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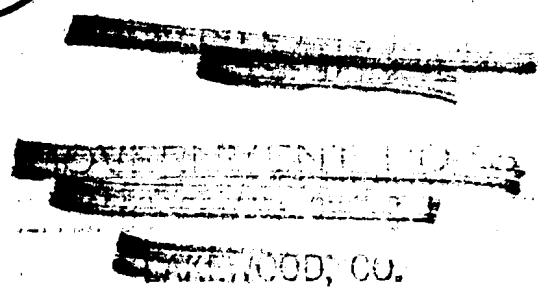
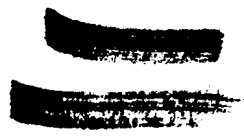
0237 Committee on Air Pollution

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NO. 237

Report to the Colorado General Assembly

RECOMMENDATIONS FOR 1979
COMMITTEE ON:

Air Pollution



COLORADO LEGISLATIVE COUNCIL

RESEARCH, PUBLICATION NO. 237

December, 1978

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* * * * *

The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

COLORADO LEGISLATIVE COUNCIL
RECOMMENDATIONS FOR 1979

COMMITTEE ON AIR POLLUTION

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 237
December, 1978



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LEGISLATIVE COUNCIL

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DENVER, COLORADO 80203
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December 12, 1978

To Members of the Fifty-second Colorado General Assembly:

In accordance with the provision of House Joint Resolution No. 1049, 1978 session, the Legislative Council transmits, with favorable recommendation, the accompanying report and proposed bill relating to air pollution.

Respectfully submitted,

/s/ Representative Carl Gustafson
Chairman
Colorado Legislative Council

CG/vjk

COLORADO STATE UNIVERSITY

FOREWORD

Under the directive in House Joint Resolution No. 1049, 1978 session, the Colorado Legislative Council appointed a committee to study

"... the differences between the Colorado "Air Pollution Control Act of 1970" and the federal "Clean Air Act", as amended, to determine what changes would be made in the Colorado statutes for the state to continue the administration and enforcement of the air pollution control program in this state."

This volume includes the report and the bill prepared by the Committee on Air Pollution which were accepted by the Legislative Council at its meeting on November 27, 1978. A staff report is also presented summarizing major provisions of the federal act and also outlines some of the air pollution problems in Colorado.

The committee and the Legislative Council are appreciative of the cooperation of the numerous persons who assisted the committee in its hearings and deliberations this year. Special appreciation is due to John V. Spiegel of the Air Pollution Control Division, State Department of Health, for his assistance throughout the study and in reviewing the background report.

December 12, 1978

Lyle C. Kyle
Director

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Research Assistant

COMMITTEE ON AIR POLLUTION

House Joint Resolution 1049, 1978 Session, directed that the Legislative Council appoint a committee to undertake a study of:

"...the differences between the Colorado "Air Pollution Control Act of 1970", and the federal "Clean Air Act", as amended, to determine what changes should be made in the Colorado statutes for the state to continue the administration and enforcement of the air pollution control program in this state."

The federal "Clean Air Act", as amended (CAAA) by the U.S. Congress in 1977, places numerous requirements on states for the achievement of federal ambient air quality standards. Failure of the state to comply with the requirements of the CAAA could result in sanctions being imposed against the state. The potential sanctions include possible cutoff of federal highway and sewage treatment funds, and a prohibition of construction of any new major stationary sources after July 1, 1979. The consequences of any imposition of these sanctions are serious enough that the state will need to be certain that its air pollution statutes will be adequate to comply with federal requirements. Further, if Colorado is not in compliance with provisions of the CAAA, the Environmental Protection Agency (EPA) could assume the responsibility of implementation of the state's air quality control program.

Committee Procedure

Before discussing the committee's recommendations, comments concerning some of the procedures which the committee followed are set forth. First, the chief concern was in revising the statutes pertaining to stationary sources, as opposed to mobile sources. This approach was adopted because the committee thought that many legislative members are already knowledgeable concerning problems of mobile source emissions, but were less familiar with the compliance issues relating to stationary sources. While stationary sources contribute less than ten percent to the problems of air pollution in Colorado, the issues involving stationary sources were considered extremely significant for the economy of the state.

As the committee progressed with its study, all organizations and public agencies interested in the problems of air pollution were invited to participate by submitting their recommendations to the committee. Three bill drafts were submitted, each adopting a different approach.

The Attorney General submitted a bill on behalf of the state Department of Health. The Legislative Drafting Office, at the direc-

tion of the committee, prepared a bill to adopt only those changes in Colorado which were essential for compliance with the CAAA. Three groups -- the Colorado Association of Commerce and Industry, the Colorado Mining Association, and the Rocky Mountain Oil and Gas Association -- retained legal counsel from the firm of Holland and Hart to present their concept of a draft bill. The various draft bills were revised as the meetings progressed, and the version of the bill which the committee submits is basically the Holland and Hart draft, but with several revisions having been made to their original concepts.

In preparing its bill, the committee has followed the known requirements of the federal law, whether these requirements are expressed in the CAAA, rules and regulations, or other official documents. Numerous parts of the federal law are now in litigation and may not be settled for some time. It may be that court interpretations relating to some sections will require additional changes in the Colorado statutes, but this bill draft is based on what the committee can now read and interpret from the federal law.

It should be noted that the committee was divided in several major respects in regard to the final recommendations outlined in this report. This report outlines the bill recommended by the committee and presents the rationale for the decisions embodied in the bill, but this report should not be interpreted as representing that all members are in agreement with the final decisions of the committee.

Provisions of Committee Recommendations

Organizational Structure - Responsibilities

Under the recommended bill, the organizational scheme for the administration of the Air Pollution Control Act differs from the present structure in a number of major respects. Because the federal act will no longer allow the granting of variances, the present variance board will be eliminated, and a new board, the Air Quality Hearings Board, will be established in its place. The hearings board will have responsibility for handling appeals from division decisions, and for conducting hearings on delayed compliance orders and on revisions (amendments) to the state implementation plan (SIP) requested by specific sources which are not in compliance with emission standards.

The Air Pollution Control Commission will have general, overall responsibility for policy determinations relative to the state air pollution control program. The commission will promulgate rules and regulations and be responsible for the general revisions in the state implementation plan. The commission will redesignate the areas of the state in accordance with the classification plan outlined in this report and can review any action of the board or division.

One of the overriding issues which the committee faced in several different contexts was the extent to which the bill should

delegate legislative authority to the executive branch, as opposed to providing greater specificity in the statutes under which the administrative bodies would have less flexibility. For the final draft, the committee decided in favor of including statutory language in some detail as guidelines for the state program for prevention of significant deterioration (PSD) in attainment areas and for the program to be used in nonattainment areas. The responsibility for developing these programs could have been delegated entirely to the commission, but the committee recommendation is for the General Assembly to specify what these policies should be and, thus, to limit the discretionary authority of the commission.

An outline of the responsibilities of the division, board, and commission follows. (References are to the 1973 Colorado Revised Statutes sections and page numbers contained in the bill as printed in this report).

Air Pollution Control Division, State Department of Health:

- 1) Filing of all permit applications [25-7-112 (1), page 41];
- 2) Application for delayed compliance orders (25-7-115, page 61); and
- 3) Determination of noncompliance penalties [25-7-113 (5) (b), page 51].

Air Quality Hearings Board:

- 1) Hears all appeals from division [25-7-112 (4) (h), page 46];
- 2) PSD hearings [25-7-112 (4) (b) page 42];
- 3) Delayed compliance order hearings, if requested (25-7-115, page 61);
- 4) Source specific SIP revisions (25-7-114.5, page 61).

Air Quality Control Commission:

- 1) Promulgate regulations (25-7-105, page 18, and 25-7-108, page 22);
- 2) Promulgate standards (25-7-107);
- 3) General SIP revisions [25-7-105 (2), page 20];
- 4) Classification and reclassification of areas; (25-7-105, page 20, and 25-7-106, page 21);

- 5) PSD redesignations [25-7-108.3 (9), page 33]; and
- 6) Review of any board action [25-7-105 (7), page 20, and 25-7-116 (9), page 67].

A major point of controversy in this organization was whether the SIP revisions for specific sources should be handled by the board or by the commission. The decision was made that applications for these revisions should be the responsibility of the board. This decision is consistent with the view that the board would be concerned with the details involving appeals and hearings, while the commission would be more concerned with the general policies and the promulgation of overall regulations and standards. Further, the commission is empowered to review any action of the board on its own motion, including, of course, specific source revisions to the SIP.

Time Limits for Agency Action

Two decisions should be noted in regard to the time limits for action by the division in processing permit applications. A preliminary analysis of the permit application is to be completed by the division within 60 days of receipt of a completed application. The applicant, however, is to be notified within 20 days after receipt of the application if there are any deficiencies in the form of the application and, unless such notice is made, the application is considered complete [25-7-112 (4) (d), page 43].

After the preliminary analysis is completed, the division or the permit hearings board has specified time periods, generally 30 days, in which to grant or deny the permit. The recommended bill provides that the applicant may waive this time limitation because some complex permit applications will take more time for the necessary studies, computer modeling, and analysis of data to be completed. In these cases it will be in the best interests of the applicant to waive the time constraints, but it was thought that a decision for the waiver should be left to the applicant, not to the division or the board [25-7-112 (4) (g), page 45].

Legislative Declaration

Additional wording is recommended for inclusion in the legislative declaration. The commission will be required to develop its air quality control program with the view that control measures utilized bear a "reasonable relationship to the economic, environmental, and energy costs of such program" (25-7-102, page 14). Further, in adopting the best available control technology (BACT), a requirement for the prevention of significant deterioration in attainment areas, the hearings board is to take into account "energy, environmental, and economic impacts and other costs" in determining BACT for a major stationary source (25-7-108.3, page 27).

Key Definitions

Some understanding of the federal clean air amendments of 1977 (CAAA) is necessary for an understanding of the recommended bill. As a point of departure, at least some concepts of the CAAA may be developed through an outline of key definitions in the federal act and a discussion of the issues on which the committee made its decisions. A definition or description of the term, and a few notations of how the term is used in the recommended bill, follows:

State implementation plan (SIP) is "an air resource plan having as its goal the achievement and maintenance of national air quality standards in the state and the prevention of any unnecessary degradation of air quality." Colorado is required to submit a SIP for approval by the EPA by January 1, 1979. The plan should provide strategies for the implementation, maintenance, and enforcement of the standards in each air quality control region. [25-7-103 (16), page 17].

The purpose of the SIP is to demonstrate how the state intends to achieve and maintain clean air within the state. The federal law requires the achievement of national primary ambient air quality standards by 1982, and achievement of the federal secondary standards as expeditiously as possible.

The EPA administrator is to approve or disapprove the plan within four months of its submission. The CAAA authorizes the administrator of EPA to issue proposed regulations providing an implementation plan, if a state plan, or any part of it, is deemed unacceptable.

The Air Pollution Control Commission is responsible for developing the SIP. The SIP is to include, wherever feasible, local or regional air pollution plans and programs adopted and enforceable by municipal or county governments. The state air pollution control statutes also become part of the SIP, which means that the Colorado statute will be subject to review by the EPA administrator.

National ambient air quality standards. Primary standards means those ambient air quality standards which have been promulgated by the EPA administrator which must be met in order to protect the public health. The standards have been designed, with a margin of safety built in, to allow certain concentrations of pollutants which have no noticeable effects on the population. These standards may be revised from time to time. [Sec. 109 (b) (1) of the CAAA].

The CAAA requires that the SIP provide for the attainment of national primary standards by December 31, 1982, with a possible extension to December 31, 1987, for areas heavily affected by automobile pollutants. The state Air Pollution Control Division reports that the Denver area will not achieve attainment of the primary standards for carbon monoxide and ozone by 1987.

Secondary standards are those ambient air quality standards which have been promulgated by the EPA administrator to protect the public welfare. The term "public welfare" includes so-called "aesthetic standards," which affect "visibility, quality of life, damage to property and plant life, and similar values." The standards may be revised from time to time. [Sec. 109 (b) (2) of CAAA.] The CAAA requires that a state implementation plan provide for the attainment of national secondary ambient air quality standards in nonattainment areas as expeditiously as possible.

Class I, II, and III areas are the three classifications of areas in attainment are provided in the PSD portion of the CAAA. The designations reflect the amount of degradation of air quality and economic growth which will be permitted for each attainment area.

Class I or "pristine" areas are allowed minimal or no growth in order to afford the greatest amount of protection of air quality in these areas. Mandatory Class I areas (areas which cannot be redesignated) are: international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size and which are in existence on the date of enactment of the CAAA. Class II areas are those areas where moderate growth will be allowed, but where stringent air quality constraints are desirable. Class III areas are those areas where substantial growth will be allowed and where increases in concentrations of pollutants up to the national secondary standards would be insignificant.

Increments and ceilings have been established for the amounts of SO₂ and particulate matter which can be emitted in Class I, II, and III areas. The EPA administrator has two years in which to promulgate regulations for emission of hydrocarbons, carbon monoxide, and photochemical oxidants in these areas. All of Colorado is in either a Class I or Class II area, with the mandatory areas noted above, as required by law, designated as Class I, and the remainder of the state designated as Class II.

Attainment areas and PSD. Attainment areas are those areas of the state for which the air quality is better than the national standards. With the exceptions noted in the background report, most of the area of Colorado outside the urbanized front range counties is in attainment for most of the pollutants. In general, air quality regions that are in attainment of the national standards will be subject to the requirements for the prevention of significant deterioration (PSD).

Maximum allowable increases -- Maximum allowable concentrations. These terms refer to the increments and ceilings provided in the PSD portion of the CAAA. The purpose of these terms is to limit the amounts of sulfur dioxide and particulate matter emitted in Class I, II, and III areas.

Major stationary source is a type of stationary source capable of emitting 250 tons or more of any pollutant. The following are a few examples of major stationary sources included in the CAAA and the committee bill: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminium ore reduction plants, and primary copper smelters. Numerous other types of industrial plants and activities are included in section 25-7-108.3 (2) (d), page 29. The definition for major stationary source is taken directly from the federal CAAA. [Sec. 169 (A) of CAAA].

Prevention of significant deterioration (PSD). This part of the law is intended to protect the air in areas which are in attainment of the national standards. PSD standards are also intended to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural recreational, scenic, or historic value. These areas are designated as Class I or "pristine" areas. The CAAA states that a purpose of the PSD part of the act is to insure that economic growth in the areas covered by this part "is consistent with the preservation of existing clean air resources." (Part C of the CAAA). Three classes of clean air areas are established, and increments and ceilings are specified for sulfur dioxide and particulates in these areas.

The federal law requires that, prior to the construction or modification of a proposed major emitting facility in a Class II or III area, a permit must be issued specifying the emission limitations which must be met in order to comply with the maximum allowable increases and maximum allowable concentrations. The CAAA provides procedures for a state to reclassify Class II to Class III areas. These areas are permitted to add new sources of air pollution, but in no case can the additional pollution cause a violation of the federal secondary standards. Except for Class I areas already designated, all of Colorado presently has Class II designation.

The committee bill specifies a PSD program which includes the following components:

- (A) Ambient air increments for Class I, II, and III areas [25-7-108.3 (1) (a), page 26].
- (B) Ceilings on ambient air concentrations [(1) (b), page 26].^{1/}

^{1/} The PSD requirements are found in section 25-7-108.3, on pages 25-34 of the bill. Only the subsection numbers and the page numbers of the bill are noted for ease of reading.

(C) Definitions:

- Major stationary source defined. [Note: The bill differs from the present EPA definition by excluding nonstationary, mobile, and certain other sources from the PSD requirements. (2) (d), page 29].
- Major modification defined [(2) (c) (I), page 28].
- Potential to emit defined. [Note: The bill differs from EPA interpretation in that the capacity to emit is measured after the application of pollution controls, rather than in the absence of controls. (2) (e), page 30].
- Baseline concentration defined. [Note: Baseline is determined at the time of first application for a permit. However, the EPA uses the baseline as the effective date of CAAA (August 7, 1977), (2) (a), page 27].
- Best available control technology (BACT) defined [(2) (b), page 27].
- Definition of source for the PSD section [(2) (f), page 30].

(D) Exemption of PSD requirements [(4) (a), page 31].

(E) Waiver of PSD requirements [(4) (b), page 31].

(F) If permit requirements are met, permit is issued notwithstanding the change of air quality resulting from emission which would cause concentrations to exceed maximum allowable increase for Class I areas [(7), page 33].

(G) Notice of permit applications transmitted to EPA [(8), page 33].

(H) Redesignation of Class I, II, and III areas. [Note: Redesignation, under the committee bill, is subject to approval by the Governor after consultation with the appropriate legislative committees if the General Assembly is in session, or with the leadership of the General Assembly if not in session. Approval of redesignations is also required by local governments representing a majority of the residents of the area to be redesignated. (9) (b) (III), page 34].

Nonattainment areas are the parts of the state which exceed the national ambient air quality standards promulgated by the EPA administrator for any pollutant [Section 171 of the CAMM].

Permits are required in these areas for construction or modification of any major stationary source if the facility would aggravate

an already existing violation of the national standards. The federal law provides that, unless the state plan meets the requirements of Part D of the CAAA (the plan requirements for nonattainment areas), after June 30, 1979, no major source can be constructed or modified in a nonattainment area.

Some provisions which must be included in the state plan with regard to nonattainment areas are: the implementation of all reasonably available control measures; reasonable further progress toward attainment; a comprehensive inventory of actual emission from existing sources in the area; and a permit program which includes the application of the offset policy.

Two essential concepts which apply to nonattainment areas are "reasonable further progress" and the policy of "offsets," which also involves the banking of offsets. These concepts are described below:

Reasonable further progress. This term is used frequently in the nonattainment portion (Part D) of the CAAA. This term means, for any pollutant, annual incremental reductions in emissions of that pollutant (including substantial reductions in the early years and regular reductions in the following years) in order to reach attainment of the national ambient air quality standards for that pollutant.

Offset policy -- Banking of offsets. Emission reductions, sufficient to give a net air quality benefit, could be required from existing sources in a nonattainment area prior to the construction or modification of a major source. This policy is known as the "offset" policy. The purpose of offsets is to reduce total emissions allowable in order to achieve reasonable further progress in attainment of the national ambient air standards. The committee bill includes the application of this policy for permits for new or modified major sources in nonattainment areas.

The proposed offset policy also allows for the "banking" of offsets for future use and credit. Banking would permit existing sources to sell offsets which they have accrued to proposed new major sources or to existing major sources which are seeking modifications of their plant. New or modified sources would still need to use reasonable available control technology, even with the offset policy in effect [25-7-108.7 (3), page 35].

Other Major Considerations

Commission -- Conflict of interest. Under the committee bill, the commission will be made up of nine members, all appointed by the Governor. Current law provides that one member be appointed by the state Board of Health and eight members to be appointed by the Governor. The commission is to have at least a majority of its members who represent the public interest and who do not derive a significant portion of their income from persons subject to permits and enforcement sections of the act. The commission members will be required to dis-

close any conflicts of interest to the Governor prior to their confirmation, and at a public meeting of the commission if a conflict arises during their terms of membership [25-7-104, page 17].

Dual enforcement -- State and EPA. Of major concern to the committee was that there be only one permit and enforcement authority for Colorado. At present, the state does not have a PSD program and major stationary sources are required to apply for PSD permits with the EPA and for other permits to the state. This situation places two separate sets of standards and two enforcement bodies on some sources for compliance. The committee believes it is important to have Colorado law in compliance with the CAAA in order to alleviate problems of dual enforcement.

Permits -- Enforcement -- Penalties. One of the committee's major concerns was in the issuing of permits. The specific question was whether permits should be of continuing force and effect, or whether permits should apply only during the construction or modification stages, and expire at the time of commencement of operations. Stated another way, the question was "should the division have enforcement power to revoke a permit for violations of conditions attached to a permit after startup of the operation of the facility?"

The committee recommends that a permit not be of continuing force and effect, and that there be no permit requirements imposed after the source commences operation [25-7-112 (4) (j), page 46]. The rationale for this recommendation is that other means of enforcement would be utilized rather than revocation of a permit. Enforcement proceedings would be initiated by the division for the alleged violation of state and federal statutes, rules and regulations, and the state implementation plan.

Penalties for noncompliance are to be not less than the sum for the economic advantage for a source for its failure to comply, plus civil penalties of up to \$25,000 per day of violation [Sections 25-7-112, page 41, and 25-7-119, page 70].

Burden of proof. In the process for obtaining a permit, the bill requires an applicant to demonstrate that it will not interfere with the attainment or maintenance of any federal ambient air quality standards. The division has a prescribed time period in which it is to determine whether or not the applicant has satisfactorily demonstrated that it will meet the standards and regulations, but a source may waive the prescribed time limitation for action on the permit [25-7-112 (4) (g), page 50].

