

APPLICABLE LAWS AND REGULATIONS

Las Animas County, CO

1.0 General Provisions

1.1 Strict Liability

There are no Colorado State Statutes that specifically discuss torts resulting from prescribed fire operations. However, basic tort laws do apply. In the state of Colorado, a private landowner may be sued for actual losses or damages resulting from careless or willful acts, and the liability can not be abrogated.

1.2 Permit Requirements

The Colorado Department of Public Health and Environment controls open burning. A smoke permit is required in most circumstances.

Colorado Department of Public Health and Environment
Air Pollution Control Division
4300 Cherry Creek Drive South
Denver, CO 80246

Coleen Campbell
303 692-3224
coleen.campbell@state.co.us
Sarah Gallup
303 916-1260
sgallup@lamar.colostate.edu

The State has delegated to the counties the responsibility for the issuance and enforcement of open burning permits and the enforcement of State open burning policies for private and non-public organizations. In Las Animas County, the county has delegated this responsibility to local fire districts. The fire district that has jurisdiction on the Bar NI Ranch is the Stonewall Fire Protection District.

An Open burning permit application must be obtained from and submitted to the

Stonewall Fire Protection District
28553 Highway 12
Trinidad, CO 81082 - 9564
(719) 846-4287
and to the Las Animas County Sheriff
2309 E Main
Trinidad, CO 81082 - 2059
(719) 846-2211

A prescribed burn is permitted, providing the Las Animas County Sheriff has not issued a burn ban in the county. The applicant must comply with applicable fire protection and safety requirements of the local authority or area. Currently, there are no additional restrictions on prescribed burning.

1.3 Notification

The Stonewall Fire Protection District must be notified prior to igniting the burn. The Pueblo Interagency Dispatch Center coordinates prescribed burning in the zone and must be notified by agreement. In addition the following agencies or individuals by agreement should also be notified prior to the burn: Las Animas County Sheriff, Colorado State Forest Service, U.S. Forest Service, and Colorado Division of Wildlife.

1.4 Air Quality Restrictions

Currently, there are no non-attainment areas within range of the project site.

1.5 Suppression Responsibility

Suppression responsibility lies with the Las Animas County Sheriff, delegated to the Stonewall Fire Protection District. The project site is within the Stonewall Fire District. The Stonewall Fire Protection District has mutual aid agreements with the following agencies: Fisher's Peak FD, Long Canyon FD, Hoehne FD, Spanish Peaks/Bon Carbo FD, and Cokedale FD.

1.6 Authority to burn

The Nature Conservancy holds a conservation easement on the Bar NI Ranch and has been asked to perform fire management activities on the ranch.

2.0 Air Quality Regulations

- ❑ Federal Clean Air Act, as amended
- ❑ Colorado Air Quality Control Act
- ❑ Colorado Air Quality Control Commission Regulations – Regulation #9, Section 11.C, “Open Burning, Prescribed Fire, and Permitting”

3.0 Colorado State Statutes

3.1 Relevant Statutes: Colorado State Statutes Relevant to Wildland Fire Management and Control

23-30-202. Powers and duties of board of governors of the Colorado state university system.

(1) The authority granted to the board by section 23-30-201 shall include the following powers and duties: (a) To provide for the protection of the forest resources of the state, both public and private, from fire, insects, and diseases; (b) To foster and promote the control of soil erosion on such forest lands; (c) To carry on an educational program with landowners, in the application of the practice of forestry on forest lands, by the growing, harvesting, and marketing of forest products from such lands; (d) To disseminate information and statistics concerning forests and forestry in the state, subject to the control and approval of the executive director of the department of natural resources; (e) To conduct investigations and experiments tending to further the intent of this part 2; (f) To report to the executive director of the department of natural resources at such times and on such matters as the executive director may require; and (g) To cooperate with all agencies of the state which need and request the aid and assistance of a trained forester.

23-30-204. Forest fires - duty of sheriff to report.

It is the duty of the sheriffs of the various counties of the state to report as soon as practicable the occurrence of any fire in any forest in the state, either on private or public lands, to the board or its authorized agent, and, upon receiving notice from any source of a fire in any forest, it is the duty of the agent of the board to aid and assist in controlling or extinguishing the same, if necessary.

23-30-206. Cooperative agreements.

