

# STATE OF COLORADO

John W. Hickenlooper, Governor  
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Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

April 11, 2011

Terrence Reis, Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
T8-E24  
Washington, D.C. 20555-0001

Dear Mr. Reis:

Enclosed is a copy of the final revisions to the Colorado Radiation Control Act, 25-11-101 through 25-11-305, Colorado Revised Statutes (CRS). This is the enabling legislation (statute) for the Colorado Agreement State Program and was revised in 2002, 2003, and 2010 through the Colorado legislature. Certain provisions of the statute pertaining to regulation of Uranium processing facilities were initiated by parties outside of our program, while other changes primarily relating to enforcement and fees were initiated by our program. Enclosed is a "clean" (non-strikeout) version of the statute in its entirety. Additionally, enclosed are knockout text copies of the Colorado legislative bills HB 02-1408 (2002), HB 03-1358 (2003), HB 10-1149 (2010) and HB 10-1348 (2010) which initiated and show the changes to certain sections of the Colorado Radiation Control Act. The changes to this statute necessitated changes to certain portions of our regulations. These regulatory changes will be submitted to NRC under separate cover in the near future.

If you have any questions, please feel free to contact me at 303/692-3423 or James Jarvis of my staff at 303/692-3454 or [james.jarvis@state.co.us](mailto:james.jarvis@state.co.us).

Sincerely,

Stephen F. Tarlton, Manager  
Radiation Program  
Hazardous Materials and Waste Management Division

Enclosures: As stated above

## CHAPTER 84

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**HEALTH AND ENVIRONMENT**

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**HOUSE BILL 02-1408**

BY REPRESENTATIVE(S) Spradley, Dean, Kester, Cloer, Coleman, Fairbank, Fritz, Harvey, Hefley, King, Lawrence, Mace, Madden, Plant, Romanoff, Sanchez, Schultheis, Stafford, Tapia, and Williams T.;  
also SENATOR(S) Thiebaut, Chlouber, Dyer, Hagedorn, Hernandez, Nichol, and Tupa.

**AN ACT****CONCERNING ADDITIONAL REQUIREMENTS FOR SHIPMENTS OF CERTAIN TYPES OF RADIOACTIVE WASTE FOR DISPOSAL INSIDE COLORADO.**

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

**SECTION 1.** 25-11-201 (1), Colorado Revised Statutes, is amended, and the said 25-11-201 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-11-201. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) (a) ~~"Disposal" means burial in soil, release through a sanitary sewerage system, incineration, or long-term storage with no intention of or provision for subsequent removal.~~ "CLASSIFIED WASTE" MEANS RADIOACTIVE WASTE THAT IS EACH OF THE FOLLOWING:

(I) "TYPE 2 BYPRODUCT MATERIAL" AS DEFINED IN 42 U.S.C. SEC. 2014 (e) (2);

(II) NATURALLY OCCURRING URANIUM-BEARING OR THORIUM-BEARING SOILS, SOLIDS, OR LIQUIDS AND THEIR DECAY PRODUCTS; AND

(III) WASTE TAKEN FROM EITHER:

(A) A SITE LISTED AS A FEDERAL FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM (FUSRAP) SITE;

(B) A DESIGNATED TITLE I OR TITLE II MILLSITE PURSUANT TO THE FEDERAL

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

"URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978"; OR

(C) A SITE LISTED ON THE FEDERAL NATIONAL PRIORITIES LIST (NPL) PURSUANT TO SECTION 105 OF THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT" (CERCLA).

(b) NOTHING IN THIS SUBSECTION (1) SHALL BE DEEMED TO INCLUDE NATURALLY OCCURRING RADIOACTIVE MATERIAL AS DEFINED IN SECTION 25-11-101 (2.7).

(c) NOTHING IN THIS PART 2 SHALL BE DEEMED TO APPLY TO THE TREATMENT, STORAGE, MANAGEMENT, PROCESSING, OR DISPOSAL OF SOLID WASTE EITHER PURSUANT TO A CERTIFICATE OF DESIGNATION ISSUED UNDER ARTICLE 20 OF TITLE 30, C.R.S., OR AT A SOLID WASTE DISPOSAL SITE AND FACILITY CONSIDERED APPROVED OR OTHERWISE DEEMED TO SATISFY THE REQUIREMENT FOR A CERTIFICATE OF DESIGNATION PURSUANT TO ARTICLE 20 OF TITLE 30, C.R.S. FACILITIES THAT HAVE BOTH A RADIOACTIVE MATERIALS LICENSE AND A CERTIFICATE OF DESIGNATION SHALL COMPLY WITH THE PROVISION OF THIS ARTICLE.

(1.5) "DISPOSAL" MEANS BURIAL IN SOIL, RELEASE THROUGH A SANITARY SEWERAGE SYSTEM, INCINERATION, OR LONG-TERM STORAGE WITH NO INTENTION OF OR PROVISION FOR SUBSEQUENT REMOVAL.

**SECTION 2.** 25-11-203, Colorado Revised Statutes, is amended to read:

**25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste.** (1) (a) No facility shall be constructed or site approved for the disposal of radioactive waste originating or used outside Colorado unless such facility or site has been approved as provided in subsection (3) of this section.

(b) (I) NO SITE WITHIN FIVE MILES OF A CITY OR TOWN SHALL RECEIVE CLASSIFIED WASTE FOR DISPOSAL UNLESS SUCH DISPOSAL HAS BEEN APPROVED AS PROVIDED IN SUBSECTION (3) OF THIS SECTION.

(II) NOTHING IN THIS PARAGRAPH (b) SHALL APPLY TO A CONTRACT FOR THE RECEIPT OF SHIPMENTS OF LESS THAN ONE HUNDRED TEN TONS OF CLASSIFIED WASTE OR TO RECEIPT OF SHIPMENTS OF CLASSIFIED WASTE FROM DRINKING WATER TREATMENT FACILITIES.

(III) NOTHING IN THIS PARAGRAPH (b) SHALL APPLY TO PROCESSING OF MATERIALS FOR THEIR MINERAL VALUE AND THE SUBSEQUENT DISPOSAL OF THE MILL TAILINGS FROM THAT PROCESSING.

(2) (a) Any person desiring to have a facility or site referred to in subsection (1) of this section approved shall apply to the department of public health and environment for approval of such facility or site. The application shall contain such information as the department requires and shall be accompanied by an application fee determined by the board pursuant to the provisions of part 1 of this article.

(b) IN ADDITION TO THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (2), IF A SITE SUBJECT TO THIS SECTION IS PROPOSING TO DISPOSE OF CLASSIFIED WASTE, THE SITE SHALL PROVIDE WRITTEN NOTICE TO THE DEPARTMENT THAT SHALL

INCLUDE:

(I) TRANSCRIPTS OF TWO PUBLIC MEETINGS HOSTED BY AND AT THE EXPENSE OF THE SITE. THE SITE SHALL PROVIDE THE PUBLIC WITH:

(A) PURSUANT TO PART 1 OF ARTICLE 70 OF TITLE 24, C.R.S., AT LEAST TWO WEEKS' WRITTEN NOTICE BEFORE THE FIRST MEETING AND AN ADDITIONAL TWO WEEKS' WRITTEN NOTICE BEFORE THE SECOND MEETING;

(B) AT BOTH MEETINGS, SUMMARIES OF THE SITE'S LICENSE TO DISPOSE OF CLASSIFIED WASTE AND THE NATURE OF THE CLASSIFIED WASTE, AND AN OPPORTUNITY TO BE HEARD; AND

(C) ACCESS TO MAKE COPIES OF A TRANSCRIPT OF THE MEETINGS;

(II) AN ENVIRONMENTAL ASSESSMENT REGARDING:

(A) THE ENVIRONMENTAL IMPACTS ON COLORADO OF ACCEPTING THE WASTE;

(B) ANY POTENTIAL NONENVIRONMENTAL ADVERSE IMPACTS ON COLORADO OF ACCEPTING THE WASTE;

(C) ANY POTENTIAL MITIGATION TO IDENTIFIED ADVERSE IMPACTS; AND

(D) ALTERNATIVES TO ACCEPTING THE WASTE; AND

(III) A RESPONSE, IF ANY, TO THE ENVIRONMENTAL ASSESSMENT WRITTEN BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY IN WHICH THE CLASSIFIED WASTE IS PROPOSED TO BE DISPOSED AND PROVIDED TO THE SITE WITHIN THIRTY DAYS AFTER THE FIRST PUBLIC MEETING. UPON REQUEST OF SUCH BOARD, THE APPLICANT SHALL PROVIDE THE BOARD WITH UP TO TWENTY THOUSAND DOLLARS FOR AN INDEPENDENT ENVIRONMENTAL ANALYSIS BY A DISINTERESTED PARTY TO ASSIST THE BOARD IN PREPARING ITS RESPONSE.

