

Study of
Air Quality
Control
Issues

Report to the
COLORADO
GENERAL ASSEMBLY

Colorado Legislative Council
Research Publication No. 430
November 1997

RECOMMENDATIONS FOR 1998

**STUDY OF
AIR QUALITY CONTROL ISSUES**

**Report to the
Colorado General Assembly**

**Research Publication No. 430
November 1997**

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November 14, 1997

To Members of the Sixty-first General Assembly:

Submitted herewith is the final report of the Study of Air Quality Control Issues. The interim committee was created pursuant to Senate Joint Resolution 97-29 to discuss air quality related issues that impact regions throughout Colorado.

At its meeting on November 13, 1997, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 1998 session was approved.

Respectfully submitted,

/s/ Representative Chuck Berry
Chairman
Legislative Council

CB/HH/pw

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STUDY OF AIR QUALITY CONTROL ISSUES

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EXECUTIVE SUMMARY

Committee Charge

The Interim Committee on Air Quality Control Issues was created pursuant to Senate Joint Resolution 97-29 and charged with reviewing procedures for determining compliance with, and the administration of, air quality standards and regulations in Colorado. Specifically, the committee was authorized to review the role of local air quality planning agencies and their relationship with the Air Pollution Control Division within the Colorado Department of Public Health and Environment. The committee was required to consider air quality standards to be regulated for all sources of air pollution and to consider the impact of these standards on Colorado's air quality. The committee was directed to consider those standards that are not specifically health-related.

House Bill 97-1176 (Section 25-7-215, C.R.S.) created the Subcommittee of the Interim Committee on Air Quality Control Issues. The subcommittee was charged with evaluating the effect of establishing specific numeric standards for measuring visibility and reporting recommendations to the full committee for consideration. The subcommittee was also directed to receive testimony from a cross-section of concerned persons, including environmental groups, representatives of federal agencies having a role in visibility protection, and interested business, labor, and citizen groups.

Committee Activities

The committee determined that it was necessary to hold meetings in various parts of the state to adequately consider air quality issues relevant to the different regions of Colorado. Five committee meetings were held, two in Denver and one each in Fort Collins, Grand Junction, and Colorado Springs. Testimony was received on a variety of air quality issues from representatives of the following organizations: Colorado Department of Public Health and Environment, U.S. Environmental Protection Agency, U.S. Forest Service, Colorado State Forest Service, Federal Highway Administration, Colorado Department of Transportation, Western Governors' Association, Colorado Utilities Coalition, Regional Air Quality Council, Denver Regional Council of Governments, Pikes Peak Area Council of Governments, North Front Range Transportation and Air Quality Planning Council, and local governments.

The committee focused on air quality issues, including prescribed burns conducted to maintain forest health, the air quality planning process under the federal Clean Air Act, the relationship between transportation conformity and air quality planning, air quality modeling, stationary source permitting requirements, and mobile source requirements.

The Subcommittee of the Interim Committee on Air Quality Issues held three meetings, two in Denver and one in Grand Junction. The first meeting was a round table discussion with prominent scientists in the field of visibility quantification and representatives from the Colorado Department of Public Health and Environment, industry, and environmental groups. This meeting focused on the application of a numeric standard to measure visibility. At the second meeting, the subcommittee discussed the relationship between the Environmental Protection Agency's (EPA) proposed regional haze rule and the recommendations of the Grand Canyon Visibility Transport Commission report. The purpose of the third meeting was to finalize, for recommendation to the full committee, draft legislation and formal comments regarding the proposed regional haze rule to be submitted to the EPA.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends four bills and one resolution for consideration in the 1998 legislative session. Additionally, the subcommittee recommended, and the full committee approved, the submittal of formal comments to the EPA regarding the proposed regional haze rule.

Bill A — Responsibilities of federal officials regarding Class I areas. Bill A requires federal land managers to develop plans for evaluating visibility in each of the mandatory Class I federal areas by visual observations or other monitoring techniques. The federal government is required to pay any expenses for implementation of the plan.

Bill B — Authority of the Air Quality Control Commission to revise emission control regulations. Bill B requires the Air Quality Control Commission to revise the state implementation plan if it determines that compliance with applicable emission control regulations through new or improved technology is economically and technologically feasible.

Bill C — Removal of provisions in the Air Quality State Implementation Plan. Bill C requires the Air Quality Control Commission and the Air Pollution Control Division to remove regulatory provisions from the state implementation plan that are more stringent than the requirements of the federal Clean Air Act.

Bill D — Application of state air quality standards to activities on public property. Bill D directs the Air Quality Control Commission to require all federal facilities to minimize emissions to the maximum extent practicable. The bill also requires federal land managers to submit permit applications that specify in their land management plans how compliance will be achieved.

Resolution A — Recommend that Congress adopt a legislative rule review process for environmental regulations. Resolution A requests that the United States Congress adopt statutes requiring the automatic legislative review of all regulations newly adopted

or amended by the Environmental Protection Agency. Any EPA regulations not affirmatively extended by Congress would automatically expire.

Committee comments on air quality control issues to the EPA. The comments submitted to the EPA declare the committee's opposition to the regional haze rule as proposed by the EPA. The committee states that the rule proposes a one-size-fits-all approach to improving regional visibility which targets stationary sources without requiring accountability for other sources of pollution, such as mobile and prescribed fires. The committee takes exception to the disproportionate share of the cost that will be borne by Western states and the failure to recognize or incorporate in any substantive way the recommendations of the Grand Canyon Visibility Transport Commission report. Finally, the committee argues that the EPA does not take into consideration individual state issues or the site-specific variables of each Class I area. See Appendix A on page 35 for a copy of the comments submitted to the EPA.

STATUTORY AUTHORITY AND RESPONSIBILITIES

The Interim Committee on Air Quality Control Issues was created by Senate Joint Resolution 97-29. The Committee is composed of eleven members, five from the Senate and six from the House, with one member of each house from west of the Continental Divide. The committee was directed to:

- review organizations that expend federal, state, or local tax revenues to study or disseminate information about air quality issues;
- review standards for the regulation of all sources of air pollution where the regulation is not specifically health-related;
- examine the impact of out-of-state sources of air pollution on Colorado's air quality;
- consult, as required, with appropriate local, state, and federal agencies and interested members of the public;
- hold public hearings outside the Denver metropolitan area as needed to meet the requirements of this study; and
- report its findings and recommendations to the 1998 General Assembly.

The Subcommittee of the Interim Committee on Air Quality Control Issues was created by House Bill 97-1176. The subcommittee consists of four members from the Interim Committee on Air Quality Control Issues and two additional legislative members. The subcommittee was directed to:

- hear testimony from a cross-section of persons concerned with visibility impairment, including environmental groups, representatives of federal agencies having a role in visibility protection, and interested business, labor, and citizen groups;
- evaluate the effect of establishing specific numeric standards for measuring visibility; and
- report any recommendations to the full committee.

