



COLORADO

Department of Transportation

Nonattainment Area Air Pollution
Mitigation Enterprise

Nonattainment Area Air Pollution Mitigation Enterprise 2022 Annual Report

Pursuant to C.R.S. § 43-4-1303 (10)(a)(IV)

REPORTING PERIOD ENCOMPASSES JANUARY 1, 2022 TO DECEMBER 31, 2022

Background

In 2021, the Nonattainment Area Air Pollution Mitigation Enterprise (NAAPME) was established within the Colorado Department of Transportation (CDOT) to support projects that mitigate the environmental and health impacts of increased air pollution from motor vehicles in nonattainment areas of Colorado. Created by Colorado Senate Bill 21-260 (SB 21-260), *Sustainability of the Transportation System*, the Enterprise imposes an Air Pollution Retail Delivery Fee and an Air Pollution per Ride Fee to fund programs and projects that fulfill the Enterprise's business purpose.

The primary business purpose of the NAAPME is to “mitigate the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas that results from the rapid and continuing growth in retail deliveries made by motor vehicles and in prearranged rides provided by transportation network companies by providing funding for eligible projects that reduce traffic, including demand management projects that encourage alternatives to driving alone or that directly reduce air pollution, such as retrofitting of construction equipment, construction of roadside vegetation barriers, and planting trees along medians.” Nonattainment areas in Colorado are designated areas from the U.S. Environmental Protection Agency (EPA) that do not meet ambient air pollution levels. In Colorado, ozone pollution is the only identified pollutant in which parts of Colorado are currently in nonattainment for these standards. Currently Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, a portion of Larimer, and Weld counties are in the designated ozone nonattainment area within the state.

Projects funded by the NAAPME will look towards reducing the impact of air pollution from ozone, from increased usage of retail deliveries and rideshare services provided by transportation network companies (TNCs). The Enterprise has identified three focus areas in which projects can support this objective, as outlined in the Enterprise's 10-Year Plan.

Calendar Year 2022 Accomplishments

NAAPME business for the initial year consisted primarily of administrative activities. These included seating of the Board of Directors and election of officers, approving administrative documents for the board including the Articles of Organization and board bylaws, rulemaking, and establishing the initial level of fee collection for the Enterprise. Additionally, the Board adopted its initial 10-Year Plan, as required by statute, approved the Enterprise's budget for fiscal year 2022-23, and began work on establishing a program for funding projects that fit within the business purpose of the Enterprise and its 10-Year Plan.

Board of Directors

All the powers of the NAAPME, as described in C.R.S. § 43-4-1303 (3), and as otherwise provided by law, are vested in the NAAPME Board. The NAAPME Board of Directors manages

the business and affairs of the Enterprise and consists of seven members determined pursuant to the composition and qualifications outlined in C.R.S. § 43-4-1303 (2).

The Governor appointed five members on September 29, 2021. All Board members received the approval of the Senate Transportation and Energy Committee on March 15, 2022, and confirmation from the Colorado Senate on March 21, 2022. The remaining two members were designated by the heads of the state agencies - CDOT and the Colorado Department of Public Health and Environment (CDPHE).

Governor Appointments:

- **Danielle “Stacy” Suniga (Greeley):** Serves as an individual with expertise on environmental, environmental justice, or public health issues.
- **Lynn Baca (Brighton):** Serves as an elected official of a disproportionately impacted community that is a member of the Denver Regional Council of Governments (DRCOG).
- **Kristin Stephens (Fort Collins):** Serves as an elected official of a local government that is a member of the North Front Range Metropolitan Planning Organization.
- **Yessica Holguin (Denver):** Serves as a representative of disproportionately impacted communities.
- **Leanne Wheeler (Aurora):** Serves as a representative of disproportionately impacted communities.

State Agency Appointments:

- **Herman Stockinger:** Colorado Department of Transportation designee.
- **Jessica Ferko:** Colorado Department of Public Health and Environment designee.

Articles of Organization and Bylaws

The NAAPME Articles of Organization were approved by the Board of Directors on April 14, 2022. The Articles of Organization cover the name, authority, purpose, TABOR exemption, enterprise board, officers, powers, revenues and expenditures and process for amendments to the Articles of Organization. The Bylaws were approved on February 24, 2022, and cover the Board composition, duties and responsibilities, meetings of the Board, open meetings and open records, officers and staff, fiscal Year and budget, amendment process, and other miscellaneous provisions.

