

CHAPTER 314

HEALTH

HOUSE BILL 94-1299

BY REPRESENTATIVES DeGette, Friednash, Gordon, Kerns, Linkhart, Pierson, Reeves, Romero, Rupert, and Strom;
also SENATORS Feeley, Casey, Johnson, and Schroeder.

AN ACT

CONCERNING ENACTMENT OF THE "VOLUNTARY CLEANUP AND REDEVELOPMENT ACT" FOR REAL PROPERTY, AND, IN CONNECTION THEREWITH, ESTABLISHING A PROGRAM FOR THE APPROVAL OF VOLUNTARY CLEANUP PLANS FOR CONTAMINATED REAL PROPERTY OR NO ACTION DETERMINATIONS FOR PROPERTIES WHERE ENVIRONMENTAL REMEDIATION IS NOT NECESSARY AND MAKING AN APPROPRIATION.

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

SECTION 1. Article 16 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 3
VOLUNTARY CLEANUP AND REDEVELOPMENT ACT

25-16-301. Short title. THIS PART 3 SHALL BE KNOWN AND MAY BE CITED AS THE "VOLUNTARY CLEANUP AND REDEVELOPMENT ACT".

25-16-302. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE PURPOSE OF THIS PART 3 IS TO PROVIDE FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT AND TO FOSTER THE TRANSFER, REDEVELOPMENT, AND REUSE OF FACILITIES AND SITES THAT HAVE BEEN PREVIOUSLY CONTAMINATED WITH HAZARDOUS SUBSTANCES OR PETROLEUM PRODUCTS. THE GENERAL ASSEMBLY FURTHER DECLARES THAT THIS PROGRAM IS INTENDED TO PERMIT AND ENCOURAGE VOLUNTARY CLEANUPS OF CONTAMINATED PROPERTY BY PROVIDING PERSONS INTERESTED IN REDEVELOPING EXISTING INDUSTRIAL SITES WITH A METHOD OF DETERMINING WHAT THE CLEANUP RESPONSIBILITIES WILL BE WHEN THEY PLAN THE REUSE OF EXISTING SITES. IT IS THE FURTHER INTENT OF THE GENERAL ASSEMBLY THAT THIS VOLUNTARY PROGRAM OPERATE IN SUCH A WAY AS TO:

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

- (a) ELIMINATE IMPEDIMENTS TO THE SALE OR REDEVELOPMENT OF PREVIOUSLY CONTAMINATED PROPERTY;
- (b) ENCOURAGE AND FACILITATE PROMPT CLEANUP ACTIVITIES; AND
- (c) MINIMIZE ADMINISTRATIVE PROCESSES AND COSTS.

25-16-303. Voluntary cleanup and redevelopment program - general provisions - fees - access to property during reviews. (1) THE PROGRAM ESTABLISHED IN THIS PART 3 SHALL BE VOLUNTARY AND MAY BE INITIATED BY:

(a) THE SUBMISSION TO THE DEPARTMENT OF AN APPLICATION FOR APPROVAL OF A VOLUNTARY CLEANUP PLAN PURSUANT TO SECTION 25-16-304 FOR PROPERTIES WHERE REMEDIATION MAY BE NECESSARY TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT IN LIGHT OF THE CURRENT OR PROPOSED USE OF THE PROPERTY; OR

(b) THE SUBMISSION TO THE DEPARTMENT OF A NO ACTION PETITION PURSUANT TO SECTION 25-16-307 FOR PROPERTIES WHERE REMEDIATION IS COMPLETE OR NOT NECESSARY TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT IN LIGHT OF THE CURRENT OR PROPOSED USE OF THE PROPERTY.