COMMITTEE ACTIVITIES

Review of Air Quality Planning Agencies

The committee was directed to review the activities of organizations that expend tax revenues to conduct air quality planning efforts. Representatives from federal agencies and both governmental and nongovernmental air quality planning agencies at the state level appeared before the committee to discuss their respective roles in air quality planning in Colorado.

Scope of issue. Colorado's air quality control processes vary throughout the state. For example, the largest metropolitan areas have lead air quality planning agencies that work with the Air Pollution Control Division to develop their portion of the State Implementation Plan (SIP). However, smaller areas that must conform to federal air quality standards do not have lead air quality planning agencies, and local officials must work directly with the Air Pollution Control Division to develop their portion of the SIP.

Discussion. EPA personnel summarized their authority to require states to achieve specific levels of air quality for different pollutants. Air Pollution Control Division officials described their methods of working with the EPA and local areas to promote community-based environmental protection.

Representatives from the lead air quality planning agencies discussed their role in the air quality planning process. Air quality planning agencies are responsible for drafting recommendations to comply with federal clean air standards. These recommendations are included in the SIP and submitted to the Air Quality Control Commission for review. The SIPs must be approved by the General Assembly before being sent to the Governor, and ultimately to the EPA.

Representatives from communities that do not have lead air quality planning agencies explained their air quality control efforts. These communities strive to reduce pollution so that they will not be subject to additional federal requirements. Budget constraints, as well as a lack of technical knowledge, force these communities to rely heavily on the Air Pollution Control Division for assistance.

Recommendation. The information provided by the various air quality planning agencies helped the committee understand the processes used by agencies throughout the state to comply with federal air quality standards. A streamlined air quality control process for the state was suggested as a method to improve Colorado's compliance with federal requirements. The committee makes no recommendation regarding the air quality planning process.

Prescribed Burns

Representatives of the U.S. Forest Service, the Colorado State Forest Service, the Colorado Department of Public Health and Environment, and industry briefed the committee on the state's program for maintaining forest health and wildlife habitat through the use of prescribed burns. The U.S. Forest Service and the Park Service plan to increase the use of prescribed burning in the Western states by 15 to 20 percent each year for the next several years. The Colorado Department of Public Health and Environment permits such activity through cooperative efforts between state and federal agencies through a memorandum of understanding.

Scope of issue. The application of prescribed burning impacts Colorado's air quality and visibility. The U.S. Forest Service and the Colorado State Forest Service conduct prescribed burning on public lands to manage forest health and wildlife habitats. The projected increase in the amount of burning has the potential to adversely impact public health and the environment. The current state program to manage the impacts of prescribed burning is through a cooperative agreement and, therefore, not mandatory. Up to this point, all participants have conducted burns according to the Air Pollution Control Division permitting requirements. The state and federal agencies that obtain permits for burning do not pay a fee to cover the cost of the program.

Discussion. The Air Pollution Control Division spokesperson reviewed the division's memorandum of understanding with the federal government regarding prescribed burns in the state. The agreement reinforces the federal government's requirement to comply with state regulations. Some committee members suggested that the state have statutory authority to require the federal government to comply with state regulations.

The Air Pollution Control Division spokesperson stated that the prescribed burning program does not have an inspection or enforcement component. It has not been determined how much program costs would increase under the current scenario if the projected increases of prescribed burning are realized. When questioned by committee members, representatives of the state and federal agencies did not object to a possible fee requirement for the administration of such a program.

The Air Pollution Control Division representative noted that prescribed burning does impact air quality and visibility, but that it reduces fuel loading in specific areas of the state and helps to reduce the impact of uncontrolled or wild fires.

Representatives from the U.S. Forest Service explained how they are merging environmental and economic concerns regarding forestry practices. Industry representatives urged the Forest Service to explore markets for timber debris and to develop alternative techniques of clearing the forest floor without burning.

Recommendation. The full committee and subcommittee recommend Bill D, which requires all federal facilities to minimize emissions to the maximum extent practicable and requires federal land managers to submit permit applications that specify in land management plans how compliance will be achieved. A review of the provisions of Bill D is provided on page 10.

Other Issues Discussed

Global warming. The committee was briefed on global warming studies that are being conducted by the Air Pollution Control Division and funded by the EPA. A representative from the coal mining industry discussed the economic impacts of the emissions reductions suggested by the EPA to minimize global warming.

Transportation conformity. A briefing was provided on the relationship between transportation conformity and air quality planning. Conformity is a method of ensuring that transportation plans are consistent with air quality goals.

Northern Front Range Air Quality Study. A progress report of the Northern Front Range Air Quality Study was provided. The study is a privately funded endeavor that focuses on particulate matter measuring less than 2.5 microns.

Modeling. Representatives from the Air Pollution Control Division provided an overview of the models they use to make air quality determinations. Similar models are used by lead air quality planning and transportation agencies.

The committee makes no recommendations on the aforementioned issues.

SUBCOMMITTEE ACTIVITIES

Establishing a Numeric Visibility Standard

Scope of issue. The Subcommittee of the Interim Committee on Air Quality Control Issues was charged with considering the feasibility of developing and implementing a numeric standard for measuring visibility. Discussion specifically pertained to the EPA's proposed regional haze rule and the recommendations of the Grand Canyon Visibility Transport Commission for addressing visibility impairment.

Discussion. The subcommittee held a joint meeting with the Air Pollution Control Division. At this meeting, four prominent scientists who specialize in the field of visibility quantification, Air Pollution Control Division staff, and representatives of environmental and industry groups, participated in a round table discussion with the subcommittee on the different issues related to developing and implementing a method of quantifying visibility. The focus of the discussion pertained to the deciview scale as a scientific method of measuring visibility as well as the factors that impact visibility when observing a scenic vista in a Class I area. A Class I area is defined by the federal government to be a designated national park or wilderness area. Factors that affect visibility include terrain, illumination, condition of material in the atmosphere, and how an individual's eye and brain process the view. There was general disagreement among the scientists regarding the application of the deciview scale and its effectiveness as a method to quantify visibility.

The subcommittee used the information from this meeting as a basis for considering both the implementation of the deciview scale as a method of measuring visibility and the application of Best Available Retrofit Technology (BART) as an alternative method of measuring and limiting source-specific emissions. The EPA's proposed rule requires the application of BART to major stationary sources from specific categories. By contrast, the Grand Canyon Visibility Transport Commission recommended using the deciview scale to measure visibility impairment regionally.

Although no consensus was reached by the scientific community regarding implementation of the deciview scale, the subcommittee opposed an across-the-board BART requirement. The subcommittee concluded that the EPA's proposed rule was too onerous on stationary sources in Colorado, and that the economic impact on Colorado's residents would be too great. Additionally, the subcommittee determined that the state should not be required to conduct or pay for the monitoring of emissions on federal lands in Colorado.

Recommendations. The subcommittee recommends that:

- the state require federal accountability for the management of federal lands in Colorado;
- a method of enforcement, such as assessing penalties and fees, be established; and
- formal comments stating opposition to the EPA's proposed regional haze rule be submitted to Congress.

