

Colorado Revised Statutes 2020

TITLE 8

LABOR AND INDUSTRY

ARTICLE 20

Fuel Products

PART 1

DIVISION OF OIL AND PUBLIC SAFETY

8-20-101. Division of oil and public safety - creation - appointment of director - transfer of duties. (1) There is hereby created within the department of labor and employment the division of oil and public safety, the head of which shall be the director of the division of oil and public safety. The director of the division of oil and public safety shall be appointed by the executive director of the department of labor and employment and shall not have an interest in the manufacture, sale, or distribution of oils.

(2) The director of the division of oil and public safety, on and after July 1, 2001, shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to July 1, 2001, in the state inspector of oils, the state boiler inspector, and, with respect to articles 6 and 7 of title 9, C.R.S., the director of the division of labor standards and statistics. On July 1, 2001, all employees of the state inspector of oils, the state boiler inspector, and, with respect to duties performed pursuant to articles 6 and 7 of title 9, C.R.S., the director of the division of labor standards and statistics, whose principal duties are concerned with the duties and functions to be performed by the director of the division of oil and public safety and whose employment by the director of the division of oil and public safety is deemed necessary by the director of the division of oil and public safety to carry out the purposes of articles 20 and 20.5 of this title and articles 4, 6, and 7 of title 9, C.R.S., shall be transferred to the director of the division of oil and public safety and shall become employees thereof. These employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(3) and (4) Repealed.

(5) The director of the division of oil and public safety shall enforce and administer article 5.5 of title 9, C.R.S.

Source: L. 15: pp. 376, 377, §§ 40, 42, 44. L. 19: p. 562, §2. C.L. §§ 3653, 3655, 3657. CSA: C. 118, §§ 54, 56, 58. CRS 53: §§ 100-1-1, 100-1-2. C.R.S. 1963: §§ 100-1-1, 100-1-2.

L. 69: p. 661, §§ 248, 249. **L. 2001:** Entire section R&RE, p. 1114, § 3, effective June 5. **L. 2007:** (5) added, p. 1423, § 3, effective January 1, 2008. **L. 2008:** (3) repealed, p. 1020, § 2, effective May 21. **L. 2009:** (4) repealed, (HB 09-1151), ch. 230, p. 1060, § 14, effective January 1, 2010. **L. 2016:** (2) amended, (HB 16-1323), ch. 131, p. 379, § 14, effective August 10.

8-20-102. Duties of director of division of oil and public safety - rules. (1) The director of the division of oil and public safety shall make, promulgate, and enforce rules setting forth minimum and general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, and utilizing liquid fuel products. Said rules shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the director of the division of oil and public safety in compliance with section 24-4-103, C.R.S.

(2) The director of the division of oil and public safety shall enforce the provisions of section 8-20-213 concerning recycled and used motor oil.

(3) Prior to January 1, 2014, the director of the division of oil and public safety shall promulgate rules for natural gas setting forth standards related to inspections; specifications; shipment notification; record keeping; labeling of containers; use of meters or mechanical devices for measurement; submittal of installation plans; and minimum standards for the design, construction, location, installation, and operation of retail natural gas systems. The division shall begin enforcing the rules on July 1, 2014. The director may modify or update the rules in his or her discretion. All of the rules required by this subsection (3) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials, and the rules must be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. The director shall adopt the rules in compliance with section 24-4-103, C.R.S.

(4) (a) On or before January 1, 2017, the director of the division of oil and public safety shall promulgate rules concerning retail hydrogen fuel systems for vehicles. The rules must set forth standards relating to:

(I) Inspections;
(II) Specifications;
(III) Shipment notification;
(IV) Record keeping;
(V) Labeling of containers;
(VI) Use of meters or mechanical devices for measurement;
(VII) Submittal of installation plans; and
(VIII) Minimum standards for the design, construction, location, installation, and operation of retail hydrogen fuel systems for vehicles.

(b) The director of the division of oil and public safety may collect reasonable fees, which the director shall establish by rule in the amounts necessary to offset the direct and indirect costs, including the costs for salaries and operating expenses, incurred by the division in administering this article.

(c) The division shall begin enforcing the rules required by this subsection (4) on July 1, 2017. The director may modify the rules at his or her discretion.

(d) Each rule required by this subsection (4) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using hydrogen fuel, and the rules must substantially conform with the generally accepted standards of safety concerning hydrogen fuel. The director shall adopt the rules in compliance with section 24-4-103, C.R.S.

Source: L. 15: p. 377, § 43. C.L. § 3656. CSA: C. 118, § 57. CRS 53: § 100-1-3. C.R.S. 1963: § 100-1-3. L. 69: p. 661, § 250. L. 73: p. 1066, § 1. L. 95: Entire section amended, p. 351, § 2, effective April 27. L. 2001: Entire section amended, p. 1115, § 4, effective June 5. L. 2003: (1) amended, p. 1820, § 2, effective May 21. L. 2013: (3) added, (HB 13-1110), ch. 225, p. 1055, § 2, effective August 15. L. 2016: (4) added, (HB 16-1053), ch. 4, p. 7, § 1, effective March 9.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (3), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-103. Inspector's report - publications.

- (1) Repealed.
- (2) Publications of the office circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 15: p. 376, § 39; C.L. § 3652; CSA: C. 118, § 53; CRS 53: § 100-1-4; C.R.S. 1963: § 100-1-4. L. 64: p. 158, § 108. L. 83: Entire section amended, p. 825, § 3, effective July 1. L. 97: (1) repealed, p. 1474, § 7, effective June 3.

8-20-104. Enforcement of law - penalties - definitions. (1) The director shall enforce this article, articles 4, 5.5, and 7 of title 9, C.R.S., and rules promulgated pursuant to this article and articles 4, 5.5, and 7 of title 9, C.R.S., by appropriate actions in courts of competent jurisdiction.

(2) (a) The director may issue a notice of violation to a person who is believed to have violated this article, article 4, 5.5, or 7 of title 9, C.R.S., or rules promulgated pursuant to this article or article 4, 5.5, or 7 of title 9, C.R.S. The notice shall be delivered to the alleged violator personally, by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(b) The notice of violation shall allege the facts that constitute a violation and the rule or statute violated.

(c) The notice of violation may require the alleged violator to act to correct the alleged violation.

(d) Within ten working days after delivery of the notice of violation, the alleged violator may request in writing an informal conference with the director concerning the notice of violation. If the alleged violator fails to request such conference within ten days, the notice is then final, the notice is not subject to further review, and any statement of facts required to correct the alleged violation pursuant to paragraph (c) of this subsection (2) become a binding enforcement order.

(e) Upon receipt of a request for an informal conference, the director shall set a reasonable time and place for such conference and shall notify the alleged violator of such time and place. At the conference, the alleged violator may present evidence and arguments concerning the allegations in the notice of violation.

(f) Within twenty working days after the informal conference, the director shall uphold, modify, or strike the allegations within the notice of violation and may issue an enforcement order. The decision and, if applicable, enforcement order shall be delivered to the alleged violator personally, by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(3) (a) A person who is the subject of and is adversely affected by a notice of violation or an enforcement order issued pursuant to subsection (2) of this section may appeal such action to the executive director of the department of labor and employment. The executive director shall hold a hearing to review such notice or order and take final action in accordance with article 4 of title 24, C.R.S., and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel.

(b) Final agency action shall be subject to judicial review pursuant to article 4 of title 24, C.R.S.

(c) An alleged violator who is required to correct an action pursuant to paragraph (c) of subsection (2) of this section shall be afforded the procedures set forth in section 24-4-104 (3), C.R.S., to the extent applicable.

(4) (a) An enforcement order issued pursuant to this section may impose a civil penalty, depending on the severity of the alleged violation, not to exceed five hundred dollars per violation for each day of violation; except that the director may impose a civil penalty not to exceed one thousand dollars per violation for each day of violation that results in, or may reasonably be expected to result in, serious bodily injury.

(b) A civil penalty collected for a violation of:

(I) Article 4 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the boiler inspection fund created in section 9-4-109, C.R.S.;

(II) Article 5.5 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the conveyance safety fund created in section 9-5.5-111, C.R.S.;

(III) Article 7 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the public safety inspection fund created in section 8-1-151.

(5) The director may file suit in the district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to this section.

(6) For the purposes of this section:

(a) "Director" means the director of the division of oil and public safety.

(b) "Division" means the division of oil and public safety.

(7) In addition to the remedies provided in this section, the director is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction restraining any person from violating any provision of articles 4, 5.5, and 7 of title 9, C.R.S., and rules promulgated pursuant to articles 4, 5.5, and 7 of title 9, C.R.S., regardless of whether there is an adequate remedy at law.

Source: L. 15: p. 377, § 41. C.L. § 3654. CSA: C. 118, § 55. CRS 53: § 100-1-5. C.R.S. 1963: § 100-1-5. L. 2003: Entire section amended, p. 1820, § 3, effective May 21. L. 2006: (1) and (2)(a) amended, p. 1355, § 1, effective July 1. L. 2007: (2)(a) amended, p. 1422, § 2, effective January 1, 2008. L. 2008: (1), (2)(a), and (4) amended and (7) added, p. 984, § 2, effective May 21. L. 2009: (1), (2)(a), (4)(b)(III), and (7) amended, (HB 09-1151), ch. 230, p. 1060, § 15, effective January 1, 2010. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2064, § 10, effective August 11.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-105. Expenses of administration. (Repealed)

Source: L. 83: Entire section added, p. 407, § 1, effective May 3. L. 2003: Entire section repealed, p. 1822, § 4, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-106. Confidentiality. (1) Information concerning liquefied petroleum gas storage tanks obtained under this article shall be available to the public; except that any specific information that is confidential by state or federal law shall remain confidential.

(2) Confidential records may be disclosed to officers, employees, or authorized representatives of this state or of the United States who have been charged with administering this article or subchapter I of the federal "Resource Conservation and Recovery Act of 1976", as amended. Such disclosure shall not constitute a waiver of confidentiality.

Source: L. 2003: Entire section added, p. 1822, § 5, effective May 21.

Cross references: (1) For the legislative declaration contained in the 2003 act enacting this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

(2) For the "Resource Conservation and Recovery Act of 1976", as amended, see Pub.L. 94-580, codified at 42 U.S.C. sec. 6901 et seq.

PART 2

FUEL PRODUCTS

8-20-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Alternative fuel" means a motor fuel that combines petroleum-based fuel products with renewable fuels.

(1.1) "Antiknock index" or "AKI" means the arithmetic average of the research octane number (RON) and motor octane number (MON): $AKI = (RON+MON)/2$. This value is called by a variety of names in addition to antiknock index including: Octane rating, posted octane, and $(R+M)/2$ octane.

(1.2) "ASTM" means ASTM international, formerly known as the American society for testing and materials.

(1.3) "British thermal unit" or "BTU" means a scientific unit of measurement equal to the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit at approximately sixty degrees Fahrenheit.

(1.5) "Department" means the department of labor and employment, division of oil and public safety.

(1.7) "DOT" means the United States department of transportation.

(2) "Fuel products" means all gasoline; aviation gasoline; aviation turbine fuel; diesel; jet fuel; fuel oil; biodiesel; biodiesel blends; kerosene; all alcohol blended fuels; liquefied petroleum gas; gas or gaseous compounds, including hydrogen; natural gas, including compressed natural gas and liquefied natural gas; and all other volatile, flammable, or combustible liquids, that are produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning, or for any other similar usage.

(2.3) (a) "Gallon equivalent" means either a gallon diesel equivalent or a gallon gasoline equivalent.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(2.5) (a) "Gallon diesel equivalent" means an amount of a motor fuel that contains an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case contains a lower heating value of less than one hundred twenty-four thousand BTUs.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(2.7) (a) "Gallon gasoline equivalent" means an amount of a motor fuel that contains an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case contains a lower heating value of less than one hundred ten thousand BTUs.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(3) "Gross gallons" as applied to fuel and petroleum products means units of two hundred thirty-one cubic inches measured at storage or metered temperature.

(3.5) "Hg" means the element mercury.

(4) "Lubricants" means petroleum products used for the purpose of reducing friction between moving surfaces.

(4.5) (a) "Motor fuel" means any liquid or gas used as fuel to generate power in engines or motors.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(5) "Net gallons" as applied to fuel and petroleum products means units of two hundred thirty-one cubic inches measured at standard temperature.

(5.3) "NFPA" means the national fire protection association.

(5.5) "NIST" means the national institute of standards and technology.

(6) "Person" means an individual, trust or estate, partnership, association, joint stock company or corporation, and any receiver appointed by law.

(7) "Proved" as applied to measuring devices means the act of having verified the accuracy of meters used to measure fuel and petroleum products.

(8) "Prover" as applied to determination of meter accuracy means a calibrated volumetric receiver or a mechanical positive displacement device.

(8.5) "Renewable fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(9) "Standard temperature" as applied to fuel and petroleum products means sixty degrees Fahrenheit.

(10) "Temperature compensation" as applied to liquid measure of fuel and petroleum products means adjustment of gallons measured at storage or metered temperature to the standard temperature.

Source: **L. 31:** p. 589, §§ 1, 2. **CSA:** C. 118, § 1. **L. 41:** p. 581, § 1. **CRS 53:** § 100-2-1. **C.R.S. 1963:** § 100-2-1. **L. 73:** p. 1066, § 2. **L. 93:** (1) amended and (1.5), (2.3), (2.5), (2.7), and (4.5) added, p. 269, § 2, effective July 1. **L. 97:** (1), (2.3), (2.5), (2.7), and (4.5) amended, p. 137, § 1, effective March 28. **L. 2001:** (1.5) amended, p. 1115, § 5, effective June 5. **L. 2005:** (1), (1.5), and (2) amended and (1.1), (1.2), (1.7), (3.5), (5.3), and (5.5) added, p. 1341, § 1, effective August 8. **L. 2007:** (1), (1.1), and (1.2) amended and (1.3) and (8.5) added, p. 1759, § 2, effective June 1. **L. 2013:** (2) amended, (HB 13-1110), ch. 225, p. 1055, § 3, effective January 1, 2014. **L. 2016:** (2) amended, (HB 16-1053), ch. 4, p. 8, § 2, effective March 9.

Editor's note: The amendment made to subsection (1) by House Bill 93-1114 resulted in adding new language to subsection (1) and numbering what was subsection (1) as subsection (1.5).

Cross references: For the legislative declaration contained in the 1993 act amending subsection (1) and enacting subsections (1.5), (2.3), (2.5), (2.7), and (4.5), see section 1 of chapter 79, Session Laws of Colorado 1993. For the legislative declaration in the 2013 act amending subsection (2), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-202. Classification of liquid fuel products. (1) "Liquid" means any material that has a fluidity greater than that of three hundred penetration asphalt when tested in accordance with ASTM specifications that are found in publication number D 5, "Test for Penetration of Bituminous Materials". Unless otherwise identified, the term "liquid" shall include both flammable and combustible liquids.

(2) "Flammable liquid" or "class I liquid" means a liquid that has a flash point below one hundred degrees Fahrenheit and a vapor pressure not exceeding forty PSIA at one degree Fahrenheit. Class I liquids are subdivided as follows:

(a) Class IA liquids have a flash point below seventy-three degrees Fahrenheit and a boiling point below one hundred degrees Fahrenheit.

(b) Class IB liquids have a flash point below seventy-three degrees Fahrenheit and a boiling point at or above one hundred degrees Fahrenheit.

(c) Class IC liquids have a flash point at or above seventy-three degrees Fahrenheit and below one hundred degrees Fahrenheit.

(3) "Combustible liquid" means a liquid that has a flash point at or above one hundred degrees Fahrenheit. Combustible liquids are subdivided as follows:

(a) Class II liquids have a flash point at or above one hundred degrees Fahrenheit and below one hundred forty degrees Fahrenheit.

(b) Class IIIA liquids have a flash point at or above one hundred forty degrees Fahrenheit and below two hundred degrees Fahrenheit.

(c) Class IIIB liquids have a flash point at or above two hundred degrees Fahrenheit.

Source: L. 31: p. 589, § 3. CSA: C. 118, § 2. L. 41: p. 581, § 2. CRS 53: § 100-2-2. C.R.S. 1963: § 100-2-2. L. 2005: Entire section R&RE, p. 1342, § 2, effective August 8.

8-20-203. Inspection. (1) All fuel products included within classes I and II shall be inspected and the containers of such products marked by brand or stencil as provided in this part 2, and all fuel products shall comply with the specifications provided for in this part 2.

(2) Fuel products included in class III shall be subject to inspection.

(3) All transports and other tank trucks used to carry fuel products shall prominently display thereon, in letters at least three inches in height, the name and address of the owner or operator thereof. All such transport, tank, and delivery trucks shall also display prominently upon the rear of the tank the appropriate DOT placard for the product contained therein.

(4) At all filling stations, garages, stores, and all other places where fuel products are sold or offered for sale, there shall be displayed in a prominent place where it may be readily seen on each pump, the name, trade name, symbol, sign, or other distinguishing mark or device of such fuel product in type at least two inches in height. If such fuel product has no such name, trade name, symbol, sign, or other distinguishing mark, or device, then there shall be displayed the name and address of the person from whom such fuel product was purchased.

Source: L. 31: p. 590, § 1. CSA: C. 118, § 3. L. 41: p. 582, § 3. L. 43: p. 446, § 1. CRS 53: § 100-2-3. C.R.S. 1963: § 100-2-3. L. 2005: (1), (2), and (3) amended, p. 1343, § 3, effective August 8.

8-20-204. Specifications - classes I, II, and III. (1) All products in classes I, II, and III shall comply with the most current applicable specifications of ASTM, which are found in section 5 of that organization's publication "Petroleum Products, Lubricants, and Fossil Fuels" and supplements thereto or revisions thereof as may be designated by ASTM, except as modified or rejected by this article or any rule promulgated pursuant to this article. If gasoline is blended with ethanol, the ASTM D 4814 specifications shall apply to the base gasoline prior to blending. Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard; except that, if the ethanol is blended at nine percent or higher but not exceeding ten percent, the blend may exceed the ASTM D 4814 vapor pressure standard by no more than 1.0 PSI. Class I products shall not be blended at a retail location with products commonly and commercially known as casinghead gasoline, absorption gasoline, condensation gasoline, drip gasoline, or natural gasoline.

