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2001



SENATE BILL 01-145

BY SENATOR(S) Phillips;
also REPRESENTATIVE(S) Witwer, Boyd, Mace, Plant, Romanoff,
Sanchez, and Stengel.

CONCERNING THE ENFORCEABILITY OF ENVIRONMENTAL REAL COVENANTS.

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

SECTION 1. 25-15-101, Colorado Revised Statutes, is amended
BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
read:

25-15-101. Definitions. As used in this article, unless the context
otherwise requires:

(4.3) "ENVIRONMENTAL COVENANT" MEANS AN INSTRUMENT
CONTAINING ENVIRONMENTAL USE RESTRICTIONS CREATED PURSUANT TO
SECTION 25-15-321.

(4.5) "ENVIRONMENTAL REMEDIATION PROJECT" MEANS CLOSURE OF
A HAZARDOUS WASTE MANAGEMENT UNIT OR SOLID WASTE DISPOSAL SITE OR
ANY REMEDIATION OF ENVIRONMENTAL CONTAMINATION, INCLUDING
DETERMINATIONS TO RELY SOLELY OR PARTIALLY ON ENVIRONMENTAL USE

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

RESTRICTIONS TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT BUT EXCLUDING INTERIM MEASURES THAT ARE NOT INTENDED AS THE FINAL REMEDIAL ACTION, THAT IS CONDUCTED UNDER ANY OF THE FOLLOWING:

(I) SUBCHAPTER III OR IX OF THE FEDERAL "RESOURCE CONSERVATION AND RECOVERY ACT OF 1976", 42 U.S.C. SEC. 6921 TO 6939e AND 6991 TO 6991i, AS AMENDED;

(II) SECTION 7002 OR 7003 OF THE FEDERAL "RESOURCE CONSERVATION AND RECOVERY ACT OF 1976", 42 U.S.C. SEC. 6972 AND 6973, AS AMENDED;

(III) THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980", 42 U.S.C. SEC. 9601 TO 9647, AS AMENDED;

(IV) THE FEDERAL "URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978", 42 U.S.C. SEC. 7901 ET SEQ., AS AMENDED;

(V) PART 1 OF ARTICLE 11 OF THIS TITLE, INCLUDING ANY DECOMMISSIONING OF SITES LICENSED UNDER THAT PART;

(VI) PART 3 OF ARTICLE 11 OF THIS TITLE;

(VII) PART 3 OF ARTICLE 15 OF THIS TITLE; AND

(VIII) ARTICLE 30 OF TITLE 20, C.R.S.

(4.7) "ENVIRONMENTAL USE RESTRICTION" MEANS A PROHIBITION OF ONE OR MORE USES OF OR ACTIVITIES ON SPECIFIED REAL PROPERTY, INCLUDING DRILLING FOR OR PUMPING GROUNDWATER; A REQUIREMENT TO PERFORM CERTAIN ACTS, INCLUDING REQUIREMENTS FOR MAINTENANCE, OPERATION, OR MONITORING NECESSARY TO PRESERVE SUCH PROHIBITION OF USES OR ACTIVITIES; OR BOTH, WHERE SUCH PROHIBITIONS OR REQUIREMENTS ARE RELIED UPON IN THE REMEDIAL DECISION FOR AN ENVIRONMENTAL REMEDIATION PROJECT FOR THE PURPOSE OF PROTECTING HUMAN HEALTH OR THE ENVIRONMENT.

(5.5) "HAZARDOUS SUBSTANCE" MEANS ANY SUBSTANCE THAT IS DEFINED AS A HAZARDOUS SUBSTANCE, POLLUTANT, OR CONTAMINANT UNDER THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE,

COMPENSATION, AND LIABILITY ACT OF 1980", 42 U.S.C. SEC. 9601 TO 9647, AS AMENDED, OR ITS IMPLEMENTING REGULATIONS.