(2) NO PERSON, FINANCIAL INSTITUTION, OR OTHER ENTITY FINANCING A COMMERCIAL REAL ESTATE TRANSACTION SHALL REQUIRE A PURCHASER TO PARTICIPATE IN THE VOLUNTARY PROGRAM CONTAINED IN THIS PART 3, AND NO ENTITY OF COLORADO STATE GOVERNMENT REGULATING ANY PERSON, FINANCIAL INSTITUTION, OR OTHER ENTITY FINANCING A COMMERCIAL REAL ESTATE TRANSACTION SHALL REQUIRE EVIDENCE OF PARTICIPATION IN THIS PROGRAM TO BE A COMPONENT OF STANDARD REAL ESTATE LOAN DOCUMENTATION.

(3) (a) THE PROGRAM CONTAINED IN THIS PART 3 IS VOLUNTARY AND MAY ONLY BE INITIATED BY THE OWNER OF THE SUBJECT REAL PROPERTY.

(b) THE PROVISIONS OF THIS PART 3 SHALL NOT APPLY TO THE FOLLOWING:

(I) PROPERTY THAT IS LISTED OR PROPOSED FOR LISTING ON THE NATIONAL PRIORITIES LIST OF SUPERFUND SITES ESTABLISHED UNDER THE FEDERAL ACT;

(II) PROPERTY THAT IS THE SUBJECT OF CORRECTIVE ACTION UNDER ORDERS OR AGREEMENTS ISSUED PURSUANT TO THE PROVISIONS OF PART 3 OF ARTICLE 15 OF THIS TITLE OR THE FEDERAL "RESOURCE CONSERVATION AND RECOVERY ACT OF 1976", AS AMENDED;

(III) PROPERTY THAT IS SUBJECT TO AN ORDER ISSUED BY OR AN AGREEMENT WITH THE WATER QUALITY CONTROL DIVISION PURSUANT TO PART 6 OF ARTICLE 8 OF THIS TITLE;

(IV) A FACILITY WHICH HAS OR SHOULD HAVE A PERMIT OR INTERIM STATUS PURSUANT TO PART 3 OF ARTICLE 15 OF THIS TITLE FOR THE TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTE; OR

(V) PROPERTY THAT IS SUBJECT TO THE PROVISIONS OF PART 5 OF ARTICLE 20 OF TITLE 8, C.R.S., OR OF ARTICLE 18 OF THIS TITLE.

(4) (a) EACH APPLICATION FOR APPROVAL OF A VOLUNTARY CLEANUP PLAN AND EACH PETITION FOR A NO ACTION DETERMINATION SHALL BE ACCOMPANIED BY A FILING FEE DETERMINED BY THE DEPARTMENT AT A LEVEL SUFFICIENT TO COVER THE DIRECT AND INDIRECT COSTS OF THE DEPARTMENT IN PROCESSING APPLICATIONS FOR APPROVAL OF VOLUNTARY CLEANUP PLANS AND PETITIONS FOR NO ACTION UNDER THIS PART 3, BUT SUCH FILING FEE SHALL NOT EXCEED TWO THOUSAND DOLLARS.

(b) THE DEPARTMENT SHALL ESTABLISH AND PUBLISH HOURLY RATES FOR REVIEW CHARGES PERFORMED BY THE DEPARTMENT IN CONNECTION WITH APPLICATIONS FOR APPROVAL OF VOLUNTARY CLEANUP PLANS AND PETITIONS FOR NO ACTION UNDER THIS PART 3. WITHIN THIRTY DAYS AFTER THE DEPARTMENT'S APPROVAL OR DENIAL OF A VOLUNTARY CLEANUP PLAN OR NO ACTION PETITION, THE DEPARTMENT SHALL BILL AN APPLICANT OR PETITIONER FOR ALL DIRECT AND INDIRECT CHARGES OF REVIEW OF APPLICATIONS AND PETITIONS UNDER THIS PART 3 IN ACCORDANCE WITH THE HOURLY RATE STRUCTURE ESTABLISHED PURSUANT TO THIS PARAGRAPH (b). THE DEPARTMENT'S CHARGES SHALL BE BILLED AGAINST THE APPLICATION FEE PAID PURSUANT TO THIS SUBSECTION (4), BUT SUCH CHARGES SHALL NOT EXCEED THE AMOUNT OF THE FILING FEE. IF THE DEPARTMENT BILLS CHARGES IN AN AMOUNT LESS THAN THE APPLICATION FEE, THE DEPARTMENT SHALL RETURN ANY UNUSED BALANCE TO THE APPLICANT AFTER THE DEPARTMENT'S FINAL DETERMINATION IN THE MATTER HAS BEEN MADE.

