

## CHAPTER 256

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**LABOR AND INDUSTRY**

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**HOUSE BILL 93-1165**

BY REPRESENTATIVES Fleming, Chlouber, Entz, Friednash, Moellenberg, Prinster, Reeves, Snyder, and Williams;  
also SENATORS Wattenberg, Bishop, Meiklejohn, Norton, L. Powers, and R. Powers.

**AN ACT****CONCERNING PETROLEUM STORAGE TANKS.**

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

**SECTION 1.** 8-20-502 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-20-502 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**8-20-502. Definitions.** As used in this part 5, unless the context otherwise requires:

(1) ~~"Closure" means the abandonment of an underground storage tank in place or the removal and disposal of an underground storage tank.~~ "ABANDONED TANK" MEANS AN UNDERGROUND PETROLEUM STORAGE TANK THAT THE CURRENT OWNER OR OPERATOR OR CURRENT PROPERTY OWNER HAS NEVER OPERATED.

(1.5) "CLOSURE" MEANS THE ABANDONMENT OF AN UNDERGROUND STORAGE TANK IN PLACE OR THE REMOVAL AND DISPOSAL OF AN UNDERGROUND STORAGE TANK.

(6.5) "PROPERTY OWNER" MEANS A PERSON HAVING A LEGAL OR EQUITABLE INTEREST IN REAL OR PERSONAL PROPERTY THAT IS SUBJECT TO THIS ARTICLE.

**SECTION 2.** The introductory portion to 8-20-503 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-20-503. Duties of the state inspector of oils.** (1) The state inspector of oils shall make, promulgate, and enforce regulations which are no more stringent than the requirements contained in 42 U.S.C. 6991 and the regulations promulgated

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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.*

thereunder ~~and which are in substantial conformity with the generally accepted standards of safety concerning the same subject matter for:~~

**SECTION 3.** 8-20-509 (1) (a), (3), and (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 8-20-509 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**8-20-509. Financial responsibility for petroleum underground storage tanks.**

(1) (a) Moneys in the underground storage tank fund, created pursuant to section 25-18-109, C.R.S., and referred to in this section as the "fund", may be used by certain owners and operators of petroleum underground ~~and aboveground~~ storage tanks to demonstrate their compliance with the financial responsibility requirements in federal regulations. Owners and operators not eligible for access to the fund shall be solely responsible for securing independent financial assistance, but may use any federally approved financial assurance mechanism identified in 40 C.F.R. 280.94 through 280.103 to help fund the cost of complying with such requirements. ~~Any owner or operator of an aboveground petroleum storage tank with a capacity of at least six hundred sixty gallons and less than forty thousand gallons, excluding aboveground storage tanks used for agricultural purposes, shall be eligible to participate in the fund, if such owner or operator is in compliance with all relevant regulations issued by the state inspector of oils, which regulations shall be no more strict than federal regulations.~~

(3) Moneys in the fund shall be available to pay required cleanup costs and third party liability payments ~~when no owner or operator can be identified, when an orphan tank is involved, or when the current owner or operator is not responsible for the release of petroleum product. No current owner or operator shall be responsible for or required to implement corrective action under section 25-18-104, C.R.S., if at the time such party acquired the tank facility it had no reason to know that a release had occurred, and such party is at the time of discovery in compliance with all relevant statutes and regulations of this part 5 and article 18 of title 25, C.R.S. In lieu of seeking reimbursement from the fund, an owner who bears no responsibility for the release may request that the department of health perform the cleanup using funds from the Underground Storage Tank Fund. In addition to any purpose provided for in section 25-18-109, C.R.S., moneys in the Underground Storage Tank Fund may be appropriated by the general assembly to the department of health for the purpose of providing for the cleanup authorized in this section. WITH NO DEDUCTIBLES FOR THE FOLLOWING PERSONS WHO ARE DEEMED TO BEAR NO RESPONSIBILITY FOR THE RELEASE:~~

(a) A PROPERTY OWNER WHO HAS NEVER OPERATED PETROLEUM UNDERGROUND STORAGE TANKS AT THE PROPERTY WHERE THE RELEASE OCCURRED, PROVIDED SUCH PROPERTY WAS ACQUIRED ON OR BEFORE JUNE 3, 1992, AND THE PROPERTY OWNER HAD NO REASON TO KNOW THAT A RELEASE HAD OCCURRED;

