

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

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, 25-8-501, **add** (7)
13 and (8) as follows:

14 **25-8-501. Permits required for discharge of pollutants -**
15 **administration.** (7) THE DIVISION SHALL GRANT OR DENY A PERMIT
16 APPLICATION WITHIN TWELVE MONTHS AFTER THE APPLICATION IS DEEMED
17 COMPLETE; EXCEPT THAT NOTHING IN THIS SUBSECTION (7) APPLIES TO AN
18 APPLICATION FOR RENEWAL OF A PERMIT. FAILURE OF THE DIVISION
19 TO GRANT OR DENY THE APPLICATION WITHIN THE TWELVE MONTHS IS
20 FINAL AGENCY ACTION FOR PURPOSES OF JUDICIAL REVIEW.

21 (8) (a) IF THE DIVISION EXPERIENCES A BACKLOG IN PROCESSING
22 WATER QUALITY PERMIT APPLICATIONS CAUSED BY AN OCCASIONAL NEED
23 THAT IS SEASONAL, IRREGULAR, OR FLUCTUATING IN NATURE, AND THE
24 DEPARTMENT DETERMINES OR REASONABLY EXPECTS THAT, AS A RESULT,
25 PERMITS WOULD NOT BE ISSUED WITHIN STATUTORY TIME FRAMES, THE
26 DIVISION MAY MAKE AVAILABLE TO AN APPLICANT THE OPTION TO HAVE
27 THE APPLICANT'S PERMIT APPLICATION REVIEWED FOR ACCEPTANCE AS

1 DEMONSTRATING COMPLIANCE BY A CONTRACT CONSULTANT SELECTED
2 BY THE DIVISION IN LIEU OF THE REVIEW BEING CONDUCTED BY DIVISION
3 STAFF.

4 (b) THE DIVISION SHALL SELECT AND CONTRACT WITH
5 NONGOVERNMENTAL ENGINEERS TO PERFORM PERMIT APPLICATION
6 REVIEWS FOR APPLICANTS WHO CHOOSE CONTRACT CONSULTANT REVIEW
7 OF THEIR PERMIT APPLICATION. THE DIVISION IS NOT SUBJECT TO THE
8 REQUIREMENTS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF
9 TITLE 24, C.R.S., IN SELECTING AND CONTRACTING WITH THE
10 CONSULTANTS. THE DIVISION SHALL REVIEW AND EXCLUDE FROM
11 CONSIDERATION AS A CONTRACT CONSULTANT ANY CONTRACTORS WITH
12 A CONFLICT OF INTEREST REGARDING SUCH PERMIT APPLICATIONS.
13 APPLICANTS THAT CHOOSE CONSULTANT REVIEW OF THEIR APPLICATION
14 ARE RESPONSIBLE FOR BOTH THE CONSULTANT'S COSTS ASSOCIATED WITH
15 THE REVIEW AS WELL AS THE DIVISION'S COSTS ASSOCIATED WITH THE
16 REVIEW AND DETERMINATION OF THE PERMIT APPLICATION, TO BE PAID TO
17 THE DIVISION. THE DIVISION SHALL TRANSFER THE MONEY TO THE STATE
18 TREASURER, WHO SHALL CREDIT IT TO THE WATER QUALITY CONTROL
19 FUND CREATED IN SECTION 25-8-502 (1) (c).

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

23 **SECTION 3. Appropriation.** In addition to any other
24 appropriation, there is hereby appropriated, out of any moneys in the
25 stationary sources control fund created in section 25-7-114.7 (2) (b) (I),
26 Colorado Revised Statutes, not otherwise appropriated, to the department
27 of public health and environment, for the fiscal year beginning July 1,

1 2012, the sum of \$196,901 and 2.5 FTE, or so much thereof as may be
2 necessary, for allocation to air pollution control division for permitting
3 activities of the stationary sources program related to the implementation
4 of this act.

5 **SECTION 4. Act subject to petition - effective date -**
6 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
7 the expiration of the ninety-day period after final adjournment of the
8 general assembly (August 7, 2012, if adjournment sine die is on May 9,
9 2012); except that, if a referendum petition is filed pursuant to section 1
10 (3) of article V of the state constitution against this act or an item, section,
11 or part of this act within such period, then the act, item, section, or part
12 will not take effect unless approved by the people at the general election
13 to be held in November 2012 and, in such case, will take effect on the
14 date of the official declaration of the vote thereon by the governor.

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