To address these recommendations, the subcommittee proposes Bills A and D and Resolution A. A review of the provisions of those bills and the resolution is provided on pages 9, 10, and 11.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following four bills and one resolution are recommended to the Colorado General Assembly.

Bill A — Responsibilities of Federal Officials Regarding Class I Areas

The potential impact of the EPA's proposed regional haze rule on Colorado was discussed by the committee. The rule, which was published in the Federal Register on July 31, 1997, proposes more stringent regulatory requirements on various sources of pollution, including prescribed burns on public land. The proposed rule was interpreted to require the state to monitor emissions from prescribed burning conducted on federal lands and to pay any costs associated with the monitoring. The committee determined that it was inappropriate for the state to both conduct and pay for emissions monitoring on federal lands.

In response to those concerns, Bill A requires the federal government to conduct and pay for the monitoring of emissions generated on federal lands. Specifically, the bill requires the appropriate federal land manager to develop a plan for evaluating visibility in each of the mandatory Class I federal areas by visual observation or other monitoring techniques that have been approved by the EPA. This plan must be submitted to the Air Pollution Control Division for approval and incorporation into the SIP. The federal government is required to pay any expenses associated with implementation of the plan. Additionally, the bill requires that all data developed by federal officials for visibility protection is made available to the Air Pollution Control Division and the Air Quality Control Commission.

Bill A would require the federal government to develop a plan for monitoring and controlling air pollution and to pay the costs of administering the plan. This bill would not increase the workload of the Air Quality Control Commission or the Air Pollution Control Division. Therefore, this bill is assessed as having no fiscal impact.

Bill B — Authority of the Air Quality Control Commission to Revise Emission Control Regulations

The committee discussed making the SIP process more flexible in order to incorporate new and improved technology that is both economically and technologically feasible.

Bill B requires the Air Quality Control Commission to revise the SIP, or any regulation or standard that is not part of the SIP, if it determines that compliance with

applicable emission control regulations through new or improved technology is economically and technologically feasible. This bill expands existing statutory language to include mobile sources along with stationary sources. Operators of either source may request commission approval to implement control techniques that utilize economically and technologically feasible alternatives.

To implement Bill B, the Department of Public Health and Environment would require between 0.1 FTE and \$6,560 and 1.0 FTE and \$65,600 in Cash Fund spending authority for FY 1998-99.

Bill C — Removal of Provisions in the Air Quality State Implementation Plan

The committee discussed the fact that a number of control measures, not required for compliance with federal law, have been erroneously incorporated into the SIP and are, therefore, federally enforceable. The committee believes that it is necessary to remove any measures from the SIP that exceed the minimum federal requirements.

Bill C authorizes the Air Quality Control Commission to remove from the SIP any regulatory provision that should not be subject to federal enforceability. The bill states that requirements more stringent than those required by federal law were placed into the SIP in violation of the federal enforceability section of Colorado law. The new language requires the Division and the Air Quality Control Commission by July 1, 1998, to remove any regulatory provisions from the SIP that are more stringent than the requirements of the federal Clean Air Act.

Local governments would have to expend personal service resources to attend meetings, hearings, and discussions concerning the review of any rule or regulation impacting that entity. This could require significant personal services depending on the number of rules that may be found more stringent than federal requirements.

Bill C is assessed as having a fiscal impact on the state. The fiscal note states that the Department of Public Health and Environment would require a minimum of 3.6 FTE and \$244,923 in Cash Fund spending authority for FY 1997-98 to implement this bill. Of that amount, the Department of Law would require a minimum of 1.0 FTE and \$88,320 in Cash Fund Exempt spending authority.

Bill D — Application of State Air Quality Standards to Activities on Public Property

Methods to require and enforce federal compliance with state regulations were discussed by the committee. This enforcement pertains specifically to the management of federal properties within Colorado. The committee determined that it is necessary to

provide the Air Quality Control Commission direct authority to require and enforce federal agency compliance with state regulations.

Bill D directs the Air Quality Control Commission to require all federal facilities to minimize emissions to the maximum extent practicable. The commission is authorized to apply and enforce the SIP, including the imposition of any fee or penalty that applies to federal property and facilities within Colorado. This authority includes the recovery of costs incurred by the state for the evaluation of land management plans. The state's authority shall be fully exercised as granted by Section 118 of the federal Clean Air Act which requires federal departments and agencies to comply with state law and regulation. Federal land managers are required to submit for approval, by July 1, 1998, permit applications that specify in the land management plan how compliance will be achieved.

The bill excludes forest management and habitat management activities from the definition of "agricultural operations" which are exempt from prohibitions on open burning. The bill also prohibits the issuance of permits to conduct burns without commission approval of the land management plan for the area proposed to be burned. Burning conducted without a permit will be subject to a penalty of \$10,000 per day.

Bill D is assessed as having a fiscal impact on the state. The fiscal note states that the permit fee in FY 1998-99 would be approximately \$2,601 which would generate \$109,251 in cash funds to the Department of Public Health and Environment. In FY 1999-2000, the estimated fee would be \$1,774 which would generate \$74,515 in cash funds to the Department. To implement this bill, the Department would require 1.6 FTE and \$109,251 in Cash Fund spending authority for FY 1998-99.

Resolution A — Recommend that Congress Adopt a Legislative Rule Review Process for Environmental Regulations

Resolution A requests that the United States Congress adopt statutes requiring the automatic legislative review of all regulations that are either newly adopted or amended by the Environmental Protection Agency. The resolution calls for the automatic expiration, within a time certain, of any regulations that Congress does not review and act upon.

MATERIALS AVAILABLE

The materials listed below are available upon request from the Legislative Council staff.

Meeting Summaries	Topics Discussed
July 28, 1997	The air quality planning process under the federal Clean Air Act; the air quality management agency process in Colorado; technical assistance provided by the Colorado Department of Public Health and Environment to local governments in nonattainment areas throughout the state; and the status of the stationary source program and the Inspection and Maintenance program
August 26, 1997 Subcommittee meeting	The deciview scale as a scientific measurement of visibility
August 28, 1997	Local air quality planning agency compliance with federal standards; relationship between transportation conformity and air quality planning; visibility issues related to prescribed burning; and the Northern Front Range Air Quality Study
September 10, 1997 Subcommittee meeting	Relationship between regional haze proposals, visibility recommendations, and current state visibility role; public response from affected groups regarding a state visibility standard; and possible 1998 legislation
September 29, 1997 Subcommittee meeting	Review written comments to the Environmental Protection Agency regarding the proposed regional haze rule; and review draft legislation for submittal to the full committee
September 30, 1997	Local air quality planning agency compliance with federal standards; public land management; and report from the subcommittee
October 6, 1997	Local air quality planning agency compliance with federal standards; Western Regional Air Partnership; modeling; stationary source permitting requirements; and possible 1998 legislation
October 17, 1997	Discussion of proposed legislation for the 1998 legislative session; global warming study; and mobile source requirements