(c) ALL MONEYS COLLECTED PURSUANT TO THIS SUBSECTION (4) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE HAZARDOUS SUBSTANCE RESPONSE FUND, CREATED IN SECTION 25-16-104.6 (1). MONEYS COLLECTED PURSUANT TO THIS SUBSECTION (4) SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY ONLY TO DEFRAY THE DIRECT AND INDIRECT COSTS OF THE DEPARTMENT IN PROCESSING VOLUNTARY CLEANUP PLANS AND PETITIONS FOR NO ACTION DETERMINATION AS SPECIFIED IN THIS PART 3.

(5) DURING THE TIME ALLOCATED FOR REVIEW OF APPLICATIONS FOR VOLUNTARY CLEANUP PLANS AND PETITIONS FOR NO ACTION DETERMINATION UNDER THIS PART 3, THE DEPARTMENT SHALL, UPON REASONABLE NOTICE TO THE PROPERTY OWNER, HAVE ACCESS AT ALL REASONABLE TIMES TO THE SUBJECT REAL PROPERTY.

25-16-304. Voluntary cleanup plan. (1) ANY PERSON WHO OWNS REAL PROPERTY WHICH HAS BEEN CONTAMINATED WITH HAZARDOUS SUBSTANCES OR PETROLEUM PRODUCTS MAY SUBMIT AN APPLICATION FOR THE APPROVAL OF A VOLUNTARY CLEANUP PLAN TO THE DEPARTMENT UNDER THE PROVISIONS OF THIS SECTION.

(2) A VOLUNTARY CLEANUP PLAN SHALL INCLUDE:

(a) AN ENVIRONMENTAL ASSESSMENT OF THE REAL PROPERTY WHICH DESCRIBES THE CONTAMINATION, IF ANY, ON THE PROPERTY AND THE RISK THE CONTAMINATION CURRENTLY POSES TO PUBLIC HEALTH AND THE ENVIRONMENT;

(b) A PROPOSAL, IF NEEDED, TO REMEDIATE ANY CONTAMINATION OR CONDITION

WHICH HAS OR COULD LEAD TO A RELEASE WHICH POSES AN UNACCEPTABLE RISK TO HUMAN HEALTH OR THE ENVIRONMENT, CONSIDERING THE PRESENT AND ANY DIFFERING PROPOSED FUTURE USE OF THE PROPERTY AND A TIMETABLE FOR IMPLEMENTING THE PROPOSAL AND FOR MONITORING THE SITE AFTER THE PROPOSED MEASURES ARE COMPLETED;

(c) A DESCRIPTION OF APPLICABLE PROMULGATED STATE STANDARDS ESTABLISHING ACCEPTABLE CONCENTRATIONS OF CONSTITUENTS IN SOILS, SURFACE WATER, OR GROUNDWATER AND, FOR CONSTITUENTS PRESENT AT THE SITE FOR WHICH SUCH STATE STANDARDS DO NOT EXIST, A DESCRIPTION OF PROPOSED CLEANUP LEVELS AND ANY CURRENT RISK TO HUMAN HEALTH OR THE ENVIRONMENT BASED UPON THE CURRENT OR PROPOSED USE OF THE SITE.

