

Authority to Regulate Open Burning in Colorado

Includes

Colorado statutes:

[25-7-102](#)

25-7-106(1)

25-7-106(7) and (8)

25-7-123

State Implementation Plans for Denver PM-10 and Class I Visibility Protection Phases 1

(Reasonably Attributable Visibility Impairment) and 2 (Regional Haze), relevant notes

Section 118 of the federal Clean Air Act

See also Colorado Air Commission [Regulation 9](#).

EMPHASES ADDED.

Colorado Revised Statutes: General Authority

25-7-102. Legislative declaration.

In order to foster the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the **policy of this state to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards, and to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards. To that end, it is the purpose of this article to require the use of all available practical methods which are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution** throughout the state of Colorado; to require the development of an air quality control program in which the **benefits of the air pollution control measures utilized bear a reasonable relationship to the economic, environmental, and energy impacts and other costs** of such measures; and to maintain a cooperative program between the state and local units of government. It is further declared that the prevention, abatement, and control of air pollution in each portion of the state are matters of statewide concern and are affected with a public interest and that the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. The general assembly further recognizes that a current and accurate inventory of actual emissions of air pollutants from all sources is essential for the proper identification and designation of attainment and nonattainment areas, the determination of the most cost-effective regulatory strategy to reduce pollution, the targeting of regulatory efforts to achieve the greatest health and environmental benefits, and the achievement of a federally approved clean air program. In order to achieve the most accurate inventory of air pollution sources possible, this article specifically provides incentives to achieve the

most accurate and complete inventory possible and to provide for the most accurate enforcement program achievable based upon that inventory.

25-7-106: Commission – additional authority

(1) Except as provided in sections 25-7-130 [re motor vehicle emissions] and 25-7-131 [training APCD staff on systems installed by manufacturers], the **commission shall have maximum flexibility in developing an effective air quality control program** and may promulgate such combination of regulations as may be necessary or desirable to carry out that program; except that such program and regulations **shall be consistent with the legislative declaration set forth in section 25-7-102**. [bracketed notes added]

25-7-123. Open burning - penalties.

(1) (a) **The commission shall adopt a program to control open burning in each portion of the state** in which such control is necessary in order to carry out the policies of this article, as set forth in section 25-7-102, and to comply with the requirements of the federal act. **Such program shall include emission control regulations** and the designation, after public hearing and from time to time, of such portions by legal description.

(b) Open burning in the course of **agricultural operations** may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning. For purposes of this section, "agricultural operations" does not include grassland, forest, or habitat management activities of significant users of prescribed fire conducted on lands the primary purpose of which is nonagricultural, unless a person asserts and the commission finds that the absence of regulation would substantially impede the objectives of this article. Such activities shall be deemed "commercial purposes" within the meaning of paragraph (b) of subsection (3) of this section.

(c) No permit shall be issued by the division pursuant to paragraph (a) of subsection (2) of this section after July 1, 2002, unless such permit is consistent with the comments and recommendations of the commission concerning the planning document, as defined in section 25-7-106 (8) (b) (II), applicable to the area to be burned; except that permit conditions may be excluded from a permit if a significant user of prescribed fire demonstrates and the state finds that such conditions are inconsistent with applicable law. The division shall report all such exclusions, within thirty days after they are granted, to the governor and to the director of the legislative council. In no event shall a permit be issued unless a planning document for the area to be burned has been submitted to the commission for review, public hearing, and comment in accordance with section 25-7-106 (8). The commission shall adopt rules to provide for exceptions from the requirements of section 25-7-106 (8) when immediate issuance of a permit is necessary to protect the public health and safety.

(2) (a) Within such designated portions of the state, no person shall burn or permit to be burned on any open premises owned or controlled by such person, or on any public

street, alley, or other land adjacent to such premises any rubbish, wastepaper, wood, or other flammable material, unless a permit therefor has first been obtained from the division. **In granting or denying the issuance of any such permit, the division shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area, climatic conditions on the day of such burning, and compliance by the applicant for the permit with applicable fire protection and safety requirements of the local authority or area.**

(b) In all or any part of any portion of the state designated pursuant to subsection (1) of this section, the prohibition contained in this subsection (2) **may be suspended** by the commission with respect to any particular type or category of open burning **upon a finding that enforcement of the prohibition would neither significantly assist in the prevention, abatement, and control of air pollution nor significantly enhance the quality of the ambient air** in such designated area.

(3) (a) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for noncommercial purposes without first having obtained a permit as required shall be subject to a civil penalty of up to five hundred dollars per day for each day during which such a violation occurs. For a second violation, the civil penalty shall be up to one thousand dollars per day for each day during which such a violation occurs. For a third or subsequent violation, the civil penalty shall be up to one thousand five hundred dollars per day for each day during which such a violation occurs.

(b) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for commercial purposes without first having obtained a permit as required shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such a violation occurs.

Colorado Statute: Specific Authority for Fire Program Fees and the Significant User of Prescribed Fire Program

25-7-106(7) (a) The commission is specifically authorized and directed to develop a program to apply and enforce every relevant provision of the state implementation plan and every relevant emission control strategy to minimize emissions, including the impacts of actions by significant users of prescribed fire, including federal, state, and local government, and private land managers that are significant users of prescribed fire. The program developed by the commission under this subsection (7) shall include, but not be limited to, the imposition of any fees necessary to administer the program, including the recovery of costs by the state for the evaluation of planning documents pursuant to subsection (8) of this section, and the imposition of penalties pursuant to section [25-7-122](#).

