

Initiative 2023-24 #282
Regulation of Indirect Sources

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Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 25-7-146, 25-7-147, and 25-7-148 as follows:

25-7-146. Regulation of indirect sources - fees - definitions - rules.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COVERED NONATTAINMENT AREA" MEANS THE EIGHT-HOUR OZONE DENVER METRO/NORTH FRONT RANGE NONATTAINMENT AREA.

(b)(I) "INDIRECT SOURCE" MEANS A NEW OR AN EXISTING FACILITY, BUILDING, STRUCTURE, INSTALLATION, OR REAL PROPERTY THAT GENERATES, ATTRACTS, OR MAY ATTRACT MOBILE SOURCE ACTIVITY THAT RESULTS IN EMISSIONS OF AIR POLLUTANTS.

(II) "INDIRECT SOURCE" INCLUDES:

(A) HIGHWAYS AND ROADS;

(B) PARKING FACILITIES;

(C) RESIDENTIAL, RETAIL, COMMERCIAL, AND INDUSTRIAL DEVELOPMENTS AND FACILITIES;

(D) CONSTRUCTION SITES;

(E) WAREHOUSES;

(F) AIRPORTS; AND

(G) MEDICAL AND EDUCATION FACILITIES.

(III) "INDIRECT SOURCE" DOES NOT INCLUDE NEW OR EXISTING ON-ROAD PARKING.

(2) ON OR BEFORE DECEMBER 31, 2025, THE COMMISSION SHALL ADOPT RULES FOR CONTROLLING EMISSIONS FROM ONE OR MORE INDIRECT SOURCE CATEGORIES WITHIN THE COVERED NONATTAINMENT AREA, WHICH RULES MUST INCLUDE:

(a) EMISSION REDUCTION TARGETS FOR INDIRECT SOURCES TO ACHIEVE THROUGH REGULATORY STANDARDS OR SOURCE-SPECIFIC PLANS APPROVED BY THE DIVISION; AND

(b) A PROCESS FOR THE DIVISION TO REVIEW ALTERNATIVE COMPLIANCE APPROACHES PROPOSED BY AN OWNER OR OPERATOR OF AN INDIRECT SOURCE THAT ACHIEVE THE REQUIRED EMISSION REDUCTIONS, WHICH APPROACHES MAY INCLUDE FUNDING OF:

(I) VOLUNTARY INCENTIVE-BASED PROGRAMS; AND

(II) EMISSION REDUCTION EFFORTS IMPLEMENTED IN DISPROPORTIONATELY IMPACTED COMMUNITIES.

(3) THE COMMISSION MAY ADOPT ADDITIONAL RULES REGULATING INDIRECT SOURCES WITHIN THE COVERED NONATTAINMENT AREA AT THE COMMISSION'S DISCRETION.

(4)(a) THE COMMISSION MAY ESTABLISH A FEE FOR INDIRECT SOURCES IN AN AMOUNT NECESSARY TO COVER THE DIVISION'S DIRECT AND INDIRECT COSTS IN IMPLEMENTING THIS SECTION.

(b) THE DIVISION SHALL TRANSFER ANY FEES ASSESSED AND COLLECTED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE STATIONARY SOURCES CONTROL FUND CREATED IN SECTION 25-7-114.7 (2)(b)(I).

25-7-147. High ozone season oil and gas preproduction activity pause - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COVERED NONATTAINMENT AREA" MEANS THE EIGHT-HOUR OZONE DENVER METRO/NORTH FRONT RANGE NONATTAINMENT AREA, AS DESIGNATED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY.

(b) "IMPLEMENTATION SEASON" MEANS THE PERIOD BEGINNING JUNE 1 AND ENDING AUGUST 31 OF EACH YEAR.

(c) "OIL AND GAS PREPRODUCTION ACTIVITY" INCLUDES DRILLING, HYDRAULIC FRACTURING, AND FLOWBACK OPERATIONS.

(2)(a) BEGINNING IN THE 2025 IMPLEMENTATION SEASON, AND IN EACH IMPLEMENTATION SEASON THEREAFTER, ANY OIL AND GAS PREPRODUCTION ACTIVITY WITHIN THE COVERED NONATTAINMENT AREA MUST PAUSE FOR THE DURATION OF THE IMPLEMENTATION SEASON.

