Agenda Item Submittal

Department Responsible for Item*	Community Development
Completion Deadline*	(This is the LAST possible date that you need the package back to your office.) 07/08/2016
Desired Agenda Date*	7/12/2016
Amount of Time Requested*	20 Minutes
Action Requested	(Please select one or select "Other" and enter in field below.) Discussion
Parties to the Agreement	
Term Begins	
Term Ends	
Grant Contract Number	
Agenda Item*	(50 Character Limit) – Example: Services Contract – ABC LLC. Discusion on Individual Grows for Marijuana Use ONLY letters, numbers and hyphens
Summary*	Staff would like to discuss unintended consequences and potential solutions related to individual marijuana cultivation.
Fiscal Impact	
Comments to Reviewers	(Enter any comments you would like for the review committee.) Dave B and Randy Barnes still need to review.
Submitted By*	Russell Forrest
Submitter's email address*	rforrest@gunnisoncounty.org
Upload any supporting Documents	(Please upload any necessary supporting documents.) July Policy Discuison with BOCC 2016.pdf 4.83MB
Warning:	Before you submit an item for the contract routing process, please obtain signatures from the other party, so that the Board and/or County Manager can sign and execute the document.

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To: **Board of County Commissioners, Gunnison County**

From: **Russell Forrest, David Baumgarten, and Randy Barnes**

Date: **July 12, 2016**

Subject: **Personal Grown Marijuana/Nuisance**

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1. Introduction:

Both the State of Colorado, through the Department of Revenue, and Gunnison County have created a thorough system of regulating retail and for sale medical marijuana to ensure the potential impacts of the marijuana industry are avoided, minimized and/or mitigated. In addition, Gunnison County has created a land use review process in addition to a licensing program to regulate marijuana uses. Specifically cultivation, manufacturing, and testing uses may be permitted subject to the County's land use resolution and licensing regulations. Retail sale of marijuana in the unincorporated areas of Gunnison County are prohibited. The major thrust of both the County's licensing and land use regulations are to prevent impacts to adjacent property owners. The primary goal in developing these regulations was that the marijuana use(s) would be "invisible" or "undetectable" to adjacent property owners. A specific area of focus in the County regulations was preventing negative impacts of odor which can be associated with certain marijuana uses.

There is a problematic area of the marijuana regulation related to "Personal Use" which is regulated under Article XVIII Section 16: Personal Use and Regulation of Marijuana in the Colorado Constitution. This area of marijuana activity is regulated through the Colorado Department of Public Health and Environment. Individuals in the State of Colorado can legally grow, with a Medical Marijuana Card from the Department of Public Health and Environment, six marijuana plants or less for themselves. Also they may be able to grow more plants if a physician makes a recommendation to that effect. Minors with parental consent can also be eligible to receive a Card. The process for receiving a Medical Marijuana Card is relatively simple (recommendation from a physician that the patient meets one or more of 8 criteria for medical use, resident of Colorado etc.) and there are no effective regulations to address the negative impacts of individual grows.

Section (3) of Section 16 states Personal Use of Marijuana: "*Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Colorado law* ***or the law of any locality within Colorado*** *or be the bases for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older:….(b) Possessing, growing, processing, or transporting* ***no more than six marijuana plants****, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed , locked space, is not conducted openly or publically, and is not made available for sale."* (See Attachment A)

2. Specific Issues:

There are essentially two very different standards for retail/for sale medical marijuana uses (which are regulated through the Department of Revenue and Gunnison County) and personal grows (which cannot involve sales) that receive permits from the Colorado Department of Public Health and are not reviewed by Gunnison County. Personal grows have generated two specific types of concerns:

1) **Retail and Personal Marijuana Uses in the same building:** In Gunnison County we have highly regulated retail uses in the same building as personal grows not regulated by the County and/or the Department of Revenue. There are not specific regulations related to odors and other impacts for personal grows. We have had the situation where retail cultivation uses in the same building (who have spent thousands of dollars on odor mitigation) are directly adjacent to a personal grow. Community Development has received complaints about building regarding marijuana odor and upon investigation we have found that the individual grows are the likely cause of the odor complaints. Staff does not have any effective enforcement tools for a personal grows but we have the ability to terminate the license for a retail grow.

   And

2) **Personal grows in a residential development:** Both the Sheriff's Department and Community Development have received complaints regarding residential uses with personal grows where the use is creating an odor that is impacting other adjacent residential owners. Typically when County staff receives a complaint regarding a personal grow, the owners/tenants of a residence grow will typically show an Medicinal Marijuana Card from the Colorado Department of Public Health and request that government officials leave the premise without a resolution to the odor complaint. On some occasions, County staff discovers construction without permits which enables some level of enforcement activity to occur. Again, staff in these cases, if there is not a land use or building violation, does not have adequate enforcement tools to stop the nuisance which is impacting adjacent property owners. Home Owners Associations often lack adequate regulatory tools through covenants to address this type of issue of issue.

Sometimes law enforcement may have concerns that other illicit activities that may be occurring in conjunction with individual grows but are often powerless to address these concerns unless land use, building code, and /or nuisance related regulations can be applied. Because individual grows are protected under a constitutional amendment, prosecutors are often reluctant to pursue enforcement actions related to individual grows.

Staff does believe that even though personal grows may be protected with a Medical Marijuana Card, that these uses do not have the right to negatively impact adjacent tenants or property owners. We have found other jurisdictions that have developed policy to address nuisance related complaints from marijuana uses including personal grows.

Specifically, staff would like to explore with the Board of County Commissioners whether a enforcement tool should be created to address nuisance complaints related to marijuana uses not regulated by the Department of Revenue and/or current Gunnison County marijuana licensing or land use regulations.

The fundamental question staff would like to discuss is whether the BOCC would like staff to develop regulations to address the issues mentioned above?

3. Potential Policy Options:

The issue of personal grows creating odor related nuisances has become an issue throughout the State of Colorado. However, this is such a new issue that local examples are limited. Given that, staff did find several examples to generate ideas regarding this policy question.

A. State of Colorado:

The State of Colorado has a body of regulation related to odor emission (5 CCR 1001-4) which essentially provides a specific standard to control odorous emission from a property. It provides guidance on how to measure and regulate odor (See Attachment B). Unfortunately it exempts agricultural uses which in this body of regulation includes marijuana cultivation. In talking to the State officials that regulate this body of regulation in the Department of Public Health and Environment, County staff discovered a tool called the "Nasal Ranger" which is a device for measuring and quantifying odor impacts which would be desirable for enforcing odor related issues. The web site is at: http://www.nasalranger.com/ .

B. City of Denver

The City of Denver utilized the State of Colorado's system for measuring odors however, they made it applicable to marijuana uses (See Attachment C). City staff then uses the Nasal Ranger and regulations they have created to regulate odors to respond to and enforce odor complaints (including marijuana uses). Denver has specific standards for measuring odor impacts. The officials in Denver believe that by not singling out marijuana uses and utilizing a state policy related to odor (while including marijuana uses) they have a defensible framework for regulating and enforcing their policy on odor emissions. Gunnison County staff would observe that in an agricultural community not having side bars on what is an offensive odor could be problematic.

C. City of Pueblo

In the research done to date, staff found that the City of Pueblo most directly provided a focused solution on marijuana related nuisances. It has a City Ordinance - Article 2/Section 17-15-20 (4) which states "*All Home (Marijuana) Cultivations must have a ventilation system(s) that prevents recirculation of indoor air and requires all air to be vented directly to the outdoors through a carbon filtration system sufficient to prevent particulates and odors from escaping the Home Cultivation* (See Attachment D)." In addition, Pueblo has Article 3/Nuisance/Section 15-17-30 (1) which provides additional regulatory capabilities for impacts associated with marijuana home cultivation. Pueblo does not use the Nasal Ranger (at least when staff contacted them). Staff believes Pueblo has a good targeted regulatory framework to address the problems mentioned above particularly if paired with the ability to objectively measure odor impacts with a proven device. It should be noted that the cost of the Nasal Ranger is approximately $3000 and it requires certification of the operator and regular certification of the unit.

Attachment A: State Regulations on Personal Grows

Attachment B: State of Colorado Odor Regulations

Attachment C: City of Denver Regulations on Odor & Nuisance

Attachment D: City of Pueblo Regulations on Marijuana Odor

Attachment E: Application for a Medical Marijuana Card – For reference

Attachment A: State Regulations on Personal Grows

Article XVIII, Section 16: Personal Use and Regulation of Marijuana, Colorado Constitution

(1) PURPOSE AND FINDINGS.

(a) In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner similar to alcohol.

(b) In the interest of the health and public safety of our citizenry, the people of the state of Colorado further find and declare that marijuana should be regulated in a manner similar to alcohol so that:

(I) Individuals will have to show proof of age before purchasing marijuana;

(II) Selling, distributing, or transferring marijuana to minors and other individuals under the age of twenty-one shall remain illegal;

(III) Driving under the influence of marijuana shall remain illegal;

(IV) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and

(V) Marijuana sold in this state will be labeled and subject to additional regulations to ensure that consumers are informed and protected.

(c) In the interest of enacting rational policies for the treatment of all variations of the cannabis plant, the people of Colorado further find and declare that industrial hemp should be regulated separately from strains of cannabis with higher delta-9 tetrahydrocannabinol (THC) concentrations.

(d) The people of the state of Colorado further find and declare that it is necessary to ensure consistency and fairness in the application of this section throughout the state and that, therefore, the matters addressed by this section are, except as specified herein, matters of statewide concern.

(2) DEFINITIONS. As used in this section, unless the context otherwise requires,

(a) "Colorado Medical Marijuana Code" means article 43.3 of title 12, Colorado Revised

Statutes.

(b) "Consumer" means a person twenty-one years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one years of age or older, but not for resale to others.

(c) "Department" means the department of revenue or its successor agency.

(d) "Industrial hemp" means the plant of the genus cannabis and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

(e) "Locality" means a county, municipality, or city and county.

(f) "Marijuana" or "marihuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

(g) "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

(h) "Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

(i) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

(j) "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana

products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

(k) "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

(l) "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

(m) "Medical marijuana center" means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

(n) "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

(o) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

(3) PERSONAL USE OF MARIJUANA. Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Colorado law or the law of any locality within Colorado or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older:

(a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana.

(b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.

(c) Transfer of one ounce or less of marijuana without remuneration to a person who is twenty-

one years of age or older.

(d) Consumption of marijuana provided that nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others.

(e) Assisting another person who is twenty-one years of age or older in any of the acts described in paragraphs (a) through (d) of this subsection.

(4) LAWFUL OPERATION OF MARIJUANA-RELATED FACILITIES. Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Colorado law or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older:

(a) Manufacture, possession, or purchase of marijuana accessories or the sale of marijuana accessories to a person who is twenty-one years of age or older.

(b) Possessing, displaying, or transporting marijuana or marijuana products; purchase of marijuana from a marijuana cultivation facility; purchase of marijuana or marijuana products from a marijuana product manufacturing facility; or sale of marijuana or marijuana products to consumers, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a retail marijuana store or is acting in his or her capacity as an owner, employee or agent of a licensed retail marijuana store.

(c) Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing marijuana; delivery or transfer of marijuana to a marijuana testing facility; selling marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store; or the purchase of marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana cultivation facility.

(d) Packaging, processing, transporting, manufacturing, displaying, or possessing marijuana or marijuana products; delivery or transfer of marijuana or marijuana products to a marijuana testing facility; selling marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility; the purchase of marijuana from a marijuana cultivation facility; or the purchase of marijuana or marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana product manufacturing

facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana product manufacturing facility.

(e) Possessing, cultivating, processing, repackaging, storing, transporting, displaying, transferring or delivering marijuana or marijuana products if the person has obtained a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana testing facility.

(f) Leasing or otherwise allowing the use of property owned, occupied or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with paragraphs (a) through (e) of this subsection.

(5) REGULATION OF MARIJUANA.

(a) Not later than July 1, 2013, the department shall adopt regulations necessary for implementation of this section. Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall include:

(I) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment, with such procedures subject to all requirements of article 4 of title 24 of the Colorado Administrative Procedure Act or any successor provision;

(II) A schedule of application, licensing and renewal fees, provided, application fees shall not exceed five thousand dollars, with this upper limit adjusted annually for inflation, unless the department determines a greater fee is necessary to carry out its responsibilities under this section, and provided further, an entity that is licensed under the Colorado Medical Marijuana Code to cultivate or sell marijuana or to manufacture marijuana products at the time this section takes effect and that chooses to apply for a separate marijuana establishment license shall not be required to pay an application fee greater than five hundred dollars to apply for a license to operate a marijuana establishment in accordance with the provisions of this section;

(III) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;

(IV) Security requirements for marijuana establishments;

(V) Requirements to prevent the sale or diversion of marijuana and marijuana products to

persons under the age of twenty-one;

(VI) Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;

(VII) Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana;

(VIII) Restrictions on the advertising and display of marijuana and marijuana products; and

(IX) Civil penalties for the failure to comply with regulations made pursuant to this section.

(b) In order to ensure the most secure, reliable, and accountable system for the production and distribution of marijuana and marijuana products in accordance with this subsection, in any competitive application process the department shall have as a primary consideration whether an applicant:

(I) Has prior experience producing or distributing marijuana or marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code in the locality in which the applicant seeks to operate a marijuana establishment; and

(II) Has, during the experience described in subparagraph (I), complied consistently with section 14 of this article, the provisions of the Colorado Medical Marijuana Code and conforming regulations.

(c) In order to ensure that individual privacy is protected, notwithstanding paragraph (a), the department shall not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.

(d) The general assembly shall enact an excise tax to be levied upon marijuana sold or otherwise transferred by a marijuana cultivation facility to a marijuana product manufacturing facility or to a retail marijuana store at a rate not to exceed fifteen percent prior to January 1, 2017 and at a rate to be determined by the general assembly thereafter, and shall direct the department to establish procedures for the collection of all taxes levied. Provided, the first forty million dollars in revenue raised annually from any such excise tax shall be credited to the

Public School Capital Construction Assistance Fund created by article 43.7 of title 22, C.R.S., or any successor fund dedicated to a similar purpose. Provided further, no such excise tax shall be levied upon marijuana intended for sale at medical marijuana centers pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

(e) Not later than October 1, 2013, each locality shall enact an ordinance or regulation specifying the entity within the locality that is responsible for processing applications submitted for a license to operate a marijuana establishment within the boundaries of the locality and for the issuance of such licenses should the issuance by the locality become necessary because of a failure by the department to adopt regulations pursuant to paragraph (a) or because of a failure by the department to process and issue licenses as required by paragraph (g).

(f) A locality may enact ordinances or regulations, not in conflict with this section or with regulations or legislation enacted pursuant to this section, governing the time, place, manner and number of marijuana establishment operations; establishing procedures for the issuance, suspension, and revocation of a license issued by the locality in accordance with paragraph (h) or (i), such procedures to be subject to all requirements of article 4 of title 24 of the Colorado Administrative Procedure Act or any successor provision; establishing a schedule of annual operating, licensing, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a locality in accordance with paragraph (i) and a licensing fee shall only be due if a license is issued by a locality in accordance with paragraph (h) or (i); and establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such locality. A locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure; provided, any initiated or referred measure to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot during an even numbered year.

(g) Each application for an annual license to operate a marijuana establishment shall be submitted to the department. The department shall:

(I) Begin accepting and processing applications on October 1, 2013;

(II) Immediately forward a copy of each application and half of the license application fee to the locality in which the applicant desires to operate the marijuana establishment;

(III) Issue an annual license to the applicant between forty-five and ninety days after receipt of an application unless the department finds the applicant is not in compliance with regulations enacted pursuant to paragraph (a) or the department is notified by the relevant locality that the applicant is not in compliance with ordinances and regulations made pursuant to paragraph (f) and in effect at the time of application, provided, where a locality has enacted a numerical limit on the number of marijuana establishments and a greater number of applicants seek licenses, the department shall solicit and consider input from the locality as to the locality's preference or preferences for licensure; and

(IV) Upon denial of an application, notify the applicant in writing of the specific reason for its denial.

(h) If the department does not issue a license to an applicant within ninety days of receipt of the application filed in accordance with paragraph (g) and does not notify the applicant of the specific reason for its denial, in writing and within such time period, or if the department has adopted regulations pursuant to paragraph (a) and has accepted applications pursuant to paragraph (g) but has not issued any licenses by January 1, 2014, the applicant may resubmit its application directly to the locality, pursuant to paragraph (e), and the locality may issue an annual license to the applicant. A locality issuing a license to an applicant shall do so within ninety days of receipt of the resubmitted application unless the locality finds and notifies the applicant that the applicant is not in compliance with ordinances and regulations made pursuant to paragraph (f) in effect at the time the application is resubmitted and the locality shall notify the department if an annual license has been issued to the applicant. If an application is submitted to a locality under this paragraph, the department shall forward to the locality the application fee paid by the applicant to the department upon request by the locality. A license issued by a locality in accordance with this paragraph shall have the same force and effect as a license issued by the department in accordance with paragraph (g) and the holder of such license shall not be subject to regulation or enforcement by the department during the term of that license. A subsequent or renewed license may be issued under this paragraph on an annual basis only upon resubmission to the locality of a new application submitted to the department pursuant to paragraph (g). Nothing in this paragraph shall limit such relief as may be available to an aggrieved party under section 24-4-104, C.R.S., of the Colorado Administrative Procedure Act or any successor provision.

(i) If the department does not adopt regulations required by paragraph (a), an applicant may submit an application directly to a locality after October 1, 2013 and the locality may issue an annual license to the applicant. A locality issuing a license to an applicant shall do so within ninety days of receipt of the application unless it finds and notifies the applicant that the

applicant is not in compliance with ordinances and regulations made pursuant to paragraph (f) in effect at the time of application and shall notify the department if an annual license has been issued to the applicant. A license issued by a locality in accordance with this paragraph shall have the same force and effect as a license issued by the department in accordance with paragraph (g) and the holder of such license shall not be subject to regulation or enforcement by the department during the term of that license. A subsequent or renewed license may be issued under this paragraph on an annual basis if the department has not adopted regulations required by paragraph (a) at least ninety days prior to the date upon which such subsequent or renewed license would be effective or if the department has adopted regulations pursuant to paragraph (a) but has not, at least ninety days after the adoption of such regulations, issued licenses pursuant to paragraph (g).

(j) Not later than July 1, 2014, the general assembly shall enact legislation governing the cultivation, processing and sale of industrial hemp.

(6) EMPLOYERS, DRIVING, MINORS AND CONTROL OF PROPERTY.(a) Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.

(b) Nothing in this section is intended to allow driving under the influence of marijuana or driving while impaired by marijuana or to supersede statutory laws related to driving under the influence of marijuana or driving while impaired by marijuana, nor shall this section prevent the state from enacting and imposing penalties for driving under the influence of or while impaired by marijuana.

(c) Nothing in this section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.

(d) Nothing in this section shall prohibit a person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

(7) MEDICAL MARIJUANA PROVISIONS UNAFFECTED. Nothing in this section shall be construed:

(a) To limit any privileges or rights of a medical marijuana patient, primary caregiver, or licensed

entity as provided in section 14 of this article and the Colorado Medical Marijuana Code;

(b) To permit a medical marijuana center to distribute marijuana to a person who is not a medical marijuana patient;

(c) To permit a medical marijuana center to purchase marijuana or marijuana products in a manner or from a source not authorized under the Colorado Medical Marijuana Code;

(d) To permit any medical marijuana center licensed pursuant to section 14 of this article and the Colorado Medical Marijuana Code to operate on the same premises as a retail marijuana store; or

(e) To discharge the department, the Colorado Board of Health, or the Colorado Department of Public Health and Environment from their statutory and constitutional duties to regulate medical marijuana pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

(8) SELF-EXECUTING, SEVERABILITY, CONFLICTING PROVISIONS. All provisions of this section are self-executing except as specified herein, are severable, and, except where otherwise indicated in the text, shall supersede conflicting state statutory, local charter, ordinance, or resolution, and other state and local provisions.