(b) WHEN AN ORPHAN OR ABANDONED PETROLEUM UNDERGROUND STORAGE TANK IS INVOLVED AND THE CURRENT OWNER, OPERATOR, OR PROPERTY OWNER HAS NEVER OPERATED THE TANK OR TANKS AND HAD NO REASON TO KNOW THAT A RELEASE HAD OCCURRED; OR

(c) A CURRENT OWNER OR OPERATOR OF PETROLEUM UNDERGROUND STORAGE

TANKS IF AT THE TIME THE OWNER OR OPERATOR ACQUIRED SUCH TANKS SUCH OWNER OR OPERATOR HAD NO REASON TO KNOW THAT A RELEASE HAD ALREADY OCCURRED, IF SUCH OWNER OR OPERATOR HAS OPERATED THE TANKS IN ACCORDANCE WITH SECTIONS 8-20-503 AND 8-20-703, AND IF THE RELEASE WAS DETECTED ON OR BEFORE DECEMBER 22, 1998.

(d) ANY MORTGAGEE OR HOLDER OF AN EVIDENCE OF DEBT SECURED BY A DEED OF TRUST WHO, THROUGH FORECLOSURE OF THE MORTGAGE OR DEED OF TRUST OR THROUGH RECEIPT OF A DEED TO THE PROPERTY IN LIEU OF FORECLOSURE, ACQUIRES PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK IS LOCATED, AND SUCH MORTGAGE OR DEED OF TRUST IS DATED ON OR BEFORE JANUARY 1, 1993.

(e) ANY MORTGAGEE OR HOLDER OF AN EVIDENCE OF DEBT SECURED BY A DEED OF TRUST WHO, THROUGH FORECLOSURE OF THE MORTGAGE OR DEED OF TRUST OR THROUGH RECEIPT OF A DEED TO THE PROPERTY IN LIEU OF FORECLOSURE, ACQUIRES PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK IS LOCATED, AND SUCH MORTGAGE OR DEED OF TRUST IS DATED AFTER JANUARY 1, 1993, AND THE MORTGAGEE OR HOLDER OF AN EVIDENCE OF DEBT SECURED BY A DEED OF TRUST HAS OBTAINED A CERTIFICATE OF ELIGIBILITY REGARDING THE PROPERTY IN ACCORDANCE WITH THE RULES OF THE STATE INSPECTOR OF OILS. THE STATE INSPECTOR OF OILS SHALL PROMULGATE RULES NECESSARY TO IMPLEMENT THIS PROGRAM.

(3.5) IN LIEU OF SEEKING REIMBURSEMENT DIRECTLY FROM THE FUND, AN OWNER, OPERATOR, OR CURRENT PROPERTY OWNER WHO BEARS NO RESPONSIBILITY FOR THE RELEASE, UNDER THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, MAY REQUEST THAT THE DEPARTMENT OF HEALTH PERFORM THE CLEANUP USING FUNDS FROM THE UNDERGROUND STORAGE TANK FUND WITHOUT FURTHER PROVING ELIGIBILITY FOR SUCH USE. IN ADDITION TO ANY PURPOSE PROVIDED FOR IN SECTION 25-18-109, C.R.S., MONEYS IN THE UNDERGROUND STORAGE TANK FUND MAY BE APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF HEALTH FOR THE PURPOSE OF PROVIDING FOR THE CLEANUP AUTHORIZED IN THIS SECTION.

(5) Underground ~~and aboveground~~ storage tanks containing petroleum or other regulated substances which are owned or operated by, or are on property owned or leased by the federal government, or any agency or subcontractor thereof shall be subject to federal financial responsibility regulations, and any financial responsibility requirements for damages caused by such tanks shall not be the responsibility of the fund.