(12.5) "OWNER", AS USED IN SECTIONS 25-15-317 TO 25-15-326, MEANS THE RECORD OWNER OF REAL PROPERTY AND, IF ANY, ANY OTHER PERSON OR ENTITY OTHERWISE LEGALLY AUTHORIZED TO MAKE DECISIONS REGARDING THE TRANSFER OF THE SUBJECT PROPERTY OR PLACEMENT OF ENCUMBRANCES ON THE SUBJECT PROPERTY, OTHER THAN BY THE EXERCISE OF EMINENT DOMAIN.

(13.5) "REMEDIAL DECISION" MEANS THE ADMINISTRATIVE DETERMINATION BY THE DEPARTMENT, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, OR OTHER APPROPRIATE GOVERNMENT ENTITY UNDER THE LAWS CITED IN SUBSECTION (4.5) OF THIS SECTION, THAT ESTABLISHES THE REMEDIAL REQUIREMENTS FOR THE ENVIRONMENTAL REMEDIATION PROJECT.

SECTION 2. Part 3 of article 15 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

25-15-317. Legislative declaration. THE GENERAL ASSEMBLY DECLARES THAT IT IS IN THE PUBLIC INTEREST TO ENSURE THAT ENVIRONMENTAL REMEDIATION PROJECTS PROTECT HUMAN HEALTH AND THE ENVIRONMENT. THE GENERAL ASSEMBLY FINDS THAT ENVIRONMENTAL REMEDIATION PROJECTS MAY LEAVE RESIDUAL CONTAMINATION AT LEVELS THAT HAVE BEEN DETERMINED TO BE SAFE FOR A SPECIFIC USE, BUT NOT ALL USES, AND MAY INCORPORATE ENGINEERED STRUCTURES THAT MUST BE MAINTAINED OR PROTECTED AGAINST DAMAGE TO REMAIN EFFECTIVE. THE GENERAL ASSEMBLY FINDS THAT IN SUCH CASES, IT IS NECESSARY TO PROVIDE AN EFFECTIVE AND ENFORCEABLE MEANS OF ENSURING THE CONDUCT OF ANY REQUIRED MAINTENANCE, MONITORING, OR OPERATION, AND OF RESTRICTING FUTURE USES OF THE LAND, INCLUDING PLACING RESTRICTIONS ON DRILLING FOR OR PUMPING GROUNDWATER FOR AS LONG AS ANY RESIDUAL CONTAMINATION REMAINS HAZARDOUS. THE GENERAL ASSEMBLY, THEREFORE, DECLARES THAT IT IS IN THE PUBLIC INTEREST TO CREATE ENVIRONMENTAL COVENANTS BECAUSE SUCH COVENANTS ARE NECESSARY FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT.

25-15-318. Nature of environmental covenants. (1) AN ENVIRONMENTAL COVENANT SHALL BE PERPETUAL UNLESS BY ITS TERMS IT IS LIMITED TO A SPECIFIC DURATION, UNLESS THE DEPARTMENT APPROVES A REQUEST TO TERMINATE OR MODIFY IT PURSUANT TO SECTION 25-15-319 (1) (h), OR UNLESS IT IS TERMINATED BY A COURT OF COMPETENT JURISDICTION. AN ENVIRONMENTAL COVENANT MAY NOT BE EXTINGUISHED, LIMITED, OR IMPAIRED THROUGH ISSUANCE OF A TAX DEED OR THROUGH ADVERSE POSSESSION, NOR MAY AN ENVIRONMENTAL COVENANT BE EXTINGUISHED, LIMITED, OR IMPAIRED BY REASON OF THE DOCTRINES OF ABANDONMENT, WAIVER, LACK OF ENFORCEMENT, OR OTHER COMMON LAW PRINCIPLES RELATING TO COVENANTS, OR BY THE EXERCISE OF EMINENT DOMAIN.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING ANY COMMON LAW REQUIREMENT FOR PRIVACY OF ESTATE, AN ENVIRONMENTAL COVENANT SHALL RUN WITH THE LAND AND SHALL BIND THE OWNER OF THE LAND, THE OWNER'S SUCCESSORS AND ASSIGNS, AND ANY PERSON USING THE LAND.