(9) EFFECTIVE DATE. Unless otherwise provided by this section, all provisions of this section shall become effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to section 1(4) of article V.

Attachment B: State of Colorado Odor Regulations

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 2

ODOR EMISSION

5 CCR 1001-4

PART A GENERAL PROVISIONS

Pursuant to Section 25-7-109(2)(d), C.R.S., the following Emission Regulations are issued:

I. No person, wherever located, shall cause or allow the emission of odorous air contaminants from any single source such as to result in detectable odors which are measured in excess of the following limits:

I.A. For areas used predominantly for residential or commercial purposes it is a violation if odors are detected after the odorous air has been diluted with seven (7) or more volumes of odor free air.

I.B. In all other land use areas, it is a violation if odors are detected after the odorous air has been diluted with fifteen (15) or more volumes of odor free air.

I.C.

I.C.1. When the source is a manufacturing process, the source shall have an affirmative defense to a violation of Sections I.A. and I.B., Part A, of this Regulation Number 2, provided that the source demonstrates that it is utilizing the best practical treatment, maintenance, and control currently available in order to maintain the lowest possible emission of odorous gases. In determining whether the source has met its burden of utilizing the best practical control methods, the source need not consider any method which would result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business or activity, if such would be without corresponding public benefit.

I.C.2. For all areas it is a violation when odors are detected after the odorous air has been diluted with one hundred twenty seven (127) or more volumes of odor free air in which case provisions of Section I.C.1., Part A, of this Regulation Number 2 shall not be applicable.

II. For the purposes of this Part A of Regulation Number 2, two odor measurements shall be made within a period of one hour, these measurements being separated by at least fifteen (15) minutes. These measurements shall be made outside the property line of the property from which the emission originates.

III. For the purposes of this Part A of Regulation Number 2, personnel for evaluating odors shall be selected using a "detectability rating test" as outline in "Selection and Training of Judges for Sensory Evaluation of the Intensity and Character of Diesel Exhaust Odors." USPHS Pub. #999-AP-32.

IV. An instrument, device, or technique designated by the Colorado Air Pollution Control Division may be used in the determination of the detectability of an odor and may be used as a guide in the enforcement of this Part A of Regulation Number 2.

V. The provisions of this Part A of Regulation Number 2 shall apply throughout the State of Colorado. Except that this Part A of Regulation Number 2 shall not apply to housed commercial swine feeding operations, or to agricultural production that is not considered a major stationary source.

PART B HOUSED COMMERCIAL SWINE FEEDING OPERATIONS

I. Applicability

The provisions of Regulation Number 2, Part B shall apply statewide, to new, expanded, and existing housed commercial swine feeding operations, with the following exception. This Part B of Regulation Number 2 is intended to work in conjunction with Section 61.13 of the Water Quality Control Commission's Colorado Discharge Permit System Regulations Number 61.

II. Definitions

The following terms are defined specifically for this Part B of Regulation Number 2. For any terms not defined in this Part B of Regulation Number 2, the definitions in the Colorado Air Pollution Prevention and Control Act (State Act, Sections 25-7-101, C.R.S., et seq.) and the Commission's Common Provisions (5 C.C.R. 1001-2) shall apply.

II.A. Aerobic

Means a waste treatment method that utilizes air or oxygen.

II.B. Anaerobic

Means a waste treatment method that, in whole or in part, does not utilize air or oxygen.

II.C. Applicable Requirements

Means all of the following as they apply to emissions units in a housed commercial swine feeding operation:

II.C.1. any term or condition of any permit to operate issued pursuant to this Part B of Regulation Number 2;

II.C.2. any standard or other requirement provided for in this Part B of Regulation Number 2; and

II.C.3. any standard or other requirement provided for in the State Act or Commission regulations that apply to housed commercial swine feeding operations.

II.D. Aquifer

Means a formation, group of formations, or part of a formation containing sufficient saturated permeable material that could yield a sufficient quantity of water that may be extracted and applied to a beneficial use.

II.E. Capable of Housing

Means the combined maximum capacities of the housing units that are included in the housed commercial swine feeding operation. Unless the owner of the housed commercial swine feeding operation provides information about the specific operation to the Division, which demonstrates that an alternative capacity calculation is appropriate for that housed commercial swine feeding operation, operations will be presumed capable of housing 800,000 pounds or more of live animal weight if they have the capacity to house:

II.E.1. 11,500 weaning swine (70 pounds or less);

II.E.2. 3,020 swine (70 pounds up to finish weight);

II.E.3. 2,000 breeding sows and/or boars; and

where more than one of the above-listed categories of swine of varying sizes are present, housed commercial swine feeding operations will be deemed capable of housing 800,000 pounds or more of live animal weight if, by dividing the capacity for the number of each type of swine by the respective limit from Sections II.E.1., II.E.2., and/or II.E.3., Part B, of this Regulation Number 2, above, the sum of the resulting numbers is one or greater.

II.F. Common or Affiliated Ownership or Management

Means:

II.F.1. housed commercial swine feeding operations owned by the same entity;

II.F.2. housed commercial swine feeding operations owned by entities related through majority ownership; or

II.F.3. housed commercial swine feeding operations with structural, organizational, or contractual relationships that evidence actual or effective control of the management of the aspects of a housed commercial swine feeding operation related to swine production or swine waste process wastewater conveyance, storage, treatment, or land application systems.

II.G. Cover

Means a man-made, man-applied, or man-operated device, technology, or material that encompasses the entire surface area of a process wastewater vessel or waste impoundment so as to capture, recover, incinerate or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emissions of such gases into the atmosphere.

II.H. Division

Means for purposes of Regulation Number 2, Part B, the Division of Environmental Health and Sustainability, of the Colorado Department of Public Health and Environment.

II.I. Existing Source

Means any housed commercial swine feeding operation that has commenced construction prior to or on March 30, 1999.

II.J. Housed Commercial Swine Feeding Operation

Means a housed swine feeding operation that is capable of housing 800,000pounds or more of live animal weight of swine at any one time or is deemed a commercial operation under local zoning or land use regulations.

Two or more housed swine feeding operations shall be considered to comprise a single housed commercial swine feeding operation if they are both:

II.J.1. under common or affiliated ownership or management, and

II.J.1.a. are adjacent to or utilize a common area or system for manure disposal; or

II.J.1.b. are integrated in any way; or

II.J.1.c. are located or discharge within the same watershed or into watersheds that are hydrologically connected; or

II.J.1.d. are located on or discharge onto land overlying the same ground water aquifer.

II.K. Housed Swine Feeding Operation

Means the practice of raising swine in buildings, or other enclosed structures wherein swine of any size are fed for 45 days or longer in any 12 month period, and crop or forage growth or production is not sustained in the area of confinement.

II.L. Integrated in Any Way

Means separate operations that are related in a manner that creates a reasonable potential for the operations to result in a measurable cumulative impact on water quality or air quality at any one location.

II.M. Land Application

Means any process wastewater or manure being applied directly to the land for land disposal, land treatment, or irrigation and does not include the discharge to surface waters or loading of process wastewater vessels or waste impoundments even if such waters are subsequently diverted and applied to the land.

II.N. Manure

Means feces, urine, litter, bedding, or feed waste from housed commercial swine feeding operations.

II.O. New Source

Means any housed commercial swine feeding operation that has not commenced construction prior to or on March 30, 1999.

II.P. Open Animal Feeding Operation

Means pens or similar confinement areas with dirt, concrete, or other paved or hard surfaces wherein swine are substantially or entirely exposed to the outside environment and are located at a housed commercial swine feeding operation. For the purposes of Part B of this Regulation

Number 2, the term open animal feeding operation is synonymous with the terms yard, pasture lot, dirt lot, and dry lot, for swine, as these terms are commonly used in the agricultural industry.

II.Q. Permit to Operate

Means the same as a "construction permit" or "emission permit", and is the permit required under Section 25-7-114.2, C.R.S.

II.R. Process Wastewater Vessel

Means a facility or part of a housed commercial swine feeding operation, other than a waste impoundment, which is used for the storage, treatment, evaporation or discharge of pollutant-containing wastewater, swine feeding process wastewater, waste solids, sludge, or associated sediment from a housed commercial swine feeding operation.

II.S. Receptor

Means any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business.

II.T. Swine Feeding Process Wastewater

Means any process-generated wastewater used in a housed commercial swine feeding operation, including water used for feeding, flushing, or washing, and any water or precipitation that comes into contact with any manure, urine, or any product used in or resulting from the production of swine. As used in this Part B of Regulation Number 2, "process wastewater" shall mean "swine feeding process wastewater."

II.U. Utilizes Air or Oxygen

Means a waste treatment method that utilizes air or oxygen at a minimum at one part per million of dissolved oxygen throughout the liquid column of the impoundment or a waste treatment method that is designed to meet the oxygen demand of the waste loading.

II.V. Waste Impoundment

Also termed "impoundment", means a facility or part of a housed commercial swine feeding operation which is a natural topographic depression, man-made excavation, or diked area formed of man-made or earthen materials, which is used for the storage, treatment, evaporation or discharge of pollutant-containing wastewater, waste solids, sludge, or associated sediment from a housed commercial swine feeding operation.

II.W. Watershed

Means a hydrologic unit no larger than an eight-digit unit as displayed on the U.S. Geologic Survey 1974 Hydrologic Unit Map for the State of Colorado. The phrase "watersheds that are hydrologically connected" shall mean watersheds that are contiguous and tributary to the same four-digit unit. Provided, that two or more housed commercial swine feeding operations shall not be considered to be located in the same watershed or in watersheds that are hydrologically connected if the owner or operator demonstrates that there is no reasonable potential for the operations to result in a cumulative impact on water quality at any one location.

II.X. Working Capacity

Means the number of weaned swine that the housed commercial swine feeding operation is capable of housing at one time.

III. Odor Standards for Housed Commercial Swine Feeding Operations

III.A. Odor Concentration Standard at Property Boundary

III.A.1. All housed commercial swine feeding operations shall manage odor emissions from all aspects of the operations such that odor emissions from the operations shall not be detected at or beyond the property boundary after the odorous air has been diluted with seven or more volumes of odor free air.

III.A.2. For the purposes of this Part B of Regulation Number 2, two odor measurements shall be made within a period of one hour, these measurements being separated by at least 15 minutes. These measurements shall be made at the property line of the property from which the emission originates.

III.B. Odor Concentration Standard at Any Receptor

III.B.1. All housed commercial swine feeding operations shall manage odor emissions from all aspects of the operations such that odor emissions from the operations shall not be detected at any off-site receptor after the odorous air has been diluted with two or more volumes of odor free air.

III.B.2. For the purposes of this Part B of Regulation Number 2, two odor measurements shall be made within a period of one hour, these measurements being separated by at least 15 minutes. These measurements shall be made at the receptor.

IV. Technology Requirements for Process Wastewater Vessels and Impoundments

IV.A. Anaerobic Process Wastewater Vessels and Impoundments

IV.A.1. New or Expanded

All new or expanded anaerobic process wastewater vessels and impoundments, including, but not limited to, waste treatment or storage impoundments, constructed or under construction for use in connection with a housed commercial swine feeding operation, shall employ an approved cover or be operated with technologies or practices that are as effective as covers at minimizing odor from the operation, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. The housed commercial swine feeding operation shall submit to the Division information sufficient to demonstrate that the technologies and practices used are as effective as covers at minimizing odor from the operation. Requirements concerning the use and maintenance of the technologies or practices employed shall be included in the permit to operate and odor management plan for the housed commercial swine feeding operation. All new anaerobic process wastewater vessels and impoundments shall meet the setback requirements of Section V., Part B, of this Regulation Number 2.

IV.A.2. Existing

All existing anaerobic process wastewater vessels and impoundments, including, but not limited to, aeration tanks and waste treatment or storage impoundments, owned or operated for use in connection with a housed commercial swine feeding operation, shall employ a cover or be operated with technologies or practices that are as effective as

covers at minimizing odor from the operation as provided in Sections IV.A.3.a. through IV.A.3.d., Part B, of this Regulation Number 2 so as to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. The housed commercial swine feeding operation shall submit to the Division information sufficient to demonstrate that the technologies and practices used are as effective as covers at minimizing odor from the operation. Requirements concerning the use and maintenance of the technologies or practices employed shall be included in the permit to operate for the housed commercial swine feeding operation.

IV.A.3. All Anaerobic process Wastewater Vessels and Impoundments

IV.A.3.a. The anaerobic treatment process wastewater vessel or impoundment shall employ an approved cover or be operated with technologies or practices that are as effective as covers at minimizing odor from the operation so as to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere.

IV.A.3.b. Approved covers must constitute a continuous, physical barrier between the anaerobic process wastewater and the ambient air that completely covers the anaerobic process. The cover must have no uncontrolled vents. Odor emissions from the anaerobic process wastewater vessel or impoundment may not be vented to the atmosphere. Rather, vents must be connected to equipment designed to capture, control, combust and/or treat the odorous emissions.

IV.A.3.c. Approved covers include, but are not limited to, the following:

IV.A.3.c.(1) Rigid covers, such as geodesic domes or other structures, which constitute a building roof or hard cap over the anaerobic process wastewater vessel or impoundment.

IV.A.3.c.(2) Synthetic covers made of reinforced polypropylene, high-density polyethylene, or other synthetic material, including geosynthetic membranes and geomembrane covers. Synthetic covers can be supported by cables or other structures above the stored liquid, or can float on, or be inflated above, the waste liquids surface. The cover must have a minimum thickness of 40 mils.

IV.A.3.c.(3) Any other cover approved by the Division with comparable effectiveness to the above approved covers to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. The owner or operator of a housed commercial swine feeding operation shall include in an application for a permit to operate credible evidence of the effectiveness of such device, technology, or material. In addition, the owner or operator must demonstrate the continuous effectiveness of such alternative cover within180 days of the Division's issuance of the permit to operate. The owner or operator shall make such a demonstration through monitoring or as otherwise provided in the permit to operate. The Division may condition final approval of such cover upon such additional demonstrations as may be necessary to prove that

such cover will minimize or manage, to the greatest extent practicable, emissions of odorous gases throughout the year. If the owner or operator fails to make such demonstration of effectiveness, the owner or operator shall promptly submit to the Division, for incorporation into the permit to operate, a compliance schedule for the installation and operation of an approved cover as soon as possible but no later than 180 days of the Division's determination of ineffectiveness.

IV.A.3.d. The owner or operator of a housed commercial swine feeding operation that employs technologies or practices associated with an anaerobic process wastewater vessel or impoundment must submit to the Division information sufficient to demonstrate that such technologies or practices are as effective as covers at minimizing odor from the operation.

IV.A.3.d.(1) The owner or operator shall include such information in an application for a permit to operate including olfactometry, scentometry or other test methods that have been reviewed and approved by the Division to demonstrate the effectiveness of technologies or practices in minimizing odor compared to Division-approved covers.

IV.A.3.d.(2) The owner or operator must demonstrate the continuous effectiveness of such technologies or practices within 180 days of the Division's issuance of the permit to operate. The owner or operator shall make such a demonstration through monitoring or other test methods as otherwise provided in the permit to operate. The Division may condition final approval of such technologies or practices upon such additional demonstrations as may be necessary to prove that such technologies or practices will minimize or manage, to the greatest extent practicable, emissions of odorous gases throughout the year. If the owner or operator fails to make such demonstrations of effectiveness, the owner or operator shall promptly submit to the Division, for incorporation into the permit to operate, a compliance schedule for the installation and operation of an approved cover, or other technology or practice approved by the Division as soon as possible but no later than 180 days of the Division's determination of ineffectiveness.

IV.A.3.e. An owner or operator may install a covered anaerobic treatment digester (including covered sequencing batch reactors) that treats the manure or process wastewater resulting from operations of the housed commercial swine feeding operation. Any associated process wastewater vessels and waste impoundments must be maintained as aerobic or the cover requirement of Section IV.A., Part B, of this Regulation Number 2 shall apply.

IV.A.3.f. Reserved.IV.A.3.g. The owner or operator of a housed commercial swine feeding operation may choose among several approved alternatives for managing the odorous gases produced from the covered anaerobic process wastewater vessel or impoundment, so long as the alternative is designed, operated, and maintained to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. Approved technologies are as follows:

IV.A.3.g.(1) Incineration. Vented gases may be collected and incinerated through the use of a flare, incinerator, or other device designed to burn waste gases.

IV.A.3.g.(2) Combustion, as part of an energy recovery operation. Gases may be collected and combusted to operate a gas turbine, engine generator set, boiler, or heater, to produce usable energy.

IV.A.3.g.(3) Add-on Control Equipment. Vented gases may be treated by the use of biofilters or wet scrubbers designed to remove odor emissions, including hydrogen sulfide, particulate matter, and ammonia gases, to the greatest extent practicable.

IV.A.3.g.(4) Any other device, technology, or process approved by the Division as comparably effective as the technologies listed in Section IV.A.3.g.(1) through IV.A.3.g.(3).

IV.B. Aerobic Impoundments

IV.B.1. New

Owners and operators of new aerobic impoundments shall employ technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable. Requirements concerning the use and maintenance of the technologies employed shall be included in the permit to operate and odor management plan for the housed commercial swine feeding operation. All new aerobic impoundments shall meet the setback requirements of Section V., Part B, of this Regulation Number 2.

IV.B.2. Existing

All existing aerobic impoundments shall install and have operational technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable. Requirements concerning the use and maintenance of the technologies employed shall be included in the permit to operate and odor management plan for the housed commercial swine feeding operation.

V. Setback Requirements for New Land Waste Application Site or New Waste Impoundment

V.A. Air Quality Setbacks

No new land waste application site or new waste impoundment used in connection with a housed commercial swine feeding operation, shall be located less than:

V.A.1. One mile from an occupied dwelling without the written consent of the owner of the dwelling;

V.A.2. One mile from a public or private school without the written consent of the school's board of trustees or board of directors; and

V.A.3. One mile from the boundaries of any incorporated municipality without the consent of the governing body of the municipality by resolution.

A new land waste application site is a land waste application site that was not in use as of June 1, 1998. A new waste impoundment is a waste impoundment that was not in use as of June 1, 1998.

V.B. Air Quality Setback Measurements and Waivers

V.B.1. The one mile setback is a required part of the permit to operate for a housed commercial swine feeding operation.

V.B.2. The setback distances specified in this Part B of Regulation Number 2 may be waived with the consent of the party benefited by the setback distance.

V.B.2.a. A waiver granted by a private property owner becomes effective upon being recorded with the county clerk of the county where the affected property is located. The waiver shall reflect the full legal description of the proposed housed commercial swine feeding operation site, the full legal description of the property for which the waiver is granted, and the signature of the owner of record as of that date. A certified copy of this recording shall be provided to the Division as part of the permit to operate application. If the proposed housed commercial swine feeding operation site is in a different county than the affected property, the waiver shall also be filed in the county where the proposed housed commercial swine feeding operation site is located.

V.B.2.b. Public schools and incorporated municipalities shall approve a waiver of setback requirements by action of the governing body. A certified copy of the final action approving the waiver shall be included with the application.