Memoranda and Reports

Legislative Council staff memoranda titles:

Authority of the State of Colorado to Enforce Air Pollution Control Requirements on Federal Facilities, September 19, 1997

Background on the Northern Front Range Air Quality Study, August 21, 1997

Federal Clean Air Act, July 22, 1997

Introduction to Air Quality Planning Agencies in Colorado, July 22, 1997

Transportation Conformity and Air Quality Planning, August 22, 1997

Reports provided to the committee:

Blueprint for Clean Air, Phase I Summary Reports, December 13, 1996, Regional Air Quality Council

Federal Register, July 31, 1997, Regional Haze Regulations; Proposed Rule, pp. 41137-41160

Interagency Assessment of Oxygenated Fuels, National Science and Technology Council, Committee on Environment and Natural Resources, June 1997

Mount Zirkel Wilderness Area Reasonable Attribution Study of Visibility Impairment, Desert Research Institute, Volume II: Results of Data Analysis and Modeling, Executive Summary, July 1, 1996

Recommendations for Improving Western Vistas, The Grand Canyon Visibility Transport Commission, June 10, 1996

BILL A

By Representative Taylor

A BILL FOR AN ACT

CONCERNING THE RESPONSIBILITIES OF FEDERAL OFFICIALS IN CONNECTION WITH
VISIBILITY MONITORING IN CLASS I AREAS

Bill Summary

"Fed Resp Visibility Monitor Class I Areas"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Air Quality Control Issues. Makes a legislative declaration that significant contributions to regional haze and visibility impairment in the west emanate from federal lands within Colorado. For the purpose of addressing the cause of this impairment, requires the federal land manager of such federal areas to develop a plan for evaluating visibility in each mandatory class I federal area and submit a plan for approval to the air pollution control division for incorporation by the air quality control commission into the state implementation plan. Conditions approval of such a plan on the federal government bearing the expenses of administration of any such plan.

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

SECTION 1. 25-7-212, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25-7-212. Actions of federal government affecting visibility - evaluation report - legislative declaration - monitoring - funding. (3) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES, AFTER REVIEWING THE FACTORS THAT CONTRIBUTE TO REGIONAL HAZE AND VISIBILITY IMPAIRMENT IN THE WEST, THAT SIGNIFICANT CONTRIBUTIONS TO REGIONAL HAZE AND VISIBILITY IMPAIRMENT EMANATE FROM FEDERAL LANDS WITHIN THE STATE OF COLORADO.

FOR THE PURPOSE OF ADDRESSING REASONABLY ATTRIBUTABLE VISIBILITY IMPAIRMENT IN MANDATORY CLASS I FEDERAL AREAS, THE FEDERAL LAND MANAGER OF SUCH AREAS SHALL DEVELOP A PLAN FOR EVALUATING VISIBILITY IN EACH MANDATORY CLASS I FEDERAL AREA BY VISUAL OBSERVATION OR OTHER APPROPRIATE MONITORING TECHNIQUE APPROVED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND SHALL SUBMIT SUCH PLAN FOR APPROVAL TO THE DIVISION FOR INCORPORATION BY THE COMMISSION AS PART OF THE STATE IMPLEMENTATION PLAN. SUCH SUBMITTAL AND COMPLIANCE BY THE FEDERAL LAND MANAGERS SHALL BE DONE IN A MANNER AND AT A TIME SO AS TO MEET ALL PRESENT OR FUTURE FEDERAL REQUIREMENTS FOR THE PROTECTION OF VISIBILITY IN ANY MANDATORY CLASS I FEDERAL AREA. SUCH PLAN SHALL ONLY BE APPROVED BY THE COMMISSION IF THE EXPENSE OF IMPLEMENTING SUCH A PLAN IS BORNE BY THE FEDERAL GOVERNMENT.

(b) FEDERAL OFFICIALS SHALL CONFER WITH THE COMMISSION AND THE DIVISION AND SHALL ENSURE THAT ALL DATA DEVELOPED FOR VISIBILITY PROTECTION PURPOSES IS MADE AVAILABLE TO THE DIVISION AND THE COMMISSION.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 98-166
Prime Sponsor(s): Rep. Taylor
Sen. Ament

Date: November 17, 1997
Bill Status: Study of Air Quality Control
Issues
Fiscal Analyst: Scott Nachtrieb (866-4752)

TITLE: CONCERNING THE RESPONSIBILITIES OF FEDERAL OFFICIALS IN CONNECTION WITH VISIBILITY MONITORING IN CLASS I AREAS.

Summary of Assessment

The bill would require federal land managers in Colorado to develop a plan for evaluating regional haze and visibility impairment in each mandatory class I federal area in Colorado and submit a plan for approval to the Air Pollution Control Division for incorporation by the Air Quality Control Commission into The State Implementation Plan. The federal government would pay the expenses of administering any approved plan. The bill would become effective at 12:01 a.m. on the day following the ninety-day period after adjournment sine die of the General Assembly, or on the date of the official declaration of the vote of the people as proclaimed by the Governor, if a referendum petition is filed pursuant to Article V, Section 1 (3) of the State Constitution.

This bill would require the federal government to develop a plan for monitoring and controlling air pollution and pay the costs of administering the plan. This bill would not increase the workload of the Air Quality Control Commission or the Air Pollution Control Division. Therefore, this bill is assessed as having no fiscal impact.

Departments Contacted

Health and Environment

BILL B

By Representative Tucker

A BILL FOR AN ACT

CONCERNING THE AUTHORITY OF THE AIR QUALITY CONTROL COMMISSION TO
REVISE CONTROL REGULATIONS TO UTILIZE NEW OR IMPROVED TECHNOLOGY.

Bill Summary

"Revision Of Air Control Regulations"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Adds to the criteria under which the owner or operator of a stationary or mobile source of air pollution may request that the air quality control commission revise the state implementation plan (SIP) or any regulation or standard that is not part of the SIP circumstances where compliance with applicable emission control regulations through new or improved technology is economically and technologically feasible.

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

SECTION 1. The introductory portion to 25-7-117 (1) and 25-7-117 (1)

(a), Colorado Revised Statutes, are amended to read:

25-7-117. State implementation plan - revisions of limited applicability.

(1) The commission, upon application by the owner or operator of a stationary OR MOBILE source or as provided in section 25-7-110 (2), ~~may~~ SHALL revise the state implementation plan or any regulation or standard ~~which~~ THAT is not part of the state implementation plan pursuant to this section if it determines that:

(a) Control techniques are not available, compliance with applicable emission control regulations would cause an unreasonable economic burden,

COMPLIANCE WITH APPLICABLE EMISSION CONTROL REGULATIONS THROUGH NEW OR IMPROVED TECHNOLOGY IS ECONOMICALLY AND TECHNOLOGICALLY FEASIBLE, or compliance with applicable emission control regulations would result in an arbitrary and unreasonable taking of property;

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Colorado Legislative Council Staff
STATE FISCAL NOTE

No General Fund Impact
State Cash Fund Expenditure Impact

Drafting Number: LLS 98-180 **Date:** November 21, 1997
Prime Sponsor(s): Rep. Tucker **Bill Status:** Study of Air Quality Control
 Sen. Mutzebaugh Issues

Fiscal Analyst: Scott Nachtrieb (866-4752)

TITLE: CONCERNING THE AUTHORITY OF THE AIR QUALITY CONTROL COMMISSION TO REVISE CONTROL REGULATIONS TO UTILIZE NEW OR IMPROVED TECHNOLOGY.