**SECTION 4.** 8-20-702 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-20-702 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**8-20-702. Definitions.** As used in this part 7, unless the context otherwise requires:

(1) ~~"Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, constructed of nonearthen materials including, but not limited to, concrete, steel, or plastic which provides structural support, used to contain or dispense fuel products and the volume of which including the pipes connected thereto is ninety percent or~~

~~more above the surface of the ground.~~ "ABANDONED TANK" MEANS AN ABOVEGROUND PETROLEUM STORAGE TANK THAT THE CURRENT OWNER OR OPERATOR OR CURRENT PROPERTY OWNER HAS NEVER OPERATED.

(1.5) (a) "ABOVEGROUND STORAGE TANK" MEANS ANY ONE OR A COMBINATION OF CONTAINERS, VESSELS, AND ENCLOSURES, INCLUDING STRUCTURES AND APPURTENANCES CONNECTED TO THEM, CONSTRUCTED OF NON-EARTHEN MATERIALS INCLUDING BUT NOT LIMITED TO CONCRETE, STEEL, OR PLASTIC WHICH PROVIDES STRUCTURAL SUPPORT, USED TO CONTAIN OR DISPENSE FUEL PRODUCTS AND THE VOLUME OF WHICH INCLUDING THE PIPES CONNECTED THERETO IS NINETY PERCENT OR MORE ABOVE THE SURFACE OF THE GROUND.

(b) "ABOVEGROUND STORAGE TANK" SHALL NOT INCLUDE ANY ABOVEGROUND STORAGE TANK ASSOCIATED WITH OIL OR GAS PRODUCTION AND GATHERING OPERATIONS.

(6.5) "PROPERTY OWNER" MEANS A PERSON HAVING A LEGAL OR EQUITABLE INTEREST IN REAL OR PERSONAL PROPERTY THAT IS SUBJECT TO THIS ARTICLE.

**SECTION 5.** 8-20-703, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-20-703. Duties of the state inspector of oils.** (1) The state inspector of oils shall make, promulgate, and enforce regulations for aboveground storage tanks containing fuel products described in section 8-20-704 ~~which are no more stringent than the requirements contained in the current edition of the national fire code published by the national fire protection association, as revised by the association from time to time.~~ AND INSTALLED BEFORE JULY 1, 1993, WHICH REGULATIONS SHALL BE NO MORE STRINGENT THAN THE REGULATIONS IN PLACE ON THE DATE OF INSTALLATION, EXCEPT AS MANDATED BY FEDERAL SPILL PREVENTION, CONTROL, AND COUNTERMEASURES REGULATIONS PROMULGATED BY THE ENVIRONMENTAL PROTECTION AGENCY.

(2) The state inspector of oils shall ~~include~~ MAKE, PROMULGATE, AND ENFORCE rules concerning the design, construction, ~~and~~ installation, AND OPERATION of aboveground storage tanks permitted to be used under section 8-20-704 AND INSTALLED ON OR AFTER JULY 1, 1993, WHICH ARE NO MORE STRINGENT, EITHER SUBSTANTIALLY OR PROCEDURALLY, THAN THE REQUIREMENTS CONTAINED IN THE CURRENT EDITION OF THE NATIONAL FIRE CODE PUBLISHED BY THE NATIONAL FIRE PROTECTION ASSOCIATION, AS REVISED BY THE ASSOCIATION FROM TIME TO TIME, AND IN SPILL PREVENTION CONTROL AND COUNTERMEASURES REGULATIONS PROMULGATED BY THE ENVIRONMENTAL PROTECTION AGENCY.

**SECTION 6.** Part 7 of article 20 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**8-20-705. Financial responsibility for petroleum aboveground storage tanks.** (1) (a) MONEYS IN THE UNDERGROUND STORAGE TANK FUND, CREATED PURSUANT TO SECTION 25-18-109, C.R.S., AND REFERRED TO IN THIS SECTION AS THE "FUND", MAY BE USED BY CERTAIN OWNERS AND OPERATORS OF PETROLEUM ABOVEGROUND STORAGE TANKS TO DEMONSTRATE THEIR COMPLIANCE WITH THE FINANCIAL

RESPONSIBILITY REQUIREMENTS IN FEDERAL REGULATIONS. ANY OWNER OR OPERATOR OF AN ABOVEGROUND PETROLEUM STORAGE TANK WITH A CAPACITY OF AT LEAST SIX HUNDRED SIXTY GALLONS AND LESS THAN FORTY THOUSAND GALLONS, EXCLUDING ABOVEGROUND STORAGE TANKS USED FOR AGRICULTURAL PURPOSES, SHALL BE ELIGIBLE TO PARTICIPATE IN THE FUND.