Stays. If it is determined that a source is or was in violation of the SIP, the source may request a hearing to determine whether specific SIP revision for that source is necessary. The bill provides that the order for compliance would be stayed, pending the determination of whether a SIP revision is warranted.

The question before the committee was whether a stay of enforcement proceedings by the state would trigger EPA action to continue with the enforcement proceedings. The committee was unable at this time to determine what action might be taken by the EPA in this situation. The proposed bill, however, provides for administrative stays pending determination of whether SIP revisions are necessary [25-7-117 (1), page 69].

Fugitive dust. The Environmental Protection Agency defines fugitive dust as solid particles of soil released into the atmosphere by natural forces or by mechanical processes, such as crushing, grinding, milling, demolishing or sweeping, but which particles are uncontaminated by industrial activity. [51.24 (b) (6), Federal Register, Vol. 43, 1978].

In contrast, the committee bill defines fugitive dust as particulate matter, not emitted from a stack, vent, or opening, which enters the atmosphere by the forces of nature, man's activity, or both. The term includes particulate matter from roads, mobile source operations, agricultural tillage, construction activities, overburden removal, blasting, mineral transport and storage, land reclamation, and other activities in which the surface of the land is disturbed or exposed. One objection to the EPA definition is that it does not consider the size of the dust particles, even though the larger sized particles are not considered a public health hazard. Numerous experts report that the large particles cannot be inhaled and are not damaging to the respiratory system.

More specific issues before the committee were: (a) what constitutes fugitive dust which is excluded, by definition, from the requirements for the prevention of significant deterioration in attainment areas [25-7-108.3 (2) (c) (IV) and (4) (a) (II), pages 29 and 31]; and (b) to what extent should particulate matter, including fugitive dust not of a size or substance to adversely affect public health, be excluded in measuring the particulates in ambient air levels. The decisions reached were to exclude fugitive dust from requirements of PSD and from baseline concentrations in the ambient air measurements. [25-7-108.3 (2) (a), page 27.]

COMMITTEE ON AIR POLLUTION

BILL 32

A BILL FOR AN ACT

1 CONCERNING AIR POLLUTION CONTROL.

Bill Summary

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

Changes the name of the air pollution control commission to the air quality control commission and modifies the structure, duties, and authority of said commission. Abolishes the variance board and creates an air quality hearings board. Provides procedures for permits for new stationary sources. Defines programs for nonattainment areas and for prevention of significant deterioration in attainment areas; establishes the scope of such programs; and defines important terms. Provides for source-specific revisions to the state implementation plan; allows the banking of offsets; provides for mandatory stays of most administrative actions pending review. Provides for redesignation and reclassification of areas in the state. Amends the legislative declaration to explicitly provide for consideration of economic, environmental, and energy costs of air pollution programs.

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

3 SECTION 1. 25-7-102, Colorado Revised Statutes 1973, is
4 amended to read:

5 25-7-102. Legislative declaration. In order to foster the
6 health, welfare, convenience, and comfort of the inhabitants of
7 the state of Colorado and to facilitate the enjoyment of--nature;

1 scenery;--and--other--resources AND USE OF THE SCENIC AND NATURAL
2 RESOURCES of the state, it is declared to be the policy of this
3 state to achieve the maximum practical degree of air purity in
4 every portion of the state CONSISTENT WITH THE WELFARE OF THE
5 STATE. ~~Fo-that-end~~; It is the purpose of this article to require
6 the use of all available practical methods WHICH ARE TECHNICALLY
7 FEASIBLE AND ECONOMICALLY REASONABLE to reduce, prevent, and
8 control air pollution throughout the entire state of Colorado; TO
9 REQUIRE THE DEVELOPMENT OF AN AIR QUALITY CONTROL PROGRAM IN
10 WHICH THE AIR QUALITY BENEFIT OF THE POLLUTION CONTROL MEASURES
11 UTILIZED BEARS A REASONABLE RELATIONSHIP TO THE ECONOMIC,
12 ENVIRONMENTAL, AND ENERGY COSTS OF SUCH MEASURES; and to maintain
13 a cooperative program between the state and local units of
14 government. It is further declared that the prevention,
15 abatement, and control of air pollution in each portion of the
16 entire state are matters of statewide concern and are affected
17 with a public interest and that the provisions of this article
18 are enacted in the exercise of the police powers of this state
19 for the purpose of protecting the health, peace, safety, and
20 general welfare of the people of this state.

21 SECTION 2. 25-7-103 (1), (4), (5), (7), (8), and (9),
22 Colorado Revised Statutes 1973, are amended, and the said
23 25-7-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW
24 SUBSECTIONS, to read:

25 25-7-103. Definitions. (1) "Air contaminant POLLUTANT"
26 means fumes ANY FUME, smoke, particulate matter, vapor, OR gas or

1 any combination thereof, INCLUDING ANY PHYSICAL, CHEMICAL,
2 BIOLOGICAL, RADIOACTIVE (INCLUDING SOURCE MATERIAL, SPECIAL
3 NUCLEAR MATERIAL, AND BY-PRODUCT MATERIAL) SUBSTANCE OR MATTER
4 WHICH IS EMITTED INTO OR OTHERWISE ENTERS THE AMBIENT AIR, but it
5 does not include water vapor or steam condensate.

6 (3.5) "Air pollution source" means any source whatsoever
7 at, from, or by reason of which there is emitted or discharged
8 into the atmosphere any air pollutant.

9 (4) "Ambient air" means ~~the surrounding or outside air~~ THAT
10 PORTION OF THE ATMOSPHERE, EXTERNAL TO BUILDINGS, TO WHICH THE
11 GENERAL PUBLIC HAS ACCESS.

12 (4.5) "Board" means the air quality hearings board created
13 by section 25-7-114.

14 (5) "Commission" means the air pollution QUALITY control
15 commission created by section 25-7-104.

16 (5.5) "Construction" means fabrication, erection,
17 installation, or modification of an air pollution source.

18 (7) "Emission" means the discharge or release into the
19 atmosphere of one or more air contaminants POLLUTANTS.

20 (8) "Emission control regulation" means and includes any
21 standard promulgated by regulation which is applicable to all air
22 contamination POLLUTION sources within a specified area and which
23 prohibits or establishes permissible limits for specific types of
24 emissions in such area, and also any regulation which by its
25 terms is applicable to a specified type of facility, process, or
26 activity for the purpose of controlling the extent, degree, or

1 nature of contamination POLLUTION emitted from such type of
2 facility, process, or activity, and also any regulation adopted
3 for the purpose of preventing or minimizing emission of any air
4 contaminant POLLUTANT in potentially dangerous quantities.

5 (8.3) "Federal "Clean Air Act", as amended," means the
6 federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq. (1970), as
7 amended by the clean air act amendments of 1977, Federal Public
8 Law 95-95, 91 Stat. 685.

9 (8.7) "Fugitive dust" means particulate matter not emitted
10 from a stack, vent, or opening which enters the atmosphere by the
11 forces of nature, man's activity, or both, and includes
12 particulate matter from roads, mobile source operations,
13 agricultural tillage, construction activities, overburden
14 removal, blasting, mineral transport and storage, land
15 reclamation, and other activities in which the surface is
16 disturbed or exposed.

17 (9) "Indirect air contamination POLLUTION source" means any
18 facility, building, structure, or installation, or any
19 combination thereof, which can reasonably be expected to cause or
20 induce substantial mobile source activity which results in
21 emissions of air contaminants POLLUTANTS which might reasonably
22 be expected to interfere with the attainment and maintenance of
23 federal ambient air standards.

24 (10.5) "Malfunction" means any sudden and unavoidable
25 failure of air pollution control equipment or process equipment
26 or unintentional failure of a process to operate in a normal or

1 usual manner, but failures that are primarily caused by poor
2 maintenance, careless operation, or any other preventable upset
3 condition or preventable equipment breakdown shall not be
4 considered malfunctions.

5 (14) "Shutdown" means the cessation of operation of any air
6 pollution source for any purpose.

7 (15) "Start-up" means the setting in operation of any air
8 pollution source for any purpose.

9 (16) "State Implementation Plan" means the plan required by
10 and described in section 110(a) of the federal "Clean Air Act",
11 as amended.

12 SECTION 3. 25-7-104 (1) and (2), Colorado Revised Statutes
13 1973, as amended, are amended, and the said 25-7-104 is further
14 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

15 25-7-104. Air quality control commission created.

16 (1) There is hereby created in the department of health the air
17 pollution QUALITY control commission, which shall consist of nine
18 members-as-follows: CITIZENS OF THIS STATE WHO SHALL BE APPOINTED
19 BY THE GOVERNOR WITH THE CONSENT OF THE SENATE:

20 (a) ~~One--member-designated-and-appointed-by-the-state-board~~
21 ~~of-health;-but-the-state-board-of-health-shall--not--appoint--any~~
22 ~~employee-or-other-staff-member-of-the-department-of-health;~~

23 (b) ~~Eight--citizens-of-this-state-who-shall-be-appointed-by~~
24 ~~the-governor-with-the-consent-of-the-senate:~~

25 (2) Appointments to the commission shall be made so as to
26 include PERSONS WITH appropriate scientific, technical,

1 INDUSTRIAL, LABOR, agricultural, and legal training OR EXPERIENCE
2 within its own membership; although no specific number of its
3 members shall be required to be so trained OR EXPERIENCED. NO
4 MORE THAN FIVE COMMISSIONERS SHALL BE MEMBERS OF ONE POLITICAL
5 PARTY.

6 (8) The commission shall have at least a majority of
7 members who represent the public interest and do not derive a
8 significant portion of their income from persons subject to
9 permits or enforcement orders under this article or under the
10 federal "Clean Air Act", as amended. The members of the
11 commission shall disclose any potential conflicts of interest to
12 the governor and the committee of reference of the general
13 assembly prior to confirmation and shall disclose any potential
14 conflicts of interest which arise during their terms of
15 membership to the governor and to the other commission members in
16 a public meeting of the commission.

17 SECTION 4. 25-7-105 (1), (2), and (7), Colorado Revised
18 Statutes 1973, as amended, are REPEALED AND REENACTED, WITH
19 AMENDMENTS, to read:

20 25-7-105. Duties of commission. (1) Except as provided in
21 sections 25-7-127 and 25-7-128, the commission shall promulgate
22 such rules and regulations as are consistent with the legislative
23 declaration set forth in section 25-7-102 and necessary for the
24 proper implementation and administration of this article,
25 including but not limited to:

26 (a) (I) A comprehensive state implementation plan

1 sufficient to attain and maintain the national primary and
2 secondary ambient air quality standards and to prevent
3 significant deterioration of air quality in conformity with the
4 provisions of this article, which plan meets the requirements of
5 the federal "Clean Air Act", as amended, together with revisions
6 of such plan when necessary or appropriate;

7 (II) The comprehensive state implementation plan of the
8 commission shall, wherever feasible, include local or regional
9 air pollution plans and programs adopted and enforceable by
10 municipal or county governments. Any such plans and programs
11 which are approved by the commission and formally submitted as a
12 part of the state implementation plan shall be deemed a part of
13 the comprehensive program of the commission and shall be enforced
14 as such.

15 (b) Emission control regulations in conformity with section
16 25-7-108;

17 (c) A prevention of significant deterioration program in
18 conformity with section 25-7-108.3 and an attainment program in
19 conformity with section 25-7-108.7;

20 (d) A satisfactory process of consultation with general
21 purpose local governments, designated organizations of elected
22 officials of local governments, and any federal land manager
23 having authority over federal land to which the state
24 implementation plan applies, effective with respect to measures
25 adopted after August 7, 1978, pertaining to transportation
26 controls, air quality maintenance plan requirements,

1 preconstruction review of direct sources of air pollution, or any
2 measure referred to in the prevention of significant
3 deterioration program established pursuant to section 25-7-108.3
4 or the attainment program established pursuant to section
5 25-7-108.7, or granting delayed compliance orders pursuant to
6 section 25-7-115.

7 (2) The commission shall provide forms of application and
8 shall receive all such applications for review of the
9 classification of any attainment, nonattainment, or
10 unclassifiable area within the state made pursuant to section
11 25-7-106 (1), all applications for designation or redesignation
12 made pursuant to section 25-7-108.3 (9), and all applications for
13 any revision of general application of the state implementation
14 plan and shall, in its discretion, either set such applications
15 for hearing and determination by the commission in accordance
16 with the provisions of section 25-7-116 or transmit such
17 applications to the board for hearing and determination in
18 accordance with the provisions of section 25-7-116.

19 (7) The commission may, in its discretion, review any
20 determination of the board pursuant to section 25-7-116 (9).

21 SECTION 5. The introductory portion to 25-7-106 (1),
22 25-7-106 (1) (a) and (3), the introductory portion to 25-7-106
23 (6), and 25-7-106 (6) (c), Colorado Revised Statutes 1973, as
24 amended, are amended, and the said 25-7-106 (1) is further
25 amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

26 25-7-106. Commission - additional authority. (1) Except

1 as provided in sections 25-7-127 and 25-7-128, the commission
2 shall have maximum flexibility in developing an effective air
3 pollution QUALITY control program and may promulgate such
4 combination of regulations as may be necessary or desirable to
5 carry out ~~the legislative purpose set forth in section 25-7-102~~
6 THAT PROGRAM; EXCEPT THAT SUCH PROGRAM AND REGULATIONS SHALL BE
7 CONSISTENT WITH THE LEGISLATIVE DECLARATION SET FORTH IN SECTION
8 25-7-102. Such regulations may include, but shall not be limited
9 to:

10 (a) CLASSIFICATION AND, AS APPROPRIATE, RECLASSIFICATION OF
11 THE STATE INTO ATTAINMENT, NONATTAINMENT, AND UNCLASSIFIABLE
12 AREAS, AND division of the state into such control zones REGIONS
13 or areas as may be necessary or desirable for effective
14 administration of ~~the air pollution control program~~ THIS ARTICLE;

15 (d) Development of a high altitude performance adjustment
16 program for motor vehicles to the extent authorized by section
17 215 of the federal "Clean Air Act", as amended;

18 (e) Development of a control or prohibition respecting the
19 use of a fuel or fuel additives in a motor vehicle or motor
20 vehicle engine to the extent authorized by section 211(c) of the
21 federal "Clean Air Act", as amended.

22 (3) The commission may adopt such rules and regulations IN
23 CONFORMITY WITH ARTICLE 4 OF TITLE 24, C.R.S. 1973, governing
24 procedures before THE COMMISSION AND the variance board as may be
25 necessary to assure that hearings before said THE COMMISSION AND
26 THE board will be fair and impartial.

1 (6) The commission may require the owner or operator, or
2 both, of any air contamination POLLUTION source to:

3 (c) Record, MONITOR, AND sample emissions in accordance
4 with such methods, at such locations, at such intervals, and in
5 such manner as the commission shall prescribe;

6 SECTION 6. 25-7-108 (1) and the introductory portion to
7 25-7-108 (3), Colorado Revised Statutes 1973, as amended, are
8 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

9 25-7-108. Commission to promulgate emission control
10 regulations. (1) (a) Except as provided in sections 25-7-127
11 and 25-7-128, as promptly as possible, the commission shall
12 adopt, promulgate, and from time to time modify or repeal
13 emission control regulations which require the use of effective
14 practical air pollution controls:

15 (I) For each significant source or category of significant
16 sources of air pollutants throughout the entire state;

17 (II) For each type of facility, process, or activity which
18 produces or might produce significant emissions of air
19 pollutants.*

20 (b) The requirements and prohibitions contained in such
21 regulations shall be set forth with as much specificity and
22 clarity as is practical. Upon adoption of an emission control
23 regulation under subparagraph (II) of paragraph (a) of this
24 subsection (1) for the control of a specific facility, process,
25 or activity, such regulation shall apply to the exclusion of
26 other emission control regulations adopted pursuant to

1 subparagraph (I) of paragraph (a) of this subsection (1); prior
2 to such adoption, the general regulations adopted pursuant to
3 subparagraph (I) of paragraph (a) of this subsection (1) shall be
4 applicable to such facility, process, or activity. In the
5 formulation of each emission control regulation, the commission
6 shall take into consideration the following:

7 (I) The state policy regarding air pollution, as set forth
8 in section 25-7-102;

9 (II) Federal recommendations and requirements;

10 (III) The degree to which altitude, topography, climate, or
11 meteorology in certain portions of the state require that
12 emission control regulations be more or less stringent than in
13 other portions of the state;

14 (IV) The degree to which any particular type of emission is
15 subject to treatment, and the availability, technical
16 feasibility, and economic reasonableness of control techniques;

17 (V) The extent to which the emission to be controlled is
18 significant;

19 (VI) The continuous, intermittent, or seasonal nature of
20 the emission to be controlled;

21 (VII) The economic, environmental, and energy costs of
22 compliance with such emission control regulation;

23 (VIII) Whether an emission control regulation should be
24 applied throughout the entire state or only within specified
25 areas or zones of the state, and whether it should be applied
26 only when a specified class or type of pollution is concerned.

1 (3) Emission control regulations adopted pursuant to this
2 section shall include, but shall not be limited to, regulations
3 pertaining to the following facilities, processes, and
4 activities:

5 SECTION 7. 25-7-108 (2) (e), (3) (b), (3) (e), (3) (k), and
6 (4), Colorado Revised Statutes 1973, as amended, are amended, and
7 the said 25-7-108 is further amended BY THE ADDITION OF A NEW
8 SUBSECTION, to read:

9 25-7-108. Commission to promulgate emission control
10 regulations. (2) (e) ~~Open-burning-of--incidental--refuse;--open~~
11 ~~burning--at--dumps;--open-burning-for-agricultural--purposes;--open~~
12 ~~burning-of-junk-automobiles;--and-any-other~~ Open burning activity;

13 (3) (b) Storage and transfer of petroleum products and any
14 other volatile substance ORGANIC COMPOUNDS;

15 (e) Wigwam waste burners, pulp mills, alfalfa dehydrators,
16 asphalt plants, and any other industrial or commercial activity
17 which tends to emit air contaminants POLLUTANTS as a by-product.
18 ~~except--that--the--provisions--of--any--commission--regulation~~
19 ~~concerning--wigwam--wood--waste--burners--shall--not--apply--prior--to~~
20 ~~July-1,-1982;-to-any-such-burner-located-within-seventy-five--air~~
21 ~~miles--of--the--border--of--any-state-bordering-on-Colorado-if-the~~
22 ~~regulations-concerning-wigwam-wood-waste-burners-of-the-bordering~~
23 ~~state-are-less-stringent--than--those--of--the--commission:--Said~~
24 ~~exception--shall--not--apply--to-wigwam-wood-waste-burners-located~~
25 ~~within-a-twenty-mile-radius-of-any-city;--town;--or--municipality~~
26 ~~having--a--population--of-fifty-thousand-persons-as-determined-by~~

1 the-1970-federal-census:

2 (k) Storage and transfer of VOLATILE COMPOUNDS AND
3 HAZARDOUS OR toxic gases OR OTHER HAZARDOUS SUBSTANCES WHICH MAY
4 BECOME AIRBORNE.

5 (4) Among its emission control regulations, the commission
6 shall include appropriate regulations pertaining to accidents,
7 shutdowns, and other conditions which justify temporary relief
8 from controls. OPERATIONS OF ANY AIR POLLUTION SOURCE DURING
9 PERIODS OF START-UP, SHUTDOWN, AND MALFUNCTION SHALL NOT
10 CONSTITUTE REPRESENTATIVE CONDITIONS FOR THE PURPOSE OF A
11 PERFORMANCE OR COMPLIANCE TEST, NOR SHALL EMISSIONS IN EXCESS OF
12 THE LEVEL OF THE APPLICABLE EMISSION CONTROL REGULATIONS DURING
13 PERIODS OF START-UP, SHUTDOWN, OR MALFUNCTION BE CONSIDERED A
14 VIOLATION OF THE APPLICABLE EMISSION CONTROL REGULATIONS.

15 (6) In establishing test methods and procedures for
16 determining compliance with emission control regulations
17 promulgated under this section, the commission shall, to the
18 maximum degree consistent with the purposes of this article,
19 consider the test methods and procedures established by the
20 United States environmental protection agency and shall adopt
21 such test methods and procedures as shall minimize the
22 possibility of inconsistency or duplication of effort.

23 SECTION 8. Article 7 of title 25, Colorado Revised Statutes
24 1973, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW
25 SECTIONS to read:

26 25-7-108.3 Prevention of significant deterioration program.

