

## ARTICLE 22

### Hazardous Substance Incidents

29-22-101. Definitions.

29-22-102. Hazardous substance incidents - response authorities - designation.

29-22-103. Emergency response authority may request assistance.

29-22-104. Right to claim reimbursement - temporary committee on reimbursement.

29-22-105. Additional reimbursement for costs of assistance - subrogation of rights - recovery of reimbursements by attorney general.

29-22-106. Emergency response cash fund. (Repealed)

29-22-106.5. Hazardous substances planning and response assistance fund - creation - acceptance of gifts, grants, and donations - grants to local government - repeal.

29-22-107. Legislative finding - hazardous substance listing required.

29-22-108. Criminal penalties.

29-22-109. Persons rendering assistance relating to hazardous substance incidents - legislative declaration - exemption from civil liability.

29-22-110. Colorado state patrol to provide information.

**29-22-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Hazardous substance" means any substance, material, waste, or mixture designated as a hazardous material, waste, or substance according to 49 Code of Federal Regulations Part 172, as amended, or by section 18-13-112 (2) (b), C.R.S., or as designated pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (PL 96-510) as in effect July 1, 1983.

(2) (a) "Hazardous substance incident" means any emergency circumstance involving the sudden discharge of a hazardous substance which threatens immediate and irreparable harm to the environment or the health and safety of any individual other than individuals exposed to the risks associated with hazardous substances in the normal course of their employment. "Hazardous substance incident" includes those incidents of spilling, dumping, or abandonment of a hazardous substance, whether or not such spilling, dumping, or abandonment is found to threaten immediate and irreparable harm, but such term does not include any discharge of a hazardous substance authorized pursuant to any federal, state, or local law or regulation. "Hazardous substance incident" includes those incidents which occur during transportation of a hazardous substance, in which a spill does not occur during the incident but is threatened prior to or during the cleanup period.

(b) As used in this section, "abandonment" means the act of leaving a thing with the intent not to retain possession of or assert ownership or control over it. The intent need not coincide with the act of leaving.

(3) "Person" means any individual, public or private corporation, partnership, association, firm, trust, or estate, the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(4) "Private property" means any property under the control, management, or operation of any person other than a governmental agency.

**29-22-102. Hazardous substance incidents - response authorities - designation.** (1) It is the purpose of this section to provide for the designation of emergency response authorities for hazardous substance incidents. Every emergency response authority designated in or pursuant to this section shall be responsible for providing and maintaining the capability for emergency response to a hazardous substance incident occurring within its jurisdiction. An emergency response authority may provide and maintain the capability for such response directly or through mutual aid or other agreements. Subject to the provisions of local or regional response agreements for hazardous substance incidents, the first emergency response authority, or its public agency designee through mutual aid or otherwise, to arrive at the scene of the incident, regardless of whether the incident occurs within its jurisdiction, shall be responsible for the emergency response as incident commander until such time as the emergency response authority that has jurisdiction over the incident site has arrived, after which unified command shall be followed until the emergency response has concluded. As used in this section, "emergency response to a hazardous substance incident" means taking the initial emergency action necessary to minimize the effects of a hazardous substance incident.

(2) If a hazardous substance incident occurs on private property and is otherwise reportable to any federal, state, or local agency, the owner of the property or person or entity operating on the property shall promptly report the incident to and coordinate a response with the appropriate emergency response authority designated in or pursuant to this section. If the owner or operator does not undertake or coordinate an emergency response or if, in the judgment of the designated emergency response authority, there exists an imminent danger to the public health and safety beyond such property, the designated emergency response authority may undertake the emergency response to such hazardous substance incident, as provided in this section. Nothing in this subsection (2) shall be construed to prohibit the owner of private property or a person or entity operating on such property from undertaking the emergency response to a hazardous substance incident occurring on the property.

(3) (a) The governing body of every town, city, and county shall designate by ordinance or resolution

an emergency response authority or authorities for hazardous substance incidents occurring within the corporate limits of such town, city, and city and county. Unless otherwise designated by ordinance or resolution, the fire authority having responsibility for the corporate limits of such town, city, or city and county shall be the designated emergency response authority.