Election of Officers

The NAAPME Board, using the directions provided in the Enterprise’s Bylaws and Articles of Organization elected officers at the February 24, 2022, Board of Directors Meeting. Director Kristin Stephens was elected Chair and Director Lynn Baca was elected Vice-Chair. In addition, the Board of Directors approved Darius Pakbaz, Deputy Director of the Division of Transportation Development (DTD) at CDOT, as the NAAPME Program Administrator and Jenni Fogel, Program Assistant for DTD at CDOT, as the NAAPME Board Secretary at the April 14, 2022, Board of Directors Meeting.

Rulemaking

SB 21-260 established several new fees, including the retail delivery fee and the prearranged ride fee, a portion of which funds the activities of the NAAPME. The NAAPME was required by C.R.S. § 43-4-1303 (6)(h) to conduct a rulemaking in accordance with the administrative procedures act “to promulgate rules for the sole purpose of setting the amounts of the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee at or below the maximum amounts authorized...”.

C.R.S. § 43-4-1303 (7)(b) initially set the maximum amount for the air pollution prearranged ride fee at 11 ¼ cents for each prearranged ride in a carshare ride or which the driver transports the rider in a zero emissions vehicle, and 22 ½ cents for every other prearranged ride. C.R.S. § 43-4-1303 (8)(b) initially set the maximum air pollution retail delivery fee at seven-tenths of one cent. Statute allows for these fees to be adjusted for inflation in future years.

The NAAPME Board of Directors initiated the rulemaking process on February 24, 2022, to set the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee for state fiscal year 2022-23. In accordance with administrative procedures, the proposed rule was filed with the Secretary of State on February 25, 2022, and a public comment period was open from March 10, 2022 through April 7, 2022. A public hearing was held on April 14, 2022 and the Board adopted [2 CCR 608-1, Rules Governing Nonattainment Area Air Pollution Mitigation Fees](#) on the same day.

The NAAPME Board of Directors will work with staff of CDOT, the Colorado Department of Revenue (DOR), and other subject matter experts on how and when to adjust the retail delivery fee to account for inflation over time.

Ten Year Enterprise Plan

No later than June 1, 2022, the NAAPME was required to publish a 10-Year Plan that details how the Enterprise will execute its business purpose during state fiscal years 2022-2023 through 2031-2032 and estimates the amount of funding necessary to do so. As per C.R.S. § 43-4-1303 (10)(a)(I), information regarding the implementation of the 10 Year Plan will be maintained and regularly updated in a public accountability dashboard that can be accessed via the NAAPME website.

To ensure transparency and accountability of the NAAPME, a 10-Year Plan was developed reflecting the vision and expertise of the NAAPME Board of Directors, along with valuable input from Colorado communities and local governments, through a public outreach process that elicited input from almost 200 members of the public and comments from three transportation planning regions that fall within the ozone nonattainment area.

The 10-Year Plan includes background information on designation of a nonattainment area for criteria pollutants and the current nine-county area currently in nonattainment for ozone. The plan also details estimated financial resources and expenditures for fiscal years 2022-23 through 2032-33 and describes the NAAPME funding strategy. Finally, the plan provides information on the three categories of funding programs - sustainably reduce traffic congestion, reduce the environmental and health impacts of transportation, and improve neighborhood connectivity for communities adjacent to highways.

The NAAPME Board of Directors intends for this 10-Year Plan to function as a living document which will be updated and refined over time to allow additional information on funding programs to be added over the timespan of the plan as the Enterprise Board of Directors determines the best way to allocate funds within its business purpose. To this end, the NAAPME Board of Directors intends to review this plan at least annually following its adoption to evaluate the need for updates.

The [NAAPME 10-Year Plan](#) was approved by the NAAPME Board of Directors at its June 23, 2022 meeting and is posted on the [NAAPME website](#).

Budget

The NAAPME did not have an operating budget or source of funding prior to August 2022 when NAAPME began receiving revenue from the retail delivery fee. All fiscal year 2021-22 expenses were paid through a loan from the Colorado Transportation Commission (TC), which was approved by the TC in December of 2021 and by the NAAPME Board of Directors in February of 2022.

