerships ~~therein~~ IN THE TRACTS OF LAND, on a fair and equitable basis so that each such tract will be permitted to produce no more than its just and equitable share from the pool and so as to prevent, insofar as is practicable, reasonably avoidable drainage from each such tract ~~which~~ THAT is not equalized by counter-drainage; ~~and~~

(b) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this ~~article~~ ARTICLE 60;

(c) AFTER CONSULTATION WITH THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, REQUIRE OPERATORS TO TAKE SUCH ACTIONS BETWEEN MAY 1 AND SEPTEMBER 30 OF EACH YEAR TO REDUCE EMISSIONS OF OXIDES OF NITROGEN (NO_x) GENERATED FROM PRODUCTION AND

PREPRODUCTION OPERATIONS AS THE COMMISSION DEEMS APPROPRIATE TO ASSURE COMPLIANCE WITH:

(I) NO_x INTENSITY TARGETS; AND

(II) OTHER NO_x RULES THAT THE AIR QUALITY CONTROL COMMISSION ADOPTS BY RULE TO ACHIEVE SECTOR-WIDE COMPLIANCE WITH THE STATE'S 2030 GOALS FOR NO_x EMISSION REDUCTIONS; AND

(d) WHEN REQUIRING OPERATORS TO TAKE ACTION PURSUANT TO SUBSECTION (3)(c) OF THIS SECTION, PRIORITIZE ACTIONS BY THOSE OPERATORS THAT DO NOT DEMONSTRATE COMPLIANCE WITH ANY APPLICABLE NO_x INTENSITY TARGETS OR OTHER NO_x RULES THAT THE AIR QUALITY CONTROL COMMISSION ADOPTS TO ACHIEVE SECTOR-WIDE COMPLIANCE WITH THE STATE'S 2030 GOALS FOR NO_x EMISSION REDUCTIONS.

(11) (c) The commission shall adopt rules that:

(I) Adopt an alternative location analysis process and specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process; ~~and~~

(III) IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, REQUIRE ENHANCED SYSTEMS AND PRACTICES TO AVOID, MINIMIZE, AND MITIGATE EMISSIONS OF OZONE PRECURSORS FROM OPERATIONS AT NEWLY PERMITTED OIL AND GAS LOCATIONS IN THE EIGHT-HOUR OZONE CONTROL AREA AND NORTHERN WELD COUNTY, AS THOSE TERMS ARE DEFINED BY THE AIR QUALITY CONTROL COMMISSION BY RULE. IN ADOPTING THE RULES PURSUANT TO THIS SUBSECTION (11)(c)(III), THE COMMISSION SHALL:

(A) BY SEPTEMBER 30, 2024, ADOPT AN INITIAL LIST OF ENHANCED SYSTEMS AND PRACTICES CONSIDERING THE BEST MANAGEMENT PRACTICES THAT HAVE BEEN RECOMMENDED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT IN CONSULTATION WITH OPERATORS;

(B) CONSIDER A PROPOSED OIL AND GAS LOCATION'S POTENTIAL TO CONTRIBUTE TO ADVERSE IMPACTS THROUGH EMISSIONS OF OZONE PRECURSORS;

(C) CONSIDER ANY AVAILABLE PHOTOCHEMICAL SENSITIVITY MODELING ANALYSES CONDUCTED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; AND

(D) EVALUATE THE POTENTIAL FOR UPDATES TO THE REQUIRED ENHANCED SYSTEMS AND PRACTICES PERIODICALLY TO ACCOUNT FOR EVOLVING DESIGN, OPERATIONAL PROCEDURES, AND TECHNOLOGIES TO REDUCE OZONE PRECURSORS.

(20.5) THE COMMISSION SHALL ADMINISTER THIS ARTICLE 60 IN A MANNER TO MINIMIZE ADVERSE IMPACTS TO DISPROPORTIONATELY IMPACTED COMMUNITIES THAT ARE NEGATIVELY AFFECTED BY OIL AND GAS OPERATIONS.

SECTION 11. In Colorado Revised Statutes, **amend** 34-60-111 as follows:

34-60-111. Judicial review. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, any rule, regulation, or final order of the commission ~~shall be~~ is subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S. The commission ~~shall~~ is not be required to post bond in any proceeding for judicial review.