The board is further authorized to enter into cooperative agreements with federal and state agencies to promote and carry out the intent and purposes of this part 2, and in carrying out the provisions of all federal acts providing funds to promote the practice of forestry; and, for the purpose of continued acceptance and participation in the provisions of the act of congress dated June 7, 1924, entitled the "Clarke-McNary Law", the board is designated as the agency of the state to administer and expend any federal appropriations received under said act of congress, pursuant to section 23-30-205.

23-30-301. Legislative declaration.

(1) The general assembly hereby finds that: (a) The management of Colorado's state-owned forested land has far-reaching impacts on overall forest condition, risk of wildfire, water quantity and quality, and wildlife habitat; (b) The unnatural condition of many forests throughout the state leaves them at great risk to catastrophic fires, invasion by exotic and native pest species, and other types of damage on a landscape scale; (c) As a result of the 2002 wildfire season, the worst in Colorado's recorded history, in which two thousand twelve fires consumed over half a million acres of forested land: (I) Local, state, and federal agencies incurred one hundred fifty-two million dollars in suppression costs

and at least fifty million dollars to date in rehabilitation costs on United States forest service land alone; and (II) Eighty-one thousand four hundred thirty-five residents had to be evacuated from their homes; (d) Excessive runoff and soil erosion that occurs following wildfires poses a substantial threat to water quantity and quality in areas dependent on forest watersheds, including water supplies and wildlife; (e) Since 1937, United States forest service scientists have been studying the relationship between forests and water yields in the Fraser Experimental Forest in western Colorado and have found that unnaturally overgrown stands reduce water yields and that carefully applied natural forest management practices can conserve a more natural water yield; (f) Decades of scientific research have built a foundation of knowledge and technologies to inform and implement sound forest management and conservation; (g) Robust, resilient forest conditions that sustain diverse forest stages are essential for productive habitat, healthy populations of wildlife, and improved water quality and quantity for Colorado's fisheries; (h) Sound forest management activities, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes as well as the condition of related water, wildlife, recreation, and aesthetic resources; (i) The Colorado state forest service has worked cooperatively and successfully with the division of wildlife, the state board of land commissioners, and the division of parks and outdoor recreation to improve the condition of forested land and wildlife habitat in selected project areas; (j) The executive director of the department of natural resources is authorized to enter into an agreement with the board of governors of the Colorado state university system to work cooperatively with the Colorado state forest service and to provide staff for the division of forestry to carry out its mission of improving the health and sustainability of Colorado's forested state land.

(2) The general assembly hereby declares that it is the public policy of this state to encourage the health of forest ecosystems through responsible management of the forest land of the state and through coordination with the United States secretary of the interior and the United States secretary of agriculture to develop management plans for federal lands within the state of Colorado pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712, including the use of prescribed and natural ignition fires and other pre-suppression activities, such as the harvest of materials, in order to preserve forest and other natural resources, enhance the growth and maintenance of forests, conserve forest cover on watersheds, protect recreational, wildlife, and other values, promote stability of forest-using industries, and prevent loss of life and damage to property from wildfires and other conflagrations.

24-33-203. State forester - authority to permit controlled burns during drought conditions - civil. The state forester may provide written authority to persons seeking to conduct prescribed or controlled fires, such as grassland, forest, or habitat management activities, during drought conditions as specified in section 13-21-105 (2), C.R.S. In issuing written authority for prescribed or controlled fires, the state forester shall be in conformity with and shall not supersede any state or local bans on fires.

30-10-512. Sheriff to act as fire warden. The sheriff of every county, in addition to other duties, shall act as fire warden of his respective county in case of prairie or

forest fires.

30-10-513. Sheriff in charge of forest or prairie fire - expenses. It is the duty of the sheriff, undersheriffs, and deputies, in case of any forest or prairie fire, to assume charge thereof or to assist other governmental authorities in such emergencies for controlling or extinguishing such fires, and, for assisting in so doing, they may call to their aid such person as they may deem necessary. The state forester may assume the duty with concurrence of the sheriff. The board of county commissioners of any county may allow the sheriff, undersheriffs, deputies, municipal or county fire departments, fire protection districts, fire authorities, and such other persons as may be called to assist in controlling or extinguishing such fires such compensation and other expenses necessarily incurred as it may deem just. The board of county commissioners of any county in this state may make such appropriation as it may deem proper for the purpose of controlling fires in its county. The board of county commissioners is authorized to levy a special tax subject to approval of the voters upon every dollar of valuation of assessment of the taxable property within the county for the purpose of creating a fund that shall be appropriated, after consultation with representatives of fire departments, fire protection districts, and fire authorities in the county, to prevent, control, or extinguish such fires anywhere in the county and to fix the rate of levy; except that the amount raised from the levy in any one year is limited to the amount raised by one mill or five hundred thousand dollars, whichever is less.