(c) AS USED IN PARAGRAPH (b) OF THIS SUBSECTION (2), "ENVIRONMENTAL ASSESSMENT" MEANS A REPORT AND ASSESSMENT SUBMITTED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT BY A SITE PROPOSING TO RECEIVE CLASSIFIED WASTE THAT ADDRESSES THE IMPACTS OF THE RECEIPT OF SUCH WASTE. THE ENVIRONMENTAL ASSESSMENT SHALL CONTAIN ALL INFORMATION DEEMED NECESSARY BY THE DEPARTMENT, AND SHALL INCLUDE AN ASSESSMENT OF THE SHORT-TERM AND LONG-TERM IMPACTS OF THE DISPOSAL; THE RADIOLOGICAL AND NONRADIOLOGICAL IMPACTS TO THE PUBLIC, INCLUDING SOCIAL AND ECONOMIC IMPACTS; ANY IMPACT ON ANY WATERWAY AND GROUND WATER; AND AN ANALYSIS OF ANY BENEFITS OF THE PROPOSAL AGAINST ENVIRONMENTAL COSTS WHILE CONSIDERING AVAILABLE ALTERNATIVES.

(3) (a) Upon receipt of an application OR NOTICE as provided in subsection (2) of this section, the department of public health and environment shall forward a copy of such application OR NOTICE to the governor and the general assembly, AS APPROPRIATE.

(b) (I) No facility or site referred to in PARAGRAPH (a) OF subsection (1) of this section shall be constructed or approved by the department of public health and environment unless the governor and the general assembly have approved such facility or site.

(II) The governor and the general assembly, in making their determination, shall consider criteria developed by the department of public health and environment for disposal of radioactive wastes pursuant to section 25-11-103 (3) in approving or disapproving the proposed facility or site.

(c) NO DISPOSAL REFERRED TO IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION SHALL OCCUR UNLESS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT HAS APPROVED SUCH DISPOSAL. THE DEPARTMENT SHALL CONSIDER THE TRANSCRIPTS OF THE PUBLIC MEETINGS HELD BY THE SITE, THE SITE'S LICENSE, AND ANY ENVIRONMENTAL ASSESSMENT OR ANALYSIS PERFORMED PURSUANT TO THIS SECTION.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 5, 2002

## CHAPTER 348

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**HEALTH AND ENVIRONMENT**


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**HOUSE BILL 03-1358**

BY REPRESENTATIVE(S) Spradley, King, Borodkin, Fairbank, McFadyen, Merrifield, Plant, Pommer, Williams S., Jahn, Romanoff, and Stengel;  
also SENATOR(S) Kester, Grossman, and Groff.

**AN ACT****CONCERNING ADDITIONAL REQUIREMENTS RELATING TO RADIOACTIVE CLASSIFIED WASTE DISPOSAL.**

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

**SECTION 1.** 25-11-201 (1) and (1.5), Colorado Revised Statutes, are amended, and the said 25-11-201 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**25-11-201. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) (a) "Classified ~~waste~~ MATERIAL" means radioactive ~~waste~~ MATERIALS that ~~is~~ ~~each~~ ARE ONE OR MORE of the following TYPES:

(I) "Type 2 byproduct material" as BYPRODUCT MATERIAL IS defined in 42 U.S.C. sec. 2014 (e) (2);

(II) Naturally occurring ~~uranium-bearing or thorium-bearing soils, solids, or liquids and their decay products;~~ and OR TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIAL;

(III) ~~Waste taken from either:~~ NON-11 e (2) MATERIAL; OR

(A) ~~A site listed as a federal formerly utilized sites remedial action program (FUSRAP) site;~~

(B) ~~A designated title I or title II millsite pursuant to the federal "Uranium Mill Tailings Radiation Control Act of 1978"; or~~

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

~~(C) A site listed on the federal national priorities list (NPL) pursuant to section 105 of the federal "Comprehensive Environmental Response, Compensation and Liability Act" (CERCLA).~~

(IV) ORE.

(b) Nothing in this subsection (1) shall be deemed to include ~~naturally occurring radioactive material as defined in section 25-11-101 (2.7)~~; THE FOLLOWING NATURALLY OCCURRING RADIOACTIVE MATERIALS OR TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS:

(I) RESIDUALS OR SLUDGES FROM THE TREATMENT OF DRINKING WATER BY ALUMINUM, FERRIC CHLORIDE, OR SIMILAR PROCESSES; EXCEPT THAT THE MATERIAL MAY NOT CONTAIN HAZARDOUS SUBSTANCES THAT OTHERWISE WOULD PRECLUDE RECEIPT;

(II) SLUDGES, SOILS, OR PIPE SCALE IN OR ON EQUIPMENT FROM OIL AND GAS EXPLORATION, PRODUCTION, OR DEVELOPMENT OPERATIONS OR DRINKING WATER OR WASTEWATER TREATMENT OPERATIONS; EXCEPT THAT THE MATERIAL MAY NOT CONTAIN HAZARDOUS SUBSTANCES THAT OTHERWISE WOULD PRECLUDE RECEIPT;

(III) MATERIALS FROM OR ACTIVITIES RELATED TO CONSTRUCTION MATERIAL MINING REGULATED UNDER ARTICLE 32.5 OF TITLE 34, C.R.S.

(c) Nothing in this part 2 shall be deemed to apply to the treatment, storage, management, processing, or disposal of solid waste, WHICH MAY INCLUDE NATURALLY OCCURRING RADIOACTIVE MATERIAL AS DEFINED IN SECTION 25-11-101 (2.7), AND TENORM AS DEFINED IN SUBSECTION (4) OF THIS SECTION, either pursuant to a certificate of designation issued under article 20 of title 30, C.R.S., or at a solid waste disposal site and facility considered approved or otherwise deemed to satisfy the requirement for a certificate of designation pursuant to article 20 of title 30, C.R.S., ~~Facilities that have both a radioactive materials license and a certificate of designation shall comply with the provision of this article.~~ OR SECTION 25-15-204 (6).

(1.5) "Disposal" means burial in soil, release through a sanitary sewerage system, incineration, or long-term storage with no intention of or provision for subsequent removal; EXCEPT THAT, WITH REGARD TO CLASSIFIED MATERIAL, "DISPOSAL", SHALL NOT INCLUDE RELEASE THROUGH A SANITARY SEWER OR INCINERATION AT A FACILITY.

(1.6) "FACILITY" MEANS A URANIUM MILL, PROCESSING, OR DISPOSAL FACILITY REQUIRED TO BE LICENSED PURSUANT TO THIS ARTICLE AND A SITE FOR SUCH FACILITY.

(1.7) "NON-11 e (2) MATERIAL" MEANS MATERIAL THAT IS NOT TYPE 2 BYPRODUCT MATERIAL OR ORE. "NON-11 e (2) BYPRODUCT MATERIAL" DOES NOT INCLUDE DEPLETED OR ENRICHED URANIUM AS DEFINED BY COLORADO OR FEDERAL STATUTE OR RULE.

(1.8) "ORE" MEANS NATURALLY OCCURRING URANIUM-BEARING, THORIUM-BEARING, OR RADIUM-BEARING MATERIAL IN ITS NATURAL FORM PRIOR TO CHEMICAL PROCESSING SUCH AS ROASTING, BENEFICIATING, OR REFINING, AND

SPECIFICALLY INCLUDES MATERIAL THAT HAS BEEN PHYSICALLY PROCESSED, SUCH AS BY CRUSHING, GRINDING, SCREENING, OR SORTING.

(4) "TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIAL" OR "TENORM" MEANS NATURALLY OCCURRING RADIOACTIVE MATERIAL WHOSE RADIONUCLIDE CONCENTRATIONS ARE INCREASED BY OR AS A RESULT OF PAST OR PRESENT HUMAN PRACTICES. "TENORM" DOES NOT INCLUDE:

(a) BACKGROUND RADIATION OR THE NATURAL RADIOACTIVITY OF ROCKS OR SOILS;

(b) "BYPRODUCT MATERIAL" OR "SOURCE MATERIAL", AS DEFINED BY COLORADO STATUTE OR RULE; OR

(c) ENRICHED OR DEPLETED URANIUM AS DEFINED BY COLORADO OR FEDERAL STATUTE OR RULE.

**SECTION 2.** 25-11-203 (1) (b), (2) (b), (2) (c), and (3) (c), Colorado Revised Statutes, are amended, and the said 25-11-203 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste.** (1) (b) (I) ~~No site within five miles of a city or town~~ FACILITY shall DISPOSE OF OR receive FOR STORAGE INCIDENT TO DISPOSAL OR PROCESSING AT THE FACILITY ~~classified waste for disposal~~ MATERIAL unless such ~~disposal has been approved as provided in subsection (3) of this section~~ FACILITY HAS RECEIVED A LICENSE, A FIVE-YEAR LICENSE RENEWAL, OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL, IN ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105, C.R.S., FOR SUCH RECEIPT, STORAGE, PROCESSING, OR DISPOSAL OF CLASSIFIED MATERIAL AND SUCH LICENSE, LICENSE RENEWAL, OR LICENSE AMENDMENT APPROVES THAT TYPE OF CLASSIFIED MATERIAL.