(b) THE REQUIREMENT PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION:

- (I) CONTINUES IN EFFECT UNTIL THE COVERED NONATTAINMENT AREA IS REDESIGNATED AS A MAINTENANCE AREA BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE UNDER THE FEDERAL ACT; AND
- (II) DOES NOT APPLY TO AN OIL AND GAS PREPRODUCTION ACTIVITY THAT USES GRID-POWERED ELECTRIC DRILL RIGS AND GRID-POWERED HYDRAULIC FRACTURING ENGINES.

25-7-148. Oil and gas emissions reporting - reports – database - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMISSION" MEANS THE ENERGY AND CARBON MANAGEMENT COMMISSION.

(b) "COVERED NONATTAINMENT AREA" MEANS THE EIGHT-HOUR OZONE DENVER METRO/NORTH FRONT RANGE NONATTAINMENT AREA.

(c) "OIL AND GAS OPERATIONS" HAS THE MEANING SET FORTH IN SECTION 34-60-103.

(d) "OPERATOR" HAS THE MEANING SET FORTH IN SECTION 34-60-103.

(e) "OZONE SEASON NITROGEN OXIDES EMISSION BUDGET" MEANS THE OZONE SEASON NITROGEN OXIDES EMISSION BUDGET DEVELOPED BY THE COMMISSION PURSUANT TO SECTION 34-60-140 (2).

(f) "STATEWIDE GREENHOUSE GAS REDUCTION GOALS" MEANS THE STATEWIDE GREENHOUSE GAS REDUCTION GOALS DESCRIBED IN SECTION 25-7-102 (2)(g).

(2)(a) ON OR BEFORE JUNE 30, 2024, AND ON OR BEFORE EACH JUNE 30 THEREAFTER, AN OPERATOR IN THE STATE SHALL SUBMIT AN OIL AND NATURAL GAS ANNUAL EMISSION INVENTORY REPORT TO THE DIVISION, WHICH REPORT MUST INCLUDE, FOR THE PREVIOUS CALENDAR YEAR, THE EMISSIONS OF GREENHOUSE GASES, HAZARDOUS AIR POLLUTANTS, AND OZONE PRECURSORS OF VOLATILE ORGANIC COMPOUNDS AND NITROGEN OXIDES FROM OIL AND GAS OPERATIONS UNDER THE CONTROL OF THE OPERATOR.

(b) ON OR BEFORE OCTOBER 1, 2024, AND ON OR BEFORE EACH OCTOBER 1 THEREAFTER, THE DIVISION, IN COORDINATION WITH THE COMMISSION, SHALL PREPARE A REPORT THAT INCLUDES THE OIL AND NATURAL GAS ANNUAL EMISSION INVENTORY REPORTS RECEIVED BY THE DIVISION FOR THE PREVIOUS CALENDAR YEAR AND:

(I) AN EVALUATION OF THE STATE'S PROGRESS TOWARD THE GOALS SET FORTH IN THE "GREENHOUSE GAS POLLUTION REDUCTION ROADMAP", PUBLISHED BY THE COLORADO ENERGY OFFICE AND DATED JANUARY 14, 2021, INCLUDING AN EVALUATION OF THE ROLE OF OIL AND GAS OPERATIONS IN ACHIEVING THE STATEWIDE GREENHOUSE GAS REDUCTION GOALS;

REDUCTION GOALS;

(II) A DESCRIPTION OF ANY INITIATIVES DEVELOPED BY THE DIVISION TO ACHIEVE THE STATEWIDE GREENHOUSE GAS REDUCTION GOALS;

(III) INFORMATION, TRENDS, AND THE IMPACTS OF OIL AND GAS OPERATIONS ON ATTAINMENT OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE UNDER THE FEDERAL ACT, INCLUDING GROUND-LEVEL OZONE STANDARDS;

(IV) A SUMMARY OF INFORMATION COLLECTED NEAR OIL AND GAS OPERATIONS PURSUANT TO THE COMMUNITY-BASED AIR TOXICS MONITORING PROGRAM PERFORMED BY THE DIVISION PURSUANT TO SECTION 25-7-141 (6)(a);

(V) A DESCRIPTION OF OPPORTUNITIES FOR INTERAGENCY COORDINATION, INCLUDING WORKGROUPS OR BASIN-WIDE, STATEWIDE, OR OTHER REGIONAL STUDIES, TO EVALUATE AND ADDRESS AIR QUALITY ISSUES RELATED TO OIL AND GAS OPERATIONS; AND

(VI) ANY ADDITIONAL INFORMATION THAT THE DIVISION DEEMS RELEVANT TO ENSURE THAT THE OIL AND GAS SECTOR IS CONTRIBUTING TO ACHIEVING THE STATEWIDE GREENHOUSE GAS REDUCTION GOALS AND ATTAINMENT OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE UNDER THE FEDERAL ACT.