(b) AFTER PAYMENT IS MADE FROM THE FUND FOR REMEDIATION EXPENSES, THE OWNER OR OPERATOR ON WHOSE BEHALF THE PAYMENT WAS MADE SHALL PAY TO THE FUND THE REMEDIATION AMOUNT OR TEN THOUSAND DOLLARS, WHICHEVER IS LESS.

(c) AFTER PAYMENT IS MADE FROM THE FUND FOR PERSONAL INJURY OR PROPERTY DAMAGE AFTER A COURT JUDGMENT OR A SETTLEMENT AGREED TO BY THE ATTORNEY GENERAL'S OFFICE, OR A COMBINATION OF BOTH, THE OWNER OR OPERATOR ON WHOSE BEHALF THE PAYMENT WAS MADE SHALL PAY TO THE FUND THE AGGREGATE SETTLEMENT PAYMENT AMOUNT OR TWENTY-FIVE THOUSAND DOLLARS, WHICHEVER IS LESS.

(d) MONEYS IN THE FUND SHALL NOT BE USED FOR ANY REMEDIATION ACTIVITY AT A LOCATION THAT IS WITHIN A SITE IDENTIFIED BY THE NATIONAL PRIORITIES LIST, OR WHERE A RESPONSE ACTION BY THIS STATE HAS BEGUN PURSUANT TO THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980".

(e) IF AN OWNER OR OPERATOR CANNOT MEET THE FINANCIAL REQUIREMENTS OF THIS SUBSECTION (1), ANOTHER APPROVED FINANCIAL ASSURANCE MECHANISM SHALL BE IDENTIFIED FOR SUCH OWNER OR OPERATOR TO REMAIN IN SUBSTANTIAL COMPLIANCE WITH THIS SECTION AND TO BE ALLOWED TO CONTINUE OPERATION OF AN ABOVEGROUND PETROLEUM STORAGE TANK.

(2) THE MAXIMUM AMOUNT OF LIABILITY OF THE FUND UNDER THIS SECTION DURING ANY FISCAL YEAR SHALL BE ONE MILLION DOLLARS PER OCCURRENCE AND TWO MILLION DOLLARS AGGREGATE, FOR TANKS THAT ARE THE RESPONSIBILITY OF AN INDIVIDUAL OWNER OR OPERATOR. FOR PURPOSES OF THIS SECTION, AN "OCCURRENCE" MEANS THE PERIOD OF TIME FROM IDENTIFICATION THROUGH REMEDIATION OF A LEAK, SPILL, OR RELEASE OF A PETROLEUM PRODUCT FROM AN ABOVEGROUND STORAGE TANK. IN THE EVENT THE COST OF REMEDIATION OR THIRD PARTY CLAIMS EXCEEDS THE AMOUNT AVAILABLE TO PAY SUCH COSTS, SUCH COSTS AND CLAIMS SHALL BE PAID ON A PRO RATA BASIS AS DETERMINED BY THE ADVISORY COMMITTEE CREATED IN SECTION 25-18-105, C.R.S. ANY BALANCE OWED SHALL BE PAID AS MONEYS BECOME AVAILABLE IN THE FUND. ANY EXCESS COSTS THAT ARE NOT PAID BY THE FUND SHALL BE PAID BY AND ARE THE SOLE RESPONSIBILITY OF THE RESPONSIBLE OWNER OR OPERATOR.