1 (1) It is the policy of this state to prevent by the following
2 means the significant deterioration of air quality in those
3 portions of the state which attain federal ambient air quality
4 standards:

5 (a) In areas designated as Class I, II, or III, pursuant to
6 this article and in accordance with the federal "Clean Air Act",
7 as amended, the increases allowed in pollutant concentrations
8 over the baseline concentration from the construction of major
9 stationary sources or from major modifications shall, in the case
10 of particulate matter and sulfur dioxide, be the same as those
11 increases established by section 163(b) of the federal "Clean Air
12 Act", as amended, and shall, in the case of any other pollutants,
13 be the same as those increases established pursuant to section
14 166(a) of the federal "Clean Air Act", as amended. For any
15 period other than an annual period, the applicable maximum
16 allowable increase may be exceeded during one such period per
17 year at any one location.

18 (b) No concentration of a pollutant shall exceed a national
19 ambient air quality standard.

20 (c) No major stationary source or major modification shall
21 be constructed unless the requirements of this section, as
22 applicable, have been met. The requirements of this section
23 shall apply to a proposed source or modification only with
24 respect to those pollutants for which it would be a major
25 stationary source or major modification.

26 (2) As used in this section:

1 (a) "Baseline concentration" means the ambient air
2 concentration level reflecting actual air quality as of the time
3 of the first application for a permit in an area subject to this
4 article, less any contributions from major stationary sources and
5 major modifications on which construction commenced on or after
6 January 6, 1975, and any particulate matter not of a size or
7 substance to adversely affect public health. The baseline
8 concentration shall include all projected emissions from any
9 major stationary sources or major modifications on which
10 construction commenced prior to January 6, 1975, but which had
11 not begun operations by the date of the baseline air quality
12 concentration determination.

13 (b) "Best available control technology" means an emission
14 limitation based on the maximum degree of reduction of each
15 pollutant subject to regulation under this article emitted from
16 or which results from any major stationary source or major
17 modification which the board, on a case-by-case basis, taking
18 into account energy, environmental, and economic impacts and
19 other costs, determines is achievable for such facility through
20 application of production processes and available methods,
21 systems, and techniques, including fuel cleaning or treatment or
22 innovative fuel combustion techniques for control of each such
23 pollutant. In no event shall application of best available
24 control technology result in emissions of any pollutants which
25 will exceed the emissions allowed by any applicable standard
26 established pursuant to section 111 or 112 of the federal "Clean

1 Air Act", as amended.

2 (c) (I) "Major modification" means any physical change in,
3 change in the method of operation of, or addition to a stationary
4 source which increases the net emissions or net potential to emit
5 of any air pollutant (taking into account all emissions decreases
6 and increases at the source which would accompany the
7 modification) by either one hundred tons per year or more for any
8 source category identified in paragraph (d) of this subsection
9 (2), or by two hundred fifty tons per year or more for any other
10 stationary source.

11 (II) A physical change shall not include routine
12 maintenance, repair, and replacement.

13 (III) A change in the method of operation, unless
14 previously limited by enforceable permit conditions, shall not
15 include:

16 (A) An increase in the production rate, if such increase
17 does not exceed the operating design capacity of the source;

18 (B) An increase in the hours of operation;

19 (C) Use of an alternative fuel or raw material by reason of
20 an order in effect under sections 2(a) and (b) of the federal
21 "Energy Supply and Environmental Coordination Act of 1974" (or
22 any superseding legislation) or by reason of a natural gas
23 curtailment plan in effect pursuant to the federal "Power Act";

24 (D) Use of an alternative fuel or raw material, if prior to
25 January 6, 1975, the source was capable of accommodating such
26 fuel or material;

1 (E) Use of an alternative fuel by reason of an order or
2 rule under section 125 of the federal "Clean Air Act", as
3 amended; or

4 (F) Change in ownership of the source.

5 (IV) Fugitive dust, emissions caused by mobile or indirect
6 sources of pollution, and emissions resulting from temporary
7 activities, such as construction or exploration, shall be
8 excluded in determining whether a major modification will occur.

9 (d) "Major stationary source" means any of the following
10 stationary sources of air pollutants which emit, or have the
11 potential to emit, one hundred tons per year or more of any air
12 pollutant regulated under the federal "Clean Air Act", as
13 amended: Fossil fuel-fired steam electric plants of more than two
14 hundred fifty million British thermal units per hour heat input,
15 coal cleaning plants (with thermal dryers), kraft pulp mills,
16 portland cement plants, primary zinc smelters, iron and steel
17 mill plants, primary aluminum ore reductions plants, primary
18 copper smelters, municipal incinerators capable of charging more
19 than two hundred fifty tons of refuse per day, hydro-fluoric,
20 sulfuric, and nitric acid plants, petroleum refineries, lime
21 plants, phosphate processing plants, coke oven batteries, sulfur
22 recovery plants, carbon black plants (furnace process), primary
23 lead smelters, fuel conversion plants, sintering plants,
24 secondary metal production facilities, chemical process plants,
25 fossil fuel boilers of more than two hundred fifty million
26 British thermal units per hour heat input, petroleum storage and

1 transfer facilities with a total storage capacity exceeding three
2 hundred thousand barrels, taconite ore processing facilities,
3 glass fiber processing plants, and charcoal production plants.
4 Such term also includes any other stationary source which emits,
5 or has the potential to emit, two hundred fifty tons per year or
6 more of any air pollutant regulated under the federal "Clean Air
7 Act", as amended. Fugitive dust emissions caused by mobile or
8 indirect air pollution sources, and emissions resulting from
9 temporary activities, such as construction or exploration, shall
10 be excluded in determining whether a source is a major stationary
11 source.

12 (e) "Potential to emit" means the allowable emission rate
13 applicable to a source or facility.

14 (f) "Source" means any structure, building, facility,
15 equipment, or installation, or any combination thereof, which is
16 located on one or more contiguous or adjacent properties and
17 which is owned or operated by the same person or by persons under
18 common control; except that properties which are or will be used
19 only for right-of-way, transmission, gathering, transportation,
20 communication, pipeline, or similar purposes shall not be
21 considered contiguous or adjacent properties.

22 (3) In accordance with section 161 of the federal "Clean
23 Air Act", as amended, and this section, the commission shall
24 incorporate in the state implementation plan emission
25 limitations, requirements for employment of best available
26 control technology, and such other measures as may be necessary

1 to prevent significant deterioration of ambient air quality in
2 each region, or portion thereof, of the state identified pursuant
3 to section 107(d)(1)(D) or (E) of the federal "Clean Air Act", as
4 amended.

5 (4)(a) The requirements of the state implementation plan
6 for prevention of significant deterioration of ambient air
7 quality shall not apply to a major stationary source or major
8 modification with respect to a particular pollutant if the owner
9 or operator demonstrates that:

10 (I) As to the pollutant, the source or modification is
11 subject to the United States environmental protection agency's
12 emission offset ruling, 41 FR 55524, as amended, or to
13 regulations approved or promulgated pursuant to section 173 of
14 the federal "Clean Air Act", as amended, and the source or
15 modification would impact no area attaining the national ambient
16 air quality standards (either internal or external to areas
17 designated as nonattainment under section 107 of the federal
18 "Clean Air Act", as amended); or

19 (II) Such emissions from the source or modification would
20 be fugitive dust; or

21 (III) With respect to a particular pollutant, no net
22 increase in emissions of that pollutant would occur at the
23 source, taking into account all emissions increases and decreases
24 at the source which would accompany the modification; or

25 (IV) Such emissions would be from a temporary activity.

26 (b) The division may grant a waiver from the requirements

1 of this section for proposed new or modified sources in order to
2 encourage the use of an innovative technological system or
3 systems of continuous emission reduction if the administrator of
4 the United States environmental protection agency has delegated
5 such authority and if the division determines, after notice and
6 opportunity for public hearing, that such innovative
7 technological system or systems of continuous emission reduction
8 have a substantial likelihood of achieving greater continuous
9 emission reduction than the means of emission limitation which,
10 but for such waiver, would be required, or of achieving
11 continuous emission reduction equivalent to that which, but for
12 such waiver, would be required, at a lower cost in terms of
13 energy or economic or nonair quality environmental impact. If a
14 public hearing is requested by any person, the request shall,
15 within twenty days of its receipt, be transmitted to the board.
16 The board shall, within sixty days of its receipt of the request,
17 hold a public hearing with respect thereto and within thirty days
18 of such hearing issue its decision.

19 (5) Applications for a proposed new or modified source
20 subject to the requirements of this section, or any additions to
21 such applications, shall be processed by the division and the
22 board as provided in section 25-7-112.

23 (6) The owner or operator of a proposed source or
24 modification shall submit all information determined by the
25 division to be necessary to perform any analysis or make any
26 determination required under this section.

1 (7) The commission shall promulgate regulations providing
2 that permits for the construction and operation of major
3 stationary sources and major modifications shall be issued
4 notwithstanding that the change in air quality resulting from
5 emissions from such new or modified source would cause or
6 contribute to concentrations which would exceed the maximum
7 allowable increase for a Class I area, where the owner or
8 operator of the new or modified source satisfies the requirements
9 of section 165(d)(2) of the federal "Clean Air Act", as amended.

10 (8) The division shall transmit to the administrator of the
11 United States environmental protection agency a copy of each
12 permit application relating to a major stationary source or major
13 modification. Thereafter the division and the board shall
14 provide notice to the administrator of the United States
15 environmental protection agency of every action related to the
16 consideration of such permit.

17 (9)(a) All areas of the state shall initially be designated
18 as provided in section 162 of the federal "Clean Air Act", as
19 amended.

20 (b) To the extent permitted by section 164 of the federal
21 "Clean Air Act", as amended, the commission may redesignate any
22 area in the state as a Class I, Class II, or Class III area. The
23 commission shall promulgate rules and regulations in conformity
24 with article 4 of title 24, C.R.S. 1973, establishing the
25 procedures for such redesignations; except that:

26 (I) Such procedures shall be uniform for all

1 redesignations;

2 (II) Any redesignation may be adopted by the commission
3 only after reasonable notice and public hearing;

4 (III) All redesignations, except any established by an
5 Indian governing body, shall be specifically approved by the
6 governor, after consultation with the appropriate committees of
7 the general assembly if it is in session or with the leadership
8 of the general assembly if it is not in session, and by
9 resolutions or ordinances enacted by the general purpose unit of
10 local government representing a majority of the residents of the
11 area to be redesignated;

12 (IV) Any redesignation shall constitute a revision to the
13 state implementation plan and shall be submitted to the
14 administrator of the United States environmental protection
15 agency.

16 (c) Any redesignations or any denial of an application for
17 redesignation made pursuant to paragraph (b) of this subsection
18 (9) shall be subject to judicial review in accord with section
19 25-7-117.

20 25-7-108.7. Attainment program. (1) The commission shall
21 develop a program providing for the attainment and maintenance of
22 each national ambient air quality standard in each nonattainment
23 area of the state, in conformity with and as provided in section
24 172 of the federal "Clean Air Act", as amended. The attainment
25 program shall be designed so that the air quality benefits of the
26 control measures utilized bear a reasonable relationship to the

1 economic, environmental, and energy costs of such measures.
2 Control measures required pursuant to the attainment program
3 shall be allocated among the different categories of air
4 pollution sources, taking into consideration their respective
5 contributions to air pollution and existing control measures,
6 although precise percentages shall not be required for such
7 allocations.

8 (2) The attainment program embodied in the state
9 implementation plan shall, with respect to proposed major sources
10 within nonattainment areas which would cause or contribute to a
11 violation of a national ambient air quality standard, provide an
12 allowance for growth while providing reasonable further progress
13 toward attainment, and new sources may be allowed that do not
14 result, individually or in the aggregate, in emissions that
15 exceed the allowance. If an applicable growth allowance has been
16 consumed, then the attainment program shall permit sources to be
17 constructed only if emission reduction offsets are obtained
18 sufficient to provide reasonable further progress toward
19 attaining the applicable national ambient air quality standards
20 by the attainment date prescribed under part D of the federal
21 "Clean Air Act", as amended. Any emission offsets required for
22 sulfur dioxide, particulates, and carbon monoxide shall provide a
23 positive net air quality benefit in the area affected by the
24 proposed source.

25 (3) The attainment program shall provide that emission
26 reduction offsets which exceed the reasonable further progress

1 requirements may be preserved for use in the future. Any offsets
2 so preserved for future use and credit shall be specifically
3 identified either in the state implementation plan or in the
4 permit for the source as to which the offset was originally
5 obtained.

6 (4)(a) The commission may, from time to time, review the
7 designation of any attainment, nonattainment, or unclassifiable
8 area within the state and may revise the designation of any such
9 area or part thereof which is calculated by air quality modeling
10 or shown by monitored data or other reliable methods to be
11 invalid.

12 (b) The commission shall, upon application by the owner or
13 operator of any existing or proposed stationary source, review
14 the designation of any attainment, nonattainment, or
15 unclassifiable area within the state and shall revise the
16 designation of any such area or part thereof which is calculated
17 by air quality modeling or shown by monitored data or other
18 reliable methods to be invalid.

19 (c) All revisions of designations shall be submitted to the
20 administrator of the United States environmental protection
21 agency.

22 SECTION 9. 25-7-109(1) and (4), Colorado Revised Statutes
23 1973, are amended to read:

24 25-7-109. Commission - procedures to be followed in setting
25 standards and regulations. (1) Prior to adopting, promulgating,
26 amending, or modifying any ambient air QUALITY standard

1 authorized in section 25-7-107, or any emission control
2 regulation authorized in section 25-7-108, OR ANY OTHER
3 REGULATORY PLANS OR PROGRAMS AUTHORIZED BY SECTIONS 25-7-105 (1)
4 (b) AND (1) (c) AND 25-7-106, the commission shall conduct a
5 public hearing thereon as provided in section ~~24-4-105~~ 24-4-103,
6 C.R.S. 1973. Notice of any such hearing shall conform to the
7 requirements of section 24-4-103, C.R.S. 1973, but such notice
8 shall be given at least sixty days prior to the hearing, and
9 shall include each proposed regulation, and shall be mailed to
10 all persons who have filed with the commission a written request
11 to receive such notices.

12 (4) RULES AND regulations promulgated pursuant to sections
13 ~~25-7-107-and-25-7-108~~ THIS ARTICLE shall not take effect until
14 ~~thirty--days--after--they--have--been--filed--with--the--secretary--of~~
15 ~~state~~ AFTER THEY HAVE BEEN PUBLISHED IN ACCORDANCE WITH SECTION
16 24-4-103, C.R.S. 1973, OR ON SUCH LATER DATE AS IS STATED IN SUCH
17 RULES AND REGULATIONS.

18 SECTION 10. 25-7-110(1), (2) (b), (2) (c), (2)(e), and (2)
19 (g), Colorado Revised Statutes 1973, are amended to read:

20 25-7-110. Administration of air quality control programs.
21 (1) The division shall administer and enforce the air pollution
22 QUALITY control programs adopted by the commission. In
23 furtherance of such responsibility of the division, the executive
24 director of the department of health shall establish within the
25 division a separate air pollution QUALITY control agency, the
26 head of which shall be a registered professional engineer or has

1 SHALL HAVE a graduate degree in engineering or other specialty
2 dealing with the problems of air pollution QUALITY control. He
3 shall also have appropriate practical and administrative
4 experience related to air pollution QUALITY control. Such person
5 shall not be the technical secretary employed pursuant to section
6 25-7-105 (3). ANY POTENTIAL CONFLICT OF INTEREST OF SUCH PERSON
7 SHALL BE ADEQUATELY DISCLOSED PRIOR TO APPOINTMENT AND AS MAY
8 FROM TIME TO TIME ARISE. All policies and procedures followed in
9 the administration and enforcement of the air pollution QUALITY
10 control programs which have been adopted by the commission shall
11 be subject to supervision by the state board of health.

12 (2) (b) Determine COLLECT DATA, by means of field studies
13 and air monitoring and-sampling;-if-the-ambient-air-standards-are
14 being-violated-in-any-area-of-the-state CONDUCTED BY THE DIVISION
15 OR BY INDIVIDUAL SOURCES, AND DETERMINE THE NATURE AND QUALITY OF
16 EXISTING AMBIENT AIR THROUGHOUT THE STATE;

17 (c) Enter and inspect any property, premises, or place for
18 the purpose of investigating any actual, suspected, or potential
19 source of air pollution or--air-contamination or ascertaining
20 compliance or noncompliance with any emission---standard
21 REQUIREMENT OF THIS ARTICLE or any order OR PERMIT, OR TERM OR
22 CONDITION THEREOF, ISSUED OR promulgated under PURSUANT TO this
23 article; AND THE DIVISION OR BOARD MAY, AT REASONABLE TIMES, HAVE
24 ACCESS TO AND COPY ANY RECORD, INSPECT ANY MONITORING EQUIPMENT
25 OR METHOD, OR SAMPLE ANY EMISSIONS REQUIRED PURSUANT TO SECTION
26 25-7-106 (6); except that, if such entry or inspection is denied

1 or not consented to and no emergency exists, the division is
2 empowered to and shall obtain from the district or county court
3 for the district or county in which such property, premises, or
4 place is located a warrant to enter and inspect any such
5 property, premises, or place prior to entry and inspection. The
6 district and county courts of this state are empowered to issue
7 such warrants upon a proper showing of the need for such entry
8 and inspection. Any information relating to secret process
9 PROCESSES or methods of manufacture or production obtained in the
10 course of the inspection or investigation shall be kept
11 confidential. ~~If--samples--of--air--or--air--contaminants--are--taken~~
12 ~~for--analysis;~~ a duplicate of the ANY analytical reports REPORT OR
13 OBSERVATION OF AN AIR POLLUTANT BY THE DIVISION shall be
14 furnished promptly to the person who is suspected of causing such
15 air pollution. ~~or--air--contamination:~~

16 (e) Inform the appropriate governmental agency of the
17 results of atmospheric tests conducted in its jurisdiction and
18 notify the affected city, town, county, or city and county
19 whenever tests establish that the ambient air or source of
20 emission of smoke or air contaminant POLLUTION fails to meet the
21 standards established under this article;

22 (g) Furnish such personnel to the variance board and the
23 commission as the variance board and commission may reasonably
24 require to carry out their duties and responsibilities under this
25 article;

26 SECTION 11. The introductory portion to 25-7-111 (1) and

1 25-7-111 (1)(a) and (2)(a), Colorado Revised Statutes 1973, are
2 amended to read:

3 25-7-111. Air pollution emergencies endangering public
4 health anywhere in this state. (1) Whenever the division shall
5 determine DETERMINES, after investigation, that any person is
6 either engaging in any activity involving a significant risk of
7 air contamination POLLUTION or is discharging or causing to be
8 discharged into the atmosphere, directly or indirectly, any air
9 contaminants POLLUTANTS and such activity or discharge
10 constitutes a clear, present, and immediate danger to the health
11 of the public, or that any such activity or discharge of air
12 contaminants POLLUTANTS, if permitted to continue unabated, will
13 result in a condition of clear, present, and immediate danger to
14 the health of the public, the division shall:

15 (a) Issue a written cease and desist order to said person
16 requiring immediate discontinuance of such activity or the
17 discharge of such contaminant POLLUTANT into the atmosphere,
18 and, upon receipt of such order, such person shall immediately
19 discontinue such activity or discharge; or

20 (2) (a) Whenever the division shall--determine DETERMINES,
21 after investigation, that the contaminated condition of the
22 ambient air in any portion of this state constitutes a clear,
23 present, and immediate danger to the health of the public, or
24 that any activity or discharge of air contaminants POLLUTANTS,
25 if permitted to continue unabated, will result in a condition of
26 clear, present, and immediate danger to the health of the public,

1 and that the procedures available to the division under
2 subsection (1) of this section will not adequately protect the
3 public, it shall immediately notify the governor of its
4 determination of either of such conditions, and it shall request
5 the governor to declare a state of air pollution emergency in
6 such portion of this state.

7 SECTION 12. 25-7-112 (1), Colorado Revised Statutes 1973,
8 is amended to read:

9 25-7-112. Air pollutant emission notices and emission
10 permits. (1) After ninety days from April 10, 1970, no person
11 shall permit emission of air contaminants POLLUTANTS from, or
12 construction or alteration of, any facility, process, or activity
13 except residential structures, from which air contaminants
14 POLLUTANTS are, or are to be, emitted through any permanently
15 located chimney, stack, pipe, or other conduit unless and until
16 an air contaminant POLLUTANT emission notice has been filed with
17 the division with respect to such emission. A revised emission
18 notice shall be filed whenever a significant change in emissions
19 is anticipated or has occurred.