(II) Nothing in this paragraph (b) shall apply to a contract for the ~~receipt of shipments~~ STORAGE, PROCESSING, OR DISPOSAL of less than THE SUM OF one hundred ten tons of classified ~~waste or to receipt of shipments of classified waste from drinking water treatment facilities~~ MATERIAL PER SOURCE OR TO A CONTRACT FOR A BENCH-SCALE OR A PILOT-SCALE TESTING PROJECT OR A CONTRACT FOR LESS THAN A DE MINIMIS AMOUNT OF CLASSIFIED MATERIAL AS DETERMINED BY THE DEPARTMENT FOR STORAGE, PROCESSING, OR DISPOSAL.

(III) Nothing in this paragraph (b) shall apply to ~~processing of materials for their mineral value and the subsequent disposal of the mill tailings from that processing~~ A LICENSED FACILITY AS OF THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (III), AS AMENDED, AS IT UNDERGOES ITS CURRENT FIVE-YEAR LICENSE RENEWAL; EXCEPT THAT, DURING THE PERIOD FROM THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (III), AS AMENDED, UNTIL SUCH LICENSE RENEWAL IS APPROVED, SUCH FACILITY SHALL:

(A) CONTINUE TO SUBSTANTIALLY COMPLY WITH ITS CURRENT LICENSE;

(B) FOR EACH TYPE OF CLASSIFIED MATERIAL FOR WHICH AN APPLICATION FOR STORAGE, PROCESSING, OR DISPOSAL HAS ALREADY BEEN SUBMITTED TO THE



DEPARTMENT, PROVIDE TO A LIBRARY IN THE COMMUNITY IN WHICH THE FACILITY IS LOCATED THE MATERIAL ACCEPTANCE REPORT PREPARED CONSISTENT WITH AND CONTAINING THE INFORMATION REQUIRED BY THE INTERIM GUIDANCE ON DISPOSAL OF NON-"ATOMIC ENERGY ACT OF 1954", SECTION 11 e (2) BYPRODUCT MATERIAL IN TAILINGS IMPOUNDMENTS, RIS 2000-23, AND INTERIM POSITION AND GUIDANCE ON THE USE OF URANIUM MILL FEED MATERIAL OTHER THAN NATURAL ORES, RIS 2000-23, AS SUCH GUIDANCE DOCUMENTS ARE AMENDED FROM TIME TO TIME, WHICH REPORT HAS ALSO BEEN PROVIDED TO THE DEPARTMENT;

(C) MEET THE STANDARDS SPECIFIED IN SUBPARAGRAPH (III) OF PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION FOR EACH TYPE OF CLASSIFIED MATERIAL; AND

(D) COMPLY WITH THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION FOR CLASSIFIED MATERIAL FOR WHICH A MATERIAL ACCEPTANCE REPORT HAS NOT ALREADY BEEN FILED WITH THE DEPARTMENT FOR RECEIPT BY THE FACILITY AS OF THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (III), AS AMENDED.

(2) (b) In addition to the requirements of paragraph (a) of this subsection (2), ~~if a site subject to this section is proposing to dispose of classified waste, the site shall provide written notice~~ EACH PROPOSED LICENSE, FIVE-YEAR LICENSE RENEWAL, OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL SHALL INCLUDE A WRITTEN APPLICATION ~~to the department that shall~~ AND INFORMATION RELEVANT TO THE PENDING APPLICATION, ~~include~~ INCLUDING:

(I) Transcripts of two public meetings hosted AND PRESIDED OVER by ~~and at the expense of the site~~ A PERSON SELECTED UPON AGREEMENT BY THE DEPARTMENT, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY WHERE THE FACILITY IS LOCATED, AND THE APPLICANT. ONE OR BOTH OF THE MEETINGS SHALL BE A HEARING CONDUCTED TO COMPLY WITH SECTION 24-4-104 OR 24-4-105, C.R.S. THE REASONABLE, NECESSARY, AND DOCUMENTED EXPENSE OF THE MEETINGS OR HEARING SHALL BE PAID BY THE FACILITY. SUCH MEETINGS SHALL NOT BE HELD UNTIL THE DEPARTMENT DETERMINES THAT THE APPLICATION IS SUBSTANTIALLY COMPLETE. The ~~site~~ FACILITY shall provide the public with:

(A) Pursuant to part 1 of article 70 of title 24, C.R.S., at least two weeks' written notice before the first meeting and an additional two weeks' written notice before the second meeting;

(B) At both meetings, summaries of the ~~site's~~ FACILITY'S license to RECEIVE, STORE, PROCESS, OR dispose of classified ~~waste~~ MATERIAL and the nature of the classified ~~waste~~ MATERIAL, and an opportunity to be heard; and

(C) Access to make copies of a transcript of the meetings;

(II) An environmental assessment ~~regarding~~ AS DEFINED IN PARAGRAPH (c) OF THIS SUBSECTION (2);

~~(A) The environmental impacts on Colorado of accepting the waste;~~

~~(B) Any potential nonenvironmental adverse impacts on Colorado of accepting the waste;~~

~~(C) Any potential mitigation to identified adverse impacts; and~~

~~(D) Alternatives to accepting the waste; and~~

(III) A response, if any, to the environmental assessment written by the board of county commissioners of the county in which the classified ~~waste~~ MATERIAL is proposed to be ~~disposed~~ RECEIVED FOR STORAGE, PROCESSING, OR DISPOSAL AT A FACILITY and provided to the ~~site~~ FACILITY within ~~thirty~~ NINETY days after the first public meeting. Upon request of AND DOCUMENTATION OF THE EXPENDITURE BY such board, the applicant shall provide the board with up to ~~twenty~~ FIFTY thousand dollars, WHICH SHALL BE AVAILABLE TO THE BOARD FOR THE REASONABLE AND NECESSARY EXPENSES DURING THE PENDENCY OF THE APPLICATION TO ASSIST THE BOARD IN RESPONDING TO THE APPLICATION, INCLUDING TO PAY for an independent environmental analysis by a disinterested party WITH APPROPRIATE ENVIRONMENTAL EXPERTISE to assist the board in preparing its response. THE BOARD'S RESPONSE MAY CONSIDER WHETHER THE APPROVAL OF THE LICENSE, FIVE-YEAR LICENSE RENEWAL, OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OR DISPOSAL OF THE CLASSIFIED MATERIAL WILL PRESENT ANY SUBSTANTIAL ADVERSE IMPACT UPON THE SAFETY OR MAINTENANCE OF TRANSPORTATION INFRASTRUCTURE OR TRANSPORTATION FACILITIES WITHIN THE COUNTY.

(c) As used in paragraph (b) of this subsection (2), "environmental assessment" means a report and assessment submitted to the department ~~of public health and environment~~ by a ~~site~~ FACILITY UPON AND IN CONNECTION WITH APPLICATION FOR A LICENSE, A FIVE-YEAR RENEWAL, OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL, proposing to receive classified ~~waste~~ MATERIAL FOR STORAGE, PROCESSING, OR DISPOSAL AT A FACILITY that addresses the impacts of the receipt FOR STORAGE, PROCESSING, OR DISPOSAL of such ~~waste~~ MATERIAL. The environmental assessment shall contain all information deemed necessary by the department, and shall include, AT A MINIMUM:

(I) THE IDENTIFICATION OF THE TYPES OF CLASSIFIED MATERIAL TO BE RECEIVED, STORED, PROCESSED, OR DISPOSED OF;

(II) A REPRESENTATIVE PRESENTATION OF THE PHYSICAL, CHEMICAL, AND RADIOLOGICAL PROPERTIES OF THE TYPE OF CLASSIFIED MATERIAL TO BE RECEIVED, STORED, PROCESSED, OR DISPOSED OF;

(III) An ~~assessment~~ EVALUATION of the short-term and ~~long-term~~ LONG-RANGE ENVIRONMENTAL impacts of ~~the~~ SUCH RECEIPT, STORAGE, PROCESSING, OR disposal;

(IV) AN ASSESSMENT OF the radiological and nonradiological impacts to the public ~~including social and economic impacts~~ HEALTH FROM THE APPLICATION;

(V) Any FACILITY-RELATED impact on any waterway and ground water FROM THE APPLICATION; and

(VI) An analysis of ~~any~~ THE ENVIRONMENTAL, ECONOMIC, SOCIAL, TECHNICAL, AND OTHER benefits of the ~~proposal~~ PROPOSED APPLICATION against environmental costs AND SOCIAL EFFECTS while considering available alternatives.