(3) MONEYS IN THE FUND SHALL BE AVAILABLE TO PAY REQUIRED CLEANUP COSTS AND THIRD PARTY LIABILITY PAYMENTS WITH NO DEDUCTIBLES FOR THE FOLLOWING PERSONS WHO ARE DEEMED TO BEAR NO RESPONSIBILITY FOR THE RELEASE:

(a) A PROPERTY OWNER WHO HAS NEVER OPERATED PETROLEUM ABOVEGROUND STORAGE TANKS AT THE PROPERTY WHERE THE RELEASE OCCURRED, PROVIDED SUCH PROPERTY WAS ACQUIRED ON OR BEFORE JUNE 3, 1992, AND THE PROPERTY OWNER HAD NO REASON TO KNOW THAT A RELEASE HAD OCCURRED;

(b) A CURRENT OWNER OR OPERATOR OF PETROLEUM ABOVEGROUND STORAGE TANKS IF AT THE TIME THE OWNER OR OPERATOR ACQUIRED SUCH TANKS SUCH OWNER OR OPERATOR HAD NO REASON TO KNOW THAT A RELEASE HAD ALREADY OCCURRED, IF SUCH OWNER OR OPERATOR HAS OPERATED THE TANKS IN ACCORDANCE WITH SECTIONS 8-20-503 AND 8-20-703, AND IF THE RELEASE WAS DETECTED ON OR BEFORE DECEMBER 22, 1998; OR

(c) WHEN AN ORPHAN OR ABANDONED PETROLEUM ABOVEGROUND STORAGE TANK IS INVOLVED AND THE CURRENT OWNER, OPERATOR, OR PROPERTY OWNER HAS NEVER OPERATED THE TANK OR TANKS AND HAD NO REASON TO KNOW THAT A RELEASE HAD OCCURRED.

(d) ANY MORTGAGEE OR HOLDER OF AN EVIDENCE OF DEBT SECURED BY A DEED OF TRUST WHO, THROUGH FORECLOSURE OF THE MORTGAGE OR DEED OF TRUST OR THROUGH RECEIPT OF A DEED TO THE PROPERTY IN LIEU OF FORECLOSURE, ACQUIRES PROPERTY ON WHICH AN ABOVEGROUND STORAGE TANK IS LOCATED, AND SUCH MORTGAGE OR DEED OF TRUST IS DATED ON OR BEFORE JANUARY 1, 1993.

(e) ANY MORTGAGEE OR HOLDER OF AN EVIDENCE OF DEBT SECURED BY A DEED OF TRUST WHO, THROUGH FORECLOSURE OF THE MORTGAGE OR DEED OF TRUST OR THROUGH RECEIPT OF A DEED TO THE PROPERTY IN LIEU OF FORECLOSURE, ACQUIRES PROPERTY ON WHICH AN ABOVEGROUND STORAGE TANK IS LOCATED, AND SUCH MORTGAGE OR DEED OF TRUST IS DATED AFTER JANUARY 1, 1993, AND THE MORTGAGEE OR HOLDER OF AN EVIDENCE OF DEBT SECURED BY A DEED OF TRUST HAS OBTAINED A CERTIFICATE OF ELIGIBILITY REGARDING THE PROPERTY IN ACCORDANCE WITH THE RULES OF THE STATE INSPECTOR OF OILS. THE STATE INSPECTOR OF OILS SHALL PROMULGATE RULES NECESSARY TO IMPLEMENT THIS PROGRAM.

(4) IN LIEU OF SEEKING REIMBURSEMENT DIRECTLY FROM THE FUND, AN OWNER, OPERATOR, OR CURRENT PROPERTY OWNER WHO BEARS NO RESPONSIBILITY FOR THE RELEASE AS SET FORTH IN SUBSECTION (3) OF THIS SECTION MAY REQUEST THAT THE DEPARTMENT OF HEALTH PERFORM THE CLEANUP USING MONEYS FROM THE UNDERGROUND STORAGE TANK FUND WITHOUT FURTHER PROVING ELIGIBILITY FOR SUCH USE. IN ADDITION TO ANY PURPOSE PROVIDED FOR IN SECTION 25-18-109, C.R.S., MONEYS IN THE UNDERGROUND STORAGE TANK FUND MAY BE APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF HEALTH FOR THE PURPOSE OF PROVIDING FOR THE CLEANUP AUTHORIZED IN THIS SECTION.

(5) AN OWNER, OPERATOR, OR PROPERTY OWNER OF AN ABOVEGROUND STORAGE TANK INSTALLED BEFORE THE EFFECTIVE DATE OF SUBSECTION (4) OF THIS SECTION SHALL BE ELIGIBLE TO PARTICIPATE IN THE FUND IF ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE UNDERGROUND STORAGE TANK ADVISORY COMMITTEE, CREATED PURSUANT TO SECTION 25-18-105, C.R.S., ARE MET.