20 SECTION 13. 25-7-112 (4) and (5) (a), Colorado Revised
21 Statutes 1973, as amended, are REPEALED AND REENACTED, WITH
22 AMENDMENTS, to read:

23 25-7-112. Air pollutant emission notices and emission
24 permits - fees. (4) No person shall construct or substantially
25 alter any building, facility, structure, or installation, except
26 single-family residential dwellings, or install any machine,

1 equipment, or other device, or commence the conduct of any such
2 activity, or commence performance of any combinations thereof, or
3 commence operations of any of the same which will or do
4 constitute a new air pollution source or a new indirect air
5 pollution source without first obtaining or having a valid permit
6 therefor from the division, board, or commission, as the case may
7 be; except that no permit shall be required for new indirect air
8 pollution sources until regulations regarding permits for such
9 sources have been promulgated by the commission. The commission
10 shall establish rules, regulations, and procedures in accordance
11 with the provisions of this article for the issuance or denial of
12 permits which shall be in conformity with the purposes of this
13 article, as set forth in section 25-7-102; but in no event shall
14 regulations governing indirect air pollution sources be more
15 stringent than those required for compliance with the federal
16 "Clean Air Act", as amended, and final rules and regulations
17 adopted pursuant thereto. Such procedures shall include, but not
18 be limited to, the following:

19 (a) Any such person shall file an application for a permit
20 with the division, which may include such relevant plans,
21 specifications, air quality data, and other information as the
22 division may reasonably require.

23 (b) The division shall evaluate permit applications to
24 determine whether operation of the proposed new source will
25 comply with all emission standards and regulations and any
26 further requirements of the state implementation plan which has

1 been submitted to and approved by the administrator of the United
2 States environmental protection agency.

3 (c) The division shall also determine whether applications
4 are for new source activity that may have an impact upon areas
5 which, at the time of application, are in compliance with federal
6 ambient air quality standards or for new source activity that may
7 have an impact upon areas which, at the time of application, are
8 not in compliance with federal ambient air quality standards.

9 (d) The division shall prepare its preliminary analysis
10 regarding compliance with applicable standards, regulations, and
11 other requirements of the state implementation plan and regarding
12 impact on attainment or nonattainment areas as expeditiously as
13 possible, but no later than sixty days after receipt of a
14 completed permit application. Applicants must be advised within
15 twenty days after receipt of any application, or supplement
16 thereto, if and in what respects the subject application is
17 incomplete. Upon failure of the division to so notify the
18 applicant within twenty days of its filing, the application shall
19 be deemed complete.

20 (e) For those types of projects or activities defined or
21 designated by the commission as warranting public comment with
22 respect thereto, the division shall, within fifteen days after it
23 has prepared its preliminary analysis, give public notice of the
24 proposed project or activity by at least one publication in a
25 newspaper of general distribution in the area in which the
26 proposed project or activity, or a part thereof, is to be

1 located. The division shall also during such period of time
2 maintain in the office of the county clerk and recorder of the
3 county in which the proposed project or activity, or a part
4 thereof, is located a copy of its preliminary analysis and a copy
5 of the application with all accompanying data for public
6 inspection. The division shall receive and consider public
7 comment thereon for a period of thirty days thereafter.

8 (f) For any application subject to the requirements for
9 prevention of significant deterioration as provided in section
10 25-7-108.3 requiring public hearing, the division shall, within
11 five days after the issuance of its preliminary analysis, forward
12 the application and its preliminary analysis to the board and
13 shall mail a copy of the preliminary analysis to the applicant.
14 The board shall, within sixty days after receipt of the
15 application and the analysis, hold a public hearing to elicit and
16 record the comment of any interested member of the public
17 regarding sufficiency of the preliminary analysis and whether the
18 permit application should be approved or denied. At least thirty
19 days prior to the public hearing, notice thereof shall be mailed
20 by the board to the applicant, printed in a newspaper of general
21 distribution in the area of the proposed project or activity, and
22 submitted for public review with the county clerk and recorder of
23 the county wherein the project or activity is proposed. The
24 board shall also during such thirty-day period maintain in the
25 office of the county clerk and recorder of the county in which
26 the proposed project or activity, or a part thereof, is located a

1 copy of the division's preliminary analysis and a copy of the
2 application with all accompanying data for public inspection.

3 (g) Within thirty days following the completion of the
4 division's preliminary analysis for applications not subject to
5 paragraphs (e) or (f) of this subsection (4), or within thirty
6 days following the period for public comment provided for in
7 paragraph (e) of this subsection (4), or within thirty days
8 following the hearing provided for in paragraph (f) of this
9 subsection (4), the division or the board, as the case may be,
10 shall grant the permit application if it finds that the proposed
11 source or activity will meet all applicable regulations of the
12 commission and all other applicable requirements of the state
13 implementation plan for control of emissions or prevention of
14 significant deterioration of air quality and that the proposed
15 source or activity will not interfere with the attainment or
16 maintenance of any federal ambient air quality standard required
17 by the federal "Clean Air Act", as amended, or that if operation
18 of the proposed source or activity may interfere with attainment
19 in an area which has not yet achieved compliance with the federal
20 ambient air quality standards required by the federal "Clean Air
21 Act", as amended, the applicant has satisfactorily demonstrated
22 compliance with the provisions of section 25-7-108.7. The
23 division or the board, as the case may be, shall include such
24 terms and conditions in any permit as it deems necessary for the
25 proposed project or activity to qualify for a permit; except
26 that the only terms or conditions of a permit which may be

1 enforced after final approval has been granted pursuant to
2 paragraph (j) of this subsection (4) are those required in order
3 to qualify for a permit under section 25-7-108.3 or 25-7-108.7 or
4 which set forth the emission control regulations to which the
5 permitted facility will be subject after it commences operation.
6 All other terms and conditions of the permit shall terminate upon
7 the granting of final approval by the division pursuant to
8 paragraph (j) of this subsection (4). If the division or the
9 board, as the case may be, fails to grant or deny the permit
10 application within the time prescribed, the permit shall be
11 deemed to have been granted unless the applicant therefor shall
12 have expressly waived such time limitation.

13 (h) If the division denies a permit or imposes conditions
14 upon the issuance of a permit which are contested by the
15 applicant, or if the division revokes a permit pursuant to
16 paragraph (j) of this subsection (4), the applicant may request a
17 hearing before the board. The hearing shall be held in
18 accordance with section 24-4-105, C.R.S. 1973. The board may,
19 after review of the evidence presented at the hearing, affirm,
20 reverse, or modify the decision of the division but shall, in any
21 event, assure that all the requirements of paragraphs (f) and (g)
22 of this subsection (4) are met.

23 (i) An order of the division, the board, or the commission
24 shall be final upon the date of issuance.

25 (j) No person shall commence the operation of any project
26 or the conduct of any activity for which a permit has been issued

1 without giving at least thirty days' prior notice to the division
2 of the date on which such commencement is to take place. During
3 such thirty-day period and again within thirty days after
4 commencement, the division shall inspect the project or activity
5 to determine whether or not the terms and conditions of the
6 permit have been properly satisfied. If at any time prior to
7 final approval the division finds that the terms or conditions of
8 the permit have been violated, it may revoke the permit, or it
9 may grant a period of not more than six months in which the terms
10 or conditions may be satisfied; except that no requirements of
11 the state implementation plan may be violated during such period.
12 If the division determines that the terms and conditions of the
13 permit have not been satisfied within such period of time, the
14 division shall revoke the permit. If the division determines
15 that the terms and conditions of the permit have been satisfied,
16 the division shall grant its final approval of the permit
17 whereupon all requirements of this subsection (4) shall have been
18 fulfilled by the applicant. Enforcement of a permit condition
19 shall occur only under section 25-7-113, and no permit issued
20 pursuant to this article shall be subject to revocation after
21 final approval has been given pursuant to this paragraph (j).

22 (k) Any permit issued prior to the effective date of this
23 section, as amended, with respect to a project or the operation
24 thereof shall continue in full force and effect and, on and after
25 the effective date of this section, as amended, shall not be
26 affected by the terms of this section, and the holder of such a

1 permit shall not be required to comply with the provisions of
2 this section. Regulations concerning permits for the
3 construction and operation of new direct air pollution sources in
4 effect as of July 1, 1973, and not inconsistent with the
5 provisions of this article shall continue in effect until
6 repealed or amended from time to time by the commission.

7 (5) (a) The commission shall designate by regulations those
8 classes of minor or insignificant sources of air pollution which
9 are exempt from the requirement for a permit because of their
10 negligible impact upon air quality. Any person required by the
11 commission to file an air pollutant emission notice with the
12 division shall pay a nonrefundable fee of forty dollars; except
13 that the commission may designate those activities or classes of
14 sources which shall be exempt from the payment of such fee. The
15 commission shall also establish graduated nonrefundable fees for
16 the processing of applications and the issuance of permits under
17 subsection (4) of this section sufficient to cover the reasonable
18 costs of such processing, administration, and enforcement, but in
19 no event more than fifteen thousand dollars for any and all
20 permits required for an entire contiguous plant site.

21 SECTION 14. 25-7-113, Colorado Revised Statutes 1973, is
22 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

23 25-7-113. Enforcement. (1) The division shall enforce
24 compliance with the standards and regulations of the commission,
25 the requirements of the state implementation plan, and the
26 provisions of this article.

1 (2) If a written and verified complaint is filed with the
2 division alleging that, or if the division itself has cause to
3 believe that, any person is violating or failing to comply with
4 any regulation of the commission, requirement of the state
5 implementation plan, provision of this article, or term or
6 condition of a permit required pursuant to section 25-7-108.3 or
7 25-7-108.7, the division shall cause a prompt investigation to be
8 made; and, if the division investigation determines that any such
9 violation or failure to comply exists, the division shall send
10 written notice to the owner or operator of such air pollution
11 source within thirty days after the discovery of the alleged
12 violation or noncompliance or within such other period as is
13 expressly required or authorized by law. Such notice shall
14 specify the provision alleged to have been violated or not
15 complied with and the facts alleged to constitute the violation
16 or noncompliance.

17 (3) (a) Within thirty days after notice has been given, the
18 division shall confer with the owner or operator of the source to
19 determine whether a violation or noncompliance did or did not
20 occur. The division shall provide an opportunity to the owner or
21 operator at such conference to submit written data, views, and
22 arguments concerning the alleged violation or noncompliance.

23 (b) If, after any such conference, a violation or
24 noncompliance is determined to have occurred and if such
25 violation or noncompliance continues beyond the thirtieth day
26 after the division notice, the division shall issue an order

1 requiring the violator and any other responsible person to
2 comply. Unless enforcement of its order has been stayed as
3 provided in paragraph (b) of subsection (4) of this section, the
4 division may seek enforcement of the applicable regulation of the
5 commission, requirement of the state implementation plan,
6 provision of this article, or terms or conditions of a permit
7 required pursuant to section 25-7-108.3 or 25-7-108.7 in the
8 district court for the district where the affected air pollution
9 source is located.

10 (c) The order for compliance shall set forth with
11 specificity the final determinations of the division regarding
12 the nature and extent of violation or noncompliance by the named
13 persons and facilities and shall also include, by reference, a
14 summary of the proceedings at the conference held after the
15 notice of violation and an evaluation of the evidence considered
16 by the division in reaching its final determinations.

17 (4) (a) Within twenty days after receipt of an order issued
18 pursuant to subsection (3) of this section, the recipient thereof
19 may file with the board a written petition requesting a hearing
20 to determine either or both of the following:

21 (I) Whether the alleged violation or noncompliance exists
22 or did exist;

23 (II) Whether a revision of the state implementation plan
24 should be implemented with respect to such violation or
25 noncompliance.

26 (b) Except with respect to actions taken pursuant to

1 section 25-7-111, upon the filing of such request with the
2 commission or the board, the order and the provisions of the
3 state implementation plan insofar as it applies to the air
4 pollution source shall be stayed pending determination of the
5 petition by the commission or board.

6 (5) (a) Any notice required by subsection (2) of this
7 section which pertains to an alleged violation described in
8 section 120(a)(2)(A) of the federal "Clean Air Act", as amended,
9 may also require each person who receives such notice, within
10 forty-five days after the issuance of such notice, to either:
11 Calculate the penalty owed in accordance with paragraph (b) of
12 this subsection (5) and submit the calculation, together with a
13 payment schedule and all information necessary for an independent
14 verification thereof, to the division; or submit to the division
15 a petition challenging such notice of violation or noncompliance
16 or alleging entitlement to an exemption under subsection (7) of
17 this section.

18 (b) (I) The amount of the penalty which shall be assessed
19 under this subsection (5) shall be equal to:

20 (A) The amount, determined in accordance with section 120
21 of the federal "Clean Air Act", as amended, and rules and
22 regulations promulgated under said act by the United States
23 environmental protection agency, which shall be no less than the
24 sum of the quarterly equivalent of the capital costs of
25 compliance and debt service over a normal amortization period of
26 not longer than ten years, operation and maintenance costs

1 foregone as a result of noncompliance, and any additional value
2 which a delay in compliance beyond July 1, 1979, may have for the
3 owner or operator of such air pollution source; less

4 (B) The amount of any expenditure made by the owner or
5 operator of such air pollution source during any such quarter for
6 the purpose of bringing the source into, and maintaining
7 compliance with, such requirement to the extent that such
8 expenditure has not been taken into account in the calculation of
9 the penalty under sub-subparagraph (A) of this subparagraph (I).

10 (II) To the extent that any expenditure under
11 sub-subparagraph (B) of subparagraph (I) of this paragraph (b)
12 made during any quarter is not subtracted for such quarter from
13 the costs under sub-subparagraph (A) of subparagraph (I) of this
14 paragraph (b), such expenditure may be subtracted for any
15 subsequent quarter from such costs; except that in no event shall
16 the amount paid be less than the quarterly payment minus the
17 amount attributed to the actual cost of construction.

18 (c) Any penalty assessed pursuant to subsections (5) to
19 (11) of this section shall be paid in equal quarterly
20 installments (except as provided in sub-subparagraph (B) of
21 subparagraph (I) of paragraph (b) of this subsection (5)) for the
22 period which begins either August 7, 1979, if notice pursuant to
23 subsection (2) of this section is issued on or before such date
24 or which begins on the date of issuance of notice pursuant to
25 subsection (2) of this section if such notice is issued after
26 August 7, 1979, and which period ends on the date on which such

1 air pollution source is estimated to come into compliance.

2 (d) Any person who fails to pay the amount of any penalty
3 with respect to any air pollution source under this subsection
4 (5) on a timely basis shall be required to pay, in addition, a
5 quarterly nonpayment penalty for each quarter during which such
6 failure to pay persists. Such nonpayment penalty shall be in an
7 amount equal to twenty percent of the aggregate amount of such
8 person's penalties and nonpayment penalties with respect to such
9 air pollution source which are unpaid as of the beginning of such
10 quarter.

11 (6) Within twenty days after receipt of a petition
12 submitted pursuant to subsection (5) (a) of this section or a
13 petition disputing the amount of the noncompliance penalty to be
14 assessed pursuant to subsection (5) (b) of this section, the
15 division shall transmit such petition to the board. Within sixty
16 days after transmission of the petition to the board, the board
17 shall hold a hearing and issue a decision thereon. Upon failure
18 of the division or the board to act within the time periods
19 provided in this section, it shall be deemed that no violation
20 occurred.

21 (7) (a) The owner or operator of any stationary source
22 shall be exempt from the duty to pay a noncompliance penalty
23 pursuant to this section if the owner or operator demonstrates
24 that the failure of such stationary source to comply is due
25 solely to:

26 (I) The conversion by such stationary source from the

1 burning of petroleum products or natural gas, or both, as the
2 primary energy source to the burning of coal pursuant to an order
3 under section 119 of the federal "Clean Air Act", as amended;

4 (II) In the case of a coal-burning source granted an
5 extension under section 119 of the federal "Clean Air Act", as
6 amended, a prohibition from using petroleum products or natural
7 gas, or both, by reason of an order under the provisions of
8 section 2 (a) and (b) of the federal "Energy Supply and
9 Environmental Coordination Act of 1974" or under any legislation
10 which amends or supersedes those provisions;

11 (III) The use of innovative technology sanctioned by an
12 enforcement order under section 113 (d) (4) of the federal "Clean
13 Air Act", as amended;

14 (IV) An inability to comply with such requirements for
15 which the stationary source has received an order pursuant to
16 section 25-7-115, which inability results from reasons entirely
17 beyond the control of the owner or operator of such stationary
18 source or of any entity controlling, controlled by, or under
19 common control with the owner or operator of such stationary
20 source;

21 (V) The conditions by reason of which a temporary emergency
22 suspension is authorized under section 110 (f) or (g) of the
23 federal "Clean Air Act", as amended;

24 (b) The division may, after notice and opportunity for a
25 public hearing, exempt any stationary source from the
26 requirements of this section with respect to a particular

1 instance of noncompliance if it finds that such instance of
2 noncompliance is de minimis in nature and in duration. If a
3 public hearing is requested by any person, the request shall be
4 transmitted to the board within twenty days of its receipt by the
5 division. The board shall, within sixty days of its receipt of
6 the request, hold a public hearing with respect thereto and
7 within thirty days of such hearing issue its decision.

8 (c) An exemption under this subsection (7) shall cease to
9 be effective if the stationary source fails to comply with the
10 interim emission control requirements or schedules of compliance,
11 including increments of progress, under any such extension,
12 order, or suspension.

13 (8) If the owner or operator of a stationary source who
14 receives a notice pursuant to subsection (2) of this section does
15 not submit a timely petition or submits a petition which is
16 denied and, within thirty days after such denial, fails to submit
17 a calculation of the penalty, a schedule for payment, and the
18 information necessary for an independent verification thereof,
19 the division may enter into a contract with a person who has no
20 financial interest in the owner or operator of the stationary
21 source or in any person controlling, controlled by, or under
22 common control with such stationary source to assist in
23 determining the penalty assessment or payment schedule with
24 respect to such stationary source. The cost of such contract may
25 be added to the penalty to be assessed against the owner or
26 operator of such stationary source.

1 (9) (a) The division or the board may adjust the amount of
2 the penalty assessment or the payment schedule proposed by the
3 owner or operator if the administrator of the United States
4 environmental protection agency determines that the penalty or
5 schedule does not meet the requirements of the federal "Clean Air
6 Act", as amended.

7 (b) Upon making a determination that a stationary source
8 which is subject to a penalty assessment pursuant to this section
9 is in compliance, the division shall review the actual
10 expenditures made by the owner or operator of such stationary
11 source for the purpose of attaining and maintaining compliance
12 and, within one hundred eighty days after such stationary source
13 comes into compliance, shall either provide reimbursement with
14 interest at appropriate prevailing rates for any overpayment by
15 such person or assess and collect any additional payment with
16 interest at prevailing rates for any underpayment by such person.

17 (10) Any orders, payments, sanctions, or other requirements
18 under this section shall be in addition to any other orders,
19 payments, sanctions, or other requirements of this article.

20 (11) The division, board, or commission may request the
21 district attorney for the district in which the alleged violation
22 or noncompliance, or any part thereof, occurred or may request
23 the attorney general to bring, and if so requested it is his duty
24 to bring, a suit for recovery of any penalty or nonpayment
25 penalty, with interest, imposed pursuant to subsection (5) of
26 this section if the penalty is not paid when due.

1 SECTION 15. 25-7-114, Colorado Revised Statutes 1973, is
2 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

3 25-7-114. Air quality hearings board. (1) There is hereby
4 created the air quality hearings board, which shall consist of
5 nine members as follows:

6 (a) One member who is designated by the state board of
7 health to represent said board in matters of air pollution in the
8 interests of the public health of the people of the state;

9 (b) One member who is a registered professional engineer
10 with at least five years' experience in the actual practice of
11 his profession and who is not from industry;

12 (c) One member who is either a physician licensed to
13 practice in this state or a toxicologist and who is not from
14 industry;

15 (d) Three members who serve as representatives of the
16 public at large and who are not from industry;

17 (e) Three members who represent industry in this state.

18 (2) (a) All members appointed pursuant to paragraphs (b) to
19 (d) of subsection (1) of this section shall represent the public
20 interest and shall not derive any significant portion of their
21 income from persons subject to permits or enforcement orders
22 under this article or the federal "Clean Air Act", as amended.

23 (b) The members of the board shall disclose any potential
24 conflicts of interest to the governor and the committee of
25 reference of the general assembly prior to confirmation and shall
26 disclose any potential conflicts of interest which arise during

1 their terms of membership to the governor, to the commission, and
2 to the other board members in a public meeting of the board.

3 (3) All members appointed under the provisions of
4 paragraphs (b) to (e) of subsection (1) of this section shall be
5 appointed by the governor.