(2) to (4) Repealed.

(5) To further avoid the perpetration of fraud upon the users and purchasers of motor fuel offered for sale for highway vehicle use, the artificial coloring of such motor fuel is absolutely prohibited, except in motor fuel having a research octane rating of eighty-eight or better after coloring, as determined by the ASTM's research method.

(6) The sale of any product under any grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade shall not be permitted unless the automotive

fuel rating or grade indicated in the grade name is consistent with the value and meets the applicable requirements of ASTM. The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

Source: L. 31: p. 590, § 5. CSA: C. 118, § 4. L. 41: p. 582, § 4. L. 43: p. 447, § 2. CRS 53: § 100-2-4. C.R.S. 1963: § 100-2-4. L. 67: p. 211, § 1. L. 86: (1) amended and (2) to (4) repealed, pp. 509, 510, §§ 1, 5, effective July 1. L. 93: (1) amended, p. 511, § 1, effective April 26. L. 2005: (1), (5), and (6) amended, p. 1343, § 4, effective August 8. L. 2007: (1) amended, p. 386, § 1, effective April 3.

8-20-204.5. Motor fuel blends containing alcohol - purity. No motor fuel blend containing alcohol derived from agricultural commodities and forest products shall be sold for retail use unless the alcohol in such blend has a purity of at least ninety-nine percent.

Source: L. 81: Entire section added, p. 459, § 1, effective May 18.

8-20-205. Specifications of kerosene. (Repealed)

Source: L. 31: p. 592, § 6. CSA: C. 118, § 5. L. 41: p. 583, § 5. CRS 53: § 100-2-5. C.R.S. 1963: § 100-2-5. L. 2005: Entire section repealed, p. 1344, § 5, effective August 8.

8-20-206. Shipper notify director. (1) Any person who ships fuel products included in classes I and II into the state, or who ships such fuel products from any refinery or pipeline terminal within the state to another point within the state, shall notify the director of the division of oil and public safety of the shipment within twenty-four hours after the shipment has been billed for departure in the case of tank cars, or after the shipment has been loaded for departure in the case of barrels, trucks, or tank wagons. At the same time, such person shall forward to the director of the division of oil and public safety a true sample of the contents of the shipment weighing at least eight ounces, with the specifications thereof and the number and initial of the tank car, or if some other method of transportation is used, an adequate description of the means of conveyance or container, so as to enable identification of the shipment. Any person who diverts a shipment of such fuel products into the state of Colorado from outside the state shall give the same notice and forward the same type of sample to the director of the division of oil and public safety within twenty-four hours after the billing of the shipment is changed to a Colorado destination.

(2) If more than one car of fuel products included in classes I and II is shipped at the same time from the same source and refinery run, the director of the division of oil and public safety may accept one sample for all or any part of such shipment.

Source: L. 31: p. 593, § 7. CSA: C. 118, § 6. L. 41: p. 584, § 6. L. 49: p. 535, § 1. CRS 53: § 100-2-6. C.R.S. 1963: § 100-2-6. L. 2001: Entire section amended, p. 1115, § 6, effective June 5. L. 2005: Entire section amended, p. 1344, § 6, effective August 8.

8-20-206.5. Environmental response surcharge - liquefied petroleum gas and natural gas inspection fund - perfluoroalkyl and polyfluoroalkyl substances cash fund -

definitions. (1) (a) Every first purchaser of odorized liquefied petroleum gas, every manufacturer of fuel products who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado, and every distributor who ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue, each calendar month, either twenty-five dollars per tank truckload of fuel products delivered during the previous calendar month for sale or use in Colorado or the fee for odorized liquefied petroleum gas and natural gas as specified in paragraph (d) of this subsection (1), whichever is applicable. Such payment shall be made on forms prescribed and furnished by the executive director. The provisions of this section shall not apply to fuel that is especially prepared and sold for use in aircraft or railroad equipment or locomotives.

(b) In the event the available fund balance in the petroleum storage tank fund is greater than twelve million dollars, no surcharge shall be imposed, but if the available fund balance in the fund is less than:

(I) Twelve million dollars, the fee imposed by paragraph (a) of this subsection (1) shall be fifty dollars per tank truckload;

(II) Six million dollars, the fee imposed shall be seventy-five dollars per tank truckload;

(III) Three million dollars, the fee imposed shall be one hundred dollars per tank truckload.

(c) Notwithstanding paragraph (b) of this subsection (1), on and after September 1, 2023, if the available fund balance in the petroleum storage tank fund is greater than eight million dollars, no surcharge shall be imposed, but if the available fund balance in the fund is less than eight million dollars, the fee imposed by paragraph (a) of this subsection (1) is twenty-five dollars per tank truckload.

(d) Notwithstanding paragraph (b) of this subsection (1), the executive director of the department of revenue shall have the authority to determine and adjust a fee for odorized liquefied petroleum gas and natural gas, not to exceed ten dollars per tank truckload for liquefied petroleum gas and liquefied natural gas and per every eight thousand gallon equivalents for compressed natural gas.

(e) (I) There is hereby created the liquefied petroleum gas and natural gas inspection fund within the state treasury. Neither this section nor section 8-20.5-103 shall be construed to make the liquefied petroleum gas and natural gas inspection fund an enterprise fund. Such fund shall consist of:

(A) Liquefied petroleum gas and natural gas inspection moneys collected pursuant to this article;

(B) Civil penalties collected as a result of court actions pursuant to section 8-20-104;

(C) Any moneys appropriated to the fund by the general assembly; and

(D) Any moneys granted to the department from a federal agency or trade association for administration of the department's liquefied petroleum gas and natural gas inspection program.

(II) The executive director of the department of revenue shall adjust the fees collected pursuant to this article so that the balance of unexpended and unencumbered moneys in the liquefied petroleum gas and natural gas inspection fund does not exceed the amount necessary to accumulate and maintain in the liquefied petroleum gas and natural gas inspection fund a reserve sufficient to defray administrative expenses of the division of oil and public safety for a period of two months.

(III) The moneys in the fund shall be subject to annual appropriation by the general assembly. Moneys in the fund shall only be used for costs related to:

(A) Initial and subsequent inspections of liquefied petroleum gas and natural gas installations;

(B) Proving, including calibrating and adjusting, liquefied petroleum gas and natural gas meters and dispensers;

(C) Abatement of fire and safety hazards at liquefied petroleum gas and natural gas installations;

(D) Investigation of reported liquefied petroleum gas and natural gas that requires state matching dollars;

(E) Any federal program pertaining to liquefied petroleum gas and natural gas that requires state matching dollars;

(F) Liquefied petroleum gas and natural gas product quality testing;

(G) Administrative costs, including costs for contract services; and

(H) Defraying the salaries and operating expenses incurred by the department of labor and employment in the administration of this article as it pertains to liquefied petroleum gas and natural gas installations, meters, and dispensers. Such moneys shall be appropriated for such purposes by the general assembly.

(IV) The moneys in the liquefied petroleum gas and natural gas inspection fund and all interest earned on the moneys in the fund shall remain in such fund and shall not be credited or transferred to the general fund or any other fund at the end of any fiscal year.

(1.5) Notwithstanding the amount specified for any fee or surcharge in subsection (1) of this section, the executive director by rule or as otherwise provided by law may reduce the amount of one or more of the fees or surcharges if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees or surcharges is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees or surcharges as provided in section 24-75-402 (4), C.R.S.

(2) The fee or surcharge imposed by subsection (1) of this section shall be collected, administered, and enforced in the same manner as the fuel taxes imposed pursuant to the provisions of article 27 of title 39, C.R.S., and the same penalty and interest provisions shall apply.

(3) (a) Except as set forth in paragraph (b) of this subsection (3), it is the duty of every manufacturer or distributor as described in subsection (1) of this section to compute the amount of the surcharge payable on all tank truckloads sold by the manufacturer or distributor and separately state the surcharge due on statements issued with each purchase of fuel. In the event that the manufacturer or distributor sells such fuel to a retailer or consumer or consumes such fuel, the manufacturer or distributor shall pay to the department of revenue the surcharge imposed in subsection (1) of this section.

(b) For compressed natural gas, the fuel distributor who reports the gallons for purposes of paying the tax set forth in article 27 of title 39, C.R.S., shall pay the surcharge imposed in subsection (1) of this section to the department of revenue.

(4) For the purposes of this section:

(a) "Available fund balance" means the sum of the current year revenues and the previous fund balance minus the sum of the obligations approved by the petroleum storage tank

committee pursuant to section 8-20.5-104 and the costs incurred by the division of oil and public safety for purposes of administering articles 20 and 20.5 of this title.

(b) "Fuel product" means gasoline, blended gasoline, gasoline sold for gasohol production, gasohol, diesel, biodiesel blends, natural gas, and special fuels, and special fuel mixes with alcohol.

(c) "Tank truckload" means eight thousand gallons or gallon equivalents.

(5) Repealed.

(6) (a) In addition to the payment collected under subsection (1)(a) of this section, the executive director of the department of revenue shall also collect a fee to:

(I) Fund the perfluoroalkyl and polyfluoroalkyl substances cash fund;

(II) Support the department of transportation in functions related to freight movement and infrastructure in the state as well as infrastructure projects that enhance the safety of movement of commercial materials;

(III) Support the Colorado state patrol in regulating hazardous materials on highways in the state; and

(IV) Pay the costs to the department of revenue for administering the fee.

(b) On and after September 1, 2020, but before September 1, 2026, every manufacturer of fuel products who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado and every distributor who ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue, each calendar month, twenty-five dollars per tank truckload of fuel products delivered during the previous calendar month for sale or use in Colorado. This section does not apply to fuel that is used in aviation or to odorized liquefied petroleum gas and natural gas.

(c) On and after September 1, 2020, but before October 1, 2021, the executive director of the department of revenue shall transmit any fee collected in accordance with this subsection (6) to the state treasurer, who shall credit:

(I) Fifty percent, minus the costs to the department of revenue for administering the fee, to the perfluoroalkyl and polyfluoroalkyl substances cash fund;

(II) Twenty-five percent, minus the costs to the department of revenue for administering the fee, to the department of transportation to support functions related to the administration of hazardous materials and safe and efficient freight movement and infrastructure in the state as well as supporting infrastructure projects that enhance the safety of movement of freight and hazardous materials;

(III) Twenty-five percent, minus the costs to the department of revenue for administering the fee, to the department of public safety for use by the Colorado state patrol to support the regulation of hazardous materials on highways in the state; and

(IV) The costs to the department of revenue for administering the fee.

(d) On and after October 1, 2021, but before October 1, 2026, the executive director of the department of revenue shall transmit any fee collected in accordance with this subsection (6) to the state treasurer, who shall credit:

(I) One hundred thousand dollars to the department of public safety for use by the Colorado state patrol to support the regulation of hazardous materials on highways in the state;

(II) Seventy-five percent of the amount remaining, minus the costs to the department of revenue for administering the fee, to the perfluoroalkyl and polyfluoroalkyl substances cash fund;

(III) Twenty-five percent of the amount remaining, minus the costs to the department of revenue for administering the fee, to the department of transportation to support functions related to the administration of hazardous materials and safe and efficient freight movement and infrastructure in the state as well as supporting infrastructure projects that enhance the safety of movement of freight and hazardous materials; and

(IV) The costs to the department of revenue for administering the fee.

(e) Notwithstanding subsection (6)(b) of this section, if the available fund balance in the perfluoroalkyl and polyfluoroalkyl substances cash fund is greater than eight million dollars, the executive director of the department of revenue shall not collect the fee described in subsection (6)(b) of this section, but if the available balance in the fund is less than eight million dollars within a fiscal year, the executive director of the department of revenue shall impose a fee in accordance with subsection (6)(b) of this section.

(f) As used in this subsection (6), "fuel products" means all gasoline; diesel; biodiesel; biodiesel blends; kerosene; and all alcohol blended fuels that are produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning, or for any other similar usage. "Fuel products" does not mean fuel that is used in aviation or odorized liquefied petroleum gas and natural gas.

(7) (a) There is hereby created in the state treasury the perfluoroalkyl and polyfluoroalkyl substances cash fund, referred to in this subsection (7) as the "fund". The fund consists of money credited to the fund pursuant to subsection (6) of this section and any other money that the general assembly may appropriate or transfer to the fund.

(b) The money in the fund shall not be deposited in or transferred to the general fund or any other fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Any unexpended and unencumbered money in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(c) Money in the fund is continuously appropriated for costs related to:

(I) Administering the perfluoroalkyl and polyfluoroalkyl substances grant program and awarding grants in accordance with section 25-5-1310;

(II) Administering the perfluoroalkyl and polyfluoroalkyl substances takeback program and purchasing and disposing of eligible materials under the takeback program in accordance with section 25-5-1311; and

(III) Providing technical assistance in locating and studying perfluoroalkyl and polyfluoroalkyl substances to communities, stakeholders, and regulatory boards or commissions for the following purposes:

(A) Developing guidance and recommendations regarding human health-based standards for perfluoroalkyl and polyfluoroalkyl substances in water or other media; and

(B) Identifying safe disposal methods of materials containing perfluoroalkyl and polyfluoroalkyl substances.

Source: L. 89: Entire section added, p. 405, § 4, effective July 1. **L. 92:** (1)(b) and (5) amended, p. 1820, § 2, effective June 3. **L. 95:** (1)(b) amended, p. 419, § 4, effective July 1. **L.**

96: (1)(b) amended and (1)(c) added, p. 709, § 1, effective May 15. **L. 97:** (5) repealed, p. 138, § 2, effective March 28. **L. 98:** (1.5) added, p. 1324, § 22, effective June 1. **L. 2000:** (1)(b)(III) and (1)(c) amended, p. 1384, § 3, effective May 30. **L. 2003:** (1)(a) amended and (1)(d) and (1)(e) added, p. 1822, § 6, effective May 21; (1)(a), IP(1)(b), (1)(c), and (4) amended, p. 2664, § 1, effective June 5. **L. 2005:** (1)(b), (1)(c), and IP(1)(e)(I) amended, p. 1328, § 5, effective July 1; (4)(b) amended, p. 1345, § 7, effective August 8. **L. 2010:** (1)(a), (1)(c), and (2) amended, (HB 10-1185), ch. 82, p. 275, § 1, effective August 11. **L. 2013:** (1)(a), (1)(d), (1)(e), (3), and (4)(b) amended and (4)(c) added, (HB 13-1110), ch. 225, p. 1056, § 4, effective January 1, 2014. **L. 2016:** (1)(c) amended, (HB 16-1044), ch. 1, p. 1, § 1, effective August 10. **L. 2020:** (6) and (7) added, (SB 20-218), ch. 141, p. 612, § 1, effective June 29.

Editor's note: Amendments to subsection (1)(a) by House Bill 03-1099 and Senate Bill 03-324 were harmonized.

Cross references: (1) For the petroleum storage tank fund, see § 8-20.5-103.

(2) For the legislative declaration contained in the 2003 act amending subsection (1)(a) and enacting subsections (1)(d) and (1)(e), see section 1 of chapter 279, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act amending subsections (1)(a), (1)(d), (1)(e), (3), and (4)(b) and adding subsection (4)(c), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-207. Method of tests. Tests made by the director of the division of oil and public safety shall be made in accordance with the most recent standard methods of tests of ASTM. The director of the division of oil and public safety is not required in every case to make a complete analysis to ascertain every form of impurities, such as sulphur and tar-like matter, but when, in the opinion of the director, a more complete analysis is necessary or advisable, the director may make a detailed chemical analysis to determine exactly the impurities or imperfections. The director in his or her discretion is authorized to make inspections of petroleum products loaded for shipment into this state, at points outside of this state.

Source: **L. 31:** p. 594, § 9. **CSA:** C. 118, § 7. **L. 41:** p. 584, § 7. **CRS 53:** § 100-2-7. **C.R.S. 1963:** § 100-2-7. **L. 2001:** Entire section amended, p. 1116, § 7, effective June 5. **L. 2005:** Entire section amended, p. 1345, § 8, effective August 8.

8-20-208. Director to keep record. (1) The director of the division of oil and public safety shall keep a record of all inspections made, showing:

- (a) Time and place of each;
- (b) Number of packages inspected;
- (c) Number of gallons contained therein;
- (d) Record of rejections;
- (e) Record of fuel products destroyed.

(2) If any fuel products included in classes I and II have been rejected, such report shall show the date and place thereof and quantity rejected, together with the name of the person possessing it, together with a record from whom received. All such records shall be open for public inspection.

Source: L. 31: p. 595, § 11. **CSA:** C. 118, § 8. **L. 41:** p. 584, § 8. **CRS 53:** § 100-2-8. **C.R.S. 1963:** § 100-2-8. **L. 2001:** IP(1) amended, p. 1116, § 8, effective June 5. **L. 2005:** (2) amended, p. 1345, § 9, effective August 8.

8-20-209. Access to premises - records. (1) Any duly authorized agent or employee of the division of oil and public safety shall have authority to enter in or upon the premises of any manufacturer, vendor, or dealer in fuel products during regular business hours and inspect any such product intended for sale or use.

(2) Every distributor shall keep a complete and accurate record of the number of gallons, as covered in classes I and II, sold by such distributor and of the number of gallons of fuel used by such distributor, the date of such sales and of such use, and, except in the case of retail sales through filling stations operated by such distributor, the names and addresses of the purchasers.

Source: L. 31: p. 595, § 12. **CSA:** C. 118, § 9. **L. 41:** p. 585, § 9. **CRS 53:** § 100-2-9. **C.R.S. 1963:** § 100-2-9. **L. 2001:** (1) amended, p. 1116, § 9, effective June 5. **L. 2005:** (2) amended, p. 1345, § 10, effective August 8.