(2) NOTWITHSTANDING SECTION 24-4-106 (5), A COURT OF COMPETENT JURISDICTION MAY POSTPONE THE EFFECTIVE DATE OF A COMMISSION ORDER SUSPENDING OR REVOKING AN OPERATOR'S LICENSE TO CONDUCT OIL AND GAS OPERATIONS OR A CERTIFICATE OF CLEARANCE AND SUBJECT TO REVIEW AS A FINAL AGENCY ACTION PURSUANT TO SECTION 24-4-106 ONLY UPON A DEMONSTRATION BY THE MOVING PARTY THAT:

(a) THE MOVING PARTY HAS A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS IN THE UNDERLYING JUDICIAL PROCEEDING;

(b) REAL, IMMEDIATE, AND IRREPARABLE INJURY TO THE MOVING PARTY WOULD OTHERWISE RESULT;

(c) POSTPONING THE EFFECTIVE DATE OF THE COMMISSION ORDER WILL NOT DISSERVE THE PUBLIC INTEREST; AND

(d) IN CONSIDERATION OF THE BALANCE OF EQUITIES, INCLUDING CONSIDERATION OF POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH, SAFETY, AND WELFARE AND THE PROTECTION OF THE ENVIRONMENT AND WILDLIFE RESOURCES, THE BALANCE FAVORS THE POSTPONEMENT.

SECTION 12. In Colorado Revised Statutes, 34-60-121, **amend** (5)(a), (6), and (7) as follows:

34-60-121. Violations - investigations - penalties - rules - definition - legislative declaration. (5) (a) If an operator fails to take corrective action required pursuant to subsection (4) of this section, or whenever the commission or the director has evidence that a violation of ~~any provision of this article~~ ARTICLE 60, or of any rule, regulation, or order of the commission, or of any permit has occurred, under circumstances deemed to constitute an emergency situation OR UNDER CIRCUMSTANCES THAT CAUSE OR THREATEN TO CAUSE A SIGNIFICANT ADVERSE IMPACT TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, OR WILDLIFE RESOURCES THAT REQUIRE IMMEDIATE ACTION, the commission or the director may issue a cease-and-desist order to the operator whose act or omission allegedly resulted in ~~such~~ THE violation. ~~Such~~ THE cease-and-desist order ~~shall~~ MUST require such action by the operator as the commission or director deems appropriate. The order shall be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and ~~shall~~ MUST state the provision alleged to have been violated, the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the commission or the director elects to require of the operator.

(6) If the commission determines, after a hearing conducted in accordance with section 34-60-108, that an operator has failed to perform any corrective action imposed under subsection (4) of this section or failed to comply with a cease-and-desist order issued under subsection (5) of this section, ~~with regard to a violation of a permit provision,~~ the commission may issue an order suspending, modifying, or revoking ~~such~~ THE OPERATOR'S PERMIT OR PERMITS OR SUSPENDING OR REVOKING THE OPERATOR'S LICENSE TO CONDUCT OIL AND GAS OPERATIONS or may take other appropriate action. An operator subject to an order that suspends, modifies, or revokes a permit OR THAT SUSPENDS OR REVOKES THE OPERATOR'S LICENSE TO CONDUCT OIL AND GAS OPERATIONS shall continue the affected operations only for the purpose of bringing them into compliance with the permit or modified permit and shall do so under the supervision of the commission. Once the affected operations are in compliance to the satisfaction of the commission and any penalty not subject to judicial review or appeal has been paid, the commission ~~shall~~ MAY reinstate the permit OR THE LICENSE TO CONDUCT OIL AND GAS OPERATIONS.

(7) (a) The commission or the director shall issue an order to an operator to appear for a hearing before the commission in accordance with section 34-60-108 whenever the commission or the director has evidence that an operator is responsible for:

(I) Gross negligence or knowing and willful misconduct that results in an egregious violation; ~~or~~

(II) A pattern of violation of this ~~article~~ ARTICLE 60, any rule or order of the commission, or any permit;

(III) A VIOLATION OF THIS ARTICLE 60, ANY RULE OR ORDER OF THE COMMISSION, OR ANY PERMIT, IF SUCH VIOLATION RESULTS IN A COMMISSION ORDER IMPOSING A PENALTY OF ONE MILLION DOLLARS OR MORE;

(IV) A VIOLATION THAT CAUSED A MAJOR ADVERSE IMPACT, AS DEFINED IN THE COMMISSION'S RULES, TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, OR WILDLIFE RESOURCES AND THE VIOLATION IS THE THIRD VIOLATION IN THE STATE IN ONE YEAR THAT CAUSED A MAJOR ADVERSE IMPACT, AS DEFINED IN THE COMMISSION'S RULES, TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, OR WILDLIFE RESOURCES; OR

(V) A VIOLATION THAT CAUSED DEATH OR SERIOUS BODILY INJURY TO AN INDIVIDUAL.