6 (4) All members appointed by the governor shall hold office
7 for terms of four years and until their successors are appointed
8 and qualified. The member designated by the state board of
9 health shall serve at the discretion of said board. There shall
10 be no limitation on the number of terms any appointed member may
11 serve. If any member of the board appointed by the governor
12 resigns or is removed from the board, the governor shall promptly
13 appoint a new member, as provided in this section, to fill the
14 vacancy for the remainder of the term of the member of the board
15 who has ceased to be a member thereof.

16 (5) The governor shall appoint alternates for all members
17 of the board appointed by him. Each such alternate shall have
18 the same qualifications as the member for which appointed. Each
19 alternate shall be appointed for a term which shall terminate on
20 the same date as that of the member for which appointed. An
21 alternate shall act as a member of the board only when the member
22 for whom he is appointed fails or refuses to so act, and, when so
23 acting, the alternate shall have all the rights, powers, duties,
24 and functions of a member of the board. Alternates shall be
25 compensated as provided in subsection (11) of this section.

26 (6) The governor may remove any appointed member of the

1 board for malfeasance in office, failure to regularly attend
2 meetings, or any cause that renders such a member incapable or
3 unfit to discharge the duties of his office, and any such
4 removal, when made, shall not be subject to review. If any
5 member of the board is absent from two consecutive meetings, the
6 chairman of the board shall determine whether the cause of such
7 absences was reasonable. If he determines that the cause of the
8 absences was unreasonable, he shall so notify the governor, who
9 shall relieve such member and appoint a qualified person for the
10 unexpired portion of the regular term.

11 (7) The board shall:

12 (a) Elect its chairman annually from its members for a term
13 of one year;

14 (b) Meet at least quarterly, but special meetings of the
15 board may be called by its chairman upon his own initiative or by
16 the commission, and such a meeting shall be called by the
17 chairman upon the receipt by him of a written request therefor
18 signed by two or more members of the board;

19 (c) Keep a record of its proceedings.

20 (8) Five members shall constitute a quorum, and the
21 concurrence of at least a majority of all members of the board in
22 any matter within its powers and duties shall be required for any
23 determination made by the board.

24 (9) At least three days prior to each meeting, written
25 notice shall be given to each member of the board of the time,
26 place, and purpose of such meeting.

1 (10) The board has the power to hold such public hearings,
2 conduct such investigations, compel the attendance of such
3 witnesses, receive such pertinent and relevant proof, appoint
4 such hearing officers pursuant to part 10 of article 30 of title
5 24, C.R.S. 1973, and do such other things as it may deem
6 necessary and proper in order that it may effectively discharge
7 its duties and responsibilities, all in conformity with article 4
8 of title 24, C.R.S. 1973, with this article, and with regulations
9 of the commission adopted pursuant to this article.

10 (11) Each member of the board shall receive a per diem of
11 forty dollars for each day actually spent in the discharge of
12 official duties, not to exceed twelve hundred dollars in any one
13 year, and shall be reimbursed for necessary and actual expenses
14 incurred in the performance of his duties under this article.

15 (12) The individuals serving as members of the air
16 pollution variance board, as it existed pursuant to this article
17 prior to the effective date of this section, as amended, shall
18 serve as the board created by this article after said date until
19 the expiration dates of the respective terms to which they were
20 appointed and until their successors are appointed and qualified;
21 except that, if they continue to serve pursuant to this
22 subsection (12), such individuals shall immediately comply with
23 subsection (2) of this section.

24 SECTION 16. Article 7 of title 25, Colorado Revised
25 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW
26 SECTION to read:

1 25-7-114.5. State implementation plan - revisions of
2 limited applicability. (1) Upon application by the owner or
3 operator of an air pollution source, the board, subject to review
4 by the commission in its discretion as provided in section
5 25-7-116 (9), or the commission may adopt a revision of the state
6 implementation plan pursuant to this section if it determines
7 that:

8 (a) Control techniques are not available, compliance with
9 applicable emission control regulations in the state
10 implementation plan would cause an unreasonable economic burden,
11 or compliance with applicable emission control regulations would
12 result in an arbitrary and unreasonable taking of property;

13 (b) The adoption of such revision would be consistent with,
14 and aid in, implementing the legislative policy set forth in
15 section 25-7-102; and

16 (c) In any event, adoption of such revision would be
17 consistent with the requirements of section 110 of the federal
18 "Clean Air Act", as amended.

19 (2) Any revision of the state implementation plan pursuant
20 to the provisions of subsection (1) of this section may be
21 adopted for such period of time as shall be specified by the
22 board or the commission.

23 SECTION 17. 25-7-115, Colorado Revised Statutes 1973, is
24 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

25 25-7-115. Delayed compliance orders. (1) The division
26 may, after notice and an opportunity for a public hearing, issue

1 an order for any stationary source which specifies a date for
2 final compliance with any requirement of the state implementation
3 plan later than the date for attainment of any national ambient
4 air quality standard specified in such plan if the requirements
5 of this section are met. If a public hearing is requested by any
6 person, the request shall, within twenty days of its receipt, be
7 transmitted to the board. The board shall, within sixty days of
8 its receipt of the request, hold a public hearing with respect
9 thereto, and within thirty days of such hearing issue its
10 decision.

11 (2) An order pursuant to this section may be issued if the
12 order:

13 (a) Is issued after notice to the public containing the
14 content of the proposed order and after an opportunity for a
15 public hearing thereon;

16 (b) Contains a schedule and timetable for compliance which
17 requires final compliance as expeditiously as practical, but in
18 no event later than July 1, 1979, or three years after the date
19 for final compliance with such requirement that is specified in
20 the state implementation plan, whichever is later;

21 (c) In the case of a major stationary source, notifies the
22 source that it will be required to pay a penalty under section
23 25-7-113 in the event such stationary source fails to achieve
24 final compliance by July 1, 1979, or by such later date as is
25 specified in the order in accordance with section 25-7-113.

26 (d) Requires emission monitoring and reporting by the

1 stationary source;

2 (e) Requires the stationary source to use the best
3 practical system of emission reduction for the period during
4 which such order is in effect and requires the stationary source
5 to comply with such interim requirements as the board determines
6 are reasonable and practical.

7 (3) If any stationary source not in compliance with any
8 requirement of the state implementation plan gives notice to the
9 board that such stationary source intends to comply by means of
10 replacement of the facility, a complete change in its production
11 process, or a termination of its operations, the board may issue
12 an order under this section permitting the stationary source to
13 operate until July 1, 1979, without any interim schedule of
14 compliance. As a condition of the issuance of any such order,
15 the owner or operator of such stationary source shall post a bond
16 or other surety in an amount equal to the cost of actual
17 compliance by such facility and any economic value which may
18 accrue to the owner or operator of such stationary source by
19 reason of the failure to comply. If a stationary source for
20 which the bond or other surety required by this subsection (3)
21 has been posted fails to replace the facility, change the
22 production process, or terminate the operations as specified in
23 the order by the required date, the owner or operator shall
24 immediately forfeit on the bond or other surety, and the board
25 shall have no discretion to modify the order under this
26 subsection (3) or to compromise the bond or other surety.

1 (4) Any order pursuant to this section shall be terminated
2 if the board determines, after notice and a hearing, that the
3 inability of the stationary source to comply no longer exists.
4 If the owner or operator of the stationary source to which the
5 order is issued demonstrates that prompt termination of such
6 order would result in undue hardship, the termination shall
7 become effective at the earliest practicable date on which such
8 undue hardship would not result, but in no event later than the
9 date required under this subsection (4).

10 (5) (a) If, on the basis of any information available to
11 it, the division has reason to believe that a stationary source
12 to which an order has been issued pursuant to this section is in
13 violation of any requirement of such order or of any provision of
14 this section, it shall notify the commission and the owner or
15 operator of the alleged violation and shall also commence action
16 pursuant to section 25-7-113.

17 (b) The owner or operator shall respond as provided in
18 section 25-7-113, and, within sixty days after receipt of such
19 notice, the division shall issue a determination thereon. If the
20 division determines that the stationary source is in violation of
21 any requirement of such order or of any provision of this
22 section, it shall revoke such order and enforce compliance with
23 the requirement with respect to which such order was granted or
24 shall order payment of a penalty as provided in section 25-7-113,
25 or both. The owner or operator may request a hearing before the
26 board to contest the division's determination that the stationary

1 source is in violation. The hearing shall be held in accordance
2 with section 24-4-105, C.R.S. 1973. The board may, after review
3 of the evidence presented at the hearing, affirm, reverse, or
4 modify the decision of the division. The division's
5 determination shall be stayed pending the decision of the board.

6 (6) During the period of the order issued under this
7 section and when the owner or operator is in compliance with the
8 terms of such order, no other enforcement action pursuant to this
9 article shall be taken against such owner or operator based upon
10 noncompliance during the period the order is in effect with the
11 requirement for the stationary source covered by such order.

12 (7) Nothing in this section, and no delayed compliance
13 order granted pursuant to this section, shall be construed to
14 prevent or limit the application of the emergency provisions of
15 section 25-7-111.

16 SECTION 18. 25-7-116, Colorado Revised Statutes 1973, as
17 amended, is amended to read:

18 25-7-116. Hearings. (1) Not less than fifteen days after
19 a hearing has been requested AS PROVIDED IN THIS ARTICLE, the
20 variance board or the commission, as the case may be, shall grant
21 such request and set a time and place therefor Every-such-hearing
22 shall-be-conducted-pursuant-to-the-provisions-of-this-article-and
23 article--4--of--title--24,--C-R-S--1973 NOT MORE THAN NINETY DAYS
24 FOLLOWING RECEIPT OF SUCH REQUEST, UNLESS A SHORTER PERIOD IS
25 OTHERWISE SPECIFICALLY PROVIDED FOR IN THIS ARTICLE. NOTICE OF
26 SUCH HEARING SHALL BE PRINTED IN A NEWSPAPER OF GENERAL

1 CIRCULATION IN THE AREA IN WHICH THE PROPOSED PROJECT OR ACTIVITY
2 IS LOCATED AT LEAST THIRTY DAYS PRIOR TO THE DATE OF SAID
3 HEARING.

4 (2) The division shall appear as a party in any hearing
5 before the variance board or the commission and shall have the
6 same rights to judicial review as any other party.

7 (3) All testimony taken at any such hearing before the
8 variance board or the commission shall be under oath or
9 affirmation. A full and complete record of all proceedings and
10 testimony presented shall be taken and filed. The stenographer
11 shall furnish, upon payment and receipt of any fees allowed
12 therefor, a certified transcript of the whole or any part of his
13 THE record to any party in such hearing requesting the same.

14 (4) Any information relating to secret processes or methods
15 of manufacture or production which may be required, ascertained,
16 or discovered shall not be publicly disclosed in public hearings
17 or otherwise and shall be kept confidential by any member,
18 officer, or employee of the variance board, the commission, or
19 the division. but Any person seeking to invoke the protection of
20 this section SUBSECTION (4) in any hearing for-a--variance shall
21 bear the burden of proving its applicability.

22 (5) At any hearing, any person who is affected by the
23 proceeding and whose interests are not already adequately
24 represented shall have the opportunity to be a party thereto upon
25 prior application to and approval by the variance board or
26 commission, AS THE CASE MAY BE, in its sole discretion, as deemed

1 reasonable and proper by said variance board and OR commission,
2 and such person shall have the right to be heard and to
3 cross-examine any witness.

4 (6) After due consideration of the written and oral
5 statements, the testimony, and the arguments presented at any
6 such hearing, the variance board or commission shall enter its
7 findings and final order, based upon evidence in the record, or
8 make such final determination of the matter as it shall deem
9 appropriate, CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE AND
10 ANY RULE, REGULATION, OR DETERMINATION MADE BY THE COMMISSION
11 PURSUANT THERETO. UNLESS A TIME PERIOD IS OTHERWISE SPECIFICALLY
12 PROVIDED FOR IN THIS ARTICLE, SUCH FINDING AND ORDER OR
13 DETERMINATION SHALL BE MADE WITHIN THIRTY DAYS AFTER THE
14 COMPLETION OF SUCH HEARING.

15 (7) In all proceedings before the variance board or the
16 commission with respect to any alleged violation of any emission
17 control PROVISION OF THIS ARTICLE, regulation OF THE COMMISSION,
18 REQUIREMENT OF THE STATE IMPLEMENTATION PLAN, or order, OR PERMIT
19 OR TERMS OR CONDITIONS THEREOF, the burden of proof shall be upon
20 the division.

21 (8) The applicant for a variance PERMIT OR DELAYED
22 COMPLIANCE ORDER, OR ANY MODIFICATION THEREOF, AND THE PETITIONER
23 FOR ANY AMENDMENT TO THE STATE IMPLEMENTATION PLAN shall bear the
24 burden of proof WITH RESPECT TO THE JUSTIFICATION THEREFOR AND
25 THE INFORMATION, DATA, AND ANALYSIS SUPPORTIVE THEREOF OR
26 REQUIRED WITH RESPECT TO SUCH APPLICATION OR PETITION.

1 (9) Variances;---orders;---and--determinations ANY PERMIT,
2 ORDER, OR DETERMINATION of the variance board shall become final
3 within thirty days from AFTER the date on which they-are IT IS
4 issued, unless, within such THIRTY-DAY period, the variance board
5 grants a rehearing or unless, within such period, the commission
6 concludes that said variance; PERMIT, order, or determination
7 interferes with the attainment of the objectives of this article,
8 as set forth in section 25-7-102. If the commission so
9 concludes, it shall, within said thirty-day period, notify the
10 applicant of such conclusion, including the nature of the
11 interference involved, and allow the applicant ten days in which
12 to request a hearing before the commission on said variance;
13 PERMIT, order, or determination, which hearing shall be set and
14 held in accordance with the provisions of section 25-7-115 and of
15 this section. Following the hearing before the commission or if
16 no hearing is requested, the commission shall enter its final
17 order affirming or modifying said variance; PERMIT, order, or
18 determination.

19 (10) Every hearing granted by the variance board or the
20 commission shall be conducted by either body or by a hearing
21 officer designated by either body pursuant to part 10 of article
22 30 of title 24, C.R.S. 1973, subject to appropriations for such
23 hearing officers made to the department of administration, and
24 every hearing shall comply with the provisions of this article
25 and the provisions of article 4 of title 24, C.R.S. 1973.

26 SECTION 19. 25-7-117, Colorado Revised Statutes 1973, is

1 amended to read:

2 25-7-117. Judicial review. (1) Any final order or
3 determination by the variance board, the division, or the
4 commission shall be subject to judicial review in accordance with
5 the provisions of this article and the provisions of article 4 of
6 title 24, C.R.S. 1973. EXCEPT WITH RESPECT TO ACTIONS TAKEN
7 PURSUANT TO SECTION 25-7-111 OR PETITIONS FOR REVISIONS OF THE
8 STATE IMPLEMENTATION PLAN PURSUANT TO SECTION 25-7-114.5, such
9 final order or determination shall be stayed pending the decision
10 of the court.

11 (2) Any party may move the court to remand the case to the
12 variance board, the division, or the commission in the interests
13 of justice for the purpose of adducing additional specified and
14 material evidence and findings thereon; but such party shall show
15 reasonable grounds for the failure to adduce such evidence
16 previously before the variance board, the division, or the
17 commission.

18 (3) Any proceeding for judicial review of any final order
19 or determination of the variance board, the division, or the
20 commission shall be filed in the district court for the district
21 in which is located the air contamination POLLUTION source
22 affected, and it shall be filed within twenty days after the date
23 of said final order or determination.

24 SECTION 20. 25-7-118, Colorado Revised Statutes 1973, is
25 amended to read:

26 25-7-118. Injunctions. In the event any person fails to

1 comply with a ~~cease-and-desist~~ FINAL ORDER OF THE BOARD, THE
2 DIVISION, OR THE COMMISSION THAT IS NOT SUBJECT TO A STAY PENDING
3 JUDICIAL OR ADMINISTRATIVE REVIEW OR IN THE EVENT ANY PERSON
4 CONSTRUCTS, MODIFIES, OR COMMENCES OPERATION OF AN AIR POLLUTION
5 SOURCE IN VIOLATION OF SECTION 25-7-112 (4), THE BOARD, the
6 commission, OR THE DIVISION, AS THE CASE MAY BE, may request the
7 district attorney for the district in which the alleged violation
8 exists OCCURS or the attorney general to bring, and if so
9 requested it is his duty to bring, a suit for an injunction to
10 prevent any further or continued violation of such THIS ARTICLE
11 OR ANY FINAL order ISSUED PURSUANT THERETO. In any such suit,
12 the final findings of the BOARD, division, or commission, based
13 upon evidence in the record, shall be prima facie evidence of the
14 facts found therein.

15 SECTION 21. 25-7-119, Colorado Revised Statutes 1973, is
16 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

17 25-7-119. Civil penalties. (1) Penalties shall be
18 determined and collected by a court of competent jurisdiction
19 upon action instituted by the division for the determination and
20 collection of said penalty under this section and in accordance
21 with the following provisions:

22 (a) Any person who violates any final order of the board,
23 division, or commission issued pursuant to this article and not
24 subject to a stay shall be subject to a civil penalty of not more
25 than twenty-five thousand dollars per day of violation.

26 (b) Any person who violates the requirements of section

1 25-7-112 (4) regarding construction, modification, or
2 commencement of operation of an air pollution source without a
3 permit from the board, the division, or the commission shall be
4 subject to a civil penalty of not more than twenty-five thousand
5 dollars per day for each day of violation.

6 (c) Any person failing to comply with the provisions of
7 section 25-7-112 (1) shall be subject to a civil penalty of not
8 more than one hundred dollars.

9 (2) In determining the amount of any civil penalty to be
10 assessed pursuant to paragraphs (a) and (b) of subsection (1) of
11 this section, the court shall take into account: The size of the
12 business, the economic impact of the penalty on the business, the
13 seriousness of the violation, and other relevant factors.

14 SECTION 22. 25-7-120 (1) (a) and (2) (a), Colorado Revised
15 Statutes 1973, are amended to read:

16 25-7-120. Incinerator and open burning - penalties. (1)
17 (a) The commission shall adopt a program to control incinerator
18 burning and open burning in each portion of the state in which
19 such control is necessary in order to carry out the policies of
20 this article, as set forth in section 25-7-102, AND TO COMPLY
21 WITH THE REQUIREMENTS OF THE FEDERAL "CLEAN AIR ACT", AS AMENDED.
22 Such program shall include emission control regulations and the
23 designation, after public hearing and from time to time, of such
24 portions by legal description.

25 (2) (a) Within such designated portions of the state, no
26 person shall burn or permit to be burned in any incinerator, or

1 on any open premises owned or controlled by him, or on any public
2 street, alley, or other land adjacent to such premises any
3 rubbish, wastepaper, wood, or other flammable material, unless a
4 permit therefor has first been obtained from the appropriate--air
5 pollution--control--authority: division. In granting or denying
6 the issuance of any such permit, said--authority THE DIVISION
7 shall base its action on the location and proximity of such
8 burning to any building or other structure, the potential
9 contribution of such burning to air pollution in the area,
10 climatic conditions on the day of such burning, and compliance by
11 the applicant for the permit with applicable fire protection and
12 safety requirements of the local authority or area.

13 SECTION 23. 25-7-121 (1), Colorado Revised Statutes 1973,
14 is amended to read:

15 25-7-121. Relationship with the federal government,
16 regional agencies, and other states. (1) The department-of
17 health COMMISSION shall serve as the state agency for all
18 purposes of the federal "Clean Air Act", AS AMENDED, and
19 regulations promulgated under said act; and-it EXCEPT THAT THE
20 DEPARTMENT OF HEALTH shall accept and supervise the
21 administration of loans and grants from the federal government
22 and from other sources, public or private, which are received by
23 the state for air pollution control purposes.

24 SECTION 24. 25-7-122, Colorado Revised Statutes 1973, is
25 amended to read:

26 25-7-122. Organization within the department of health.

1 The air pollution QUALITY control commission, together with the
2 variance AIR QUALITY HEARINGS board and the technical secretary
3 under said commission, shall exercise its powers and perform its
4 duties and functions specified in this article in the department
5 of health as if the same were transferred to the department by a
6 type 1 transfer, as such transfer is defined in the
7 "Administrative Organization Act of 1968", being article 1 of
8 title 24, C.R.S. 1973.

9 SECTION 25. 25-7-123, Colorado Revised Statutes 1973, is
10 amended to read:

11 25-7-123. Application of article. (1) The factual or legal
12 basis for proceedings or other actions that shall result from a
13 violation of any emission control regulation inure solely to and
14 shall be for the benefit of the people of the state generally,
15 and it is not intended to create by this article, in any way, new
16 or enlarged private rights, or to enlarge existing private
17 rights, or to diminish private rights. A determination that air
18 pollution or--air--contamination exists or that any standard has
19 been disregarded or violated, whether or not a proceeding or
20 action may be brought by the state, shall not create by reason
21 thereof any presumption of law or finding of fact which shall
22 inure to or be for the benefit of any person other than the
23 state.