(3) THE REQUIREMENTS AND RESTRICTIONS OF AN ENVIRONMENTAL COVENANT ARE REQUIREMENTS UNDER THIS PART 3 BUT MAY ONLY BE ENFORCED AS PROVIDED IN SECTION 25-15-322. THE CREATION OF AN ENVIRONMENTAL COVENANT DOES NOT TRIGGER THE APPLICATION OF ANY OTHER REQUIREMENT OF THIS PART 3.

(4) THE DEPARTMENT SHALL NOT ACQUIRE ANY LIABILITY UNDER STATE LAW BY VIRTUE OF ACCEPTING AN ENVIRONMENTAL COVENANT, NOR SHALL ANY NAMED BENEFICIARY OF AN ENVIRONMENTAL COVENANT ACQUIRE ANY LIABILITY UNDER STATE LAW BY VIRTUE OF BEING SUCH A BENEFICIARY.

25-15-319. Contents of environmental covenants. (1) AN ENVIRONMENTAL COVENANT SHALL INCLUDE PROVISIONS REGARDING:

(a) ITS DURATION AND ANY CONDITIONS UNDER WHICH IT MAY BE MODIFIED OR TERMINATED;

(b) ANY ENVIRONMENTAL USE RESTRICTIONS RELIED ON IN THE REMEDIATION DECISION FOR THE ENVIRONMENTAL REMEDIATION PROJECT FOR THE SUBJECT PROPERTY;

(c) A REQUIREMENT THAT THE OWNER OF THE PROPERTY SUBJECT TO

THE ENVIRONMENTAL COVENANT NOTIFY THE DEPARTMENT AT LEAST FIFTEEN DAYS IN ADVANCE OF ANY TRANSFER OF OWNERSHIP OF SOME OR ALL OF THE REAL PROPERTY SUBJECT TO THE ENVIRONMENTAL COVENANT;

(d) A REQUIREMENT THAT THE OWNER OF THE PROPERTY NOTIFY THE DEPARTMENT SIMULTANEOUSLY WITH SUBMITTING ANY APPLICATION TO A LOCAL GOVERNMENT FOR A BUILDING PERMIT OR CHANGE IN LAND USE;

(e) A REQUIREMENT TO ALLOW THE DEPARTMENT RIGHT OF ENTRY AT REASONABLE TIMES WITH PRIOR NOTICE FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH THE TERMS OF THE ENVIRONMENTAL COVENANT. NOTHING IN THIS SECTION SHALL IMPAIR ANY OTHER AUTHORITY THE DEPARTMENT MAY OTHERWISE HAVE TO ENTER AND INSPECT PROPERTY SUBJECT TO THE ENVIRONMENTAL COVENANT.

(f) INCLUSION OF THE FOLLOWING STATEMENT ON THE FIRST PAGE OF THE INSTRUMENT CREATING THE ENVIRONMENTAL COVENANT IN FIFTEEN-POINT BOLD-FACED TYPE: "THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT HELD BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-15-321, C.R.S.";

(g) AN AGREEMENT TO INCORPORATE EITHER IN FULL OR BY REFERENCE THE ENVIRONMENTAL COVENANT IN ANY LEASES, LICENSES, OR OTHER INSTRUMENTS GRANTING A RIGHT TO USE THE PROPERTY THAT MAY BE AFFECTED BY THE ENVIRONMENTAL COVENANT;

(h) MODIFICATION OR TERMINATION OF THE ENVIRONMENTAL COVENANT CONSISTENT WITH THIS SUBSECTION (1). THE OWNER OF LAND SUBJECT TO AN ENVIRONMENTAL COVENANT MAY REQUEST THAT THE DEPARTMENT APPROVE MODIFICATION OR TERMINATION OF THE COVENANT. THE REQUEST SHALL CONTAIN INFORMATION SHOWING THAT THE PROPOSED MODIFICATION OR TERMINATION SHALL, IF IMPLEMENTED, ENSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT. THE DEPARTMENT SHALL REVIEW ANY SUBMITTED INFORMATION, AND MAY REQUEST ADDITIONAL INFORMATION. IF THE DEPARTMENT DETERMINES THAT THE PROPOSAL TO MODIFY OR TERMINATE THE ENVIRONMENTAL COVENANT WILL ENSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT, IT SHALL APPROVE THE PROPOSAL. NO MODIFICATION OR TERMINATION OF AN ENVIRONMENTAL COVENANT SHALL BE EFFECTIVE UNLESS IT HAS BEEN APPROVED IN WRITING BY THE DEPARTMENT. INFORMATION TO SUPPORT A

