

**Written Testimony of the Colorado Mining Association Concerning Senate Bill 20-204**

Submitted by Stan Dempsey, Jr., President

Thank you for the opportunity to share CMA's views on Senate Bill 204. Though CDPHE conducted a stakeholder process including a video briefing several weeks ago discussing potential changes to the bill, CMA remains opposed to the bill.

Colorado's unemployment rate in April hit its highest level ever, a rate of 11.3%. CMA's members including three of its operating mines have reduced their workforce in response to fast moving market conditions that have affected their operations. This is no time to raise fees and create a duplicative governmental agency, especially when air pollution emissions have fallen.

Though the Department discussed changes to Senate Bill 204, it did not address our fundamental opposition to the creation of the Air Quality Enterprise. We are not aware of changes made by the Department since that stakeholder meeting.

During the last general stakeholder meeting, Director Putnam acknowledged that current law already allows the AQCC and APCD to perform many of the functions proposed by the Air Quality Enterprise. In fact, several years ago, the Division secured additional spending authority for air quality studies to study ozone formation. The Division reached out to numerous stakeholders asking for support for the additional spending authority.

CMA and other industry stakeholders support a robust Colorado air quality program, including support for fee increases going back to 1993. This support was the result of close collaboration between the Division and a broad range of stakeholders. First, more clarity is needed to better understand what the Division needs in additional resources in terms of existing fees. Second, CMA supports the current process of setting fees, with the Commission having the ability to adjust fees pursuant to changes in the CPI.

CMA urges the sponsors of Senate Bill 204 to delay moving forward with the bill until a robust stakeholder process can better define the need to raise the existing stationary source fees, as well as define who would pay fees to the Air Quality Enterprise, the scope of work and whether the Enterprise is being proposed to address simply Denver/Northern Front Range ozone challenges or other yet to be named initiatives in other areas of Colorado. Simply put, the Department needs to articulate why existing stationary source fee payers operating out of the Denver/Northern Front Range should pay a second fee to support the work addressing the topics identified in the Department's earlier fact sheets, which highlight oil and gas operations.

Finally, I would reiterate our concerns that businesses, local governments, and other entities who pay emissions fees are facing severe economic challenges. Our members have communicated to us their challenges to their businesses and operations in this pandemic and economic crisis. We would urge extreme caution in the enactment of new fees and undefined regulatory programs

We are providing as background the following comments that we submitted to the Department in its stakeholder process:

The air quality enterprise envisioned by SB-204 is a new regulatory authority created as a TYPE 1 transfer, given independent and unchecked authority to develop programs and set fees without legislative constraint. CDPHE and the Governor independently will select the members of the enterprise and the enterprise will develop new air quality regulatory program requirements and set fees to further regulate business and industry in Colorado. The bill also removes all legislative constraints on the CDPHE regarding the AQCC setting the emission and hourly service fees for the programs they adopt.

Our government's system of checks and balances is a hallmark of good public policy and should not be so quickly removed for the implementation of agency desired new programs. Legislative oversight of a newly formed air quality enterprise, as well as the fee setting authority of the air quality control commission should be retained by the General Assembly. There are several ways in which the General Assembly can exercise its oversight; retain the fee setting authority for both the AQCC and the Air Quality Enterprise, implement a sunset provision (on the enterprise), require regular reporting of these organizations to oversight committees, subject the enterprise to an annual appropriation. We believe retaining the fee setting authority for both the air quality enterprise and the AQCC emissions and hourly fees is the most appropriate approach. This approach has worked for many years and should not be abandoned. As recently as 2018, the CDPHE was able to secure a fee increase with the support of the regulated community and members of the public. We believe the same model would also work for the air quality enterprise. Delegating rulemaking authority to independent bodies to develop programs and giving them unbridled authority to charge members of the public fees to implement the programs they adopt is irresponsible, not in the public's best interest and poor public policy.

The General Assembly should require the air quality enterprise to operate in a public setting and abide by the state administrative procedures act for conducting its business. The air quality enterprise created by SB204 is created as a TYPE 1 transfer but makes no provision for how the enterprise is expected to conduct its business. SB204 is silent on how the enterprise will consider and adopt program elements. Given the lack of definition regarding the enterprise's expected operation, it is anticipated that the group will act in private to make rules and implement program requirements that members of the public will be subject to and will be required to fund. The air quality enterprise should be required to conduct its business in public and should follow the State administrative procedure rules for adoption of regulatory requirements.

The air quality enterprise is a highly specialized body that is being formed to address highly specialized air quality issues, by a very select group of individuals with specialized expertise. The formation of the body and the need for their ongoing service should be reviewed in detail after a given amount of time. We believe if the air quality enterprise is created, it should undergo sunset review after a period of seven years to ensure they have had time to formulate and address the issues for which it is intended to then to undergo an evaluation of future need. Creating another regulatory entity in perpetuity without further evaluation of need or effectiveness is shortsighted and should not proceed.