Summary of Legislation

The bill would allow the owner or operator of any stationary or mobile pollution source to request that the Air Quality Control Commission revise the State Implementation Plan (SIP) or any regulation or standard that is not part of the SIP if the commission determines that compliance with applicable emission control regulations through new or improved technology is economically and technologically feasible. The bill would become effective at 12:01 a.m. on the day following the ninety-day period after adjournment sine die of the General Assembly, or on the date of the official declaration of the vote of the people as proclaimed by the Governor, if a referendum petition is filed pursuant to Article V, Section 1 (3) of the State Constitution.

STATE FISCAL IMPACT SUMMARY		
	FY 1998/99	FY 1999/2000
State Revenues		
State Expenditures		
Cash Fund	\$6,560 *	\$6,560 *
FTE Position Change	0.1 FTE *	0.1 FTE *
Local Government Impact — None		

* Estimated cost for each new technology if proven to have merit and require a change to the state implementation plan

State Expenditures

Under current law, the Department of Public Health and Environment (DPHE) has the ability to determine if new or improved technology is available, has merit, and to revise the state implementation plan for these cases. The DPHE may choose not to revise the plan because the impact on air quality is not significant. The bill would require the department to modify the plan if the technology were proven to have merit regardless of the significance of the impact on air quality. The number of times that a new technology would be proven to have merit and need to be included in the state implementation plan is estimated to be minimal. However, should a new technology be proven to have merit and require inclusion in the state implementation plan, the

Bill - B

DPHE would have costs of approximately 170 hours of a Professional Engineer's time and 50 hours of an Environmental Protection Specialist's time. Therefore, this bill is assessed as having an expenditure impact to the DPHE. It is estimated that the department would require approximately \$6,560 annually for new technology that is proven to have merit and require a change to the state implementation plan.

Spending Authority

This fiscal note implies that the Department of Public Health and Environment would require between 0.1 FTE and \$6,560 and 1.0 FTE and \$65,600 in Cash Fund spending authority for FY 1998-99 to implement this bill.

Departments Contacted

Health and Environment Law

The Department of Public Health and Environment estimates that it may receive 10 cases annually which would require 1.0 FTE and \$65,600 in cash funds.

BILL C

By Representative Schauer

A BILL FOR AN ACT

CONCERNING THE REMOVAL OF PROVISIONS IN THE AIR QUALITY STATE IMPLEMENTATION PLAN THAT ARE MORE STRINGENT THAN THOSE REQUIRED BY FEDERAL LAW.

Bill Summary

"Remove State Only SIP Provisions"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Air Quality Control Issues. Declares that certain provisions in the air quality state implementation plan are more stringent than federal requirements. Declares that state permits issued pursuant to such provisions contain terms or conditions that are more stringent than required by federal law. Declares that such provisions were placed in the state implementation plan in violation of state law.

Requires that no later than July 1, 1998, the air pollution control division and the air quality control commission shall take all necessary action to remove from the state implementation plan those provisions that were submitted in violation of state law.

Makes a specific finding that the state has complied with the provisions of the federal "Clean Air Act" relating to state implementation plans for national primary and secondary ambient air quality standards and the general savings clause provisions of such federal act.

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

SECTION 1. 25-7-105.1, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25-7-105.1. Federal enforceability. (4) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES:

(I) THAT THERE ARE CERTAIN PROVISIONS IN THE REGULATIONS OF THE COMMISSION THAT ARE MORE STRINGENT THAN THE REQUIREMENTS OF THE FEDERAL ACT;

(II) THAT THE DIVISION HAS ISSUED PERMITS PURSUANT TO THE COMMISSION'S REGULATIONS THAT CONTAIN TERMS OR CONDITIONS THAT ARE MORE STRINGENT THAN THE REQUIREMENTS OF THE FEDERAL ACT;

(III) THAT SUCH MORE STRINGENT PROVISIONS OF THE COMMISSION'S REGULATIONS HAVE BEEN PLACED INTO THE STATE IMPLEMENTATION PLAN IN VIOLATION OF THIS SECTION AND ITS PREDECESSOR, SECTION 25-7-105 (8), AS IT EXISTED PRIOR TO JULY 1, 1992.

(b) THE DIVISION AND THE COMMISSION SHALL, NO LATER THAN JULY 1, 1998, TAKE ALL NECESSARY ACTION TO REMOVE FROM THE STATE IMPLEMENTATION PLAN THOSE PROVISIONS OF THE COMMISSION'S REGULATIONS THAT THE COMMISSION SUBMITTED FOR INCLUSION IN THE STATE IMPLEMENTATION PLAN IN VIOLATION OF THIS SECTION OR ITS PREDECESSOR, SECTION 25-7-105 (8), AS IT EXISTED PRIOR TO JULY 1, 1992.

(c) ABSENT SPECIFIC FACTUAL FINDINGS BY THE COMMISSION, THE GENERAL ASSEMBLY HEREBY FINDS THAT SECTIONS 110 AND 193 OF THE FEDERAL ACT ARE COMPLIED WITH.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Colorado Legislative Council Staff

**STATE and LOCAL
FISCAL NOTE**

No General Fund Impact
State Cash Fund Expenditure Impact
Local Expenditure Impact

Drafting Number: LLS 98-195	Date: November 17, 1997
Prime Sponsor(s): Rep. Schauer Sen. Mutzebaugh	Bill Status: Study of Air Quality Control Issues
	Fiscal Analyst: Scott Nachtrieb (866-4752)

TITLE: CONCERNING THE REMOVAL OF PROVISIONS IN THE AIR QUALITY STATE IMPLEMENTATION PLAN THAT ARE MORE STRINGENT THAN THOSE REQUIRED BY FEDERAL LAW.

Summary of Legislation

The bill states that certain provisions in the Air Quality State Implementation Plan are more stringent than federal requirements and are in violation of state law. The permits issued pursuant to these provisions contain terms or conditions that are more stringent than required by federal law. The Air Pollution Control Division and the Air Quality Control Commission would be required to remove before July 1, 1998, the provisions that were submitted in violation of state law. The bill also states that the state has complied with the national primary and secondary ambient air quality standards and the general savings clause provisions of the federal "Clean Air Act". The bill would become effective upon the Governor's signature.