(b) If the commission finds, after ~~such~~ THE HEARING CONDUCTED PURSUANT TO SUBSECTION (7)(a) OF THIS SECTION, that the operator is responsible under the legal standards specified in ~~paragraph (a) of this subsection (7),~~ it SUBSECTION (7)(a) OF THIS SECTION, THE COMMISSION may issue an order that prohibits the issuance of any new permits to the operator, suspends any or all of the operator's certificates of clearance, SUSPENDS THE OPERATOR'S LICENSE TO CONDUCT OIL AND GAS OPERATIONS, or ~~both.~~ ~~When~~ ANY COMBINATION OF THE THREE. If the operator demonstrates to the satisfaction of the commission that ~~it~~ THE OPERATOR has

brought each of the violations into compliance and that any penalty not subject to judicial review or appeal has been paid, the commission may vacate the order.

(c) IN A HEARING CONDUCTED PURSUANT TO THIS SUBSECTION (7), THE COMMISSION MAY CONSIDER AS EVIDENCE VIOLATIONS FOR WHICH ENFORCEMENT WAS COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (7), AS AMENDED, IN DETERMINING WHETHER TO PROHIBIT THE ISSUANCE OF ANY NEW PERMITS TO THE OPERATOR, SUSPEND ANY OR ALL OF THE OPERATOR'S CERTIFICATES OF CLEARANCE, SUSPEND THE OPERATOR'S LICENSE TO CONDUCT OIL AND GAS OPERATIONS, OR ANY COMBINATION OF THE THREE.

SECTION 13. In Colorado Revised Statutes, 34-60-124, **amend** (4)(e)(II) and (4)(f); and **add** (4)(h) as follows:

34-60-124. Energy and carbon management cash fund - definitions - repeal. (4) The fund may be expended:

(e) (II) This subsection (4)(e) is repealed, effective July 1, 2025. ~~and~~

(f) To create and maintain the website described in section 34-60-106 (22); AND

(h) BY THE COMMISSION TO FUND THE COMMUNITY LIAISON POSITIONS APPOINTED PURSUANT TO SECTION 34-60-104.5 (2)(d)(III).

SECTION 14. In Colorado Revised Statutes, 34-60-133, **amend** (1)(a)(II) and (1)(a)(III); and **add** (1.5), (2)(e.5), (6)(d)(1.5), and (8)(d.5) as follows:

34-60-133. Orphaned wells mitigation enterprise - creation - powers and duties - enterprise board created - mitigation fees - cash fund created - rules - definitions - legislative declaration. (1) **Enterprise created.** (a) The orphaned wells mitigation enterprise is created in the department for the purpose of:

(II) Funding the plugging, reclaiming, and remediating of orphaned wells AND MARGINAL WELLS in the state;

(III) Ensuring that the costs associated with plugging, reclaiming, and remediating orphaned wells AND MARGINAL WELLS are borne by operators in the form of mitigation fees; and

(1.5) **Legislative declaration.** THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) ORPHANED WELLS AND MARGINAL WELLS PRESENT RISKS TO PUBLIC HEALTH, SAFETY, AND WELFARE, INCLUDING RISKS TO THE ENVIRONMENT AND WILDLIFE RESOURCES;

(b) ENVIRONMENTAL JUSTICE IS A PRIORITY FOR THE STATE, AND THE ENTERPRISE BOARD SHOULD ADMINISTER THIS SECTION IN A MANNER THAT REDUCES BURDENS ON OVERBURDENED COMMUNITIES;

(c) THE ENTERPRISE HELPS MITIGATE RISKS BY PLUGGING, RECLAIMING, AND REMEDIATING ORPHANED WELLS AND THOSE MARGINAL WELLS THAT ARE AT THE HIGHEST RISK OF BECOMING ORPHANED;

(d) ALL OIL AND GAS WELLS WILL REQUIRE PLUGGING AND RECLAIMING AT THE END OF THEIR USEFUL LIFE;