(6) ABOVEGROUND STORAGE TANKS CONTAINING PETROLEUM OR OTHER REGULATED SUBSTANCES WHICH ARE OWNED OR OPERATED BY, OR ARE ON PROPERTY OWNED OR LEASED BY THE FEDERAL GOVERNMENT OR ANY AGENCY OR SUBCONTRACTOR THEREOF SHALL BE SUBJECT TO FEDERAL FINANCIAL RESPONSIBILITY REGULATIONS, AND ANY FINANCIAL RESPONSIBILITY REQUIREMENTS FOR DAMAGES CAUSED BY SUCH TANKS SHALL NOT BE THE RESPONSIBILITY OF THE FUND.

(7) NOTHING IN THIS SECTION SHALL CREATE ANY LIABILITY FOR THE STATE OF COLORADO THAT EXCEEDS THE AMOUNT AVAILABLE IN THE FUND.

**SECTION 7.** 25-18-102 (1), Colorado Revised Statutes, 1989 Repl. Vol., is amended, and the said 25-18-102, as amended, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**25-18-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) ~~"Board" means the state board of health created in section 25-1-103.~~  
"ABANDONED TANK" MEANS AN UNDERGROUND OR ABOVEGROUND PETROLEUM STORAGE TANK THAT THE CURRENT OWNER OR OPERATOR OR CURRENT PROPERTY OWNER HAS NEVER OPERATED.

(1.3) (a) "ABOVEGROUND STORAGE TANK" MEANS ANY ONE OR A COMBINATION OF CONTAINERS, VESSELS, AND ENCLOSURES, INCLUDING STRUCTURES AND APPURTENANCES CONNECTED TO THEM, CONSTRUCTED OF NON-EARTHEN MATERIALS INCLUDING BUT NOT LIMITED TO CONCRETE, STEEL, OR PLASTIC WHICH PROVIDES STRUCTURAL SUPPORT, USED TO CONTAIN OR DISPENSE FUEL PRODUCTS AND THE VOLUME OF WHICH INCLUDING THE PIPES CONNECTED THERETO IS NINETY PERCENT OR MORE ABOVE THE SURFACE OF THE GROUND.

(b) "ABOVEGROUND STORAGE TANK" SHALL NOT INCLUDE ANY ABOVEGROUND STORAGE TANK ASSOCIATED WITH OIL OR GAS PRODUCTION AND GATHERING OPERATIONS.

(1.8) "BOARD" MEANS THE STATE BOARD OF HEALTH CREATED IN SECTION 25-1-103.

(8.5) "PROPERTY OWNER" MEANS A PERSON HAVING A LEGAL OR EQUITABLE INTEREST IN REAL OR PERSONAL PROPERTY THAT IS SUBJECT TO THIS ARTICLE.

**SECTION 8.** 25-18-105 (1), (4) (b), (4) (d), (4) (e), (4) (f), and (4) (g), Colorado Revised Statutes, 1989 Repl. Vol., are amended, and the said 25-18-105 (4) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

**25-18-105. Regulations - advisory committee.** (1) The governor shall appoint an underground storage tank advisory committee which shall be comprised of seven members who have technical expertise and knowledge in fields related to corrective actions taken to mitigate underground AND ABOVEGROUND storage tank releases. The state inspector of oils or ~~his~~ THE STATE INSPECTOR'S designee and the director of the department or ~~his~~ THE DIRECTOR'S designee shall be permanent members of the advisory committee. The remaining five members of the advisory committee shall be chosen from among the following groups, with no more than one member representing each group: Fire protection districts, elected local governmental officials, companies that refine and retail motor fuels in Colorado, companies that wholesale motor fuels in Colorado, owners and operators of independent retail outlets, companies that conduct corrective actions or install and repair underground AND ABOVEGROUND storage tanks, and private citizens or interest groups. The department shall provide

staff to support the activities of the advisory committee.