Colorado General Assembly, Senate Finance Committee

Senator Julie Gonzales, Chair  
Senator Pete Lee, Vice Chair  
Senator Chris Hansen  
Senator Paul Lundeen  
Senator Jack Tate  
Senator Nancy Todd  
Senator Rob Woodward

Erin Overturf, Deputy Director, Clean Energy Program  
Western Resource Advocates  
1536 Wynkoop Street, Suite 210  
Denver, CO 80202

#### **Support of SB20-204 - Additional Resources To Protect Air Quality**

Wednesday, May 27, 2020

Madam Chair Gonzales, Vice Chair Lee and members of the committees,

My name is Erin Overturf and I am the deputy director of the Clean Energy Program at Western Resource Advocates (WRA), a regional conservation non-profit working to protect the West's land, air, and water for the last 30 years. On behalf of WRA, I am writing in support of SB20-204 - Additional Resources To Protect Air Quality.

WRA's Clean Energy Program is focused on reducing greenhouse gas pollution and other detrimental environmental impacts from the power sector, and leveraging clean electricity as an alternative to using fossil fuels in other sectors of the economy. We know that in order to limit warming to 1.5 degrees Celsius and avoid the most devastating impacts of climate change, we must drastically reduce emissions of greenhouse gas pollution over the next decade -- at least 50% by 2030, with a goal of reaching carbon neutrality by 2050.

One year ago, Governor Polis signed into law the Climate Action Plan to Reduce Carbon Pollution, as well as several other complimentary bills that put Colorado on a path of science-based climate action. These new laws require the Colorado Department of Public Health and Environment (CDPHE) and the Colorado Air Quality Control Commission to develop and adopt cost-effective regulations designed to meet the State's climate goals.

WRA believes passage of SB20-204 is crucial to ensure that the CDPHE has sufficient staff capacity to reduce emissions of criteria pollutants like ozone and particulate matter to levels that protect human

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health, while also moving forward with effective and enforceable regulations to reduce climate changing greenhouse gas emissions.

At this time, when our communities are being impacted by a respiratory illness public health crisis, it is more important than ever to ensure all Coloradans, including our most disenfranchised and vulnerable populations have clean air to breathe. It is critical that agencies such as CDPHE that are responsible for monitoring air quality and enforcing our clean air rules have the resources they need to get their work done. Please vote yes on SB20-204.

Sincerely,

Erin Overturf  
Deputy Director Clean Energy Program  
Western Resource Advocates

## ***SB20-204 – Additional Resources to Protect Air Quality***

### **What does the bill do?**

This bill creates an Air Quality Enterprise to conduct modeling, monitoring, data assessment and research on air emissions and is housed under the Colorado Department of Public Health and Environment. The Enterprise would be funded by new fees levied on the natural gas and oil industry. The bill also removes the statutory maximum cap for fees assessed on stationary sources, increases the fees for the 2020-21 Fiscal Year and allows the Air Quality Control Commission to increase those fees as they deem necessary for years thereafter.

### **Please **OPPOSE** SB20-204 as Introduced**

Colorado's business community is facing unprecedented challenges due to the COVID-19 pandemic. It is critical that the State of Colorado's approach to new regulations, policy and legislative decisions focus on stabilizing the economy. Now is not the time to be implementing drastic fee increases on already strained companies.

- Industry supported House Bill 18-1400, which increased fees and set those fees to the CPI in order to provide annual predictability for company planning and budgeting. The department has not appropriately justified the necessity for additional fee increases just two years later, nor has it outlined how the increased revenue generation will be utilized. We would request an analysis of how the dollar figures for the new fees were established. The increase appears drastic and poorly timed, and justification for those increases should be provided as a principle of transparency.
- There should be required efficiency improvements that complement the increase in fees. The Stationary Source Stakeholder group, which was a result of HB18-1400, has worked closely with the department to identify areas of needed improvement within the department, and this work should continue. At the top of the list is database improvements. A portion of any fee increase should be designated for improved functionality, particularly digital functionality that will help both regulators and the regulated.
- As introduced, the timeline for both the increase in stationary source fees and the establishment of the Enterprise Fund is unreasonable and does not provide adequate time for fee-payers to adjust their budgets, particularly as the economy crumbles and any return to normal is months if not years away.
- The bill, in its current form, fails to define sound scientific methods for modeling, monitoring and research. Political agendas should not influence or motivate the research and work that would be done by the Enterprise. Accordingly, there needs to be clearly defined selection criteria for studies and projects to ensure there is scientific neutrality, and to ensure that modelers and monitoring groups are truly independent.
- There is no cap on the revenue generation from the Enterprise fund and no sunset provision included. These are standard practices that ensure the program is meeting the intended goals, is still answering to the legislature, and that the methods and research are providing real value.