REQUEST FOR MODIFICATION OR TERMINATION MAY INCLUDE ONE OR MORE OF THE FOLLOWING:

(I) A PROPOSAL TO PERFORM ADDITIONAL REMEDIAL WORK;

(II) NEW INFORMATION REGARDING THE RISKS POSED BY THE RESIDUAL CONTAMINATION;

(III) INFORMATION DEMONSTRATING THAT RESIDUAL CONTAMINATION HAS DIMINISHED;

(IV) INFORMATION DEMONSTRATING THAT AN ENGINEERED FEATURE OR STRUCTURE IS NO LONGER NECESSARY;

(V) INFORMATION DEMONSTRATING THAT THE PROPOSED MODIFICATION WOULD NOT ADVERSELY IMPACT THE REMEDY AND IS PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT; AND

(VI) OTHER APPROPRIATE SUPPORTING INFORMATION; AND

(i) SUCH OTHER SUBJECTS AS MAY BE APPROPRIATE.

25-15-320. Environmental covenants - when required - waiver.

(1) NO ENVIRONMENTAL COVENANT SHALL BE REQUIRED FOR ANY ENVIRONMENTAL REMEDIATION PROJECT THAT RESULTS IN RESIDUAL CONTAMINATION LEVELS THAT HAVE BEEN DETERMINED BY THE RELEVANT REGULATORY AGENCY TO BE SAFE FOR ALL USES AND THAT DOES NOT INCORPORATE ANY ENGINEERED FEATURE OR STRUCTURE OR REQUIRE ANY MONITORING, MAINTENANCE, OR OPERATION.

(2) AN ENVIRONMENTAL COVENANT UNDER THIS PART 3 SHALL BE REQUIRED FOR ANY ENVIRONMENTAL REMEDIATION PROJECT IN WHICH THE RELEVANT REGULATORY AUTHORITY MAKES A REMEDIAL DECISION ON OR AFTER JULY 1, 2001, THAT WOULD RESULT IN EITHER OR BOTH OF THE FOLLOWING:

(a) RESIDUAL CONTAMINATION AT LEVELS THAT HAVE BEEN DETERMINED TO BE SAFE FOR ONE OR MORE SPECIFIC USES, BUT NOT ALL USES; OR

(b) INCORPORATION OF AN ENGINEERED FEATURE OR STRUCTURE

THAT REQUIRES MONITORING, MAINTENANCE, OR OPERATION OR THAT WILL NOT FUNCTION AS INTENDED IF IT IS DISTURBED.

(3) THE DEPARTMENT MAY WAIVE THE REQUIREMENT FOR AN ENVIRONMENTAL COVENANT IN THE FOLLOWING CIRCUMSTANCES:

(a) IF THE DEPARTMENT DETERMINES THAT IT IS AUTHORIZED UNDER ANOTHER STATUTE OR DECISION OF THE COLORADO SUPREME COURT TO IMPLEMENT AND ENFORCE ENVIRONMENTAL USE RESTRICTIONS AGAINST THE PRESENT AND SUBSEQUENT OWNERS OF REAL PROPERTY REMEDIATED PURSUANT TO AN ENVIRONMENTAL REMEDIATION PROJECT, AND IMPLEMENTS ENVIRONMENTAL USE RESTRICTIONS UNDER SUCH STATUTE OR DECISION; OR