(3)(a) ON OR BEFORE NOVEMBER 30, 2024, AND ON OR BEFORE EACH NOVEMBER 30 THEREAFTER, FOR THE OZONE SEASON OF THE SUBSEQUENT YEAR, AN OPERATOR THAT CONTROLS OIL AND GAS OPERATIONS IN THE COVERED NONATTAINMENT AREA SHALL SUBMIT A REPORT TO THE DIVISION ESTIMATING EMISSIONS OF NITROGEN OXIDES FROM THE OIL AND GAS OPERATIONS CONTROLLED BY THE OPERATOR IN THE COVERED NONATTAINMENT AREA.

(b) ON OR BEFORE FEBRUARY 1, 2025, AND ON OR BEFORE EACH FEBRUARY 1 THEREAFTER, THE DIVISION SHALL PREPARE A NITROGEN OXIDES REPORT THAT INCLUDES THE ESTIMATES REPORTED PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION FOR USE BY THE COMMISSION TO DETERMINE IF THE TOTAL ESTIMATED EMISSIONS REPORTED EXCEEDS THE OZONE SEASON NITROGEN OXIDES EMISSION BUDGET FOR THE OZONE SEASON OF THE CURRENT YEAR.

(4)(a) THE DIVISION SHALL MAKE THE REPORTS PREPARED PURSUANT TO THIS SECTION PUBLICLY AVAILABLE ON A SEARCHABLE DATABASE.

(b)(I) NOTWITHSTANDING THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, TO PREPARE THE SEARCHABLE DATABASE DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION, THE DIVISION MAY ENGAGE THE SERVICES OF CONTRACTORS; LEGAL COUNSEL; CONSULTANTS, INCLUDING CONSULTANTS WITH EXPERTISE IN AIR QUALITY; INSTITUTIONS OF HIGHER EDUCATION; PUBLIC RESEARCH LABORATORIES; PRIVATE RESEARCH INSTITUTIONS; AND THE ATTORNEY GENERAL'S OFFICE FOR PROFESSIONAL AND TECHNICAL ASSISTANCE, ADVICE, AND OTHER GOODS AND SERVICES, INCLUDING INFORMATION TECHNOLOGY SERVICES.

(II) THE DIVISION SHALL ENCOURAGE DIVERSITY IN APPLICANTS FOR CONTRACTS PURSUANT TO SUBSECTION (4)(b)(I) OF THIS SECTION AND AVOID USING SINGLE-SOURCE BIDS.

SECTION 2. In Colorado Revised Statutes, **add** 34-60-140 as follows:

34-60-140. Ozone season nitrogen oxides emission budget - rules - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COVERED NONATTAINMENT AREA" MEANS THE EIGHT-HOUR OZONE DENVER METRO/NORTH FRONT RANGE NONATTAINMENT AREA.

(b) "DIVISION" MEANS THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(c) "OZONE SEASON" MEANS THE PERIOD BEGINNING MAY 1 AND ENDING SEPTEMBER 30 OF EACH YEAR.

(2) FOR THE 2025 OZONE SEASON, AND FOR EACH OZONE SEASON THEREAFTER, THE COMMISSION, IN CONSULTATION WITH THE DIVISION, SHALL DEVELOP AN OZONE SEASON NITROGEN OXIDES EMISSION BUDGET FOR EMISSIONS OF NITROGEN OXIDES BY OIL AND GAS OPERATIONS IN THE COVERED NONATTAINMENT AREA, WHICH OZONE SEASON NITROGEN OXIDES EMISSION BUDGET MUST:

(a) FOR THE 2025 THROUGH 2029 OZONE SEASONS, SET A MAXIMUM EMISSIONS LEVEL OF NITROGEN OXIDES BY OIL AND GAS OPERATIONS IN THE COVERED NONATTAINMENT AREA TO AN AVERAGE OF NO MORE THAN THIRTY-ONE AND SEVENTY-ONE HUNDREDTHS TONS OF NITROGEN OXIDES PER DAY; AND

(b) EXCEPT AS SET FORTH IN SUBSECTION (3)(b) OF THIS SECTION, FOR THE 2030 OZONE SEASON, AND EACH OZONE SEASON THEREAFTER, SET A MAXIMUM EMISSIONS LEVEL OF NITROGEN OXIDES BY OIL AND GAS OPERATIONS IN THE COVERED NONATTAINMENT AREA TO AN AVERAGE OF NO MORE THAN TWENTY-TWO AND SIXTY-FIVE HUNDREDTHS TONS OF NITROGEN OXIDES PER DAY.