(b) The board of county commissioners of every county in the state shall designate by ordinance or resolution the emergency response authority or authorities for hazardous substance incidents occurring within the unincorporated area of the county. Unless otherwise designated by ordinance or resolution, the county sheriff having responsibility for the unincorporated area of the county shall be the designated emergency response authority.

(c) (Deleted by amendment, L. 99, p. 432, §§ 1, effective April 30, 1999.)

(4) (Deleted by amendment, L. 99, p. 432, §§ 1, effective April 30, 1999.)

(5) (a) For the purposes of this section, if a hazardous substance incident occurs on any federal, state, or county highway located outside of municipal city limits, the Colorado state patrol shall be the emergency response authority for such hazardous substance incident.

(b) The Colorado state patrol may delegate such authority to the emergency response authority designated pursuant to subsection (3) of this section or to any public entity capable of performing the emergency response to a hazardous substance incident upon approval of the governing body of the entity receiving authority under such delegation.

(c) In performing its duties under this subsection (5), the Colorado state patrol shall, when practicable, locate its emergency response resources based upon its assessment of the hazardous substances emergency response needs of the different geographic areas of the state.

(d) The Colorado state patrol shall actively coordinate its emergency response capabilities and plans with local emergency response agencies.

(6) Each governing body identified in subsection (3) of this section and the Colorado state patrol shall, as necessary, exercise continuing supervisory authority in consultation with other federal, state, and local agencies having regulatory jurisdiction for the cleanup and removal of the hazardous substance involved in an incident.

**29-22-103. Emergency response authority may request assistance.** (1) Any emergency response authority that, in its judgment, does not have the equipment, personnel, or expertise necessary to handle a particular hazardous substance incident may make a request to any public agency or private entity possessing such necessary equipment, personnel, or expertise to provide assistance to such emergency response authority.

(2) (a) Any emergency response authority designated in or pursuant to section 29-22-102 may request the department of public health and environment and the county or district health department to provide assistance. If there is no county or district health department for the area in which a hazardous substance incident occurs, such request may be made to the board of county commissioners in its capacity as the county board of health or to the mayor and council or trustees in their capacity as the municipal board of health. In addition, any other state or local agency with useful expertise shall have the authority, upon request, to provide assistance to and cooperate with the emergency response authority designated in or pursuant to section 29-22-102.

(b) The department of public safety is hereby authorized to organize, through mutual aid or other agreements, a state emergency response team and regional emergency response teams. The state team may consist of any federal, state, local, or private entities that have the appropriately trained personnel and the necessary equipment to respond on a statewide basis to a hazardous substance incident. The regional teams may consist of any federal, state, local, or private entities that have the appropriately trained personnel and the necessary equipment to respond on a regional basis to a hazardous substance incident and to assist the state team in responding on a statewide basis to a hazardous substance incident. The state and regional teams shall be available to respond to hazardous substance incidents upon request made to the department of public safety by an emergency response authority. The emergency response authority that requests a response by the state emergency response team, a regional emergency response team, or both shall assure that the reasonable and documented costs of the team's or teams' response are included in any reimbursement for costs sought in accordance with this article. The emergency response authority shall distribute any such reimbursement that is made to it on a pro rata basis to each entity that made up the emergency response team or teams that responded to a hazardous substance incident.

(3) Any municipal or county governing body, any emergency response authority, any private entity, the Colorado state patrol, or the department of public safety may enter into mutual aid or other agreements for the purpose of enhancing the response to hazardous substance incidents. Such agreements may include, but are not limited to, procedures for utilizing equipment, personnel, and technical assistance.