(b) FOR A PARCEL OF LAND INVOLVED IN AN ENVIRONMENTAL REMEDIATION PROJECT THAT IS OWNED BY ANY PERSON WHO IS NOT BEING REQUIRED TO REMEDIATE THE CONTAMINATION, AND:

(I) THE OWNER OF ANY SUCH PARCEL DOES NOT GRANT AN ENVIRONMENTAL COVENANT UNDER THIS SECTION;

(II) THE COUNTY, CITY AND COUNTY, OR MUNICIPALITY HAVING JURISDICTION OVER THE AFFECTED LAND HAS ENACTED AN ORDINANCE OR RESOLUTION IMPOSING THE RELEVANT ENVIRONMENTAL USE RESTRICTIONS; AND

(III) THE COUNTY, CITY AND COUNTY, OR MUNICIPALITY HAVING JURISDICTION AND THE DEPARTMENT HAVE ENTERED INTO AN INTERGOVERNMENTAL AGREEMENT FOR OVERSIGHT AND ENFORCEMENT OF THE LOCAL ORDINANCE OR RESOLUTION PURSUANT TO SECTION 29-1-203, C.R.S. SUCH AGREEMENT SHALL BE BINDING AND MUTUALLY ENFORCEABLE. THE DEPARTMENT'S AUTHORITY UNDER ANY SUCH AGREEMENT SHALL BE LIMITED TO PROPERTIES THAT ARE SUBJECT TO THE REQUIREMENTS OF THIS SECTION. ANY INTERGOVERNMENTAL AGREEMENT UNDER THIS SECTION SHALL REQUIRE THAT, IN SO FAR AS THE LOCAL ORDINANCE OR RESOLUTION APPLIES TO PROPERTIES THAT ARE SUBJECT TO THE REQUIREMENTS OF THIS SECTION, ANY AMENDMENTS TO THE LOCAL ORDINANCE OR RESOLUTION SHALL INCORPORATE SUCH REQUIREMENTS AS THE DEPARTMENT MAY RECOMMEND TO ENSURE CONTINUED PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT.

(4) THE DEPARTMENT SHALL HAVE SUCH AUTHORITY AS MAY BE

PROVIDED IN THE INTERGOVERNMENTAL AGREEMENT TO BRING SUIT FOR INJUNCTIVE RELIEF TO ENFORCE ANY LOCAL ORDINANCE OR RESOLUTION DESCRIBED IN SUBSECTION (3) OF THIS SECTION WITH RESPECT TO PROPERTIES THAT ARE SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

(5) THE DEPARTMENT MAY ACCEPT AND ENFORCE ENVIRONMENTAL COVENANTS IN CASES WHERE SUCH COVENANTS ARE NOT REQUIRED, INCLUDING APPROVALS OF VOLUNTARY CLEANUP PLANS OR PETITIONS FOR NO ACTION DETERMINATIONS UNDER SECTIONS 25-16-306 AND 25-16-307, BUT THE OWNER OF THE REMEDIATED LAND NONETHELESS DESIRES TO CREATE SUCH A COVENANT.

25-15-321. Creation, modification, and termination of an environmental covenant. (1) AN ENVIRONMENTAL COVENANT UNDER THIS PART 3 MAY BE CREATED ONLY BY THE OWNER OF THE PROPERTY THROUGH A WRITTEN GRANT TO THE DEPARTMENT BY A DEED OR OTHER INSTRUMENT OF CONVEYANCE SPECIFICALLY STATING THE INTENTION OF THE GRANTOR TO CREATE SUCH A RESTRICTION UNDER THIS ARTICLE.

(2) THE DEPARTMENT IS AUTHORIZED TO ACCEPT, REFUSE TO ACCEPT, CONDITIONALLY ACCEPT, HOLD, MODIFY, AND TERMINATE ENVIRONMENTAL COVENANTS.

(3) INSTRUMENTS CREATING, MODIFYING, OR TERMINATING AN ENVIRONMENTAL COVENANT SHALL BE RECORDED AS ANY OTHER INSTRUMENT AFFECTING TITLE TO AND INTERESTS IN REAL PROPERTY.