(b) The general assembly hereby finds, determines, and declares that the Grand Canyon visibility transport commission's recommendations for improving western vistas

report identified the emissions from fire, both wildfire and prescribed fires, as likely to have the single greatest impact on visibility at class I areas through the year 2040. The emissions from fire, both wildfire and prescribed fire, are an important episodic contributor to visibility impairing aerosols. The Grand Canyon visibility transport commission report identified that significant amounts of visibility impairment result from activities on federal lands, from mobile sources, and from Mexico.

(c) The general assembly further finds, determines, and declares that emissions from grassland and forest fires have substantial episodic impacts on ambient air quality throughout the state and are a major source of visibility impairment over which this state has jurisdiction but has not yet developed a comprehensive program to reduce such impairment.

(d) The general assembly further finds, determines, and declares that the standard in its statement of legislative purpose in section [25-7-102](#) of the "Colorado Air Pollution Prevention and Control Act" requiring the use of all practical methods that are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution is an appropriate standard to apply in relation to air pollution emissions resulting from the use of prescribed fire in grassland and forest management.

(e) This subsection (7) and subsection (8) of this section are adopted pursuant to section 118 of the federal act and shall be construed to exercise the full extent of the state's authority as granted by the provisions of said federal act. The federal government, as the only landowner of its size in the state and the only landowner in the state other than the state government itself that routinely prepares plans involving the management of grassland and forest lands using prescribed fire, is appropriately subject to the requirements of this section pertaining to review and approval of planning documents.

(f) Persons owning or managing large parcels of land who significantly use prescribed fire as a grassland or forest management tool shall prepare plans addressing the use and role of prescribed fire and the air quality impacts resulting therefrom, and such plans are appropriately subject to the review requirements of this section. The state, by reviewing these types of plans, can achieve significant progress towards cooperatively reducing emissions from those lands that impact visibility in Colorado.

(g) As used in this subsection (7) and in subsection (8) of this section, the term "significant user of prescribed fire" means a federal, state, or local agency or significant management unit thereof or person that collectively manages or owns more than ten thousand acres of grasslands or forest lands within the state of Colorado and that uses prescribed fire. The adoption of a fire management plan by a local or county unit of government pursuant to section [30-11-124](#), C.R.S., does not constitute management for purposes of this section unless the county or local unit of government owns or manages more than ten thousand acres and is a significant user of prescribed fire. "Prescribed fire" means fire that is intentionally used for grassland or forest management, regardless of whether the fire is caused by natural or human sources. Prescribed fire does not include open burning in the course of agricultural operations and does not include open burning

for the purpose of maintaining water conveyance structures, unless the commission acts pursuant to section [25-7-123](#). The commission shall by rule exempt from the program developed pursuant to this subsection (7) those sources that have an insignificant impact on visibility and air quality.

(8) (a) The commission, in exercising the powers conferred by subsection (7) of this section and this subsection (8), shall require all significant users of prescribed fire, including federal agencies for activities directly conducted by or on behalf of federal agencies on federal lands, to minimize emissions using all available, practicable methods that are technologically feasible and economically reasonable in order to minimize the impact or reduce the potential for such impact on both the attainment and maintenance of national ambient air quality standards and the achievement of federal and state visibility goals.

(b) (I) In order to ensure compliance with the requirements of paragraph (a) of this subsection (8), significant users of prescribed fire shall submit planning documents to the commission. The commission shall then conduct a public hearing to review each planning document submitted relevant to achieving the goal of minimizing emissions and impacts as set forth in paragraph (a) of this subsection (8). Only one hearing shall be held for each planning document. The commission shall hold a hearing and complete its review of the planning documents submitted by any significant user of prescribed fire within forty-five days of their receipt by the commission, unless otherwise agreed to by the significant user of prescribed fire.

(II) As used in this paragraph (b), "planning documents" means documents that summarize the use of prescribed fire as a grassland or forest management tool and the associated discharge or release of air pollution and that demonstrate how compliance with the state standard expressed in section [25-7-102](#) shall be achieved. "Planning documents" shall include land management plans or a summary of the equivalent information that explains and supports the land management criteria evaluated and the decision to use prescribed fire as the fuel treatment method. Planning documents shall include a discussion of the alternatives considered and a discussion of how prescribed fire, if selected, minimizes the risk of wildfire.

(III) The commission shall have discretion to adopt rules governing the resubmission of planning documents to prevent such plans from becoming outdated.

(c) Following a public hearing, the commission shall comment and make recommendations to the significant user of prescribed fire regarding any changes to elements of the plan relating to the discharge or release of air pollutants that the commission finds necessary to comply with the state standard expressed in section [25-7-102](#).

SIPS that Include Open Burning and/or Wildland Prescribed Fire

Denver PM10 SIP

While no mention of open burning is contained in this SIP, all of Colorado Air Quality Control Commission's Regulation No. 1 (aka: the particulate matter regulation) was included with the SIP in the submittal to EPA. Part of Reg. 1 contains requirements for open burning that are also repeated and expanded on in Reg. 9. The Division attempted to repeal the duplicative open burning section in Reg. 1 but EPA objected and it remains.

Phase I RAVI Visibility SIP

EPA's regulations require that the Long-Term Strategy state address open burning from all sources. The Commission approved SIP and LTS amendments have included discussion about the state's smoke management program and general open burning program but have not included Reg. 1 or 9 as part of the SIP.

Phase II Regional Haze Visibility SIP

This SIP essentially responds to EPA requirements for Regional Haze in the same manner as described immediately above.

federal Clean Air Act Section 118

TITLE 42 > CHAPTER 85 > SUBCHAPTER I > Part A > § 7418

§ 7418. Control of pollution from Federal facilities

(a) General compliance

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of **the Federal Government**

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply

(A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever),

(B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program,

(C) to the exercise of any Federal, State, or local administrative authority, and

(D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

(b) Exemption

The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he

determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 7411 of this title, and an exemption from section 7412 of this title may be granted only in accordance with section 7412 (i)(4) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.