

May 24, 2022

The Honorable Jared Polis
Governor, State of Colorado
Colorado State Capitol
Denver, CO 80230

Delivered via email

RE: Veto Request/HB 22-1244 "Toxic Air Contaminants"

Dear Governor Polis:

We are writing to respectfully request that you veto HB 22-1244, concerning "Toxic Air Contaminants." This request recognizes your administration's efforts to make substantive progress in improving Colorado's air quality and to reduce greenhouse gas emissions – important goals that are not addressed by this legislation. We believe this legislation will likely delay achievement of those goals by diverting critical resources from programs designed to attain federal air quality standards.

HB22-1244 warrants a veto for three principal reasons: defective process, scarcity of resources, and the potential to harm current programs.

HB 22-1244 creates a new air toxics regulatory program at the CO Department of Public Health and Environment (CDPHE). The bill is duplicative and redundant of existing processes at both the federal and state level. Quite literally, this bill is the proverbial "solution in search of a problem". The bill fails to utilize a longstanding, widely recognized and proven scientific approach to first determine if there is a problem, then analyze and scope its size. Instead, with no supporting evidence the bill predetermines that Colorado has a widespread and substantial air toxics problem and dictates a new burdensome and costly regulatory regime to address this supposed problem. This is a radical and cynical departure from the "Colorado Way" and will create more harm than good.

The process to adopt this bill can only be described as defective and a *rushed attempt to pass anything* that culminated in a final bill that is substantially different from the introduced version. Most significantly, during the chaotic final three days of session the bill was substantially amended and passed from Senate committees to the Senate floor in roughly 24 hours, providing no time for analysis and input from impacted stakeholders. During Senate Finance Committee consideration, a CDPHE witness testified that she had not seen or reviewed the proposed amendments that the Committee subsequently adopted. The final amendment to the bill, L.082, was passed on the Senate floor, again with no stakeholder input and no time for evaluation by industry or the Department. In the House Energy and Environment Committee, a CDPHE witness testified on the record that there will be "significant challenges" to "successful implementation" of HB 22-1244. Finally, the fiscal note which is required to accompany this legislation was never updated after the bill passed out of the House.

The regulated and impacted community now face uncertain and unpredictable new compliance requirements that are unrelated to actual data that support a new regulatory activity. This will threaten the regulated community's ability to operate and provide employment in Colorado.

Just as concerning, the Department is now tasked with creating and implementing a sweeping new program without appropriate resources.

Again, in the House Energy and Environment Committee hearing, a CDPHE witness stated, “We don't think we have the resources right now to even do all the work that's already on our plate.” HB 22-1244 will only further exacerbate the resource challenges and staffing vacancies at the CDPHE. During the May 19 Air Quality Control Commission (AQCC) monthly meeting, the Director of the Air Pollution Control Division reported that they have about 15-20 current vacancies and he has concerns about hiring an additional 43.0 new FTE as itemized in the HB1244 fiscal note, and calling this a, “significant lift.” Based on the recently-adopted FY22-23 budget, the CDPHE will also be tasked with hiring 83.0 new FTE. The Assistant Attorney General echoed that the Department is understaffed and under-resourced which has resulted in the delay of several Title 5 permits, leading to four different lawsuits. It is very likely that the Department will be forced to use existing resources to implement HB 22-1244 creating further delays in issuing permits and meeting existing program requirements.

The CDPHE acknowledges that “air quality has improved greatly over the past several decades and ozone concentrations generally trend downward in the Denver Metro/North Front Range area” but it has been difficult for the State to “comply with increasingly stringent federal regulations.” Senator Julie Gonzales, the Senate bill sponsor, conceded that HB 22-1244 will not do anything to help with meeting ozone standards. The APCD should be focused on its current statutory obligations and not forced to create new programs that will neither address persistent ozone pollution nor provide any ozone reductions.

Not insignificantly, the bill also provides ample fodder for needless and costly litigation when the Department is not able to meet imposed statutory deadlines.

In summary, HB 22-1244 interferes with Colorado’s efforts to meet federal air quality standards, duplicates existing state and federal programs, creates litigation landmines if the state fails to meet the requirements, forces the APCD to divert scarce resources, adds layers of burden to the AQCC rulemaking schedule, and imposes needless regulatory and cost burdens on the regulated community.

For these reasons, we respectfully request your veto of HB 22-1244 Concerning “Toxic Air Contaminants.” This issue can and should be addressed in a more inclusive and informed manner in a future legislative session.

Thank you for your consideration.

Sincerely,

Bonnie Petersen, Executive Director
Associated Governments of Northwest Colorado

Tom Peterson, Executive Director
Colorado Asphalt Pavement Association

Zach Riley, Chief Executive Officer
Colorado Livestock Association

Stan Dempsey, President
Colorado Mining Association

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cc:

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