May 25, 2020

Senate Transportation and Energy Committee  
200 E Colfax  
SCR 357  
Denver, CO 80203

Re: SB20-204

Dear Members of the Senate Transportation and Energy Committee,

I am writing to you today as the representative of the Colorado Sierra Club which has approximately 100,000 members and supporters in Colorado. We strongly support SB20-024 and urge you to vote to pass the bill.

Parts of Colorado suffer from some of the worst air quality in the country. Much of the Front Range has been designated as being in "serious" non-attainment status for ozone pollution by the EPA; some other parts of the state like La Plata county have received F grades from the American Lung Association; and, by some measures, 80216 in the Denver area is the worst polluted zip code in the country. At the same time, we do not have accurate measures of toxic pollution occurring in our state. For example, there are consistent differences between oil and gas industry data versus those produced by independent scientists. Even John Putnam, Director of Environmental Programs at the CDPHE, has stated that state agencies have been underestimating pollution from oil and gas operations for many years.

SB20-204, "Clean Up Colorado's Air Act," addresses these concerns by setting up an "enterprise" whose function would be to use scientific expertise to obtain accurate measurements of pollution and to provide guidance to industry on ways to reduce emissions. The enterprise is also charged with measuring health effects of pollution and mitigation efforts. This entity would be funded by charging polluters a fee per ton of air pollution and a fee for air quality monitoring and research. Thus, the costs of monitoring and mitigating pollution will fall on polluters rather than on taxpayers.

The enterprise would be governed by a board of directors. The majority of the members of this board would be scientists and academics with a record of peer-reviewed publications appointed by the governor. SB20-204 requires the board to generate "high-quality, independent, and trusted research and development services regarding emissions rates and inventories, monitoring and control technologies, and health effects and emissions impacts." Thus, the enterprise is expected to be science oriented, address major gaps in our knowledge about pollution in Colorado, and generate ways to mitigate it.

SB20-204 recognizes that pollution is seriously affecting the health of Coloradans as well as the state's economy. Air pollution is of particular concern now because several studies have

demonstrated that there is a direct connection between the health effects of COVID-19 and air pollution, with people who have been chronically exposed to more pollution being more adversely affected by the disease. Thus, we cannot afford to wait to address air pollution. If, like the flu, COVID-19 becomes a permanent part of the human experience, we must rapidly reduce pollution if we wish to avoid the worst dangers of the disease. SB20-204 provides a cost-effective, efficient, and scientific way to achieve this goal.

We are very thankful to you for considering this and other bills to protect Coloradoans from the effects of COVID-19. We understand the deadly nature of this disease and the fact that you are exposing yourself to potential personal danger to do the people's work. We hope that you and your families stay safe and healthy in these difficult times.

Thank you for the opportunity to comment on SB20-204. We urge you to vote to pass the bill.

Warm regards,

Jan Douglas, M.D.  
Chair, Colorado Sierra Club Legislative Committee  
1536 Wynkoop Street, Suite 200 Denver, CO 80202  
###



Fwd: Testimony re SB 204

Julie Gonzales

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Elizabeth Burger

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**Subject:** Testimony re SB 204

Senate Finance Committee Members,

Please find below my testimony on behalf of the Colorado Chamber of Commerce in opposition to SB 204 Additional Resources to Protect Air Quality sponsored by Majority Leader Fenberg and Representatives Jackson and Caraveo.

Regards,

Bill

Thank you, Madam Chair, members of the committee, my name is Bill Skewes and I am here representing the Colorado Chamber of Commerce in opposition to Senate Bill 204.

The Colorado Chamber of Commerce represents hundreds of business of all different sizes from across Colorado, as well as over 40 local chambers of commerce and 39 trade associations. The Chamber's Energy & Environment

Council voted to oppose Senate Bill 204.

Our Energy & Environment Council believes that given the current pandemic and unprecedented economic environment now is not the time to be increasing fees on employers. In the past the Chamber has been supportive of increasing fees once CDPHE has justified the need for the increases. In fact, during the 2018 session, the Chamber worked with CDPHE and other stakeholders to pass HB 18-1400 that increased these same fees by 25% and allowed CDPHE to increase these fees by inflation thereafter.

The Chamber asks you to vote no on SB 204 and delay consideration of the proposed fee increases until next session to give CDPHE time to meet with stakeholders and justify the requested fee increases. In addition, delaying consideration of establishing the Air Quality Enterprise until next session will give CDPHE time to better explain the need for and details of the proposed enterprise to stakeholders.

Accordingly, the Colorado Chamber asks you to vote no on SB 20-204. Thank you for your consideration.

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