24 (2) Other than section 25-7-111, the provisions of this
25 article and regulations adopted under this article shall not
26 apply to air contamination POLLUTION insofar as such

1 contamination--- POLLUTION exists within the confines of a
2 particular commercial or industrial plant, works, or shop which
3 is the source of air contamination POLLUTION and shall not apply
4 or affect the relations between employers and employees with
5 respect to or arising out of any condition of air contamination
6 POLLUTION.

7 (3) It is the purpose of this article to provide additional
8 and cumulative remedies to prevent and abate air pollution. and
9 ~~air-contamination~~: Nothing in this article shall abridge or
10 alter rights of action or remedies existing on April 10, 1970, or
11 after said date, nor shall any provision of this article or
12 anything done by virtue of this article be construed as estopping
13 individuals, cities, towns, counties, cities and counties, or
14 duly constituted political subdivisions of the state from the
15 exercise of their respective rights to suppress nuisances.

16 SECTION 26. 25-7-124 (3), Colorado Revised Statutes 1973,
17 is amended, and the said 25-7-124 is further amended BY THE
18 ADDITION OF A NEW SUBSECTION, to read:

19 25-7-124. Temporary emission control regulations and
20 continuance of existing orders. (3) All actions, orders, and
21 determinations of the air pollution variance board created by
22 article 29 of chapter 66, C.R.S. 1963, as that article existed on
23 January 1, 1970, shall remain in full force and effect until
24 countermanded or modified by the variance AIR QUALITY HEARINGS
25 board OR COMMISSION created by this article.

26 (4) All actions, orders, and determinations of the air

1 pollution variance board created by this article as it existed
2 prior to July 1, 1979, shall remain in full force and effect
3 until countermanded or modified by the board or commission
4 created by this article.

5 SECTION 27. 25-7-125, Colorado Revised Statutes 1973, is
6 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

7 25-7-125. Local government - authority - penalty.

8 (1) Home rule cities, cities, towns, counties, and cities and
9 counties are hereby authorized to enact local air pollution
10 resolutions or ordinances. Every such resolution or ordinance
11 shall provide for hearings, judicial review, and injunctions
12 consistent with sections 25-7-115 to 25-7-118 and shall include
13 emission control regulations which are at least the same as, or
14 may be more restrictive than, the emission control regulations
15 adopted pursuant to this article; except that nothing in this
16 article shall prohibit any such local law from controlling any
17 air pollution or air pollution source which is not subject to
18 control under the provisions of this article and except that no
19 permit issued under any local air pollution law with respect to
20 any facility, activity, or process shall ever be construed to
21 relieve any holder thereof from the duty to maintain such
22 facility, activity, or process in compliance with the emission
23 standards and emission control regulations adopted pursuant to
24 this article nor to relieve the division from its duty to enforce
25 such emission standards and emission control regulations with
26 respect to such facility, activity, or process. Any local air

1 pollution standards or regulations submitted and approved as
2 revisions to the state implementation plan shall be enforced as
3 such by the division. In order to assure coordination of efforts
4 to control and abate air pollution, local governmental entities
5 are encouraged to submit their adopted plans and regulations as
6 revisions to the state implementation plan for Colorado.

7 (2) All local air pollution resolutions and ordinances and
8 orders issued pursuant thereto in existence on March 1, 1979, are
9 validated as though adopted pursuant to the authority of
10 subsection (1) of this section; except that, if any such local
11 resolution, ordinance, or order fails to meet the requirements of
12 this article, the governing body under whose authority such
13 resolution, ordinance, or order was promulgated shall have until
14 July 1, 1979, to amend, modify, or repeal the same so that it
15 will meet the requirements of this article, but, if not so
16 amended, modified, or repealed, the same shall be superseded by
17 this article.

18 (3) To the extent that a local air pollution resolution
19 adopted by a county is more restrictive than an ordinance adopted
20 by any city or town within such county, the county resolution
21 shall apply in lieu of the city or town ordinance to the extent
22 of the inconsistency.

23 (4) Any local governmental authority enforcing air
24 pollution control regulations which shall issue any enforcement
25 order or grant any permit shall, at the time of such issuance or
26 granting, transmit to the commission a copy of such order or

1 permit.

2 (5) Application, operation, and enforcement of valid local
3 air pollution laws shall be completely independent of, but may be
4 concurrent with, the application, operation, and enforcement of
5 this article. The appointment of an air pollution control
6 authority by the division shall in no way affect the duties and
7 responsibilities given the same person or agency under a local
8 air pollution law, and the appointment of an air pollution
9 control authority by a local governmental unit shall in no way
10 affect the duties and responsibilities given the same person or
11 agency by the division.

12 (6) In order to assure coordination of efforts to control
13 and abate air pollution, at least semiannually the commission and
14 each air pollution control authority created by a local air
15 pollution law shall confer and review each other's records
16 concerning the area subject to such local law and coordinate
17 their respective plans and programs for such area.

18 (7) No local air pollution control authority shall
19 institute any system or program that conflicts with, or is in any
20 way inconsistent with, air pollution emergency plans promulgated
21 by the governor pursuant to section 25-7-111 (2).

22 (8) Any person who violates any emission standard or
23 emission control regulation adopted by a local governmental
24 entity, where such local government has not submitted its
25 standards or regulations as revisions to the state implementation
26 plan, shall be subject to a civil penalty of not more than three

1 hundred dollars. Each day during which such a violation occurs
2 shall be deemed a separate offense.

3 SECTION 28. 25-7-129, Colorado Revised Statutes 1973, is
4 amended to read:

5 25-7-129. Emission data - public availability.

6 Notwithstanding any other provisions of this article or any other
7 law to the contrary, all emission data received or obtained by
8 the commission, THE DIVISION, or the variance board shall be
9 available to the public to the extent required by the federal
10 "Clean Air Act", as ~~the same may be~~ amended. ~~from time to time~~

11 SECTION 29. 18-13-110 (1) (a) (I), (1) (a) (II), (1) (a)
12 (III), (1) (b), and (2) (a), Colorado Revised Statutes 1973, 1978
13 Repl. Vol., are amended to read:

14 18-13-110. Air pollution violations. (1) (a) (I) Causing
15 or permitting, in any air pollution QUALITY control region
16 designated by the commission in which more than thirty times per
17 year the carbon monoxide level exceeds nine parts per million
18 averaged over an eight-hour period, the emission into the
19 atmosphere from any motor vehicle powered by gasoline, or other
20 fuel except diesel, of any visible air contaminant POLLUTANT
21 (except water vapor) for a period greater than five consecutive
22 seconds; except that no two-cycle gasoline-powered motor vehicle
23 shall emit into the atmosphere any air contaminant POLLUTANT
24 (except water vapor) of a shade or density equal to or greater
25 than twenty percent opacity for a period greater than ten
26 consecutive seconds;

1 (II) Causing or permitting the emission into the atmosphere
2 from any diesel-powered motor vehicle operating not more than at
3 an altitude of eight thousand feet above mean sea level any air
4 contaminant POLLUTANT (except water vapor) of a shade or density
5 equal to or greater than thirty percent opacity for a period
6 greater than ten consecutive seconds, other than as a result of a
7 cold engine start-up;

8 (III) Causing or permitting the emission into the
9 atmosphere from any diesel-powered motor vehicle operating at
10 more than eight thousand feet above mean sea level any air
11 contaminant POLLUTANT (except water vapor) of a shade or density
12 equal to or greater than forty percent opacity for a period
13 greater than ten consecutive seconds, other than as a result of a
14 cold engine start-up.

15 (b) "Opacity", AS USED IN THIS SUBSECTION (1), is defined
16 as the degree to which an air contaminant POLLUTANT emission
17 obscures the view of an observer, expressed in percentage of the
18 obscuration or in the degree (percent) to which transmittance of
19 light is reduced by an air contaminant POLLUTANT emission.

20 (2) (a) The air pollution QUALITY control commission shall
21 establish training requirements for peace officers charged with
22 the enforcement of the provisions of subsection (1) of this
23 section.

24 SECTION 30. 24-1-119 (7), Colorado Revised Statutes 1973,
25 is amended to read:

26 24-1-119. Department of health - creation. (7) (a) The

1 air pollution QUALITY control commission, created by article 7 of
2 title 25, C.R.S. 1973, and SHALL EXERCISE its powers AND PERFORM
3 ITS duties and functions are AS IF THE SAME WERE transferred by a
4 type 1 transfer to the department of health. Anything in this
5 ~~act~~ ARTICLE to the contrary notwithstanding, the state board of
6 health shall have no powers, duties, or functions with respect to
7 air pollution other than as provided in section 25-7-110 (1),
8 C.R.S. 1973.

9 (b) The ~~variance~~ AIR QUALITY HEARINGS board, created by
10 article 7 of title 25, C.R.S. 1973, and SHALL EXERCISE its powers
11 AND PERFORM ITS duties and functions are AS IF THE SAME WERE
12 transferred by a type 1 transfer to the department of health and
13 allocated to the air pollution QUALITY control commission.

14 (c) The office of technical secretary, created by article 7
15 of title 25, C.R.S. 1973, ~~and the~~ SHALL EXERCISE ITS powers AND
16 PERFORM ITS duties and functions ~~thereof are~~ AS IF THE SAME WERE
17 transferred by a type 1 transfer to the department of health and
18 allocated to the air pollution QUALITY control commission.

19 SECTION 31. 25-1-102 (1), Colorado Revised Statutes 1973,
20 is amended to read:

21 25-1-102. Department created - executive director -
22 divisions. (1) There is hereby created a department of health,
23 referred to in this part 1 as the "department". The head of the
24 department shall be the executive director of the department of
25 health, which office is hereby created. The governor shall
26 appoint said executive director, with the consent of the senate,

1 and the executive director shall serve at the pleasure of the
2 governor. The executive director shall administer the
3 department, subject to the authority of the state board of
4 health, the air pollution QUALITY control commission, and the
5 state water quality control commission.

6 SECTION 32. 25-1-506 (1) (k), Colorado Revised Statutes
7 1973, is amended to read:

8 25-1-506. Powers and duties of health departments.
9 (1) (k) To cooperate with the department of health and the state
10 board of health in all matters pertaining to the public health,
11 with the state water quality control commission in all matters
12 pertaining to water quality control, and with the air pollution
13 QUALITY control commission, the variance AIR QUALITY HEARINGS
14 board, and the division of administration of the department of
15 health in all matters pertaining to air pollution.

16 SECTION 33. 28-2-103 (1), Colorado Revised Statutes 1973,
17 is amended to read:

18 28-2-103. Definitions. (1) "Disaster" means occurrence or
19 imminent threat of widespread or severe damage, injury, or loss
20 of life or property resulting from any natural or man-made cause,
21 including but not limited to fire, flood, earthquake, wind,
22 storm, wave action, oil spill or other water contamination
23 requiring emergency action to avert danger or damage, volcanic
24 activity, epidemic, air contamination POLLUTION, blight, drought,
25 infestation, explosion, civil disturbance, or hostile military or
26 paramilitary action.

1 SECTION 34. 30-20-103, Colorado Revised Statutes 1973, 1977
2 Repl. Vol., is amended to read:

3 30-20-103. Application for certificate. Any person
4 desiring to operate a solid wastes disposal site and facility
5 within the unincorporated portion of any county shall make
6 application to the board of county commissioners of the county in
7 which such site and facility is or is proposed to be located for
8 a certificate of designation. Such application shall be
9 accompanied by a fee of twenty-five dollars which shall not be
10 refundable, and it shall set forth the location of the site and
11 facility; the type of site and facility; the type of processing
12 to be used, such as sanitary landfill, composting, or
13 incineration; the hours of operation; the method of supervision;
14 the rates to be charged, if any; and such other information as
15 may be required by the board of county commissioners. The
16 application shall also contain such engineering, geological,
17 hydrological, and operational data as may be required by the
18 department by regulation. The application shall be referred to
19 the department for review and for recommendation as to approval
20 or disapproval, which shall be based upon criteria established by
21 the state board of health, the water quality control commission,
22 and the air pollution QUALITY control commission.

23 SECTION 35. 42-4-230 (1), Colorado Revised Statutes 1973,
24 is amended to read:

25 42-4-230. Air pollution control systems required. (1) No
26 gasoline-powered automobile or truck manufactured in the United

1 States after July 1, 1965, shall be issued an official
2 certificate of inspection and approval pursuant to section
3 42-4-302 unless it shall be equipped with a crankcase ventilating
4 system designed to prevent the emission of air contaminants
5 POLLUTANTS which contribute or which are likely to contribute to
6 a condition of air pollution.

7 SECTION 36. 42-4-302 (4) (b) and (4) (c), Colorado Revised
8 Statutes 1973, are amended to read:

9 42-4-302. Periodic inspections required. (4) (b) Except
10 as to devices found by the air pollution QUALITY control
11 commission to be ineffective pursuant to section 25-7-106 (4),
12 C.R.S. 1973, the inspection required by this section shall
13 include the crankcase ventilating system on gasoline-propelled
14 automobiles and trucks manufactured in the United States after
15 July 1, 1965, and on all other motor vehicles equipped with the
16 same, THE connection of air pollution control devices installed
17 by the manufacturer of IN any automobile of a model year of 1968
18 or later, and any other inspection prescribed pursuant to
19 paragraph (c) of this subsection (4).

20 (c) Effective July 1, 1973, as part of the inspection
21 required by this section, the air pollution QUALITY control
22 commission is authorized to adopt regulations pursuant to
23 sections 25-7-108 and 25-7-109, C.R.S. 1973, for the proper
24 connection and operation of air pollution control devices
25 installed by the manufacturer in any motor vehicle for the
26 purpose of controlling vehicle emissions; the air pollution

1 QUALITY control commission may further adopt rules and
2 regulations governing other air pollution control devices, which
3 rules and regulations shall be enforced by the department. Such
4 rules and regulations pertaining to inspections for the proper
5 operation of all AIR pollution control devices shall not become
6 effective before July 1, 1974, and, prior to that time, the air
7 pollution QUALITY control commission shall recommend to the
8 general assembly an appropriate fee therefor.

9 SECTION 37. 42-4-307 (2), Colorado Revised Statutes 1973,
10 as amended, is amended to read:

11 42-4-307. Definitions relating to emissions inspection
12 stations. (2) "Commission" means the air pollution QUALITY
13 control commission.

14 SECTION 38. 42-4-309 (2), Colorado Revised Statutes 1973,
15 as amended, is amended to read:

16 42-4-309. Powers and duties of commission - emissions
17 control program. (2) Motor vehicles required to be inspected
18 shall be required to pass the periodic emissions inspections. It
19 shall be the responsibility of the commission to adopt such rules
20 and regulations of a technical nature to assist the department in
21 the administration and full implementation of the motor vehicle
22 emissions control inspection program, including, but not limited
23 to, such emissions control regulations and procedures to control
24 air contaminant POLLUTANT emissions from motor vehicles not
25 otherwise exempted by law as are deemed necessary to carry out
26 the legislative intent of sections 42-4-307 to 42-4-315.

1 SECTION 39. 42-4-1210 (4), Colorado Revised Statutes 1973,
2 is amended to read:

3 42-4-1210. Automobile air pollution control devices -
4 tampering - operation of vehicle. (4) The air pollution QUALITY
5 control commission may adopt rules and regulations pursuant to
6 sections 25-7-108 and 25-7-109, C.R.S. 1973, which permit or
7 allow for the alteration, modification, or disconnection of
8 manufacturer-installed air pollution control systems or
9 manufacturer tuning specifications on motor vehicles for the
10 purpose of controlling vehicle emissions. Nothing in this
11 section shall prohibit the alteration or the conversion of a
12 motor vehicle to operate on a gaseous fuel, if the resultant
13 emissions are at levels complying with state and federal
14 standards for that model year of motor vehicle.

15 SECTION 40. Repeal. 25-7-103 (2) and (13), 25-7-105 (8),
16 and 25-7-108 (5), Colorado Revised Statutes 1973, are repealed.

17 SECTION 41. Safety clause. The general assembly hereby
18 finds, determines, and declares that this act is necessary for
19 the immediate preservation of the public peace, health, and
20 safety.

BACKGROUND REPORT

Two important aspects of the air pollution problem in Colorado, which could not be considered in depth in the committee report, were thought to be of major importance to describe in further detail in a background report. The two sections of this background report are:

I. Causes, trends, and health effects of air pollutants in Colorado and particularly in the Denver metropolitan area.

II. Outline of selected sections of the "Federal Clean Air Act", as amended, 1977.

I. Pollutants - Sources - Trends - Health Effects

In order to understand Colorado's air quality problems and the state's air pollution control program, some description of the major air pollutants and where they originate is necessary. This discussion, therefore, provides definitions, and identifies the sources of each pollutant, notes the future trends projected in regard to attainment or nonattainment of standards, and comments briefly on possible health effects of each pollutant.

The discussion in this part of the report is taken from information presented by the state Department of Health and the report of the Governor's Committee on the Health Effects of Air Pollution. Officials of the Department of Health reported that progress has been made in regard to reductions of some pollutants, and these trends are noted.

The "Brown Cloud"

Air pollution in the Denver metropolitan area has become known as the "brown cloud". What is known scientifically about the phenomenon of smog being formed from time to time is recognized by experts as an inadequate body of knowledge on which actions can be taken which will result in direct, noticeable improvements. Particulates, carbon monoxide, ozone, and its precursors of hydrocarbons and nitrogen oxides, may be part of or contribute to the formation of the Denver region's brown cloud. However, the Department of Health considers the primary and immediate concern for controlling these pollutants, most of which are invisible, should be their effect on human health, not on the color of the cloud. While visibility is an important consideration, the brown cloud may encompass a bewildering and perhaps rapidly changing array of substances. It is possible that reducing these pollutants to levels necessary to protect public health may not eliminate the brownish color of the sky over Denver.

The brown cloud consists of a variety of substances, including particles from street dirt, direct emissions from mobile and stationary sources, and at times natural background in the atmosphere. The scattering of sunlight passing through pollutants is believed to be the cause of the brownish color. In an area which forms a basin, temperature inversions can trap warm air, with the pollutants, close to ground with concentrations of pollutants readily apparent.

The Air Pollution Control Division of the state Department of Health has estimated that motor vehicles account for most of the carbon monoxide (CO) and hydrocarbon (HC) emissions, about one-third of the nitrogen oxide (NOx) emissions, and nearly three-fourths of the particulates (TSP) in the Denver area. Transportation activities, especially from the automobile, constitute the number one contributor of most of the elements (CO, HC, TSP) which constitute the brown cloud. Encouraging reports from the department indicate that carbon monoxide and hydrocarbon emissions are expected to decrease by about 30 percent by 1982 and 63 percent by 1987. The other pollutants are projected to either increase or decrease only slightly by those years.

Assumptions. The assumptions on which the trends in air pollution are based are critical to the validity of the projections. Some of the assumptions are speculative and, in some cases, the facts which underlie some assumptions are subject to change based, for example, on legislative action. Different methodologies may be used in making projections and these methodologies may produce different results. Among the assumptions of the Department of Health were that the present air pollution control standards and regulations will be enforced and that the growth patterns of the Denver metropolitan area will be as projected by the Denver Regional Council of Governments.

Carbon monoxide (CO) is considered to be the number one pollution problem in the Denver metropolitan area, and this area is considered to have a CO problem as severe as any in the nation. CO is a poisonous gas formed by the incomplete combustion of fuels rich in carbon. The automobile is the primary source of this gas in an urban environment.

Carbon monoxide has a strong affinity for the hemoglobin in the blood system which reduces the capacity of the bloodstream to carry oxygen. Health hazards which result from CO include reduced tolerance for exercise, impairment of mental functions, aggravation of cardiovascular diseases, and impairment of fetal development.

The CO concentration in Denver has been on a general downward trend since 1972, in large part because new cleaner burning automobiles have been replacing older vehicles. Both the number of days in violation of federal standards and the levels of concentration of CO have lessened. Weather conditions also was a factor which made 1977 a cleaner year than average for CO. Denver is not expected to achieve the CO standards by 1987 based solely on a federal motor vehicle emission control program. However, it has been projected that the federal program, coupled with a state auto emissions inspection and mainte-

nance program, would be sufficient to achieve compliance.

Sulfur dioxide (SO₂) is a colorless gas with a pungent odor. It is a product of combustion of fossil fuels containing sulfur, primarily coal and fuel oil. When combined with water in the atmosphere or in the respiratory tract, SO₂ forms sulfurous and sulfuric acids. Under the current standards, there may be a light increase in the levels of SO₂, but the increase should not violate the national standards. An increase would be attributed to major fuel burning sources changing from natural gas to higher sulfur fuels, such as coal and residual oil. All of Colorado is in attainment of the national standards for SO₂.

The health hazards of SO₂ include aggravation of respiratory diseases such as asthma, chronic bronchitis, and emphysema, and conditions including reduced lung function, irritation of eyes and respiratory tract, and increased mortality. When SO₂ enters the respiratory system, it combines with the moist tissues to form sulfuric acid (H₂SO₄) which damages the tissues and causes problems noted above.

Particulates (TSP). Solid or liquid particulates dispersed in the air, including dust, pollen, ash, soot, metals, and various chemicals, are considered as total suspended particulates (TSP). Sources of TSP include natural sources, such as blowing dust, and factors involving man's activity, including travel on unpaved roads, stripping of cover leaving bare ground, fuel combustion processes, emissions from industrial processes, and vehicular movement throughout an area. In metropolitan areas major particulate problems result from vehicles driving on streets which have been sanded after snow has fallen, with the result of finely grained particles entering the air. Most stationary sources which produce particulate matter, except for a few power plants, are considered well controlled.

Particulates have been a major pollution problem in the metropolitan Denver area and, at times, the problem has been severe. This problem has remained relatively constant, without significant increases or decreases, in recent years. For some areas, although now in attainment of the national TSP standards, it is anticipated that there will be increases in TSP levels as additional activity occurs. Areas of energy development are among the areas in which additional particulate problems may occur. Currently there is discussion concerning the need to modify the TSP standard for particulates as it relates to total mass to one which takes into account the particle-size in relation to respirable and inhaleable fractions.

The health effects of TSP vary with the type of particulates, but effects include direct toxic effect and aggravation of effects of gaseous pollutants, aggravation of asthma or other respiratory or cardiorespiratory symptoms, increased cough and chest discomfort, and increased mortality.

Oxidants - ozone. "Oxidant" is a term which includes many of different chemical compounds. In simple terms, oxidants are formed

when hydrocarbons rise in the air and mix and react with other pollutants, including nitrogen oxides. At night, these pollutants do not change immediately. Brisk winds may carry them 40 to 50 miles into the country or, in contrast, lack of wind, combined with a high pressure system, may cause the pollutants to hover over one region. In the latter case, sunshine reacts with this pocket of mixed hydrocarbons and nitrogen oxides and a photochemical reaction occurs creating oxidants -- also known as photochemical smog. In a summer afternoon when oxidant levels are highest, about 90 percent of the oxidants is ozone.

Motor vehicles are the chief source of the hydrocarbons, with the remainder coming from evaporation of industrial solvents in painting, gasoline marketing, incineration, dry cleaning, along with other sources.

Nitrogen oxides (NO_x and NO₂). There are six known oxides of nitrogen, two of which are considered air pollutants -- nitric oxide and nitrogen dioxide. Nitric oxide results from the internal combustion engine burning fuel at a sufficiently high temperature to cause reaction between the nitrogen and oxygen in the air. Nitric oxide may be converted to nitrogen dioxide through photochemical or other processes; nitrogen dioxide is considerably more toxic and is the only widespread polluting gas that is colored. About 50 percent of direct emissions of nitrogen dioxide originate from automobiles and the remainder comes from power plants, home heating, and other high temperature combustion processes which take place in the presence of nitrogen and oxygen.

The NO₂ problem is not considered to be a major pollution problem in the Denver area. Colorado is expected to be in compliance with the federal standards by the compliance date. In regard to health effects, NO_x is suspected of aggravating respiratory and cardiovascular illnesses.

Health Effects

Questions remain as to the effect of air pollution in either irritating, aggravating, or causing health problems of persons living in a metropolitan environment. While there may be general agreement that air pollution is deleterious to the health of anyone, much of the scientific evidence of the long-term toxicologic and epidemiologic effects appears to be suggestive rather than definitive. The Governor's Task Force on Health Effects of Air Pollution, reporting in September, 1978, said:

susceptibility to the effects of urban air pollution varies widely among individuals, with the most susceptible being fetuses in utero, the newborn, the elderly, the infirm, those with chronic heart and lung diseases and those who smoke.

Adverse effects of air pollution on health may be considered under the acute effects (those noticeable within a few hours of exposure to the air pollutants), and chronic effects (diseases which develop over a period of years). The Council on Environmental Quality reported that some pollutants affect an entire population by causing eye irritation, coughing, and headaches. Dr. John Cobb, of the University of Colorado School of Medicine, has reported that there is suggestive evidence that repeated exposure of several hours over a period of years to the levels of air pollution found in Denver may produce chronic diseases. This evidence comes from epidemiologic analysis (the sum of the factors controlling the presence or absence of a disease) or data from other cities.

The following were among the conclusions reached by the Governor's Task Force, based on that group's extensive review of the scientific literature concerning urban air pollution:

1. Urban air pollution, when sufficiently severe, can cause death in humans; these deaths occur predominantly among those with increased susceptibility. Evidence that this has occurred in Colorado is quite limited and, at least to a minority of Task Force members, unconvincing.
2. Urban air pollution -- CO and oxidants in particular -- is aggravating pre-existing chronic heart and lung diseases, at least in the metropolitan Denver area.
3. Urban air pollution, especially the kind to be found in the metropolitan Denver area, can also cause temporary eye irritation and various forms of annoyance (especially offensive odors and haze).
4. Urban air pollution and tobacco (especially cigarette) smoke act synergistically in a causative role in chronic bronchitis and in an aggravating role in emphysema.
5. The possibility that long term exposure to urban air pollution may play a role in the causation of chronic heart and lung disease can neither be affirmed nor conclusively denied at this time.

This group pointed out, however, that most of the conclusions reached in this review of the literature must necessarily be regarded as educated opinion rather than proven fact. This is because of the still obscure, almost surely multifactorial, causation of most of the diseases with which air pollution is associated, and because of the complexities and our still limited knowledge of urban air pollution.

A factor that aggravates the effects of air pollution in Denver is its altitude. With the high altitude there is decreased oxygen content with higher levels of emissions from automobiles. Occupation

and location of residency may also play a role in the effects of air pollution. Individuals whose employment requires that they work outdoors are exposed to higher levels of pollution than those individuals who work indoors. Persons living in the core area of an urban environment would generally be exposed to heavier concentrations of pollutants than persons who live away from the central city.

II. Selected Sections of the CAAA as Amended in 1977

The following is a description of some of the important requirements of the Clean Air Act amendments of 1977 (CAAA), particularly those which effect the proposed legislation. Since the committee's proposal primarily concerns stationary sources, rather than mobile sources, the emphasis in this outline is on the federal requirements for stationary sources. Sections addressed in this summary are:

- Section 110 - State Implementation Plan, (SIP)
- Section 111 - Standards of Performance for New Stationary Sources
- Section 113 - Federal Enforcement
- Section 120 - Noncompliance Penalties
- Section 162 - Classifications - Prevention of Significant Deterioration (PSD)
- Section 164 - Area Redesignations (PSD)
- Section 165 - Preconstruction Requirements for Prevention of Significant Deterioration Areas (PSD)
- Section 167 - Enforcement of PSD Areas
- Section 172 - Nonattainment Plan Provisions
- Section 173 - Permit Requirements of Nonattainment Areas.

State Implementation Plan (Section 110)

The CAAA requires that each state submit a state implementation plan (SIP) within nine months after the national primary and the national secondary ambient air quality standards are promulgated by the administrator of the EPA [section 110 (c) (a) (1)]. The two sets of standards have been issued by EPA and the deadline for submission of Colorado's SIP is January 1, 1979. Colorado currently has an implementation plan which fails to demonstrate compliance with the standards, and the new SIP will be a revision of the existing plan,

with additional strategies for pollution control.

The purpose of the SIP is to demonstrate how the state intends to achieve and maintain clean air. Therefore, the plan must include local and state strategies for the implementation, maintenance, and enforcement of clean air standards in each of the state's air quality control regions, and must be legally enforceable. The state statutes become part of the SIP and the EPA is authorized to approve or disapprove part or all of the plan, including state statutes.

If a state's plan, or any portion of the plan, is deemed unacceptable, the CAAA authorizes the EPA to issue proposed regulations setting forth an implementation plan. There are two conditions under which the EPA would prepare the plan: (a) the SIP does not meet the requirements of the federal law; or (b) if the state fails to submit a revised plan within 60 days, or other prescribed time period [section 110 (c) (1)]. Administration of the EPA plan would be by the EPA administrator or the authority may be delegated to local government to implement and enforce the plan promulgated by the administrator [section 110 (c) (3)].

Since the SIP is a statement of the state's clean air policy for the next several years, the strategies which must be included are numerous and complex. Most importantly, the federal law requires that the plan provide for meeting the national primary ambient air quality standards (NAAQS) not later than December 31, 1982, with an extension possible to December 31, 1987, for areas heavily effected by automobile pollutants. [section 110 (e) (1)]. Secondary standards have no specific time frame, although CAAA provides that they be achieved in a reasonable period of time.

Primary standards means the ambient air quality standards which have been promulgated by the EPA administrator which must be met in order to protect the public health. The standards have been designed, with a margin of safety built in, to allow certain concentrations of pollutants, without noticeable effects on the population. These standards may be revised from time to time.

Secondary standards are those standards which have been promulgated by the EPA administrator to protect the "public welfare". The term "public welfare" includes visibility, quality of life, damage to property and plant life.*

In order to achieve the primary and secondary standards, the CAAA provides for the inclusion of emission limitations and compliance schedules. [Section 110 (a) (2) (b)].

*Definition taken from Report to the Public 1977, Air Pollution Control Commission, Colorado Department of Health.

Standards of Performance for New Stationary Sources (Section 111)

The EPA is authorized to promulgate operational standards of performance to control emissions from new stationary sources or from existing sources which have been modified. For existing sources for which air quality criteria have not been issued, the standard is to reflect the degree of emission reduction achievable through the best system of continuous emission reduction, as determined by the EPA.

Each state may develop and submit to the EPA a procedure for implementing and enforcing standards of performance for new sources in each state. If the state fails to implement or to enforce the standards, the EPA is authorized to assume responsibility for their implementation and enforcement.

The EPA is to consider the following criteria in setting standards for major stationary sources:

- the quality of air pollutant emissions each such category will emit, or will be designed to emit;
- the extent to which such pollutant may reasonably be anticipated to endanger public health and welfare; and
- the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

Federal Enforcement (Section 113)

The CAAA provides that, whenever the administrator finds any person in violation of any requirement of the SIP, the administrator is to notify that person and the state of such finding. If the violation extends beyond 30 days after the date of such notification, the administrator may issue an order requiring compliance with the plan or he may bring civil action.

If the administrator finds that violations of the SIP to be so widespread that the violations appear to result from a failure of the state to enforce the plan effectively, the state is notified. If it is found that such failure extends beyond 30 days after such notice, the administrator is to give public notice of such finding. During the period beginning with such public notice and ending when such state satisfies the administrator that it will enforce its plan the administrator may enforce any requirement of such plan by issuing an order to comply with such requirement or by bringing civil action.

Noncompliance Penalty (Section 120)

The CAAA provides for the assessment and the collection of non-compliance penalties. These penalties are assessed against any person

who owns or operates a major stationary source (other than a primary nonferrous smelter) which is not in compliance with any emission limitation, emission standard, or compliance schedule under any applicable implementation plan.

The amount of the noncompliance penalty, in addition to the civil penalties, is to be determined in a manner that there is no economic advantage for an industry in failing to come into compliance. The amount of the penalty is to be no less than the economic value which a delay beyond July 1, 1979, may have, including the quarterly equivalent of the capital costs of compliance, debt service, operational and maintenance costs foregone as a result of noncompliance, and any additional value which a delay in compliance may have, less the amount of an expenditure made during any quarter to bring the source into compliance.

Each person who receives a notice of noncompliance is to calculate the amount of penalty owed and to develop a payment schedule for the penalty. The individual may challenge the notice of noncompliance and, in this event, a hearing would be held. If the owner or operator of any stationary source receives a notice of noncompliance and does not submit this information, the state (or administrator) may contract with a person to assist in determining the penalty and payment schedule. The cost of the contract is added to the penalty. It is significant to note that penalties assessed by the EPA are paid to the U.S. Treasury; penalties assessed by the state are paid to the state.

Classification of Prevention of Significant Deterioration (PSD) Areas (Section 162)

Areas in which the air quality is cleaner than the national standards are known as attainment areas and are protected under the PSD part of the CAAA (Part C). The purpose of part C of the act is to insure that the economic growth in the areas covered by this part "is consistent with the preservation of existing clean air resources." All nondegradation areas must be designated Class I, II, or III, depending upon the degree of deterioration that is to be allowed, and limits are assigned to increases in pollution concentration for each classification.

Class I areas. These areas are "pristine" areas, in which minimal or no growth is allowed in order to provide the greatest amount of protection of the air quality. There are two types of Class I areas; those designated by the state (these areas may be redesignated as Class II or III); and mandatory Class I areas (areas designated by Congress which cannot be redesignated). The mandatory Class I areas are: international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size and which are in existence on the date of enactment of the CAAA.

Class II and III areas. Class II areas are those areas where moderate growth will be allowed, but where stringent air quality constraints are desirable. Class III areas are those areas where substantial growth will be allowed and where increases in concentrations of pollutants, up to the national secondary standards, would be permitted. Colorado currently has no designated Class III areas.

The following areas are designated as Class I areas in Colorado:

Wilderness Areas

Eagles Nest Wilderness Area
Flat Top Wilderness Area
La Garita Wilderness Area
Maroon Bells - Snowmass Wilderness Area
Mt. Zirkel Wilderness Area
Weminucke Wilderness Area
Rawah Wilderness Area
West Elk Wilderness Area

National Parks

Rocky Mountain National Park
Mesa Verde National Park

National Monuments

Black Canyon of the Gunnison National Monument
Great Sand Dunes National Monument
Colorado National Monument*
Dinosaur National Monument*
Florissant Fossil Beds National Monument*

Primitive Areas

Uncompahgre Primitive Area*
Wilson Mountain Primitive Area*

Recreation Area

Gunnison Gorge Recreation Area*

*Designated by the state as Category I areas. Colorado's Category I standards are equivalent to the federal Class I standards, but Colorado standards are more restrictive for Category II and III areas than are the federal standards for Class II and III.

Area Redesignation (Section 164)

The state may redesignate such areas of the state as it deems appropriate as Class I areas. However, the CAAA provides that the following areas may be redesignated only as Class I or II:

(1) an area over 10,000 acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, national wildlife refuge, a national lakeshore or seashore; and

(2) a national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Any other area [other than (1) or (2)] or an area established as Class I may be redesignated by the state as Class II if the following requirements are met:

(1) Any redesignation must be approved by the Governor after consultation with the appropriate committees of the legislature if it is in session, or with the leadership of the legislature if it is not in session. The state, however, may require approval by the entire General Assembly. Local governments representing a majority of the residents of the area so redesignated, must also enact resolutions or ordinances concurring in the redesignation;

(2) Such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area.

Preconstruction Requirements for PSD Areas (Section 165)

In PSD areas, permits are required for major stationary sources in order to provide for the prevention of significant deterioration (PSD). Preconstruction requirements set forth in section 165, CAAA, include:

I. The facility must demonstrate that it will not:

(a) Contribute to excesses of maximum allowable increases or maximum allowable concentrations more than once a year. [Section 165 (a) (3) (A)]

(b) Pollute in excess of national primary standards for any air quality control region; (a) (3) (B)

(c) Violate any standard of standard of performance. (a) (3) (C)

II. The facility must demonstrate that:

- (a) It will use the best available control technology; (a) (4)
- (b) It would be in compliance with protection of Class I areas; (a) (5)
- (c) Analyses have been made of impact of projected growth from facility; (a) (6)
- (d) That the owner will monitor for air pollution; (a) (7) and
- (e) Further, for a source to locate in a Class III area, with emissions in violation of a Class II area, and no standard of performance has been issued, administrator may issue a permit if best available control technology is approved. (a) (8)

III. Exemption:

Sources in existence as of the effective date of the act (August 3, 1977), which proposed a modification or expansion in a Class II area, are not subject to maximum allowable increases or concentrations if they use the best available control technology, if they emit less than 50 tons per year, and if emissions of SO_x and particulates will not exceed national secondary standards. (b)

IV. Decision on permit is to be made in one year. (c)

- V. (a) Notice of permit applications and actions taken by the state are given to EPA. The federal land manager is to insure that the facility will not violate air quality values in Class I areas. (d) (1); and (d) (2) (A) and (B)
- (b) A permit shall not be issued if a federal official, the Governor of an adjacent state, or the administrator finds adverse impact to Class I areas. However, a permit may be issued if emissions of particulates or SO_x will result in concentrations which exceed maximum allowable increases for Class I areas, (d) (2) (c) (i)
 - (1) Where the federal land manager demonstrates that a facility will adversely impact air quality related values (including visibility), even though the facility will not result in concentrations which exceed maximum allowable increases for Class I areas, a permit shall not be issued. (2) (c) (ii)
 - (2) A permit will be issued if demonstration is made that the proposed facility will not adversely impact air quality (including visibility), even though maximum allowable increases of baseline

concentrations, in Class I areas will be exceeded.
(d) (2) (c) (iii)

(3) For permit under (2), the facility is to comply with emission limits in the permit. (d) (2) (c) (iv)

(c) If a source is denied a permit, appeal may be made to the Governor. If the facility cannot be constructed by reason of any maximum allowable increase for SO_x for periods of 24 hours or less applicable to any Class I area and a variance will not adversely impact the air quality, the Governor, with concurrence by the federal land manager, may grant variance. (d) (2) (D) (i)

(1) If these officials disagree, appeal is to the President. (d) (2) (D) (ii)

(2) If variance is granted, limits on SO_x, with emissions from all other sources, will not exceed maximum allowable increases for 24 hours or less or not more than 18 days of the year, and daily emissions will not exceed maximum allowable increases. (d) (2) (d) (iii)

VI. (a) Either the state, local government, or owner/operator is to analyze ambient air at the proposed site of a major facility for each pollutant emitted. (e) (1)

(b) As of August, 1978, continuous monitoring for one year shall be required unless an adequate analysis can be made in a shorter time. (e) (2)

(c) Administrator's regulations require an analysis of specific items. (e) (3)

Enforcement of PSD -- Section 167

The CAAA directs that the state is to act, either through an order or by seeking injunctive relief, to prevent the construction of a major emitting facility which does not comply with requirements for an attainment area.

Nonattainment Areas Plan Provisions (Section 172)

Areas in which the air quality does not meet the national ambient air quality standards are designated as nonattainment areas. In general, the urbanized front range areas currently are nonattainment areas for one or more pollutants, with the immediate Denver area in nonattainment of four pollutants. For the rest of the state, a number of smaller areas are in nonattainment, generally for

only one pollutant. Appendix A provides a series of maps which indicates the areas of the state which are in nonattainment of the national ambient air quality standards.

The federal law also provides that, if the state plan does not meet the requirements of Part D (Plan Requirements for Nonattainment Areas), no major stationary source can be constructed or modified in a nonattainment area after June 30, 1979, if the proposed facility would cause or contribute to concentrations of any pollutant for which the national standard is exceeded for that area. [Section 110 (a) (2) (I) of the CAAA].

The provisions which must be included in the SIP for nonattainment areas are:

- (1) the implementation of all reasonably available control measures as expeditiously as possible;
- (2) reasonable further progress including reduction in emissions from existing sources;
- (3) a comprehensive inventory of actual emission from existing sources in the area;
- (4) a permit program;
- (5) quantification of emissions of any pollutant resulting from or modification of any major new or modified stationary source in a nonattainment area;
- (6) permits required for the construction or modification of major stationary sources;
- (7) requirement of necessary state financial and manpower resources;
- (8) emissions limitations, compliance schedules, and other measures necessary to meet the requirements of Part D;
- (9) public, local government, and state legislative involvement in the planning process; and identification and analysis of the air quality, health, welfare, economic, energy and social effects of the provisions required in the plan; and
- (10) written evidence that the state and local governments have adopted the necessary requirements, schedules, and timetables for compliance.

Extension for oxidants and CO. States which receive an extension to December 31, 1987, for oxidant and carbon monoxide standards must demonstrate that its plan:

- (1) includes requirements, prior to the issuance of any permit

for construction or modification of a major emitting facility, an analysis of alternative sites, sizes, production processes and environmental control techniques of the source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of the source location, construction, or modification;

- (2) establishes a vehicle emission control and inspection program;
- (3) identifies other measures necessary to attain the applicable NAAQS not later than December 31, 1987; and
- (4) includes enforceable measures to assure attainment of standards by December 31, 1987.