STATE FISCAL IMPACT SUMMARY	FY 1998/99	FY 1999/2000
State Revenues		
General Fund		
Other Fund		
State Expenditures		
Cash Fund *	\$244,923 to 278,449 *	\$244,92 *
FTE Position Change	3.6 to 4.1 FTE *	3.6 FTE *
Local Government Impact —		

* The amount of the impact would vary depending on the number of rules and regulations that are found to be more stringent than federal requirements.

State Expenditures

The Department of Public Health and Environment (DPHE) would have an increased workload as a result of this bill. The current state implementation plans have gone through an extensive review process and overall meet the federal Environmental Protection Agency (EPA)

Bill - C

requirements. Two possible scenarios may be available to the department. First, the DPHE could react to instances where another entity outside DPHE identifies a rule or regulation to be more stringent than the federal requirement. In this scenario, the DPHE would require additional personnel to review each of the rules and regulations that may be presented as being more stringent than federal standards and redevelop new rules and regulations to meet federal requirements. Adjusting one rule or regulation may require adjusting all or a significant number of other rules and regulations which would affect various economic and governmental entities. Removing one rule or regulation may mean that the entire state implementation plan does not meet federal requirements. This would require adjusting the models used to demonstrate compliance with federal requirements, renegotiations with the EPA, local governments, business and industry, and other interested parties.

For each review, it is estimated that 3.6 FTE and \$244,923 in cash funds would be required. Of that amount, 1.0 FTE attorney and \$88,320 CF would be for legal services from the Department of Law for legal assistance and rule review. Approximately 1.3 FTE Environmental Protection Specialist II and \$67,274 CF would be required to prepare for hearings and assist in negotiations with interested persons. Another 1.3 FTE Physical Science Research/Scientist and \$67,274 CF would be required to develop/modify the models used to demonstrate compliance with federal requirements. Capital outlay costs are estimated to be \$8,600 CF and operating costs are estimated to be \$13,455 CF.

The second scenario would require the DPHE to actively search the current rules and regulations to determine if there are any rules and regulations that are more stringent than federal requirements. Under this scenario, the DPHE would require additional personnel to review all of the relevant rules and regulations to determine those that may be more stringent than federal standards and redevelop new rules and regulations to meet federal requirements. The affect of adjusting one rule or regulation would be the same as in the first scenario.

The DPHE would require 4.1 FTE and \$278,449 in cash funds. An additional 0.5 FTE Program Administrator I and \$28,524 would be required to determine which rules may be in excess of federal requirements. *For each review*, 1.0 FTE attorney and \$88,320 CF would be for legal services from the Department of Law for legal assistance and rule review. Approximately 1.3 FTE Environmental Protection Specialist II and \$67,274 CF would be required to prepare for hearings and assist in negotiations with interested persons. Another 1.3 FTE Physical Science Research/Scientist and \$67,274 CF would be required to develop/modify the models used to demonstrate compliance with federal requirements. Capital outlay costs are estimated to be \$10,750 CF and operating costs are estimated to be \$16,307 CF.

Expenditures Not Included

Pursuant to the Joint Budget Committee's budget policies, the following expenditures have not been included in this fiscal note:

- health and life insurance costs; \$6,856
- short-term disability costs; \$203
- inflationary cost factors;
- leased space; and
- indirect costs.

Local Government Impact

Local governments would have to expend personal service resources to attend meetings, hearings, and discussions concerning the review of any rule or regulation impacting that entity. This could require significant personal services depending on the number of rules that may be found more stringent than federal requirements.

Spending Authority

This fiscal note implies that the Department of Public Health and Environment would require a minimum of 3.6 FTE and \$244,923 in Cash Fund spending authority for FY 1997-98 to implement this bill. Of that amount, the Department of Law would require a minimum of 1.0 FTE and \$88,320 in Cash Fund Exempt spending authority.

Departments Contacted

Health and Environment Law

BILL D

By Senator Norton

A BILL FOR AN ACT

CONCERNING THE APPLICATION OF STATE AIR QUALITY STANDARDS TO ACTIVITIES
TAKING PLACE ON PUBLIC PROPERTY WITHIN THE STATE.

Bill Summary

"Apply Clean Air Rules To Public Property"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Air Quality Control Issues. Requires that the state implementation plan for air quality and emission controls generally applicable to property and facilities within the state also be imposed upon public property and facilities. Declares that significant contributions to regional haze and visibility impairment emanate from federal lands within the state, and that this act is adopted pursuant to authority granted to the state under the federal "Clean Air Act".

Directs the air quality control commission to require all federal facilities to minimize emissions to the maximum extent practicable 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. By July 1, 1998, requires federal land managers to submit permit applications that specify in the land management plan for those federal lands how compliance with this act will be achieved. Requires that such land management plans meet the requirements of this act.

For purposes of an existing partial exemption from clean-air rules in the case of "agricultural operations", specifically excludes forest management and habitat management activities of federal or state land managers from the term "agricultural operations". Defines such activity as "commercial" rather than "noncommercial" for purposes of provisions imposing civil penalties of \$100 per day for noncommercial violations and \$10,000 per day for commercial violations. Specifies that no permit for open burning shall be issued by the air pollution control division after July 1, 1998, unless the land management plan for the area to be burned has been approved by the commission pursuant to this act.

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

SECTION 1. 25-7-106, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

25-7-106. Commission - additional authority. (7) (a) WITH RESPECT TO FEDERAL PROPERTY AND FACILITIES AND ALL FEDERAL ACTIVITIES RESULTING, OR WHICH MAY RESULT, IN THE DISCHARGE OF AIR POLLUTANTS, THE COMMISSION IS SPECIFICALLY AUTHORIZED AND DIRECTED TO APPLY AND ENFORCE EVERY RELEVANT PROVISION OF THE STATE IMPLEMENTATION PLAN AND EVERY RELEVANT EMISSION CONTROL, INCLUDING THE IMPOSITION OF ANY FEE OR PENALTY PURSUANT TO SECTION 25-7-122, THAT APPLIES TO PROPERTY AND FACILITIES WITHIN THE STATE OF COLORADO, INCLUDING THE RECOVERY OF COSTS BY THE STATE FOR THE EVALUATION OF LAND MANAGEMENT PLANS PURSUANT TO SUBSECTION (8) OF THIS SECTION.

(b) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES, AFTER REVIEWING THE FACTORS THAT CONTRIBUTE TO REGIONAL HAZE AND VISIBILITY IMPAIRMENT IN THE WEST, THAT SIGNIFICANT CONTRIBUTIONS TO REGIONAL HAZE AND VISIBILITY IMPAIRMENT EMANATE FROM FEDERAL LANDS WITHIN THE STATE. THIS SUBSECTION (7) IS 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 WITH REGARD TO POLLUTION COMING FROM FEDERAL FACILITIES.