3.2 Liability

30-10-513.5. Authority of sheriff relating to fires within unincorporated areas of county - liability for expenses. (1) (a) The sheriff of any county may request assistance from a fire protection district or municipality in controlling or extinguishing a fire occurring on private property if, in the judgment of such sheriff, the fire constitutes a danger to the health and safety of the public or a risk of serious damage to property. Except as provided in subsection (3) of this section, any fire protection district or municipality assisting in controlling or extinguishing such fire is entitled to reimbursement from the property owner on whose property the fire occurred or from the party responsible for the occurrence of such fire for the reasonable and documented costs resulting from such assistance. The fire protection district or municipality may recover the costs incurred in a civil action against the property owner or the responsible party or may, by resolution of its board or governing body adopted at a public hearing after notice to the affected parties, certify to the county treasurer the amount of any costs incurred that remains uncollected after diligent effort for a period greater than one hundred eighty days. Such certification is subject to the appeal process and all other remedies, if any, provided in the "State Administrative Procedure Act", article 4 of title 24, C.R.S. If the fire protection district or municipality prevails, the amount certified shall be collected by the treasurer in the same manner as taxes are authorized to be collected pursuant to section 39-10-107, C.R.S. To defray the costs of collection, the treasurer shall be authorized to charge an amount equal to ten percent of the amount collected. (b) For purposes of this subsection (1), "fire occurring on private property" means: (I) A fire

occurring on property not located within a fire protection district or municipality providing fire protection services. (II) (Deleted by amendment, L. 93, p. 1253, § 1, effective July 1, 1993.)

(2) (a) An owner of private property who has contracted with a fire protection district for fire protection services shall advise the sheriff of such contract and any fire protection districts with which such district has mutual aid agreements. In the event that a fire occurs on such property, the sheriff shall make a reasonable attempt to secure the services from such district. If the district does not respond, he shall make a reasonable attempt to secure such services from any of the districts with which such district has mutual aid agreements. If services cannot be secured, the sheriff, in his discretion, may attempt to secure fire protection services from any other district or municipality, and, if services are provided, the owner of the property or the party responsible for the fire shall be liable for the costs incurred by such district or municipality. Such costs may be assessed and collected in the manner provided in subsection (1) of this section. (b) No sheriff shall be held liable for failure to secure fire protection services as required by paragraph (a) of this subsection (2) unless the failure was due to willful misconduct, gross negligence, or bad faith.

(3) Any property owner who desires to conduct a controlled burn of a structure or building located on such property shall notify the county sheriff of the date when such controlled burn will be conducted. Any property owner providing such notification shall not be liable for any costs under this section resulting from the response by a fire protection district or municipality to such controlled burn due to any person informing or warning such district or municipality of the fire arising from such burn.

18-13-109. Firing woods or prairie. (1) (a) Except as otherwise provided in subsection (2) of this section, any person who, without lawful authority and knowingly, recklessly, or with criminal negligence, sets on fire, or causes to be set on fire, any woods, prairie, or grounds of any description, other than his or her own, or who, knowingly, recklessly, or with criminal negligence, permits a fire, set or caused to be set by such person, to pass from his or her own grounds to the injury of any other person commits a class 2 misdemeanor. (b) Any person convicted under paragraph (a) of this subsection (1) shall be assessed a fine of not less than two hundred fifty dollars and not greater than one thousand dollars. The fine imposed by this paragraph (b) shall be mandatory and not subject to suspension. Nothing in this paragraph (b) shall be construed to limit the court's discretion in exercising other available sentencing alternatives in addition to the mandatory fine.