(4) IF THE ONLY USES ALLOWED UNDER THE PROPOSED ENVIRONMENTAL COVENANT ARE PROHIBITED BY EXISTING ORDINANCE OR RESOLUTION, THE DEPARTMENT SHALL CONDITION ITS ACCEPTANCE OF THE COVENANT UPON THE APPLICANT'S DEMONSTRATION THAT SUCH APPLICANT HAS OBTAINED APPROVAL FROM THE RELEVANT AUTHORITY THAT WOULD ALLOW FOR ONE OR MORE OF THE PROPOSED USES.

(5) PERSONS PROPOSING TO CREATE, MODIFY, OR TERMINATE AN ENVIRONMENTAL COVENANT SHALL PROVIDE WRITTEN NOTICE OF THEIR INTENTION TO ALL PERSONS HOLDING AN INTEREST OF RECORD IN THE REAL PROPERTY THAT WILL BE SUBJECT TO THE ENVIRONMENTAL COVENANT, TO ALL PERSONS KNOWN TO THEM TO HAVE AN UNRECORDED INTEREST IN THE PROPERTY, AND TO ALL AFFECTED PERSONS IN POSSESSION OF THE PROPERTY PRIOR TO SUCH CREATION, MODIFICATION, OR TERMINATION, AND SHALL

PROVIDE THE DEPARTMENT WITH:

(a) A COPY OF THE NOTICE PROVIDED;

(b) A LIST OF THE PERSONS TO WHOM NOTICE WAS GIVEN AND THE ADDRESS OR OTHER LOCATION TO WHICH THE NOTICE WAS DIRECTED; AND

(c) SUCH TITLE INFORMATION AS THE DEPARTMENT MAY REQUIRE.

(6) THE DEPARTMENT SHALL REVIEW AND MAKE A DETERMINATION REGARDING ALL APPLICATIONS FOR CREATING, MODIFYING, OR TERMINATING AN ENVIRONMENTAL COVENANT WITHIN SIXTY DAYS AFTER RECEIPT OF SUCH APPLICATION.

(7) ANY DETERMINATION BY THE DEPARTMENT REGARDING A PROPOSAL TO CREATE, MODIFY, OR TERMINATE AN ENVIRONMENTAL COVENANT SHALL BE SUBJECT TO APPEAL IN ACCORDANCE WITH SECTION 25-15-305.

25-15-322. Enforcement - remedies. (1) AN ENVIRONMENTAL COVENANT IMPOSED AT ANY ENVIRONMENTAL REMEDIATION PROJECT SHALL BE ENFORCEABLE AS PROVIDED IN THIS SECTION, EVEN IF THE ENVIRONMENTAL REMEDIATION PROJECT IS NOT OTHERWISE SUBJECT TO THIS PART 3.

(2) IN THE EVENT OF AN ACTUAL OR THREATENED FAILURE TO COMPLY WITH AN ENVIRONMENTAL COVENANT, THE DEPARTMENT MAY ISSUE AN ORDER UNDER THIS SECTION REQUIRING COMPLIANCE WITH THE TERMS OF THE ENVIRONMENTAL COVENANT AND MAY REQUEST THE ATTORNEY GENERAL TO BRING SUIT IN DISTRICT COURT TO ENFORCE THE TERMS OF THE ENVIRONMENTAL COVENANT, TO ENFORCE THE ORDER ISSUED PURSUANT TO THIS SECTION, OR TO SEEK OTHER APPROPRIATE INJUNCTIVE RELIEF. AN ADMINISTRATIVE ORDER ISSUED UNDER THIS SUBSECTION (2) SHALL BE SUBJECT TO APPEAL IN ACCORDANCE WITH SECTION 25-15-308.

(3) IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT AN ENVIRONMENTAL COVENANT IS VOID OR OTHERWISE UNENFORCEABLE, THE DEPARTMENT MAY TAKE SUCH ACTION AS MAY BE AUTHORIZED BY ANY OTHER LAW.