8-20-210. Records of carriers - access. Every agent or employee of any railroad company or other transportation company, having the custody of books or records showing the shipment or receipt of fuel products, shall permit the director of the division of oil and public safety or the director's agents and employees free access to such books and records to determine the amount of fuel products shipped and received. All clerks, bookkeepers, express agents or officials, railroad agents, employees of common carriers, or other persons shall render to the director of the division of oil and public safety or the director's employees all the assistance in their power when so requested in tracing, finding, and inspecting such shipments.

Source: L. 31: p. 596, § 13. **CSA:** C. 118, § 10. **L. 41:** p. 585, § 10. **CRS 53:** § 100-2-10. **C.R.S. 1963:** § 100-2-10. **L. 2001:** Entire section amended, p. 1116, § 10, effective June 5.

8-20-211. Labeling visible containers. All visible containers and all devices used for drawing class I product from underground or aboveground containers at filling stations, garages, or other places where such products are sold or offered for sale shall be stamped or labeled in a visible place with the letters and figures:

"State Inspected ___(Date)___".

Source: L. 31: p. 596, § 14. **CSA:** C. 118, § 11. **L. 41:** p. 585, § 11. **CRS 53:** § 100-2-11. **C.R.S. 1963:** § 100-2-11. **L. 2005:** Entire section amended, p. 1345, § 11, effective August 8.

8-20-211.5. Labeling of containers. Throughout the state of Colorado, all visible containers and all devices for drawing motor fuel blends containing class I fuel products and at least two percent by volume of alcohol from underground containers at filling stations, garages, or other places where such products are sold or offered for sale shall be stamped or labeled in a visible place with information indicating the presence of alcohol in the motor fuel blend. If the

volume of ethanol exceeds ten percent, or if the volume of methanol exceeds two percent, the stamp or label shall state the exact percentage. Such information shall appear on the front of the pump in a position clear and conspicuous to the driver's position, in at least one-half inch block letters, with information that identifies the maximum percentage by volume to the nearest whole percent of ethanol or of methanol or methanol with cosolvents.

Source: **L. 79:** Entire section added, p. 1326, § 1, effective July 1. **L. 86:** Entire section amended, p. 509, § 2, effective July 1. **L. 89:** Entire section amended, p. 382, § 1, effective June 10. **L. 2000:** Entire section amended, p. 763, § 4, effective September 1. **L. 2005:** Entire section amended, p. 1346, § 12, effective August 8.

8-20-212. Loading lines to be cleaned. Any loading or unloading line once used for one class of fuel products shall not be used for loading or unloading other classes of fuel products until the lines have been thoroughly cleaned and approved by the director of the division of oil and public safety.

Source: **L. 41:** p. 585, § 12. **CSA:** C. 118, § 12. **CRS 53:** § 100-2-12. **C.R.S. 1963:** § 100-2-12. **L. 2001:** Entire section amended, p. 1116, § 11, effective June 5.

8-20-213. Recycled or used motor oil - legislative declaration - definitions - sale. (1) The general assembly hereby finds and declares that the used oil generated by this state each year is a valuable resource that can be reused as an environmentally acceptable re-refined product. The general assembly further finds that the disposal of automotive engine oil and other lubricants is very costly, creates environmental and health hazards, and depletes the state's and the nation's dwindling supply of petroleum. It is the intent of the general assembly to reduce the amount of used oil that is improperly disposed of and to increase the amount that is reused as a re-refined product.

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

(a) "API service classification" means one of the two letter classification performance ratings for engine oils, including re-refined oils, as determined by the American petroleum institute.

(b) "Lubricant" means a lubricating oil as defined in paragraph (c) of this subsection (2) or any other substance or mixture of substances used to reduce the friction caused by automotive parts moving against each other.

(c) "Lubricating oil" means oil classified for use in an internal combustion engine, hydraulic system, gear box, differential gear mechanism, or wheel bearing.

(d) "Recycled oil" means oil that is prepared for automotive use by reclaiming and otherwise reprocessing used oil.

(e) "Re-refined oil" means used oil that has been refined using processing technology to remove the physical and chemical contaminants acquired through use and which, by itself or when blended with new lubricating oil or additives, meets applicable API service classifications and SAE viscosity grades.

(f) "SAE viscosity grade" means the measure of an oil's, including a re-refined oil's, resistance to flow at a given temperature, as determined by the society of automotive engineers.

(g) "Used oil" means refined crude or synthetic oil that as a result of use has become unsuitable for its original purpose due to loss of original properties or the presence of impurities and that may be recycled in an economical manner and made suitable for further use as an automotive lubricant.

(3) (a) It is unlawful for a person to package and sell a container of:

(I) Lubricant unless the container prominently displays the applicable API service classification, API certification mark, and SAE viscosity grade of the contents; or

(II) Lubricant made wholly or partly from used or recycled oil unless the container is plainly labeled as containing used or recycled oil.

(b) The label or advertising on a container of used or recycled oil shall accurately reflect the type of oil stored in such container.

(c) A person may represent a product made wholly or partly from re-refined oil to be equal to or better than a similar product made from virgin oil if the product for sale conforms with applicable API service classifications, API certification mark, and SAE viscosity grades.

(d) Notwithstanding section 8-20-104, a person found guilty of violating this subsection (3) shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars for the first offense. A person found guilty of a second or subsequent offense shall be enjoined from selling or distributing used oil for not less than one year and not more than five years.

Source: L. 41: p. 586, § 13. CSA: C. 118, § 13. CRS 53: § 100-2-13. C.R.S. 1963: § 100-2-13. L. 95: Entire section amended, p. 349, § 1, effective April 27. L. 2003: (3)(d) amended, p. 1824, § 7, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (3)(d), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-214. Inspectors - business forbidden. No person employed by the director of the division of oil and public safety to make inspections under this part 2 shall engage directly or indirectly in the business of dealing in petroleum products.

Source: L. 31: p. 598, § 17. CSA: C. 118, § 14. L. 41: p. 586, § 14. CRS 53: § 100-2-14. C.R.S. 1963: § 100-2-14. L. 2001: Entire section amended, p. 1117, § 12, effective June 5.

8-20-215. Mislabeling. No person shall mark, stencil, brand, or certify falsely any pump, receptacle, or container of fuel products, or change, alter, or deface the mark, brand, or a certificate on any such pump, receptacle, or container, or falsely represent the quality or grade of any fuel product.

Source: L. 31: p. 598, § 17. CSA: C. 118, § 14. L. 41: p. 586, § 14. CRS 53: § 100-2-15. C.R.S. 1963: § 100-2-15. L. 2005: Entire section amended, p. 1346, § 13, effective August 8.

8-20-216. Unlawful to deceive purchaser. It is unlawful for any person, firm, or corporation to store, sell, expose for sale, or offer for sale any liquid fuels, lubricating oils, or

other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, price, quality, and identity of the products so sold or offered for sale.

Source: L. 31: p. 598, § 18. CSA: C. 118, § 15. L. 41: p. 586, § 15. CRS 53: § 100-2-16. C.R.S. 1963: § 100-2-16. L. 86: Entire section amended, p. 510, § 3, effective July 1.

8-20-217. Sale of products not indicated. It is unlawful for any person to store, keep, expose for sale, offer for sale, or sell from any tank or container, or from any pump or other distributing device or equipment, any fuel or other similar products than those indicated by the name, trade name, symbol, sign, or other distinguishing mark or device of such fuel or other products, or by the name and address of the manufacturer of such fuel product appearing upon the tank, container, pump, or other distributing equipment, from which the same are sold, offered for sale, or distributed.

Source: L. 31: p. 599, § 19. CSA: C. 118, § 16. L. 41: p. 586, § 16. L. 43: p. 448, § 3. CRS 53: § 100-2-17. C.R.S. 1963: § 100-2-17.

8-20-218. Calibration of transport, tank truck, or delivery trucks. (1) The director of the division of oil and public safety shall calibrate transport, trailer, and delivery truck tanks to determine the legal capacity of each compartment, allowing for expansion outage to conform to DOT regulations, except in the case of delivery truck tanks where two percent outage will suffice. Each tank compartment shall have affixed and spot-welded by the owner or operator thereof a capacity marker, which shall be set by measuring with a steel rule from the bottom of a steel bar set across the fill opening to the bottom of the marker (floated). The compartment gallonage shall be marked or stenciled with paint in figures at least one inch in height on each compartment dome collar.

(2) All new or additional vehicular tanks purchased or leased after April 6, 1955, by any person for hauling class I, II, or III petroleum products within or into the state shall be calibrated by the director of the division of oil and public safety and a certificate of calibration shall be issued to the owner or operator thereof before such equipment is put in service. A copy of the certificate of calibration shall accompany the tank at all times.

(3) Whenever a certificate of calibration has been lost or mutilated, the director of the division of oil and public safety shall issue a duplicate of the original which shall serve the purpose of the original. The director of the division of oil and public safety may order, after proper inspection, a calibration or a recalibration of any transport, trailer, or delivery truck tank operating in the state, whether calibrated by the director previously or not, when inspection by the director or the director's deputy reveals that tank compartments or capacity markers have been altered intentionally or accidentally, and the owner or operator shall comply with such order within ten days. If the owner or operator of a delivery truck tank has available calibrating equipment acceptable to the director of the division of oil and public safety, the tanks shall be calibrated in the presence of the director or the director's deputy, at or near the place of business of the owner or operator, and the director shall issue a certificate of calibration for said tank.

Source: L. 31: p. 599, § 19. CSA: C. 118, § 16. L. 41: p. 586, § 16. L. 43: p. 448, § 3. CRS 53: § 100-2-18. L. 55: p. 644, § 1. C.R.S. 1963: § 100-2-18. L. 2001: Entire section

amended, p. 1117, § 13, effective June 5. **L. 2005:** (1) and (2) amended, p. 1346, § 14, effective August 8.

8-20-219. Equipment - disguise unlawful. It is unlawful for any person, firm, or corporation, to disguise or camouflage his equipment, by imitating the design, symbol, or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils, and similar products are generally marketed.

Source: **L. 31:** p. 599, § 20. **CSA:** C. 118, § 17. **L. 41:** p. 587, § 17. **CRS 53:** § 100-2-19. **C.R.S. 1963:** § 100-2-19.

8-20-220. Trade names - unlawful use. It is unlawful for any person, firm, or corporation, to expose for sale, offer for sale, or sell, under any trademark or trade name in general use, any liquid fuels, lubricating oils, or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils, or other like products, under such trademark or trade names, or to substitute, mix, or adulterate the liquid fuels, lubricating oils, or other similar products sold, offered for sale, or distributed under such trademark or trade name.

Source: **L. 31:** p. 599, § 21. **CSA:** C. 118, § 18. **L. 41:** p. 587, § 18. **CRS 53:** § 100-2-20. **C.R.S. 1963:** § 100-2-20.

Cross references: For trademarks and trade names, see articles 70 and 71 of title 7.

8-20-221. Assisting in violations. It is unlawful for any person to aid or assist any other person in the violation of the provisions of this part 2, by depositing or delivering into any tank, receptacle, or other container, any liquid fuels, lubricating oils, or like products than those intended to be stored therein and distributed therefrom, as indicated by the name of the manufacturer or distributor or the trade name or trademark of the product displayed on the container itself, or on the pump, or on any other distributing device in connection therewith.

Source: **L. 31:** p. 599, § 22. **CSA:** C. 118, § 19. **L. 41:** p. 587, § 19. **CRS 53:** § 100-2-21. **C.R.S. 1963:** § 100-2-21.

8-20-222. Improvers of products. All materials, fluids, or substances offered for sale or exposed for sale, purporting to be substances for, or improvers of, fuel products to be used for power, heating, lubricating, or illuminating purposes, before being sold, exposed, or offered for sale, shall be submitted to the director of the division of oil and public safety for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the director in writing.

Source: **L. 31:** p. 600, § 23. **CSA:** C. 118, § 20. **L. 41:** p. 587, § 20. **CRS 53:** § 100-2-22. **C.R.S. 1963:** § 100-2-22. **L. 73:** p. 1067, § 3. **L. 2001:** Entire section amended, p. 1117, § 14, effective June 5. **L. 2005:** Entire section amended, p. 1346, § 15, effective August 8.

8-20-223. Containers - inspection. It is the duty of the director of the division of oil and public safety and the director's deputies to inspect all containers or storage tanks from which products of petroleum to be used for illuminating or power purposes are retailed. When such containers or storage tanks are found to be placed in an unsafe position or to contain water or foreign matter, the director shall make a written order to have the same properly cleaned or removed, and upon failure of the owner to comply with said order within ten days after the date thereof, the director shall confiscate and cause the same to be destroyed or removed. All vendors of classes I, II, and III fuel products shall have fire extinguishers in their establishments.

Source: L. 31: p. 600, § 24. CSA: C. 118, § 21. L. 41: p. 587, § 21. CRS 53: § 100-2-23. C.R.S. 1963: § 100-2-23. L. 78: Entire section amended, p. 255, § 12, effective May 23. L. 2001: Entire section amended, p. 1118, § 15, effective June 5. L. 2005: Entire section amended, p. 1347, § 16, effective August 8.

8-20-223.5. Emission inspection. (1) The director of the division of oil and public safety shall conduct the emission inspection of any underground storage tank which is required to have installed pollution control equipment. Such inspection shall only be conducted in the ozone nonattainment area as defined pursuant to the authority contained in section 25-7-107, C.R.S. Such inspection shall be for the purpose of verifying the installation of such pollution control equipment and for the purpose of assuring its proper use.

(2) The director of the division of oil and public safety shall contract with the department of public health and environment for the purpose of submitting inspection reports, determining the frequency of certain inspections, assisting in the enforcement of the "Colorado Air Quality Control Act" as it pertains to underground storage tank pollution control equipment violations, and transmitting the payment for the costs of administering the program aspects in the department of public health and environment.

(3) The fees paid pursuant to this subsection (3) shall be no more than necessary to offset the direct cost of the inspection conducted pursuant to subsections (1) and (2) of this section, but in no event more than twelve dollars.

Source: L. 89: Entire section added, p. 1167, § 3, effective May 26. L. 94: (2) amended, p. 2721, § 312, effective July 1. L. 2001: (1) and (2) amended, p. 1118, § 16, effective June 5.

Editor's note: The "Colorado Air Quality Control Act" was changed to the "Colorado Air Pollution Prevention and Control Act" and is located in article 7 of title 25. (See L. 92, p. 1165.)

8-20-224. Empty containers - removal. It is the duty of the director of the division of oil and public safety or the director's deputies to notify the owner or person having in his or her possession empty oil barrels and other containers which are stored or placed in a position dangerous to property to remove the same to a place of safety.

Source: L. 31: p. 600, § 25. CSA: C. 118, § 22. L. 41: p. 588, § 22. CRS 53: § 100-2-24. C.R.S. 1963: § 100-2-24. L. 2001: Entire section amended, p. 1118, § 17, effective June 5.

8-20-225. Measuring device - sealing - approval of prover and procedure. (1) No person, or agent or employee of any person, shall use any meter or mechanical device for the measurement of oil, gasoline, or liquid fuels unless the same has been proved in a manner acceptable to the director of the division of oil and public safety and sealed as correct by the director or one of the director's deputies. The director and the director's deputies are further authorized, if any such meter or mechanical device fails to comply with any of the provisions of this part 2, to seal the meter or mechanical device in a manner that prohibits its use until such meter or mechanical device complies with all of the provisions of this part 2, at which time the seal shall be removed by the director or the director's deputies.

(2) The specifications, tolerances, and other technical requirements published in the NIST handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", NIST handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality", and supplements thereto or revisions thereof, shall apply to the provisions of this article, except as modified or rejected by this article or any rule promulgated pursuant to this article.

Source: L. 31: p. 601, § 26. CSA: C. 118, § 23. L. 41: p. 588, § 23. CRS 53: § 100-2-25. C.R.S. 1963: § 100-2-25. L. 67: p. 150, § 1. L. 73: p. 1067, § 4. L. 86: Entire section amended, p. 510, § 4, effective July 1. L. 2001: (1) amended, p. 1118, § 18, effective June 5. L. 2003: (1) amended, p. 1824, § 8, effective May 21. L. 2005: (2) amended, p. 1347, § 17, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-226. False labels unlawful. No label upon, or invoice for, any lubricating oil or grease shall contain any untrue or misleading statement, and any person, agent, or employee of any person who substitutes any oil or grease for any other brand, without notice, shall be subject to the penalties prescribed in section 8-20-104.

Source: L. 31: p. 605, § 36. CSA: C. 118, § 24. L. 41: p. 588, § 24. CRS 53: § 100-2-26. C.R.S. 1963: § 100-2-26. L. 2003: Entire section amended, p. 1825, § 9, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-227. Tests used. Where no tests are specified in this part 2, the most recent tests prescribed, accepted, and considered as standards by ASTM or NIST shall be used.

Source: L. 31: p. 605, § 37. CSA: C. 118, § 25. L. 41: p. 588, § 25. CRS 53: § 100-2-27. C.R.S. 1963: § 100-2-27. L. 2005: Entire section amended, p. 1347, § 18, effective August 8.

8-20-228. Hazardous, dangerous conditions - duty of director. (1) It is the duty of the director of the division of oil and public safety, whenever the director has reasonable and

probable grounds to believe that a hazardous or dangerous condition exists due to deterioration of fuel products storage and piping facilities which are endangering human and environmental life to determine the reason for the condition. The director may order the person responsible for the hazardous or dangerous condition to take corrective measures within a reasonable period of time to alleviate or eliminate the condition, and if the measures are not taken within such time, the director may act to alleviate or eliminate the same.

(2) If any person fails or refuses to comply with any such order of the director of the division of oil and public safety, the director, in the name of the people of the state of Colorado and through the attorney general, may apply to any district court having jurisdiction for a mandatory injunction to compel compliance with such order to alleviate or eliminate such hazardous or dangerous condition.