(2) (a) Any person who knowingly violates paragraph (a) of subsection (1) of this section and who knows or reasonably should know that he or she violates any applicable order, rule, or regulation lawfully issued by a governmental authority that prohibits, bans, restricts, or otherwise regulates fires during periods of extreme fire hazard and that is designed to promote the safety of persons and property, commits a class 6 felony. (b) The following activities shall not be offenses under this subsection (2): (I) Open burning lawfully conducted in the course of agricultural operations; (II) State, municipality, or

county fire management operations; (III) Prescribed or controlled fires conducted with written authority from the state forester; (IV) Lawful activities conducted pursuant to rules, regulations, or policies adopted by the relevant state, tribal, or federal regulatory agency or agencies.

13-21-105. Damages from fire set in woods or prairie - treble damages during drought conditions. (1) If any person sets fire to any woods or prairie so as to damage any other person, such person shall make satisfaction for the damage to the party injured, to be recovered in an action before any court of competent jurisdiction.

(2) (a) If a state of emergency or disaster due to drought has been declared by the governor at the time a person knowingly sets fire to any woods or prairie as described in subsection (1) of this section, such person may be held liable for treble damages to any injured party. (b) (I) The provisions of paragraph (a) of this subsection (2) shall not apply to any open burning conducted in the course of agricultural operations or to any state, municipal, or county fire management operations. (II) The provisions of paragraph (a) of this subsection (2) shall not apply to any other person seeking to conduct other prescribed or controlled fires such as grassland, forest, or habitat management activities, if such person has first obtained written authority from the state forester.

3.3 Planning and Permits

30-11-124. Fire planning authority. (1) The board of county commissioners of each county in the state, subject to the requirements of section 25-7-123, C.R.S., may prepare, adopt, and implement a county fire management plan that details individual county policies on fire management for prescribed burns, fuels management, or natural ignition burns *on lands owned by the state or county* (emphases added). Such plans shall be developed in coordination with the county sheriff, the Colorado state forest service, and the appropriate state and local governmental entities. All interested parties shall have the opportunity to comment on the plan prior to its adoption and implementation. (2) County fire management plans created pursuant to subsection (1) of this section shall: (a) Clearly define appropriate responses in order to mitigate immediate threats to public safety; and (b) Set forth the conditions under which prescribed or natural ignition fires shall be managed. (3) Any county that adopts and adheres to a county fire management plan shall be accorded liability protection pursuant to article 10 of title 24, C.R.S. (4) Federal government agencies, subject to the provisions of sections 25-7-106 (7) and (8) and 25-7-114.7 (2) (a) (III), C.R.S., and *private landowners may enter into memoranda of understanding with the board of county commissioners to include public or private lands that are within the boundaries of the county under the county fire management plan. Counties may purchase an indemnification insurance policy and private landowners who enter into memoranda of understanding with the board shall have the opportunity to opt into such policy* (emphases added). (5) Nothing in this section shall infringe upon or otherwise affect the ability of agricultural producers to conduct burning on their property.

25-7-106 (7) (a) State Air Quality Commission Regulations The commission is specifically authorized and directed to develop a program to apply and enforce every relevant provision of the state implementation plan and every relevant emission control strategy to minimize emissions, including the impacts of actions by significant users of prescribed fire, including federal, state, and local government, and private land managers that are significant users of prescribed fire. The program developed by the commission under this subsection (7) shall include, but not be limited to, the imposition of any fees necessary to administer the program, including the recovery of costs by the state for the evaluation of planning documents pursuant to subsection (8) of this section, and the imposition of penalties pursuant to section 25-7-122.

(b) The general assembly hereby finds, determines, and declares that the Grand Canyon visibility transport commission's recommendations for improving western vistas report identified the emissions from fire, both wildfire and prescribed fires, as likely to have the single greatest impact on visibility at class I areas through the year 2040. The emissions from fire, both wildfire and prescribed fire, are an important episodic contributor to visibility impairing aerosols. The Grand Canyon visibility transport commission report identified that significant amounts of visibility impairment result from activities on federal lands, from mobile sources, and from Mexico.

(c) The general assembly further finds, determines, and declares that emissions from grassland and forest fires have substantial episodic impacts on ambient air quality throughout the state and are a major source of visibility impairment over which this state has jurisdiction but has not yet developed a comprehensive program to reduce such impairment.