(3)(a) BEGINNING IN FEBRUARY 2025, AND IN EACH FEBRUARY THEREAFTER, THE COMMISSION, IN CONSULTATION WITH THE DIVISION, SHALL ACT TO LIMIT EMISSIONS FROM OIL AND GAS OPERATIONS IN THE COVERED NONATTAINMENT AREA IN A MANNER THAT PREVENTS AN EXCEEDANCE OF THE CURRENT YEAR'S OZONE SEASON NITROGEN OXIDES EMISSION BUDGET.

(b) NOTWITHSTANDING SUBSECTIONS (2)(b) AND (3)(a) OF THIS SECTION, BEGINNING IN 2030, AND EVERY THREE YEARS THEREAFTER, THE COMMISSION, IN CONSULTATION WITH THE DIVISION:

(I) EXCEPT AS SET FORTH IN SUBSECTION (3)(b)(ii)(B) OF THIS SECTION, SHALL CONSIDER REVISING THE MAXIMUM EMISSIONS LEVEL DESCRIBED IN SUBSECTION (2)(b) OF THIS SECTION BY RULE; AND

(II) MAY, FOR AN OZONE SEASON IN WHICH THE COVERED NONATTAINMENT AREA IS REDESIGNATED AS A MAINTENANCE AREA BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE UNDER THE FEDERAL ACT, AS DEFINED IN SECTION 25-7-103:

(A) REVISE THE OZONE SEASON NITROGEN OXIDES EMISSION BUDGET IN A MANNER DEEMED NECESSARY BY THE COMMISSION, IN CONSULTATION WITH THE DIVISION; OR

(B) ELIMINATE AN OZONE SEASON NITROGEN OXIDES EMISSION BUDGET FOR THE OZONE SEASON SO LONG AS THE COVERED NONATTAINMENT AREA REMAINS IN ATTAINMENT WITH THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE DESCRIBED IN THE FEDERAL ACT.

SECTION 3. In Colorado Revised Statutes, add 25-7-306 as follows:

25-7-306. On-road and nonroad vehicle emission budgets - reporting - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COVERED NONATTAINMENT AREA" MEANS THE EIGHT-HOUR OZONE DENVER METRO/NORTH FRONT RANGE NONATTAINMENT AREA.

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

(c) "EMISSION BUDGET" MEANS AN AVERAGE ANNUAL MOTOR VEHICLE EMISSION BUDGET FOR NITROGEN OXIDES AND VOLATILE ORGANIC COMPOUNDS DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION.

(2)(a) AS PART OF THE 2025 RULE-MAKING FOR THE CONSIDERATION OF ANY OZONE STATE IMPLEMENTATION PLAN FOR THE 2008 AND 2015 EIGHT-HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS DEVELOPED PURSUANT TO THE FEDERAL ACT, THE DEPARTMENT SHALL PROPOSE, AND THE COMMISSION SHALL ADOPT, MODIFY, OR REJECT, AVERAGE ANNUAL MOTOR

VEHICLE EMISSION BUDGETS FOR NITROGEN OXIDES AND VOLATILE ORGANIC COMPOUNDS FOR 2026 THROUGH 2050 THAT APPLY TO THE COVERED NONATTAINMENT AREA. EACH YEAR'S EMISSION BUDGET MUST INCLUDE MAXIMUM EMISSION LEVELS OF NITROGEN OXIDES AND VOLATILE ORGANIC COMPOUNDS FROM ALL INDIVIDUAL ON-ROAD AND NONROAD MOTOR VEHICLE CLASSES IN THE COVERED NONATTAINMENT AREA.

(b) THE EMISSION BUDGET FOR 2030 MUST BE AT LEAST TEN PERCENT BELOW THE EMISSION BUDGET FOR 2026. THE EMISSION BUDGETS FOR 2030 THROUGH 2050 MUST PROGRESSIVELY DECLINE EVERY FIVE YEARS.

(3) BEGINNING IN JANUARY 2026, AND IN JANUARY EVERY YEAR THEREAFTER, THE DEPARTMENT SHALL INCLUDE, AS PART OF ITS PRESENTATION DURING ITS "SMART ACT" HEARING REQUIRED BY SECTION 2-7-203, INFORMATION CONCERNING THE EMISSION BUDGETS."