(3) (c) (I) ~~No disposal referred to in paragraph (b) of subsection (1) of this section shall occur unless the department of public health and environment has approved such disposal.~~ IN DECIDING WHETHER TO APPROVE A LICENSE, FIVE-YEAR LICENSE RENEWAL, OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL, the department shall consider the transcripts of the public meetings held ~~by the site~~ PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, the ~~site's~~ FACILITY'S license, ~~and~~ any environmental assessment or analysis performed pursuant to this section, THE FACILITY'S COMPLIANCE WITH FINANCIAL ASSURANCE REQUIREMENTS OF SECTION 25-11-110, AND THE BOARD OF COUNTY COMMISSIONERS' RESPONSE TO THE ENVIRONMENTAL ASSESSMENT PREPARED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION. THE DEPARTMENT SHALL DENY OR APPROVE THE APPLICATION AS A WHOLE.

(II) THE DEPARTMENT MAY ORDER REASONABLE MITIGATION MEASURES TO ADDRESS ANY SUBSTANTIAL ADVERSE IMPACTS TO PUBLIC HEALTH OR THE ENVIRONMENT OR TRANSPORTATION INFRASTRUCTURE OR TRANSPORTATION FACILITIES WITHIN THE COUNTY ATTRIBUTABLE SOLELY TO APPROVAL OF THE LICENSE, FIVE-YEAR RENEWAL, OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL.

(III) THE APPLICANT SHALL DEMONSTRATE THAT IF THE LICENSE, FIVE-YEAR RENEWAL, OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL IS APPROVED, THEN THE RECEIPT, STORAGE, PROCESSING, AND DISPOSAL OF CLASSIFIED MATERIAL SHALL:

(A) BE CONDUCTED SUCH THAT THE EXPOSURES TO WORKERS AND THE PUBLIC ARE WITHIN THE DOSE LIMITS OF PART 4 OF THE DEPARTMENT'S RULES PERTAINING TO RADIATION CONTROL FOR WORKERS AND THE PUBLIC;

(B) NOT CAUSE RELEASES TO THE AIR, GROUND, OR SURFACE OR GROUND WATER THAT EXCEED PERMITTED LIMITS; AND

(C) NOT PREVENT TRANSFER OF THE FACILITY TO THE UNITED STATES IN ACCORDANCE WITH 42 U.S.C. SEC. 2113 UPON COMPLETION OF DECONTAMINATION, DECOMMISSIONING, AND RECLAMATION OF THE FACILITY.

(IV) NO FACILITY MAY BE PERMITTED AS A HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITY UNDER PART 3 OF ARTICLE 15 OF THIS TITLE.

(V) (A) THE DEPARTMENT SHALL MAKE A DETERMINATION AS TO WHETHER AN APPLICATION SUBMITTED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION IS SUBSTANTIALLY COMPLETE WITHIN THIRTY DAYS AFTER RECEIPT OF SUCH APPLICATION.

(B) THE FIRST PUBLIC MEETING OR HEARING REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION SHALL BE CONVENED WITHIN FORTY-FIVE DAYS AFTER ITS DETERMINATION THAT THE APPLICATION IS SUBSTANTIALLY COMPLETE AND THE SECOND SUCH PUBLIC MEETING OR HEARING SHALL BE CONVENED WITHIN THIRTY DAYS AFTER THE FIRST PUBLIC MEETING.

(C) THE DEPARTMENT SHALL APPROVE, APPROVE WITH CONDITIONS, OR DENY THE APPLICATION SUBMITTED UNDER PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION WITHIN TWO HUNDRED SEVENTY DAYS AFTER THE DEPARTMENT'S RECEIPT OF ANY RESPONSE OF THE BOARD OF COUNTY COMMISSIONERS TO THE APPLICATION PREPARED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION AND WITHIN THREE HUNDRED SIXTY DAYS AFTER THE SECOND PUBLIC MEETING OR HEARING IF NO TIMELY RESPONSE IS RECEIVED BY THE DEPARTMENT FROM THE BOARD OF COUNTY COMMISSIONERS.

(4) (a) (I) AT LEAST SIXTY DAYS BEFORE A FACILITY PROPOSES TO RECEIVE, STORE, PROCESS, OR DISPOSE OF CLASSIFIED MATERIAL FOR WHICH A MATERIAL ACCEPTANCE REPORT HAS NOT ALREADY BEEN FILED WITH THE DEPARTMENT, THE FACILITY SHALL PROVIDE NOTICE TO THE DEPARTMENT, AND THE DEPARTMENT SHALL PROVIDE NOTICE TO THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY IN WHICH THE FACILITY IS LOCATED, OF IDENTIFICATION OF THE SPECIFIC CLASSIFIED MATERIAL TO BE RECEIVED, STORED, PROCESSED, OR DISPOSED OF. SUCH NOTICE SHALL INCLUDE:

(A) A REPRESENTATIVE ANALYSIS, SUITABLE TO THE DEPARTMENT, OF THE PHYSICAL, CHEMICAL, AND RADIOLOGICAL PROPERTIES OF THE CLASSIFIED MATERIAL;

(B) THE MATERIAL ACCEPTANCE REPORT PREPARED CONSISTENT WITH, AND CONTAINING THE INFORMATION REQUIRED BY, THE INTERIM GUIDANCE ON DISPOSAL OF NON-"ATOMIC ENERGY ACT OF 1954", SECTION 11 e (2) BYPRODUCT MATERIAL IN TAILINGS IMPOUNDMENTS, RIS 2000-23, AND INTERIM POSITION AND GUIDANCE ON THE USE OF URANIUM MILL FEED MATERIAL OTHER THAN NATURAL ORES, RIS 2000-23, AS SUCH GUIDANCE DOCUMENTS ARE AMENDED OR SUPERCEDED FROM TIME TO TIME;

(C) THE EXISTING LOCATION OF THE CLASSIFIED MATERIAL;

(D) THE HISTORY OF THE CLASSIFIED MATERIAL;

(E) IF AVAILABLE, ANY PRE-EXISTING REGULATORY CLASSIFICATION OF THE CLASSIFIED WASTE IN THE STATE OF ORIGIN;

(F) A WRITTEN STATEMENT FROM THE UNITED STATES DEPARTMENT OF ENERGY OR SUCCESSOR AGENCY THAT THE RECEIPT, STORAGE, PROCESSING, OR DISPOSAL OF THE CLASSIFIED MATERIAL AT THE FACILITY WILL NOT ADVERSELY AFFECT THE DEPARTMENT OF ENERGY'S RECEIPT OF TITLE TO THE FACILITY PURSUANT TO THE FEDERAL "ATOMIC ENERGY ACT OF 1954 ", 42 U.S.C. SEC. 2113; AND

(G) DOCUMENTATION SHOWING ANY NECESSARY APPROVALS OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

(II) FOR CLASSIFIED MATERIAL THAT WOULD OTHERWISE BE SUBJECT TO THE "LOW-LEVEL RADIOACTIVE WASTE ACT", PART 22 OF ARTICLE 60 OF TITLE 24, C.R.S., THE FACILITY'S NOTICE SHALL ALSO INCLUDE WRITTEN DOCUMENTATION THAT THE ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE BOARD HAS BEEN NOTIFIED THAT THE CLASSIFIED MATERIAL IS BEING CONSIDERED FOR DISPOSAL IN THE SUBJECT FACILITY.

(b) WITHIN FIVE DAYS AFTER THE DEPARTMENT'S RECEIPT OF NOTICE PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (4), THE DEPARTMENT SHALL PUBLISH A NOTICE OF A THIRTY-DAY PUBLIC COMMENT PERIOD, FOR THE RECEIPT OF WRITTEN COMMENTS ONLY, CONCERNING THE NOTICE.

(c) WITHIN THIRTY DAYS AFTER THE CLOSE OF THE WRITTEN PUBLIC COMMENT PERIOD PROVIDED BY PARAGRAPH (b) OF THIS SUBSECTION (4), THE DEPARTMENT SHALL CONFIRM WHETHER THE MATERIAL PROPOSED FOR RECEIPT, STORAGE, PROCESSING, OR DISPOSAL AT THE FACILITY COMPLIES WITH THE FACILITY'S LICENSE AND MEETS THE STANDARDS ESTABLISHED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION, AND NO FURTHER APPROVAL SHALL BE REQUIRED FOR THE FACILITY TO RECEIVE, STORE, PROCESS, OR DISPOSE OF THE CLASSIFIED MATERIAL DESCRIBED IN THE NOTICE.

**SECTION 3. Effective date - applicability.** This act shall take effect upon passage and shall apply to approvals of applications to dispose of, or to receive for storage incident to disposal or processing at a facility, classified waste occurring or required on or after said date.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 2003

## **ARTICLE 11 RADIATION CONTROL**

**Cross references:** For western interstate nuclear compact, see part 14 of article 60 of title 24.

### Section

#### **PART 1 GENERAL PROVISIONS**

- 25-11-101. Definitions.
- 25-11-101.5. Coordination of regulatory interpretations regarding in situ leach uranium mining.
- 25-11-102. Agreements for transfer of functions from federal government to state government.
- 25-11-103. Radiation control agency - powers and duties.
- 25-11-104. Rules to be adopted - fees - fund created.
- 25-11-105. Radiation advisory committee.
- 25-11-105.5. Mammography quality assurance advisory committee - repeal. (Repealed)
- 25-11-106. Injunction proceedings.
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- 25-11-108. Exemptions.
- 25-11-109. Provisional license.
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- 25-11-111. Forfeiture of decommissioning warranties - use of funds.
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#### **PART 2 RADIOACTIVE WASTE DISPOSAL**

- 25-11-201. Definitions.
- 25-11-202. Disposal of foreign radioactive waste prohibited.
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## PART 1 GENERAL PROVISIONS

### 25-11-101. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Civil penalty" means a monetary penalty levied against a licensee or registrant because of a violation of a statute, rule, license, or registration certificate. "Civil penalty" does not include any criminal penalty levied under section 25-1-114 or 25-11-107 (3).