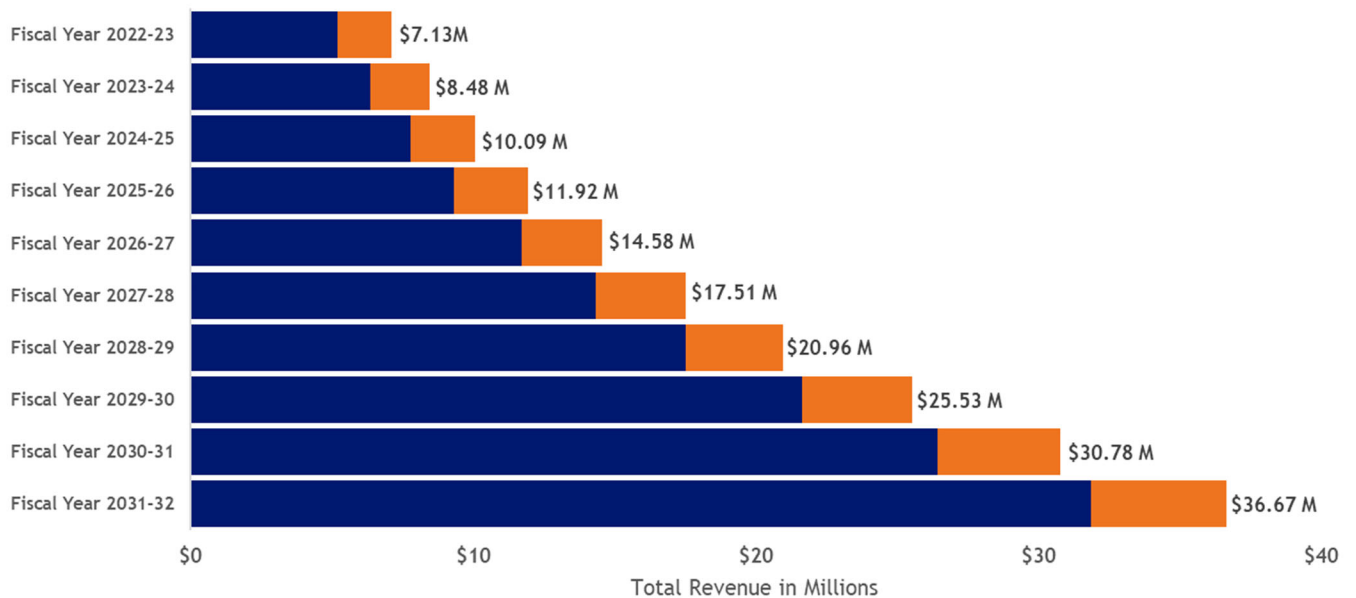
Once NAAPME received fee revenue for the quarter one of fiscal year 2023, the NAAPME Board of Directors approved repayment of the Transportation Commission Loan in full, with interest, per the terms of the loan agreement, in late October 2022. The NAAPME spent \$24,917 of the \$74,700 loan in fiscal years 2021-22 and 2022-23. In October of 2022, the NAAPME Board of Directors voted to transfer the remaining balance of the loan funds to the 2023 Programmed Funds budget.

The NAAPME Board of Directors approved its initial budget for fiscal year 2022-23 at the June 23, 2022, Board of Directors meeting. Elements of the annual budget include Administrative and Agency Operations to support day-to-day operations of the Enterprise, Contingency Reserve to handle unexpected expenses that are outside the range of the usual budget, and Programmed Funds that will be made available to fund programs and projects that are within the business purpose of the Enterprise and have been approved by the Board of Directors. The NAAPME does not anticipate having dedicated staff members but will leverage existing CDOT staff to support Enterprise work.