VI. Permit to Operate

VI.A. General Considerations

VI.A.1. Existing Sources

VI.A.1.a. No person shall operate, or modify as per Section VIII.A., an existing housed commercial swine feeding operation without obtaining or having a valid permit to operate from the Division for the housed commercial swine feeding operation.. The owner or operator shall follow the procedures and requirements set forth in this Part B of Regulation Number 2 for obtaining and modifying a permit to operate from the Division. The permit to operate application shall include an odor management plan that demonstrates the housed commercial swine feeding operation is in compliance with this Part B of Regulation Number 2. The owner or operator shall also file a copy of the complete application for a permit to operate with the county clerk and with the county or district public health agency for the county(ies) in which the housed commercial swine feeding operation is located.

VI.A.1.b. A timely and complete application for a permit to operate for existing sources under the provisions of this Part B of Regulation Number 2 shall operate as a defense to an administrative enforcement action for the housed commercial swine feeding operation's failure to have a permit to operate until the Division or the Commission make a final determination on the permit to operate application. This defense to

an enforcement action shall not apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the Division any additional information identified as necessary to process the application, or to otherwise supplement its application in accordance with the provisions of Part B, of this Regulation Number 2. This defense to an enforcement action shall not be available to an applicant who files a fraudulent application.

VI.A.2. New or Expanded Sources

No person shall commence construction, expansion, reconstruction, or modification of a housed commercial swine feeding operation without obtaining or having a valid permit to operate from the Division for the housed commercial swine feeding operation. The owner or operator shall follow the procedures and requirements set forth in this Part B of Regulation Number 2 for obtaining and modifying a permit to operate. The application for a permit to operate shall include an odor management plan that demonstrates the housed commercial swine feeding operation is in compliance with this Part B of Regulation Number 2.

VI.A.3. New, Expanded, and Existing Sources

VI.A.3.a. Any permit which has been issued pursuant to a prior regulation of the Commission, with respect to a project or the operation thereof, shall continue in full force and effect for the purpose for which it was originally issued, unless this current regulation no longer requires such permit, in which case the permit can be rescinded by the Division upon request of the owner or operator of the permitted source. The source may request the Division to consolidate any previously issued permit with a permit to operate required under this Part B of Regulation Number 2.

VI.A.3.b. Any order or decision of the Division shall be final upon issuance.

VI.A.3.c. The owner or operator of a housed commercial swine feeding operation shall pay the Division permit processing fees in the amounts and subject to the limits specified in the provisions of the Colorado Revised Statutes Section 25-7-114.7 for the costs of processing an application for a permit to operate.

VI.A.4. Transfer or Assignment of Ownership

VI.A.4.a. If transfer or assignment of ownership or operation of an air pollution emission source permitted pursuant to this Part B of Regulation Number 2 is anticipated, the prospective owner or operator shall apply to the Division on Division supplied administrative permit to operate amendment forms for re-issuance of the existing permit to operate. To revise a permit to operate for a transfer or assignment of ownership or operation, the owner or operator must submit an amendment form to the Division no later than 30 days after a change in the owner or operator of any facility, process, or activity of a housed commercial swine feeding operation.

VI.A.4.b. In accordance with the provisions of this Section VI.A.4., Part B, of this Regulation Number 2, the permit to operate shall be reissued upon completion of the transfer or assignment if the applicant certifies

that no change is contemplated which might constitute a new, expanded, or modified air pollution source. In no event shall the new owner or operator of a housed commercial swine feeding operation which was subject to the requirements of this Part B of Regulation Number 2 prior to the transfer or assignment be relieved of the obligation to comply with such requirements by reason of a transfer. Such transfers are subject to all applicable permit processing and inspection fees.

VI.A.4.c. If a company is changing its name only, the owner or operator shall apply to the Division, on Division supplied administrative permit to operate amendment forms, for re-issuance of the existing permit to operate.

VI.A.4.d. No administrative permit to operate amendment for transfer or assignment of ownership of a source shall be complete until a written agreement containing a specific date for transfer of permit, responsibility, coverage and liability between the current and new permittee is received by the Division.

VI.B. Option for a Pre-Application Meeting

Prior to submitting an application for a permit to operate an applicant may request and, if so requested, the Division shall grant, a pre-application meeting with the applicant. At such meeting, the Division shall advise the applicant of the applicable requirements, including the information, plans, specifications and the data required to be furnished with the application for the permit to operate.

VI.C. Application for a Permit to Operate

VI.C.1. An application for a permit to operate shall be prepared on forms currently supplied by the Division.

VI.C.2. Applications shall be signed by a person legally authorized to act on behalf of the applicant. The applicant shall furnish all information and data required by the Division to evaluate the application for a permit to operate and to make its preliminary analysis.

VI.C.3. An application for a permit to operate will not be deemed to be complete until all information and data required to evaluate the application have been submitted to the Division. Within 60 calendar days after the receipt of an application or any supplemental information requested by the Division, the Division will give notice to the applicant if and in what respect the application is incomplete. If the Division fails to notify an applicant that the application is incomplete within 60 calendar days of receipt of the original application or receipt of the requested supplemental information, the application shall be deemed to have been complete as of the day of receipt by the Division of the original application or receipt of the requested supplemental information. The application shall be deemed to have been complete as of the day of receipt by the Division of the application or the last submitted supplemental information, whichever is later, for purposes of the application shield discussed in Section VI.A.1.b., Part B, of this Regulation Number 2. Nothing herein precludes the Division from requesting further information about the housed commercial swine feeding operation in order to process the application for a permit to operate. If the Division concludes that the application is not complete, it shall inform the applicant of the additional information, which must be submitted prior to consideration of the application.

VI.C.4. Completeness Determinations

VI.C.4.a. The Division shall review each application submitted to determine whether it is complete. An application shall be deemed to be complete when it contains the information required by Sections VI.C.2., VI.C.3., and VI.D., Part B, of this Regulation Number 2 in sufficient detail for the Division to evaluate the subject housed commercial swine feeding operation and the application for a permit to operate and to determine all applicable requirements.

VI.C.4.b. An owner or operator shall supplement the application for a permit to operate to correct or update information provided in its initial submission as soon as it becomes aware of any omissions or incorrect information submitted or to address changes made to the housed commercial swine feeding operation after submission of the application.

VI.C.4.c. An owner or operator shall supplement its application for a permit to operate to address any requirements that become applicable to the housed commercial swine feeding operation after the date the owner or operator submitted its application, but prior to the Division's issuance of a draft permit to operate.

VI.C.5. Requests for Additional Information

If, after an application for a permit to operate is deemed complete, the Division determines that additional information is necessary to evaluate or take final action on an application, the Division shall request necessary information in writing and set a reasonable deadline for response. Additional information submitted by the deadline will be evaluated by the Division. If the applicant fails to provide the requested information or does not meet the deadline, the housed commercial swine feeding operation's ability to operate without a permit to operate shall terminate on the date of the deadline.

VI.C.6. Preliminary Analysis

The Division shall prepare its preliminary analysis within 60 calendar days after receipt of a complete application for a permit to operate. The preliminary analysis allows the Division to determine whether the housed commercial swine feeding operation will upon issuance of the permit to operate for existing sources or at the date of commencement of operation for new sources comply with all applicable emission control regulations.

VI.D. Content of Permit to Operate and Application for a Permit to Operate

A permit to operate and application for a permit to operate shall contain at a minimum the following:

VI.D.1. A complete and accurate odor management plan that minimizes to the greatest extent practicable off-site odor emissions (see Section VII).

VI.D.2. A description of the cover, technologies and/or practices employed to capture, recover, incinerate, or otherwise manage odorous gases from anaerobic process wastewater vessels and impoundments to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere.

VI.D.3. The technologies employed to ensure the maintenance of aerobic conditions or otherwise minimize to the greatest extent practicable the emission of odorous gases from aerobic impoundments to the atmosphere.

VI.D.4. The applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of the Division's issuance of the permit to operate.

VI.D.5. All applicable monitoring requirements.

VI.D.6. All applicable recordkeeping requirements.

VI.D.7. All applicable reporting requirements.

VI.E. Hearing and Public Comment Requirements

VI.E.1. For new operations, the Division shall, within 15 calendar days after the preparation of the preliminary analysis, cause public notice of the application to be published on the Colorado Department of Public Health and Environment's website and in a newspaper of general distribution in the area in which the proposed operation will be located, and a copy of the preliminary analysis and application to be filed with the county clerk(s) for the county(ies) in which the source will be located and shall send written notice to persons requesting notice of an application for a permit to operate for the type of area or source affected. Such notice shall state:

VI.E.1.a. The location and nature of the proposed activity or project for which a permit to operate application has been filed;

VI.E.1.b. The locations where the application and preliminary analysis are available for public inspection;

VI.E.1.c. That comments concerning the ability of the proposed project or activity to comply with the applicable standards and regulations of the Commission are solicited from any interested person;

VI.E.1.d. That the Division will receive and consider public comments for 30calendar days after such publication;

VI.E.1.e The Division's preliminary determination of approval, conditional approval, or disapproval of the application and/or compliance plan;

VI.E.1.f. That comments are solicited on an innovative technological system for pollution control if proposed by the applicant;

VI.E.1.g.That comments are solicited on the air quality impacts of the housed commercial swine feeding operation or modification; and

VI.E.1.h. That comments are solicited on alternatives available to the housed commercial swine feeding operation.

VI.E.2. For new housed commercial swine feeding operations, a hearing request by the applicant must be provided to the Division within 30 days of publication of the notice for public comment.

VI.E.3. A hearing request pursuant to Section VI.E.2., Part B, of this Regulation Number 2, must be transmitted by the Division to the Commission, along with the complete application for a permit to operate, the preliminary analysis, and any written comments received by the Division within five days after the end of the 30 day comment period; except that for existing housed commercial swine feeding operations the Division will transmit the required information to the Commission within five days after receipt of the hearing request.

VI.E.4. Applicants appealing any final decision of the Division shall follow the Commission's Procedural Rules (5 C.C.R. 1001-1, Section VI.).

VI.F. Permit to Operate Review Requirements

Within 30calendar days following the completion of the Division's preliminary analysis for applications for existing sources, within 30 calendar days following the period for public comment for new sources, or if a hearing is held, within 30 calendar days following such hearing, the Division or the Commission, as the case may be, shall grant the permit to operate if it finds that the proposed housed commercial swine feeding operation or activity will meet all applicable requirements in this Part B of Regulation Number 2 and any other applicable Commission regulations.

VI.G. Denial or Revocation of the Permit to Operate

VI.G.1. If the Division determines that a housed commercial swine feeding operation cannot comply or does not operate in compliance with the provisions of Section VI., Part B, of this Regulation Number 2, the Division shall issue its written denial of the application for a permit to operate stating the reasons for such denial. Any Division denial of a permit to operate shall become final upon mailing of the denial notice to the applicant by certified mail. The applicant may appeal the Division's final denial of a permit to operate as provided in Section VI.G.3., Part B, of this Regulation Number 2.

VI.G.2. Any applicant for a permit to operate shall advise the Division in writing of any refusal to accept any permit condition imposed by the Division within 30 calendar days after receipt of the permit to operate. Such refusal shall be deemed a denial of the application for a permit to operate.

VI.G.3. If the Division denies a permit to operate, the conditions imposed upon a permit to operate are contested by the applicant, or the Division revokes a permit to operate, the applicant or owner or operator may request a hearing before the Commission for review of the Division's action. The hearing shall be heard in accordance with the provisions of Section 25-7-114(4)(h), C.R.S. and Section 25-7-119, C.R.S. of the Act and Section 24-4-105, C.R.S. (State Administrative Procedures Act).

VI.H. Final Approval of a Permit to Operate

VI.H.1. Unless prior and mutually acceptable arrangements have been made, the applicant shall not commence the operation of a new source for which a permit to operate has been issued or reinstated without giving notice to the Division, 30 calendar days prior to the date on which commencement will take place.

VI.H.2. Within 180 calendar days after commencement of operation of a new source the owner or operator shall demonstrate to the Division compliance with the terms and conditions of the permit to operate and the Division may inspect the housed

commercial swine feeding operation to determine whether or not the operating terms and conditions of the permit to operate have been satisfied.

V I.H.3. Before the Division grants final approval of the permit to operate, the Division may require the applicant to conduct performance tests in accordance with methods approved by the Division. A test protocol shall be submitted to the Division for review and approval prior to testing. The Division may monitor such tests and may, at its expense, conduct its own performance tests.

VI.H.4. If the Division determines that the terms and conditions of the permit to operate have been satisfied, the Division shall issue in writing its final approval of a permit to operate to the applicant. Otherwise, the Division shall revoke the permit to operate.

VI.H.5. Final approval of a permit to operate may be issued at the same time as initial approval for temporary sources within a housed commercial swine feeding operation of a duration of one month or less.

VI.I. Cancellation of a Permit to Operate

Whenever an owner or operator wishes to cancel a permit to operate, the owner or operator shall notify the Division, in writing.

VII. Odor Management Plan

VII.A. The application for a permit to operate shall be accompanied by a complete and accurate odor management plan. An odor management plan is required for each new or existing source. The odor management plan shall be approved by the Division prior to issuance of the permit to operate.

VII.B. A complete and accurate odor management plan shall include a description of and a map which demonstrates the location of each of the operations and processes at the housed commercial swine feeding operation, including the following:

VII.B.1. Swine confinement structures, including open animal feeding operations;

VII.B.2. Manure collection, storage, and treatment systems, including anaerobic process wastewater vessels and impoundments and aerobic impoundments;

VII.B.3. Composting storage sites; and

VII.B.4. Land application equipment and sites.

VII.C. A complete and accurate odor management plan shall also include the following components:

VII.C.1. Construction and design plans for odor controls and management practices, including for the following technologies if applicable:

VII.C.1.a. The necessary technology that shall be employed to minimize to the greatest extent practicable off-site odor emissions from all aspects of the operations at the housed commercial swine feeding operation, including swine confinement structures, animal waste, and composting storage sites, and odor and aerosol drift from land application equipment and sites;

VII.C.2. Operation plans for odor controls and management practices, including plans for the following, if applicable:

VII.C.2.a. Proper operation and maintenance of the necessary technology or practices to minimize to the greatest extent practicable off-site odor emissions from all aspects of the operations at the housed commercial swine feeding operation, including swine confinement structures, animal waste, and composting storage sites, and odor and aerosol drift from land application equipment and sites;

VII.C.2.b. Operation of the required equipment in compliance with manufacturer's specifications and recommendations;

VII.C.2.c. Proper operation and maintenance of covers, technologies and/or practices employed for anaerobic process wastewater vessels and impoundments to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere; and

VII.C.2.d. Proper operation and maintenance of the necessary technology employed for aerobic impoundments to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable.

VII.C.3. An animal waste management plan for odor control and management practices necessary to minimize to the greatest extent practicable off-site odor emissions from all aspects of the operations at the housed commercial swine feeding operation, including swine confinement structures, animal waste, and composting storage sites, and odor and aerosol drift from land application equipment and sites.

VII.D. All plans and specifications for odor control equipment and management practices included in the odor management plan must conform to common and accepted professional practices.

VII.E. Testing, sampling, and analysis requirements appropriate for the housed commercial swine feeding operation.

VIII. Modification or Reopening of a Permit to Operate

VIII.A. Modification

The owner or operator must request, or the Division may require, a modification to the permit to operate and odor management plan when it is necessary to correct operational problems or to incorporate controls that minimize to the greatest extent practicable the emission of odorous gases from anaerobic process wastewater vessels and impoundments into the atmosphere, the emission of odorous gases from aerobic impoundments, and off-site odor emissions from all aspects of the housed commercial swine feeding operations. The owner or operator must obtain approval from the Division prior to initiating any change in operational procedures that may impact odorous gases, including but not limited to the following:

VIII.A.1. Increasing the number of animals permitted at the housed commercial swine feeding operation;

VIII.A.2. Changing animal waste treatment, storage, or disposal practices from those permitted at the housed commercial swine feeding operation;

VIII.A.3. Changing the nature and volume of the animal waste generated at the housed commercial swine feeding operation; and

VIII.A.4. Disposing of animal waste at any locations other than those identified in the permit to operate.

If a housed commercial swine feeding operation is required to modify its permit to operate or odor management plan, it shall pay the Division permit processing fees in the amounts and subject to the limits specified in the provisions of the Colorado Revised Statutes Section 25-7-114.7, for the Division's review of the odor management plan revisions.

VIII.B. Revocations/Reopening for Cause

VIII.B.1. A permit to operate issued pursuant to this Part B of Regulation Number 2 shall be reopened and revised in accordance with the State Act under any of the following circumstances:

VIII.B.1.a. The Division determines that the permit to operate contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit to operate.

VIII.B.1.b. The Division determines that the permit to operate must be revised or revoked to assure compliance with the applicable requirements.

VIII.B.2. Permit to operate reopenings and reissuance shall be processed using the procedures set forth in Section VI., Part B, of this Regulation Number 2 for permit to operate issuance and renewal.

VIII.B.2.a. Proceedings to reopen and reissue permits to operate affect only those parts of the permit to operate for which cause to reopen exists.

VII.B.2.b. Reopenings under this Section VIII.B., Part B, of this Regulation Number 2 shall not be initiated before notice of such intent is provided to the housed commercial swine feeding operation by the Division at least 30 days in advance of the date that the permit to operate is to be reopened.

IX. Specific Odor Control Requirements

Housed commercial swine feeding operations shall employ technology to minimize to the greatest extent practicable off-site odor emissions from all aspects of its operations.

IX.A. Mandatory Specific Odor Control Requirements

Housed commercial swine feeding operations shall employ the following odor control technologies and comply with the following work practices at a minimum for all aspects of the operations, unless the owner or operator can demonstrate that an alternative technology or work practice is more effective in minimizing off-site odor emissions from that aspect of the operation to the greatest extent practicable, with the exception of Sections IX.A.2.a., and IX.A.2.b., Part B, Regulation Number 2. In any event, the housed commercial swine feeding operation must comply with the standards in Section III.A., and III.B., Part B, of this Regulation Number 2.

IX.A.1. Swine Confinement Structures

Swine confinement structures, including under floor waste storage areas, must be designed, operated, and maintained to minimize odor emissions. Each swine confinement structure must employ, at a minimum, the following odor control technologies and work practices to minimize odor emissions to the greatest extent practicable, but in any event must meet the standards in Sections III.A., and III.B., Part B, of this Regulation Number 2:

IX.A.1.a. Adequate Ventilation

IX.A.1.a.(1) Existing sources shall employ the necessary technology and work practices to ensure adequate ventilation and efficient air movement to reduce gases and odors, remove moisture, control temperature, and keep the animals clean.

IX.A.1.a.(2) New sources that store and/or treat wastewater, solids, and/or sludges under the floor of the swine building shall employ mechanical under floor ventilation and add-on control equipment for exhaust vents to the outside.

IX.A.1.b. Dust Management

The dust at a confinement structure must be managed so as to minimize off-site odor emissions to the greatest extent practicable by minimizing the amount of dust in the confinement structure.

IX.A.1.b.(1) The inside of the confinement structure shall be maintained so as to keep the animals reasonably clean.

IX.A.1.b.(2) Bedding shall be replaced as necessary to reduce dust, if applicable.

IX.A.1.b.(3) The feed delivery downspouts shall be sized to minimize the generation of dust.

IX.A.1.b.(4) The feed storage tanks and containers shall be maintained so as to minimize spills, including keeping mechanical equipment in good repair and removing spilled feed as specified in the Odor Management Plan.

IX.A.1.b.(5) Exhaust fans and shutters must be cleaned of dust as necessary.

IX.A.1.b.(6) Building sidewall screens should be cleaned of debris such as dust, cobwebs, and weeds as frequently as necessary.