**29-22-104. Right to claim reimbursement - temporary committee on reimbursement.** (1) A public entity, political subdivision of the state, or unit of local government is hereby given the right to claim reimbursement from the person or persons who have care, custody, and control of the hazardous substance involved at the time of the incident for the reasonable, necessary, and documented costs resulting from action taken to remove, contain, or otherwise mitigate the effects of such incident. When the action to remove, contain, or otherwise mitigate the effects of such an incident also involves extinguishing a fire, the costs may only include the extraordinary expenses related to the hazardous substance and not any expense related to extinguishing the fire. If the property on which the hazardous substance incident occurred lies within an

unincorporated area of a county and not otherwise within a fire protection district, then the costs may include any expense related to the hazardous substance incident or to extinguishing the fire. If any such person is the owner of property upon which the hazardous substance incident occurs, collection of such costs may be made pursuant to section 30-10-513.5 (1), C.R.S.

(2) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

(3) (a) The governing body of the emergency response authority designated in section 29-22-102 (3), or when the emergency response authority is the Colorado state patrol, the attorney general, shall be responsible for collecting any claims for reimbursement made pursuant to this section when more than one public entity, political subdivision of the state, or unit of local government has assisted in said removal, containment, or mitigation. Such responsibility shall include, when necessary, the filing of a civil action against the person responsible for the abandonment or spill. Any such agency which rendered assistance may also join any civil action as a party plaintiff or may assign any rights to the appropriate emergency response authority.

(b) Any collections or recovery made by the emergency response authority shall be distributed on a pro rata basis among the agencies which rendered assistance.

(c) The emergency response authority is entitled to recover its reasonable costs in collecting any reimbursement, including any attorney fees. If such costs are not included in a judgment rendered in a civil action, they shall be deducted from any recovery prior to the distribution provided for in paragraph (b) of this subsection (3).

(d) All moneys collected or recovered pursuant to the provisions of this section on behalf of the Colorado state patrol, except for moneys distributed to assisting agencies pursuant to paragraph (b) of this subsection (3) or to pay legal fees or costs pursuant to paragraph (c) of this subsection (3), shall be transmitted to the state treasurer who shall credit the same to the highway users tax fund established in section 43-4-201, C.R.S.

(4) The provisions of this section shall apply to any claim for reimbursement for costs related to a hazardous substance which is authorized by other provisions of law.

(5) (a) (I) No later than June 15, 1999, the executive director of the department of public safety shall appoint a temporary committee on reimbursement for the costs of hazardous substance incidents. The executive director shall appoint as committee members representatives of facilities and transportation companies that produce or handle hazardous substances, insurance companies, fire departments and other hazardous substance incident response agencies, municipal and county governments, the Colorado state patrol, the division of fire safety, and such other entities as the director deems necessary and appropriate. The director shall appoint equal numbers of representatives of private and public entities to the committee.

(II) The committee shall hold its first meeting no later than July 1, 1999, and shall elect a chairperson at the first meeting. Subsequently, the committee shall meet at least once each month until it has made the written recommendations required by subparagraph (I) of paragraph (b) of this subsection (5) and may meet as often as the chairperson deems necessary. Members of the committee shall not receive compensation of any kind.

(b) (I) No later than August 15, 1999, the temporary committee on reimbursement for the costs of hazardous substance incidents shall make written recommendations to the executive director of the department of public safety regarding guidelines for administering and resolving claims for reimbursement made pursuant to this section against any party or person responsible for a hazardous substance incident. Such recommendations may include recommendations for proposed legislation or administrative rules and shall include recommendations for an administrative process to ensure prompt mediation of disputes concerning claims for reimbursement made pursuant to this section by any public entity against any person or party responsible for a hazardous substance incident. Such recommendations shall be designed to provide public entities and persons or parties responsible for hazardous substance incidents with the opportunity to resolve claims for reimbursement that result from hazardous substance incidents in a timely and reasonable manner.

(II) No recommendation made by the temporary committee on reimbursement for the costs of hazardous substance incidents shall be implemented or have the force and effect of law or rule, or be considered by any court or arbiter unless such recommendation is enacted into law or adopted by administrative rule in accordance with article 4 of title 24, C.R.S.