(4) THE GRANTOR OF AN ENVIRONMENTAL COVENANT MAY FILE SUIT

IN DISTRICT COURT TO ENJOIN ACTUAL OR THREATENED VIOLATIONS OF THE COVENANT. ANY THIRD PARTY BENEFICIARY SPECIFICALLY NAMED IN AN ENVIRONMENTAL COVENANT MAY FILE SUIT IN DISTRICT COURT TO ENJOIN ACTUAL OR THREATENED VIOLATIONS OF THE COVENANT.

(5) AN AFFECTED LOCAL GOVERNMENT, AS DEFINED IN SECTION 25-15-324, MAY FILE SUIT IN DISTRICT COURT TO ENJOIN ACTUAL OR THREATENED VIOLATIONS OF ANY ENVIRONMENTAL COVENANT THAT APPLIES TO LAND WITHIN ITS JURISDICTION.

(6) NO ENVIRONMENTAL COVENANT SHALL BE UNENFORCEABLE BECAUSE OF LACK OF PRIVITY OF CONTRACT OR LACK OF BENEFIT TO A PARTICULAR PARCEL OF LAND, BECAUSE THE ENVIRONMENTAL COVENANT DOES NOT EXPRESSLY STATE THAT IT RUNS WITH THE LAND, OR BECAUSE OF ANY OTHER INCONSISTENCY WITH COMMON LAW REQUIREMENTS APPLICABLE TO COMMON LAW COVENANTS.

(7) A COURT OF COMPETENT JURISDICTION IS AUTHORIZED TO ISSUE ORDERS REQUIRING COMPLIANCE WITH AN ENVIRONMENTAL COVENANT, TO ENJOIN ACTUAL OR THREATENED VIOLATIONS OF ENVIRONMENTAL COVENANTS, AND TO GRANT SUCH OTHER INJUNCTIVE RELIEF AS IT MAY DEEM APPROPRIATE.

25-15-323. Registry of environmental covenants. THE DEPARTMENT SHALL CREATE AND MAINTAIN A REGISTRY OF ALL ENVIRONMENTAL COVENANTS, INCLUDING ANY MODIFICATION OR TERMINATION THEREOF.

25-15-324. Coordination with affected local governments.
(1) FOR PURPOSES OF THIS PART 3, "AFFECTED LOCAL GOVERNMENT" MEANS EVERY COUNTY, CITY AND COUNTY, OR MUNICIPALITY IN WHICH LAND SUBJECT TO AN ENVIRONMENTAL COVENANT IS LOCATED. THE DEPARTMENT SHALL PROVIDE EACH AFFECTED LOCAL GOVERNMENT WITH A COPY OF EVERY ENVIRONMENTAL COVENANT WITHIN SUCH LOCAL GOVERNMENT'S JURISDICTION AND SHALL ALSO PROVIDE A COPY OF ANY DOCUMENTS MODIFYING OR TERMINATING SUCH ENVIRONMENTAL COVENANT.

(2) WHENEVER AN AFFECTED LOCAL GOVERNMENT RECEIVES AN APPLICATION AFFECTING LAND USE OR DEVELOPMENT OF LAND THAT IS SUBJECT TO AN ENVIRONMENTAL COVENANT AND THAT MAY RELATE TO OR IMPACT SUCH COVENANT, THE AFFECTED LOCAL GOVERNMENT SHALL NOTIFY

THE DEPARTMENT OF THE APPLICATION. THE DEPARTMENT SHALL EVALUATE WHETHER THE APPLICATION IS CONSISTENT WITH THE ENVIRONMENTAL COVENANT AND SHALL NOTIFY THE AFFECTED LOCAL GOVERNMENT OF THE DEPARTMENT'S DETERMINATION IN A TIMELY FASHION, CONSIDERING THE TIME FRAME FOR THE LOCAL GOVERNMENT'S REVIEW OF THE APPLICATION.