IX.A.1.c. Manure Management

IX.A.1.c.(1) All surfaces (including slotted and slatted floors) on which manure may collect and on which animals are maintained, including floors and walls, should be as clean and dry as possible and with a minimum of cracks and crevices.

IX.A.1.c.(2) Manure must be removed from all of these surfaces as frequently as necessary, by flushing or pit recharge using fresh, recycled, or well treated water, or scraping.

IX.A.1.c.(3) The surfaces shall be completely cleaned and washed down between groups of animals.

IX.A.1.c.(4) Flushing systems shall be flushed as frequently as necessary.

IX.A.1.c.(5) Pit recharge systems shall be partially drained and refilled as frequently as necessary.

IX.A.1.c.(6) The floor surface area on which manure can accumulate shall be minimized.

IX.A.1.c.(7) New sources shall use slotted (also known as slatted) floors or another design as approved by the Division.

IX.A.1.c.(8) Flush tanks shall have a cover and the fill line shall be extended to near the bottom of the tank with an anti-siphon vent.

IX.A.1.c.(9) Sump tanks shall be covered.

IX.A.2. Solid Waste and Process Wastewater Collection, Storage, and Treatment Systems

All solid waste and process wastewater held in process wastewater collection, storage and treatment systems, including waste impoundments and anaerobic and aerobic impoundments and vessels, must be stored, treated, and handled in a manner to minimize odor emissions. Solid waste and process wastewater may be stored only in accordance with the following methods:

IX.A.2.a. In anaerobic process wastewater vessels and impoundments, pursuant to the preceding Section IV.A., Part B, of this Regulation Number 2; or

IX.A.2.b. In aerobic impoundments, pursuant to the preceding Section IV.B., Part B, of this Regulation Number 2.

IX.A.2.c. The owner or operator shall ensure that separated solids are removed promptly to a storage vessel and managed to minimize off-site odor emissions to the greatest extent practicable, composted in compliance with Section IX.A.3., Part B, of this Regulation Number 2, and/or land applied in compliance with Section IX.A.4., Part B, of this Regulation Number 2.

IX.A.2.d. The owner or operator shall comply with the following practices during operation of process wastewater vessel or waste impoundment:

IX.A.2.d.(1) Treatment and storage vessels and impoundments must be loaded at the proper rate to minimize the emission of odorous gases to the greatest extent practicable.

IX.A.2.d.(2) Loading shall occur on a daily or frequent basis to avoid "shock" loading and upset conditions.

IX.A.2.d.(3) Loading shall occur through a feeder pipe that discharges below the surface water level.

IX.A.2.d.(4) Aerobic impoundments shall ensure that there is sufficient oxygen in the impoundment to ensure maintenance of aerobic conditions and utilize air or oxygen as defined in this Part B of Regulation Number 2.

IX.A.2.e. Owners and operators shall minimize release of odorous gases from the liquids in the process wastewater vessels and waste impoundments to the greatest extent practicable.

IX.A.2.f. The owner or operator shall ensure that all pre-treatment digesters are operated to ensure stabilization of the waste and odor control, including operating at the appropriate loading rate, retention time, and temperature.

IX.A.3. Manure Composting Storage Sites

All solid manure compost operations shall meet at a minimum the following best odor management control practices:

IX.A.3.a. All compost piles shall be operated to ensure maintenance of proper aerobic conditions at all times or shall be fully contained in a vessel or a covered building to minimize to the greatest extent practicable off-site odor emissions.

IX.A.3.b. All compost piles shall be aerated using natural, mechanical, or other Division- approved system. If a natural system is used, the owner or operator shall turn the compost pile on a frequent basis (at least weekly or more frequently as necessary to comply with Sections III.A., and III.B., Part B, of this Regulation Number 2). If a mechanical system is used, the owner or operator shall establish and follow operating parameters to minimize to the greatest extent practicable off-site odor emissions.

IX.A.4. Land Application

Owners and operators land applying process wastewater, solid waste, or sludge shall, at a minimum, comply with the following requirements:

IX.A.4.a. No land application of process wastewater, solid waste, or sludge shall occur on lands which are saturated, on land where ponding is occurring, or on land with a snow depth of greater than one inch. During this period, wastewater must be impounded or otherwise treated pursuant to this Part B of Regulation Number 2.

IX.A.4.b. No land application of process wastewater, solid waste, or sludge shall occur on lands which are frozen unless the Water Quality Control Division has approved of the required site-specific analysis demonstrating that run-off will not occur. During this period, wastewater

must be impounded or otherwise treated pursuant to this Part B of Regulation Number 2.

IX.A.4.c. Process wastewater shall be land applied only when the wind conditions are such to minimize off-site transport of the process wastewater.

IX.A.4.d. Land application on weekends and holidays shall not occur unless the Division approves of a waiver or under dire circumstances or an emergency.

IX.A.4.e. All process wastewater:

IX.A.4.e.(1) that is land applied and not injected shall be pretreated to remove at least 65 percent of the total solids and remove over 90 percent of the volatile fatty acids or achieve at least 60 percent removal of total volatile solids; or

IX.A.4.e.(2) that is land applied and injected need not be pretreated as described in Section IX.A.4.e.(1), Part B, Regulation Number 2.

IX.A.4.f. All process wastewater disposal operations using pressure spray systems shall meet the following requirements:

IX.A.4.f.(1) Spraying shall occur using minimum recommended operating pressure with a low pressure system that is no greater than 20 psi, unless the process wastewater is pretreated to remove at least 60 percent of the solids and destroy 95 percent of the volatile fatty acids or achieve at least 60 percent removal of total volatile solids;

IX.A.4.f.(2) Pump intake shall be located near the waste impoundment liquid surface;

IX.A.4.f.(3) A low trajectory system shall be used for spraying; and

IX.A.4.f.(4) Multi-stage waste impoundment systems shall only utilize liquids for land application from the last stage waste impoundment.

IX.A.4.g. Owners and operators land applying any solids separated from process wastewater by screening, settling, or other means, and the land application of any sludge from any process wastewater vessel or impoundment, shall, at a minimum, comply with the following requirements:

IX.A.4.g.(1) All solids or sludges being land applied shall be injected or knifed into the soil immediately upon application. The owner or operator may request and the Division may approve solids or sludges being incorporated into the soil within six hours after application is completed if the owner or operator can demonstrate such a process minimizes to the greatest extent practicable off-site odor emissions.

IX.A.4.g.(2) All solids or sludges applied to the land using subsurface injection methods shall not result in significant amounts of the solids or sludges being present on the surface within one hour after the solids or sludges are injected.

IX.A.4.h. Land application of wastewater shall not be allowed outside of the period of March 1 through October 31.

IX.A.5. Carcass Disposal

Owners and operators shall dispose of carcasses in a manner that minimizes to the greatest extent practicable off-site odor emissions, using one of the approved carcass disposal methods described in Sections IX.A.5.a., through IX.A.5.d., Part B, of this Regulation Number 2.

All carcasses shall be refrigerated or kept natural cooled in a covered enclosure if the owner or operator fails or is unable to properly dispose of the carcasses in accordance with Sections IX.A.5.a. through IX.A.5.d., Part B, of this Regulation Number 2, within 24 hours.

IX.A.5.a. Incineration. Owners or operators shall store the carcasses in an enclosure until the carcasses can be incinerated. The carcasses shall be incinerated so as to avoid incomplete combustion. If the incinerator is unable to consistently achieve complete combustion, the owner or operator shall install a secondary stack burner. The owner or operator shall operate the incinerator in compliance with Commission Regulation Number 6 (5 C.C.R. 1001-8), Part B Sections VII., concerning the operation of incinerators.

IX.A.5.b. Burial. Owners or operators shall bury the carcasses after one day of storage. The carcasses shall be completely covered so as to minimize to the greatest extent practicable odor emissions. The carcasses shall be buried so as not to negatively impact water quality of the waters of Colorado and be in compliance with the Colorado Solid Waste Act and its implementing regulations.

IX.A.5.c. Transport Off Site. Owners or operators shall store the carcasses in a manner to minimize to the greatest extent practicable off-site odor emissions from death of the animal until the carcass is picked up.

IX.A.5.d. Composting. Owners or operators shall put the carcasses in the composter within one day of the death of the animal. The carcasses shall be maintained in a manner to minimize to the greatest extent practicable off-site odor emissions.

IX.A.5.e. Any other disposal method approved by the Division.

IX.B. Recommended Specific Odor Control Requirements

The following technologies and work practices are recommended and the Division may require a housed commercial swine feeding operation to employ the following odor control technologies and comply with the following work practices at a minimum for all aspects of the operations, if the Division determines that the housed commercial swine feeding operation must employ such

technologies or work practices to comply with the standards in Sections III.A., and III.B., Part B, of this Regulation Number 2.

IX.B.1. Swine Confinement Structures

IX.B.1.a. Adequate Ventilation

IX.B.1.a.(1) A mechanical ventilation system shall be designed, installed, operated, and maintained to ensure adequate ventilation and efficient air movement to reduce gases and odors, remove moisture, control temperature, and keep the animals clean.

IX.B.1.a.(2) Fresh air intakes for ventilation located away from dust sources and manure pits.

IX.B.1.a.(3) Add-on control equipment installed on all exhaust vents from the confinement structures.

IX.B.1.a.(4) Mechanical under floor ventilation and add-on control equipment from exhaust vents to the outside.

IX.B.1.b. Dust Management

IX.B.1.b.(1) The use of feed additives and enclosed feeder mechanisms and feed delivery systems.

IX.B.1.c. Manure Management

IX.B.1.c.(1) Manure must be removed from all of surfaces on which manure may collect and on which animals are maintained as frequently as necessary, by flushing or pit recharge using fresh or well treated water, or scraping.

IX.B.1.c.(2) Use of feed management practices, such as phase feeding, amino acid supplemented low protein diets, enzymes, or other feed additives, which reduce the nitrogen content of manure.

IX.B.1.d. Windbreak walls shall be erected downwind from the fans that exhaust air from tunnel-ventilated confinement structures.

IX.B.1.e. Add-on control system shall be installed at each exhaust vent to the outside at confinement structures.

IX.B.2. Solid Waste and Process Wastewater Collection, Storage, and Treatment Systems

IX.B.2.a. The owner or operator shall comply with the following practices during operation of a process wastewater vessel or waste impoundment:

IX.B.2.a.(1) Aerobic impoundments shall employ mechanical aerators sized to provide sufficient oxygen to ensure maintenance of aerobic conditions and utilize air or oxygen as

defined in this Part B of Regulation Number 2, and mechanically aerated impoundments shall be aerated continuously; and

IX.B.2.a.(2) The removal pumps shall be located as far as possible from the inflow line and above the designed sludge storage volume.

IX.B.2.b. Fill and recharge lines are extended to near the bottom of the pit with an anti-siphon vent to minimize agitation when pumping liquids.

IX.B.3. Manure Composting Storage Sites

IX.B.3.a. All air collected from the manure compost pile shall be directed to one or more control points for odor reduction using one or more odor control practices defined in Section IV.A.3.e., Part B, of this Regulation Number 2.

IX.B.4. Land Application

IX.B.4.a. All process wastewater, solid wastes, and sludges prior to land application shall be treated as necessary to minimize to the greatest extent practicable off-site odor emissions.

IX.B.4.b. Land applying process wastewater, solid wastes, and sludges may be restricted based upon other factors as necessary to minimize to the greatest extent practicable off-site odor emissions, including, but not limited to, wind direction, temperature, humidity, and impending rainfall.

IX.B.4.c. The soil shall be tilled prior to and after application of solid wastes or sludges.

IX.B.4.d. All process wastewater disposal operations using pressure spray systems shall meet the following requirements:

IX.B.4.d.(1) The application of extra fine spray shall not occur.

IX.B.5. Carcass Disposal

IX.B.5.a. Any odor emissions from any enclosures or covered units or vessels used to store carcasses shall be captured and treated as necessary.

X. Testing, Recordkeeping, Reporting, and Monitoring Requirements

X.A. Testing Requirements

X.A.1. Testing requirements apply to all aspects of the housed commercial swine feeding operations and include:

X.A.1.a. Testing for concentration of off-site odor emissions; and

X.A.1.b. Testing for emissions from incinerators if applicable.

X.A.2. At a minimum, an owner or operator shall comply with the following testing requirements:

X.A.1.a. An initial compliance test within 180 days after a permit to operate has been issued; and

X.A.2.b. Semi-annual compliance testing beginning within six months of issuance of the permit to operate.

X.B. Recordkeeping Requirements

At a minimum, an owner or operator shall comply with the following recordkeeping requirements:

X.B.1. Records of the required monitoring information that includes the following:

X.B.1.a. Date, place as defined in the permit to operate, and time of sampling or measurements;

X.B.1.b. Date(s) on which analyses were performed;

X.B.1.c. The company or entity that performed the analyses;

X.B.1.d. The analytical techniques or methods used;

X.B.1.e. The results of such analysis; and

X.B.2.f. The operating conditions existing at the time of sampling or measurement.

X.B.2. The owner or operator shall record the dates, field locations, wind direction, wind rate, application rate, and the source of the process wastewater, solid waste, or sludge for each land application at the housed commercial swine feeding operation.

X.B.3. The retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. A housed commercial swine feeding operation shall make available for Division review all other records of required monitoring data and support information required to be retained by a housed commercial swine feeding operation upon 48 hours advance notice by the Division.

X.C. Monitoring Requirements

At a minimum, an owner or operator shall comply with the following monitoring requirements:

X.C.1. All odor emissions monitoring and analysis procedures or test methods relied upon in the odor management plan, including any required procedures and methods for compliance certification requirements.

X.C.2. Periodic monitoring sufficient to yield reliable data for the relevant time period that are representative of the housed commercial swine feeding operation's compliance with the permit to operate and odor management plan. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirements in the permit to operate and odor management plan.

X.C.3. As necessary, requirements concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods as required by the permit to operate and odor management plan.

X.D. Reporting Requirements

At a minimum, an owner or operator shall comply with the following reporting requirements:

X.D.1. Submit an annual report by February 15th of each year that includes the results of all required monitoring.

X.D.2. Prompt reporting of deviations from permit to operate requirements, including those attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventative measures taken.

XI. Enforcement

The Division shall enforce the provisions of Regulation Number 2, Part B. The Division may delegate enforcement of the provisions of Regulation Number 2, Part B to any county or district public health agency. If the Division delegate's enforcement of Regulation Number 2, Part B, the Division shall monitor the actions of any county or district public health agency as such actions pertain to enforcement of Regulation Number 2, Part B.

XII. Annual Fees

The Division shall assess each housed commercial swine feeding operation an annual fee in accordance with and in the amounts and limits specified in the provisions of the Colorado Revised Statutes Section 25-7-138 (5).

XII.A. This fee shall be based on the working capacity of each housed commercial swine feeding operation.

XII.B. This fee shall be designated to fund and offset the Division's direct and indirect costs of an inspection, complaint response and enforcement program.

XII.C. By mutual agreement, any county or district public health agency that assists in enforcement of this Regulation Number 2, Part B shall receive funding to conduct inspections and respond to complaints.

XIII. Reserved. XIV. Severability Clause

If any provision of this regulation is found to be invalid by a court of competent jurisdiction, the remaining provisions of the regulation are valid, unless it appears to the court that the valid provisions of the regulation are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the Commission would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the statutory provisions.

PART C STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE

I. Adopted February 19, 1999

Background

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103(4), C.R.S. and the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S.

Basis

The purpose of this rule revision is to implement Section 25-7-138, C.R.S., which was approved by the electorate on November 3, 1998 and requires the Air Quality Control Commission to promulgate regulations concerning odorous gases and odor emissions from housed commercial swine feeding operations. The rule revisions affect new and existing housed commercial swine feeding operations, including anaerobic process wastewater vessels and impoundments, aerobic impoundments, land waste application sites, and waste impoundments, and require these sources to use technologies to minimize off-site odor emissions from all aspects of housed commercial swine feeding operations, and enforcement provisions.

Authority

The authority for this regulation is contained in the Colorado Air Pollution Prevention and Control Act ("Colorado Act"), Section 25-7-138, C.R.S. Additional authority to promulgate emission control regulations for housed commercial swine feeding operations is set out in Section 25-7-109(8), C.R.S.

The specific authority to require a construction permit, or "permit to operate", for housed commercial swine feeding operations is set out at Section 25-7-114.2, C.R.S. Such operations are no longer exempt from regulation pursuant to Section 25-7-109(8), C.R.S. The authority to charge a permit processing fee of fifty dollars ($50.00) per hour is set out at Section 25-7-114.7(2)(a)(III), C.R.S.

The specific authority to promulgate regulations concerning permit applications and procedures to terminate, modify, or revoke or reissue permits is set out at Section 25-7-114.4, C.R.S.

The specific authority to designate which permit applications warrant public comment, and which do not, and the procedures applicable to such public comment, are set out at Section 25-7-114.5, C.R.S.

The statutory authority to provide for public comment on applications for new operations is set out at Section 25-7-106(2), C.R.S. But the process for public comment on the application and on the Division's preliminary analysis set out in Section 25-7-114.5(5), C.R.S., cannot reasonably be applied to existing operations because there is insufficient time to allow for such comments prior to the issuance of permits on July 1, 1999, as contemplated in statute. For existing operations the process of public comment allows for comment on the permit applications and not the draft permits. Such procedure is promulgated under the Commission's general authority to receive comments before taking agency action, and on its authority under Section 25-7-106(2), C.R.S.

Purpose

The citizens of Colorado have approved an amendment to the Colorado Act requiring the Commission to develop regulations to minimize odor emissions from housed commercial swine feeding operations. The purpose of the regulations is to minimize odor emissions from affected sources to the greatest extent practicable. The Commission finds that the regulatory revisions contained in Regulation Number 2, Part B are necessary to minimize odor emissions from housed commercial swine feeding operations in the State of Colorado.

The regulation requires housed commercial swine feeding operations to employ technology to minimize to the greatest extent practicable off-site odor emissions from all aspects of their operations.

The Commission concludes that the adoption of these regulatory revisions is an appropriate step to minimize odor emissions from housed commercial swine feeding operations.

Applicability

A party has stated that the Commission should consider a de minimis exemption for sources with no odor impact on receptors due to distance of operations from permanent receptor (3,000 feet away). The Commission disagrees that the text of Amendment 14 allows de minimis exemptions to the cover requirement for anaerobic impoundments. Amendment 14 requires that anaerobic process wastewater vessels and impoundments be covered so as to minimize the emission of odorous gases to the "greatest extent practicable;" it does not tie this requirement to "off-site" emissions and does not provide for exceptions if neighbors do not live within a specified distance of the operation.

To the extent that parties assert that distance from receptors should exclude or excuse them from having to comply with technology or odor standards, the Commission has determined that Amendment 14 establishes a requirement to minimize odorous gases to the atmosphere from anaerobic process wastewater vessels and impoundments and aerobic impoundments and a technology standard at the property line for all aspects of the operations.

Definitions

The Commission did not define any terms that are otherwise defined in the Common Provisions. The Commission has attempted to ensure that definitions common to the Water Quality Control Commission's regulation (site regulation) and the Commission's regulation concerning housed commercial swine feeding operations are consistent.

The regulation includes definitions for several terms also defined in the statute. The statutory definitions of "aerobic", "anaerobic", "housed commercial swine feeding operation", and "housed swine feeding operation" appear verbatim in the regulation. The Commission clarified certain statutory definitions by defining terms used within the statutory definitions of "aerobic" and "housed commercial swine feeding operation."

The phrase "capable of housing" is defined and clarified to refer to the combined maximum capacities of individual housing units. The Commission intends this capacity to be based on the sum of the weights of swine anticipated to be present in all housing units at any one time, e.g., based on the business plan for the operation. That is, the capacity determination is based on full use of existing physical facilities, consistent with standard industry practices aimed at providing a continuous supply of marketable hogs. If the owner demonstrates that standard practice results in swine at a variety of weights being present at any one time, the combined total of those various weights at the time of maximum utilization is to be used. The Commission does not believe that the proposal to allow a determination that an operation may be excluded from the definition, based on a commitment not to house more than a specified weight, is consistent with the statutory language, which is based on what an operation is "capable of housing", not on actual operations that may be at a lower level.

The definition includes default values to correlate the statutory 800,000 pounds threshold with different size categories of swine. However, the definition also allows the owner of an operation to provide specific information that demonstrates the appropriateness of an alternative capacity calculation for a particular facility. The Commission intends these elements of the definition to provide predictability and ease of application in most circumstances, while also providing flexibility to address any unique circumstances.

The regulation defines the phrase "under common or affiliated ownership or management" which is used in the definition of "housed commercial swine feeding operation", by focusing on majority ownership or actual or effective control of the management of those aspects of an operation related to swine production or swine waste management. The Commission does not intend that mere similarity of practices, such as utilizing the same university feeding recommendations or local veterinarian or the same feed manufacturer alone evidence "effective control of the management" of operations. Moreover, limited cooperative efforts, such as the participation in a common marketing organization or a commitment by multiple producers to meet common product standards (e.g., for organic pork) alone, without more extensive control of other aspects of swine production or waste management, would not constitute

"effective control of the management" of an operation, so long as no entity has the ability to require such participation. The Commission anticipates that application of this definition will require the Division to exercise its judgment on a case-by-case basis to determine what circumstances do or do not evidence "effective control", e.g., based on actual decision-making authority or dominant market position. All possible circumstances and arrangements cannot be anticipated in this regulation.

There were issues concerning the appropriate application of the housed commercial swine feeding operation definition in one specific type of arrangement: where a contract finisher would not meet the definition of "common or affiliated ownership or management" except that it does not own in total the swine that it finishes; instead, it finishes swine pursuant to a contract with an agricultural cooperative or corporation. The Commission believes that new operations that are involved in this type of arrangement fall under the statutory "common or affiliated ownership or management". The Commission believes that new operations that are involved in this type of arrangement fall under the statutory "common or affiliated ownership or management" language and that, if they also meet one of the tests in the definition relating to water quality or air quality impacts, excluding those operations would be inconsistent with the requirements of the statute. The interdependency among the various phases of swine production -- farrowing, finishing and processing -- for these arrangements does not appear to be substantially different from that associated with a single corporate operation.

Many of the existing operations, however, are family farms that have added housed swine facilities within the last several years pursuant to a contract with an agricultural cooperative. The Commission recognizes that these cooperative contract operations face a substantial financial and management challenge to come into compliance with the requirements of Amendment 14, especially considering the cumulative air and water quality requirements. Therefore, the Commission has provided a ten year deferral period for the existing contract producers that meet the definition of a housed commercial swine feeding operation. During this ten year deferral period, the Commission directs the Division to carefully monitor the eight to ten existing operations to determine whether these operations should be regulated under this rule due to their adverse impacts on air quality. The Division shall report back to the Commission at the end of five years to recommend whether the deferral should be made permanent. The deferral does not apply to operations that have been designated under local zoning or land use regulations as commercial operations. The Commission is not providing the ten year deferral to new operations that commenced construction on or after November 3, 1998 and that are contract producers for agricultural cooperatives that meet the definition of housed commercial swine feeding operation. This is done, in part, to avert the potential for large vertically integrated swine producers to reorganize in order to rely upon contract producers to produce large numbers of swine in a relatively small area with the attendant risks to air quality that might flow from such agreements.

The Commission has defined the phrase "integrated in any way" as referring to a potential measurable cumulative impact on state waters or air quality in any one location. The Commission intends that this potential is to be determined based on the location of the facilities, not on operational controls. If this phrase were interpreted to refer solely to integration of business operations, it would be duplicative of the phrase "common or affiliated ownership or management," which would render the other phrases in the second half of the sentence in the statutory definition of "housed commercial swine feeding operations" irrelevant.

The statute defined "process wastewater" and the Water Quality Control Commission revised that definition to be "swine feeding process wastewater", since the water discharge permit regulation as a whole applies to many other types of process wastewater. To be consistent, the Commission has likewise used the term "swine feeding process wastewater." The Water Quality Control Commission modified the definition to clarify the intent that it apply to wastewater resulting from the swine feeding and wastewater management aspects of a housed commercial swine feeding operation.

In addition to the statutorily defined terms and the terms to clarify those terms, the Commission included several additional definitions to provide clarity regarding implementation of this new regulatory program. The Commission added definitions of "new" and "existing" housed commercial swine feeding operations as is consistent with the statute. The definitions hinge on whether the owner or operator "commenced

construction" by March 30, 1999, the anticipated effective date of this amendment to Regulation Number 2. Typically, the date selected for existing sources in air quality regulations is either the date of the proposal of the regulation or the effective date of the regulation. The Commission chose the effective date of the regulation. The phrase "commence construction" is defined in the Commission's Common Provisions. New and existing operations are to be distinguished from the definition of "new land application sites" and "new waste impoundments" concerning the statutory setback requirements.

The Commission included a definition of "aquifer", since the term is used in the statute and the regulation. This definition tracks the definition of this term in Colorado statutes for ground water management.

The Commission included a definition of the term "cover" to clarify the statutory requirement that all anaerobic process wastewater vessels and impoundments, including but not limited to treatment and storage lagoons, shall be covered so as to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases to the atmosphere (Sections 25-7-138(1) and (2), C.R.S.). The Commission has defined a cover to mean a device, technology, or material that encompasses the entire surface area of the vessels or impoundments. The cover must encompass the entire surface area so as to properly capture, recover, incinerate, or otherwise manage odorous gases. The owner or operator must minimize odorous gases emitted from the vessels or impoundments, in addition to minimizing off-site odor emissions from other operations and activities at the housed commercial swine feeding operation.

The Commission has defined "land application" to clarify that land application includes the applying of waste for purposes of treatment or storage. The definitions generally track the Water Quality Control Commission's existing definition of land application with a few modifications. The Commission defined "manure", "open animal feeding operation", "waste impoundment", and "watershed" to be consistent with the Water Quality Control Commission's definitions of those terms. A party requested that the Commission exclude "evaporation ponds" from the definition of waste impoundment. The Commission determined that since evaporation ponds are either anaerobic or aerobic and can be considered impoundments, the statute intended to include evaporation ponds in the requirements for anaerobic and aerobic impoundments.

The Commission defined "permit to operate" to clarify that it is a construction permit. The phrase "process wastewater vessel" was defined because it is used in the statute and to clarify the difference between such vessels and waste impoundments. The Commission intends the definitions of waste impoundment and process wastewater vessel to encompass all manure and wastewater treatment and storage devices, technologies, or methods used by housed commercial swine feeding operations.

One of the parties to the rulemaking expressed concern that the definitions of "process wastewater vessel" and "waste impoundments" may not capture all waste storage and treatment facilities. The Commission intends the definitions of "process wastewater vessel" and "waste impoundment" to include all types of storage and treatment facilities at such affected operations.

The Commission defined "utilizes air or oxygen" because it is the key component of the statutory definition of "aerobic". There are two parts to the definition: (1) a waste treatment method that utilizes air or oxygen at a minimum of one part per million of dissolved oxygen throughout the liquid column; or (2) a waste treatment method that is designed to meet the oxygen demand of the waste loading. The first requirement of one part per million dissolved oxygen is consistent with generally accepted municipal wastewater treatment standards and is intended as a default standard where the owner or operator does not or cannot make the necessary demonstration under part (2) of this definition. The second requirement is based upon recommendations and research by the Water Quality Control Division. The Commission did not tie the definition of utilizes air or oxygen with the odor concentration standards in the regulation for several reasons. First, an aerobic condition is not directly linked to odor control, but to scientific and technical conditions. Second, the odor concentration standards are intended to measure off-site odor emissions and the requirements concerning anaerobic and aerobic vessels and impoundments are not tied to off-site odor emissions, but simply require the operation to minimize the emission of odorous gases to the atmosphere.

The determination of an aerobic lagoon includes the factors of lagoon surface area, depth of the lagoon, distribution of influent, loading rate of the influent, and maintenance to maximize the performance of the lagoon. The influent loading rate has to match the lagoon aeration potential (surface area and/or supplemental aeration). In calculating the organic oxygen demand, we will assume a reoxygenation rate of 50 pounds of biological oxygen demand (BOD) per acre per day of surface area as a guide.

Standards

Sections III.A. and III.B. of the regulation establish odor standards that must be met at or beyond the property boundary, and at occupied dwellings, schools, places of business, and municipal boundaries.

The dilution standard of 7:1 established in Section III.A. applies at and beyond the operation boundary, and may be monitored by the owner or operator within the property boundaries of the operation. The dilution standard of 2:1 established in III.B. applies at any receptor. In implementing III.B., the Division should not enter private property for the purpose of applying the dilution standard of 2:1 without permission from someone with actual or apparent control over such property. The Commission has determined that a "place of business" means the fixed location for the business and the immediate area around the fixed location. The Commission understands that odor easements have been and may be obtained by operations. The property boundary of any operation shall include the legal property boundary of the parcels owned by the housed commercial swine feeding operation and any easements on adjacent properties that have been granted to the operation.

The Commission has required the dilution standard of 7:1 at the property boundary based on the experience of the Division's inspectors as well as testimony of some of the affected operations that this standard is reasonably attainable. The Commission believes that a property boundary standard of 2:1 is probably not a practicable standard for minimizing odors at the property boundary. But, that standard should apply to the nearest receptor because of the statutory requirement of minimizing off-site odor emissions to the greatest extent practicable. Some parties expressed concern that these standards are inappropriate because the standards are more stringent than the standard for urban areas (residential and industrial). In general, such operations are located in rural areas. The Commission interprets Amendment 14 to require a rigorous regulatory scheme for the control of odors from housed commercial swine feeding operations and to substantially eliminate the nuisance nature of these odors (see Section 1. Amendment 14). Thus, a protective receptor standard is deemed appropriate.

The Commission determined that the standards of 15:1 and 127:1 at the property boundary are not sufficient to meet the statutory standard. Amendment 14 specifically states that housed commercial swine feeding operations must minimize odor emissions to the greatest extent practicable which the Commission interprets as a more stringent requirement than the existing statutory authority for Regulation Number 2's odor standards for other sources. Amendment 14 does not provide the Commission with the authority to impose comparable odor standards for any other agricultural sources in Colorado other than housed commercial swine feeding operations.

The standards must be applied in conjunction with the requirement to employ technology to minimize to the greatest extent practicable off-site odor emissions from all aspects of the operations of a housed commercial swine feeding operation. The Division may determine that an operation is not employing the appropriate technology even if the operation can demonstrate compliance with the odor concentration standards and will then incorporate such technology in the permit or odor management plan.

The Commission understands that measuring odor concentration is only one of the various aspects of detecting odor. But the Commission selected odor concentration standards because the Division has experience with implementing and enforcing this standard and this form of odor measurement is generally accepted in the field of odor measurement.

The Commission elected not to rely upon a complaint-based program, because the statute does not appear to so limit the Commission or the Division in implementing and enforcing the statute. In addition, each individual is entitled to the protection of the standards and enforcement should not depend on the

number or verification of complaints. The Commission determined that the statute requires, at a minimum, the property boundary as the appropriate place to apply the standard.

Several parties argued for a safe harbor provision in the regulation, which would preclude an enforcement action for operating in excess of the odor concentration standards in the event that an operation successfully asserted that it was employing all technologies to minimize to the greatest extent practicable odor emissions. The Commission has determined that this is not a likely scenario. Like all other sources subject to air quality regulation, standards independent of technology requirements are established and sources must determine for themselves how to comply. This is the reason that the Commission has chosen to adopt a flexible approach to the specific odor control requirements. At time such compliance may require modification of the operations. In the unlikely event that the suggested scenario occurs in the future, the Commission can entertain an appropriate revision to the regulation.

C.A.R.E., a party to the hearing, refers the Commission to a process established in Northeast Metro Denver for the voluntary control of odors; indeed, in Northeast Metro Denver the Division and several industries have entered into a memorandum of understanding that allows the Division to forego its enforcement authority if, upon receiving one or more odor complaints, the offending industry agrees to and does implement a prompt odor abatement project that must include, among other things, a citizen input component. The Division has stated that it is a process that has worked well and could be considered in the future for housed commercial swine feeding operations outside of the regulatory scheme and in the Division's enforcement discretion.

Process Wastewater Vessels and Impoundments

The statute requires affected operations to cover existing, new, and expanded anaerobic process wastewater vessels and impoundments so as to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases to the atmosphere. The cover must encompass the entire surface area of the vessel or impoundment and there must be no uncontrolled vents.

The Commission has included several approved covers that operations may employ. Covers were deemed approved if the technology was generally accepted by other states and in university studies to effectively minimize the emission of odorous gases. Alternative covers may be employed if the owner or operator can demonstrate that the alternative is of comparable effectiveness to the approved covers. Such a demonstration can include studies or research from universities or other states concerning the effectiveness of the device or technology. Alternative covers can include synthetic covers of variable densities and thicknesses and aerobic covers less than three feet in depth if the owner or operator can make the necessary demonstrations.

Experimental covers may be employed by operations and the operation must demonstrate that the experimental cover is as effective in minimizing the emission of odorous gases as approved covers within one hundred and eighty (180) days of the issuance of the permit to operate. This provides operations a period of time to install experimental covers and test the covers for effectiveness. Certain parties requested that the Commission consider defining an aerobic cover such that it meets the off-site odor emission standard. Again, the requirement to cover anaerobic process wastewater vessels and impoundments is not linked to off-site odor emissions, but to minimizing the emission of odorous gases to the atmosphere. The Commission believes that biocovers are of limited effectiveness and has required that biocovers must cover the entire surface area of the vessel or impoundment.

Several parties have stated that the cover requirement should be applicable only if there are odors from the process in violation of the odor concentration standards, because the covers are expensive and unnecessary if the process generates no odors. Parties believe that the Commission should allow technologies or systems that effectively manage odor to be used if they already meet odor concentration standard. The Commission interprets the statute to require a cover if an anaerobic process wastewater vessel or impoundment is utilized and the requirement does not appear to be connected to any particular standard, other than the requirement to minimize to the greatest extent practicable the emission of

odorous gases. Anaerobic treatment systems are commonly used today and the Division believes that the statute specifically covers both storage and treatment impoundments in the plain language of the cover requirement. In addition, the requirement to cover anaerobic process wastewater vessels and impoundments is not tied to the requirement to minimize off-site odor emissions. Instead, operators are required to minimize to the greatest extent practicable the emission of odorous gases to the atmosphere.

Other parties requested that the Commission not prescribe technologies to meet the cover requirement, but be as flexible as possible in allowing alternative technologies to minimize odor emissions and meet the odor standards. The Commission believes that in allowing for alternative and experimental covers it is providing the necessary flexibility for odor control in a manner that is consistent with the statute.

Aerobic impoundments must be operated to ensure maintenance of aerobic conditions or to otherwise minimize the emission of odorous gases to the atmosphere. The Commission has defined "aerobic" to be consistent with the statutory definition and defined "utilizes air or oxygen" as maintaining 1 ppm of dissolved oxygen throughout the column (an accepted standard for municipal wastewater impoundments) or a waste treatment method that is designed to meet the oxygen demand of the waste loading (as recommended by the Water Quality Control Division).

Air Quality Setback Measurements and Waivers

The Commission included the statutory requirements concerning one mile air quality setbacks for new land waste application sites and new waste impoundments. The statute defines "new" for this section to mean in use as of June 1, 1998. The statute contemplates allowance for waivers of these setback requirements and the Commission has included procedures and requirements for obtaining waivers in the regulation. Waivers must be recorded with the county clerk of the county where the affected property is located.

Parties have argued that the Commission should consider any new land application sites that are acquired as a means to comply with this regulation as existing land application sites. Whether a land application site or waste impoundment is considered "new" is driven by statutory dates. Consequently, whether a housed commercial swine feeding operation is new or existing under this regulation is irrelevant to consideration of the air quality setback requirement for land application sites and waste impoundments.

Permit to Operate

The Commission has determined that to effectively enforce the provisions of Section 25-7-138, C.R.S. and Part B of Regulation Number 2, a permit to operate is required. A permit to operate is a construction permit. The Commission has statutory authority to require construction permits for such sources pursuant to Section 25-7-114.2, C.R.S.

The statute requires existing sources to be in compliance with the Commission's regulation and with the statutory technology requirements by July 1, 1999. In order to comply with this ambitious deadline, the Commission established a permitting structure that requires submission of initial permit applications by existing facilities by April 15, 1999, and contemplates issuance of the permits for existing sources by July 1, 1999. Although the April 15, 1999 deadline is a little more than two weeks after the legal effective date of these new regulatory provisions, the Commission understands that the application forms for existing facilities will be available shortly after the Commission takes final action in this rulemaking.

Affected operations must submit an odor management plan along with the permit application on April 15, 1999 pursuant to the Commission's authority in Section 25-7-138(3), C.R.S. The odor management plan is an enforceable part of the permit to operate and shall include technologies and work practices not required as conditions in the permit.

The Commission has included in the regulation an opportunity for public review and comment for the permit applications and odor management plans. For existing operations, the public review and comment period occurs from April 15, 1999 to May 15, 1999. Existing operations are required to submit a copy of the application and odor management plan to the Division, the county clerk's office and local or regional health department for the county(ies) in which the operation is located in by April 15, 1999. Parties to the hearing have requested that the Commission allow for public hearings. Given the tight time frame to consider and issue these permits and given the significant resource demands of preparing for and conducting such hearings, the Commission has determined that a public hearing opportunity on each permit cannot be accommodated.

The Commission has determined that the annual fee of $0.20 per swine to offset the costs of administering the housed commercial swine feeding operation program for the Water Quality Control Division included in the amendment to Section 25-8-501.1, C.R.S. was not intended to offset the costs of the Division's costs of administering the program. Operations are required to pay a permit processing fee of $50.00 per hour of a permit engineer's time to process the permit and a $100.00 application fee. The additional costs of administering the program must be funded separately.

The regulation also includes requirements concerning modification of permits to operate if the operation is modified pursuant to the Commission's authority in Section 25-7-114.2, C.R.S., including increasing the number of animals at the operation. An operation shall be permitted to operate with a maximum number of animals. If the operation wishes to increase the maximum number of animals, it must request a permit modification. The sources of odor at a housed commercial swine feeding operation are directly linked to the number of animals at the operation. As the number of animals increase, the amount of animal waste increases inside the confinement structure, being loaded into storage and treatment vessels and impoundments, and being disposed of through land application, composting, etc. Therefore, the permit conditions and odor management plan may need to be revised if the number of animals at an operation increases. In addition, if the type of feed for the animals changes then a permit modification is necessary. Experts in the industry agree that the type of feed provided the animals can increase or decrease the amount of waste generated at an operation and, therefore, modify the waste management needs of an affected operation.

An operation that operates an incinerator or combustor must obtain a separate construction permit for those sources and is subject to any other applicable Commission regulations.

Several parties to the hearing recommended that the Commission require that affected operations submit Air Pollutant Emission Notices and pay the necessary air pollutant emission fees. The Commission considered requiring APENs for odor emissions from these operations. The only reportable emission related to odor is hydrogen sulfide, which is a criteria pollutant. Hydrogen sulfide is emitted primarily from the anaerobic processes. In order to determine the amount of hydrogen sulfide being emitted, the operation would have to use a Jerome meter, which is very costly. According to other states, the typical hydrogen sulfide emissions from these sources amount to about 2 to 8 tons per year. The Commission has elected not to require APENs or the related fees at this time, but may consider this issue if this regulation is revised in the future.

Specific Odor Control Requirements

There are several primary sources of odor at a housed commercial swine feeding operation: confinement structures, manure storage and treatment, waste disposal including land application, and carcass disposal. The Commission intends the specific odor control requirements in Section IX., Part B, of Regulation Number 2 to be included in the odor management plan.

The Commission has divided the specific odor control requirements into mandatory and recommended requirements. The mandatory requirements are limited to those work practices and technologies that appear to be effective and commonly utilized to minimize odor emissions throughout the industry. Rather than requiring numerous prescriptive technologies and potentially limit the use of new and innovative technologies, the Commission has allowed flexibility for sources. If an operation cannot demonstrate or

maintain compliance with the mandatory and source-selected work practices and technologies or the Division believes that an operation will require additional work practices or technologies during the permit processing period, then the operation may be required to employ additional work practices and technologies including those in the recommended technologies.

Odor management plans must include the applicable mandatory requirements as well as any additional work practices or technologies necessary so that the operation employs technology to minimize to the greatest extent practicable off-site odor emissions from all aspects of its operations, including but not limited to odor from the operation's swine confinement structures, manure and composting storage sites, animal carcass disposal, and odor and aerosol drift from land application equipment and sites.

Parties to the hearing raised several issues concerning mandatory land application requirements, including issues concerning restrictions on when and how the waste is land applied. Land application of process wastewater raises a substantial possibility of significant odor emissions when the application is to frozen, saturated or snow-covered ground or the waste is allowed to pond on the surface. Increased volatilization and evaporation cause greater emissions under these conditions. In addition, untreated process wastewater often results in increased odors compared to pretreated process wastewater. Accordingly, the regulation prohibits land application when the ground is saturated or snow covered or ponding has occurred and requires pretreatment of process wastewater unless the land application is accomplished through injection of the wastewater. Land application of solids and sludges requires the material be pretreated and injected or incorporated into the soil within six hours of application.

The National Pork Producers Council recommends that land application not occur on weekends or holidays to minimize the nuisance impact of odors to neighbors when they are most likely to be home and/or in and around their home. The Commission adopted this practice as a mandatory requirement. Also, land application of process wastewater should only occur when wind conditions are such that off-site transport of the odorous wastewater is minimized. Low pressure sprays are required, unless a waiver is granted, to minimize the off-site transfer of fine mist spray. A waiver for land application on holidays or weekends is allowed if an emergency occurs (i.e., overflow of impoundments).

Another party requested that the Commission require low trajectory systems "utilizing drop nozzles" to prevent evaporation and the low trajectory systems should be two to three feet above ground. On the other side, a party requested that the Commission not specify the pressure if the owner or operator can demonstrate compliance with the standard using a different pressure. The Commission intends "system operating pressure" to include the nozzle discharge and the requirement to reduce the fine spray during land application. The Commission does not want to mandate "drop nozzles" when the technology may change and some other technology may be as or more effective. The Commission did not clarify the height of the trajectory system in the regulation, but it will be discussed in the Division's guidance document and particular height will be included in the permit to operate for affected operations. The Commission allows for a waiver from the requirement for a specific pressure of twenty (20) psi if the operation can demonstrate compliance using a different system pressure.

Housed commercial swine feeding operations often contract with neighboring farmers for land applying the process wastewater and manure for fertilizing crops. The regulation contemplates such an agreement. The owner or operator of the housed commercial swine feeding operation is responsible for assuring that the requirements of this regulation are met on those lands owned by a third party. This includes, but is not limited to, the setback requirements and the land application requirements.

The Division may require specific technologies and work practices in addition to the mandatory technologies and work practices be included in a permit to operate to minimize off-site odor emissions to the greatest extent practicable for both new and existing operations. Such recommended requirements could include, but not be limited to, add-on control equipment for swine confinement structures, composting storage sites, and carcass disposal vessels. These additional recommended requirements may be added as permit conditions if there is evidence of exceedences of the odor standard.

Testing, Recordkeeping, Monitoring, and Reporting Requirements

The regulation includes testing, recordkeeping, monitoring, and reporting requirements to aid in determining whether an operation is in compliance with the odor concentration standards, has employed the necessary technology and work practices, and is properly maintaining the necessary technology. An operation must conduct initial testing and semi-annual testing. An operation must modify its permit to operate and/or odor management plan as necessary if it cannot demonstrate compliance with the odor concentration standards.

Environmental Leadership Program

The regulation includes the first regulatory provisions implementing the Environmental Leadership Program. This program is intended to apply only to housed commercial swine feeding operations and not other third parties associated with such operations, for example, manufacturers, suppliers, and consultants. The Commission intends for the Environmental Leadership Program of the Colorado Department of Public Health and Environment to implement this program with input from the Division. Any operation approved as a leader, must still comply with the substantive requirements of Regulation Number 2, including the cover requirement for anaerobic process wastewater vessels and impoundments if applicable.

Coordination with Water Quality Control Division

Amendment 14 establishes both water quality and air quality protection requirements. In developing the air quality program for housed commercial swine feeding operations, the Commission attempted to coordinate these requirements to the maximum degree possible with the new requirements being developed by the Water Quality Control Commission. Such coordination will best serve the interests of the regulated community, the general public, and the implementing agencies. In particular, the Commission adopted definitions that are also proposed as part of the new water quality regulations for housed commercial swine feeding operations and established application deadlines consistent with those proposed for water quality, to maximize the coordination of permit application review and permit issuance. In addition, the Division and the Water Quality Control Division will be issuing multi-media permits to these sources. The two parts to the permits are issued under separate statutory authority and there is no requirement that the air quality permit be renewed every five years as is required for the water quality permit.

Economic Issues

Concern was expressed by parties to the hearing regarding the costs of complying with the new requirements established for housed commercial swine feeding operations. A wide range of potential cost estimates was provided. The Commission attempted to adopt regulatory requirements that are as economically reasonable as possible, consistent with the specific requirements of Amendment 14. Where the statute provided room for flexibility, the Commission included flexibility with respect to implementation of specific aspects of the program, to the degree that it believes is consistent with meeting the intent expressed in the legislative declaration of Amendment 14, and keeping in mind the need to establish a program that will be feasible for the Division to implement with the available resources. The Commission does not believe that the proposal from some parties to include a general waiver provision that would apply to all aspects of the housed commercial swine feeding operations program is appropriate, in view of the explicit intent and requirements of the statute.

Parties were divided over whether or not costs should be considered in determining what technologies should be required to meet the requirement to minimize to the greatest extent practicable odor emissions. The Commission chose to consider the comparative costs of technologies for the cover requirement and other various odor sources. Each technology meets the standard of minimizing emissions to the greatest extent practicable. Having adopted the technology requirements as meeting the operative standard, it is not the Commission's intent to excuse any operation from the requirement to employ such technology based on the economic burden or cost to the operation.

Enforcement Issues

The Commission has not included a requested "notice of intent to sue" provision in the regulation, with respect to the provision in Amendment 14 allowing civil actions for enforcement to be brought by any person who may be adversely affected by a housed commercial swine feeding operation. This statutory provision is self-implementing. As an administrative agency, the Commission is without authority to impose procedures related to the filing or conduct of district court actions.

The Commission notes that there is an understanding between the Division and local health agencies to coordinate the implementation and enforcement of the housed commercial swine feeding operation program to the greatest extent feasible in view of resources available to both state and local governments. The Commission does not believe it is necessary or appropriate to attempt to specify the details of this relationship in the regulation. But the Commission believes that such a cooperative effort will strengthen the efficiency and effectiveness of this program. In particular, the Commission encourages the Division to seek local health agency assistance in implementation efforts in the field, such as conducting inspections for purposes of compliance assurance or in response to site-specific complaints.

Federal Requirements

The rule revisions required by Section 25-7-138, C.R.S., are state-only regulations, are not required by the provisions of the federal act, and are otherwise more stringent than the requirements of the federal act. Such rule revisions have not been adopted for inclusion in the State Implementation Plan.

Determinations Required by Section 25-7-110.8, C.R.S.

Pursuant to Section 25-7-110.8, C.R.S., the Commission hereby determines that:

The regulations for housed commercial swine feeding operations are based on reasonably available, validated, reviewed, and sound scientific methodologies. all validated, reviewed, and sound scientific methodologies and information made available by interested parties have been considered.

Based on Evidence in the record, the Commission finds that the rule shall result in a demonstrable reduction in odor emissions from housed commercial swine feeding operations.

The Commission chose the regulatory alternative that complied with the requirements of Section 25-7-138, C.R.S., in the most cost-effective manner and in a manner that provides the regulated community flexibility.

The regulatory alternative selected by the Commission will maximize the air quality benefits pursuant to Section 25-7-138 in the most cost-effective manner.

COLORADO AIR QUALITY CONTROL COMMISSION

ADOPTED: February 19, 1999

II. Adopted December 14, 2006

Background

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103(4), C.R.S. and the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S.

Basis

Regulation Number 2, Part B contains odor standards, technology requirements for process wastewater vessels and impoundments, setback requirements for new land waste application sites or impoundments, and requirements for permitting, odor management plans, testing, recordkeeping, reporting and monitoring for housed commercial swine feeding operations. The purpose of this rule revision is to implement into the existing requirements of Regulation Number 2, Part B statutory revisions to Section 25-7-138, C.R.S., approved by the General Assembly through Senate Bill (SB) 06-114, Concerning the Expansion of Anaerobic Controls to Allow Additional Technologies to be used in the Operation of Housed Commercial Swine Feeding Operations, and Making an Appropriation in Connection Therewith, signed by the Governor on May 25, 2006 and summarized below. SB 06-114:

1. Allows anaerobic process wastewater vessels and impoundments used in connection with a housed commercial swine feeding operation to be operated with technologies or practices that are as effective as covers at minimizing odor from the operation, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere.

2. Requires a housed commercial swine feeding operation to submit to the Division information sufficient to demonstrate that the technologies or practices used are as effective as covers at minimizing odor from the operation.

3. Requires a housed commercial swine feeding operation to manage odor emissions such that odor emissions from the operation:

Cannot be detected at or beyond the property boundary after the odorous air has been diluted with seven volumes of odor-free air; and

Cannot be detected at any off-site receptor (defined as any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business) after the odorous air has been diluted with two volumes of odor-free air.

4. Allows the Division to delegate enforcement of Regulation Number 2, Part B to any county or regional department of health.

5. Establishes a fee to offset the direct and indirect costs of enforcement, compliance, and regulation of odor emissions for the Division.

6. Creates the housed commercial swine feeding operation fund for the deposit of such fees and for the support of enforcement activities.

7. Appropriates $52,312 and 0.5 FTE to the Department of Public Health and Environment, and $4,834 to the Department of Law for the fiscal year July 2006 – June 2007, for the implementation of the act.

Specific Statutory Authority

The authority for this regulation is contained in the Colorado Air Pollution Prevention and Control Act ("Colorado Act"), Section 25-7-138, C.R.S. Additional authority to promulgate emission control regulations for housed commercial swine feeding operations is set out in Section 25-7-109(8), C.R.S.

The above fee does not modify the Division's authority to assess permit processing fees, pursuant to Section 25-7-114.7(2)(a)(III), C.R.S.

Purpose

The General Assembly modified Section 25-7-138, C.R.S., to: allow all existing, new or expanded anaerobic process wastewater vessels and impoundments used in connection with a housed commercial swine feeding operation to be operated with technologies or practices that are as effective as covers at minimizing odor from the operation, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere; require a housed commercial swine feeding operation to submit to the Division information sufficient to demonstrate that the technologies or practices used are as effective as covers at minimizing odor from the operation; require a housed commercial swine feeding operation to manage odor emissions such that odor emissions from the operation cannot be detected at or beyond the property boundary after the odorous air has been diluted with seven volumes of odor-free air and at any off-site receptor (defined as any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business) after the odorous air has been diluted with two volumes of odor-free air; allow the Division to delegate enforcement of the requirements of Regulation Number 2, Part B to any county or regional department of health; allow the Division to assess an annual fee, not to exceed seven cents per animal based on the working capacity of each housed commercial swine feeding operation to offset the costs of enforcement, compliance and regulation of Regulation Number 2, Part B; and, establish a fund for the purposes of enforcement, compliance and regulation, including reimbursement to local and regional health departments for assistance in of enforcement activities.

The Commission finds that the regulatory revisions contained in Regulation Number 2, Part B are necessary to minimize odor emissions from housed commercial swine feeding operations in the State of Colorado. The Commission concludes that the adoption of these regulatory revisions is an appropriate step to minimize odor emissions from housed commercial swine feeding operations.

Summary of Provisions

Applicability

The Commission concludes that applicability of this regulation has not been modified pursuant to SB 06-114.

Definitions

The Commission added three new definitions to Regulation Number 2, Part B., Section II. - Division; receptor and working capacity. The Commission clarified the definition of "Division" to specifically designate the Division as the Division of Administration of the Colorado Department of Public Health and Environment as it pertains to implementation of Regulation Number 2, Part B and not as defined in the Commission's Common Provisions Regulation. The term "receptor" was deleted from Section III.B.1., and added verbatim in the definition section of the regulation because the term was deemed more appropriate in the definition section of the regulation. To help clarify how annual fees are determined by the Division, the Commission incorporated the definition of "working capacity" from SB 06-114(5).

Odor Standards

The Commission has determined that SB 06-114 establishes a requirement to minimize odorous gases to the atmosphere from anaerobic process wastewater vessels and impoundments such that odor emissions from the operation cannot be detected at or beyond the property boundary after the odorous air has been diluted with seven volumes of odor-free air and at any off-site receptor after the odorous air has been diluted with two volumes of odor-free air. The Commission has determined that this requirement is met by the existing regulatory requirement in Sections III.A. and III.B of Regulation Number 2, Part B.

The Commission established the dilution standard of 7:1 at the property boundary based on the experience of the Air Pollution Control Division's inspectors as well as testimony of some of the affected operations that this standard is reasonably attainable during the original rulemaking process held in 1999. At that time, the Commission held that a property boundary standard of 2:1 is not a practicable standard

for minimizing odors at the property boundary, but does maintain a higher standard for minimizing off-site odor emissions to the greatest extent practicable and should therefore apply to off-site receptors. SB 06-114 defines a receptor as any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business. As originally determined during the 1999 rulemaking, the Commission still contends that a "place of business" means the fixed location for the business and the immediate area around the fixed location.

Process Wastewater Vessels and Impoundments

The Commission incorporated the requirement that all new, expanded, or existing anaerobic process wastewater vessels and impoundments constructed or under construction for use in connection with a housed commercial swine feeding operation shall be covered or operated with technologies or practices that are as effective as covers at minimizing odor from the operation. As required by SB 06-114, housed commercial swine feeding operations must submit to the Division information sufficient to demonstrate that the technologies or practices used are as effective as covers at minimizing the odor from the operation. The Commission determined that this information, at a minimum, should include science-based technical information on how odor will be reduced to the greatest extent practicable using olfactometry, scentometry and/or some other method(s) of verification as approved by the Division.

Permit to Operate & Modification or Reopening of a Permit to Operate

The Commission has determined this section of the regulation was not modified pursuant to SB 06-114. Operations are still required to pay a permit-processing fee pursuant to Section 25-7-114.7, C.R.S.

The Commission did, however, revise Sections VI.A.3.c. and VIII.A.4., by removing the outdated fee of $50.00 per hour for permit processing and odor management plan revisions and referencing the amounts and limitations specified in statute (25-7-114.7, C.R.S.). This revision will keep permit-related fees aligned with statutory changes over time and eliminate the occurrence of these sections becoming outdated and in need of a regulatory revision(s).

Specific Odor Control Requirements

The Commission has determined this section of the regulation was not modified pursuant to SB 06-114, except as described above regarding technologies or practices that must be included in any odor management plan.

Testing, Recordkeeping, Monitoring, and Reporting Requirements

The Commission has determined this section of the regulation was not modified pursuant to SB 06-114.

Enforcement

The Commission added a new section on enforcement to the regulation pursuant to SB 06-114. The Commission notes that there is an understanding between the Division and local health agencies to coordinate the enforcement of the housed commercial swine feeding operation program to the greatest extent feasible in view of resources available to both state and local governments. The Commission does not believe it is necessary or appropriate to attempt to specify the details of this relationship in the regulation. But the Commission believes that such a cooperative effort will strengthen the efficiency and effectiveness of this program. In particular, the Commission encourages the Division to seek local health agency assistance in implementation efforts in the field, such as conducting inspections for purposes of compliance assurance or in response to site-specific complaints.

Annual Fee

The Commission added this as a new section to the regulation. In accordance with SB 06-114, the Division has the authority to assess and collect an annual fee not to exceed seven cents per animal based on the working capacity of the operation as set forth in Section 25-7-138 (5), C.R.S. The Commission included this authority in the regulation by establishing an annual fee based on the working capacity of each housed commercial swine feeding operation covered by a separate permit. The Commission defined working capacity to mean the number of weaned swine that the housed commercial swine feeding operation is capable of housing at one time. The fee will be used to offset the costs of administering Regulation Number 2, Part B, including activities related to enforcement, inspections and complaint response. The Commission believes that imposing the fee based on weaned swine is consistent with the intent of the Colorado General Assembly during consideration and passage of SB 06-114, and comports with the standard agricultural industry practice of accounting for swine for regulatory purposes.

In addition, a fee based on weaned swine allows the Division to be consistent with the way fees are collected for water quality protection under the Water Quality Control Commission's Regulation Number 61, Discharge Permit System Regulations (i.e., sow and unweaned piglets are counted as one animal).

The Commission recognizes in Section XII.C. of Regulation Number 2, Part B., that inspections and complaint response to operations subject to the regulatory requirements of Part B of this regulation must be developed in coordination with the Division and applicable local health departments or other agents of the state as appropriate. Such cooperative agreements will ensure that proper resources and staffing will be available to enforce the requirements of Regulation Number 2, Part B.

Environmental Leadership Program

This section was renumbered from Section XI. to Section XIII. due to the addition of the enforcement and annual fee sections to the regulation.

Economic Issues

The Commission attempted to adopt regulatory requirements that are as economically reasonable as possible, consistent with the specific requirements of SB 06-114.

Federal Requirements

The rule revisions required by Section 25-7-138, C.R.S., are state-only regulations and are not required by the provisions of a federal act, and are, therefore, more stringent than federal requirements. Such rule revisions have not been adopted for inclusion in the Colorado State Implementation Plan.

Determinations Required by Section 25-7-110.8, C.R.S.

Pursuant to Section 25-7-110.8, C.R.S., the Commission hereby determines that the regulations for housed commercial swine feeding operations are based on reasonably available, validated, reviewed, and sound scientific methodologies. Based on evidence in the record, the Commission finds that the rule shall result in a demonstrable reduction in odor emissions from housed commercial swine feeding operations.

Further, these revisions will include any typographical and grammatical errors throughout the regulation.

COLORADO AIR QUALITY CONTROL COMMISSION

ADOPTED: December 14, 2006

III. Adopted June 19, 2008

Adoption of changes that address the Commission's 2006 orders associated with the adjudicatory hearing on Kasel Associates Industries, Inc. and that further clarify and revise Regulation Number 2, Part A.