(2) "Department" means the department of public health and environment.

(2.5) "Mammographer" means a person who operates a machine source of radiation, commonly known as an "X-ray machine", in the conduct of a mammography exam.

(2.7) "Naturally occurring radioactive material" means any nuclide that is radioactive in its natural physical state and is not manufactured. "Naturally occurring radioactive material" does not include source material, special nuclear material, or by-products of fossil fuel combustion, including bottom ash, fly ash, and flue-gas emission by-products.

(3) "Radiation" means ionizing radiation, which includes gamma rays, X rays, alpha particles, beta particles, high-speed electrons, high-speed neutrons, high-speed protons, and other high-speed nuclear particles.

(4) "Radiation machine" means a device capable of producing radiation; except that "radiation machine" does not include a device with radioactive material as its only source of radiation.

(5) "Radioactive" means emitting radiation.

(6) "Radioactive material" means any material, whether solid, liquid, or gas, that emits radiation spontaneously.

(7) "Specific license" means a license issued to a person to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing, radioactive materials occurring naturally or produced artificially.

(8) "State board" means the state board of health created in section 25-1-103.

**Source:** L. 65: p. 716, § 1. **C.R.S. 1963:** § 66-26-1. **L. 79:** IP amended and (4) added, p. 1063, § 1, effective July 1; IP amended, p. 1070, § 3, effective January 1, 1980. **L. 83:** (1) R&RE and (1.5) added, p. 1084, §§ 1, 2, effective July 1. **L. 93:** (2.7) added, p. 487, § 1, effective April 26; (2.5) added, p. 701, § 2, effective July 1. **L. 94:** (1.5) amended, p. 2791, § 525, effective July 1.

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**L. 2010:** Entire section amended, (HB 10-1149), ch. 282, p. 1309, § 1, effective May 26.

**Editor's note:** (1) Subsection (2.7) was enacted as subsection (2.5) by Senate Bill 93-126, Session Laws of Colorado 1993, but was renumbered on revision for ease of location.

(2) Subsections (4), (5), and (6) were numbered as subsections (6), (4), and (5), respectively, in House Bill 10-1149 but were renumbered on revision to place defined terms in alphabetical order.

**Cross references:** For the legislative declaration contained in the 1993 act enacting subsection (2.7), see section 1 of chapter 184, Session Laws of Colorado 1993; for the legislative declaration contained in the 1994 act enacting subsection (1.5), see section 1 of chapter 345, Session Laws of Colorado 1994.

## ANNOTATION

**Law reviews.** For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

### **25-11-101.5. Coordination of regulatory interpretations regarding in situ leach uranium mining.**

The general assembly recognizes that the proper and orderly regulation of in situ leach mining, as defined in section 34-32-103, C.R.S., for uranium ore has aspects that may involve more than one regulatory agency of state government and that the statutes that each agency is responsible for administering may, due to the use of terms of art and other technical words, phrases, and definitions, hold the potential of being interpreted inconsistently or to be held in conflict with each other. It is the intent of the general assembly that, with regard to in situ leach mining for uranium ore, the relevant agencies coordinate to the maximum extent practicable to resolve any such conflicts or inconsistencies.

**Source: L. 2010:** Entire section added, (HB 10-1348), ch. 388, p. 1818, § 1, effective June 8.

**Editor's note:** Section 7 of chapter 388, Session Laws of Colorado 2010, provides that the act adding this section applies to applications currently filed or filed on or after June 8, 2010, and to operations currently permitted or permitted on or after June 8, 2010.

### **25-11-102. Agreements for transfer of functions from federal government to state government.**

(1) The governor, on behalf of this state, is authorized, from time to time, to enter into agreements with the federal government providing for the assumption by this state through the department, and the discontinuance by the federal government, of any responsibilities within the state of Colorado relating to the protection of persons and property from the hazards of radioactive materials and other sources of radiation.



(2) The governor, on behalf of this state, is authorized, from time to time, to enter into agreements with the federal government, other states, or interstate agencies whereby the department shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of radiation.

(3) No such agreement entered into pursuant to the provisions of subsections (1) or (2) of this section shall transfer to, delegate to, or impose upon the department any power, authority, or responsibility that is not fully consistent with the provisions of this article.

**Source:** L. 65: p. 716, § 2. C.R.S. 1963: § 66-26-2. L. 2010: (1) and (2) amended, (HB 10-1149), ch. 282, p. 1310, § 2, effective May 26.

#### ANNOTATION

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, § 1592

#### **25-11-103. Radiation control agency - powers and duties.**

(1) The department is designated as the radiation control agency of this state.

(2) Pursuant to rules adopted as provided in section 25-11-104, the department shall issue licenses pertaining to radioactive materials, prescribe and collect fees for such licenses, and require registration of other sources of radiation. No other agency or branch of this state has such power or authority.

(3) The department shall develop and conduct programs for evaluation and control of hazards associated with the use of radioactive materials and other sources of radiation, including criteria for disposal of radioactive wastes and materials to be considered in approving facilities and sites pursuant to part 2 of this article.

(4) The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of this part 1 and may make said personnel available for participation in any program of the federal government, other states, or interstate agencies in furtherance of the purposes of this part 1.

(5) In the event of an emergency relating to any source of radiation that endangers the public peace, health, or safety, the department has the authority to issue such orders for the protection of the public health and safety as may be appropriate, including orders to lay an embargo upon or impound radioactive materials and other sources of radiation in the possession of any person who is not equipped to observe or who fails to comply with this part 1 or any rules promulgated under this part 1.

(6) The department or its duly authorized representatives has the power to enter at all

reasonable times, in accordance with applicable state or federal regulations, into the areas in which sources of radiation are reasonably believed to be located for the purpose of determining whether or not the owner, occupant, or licensee is in compliance with or in violation of this part 1 and the rules promulgated under this part 1, and the owner, occupant, or person in charge of such property shall permit such entry and inspection.

(7) (a) In order to provide for the concentration, storage, or permanent disposal of radioactive materials consistent with adequate protection of the public health and safety, the state, through the department, may acquire by gift, transfer from another state department or agency, or other transfer any and all lands, buildings, and grounds suitable for such purposes. Any such acquisition shall be subject to the provisions of paragraph (h) of this subsection (7).

(b) The state, through the department, may, by lease or license with private persons or corporations, provide for the operation of sites or facilities, for the purposes stated in paragraph (a) of this subsection (7), in, under, and upon lands and grounds acquired under said paragraph (a) in accordance with rules and regulations established by the department; but no lease or license shall be authorized except with the prior approval of the state engineer. The department may permit the conduct thereon of other related activities involving radioactive materials not contrary to the public interest, health, and safety. Each such lease or license shall cover only one site or facility and shall provide for a term up to ninety-nine years, which shall be renewable. Each such lease or license shall provide for the payment to the state of a fee based upon the quantity of radioactive material stored in the lands covered thereby. Such fee shall be established at such rate that interest on the sum of all fees reasonably anticipated as payable under any lease or license shall provide an annual amount equal to the anticipated reasonable costs to the state of such maintenance, monitoring, and other supervision of the lands and facilities covered by such lease or license, following the term thereof, as are required in the interest of the public health and safety. In arriving at the rate of the fee, the department shall consider the nature of the material to be stored, the storage space available, estimated future receipts, and estimated future expenses of maintenance, monitoring, and supervision.

(c) Said lease shall include a payment in lieu of taxes which shall be paid over to local governmental units in compensation for loss of valuation for assessment. Said payment shall be adjusted annually to conform with current mill levies, assessment practices, and value of land and improvements.

(d) All fees provided in this section shall be paid quarterly, as accrued, to the department, which shall receipt for the same and shall transmit such payment to the state treasurer and take his receipt therefor.

(e) The department may require, as a condition to the issuance of any lease or license under paragraph (b) of this subsection (7), that the lessee or licensee give reasonable security for the payment of the amount of all fees reasonably anticipated during the full term of such lease or license, and the department may also require, as a condition to the issuance of any lease or license, that the lessee or licensee post a bond or other security under such regulation as the

department may prescribe to cover any tortious act committed during the term of the lease or license.

(f) Prior to the issuance of any lease or license under paragraph (b) of this subsection (7), the department, at the expense of the applicant, shall hold a public hearing on the application, in the area of the proposed site or facility, after reasonable public notice.

(g) The operation of any and all sites and appurtenant facilities established for the purposes of paragraph (a) of this subsection (7) shall be under the direct supervision of the department and shall be in accordance with rules and regulations adopted under section 25-11-104.

(h) It is recognized by the general assembly that any site used for the concentration, disposal, or storage of radioactive material and the contents thereof will represent a continuing and perpetual responsibility involving the public health, safety, and general welfare and that ownership of said site and its contents must ultimately be reposed in a solvent government, without regard for the existence of any particular agency, instrumentality, department, division, or officer thereof. To this end and subject only to the terms of any lease or license issued under paragraph (b) of this subsection (7), all lands, buildings, and grounds acquired by the state under paragraph (a) of this subsection (7) which are used as sites for the concentration, storage, or disposal of radioactive materials shall be owned in fee simple absolute by the state and dedicated in perpetuity to such purposes, and all radioactive material received at such facility, upon permanent storage therein, shall become the property of the state and shall be in all respects administered, controlled, and disposed of, including transfer by sale, lease, loan, or otherwise, by the state, through the department, unless the general assembly shall designate another agency, instrumentality, department, or division of the state so to act.

(8) The state board of health shall prescribe, revise periodically as appropriate, and provide for the collection of fees from any person for radiation control services provided by the department.

**Source:** L. 65: p. 717, § 3. C.R.S. 1963: § 66-26-3. L. 67: p. 763, § 1. L. 75: (6) amended, p. 884, § 1, effective July 14. L. 79: (2) to (6) amended and (8) added, p. 1063, § 2, effective July 1; (4) to (6) amended, p. 1070, § 4, effective January 1, 1980. L. 2010: (2), (3), (5), and (6) amended, (HB 10-1149), ch. 282, p. 1310, § 3, effective May 26.

#### ANNOTATION

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, § 1592.

**County exercises a separate power from that of the department of public health and environment in the issuance of licenses under this section,** and therefore has standing to challenge the department's licensing decisions. *Adams Bd. of County Comm'rs v. Colo. Dept. of Pub. Health & Env't*, 218 P.3d 336 (Colo. 2009).

## **25-11-104. Rules to be adopted - fees - fund created.**

(1) (a) The state board shall formulate, adopt, and promulgate rules as provided in subsections (2) and (2.5) of this section that cover subject matter relative to radiation machines and radioactive materials, including naturally occurring radioactive materials and other sources of radiation. The subject matter of the rules shall include: Licenses and registration; records; permissible levels of exposure; notification and reports of accidents; technical qualifications of personnel; technical qualifications of mammographers; handling, transportation, and storage; waste disposal; posting and labeling of hazardous sources and areas; surveys; monitoring; and financial assurance warranties.

(b) The state board may adopt rules concerning the disposal of naturally occurring radioactive materials at any time after the promulgation by the federal environmental protection agency or its successor of rules for the disposal of naturally occurring radioactive materials.

(c) Notwithstanding any provision of section 25-11-103 (7) (h), it is not necessary that a governmental entity own any site that is used for the concentration, storage, or disposal of radioactive material that at the time of its acceptance for concentration, storage, or disposal is owned or generated by the United States department of energy and is defined as low-level radioactive waste under the federal "Low-level Radioactive Waste Policy Act Amendments of 1986", as amended, if the owner of the site complies with rules promulgated by the board in accordance with this section. The rules shall ensure the long-term protection of the public health and safety and may include financial assurance warranties pursuant to this part 1, deed annotations and restrictions, easement provisions, restrictive covenants, and adequate markers to warn of the presence of radioactive materials.

(2) Rules promulgated under this section shall be consistent with regulations proposed by the conference of radiation control program directors, inc., or its successor, under the title, "Suggested State Regulations for Control of Radiation"; except that, if the state board concludes on the basis of detailed findings that a substantial deviation from any of the suggested state regulations is warranted and that a substitute rule or no rule would effectively permit maximum utilization of sources of radiation consistent with the health and safety of all persons who might otherwise become exposed to the radiation, the state board need not maintain the suggested state regulation or may promulgate a substitute rule as the case may be.

(2.5) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26, 2010.)

(3) The rules adopted pursuant to this part 1 shall never be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a duly licensed practitioner of the healing arts.

(4) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26,

2010.)

(5) In adopting, amending, or repealing rules under this section, the board shall comply with article 4 of title 24, C.R.S.

(6) (a) The state board shall promulgate a fee schedule, in accordance with section 24-4-103, C.R.S., for radiation control services provided by the department. Radiation control services for which fees may be established include application processing for qualified inspectors, qualified experts, and service companies as defined by the state board, which fees shall be paid by the applicants or service companies; issuance of categories of specific licenses to accord with categories established by the nuclear regulatory commission and which shall include licenses for special nuclear material, source material, by-product material, well logging and surveys and tracer studies, and for human use; and inspections of licensees as authorized by section 25-11-103 (6). Licenses and fees shall, where appropriate, be in accordance with policies and priorities of the nuclear regulatory commission.

(b) The state board shall set fees that provide sufficient revenues to reimburse the state for the actual direct and indirect costs of the radiation control services specified in paragraph (a) of this subsection (6). In so doing, the state board shall take into account any special arrangements between the state and the licensee, another state, or a federal agency whereby the cost of the service is otherwise recovered.

(c) All fees collected pursuant to this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the radiation control fund, which fund is hereby created. Moneys credited to the radiation control fund, in amounts determined annually by the general assembly by appropriation, shall be expended for radiation control services as provided in this subsection (6).

(7) The state board shall promulgate rules as necessary to implement section 25-11-107 (5).

(8) (a) The state board shall adopt rules requiring that all machine sources of radiation be inspected and certified by qualified inspectors as safe for the intended uses consistent with 42 U.S.C. sec. 263b and in compliance with the specifications of the state board and the equipment manufacturer. Rules shall include minimum specifications for radiation machines, minimum standards for the qualifications of individuals authorized to inspect and certify radiation machines, and procedures for inspection of radiation machines. If a qualified inspector determines that a radiation machine fails to meet the required specifications, the inspector shall notify the owner or operator immediately and shall notify the department within three days after the determination. A radiation machine that fails to meet the required specifications and is determined by a qualified inspector to be unsafe for human use shall not thereafter be used for human use until subsequent certification, and the qualified inspector shall affix an official noncertification sticker issued by the department indicating that the machine is not authorized for human use. A certification or noncertification sticker shall be affixed on each radiation machine in a location conspicuous to machine operators and to persons on whom the machine is used.

(a.5) and (b) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26, 2010.)

(c) In establishing or revising specifications for each type of machine that is a source of radiation, the standards for approval of qualified inspectors, and the procedures for making inspections, the department shall consult with manufacturers of radiation equipment, health care providers and operators who use the equipment in diagnostic and therapeutic treatment of humans, and qualified inspectors and individuals.

(d) The general assembly hereby finds that the setting of minimum specifications for radiation machines and the establishment of minimum standards for qualified inspectors of those machines are matters of statewide concern. Therefore, no other state agency, political subdivision, or local government shall establish any other specifications for radiation machines or standards for radiation machine inspectors, or impose any fees therefor.

**Source:** L. 65: p. 718, § 4. C.R.S. 1963: § 66-26-4. L. 79: (2) and (3) amended and (6) added, p. 1064, § 3, effective July 1; (3) amended, p. 1071, § 5, effective January 1, 1980. L. 83: (6)(c) R&RE, p. 1087, § 1, effective July 1; (7) added, p. 1084, § 3, effective July 1. L. 88: (6)(c) amended and (8) added, p. 1045, § 1, effective July 1. L. 93: (1) amended, p. 487, § 2, effective April 26; (1) amended and (2.5) and (8)(a.5) added, p. 701, §§ 3, 4, effective July 1. L. 94: (1)(b) amended, p. 731, § 1, effective April 19. L. 97: (1)(a) amended and (1)(c) added, p. 1632, § 1, effective August 15. L. 98: IP(8)(a) and (8)(a)(III) amended, p. 1337, § 54, effective June 1. L. 2002: (8)(a)(II) and (8)(a)(III) amended, p. 533, § 1, effective May 24. L. 2003: IP(8)(a) amended, p. 711, § 43, effective July 1. L. 2007: IP(8)(a) amended, p. 552, § 1, effective April 16. L. 2010: Entire section amended, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26.

**Editor's note:** Amendments to subsection (1) by Senate Bill 93-126 and House Bill 93-1185 were harmonized.

**Cross references:** For the legislative declaration contained in the 1993 act amending subsection (1) and enacting subsections (2.5) and (8)(a.5) see section 1 of chapter 184, Session Laws of Colorado 1993.

## ANNOTATION

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, § 1635.

**Law reviews.** For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

### 25-11-105. Radiation advisory committee.

(1) The governor shall appoint a radiation advisory committee of nine members, no more

than four of whom shall represent any one political party and three of whom shall represent industry, three the healing arts, and three the public and private institutions of higher education. Members of the committee shall serve at the discretion of the governor and shall be reimbursed for necessary and actual expenses incurred in attendance at meetings or for authorized business of the board. The committee shall furnish to the department such technical advice as may be desirable or required on matters relating to the radiation control program.