(e) MANY OIL AND GAS WELLS WILL REQUIRE REMEDIATION AT THE END OF THEIR USEFUL LIFE;

(f) PURSUANT TO SECTION 34-60-106, ALL OPERATORS ARE REQUIRED TO PROVIDE FINANCIAL ASSURANCE DEMONSTRATING THAT THE OPERATORS ARE FINANCIALLY CAPABLE OF FULFILLING EVERY OBLIGATION IMPOSED ON THE OPERATOR PURSUANT TO THIS ARTICLE 60, INCLUDING AN OPERATOR'S PLUGGING, RECLAMATION, AND REMEDIATION OBLIGATIONS; AND

(g) THE SERVICES THAT THE ENTERPRISE PROVIDES BENEFIT ALL OPERATORS IN THE STATE BY:

(I) MITIGATING THE RISKS OF AN OPERATOR'S OIL AND GAS WELL BECOMING AN ORPHANED WELL; AND

(II) PLUGGING, RECLAIMING, AND REMEDIATING QUALIFYING MARGINAL WELLS AND ELIMINATING THE RISK OF SUCH QUALIFYING MARGINAL WELLS BECOMING ORPHANED WELLS.

(2) **Powers and duties.** In addition to any other powers and duties specified in this section, the enterprise board has the following general powers and duties on behalf of the enterprise:

(e.5) TO ISSUE GUIDANCE ESTABLISHING STANDARDS FOR MARGINAL WELLS TO QUALIFY FOR FUNDING PURSUANT TO SUBSECTION (1)(a)(II) OF THIS SECTION. IN ESTABLISHING THESE STANDARDS, THE ENTERPRISE BOARD SHALL CONSIDER:

(I) AN OIL AND GAS WELL'S LOCATION IN OR NEAR A DISPROPORTIONATELY IMPACTED COMMUNITY OR A HIGHLY POPULATED AREA; AND

(II) AN OIL AND GAS WELL'S RISK OF ADVERSE IMPACTS ON PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES; AND

(6) **Cash fund.** (d) Money credited to the fund is continuously appropriated to the fund for use by the enterprise and shall be expended to:

(I.5) PLUG, RECLAIM, AND REMEDIATE QUALIFYING MARGINAL WELLS, AS DETERMINED BASED ON FACTORS THAT INCLUDE:

(A) THE OIL AND GAS WELL'S LOCATION IN OR NEAR A DISPROPORTIONATELY IMPACTED COMMUNITY OR A HIGHLY POPULATED AREA; AND

(B) THE OIL AND GAS WELL'S RISK OF ADVERSE IMPACTS ON PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES;

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(d.5) "MARGINAL WELL" MEANS AN OIL AND GAS WELL THAT PRESENTS A HIGH RISK OF BECOMING ORPHANED.

SECTION 15. Appropriation. (1) For the 2024-25 state fiscal year, \$753,157 is appropriated to the department of public health and environment. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$312,865 for use by the air pollution control division for personal services related to stationary sources, which amount is based on an assumption that the division will require an additional 3.3 FTE;

(b) \$325,074 for use by the air pollution control division for operating expenses related to stationary sources; and

(c) \$115,218 for the purchase of legal services.

(2) For the 2024-25 state fiscal year, \$115,218 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of public health and environment under subsection (1)(c) of this section and is based on an assumption that the department of law will require an additional 0.5 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of public health and environment.

(3) For the 2024-25 state fiscal year, \$179,127 is appropriated to the department of natural resources for use by the energy and carbon management commission. This appropriation is from the energy and carbon management cash fund created in section 34-60-122 (5)(a), C.R.S., and is based on an assumption that the commission will require an additional 2.0 FTE. To implement this act, the commission may use this appropriation for program costs.

SECTION 16. Effective date - applicability. (1) (a) Except as otherwise provided in this subsection (1), this act takes effect upon passage.

(b) Section 6 of this act takes effect only if House Bill 24-1338 becomes law, in which case section 6 of this act takes effect upon passage.

(c) Section 5 of this act takes effect only if House Bill 24-1338 does not become law, in which case section 5 of this act takes effect upon passage.

(2) This act applies to enforcement actions commenced by the division of administration in the department of public health and environment and the energy and carbon management commission on or after the effective date of this act.

SECTION 17. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: May 16, 2024