(c) No later than September 1, 1999, unless the legislative audit committee specifies a later date, the executive director of the department of public safety shall report the recommendations of the temporary committee on reimbursement for the costs of hazardous substance incidents to the legislative audit committee. The report shall include any proposed legislation recommended to the executive director by the temporary committee.

(6) (a) The executive director of the department of public safety shall adopt rules in accordance with article 4 of title 24, C.R.S., to create a process by which a public entity, political subdivision of the state, or unit of local government claiming reimbursement pursuant to this section shall establish that the costs attributed to a hazardous substance incident are reasonable, necessary, and documented. Such rules shall provide for consideration of all appropriate cost factors including but not limited to acquisition and operation expenses for equipment, salaries and benefits, the cost of expendable supplies, the cost differences between rural and urban areas, and the cost differences between responding entities that utilize paid staff and entities that use volunteers.

(b) The executive director of the department of public safety shall create a list of qualified and knowledgeable persons who are willing to perform the role of voluntary ombudsman, mediator, or arbitrator to resolve disputes regarding claims for reimbursement made pursuant to this section and shall adopt rules in accordance with article 4 of title 24, C.R.S., to establish the process by which the parties involved in such a dispute may access and arrange for the assistance of persons on the list. Persons on the list shall not receive compensation for their services from the state and shall not be state employees. Persons on the list shall not be subject to civil liability for any actions taken in good faith pursuant to this paragraph (b) or any rule adopted by the

executive director of the department of public safety in accordance with this section.

**29-22-105. Additional reimbursement for costs of assistance - subrogation of rights - recovery of reimbursements by attorney general.** Whenever any fire department or other public agency provides assistance to a designated emergency response authority, as provided in section 29-22-103 or 29-22-104, outside of the area of its jurisdiction, whenever assistance to a designated emergency response authority is provided pursuant to a mutual aid agreement, or whenever the department of public health and environment or local health department provides services such as laboratory analyses, waste removal, transportation, storage, or disposal, the reasonable documented costs of the equipment, supplies, analyses, and personnel provided by such fire department or public agency may be reimbursed, subject to guidelines by the executive director of the department of public safety. Reimbursement shall be for costs not recovered pursuant to section 29-22-104 and shall be out of any moneys made available by legislative appropriation therefor. In the event of such reimbursement, the state of Colorado shall be subrogated to any rights of such fire department or public agency with respect to the amounts so reimbursed. The attorney general shall pursue all available remedies to recover any moneys paid out pursuant to this section from the person responsible for said incident. Any moneys recovered by the attorney general shall be transmitted to the state treasurer. Nothing in this article shall be construed to enlarge or impair any right of recovery or subrogation arising under any other provision of law. The attorney general shall not attempt to recover any moneys from any person responding to a hazardous substance incident pursuant to a mutual aid agreement or to any provision of this article.

**29-22-106.5. Hazardous substances planning and response assistance fund - creation - acceptance of gifts, grants, and donations - grants to local government - repeal.** (1) There is hereby created in the state treasury a fund to be known as the hazardous substances planning and response assistance fund, referred to in this section as the "fund". The fund shall be administered by the executive director of the department of public safety.

(2) The executive director of the department of public safety is hereby directed to actively solicit and to accept all moneys received from the federal government and from public or private grants, gifts, bequests, donations, and other contributions for any purpose consistent with the provisions of this article. Such moneys, together with any other moneys appropriated by the general assembly, shall be credited to the fund.

(3) All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year. Any moneys remaining in the fund upon the repeal of this section shall be transferred to the general fund.