(8) THE COMMISSION, IN EXERCISING THE POWERS CONFERRED BY SUBSECTION (7) OF THIS SECTION AND THIS SUBSECTION (8), SHALL REQUIRE ALL FEDERAL FACILITIES, INCLUDING ACTIVITIES DIRECTLY CONDUCTED BY OR ON

BEHALF OF FEDERAL AGENCIES ON FEDERAL LANDS, TO MINIMIZE EMISSIONS TO THE MAXIMUM EXTENT PRACTICABLE 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. IN ORDER TO ENSURE COMPLIANCE WITH SUCH MANDATE, THE COMMISSION SHALL REQUIRE THAT THE FEDERAL LAND MANAGERS SUBMIT FOR APPROVAL BY JULY 1, 1998, PERMIT APPLICATIONS THAT SPECIFY IN THE LAND MANAGEMENT PLAN FOR THOSE FEDERAL LANDS HOW COMPLIANCE SHALL BE ACHIEVED. THE COMMISSION, AS PART OF ITS DUTIES UNDER SUBSECTION (7) OF THIS SECTION AND THIS SUBSECTION (8), SHALL EVALUATE THOSE FEDERAL LAND MANAGEMENT PLANS AND SHALL ENSURE THAT SUCH PLANS MEET THE REQUIREMENTS OF THIS SECTION TO MINIMIZE EMISSIONS TO THE MAXIMUM EXTENT PRACTICABLE IN THE MANAGEMENT OF THOSE LANDS.

SECTION 2. 25-7-123 (1) (b), Colorado Revised Statutes, is amended, and the said 25-7-123 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

25-7-123. Open burning - penalties. (1) (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 FOREST MANAGEMENT OR HABITAT MANAGEMENT ACTIVITIES OF FEDERAL OR STATE LAND MANAGERS, AND 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, 1998, UNLESS THE LAND MANAGEMENT PLAN FOR THE AREA TO BE BURNED HAS BEEN APPROVED PURSUANT TO A REVISED PLAN SUBMITTED IN COMPLIANCE WITH SECTION 25-7-106 (8).

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Colorado Legislative Council Staff

**STATE
FISCAL NOTE**

No General Fund Impact

Cash Fund Revenue and Expenditure Impact

Drafting Number: LLS 98-165	Date: November 17, 1997
Prime Sponsor(s): Sen. Norton	Bill Status: Air Quality Control Committee
Rep. G. Berry	Fiscal Analyst: Scott Nachtrieb (866-4752)

TITLE: CONCERNING THE APPLICATION OF STATE AIR QUALITY STANDARDS TO ACTIVITIES TAKING PLACE ON PUBLIC PROPERTY WITHIN THE STATE.

Summary of Legislation

The bill would require that the state air quality and emission control implementation plan for property and facilities also be imposed upon public property and facilities. The Air Quality Control Commission would require all federal facilities to minimize emissions to the maximum extent practicable. Federal land managers would have to submit permit applications that specify how compliance with this act will be achieved by July 1, 1998. Forest management and habitat management activities of federal or state land managers would be excluded from the term "agricultural operations" for the existing partial exemption from clean-air rules. These activities would be defined as "commercial" rather than "noncommercial" and allow penalties of \$100 per day for noncommercial and \$10,000 per day for commercial violations to be imposed for violating the bill. No permit for open burning would be issued by the division after July 1, 1998, unless the land management plan were approved by the commission. The bill would become effective upon the Governor's signature.

STATE FISCAL IMPACT SUMMARY	FY 1998/99	FY 1999/2000
State Revenues		
General Fund		
Cash Fund	\$109,251	\$74,515
State Expenditures		
General Fund		
Other Fund	\$109,251	\$74,515
FTE Position Change	1.6 FTE	1.1 FTE
Local Government Impact — None		

State Revenues

The bill would allow the Department of Public Health and Environment (DPHE) to assess fees to cover the cost of administering this program. It is assumed that each of the 42 U.S. District Forest Service Offices would seek an open burning permit. The permit fee in FY 1998-99 would

Bill - D

be approximately \$2,601 which would generate \$109,251 in cash funds to DPHE. In FY 1999-2000, the estimated fee would be \$1,774 which would generate \$74,515 in cash funds to the DPHE.

State Expenditures

Under current law, the DPHE does not manage an open burning program. The DPHE would require 1.6 FTE and \$109,251 in cash funds in FY 1998-99 for open burning permits program. Personal services would be approximately 0.5 FTE Environmental Protection Specialist II for initial rule development, 0.4 FTE Environmental Protection Specialist IV for review of land management plans and permit coordination, and 0.4 FTE Environmental Protection Specialist II for annual permit coordination and writing. Total personal services would be \$93,098 CF, operating and travel would be \$9,309 CF, and capital outlay would be \$6,844 CF. Total program costs are estimated to be \$109,251 CF in FY 1998-99.

In FY 1999-2000, the estimated personal services would be \$67,741 CF and operating and travel would be \$6,774 CF. Total program costs are estimated to be \$74,515 CF in FY 1999-2000.

Expenditures Not Included

Pursuant to the Joint Budget Committee's budget policies, the following expenditures have not been included in this fiscal note:

- health and life insurance costs; \$3,605
- short-term disability costs; \$166
- inflationary cost factors;
- leased space; and
- indirect costs.

Spending Authority

This fiscal note implies that the Department of Public Health and Environment would require 1.6 FTE and \$109,251 in Cash Fund spending authority for FY 1998-99 to implement this bill.

Departments Contacted

Health and Environment Law

FACTS AND ASSUMPTIONS

Assumptions

1. That there are 42 U.S. Forest Service District Offices in Colorado that would submit a land management plan.
2. That each district office would require one open burning permit annually.

RESOLUTION A

By Senator Mutzebaugh

CONCERNING A RECOMMENDATION THAT THE UNITED STATES CONGRESS
ADOPT A LEGISLATIVE RULE REVIEW PROCESS FOR ENVIRONMENTAL REGULATIONS.

WHEREAS, On July 31, 1997, the Environmental Protection Agency (EPA)
issued its Notice of Proposed Rulemaking concerning regional haze regulations
(the Notice); and

WHEREAS, In the Notice, the EPA cites as legislative authority for the
proposed regulations a federal statute directing the EPA to ensure "reasonable
progress" toward the attainment of improved visibility in class I areas; and

WHEREAS, Under this rubric of "reasonable progress", the EPA seeks to
impose a rigid scheme of steadily increasing requirements nationwide, without
exception and without consideration for the very real differences among the
various states and regions affected; and

WHEREAS, The EPA has estimated that implementation of this program
will cost approximately 2.9 billion dollars, of which 2.07 billion dollars will
come from states in the West that already have the cleanest air in the nation; and

WHEREAS, Of such visible pollution as there may be that affects class I
areas in the Western states, a significant portion comes from beyond their borders
or originates on lands controlled by federal agencies; and

WHEREAS, For these reasons, the proposed regulations are grossly unfair
and irrational; and

WHEREAS, We believe that by promulgating these regulations the EPA has
far exceeded its congressional mandate to ensure "reasonable progress" in this
area; and

