



Colorado Department of Transportation | 2829 W Howard Pl | Denver, CO 80204

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## NAAPME Governing Board Meeting - January 27, 2022



*The Nonattainment Area Air Pollution Mitigation Enterprise mitigates the environmental and health impacts of increased air pollution from motor vehicle emissions in nonattainment areas.*

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## About The Nonattainment Area Air Pollution Mitigation Enterprise

This enterprise is created within the Colorado Department of Transportation (CDOT) to support mitigation of 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. Enterprise funding is 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 ([CRS 43-4-1303](#))

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## Meeting Resources

[First Meeting Agenda](#)

[Meeting Presentation](#)

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## NAAPME Governing Board Resources

[Statute - Board Creation](#)

[Board Appointments](#)

[Enterprise Fund & Fees](#)

[Board Powers & Duties](#)

[Enterprise Bylaws](#)

[Articles of Incorporation](#)

[Enterprise Expenditure and Revenue](#)

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## Additional Resources

### Optional Background Reading

- [Basic Information on Nonattainment](#)
- [Map of Colorado's Nonattainment Areas](#)

- [History of Ozone in Colorado](#)
    - CDPHE summary of ozone classification in Colorado since the 1970s
  - [Recent EPA Action on Colorado's Ozone Nonattainment Boundaries](#) (Weld Co)
    - [https://www.epa.gov/system/files/documents/2021-11/summar1.doc\\_0.pdf](https://www.epa.gov/system/files/documents/2021-11/summar1.doc_0.pdf)
    - <https://www.epa.gov/system/files/documents/2021-11/final-weld-county-co-tds-20210831.pdf>
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## About the Colorado Department of Transportation



The Colorado Department of Transportation (CDOT) works to provide the best multi-modal transportation system for Colorado that most effectively and safely moves people, goods and information. CDOT manages more than 23,000 lane miles of highway, more than 3,000 bridges and 35 mountain passes. CDOT also manages grant partnerships with a range of agencies and operates Bustang, the state-owned interregional express bus service. Gov. Jared Polis has charged CDOT to further build on the state's intermodal mobility options. Find more details at [codot.gov](https://www.codot.gov).



## NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE

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### ENTERPRISE GOVERNING BOARD MEETING - JANUARY 27, 2022

#### SCHEDULE AND AGENDA

- I. **Welcome and Introduction (5 minutes)**  
Rebecca White, *Director, Division of Transportation Development (CDOT)*
- II. **Powers & Duties, Enterprise Bylaws, Articles of Incorporation (10 minutes)**  
Herman Stockinger, *Deputy Director and Director of Policy (CDOT)*
- III. **Rulemaking for Setting Fees (5 minutes)**  
Herman Stockinger, *Deputy Director and Director of Policy (CDOT)*
- IV. **Transportation Commission Loan - Board Expenditures (5 min)**  
Jeff Sudmeier, *Chief Financial Officer (CDOT)*
- V. **Nonattainment 101 (20 minutes)**  
Dena Wojtach, *Manager, Planning and Policy, Air Pollution Control Division (CDPHE)*
- VI. **Best Practices Training (Colorado Sunshine Law) (30 minutes)**  
Kathy Young, *Senior Assistant Attorney General, State of Colorado*
- VII. **Future Meetings (5 minutes)**



# Nonattainment Area Air Pollution Mitigation Enterprise



**COLORADO**

Department of Transportation

*Governing Board Meeting*  
January 19, 2022



# Meeting Agenda

1. Welcome & Introductions  
Speaker: Rebecca White, Director, *Division of Transportation Development* (CDOT)
2. Powers & Duties, Enterprise Bylaws, Articles of Incorporation  
Speaker: Herman Stockinger, Deputy Director and Director of Policy (CDOT)
3. Rulemaking for Setting Fees  
Speaker: Herman Stockinger, Deputy Director and Director of Policy (CDOT)
4. Transportation Commission Loan for Board Expenditures  
Speaker: Jeff Sudmeier, Chief Financial Officer (CDOT)
5. Nonattainment Overview  
Speaker: Dena Wojtach, Manager, Planning and Policy, *Air Pollution Control Division* (CDPHE)
6. Best Practices Training  
Speaker: Kathy Young, *First Assistant Attorney General*, Transportation Unit, *State of Colorado*
7. Future Meetings



# Welcome and Introduction

## Enterprise Overview

- Created within CDOT to mitigate transportation-related emissions in ozone nonattainment areas
- Enterprise can fund projects that reduce traffic or directly reduce air pollution through the congestion mitigation and air quality improvement program
- Enterprise can impose an air pollution mitigation fee on retail deliveries and rides provided by TNCs to fund its operations





# Governing Board

Appointment	Appointment Criteria
Lynn Baca, <i>Brighton</i>	Elected official of a disproportionately impacted community that is a member DRCOG
Yessica Holguin, <i>Denver</i>	Representative of a Disproportionately Impacted Community
Kristin Stephens, <i>Fort Collins</i>	Elected official of a local government that is a member of NFRMPO
Danielle "Stacy" Suniga, <i>Greely</i>	Expertise on Environmental, Environmental Justice, or Public Health Issues
Leanne Wheeler, <i>Aurora</i>	Representative of a Disproportionately Impacted Community
Shoshana Lew	Executive Director, CDOT (or designee)
Dena Wojtach	Executive Director Designee, CDPHE





# Powers and Duties/Reporting

- Promulgate rules to impose an “Air Pollution Mitigation Per Ride Fee” and an “Air Pollution Mitigation Retail Delivery Fee.”
- Notify the Department of Revenue by March 15 each year of the amount of the fee that would begin July 1.
- Issue Grants (and Loans and Rebates); Issue Revenue Bonds.
- Accept Loans from CDOT and reimburse the Department of any loans received.
- By June 1, 2022 publish a 10-Year Plan that “details how the enterprise will execute its business purpose and estimate the funding available for ten years.
- Create, maintain and regularly update on its website a “public accountability dashboard” that includes the funding status and progress toward completion of each project.”
- Prepare an annual report that details activities of the enterprise and present the report to the Transportation Commission and House and Senate Transportation Committees.



# Choosing Projects and Seeking Public Input

- Projects must be in nonattainment areas (DRCOG & NFRMPO areas).
- Seek input from communities, including but not limited to disproportionately affected communities and local governments, to:
  - Mitigate the environmental and health impacts of highway projects
  - Reduce traffic congestion
  - Improve neighborhood connectivity for communities adjacent to highways
- The Enterprise shall include mitigation strategies that take into account the input as well as issues and impacts of particular importance to the state such as reduction of greenhouse gas emissions and fine particulate matter.



# Bylaws and Articles of Incorporation

## **Enterprise Bylaws** - details how the Board shall function

- Board Composition and Details
- Frequency and Method of Holding Meetings
- Open Meetings and Open Records
- Officers and Staff
- Fiscal Year and Budget
- Miscellaneous Provisions

## **Articles of Incorporation** - mostly reiterates statute

- Business Purpose
- TABOR Exemption
- Powers and Duties
- Revenues and Expenditures
- Need to Adopt Bylaws



# Rulemaking for Enterprise Fee Setting

## Single Statutory Purpose for Rule: Set the Fees

- Retail delivery fee of seven-tenths of one cent per retail delivery
- Per ride fee of 22 ½ cents for prearranged ride that is a carshare ride or for which the transportation network company driver transports the rider (11 ¼ cents in ZEV)

## Process and Timeline

- Open Rule: Enterprise Opens Rule February 24, authorizes CDOT Hearing Officer to conduct Public Hearing
- File Rule: CDOT staff “files the rule” with the Secretary of State
- Public Hearing: CDOT staff conducts public hearing per the Administrative Procedures Act in late March or early April
- Adopt Rule: Enterprise Board adopts Rule on April 14
- Effective Date: As early as May 31.



# Nonattainment Area Air Pollution Mitigation Enterprise Loan

Loan for Board Expenditures



# Expected Revenue and Loans for Board Expenditures

## Nonattainment Area Air Pollution Mitigation Enterprise - Summary FY 2022-23 to FY 2031-32

<b>Fiscal Year</b>	<b>Mitigation Per Ride Fee</b>	<b>Mitigation Retail Delivery Fee</b>	<b>Total Fee Revenue</b>
FY 2021-22	\$0	\$0	\$0
FY 2022-23	\$5,193,149	\$1,932,077	\$7,125,226
FY 2023-24	\$6,350,348	\$2,131,003	\$8,481,351
FY 2024-25	\$7,799,651	\$2,294,681	\$10,094,332
FY 2025-26	\$9,325,133	\$2,597,962	\$11,923,096
FY 2026-27	\$11,713,055	\$2,871,891	\$14,584,946
FY 2027-28	\$14,330,228	\$3,177,431	\$17,507,658
FY 2028-29	\$17,528,868	\$3,432,886	\$20,961,753
FY 2029-30	\$21,626,892	\$3,900,463	\$25,527,354
FY 2030-31	\$26,448,435	\$4,328,152	\$30,776,588
FY 2031-32	\$31,857,744	\$4,808,073	\$36,665,817
<b>10-Year Total</b>	<b>\$152,173,502</b>	<b>\$31,474,619</b>	<b>\$183,648,121</b>



# Nonattainment Area Air Pollution Mitigation Enterprise Loan

- The Enterprise currently has no operating budget and no source of funding.
- Staff has prepared a loan (SB21-260 requires funds to be repaid and prohibits a grant). The loan was approved by the Transportation Commission on December 16, 2021, contingent on approval by the Enterprise Board.
- Repayment starts September 1, 2022 and the deadline for the principal amount and the interest (2% annually) on the unpaid principal balance is June 30, 2023. The Enterprise has the option to prepay all or a portion of the loan principal without penalty.



# Nonattainment Area Air Pollution Mitigation Enterprise Loan

Staff estimates \$74,700 to cover costs prior to FY 2022-23 when fee revenues begin.

Expense Description	Quantity	FY22 Funding
Deputy Director	20.0% of 1.0 FTE	\$25,000
Division of Transportation Development (DTD) Staff (10-Year Plan Development)	15.0% of 1.0 FTE	\$12,000
Fellow	30.0% of 1.0 FTE	\$18,000
Division of Accounting and Finance Staff	15.0% of 1.0 FTE	\$15,000
Policy Staff	2.5% of 1.0 FTE	\$2,500
Board Travel/Reimbursement	\$1,000 per mtg (2)	\$2,000
Meeting Expenses	\$100 per mtg (2)	\$200
<b>Total</b>		<b>\$74,700</b>





# Nonattainment Overview

# Nonattainment Overview

Why a downgrade to “severe”?

What reduction strategies are being considered?

What is the timeline to inform planning?

What are disproportionately impacted community concerns?

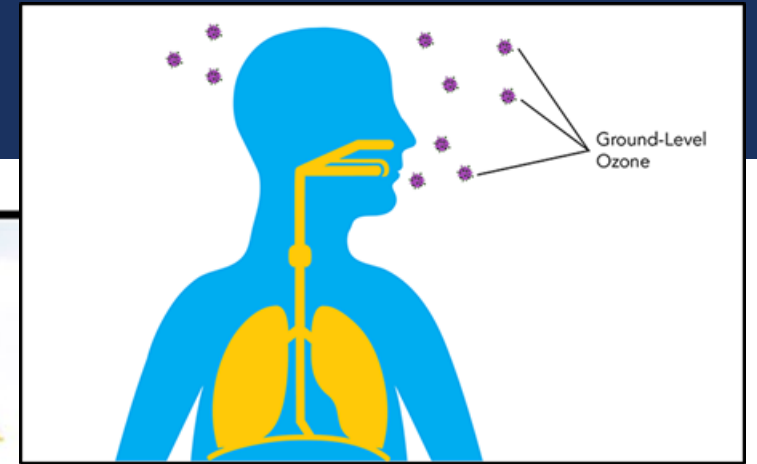
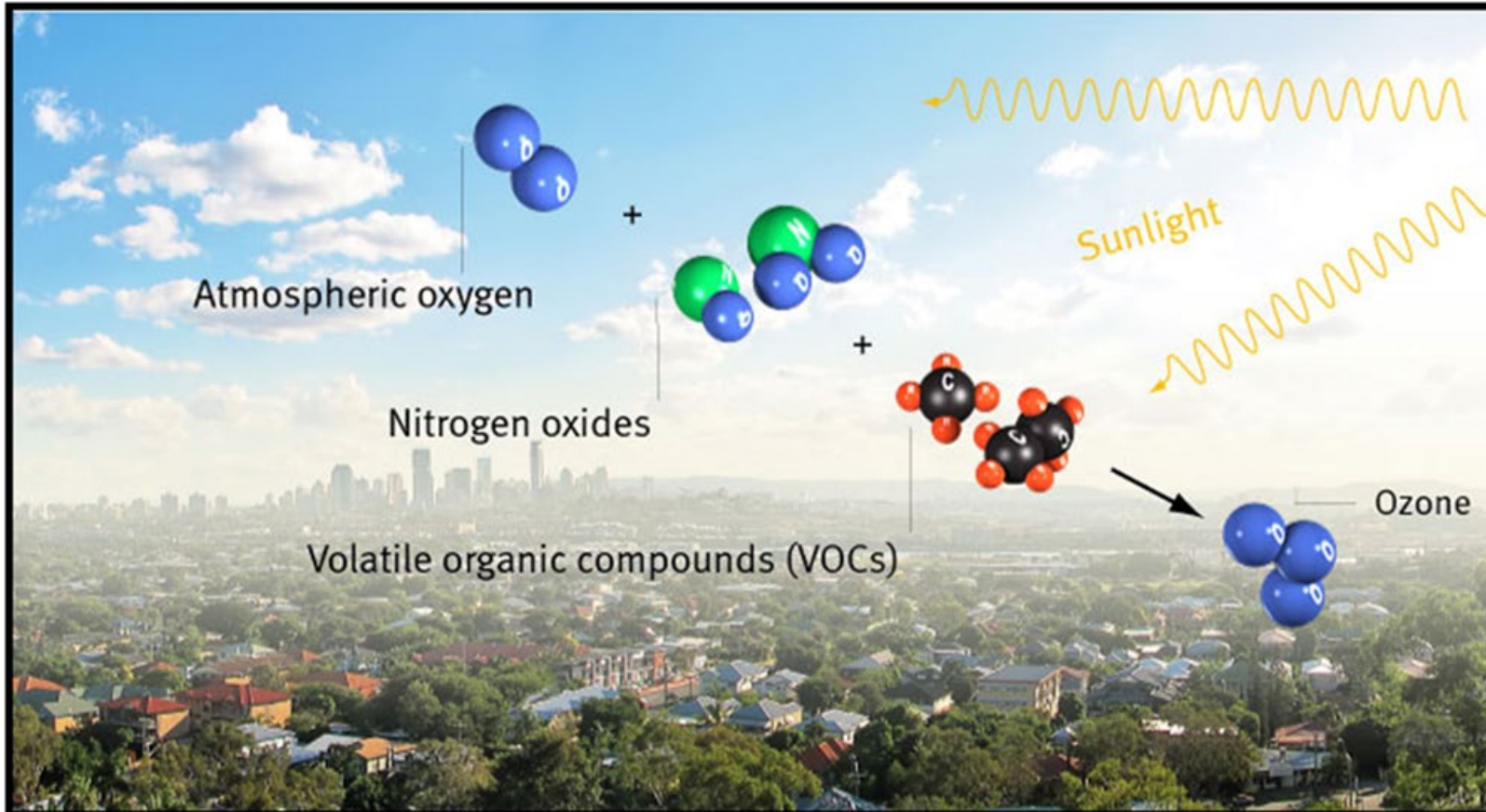
- ❑ Ozone Basics
- ❑ Colorado’s Ozone Status
- ❑ Upcoming Reclassifications
- ❑ Implications
- ❑ Next Steps





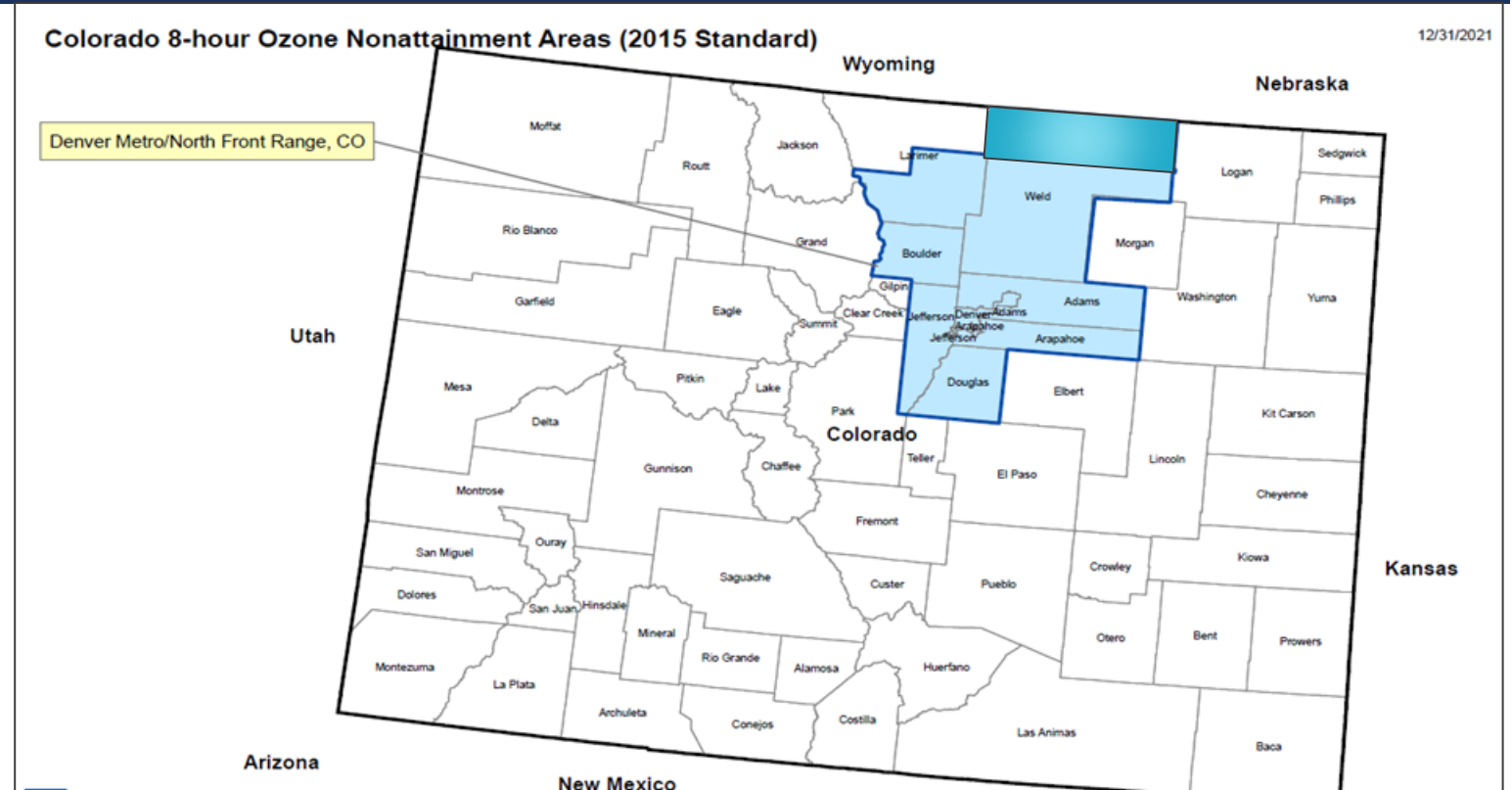
# AIR POLLUTION

# OZONE BASICS



# OZONE NONATTAINMENT AREA

- Environmental Protection Agency (EPA) sets federal standards
  - 2015 Ozone National Ambient Air Quality Standard
  - 2008 Ozone National Ambient Air Quality Standard
- EPA sets the boundary for areas that are not meeting standards, called nonattainment areas



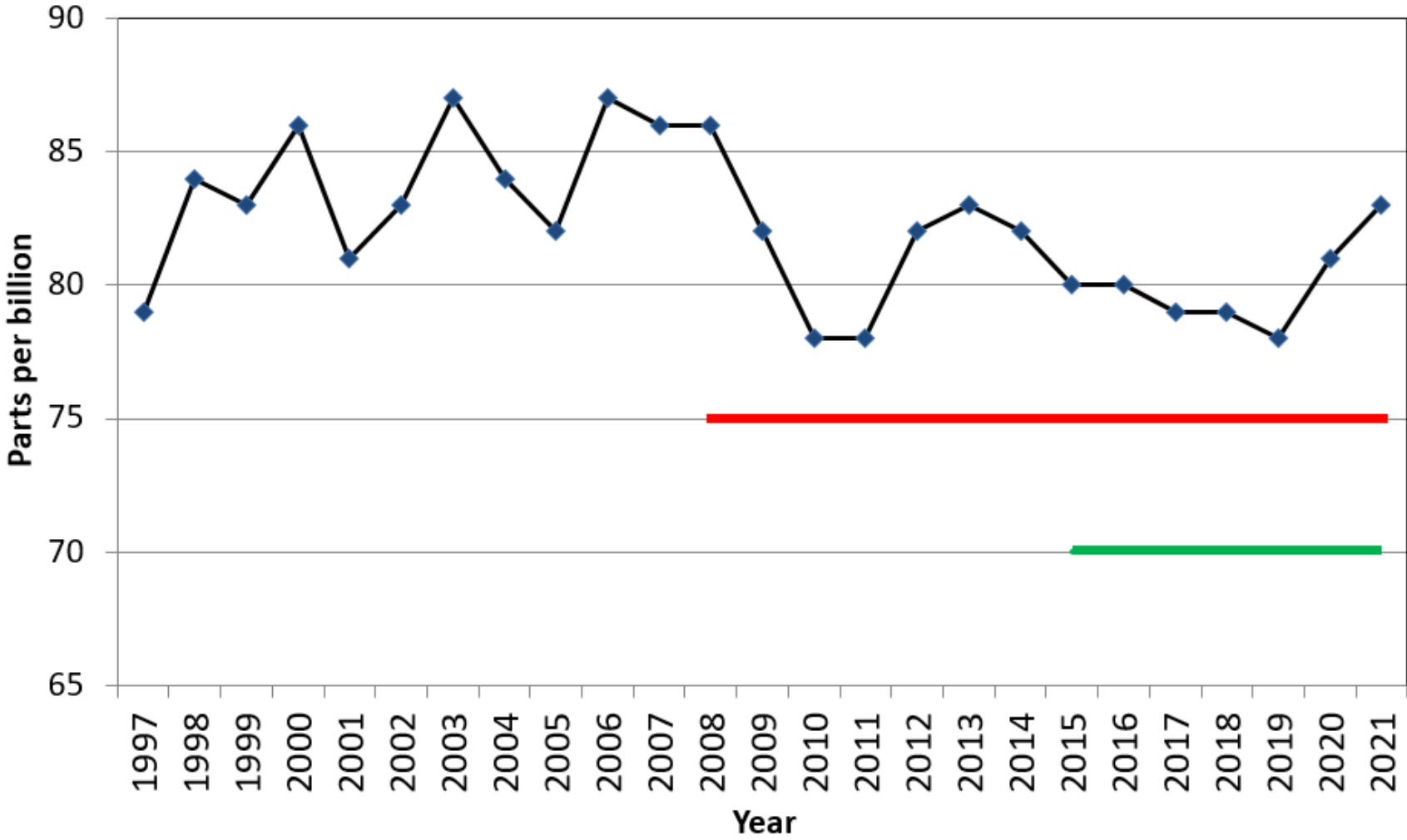
Source - EPA, 1/18/22: [https://www3.epa.gov/airquality/greenbook/co8\\_2015.html](https://www3.epa.gov/airquality/greenbook/co8_2015.html)

# COLORADO IS NOT MEETING FEDERAL OZONE STANDARDS



**COLORADO**  
Air Pollution Control Division  
Department of Public Health & Environment

# 8-Hour Ozone Values for Denver Metro/North Front Range



# COLORADO'S HUMAN- CAUSED EMISSIONS ARE DECREASING

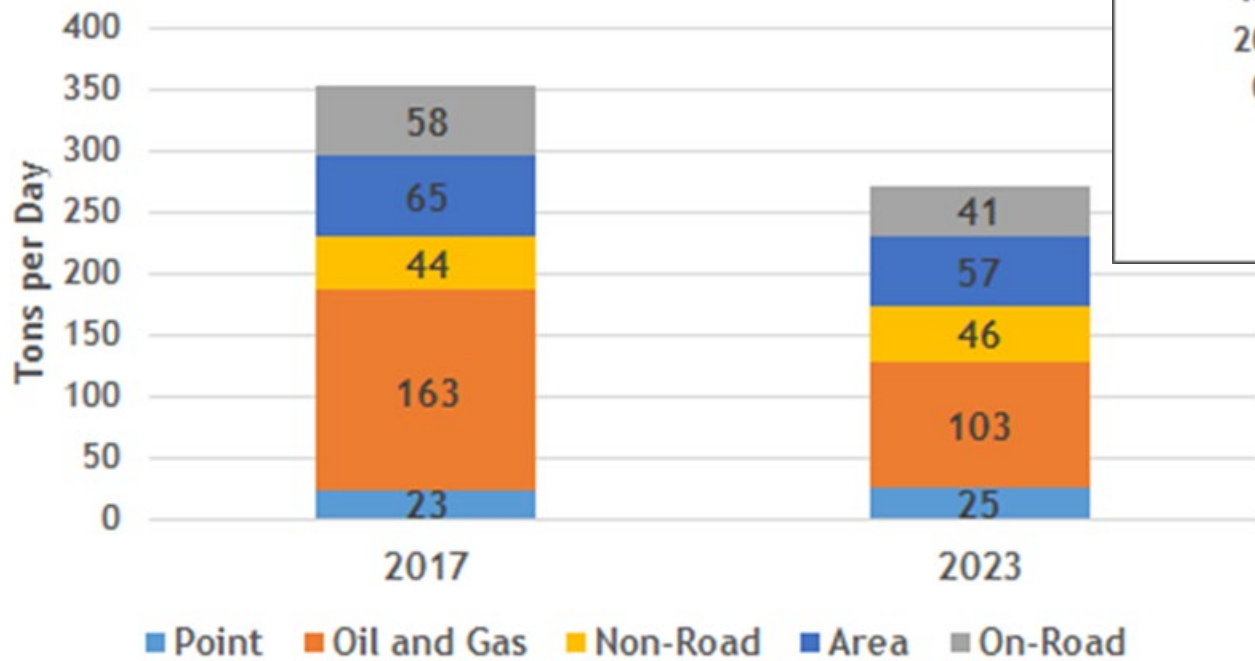


**COLORADO**  
Air Pollution Control Division  
Department of Public Health & Environment

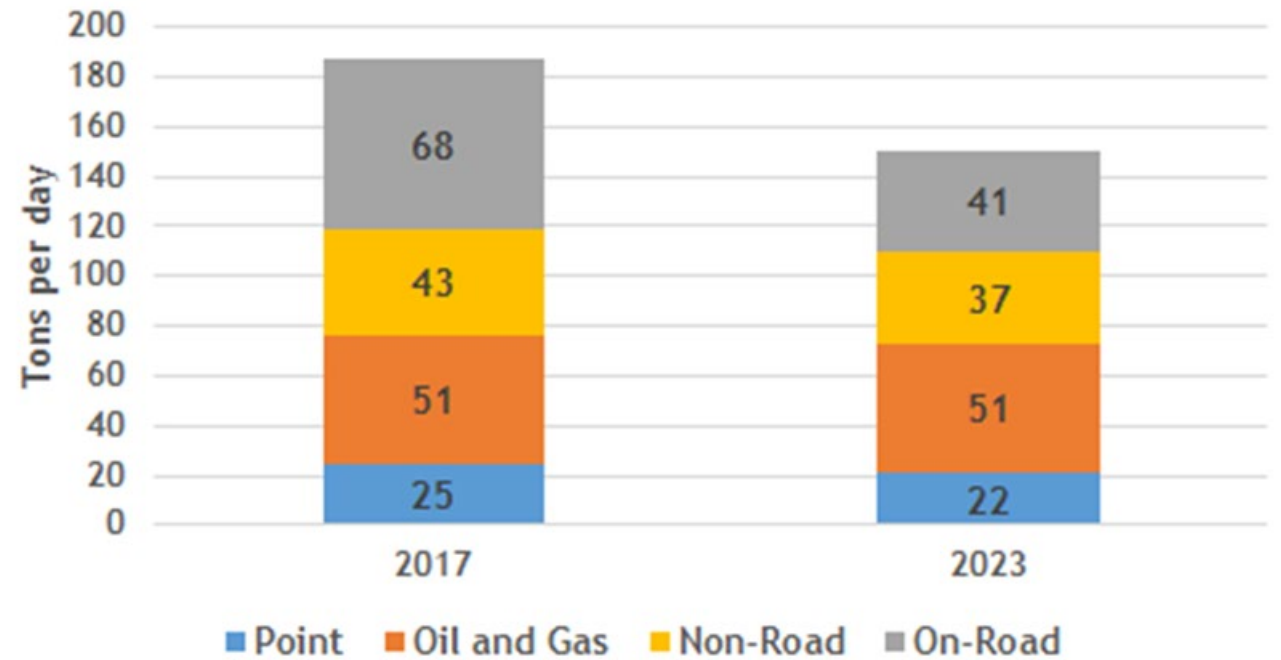


# Colorado Human-Caused Ozone Precursors

## VOCs



## NOx

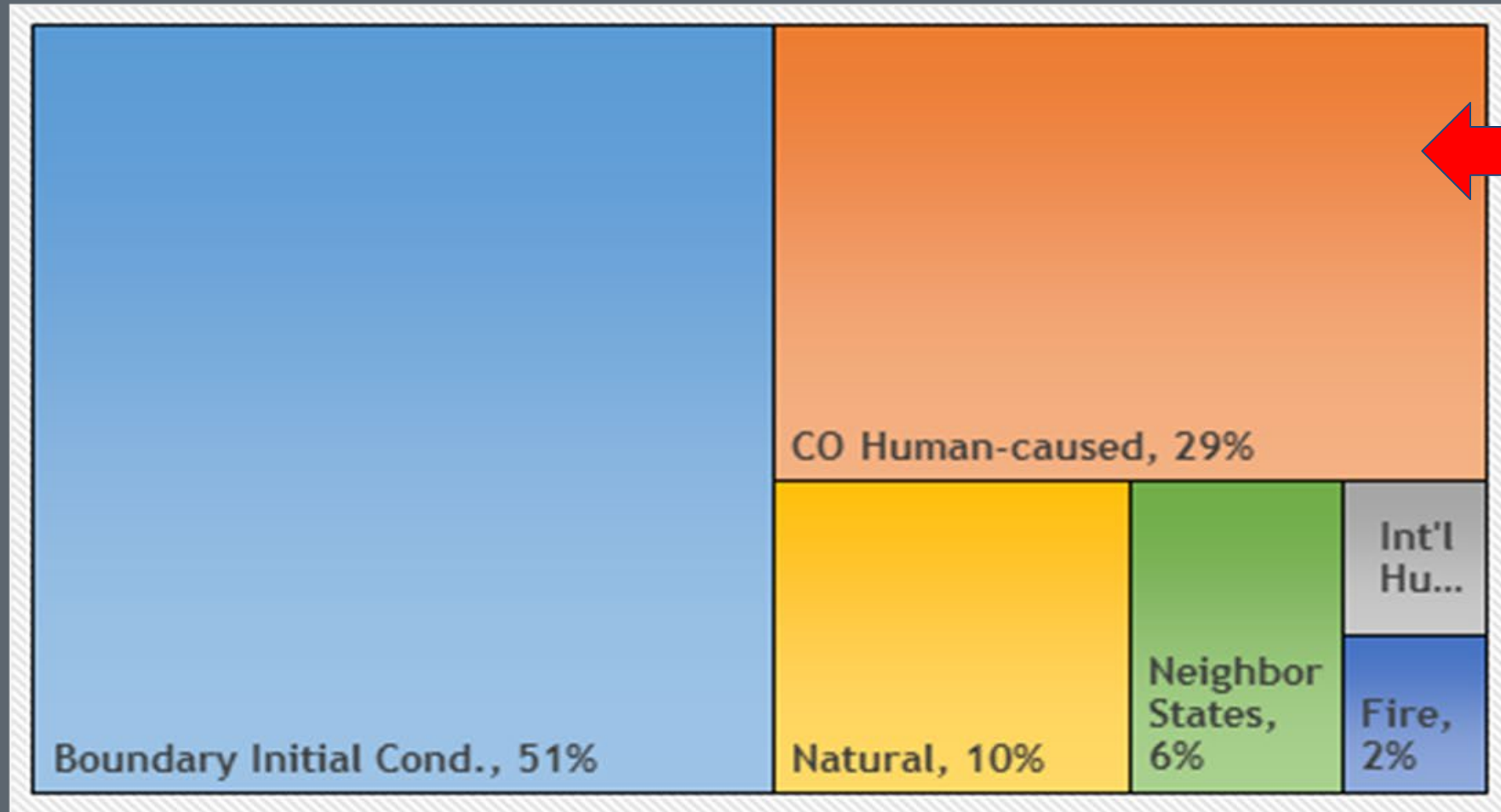


**ALMOST  $\frac{1}{3}$  OF OZONE  
FORMATION COMES FROM  
COLORADO'S HUMAN-CAUSED  
EMISSIONS**



**COLORADO**  
**Air Pollution Control Division**  
Department of Public Health & Environment

# Average Contribution Across Monitors



## 2023 Ozone Source Apportionment Modeling Results by Monitor

Monitor	Top Contributor	Secondary Contributor	Tertiary Contributor
Chatfield	Light Duty Vehicles	Lawn & Garden	Non EGU Point Sources
NREL	Light Duty Vehicles	Non EGU Point Sources	Lawn & Garden
Rocky Flats North	Light Duty Vehicles	Non EGU Point Sources	O&G - Area
Fort Collins - West	O&G - Area	Light Duty Vehicles	Non EGU Point Sources
Highland	Light Duty Vehicles	Lawn & Garden	Construction
Welch	Light Duty Vehicles	Lawn & Garden	Non EGU Point Sources
Greeley - Weld Tower	O&G - Area	Light Duty Vehicles	O&G - Point
RMNP	Light Duty Vehicles	Non EGU Point Sources	O&G - Area
Aurora East	Light Duty Vehicles	O&G - Area	Non EGU Point Sources
CAMP	Light Duty Vehicles	Non EGU Point Sources	Lawn & Garden
La Casa	Light Duty Vehicles	Non EGU Point Sources	Lawn & Garden
Fort Collins - CSU	O&G - Area	Light Duty Vehicles	Non EGU Point Sources
Welby	Light Duty Vehicles	Non EGU Point Sources	EGU



# THERE'S MORE TO DO



**COLORADO**  
**Air Pollution Control Division**  
Department of Public Health & Environment

# REDUCTION STRATEGIES IN PLACE OR COMING SOON

## VEHICLE -FOCUSED

- New emissions standards
- Inspection & Maintenance Program
- Gasoline & diesel fuel standards

## INDUSTRY FOCUSED

- Utilities/power generation
- Oil & gas industry
- Major sources (large emitting sources)

## ELECTRIFICATION

- Transportation focused (charging stations, fleets)
- Electricity from renewable sources

## TOUGHER PERMITTING REQUIREMENTS

- More sources covered
- Tighter control requirements
- Emission increases are offset

## OTHER PROJECTS' COBENEFITS

- CDOT's Transportation GHG Rule (adopted 2021)
- AQCC's GEMM Rule (adopted 2021)
- AQCC's Regional Haze Rule (adopted 2021)
- AQCC's Oil & Gas Rule (adopted 2021)
- CEO's Building Efficiency Taskforce Recommendations/AQCC Rulemaking (2022)



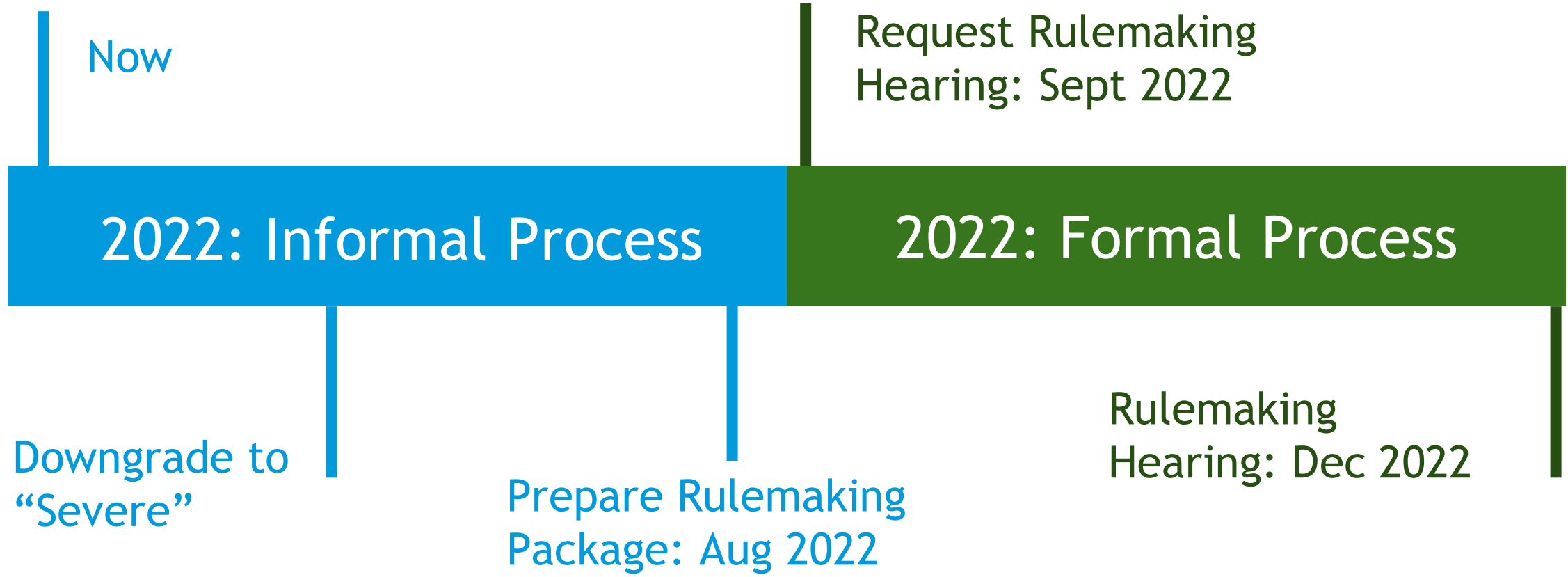
# DEVELOPING REDUCTION STRATEGIES

- Stationary Engines (non-EGU Point)
  - Large (1,000 hp) natural gas fired engines in oil and gas sector
  - Smaller engines
- Motor Vehicle Emission Budgets
- Non-road Mobile Emissions
  - Construction
  - Lawn & Garden
- Vehicle Miles Traveled Growth  
Offset/Reductions

Other  
Suggestions  
Welcome!



# TIMELINE TO INFORM PLANNING



Now

Request Rulemaking  
Hearing: Sept 2022

2022: Informal Process

2022: Formal Process

Downgrade to  
"Severe"

Prepare Rulemaking  
Package: Aug 2022

Rulemaking  
Hearing: Dec 2022







THE WAY  
TO MY HEART  
IS A  
BIKE LANE

LOVE,   
COLORADO



Pack a lunch to save a trip.  
#BetterAir



MOWING  
AFTER 5 PM  
IS BETTER FOR  
COLORADO AIR



[SimpleStepsBetterAir.org](http://SimpleStepsBetterAir.org)



Sunlight  
+ Nitrogen Oxides (NOx)  
+ Volatile Organic Compounds (VOCs)  
= Ground-Level Ozone



[SimpleStepsBetterAir.org](http://SimpleStepsBetterAir.org)



KNOW  
WHEN  
SUMMER  
AIR IS  
SAFE  
FOR  
YOUR  
FAMILY



[SimpleStepsBetterAir.org](http://SimpleStepsBetterAir.org)

# HOW TO STAY INFORMED

- Additional Public Meetings Tentatively Scheduled
  - March 17, 11am-1pm
  - April 26, 6-8 pm
  - May 14, 10am-12pm
- Targeted Stakeholder Meetings Planned
- Regional Air Quality Council (RAQC) Board and Committee Meetings Scheduled
  - Board Meetings: 1st Friday of each month, 9:30-Noon
  - Committee Meeting Schedule: <https://raqc.org/events>
- Other Ways to Stay Informed
  - Sign up for Air Pollution Control Division (APCD) notifications: [cdphe.colorado.gov/air-mailing-lists](https://cdphe.colorado.gov/air-mailing-lists)
  - Watch APCD webpage: <https://cdphe.colorado.gov/severe-ozone-planning>
  - Watch RAQC website: <https://raqc.org/>
    - Simple Steps Better Air: <https://simplestepsbetterair.org/>
- Submit comments to APCD at: [cdphe.commentsapcd@state.co.us](mailto:cdphe.commentsapcd@state.co.us) with "Severe Ozone Planning" in the subject line





# Colorado Boards Best Practices



# **ANNUAL BEST PRACTICES TRAINING**

**Nonattainment Area Air Pollution Mitigation Enterprise  
Board Meeting - January 27, 2022**

**Kathy Young  
First Assistant Attorney General  
Transportation Unit**

# Best Practices

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- Section 24-3.7-102, C.R.S., requires annual training in several areas including:
  - ◆ Statutory powers and duties;
  - ◆ Identifying and managing conflicts of interest;
  - ◆ Understanding the requirements of the Colorado Open Records Act and open meetings laws.

# GOVERNING STATUTE

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Section 43-4-1303, C.R.S. – A copy of the statute is attached.

- TABOR-exempt Enterprise
- Government-owned business within CDOT.
- Type 1 Transfer



# Conflict of Interest

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- Rules of Conduct – A Commissioner who receives no compensation other than a per diem allowance . . . “shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.”

Section 24-18-108.5, C.R.S.

- Voluntary Disclosure – Two step process:

- ◆ You can make a written disclosure to the Secretary of State that adequately describes the financial interest; and
- ◆ Immediately before the vote, you state for the record the fact and summarize the nature of the interest.

Section 24-18-110, C.R.S.

# CORA – In a Nutshell

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All public records **shall** be open for inspection by any person at reasonable times, except as provided in part 2 or as otherwise provided by law.

- ◆ Section 24-72-203, C.R.S.





## Key Concept – “Public Record”

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- “...includes all writings...
- ...made, maintained, or kept...
- ...by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state...”
- Section 24-72-202(6)(A)(I), C.R.S.

# Is My Record a “Public Record”?

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- What is a public record? Definition is very broad and includes:
  - ◆ Internal and external communications, such as might take place among agency staff, between staff and a board, between board members, between staff, between members of one agency and another agency, and between members of the public/3<sup>rd</sup> parties.
  - ◆ No limitation on means of communication. A “public record” includes both hard-paper documents and electronic records/documents.

## Record, but Not a “Public Record”

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- CORA exempts numerous documents from the definition of “public records.” Those are found in section 24-72-202(6), C.R.S.
  - ◆ Most exemptions will not apply to this Board.
  - ◆ Work product prepared for elected officials is exempt.

# Public Record Denial of Inspection

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- Basis for denying inspection of “public records” found in section 24-72-204, C.R.S.
- Reasons are many, and range from “contrary to any state statute” and court order, to reasons in the public interest such as test questions and scoring keys from licensing exams, security arrangements, trade secrets, certain employment records, etc.

## Deliberative Process Privilege

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- One such exception is the deliberative process or governmental privilege found in section 24-72-204(3)(a)(XIII), C.R.S. and covers records “if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived.”

## Other Reasons to Deny

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- Discretionary denial – Section 204(2)(a) – “may deny... unless otherwise provided by law...”
- Mandatory denial – Section 204(3)(a) “shall deny the right of inspection, unless otherwise provided by law...”
- Know your organic act and any related statutes for additional reasons to withhold. Don't forget relevant federal statutes.
- Be ready to explain denial – the applicant may request a written statement of the grounds for denial.

## But I Want them NOW!

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- The requestor must have access to the records within a “reasonable time.”
- “a ‘reasonable time’ shall be presumed to be three working days or less.”
  - ◆ Sec. 24-72-203(3)(b), C.R.S.
- The period may be extended by seven working days upon finding of “extenuating circumstances.”
  - ◆ Sec. 24-72-203(3)(b), C.R.S.

# Extenuating Circumstances

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- Section 203(3) spells out what constitutes “extenuating circumstances” and “shall be provided to the person making the request within the three-day period.”
- Most common: “A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian’s obligation to perform his or her other public service responsibilities.” Section 203(3)(b)(III).
- In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.” Section 24-72-203(3)(c), C.R.S.



# Remedies

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## Options for Denial of Access Include:

- Fourteen day “cooling off” period – Section 24-72-204(5)(a), C.R.S.
- Requestor may apply to the district court for an order, with court costs and reasonable attorney fees to the prevailing party. Sec. 24-72-204(5), C.R.S.
- Custodian may sue to obtain a declaratory order determining status of records for CORA request where it cannot be determined. **NO ATTORNEYS FEES!** Section 24-72-204(6), C.R.S.

# Open Meetings Law (OML)

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- “It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.” Section 24-6-401, C.R.S.
- To give citizens an expanded opportunity to become fully informed on issues of public importance
- To allow citizens to participate in the legislative decision-making process that affects their personal interests



# What is a Meeting?

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## A Meeting is Defined by the Act as:



Any kind of **gathering**, convened to discuss **public business**, in person, by telephone, electronically, or by other means of communication.

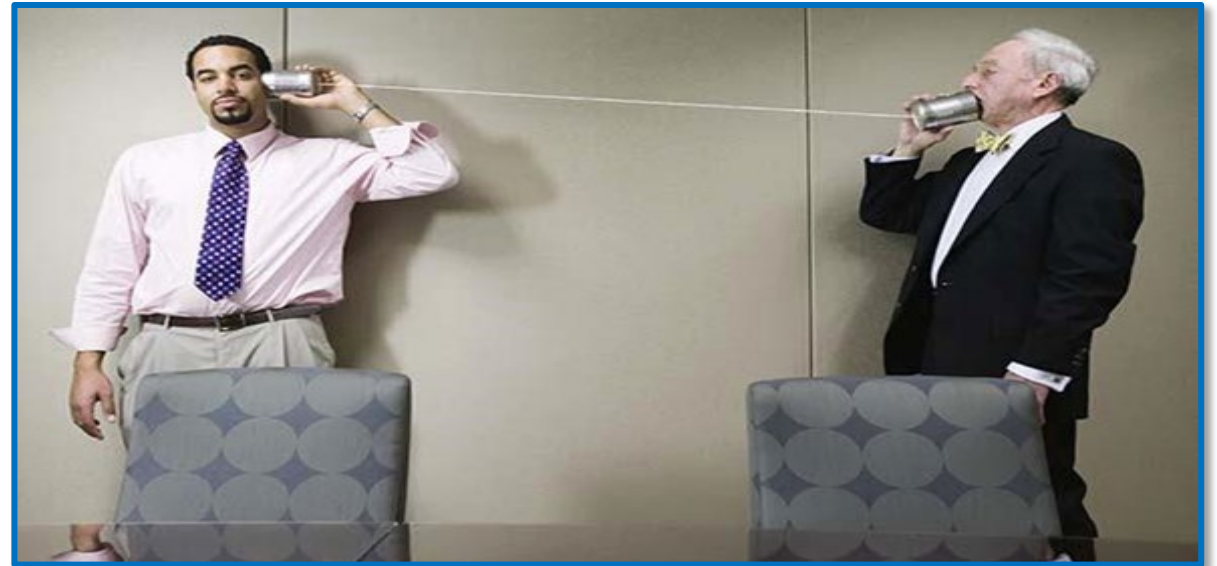


Section 24-6-402(1)(b)

# When Are Meetings Considered Public?

- All meetings of two or more members of a state public body at which any **public business** is discussed or at which any **formal action** (public policy, rule making, legislation, policy making, interpretation of policies, rules, regulations, guidance documents or the like) may be taken are declared to be public meetings open to the public at all times. Section 24-6-402(2)(a)
- To determine whether “public business” is discussed, Court looks to policy-making responsibilities and powers of the state body

*Board of County Comm’rs v. Costilla County Conservancy Dist*, 88 P.3d 1188, 1189 (Colo. 2004); *Intermountain Rural Elec. Assn. v. Colo. PUC*, 298 P.3d 1027 (Colo. App. 2012)



# What is Proper Notice?

- Notice must be “full and timely.” Section 24-6-402(2)(c)
- “Full notice” is objective, to be interpreted in light of an ordinary member of the community to whom it is directed . . . to provide fair notice to members of that community. *Town of Marble v. Darien*, 181 P.3d 1148 (Colo. 2008).
- Open Meetings Law imposes no requirement that specific advance notice be given of formal actions that might be taken. Notice is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice. *Id.*
- Posting must occur no less than 24 hours prior to the meeting



# What Does the Notice Include?

- Date and time of the meeting
- Location of the meeting
- Agenda for meeting
- Specific agenda information if possible
- ADA Considerations?