25-16-305. Remediation alternatives. (1) REMEDIATION ALTERNATIVES SHALL BE BASED ON THE ACTUAL RISK TO HUMAN HEALTH AND THE ENVIRONMENT CURRENTLY POSED BY CONTAMINANTS ON THE REAL PROPERTY, CONSIDERING THE FOLLOWING FACTORS:

(a) THE PRESENT OR PROPOSED USES OF THE SITE;

(b) THE ABILITY OF THE CONTAMINANTS TO MOVE IN A FORM AND MANNER WHICH WOULD RESULT IN EXPOSURE TO HUMANS AND THE SURROUNDING ENVIRONMENT AT LEVELS WHICH EXCEED APPLICABLE PROMULGATED STATE STANDARDS OR, IN THE ABSENCE OF SUCH STANDARDS, WHICH REPRESENT AN UNACCEPTABLE RISK TO HUMAN HEALTH OR THE ENVIRONMENT;

(c) THE POTENTIAL RISKS ASSOCIATED WITH PROPOSED CLEANUP ALTERNATIVES AND THE ECONOMIC AND TECHNICAL FEASIBILITY AND RELIABILITY OF SUCH ALTERNATIVES.

25-16-306. Approval of voluntary cleanup plan - time limits - contents of notice - conditions under which approval is void - expiration of approval.

(1) (a) THE DEPARTMENT SHALL PROVIDE FORMAL WRITTEN NOTIFICATION THAT A VOLUNTARY CLEANUP PLAN HAS BEEN APPROVED OR DISAPPROVED WITHIN NO MORE THAN FORTY-FIVE DAYS AFTER A REQUEST BY A PROPERTY OWNER, UNLESS THE PROPERTY OWNER AND THE DEPARTMENT AGREE TO AN EXTENSION OF THE REVIEW TO A DATE CERTAIN. SUCH REVIEW SHALL BE LIMITED TO A REVIEW OF THE MATERIALS SUBMITTED BY THE APPLICANT AND DOCUMENTS OR INFORMATION READILY AVAILABLE TO THE DEPARTMENT. IF THE DEPARTMENT FAILS TO ACT ON AN APPLICATION WITHIN THE TIME LIMITS SPECIFIED IN THIS SUBSECTION (1), THE VOLUNTARY CLEANUP PLAN SHALL BE DEEMED APPROVED. IF THE DEPARTMENT HAS RECEIVED EIGHT APPLICATIONS FOR REVIEW OF VOLUNTARY CLEANUP PLANS OR NO ACTION PETITIONS IN A CALENDAR MONTH, THE DEPARTMENT MAY NOTIFY ANY ADDITIONAL APPLICANTS IN THAT MONTH THAT THEIR PLAN OR PETITION WILL BE CONSIDERED THE FOLLOWING MONTH, AND THE FORTY-FIVE DAY PERIOD FOR DEPARTMENT REVIEW SHALL BEGIN ON THE FIRST DAY OF THE MONTH FOLLOWING RECEIPT OF THE PLAN OR PETITION.

(b) THE DEPARTMENT SHALL APPROVE A VOLUNTARY CLEANUP PLAN IF, BASED ON THE INFORMATION SUBMITTED BY THE PROPERTY OWNER, THE DEPARTMENT CONCLUDES THAT THE PLAN WILL:

(I) ATTAIN A DEGREE OF CLEANUP AND CONTROL OF HAZARDOUS SUBSTANCES OR PETROLEUM PRODUCTS, OR BOTH, THAT COMPLIES WITH ALL PROMULGATED APPLICABLE STATE REQUIREMENTS, REGULATIONS, CRITERIA, OR STANDARDS;

(II) FOR CONSTITUENTS NOT GOVERNED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), REDUCE CONCENTRATIONS SUCH THAT THE PROPERTY DOES NOT PRESENT AN UNACCEPTABLE RISK TO HUMAN HEALTH OR THE ENVIRONMENT BASED UPON THE PROPERTY'S CURRENT USE AND ANY FUTURE USES PROPOSED BY THE PROPERTY OWNER.