Background

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedures Act, Section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, Section 25-7-110.5, C.R.S.

Basis

On April 6, 2006, and later revised on and April 20, 2006, the Hearing Officer associated with the 2006 Kasel Associates' adjudicatory hearing, issued an order interpreting Regulation Number 2 to provide that the Division has the burden of proof in determining whether a source used "best practical treatment, maintenance, and control currently available... to maintain the lowest possible emission of odorous gases...". The Commission herein intended to clarify and revise Regulation Number 2, Part A to address this and other issues.

Authority

Sections 25-7-105(1)(b) and 25-7-109, C.R.S. authorize the Commission to adopt emission control regulations, including emission control regulations relating to new stationary sources.

Purpose

The Metro Wastewater Reclamation District requested confirmation that domestic wastewater treatment facilities are subject to the provisions of Regulation Number 2, Part A. The term "manufacturing process" is used but not defined in Regulation Number 2, Part A. The term is, however, defined in Section I.G. of the Commission's Common Provisions. The Commission expressly confirms that wastewater treatment plants are subject to the terms, conditions and defenses of Regulation Number 2, Part A. The Commission finds that such facilities are, among things, an "operation or treatment involving chemical, industrial, or manufacturing factors," and a "method or form of manufacturing or processing that emits, or affects the emission of air pollutants," as contemplated by the Common Provisions and this Regulation Number 2, Part A.

The Commission approved updates, revisions and clarifications to Regulation Number 2, Part A, intending to amend Paragraph 1.C.1 to make clear that the emission source has the burden of demonstrating that it is utilizing the best practicable control method. Many different agricultural, commercial and industrial sources operate throughout Colorado. These sources generate a wide variety site-specific types of odors. A source of odorous emissions is in the best position to ascertain and demonstrate what it believes is the best practicable control method for that source. A source can meet this burden by conducting an inquiry into applicable odor control options and documenting their basis for selecting and utilizing what the source has determined to be the best practicable treatment, maintenance and control currently available for its particular needs, taking into account both economic and non-economic factors. The Division may seek to rebut any such demonstration.

The Commission intends to clarify odor regulation exemptions to address pre-existing exemptions (see Sections 25-7-109(2)(d) and (8)(a) C.R.S.) and co-locate them for clarification.

The Commission intends to make specific technical corrections to update the rule language, including 1) removing the reference to an outdated and unnecessary document entitled "Colorado /Department of Health Pasteurized Fluid Milk and Milk Products Regulation" adopted April 18, 1967, 2) replacing the term "intensity" with "detectability," to align language with current odor vocabulary, and 3) removing specific names of Division-approved odor measurement devices and instead defaulting to currently Division-approved devices as allowed for in Regulation Number 2, Part A, Section IV.

Finally, the Commission intends to make General corrections – revisions to correct typographical, grammatical and/or formatting errors.

Regulation Number 2, Part A is a state-only rule and there are no corresponding federal odor requirements. In addition, the direct intent of these amendments is not to reduce air pollution. Accordingly, the applicability of §§ 25-7-110.5(5) and 25-7-110.8, C.R.S. to this rulemaking is not clear. Nonetheless, the Commission provides the following additional statement, consistent with these statutory sections:

(I) No federal requirements are applicable.

(II) The rule is based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(III) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction of any air pollution to be addressed by the rule.

(IV) Evidence in this record supports the finding that the rule shall bring about reductions in risks to human health and the environment or provide other benefits that justify the costs to implement and comply with the rule.

(V) The rule is the most cost effective, provides the regulated community flexibility, and achieves any necessary reduction in air pollution.

(VI) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

COLORADO AIR QUALITY CONTROL COMMISSION

ADOPTED: June 19, 2008

IV. Adopted: May 16, 2013

Background

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103(4), C.R.S. and the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S.

Basis

Regulation Number 2, Part B contains odor standards, technological requirements for process wastewater impoundments and vessels and other permitting and monitoring requirements for housed commercial swine feeding operations. The purpose of this rule revision is to update and remove portions of the rule that are no longer applicable, are deemed obsolete, and to remove compliance dates that have already past. In addition, grammatical and formatting errors are being corrected, and a reporting burden reduced by revising a reporting requirement from two times per year to one time per year.

Specific Statutory Authority

The authority for this regulation is contained in the Colorado Air Pollution Prevention and Control at ("State Act"), Section 25-7-138. C.R.S. Additional authority to promulgate emission control regulations for housed commercial swine feeding operations is set out in Section 25-7-109(8), C.R.S.

Purpose

Regulation Number 2, Part B was last revised in 2006. Due to the length of time since the rulemaking, the Division of Environmental Health and Sustainability conducted a routine review of Regulation Number 2, Part B and determined it would be appropriate to propose updates to the regulation to remove sections that are no longer applicable, including compliance dates that have already past. In addition, the Division proposes reducing the number of reporting periods from two times per year to one time in order to provide regulatory relief.

The Colorado Air Quality Control Commission (Commission) concludes that the adoption of these regulatory revisions is an appropriate step to remove obsolete provisions, reduce reporting burdens for housed commercial swine feeding operations, and to clean up grammatical and typographical errors in the regulation.

Applicability

The Commission has determined that the applicability of this regulation has not been modified by these changes.

SUMMARY OF CHANGES

Definitions

The definition of "Division" is revised to refer to the Division of Environmental Health and Sustainability, as it pertains to implementation of Regulation Number 2, Part B and not as defined in the Commission's Common Provisions Regulation.

Technology Requirements for Process Wastewater Vessels and Impoundments

The Commission removed references to the "on or before July 1, 1999" date for existing operations in IV.A.2., and IV.A.3., and Section IV.A.3.f., as it referred to experimental covers where comparable effectiveness information was to be submitted to the Division by no later than January 1, 2000. These dates are obsolete. Section IV.A.3.f. was reserved as a placeholder.

In the Section IV.B., Aerobic Impoundments for New Impoundments, the numbering was corrected to read IV.B.1.

Permit to Operate

In Section VI.A.1.a., the Commission removed the deadline to submit a complete and accurate application by April 15, 1999, as this date has already past. The addition of "or modify as per Section VIII.A." was added for existing sources in Section VI.A.1.a., to provide greater clarity to what a permit modification as specified in this section of the regulation. The reference to local or regional health department was revised in this section to read the county or district public health agency to accurately reflect the terminology for these entities. Content of Permit to Operate and Application for a Permit to Operate. Clarifying language was added to the regulation describing that the owner or operator is required to file the "complete" application, which includes the facility's approved Odor Management Plan with the county clerk and with the county or district public health agency for the county(ies) in which the housed commercial swine feeding operation is located. Consistent with the intent to allow the public to have adequate time to review and provide comment, the owner or operator shall file the copy of the approved application for a permit to operate, prior to public notice of the permit by the Division.

The Commission removed the following sections from the regulation:

Section VI.D.2.a., as the deadline of July 1, 1999 identified for existing operations to have covers and related technologies installed or implement compliance schedules is past.

Section VI.D.8., referred to compliance schedules that were put in place when the regulation was first adopted. This section is no longer applicable.

Hearing and Public Comment Requirements

The Commission removed Sections VI.E.1., and VI.E.3., as the language was past and no longer applicable. The language under the new Section VI.E.1., was revised to add that the public notice will be published on the Colorado Department of Public Health and Environment's website in addition to the publishing of the preliminary analysis and application in a newspaper of general distribution in the area in which the proposed operation will be located.

Specific Odor Control Requirements

The Commission added the words, "as applicable" to Section IX.A.1.b.(2), as stakeholders identified that no bedding is used in most housed commercial swine feeding operations in Colorado.

Stakeholders requested that the word "promptly" in Section IX.A.1.b.(4), be replaced with the following specific terminology, "as specified in the Odor Management Plan".

Reporting Requirements

Since the promulgation of this regulation in 1999, regulated entities have been required to submit reports twice per year; the regulated entities have demonstrated high levels of compliance not only with the reporting requirements but also with the monitoring requirements of the regulation, therefore the Program proposed that reducing the reporting requirement to once per year will maintain the same level of environmental protection, while reducing both an undue administrative burden for the Division and provide some regulatory relief to the industry. The Commission has determined that submitting two monitoring reports each year creates an undue regulatory burden on housed commercial swine feeding operations that can be addressed, while providing the same level of environmental protection by the submittal of one report each year. To this end, Section X.D.1.a., of Regulation Number 2, Part B was revised to require the submittal of one annual report of required monitoring versus every six months. Stakeholders requested the specificity of the deadline to submit the annual report "by February 15th of each year" be added to this section.

Enforcement

Two references in Section XI., to county or regional departments of health were revised to reflect the correct reference to these entities as a county or district public health agency.

Annual Fees

The same revision to the references in Section XII., to a county or district public health agency, as described above, was made in the Annual Fees section.

Environmental Leadership Program

The Commission removed the information in Section XIII, the Environmental Leadership Program from the regulation as these provisions have not been used. In addition, the Commission is aware of other stand-alone recognition programs offered by the department that can serve the same purpose for housed commercial swine feeding operations. The Section XIII. was reserved.

Federal Requirements

Regulation Number 2, Part B is a state-only rule.

Findings Pursuant to 25-7-110.8, C.R.S.

This rule revision is intended to reduce the regulatory and financial burden associated with the odor regulations for housed commercial swine feeding operations. It is otherwise administrative in nature, and is not intended to be more stringent than existing rule. Therefore, requirements of 25-7-110.8 do not apply to these revisions because these revisions do not establish new requirements intended to reduce air pollution.

Attachment C: City of Denver Regulations on Odor & Nuisance

Guide to DEH's Odor Regulations

Regulation

Denver's Department of Environmental Health (DEH) is responsible for regulating nuisance odors as defined under Denver Revised Municipal Code, Chapter 4 – Air Pollution Control, Section 4-10. Denver's ordinance specifies odors as a nuisance issue, as opposed to a health issue, to address reasonable and comfortable use and enjoyment of property.

The city ordinance for odor intensity is based upon the Colorado State law, and includes an odor definition, specific occurrences that result in a violation, affirmative defenses to a violation, and exemptions. Colorado State's Odor Control Regulation sets standards for allowable odor contaminants for different land-use areas in the state and outlines control measures that can be taken to bring violators into compliance.

Investigating Odor Complaints

Denver investigates all odor complaints received on questionable odors. This includes identifying the source, independently verifying the odor, responding to the complainant and the source, and issuing a citation if necessary.

When an odor complaint is made, an inspector contacts the complainant to gather specific information on the odor and source. As part of the investigation, the inspector may attempt to identify and determine the odor intensity using a portable odor-measuring device, called the Nasal Ranger. The Nasal Ranger provides a scientific method of quantifying odor strength in terms of 'dilution to threshold' (D/T) ratios. To make a D/T measurement, carbon-filtered air is mixed with specific volumes of odorous ambient air. The D/T ratio is a measure of the number of dilutions needed to take the odorous air to a threshold that can be detected by the odor evaluator.

While all odor complaints are investigated, administrative citations can only be issued under the following circumstances:

- If the odorous contaminants are detected and meet the threshold of the 7/1 dilution standard.
- When DEH receives five or more complaints from individual residents representing separate households within a 12-hour period and the complaints are related to a single odor source.

In 2008, the City's ordinance was modified to include the added provision of requiring five complaints from separate households to offer an additional mechanism for dealing with odors that are a significant source of complaints, but do not exceed the intensity threshold.

If multiple complaints have been filed on a single source, but the intensity threshold (D/T or complaint standard) is not met, the inspector will contact the owner/operator of the source to discuss odor mitigation measures. If the D/T or five complaints within 12 hours threshold is met and confirmed, the owner/operator will receive an administrative citation. The penalty assessed for an odor citation is based on a range of criteria, including actual or threatened impacts to public health and the environment, history of previous violations, willingness of cooperation, and other factors. The minimum penalty is $150, maximum is $2,000.

Marijuana Odors

Odor regulation is a complex issue. The following information is related to marijuana-specific odor complaints:

- **Odor Regulation Includes All Sources** - While the city regulates odors based on its own ordinance, this ordinance is based on the State's odor ordinance to regulate industrial sources such as manufacturing. Denver's ordinance is actually more stringent than state standards. To ensure a balanced approach to enforcement, all odors, including marijuana, are regulated according to the same standards.

- **Grow vs. Retail (smoking) Complaints** - Overall, the majority of the city's odor complaints arise from various manufacturing industries. Most marijuana-related complaints arise from grow facilities rather than a dispensary, since the odor from grow facilities are more pungent and tends to linger. Under the city's existing odor ordinance, it is unlikely that most non-industrial industries, including grow facilities, will exceed the 7/1 dilution standard.
- **Identifying A Single Source Where Multiple Exist** – The ordinance requires a single source to be clearly identified to violate the ordinance (dilution threshold or through complaints). Given that there are often multiple industries (including marijuana grow operations) in one area, this can be challenging as odors are transient and not limited to normal working hours, made up of several different chemical combinations, and at times located outside Denver's borders.

Next Steps

With the legalization of recreational marijuana on January 1, DEH expects to see an increase in marijuana-related odor complaints. Denver's existing odor regulations are limited in the ability to adequately address both existing sources and this new source of odor complaints.

To address the current and upcoming challenges, DEH has implemented the following next steps:

January 2014

- Hire a marijuana grow facility inspector to focus on managing all environmental aspects of marijuana, including odor education and mitigation.
- Develop marijuana facility recommended Best Practices Guide to include regulated facility and community outreach goals.

April 2014

- Complete a comprehensive research study on community odor issues.

June 2014

- Develop recommendations on a path forward to address odor issues, using information from research study.

Sec. 4-10. - Nuisance.

(a) It shall be unlawful for any person to emit air contaminants that constitute a nuisance as defined in section 4-2.

(b) It shall be an unlawful nuisance for any person to cause or permit the emission of odorous air contaminants from any source so as to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of property. Upon either or both of the following occurrences, any odor will be deemed to interfere with reasonable and comfortable use and enjoyment of property:

(1) If odorous contaminants are detected when one (1) volume of the odorous air has been diluted with seven (7) or more volumes of odor-free air, as measured by any instrument, device, or method designated by the Colorado Air Pollution Control Division to be used in the determination of the intensity of an odor and in the enforcement of Colorado Air Quality Control Commission Regulation 2.

(2) When the department receives five (5) or more complaints from individuals representing separate households within the city within a 12-hour period relating to a single odor description, and the department verifies the source of the odor. To be considered an odor complaint the department must have a record of it, which must include the:

a. Name, address and phone number of complainant.

b. Time and date of call.

c. Description of odor nuisance, including estimated location or source of complaint, and if possible, prevailing wind or weather conditions observed.

(3) The department must use reasonable efforts to investigate all complaints to verify the source of the odor.

(c) It is an affirmative defense to a violation of the odorous air contaminant standard that the violation was caused by an upset condition or breakdown of a device, facility, or process that: could not have been reasonably anticipated or prevented; the facility owner or operator took immediate action to eliminate the upset condition and, if necessary, repair all equipment and devices that caused or contributed to the upset condition or breakdown; the facility owner or operator notified the department about the upset condition or breakdown within eight (8) hours of its occurrence; and the facility owner or operator provided written detailed information describing the upset condition or breakdown and identifying the measures taken to correct it within three (3) working days of the occurrence.

(d) Rodeos, stock shows, tarring operations, and other similar temporary events are exempt from this section.

(Ord. No. 292-90, § 3, 5-29-90; Ord. No. 683-08, § 5, 12-8-08)

Attachment D: City of Pueblo Regulations on Marijuana Odor

As Amended
February 23, 2015

ORDINANCE NO. 8841

AN ORDINANCE AMENDING CHAPTERS 2 AND 15 OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO MEDICAL AND RETAIL PERSONAL MARIJUANA CULTIVATION AND PROVIDING PENALTIES FOR VIOLATION THEREOF

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:
(brackets indicate matter being deleted, underscoring indicating matter being added)

SECTION 1.

Section 17-2-1, Chapter 2, Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of the following subsections:

(16.001) *Enclosed Space* means a permanent or semi-permanent area, surrounded on all sides, including the roof. The temporary opening of windows or doors does not convert the area into an unenclosed space.

(27.1) *Locked Space* means secured at all points of ingress and egress with a locking mechanism, such as a key or combination lock, designed to limit access only to those lawfully permitted.

(32.001) *Marijuana Home Cultivation* means the use of a residential property, in which a person resides as their primary residence, for the cultivation and growing of medical and/or retail marijuana for that person's personal use only. The use of a Marijuana Home Cultivation shall require compliance with Section 17-15-8 and/or 17-15-20 of this Title.

SECTION 2.

Chapter 15, Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of *Article 1* to read as follows:

CHAPTER 15

Marijuana Code[Medical Marijuana]

Article 1
Findings, Definitions, and Purpose

SECTION 3.

Section 17-15-1, Chapter 15, Title XVII of the Pueblo Municipal Code, as amended, is hereby amended and modified as follows:

Sec. 17-15-1. [Findings.] Purpose and Scope.

(a) The City Council hereby makes the following findings of fact:

(1) On November 7, 2000, the voters of the State of Colorado approved Amendment 20. Amendment 20 added Section 14 of Article 18 to the Colorado Constitution and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.

(2) The intent of Amendment 20 was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use and distribute marijuana without fear of criminal prosecution under Colorado (as opposed to federal) law.

(3) On November 6, 2012, the voters of the State of Colorado approved Amendment 64. Amendment 64 added Section 16 of Article 18 to the Colorado Constitution and legalized under Colorado law (as opposed to federal law), the personal use, possession, and limited cultivation of recreational marijuana for adults twenty-one years of age or older. [Despite the adoption of amendment 20, marijuana is still a controlled substance under Colorado and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use and distribute limited amounts of marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse that should be closely monitored and regulated by local authorities.]

(4) Despite the adoption of Amendments 20 and 64, marijuana remains a controlled substance under federal law. Marijuana has the potential for abuse that should be closely monitored and regulated. If not closely monitored and regulated, the presence of marijuana, even [for the purposes] **that** legally permitted by Amendment**s** 20 **and 64**, can cause an increase in illegal activities within the City, [affecting] **create nuisances, and affect** the health, safety, order, comfort, convenience and general welfare of the residents of the City.

(5) Pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution, and as further authorized by state statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its residents.

(6) If [medical] marijuana facilities operating pursuant to Amendment**s** 20 **and 64,** and state law were allowed to be established and to operate without appropriate local regulation of their location, [medical] marijuana **sales** [centers] might be established in areas that would be inconsistent with surrounding uses, or otherwise be detrimental to the public health, safety and welfare.

([6]7) On May 11, 2010, the Colorado General Assembly passed House Bill 10-1284, which authorizes and recognizes the authority of cities to enact ordinances regulating, licensing and zoning medical marijuana facilities and medical marijuana.

([7]8) The City of Pueblo has determined that, between April 30, 2008 and May 31, 2010, the incidence of thefts, burglaries and robberies in nonresidential zone districts, along Interstate 25 and highway 50A within the City limits has been at least two (2) times greater than the same offenses over the same period in nonresidential zone districts within the City. Buffering medical marijuana facilities from these corridors is necessary to protect the health, safety and welfare of the residents of the City of Pueblo and the customers, employees, managers and owners of the medical marijuana facilities.

([8]9) Nothing in this Chapter allows a person to:

a. Engage in conduct that endangers others or causes a public nuisance;
b. Possess, cultivate, grow, use or distribute marijuana for any purpose other than [for use as medical marijuana] **that allowed by Amendments 20 and 64, the implementing state statutes and administrative regulations, and Pueblo City Charter, ordinances, rules and regulations.**
c. Possess, cultivate, grow, use or distribute marijuana that is otherwise illegal under applicable law; or
d. Engage in any activity related to the possession, cultivation, growing, use or distribution of marijuana that is otherwise not permitted under the laws of the City or the State of Colorado.