(4) Moneys in the fund shall be used to provide grants to public entities and agencies in the state to assist with emergency planning and emergency response to hazardous substance incidents. The department of public safety shall administer all grants from the fund and shall accept applications from local emergency planning committees and from first responder organizations who have coordinated their request with their local or regional emergency planning committee. Prior to June 1, 2000, the Colorado emergency planning commission shall assess the emergency planning and response needs of the state and report its findings to the executive director of the department of public safety. The executive director of the department of public safety shall evaluate the grant applications, taking into account the needs assessment findings and any other input of the Colorado emergency planning commission, and shall determine which applications shall be approved as well as the amount of each grant. Grants shall be made for the purposes of emergency planning and emergency response including, but not limited to, response equipment, training and planning programs, and training and planning equipment, as needed to carry out the purposes of this article. A grant shall only be made to a grant applicant who has obtained local funding or entered into an agreement to obtain local funding in an amount of twenty-five percent or greater than the amount of the grant.

(5) The executive director of the department of public safety may promulgate rules prescribing the procedures to be followed in the making, filing, and evaluation of grant applications and any other rules necessary for administering the fund. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(6) The executive director of the department of public safety shall report by November 1 of each year to the joint budget committee of the general assembly on all grants of moneys from the fund made in the preceding fiscal year. Such report shall include the criteria used to award grants, the number of grant applications received, the number of grants made, the amount of each grant, the specific purpose for the grant, and the amount of local funding contributed for each grant.

(7) This section is repealed, effective July 1, 2005.

**29-22-107. Legislative finding - hazardous substance listing required.** (1) The general assembly finds, determines, and declares:

(a) That the protection of the public from the dangers of hazardous substance incidents occurring on private property, other than residential or agricultural property, is a matter of statewide concern;

(b) That, without the provisions of this section, such protection is inadequate; and

(c) That the provisions of this section are enacted in the exercise of the police powers of this state for the purpose of protecting the peace, health, safety, and welfare of the people of this state.

(2) (a) Upon the request of the designated emergency response authority, the department of public health and environment, or the local fire department, any person who, in accordance with the following table, possesses

the specified quantity, or a quantity in excess of that specified, of any hazard type of hazardous substance on private property shall provide the designated emergency response authority and the waste management division of the department of public health and environment and, when requested, the local fire department with a listing of the maximum quantity of each such hazard type reasonably anticipated to be present on the property at any time:

### **Hazard type Quantity**

Class A or B explosive Any quantity

Class C explosive 50 pounds

Etiological agent Any quantity

Water reactive flammable solid 5 pounds

Pyrophoric material 5 pounds

Organic/inorganic peroxide 50 pounds

Poison A or poison B 100 pounds or 15 gallons

Flammable liquid other than a pyrophoric liquid 700 pounds or 120 gallons

Compressed flammable gas other than 3,000 cubic feet or more liquefied petroleum gases at one atmosphere at seventy degrees Fahrenheit

Liquefied petroleum gases Any installation exceeding 18,000 gallon water capacity

Oxidizer 200 pounds or 120 gallons

Combustible liquid  
Class I 120 gallons  
Class II 240 gallons  
Class III 500 gallons

Corrosive material 200 pounds or 120 gallons (unless a lesser amount is specified in 49 Code of Federal Regulations Part 172.101)

Irritating material 200 pounds or 120 gallons

(b) With respect to the terms listed as hazard types in the table in paragraph (a) of this subsection (2):

(I) "Pyrophoric material" means any material which ignites spontaneously in dry or moist air at or below one hundred thirty degrees Fahrenheit.

(II) The remaining terms shall have the meanings ascribed to them in 49 Code of Federal Regulations Subchapter C as in effect on July 1, 1983.

(c) (I) Any person requested to list pursuant to this subsection (2) shall update such list annually unless the designated response authority, the department of public health and environment, or the local fire department requests an updated list prior to the annual update.

(II) Except as to those authorities designated in paragraph (a) of this subsection (2), all information required to be provided under this subsection (2) shall be deemed privileged and shall not be released to any person or organization without the express written consent of the person providing the information.