(c) IN THE EVENT THAT A VOLUNTARY CLEANUP PLAN IS NOT APPROVED BY THE DEPARTMENT, THE DEPARTMENT SHALL PROMPTLY PROVIDE THE PROPERTY OWNER WITH A WRITTEN STATEMENT OF THE REASONS FOR SUCH DENIAL. IF THE DEPARTMENT DISAPPROVES A VOLUNTARY CLEANUP PLAN BASED UPON THE APPLICANT'S FAILURE TO SUBMIT THE INFORMATION REQUIRED BY SECTION 25-16-304, THE DEPARTMENT SHALL NOTIFY THE APPLICANT OF THE SPECIFIC INFORMATION OMITTED BY THE APPLICANT.

(d) THE APPROVAL OF A VOLUNTARY CLEANUP PLAN BY THE DEPARTMENT APPLIES ONLY TO CONDITIONS ON THE PROPERTY AND STATE STANDARDS THAT EXIST AS OF THE TIME OF SUBMISSION OF THE APPLICATION.

(2) WRITTEN NOTIFICATION BY THE DEPARTMENT THAT A VOLUNTARY CLEANUP PLAN IS APPROVED SHALL CONTAIN THE BASIS FOR THE DETERMINATION AND THE FOLLOWING STATEMENT:

"BASED UPON THE INFORMATION PROVIDED BY [INSERT NAME(S) OF PROPERTY OWNER(S)] CONCERNING PROPERTY LOCATED AT [INSERT ADDRESS], IT IS THE OPINION OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT THAT UPON COMPLETION OF THE VOLUNTARY CLEANUP PLAN NO FURTHER ACTION IS REQUIRED TO ASSURE THAT THIS PROPERTY, WHEN USED FOR THE PURPOSES IDENTIFIED IN THE VOLUNTARY CLEANUP PLAN, IS PROTECTIVE OF EXISTING AND PROPOSED USES AND DOES NOT POSE AN UNACCEPTABLE RISK TO HUMAN HEALTH OR THE ENVIRONMENT AT THE SITE."

(3) (a) FAILURE OF A PROPERTY OWNER TO MATERIALLY COMPLY WITH THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL RENDER THE APPROVAL VOID.

(b) SUBMISSION OF MATERIALLY MISLEADING INFORMATION BY THE APPLICANT IN THE CONTEXT OF THE VOLUNTARY CLEANUP PLAN SHALL RENDER THE DEPARTMENT APPROVAL VOID.

(4) (a) IF A VOLUNTARY CLEANUP PLAN IS NOT INITIATED WITHIN TWELVE MONTHS AND COMPLETED WITHIN TWENTY-FOUR MONTHS AFTER APPROVAL BY THE DEPARTMENT, SUCH APPROVAL SHALL LAPSE; EXCEPT THAT THE DEPARTMENT MAY GRANT AN EXTENSION OF THE TIME LIMIT FOR COMPLETION OF THE VOLUNTARY CLEANUP PLAN.

(b) A PROPERTY OWNER DESIRING TO IMPLEMENT A VOLUNTARY CLEANUP PLAN AFTER THE TIME LIMITS PERMITTED IN PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL

SUBMIT A WRITTEN PETITION FOR REAPPLICATION ACCOMPANIED BY WRITTEN CERTIFICATION OF A QUALIFIED ENVIRONMENTAL PROFESSIONAL THAT THE CONDITIONS ON THE SUBJECT REAL PROPERTY ARE SUBSTANTIALLY SIMILAR TO THOSE THAT EXISTED AT THE TIME OF THE ORIGINAL APPROVAL.

(c) REAPPLICATIONS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4) SHALL BE SUBJECT TO LIMITED REVIEW BY THE DEPARTMENT, WHICH SHALL COMPLETE SUCH REVIEW WITHIN THIRTY DAYS OF RECEIPT OF A PETITION FOR REAPPLICATION; EXCEPT THAT ANY REAPPLICATION THAT INVOLVES REAL PROPERTY, THE CONDITION OF WHICH HAS SUBSTANTIALLY CHANGED SINCE APPROVAL OF THE ORIGINAL VOLUNTARY CLEANUP PLAN, SHALL BE TREATED AS A NEW APPLICATION AND SHALL BE SUBJECT TO ALL THE REQUIREMENTS OF THIS PART 3.