(4) The committee shall be required to meet no more than twice in any month. All regulatory actions proposed by the committee shall be recommended to the state board of health for adoption or ratification. The committee shall conduct the following activities in accordance with section 24-4-104, C.R.S., as its routine business:

(b) Review standards and regulations governing underground AND ABOVEGROUND storage tanks;

(d) (I) Establish procedures, practices, and policies governing any and all aspects of processing, adjusting, defending, or paying claims against the fund. ~~which are eligible for payment from the fund. The committee or the department may, in order to perform any or all of these functions, contract for the use of outside experts, consultants, or services.~~ TO ENCOURAGE TANK OWNERS AND OPERATORS TO REPORT AND REMEDIATE CONTAMINATION AND ACHIEVE COMPLIANCE WITH REGULATIONS PROMULGATED BY THE STATE INSPECTOR OF OILS, THE COMMITTEE MAY APPROVE CLAIMS INVOLVING TANKS NOT OPERATED IN SUBSTANTIAL COMPLIANCE, BUT MAY ALSO DETERMINE THE AMOUNT, IF ANY, BY WHICH SUCH CLAIMS MAY BE REDUCED FOR NONCOMPLIANCE. BEFORE IMPOSING ANY REDUCTION FOR NONCOMPLIANCE THE COMMITTEE SHALL DETERMINE WHETHER THE RULES ISSUED BY THE STATE INSPECTOR OF OILS ARE BOTH SUBSTANTIALLY AND PROCEDURALLY NO MORE STRINGENT THAN ENVIRONMENTAL PROTECTION AGENCY REGULATIONS UNDER 42 U.S.C. 6991 AND WHETHER THE AREAS OF NONCOMPLIANCE WERE BROUGHT INTO COMPLIANCE PRIOR TO APPLICATION TO THE FUND, WHERE POSSIBLE. THE COMMITTEE SHALL USE THE FOLLOWING GUIDELINES WHEN IMPOSING A REDUCTION FOR NONCOMPLIANCE:

(A) UP TO A TEN PERCENT REDUCTION FOR FAILURE TO REGISTER A TANK;

(B) UP TO A TWENTY-FIVE PERCENT REDUCTION FOR IMPROPER RELEASE DETECTION;

(C) UP TO A TEN PERCENT REDUCTION FOR IMPROPER RELEASE REPORTING;

(D) UP TO A TWENTY PERCENT REDUCTION FOR IMPROPER OUT-OF-SERVICE AND CLOSURE.

(II) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE THE COMMITTEE TO APPROVE A CLAIM INVOLVING SUBSTANTIAL NONCOMPLIANCE. THE COMMITTEE SHALL ESTABLISH SPECIFIC CRITERIA TO DEFINE WHEN DENIAL FOR SUBSTANTIAL NONCOMPLIANCE MAY BE IMPOSED.

(e) ~~Establish priorities governing the types of corrective actions which shall be reimbursed from the fund;~~

(f) ~~Review correction action plans submitted pursuant to section 25-18-104, for which no agreement has been reached through informal conferences between the department and the owner or operator and make a recommendation to the board, upon request from the department or the owner or the operator, what corrective action is acceptable; and~~

~~(g) Issue public notices and hold public hearings to obtain comment on the activities described in paragraphs (a) to (f) of this subsection (4).~~

(h) ESTABLISH PRIORITIES GOVERNING THE TYPES OF CORRECTIVE ACTIONS WHICH SHALL BE REIMBURSED FROM THE FUND;

(i) REVIEW CORRECTIVE ACTION PLANS SUBMITTED PURSUANT TO SECTION 25-18-104, FOR WHICH NO AGREEMENT HAS BEEN REACHED THROUGH INFORMAL CONFERENCES BETWEEN THE DEPARTMENT AND THE OWNER OR OPERATOR, AND MAKE A RECOMMENDATION TO THE BOARD, UPON REQUEST FROM THE DEPARTMENT OR THE OWNER OR THE OPERATOR, THE CORRECTIVE ACTION THAT IS ACCEPTABLE;

(j) ISSUE PUBLIC NOTICES AND HOLD PUBLIC HEARINGS TO OBTAIN COMMENT ON THE ACTIVITIES DESCRIBED IN THIS SUBSECTION (4); AND

(k) THE COMMITTEE OR THE DEPARTMENT MAY, IN ORDER TO PERFORM ANY OR ALL OF THEIR RESPONSIBILITIES AND FUNCTIONS UNDER THIS SUBSECTION (4), CONTRACT FOR THE USE OF OUTSIDE EXPERTS, CONSULTANTS, OR SERVICES.

