

## CHAPTER 53

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**HEALTH AND ENVIRONMENT**

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## SENATE BILL 16-092

BY SENATOR(S) Grantham, Lambert, Steadman, Crowder;  
also REPRESENTATIVE(S) Rankin, Hamner, Young, Brown, Duran, Lontine, Mitsch Bush, Moreno, Pettersen, Primavera,  
Rosenthal, Ryden.

**AN ACT****CONCERNING THE AUTHORIZATION OF THE STATE TO ACT PURSUANT TO THE FEDERAL "OIL POLLUTION ACT OF 1990".**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 25-16-102, **amend** (5) and (9); and **add** (5.3) and (5.6) as follows:

**25-16-102. Definitions.** As used in this article, unless the context otherwise requires:

(5) "National contingency plan" has the same meaning as that ascribed to it in the federal act AND THE OPA.

(5.3) "OIL" HAS THE SAME MEANING AS THAT ASCRIBED TO IT IN THE OPA.

(5.6) "OPA" MEANS THE FEDERAL "OIL POLLUTION ACT OF 1990", 33 U.S.C. SEC. 2701 ET SEQ., AS AMENDED.

(9) "Responsible party" has the same meaning as that ascribed to it in the federal act AND THE OPA.

**SECTION 2.** In Colorado Revised Statutes, 25-16-103, **amend** (1) introductory portion as follows:

**25-16-103. Authorization to participate - implementation.** (1) The general assembly hereby authorizes the department of public health and environment to participate in federal implementation of the federal act AND THE OPA and, for such

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

purpose, the department has the authority to participate in the selection and performance of responses and remedial actions and to enter into cooperative agreements with the federal government providing for remedial actions and responses. The department, with the consent of the governor, has the authority to decline to participate with the federal government on remedial actions which the department determines are not in the interest of the state. Any cooperative agreements entered into under this article may provide assurances acceptable to the federal government that:

**SECTION 3.** In Colorado Revised Statutes, 25-16-104.5, **amend** (1.7) (b) (II) as follows:

**25-16-104.5. Solid waste user fee - imposed - rate - direction - legislative declaration - repeal.** (1.7) (b) (II) The portions of the fee imposed under this subsection (1.7) that are collected for the costs described in subparagraphs (II) and (III) of paragraph (a) of this subsection (1.7) shall be transmitted to the department for deposit into the hazardous substance response fund created in section 25-16-104.6. The department may expend ~~moneys~~ MONEY from the portion of the fee collected under subparagraph (III) of paragraph (a) of this subsection (1.7) to compensate the department of law for all or a portion of the expenses incurred for services rendered under the federal act AND THE OPA, as billed to the department by the department of law.

**SECTION 4.** In Colorado Revised Statutes, 25-16-104.6, **amend** (1) (a), (2.5) introductory portion, and (2.5) (a) as follows:

**25-16-104.6. Fund established - administration - revenue sources - use.** (1) (a) There is hereby established in the state treasury the hazardous substance response fund. The fund ~~shall be~~ is composed of ~~any moneys~~ MONEY that the general assembly may choose to appropriate from the general fund, ~~and any moneys~~ MONEY derived from the fee imposed pursuant to section 25-16-104.5, and any interest derived therefrom; ~~any moneys~~ MONEY recovered from responsible parties pursuant to the federal act OR THE OPA that are not generated by the state litigating as trustee for natural resources pursuant to section 25-16-104.7; ~~any moneys~~ MONEY recovered through litigation by the state pursuant to the federal act OR THE OPA that are designated for future response cost; and any other ~~moneys~~ MONEY derived from public or private sources that may be credited to the fund. ~~Moneys~~ MONEY in the fund shall be annually appropriated by the general assembly, subject to ~~the provisions of section 25-16-104, shall remain~~ REMAINS available for the purposes of this article, and ~~shall~~ DOES not revert ~~or be transferred~~ to the general fund of the state at the end of any fiscal year. If the fund balance exceeds ten million dollars in any state fiscal year and the fund balance is not projected to fall below ten million dollars within twenty-four months, the department shall evaluate the need to reduce fees to bring the balance of the fund below ten million dollars, and shall present the evaluation to the commission.

(2.5) ~~Moneys~~ MONEY in the hazardous substance response fund ~~created pursuant to this section~~ may be appropriated as follows:

(a) To finance any litigation arising under this part 1, ~~or~~ the federal act, OR THE OPA on behalf of the state;

**SECTION 5.** In Colorado Revised Statutes, 25-16-104.7, **amend** (1) and (3) as follows:

**25-16-104.7. Natural resource damage recoveries - fund created - repeal.**

(1) Except as provided in subsection (3) of this section, ~~any moneys~~ MONEY recovered through litigation by the state acting as trustee of natural resources pursuant to the federal act OR THE OPA, and any interest derived therefrom, are credited to the natural resource damage recovery fund, which fund is hereby created. The department may expend the custodial ~~moneys~~ MONEY in the fund without further appropriation for purposes authorized by the federal act OR THE OPA, including the restoration, replacement, or acquisition of the equivalent of natural resources that have been injured, destroyed, or lost as a result of a release of a hazardous substance OR OIL. In addition, the department shall use the ~~moneys~~ MONEY in the natural resource damage recovery fund in a manner that is consistent with any judicial order, decree, or judgment governing the use of any particular recovery credited to the fund.

(3) To the extent authorized by law, and consistent with a final judicial order or decree in any litigation by the state acting as trustee of natural resources pursuant to the federal act OR THE OPA, any recovery of natural resource damage assessment or other costs, including litigation costs and fees, shall be credited to the fund from which such costs were originally paid.

**SECTION 6. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct undertaken pursuant to the federal "Oil Pollution Act of 1990" occurring on or after the applicable effective date of this act.

Approved: March 23, 2016