(5) WITHIN FORTY-FIVE DAYS AFTER THE COMPLETION OF THE VOLUNTARY CLEANUP DESCRIBED IN THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT, THE PROPERTY OWNER SHALL PROVIDE TO THE DEPARTMENT A CERTIFICATION FROM A QUALIFIED ENVIRONMENTAL PROFESSIONAL THAT THE PLAN HAS BEEN FULLY IMPLEMENTED.

25-16-307. No action determinations. (1) A PROPERTY OWNER MAY FILE WITH THE DEPARTMENT A WRITTEN PETITION TO REQUEST A NO ACTION DETERMINATION PURSUANT TO THIS SECTION. THE DEPARTMENT SHALL PROVIDE FORMAL WRITTEN NOTIFICATION THAT A NO ACTION PETITION HAS BEEN APPROVED OR DISAPPROVED WITHIN NO MORE THAN FORTY-FIVE DAYS AFTER A REQUEST BY A PROPERTY OWNER, UNLESS THE PROPERTY OWNER AND THE DEPARTMENT AGREE TO AN EXTENSION OF THE REVIEW TO A DATE CERTAIN. SUCH REVIEW SHALL BE LIMITED TO A REVIEW OF THE MATERIALS SUBMITTED BY THE APPLICANT AND DOCUMENTS OR INFORMATION READILY AVAILABLE TO THE DEPARTMENT. IF THE DEPARTMENT FAILS TO ACT ON A PETITION WITHIN THE TIME LIMITS SPECIFIED IN THIS SUBSECTION (1), THE NO ACTION PETITION SHALL BE DEEMED APPROVED. IF THE DEPARTMENT HAS RECEIVED EIGHT APPLICATIONS FOR REVIEW OF VOLUNTARY CLEANUP PLANS OR NO ACTION PETITIONS IN A CALENDAR MONTH, THE DEPARTMENT MAY NOTIFY ANY ADDITIONAL APPLICANTS IN THAT MONTH THAT THEIR PLAN OR PETITION WILL BE CONSIDERED THE FOLLOWING MONTH, AND THE FORTY-FIVE DAY PERIOD FOR DEPARTMENT REVIEW SHALL BEGIN ON THE FIRST DAY OF THE MONTH FOLLOWING RECEIPT OF THE PLAN OR PETITION.

(2) (a) THE DEPARTMENT SHALL ISSUE A WRITTEN DETERMINATION APPROVING A NO ACTION PETITION WHEN:

(I) THE ENVIRONMENTAL ASSESSMENT DESCRIBED IN 25-16-308 PERFORMED BY A QUALIFIED ENVIRONMENTAL PROFESSIONAL INDICATES THE EXISTENCE OF CONTAMINATION WHICH DOES NOT EXCEED APPLICABLE PROMULGATED STATE STANDARDS OR CONTAMINATION WHICH DOES NOT POSE AN UNACCEPTABLE RISK TO HUMAN HEALTH AND THE ENVIRONMENT; OR

(II) THE DEPARTMENT FINDS THAT CONTAMINATION OR A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE OR PETROLEUM PRODUCT ORIGINATES FROM A SOURCE ON ADJACENT OR NEARBY REAL PROPERTY IF A PERSON OR ENTITY RESPONSIBLE FOR SUCH A SOURCE OF CONTAMINATION IS OR WILL BE TAKING NECESSARY ACTION, IF ANY, TO ADDRESS THE CONTAMINATION.