(d) The general assembly further finds, determines, and declares that the standard in its statement of legislative purpose in section 25-7-102 of the "Colorado Air Pollution Prevention and Control Act" requiring the use of all practical methods that are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution is an appropriate standard to apply in relation to air pollution emissions resulting from the use of prescribed fire in grassland and forest management.

(e) This subsection (7) and subsection (8) of this section are adopted pursuant to section 118 of the federal act and shall be construed to exercise the full extent of the state's authority as granted by the provisions of said federal act. The federal government, as the only landowner of its size in the state and the only landowner in the state other than the state government itself that routinely prepares plans involving the management of grassland and forest lands using prescribed fire, is appropriately subject to the requirements of this section pertaining to review and approval of planning documents.

(f) Persons owning or managing large parcels of land who significantly use prescribed fire as a grassland or forest management tool shall prepare plans addressing the use and role of prescribed fire and the air quality impacts resulting therefrom, and such plans are appropriately subject to the review requirements of this section. The state, by reviewing these types of plans, can achieve significant progress towards cooperatively reducing emissions from those lands that impact visibility in Colorado.

(g) As used in this subsection (7) and in subsection (8) of this section, the term "significant user of prescribed fire" means a federal, state, or local agency or significant management unit thereof or person that collectively manages or owns more than ten thousand acres of grasslands or forest lands within the state of Colorado and that uses prescribed fire. The adoption of a fire management plan by a local or county unit of government pursuant to section 30-11-124, C.R.S., does not constitute management for purposes of this section unless the county or local unit of government owns or manages more than ten thousand acres and is a significant user of prescribed fire. "Prescribed fire" means fire that is intentionally used for grassland or forest management, regardless of whether the fire is caused by natural or human sources. Prescribed fire does not include open burning in the course of agricultural operations and does not include open burning for the purpose of maintaining water conveyance structures, unless the commission acts pursuant to section 25-7-123. The commission shall by rule exempt from the program developed pursuant to this subsection (7) those sources that have an insignificant impact on visibility and air quality.

(8) (a) The commission, in exercising the powers conferred by subsection (7) of this section and this subsection (8), shall require all significant users of prescribed fire, including federal agencies for activities directly conducted by or on behalf of federal agencies on federal lands, to minimize emissions using all available, practicable methods that are technologically feasible and economically reasonable in order to minimize the impact or reduce the potential for such impact on both the attainment and maintenance of national ambient air quality standards and the achievement of federal and state visibility goals.

(b) (I) In order to ensure compliance with the requirements of paragraph (a) of this subsection (8), significant users of prescribed fire shall submit planning documents to the commission. The commission shall then conduct a public hearing to review each planning document submitted relevant to achieving the goal of minimizing emissions and impacts as set forth in paragraph (a) of this subsection (8). Only one hearing shall be held for each planning document. The commission shall hold a hearing and complete its review of the planning documents submitted by any significant user of prescribed fire within forty-five days of their receipt by the commission, unless otherwise agreed to by the significant user of prescribed fire.

(II) As used in this paragraph (b), "planning documents" means documents that summarize the use of prescribed fire as a grassland or forest management tool and the associated discharge or release of air pollution and that demonstrate how compliance with the state standard expressed in section 25-7-102 shall be achieved. "Planning documents" shall include land management plans or a summary of the equivalent information that explains and supports the land management criteria evaluated and the decision to use prescribed fire as the fuel treatment method. Planning documents shall include a discussion of the alternatives considered and a discussion of how prescribed fire, if selected, minimizes the risk of wildfire.

(III) The commission shall have discretion to adopt rules governing the resubmission of planning documents to prevent such plans from becoming outdated.

(c) Following a public hearing, the commission shall comment and make recommendations to the significant user of prescribed fire regarding any changes to elements of the plan relating to the discharge or release of air pollutants that the commission finds necessary to comply with the state standard expressed in section 25-7-102

25-7-114.7(2)(a)(III) Every owner or operator subject to the requirements of paying fees set forth in subparagraph (I) of this paragraph (a) shall also pay a processing fee for the costs of processing any application other than an air pollution emission notice under this article. Every significant user of prescribed fire, including federal facilities, submitting a planning document to the commission pursuant to section 25-7-106 (8) (b) shall pay a fee for costs of evaluating such documents. The division shall assess a fee for work it performs up to a maximum of thirty hours at a rate of fifty-nine dollars and ninety-eight cents per hour. If the division requires more than thirty hours to process the application or evaluate the prescribed fire-related planning documents, the fee paid by the applicant shall not exceed three thousand dollars, unless the division has informed the source that the respective billings may exceed three thousand dollars and has provided the source with an estimate of what the actual charges may be prior to commencing the work.