(2) Repealed.

**Source:** L. 65: p. 719, § 5. C.R.S. 1963: § 66-26-5. L. 86: Entire section amended, p. 420, § 43, effective March 26. L. 89: (2) repealed, p. 1147, § 3, effective April 6.

#### **25-11-105.5. Mammography quality assurance advisory committee - repeal. (Repealed)**

**Source:** L. 93: Entire section added, p. 702, § 5, effective July 1.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective July 1, 1998. (See L. 93, p. 702.)

#### **25-11-106. Injunction proceedings.**

If, in the judgment of the department, any person has engaged in or is about to engage in an act or practice that constitutes a violation of this part 1 or of any license, registration, rule, or order issued under this part 1, the attorney general shall, at the request of the department, apply to the district court for an order enjoining the act or practice or for an order directing compliance with this part 1 and all rules and orders and the terms and conditions of a license or registration issued under this part 1.

**Source:** L. 65: p. 719, § 6. C.R.S. 1963: § 66-26-6. L. 79: Entire section amended, p. 1065, § 4, effective July 1; entire section amended, p. 1071, § 6, effective January 1, 1980. L. 2010: Entire section amended, (HB 10-1149), ch. 282, p. 1315, § 5, effective May 26.

### **ANNOTATION**

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, §§ 2046, 2047.

**Private parties who are adversely affected or aggrieved have standing to seek judicial review** of the department's action. Nat'l Wildlife Fed'n v. Cotter Corp., 665 P.2d 598 (Colo. App. 1983).

#### **25-11-107. Prohibited acts - violations - penalties - rules - cease-and-desist orders.**

(1) Except as allowed by rule of the state board:

(a) No person shall acquire, own, possess, or use any radioactive material occurring naturally or produced artificially without having been granted a license therefor from the department; or

(b) Transfer to another or dispose of such material without first having been granted approval of the department therefor.

(2) Except as allowed by rule of the state board, no person shall knowingly use, manufacture, produce, transport, transfer, receive, send, acquire, own, or possess any source of radiation unless such person is licensed by or registered with the department. The exceptions promulgated by the state board shall include use of domestic television receivers, computer monitors, household microwave ovens, radiant heat devices, cellular telephones, incandescent gas mantles, and vacuum tubes.

(2.5) No person shall knowingly use any radiation machine to treat or diagnose any disease or conditions of the human body if the radiation machine is not certified for such treatment or diagnosis as provided in section 25-11-104 (8).

(3) Any person who violates the provisions of subsection (1), (2), or (2.5) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

(4) If a person does not pay the fee for radiation control services, the department may request the attorney general to commence a civil action against the person. If the court finds in such action that such person has not paid the fee for radiation control services, the court shall require such person to pay the fee together with a penalty not greater than twice the amount of the fee or one thousand dollars, whichever is greater. All civil penalties collected pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit them to the general fund.

(5) (a) Any person who violates subsection (1), (2), or (2.5) of this section, any licensing or registration provision, any rule or order issued under this part 1, or any term, condition, or limitation of any license or registration certificate issued pursuant to this part 1 is subject to an administrative penalty not to exceed fifteen thousand dollars per day for each violation.

(b) If the department has reason to believe, based upon facts available to it, that a person has committed any of the violations designated in paragraph (a) of this subsection (5), it shall send the person, within a reasonable time, a written notice of the violation specifying:

(I) The factual basis of each act or omission with which the person is charged; and

(II) The particular provision of the statute, rule, order, license, or registration certificate violated.



(c) (I) The department shall send the notice required by paragraph (b) of this subsection (5) by certified or registered mail, return receipt requested, to the last-known address of the alleged violator, or the department shall personally serve the notice of the violation upon the alleged violator or the alleged violator's agent.

(II) The alleged violator shall have thirty days following the receipt of the notice to submit a written response containing data, views, and arguments concerning the alleged violation and potential corrective measures.

(III) In addition, the alleged violator may request an informal conference with department personnel to discuss the notice of violation required by paragraph (b) of this subsection (5). The alleged violator shall request the informal conference within fifteen days after receiving the notice, and the conference shall be held within the thirty days allowed for a written response.

(IV) After consideration of any written response and informal conference, the department shall issue a letter, within thirty days after the date of the informal conference or the receipt of a written response, whichever is later, affirming or dismissing the violation. Any remaining corrective measures that are necessary, and any administrative penalty determined to be appropriate, will be incorporated into an administrative order.

(c.3) In determining the amount of any administrative penalty, the department shall consider the factors in subparagraphs (I) to (X) of this paragraph (c.3). The factors contained in subparagraphs (VII), (VIII), and (IX) of this paragraph (c.3) are mitigating factors and may be applied, with other factors, to reduce any administrative penalty. Such factors are:

(I) The seriousness of the violation;

(II) Whether the violation was intentional, reckless, or negligent;

(III) The impact on, or threat to, the public health or the environment as a result of the violation;

(IV) The degree of recalcitrance, if any, on the part of the violator;

(V) Whether the violator is a recidivist;

(VI) The economic benefit realized by the violator as a result of the violation;

(VII) The violator's voluntary, timely, and complete disclosure of the violation, if prior to the department's knowledge of the violation, and if all reports required pursuant to state environmental control laws have been submitted as required;

(VIII) The violator's full and prompt cooperation with the department following disclosure or discovery of a violation, including, when appropriate, entering into and implementing, in good faith, a legally enforceable agreement with the department to undertake compliance and remediation efforts;

(IX) The existence of a comprehensive regulatory compliance program or an audit program that the violator adopted in good faith and in a timely manner, which program includes measures determined by the department to be sufficient to identify and prevent future noncompliance; and

(X) Any other aggravating or mitigating circumstance.

(c.5) In accordance with article 4 of title 24, C.R.S., and based upon the factors enumerated in paragraph (c.3) of this subsection (5), the state board shall adopt rules for determining administrative penalties imposed under this subsection (5).

(c.7) The department may compromise, mitigate, or remit an administrative penalty imposed pursuant to this subsection (5). The department may enter into a settlement agreement regarding any penalty or claim resolved under this part 1. The settlement agreement may include the payment or contribution of moneys to state or local agencies for other environmentally beneficial purposes.

(d) If the circumstances warrant, the department shall issue an order containing the elements of both the notice of violation specified in paragraph (b) of this subsection (5) and the letter described in subparagraph (IV) of paragraph (c) of this subsection (5).

(e) (I) The letter issued pursuant to subparagraph (IV) of paragraph (c) of this subsection (5) and the order issued pursuant to paragraph (d) of this subsection (5) shall notify the alleged violator of the right to request a hearing within thirty days, which hearing shall be held in accordance with section 24-4-105, C.R.S., to determine any of the following:

(A) Whether the alleged violation exists or did exist;

(B) The reasonableness of the time set for abatement; and

(C) Whether the administrative penalty is reasonable in light of the statutory criteria on which it is based.

(II) The alleged violator shall address each alleged violation in the request for the hearing and shall specify which of the alleged violations the alleged violator is appealing. An allegation not addressed in the request for the hearing shall be deemed admitted.

(III) No person engaged in conducting the hearing or participating in a decision or an initial decision shall be responsible for or subject to the supervision or direction of any department employee engaged in the performance of an investigatory or prosecuting function for the department.

(IV) The final action of the department is subject to judicial review pursuant to section 24-4-106, C.R.S.

(f) and (g) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1315, § 6, effective May 26, 2010.)

(h) At the request of the department, the attorney general may institute a civil action to collect an administrative penalty imposed pursuant to this subsection (5).

(i) Except as specified in paragraph (c.3) of this subsection (5), all administrative penalties collected pursuant to this subsection (5) shall be transmitted to the state treasurer, who shall credit them to the general fund.

(j) For any site or facility licensed under part 2 of this article determined by the department to have caused a release to the groundwater that exceeds the basic standards for groundwater as established by the water quality control commission, until remediation has been completed, the licensee shall provide annual written notice of the status of the release and any remediation activities associated with the release, by certified or registered mail, return receipt requested, to the current address for each registered groundwater well within one mile of the release as identified in the corrective action monitoring program, unless the licensee demonstrates that a distance less than one mile is warranted.

(6) Any qualified inspector who incorrectly certifies a machine that is a source of radiation as meeting the applicable specifications as required in section 25-11-104 (8) is subject to disciplinary action in accordance with section 24-4-104, C.R.S.

(7) If the department has reasonable cause to believe that a violation of this part 1 or of a license, registration, rule, or order issued under this part 1 has occurred or is occurring, the department may issue a cease-and-desist order setting forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which the violation must cease. Except for emergency orders issued to protect the public health or the environment, for which a person to whom the emergency order has been issued may request an immediate hearing pursuant to section 24-4-105 (12), C.R.S., a person to whom a cease-and-desist order has been issued may petition the district court for the district in which the violation is alleged to have occurred or be occurring for a stay of the order. The court shall grant the request to stay if the person demonstrates that immediate and irreparable injury will result if the stay is not granted and that granting the stay will not result in serious harm to the public health, safety, or welfare or the environment.