(III) The person who, without the express written consent required in subparagraph (II) of this paragraph (c), releases information required to be provided by this subsection (2) commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(d) The requirements of this subsection (2) shall not apply to:

(I) Motor fuel products in quantities less than forty-two thousand gallons in underground storage or less than six hundred twenty gallons in one tank or less than one thousand three hundred forty gallons in combination in above ground storage;

(II) Hazardous substances located on residential, personal, or agricultural property;

(III) Any person who has specific arrangements with a designated emergency response authority for responding to hazardous substance incidents;

(IV) Hazardous materials in transportation which are subject to the provisions of article 2.1 of title 40, C.R.S.;

(V) The armed forces of the United States or the state militia;

(VI) Explosives in forms prescribed by the official United States pharmacopolia;

(VII) The sale, possession, or use of fireworks;

(VIII) The possession, transportation, and use of small arms ammunition;

(IX) The possession, storage, and transportation of not more than fifty pounds of black powder and two thousand small arms primers for hand-loading of small arms ammunition for personal use unless otherwise regulated by the local jurisdiction;

(X) The transportation and use of explosives or blasting agents by the United States bureau of mines, the federal bureau of investigation, the United States secret service, the United States department of the treasury, or a police or fire department acting in its official capacity;

(XI) Special industrial explosive devices which in the aggregate contain less than fifty pounds of explosives.

(3) On or after October 1, 1983, any person failing to comply with the provisions of subsection (2) of this section shall be subject to a civil penalty of not more than one hundred dollars per day for each day during which said violation occurs. Such penalty shall be determined and collected by a court of competent jurisdiction upon an action instituted by the district attorney. Civil penalties collected shall be transmitted to the state treasurer, who shall credit the same to the general fund.

**29-22-108. Criminal penalties.** (1) Any person who intentionally causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provision of this article commits a class 4 felony and shall be punished as provided in section 18-1-105, C.R.S.

(2) Any person who willfully, recklessly, or with criminal negligence as defined in section 18-1-501, C.R.S., causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provisions of this article commits a class 5 felony and shall be punished as provided in section 18-1-105, C.R.S.

**29-22-109. Persons rendering assistance relating to hazardous substance incidents - legislative declaration - exemption from civil liability.** (1) The general assembly hereby finds and declares that knowledgeable individuals and organizations should be encouraged to lend expert assistance in the event of a hazardous substance incident. The purpose of this section is to so encourage such individuals and organizations to lend assistance by providing them with limited immunity from civil liability.

(2) As used in this section, "person" means individual, government or governmental subdivision or agency, corporation, partnership, or association or any other legal entity.

(3) (a) Notwithstanding any provision of law to the contrary, any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous substance incident, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up, or dispose of any such incident, shall not be subject to civil liability for such assistance or advice, except as provided in subsection (4) of this section.

(b) Notwithstanding any provision of law to the contrary, any person who provides assistance upon request of any emergency response authority, police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of hazardous substance, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance, except as provided in subsection (4) of this section.

(4) The exemption from civil liability provided for in this section shall not apply to:

(a) Any person whose act or omission caused in whole or in part such discharge and who would otherwise be liable therefor;

(b) Any person, other than the employee of a governmental subdivision or agency, who receives compensation other than reimbursement for out-of-pocket expenses for his assistance or advice;

(c) Any person's gross negligence or reckless, wanton, or intentional misconduct.

(5) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to article 10 of title 24, C.R.S., the "Colorado Governmental Immunity Act".

**29-22-110. Colorado state patrol to provide information.** The Colorado state patrol shall compile and maintain information on the emergency response capabilities of public and private agencies throughout the state to enable the state patrol to answer any inquiry concerning the nearest agencies or entities available to contribute equipment and personnel to aid in the emergency response to any hazardous substance incident. The state patrol shall also compile and maintain information regarding which local, state, or federal agencies or entities should be notified of any hazardous substance incident. The state patrol shall establish, maintain, and publicize a telephone service to make such information available to the public twenty-four hours each day and shall notify each emergency response authority designated in or pursuant to section 29-22-102 as responsible for the emergency response to a hazardous substance incident of such service. With respect to the powers and duties specified in this section, the state patrol shall have no rule-making authority and shall avail itself of all available private resources. The state patrol shall coordinate its activities pursuant to this section with the department of public health and environment and the department of local affairs.