Permit Requirements for Nonattainment Areas (Section 173)

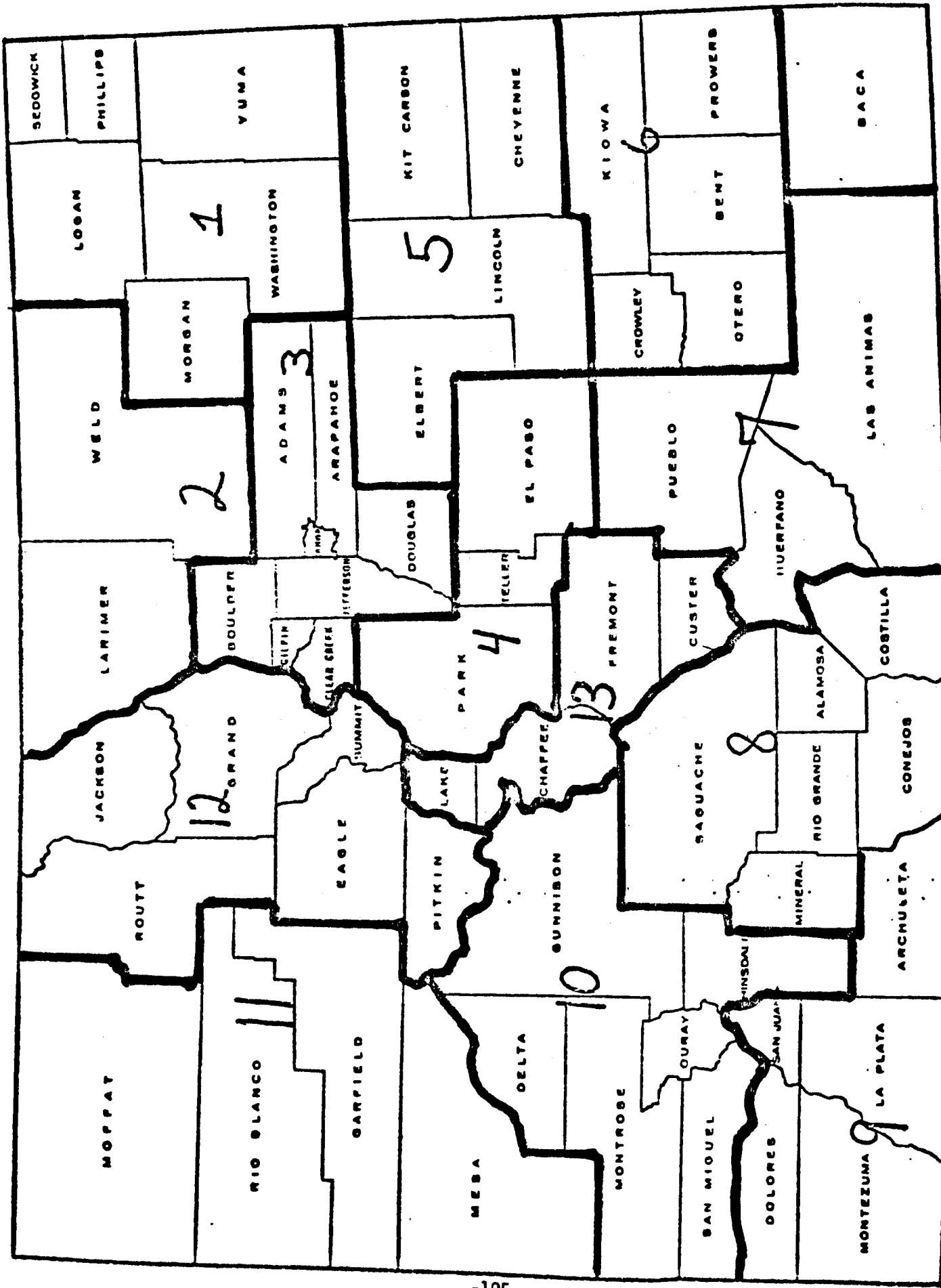
Permits are required for construction or modification of major stationary sources if the proposed facility would aggravate an already existing violation of the national standards. Permits to construct and operate a source in a nonattainment area may be issued if the following conditions are met:

- (1) Offset policy emissions from existing and new sources, not major emitting facilities, are sufficiently reduced so that, in combination with the new source, there is a total reduction in emissions allowed under the SIP.
- (2) Emissions of a pollutant resulting from the proposed new or modified major stationary source will not result in pollution levels which exceed the allowance permitted for such pollutant from a new or modified stationary source in a nonattainment area.
- (3) The proposed facility complies with the lowest achievable emissions rate. (That rate can be no higher than the "existing emission standard for new sources".)
- (4) The proposed facility (and all facilities controlled by the owner/operator within the state) will comply with requirements of the SIP or will meet an approved schedule for compliance with the SIP.
- (5) The SIP is being implemented in all nonattainment areas.

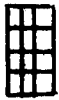
APPENDIX

Attainment and Nonattainment
Areas in Colorado

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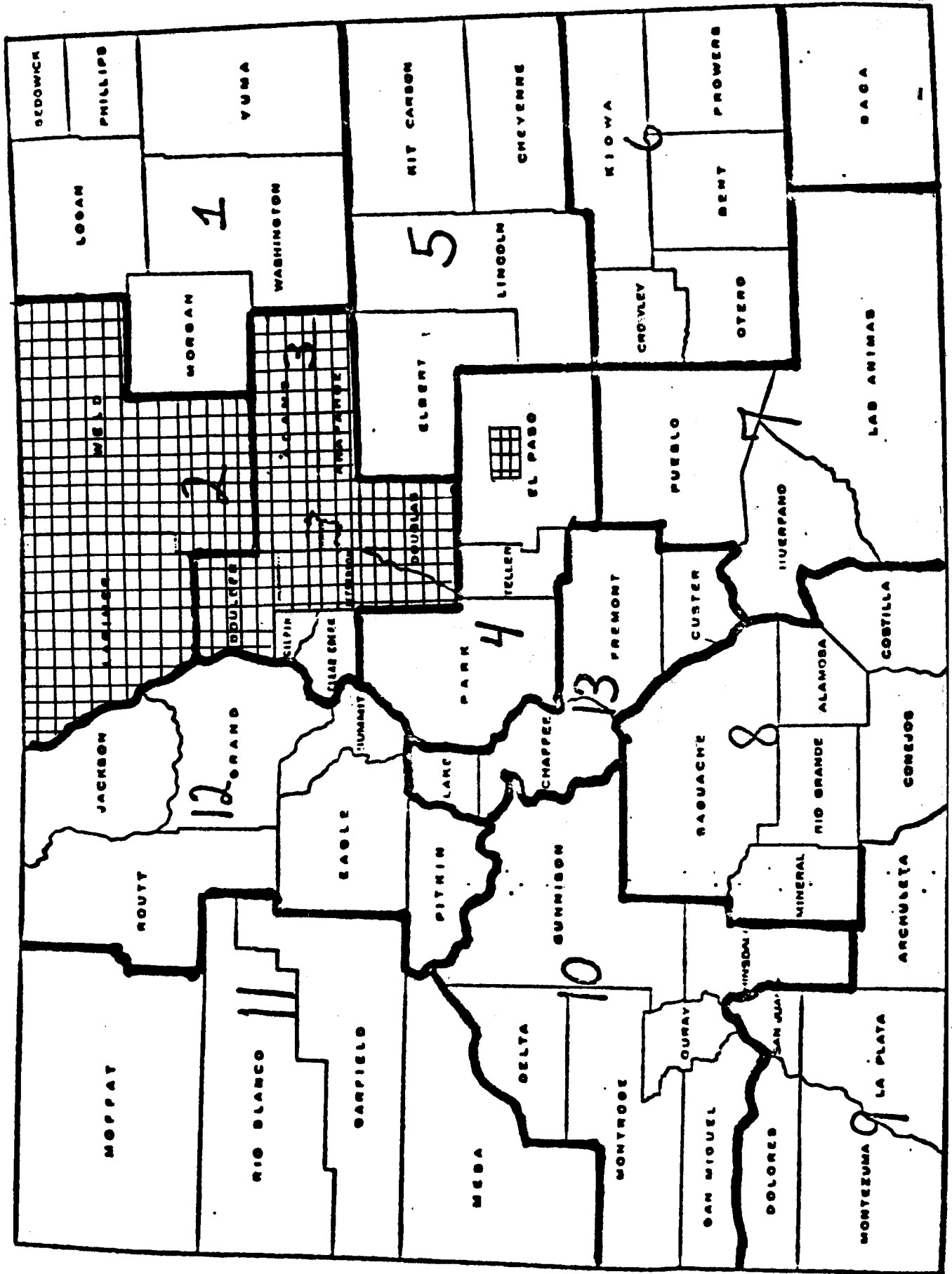


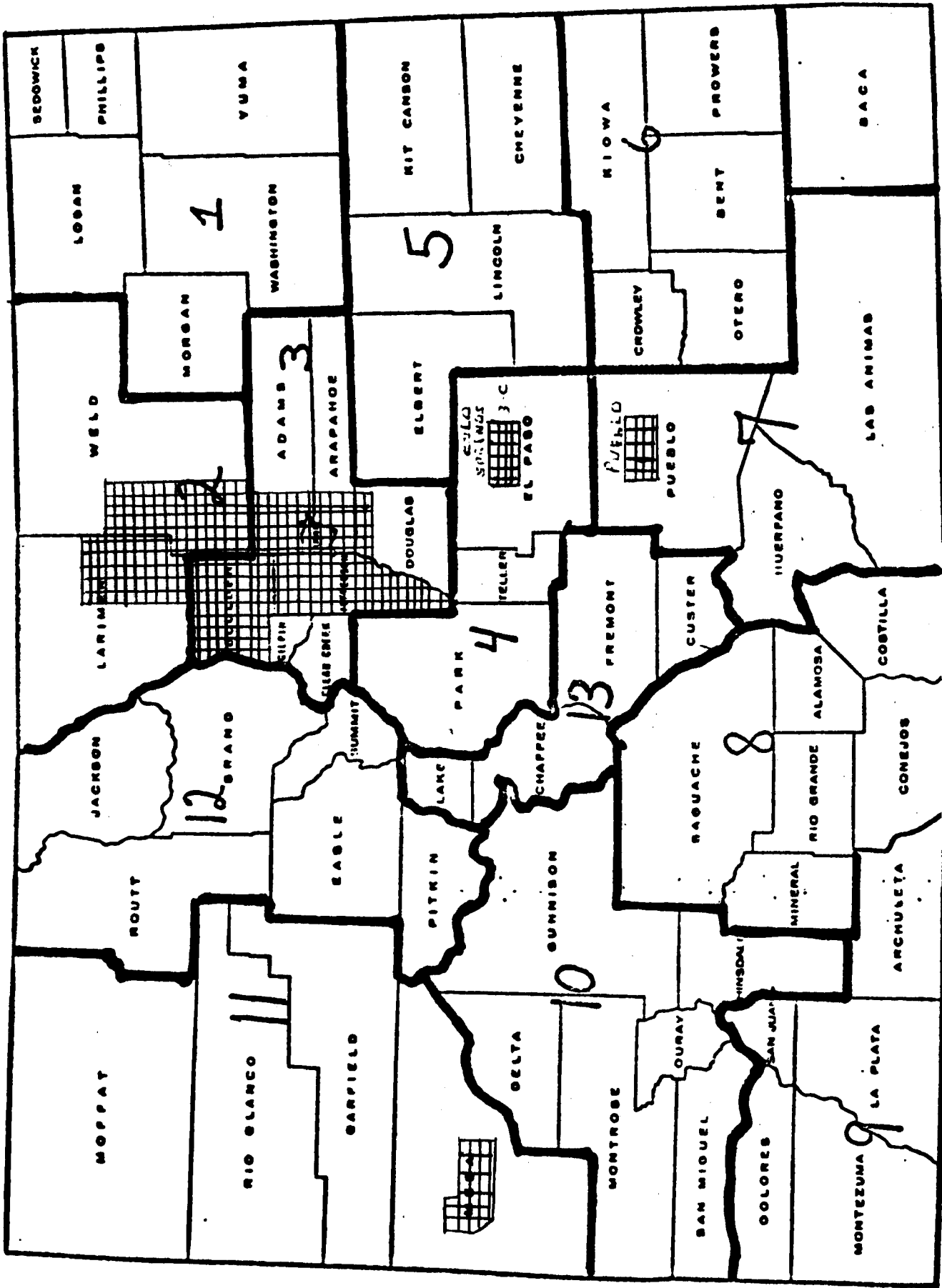
AIR POLLUTION CONTROL REGIONS (ACQR)



Nonattainment

Remaining Counties in attainment or unclassified





Nonattainment

Remaining Counties in attainment or unclassified

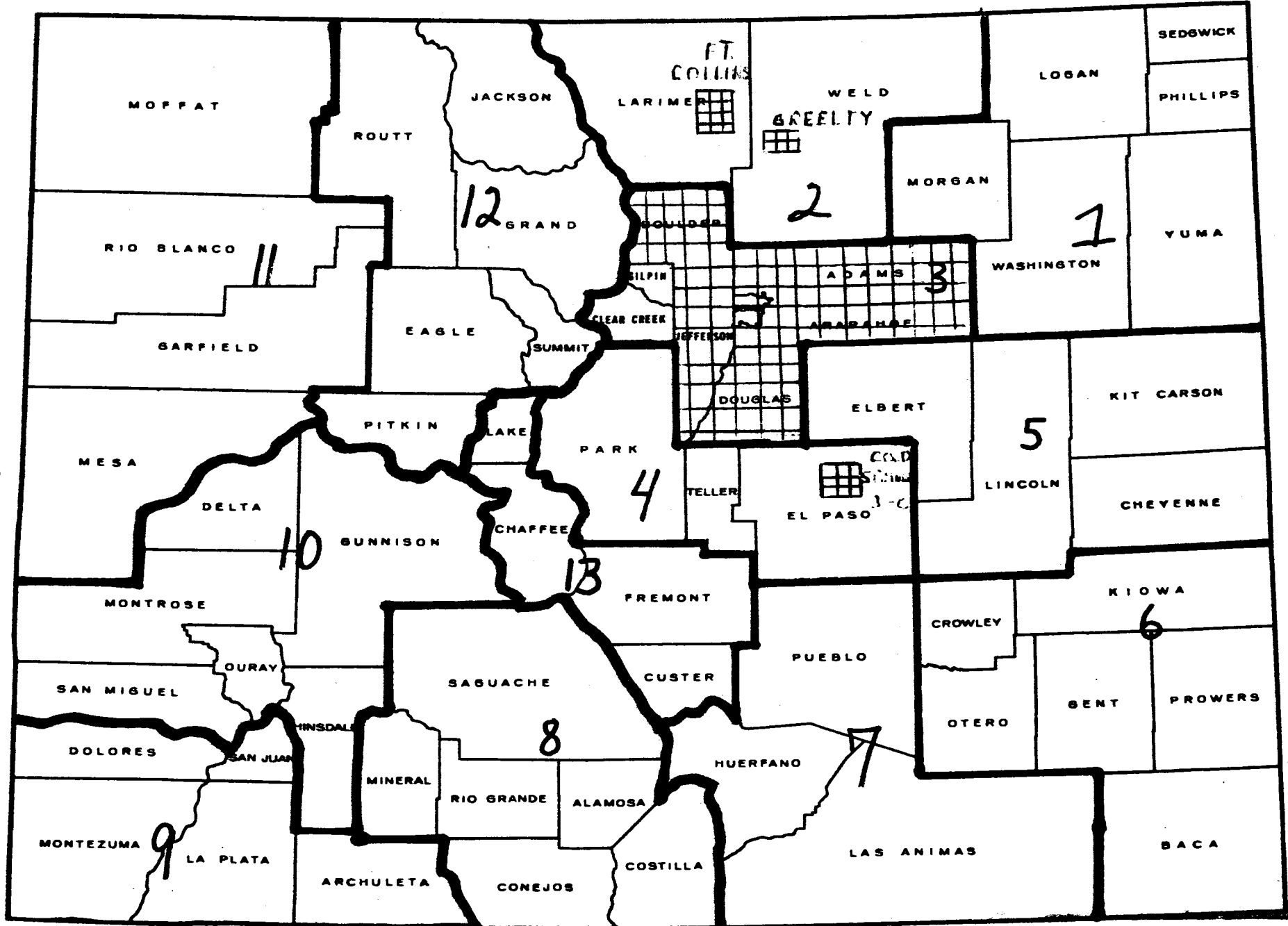
TOTAL SUSPENDED PARTICLES (TSP)

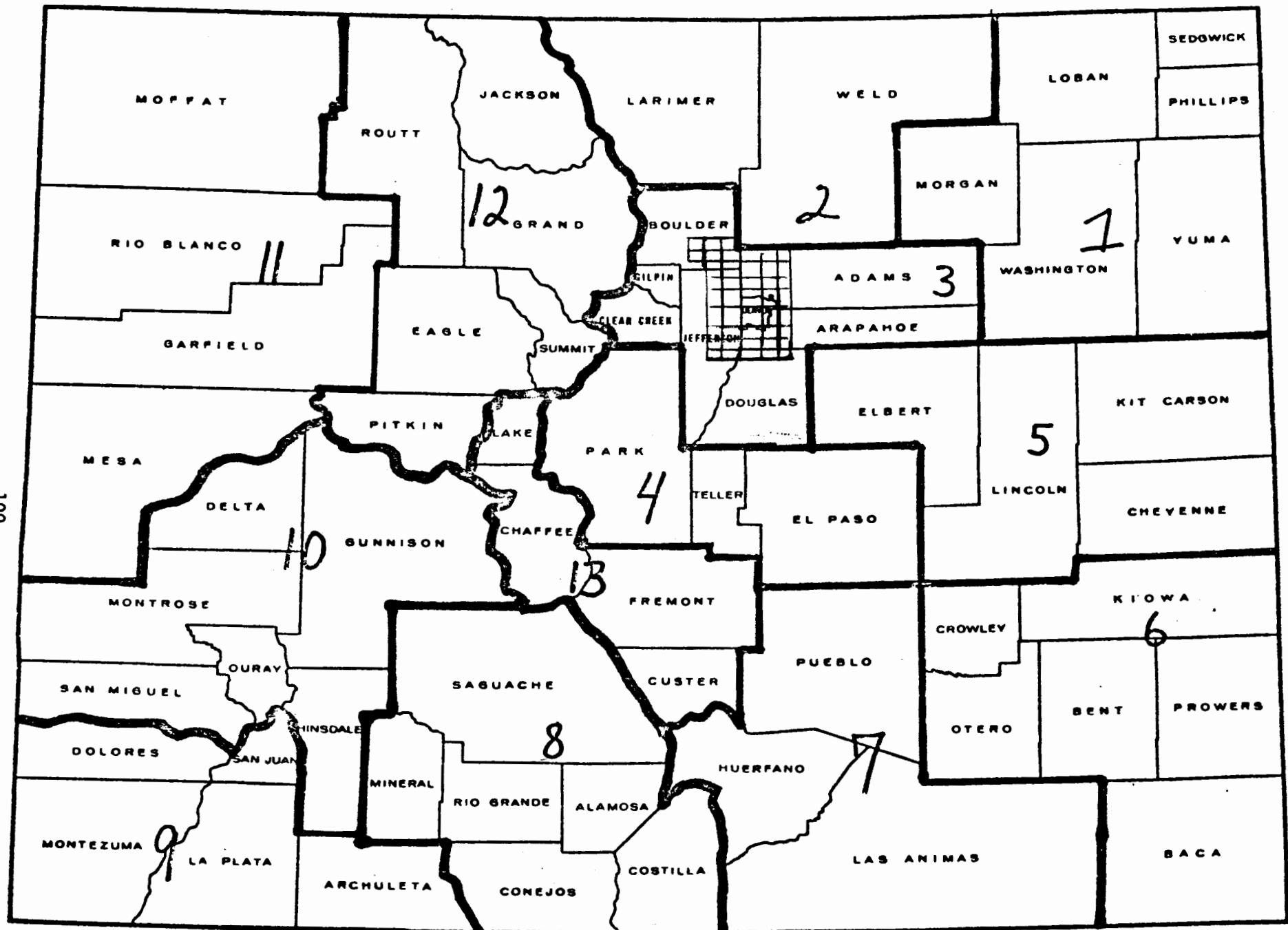
CARBON MONOXIDE
(CO)



Nonattainment

Remaining counties unclassified or in attainment





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NITROGEN DIOXIDE



Nonattainment

Remaining counties unclassified or in attainment

SULFUR DIOXIDE
(SO₂)