(b) THE DEPARTMENT SHALL PROVIDE FORMAL WRITTEN NOTIFICATION OF A NO ACTION DETERMINATION, WHICH SHALL CONTAIN THE BASIS FOR THE DETERMINATION AND THE FOLLOWING STATEMENT:

"BASED UPON THE INFORMATION PROVIDED BY [INSERT NAME(S) OF PROPERTY OWNER(S)] CONCERNING PROPERTY LOCATED AT [INSERT ADDRESS], IT IS THE OPINION OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT THAT NO FURTHER ACTION IS REQUIRED TO ASSURE THAT THIS PROPERTY, WHEN USED FOR THE PURPOSES IDENTIFIED IN THE NO ACTION PETITION, IS PROTECTIVE OF EXISTING AND PROPOSED USES AND DOES NOT POSE AN UNACCEPTABLE RISK TO HUMAN HEALTH OR THE ENVIRONMENT AT THE SITE."

(c) THE APPROVAL OF A NO ACTION PETITION BY THE DEPARTMENT APPLIES ONLY TO CONDITIONS ON THE PROPERTY AND STATE STANDARDS THAT EXIST AS OF THE TIME OF SUBMISSION OF THE PETITION.

(3) SUBMISSION OF MATERIALLY MISLEADING INFORMATION BY THE APPLICANT IN THE CONTEXT OF A NO ACTION PETITION SHALL RENDER THE DEPARTMENT APPROVAL VOID.

(4) IN THE EVENT THAT A NO ACTION PETITION IS NOT APPROVED BY THE DEPARTMENT, THE DEPARTMENT SHALL PROMPTLY PROVIDE THE PROPERTY OWNER WITH A WRITTEN STATEMENT OF THE REASONS FOR SUCH DENIAL. IF THE DEPARTMENT DISAPPROVES A NO ACTION PETITION BASED UPON THE APPLICANT'S FAILURE TO SUBMIT REQUIRED INFORMATION, THE DEPARTMENT SHALL NOTIFY THE APPLICANT OF THE SPECIFIC INFORMATION OMITTED.

25-16-308. Environmental assessment - requirements. (1) THE DEPARTMENT MAY ONLY ACCEPT ENVIRONMENTAL ASSESSMENTS UNDER THIS PART 3 THAT ARE PREPARED BY A QUALIFIED ENVIRONMENTAL PROFESSIONAL. A QUALIFIED ENVIRONMENTAL PROFESSIONAL IS A PERSON WITH EDUCATION, TRAINING, AND EXPERIENCE IN PREPARING ENVIRONMENTAL STUDIES AND ASSESSMENTS.

(2) THE ENVIRONMENTAL ASSESSMENT DESCRIBED IN SECTION 25-16-304 (2) (a) SHALL INCLUDE THE FOLLOWING INFORMATION:

(a) THE LEGAL DESCRIPTION OF THE SITE AND A MAP IDENTIFYING THE LOCATION AND SIZE OF THE PROPERTY;

(b) THE PHYSICAL CHARACTERISTICS OF THE SITE AND AREAS CONTIGUOUS TO THE SITE, INCLUDING THE LOCATION OF ANY SURFACE WATER BODIES AND GROUND WATER AQUIFERS;

(c) THE LOCATION OF ANY WELLS LOCATED ON THE SITE OR ON AREAS WITHIN A ONE-HALF MILE RADIUS OF THE SITE AND A DESCRIPTION OF THE USE OF THOSE WELLS;

(d) THE CURRENT AND PROPOSED USE OF ON-SITE GROUNDWATER;

(e) THE OPERATIONAL HISTORY OF THE SITE AND THE CURRENT USE OF AREAS CONTIGUOUS TO THE SITE;

(f) THE PRESENT AND PROPOSED USES OF THE SITE;

(g) INFORMATION CONCERNING THE NATURE AND EXTENT OF ANY CONTAMINATION AND RELEASES OF HAZARDOUS SUBSTANCES OR PETROLEUM PRODUCTS WHICH HAVE OCCURRED AT THE SITE INCLUDING ANY IMPACTS ON AREAS CONTIGUOUS TO THE SITE;

(h) ANY SAMPLING RESULTS OR OTHER DATA WHICH CHARACTERIZES THE SOIL, GROUNDWATER, OR SURFACE WATER ON THE SITE; AND

(i) A DESCRIPTION OF THE HUMAN AND ENVIRONMENTAL EXPOSURE TO CONTAMINATION AT THE SITE BASED UPON THE PROPERTY'S CURRENT USE AND ANY FUTURE USE PROPOSED BY THE PROPERTY OWNER.