([9]10) This Chapter is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of the City and the inhabitants thereof.

([10]11) No person, business, activity or use that distributed or involved the distribution of marijuana within the City prior to the enactment of this Chapter shall be deemed to have been legally established under this Code, and no such person, business, activity or use shall be entitled to claim legal nonconforming status under any provision of this Code or applicable law.

(b) Definitions.

As used in this Chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

(1) *Amendment 64* means the voter-initiated amendment to the Colorado Constitution adopted November 6, 2012. Amendment 64 added Section 16 to Article 18 of the Colorado Constitution.

(2) *Cultivation* means the planting, growing or harvesting of marijuana, including but not limited to hydroponic cultivation and cloning.

(3) *Enclosed Space* means a permanent or semi-permanent area, surrounded on all sides, including the roof. The temporary opening of windows or doors does not convert the area into an unenclosed space.

(4) *Locked Space* means secured at all points of ingress and egress with a locking mechanism, such as a key or combination lock, designed to limit access only to those lawfully permitted.

(5) *Marijuana Home Cultivation* means the use of a residential property, in which a person resides as their primary residence, for the cultivation and growing of medical and/or retail marijuana for that person's personal use only. The use of a Marijuana Home Cultivation shall require compliance with Section 17-15-8 and/or 17-15-20 of this Title.

(6) *Medical marijuana facility* means a medical marijuana center, optional cultivation premises or medical marijuana infused product manufacturing.

(7) *Medical marijuana center* means the use of any property or structure to distribute, transmit, give, dispense or otherwise provide marijuana in any manner to patients or primary caregivers in accordance with Amendment 20 and the implementing state statutes and administrative regulations. The medical marijuana center may include an optional cultivation premises as an accessory use by right.

(8) *Medical marijuana optional cultivation premises* means the use of any property or structure for the cultivation and growing of medical marijuana. All medical marijuana optional cultivation premises shall be contiguous to the associated medical marijuana center or infused product manufacturing facility. Discontiguous optional cultivation premises are prohibited uses.

(9) *Medical marijuana infused product manufacturing* means a manufacturing or processing facility in which a product is infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures. The medical marijuana infused product manufacturing use may include an optional cultivation premises as an accessory use by right.

(10) *Minor revision* means a change in the approved limited use permit to allow changes, which are required by circumstances not foreseen when approval of the limited use permit was given, and have no adverse impact on adjoining or surrounding properties. A minor revision may be approved for only the following: (1) reduction of size of the premises; (2) increase in size of the premises of ten percent (10%) or less; (3) installation of signage; (4) other changes deemed to be minor in nature by the administrative official.

(c) In addition to the definitions provided in Subsection (b) of this Section, the other defined terms in Amendments 20 and 64 are incorporated into this Chapter by reference, except where the ordinance provides a different definition or the context makes it clear that the statutory or constitutional definition does not apply.

SECTION 4.

Section 17-15-4, Chapter 15, Title XVII of the Pueblo Municipal Code, as amended, is hereby deleted and reserved.

SECTION 5.

Section 17-15-8, Chapter 15, Title XVII of the Pueblo Municipal Code, as amended, is hereby amended and modified as follows:

Sec. 17-15-8. Medical marijuana optional cultivation premises [cultivation] performance standards.

All medical marijuana [cultivation uses, including] optional cultivation premises [and home cultivations,] shall comply with the following performance standards:

(1) The optional cultivation premises shall be contiguous to the associated medical marijuana center or medical marijuana infused product manufacturing facility.

(2) The facility **or structure used for the cultivation** shall comply with all applicable building codes, including but not limited to the health, building, electrical, plumbing, mechanical, sign, fire, and other codes, statutes, and ordinances.

(3) All grow operations shall be conducted in a fully enclosed **non-residential** building [or greenhouse]. Outdoor grow operations [shall be] are prohibited.

(4) **Optional cultivation premises** [Grow operations] shall not be located in a structure that contains a residential use.

[(5) It shall be unlawful for any patient or primary caregiver to cultivate marijuana until he or she has first registered the location with the Pueblo Police Department and presented his or her state medical marijuana registration identification card to the Police. This information shall be a confidential record and shall be exempt from the Colorado Open Records Act, as required by House Bill 10-1284.]

[(6) In addition to the above requirements, home cultivation uses shall also comply with the following:

(a) Growing permitted for registered patients that are residents of the dwelling,

(b) The registered patient(s) must live at the property used for cultivation,

(c) Sale, transferal or other distribution of any portions of the plant, product, bi-product, etc. associated with home cultivation shall require a medical marijuana center license,

(d) The number of plants shall not exceed what's allowed by Amendment 20.

(e) It shall be unlawful for any patient or caregiver to cultivate marijuana using carbon dioxide at any concentration above ambient air concentration for 4900 feet above sea level. The use or storage of other hazardous chemicals must be approved by the Fire Department.

(f) A copy of the registered patients state medical marijuana registration shall be posted in a conspicuous place within three (3) feet of the place where the marijuana plants are cultivated.]

SECTION 6.

Chapter 15, Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of *Article 2* to read as follows:

Article 2
Home Cultivation Performance Standards

Sec. 17-15-20. Medical and Retail Marijuana Home Cultivation performance standards.

(1) The structure used for Home Cultivation shall comply with all applicable building codes, including but not limited to the health, building, electrical, plumbing, mechanical, sign, fire, and other codes, statutes, and ordinances.

(2) All grow operations shall be conducted in a fully enclosed and locked space inside a detached one-family residence, attached accessory structure to a detached one-family residence, or a detached accessory structure subject to the following limitations:

(a) The total area used to grow and process marijuana inside a detached one-family residence or accessory structure attached to a detached one-family residence shall not exceed one hundred (100) contiguous square feet and ten feet in height. Only a medical marijuana caregiver may seek a variance pursuant to Pueblo Municipal Code §17-5-34 to exceed the one hundred (100) contiguous square feet limitation; however, in no event shall a caregiver be allowed to grow marijuana in an area exceeding twenty-five percent (25%) of the gross floor area of the residence or one hundred (100) square feet, whichever is greater.

(b) The total area used to grow and process marijuana inside a detached accessory structure shall not exceed one hundred fifty (150) contiguous feet and twelve feet in height, Only a medical marijuana caregiver may seek a variance pursuant to Pueblo Municipal Code §17-5-34 to exceed the one hundred fifty (150) contiguous square feet; however, in no event shall a Caregiver be allowed to grow marijuana in a detached accessory structure larger than necessary to allow ten (10) square feet per doctor recommended marijuana plant, or one hundred fifty (150) square feet, whichever is greater.

(c) All detached accessory structures must comply with all other applicable zoning codes.

(3) Any space used for grow operations pursuant to this Article 2 must not be available to the public or accessible to anyone under the age of twenty-one (21) years unless such person possesses a medical marijuana registration card.

(4) All Home Cultivations must have a ventilation system(s) that prevents recirculation of indoor air and requires all air to be vented directly to the outdoors through a carbon filtration system sufficient to prevent particulate and odors from escaping the Home Cultivation. All ventilation systems must meet all applicable building codes.

(5) Outdoor grow operations and home cultivation in greenhouse are prohibited. It shall be unlawful and a class one municipal offense to violate this subsection. In addition, violation of this subsection shall be considered a nuisance *pro se* subject to abatement pursuant to Pueblo Municipal Code §7-1-1 *et seq.*

(6) Conducting a Home Cultivation in, or on any property zoned for any use other than one-family residential is prohibited.

(7) Home Cultivation of marijuana is only permitted by adults over 21 years of age, unless such person possesses a valid medical marijuana registration card, who reside at, and use the property on which the Home Cultivation is located as their primary residence; except that Medical Marijuana Caregivers may cultivate for up to five (5) persons who do not reside at the property on which the Home Cultivation is located, so long as the property on which the Home Cultivation is located is the Caregiver's primary residence and the Caregiver has been designated by the person(s) that possess the valid medical marijuana registration card(s) to be their Caregiver. In no event, shall a Caregiver be allowed to cultivate for more than a total of five (5) patients without obtaining a valid medical marijuana license from the City pursuant to Pueblo Municipal Code §11-10-301 *et seq.*

(8) Anyone cultivating medical marijuana must post a copy of the registered patient's state medical marijuana registration in a conspicuous place within three (3) feet of the Home Cultivation.

(9) Sale, transfer, or other distribution of any portions of the plant, product, bi-product, etc. associated with Home Cultivation in exchange for any form of consideration is prohibited; except that transfer of one ounce or less of retail marijuana without remuneration to a person who is 21 years of age or older shall not be unlawful.

(10) Sale, transfer (with or without remuneration), gift, or other distribution of any portions of the plant, product, bi-product, etc. associated with Home Cultivation to persons under 21 years of age, unless such person possesses a valid medical marijuana registration card and the person distributing the marijuana is their designated caregiver, is prohibited and unlawful, and a class one municipal offense.

(11) It shall be unlawful and a class two municipal offense to cultivate marijuana using carbon dioxide at any concentration above ambient air concentration for 4900 feet above sea level, or to use or store any other hazardous chemicals without first obtaining the approval of the Fire Department.

(12) If the residential property used for Personal Cultivation is leased, the resident of the property must have written authorization, in the form approved by the Planning and Community Development Department, from the property owner allowing the property to be used to cultivate marijuana. Owner approval forms may be obtained from the Planning and Community Development Department.

(13) Violation of any of any subsection(s) of this Article 2 shall be a Class two municipal offense unless specifically designated otherwise, and may be considered a nuisance *pro se* subject to abatement pursuant to Pueblo Municipal Code Section 7-1-1 et seq.

SECTION 7.

Chapter 15, Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of Article 3 to read as follows:

Article 3
Nuisance

Sec. 15-17-30. Marijuana as a nuisance.

(1) Neither the growing nor processing of medical or retail marijuana plants as part of a Home Cultivation shall be perceptible from the exterior of the structure in which any such activities occur, by or through any of the following means, or as a result of the general of any of the following impacts or effects:

(a) Common visual observation (e.g., through a window) by a person of normal vision;

(b) Light pollution, glare, or brightness that reasonably could be expected to disturb the repose of another person of normal visual sensitivities;

(c) The smell or odor of marijuana, or unusual smells or odors generated by or connected to such growing or processing and not generally found in a residential environment, as detectable by a person with a normal sense of smell;

(d) Undue or unusually high volumes of vehicular or pedestrian traffic, including unusually heavy or frequent parking in front of or in the immediate vicinity of the residence or residential structure; or

(e) Noise from exhaust fans, other equipment, or other sources associated with or connected to such growing or processing in excess of any applicable permissible noise level set forth in Pueblo Municipal Code Section 11-1-607.

(2) Receipt by the City of three or more sustained complaints within a ninety (90) day period that a property on which a Home Cultivation exists has violated this Article 3 shall be considered a nuisance per se.

(3) Each continuance of a nuisance for twenty-four (24) hours shall be considered a separate and distinct violation of this Chapter.

Sec. 15-17-31. Nuisance *per se*.

Any violation of this Chapter designated herein as a nuisance *per se* is considered a condition detrimental to the health or safety of any of the inhabitants of the City, and may be summarily abated pursuant to Pueblo Municipal Code § 7-1-1 *et seq* without right of appeal. The City may recover any and costs incurred as a result of the abatement pursuant to Pueblo Municipal Code § 7-1-1 *et seq.*

Sec. 15-17-32. Notice.

(1) With regard to all violations of this Chapter not designated as a nuisance *per se*, it shall be unlawful and a class two municipal offense for the owner or the occupant of any property to permit, continue or suffer the existence of any nuisance on any property under his or her ownership or control for a period of ten (10) days after service by certified mail or posting on the property notice of the nuisance. Service shall be deemed received upon the date signed on the return receipt, upon receipt of the return receipt unsigned, undeliverable or unclaimed, or ten (10) days after notice has been posted on the property.

(2) The notice shall contain the following information:

(a) The street address and legal description of the property sufficient for identification of the property;

(b) A statement of the nature of the nuisance (i.e. visual, smell, noise, etc.); and

(c) A statement that the nuisance must be removed or corrected within ten (10) days after receipt of the notice and if the nuisance is not abated, or an appeal filed within that time, the property will be declared to be a public nuisance. Thereafter, the City may enter upon the property and abate the nuisance to include removal and disposal of any marijuana plants, equipment, materials or items determined to be the cause of the nuisance.

Sec. 15-17-33. Appeal.

(1) In all cases except those involving a nuisance *per se*, a property owner or responsible party may file a written appeal with the City Manager or the designee of the City Manager within ten (10) days after receipt of the notice.

(2) The appeal notice shall set forth the reasons why the property does not constitute a public nuisance and any defenses the property owner or responsible party may have for failure to remove the nuisance pursuant to the notice. Untimely appeals will not be considered.

(3) The City Manager or the designee of the City Manager shall hold an appeal hearing within ten (10) days of the filing of a notice of appeal by the property owner or responsible party. At the hearing, the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance and any defenses the property owner or responsible party may have for failure to remove the nuisance.

(4) The determination of the Hearing Officer after the hearing shall be final and not appealable. If, after the hearing, regardless of the attendance of the owner or the responsible party or their respective agents, the Hearing Officer determines that the property is a public nuisance, the Hearing Officer shall give a written order to the owner or responsible party at the time of the hearing, or if the owner or responsible party does not appear, by mailing a copy of the written order by U.S. mail postage pre-paid to the address provided by the owner or responsible party in the notice of appeal, that, unless the nuisance is abated within seven (7) days of the date of the written order, the City shall enter upon the property and cause the abatement of the nuisance, which may include but not be limited to removal and disposal of marijuana, marijuana plants, equipment and materials.

Sec. 15-17-34. Recovery of costs.

Within fourteen (14) days of completion of the abatement by the City, the City shall provide an accounting to the owner and the responsible party of the costs of such abatement. If all or any portion of the cost of such abatement remains unpaid after thirty (30) days, the amount thereof shall be charged against the owner of the property that was the subject of the abatement effort and be considered an unpaid debt owed to the City. Upon recording in the office of the County Clerk and Recorder of a statement under oath of the City Manager showing the amount of the unpaid cost of such abatement and describing the property, the unpaid cost of such abatement plus interest at the rate of ten percent (10%) per annum from the date such costs were incurred, shall be and constitute a perpetual lien on the property having priority over all other liens and encumbrances except general ad valorem tax liens, and such lien shall remain in full force and effect until paid in full. Filing of such lien shall not be an exclusive remedy. The City may pursue any other remedies provided for in law or equity by the laws of the State of Colorado, City Charter or Municipal Code for collection of a debt owed to the City.

SECTION 8.

This Ordinance, and these amendments to Title XVII of the Pueblo Municipal Code, shall be subject to administration and enforcement in accordance with Chapters 5 and 7 of the Title XVII, Pueblo Municipal Code, as amended. Any person who violates any provision of this Ordinance or these amendments shall be guilty of a municipal offense and shall be subject to the punishment and all other remedies as provided in Chapter 7 of Title XVII of the Pueblo Municipal Code, as amended.

Attachment E: Application for a Medical Marijuana Card

COLORADO
Medical Marijuana Registry
Department of Public Health & Environment

AP

Medical Marijuana Card Application

This request is for a: ☐ **First time applicant** ☐ **Renewal applicant** ☐ **Minor applicant (under 18)**

STAFF ONLY

Evaluated

Paid

Patient Information The mailing address listed below is for the patient and is where the card will be sent

1. Social Security Number	2. Date of Birth		
3. Last Name	4. First Name		5. Middle Initial
6a. Patient Mailing Address			6b. Apt/Ste #
7. City	State CO	8. Zip Code	9. County
10. Telephone	11. Email		12. Gender ☐ Male ☐ Female

By checking this box ☐, I authorize the Medical Marijuana Registry to contact me using the telephone number and email address above. This includes leaving voicemail messages on the contact telephone number.

13. Once you receive your medical marijuana registry card, will you have a medical marijuana center grow all (or a portion of) your medical marijuana plants?
☐ Yes ☐ No

Assign a Caregiver Complete this section if you are requesting to have a cultivating or transporting caregiver

Adults - A Caregiver Acknowledgement form must be included with your application to assign a caregiver.
Minors- A parent must be the caregiver - A Parental Consent form must be included with your application.

14a. Caregiver Last Name	14b. Caregiver First Name	14c. Caregiver Date of Birth

If you wish to assign a caregiver who already serves 5 or more patients, you must answer question #15.

15. What benefits do your caregiver and their products provide that improve your health and wellbeing?

_____
_____
_____

I hereby certify that I, the patient, have verified the above information to be accurate and complete and no one other than me (or my legally authorized representative) is submitting this request on my behalf.

16a. Patient's or Authorized Representative's Signature:	16b. Signature Date

COLORADO
Medical Marijuana Registry
Department of Public Health & Environment

AP

Application for Medical Marijuana Card

Before submitting your paperwork to the Registry, make copies for your personal records. Participation in the Registry does not appear on background checks and is completely confidential. Applications MUST BE mailed in by the patient.

New and Renewal Adult Applications must include:

- ☐ A complete application page
- ☐ A physician certification completed by a qualified MD or DO
- ☐ A copy of your Colorado driver's license or photo ID (or a Proof of Identity and Residency Waiver)
- ☐ A $15 check or money order (**non-refundable application processing fee**) made out to CDPHE (or a Fee Waiver)

For renewal applications:
Please submit renewal applications between 30 to 60 days before your card expires. Renewal applications CANNOT be used to purchase medical marijuana. You must wait until your new card arrives in the mail to purchase medical marijuana.

For applicants with legal guardians or an authorized representative:
If you are signing on behalf of the patient, you must provide a copy of your Colorado driver's license or photo ID and legal documentation granting guardianship and/or authorized representation such as a court-certified guardianship order or medical power of attorney. Medical care rights and or health care decision authority must be legally assigned in order for you to sign on behalf of the patient.

Minor applications must include:

- ☐ A complete application page
- ☐ A Parental Consent form (MC) for parents/guardians residing in Colorado
- ☐ Two (2) physician certifications completed by two (2) separate qualified MD's or DO's
- ☐ A certified copy of the minor's state-issued birth certificate (or legal guardianship order)
- ☐ A copy of both parent's/legal guardian's Colorado driver's licenses or ID's (or a Proof of Identity and Residency Waiver)
- ☐ A $15 check or money order (non-refundable) made out to CDPHE (or a Fee Waiver form)

Proof of identity and Colorado residency requirements:

Proof of Residency Waivers are only valid for one (1) year. Upon renewing your medical marijuana card, you **must** provide a Colorado driver's license or photo ID.

Submit paperwork by mail or deliver to the Registry's drop-box:

Mail: Application Processing, CDPHE HSV-8608, 4300 Cherry Creek Dr S, Denver, CO 80246-1530
Deliver to drop-box: 710 S Ash St, southeast entrance, Monday-Friday, 7:00 a.m. to 6:00 p.m.
The drop box is on the wall inside the first set of glass doors. Your paperwork must be in a sealed envelope. You will not receive a receipt. If you wish to have a receipt, please mail in your paperwork by certified mail.

Processing time:

Please allow 3-5 weeks from the date the Registry receives your paperwork for standard processing. Applications with Proof of Residency Waivers or caregiver requests for a caregiver who currently serves 5 or more patients may require additional time for review. If you do not receive your card or a letter from the Registry within 35 days, please contact us at 303-692-2184.