(3) The provisions of this part 2 shall not extend to nor be applicable to cities which are organized under article XX of the state constitution. If any such city desires to become subject to this part 2, the same may be accomplished by a resolution of the legislative body of such city adopted in the usual manner.

Source: L. 67: p. 144, § 1. C.R.S. 1963: § 100-2-29. L. 73: p. 1067, § 5. L. 2001: (1) and (2) amended, p. 1119, § 19, effective June 5.

8-20-229. Penalty. (Repealed)

Source: L. 31: p. 605, § 38, CSA: C. 118, § 26. L. 41: p. 588, § 26. CRS 53: § 100-2-28. C.R.S. 1963: § 100-2-28. L. 2003: Entire section repealed, p. 1825, § 10, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-230. Submittal of plans. (1) Plans for all installations utilizing liquid fuel products, except for those liquid fuel products which are defined as regulated substances and regulated pursuant to article 20.5 of this title, in storage containers of an aggregate of over fifteen hundred gallons water capacity, including gasoline stations, garages, stores, and all other places where said products are dispensed, shall be submitted to the director of the division of oil and public safety for approval before construction begins.

(2) Plans for the preceding installations shall include:

(a) Provisions for extended protection against underground leaks due to corrosion, erosion, electrolysis, galvanic action, soil shifting, soil compaction, and high groundwater tables;

(b) Provisions for a containment of liquid fuels in the event of damage to fuel dispensers and attendant piping;

(c) Provisions for safety of human and environmental life.

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-30. L. 89: (1) amended, p. 405, § 3, effective July 1. L. 95: (1) amended, p. 419, § 5, effective July 1. L. 2001: (1) amended, p. 1119, § 20, effective June 5.

8-20-231. Minimum standards - publications. (1) (a) The design, construction, location, installation, and operation of liquid fuel systems, fuel products, and equipment and the handling of liquid fuels and fuel products must conform to the minimum standards as prescribed by the applicable sections of the current edition of the national fire code published by the National Fire Protection Association, as revised by the Association from time to time.

(b) The minimum standards as prescribed must also apply to marine and pipeline terminals, natural gasoline plants, refineries, tank farms, underground storage facilities, aboveground storage facilities, and chemical plants utilizing liquid fuels; except that the gallon limitations in such minimum standards do not apply to:

- (I) Aboveground storage facilities associated with mining;
- (II) Oil and gas production facilities;
- (III) Asphalt or concrete production;
- (IV) Construction projects; or
- (V) Activities related to aboveground storage facilities associated with mining, oil and gas production facilities, asphalt or concrete production, or construction projects.

(2) The director of the division of oil and public safety shall maintain copies of the codes in his or her office at all times for public examination.

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-31. L. 90: Entire section amended, p. 467, § 2, effective May 24. L. 2001: Entire section amended, p. 1119, § 21, effective June 5. L. 2005: Entire section amended, p. 1347, § 19, effective August 8. L. 2016: Entire section amended, (HB 16-1053), ch. 4, p. 8, § 3, effective March 9.

8-20-232. Method of sales. Petroleum products in liquid form shall be sold only by metered liquid measure or by weight.

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-32.

8-20-232.5. Method of sales of motor fuels - gallon equivalents - conversion factors.

(1) In addition to any other allowed unit of measurement, motor fuels may be sold by gallon equivalents pursuant to the requirements of this section.

(2) (a) Any dispenser used for the sale of motor fuel in gallon equivalents shall display gallon equivalents as the primary display information provided. Such dispenser shall indicate the number of gallon equivalents and fractions of gallon equivalents sold, the total sales price of the motor fuel dispensed, and the sales price per gallon equivalent of motor fuel sold. Information concerning the sale of motor fuels by gallon equivalents may be provided at the point of sale in literature, signs, or other advertisements. Street sign advertisements regarding the sale of motor fuels by gallon equivalents may abbreviate the term "gallon gasoline equivalent" as "gallon G.E." and the term "gallon diesel equivalent" as "gallon D.E.".

(b) In addition to the information required by paragraph (a) of this subsection (2), the face of a dispenser that is used for the sale of motor fuel in gallon equivalents shall prominently display the conversion factor that is being used by the seller to determine the number of gallon equivalents sold based upon the type and amount of actual measured units of motor fuel that is dispensed. The information displayed on such a dispenser shall include, but is not limited to, the following statements concerning the conversion factor:

(I) "One gallon diesel equivalent of (type of motor fuel) is equivalent to (amount of actual units of measurement) of (type of motor fuel)."

(II) "One gallon diesel equivalent of (type of motor fuel) contains an average lower heating value of 128,000 BTUs of energy, but in no case contains a lower heating value of less than 124,000 BTUs of energy."

(III) "One gallon gasoline equivalent of (type of motor fuel) is equivalent to (amount of actual units of measurement) of (type of motor fuel)."

(IV) "One gallon gasoline equivalent of (type of motor fuel) contains an average lower heating value of 114,000 BTUs of energy, but in no case contains a lower heating value of less than 110,000 BTUs of energy."

(3) Any seller using gallon equivalents for motor fuel sales shall calculate the conversion factor used by the seller to convert the actual units by which a motor fuel is measured at the dispenser to gallon equivalent units based on the inferred energy content of such motor fuel as measured by one of the following methods:

(a) For conversions to gallon diesel equivalents:

(I) If the motor fuel is actually measured at the dispenser as a volume, the gallon diesel equivalent measurement shall be calculated by determining the number of measured volumetric units required to provide an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred twenty-four thousand BTUs.

(II) If the motor fuel is actually measured at the dispenser as a mass, the gallon diesel equivalent measurement shall be calculated by determining the number of measured mass units required to provide an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred twenty-four thousand BTUs.

(b) For conversions to gallon gasoline equivalents:

(I) If the motor fuel is actually measured at the dispenser as a volume, the gallon gasoline equivalent measurement shall be calculated by determining the number of measured volumetric units required to provide an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred ten thousand BTUs.

(II) If the motor fuel is actually measured at the dispenser as a mass, the gallon gasoline equivalent measurement shall be calculated by determining the number of measured mass units required to provide an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred ten thousand BTUs.

(4) The actual unit of measurement for a motor fuel sold in terms of gallon equivalents shall be calibrated by the seller with appropriate precision to ensure conformance with any required dispensing accuracies.

(5) Repealed.

Source: L. 93: Entire section added, p. 270, § 3, effective July 1. **L. 97:** (5) repealed, p. 138, § 3, effective March 28.

Cross references: For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 79, Session Laws of Colorado 1993.

8-20-233. Declaration on invoice. (1) The sale of petroleum products shall include on the sales statement a definite, plain, and conspicuous declaration of:

- (a) The quantity of goods sold;
- (b) The weight or basis for measurement of either gross volume or volume adjusted to standard temperature of sixty degrees Fahrenheit.

Source: L. 73: p. 1068, § 6. **C.R.S. 1963:** § 100-2-33.

8-20-234. Temperature compensator permanent. Whenever a temperature compensating meter is used to determine the amount of liquid fuels or liquefied petroleum gas offered for sale in the liquid state, such compensating meter shall be installed permanently on all meters within a geographical location owned by a user in Colorado and used exclusively for at least a period of one year and the temperature compensating devices shall not be disconnected, deactivated, or removed at any time except for repairs or for tests by the director of the division of oil and public safety. If a temperature compensating device is disconnected, deactivated, or removed for reasons other than repair, it shall not be reactivated for a period of one year from the date of removal. Notification of such removal or installation shall be in accordance with the provisions of section 8-20-408 (2).

Source: L. 73: p. 1068, § 6. **C.R.S. 1963:** § 100-2-34. **L. 2001:** Entire section amended, p. 1120, § 22, effective June 5.

8-20-235. Measuring gasoline and special fuel for sale to distributors. Notwithstanding any other provision of this part 2, the method of determining gallonage of gasoline or special fuel sold to distributors, as defined in section 39-27-101 (7), C.R.S., shall be on a gross or net gallons basis at the option of the distributor. Such election shall be for a twelve-month period.

Source: L. 81: Entire section added, p. 1892, § 1, effective May 18. **L. 98:** Entire section amended, p. 1040, § 12, effective July 1. **L. 2003:** Entire section amended, p. 1818, § 5, effective August 6.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 278, Session Laws of Colorado 2003.

PART 3

CONTAINERS OF GAS OR GASEOUS COMPOUNDS

8-20-301. Unlawful use of container. No person, firm, or corporation, except the owner thereof or persons authorized in writing by the owner, shall sell or offer for sale, or deliver any gas or gaseous compound used for heating or cooking, which is shipped, consigned, or delivered

in steel containers, or containers made of other metal, plastic, or other substance, if such container bears upon the surface thereof, in plainly legible characters the name, initials, or trademark of the owner. The term "gas or gaseous compound" as used in this part 3 includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes, normal butane and isobutane, and butylenes.

Source: L. 43: p. 598, § 1. CSA: C. 165, § 25. CRS 53: § 100-4-1. C.R.S. 1963: § 100-4-1.

8-20-302. Refill container unlawful. No person, firm, or corporation, other than the owner or person authorized by the owner shall refill or use in any manner a container or receptacle which has imprinted thereon the name, initials, or trademark of the owner, for any gas or gaseous compound used for cooking or heating.

Source: L. 43: p. 598, § 2. CSA: C. 165, § 26. CRS 53: § 100-4-2. C.R.S. 1963: § 100-4-2.

8-20-303. Reuse of container unlawful. No person, firm, or corporation to whom such gas or gaseous compound has been sold or delivered in such containers shall sell, loan, deliver, or permit to be delivered such containers to any person other than such owner, or persons authorized by such owner to receive the delivery of such containers.

Source: L. 43: p. 598, § 3. CSA: C. 165, § 27. CRS 53: § 100-4-3. C.R.S. 1963: § 100-4-3.

8-20-304. Applicable - when. Sections 8-20-301 to 8-20-303 shall not apply to any gas or gaseous compound referred to in section 8-20-301, contained in such containers, unless the title to the containers is retained by the owner or his representative, and unless the gas or gaseous substance contained in the containers is sold and delivered upon the understanding and agreement that the container in which it was delivered shall be returned to the owner or its representative when the contents have been used up by the purchaser.

Source: L. 43: p. 599, § 4. CSA: C. 165, § 28. CRS 53: § 100-4-4. C.R.S. 1963: § 100-4-4.

8-20-305. Penalty for violation. Any fuel distributor who fills a fuel tank with liquified petroleum gas without the approval of the owner of the tank shall be liable in a civil action for treble damages in addition to costs and reasonable attorney fees.

Source: L. 43: p. 599, § 5. CSA: C. 165, § 29. CRS 53: § 100-4-5. C.R.S. 1963: § 100-4-5. L. 2003: Entire section amended, p. 1825, § 11, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

PART 4

LIQUEFIED PETROLEUM GAS - RULES

8-20-401. Definitions. As used in this part 4, unless the context otherwise requires:

- (1) Repealed.
- (2) "GPA" means the gas processors association.
- (3) "GPA 2140" means the publication number 2140 produced by the gas processors association.
- (4) and (5) Repealed.
- (6) "Liquefied petroleum gas", referred to as LPG, means and includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes, normal butane or isobutane, and butylenes.
- (7) Repealed.
- (8) The definitions as set forth in section 8-20-201, except section 8-20-201 (1), shall also apply to this part 4.

Source: L. 45: p. 496, § 1. CSA: C. 118, § 74. CRS 53: § 100-5-1. C.R.S. 1963: § 100-5-1. L. 73: p. 1069, § 7. L. 91: Entire section amended, p. 1346, § 2, effective April 19. L. 2003: (1), (4), (5), and (7) repealed, p. 1825, § 12, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing subsections (1), (4), (5), and (7), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-402. Rules of director. The director of the division of oil and public safety shall make, promulgate, and enforce rules setting forth minimum general standards consistent with the provisions of section 8-20-405 covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting, dispensing, and utilizing liquefied petroleum gases, and specifying the odorization of said gases and the degree thereof and the odorizing agent to be used therein. These rules shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using these materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the director of the division of oil and public safety only after a public hearing thereon.

Source: L. 45: p. 496, § 2. CSA: C. 118, § 75. CRS 53: § 100-5-2. C.R.S. 1963: § 100-5-2. L. 2001: Entire section amended, p. 1120, § 23, effective June 5. L. 2003: Entire section amended, p. 1825, § 13, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-403. Penalty for violation. (Repealed)

Source: L. 45: p. 496, § 3. CSA: C. 118, § 76. CRS 53: § 100-5-3. C.R.S. 1963: § 100-5-3. L. 2001: Entire section amended, p. 1120, § 24, effective June 5. L. 2003: Entire section repealed, p. 1826, § 14, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-404. Conflicting rules forbidden. No municipality or other political subdivision shall adopt or enforce any ordinance or regulation in conflict with the provisions of this part 4 or with the rules promulgated under section 8-20-402.

Source: L. 45: p. 497, § 4. CSA: C. 118, § 77. CRS 53: § 100-5-4. C.R.S. 1963: § 100-5-4. L. 2011: Entire section amended, (HB 11-1303), ch. 264, p. 1149, § 4, effective August 10.

8-20-405. Minimum standards. (1) The design, construction, location, installation, and operation of liquefied petroleum gas systems and equipment, and the transportation and handling of liquefied petroleum gas, and the odorization of liquefied petroleum gas, the degree thereof, and the odorizing agent to be used therein, shall conform to the minimum standards therefor as prescribed by the applicable sections of the 2001 edition of the national fire code published by the national fire protection association, as revised by the association from time to time. The minimum standards as prescribed in this section shall also apply to marine and pipeline terminals, natural gasoline plants, refineries, tank farms, underground storage facilities such as salt and coal mines, aboveground storage facilities, and to chemical plants utilizing liquefied petroleum gas in the manufacture of their products. Copies of the pamphlets shall be kept and maintained in the office of the director of the division of oil and public safety at all times for examination by any interested person.

(2) Any changes to any standards promulgated by the national fire protection association after January 1, 2003, shall be reviewed by the director of the division of oil and public safety. After such review, the director may adopt such changes by rule.

Source: L. 63: p. 733, § 1. C.R.S. 1963: § 100-5-5. L. 67: p. 149, § 1. L. 73: p. 1069, § 8. L. 2001: Entire section amended, p. 1121, § 25, effective June 5. L. 2003: Entire section amended, p. 1826, § 15, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-406. Submittal of plans. (1) Plans for all installations utilizing liquefied petroleum gas storage containers of over two thousand gallons water capacity shall be submitted to the director of the division of oil and public safety for approval before construction of such installations begins.

(2) Plans for any of the following shall be submitted to the director of the division of oil and public safety for approval before installation:

(a) Service stations supplying liquefied petroleum gas for motor fuel;

(b) Installations for filling of cylinders (bottles) or other portable containers meeting surface transportation board specifications;

(c) Industrial bulk storage installations and all other bulk storage installations utilizing storage containers for liquefied petroleum gas of over two thousand gallons aggregate water capacity.

Source: L. 63: p. 733, § 2. C.R.S. 1963: § 100-5-6. L. 2001: (1) and IP(2) amended, p. 1121, § 26, effective June 5; (2)(b) amended, p. 1266, § 3, effective June 5.

8-20-407. Reports of accidents. (1) Reports of accidents, fires, explosions, injuries, damage to property, or loss of life at installations using liquefied petroleum gas shall be reported to the director of the division of oil and public safety within twenty-four hours after their occurrence.

(2) Subsection (1) of this section includes accidents resulting from the improper use of equipment, appliances, and appurtenances to liquefied petroleum gas systems. The director of the division of oil and public safety may, at his or her discretion, investigate such occurrences and shall maintain a written record of his or her findings, which shall be available to public examination.

Source: L. 63: p. 734, § 3. C.R.S. 1963: § 100-5-7. L. 2001: Entire section amended, p. 1121, § 27, effective June 5.

8-20-408. Meter inspection. (1) No person, firm, partnership, or corporation shall use a liquefied petroleum gas liquid metering system for the sale of liquefied petroleum gas unless the system has been inspected, approved, and sealed by the director of the division of oil and public safety. Operation or use of a liquefied petroleum gas liquid metering system that has not been properly inspected and sealed constitutes a violation of sections 8-20-405 to 8-20-411, except under the circumstances outlined in subsection (2) of this section.

(2) The director of the division of oil and public safety shall be notified immediately when a new metering system is placed in service or when the seal on an operating metering system is broken for any purpose. Such systems may be operated on a temporary basis until reinspected and sealed by the director of the division of oil and public safety. Upon such notification, it is the responsibility of the director of the division of oil and public safety to make a field inspection within a reasonable period of time.

Source: L. 63: p. 734, § 4. C.R.S. 1963: § 100-5-8. L. 2001: Entire section amended, p. 1121, § 28, effective June 5. L. 2003: (1) amended, p. 1826, § 16, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-409. Requirements for appliances.

(1) (Deleted by amendment, L. 2003, p. 1827, § 17, effective May 21, 2003.)

(2) Appliances and components shall not be used or installed unless certified by or listed in standards established by rules promulgated by the director of the division of oil and public safety pursuant to section 8-20-102.

Source: L. 63: p. 734, § 5. C.R.S. 1963: § 100-5-9. L. 2001: (2) amended, p. 1122, § 29, effective June 5. L. 2003: Entire section amended, p. 1827, § 17, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-410. Tank delivery truck, semitrailer, or truck trailer for bulk storage. No tank delivery truck, semitrailer, or truck trailer shall be used as a bulk storage plant for liquefied petroleum gas unless the same has been inspected and approved by the director of the division of oil and public safety.

Source: L. 63: p. 735, § 6. C.R.S. 1963: § 100-5-10. L. 2001: Entire section amended, p. 1122, § 30, effective June 5.