25-7-123. Open burning - penalties.

(1) (a) The commission shall adopt a program to control open burning in each portion of the state in which such control is necessary in order to carry out the policies of this article, as set forth in section 25-7-102, and to comply with the requirements of the federal act. Such program shall include emission control regulations and the designation, after public hearing and from time to time, of such portions by legal description.

(b) Open burning in the course of agricultural operations may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning. For purposes of this section, "agricultural operations" does not include grassland, forest, or habitat management activities of significant users of prescribed fire conducted on lands the primary purpose of which is nonagricultural, unless a person asserts and the commission finds that the absence of regulation would substantially impede the objectives of this article. Such activities shall be deemed "commercial purposes" within the meaning of paragraph (b) of subsection (3) of this section.

(c) No permit shall be issued by the division pursuant to paragraph (a) of subsection (2) of this section after July 1, 2002, unless such permit is consistent with the comments and recommendations of the commission concerning the planning document, as defined in section 25-7-106 (8) (b) (II), applicable to the area to be burned; except that permit conditions may be excluded from a permit if a significant user of prescribed fire demonstrates and the state finds that such conditions are inconsistent with applicable law.

The division shall report all such exclusions, within thirty days after they are granted, to the governor and to the director of the legislative council. In no event shall a permit be issued unless a planning document for the area to be burned has been submitted to the commission for review, public hearing, and comment in accordance with section 25-7-106 (8). The commission shall adopt rules to provide for exceptions from the requirements of section 25-7-106 (8) when immediate issuance of a permit is necessary to protect the public health and safety.

(2) (a) Within such designated portions of the state, no person shall burn or permit to be burned on any open premises owned or controlled by such person, or on any public street, alley, or other land adjacent to such premises any rubbish, wastepaper, wood, or other flammable material, unless a permit therefor has first been obtained from the division. In granting or denying the issuance of any such permit, the division shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area, climatic conditions on the day of such burning, and compliance by the applicant for the permit with applicable fire protection and safety requirements of the local authority or area.

(b) In all or any part of any portion of the state designated pursuant to subsection (1) of this section, the prohibition contained in this subsection (2) may be suspended by the commission with respect to any particular type or category of open burning upon a finding that enforcement of the prohibition would neither significantly assist in the prevention, abatement, and control of air pollution nor significantly enhance the quality of the ambient air in such designated area.

(3) (a) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for noncommercial purposes without first having obtained a permit as required shall be subject to a civil penalty of not more than one hundred dollars per day for each day during which such a violation occurs.

(b) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for commercial purposes without first having obtained a permit as required shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such a violation occurs.

25-7-122. Civil penalties.

(1) Upon application of the division, penalties as determined under this article may be collected by the division by action instituted in the district court for the district in which is located the air pollution source affected in accordance with the following provisions:

(b) Any person who violates any requirement or prohibition of an applicable emission control regulation of the commission, the state implementation plan, a construction permit, any provision for the prevention of significant deterioration under part 2 of this article, any provision related to attainment under part 3 of this article, or any provision of section 25-7-105, 25-7-106, 25-7-106.3, 25-7-106.8, 25-7-106.9, 25-7-108,

25-7-109, 25-7-111, 25-7-112, 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414, C.R.S., shall be subject to a civil penalty of not more than fifteen thousand dollars per day for each day of such violation; except that there shall be no civil penalties assessed or collected against persons who violate emission regulations promulgated by the commission for the control of odor until a compliance order issued pursuant to section 25-7-115 and ordering compliance with the odor regulation has been violated. (c) Any person failing to comply with the provisions of section 25-7-114.1 shall be subject to a civil penalty of not more than five hundred dollars. (d) Any person who violates any requirement, prohibition, or order respecting an operating permit issued pursuant to section 25-7-114.3, including but not limited to failure to obtain such a permit or to operate in compliance with any term or condition thereof or to pay the permit fee required under section 25-7-114.7 (2) or commits a violation of section 25-7-109.6 shall be subject to a civil penalty of not more than fifteen thousand dollars per day for each violation. (e) Any person who violates any provision of section 25-7-139 shall be subject to a civil penalty of not more than one thousand dollars.

