



TO: Stan Dempsey, Jr., President
Colorado Mining Association (CMA)
CMA Board of Directors
CMA Committees
FROM: Dianna L. Orf
RE: Govt. Affairs Report
DATE: July 26, 2018

STAKEHOLDER PROCESSES

Stationary Source Fee Increase. HB 18-1400 which authorized a fee increase to fund activities of the Air Pollution Control Division's Stationary Source Program required a series of stakeholder meetings to 1) identify and assess measures to improve billing practices and increase accounting transparency with respect to application processing fees, including providing more detail on application review process and the time spent on the process and 2) assess potential efficiency improvements, including associated metrics to assess the division's performance with respect to activities financed by the stationary sources control fund. The first of those stakeholder meetings was held today and will continue over a four year period. Initially the group plans to meet bi-weekly until all issues are identified and priorities set. In addition to the two areas identified in the legislation, the group will also discuss compliance assistance measures. Division staff present were Garry Kaufman (head of the division), Mark McMillan and Stephanie Rucker .

The division emphasized that this will be a long-term effort (it is required to report to the legislature on an annual basis for five years) and will require a long-term commitment from industry stakeholders to identify potential solutions to problems raised. The division announced that it has initiated the hiring process for three new engineers, two for oil/gas and one for non-oil/gas permits. They have also undertaken a list of internal improvement measures which will be discussed at the next meeting. The stakeholder group (approximately 35) requested that the division provide a list of the internal improvement measures in process along with background correspondence supplied by CACI and other organizations to assist in seeing where already-identified problems may be addressed. Most of the meeting was spent discussing how to best identify goals and priorities of the group before jumping to solutions. Communication will be provided through the division's web site, its listserv for the Stationary Source Control Fund, and through the various trade associations who are then asked to forward information to their members. Everyone agreed that a regular meeting schedule is important; the next meeting should therefore be July 30. Monday afternoons were determined preferable to Monday mornings as companies tend to have staff meetings at that time.

TENORM. SB 18-245 was enacted to provide authority to CDPHE to regulate the disposal of technologically enhanced naturally occurring radioactive materials (TENORM). In order to provide a scientific basis for regulations and engage all industries potentially affected, the legislation called for a stakeholder process to be formed, receive input, and report back to the legislature by the end of 2019. Rules will be adopted by the end of 2020, but not before the legislature receives the stakeholder report.

The first stakeholder meeting was held on July 11. The stakeholder meeting provided a tutorial on the basics of radiation physics explaining definitions, source of radiation, and exposure mechanisms. Topics for inclusion in future meetings are:

- Exempt levels
- Regulatory limits for landfill disposal
- Regulatory limits for beneficial reuse
- Regulatory limits for licensing
- Implementing limits and levels

Discussions during the legislative session focused on water treatment residuals and oil/gas waste but it is clear that a much broader universe of waste could be under consideration. Current regulation of radioactive materials appears to focus on quantities of material, while anticipated rulemaking appears to emphasize exposure level (dose). Material from the CDPHE overview presentation can be found at <https://environmentalrecords.colorado.gov/HPRMWebDrawerHM/RecordView/415597>

Public comment is solicited for a 90 day period beginning August 1. The previously scheduled July 31 meeting has been cancelled; August 29 and Sept. 6 meetings are still tentative. CDPHE wants its consultant (yet to be hired) to be present at those meetings. Until rules are adopted (end of 2020), CDPHE will be operating under its 2007 Guidance Document and the November 2017 letters to disposal sites concerning oil/gas wastes. Currently the following disposal facilities in Colorado are licensed to accept TENORM waste: Clean Harbors (Deer Trail), Pawnee Waste (Weld county), and Waste Connections Southside Landfill (uranium only less than 339 pCi/g).

Utility/Community Voluntary Agreement. HB 18-1428 authorized regulated utilities to enter agreements with communities to meet community preference in supplying electricity (e.g., smart grid, higher percentage of wind or solar, distributed generation) without shifting costs to customers in communities outside the agreement. In the Senate hearing, the bill's sponsor Sen. Cooke asked the committee to kill the bill because there was insufficient time to work through details that concerned various entities including CMA. At that time he expressed to us his intent to convene a stakeholder group in the summer to discuss concerns and to develop a bill that was more thoroughly vetted. To date we have not heard from Sen. Cooke.

Interim Committees

Alternatives to Gallagher Amendment Interim Study Committee. The committee met July 13 at the Capitol where committee members received the basics in property tax history from the Colorado Assessors' Foundation, JBC staff, and JoAnn Groff (State Property Tax Assessor). Most discussion focused on the interaction between the Gallagher Amendment, passed by the voters in 1983 when residential property taxes high and a tax revolt was underway, and the TABOR amendment adopted in 1992. In order to maintain the required ratio between residential property and non-residential property, the assessment ratio for residential continues to fall – from 21% in 1983 to 7.2%, and

projected to drop again to 6.1% Because the assessment ratios are applied statewide, the skyrocketing value of homes on the Front Range drive down the assessment rate in order to maintain the required ratio with non-residential property. Because of TABOR the mill levies placed by individual taxing authorities cannot “float”, and once the mill levy drops for whatever reason, it cannot be increased without a vote of the citizens of that taxing district. While this is problematic for Front Range communities, it is disastrous for rural communities where housing values have not risen so rapidly and non-residential property does not generate the same kind of revenues as in the urban area. Local governments (, counties, municipalities, special districts) rely primarily on property taxes to provide necessary services such as fire and police protection, water and sewer, flood control, trash collection, and recreation. School districts are particularly hard hit, even when the state backfills or makes up the difference when local property tax revenues fall because of the Gallagher impact. In districts where citizens have voted to override the TABOR limit on mill levy and allow for higher taxes, the state does not backfill that amount. When the effect of Amendment 23, which requires increasing amounts to be spent on K-12 education, is added to the mix the problem becomes particularly acute. Against this background, various taxing districts explained the particular impact on their ability to provide services.

The committee also heard about disparate impacts on non-residential properties. While residential property is assessed on the basis of market, “all other” property is based on either an income, market, or cost basis.

Among potential solutions suggested to the committee by witnesses:

- Decouple residential assessment ratio from the non-residential assessment rate; Lower the residential assessment ratio from 7.2 – 7.1 for five years and state backfills loss of revenue to counties during the first year, then evaluate the outcome (essentially freezing rate)
- Determine the non-residential vs. residential assessment calculation (55-45) on a regional accumulated property values rather than statewide basis
- Adopt some other system which creates stability and predictability

It was generally believed that almost anything recommended would require a vote of the citizens and would require extensive taxpayer education.

The committee will meet in Glenwood Springs July 18. Meetings are scheduled at the Capitol on August 21 and October 3.

Water Resources Review Committee. On June 19 the committee met to hear reports on a variety of topics – two of the most important being severance tax funding for DNR and TENORM rule development. The good news on severance tax is that there may be only \$60 million or so of outstanding potential liability for refunds stemming from the BP America decision. \$15 million was paid out last year along with refunds for routine overpayment. Although no good data is available, there is no evidence that suggests individual large refund claims will be made. As a result of the BP decision, however, oil/gas severance tax payers now have larger allowable deductions and will be paying lower taxes. The good news, according to Legislative Council economists, is that rising oil prices will stimulate investment in additional drilling causing revenues to rise. Total severance tax revenues to the state for

FY 2017-18 are estimated at around \$100 million -- \$30 million more than earlier projections on which the budget was based. This news prompted the question: "Where will that additional money go?" The answer was that it could be used by the Colorado Water Conservation Board to make smaller loans (outside the annual Projects Bill) or could be held and added to the next year's budget. That caused some concern that the money might be spent "outside the legislature's control." (The legislature must approve each annual Projects bill.) Despite improving forecasts, the formula devised under HB 18-1338 will continue in place, with the General Fund paying \$17 million for Tier 1 (DNR operating programs) and recouping the expenditure from severance tax as it is collected. It was noted that May refunds and May collections were about equal. There will be no money to Tier 2 (grant programs) during the current fiscal year, although money may flow into the Tier 2 programs to partially fund them by 2020. HB 18-1338 does provide some funding for the Aquatic Nuisance Species program, and the Species Conservation program.

CDPHE Radiation Control Manager Jennifer Opila outlined the upcoming stakeholder process that will guide development of the TENORM disposal rules. These rules, which will regulate disposal of technologically enhanced naturally occurring radioactive materials such as oil/gas waste and water treatment residuals are authorized by SB 18-245. (See stakeholder discussion above).

Candidate Interviews

CMA is participating with CACI –the State Chamber of Commerce – interviewing various candidates for the legislature to become acquainted with them, their philosophy of governing, and attitudes toward mining and business issues. These have been most instructive and have identified several candidates that, should they be elected, could become allies of the industry.

Ballot Initiatives

Petition signatures for Initiative #93 were submitted to the Secretary of State's office on July 11. The measure calls for a graduated increase tax on personal income that exceeds \$150,000 and adds an additional 1.37% to corporate income tax bills to fund education. The measure creates the Quality Public Education Fund (fund) in the Colorado Constitution. Money in the fund is to be used to support and enhance the quality of preschool through twelfth grade (P-12) public education beginning in FY 2019-20. The fund will contain revenue from the proposed income tax increase. Money in the fund is exempt from the TABOR revenue limit and must be used to supplement General Fund appropriations for P-12 public education as of the measure's effective date, adjusted each year for inflation up to 5 percent. The petitions are currently under review to determine their legal sufficiency.

Proponents of Initiative #97 have until August 6 to submit signatures. That measure would amend statutes to require a 2500 foot setback to separate new oil and gas development facilities from occupied buildings and "vulnerable areas". Individual local governments could establish a greater set-back requirement. Occupied structures means any building intended for human occupancy, including homes, hospitals, and schools. Vulnerable areas include playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation

canals, reservoirs, lakes, rivers, perennial or intermittent streams, and creeks. The state or a local government may designate additional vulnerable areas, which must then be considered for any setback site calculation. A study by the state's Oil and Gas Conservation Commission estimates that if adopted, the initiative would prohibit new oil/gas development on as much as 85% of private land in the State. Development on federal lands is not included in the measure.

The fiscal abstract, as amended by the Title Board, includes the following statement:

“The measure is highly likely to decrease the amount of severance tax, royalty payments, and lease revenue that state and local government collects in the future, and the amount of state and local expenditures of that revenue.”