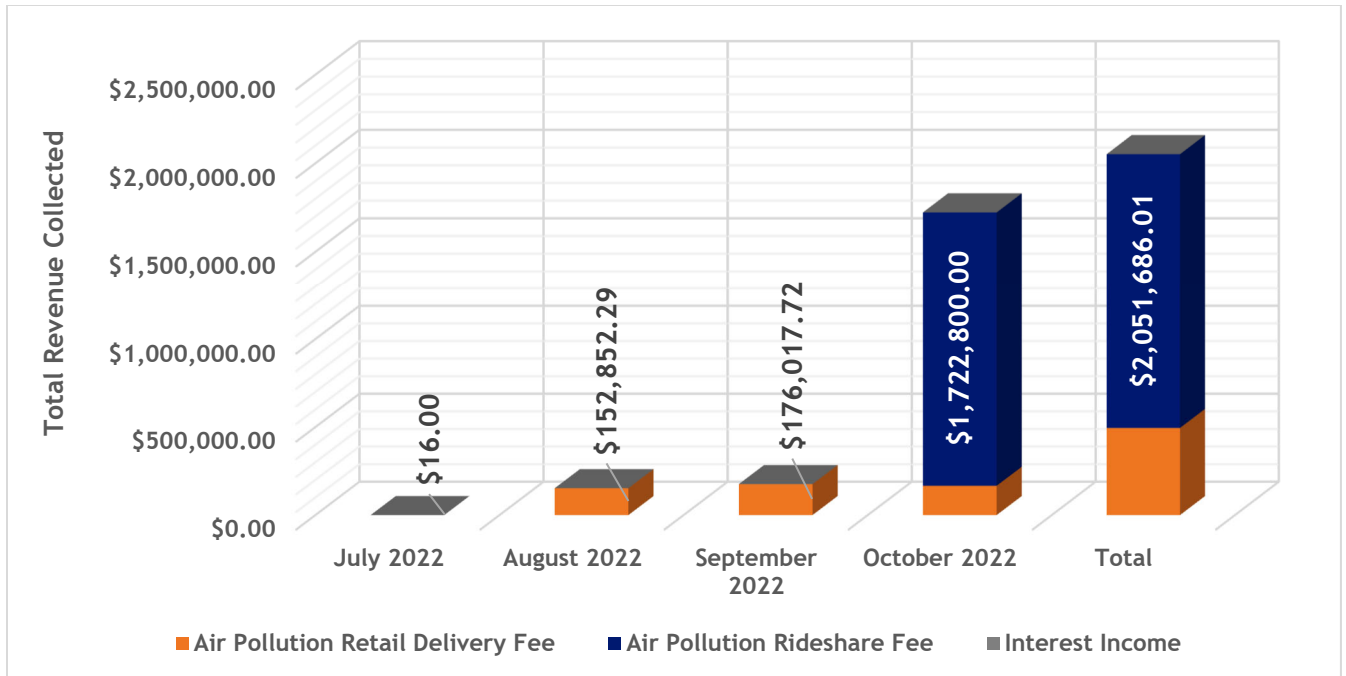
Revenue Allocation Category	Estimated Rollforward from FY 2021-2022	FY 2022-23 Final Allocation Plan	FY 2022-23 Total Available Budget
Program Funds	\$49,783.00	\$6,621,089.75	\$6,670,872.75
Administration & Agency Ops.	\$0.00	\$227,650.00	\$227,650.00
Debt Service	\$0.00	\$76,486.25	\$76,486.25
Contingency Reserve	\$0.00	\$200,000.00	\$200,000.00

Financial Status Report

The fees established in SB21-260 are on-going revenue streams and CDOT staff have estimated revenue amounts for the next ten years. The projections anticipate that retail delivery fee and ride share fee will result in \$7.2 million in revenue in the first full year of implementation, growing to \$36.7 million by fiscal year 2031-32.



A proposed spending plan for fiscal years 2022-23 through 2031-32 was developed as part of the [NAAPME 10 Year Plan](#), available on page 15. As of December 1, 2022, NAAPME has collected \$2.05 million in revenue from both fees.



Upcoming Activities

Now that revenue from both fees has begun to be received by the Enterprise, the NAAPME will be turning its attention to determining its initial program of projects for the latter half of fiscal year 2022-23 and into fiscal year 2023-24. The Board of Directors has heard from numerous voices across the nine-county area of where assistance can be provided within the three focus areas identified in the Enterprise’s ten-year plan.

The Board of Directors will begin the early part of 2023 soliciting information about proposed Bus Rapid Transit corridors being established in both the Denver Metro Area and the North Front Range area to see if the Enterprise can support projects which could provide first mile/last mile connections in those corridors. Additionally, the Enterprise will continue its outreach efforts to identify other areas of need that can help fund projects and programs that will help reduce ozone pollution and improve connectivity in neighborhoods in the nonattainment area.