

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 12-0565.01 Thomas Morris x4218

SENATE BILL 12-132

SENATE SPONSORSHIP

Grantham, Cadman, Scheffel, Brophy, Harvey, King S., Lambert, Lundberg, Neville,
Renfroe, Roberts, Spence

HOUSE SPONSORSHIP

Becker,

Senate Committees

Agriculture, Natural Resources, and Energy
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING TIMELY ISSUANCE OF ENVIRONMENTAL CONTROL**
102 **PERMITS, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill requires air quality permits to be issued within 12 months after receipt of a complete permit application. **Section 2** requires the same of water quality permits.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 2, 2012

SENATE
Amended 2nd Reading
May 1, 2012

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-7-114.5, **amend**
3 (4) as follows:

4 **25-7-114.5. Application review - public participation.**

5 (4) (a) The division shall prepare its preliminary analysis regarding
6 compliance, as set forth in subsection (2) of this section, and regarding
7 the impact on attainment or nonattainment areas, as set forth in subsection
8 (3) of this section, as expeditiously as possible. For construction permits
9 not subject to part 2 of this article, ~~such~~ THE DIVISION SHALL COMPLETE
10 THE preliminary analysis ~~shall be completed~~ no later than sixty calendar
11 days after receipt of a completed permit application. THE DIVISION SHALL
12 ADVISE applicants ~~must be advised~~ within sixty calendar days after receipt
13 of any application, or supplement thereto, if and in what respects the
14 subject application is incomplete. Upon failure of the division to so notify
15 the applicant within sixty calendar days ~~of~~ AFTER its filing, the application
16 shall be deemed complete.

17 (b) THE DIVISION SHALL APPROVE OR DISAPPROVE applications for
18 construction permits subject to part 2 of this article ~~shall be approved or~~
19 ~~disapproved~~ AND RENEWABLE OPERATING PERMITS within twelve months
20 ~~of~~ AFTER receipt of a complete application; EXCEPT THAT THE
21 TWELVE-MONTH DEADLINE DOES NOT APPLY TO AN APPLICATION FOR
22 RENEWAL OF A PERMIT. ~~Applications for renewable operating permits~~
23 ~~shall be approved or disapproved within eighteen months after the receipt~~
24 ~~of the completed permit application; except that those applications~~
25 ~~submitted within the first year after the effective date of the operating~~
26 ~~permit program shall be subject to a phased schedule for acting on such~~

1 permit applications established by the division. The phased schedule shall
2 assure that at least one-third of such permits will be acted on by the
3 division annually over a three-year period. The commission may establish
4 a phased schedule for acting on applications for which a deferral has been
5 granted pursuant to the federal act. A timely and complete permit
6 application operates as a defense to enforcement action for operating
7 without a permit for the period of time during which the division or the
8 commission is reviewing the application and until such time as the
9 division or the commission makes a final determination on the permit
10 application; except that this defense to an enforcement action shall IS not
11 be available to an applicant which THAT files a fraudulent application.

12 **SECTION 2.** In Colorado Revised Statutes, 25-7-114.1, **amend**
13 **(6) (a) as follows:**

14 **25-7-114.1. Air pollutant emission notices (APEN).** (6) (a) The
15 COMMISSION MAY, BY RULE, SET THE fee for filing an air pollutant
16 emission notice or amendment thereto under this section shall be AT NO
17 MORE THAN one hundred fifty-two SIXTY-THREE dollars and ninety SIXTY
18 cents. The DIVISION SHALL TRANSMIT THE moneys collected pursuant to
19 this section shall be transmitted to the state treasurer, who shall credit the
20 same to the stationary sources control fund created in section 25-7-114.7
21 **(2) (b) (I).**

22 **SECTION 3.** In Colorado Revised Statutes, 25-7-114.7, **amend**
23 **(2) (a) (I) (A), (2) (a) (I) (B), and (2) (a) (III) as follows:**

24 **25-7-114.7. Emission fees - fund.** (2) (a) (I) The commission
25 shall designate by rule those classes of sources of air pollution that are
26 exempt from the requirement to pay an annual emission fee. Every owner
27 or operator of an air pollution source not otherwise exempt in accordance

1 with such commission rules shall pay an annual fee as follows:

2 (A) For fiscal years 2008-09 and thereafter, twenty-two A FEE SET
3 BY THE COMMISSION BY RULE THAT DOES NOT EXCEED TWENTY-FOUR
4 dollars and ~~ninety~~ FIFTY cents per ton of regulated pollutant reported in
5 the most recent air pollution emission notice on file with the division;

6 (B) For fiscal years 2008-09 and thereafter, In addition to the
7 annual fee set forth in sub-subparagraph (A) of this subparagraph (I), for
8 hazardous air pollutants, including ozone-depleting compounds, an
9 annual fee of SET BY THE COMMISSION BY RULE THAT DOES NOT EXCEED
10 one hundred ~~fifty-two~~ SIXTY-THREE dollars and ~~ninety~~ SIXTY cents per
11 ton;

12 (III) Every owner or operator subject to the requirements of
13 paying fees set forth in subparagraph (I) of this paragraph (a) shall also
14 pay a processing fee for the costs of processing any application other than
15 an air pollution emission notice under this article. Every significant user
16 of prescribed fire, including federal facilities, submitting a planning
17 document to the commission pursuant to section 25-7-106 (8) (b) shall
18 pay a fee for costs of evaluating ~~such~~ THE documents. The division shall
19 assess a fee for work it performs, up to a maximum of thirty hours at a
20 rate of ~~seventy-six~~ SET BY THE COMMISSION BY RULE THAT DOES NOT
21 EXCEED EIGHTY-ONE dollars and ~~forty-five~~ EIGHTY cents per hour. If the
22 division requires more than thirty hours to process the application or
23 evaluate the prescribed fire-related planning documents, the fee paid by
24 the applicant shall not exceed three thousand dollars unless the division
25 has informed the source that the respective billings may exceed three
26 thousand dollars and has provided the source with an estimate of what the
27 actual charges may be prior to commencing the work.