8-20-411. Location and charging of containers. (1) Permanently installed American petroleum institute-American society of mechanical engineers or United States department of transportation containers or surface transportation board containers provided with excess flow or back-flow check valves shall be located and filled in accordance with the applicable requirements of basic rules of the national fire code described in section 8-20-405. Private streets, roads, or rights-of-way shall not be classed as public streets or highways for the purpose of sections 8-20-405 to 8-20-411.

(2) DOT containers not provided with excess flow or back-flow check valves shall not be filled within the limits or boundaries of an area in which two or more mobile vehicles are situated. Such containers shall be filled in accordance with the applicable provisions of basic rules and of the national fire code, at a properly equipped container filling plant. Such plant shall be located at least fifty feet from the nearest trailer, important building, or line of property that may be built upon, and at least twenty-five feet from any public road, street, or highway. Such filling plant shall be enclosed by man-proof fencing or otherwise protected from tampering or physical damage. The area shall be kept locked when unattended.

(3) Container charging operations shall be performed only by qualified personnel.

Source: L. 63: p. 735, § 7. C.R.S. 1963: § 100-5-11. L. 2001: (1) and (2) amended, p. 1266, § 4, effective June 5. L. 2003: (1) amended, p. 1827, § 18, effective May 21. L. 2005: (2) amended, p. 1348, § 20, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-412. Violations of sections 8-20-405 to 8-20-414. (Repealed)

Source: L. 63: p. 735, § 8. C.R.S. 1963: § 100-5-12. L. 74: Entire section amended, p. 417, § 59, effective April 11. L. 2003: Entire section repealed, p. 1827, § 19, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-413. Specifications of liquefied petroleum gas as defined in GPA 2140. (1) Liquefied petroleum gas shall comply with the specifications of GPA 2140, "liquefied petroleum gas specification", as revised as of January 1, 2003, including revisions that refer to ASTM international test of specifications.

(2) (Deleted by amendment, L. 2003, p. 1827, § 20, effective May 21, 2003.)

(3) Any changes to any standards promulgated by the GPA after January 1, 2003, shall be reviewed by the director of the division of oil and public safety. After such review, the director may adopt any such changes by rule.

Source: L. 73: p. 1069, § 9. C.R.S. 1963: § 100-5-13. L. 91: Entire section amended, p. 1345, § 1, effective April 19. L. 2003: Entire section amended, p. 1827, § 20, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-414. Restrictions on use of butane and butane-propane mixtures. Liquefied petroleum gas containing more than five percent liquid volume butane or butylenes shall be designated as butane-propane mixtures and shall be sold for use only in those applications approved by the director of the division of oil and public safety and for which special use permits have been granted.

Source: L. 73: p. 1069, § 9. C.R.S. 1963: § 100-5-14. L. 2001: Entire section amended, p. 1122, § 31, effective June 5.

8-20-415. Liability limited. (1) No legal action shall be commenced or maintained against any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas if the alleged injury, damage, or loss was caused by:

(a) The alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance if the alteration, modification, or repair was done without the knowledge and consent of the liquefied petroleum gas seller, supplier, handler, or transporter; or

(b) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance in a manner or for a purpose other than that for which the equipment or appliance was intended and that could not reasonably have been expected.

(2) A person who follows the applicable procedures established by the standards of the national fire code pursuant to section 8-20-405 as adopted by the director of the division of oil and public safety and rules promulgated pursuant to section 8-20-402 shall not be deemed to be grossly negligent or willful and wanton.

Source: L. 2004: Entire section added, p. 616, § 1, effective August 4.

PART 5

UNDERGROUND STORAGE TANKS

8-20-501 to 8-20-513. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 5 was added in 1989. For amendments to this part 5 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning underground storage tanks, see part 2 of article 20.5 of this title.

PART 6

UNDERGROUND STORAGE TANK INSTALLERS

8-20-601 to 8-20-608. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 6 was added in 1989. For amendments to this part 6 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 7

ABOVEGROUND STORAGE TANKS

8-20-701 to 8-20-705. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 7 was added in 1990. For amendments to this part 7 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning aboveground storage tanks, see part 3 of article 20.5 of this title.

PART 8

COLORADO ANTIFREEZE LAW

Editor's note: This part 8 was added with relocations in 1994 containing relocated provisions of some sections formerly located in part 1 of article 10 of title 42. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

8-20-801. Short title. This part 8 shall be known and may be cited as the "Colorado Antifreeze Law".

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-101 as it existed prior to 1994.

8-20-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Antifreeze" means all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

(2) "Person" means individuals, partnerships, corporations, companies, and associations.

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-102 as it existed prior to 1994.

8-20-803. Annual inspection of sample - permit authorizing sale - reinspection. (1) Before any antifreeze is sold, exposed for sale, or held with intent to sell within this state, a sample thereof must be inspected annually by the director of the division of oil and public safety at an inspection laboratory designated by the director of the division of oil and public safety. Upon application of the manufacturer, packer, seller, or distributor, and the payment of a fee not to exceed twenty-five dollars for each sample of antifreeze submitted, the director of the division of oil and public safety shall inspect the antifreeze submitted as set forth in this subsection (1), but in no case shall an approved antifreeze be inspected more than one time for each antifreeze marketing year beginning May 1 and ending April 30, except as set forth in this section.

(2) If the antifreeze is not adulterated or misbranded, meets the standards of the director of the division of oil and public safety, and is not in violation of this part 8, the director of the division of oil and public safety shall give the applicant a written permit authorizing the sale by any person of such antifreeze in this state for the marketing year for which the inspection fee is paid. If the director of the division of oil and public safety at a later date finds that the product to be sold, exposed for sale, or held with intent to sell has been materially altered or adulterated, or that a change has been made in the name, brand, or trademark under which the antifreeze is sold, or that it violates the provisions of this part 8, the director of the division of oil and public safety shall notify the applicant and the permit shall be cancelled.

(3) In the event a manufacturer, packer, seller, or distributor changes the composition, content, or formula of any antifreeze which the manufacturer, packer, seller, or distributor is

marketing under a permit from the director of the division of oil and public safety, it is the duty of said manufacturer, packer, seller, or distributor to immediately notify the director of the division of oil and public safety and submit a sample for test in compliance with this section.

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1122, § 32, effective June 5.

Editor's note: This section is similar to former § 42-10-103 as it existed prior to 1994.

8-20-804. When deemed adulterated. (1) An antifreeze shall be deemed to be adulterated:

(a) If it consists in whole or in part of any substances which will render it injurious to the cooling system of an internal combustion engine or will make the operation of any internal combustion engine dangerous to the user; or

(b) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-104 as it existed prior to 1994.

8-20-805. When deemed misbranded. (1) Antifreeze shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular; or

(b) If in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller, or distributor, and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-105 as it existed prior to 1994.

8-20-806. Director to enforce. The director of the division of oil and public safety shall enforce the provisions of this part 8 by inspections, chemical analysis, or any other appropriate methods. All samples for inspection or analysis shall be taken from the stocks in the state or intended for sale in the state, or the director of the division of oil and public safety, through his or her agents, may call upon the manufacturer or distributor applying for an inspection of antifreeze to supply such samples thereof for analysis. The director of the division of oil and public safety, or his or her agents, shall have free access during business hours to all places of business, buildings, vehicles, cars, and vessels used in the manufacture, transportation, sale, or storage of any antifreeze, and may open any box, carton, parcel, or package containing or supposed to contain any antifreeze and may take samples for analysis.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1123, § 33, effective June 5.

Editor's note: This section is similar to former § 42-10-106 as it existed prior to 1994.

8-20-807. Rules. The director of the division of oil and public safety has authority to promulgate such rules as are necessary to promptly and effectively enforce the provisions of this part 8.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1123, § 34, effective June 5.

Editor's note: This section is similar to former § 42-10-107 as it existed prior to 1994.

8-20-808. List of brands may be furnished. The director of the division of oil and public safety may furnish, upon request, a list of the brands and trademarks of antifreeze inspected by the director during the marketing year that have been found to be in accord with this part 8.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1123, § 35, effective June 5.

Editor's note: This section is similar to former § 42-10-108 as it existed prior to 1994.

8-20-809. False advertising prohibited. No advertising literature relating to any antifreeze in this state shall contain any statement that the antifreeze advertised for sale has been approved by the director of the division of oil and public safety unless the said antifreeze has been inspected by the director of the division of oil and public safety and found to meet the standards of the division of oil and public safety and not to be in violation of this part 8, in which case such statement may be contained in any advertising literature where such brand or trademark of antifreeze is being advertised for sale.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1124, § 36, effective June 5.

Editor's note: This section is similar to former § 42-10-109 as it existed prior to 1994.

8-20-810. District attorney to bring actions. Whenever the director of the division of oil and public safety discovers any antifreeze is being sold or has been sold in violation of this part 8, it is the director's duty to bring this violation to the attention of the district attorney in the director's respective district, or the attorney general in cases where the district attorney refuses to act, to enforce the provisions of this part 8 by appropriate action in courts of competent jurisdiction.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1124, § 37, effective June 5.

Editor's note: This section is similar to former § 42-10-110 as it existed prior to 1994.

8-20-811. Disposition of fees. All fees provided for in this part 8 shall be collected by the department of revenue and remitted to the state treasurer to be credited to the general fund of the state.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-111 as it existed prior to 1994.

8-20-812. Penalty. If any person violates the provisions of this part 8, or fails to comply with any of the provisions of this part 8, such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars for each offense.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-112 as it existed prior to 1994.

PART 9

BRAKE FLUID

Editor's note: This part 9 was added with relocations in 1994 containing relocated provisions of some sections formerly located in part 2 of article 10 of title 42. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

8-20-901. Sale of approved brake fluid. It is unlawful for any person, partnership, corporation, or association to sell or offer for sale brake fluid for automotive use which has not been approved by the director of the division of oil and public safety.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1124, § 38, effective June 5.

Editor's note: This section is similar to former § 42-10-201 as it existed prior to 1994.

8-20-902. Brake fluid specifications - list of approved brands. The director of the division of oil and public safety shall establish specifications or requirements for approved-type brake fluid; but the specifications or requirements shall not be lower in standard than the specifications and requirements of the society of automotive engineers, numbered J-70 b, approved May, 1963. The director shall compile and furnish upon request a list of brands and trademarks of brake fluid inspected by the director that have been so approved.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1124, § 39, effective June 5.

Editor's note: This section is similar to former § 42-10-202 as it existed prior to 1994.

8-20-903. District attorney to bring actions. Whenever the director of the division of oil and public safety discovers that any person, partnership, corporation, or association has sold or is offering for sale any brake fluid that does not conform to the minimum specifications established, the director shall notify the seller to immediately discontinue the sale of such nonconforming brake fluid. If such seller continues to offer the same for sale, it is the duty of the director to bring such violation to the attention of the district attorney in such respective district to enforce the provisions of this part 9 by appropriate action or injunctive relief in courts of competent jurisdiction.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.
L. 2001: Entire section amended, p. 1124, § 40, effective June 5.

Editor's note: This section is similar to former § 42-10-203 as it existed prior to 1994.

8-20-904. Penalty. If any person, partnership, corporation, or association violates the provisions of this part 9, or fails to comply with any of the provisions of this part 9, such person, partnership, corporation, or association is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars for each offense.

Source: L. 94: Entire part added with relocations, p. 2539, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-204 as it existed prior to 1994.

ARTICLE 20.5

Petroleum Storage Tanks

Editor's note: This article was added with relocations in 1995 containing relocated provisions of some sections formerly located in parts 5, 6, and 7 of article 20 of this title and article 18 of title 25. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

PART 1

ADMINISTRATION

8-20.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Abandoned tank" means an underground or aboveground petroleum storage tank that the current tank owner or operator or current property owner did not install, has never operated or leased to another for operation, and had no reason to know was present on the site at the time of site acquisition.

(2) (a) "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 provide

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" does not include:

(I) A wastewater treatment tank system that is part of a wastewater treatment facility;

(II) Equipment or machinery that contains regulated substances for operational purposes;

(III) (A) Farm and residential tanks or tanks used for horticultural or floricultural operations.

(B) Nothing in sub-subparagraph (A) of this subparagraph (III), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(IV) Aboveground storage tanks located at natural gas pipeline facilities that are regulated under state or federal natural gas pipeline acts;

(V) Aboveground storage tanks associated with natural gas liquids separation, gathering, and production;

(VI) Aboveground storage tanks associated with crude oil production, storage, and gathering;

(VII) Aboveground storage tanks at transportation-related facilities regulated by the federal department of transportation;

(VIII) Aboveground storage tanks used to store heating oil for consumptive use on the premises where stored;

(IX) Aboveground storage tanks used to store flammable and combustible liquids at mining facilities and construction and earthmoving projects, including gravel pits, quarries, and borrow pits where, in the opinion of the director of the division of oil and public safety, tight control by the owner or contractor and isolation from other structures make it unnecessary to meet the requirements of this article;

(X) Any other aboveground tank excluded by regulation.

(2.5) "Alternative fuel" means a motor fuel that combines petroleum-based fuel products with renewable fuels.

(3) "Closure" means the abandonment of an underground storage tank in place or the removal and disposal of an underground storage tank.

(4) "Department" means the department of labor and employment, created in section 24-1-121, C.R.S.

(5) "Designee" means a qualified municipality, city, home rule city, city and county, county, fire protection district, or any other political subdivision of the state, including a county or district public health agency created pursuant to section 25-1-506, C.R.S., which county or district public health agency is acting under agreement or contract with the department for the implementation of the provisions of this article.

(5.5) "Fee lands" means land owned in fee simple within the exterior boundaries of the Southern Ute Indian reservations in Colorado. "Fee land" does not mean land owned by an Indian tribe or the federal government or held in trust by the federal government for the use or benefit of an Indian tribe or its members.

(6) "Fuel products" means all gasoline, aviation gasoline, diesel, aviation turbine fuel, jet fuel, fuel oil, biodiesel, biodiesel blends, kerosene, all alcohol blended fuels, gas or gaseous compounds, and other volatile, flammable, or combustible liquids, produced, compounded, and

offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning or for any other similar usage.

(7) "Municipality" means any city or any town operating under general or special laws of the state of Colorado or any home rule city or town, the charter or ordinances of which contain no provisions inconsistent with the provisions of part 3 of this article.

(8) "Operator" means any person in control of, or having responsibility for, the operation of an underground or aboveground storage tank.

(9) "Orphan tank" means an underground storage tank which is:

(a) Owned or operated by an unidentified owner as defined in this article; or

(b) No longer in use and was not closed in accordance with the procedures required by this article and the property has changed ownership prior to December 22, 1988, and such property is no longer used to dispense fuels.

(10) (a) "Owner" means:

(I) In the case of an underground storage tank in use on or after November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;

(II) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on or after November 8, 1984, any person who owned such tank immediately before the discontinuation of its use; or

(III) Any person who owns an aboveground storage tank.

(b) For purposes of corrective action for petroleum releases, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located.

(11) "Person" means any individual, trust, firm, joint-stock company, corporation (including a government corporation), partnership, association, commission, municipality, state, county, city and county, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, or the government of the United States.

(12) "Property owner" means a person having a legal or equitable interest in real or personal property that is subject to this article.

(13) "Regulated substance" means:

(a) Any substance defined in section 101 (14) of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, but not including any substance regulated as a hazardous waste under subtitle (C) of Title II of the federal "Resource Conservation and Recovery Act of 1976", as amended;

(b) Petroleum, including crude oil, and crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);

(c) Alternative fuel; or

(d) Renewable fuel.

(14) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from an underground storage tank into groundwater, surface water, or subsurface soils.

(14.5) "Renewable fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(15) "Reportable quantities" means quantities of a released regulated substance which equal or exceed the reportable quantity under the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, and petroleum products in quantities of twenty-five gallons or more.

(16) "Tank" means a stationary device designed to contain an accumulation of a regulated substance, constructed primarily of nonearthen materials which provide structural support including, but not limited to, wood, concrete, steel, or plastic.

(17) (a) "Underground storage tank" means any one or combination of tanks, including underground pipes connected thereto, except those identified in paragraph (b) of this subsection (17), that is used to contain an accumulation of regulated substances and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground.

(b) "Underground storage tank" does not include:

(I) Any farm or residential tank with a capacity of one thousand one hundred gallons or less used for storing motor fuel for noncommercial purposes;

(II) Any tank used for storing heating oil for consumptive use on the premises where stored;

(III) Any septic tank;

(IV) Any pipeline facility, including its gathering lines, regulated under the federal "Natural Gas Pipeline Safety Act of 1968", as amended, or the federal "Hazardous Liquid Pipeline Safety Act of 1979", as amended, or regulated under Colorado law if such facility is an intrastate facility;

(V) Any surface impoundment, pit, pond, lagoon, or landfill;

(VI) Any storm-water or wastewater collection system;

(VII) Any flow-through process tank;

(VIII) Any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(IX) Any storage tank situated in an underground area, such as a basement, cellar, mine-working, drift, shaft, or tunnel area, if the tank is situated upon or above the surface of the floor;

(X) Any pipes connected to any tank described in subparagraphs (I) to (IX) of this paragraph (b); or

(XI) Any other underground tank excluded by regulation.

(18) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, modification of the system piping, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product.

Source: L. 95: Entire article added, p. 389, § 1, effective July 1. **L. 96:** (1) and (2)(b) amended and (17)(b)(XI) added, pp. 710, 711, §§ 2, 3, effective May 15. **L. 2001:** (2)(b)(IX) amended, p. 1125, § 41, effective June 5. **L. 2005:** (5.5) added, p. 418, § 4, effective July 1; (2)(b)(III) amended, p. 347, § 2, effective August 8; (6) amended, p. 1348, § 21, effective August 8. **L. 2007:** (2.5) and (14.5) added and (13) amended, p. 1760, §§ 3, 4, effective June 1. **L. 2008:** (5) amended, p. 2051, § 4, effective July 1. **L. 2009:** (13)(a) amended, (SB 09-292), ch. 369, p. 1939, § 6, effective August 5.

Editor's note: This section is similar to §§ 8-20-501, 8-20-601, 8-20-702, and 25-18-102 as they existed prior to 1995.

Cross references: For the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq. For the federal "Resource Conservation and Recovery Act of 1976", see Pub.L. 94-580, codified at 42 U.S.C. § 6901 et seq.

8-20.5-102. Registration - fees. (1) Each owner or operator of an underground or aboveground storage tank shall register such tank with the director of the division of oil and public safety within thirty days after the first day on which the tank is actually used to contain a regulated substance or, in the case of an aboveground storage tank, on or before July 1, 1993, or, thereafter, within thirty days after the first day on which the tank is actually used to contain a regulated substance. Each owner or operator shall renew such registration annually on or before the calendar day and month of initial registration for each year in which the storage tank is in use. An underground storage tank is considered to be in use at all times, except when the tank has been either removed from the ground or permanently closed in accordance with the rules promulgated pursuant to section 8-20.5-202 (1.5) that relate to the closure of such tanks.

(2) To register or renew registration of an underground or aboveground storage tank, the owner or operator of the tank shall submit to the director of the division of oil and public safety a completed registration or renewal form and payment of the fee established in subsection (3) of this section. The director of the division of oil and public safety shall provide registration and renewal forms.

(3) The registration and renewal fee shall be thirty-five dollars for each tank for each year. The fees collected pursuant to this subsection (3) shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety shall collect delinquent registration and renewal fees and assess a penalty of up to twice the amount of such fees and reasonable costs associated with the collection of such fees.

Source: **L. 95:** Entire article added, p. 392, § 1, effective July 1. **L. 2001:** (1), (2), and (4) amended, p. 1125, § 42, effective June 5. **L. 2007:** (4) amended, p. 386, § 2, effective April 3; (1) amended, p. 981, § 3, effective July 1.

Editor's note: This section is similar to former § 8-20-506 as it existed prior to 1995.

8-20.5-103. Petroleum storage tank fund - petroleum cleanup and redevelopment fund - creation - rules - repeal. (1) There is hereby created in the state treasury the petroleum storage tank fund, which is an enterprise fund. The fund consists of the following:

(a) Registration and annual renewal fees collected from owners or operators of aboveground and underground storage tanks pursuant to section 8-20.5-102 (3);

(b) Repealed.

(c) Fees collected pursuant to section 8-20.5-102 (4);

(d) Surcharge funds collected pursuant to section 8-20-206.5;

(e) Moneys reimbursed to the department in payment for costs incurred in the investigation of a release and performance of corrective action pursuant to section 8-20.5-209;

(f) Any moneys appropriated to the fund by the general assembly;

(g) Any moneys granted to the department from a federal agency for administration of the underground storage tank program; and

(h) Moneys from bonds issued pursuant to subsection (8) of this section.

(2) (a) The moneys in the petroleum storage tank fund and all interest earned on moneys in the fund shall not be credited or transferred to the general fund at the end of the fiscal year.

(b) Repealed.

(3) The moneys in the petroleum storage tank fund are continuously appropriated to the division of oil and public safety; except that moneys for the purposes specified in paragraphs (b), (f), and (g) of this subsection (3) are subject to annual appropriation by the general assembly. The fund shall be used for:

(a) Petroleum corrective action purposes and third-party liability where the costs exceed the minimum financial responsibility requirements of the owner or operator provided for in section 8-20.5-206; except that moneys from the fund may not be used for initial abatement and corrective action regarding fuels that are especially prepared and sold for use in aircraft or railroad equipment or locomotives;

(b) Administrative costs, limited each year to the amount of the registration fee stated in section 8-20.5-102, including costs for contract services and costs related to the delegation of duties to units of local government which are incurred by the department of labor and employment in carrying out administrative responsibilities pursuant to this article;

(c) Any costs related to the abatement of fire and safety hazards as ordered by the director of the division of oil and public safety pursuant to section 8-20.5-208 (3);

(d) Investigation of releases or suspected releases and performance of corrective action for petroleum releases by the department or its designated agent pursuant to section 8-20.5-209;

(e) Any federal program pertaining to petroleum underground storage tanks, which program requires state-matching dollars;

(f) (I) Costs related to petroleum storage tank facility inspections and meter calibrations.

(II) This paragraph (f) is repealed, effective September 1, 2023.

(g) Administrative costs necessary for the implementation of this article and section 8-20-206.5.

(3.5) (a) Moneys in the petroleum storage tank fund may be used as incentives to underground or aboveground storage tank owners and operators for significant operational compliance or to upgrade existing systems. The director of the division of oil and public safety shall promulgate rules to implement this subsection (3.5).

(b) For purposes of this subsection (3.5), "significant operational compliance" means that an owner or operator of an underground or aboveground storage tank is in full compliance with all of the requirements of this article and, through one or more best management practices that are not otherwise required, has prevented or reduced the threat of a release to the environment.

(4) Appropriations of moneys out of the fund for the purpose of initial abatement response or for corrective action purposes in the cleanup of releases shall be used only for those stated purposes and shall not be used for any administrative costs incurred by the department.

Any amounts used for initial abatement response or for corrective action purposes shall be reported annually to the general assembly and the joint budget committee.

(5) Subject to section 8-20.5-104, the fund shall be available only to those underground and aboveground storage tanks owners or operators who are in compliance with the provisions of section 8-20.5-209 and regulations promulgated pursuant to sections 8-20.5-202 and 8-20.5-302.

(6) Moneys in the petroleum storage tank fund shall not be used:

(a) Repealed.

(b) To fund any programs that are not specifically stated within this section.

(7) (a) Subject to sections 8-20.5-206 (6) and 8-20.5-303 (6), owners and operators of underground and aboveground storage tanks on fee lands shall be eligible for access to the fund if the tank owner or operator:

(I) Has registered such tanks pursuant to section 8-20.5-102 and paid the surcharges imposed by section 8-20-206.5;

(II) Can demonstrate that the owner or operator is in compliance with the rules promulgated pursuant to sections 8-20.5-202 and 8-20.5-302; and

(III) Can demonstrate that the owner or operator has complied with sections 8-20.5-209 and 8-20.5-304 and any other rules, policies, and procedures of the department concerning corrective action.

(b) Underground and aboveground storage tank owners and operators who have been denied access to the fund prior to July 1, 2005, based upon a determination that the tanks are on fee lands, are eligible to reapply for reimbursement from the fund if the application is filed prior to December 31, 2005, and is not barred by settlement or other agreement.

(c) Nothing in this subsection (7) shall be construed to modify the department's authority to regulate operation of or corrective action for underground and aboveground storage tanks on fee lands.

(7.5) In addition to the sources identified in subsection (1) of this section, the petroleum storage tank fund includes the amount transferred from the petroleum cleanup and redevelopment fund in accordance with subsection (9)(e)(II) of this section. On October 15, 2020, and the fifteenth day of each of the next seven months, the state treasurer shall transfer five hundred thousand dollars from the petroleum storage tank fund to the general fund. These transfers are repayment for the transfer from the petroleum cleanup and redevelopment fund, as the original amount transferred would have otherwise transferred to the general fund.

(8) The executive director of the department is authorized to issue bonds to reimburse assessment and corrective action costs to remediate petroleum contamination. The petroleum storage tank committee may temporarily raise such bonding limits in the event of extraordinary circumstances or environmental conditions.

(9) (a) There is hereby created in the state treasury the petroleum cleanup and redevelopment fund, which is referred to in this subsection (9) as the redevelopment fund. The redevelopment fund's sources of revenue are:

(I) Civil penalties collected pursuant to section 8-20.5-107;

(II) Any public or private gifts, grants, or donations to the redevelopment fund received by the department;

(III) Any legislative appropriations made to the redevelopment fund; and

(IV) Earned interest, which the state treasurer shall deposit in the redevelopment fund.

(b) (I) The department may use revenues in the redevelopment fund for administration, investigation, abatement action, and preparing and implementing corrective action plans for petroleum releases not covered by the petroleum storage tank fund if, in the opinion of the director of the division of oil and public safety, such actions would enhance environmental protection and beneficial use of the property affected by the releases. The revenues in the redevelopment fund:

(A) Remain in the fund and shall neither be credited nor transferred to the general fund at the end of any fiscal year;

(B) Are exempt from section 24-75-402, C.R.S.; and

(C) Are continuously appropriated to the division of oil and public safety for the purposes stated in this section and are not subject to annual appropriation by the general assembly; except that the uses of the fund for the department's costs in administering this subsection (9) are subject to annual appropriation by the general assembly.

(II) Subject to the availability of money in the redevelopment fund, the maximum amount payable from the redevelopment fund for any single corrective action plan must not exceed fifty percent of the eligible cleanup costs or five hundred thousand dollars, whichever is less.

(c) Repealed.

(d) The division of oil and public safety shall promulgate rules to implement this subsection (9).

(e) (I) Notwithstanding any other provision of this section to the contrary, on June 30, 2020, the state treasurer shall transfer two million dollars from the redevelopment fund to the general fund.

(II) Notwithstanding any other provision of this section, on June 29, 2020, the state treasurer shall transfer four million dollars from the redevelopment fund to the petroleum storage tank fund created in subsection (1) of this section.

Source: **L. 95:** Entire article added, p. 393, § 1, effective July 1. **L. 2000:** (3)(f) and (6) added, p. 1383, §§ 1, 2, effective May 30. **L. 2001:** (3)(c) amended, p. 1126, § 43, effective June 5. **L. 2002:** (2) amended, p. 150, § 2, effective March 27; (3)(f) amended, p. 950, § 1, effective August 7. **L. 2003:** (3)(g) added and (6)(a) repealed, p. 2665, §§ 3, 2, effective June 5. **L. 2005:** IP(1) amended and (1)(h) and (8) added, p. 1326, §§ 1, 2, effective July 1; (7) added, p. 416, § 1, effective July 1. **L. 2007:** IP(3), (3)(a), and (3)(f)(II) amended, p. 387, § 3, effective April 3; (3.5) added, p. 980, § 1, effective July 1. **L. 2010:** (3)(f)(II) amended, (HB 10-1185), ch. 82, p. 276, § 2, effective August 11. **L. 2013:** IP(1) amended, (1)(b) repealed, and (9) added, (HB 13-1252), ch. 247, p. 1196, § 1, effective May 18. **L. 2014:** (9)(b)(I) amended, (HB 14-1334), ch. 370, p. 1762, § 1, effective June 6. **L. 2015:** (3.5) added, (HB 15-1299), ch. 162, p. 494, § 1, effective August 5. **L. 2016:** (2)(b) repealed, (HB 16-1408), ch. 153, p. 472, § 26, effective July 1; IP(3) and (3)(f)(II) amended, (HB 16-1044), ch. 1, p. 1, § 2, effective August 10. **L. 2020:** (7.5) and (9)(e) added, (HB 20-1406), ch. 178, p. 810, § 1, effective June 29.

Editor's note: (1) This section is similar to former § 25-18-109 as it existed prior to 1995.

(2) Subsection (9)(c)(II) provided for the repeal of subsection (9)(c), effective July 1, 2014. (See L. 2013, p. 1196.)

8-20.5-104. Rules - petroleum storage tank committee. (1) The governor shall appoint a petroleum storage tank committee, which shall consist 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 director of the division of oil and public safety or the director's designee, the executive director of the department or the designee of the executive director, and an owner or operator shall be permanent members of the committee. The remaining four members of the 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 committee.

(2) Members of the committee shall serve three-year terms. All vacancies shall be filled by the governor to serve the remainder of the unexpired term.

(3) Members of the committee shall receive no additional salary or per diem reimbursement for their services as members of the committee, but shall be allowed travel and parking costs and maintenance expenses while on official committee business conducted more than one hundred miles from their respective residences.

(4) The committee shall be required to meet no more than twice in any month. The committee shall recommend all regulatory actions proposed by the committee to the director of the division of oil and public safety for adoption or ratification. The committee shall conduct the following activities in accordance with section 24-4-105, C.R.S., as its routine business:

(a) Establish procedures, practices, and policies governing the committee's activities;

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

(c) Establish procedures, practices, and policies governing the form and procedures for applications to the petroleum storage tank fund for reimbursement compensation;

(d) (I) Establish procedures, practices, and policies governing any and all aspects of processing, adjusting, defending, or paying claims against the fund. To encourage tank owners and operators to report and remediate contamination and achieve compliance with rules promulgated by the director of the division of oil and public safety, 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 director of the division of oil and public safety are both substantially and procedurally no more stringent than United States environmental protection agency regulations under 42 U.S.C. sec. 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 corrective action plans submitted pursuant to section 8-20.5-209, for which no agreement has been reached through informal conferences between the department and the owner or operator, and make a recommendation to the department, upon request from the department or the owner or the operator, as to the corrective action that is acceptable;

(g) Issue public notices and hold public hearings to obtain comment on the activities described in this subsection (4);

(h) (I) (A) Pay interest to all persons who file a properly and fully completed claim for reimbursement and are not reimbursed in a timely manner. For purposes of this paragraph (h), interest shall accrue on the amount approved for payment by the committee at the rate determined pursuant to section 39-21-110.5, C.R.S., for each day a properly and fully completed application is not processed in a timely manner.

(B) Notwithstanding this paragraph (h), if a claimant cannot be reimbursed in a timely manner because insufficient moneys in the petroleum storage tank fund prevent the issuance of a reimbursement check within thirty days after approval of the disbursement, interest shall not begin to accrue on the claim until thirty-one days after sufficient moneys are available in said fund.

(II) For purposes of this paragraph (h), "timely manner" means:

(A) That an application filed with the petroleum storage tank fund on or after January 1, 1996, shall be submitted for review by the committee within ninety working days of receipt;

(B) That an application filed with the petroleum storage tank fund on or after July 1, 1995, but before January 1, 1996, shall be submitted for review by the committee within one hundred twenty working days of receipt;

(C) That an application filed with the petroleum storage tank fund before July 1, 1995, shall be submitted for review by the committee no later than December 31, 1995;

(D) That reimbursement checks shall be issued within thirty days after disbursement is approved by the committee.

(5) The committee may, in order to perform any or all of its responsibilities and functions under subsection (4) of this section, contract for the use of outside experts, consultants, or services.

(6) 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 8-20.5-206 (2); except that in no instance shall cumulative reductions for noncompliance apply to claims submitted in accordance with section 8-20.5-206 (3) or 8-20.5-303 (3).

(7) The reductions described in subsections (4)(d) and (6) 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 8-20.5-209 or any civil or criminal penalties imposed as part of an enforcement proceeding.

(8) 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 8-20.5-206 (3) or 8-20.5-303 (3), an amount equal to twenty percent of the total budget of the department from the petroleum storage tank fund, which amount shall be used for the purpose of conducting remediation activities in accordance with sections 8-20.5-206 (3), 8-20.5-209, and 8-20.5-303 (3) 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.

(9) The petroleum storage tank committee shall exercise its powers and perform its duties and functions specified by this section under the department of labor and employment and the executive director thereof as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in section 24-1-105, C.R.S.

Source: **L. 95:** Entire article added, p. 394, § 1, effective July 1. **L. 96:** (4)(h)(I) amended, p. 711, § 4, effective May 15. **L. 2001:** (1), IP(4), and IP(4)(d)(I) amended, p. 1126, § 44, effective June 5. **L. 2007:** (8) amended, p. 387, § 4, effective April 3.

Editor's note: This section is similar to former § 25-18-105 as it existed prior to 1995.

8-20.5-105. Confidentiality. (1) Any records, reports, and information obtained from any person under the provisions of this article shall be available to the public; except that any records granted confidentiality by the director of the division of oil and public safety or a designee, or granted confidentiality under existing Colorado statutes or rules, shall remain confidential.

(2) Any person making such confidential records available to any person or organization without authorization from the affected operator or owner commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Confidential records may be disclosed to officers, employees, or authorized representatives of the state or of the United States who have been charged with administering this article or subtitle I of the federal "Resource Conservation and Recovery Act of 1976", as amended. Such disclosure shall not constitute a waiver of confidentiality.

Source: **L. 95:** Entire article added, p. 397, § 1, effective July 1. **L. 2001:** (1) amended, p. 1126, § 45, effective June 5. **L. 2002:** (2) amended, p. 1467, § 19, effective October 1.

Editor's note: This section is similar to former § 25-18-106 as it existed prior to 1995.

Cross references: (1) For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the "Resource Conservation and Recovery Act of 1976", as amended, see Pub.L. 94-580, codified at 42 U.S.C. § 6901 et seq.

8-20.5-106. Injunctions. In addition to the remedies provided in this article, the director of the division of oil and public safety is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction restraining any person from violating any provision of this article, regardless of whether there is an adequate remedy at law.

Source: L. 95: Entire article added, p. 398, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1127, § 46, effective June 5.

Editor's note: This section is similar to former § 8-20-513 as it existed prior to 1995.

8-20.5-107. Enforcement orders - civil penalties. (1) A notice of violation may be issued by the director of the division of oil and public safety to any person who is believed to have violated any provision of this article, any rule promulgated pursuant thereto, or any warrant issued pursuant to section 8-20.5-208. The notice of violation shall be served personally or by certified mail, return receipt requested, upon the alleged violator.

(2) The notice of violation shall set forth the facts which allegedly constitute the violation and the provisions which have allegedly been violated of either this article or any regulation promulgated pursuant thereto. The notice of violation may require the alleged violator to take any actions necessary to correct the alleged violation.

(3) Within ten working days after service of the notice of violation, the alleged violator may file a written request with the director of the division of oil and public safety for an informal conference regarding the notice of violation. If the alleged violator fails to timely request an informal conference, all provisions of the notice of violation shall become final and not subject to further administrative review. The director of the division of oil and public safety may then seek judicial enforcement of the notice of violation.

(4) Upon receipt of the written request, the director of the division of oil and public safety shall provide the alleged violator with a written notice of the date, time, and place of the informal conference. The director of the division of oil and public safety or a designee shall preside at the informal conference, during which the alleged violator and the entity that issued the notice of violation may present information and arguments regarding the allegations and requirements of the notice of violation.

(5) Within twenty working days after the informal conference, the director of the division of oil and public safety shall uphold, modify, or strike the allegations of the notice of violation and may issue an enforcement order. The decision shall be served upon the alleged violator personally or by certified mail, return receipt requested. Such notice of violation or enforcement order may be appealed within twenty working days to the executive director of the department. The executive director may either conduct the hearing personally or appoint an administrative law judge from the office of administrative courts in the department of personnel to conduct the hearing. The executive director may review such decision in accordance with the provisions of section 24-4-105, C.R.S., and final agency action shall be determined in accordance with the provisions of said section. Such final agency action shall be subject to judicial review in accordance with section 24-4-106, C.R.S.

(6) The enforcement order may require the alleged violator to pay a civil penalty not to exceed five thousand dollars per tank for each day of violation.

(7) The director of the division of oil and public safety may file suit in the district court for the judicial district in which violations have occurred to obtain judicial enforcement of the provisions of any enforcement order. The petroleum storage tank fund may be subrogated to the rights of an owner or operator with respect to a claimed amount at the time a claim is filed with the fund.

Source: L. 95: Entire article added, p. 398, § 1, effective July 1; (5) amended, p. 634, § 12, effective July 1. L. 2001: (1), (3), (4), (5), and (7) amended, p. 1127, § 47, effective June 5. L. 2005: (5) amended, p. 853, § 8, effective June 1.

Editor's note: This section is similar to former § 8-20-512 as it existed prior to 1995.

8-20.5-108. Petroleum storage tank administration - transfer to department of labor and employment - legislative declaration. (1) (a) The general assembly hereby finds, determines, and declares that there is a significant backlog in the processing of claims being made against the petroleum storage tank fund. Claims for reimbursement for cleaning up petroleum contamination are not acted upon in a timely manner, which places the storage tank owner in financial jeopardy. Lenders are reluctant to write loans on contaminated property, causing the next phase of remediation to be delayed and allowing contamination to spread, threatening the environment and unnecessarily escalating future cleanup expenses.

(b) The general assembly further finds, determines, and declares that it is in the best interest of this state to transfer petroleum storage tank administrative functions performed by the department of public health and environment to the department of labor and employment, and thereby consolidate the administration and regulation of petroleum storage tanks in this state under one department, which will minimize the cost of such functions and centralize management.

(2) (a) The administrative functions of the petroleum storage tank fund, including claims processing, corrective action plan review and approval, and any other responsibilities for petroleum storage tank programs performed by the department of public health and environment prior to July 1, 1995, are transferred to the department of labor and employment. All employees of the department of public health and environment, excluding any contract labor, who perform the functions transferred pursuant to this subsection (2) and whose employment in the department of labor and employment is deemed necessary by the executive director of the said department are transferred to the department of labor and employment and shall become employees thereof.

(b) Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(c) On July 1, 1995, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of public health and environment pertaining to the duties and functions transferred to the department of labor and employment pursuant to this subsection (2) are transferred to the department of labor and employment and shall become the property of such department.

(3) Repealed.

Source: L. 95: Entire article added, p. 399, § 1, effective July 1.

Editor's note: Subsection (3)(c) provided for the repeal of subsection (3), effective December 31, 1996. (See L. 95, p. 399.)

PART 2

UNDERGROUND STORAGE TANKS

Law reviews: For article, "Colorado New Underground Storage Tank Law", see 19 Colo. Law. 233 (1990); for article, "Availability of the Colorado UST Fund to Property Owners and Mortgagees", see 23 Colo. Law. 873 (1994).

8-20.5-201. Legislative declaration. The general assembly hereby finds and declares that the leakage of regulated substances from underground storage tanks constitutes a potential threat to the waters and the environment of the state of Colorado and presents a potential menace to the public health, safety, and welfare of the people of the state of Colorado and that, to that end, it is the purpose of this part 2 to establish a program for the protection of the environment and of the public health and safety by preventing and mitigating the contamination of the subsurface soil, groundwater, and surface water which may result from leaking underground storage tanks.

Source: L. 95: Entire article added, p. 400, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-501 as it existed prior to 1995.

8-20.5-202. Duties of director of division of oil and public safety - rules. (1) The director of the division of oil and public safety shall promulgate and enforce rules that are no more stringent than the requirements contained in 42 U.S.C. sec. 6991 et seq., and the regulations promulgated thereunder, except as allowed by federal law, including the federal "Energy Policy Act of 2005", Pub.L. 109-58, as amended, for:

- (a) Notification requirements for owners and operators of underground storage tanks;
- (b) Design, performance, construction, and installation standards for new underground storage tanks;
- (c) Design, performance, construction, and installation standards for the upgrading of existing underground storage tanks;
- (d) General operating requirements;
- (e) Release detection;
- (f) Release reporting, investigation, and confirmation; and
- (g) (Deleted by amendment, L. 2007, p. 980, § 2, effective July 1, 2007.)
- (h) Financial responsibility for underground storage tank systems containing regulated substances.

(1.5) The director of the division of oil and public safety shall promulgate and enforce rules for out-of-service underground storage tank systems and closure of such tanks.

(1.7) Within one hundred twenty days after January 1, 2008, the director of the division of oil and public safety shall promulgate, and the division shall enforce, rules concerning the placement of underground storage tanks that contain renewable fuels. Such rules shall be promulgated with the purpose of developing a uniform statewide standard of issuing permits for underground storage tanks to promote the use of renewable fuels so that the process of obtaining a permit for an underground storage tank that contains renewable fuels may be more efficient and affordable.

(2) The director of the division of oil and public safety shall ensure that:

(a) All releases from underground storage tank systems are promptly assessed and that further releases are stopped;

(b) Actions are taken to identify, contain, and mitigate any immediate fire and safety hazards that are posed by a release;

(c) All releases from underground storage tank systems are investigated to determine if there are impacts of reportable quantities on subsurface soil, groundwater, and any nearby surface water;

(d) All releases above reportable quantities are reported to the director of the division of oil and public safety.

(3) The director of the division of oil and public safety shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency pursuant to the provisions of this article.

(4) The director of the division of oil and public safety shall establish criteria pursuant to subsection (1) of this section for delegation of authority to local agencies.

(5) Repealed.

Source: **L. 95:** Entire article added, p. 401, § 1, effective July 1. **L. 97:** (5) repealed, p. 1474, § 8, effective June 3. **L. 2001:** IP(1), IP(2), (2)(d), (3), and (4) amended, p. 1128, § 48, effective June 5. **L. 2007:** IP(1) amended, p. 387, § 5, effective April 3; (1.7) added, p. 1760, § 5, effective June 1; IP(1) and (1)(g) amended and (1.5) added, p. 980, § 2, effective July 1.

Editor's note: (1) This section is similar to former § 8-20-503 as it existed prior to 1995.

(2) Amendments to the introductory portion to subsection (1) by Senate Bill 07-031 and Senate Bill 07-247 were harmonized.

8-20.5-203. Performance of duties by owner or operator. Duties imposed by this part 2 on the owner or the operator may be performed by either the owner or the operator. If neither the owner nor the operator performs the duties imposed by this part 2, both shall be considered in violation of this part 2.

Source: **L. 95:** Entire article added, p. 402, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-504 as it existed prior to 1995.

8-20.5-204. Installation and upgrading of underground storage tanks. (1) Plans for any installation of a new underground storage tank and plans for the complete upgrading of an

existing underground storage tank shall be submitted by the owner or operator of the proposed or existing underground storage tank to the director of the division of oil and public safety for approval prior to such installation or upgrading.

(2) Plans for the installation of a new underground storage tank or for the complete upgrading of an existing underground storage tank shall be in compliance with the rules promulgated pursuant to section 8-20.5-202 (1). The director of the division of oil and public safety or a designee shall approve or reject proposed plans and amendments thereto within twenty working days after submittal of the plan. If no action is taken by the director of the division of oil and public safety or a designee within twenty working days after submittal, the plans shall be deemed approved.

(3) In an emergency situation the director of the division of oil and public safety shall respond to plans within twenty-four hours.

(4) The director of the division of oil and public safety or a designee shall make an on-site inspection of every new installation and every upgrading of an existing underground storage tank prior to the operational start-up of such tank to ensure that all of the standards established in this part 2 have been met. The director of the division of oil and public safety or a designee shall complete the on-site inspection within ten calendar days prior to the anticipated operational start-up date. For the purposes of this subsection (4), a designee may be an underground storage tank inspector when licensed as such by the director of the division of oil and public safety.

(5) All installations and inspections of underground storage tanks shall be performed in accordance with the rules promulgated by the director of the division of oil and public safety pursuant to section 8-20.5-202 (1).

(6) The director of the division of oil and public safety shall establish a fee to be paid by each person submitting plans pursuant to subsection (1) of this section for on-site inspection. The fees paid pursuant to this subsection (6) shall be:

- (a) Used for the administration of this section; and
- (b) No more than necessary to offset the direct costs of the inspections conducted pursuant to subsections (4) and (5) of this section, but in no event more than one hundred fifty dollars.

Source: L. 95: Entire article added, p. 402, § 1, effective July 1. **L. 2001:** (1) to (5) and IP(6) amended, p. 1128, § 49, effective June 5.

Editor's note: This section is similar to former § 8-20-505 as it existed prior to 1995.

8-20.5-205. More stringent requirements prohibited. (1) No municipality, city, home rule city, city and county, county, or other political subdivision of the state shall adopt or enforce any requirement more stringent than the provisions of this part 2. This section does not apply to requirements established pursuant to the uniform fire code or the national fire protection association codes, nor does it apply to requirements established pursuant to local zoning regulations.

(2) The limitation in subsection (1) of this section shall not apply to any municipality, city, home rule city, city and county, county, or other political subdivision of the state which has received an exemption from the committee created in section 8-20.5-104. The committee may grant a site-specific exemption when the applicant demonstrates that such an exemption would

be cost beneficial and serve the health, safety, or economic interest of its citizens based on consideration of local hydrologic, geologic, or other conditions, including location of population concentrations or commercial areas.

Source: L. 95: Entire article added, p. 403, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-508 as it existed prior to 1995.

8-20.5-206. Financial responsibility for petroleum underground storage tanks. (1)

(a) Moneys in the petroleum storage tank fund, created pursuant to section 8-20.5-103, and referred to in this section as the "fund", may be used by certain owners and operators of petroleum 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 CFR 280.94 through 280.103 to help fund the cost of complying with such requirements.

(b) (I) 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.

(II) The payment required pursuant to subparagraph (I) of this paragraph (b) shall be waived if:

(A) The owner or operator discovers the contamination while upgrading tanks to meet the December 22, 1998, deadline for corrosion protection, spill and overfill prevention, or monthly monitoring;

(B) The upgrade is completed no later than December 22, 1997; and

(C) The annual throughput of petroleum products at the site does not exceed six hundred thousand gallons during the year preceding the discovery of contamination.

(c) After payment is made from the fund for personal injury or property damage settlement expenses, 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 paragraphs (b) and (c) of this subsection (1), another approved financial assurance mechanism must be identified for such owner or operator to remain in compliance with this section and to be allowed to continue operation of an underground petroleum storage tank.

(2) The maximum amount of liability of the fund under this section shall be three million dollars aggregate during a state fiscal year for multiple occurrences involving tanks that are the responsibility of an individual owner or operator, but in no event shall the liability of the fund exceed two million dollars per occurrence. 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 underground 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 committee created in section 8-20.5-104. Any balance owed shall be paid as moneys become available in the fund. Any excess costs that are not paid by the fund or by the federal leaking underground storage tank trust 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 applicants who are deemed to bear no responsibility for the release:

(a) A current or former property owner who has never owned, operated, leased, or managed petroleum underground storage tanks at the property where the release occurred, provided such property was acquired on or before June 3, 1992, and in the case of a preexisting release, the property owner had no reason to know that a release had occurred prior to acquiring the property;

(b) When an orphan or abandoned petroleum underground storage tank is involved and the applicant is a current or former owner, operator, or property owner who has never operated the tank or tanks and had no reason to know that a release had occurred prior to acquiring the property;

(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 8-20.5-202 and 8-20.5-302, 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) (I) (A) 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 director of the division of oil and public safety; or

(B) Any mortgagee or holder of an evidence of debt as described in sub-subparagraph (A) of this subparagraph (I), who sells the property on which an underground storage tank is located in lieu of remediating such property and transfers the certificate of eligibility to the purchaser. Such purchaser may receive fund moneys pursuant to this subsection (3).

(II) The director of the division of oil and public safety 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, under the provisions of subsection (3) of this section, may request that the department perform the cleanup using funds from the petroleum storage tank fund without further proving eligibility for such use. In addition to any purpose provided for in section 8-20.5-103, moneys in the petroleum storage tank fund

may be appropriated by the general assembly to the department for the purpose of providing for the cleanup authorized in this section.

(5) Whenever appropriate, to pay costs that exceed the maximum allowed to be paid from the fund under this section, the state shall seek funding from the federal leaking underground storage tank trust fund.

(6) Underground storage tanks containing petroleum or other regulated substances that are owned or operated by, or are on property owned or leased by, an Indian tribe or the federal government, or an agency or subcontractor performing services on behalf of the federal government shall be subject to federal financial responsibility regulations. Any financial responsibility requirements for damages caused by such tanks are not the responsibility of the fund unless the tanks are owned or operated by a person, other than the federal government or such agency or subcontractor, and located on property that is leased from or otherwise occupied pursuant to a permit or other agreement with the United States or any agency thereof other than the department of defense or the department of energy.

(7) Nothing in this article shall create any liability for the state of Colorado that exceeds the amount available in the fund.

(8) Subject to subsection (6) of this section, owners and operators of underground storage tanks that are on fee lands may use the fund to demonstrate compliance with the financial responsibility requirements in federal regulations if the owners and operators have registered such tanks pursuant to section 8-20.5-102.

Source: **L. 95:** Entire article added, p. 403, § 1, effective July 1. **L. 96:** (1)(b), (2), and (7) amended, p. 711, § 5, effective May 15. **L. 2001:** (3)(e)(I)(A) and (3)(e)(II) amended, p. 1129, § 50, effective June 5. **L. 2005:** (2), IP(3), (3)(a), and (3)(b) amended, p. 1326, § 3, effective July 1; (6) amended and (8) added, p. 417, § 2, effective July 1.

Editor's note: This section is similar to former § 8-20-509 as it existed prior to 1995.

Cross references: For the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq.

8-20.5-207. Financial responsibility for regulated substances other than petroleum. Owners and operators of underground storage tanks containing regulated substances other than petroleum may demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damages by using any one or more of the mechanisms allowable under 40 CFR sections 280.95, 280.96, 280.97, 280.98, 280.99, 280.102, and 280.103. Owners and operators of underground storage tanks containing regulated substances other than petroleum shall not be eligible to participate in the petroleum storage tank fund, but shall be subject to federal financial responsibility regulations.

Source: **L. 95:** Entire article added, p. 406, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-510 as it existed prior to 1995.

8-20.5-208. Reporting of releases - investigation. (1) If a release is detected or suspected, the owner or operator shall immediately take all actions necessary to mitigate or stop the release and shall mitigate fire and safety hazards.

(2) Upon detection of any release of reportable quantities of a regulated substance from an underground storage tank, the owner or operator shall report such release to the director of the division of oil and public safety within twenty-four hours of its detection. However, the local fire authority shall be notified immediately if such release exceeds reportable quantities. If the director of the division of oil and public safety determines that the release of such reportable quantity will affect subsurface soils, groundwater, or surface water, the department may require the owner or operator to take corrective action in accordance with section 8-20.5-209.

(3) If the director of the division of oil and public safety or a designee finds that a release has occurred, and the owner or the operator cannot be identified, or is unwilling to mitigate or stop the release or mitigate fire and safety hazards, the director of the division of oil and public safety or a designee may initiate free product removal and whatever other actions are necessary to mitigate fire and safety hazards.

(4) For the purpose of enforcing this section, if a release poses an imminent and substantial threat to human health and the environment, the director of the division of oil and public safety or a designee is authorized to take such action as is necessary under the circumstances, including but not limited to:

(a) Entering any property, premises, or place where an underground storage tank is located;

(b) Monitoring or testing or requiring the owner or the operator to monitor or test any underground storage tank or any surrounding soils, groundwater, or surface water. A duplicate sample taken for testing shall be provided to any person, at such person's request, who the director of the division of oil and public safety or a designee reasonably believes may be responsible for the release. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this paragraph (b) shall be provided as soon as practicable to any person who the director of the division of oil and public safety or a designee reasonably believes may be responsible for the release. When such tests are performed, the director of the division of oil and public safety shall notify, when possible, any person reasonably believed to be an owner or operator.

(c) Entering any site or premises in which records relevant to the operation of an underground storage tank are maintained and to inspect and copy such records.

(5) If such entry or inspection is denied or not consented to, the director of the division of oil and public safety or a designee shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(6) If requested by the director of the division of oil and public safety or a designee, the owner or the operator of an underground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

Source: L. 95: Entire article added, p. 406, § 1, effective July 1. L. 96: (2) amended, p. 712, § 6, effective May 15. L. 2001: (2), (3), IP(4), (4)(b), (5), and (6) amended, p. 1129, § 51, effective June 5.

Editor's note: This section is similar to former § 8-20-507 as it existed prior to 1995.

8-20.5-209. Regulated substances releases - corrective actions. (1) If a release has occurred at a site where the owner or the operator cannot be identified, after the director of the division of oil and public safety or a designee has mitigated fire and safety hazards in accordance with section 8-20.5-208 and determined that a release exceeds reportable quantities, the director of the division of oil and public safety may initiate corrective action to mitigate any threat to subsurface soil, groundwater, or surface water and develop a plan for cleanup in accordance with subsection (3) of this section and shall recover costs pursuant to section 8-20.5-103.