25-16-309. Coordination with other laws. (1) NOTHING IN THIS PART 3 SHALL ABSOLVE ANY PERSON FROM OBLIGATIONS UNDER ANY OTHER LAW OR REGULATION, INCLUDING ANY REQUIREMENT TO OBTAIN PERMITS OR APPROVALS FOR WORK PERFORMED UNDER A VOLUNTARY CLEANUP PLAN.

(2) IF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY INDICATES THAT IT IS INVESTIGATING A SITE WHICH IS THE SUBJECT OF AN APPROVED VOLUNTARY CLEANUP PLAN OR NO ACTION PETITION, THE DEPARTMENT SHALL ACTIVELY PURSUE A DETERMINATION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY THAT THE PROPERTY NOT BE ADDRESSED UNDER THE FEDERAL ACT OR, IN THE CASE OF PROPERTY BEING ADDRESSED THROUGH A VOLUNTARY CLEANUP PLAN, THAT NO FURTHER FEDERAL ACTION BE TAKEN WITH RESPECT TO THE PROPERTY AT LEAST UNTIL THE VOLUNTARY CLEANUP PLAN IS COMPLETELY IMPLEMENTED.

25-16-310. Enforceability of voluntary cleanup plans and no action determinations. (1) VOLUNTARY CLEANUP PLANS ARE NOT ENFORCEABLE AGAINST A PROPERTY OWNER; EXCEPT THAT, IF THE DEPARTMENT CAN DEMONSTRATE THAT A PROPERTY OWNER WHO INITIATED A VOLUNTARY CLEANUP UNDER AN APPROVED PLAN HAS FAILED TO FULLY AND PROPERLY IMPLEMENT THAT PLAN, THE DEPARTMENT MAY REQUIRE FURTHER ACTION IF THE ACTION IS AUTHORIZED BY OTHER LAWS OR REGULATIONS OF THIS STATE.

(2) INFORMATION PROVIDED BY A PROPERTY OWNER TO SUPPORT A VOLUNTARY CLEANUP PLAN OR NO ACTION PETITION SHALL NOT PROVIDE THE DEPARTMENT WITH AN INDEPENDENT BASIS TO SEEK PENALTIES FROM THE PROPERTY OWNER PURSUANT TO STATE ENVIRONMENTAL STATUTES OR REGULATIONS. IF, PURSUANT TO OTHER STATE STATUTES OR REGULATIONS, THE DEPARTMENT INITIATES AN ENFORCEMENT ACTION AGAINST THE PROPERTY OWNER SUBSEQUENT TO THE SUBMISSION OF A VOLUNTARY CLEANUP PLAN OR NO ACTION PETITION REGARDING THE CONTAMINATION ADDRESSED IN THE PLAN OR PETITION, THE VOLUNTARY DISCLOSURE OF THE INFORMATION IN THE PLAN OR PETITION SHALL BE CONSIDERED BY THE ENFORCING AUTHORITY TO REDUCE OR ELIMINATE ANY PENALTIES ASSESSED TO THE PROPERTY OWNER.

25-16-311. Repeal of part. THIS PART 3 IS REPEALED, EFFECTIVE JULY 1, 1999.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the hazardous substance response fund not

otherwise appropriated, to the department of health, for the fiscal year beginning July 1, 1994, the sum of seventy-two thousand seven hundred twenty-three dollars (\$72,723) and 1.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 3. Effective date. This act shall take effect July 1, 1994.

SECTION 4. 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 2, 1994