1 **SECTION 4.** In Colorado Revised Statutes, 25-8-501, **add** (7)
2 and (8) as follows:

3 **25-8-501. Permits required for discharge of pollutants -**
4 **administration.** (7) THE DIVISION ___ SHALL GRANT OR DENY A PERMIT
5 APPLICATION WITHIN TWELVE MONTHS AFTER THE APPLICATION IS DEEMED
6 COMPLETE; EXCEPT THAT NOTHING IN THIS SUBSECTION (7) APPLIES TO AN
7 APPLICATION FOR RENEWAL OF A PERMIT. FAILURE OF THE DIVISION ___
8 TO GRANT OR DENY THE APPLICATION WITHIN THE TWELVE MONTHS IS
9 FINAL AGENCY ACTION FOR PURPOSES OF JUDICIAL REVIEW.

10 (8) (a) IF THE DIVISION EXPERIENCES A BACKLOG IN PROCESSING
11 WATER QUALITY PERMIT APPLICATIONS CAUSED BY AN OCCASIONAL NEED
12 THAT IS SEASONAL, IRREGULAR, OR FLUCTUATING IN NATURE, AND THE
13 DEPARTMENT DETERMINES OR REASONABLY EXPECTS THAT, AS A RESULT,
14 PERMITS WOULD NOT BE ISSUED WITHIN STATUTORY TIME FRAMES, THE
15 DIVISION MAY MAKE AVAILABLE TO AN APPLICANT THE OPTION TO HAVE
16 THE APPLICANT'S PERMIT APPLICATION REVIEWED FOR ACCEPTANCE AS
17 DEMONSTRATING COMPLIANCE BY A CONTRACT CONSULTANT SELECTED
18 BY THE DIVISION IN LIEU OF THE REVIEW BEING CONDUCTED BY DIVISION
19 STAFF.

20 (b) THE DIVISION SHALL SELECT AND CONTRACT WITH
21 NONGOVERNMENTAL ENGINEERS TO PERFORM PERMIT APPLICATION
22 REVIEWS FOR APPLICANTS WHO CHOOSE CONTRACT CONSULTANT REVIEW
23 OF THEIR PERMIT APPLICATION. THE DIVISION IS NOT SUBJECT TO THE
24 REQUIREMENTS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF
25 TITLE 24, C.R.S., IN SELECTING AND CONTRACTING WITH THE
26 CONSULTANTS. THE DIVISION SHALL REVIEW AND EXCLUDE FROM
27 CONSIDERATION AS A CONTRACT CONSULTANT ANY CONTRACTORS WITH

1 A CONFLICT OF INTEREST REGARDING SUCH PERMIT APPLICATIONS.
2 APPLICANTS THAT CHOOSE CONSULTANT REVIEW OF THEIR APPLICATION
3 ARE RESPONSIBLE FOR BOTH THE CONSULTANT'S COSTS ASSOCIATED WITH
4 THE REVIEW AS WELL AS THE DIVISION'S COSTS ASSOCIATED WITH THE
5 REVIEW AND DETERMINATION OF THE PERMIT APPLICATION, TO BE PAID TO
6 THE DIVISION. THE DIVISION SHALL TRANSFER THE MONEY TO THE STATE
7 TREASURER, WHO SHALL CREDIT IT TO THE WATER QUALITY CONTROL
8 FUND CREATED IN SECTION 25-8-502 (1) (c).

9 (c) THE DIVISION SHALL USE THE RESULTS OF THE REVIEW
10 CONDUCTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (8) FOR
11 PURPOSES OF THE DIVISION'S PERMIT APPLICATION ANALYSIS.

12 **SECTION 5. Appropriation.** In addition to any other
13 appropriation, there is hereby appropriated, out of any moneys in the
14 stationary sources control fund created in section 25-7-114.7 (2) (b) (I),
15 Colorado Revised Statutes, not otherwise appropriated, to the department
16 of public health and environment, for the fiscal year beginning July 1,
17 2012, the sum of \$196,901 and 2.5 FTE, or so much thereof as may be
18 necessary, for allocation to air pollution control division for permitting
19 activities of the stationary sources program related to the implementation
20 of this act.

21 **SECTION 6. Act subject to petition - effective date -**
22 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
23 the expiration of the ninety-day period after final adjournment of the
24 general assembly (August 7, 2012, if adjournment sine die is on May 9,
25 2012); except that, if a referendum petition is filed pursuant to section 1
26 (3) of article V of the state constitution against this act or an item, section,
27 or part of this act within such period, then the act, item, section, or part

1 will not take effect unless approved by the people at the general election
2 to be held in November 2012 and, in such case, will take effect on the
3 date of the official declaration of the vote thereon by the governor.

4 (2) The provisions of this act apply to permit applications filed on
5 or after the applicable effective date of this act.