# Minutes

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- Minutes are prepared for all meetings. Section 24-6-402(2)(d).
- Minutes are open to the public for review. *Id.*
- Minutes of meeting during which an executive session is authorized shall only reflect the topic discussed in executive session. *Id.*



**Email discussions between members regarding public business are subject to public inspection.**

# What is Executive Session?

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- Meeting of the board without the public present
- Can only be used for discussions of specific topics
- Cannot be used to take any formal action
- Exception to Open Meetings Law





# Privileged Communications

- Attorney-client privileged discussions are confidential by the Open Meetings Law as well as state statute C.R.S §13-90-107(1)(b) and federal law.
- Privileged communications during Executive Session may be required to be electronically recorded



## Executive Session is a Limited Discussion?

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- Members may only discuss the topic(s) that were announced during the open public meeting and which were specifically referred to executive session
- Must follow exact process

# Examples of Topics

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- **Conferences with an attorney representing the state public body** concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions.
- Matters required to be kept **confidential** by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;
- Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;
- Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;
- All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session.

## What Cannot Occur in Executive Session?

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- Adoption of any proposed policy, position, resolution, rule, regulation, or formal action. Section 24-6-402(3)(a).
- No additional matters may be discussed.



# When Don't You Need a Meeting?

- Chance meetings
- Social gatherings at which discussion of public business is not the central purpose
- Other events in which public business is not the central purpose

Section 24-6-402(e), C.R.S.



# Failure to Comply With OML

- **Invalidation.** Decisions of the Board may be invalidated should the Board fail to adhere to the requirements of the Open Meetings Law. This may occur in the case of a regularly-scheduled meeting that has not been properly noticed or in a situation where two or more Board members discussed an agenda item in a context outside of a regular meeting. Section 24-6-402(8), C.R.S.
- **Willful Misconduct.** Members who engage in “meetings” outside the regularly scheduled public meetings may be found to have been engaged in “willful misconduct” and, therefore, be subject to removal from the Board.
- **Negative Publicity/Litigation.** Failure to follow the requirements of the Open Meetings Law may result in the Board, and its members, being questioned publicly concerning the content of the alleged outside conversations. Not only does this impact negatively upon the Board but, moreover, should litigation ensue, members may be required to testify against other members either in deposition or at hearing regarding the alleged failure to comply with the law. The remedies available to a party who has been successful in proving a violation of the Open Meetings Law include injunctive relief, costs, and attorney fees. See § 24-6-402(9), C.R.S.
- **Release of Otherwise Confidential Information.** A court may open the portion of the executive session that was held in violation of the Open Meetings Law. Consequently, otherwise confidential information discussed in executive session may be disclosed publicly. Section 24-72-204(5.5), C.R.S; see, e.g., *Gumina v. City of Sterling*, 119 P.2d 527, 532 (Colo. App. 2004) (holding that if a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session).

# Virtual Open Meetings

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- Open meetings may be held virtually.
- Public comments are not required, but there are some tips if a board does want to have a public comments be part of an open meeting.







**The Nonattainment Enterprise needs to meet at the following junctures in order to take action on several required decision points. Also listed is a possible Thursday at 3pm time and date as a starting point to consider.**

- **End of February**
  - February 24th @ 3pm
- **Mid-April**
  - April 14th @ 3pm
- **End of May**
  - May 26th @ 3pm
- **End of June**
  - June 23 or June 30 @3pm

After these series of meetings, the Board can determine the cadence for future meetings (e.g. quarterly).



# Board Leadership & Support Roles

## General Duties

*All officers of the Enterprise, as between themselves and the Enterprise, shall have the authority and shall perform such duties in the management of the Enterprise as may be provided in these Bylaws, the Articles of Organization, or as may be determined by resolution or action of the Enterprise Board not inconsistent with these Bylaws.*



# Board Leadership & Support Roles

## Chair

The Chair shall preside at all meetings of the Enterprise Board. The Chair shall be a Member of the Enterprise Board. The Chair shall serve as the principal spokesperson for the Enterprise Board, and shall aid the Enterprise Program Manager and/or Secretary in coordination of meetings and agendas, and perform all duties incident to the office.

## Vice Chair

The Vice-Chair shall, in the case of the absence or disability of the Chair, perform the duties of the Chair. The Vice-Chair shall be a Member of the Enterprise Board. The Vice-Chair shall also perform such other duties as may be prescribed by the Enterprise Board from time to time.



# Board Leadership & Support Roles

## Appointed Secretary

The Secretary, a member of the Colorado Department of Transportation (“CDOT”) staff, shall keep the records of the Enterprise Board. The Secretary shall perform all of the other administrative duties usually pertaining to this office, including taking the minutes of Enterprise Board meetings, and coordinating all communications, announcements, etc. The Secretary shall work with the Chair to coordinate Enterprise Board meeting details, including securing a location, posting the agenda, board packets, and notification of meetings. The Secretary’s term of office shall be at the will of the Enterprise Board.



# Board Leadership & Support Roles

## Program Administrator

The Program Administrator is a senior member of the CDOT staff assigned to provide strategic management and support for the Enterprise Board. The Program Administrator shall serve as a point of contact for the Enterprise and the Enterprise Board. The Program Administrator may suggest policies, procedures, and agenda items for the Board's consideration and shall see that all policies, directions and orders of the Board are carried out. The Program Administrator shall have such other authority, powers, or duties as may be prescribed by the Board.

## Other Officers

The Enterprise Board may appoint other officers as it deems necessary and appropriate.

West's Colorado Revised Statutes Annotated

Title 43. Transportation

Financing

Article 4. Financing

Part 13. Nonattainment Area Air Pollution Mitigation Enterprise

C.R.S.A. § 43-4-1303

§ 43-4-1303. Nonattainment area air pollution mitigation enterprise--creation--board--powers and duties--fees--fund

Effective: June 17, 2021

Currentness

(1)(a) The nonattainment area air pollution mitigation enterprise is hereby created in the department. The enterprise is and operates as a government-owned business within the department in order to execute its business purpose as specified in subsection (3) of this section by exercising the powers and performing the duties set forth in this section.

(b) The enterprise exercises its powers and performs its duties and functions under the department as if the same were transferred to the department by a **type 1** transfer, as defined in [section 24-1-105](#).

(2)(a) The governing board of the enterprise consists of up to seven members as follows:

(I) Five members appointed by the governor with the consent of the senate as follows:

(A) One member with expertise on environmental, environmental justice, or public health issues;

(B) One member who is an elected official of a disproportionately impacted community that is a member of the Denver regional council of governments;

(C) One member who is an elected official of a local government that is a member of the north front range metropolitan planning organization; and

(D) Up to two members who are representatives of disproportionately impacted communities;

(II) The executive director of the department of transportation or the executive director's designee; and

(III) The executive director of the department of public health and environment or the executive director's designee.

(b) Appointed members of the board serve at the pleasure of the governor. The other board members serve for as long as they hold their executive director positions or are designated to serve by an executive director.

(3) The business purpose of the enterprise 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. To allow the enterprise to accomplish this purpose and fully exercise its powers and duties through the board, the enterprise may:

(a) Impose an air pollution mitigation per ride fee and an air pollution mitigation retail delivery fee as authorized by subsections (7) and (8) of this section;

(b) Issue grants, loans, and rebates as authorized by subsection (9) of this section; and

(c) Issue revenue bonds payable from the revenue and other available money of the enterprise.

(4) The enterprise constitutes an enterprise for purposes of [section 20 of article X of the state constitution](#) so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenue in grants from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this subsection (4), the enterprise is not subject to [section 20 of article X of the state constitution](#).

(5)(a) The nonattainment area air pollution mitigation enterprise fund is hereby created in the state treasury. The fund consists of air pollution mitigation per ride fee revenue and air pollution mitigation retail delivery fee revenue credited to the fund pursuant to subsections (7) and (8) of this section, any monetary gifts, grants, donations, or other payments received by the enterprise, any federal money that may be credited to the fund, and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Money in the fund is continuously appropriated to the enterprise for the purposes set forth in this part 13 and to pay the enterprise's reasonable and necessary operating expenses, including the repayment of any loan received pursuant to subsection (5)(b) of this section.

(b) The department may transfer money from any legally available source to the enterprise for the purpose of defraying expenses incurred by the enterprise before it receives fee revenue or revenue bond proceeds. The enterprise may accept and expend any money so transferred, and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer is a loan from the department to the enterprise that is required to be repaid and is not a grant for purposes of [section 20\(2\)\(d\) of article X of the state constitution](#) or as defined in [section 24-77-102\(7\)](#). All money transferred as a loan to the enterprise shall be credited to the nonattainment area

air pollution mitigation enterprise initial expenses fund, which is hereby created in the state treasury, and loan liabilities that are recorded in the nonattainment area air pollution mitigation enterprise initial expenses fund but that are not required to be paid in the current fiscal year shall not be considered when calculating sufficient statutory fund balance for purposes of [section 24-75-109](#). The state treasurer shall credit all interest and income derived from the deposit and investment of money in the nonattainment area air pollution mitigation enterprise initial expenses fund to the fund. The nonattainment area air pollution mitigation enterprise initial expenses fund is continuously appropriated to the enterprise for the purpose of defraying expenses incurred by the enterprise before it receives fee revenue or revenue bond proceeds. As the enterprise receives sufficient revenue in excess of expenses, the enterprise shall reimburse the department for the principal amount of any loan made by the department plus interest at a rate set by the department.

(6) In addition to any other powers and duties specified in this section, the board has the following general powers and duties:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To acquire, hold title to, and dispose of real and personal property;

(c) In consultation with the executive director of the department, or the executive director's designee, to employ and supervise individuals, professional consultants, and contractors as are necessary in its judgment to carry out its business purpose;

(d) To contract with any public or private entity, including state agencies, consultants, and the attorney general's office, for professional and technical assistance, office space and administrative services, advice, and other services related to the conduct of the affairs of the enterprise. The enterprise is encouraged to issue grants on a competitive basis based on written criteria established by the enterprise in advance of any deadlines for the submission of grant applications. The board shall generally avoid using sole-source contracts.

(e) To seek, accept, and expend gifts, grants, donations, or other payments from private or public sources for the purposes of this part 13 so long as the total amount of all grants from Colorado state and local governments received in any state fiscal year is less than ten percent of the enterprise's total annual revenue for the state fiscal year. The enterprise shall transmit any money received through gifts, grants, donations, or other payments to the state treasurer, who shall credit the money to the fund.

(f) To provide services as set forth in subsection (9) of this section;

(g) To publish the processes by which the enterprise accepts applications, the criteria for evaluating applications, and a list of grantees or program participants pursuant to subsection (9) of this section;

(h) 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 in this section; and



(i) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers and duties granted by this section.

(7)(a) In furtherance of its business purpose, beginning in state fiscal year 2022--23, the enterprise shall impose an air pollution mitigation per ride fee to be paid by a transportation network company for each prearranged ride requested and accepted through the company's digital network. For the purpose of minimizing compliance costs for transportation network companies and administrative costs for the state, the department of revenue shall collect the air pollution mitigation per ride fee on behalf of the enterprise, and a transportation network company shall pay the fee to the department of revenue as required by [section 40-10.1-607.5\(2\)](#).

(b) For prearranged rides requested and accepted during state fiscal year 2022--23, the enterprise shall impose the air pollution mitigation per ride fee in a maximum amount of:

(I) Eleven and one-quarter cents for each prearranged ride that is a carshare ride or for which the driver transports the rider in a zero emissions motor vehicle; and

(II) Twenty-two and one-half cents for every other prearranged ride.

(c)(I) Except as otherwise provided in subsection (7)(c)(II) of this section, for prearranged rides requested and accepted during state fiscal year 2023--24 or during any subsequent state fiscal year, the enterprise shall impose the air pollution mitigation per ride fee in a maximum amount that is the applicable maximum amount for the prior state fiscal year adjusted for inflation. The enterprise shall notify the department of revenue of the amount of the air pollution mitigation per ride fee to be collected for rides requested and accepted during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins, and the department of revenue shall publish the amount no later than April 15 of the calendar year in which the state fiscal year begins.

(II) The enterprise is authorized to adjust the amount of the air pollution mitigation per ride fee for prearranged rides requested and accepted during a state fiscal year only if the rate of inflation is positive and cumulative inflation from the time of the last adjustment in the amount of the fee, when applied to the sum of the current air pollution mitigation per ride fee and the current clean fleet per ride fee imposed as required by [section 25-7.5-103\(7\)](#) and rounded to the nearest whole cent, will result in an increase of at least one whole cent in the total amount of the air pollution mitigation per ride fee and the clean fleet per ride fee paid by a person who requests and accepts a prearranged ride. The amount of cumulative inflation to be applied to the sum of the current air pollution mitigation per ride fee and the current clean fleet per ride fee and rounded to the nearest whole cent is the lesser of actual cumulative inflation or five percent.

(d) As required by [section 40-10.1-607.5\(3\)\(a\)](#), the department of revenue shall transmit all net air pollution mitigation per ride fee revenue collected to the state treasurer, who shall credit the revenue to the fund.

(8)(a) In furtherance of its business purpose, beginning in state fiscal year 2022--23, the enterprise shall impose, and the department of revenue shall collect on behalf of the enterprise, an air pollution mitigation retail delivery fee on each retail delivery. Each retailer who makes a retail delivery shall add to the price of the retail delivery, collect from the purchaser, and pay to the department of revenue at the time and in the manner prescribed by the department in accordance with [section 43-4-218\(6\)](#) the air pollution mitigation retail delivery fee. For the purpose of minimizing compliance costs for retailers and administrative costs for the state, the department of revenue shall collect and administer the air pollution mitigation retail delivery fee on behalf of the enterprise in the same manner in which it collects and administers the retail delivery fee imposed by [section 43-4-218\(3\)](#).

(b) For retail deliveries of tangible personal property purchased during state fiscal year 2022--23, the enterprise shall impose the air pollution mitigation retail delivery fee in a maximum amount of seven-tenths of one cent.

(c)(I) Except as otherwise provided in subsection (8)(c)(II) of this section, for retail deliveries of tangible personal property purchased during state fiscal year 2023--24 or during any subsequent state fiscal year, the enterprise shall impose the air pollution mitigation retail delivery fee in a maximum amount that is the maximum amount for the prior state fiscal year adjusted for inflation. The enterprise shall notify the department of revenue of the amount of the air pollution mitigation retail delivery fee to be collected for retail deliveries of tangible personal property purchased during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins, and the department of revenue shall publish the amount no later than April 15 of the calendar year in which the state fiscal year begins.

(II) The enterprise is authorized to adjust the amount of the air pollution mitigation retail delivery fee for retail deliveries of tangible personal property purchased during a state fiscal year only if the department of revenue adjusts the amount of the retail delivery fee imposed by [section 43-4-218\(3\)](#) for retail deliveries of tangible personal property purchased during the state fiscal year.

(9) In furtherance of its business purpose, and subject to the requirements set forth in this subsection (9), the enterprise is authorized to provide grants to eligible entities for eligible projects. The enterprise shall actively seek input from communities, including but not limited to disproportionately impacted communities, and local governments to mitigate the environmental and health impacts of highway projects, reduce traffic congestion, and improve neighborhood connectivity for communities adjacent to highways. The enterprise shall include mitigation strategies that take into account the input as well as issues and impacts of particular importance to the state such as reduction of greenhouse gas emissions and fine particulate matter.

(10)(a) To ensure transparency and accountability, the enterprise shall:

(I) No later than June 1, 2022, publish and post on its website a ten-year plan that details how the enterprise will execute its business purpose during state fiscal years 2022--23 through 2031--32 and estimates the amount of funding needed to implement the plan. No later than January 1, 2032, the enterprise shall publish and post on its website a new ten-year plan for state fiscal years 2032--33 through 2041--42.

(II) Create, maintain, and regularly update on its website a public accountability dashboard that provides, at a minimum, accessible and transparent summary information regarding the implementation of its ten-year plan, the funding status and progress toward completion of each project that it wholly or partly funds, and its per project and total funding and expenditures;

(III) Engage regularly regarding its projects and activities with the public, including but not limited to seeking input from disproportionately impacted communities and interest groups that are likely to be interested in the projects and activities; and

(IV) Prepare an annual report regarding its activities and funding and present the report to the transportation commission created in [section 43-1-106\(1\)](#) and to the transportation and local government and energy and environment committees of the house of representatives and the transportation and energy committee of the senate, or any successor committees. The enterprise shall also post the annual report on its website. Notwithstanding the requirement in [section 24-1-136\(11\)\(a\)\(I\)](#), the requirement to submit the report required in this subsection (10)(a)(IV) to the specified legislative committees continues indefinitely.

(b) The enterprise is subject to the open meetings provisions of the “Colorado Sunshine Act of 1972”, contained in part 4 of article 6 of title 24, and the “Colorado Open Records Act”, part 2 of article 72 of title 24.

(c) For purposes of the “Colorado Open Records Act”, part 2 of article 72 of title 24, and except as may otherwise be provided by federal law or regulation or state law, the records of the enterprise are public records, as defined in [section 24-72-202\(6\)](#), regardless of whether the enterprise receives less than ten percent of its total annual revenue in grants, as defined in [section 24-77-102\(7\)](#), from all Colorado state and local governments combined.

(d) The enterprise is a public entity for purposes of part 2 of article 57 of title 11.

#### **Credits**

Added by [Laws 2021, Ch. 250 \(S.B. 21-260\)](#), § 52, eff. June 17, 2021.

C. R. S. A. § 43-4-1303, CO ST § 43-4-1303

Current through the end of the First Regular Session of the 73rd General Assembly (2021).

## Colo. Rev. Stat. § 43-4-1303

(2)(a) The governing board of the enterprise consists of up to seven members as follows:

(I) Five members appointed by the governor with the consent of the senate as follows:

(A) One member with expertise on environmental, environmental justice, or public health issues;

(B) One member who is an elected official of a disproportionately impacted community that is a member of the Denver regional council of governments;

(C) One member who is an elected official of a local government that is a member of the north front range metropolitan planning organization; and

(D) Up to two members who are representatives of disproportionately impacted communities;

(II) The executive director of the department of transportation or the executive director's designee; and

(III) The executive director of the department of public health and environment or the executive director's designee.

(b) Appointed members of the board serve at the pleasure of the governor. The other board members serve for as long as they hold their executive director positions or are designated to serve by an executive director.



## MEMORANDUM

**TO: NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE GOVERNING BOARD**  
**FROM: OFFICE OF POLICY AND GOVERNMENT RELATIONS, CDOT**  
**DATE: JANUARY 25, 2022**  
**SUBJECT: CONCERNING CREATION OF FUNDS AND IMPOSITION OF FEES FOR THE NEWLY CREATED NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE**

### Purpose

The purpose of this memorandum is to provide the Transportation Commission information concerning fees, funds, and powers and duties, for the newly created Nonattainment Area Air Pollution Mitigation Enterprise, pursuant to SB21-260, C.R.S. § 43-4-1303.

### Action

*No immediate action is required; this memorandum is for informational purposes only*

#### **Creation of Enterprise Funds**

SB21-260 creates *The Nonattainment Area Air Pollution Mitigation Enterprise Fund* and the *Nonattainment Area Air Pollution Mitigation Enterprise Initial Expenses Fund* in the State Treasury. The Fund consists of revenue from fees, monetary gifts, grants, donations, Federal money that be credited to the fund, and appropriated/transfers from the General Assembly.

- The Department may transfer money from any legally available source to the enterprise for the purpose of defraying expenses incurred by the enterprise before it receives any fee revenue or revenue bond proceeds.
  - The enterprise may accept and expend any money transferred; However, such a transfer is considered a loan to the enterprise from the department and is required to be repaid
  - All money transferred as a loan to the enterprise shall be credited to the Nonattainment Area Air Pollution Mitigation Enterprise Initial Expenses Fund
    - Liabilities that are recorded in the Initial Fund but that are not required to be paid in the current fiscal year shall not be considered when calculating sufficient statutory fund balance
    - The State Treasurer shall credit all interest and income derived from the deposit and investment of money in the Initial Expenses Fund to the Fund

#### **Imposition of New Fees**



In order to allow the enterprise to accomplish its business purpose and fully exercise its powers and duties through the board, beginning in Fiscal Year 2022-2023, the enterprise may impose the following fees:

- **Air Pollution Mitigation Per Ride Fee**
  - To be paid by a transportation network company for each prearranged ride requested and accepted through the company’s digital network
  - The fee is collected by the Department of Revenue on behalf of the Enterprise
  - **Fee Amounts:**
    - For Fiscal Year 2022-2023:
      - Eleven and one-quarter cents for each prearranged ride that is a carshare ride or for which the driver transports the rider in a zero-emissions vehicle
      - Twenty-two and one-half cents for every other prearranged ride
    - For Fiscal Year 2023-2024 and subsequent state fiscal years:
      - The board shall impose a fee in the applicable maximum amount from the prior state fiscal year adjusted for inflation.
      - The Enterprise shall notify the Department of Revenue of the fee amount to be collected *no later than March 15* of the calendar year in which state fiscal years begins
      - The Department of Revenue shall publish the amount *no later than April 15* of the calendar year in which state fiscal years begins
    - The Enterprise is authorized to adjust fee based on positive rate of inflation and cumulative inflation
- **Air Pollution Mitigation Retail Delivery Fee**
  - Fee is for retail deliveries of tangible personal property
  - Fee is added to the price of delivery by the retailer, collected from the customer, and paid to the Department of Revenue
  - **Fee Amounts:**
    - For Fiscal Year 2022-2023:
      - Maximum amount of seven-tenths of one cent
    - For Fiscal Year 2023-2024 and subsequent state fiscal years:
      - The board shall impose a fee in the applicable maximum amount from the prior state fiscal year adjusted for inflation.
      - The Enterprise shall notify the Department of Revenue of the fee amount to be collected *no later than March 15* of the calendar year in which state fiscal years begins



- The Department of Revenue shall publish the amount *no later than April 15* of the calendar year in which state fiscal years begins
- The Enterprise is authorized to adjust fee based on positive rate of inflation and cumulative inflation

### Background

The **Nonattainment Area Air Pollution Mitigation Enterprise** is created to serve the primary business purpose of mitigating 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
- Planting trees along medians

### Next Steps

*See Next Steps under Enterprise Power and Duties Memorandum*

*See Next Steps under Enterprise Board Composition Memorandum*

### Attachments

- No Attachments





MEMORANDUM

**TO: NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE GOVERNING BOARD**  
**FROM: OFFICE OF POLICY AND GOVERNMENT RELATIONS, CDOT**  
**DATE: JANUARY 25, 2022**  
**SUBJECT: CONCERNING THE SCOPE OF POWERS AND DUTIES FOR THE NEWLY  
CREATED NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE**

Purpose

The purpose of this memorandum is to provide the Transportation Commission guidance and situational concerning the timeline and criteria for appointments for the Nonattainment Area Air Pollution Mitigation Enterprise, pursuant to SB21-260, C.R.S. § 43-4-1303.

Action

*No action required. This memorandum is for informational purposes only*

**Enterprise Powers and Duties**

In furtherance of its business purpose, beginning in State Fiscal Year 2022-2023, the Enterprise:

- Shall impose an ***Air Pollution Mitigation Per Ride Fee*** and an ***Air Pollution Mitigation Retail Delivery Fee***
  - *See Memorandum on Enterprise Funds and Fees*
- Is authorized to provide grants to eligible entities for eligible projects
  - The Enterprise shall actively seek input from communities, including but not limited to disproportionately affected communities and local governments, to:
    - Mitigate the environmental and health impacts of highway projects
    - Reduce traffic congestion
    - Improve neighborhood connectivity for communities adjacent to highways
- The Enterprise shall include mitigation strategies that take into account the input as well as issues and impacts of particular importance to the state such as reduction of greenhouse gas emissions and fine particulate matter

In addition to any other powers and duties specified in SB21-260, the board has the following general powers and duties:





- To adopt bylaws for the regulation of its affairs and the conduct of its business
- To acquire, hold title to, and dispose of real and personal property
- In consultation with the Executive Director of the Department, or the Executive Director's designee, to employ and supervise individuals, professional consultants, and contractors as are necessary in its judgement to carry out its business purpose
- To contract with any public or private entity, including state agencies, consultants, and the attorney general's office, for professional and technical assistance, office space and administrative services, advice, and other services related to the conduct of the affairs of the enterprise.
- To seek, accept, and expend gifts, grants, donations, or other payments from private or public sources, so long as the total amount of all grants from the state of Colorado and local governments received in any state fiscal year is less than ten (10) percent of the enterprise's total annual revenue for the state fiscal year.
- To publish grant and similar program processes by which the enterprise accepts application
- To promulgate rules for the sole purpose of setting the amount of the community access retail delivery fee at or below the maximum amount authorized in this section
- To have and exercise all rights and powers necessary or incidental to or implied from the specific powers necessary and duties granted in this section

### Background

The **Nonattainment Area Air Pollution Mitigation Enterprise** is created to serve the primary business purpose of mitigating 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
- Planting trees along medians

### Next Steps

- No later than June 1, 2022, publish and post its website a ten-year plan that details how the Enterprise will execute its business purpose during Fiscal Years 2022-23 through 2031-32, and estimates the amount of funding needed to implement its plan

### Attachments

- No attachments



# NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE BYLAWS

## **Article I. Board of the Nonattainment Area Air Pollution Mitigation Enterprise**

A. Enterprise Board. All of the powers of the Enterprise, as described in Section 43-4-1303, *et seq.*, C.R.S., and as otherwise provided by law, shall be vested in the Board of the Enterprise (“Enterprise Board”). The Enterprise Board shall manage the business and affairs of the Enterprise. The Enterprise shall consist of the members as determined pursuant to Section 43-4-1303(2)(a), C.R.S. (each shall be a “Member” and collectively, the “Members”). Members of the Enterprise Board shall have the ability to vote.

### B. Composition and Qualifications.

1. The governing board of the enterprise consists of up to seven (7) Members, appointed as follows: Five (5) Members appointed by the Governor with the consent of the Senate, as follows:
  - a. One Member with expertise on environmental, environmental justice, or public health issues.
  - b. One Member who is an elected official of a disproportionately affected community that is a member of the Denver Regional Council of Governments.
  - c. One Member who is an elected official of a local government that is a member of the North Front Range Metropolitan Planning Organization.
  - d. Up to two (2) Members who are representatives of disproportionately impacted communities.
2. The two (2) Members not appointed by the Governor are:
  - a. The Executive Director of the Department of Transportation or the Executive Director’s designee.
  - b. The Executive Director of the Department of Public Health and Environment or the Executive Director’s designee.

- C. Performance of Duties. By acceptance of the office, each Member of the Enterprise Board shall be deemed to have accepted the obligation to perform their duties in good faith and in a manner they believe to be in the best interests of the Enterprise.
- D. Reimbursement. The Enterprise Board may provide for reimbursement of the Members for reasonable and necessary expenses incurred on behalf of the Enterprise consistent with State Fiscal Rules, but the Members shall otherwise serve without compensation.
- E. Disclosures. Members of the Enterprise Board shall make financial disclosures and avoid conflicts of interest, as provided by law and any policies adopted by the Enterprise.
- F. Term of Office. Appointed Members of the Board serve at the pleasure of the Governor. Other Board Members serve for as long as they hold their Executive Director positions or are designated to serve by an Executive Director.
- G. Vacancies. Members appointed to fill a vacancy will serve the remainder of the unexpired term of the former member.
- H. Removal. Any Enterprise Board member who fails to attend three (3) consecutive Enterprise Board meetings without being excused may be subject to recommendation to the Governor for removal from the Enterprise Board.

## **Article II. Meetings of the Board.**

- A. Place of Meetings. The regular or special meetings of the Enterprise Board or any committee designated by the Enterprise Board shall be held at the principal office of the Enterprise or at any place that a majority of the Enterprise Board, or any such committee, designates.
- B. Regular Meetings. The Nonattainment Area Air Pollution Mitigation Enterprise shall hold regular meetings at such dates, times, and locations, including virtual meetings, as the Enterprise Board shall determine, but no less than four (4) times per calendar year. Members of the Enterprise Board are expected to attend all regular Enterprise Board meetings unless excused in advance.

Any Enterprise Board Member may participate in any regular or special meeting through telephonic and virtual participation, provided that all directors participating are able to hear each other during the meeting.

- The Chair of the Enterprise Board (“Chair”) may postpone or advance the time and date of any regular meeting for a period not to exceed one week. The Enterprise Board may remove items from the agenda or rearrange the order of the agenda items at any time. Items may be added to the agenda only with adequate public notice prior to the meeting, as provided by law.
- C. Special Meetings. Special meetings may be called by the Chair or by a majority of the Members of the Enterprise Board with three (3) days advance notice by mail, electronic mail, or telephone. In an emergency, 24 hours of notice by telephone or electronic mail is sufficient, unless otherwise provided by law.
- D. Notice of Meetings. A notice of the time, date, and location of a meeting will be sent to each Enterprise Board Member by the Program Manager for regular meetings at least two (2) weeks in advance. A public notice of the meeting shall also be posted to the Nonattainment Area Air Pollution Mitigation Enterprise website at least two (2) weeks in advance of the meeting.
- E. Quorum. A quorum of the Nonattainment Area Air Pollution Mitigation Enterprise Board shall be a majority of the voting Enterprise Board Members. If a quorum of the Enterprise Board is present, a simple majority vote of Members present shall be required to carry any motion, order, regulation, bylaw, or other action. All formal action of the Enterprise Board shall be by resolution adopted at a duly called meeting of the Enterprise Board and no individual Member shall exercise any individual administrative authority with respect to the Enterprise.
- F. Voting. Each Member of the Enterprise Board shall be entitled to one vote. The Enterprise Board may act only by resolution or motion at a duly called meeting. Voting shall be either by voice or roll call vote. A roll call vote shall be conducted upon the request of a Member of the Enterprise Board or at the discretion of the Chair. Any Member of the Enterprise Board shall be disqualified from voting on any issue with respect to which they have a private interest, unless such Member has disclosed such interest in compliance with Section 24-18-110, C.R.S.
- G. Conduct of Meetings. All meetings of the Enterprise Board shall be conducted under Robert’s Rules of Order unless specifically provided otherwise by the Enterprise Board or these Bylaws. When action is to be taken at a meeting, a motion shall be made by one of the Members to undertake the action; another Member must second the motion. The Chair or other individual facilitating the meeting shall entertain discussion on the motion, and a vote shall be taken. The motion shall be adopted by a majority of those casting votes, unless a greater margin of votes is otherwise required

by these Bylaws or State law. The Members may vote to govern their proceedings by additional procedures contained in Robert's Rules of Order if they so desire.

- H. Committees. The Enterprise Board may, by a motion or resolution adopted by a majority of the Members of the Enterprise Board, designate not less than two (2) of its Members to constitute one or more committees, each of which shall have and may exercise such authority as may be set forth in said motion or resolution. If any such delegation of authority of the Enterprise Board is made as herein provided, all references to the Enterprise Board contained in these Bylaws, the Articles of Organization, Section 43-4-1203, *et seq.*, C.R.S., or any other applicable law or regulation relating to the authority so delegated shall be deemed to refer to such committee.
- I. Advisory Groups. The Enterprise Board may establish ad hoc advisory groups as needed for specific projects.

### **Article III. Open Meetings and Open Records**

- A. Open Meetings. All meetings of the Enterprise Board shall be open to the public and shall be preceded by adequate public notice as required by law. Public notice of the Enterprise Board agenda shall be made prior to Enterprise Board meetings.
- B. Open Records. The records of the Enterprise Board shall be public records and shall be open for public inspection, as provided by law for public records. Enterprise Board meetings shall be recorded by electronic recording device. Minutes shall be made of all Enterprise Board meetings and shall be approved by the Enterprise Board. After approval by the Enterprise Board, minutes shall be made a part of the Enterprise Board records.

### **Article IV. Officers and Staff**

- A. General. The Chair and Vice-Chair shall be the officers of the Enterprise Board. The Enterprise Board shall appoint a Secretary who shall not be a Member of the Enterprise Board. The Chair and Vice-Chair shall be elected by the Enterprise Board at its meeting in January 2022 and shall serve two (2) year terms in office or until a successor is elected by a vote of the Members of the Enterprise Board. Thereafter, the Enterprise Board shall elect a Chair and Vice-Chair in January in even-numbered years. If the election of such officers is not held at such meeting, such election shall take place as soon thereafter as a meeting may be conveniently held.

- B. General Duties. All officers of the Enterprise, as between themselves and the Enterprise, shall have the authority and shall perform such duties in the management of the Enterprise as may be provided in these Bylaws, the Articles of Organization, or as may be determined by resolution or action of the Enterprise Board not inconsistent with these Bylaws.
1. Chair. The Chair shall preside at all meetings of the Enterprise Board. The Chair shall be a Member of the Enterprise Board. The Chair shall serve as the principal spokesperson for the Enterprise Board, and shall aid the Enterprise Program Manager and/or Secretary in coordination of meetings and agendas, and perform all duties incident to the office.
  2. Vice-Chair. The Vice-Chair shall, in the case of the absence or disability of the Chair, perform the duties of the Chair. The Vice-Chair shall be a Member of the Enterprise Board. The Vice-Chair shall also perform such other duties as may be prescribed by the Enterprise Board from time to time.
  3. Secretary. The Secretary, a member of the Colorado Department of Transportation (“CDOT”) staff, shall keep the records of the Enterprise Board. The Secretary shall perform all of the other administrative duties usually pertaining to this office, including taking the minutes of Enterprise Board meetings, and coordinating all communications, announcements, etc. The Secretary shall work with the Chair to coordinate Enterprise Board meeting details, including securing a location, posting the agenda, board packets, and notification of meetings. The Secretary’s term of office shall be at the will of the Enterprise Board.
  4. Program Administrator. The Program Administrator is a senior member of the CDOT staff assigned to provide strategic management and support for the Enterprise Board. The Program Administrator shall serve as a point of contact for the Enterprise and the Enterprise Board. The Program Administrator may suggest policies, procedures, and agenda items for the Board’s consideration and shall see that all policies, directions and orders of the Board are carried out. The Program Administrator shall have such other authority, powers, or duties as may be prescribed by the Board.
  5. Other Officers. The Enterprise Board may appoint other officers as it deems necessary and appropriate.

- C. Delegation of Duties. Whenever an officer is absent for any reason, the Enterprise Board may delegate the powers and duties of an officer to any other officer or to any Member of the Enterprise Board.
- D. No Contract Right. Service on the Enterprise Board shall not of itself create contract rights in the office.

#### **Article V. Fiscal Year and Budget**

- A. Fiscal Year. The fiscal year of the Enterprise shall be based on the State of Colorado fiscal year (July 1 - June 30).
- B. Budget. The Enterprise Board shall set and adopt annual estimates of revenues and other available funds for the operating fund and for the special revenue fund, respectively. These estimates shall be adopted not later than June of each year for the following fiscal year. If circumstances change, the Enterprise Board may, at a regular or special Board meeting, modify the estimates to ensure expenditures do not exceed available funds or to allow for additional appropriate expenditures if additional funds are available.

#### **Article VI. Amendments**

- A. General. The Enterprise Board may amend, supplement, or repeal these Bylaws or adopt new bylaws; all such changes shall affect and be binding upon the Enterprise Board. Any amendments, supplement, or repeal of these Bylaws, or adoption of new bylaws, shall require a majority vote of all Members.
- B. Notice. Specific notice of each meeting at which consideration of proposed amendment to, supplementation of, or repeal of these Bylaws or adoption of new bylaws shall be given in the same manner as notice of special meetings pursuant to Article III, Section C of these Bylaws.
- C. Vote Necessary. Any adoption of new bylaws, or amendment, supplement, or repeal of these Bylaws, shall require approval by a majority of the Enterprise Board at any regular meeting at which the amendment, supplement, repeal, or adoption is considered.

#### **Article VII. Miscellaneous Provisions**

- A. Invalid Provision. The invalidity or unenforceability of any particular provision of these Bylaws shall not affect the other provisions herein, and these Bylaws shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- B. Governing Law. These Bylaws shall be governed by and construed in accordance with the constitution and laws of the State of Colorado and Section 43-4-1203, *et seq.*, C.R.S. for the Enterprise, as amended from time to time.
- C. Gender. Whenever required by context, the singular shall include the plural, the plural the singular, and one gender shall include the other.
- D. Contracts and Amendments. The Enterprise Board shall set budgets for its operations and shall have authority to approve and enter into contracts and amend existing contracts so long as the total projected expenditures for either the operating fund or the special revenue fund do not exceed the estimate of available funds approved for the fiscal year by the Board.



**NONATTAINMENT AREA AIR POLLUTION  
MITIGATION ENTERPRISE  
ARTICLES OF ORGANIZATION**

**PREAMBLE**

The General Assembly of the State of Colorado (the “State”) found and declared in C.R.S. 43-4-1301 that:

(a) Rapid and continuing growth in retail deliveries made by motor vehicles and in prearranged rides arranged through transportation network companies has increased and will continue to increase traffic congestion and air pollution from motor vehicle emissions, along with the adverse environmental and health impacts that result from such pollution, in nonattainment areas, including but not limited to disproportionately impacted communities and communities adjacent to highways;

(b) It is necessary and appropriate to offset and mitigate these impacts by creating a nonattainment area air pollution mitigation enterprise that has the business purpose of providing funding for eligible projects that reduce traffic congestion, including demand management projects that encourage alternatives to driving alone, and thereby reduce travel delays, engine idle time, and unproductive fuel consumption or that directly reduce emissions by means such as retrofitting of construction equipment;

(c) Instead of reducing the impacts of retail deliveries and prearranged rides arranged through transportation network companies, by limiting retail delivery and prearranged ride activity through regulation, it is more appropriate to continue to allow persons who receive retail deliveries and benefit from the convenience afforded by unfettered retail deliveries and to allow transportation network companies that arrange prearranged rides to continue to provide that service without undue restrictions and to instead impose a small fee on each retail delivery and prearranged ride and use fee revenue to fund necessary mitigation activities.

(d) The creation of a nonattainment area air pollution mitigation enterprise is in the public interest and will promote the health, safety, and welfare of all Coloradans and visitors to the state by mitigating the impacts of prearranged rides arranged through transportation network companies and residential and commercial deliveries on the state's transportation infrastructure, air quality, and emissions.

The General Assembly thereupon created in C.R.S. § 43-4-1303(1)(a) a nonattainment area air pollution mitigation enterprise as a government-owned business in the Colorado Department of Transportation (the “Department”).

**Article I.     Name**

The nonattainment area air pollution mitigation enterprise created in C.R.S. § 43-4-1303(1)(a) shall be known as the NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE (“Enterprise”).

## **Article II. Authority**

The Colorado Legislature approved the creation of the Nonattainment Area Air Pollution Mitigation Enterprise during its regularly scheduled session in 2021, and the Governor of the State of Colorado signed SB 21-260 into law on June 17, 2021. The Enterprise shall function pursuant to these Articles of Organization until such time as it may be abolished by a specific action under applicable Colorado state law.

## **Article III. Purpose**

The business purpose of the Enterprise 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. To accomplish this purpose, the Enterprise may impose an air pollution mitigation per ride fee and an air pollution mitigation retail delivery fee; issue grants, loans, and rebates; and issue revenue bonds payable from the revenue and other money available to the Enterprise.

## **Article IV. TABOR Exemption**

As provided in C.R.S. § 43-4-1303(4), the Enterprise constitutes an “enterprise” for purposes of section 20 article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenue in grants from all Colorado state and local governments combined. By providing impact remediation services as authorized by C.R.S. § 43-4-1301 *et seq.*, the nonattainment area air pollution mitigation enterprise provides a benefit to fee payers when it remediates the impacts they cause and therefore operates as a business in accordance with the determination of the Colorado supreme court in *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36. Consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), that the power to impose taxes is inconsistent with enterprise status under section 20 of article X of the state constitution, the general assembly declared that the revenue collected by the Enterprise is generated by fees, not taxes, because the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee imposed by the Enterprise as authorized by C.R.S. § 43-4-1303(7) and (8) are imposed for the specific purpose of allowing the enterprise to defray the costs of providing the remediation services specified by law, including mitigating impacts to air quality and greenhouse gas emissions caused by the activities on which the fees are assessed, and contribute to the implementation of the comprehensive regulatory scheme required for the planning, funding, development, construction, maintenance, and supervision of a sustainable transportation system. The fees are collected at rates that are reasonably calculated based on the impacts caused by fee payers and the cost of remediating those impacts.

## **Article V. Enterprise Board**

The Board of the Enterprise shall consist of up to seven (7) Members as described and defined in C.R.S. § 43-4-1303(2)(a).

The Enterprise Board shall exercise their powers and perform their duties as if the same were transferred to the Colorado Department of Transportation by a type 1 transfer, as defined in C.R.S. § 24-1-105.

**Article VI. Officers**

The officers of the Enterprise shall be elected according to the Bylaws of the Board and shall have the duties set forth in the Bylaws.

**Article VII. Powers**

The Enterprise may:

- (a) Impose an air pollution mitigation per ride fee as authorized in C.R.S. § 43-4-1303(7);
- (b) Impose an air pollution mitigation retail delivery fee as authorized in C.R.S. § 43-4-1303(8);
- (c) Issue grants, loans, and rebates as authorized in C.R.S. § 43-4-1303(9); and
- (d) Issue revenue bonds payable from the revenue and other available money of the Enterprise.

In addition to any other powers and duties specified in C.R.S. § 43-4-1303, the Board also has the following powers and duties:

- (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (b) To acquire, hold title to, and dispose of real and personal property;
- (c) To employ and supervise individuals, professional consultants, and contractors as are necessary in its judgement to carry out its business purpose;
- (d) To contract with any public or private entity, including state agencies, consultants, and the attorney general's office, for professional and technical assistance, office space and administrative services, advice, and other services related to the conduct of the affairs of the Enterprise;
- (e) To seek, accept, and expend gifts, grants, donations, or other payments from private or public sources, so long as the total amount of all grants from the state of Colorado and local governments received in any state fiscal year is less than ten (10) percent of the Enterprise's total annual revenue for the state fiscal year;
- (f) To publish the processes by which the Enterprise accepts applications, the criteria for evaluating applications, and a list of grantees or program participants. The Enterprise shall actively seek input from communities, including but not limited to disproportionately impacted communities, and local governments to mitigate the environmental and health impacts of

highway projects, reduce traffic congestion, and improve neighborhood connectivity for communities adjacent to highways. The Enterprise shall include mitigation strategies that take into account the input as well as issues and impacts of particular importance to the state such as reduction of greenhouse gas emissions and fine particulate matter;

(g) To promulgate rules for the sole purpose of setting the amount of the air pollution mitigation per ride fee and the air pollution mitigation retail delivery fee at or below the maximum amounts authorized by law; and

(h) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers necessary and duties granted by law.

### **Article VIII. Revenues and Expenditures**

The nonattainment area air pollution mitigation enterprise fund has been created in the state treasury. The fund consists of air pollution mitigation per ride fee revenue and air pollution mitigation retail delivery fee revenue credited to the fund pursuant to C.R.S. §§ 43-4-1303(7) and (8), any monetary gifts, grants, donations, or other payments received by the Enterprise, any federal money that may be credited to the fund, and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the fund. Money in the fund is continuously appropriated to the Enterprise for the purposes set forth in C.R.S. § 43-4-1301 *et seq.* and to pay the Enterprise's reasonable and necessary operating expenses, including the repayment of any loan received pursuant to C.R.S. § 43-4-1303(5)(b).

CDOT may transfer money from any legally available source to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. The Enterprise may accept and expend any money so transferred, and notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer is a loan from CDOT to the Enterprise that is required to be repaid and is not a grant for purposes of section 20(2)(d) of article X of the state constitution or as defined in C.R.S. § 24-77-102(7). All money transferred as a loan to the Enterprise shall be credited to the nonattainment area air pollution mitigation enterprise initial expenses fund in the state treasury, and loan liabilities that are recorded in the nonattainment area air pollution mitigation enterprise initial expenses fund but that are not required to be paid in the current fiscal year shall not be considered when calculating sufficient statutory fund balance for purposes of C.R.S. § 24-75-109. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the nonattainment area pollution mitigation enterprise initial expenses fund. The nonattainment area air pollution mitigation enterprise initial expenses fund is continuously appropriated to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. As the Enterprise receives sufficient revenue in excess of expenses, the Enterprise shall reimburse CDOT for the principal amount of any loan made by CDOT plus interest at a rate set by CDOT.

**Article IX. Articles of Organization – Amendment**

The Board may amend, supplement, or repeal these Articles of Organization or adopt new Articles of Organization. All such changes shall affect and be binding upon the Enterprise, the Board and Members heretofore, as well as hereafter, authorized. Any amendment, supplement, or repeal of these Articles of Organization, or adoption of new Articles of Organization shall require a majority vote of the Members at any regular meeting of the Board.

**Article X. Bylaws**

The Board shall adopt a set of Bylaws to govern its internal operations and procedures.



# Nonattainment Area Air Pollution Mitigation Enterprise Loan

Loan for Board Expenditures

&

Enterprise Projected Revenue



# Nonattainment Area Air Pollution Mitigation Enterprise Loan

- The Enterprise currently has no operating budget and no source of funding.
- Staff has prepared a loan (SB21-260 requires funds to be repaid and prohibits a grant). The loan was approved by the Transportation Commission on December 16, 2021, contingent on approval by the Enterprise Board.
- Repayment starts September 1, 2022 and the deadline for the principal amount and the interest (2% annually) on the unpaid principal balance is June 30, 2023. The Enterprise has the option to prepay all or a portion of the loan principal without penalty.



# Nonattainment Area Air Pollution Mitigation Enterprise Loan

Staff estimates \$74,700 to cover costs prior to FY 2022-23 when fee revenues begin.

Expense Description	Quantity	FY22 Funding
Deputy Director	20.0% of 1.0 FTE	\$25,000
Division of Transportation Development (DTD) Staff (10-Year Plan Development)	15.0% of 1.0 FTE	\$12,000
Fellow	30.0% of 1.0 FTE	\$18,000
Division of Accounting and Finance Staff	15.0% of 1.0 FTE	\$15,000
Policy Staff	2.5% of 1.0 FTE	\$2,500
Board Travel/Reimbursement	\$1,000 per mtg (2)	\$2,000
Meeting Expenses	\$100 per mtg (2)	\$200
<b>Total</b>		<b>\$74,700</b>





# Nonattainment Area Air Pollution Mitigation Enterprise Loan

## Nonattainment Area Air Pollution Mitigation Enterprise - Summary FY 2022-23 to FY 2031-32

<b>Fiscal Year</b>	<b>Mitigation Per Ride Fee</b>	<b>Mitigation Retail Delivery Fee</b>	<b>Total Fee Revenue</b>
FY 2021-22	\$0	\$0	\$0
FY 2022-23	\$5,193,149	\$1,932,077	\$7,125,226
FY 2023-24	\$6,350,348	\$2,131,003	\$8,481,351
FY 2024-25	\$7,799,651	\$2,294,681	\$10,094,332
FY 2025-26	\$9,325,133	\$2,597,962	\$11,923,096
FY 2026-27	\$11,713,055	\$2,871,891	\$14,584,946
FY 2027-28	\$14,330,228	\$3,177,431	\$17,507,658
FY 2028-29	\$17,528,868	\$3,432,886	\$20,961,753
FY 2029-30	\$21,626,892	\$3,900,463	\$25,527,354
FY 2030-31	\$26,448,435	\$4,328,152	\$30,776,588
FY 2031-32	\$31,857,744	\$4,808,073	\$36,665,817
<b>10-Year Total</b>	<b>\$152,173,502</b>	<b>\$31,474,619</b>	<b>\$183,648,121</b>