**SECTION 9.** 25-18-105, Colorado Revised Statutes, 1989 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**25-18-105. Regulations - advisory committee.** (4.2) REDUCTIONS DETERMINED BY THE COMMITTEE BECAUSE OF NONCOMPLIANCE SHALL BE CUMULATIVE AND SHALL APPLY TO ALL ELIGIBLE COSTS APPROVED BY THE COMMITTEE IN THE INITIAL AND ALL SUPPLEMENTAL CLAIMS FOR THE OCCURRENCE AS DEFINED IN SECTION 8-20-509 (2), C.R.S.; EXCEPT THAT IN NO INSTANCE SHALL CUMULATIVE REDUCTIONS FOR NONCOMPLIANCE APPLY TO CLAIMS SUBMITTED IN ACCORDANCE WITH SECTION 8-20-705 (3) OR 8-20-509 (3), C.R.S.

(4.4) THE REDUCTIONS DESCRIBED IN SUBSECTIONS (4) (d) AND (4.2) OF THIS SECTION PERTAIN TO THIS SECTION ONLY AND SHALL NOT BE CONSTRUED TO HAVE ANY IMPACT ON COST-RECOVERY ACTIONS TAKEN IN ACCORDANCE WITH SECTION 25-18-104 OR ANY CIVIL OR CRIMINAL PENALTIES IMPOSED AS PART OF AN ENFORCEMENT PROCEEDING. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT THE ENFORCEMENT POWERS DESCRIBED IN ARTICLE 20 OF TITLE 8, C.R.S.

(4.6) AT ITS FIRST MEETING OF EACH FISCAL YEAR, ON OR ABOUT JULY 1, THE COMMITTEE SHALL ESTABLISH AND SET ASIDE FOR REIMBURSEMENTS TO THOSE INDIVIDUALS WHO ARE ELIGIBLE TO MAKE APPLICATION TO THE FUND IN ACCORDANCE WITH SECTION 8-20-509 (3) OR 8-20-705 (3), C.R.S., AN AMOUNT EQUAL TO TWENTY PERCENT OF THE TOTAL ANNUAL ALLOCATION TO THE CAPITAL CONSTRUCTION BUDGET OF THE DEPARTMENT FROM THE UNDERGROUND STORAGE TANK FUND, WHICH AMOUNT SHALL BE USED FOR THE PURPOSE OF CONDUCTING REMEDIATION ACTIVITIES IN ACCORDANCE WITH SECTIONS 8-20-509 (3), 8-20-705 (3), C.R.S., AND 25-18-104 AND SHALL PROTECT THE INTEGRITY OF THE FUND AS A FINANCIAL ASSURANCE MECHANISM FOR TANK OWNERS AND OPERATORS. THE COMMITTEE SHALL REEXAMINE ON A QUARTERLY BASIS THE UNENCUMBERED BALANCE OF THIS ALLOCATION AND MAY SET ASIDE LESSER OR ADDITIONAL AMOUNTS FOR REIMBURSEMENTS TO SUCH APPLICANTS BASED ON THE RELATIVE NUMBER OF REQUESTED REIMBURSEMENTS FROM THE OWNERS AND OPERATORS OF ACTIVE SITES, WITH PREFERENCE GIVEN TO

THE REMEDIATION OF RECENTLY CONTAMINATED LOCATIONS AND TO ACTIVE TANK SITES BASED ON THEIR HIGHER POTENTIAL FOR ENVIRONMENTAL IMPACT.

**SECTION 10.** 25-18-109 (4), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

**25-18-109. Underground storage tank fund - creation.** (4) SUBJECT TO SECTION 25-18-105, the fund shall be available only to those petroleum underground and aboveground storage tanks owners or operators who are in compliance with the provisions of sections 8-20-503, 8-20-703, C.R.S., and 25-18-104.

**SECTION 11. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993