WHEREAS, This is only one example of the increasingly common situation
in which the EPA oversteps its delegated authority by promulgating regulations
that are economically burdensome, scientifically dubious, counterproductive, and
contrary to reasonable interpretations of Congressional intent; and

WHEREAS, Such abuses could be prevented or reduced if there were an
institutional process by which Congress would have the final say about whether
its directives were being faithfully carried out; and

WHEREAS, Colorado has had such a process in place for many years, to
the great benefit of the state and its citizens; and

WHEREAS, Under this process, all rules newly adopted or amended by
administrative agencies automatically expire within one year unless reviewed, for
the limited purpose of determining whether they are within the scope of the
agencies' legislatively granted authority, and affirmatively extended in an
omnibus bill passed by the legislature each year for that purpose; and

WHEREAS, We believe that the application of such a process to EPA
regulations at the national level would keep the agency accountable to Congress,
improve the image of the EPA and Congress in the eyes of the American public,
avoid overreaching regulations such as the pending Regional Haze Regulations,
and benefit both the national economy and the natural environment; now,
therefore,

*Be It Resolved by the Senate of the Sixty-first General Assembly of the State
of Colorado, The House of Representatives concurring herein:*

That we, the members of the Colorado General Assembly, hereby request
the Congress of the United States to adopt statutes analogous to sections
24-4-103 (8) (d) and 25-7-133, Colorado Revised Statutes, providing for

automatic legislative review of all regulations newly adopted or amended by the EPA for the purpose of determining whether they are within the scope of the EPA's legislatively delegated authority and whether they accomplish their policy objectives in a cost-effective manner and further providing for the automatic expiration, within a time certain, of all such regulations not affirmatively extended by act of Congress.

Be it further resolved, That copies of this resolution be sent to each member of Colorado's Congressional delegation and the administrator of the EPA.



General Assembly
State of Colorado
Denver

October 7, 1997

Air and Radiation Docket and Information Center
401 M Street, SW
Washington, DC 20460

Re: Docket No. A-95-38
62 FR 41137 (July 31, 1997)
Notice of Proposed Rulemaking: EPA Regional Haze Regulations

COMMENTS
of the
COLORADO GENERAL ASSEMBLY
INTERIM COMMITTEE ON AIR QUALITY CONTROL ISSUES

These comments reflect the views of the interim committee on air quality control issues of the Sixty-First General Assembly of the State of Colorado, based upon testimony from leading federal and state officials, scientists, and citizens. The comments respond to the notice of proposed rulemaking regarding regional haze as published in the Federal Register on July 31, 1997.

These comments reflect the committee's major concerns on a number of issues we believe are of critical importance to the people of Colorado.

First and foremost, the proposed rules represent an attempt by the EPA to impose regionwide aesthetic standards upon individual states without regard to the very real differences among those states. This one-size-fits-all approach exceeds the authority granted by Congress to ensure "*reasonable progress*" (emphasis added) toward reaching the national goal of improved visibility in class I areas. What is "reasonable" for one state is not necessarily "reasonable" for another. In particular, Colorado's visibility problems are due overwhelmingly to sources in other states, on federal lands, and in foreign countries. These are sources over which Colorado has no control. To the extent the proposed rules impose upon Colorado's citizens economic burdens attributable to such sources, this approach is

manifestly unfair. To the extent the rules require Colorado's state government to monitor and measure pollution for the purpose of meeting national standards, despite the fact that Colorado is powerless to control such pollution, this approach may well be unconstitutional under the Tenth Amendment.

The unfairness inherent in the proposed rules is apparent not only state by state, but also region by region. By the EPA's own estimate, up to 76% of the cost of implementing these rules would be borne by western states. To impose the bulk of the cost of this nationwide program on only about a dozen states, representing a region with a relatively small population and tax base, is unfair, arbitrary, and capricious.

Second, the proposed rules would impose *no* accountability or regulation on the sources that contribute the most to visible pollution: mobile sources, area sources, and sources subject to federal control--for example, fires intentionally set ("prescribed burns") on national forest lands. These sources were specifically identified in the Report of the Grand Canyon Visibility Transport Commission (GCVTC), the most far-reaching study ever done of visibility issues in the West. It is unacceptable for federal regulators to exempt federal polluters from accountability while imposing expensive and inefficient regulations on the private sector.

Third, the proposed rules fail to recognize or incorporate in any substantive way the recommendations of the GCVTC. This is directly contrary to the EPA's congressional mandate. The state of Colorado has been and is continuing to work diligently and in good faith within the parameters and recommendations of the GCVTC. By ignoring the substance of the GCVTC report, these rules not only undermine the improvements that would be obtained by following its recommendations, but also substitute an artificial barrier of protection for some of the sources clearly identified as needing to be addressed (*i.e.*, mobile sources, area sources, and federal land emissions). We endorse the efforts of the Western Governors' Association (WGA), which has strongly supported the GCVTC report, and the Western Region Air Partnership (WRAP).

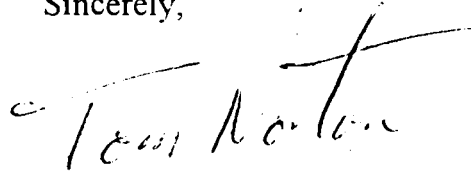
Recent Colorado legislation (Senate Bill 94-180) required an extensive study of the sources of visibility impairment. That study determined that a substantial portion of Colorado's visibility impairment is coming from out-of-state sources including mobile, stationary, and area sources. We need the cooperation of the surrounding states which have contributing polluters, as well as of the federal government, which is also a contributor, to help enforce compliance so Colorado can meet visibility standards.

Finally, by imposing a new *visibility* standard (the one-deciview standard) as the measure for "reasonable progress" for the entire country--without regard to the site-specific variables of each class I area--while imposing on a select group of sources a modified and

expensive *emission* standard (the modified "best available retrofit technology" or "BART" standard) as the means to achieve such progress, the rules contain a fundamental disconnect between means and ends. The rules do not contain, nor has the EPA offered, any basis to believe that a reduction in emissions from a few isolated sources will produce a general improvement in visibility in the multi-state region encompassed by this proposal.

We on the Committee hope that these comments will be taken constructively to prompt a fundamental rethinking and rewriting of the regional haze regulations. We believe a cooperative approach among the western states and federal land managers--one that identifies, quantifies, and controls pollution on a source-by-source basis and uses a variety of control strategies, including economic incentives, to address the biggest problems first and implement the lowest-cost measures first rather than last--has the best chance of achieving what we all agree is a valuable national goal.

Sincerely,

A handwritten signature in black ink that reads "Tom Norton". The signature is written in a cursive style with a large, sweeping flourish at the end.

Senator Tom Norton
President of the Senate
Chairman, Interim Committee on
Air Quality Control Issues

A handwritten signature in black ink that reads "Paul Schauer". The signature is written in a cursive style with a large, sweeping flourish at the end.

Representative Paul Schauer
Vice-Chairman, Interim Committee on
Air Quality Control Issues