25-15-325. Other interests not impaired. EXCEPT AS SPECIFICALLY PROVIDED IN AN ENVIRONMENTAL COVENANT OR PURSUANT TO SECTION 25-15-326, NO TRANSFER OF A WATER RIGHT OR ANY CHANGE OF A POINT OF DIVERSION AT ANY TIME, NOR ANY INTEREST IN REAL PROPERTY COGNIZABLE UNDER STATUTE, COMMON LAW, OR CUSTOM IN EFFECT IN THIS STATE PRIOR TO JULY 1, 2001, NOR ANY LEASE OR SUBLEASE THEREOF AT ANY TIME SHALL BE IMPAIRED, INVALIDATED, OR IN ANY WAY ADVERSELY AFFECTED BY SECTIONS 25-15-317 TO 25-15-326. ALL INTERESTS NOT TRANSFERRED OR CONVEYED IN THE ENVIRONMENTAL COVENANT SHALL REMAIN IN THE GRANTOR OF THE ENVIRONMENTAL COVENANT, INCLUDING THE RIGHT TO ENGAGE IN ALL USES OF THE LANDS AFFECTED BY THE ENVIRONMENTAL COVENANT THAT ARE NOT INCONSISTENT WITH THE ENVIRONMENTAL COVENANT AND NOT EXPRESSLY PROHIBITED BY THE ENVIRONMENTAL COVENANT OR BY LAW.

25-15-326. Validation. (1) ANY DOCUMENT RECORDED BY THE OWNER OF REAL PROPERTY THAT RESTRICTS OR REQUIRES CERTAIN USES OR ACTIVITIES RELATING TO SUCH REAL PROPERTY, INCLUDING ANY RESTRICTIONS ON DRILLING FOR OR PUMPING GROUNDWATER, TO PROTECT HUMAN HEALTH OR THE ENVIRONMENT BY LIMITING EXPOSURE TO HAZARDOUS SUBSTANCES OR BY ENSURING THE INTEGRITY OF A RESPONSE ACTION, SHALL BE CONSIDERED VALID AND ENFORCEABLE BY ITS TERMS, REGARDLESS OF WHETHER SUCH DOCUMENT IS DENOMINATED AN EASEMENT, COVENANT, DEED RESTRICTION, OR SOME OTHER INSTRUMENT.

(2) THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SHALL APPLY ONLY TO:

(a) DOCUMENTS THAT WERE REQUIRED AS PART OF AN ENVIRONMENTAL REMEDIATION DECISION THAT WAS RENDERED PRIOR TO JULY 1, 2001; AND

(b) DOCUMENTS RECORDED IN CONNECTION WITH A VOLUNTARY CLEANUP PLAN APPROVED UNDER SECTION 25-16-306 OR PETITION FOR A NO ACTION DETERMINATION APPROVED UNDER SECTION 25-16-307.

(3) NOTHING IN THIS SECTION SHALL IMPAIR THE VALIDITY OR ENFORCEABILITY OF AN ENVIRONMENTAL COVENANT CREATED UNDER SECTION 25-15-321.

25-15-327. Applicability. THE REQUIREMENTS OF SECTION 25-15-320 APPLY TO REMEDIAL DECISIONS MADE ON OR AFTER JULY 1, 2001, THAT WOULD CREATE ONE OR MORE OF THE CONDITIONS DESCRIBED IN SECTION 25-15-320 (2).

SECTION 3. 25-15-301.5 (3), Colorado Revised Statutes, is amended to read:

25-15-301.5. Additional powers of the department - legislative declaration - report. (3) The department is directed to submit a report to the general assembly on or before February 1, 2002, and annually on or before each February 1 thereafter that describes the status of the hazardous waste control program, and the department's efforts to carry out its statutory responsibilities at the lowest possible cost without jeopardizing the intent stated in subsection (1) of this section, AND THE DEPARTMENT'S IMPLEMENTATION OF THE AUTHORITY TO ACCEPT ENVIRONMENTAL COVENANTS CREATED PURSUANT TO SECTION 25-15-321.

SECTION 4. Effective date. This act shall take effect July 1, 2001.

SECTION 5. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Stan Matsunaka
PRESIDENT OF
THE SENATE

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO