

C.R.S. 29-22-104

Current through all laws passed during the 2019 Legislative Session.

CO - Colorado Revised Statutes Annotated > TITLE 29. GOVERNMENT - LOCAL > HAZARDOUS SUBSTANCE INCIDENTS > ARTICLE 22. HAZARDOUS SUBSTANCE INCIDENTS

29-22-104. Right to claim reimbursement - rules

(1) (a) A public entity, political subdivision of the state, unit of local government, or private entity is hereby given the right to claim reimbursement from the person or persons who have care, custody, and control of the hazardous substance involved at the time of the incident for the reasonable, necessary, and documented costs resulting from action taken to remove, contain, or otherwise mitigate the effects of the incident. A private entity that is neither a responsible party nor otherwise compensated may claim its costs only when it provided services under an agreement with the designated emergency response authority or fire department pursuant to section 29-22-102 or 29-22-103 that provides that the private entity will not be paid by the designated emergency response authority or fire department. A private entity may assist a fire department or designated emergency response authority in pursuing such a claim under subsection (3) of this section; however, the fire department or designated emergency response authority must approve the claim. When the action to remove, contain, or otherwise mitigate the effects of such an incident also involves extinguishing a fire, the costs may only include the extraordinary expenses related to the hazardous substance and not any expense related to extinguishing the fire. If the property on which the hazardous substance incident occurred lies within an unincorporated area of a county and not otherwise within a fire protection district, then the costs may include any expense related to the hazardous substance incident or to extinguishing the fire. If any such person is the owner of property upon which the hazardous substance incident occurs, collection of such costs may be made pursuant to section 30-10-513.5 (1), C.R.S.

(b) Response costs recoverable under this section include the value of reasonable emergency response services provided by a private entity under an agreement for assistance with a fire department or the designated emergency response authority regardless of whether the private entity has been paid by the fire department or designated emergency response authority.

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

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

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

(c) The emergency response authority is entitled to recover its reasonable costs in collecting any reimbursement, including any attorney fees. If such costs are not included in a judgment rendered

in a civil action, they shall be deducted from any recovery prior to the distribution provided for in paragraph (b) of this subsection (3).

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

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

(5) Repealed.

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

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

History

Source:

L. 83: R&RE, p. 1218, Section 1, July 1. L. 89: (1) amended, p. 1280, Section 2, effective April 26. L. 99: (3)(d) added, p. 493, Section 1, effective April 30; (5) added, p. 435, Section 3, effective April 30. L. 2000: (1) amended and (6) added, p. 991, Section 1, effective May 26. L. 2001: (5)(c) repealed, p. 1179, Section 15, effective August 8. L. 2012: (5) repealed, (HB 12-1283), ch. 240, p. 1136, Section 53, effective July 1. L. 2016: (1) and (3)(b) amended, (HB 16-1046), ch. 60, p. 158, Section 3, effective March 31.