(2) (a) In determining the amount of any civil penalty, the following factors shall be considered: (I) The violator's compliance history; (II) Good faith efforts on behalf of the violator to comply; (III) Payment by the violator of penalties previously assessed for the same violation; (IV) Duration of the violation; (V) Economic benefit of noncompliance to the violator; (VI) Impact on, or threat to, the public health or welfare or the environment as a result of the violation; (VII) Malfeasance; and (VIII) Whether legal and factual theories were advanced for purposes of delay.

(b) In addition to the factors set forth in paragraph (a) of this subsection (2), the following circumstances shall be considered as grounds for reducing or eliminating civil penalties: (I) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance; (II) Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts; (III) The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program; (IV) Substantial economic impact of a penalty on the violator; (V) Nonfeasance; and (VI) Other mitigating factors.

(c) The imposition of civil penalties may be deferred or suspended where appropriate based on consideration of the factors set forth in this subsection (2).

(3) Notwithstanding any other provision in this section, no action for civil enforcement of this article may be taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section 25-7-114.4 (3).

25-7-123. Open burning - penalties.

(1) (a) The commission shall adopt a program to control open burning in each portion of the state in which such control is necessary in order to carry out the policies of this article, as set forth in section 25-7-102, and to comply with the requirements of the federal act. Such program shall include emission control regulations and the designation, after public hearing and from time to time, of such portions by legal description.

(b) Open burning in the course of agricultural operations may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning. For purposes of this section, "agricultural operations" does not include grassland, forest, or habitat management activities of significant users of prescribed fire conducted on lands the primary purpose of which is nonagricultural, unless a person asserts and the commission finds that the absence of regulation would substantially impede the objectives of this article. Such activities shall be deemed "commercial purposes" within the meaning of paragraph (b) of subsection (3) of this section.

(c) No permit shall be issued by the division pursuant to paragraph (a) of subsection (2) of this section after July 1, 2002, unless such permit is consistent with the comments and recommendations of the commission concerning the planning document, as defined in section 25-7-106 (8) (b) (II), applicable to the area to be burned; except that permit conditions may be excluded from a permit if a significant user of prescribed fire demonstrates and the state finds that such conditions are inconsistent with applicable law. The division shall report all such exclusions, within thirty days after they are granted, to the governor and to the director of the legislative council. In no event shall a permit be issued unless a planning document for the area to be burned has been submitted to the commission for review, public hearing, and comment in accordance with section 25-7-106 (8). The commission shall adopt rules to provide for exceptions from the requirements of section 25-7-106 (8) when immediate issuance of a permit is necessary to protect the public health and safety.

(2) (a) Within such designated portions of the state, no person shall burn or permit to be burned on any open premises owned or controlled by such person, or on any public street, alley, or other land adjacent to such premises any rubbish, wastepaper, wood, or other flammable material, unless a permit therefor has first been obtained from the division. In granting or denying the issuance of any such permit, the division shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area, climatic conditions on the day of such burning, and compliance by the applicant for the permit with applicable fire protection and safety requirements of the local authority or area.

(b) In all or any part of any portion of the state designated pursuant to subsection (1) of this section, the prohibition contained in this subsection (2) may be suspended by the

commission with respect to any particular type or category of open burning upon a finding that enforcement of the prohibition would neither significantly assist in the prevention, abatement, and control of air pollution nor significantly enhance the quality of the ambient air in such designated area.

(3) (a) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for noncommercial purposes without first having obtained a permit as required shall be subject to a civil penalty of not more than one hundred dollars per day for each day during which such a violation occurs.

(b) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for commercial purposes without first having obtained a permit as required shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such a violation occurs.

3.4 Notification

30-10-513.5 (3) Any property owner who desires to conduct a controlled burn of a structure or building located on such property shall notify the county sheriff of the date when such controlled burn will be conducted. Any property owner providing such notification shall not be liable for any costs under this section resulting from the response by a fire protection district or municipality to such controlled burn due to any person informing or warning such district or municipality of the fire arising from such burn.