(2) If the release has occurred at a site where the owner or the operator can be identified, and after fire and safety hazards have been mitigated in accordance with section 8-20.5-208 and the director of the division of oil and public safety has determined that the release exceeds reportable quantities, then the owner or the operator shall provide the director of the division of oil and public safety with a corrective action plan to clean up subsurface soil, groundwater, and surface water as a result of the release. In addition to the corrective action plan, the owner or operator shall prepare a summary of the costs associated with the preferred corrective action, taking into account economic and technological feasibility, in accordance with the rules promulgated pursuant to section 8-20.5-104 (4)(d) and shall submit the summary to the committee created in said section. The director of the division of oil and public safety shall review and approve or disapprove the plan and, if the plan is disapproved, shall provide the owner or the operator with a statement specifying the deficiencies in the plan. The owner or the operator shall submit a revised plan within twenty working days after receipt of the statement, and the owner or the operator shall be given an opportunity to take necessary and appropriate actions to clean up subsurface soils, groundwater, and surface water. If the owner or the operator is unable or unwilling to take such necessary and appropriate actions, the director of the division of oil and public safety may conduct corrective action to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(3) After the director of the division of oil and public safety mitigates the threat to subsurface soils, groundwater, and surface water as specified in subsections (1) and (2) of this section, and the owner or the operator of the tank from which petroleum has been released is identified, the owner or the operator shall pay the required costs pursuant to the financial responsibility requirements set forth in sections 8-20.5-206, 8-20.5-207, and 8-20.5-303, incurred in the investigation of the release and mitigation of threats to subsurface soils, groundwater, and surface water. The director of the division of oil and public safety may file suit in the district court for the judicial district in which the release occurred to recover such costs. The moneys obtained as a result of any suit brought pursuant to this section shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety may order the owner or the operator of an underground storage tank from which a regulated substance has been released to

implement a corrective action plan approved under subsection (2) of this section. Such order shall be served personally or by certified mail, return receipt requested, upon the owner or the operator.

(5) If the director of the division of oil and public safety disapproves or fails to approve the plan within thirty days after the plan's submission, the director shall immediately provide a statement of findings of fact outlining the reasons for such disapproval or failure to approve, including the reasons the proposed plan fails to meet the criteria outlined in this section. The statement shall be provided by formal notice or by certified mail to the owner or the operator within ten days after the director's decision.

(6) The director of the division of oil and public safety may waive the requirement for such a plan if the director determines that reasonable steps have been taken to prevent further releases and that any previously released regulated substance has been cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release at that specific location. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(7) Within ten days after notification of disapproval of the plan, the owner or the operator may file a written request with the director of the division of oil and public safety for an informal conference regarding the disapproval. Upon receipt of such a request, the director shall provide the owner or the operator with a written notice of the date, time, and place of the informal conference. The executive director of the department or a designee shall preside at the informal conference, during which the owner or the operator and the director or the director's designee may present information and arguments regarding the issues raised in the statement of findings of fact.

(8) Within twenty days after the conference, the owner or operator may resubmit a modified plan which addresses the deficiencies identified by the department in the original plan. The department shall review the modifications to the plan and, within twenty days, approve or disapprove the resubmitted plan. If, after the conference, the owner, the operator, or the department determines that the issues identified in the statement of findings of fact cannot be reasonably resolved, the owner, the operator, or the department may request that the committee, created in section 8-20.5-104, schedule and hold a hearing within thirty days to resolve the issues identified in the statement of findings of fact.

(9) At any time after the receipt of the statement of findings of fact, the owner, the operator, or the department may request, in writing, a formal hearing before the committee created in section 8-20.5-104. Upon such request, the committee shall meet and review the initial plan and statement of findings of fact.

(10) The committee shall recommend such plan if any current release has been mitigated and if any regulated substance which has been released has been or will be cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of the release at that specific location. The department shall give serious consideration to the recommendation of the committee. Such action shall be taken after consideration of the risks posed to the public and shall be determined in light of current economic and technological feasibility. If the committee finds that a current release has not been mitigated or that any regulated substance which has been released will not be cleaned up to the extent appropriate, the committee shall issue a statement of findings of fact and recommendations to the department for revisions to the plan. Such revisions, if approved by the department, shall be incorporated into

the plan by the department, and the revised plan shall then be approved as provided in subsection (2) of this section.

(11) Within thirty days following mitigation and cleanup, the department shall notify the owner or the operator, in writing, that the owner or the operator has complied with the requirements for mitigation and cleanup as outlined in this section.

(12) For the purpose of implementing the provisions of this section, the department or its designee is authorized for justifiable cause:

(a) To enter the property, premises, or place where a release or suspected release from an underground storage tank is located;

(b) To monitor or test or require the owner or the operator to monitor or test an underground storage tank or any surrounding soils, groundwater, or surface water where a suspected release from an underground storage tank has occurred. A duplicate sample taken for testing shall be provided to any owner or operator who the department reasonably believes may be responsible for the violation upon request of such person. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this paragraph (b) shall be provided as soon as practicable to any person the department or its designee reasonably believes may be responsible for the violation. When such tests are performed, the department shall notify, when possible, any person reasonably believed to be an owner or operator.

(13) If such entry or inspection is denied, the department shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(14) If requested by the department or its designee, the owner or operator of an underground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

(15) The department may consider water quality standards adopted by the water quality control commission as guidelines for cleanup but must assure that cleanup requirements are appropriate, in light of economic and technical feasibility and after consideration of the risks to public health, to protect subsurface soils, groundwater, or surface water as a result of a release at a specific location.

(16) The department shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency pursuant to the provisions of this article.

Source: L. 95: Entire article added, p. 407, § 1, effective July 1. L. 96: (4) amended, p. 712, § 7, effective May 15. L. 2001: (1) to (7) amended, p. 1130, § 52, effective June 5.

Editor's note: This section is similar to former § 25-18-104 as it existed prior to 1995.

PART 3

ABOVEGROUND STORAGE TANKS

8-20.5-301. Legislative declaration. The general assembly hereby finds and declares that the rising expense of operating and maintaining aboveground storage tanks, including but not limited to the cost of liability insurance, has resulted in the discontinuance of business by several small gasoline service station operators and imposes an increasing hardship on those service stations still in operation. The general assembly further finds that the viability of aboveground storage tanks is being recognized and that rules and regulations for aboveground storage tanks have been promulgated and endorsed by the western fire chiefs association's uniform fire code committee and the national fire protection association's automotive and service station code committee. The general assembly further finds that aboveground storage tanks for fuel products are feasible and economical and should be permitted under certain narrowly drawn circumstances.

Source: L. 95: Entire article added, p. 411, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-701 as it existed prior to 1995.

8-20.5-302. Duties of director of division of oil and public safety - rules. (1) The director of the division of oil and public safety shall make, promulgate, and enforce rules for aboveground storage tanks installed before July 1, 1993, which rules shall be no more stringent than the rules in place on the date of installation, except as mandated by federal spill prevention, control, and countermeasures regulations promulgated by the United States environmental protection agency.

(2) The director of the division of oil and public safety shall make, promulgate, and enforce rules concerning the design, construction, installation, and operation of aboveground storage tanks permitted to be used and installed on or after July 1, 1993, which rules shall be 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 United States environmental protection agency.

(3) Within one hundred twenty days after January 1, 2008, the director of the division of oil and public safety shall promulgate, and the division shall enforce, rules concerning the placement of aboveground storage tanks that contain renewable fuels. Such rules shall be promulgated with the purpose of developing a uniform statewide standard of issuing permits for aboveground storage tanks to promote the use of renewable fuels so that the process of obtaining a permit for an aboveground storage tank that contains renewable fuels may be more efficient and affordable.

Source: L. 95: Entire article added, p. 411, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1132, § 53, effective June 5. **L. 2007:** (3) added, p. 1760, § 6, effective June 1.

Editor's note: This section is similar to former § 8-20-703 as it existed prior to 1995.

8-20.5-303. Financial responsibility for aboveground storage tanks. (1) (a) Moneys in the petroleum storage tank fund, created pursuant to section 8-20.5-103 and referred to in this section as the "fund", may be used by certain owners and operators of aboveground storage

tanks. Any owner or operator of an aboveground storage tank with a capacity of at least six hundred sixty gallons and less than forty thousand gallons 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 storage tank.

(2) The maximum amount of liability of the fund under this section shall be three million dollars aggregate during a fiscal year for multiple occurrences involving tanks that are the responsibility of an individual owner or operator, but in no event shall the liability of the fund exceed two million dollars per occurrence. 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 committee created in section 8-20.5-104. 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 applicants who are deemed to bear no responsibility for the release:

(a) A current or former property owner who has never owned, operated, leased, or managed aboveground storage tanks at the property where the release occurred, provided such property was acquired on or before June 3, 1992, and in the case of a preexisting release, the property owner had no reason to know that a release had occurred prior to acquiring the property;

(b) When an orphan or abandoned aboveground storage tank is involved and the applicant is a current or former owner, operator, or property owner who has never operated the tank or tanks and had no reason to know that a release had occurred prior to acquiring the property;

(c) A current owner or operator of 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 8-20.5-202 and 8-20.5-302;

(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; or

(e) (I) 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 director of the division of oil and public safety. The director of the division of oil and public safety shall promulgate rules necessary to implement this program.

(II) Any mortgagee or holder of an evidence of debt as described in subparagraph (I) of this paragraph (e) who sells the property on which an aboveground storage tank is located in lieu of remediating such property and transfers the certificate of eligibility to the purchaser. Such purchaser may receive funds pursuant to this subsection (3).

(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 perform the cleanup using moneys from the petroleum storage tank fund without further proving eligibility for such use. In addition to any purpose provided for in section 8-20.5-103, moneys in the petroleum storage tank fund may be appropriated by the general assembly to the department for the purpose of providing for the cleanup authorized in this section.

(5) An owner or operator of an aboveground storage tank or a person deemed to bear no responsibility for the release pursuant to subsection (3) of this section shall be eligible to participate in the fund if eligibility requirements established by the petroleum storage tank committee, created pursuant to section 8-20.5-104, are met.

(6) Aboveground storage tanks containing petroleum or other regulated substances that are owned or operated by, or are on property owned or leased by, an Indian tribe or the federal government or an agency or subcontractor performing services on behalf of the federal government shall be subject to federal financial responsibility regulations. Any financial responsibility requirements for damages caused by such tanks are not the responsibility of the fund unless such tanks are owned or operated by a person, other than the federal government or such agency or subcontractor, and located on property that is leased from or otherwise occupied pursuant to a permit or other agreement with the United States or any agency thereof other than the department of defense or the department of energy.

(7) Nothing in this article shall create any liability for the state of Colorado that exceeds the amount available in the fund.

(8) Subject to subsection (6) of this section, owners and operators of aboveground storage tanks that are on fee lands may use the fund to demonstrate compliance with the financial responsibility requirements in federal regulations if the owners and operators have registered such tanks pursuant to section 8-20.5-102.

Source: L. 95: Entire article added, p. 411, § 1, effective July 1. **L. 96:** (1)(a), (2), (3)(b), (3)(c), (5), and (7) amended, p. 713, § 8, effective May 15. **L. 2001:** (3)(e)(I) amended, p. 1132,

§ 54, effective June 5. **L. 2005:** (2), IP(3), (3)(a), and (3)(b) amended, p. 1327, § 4, effective July 1; (6) amended and (8) added, p. 417, § 3, effective July 1.

Editor's note: This section is similar to former § 8-20-705 as it existed prior to 1995.

Cross references: For the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq.

8-20.5-304. Regulated substances releases - corrective actions. (1) If a release has occurred at a site where the owner or operator cannot be identified, after the director of the division of oil and public safety or a designee has mitigated fire and safety hazards in accordance with section 8-20.5-208 and determined that a release exceeds reportable quantities, the director of the division of oil and public safety may initiate corrective action to mitigate any threat to subsurface soil, groundwater, or surface water and develop a plan for cleanup in accordance with subsection (3) of this section and shall recover costs pursuant to section 8-20.5-103.

(2) If a release has occurred at a site where the owner or operator can be identified, and after fire and safety hazards have been mitigated in accordance with section 8-20.5-208 and the director of the division of oil and public safety has determined that the release exceeds reportable quantities, then the owner or operator shall provide the director of the division of oil and public safety with a corrective action plan to clean up subsurface soil, groundwater, and surface water as a result of the release. In addition to the corrective action plan, the owner or operator shall prepare a summary of the costs associated with the preferred corrective action, taking into account economic and technological feasibility, in accordance with the rules promulgated pursuant to section 8-20.5-104 (4)(d) and shall submit the summary to the committee created in said section. The director of the division of oil and public safety shall review and approve or disapprove the plan and, if the plan is disapproved, the director shall provide the owner or operator with a statement specifying the deficiencies in the plan. Within twenty working days after receiving such statements, the owner or operator shall submit a revised plan and shall be given an opportunity to take necessary and appropriate actions to clean up subsurface soils, groundwater, and surface water. If the owner or operator is unable or unwilling to take such necessary and appropriate actions, the director of the division of oil and public safety may conduct corrective action to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(3) After the director of the division of oil and public safety mitigates the threat to subsurface soils, groundwater, and surface water as specified in subsections (1) and (2) of this section, and the owner or operator of the tank from which petroleum has been released is identified, the owner or operator shall pay the required costs of investigation and mitigation pursuant to the financial responsibility requirements set forth in sections 8-20.5-206, 8-20.5-207, and 8-20.5-303. The director of the division of oil and public safety may file suit in the district court for the judicial district in which the release occurred to recover such costs. The moneys obtained as a result of any suit brought pursuant to this section shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety may order the owner or operator of an aboveground storage tank from which a regulated substance has been released to implement a corrective action plan approved under subsection (2) of this section. Such order shall be served personally or by certified mail, return receipt requested, upon the owner or operator.

(5) (a) If the director of the division of oil and public safety disapproves or fails to approve the plan within thirty days following its submission, the director shall immediately provide a statement of findings of fact outlining the reasons for such disapproval or failure to approve, including the reasons the proposed plan fails to meet the criteria outlined in this section. The statement shall be provided by formal notice or by certified mail to the owner or operator within ten days after the director's decision.

(b) The director of the division of oil and public safety may waive the requirement for such a plan if the director determines that reasonable steps have been taken to prevent further releases and that any previously released regulated substance has been cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release at that specific location. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(6) (a) Within ten days after notification of disapproval of the plan, the owner or operator may file a written request with the director of the division of oil and public safety for an informal conference regarding the disapproval. Upon receipt of such a request, the director shall provide the owner or operator with a written notice of the date, time, and place of the informal conference. The executive director of the department or a designee shall preside at the informal conference, during which the owner or operator and the director or the director's designee may present information and arguments regarding the issues raised in the statement of findings of fact.

(b) Within twenty days after the conference, the owner or operator may resubmit a modified plan which addresses the deficiencies identified by the department in the original plan. The department shall review the modifications to the plan and, within twenty days, approve or disapprove the resubmitted plan. If, after the conference, the owner or operator or the department determines that the issues identified in the statement of findings of fact cannot be reasonably resolved, the owner or operator or the department may request that the committee, created in section 8-20.5-104, schedule and hold a hearing within thirty days to resolve the issues identified in the statement of findings of fact.

(7) (a) At any time after receiving the statement of findings of fact, the owner or operator or the department may request, in writing, a formal hearing before the committee created in section 8-20.5-104. Upon such request, the committee shall meet and review the initial plan and statement of findings of fact.

(b) The committee shall recommend such plan if any current release has been mitigated and if any regulated substance which has been released has been or will be cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of the release at that specific location. The department shall give serious consideration to the recommendation of the committee. Such action shall be taken after consideration of the risks posed to the public and shall be determined in light of current economic and technological feasibility. If the committee finds that a current release has not been mitigated or that any regulated substance which has been released will not be cleaned up to the extent appropriate, the

committee shall issue a statement of findings of fact and recommendations to the department for revisions to the plan. Such revisions, if approved by the department, shall be incorporated into the plan by the department, and the revised plan shall then be approved as provided in subsection (2) of this section.

(8) Within thirty days following mitigation and cleanup, the department shall notify the owner or operator, in writing, that the owner or operator has complied with the requirements for mitigation and cleanup as outlined in this section.

(9) (a) For the purpose of implementing the provisions of this section, the department or its designee is authorized for justifiable cause:

(I) To enter the property, premises, or place where a release or suspected release from an aboveground storage tank is located;

(II) To monitor or test or require the owner or operator to monitor or test an aboveground storage tank or any surrounding soils, groundwater, or surface water where a suspected release from an aboveground storage tank has occurred. A duplicate sample taken for testing shall be provided to any owner or operator who the department reasonably believes may be responsible for the violation upon request of such person. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this subparagraph (II) shall be provided as soon as practicable to any person the department or its designee reasonably believes may be responsible for the violation. When such tests are performed, the department shall notify, when possible, any person reasonably believed to be an owner or operator.

(b) If such entry or inspection is denied, the department shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(c) If requested by the department or its designee, the owner or operator of an aboveground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

(10) (a) The department may consider water quality standards adopted by the water quality control commission as guidelines for cleanup but shall assure that cleanup requirements are appropriate, in light of economic and technical feasibility and after consideration of the risks to public health, to protect subsurface soils, groundwater, or surface water as a result of a release at a specific location.

(b) The department shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency.

Source: L. 96: Entire section added, p. 714, § 9, effective May 15. **L. 2001:** (1) to (5) and (6)(a) amended, p. 1133, § 55, effective June 5.

PART 4

UNDERGROUND STORAGE TANKS INSTALLERS

8-20.5-401 to 8-20.5-407. (Repealed)

Editor's note: (1) This part 4 was added with relocations in 1995 containing relocated provisions of some sections formerly located in part 6 of article 20 of this title and was not amended prior to its repeal in 1996. For the text of this part 4 prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 8-20.5-407 provided for the repeal of this part 4, effective July 1, 1996. (See L. 95, p. 418.)