**Source:** L. 65: p. 719, § 7. C.R.S. 1963: § 66-26-7. L. 67: p. 764, § 2. L. 79: (4) added, p. 1065, § 5, effective July 1. L. 83: (5) added, p. 1084, § 4, effective July 1. L. 88: (2.5) and (6) added and (3) amended, p. 1047, § 2, effective July 1. L. 2010: (1), (2), (2.5), (4), (5), and (6) amended and (7) added, (HB 10-1149), ch. 282, p. 1315, § 6, effective May 26; (5)(j) added, (HB 10-1348), ch. 388, p. 1818, § 2, effective June 8.

**Editor's note:** (1) Amendments to subsection (5) by House Bill 10-1149 and House Bill 10-1348 were harmonized.

(2) Section 7 of chapter 388, Session Laws of Colorado 2010, provides that the act adding subsection (5)(j) applies to applications currently filed or filed on or after June 8, 2010, and to operations

currently permitted or permitted on or after June 8, 2010.

#### ANNOTATION

**Am. Jur.2d.** See 61B Am. Jur.2d, Pollution Control, § 80.

#### **25-11-108. Exemptions.**

(1) The provisions of sections 25-11-103 and 25-11-104 shall not apply to the following sources or conditions:

(a) Electrical or other equipment or material that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit generally accepted by the medical profession for any critical organ exposed. The production testing or production servicing of such equipment shall not be exempt.

(b) Radiation machines during process of manufacture or in storage or transit. The production testing or production servicing of such machines shall not be exempt.

(c) Any radioactive material while being transported in conformity with regulations adopted by the atomic energy commission, or any successor thereto, or the surface transportation board and specifically applicable to the transportation of such radioactive materials;

(d) Sound and radio waves and visible infrared and ultraviolet light.

(2) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the atomic energy commission or any successor thereto.

(3) Section 25-11-107 shall not apply to unmined minerals containing radioactive materials including such as are involved in mining operations.

(4) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1320, § 7, effective May 26, 2010.)

(5) Any person may file application for exemption under this section for activities including, but not limited to, licensed sources of radiation for educational or noncommercial public displays or scientific collections.

**Source: L. 65:** p. 719, § 8. **C.R.S. 1963:** § 66-26-8. **L. 79:** (3) amended and (4) and (5) added, p. 1066, § 6, effective July 1. **L. 2001:** (1)(c) amended, p. 1275, § 38, effective June 5. **L. 2010:** (3) and (4) amended, (HB 10-1149), ch. 282, p. 1320, § 7, effective May 26.

### **25-11-109. Provisional license.**

In the event the department has failed to issue or has denied a request for a license, or an amendment thereto, as authorized by this article, within thirty days of the date of receipt by the department of a completed application made on the appropriate forms designated by the department to a hospital as licensed or certified pursuant to section 25-1.5-103 (1) (a) (I) and (1) (a) (II), a provisional license shall be deemed to have been issued by the department. In the case of a denial, the department shall provide the applicant in writing with information and substantive reasons in explanation thereof. The provisional license shall be in effect for a period of ninety days and may be continued for one additional ninety-day period. Such provisional license shall apply only to licensed or certified hospitals when the purpose is to acquire, possess, and use radioactive material for diagnostic or therapeutic human use.

**Source: L. 79:** Entire section added, p. 1066, § 7, effective July 1. **L. 2003:** Entire section amended, p. 711, § 44, effective July 1.

### **25-11-110. Financial assurance warranties - definitions.**

(1) As a part of any license, certificate, or authorization issued under this article and pursuant to regulations promulgated by the state board of health, the department may require financial assurance warranties.

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

(a) "Decommissioning warranty" means a financial assurance arrangement provided by a person licensed, certified, or authorized pursuant to this article that is required to ensure decommissioning and decontamination of a facility and proper disposal of radioactive materials to meet the requirements of this part 1, the regulations promulgated pursuant thereto, or the license.

(b) "Financial assurance warranty" means a decommissioning warranty or a long-term care warranty.

(c) "Indirect costs" means those costs established annually in accordance with federal circular A-87, or any applicable successor document.

(d) "Long-term care warranty" means a financial assurance arrangement provided by a person licensed, certified, or authorized pursuant to this article that is required to cover the costs incurred by the department in conducting surveillance of a disposal site in perpetuity subsequent to the termination of the radioactive materials license for that site.

(3) (a) Financial assurance warranties may be provided by the licensee or by a third party or combination of persons.

(b) Any financial assurance warranty required pursuant to this section shall be in a form prescribed by the state board of health by regulation.

(c) The department may refuse to accept any financial assurance warranty if:

(I) The form, content, or terms of the warranty are other than as prescribed by the state board of health by regulation;

(II) The financial institution providing the financial assurance instrument is an off-shore, nondomestic institution or does not have a registered agent in the state of Colorado;

(III) The value of the financial assurance warranty offered is dependent upon the success, profitability, or continued operation of the licensed business or operation; or

(IV) The department determines that the financial assurance warranty cannot be converted to cash within thirty days after forfeiture.

(4) (a) The department shall determine the amount of financial assurance warranties required, taking into account the nature, extent, and duration of the licensed activities and the magnitude, type, and estimated cost for proper disposal of radioactive materials, decontamination, and decommissioning or long-term care.

(b) The amount of a decommissioning warranty shall be sufficient to enable the department to dispose of radioactive materials and complete decontamination and decommissioning of affected buildings, fixtures, equipment, personal property, and lands if necessary.

(c) The amount of the decommissioning warranty shall be based upon cost estimates of the total costs that would be incurred if an independent contractor were hired to perform the decommissioning, decontamination, and disposal work, and may include reasonable administrative costs, including indirect costs, incurred by the department in conducting or overseeing disposal, decontamination, and decommissioning and to cover the department's reasonable attorney costs that may be incurred in successfully revoking, foreclosing, or realizing the decommissioning warranty as authorized in section 25-11-111 (4).

(d) The amount of a long-term care warranty shall be enough that, with an assumed six percent annual real interest rate, the annual interest earnings will be sufficient to cover the annual costs of site surveillance by the department, including reasonable administrative costs incurred by the department, in perpetuity, subsequent to the termination of the radioactive materials license for that site.

(e) If the state of Colorado is the long-term caretaker for the disposal facility pursuant to section 25-11-103 (7) (h), long-term care moneys shall be transferred, pursuant to section 25-11-113 (3), to the long-term care fund, created in section 25-11-113, prior to license termination and shall be used by the department to perform site surveillance and to cover the department's administrative and reasonable attorney costs.

(f) The department is authorized to transfer a long-term care warranty to the United States department of energy or another federal agency if that agency will be the long-term caretaker for the disposal facility.

(5) (a) The department shall take reasonable measures to assure the continued adequacy of any financial assurance warranty and may annually or for good cause increase or decrease the amount of required financial assurance warranties or require proof of the value of existing warranties.

(b) The licensee shall submit an annual report to the department demonstrating proof of the value of existing warranties. The annual report shall describe any changes in operations, estimated costs, or any other circumstances that may affect the amount of the required financial assurance warranties, including any increased or decreased costs attributable to inflation.

(c) Public notice of the submittal of the licensee's annual report shall be posted on the department's web site and published by the operator in the local paper of general circulation. Any person may submit written comments to the department concerning the adequacy of any financial assurance warranties. The act of submitting such comments does not provide a right to administrative appeal concerning the financial assurance warranties.

(d) The licensee shall have sixty days after the date of written notification by the department of a required adjustment to establish a warranty fulfilling all new requirements unless granted an extension by the department. If the licensee disputes the amount of the required financial assurance warranties, the licensee may request a hearing to be conducted in accordance with section 24-4-105, C.R.S.

(e) If the licensee requests a hearing, no new classified material, as that term is defined in section 25-11-201, may be brought on site and no classified material may be processed until the licensee's dispute over the financial assurance warranty is resolved, unless the licensee posts a bond in a form approved by the department equal to the amount in dispute.

(6) (a) Financial assurance warranties shall be maintained in good standing until the department has authorized in writing the discontinuance of such warranties.

(b) (I) If a financial warranty is provided by a corporate surety, the department shall require the surety to be A.M. Best rated "A-V" or better and listed on the United States treasury's federal register of companies holding certificates of authority as acceptable sureties on federal bonds; except that, the corporate surety shall notify the department and the licensee, in writing, as soon as practicable in the event its A.M. Best, or equivalent, rating deteriorates below an "A-V" rating or such corporate surety is removed from the department of the treasury's list of companies holding certificates of authority as acceptable sureties on federal bonds.

(II) The board may promulgate rules and regulations concerning other circumstances that may constitute an impairment of the warranties referenced in this article that would require

reasonable notice to the department by the warrantor.

(III) A financial warrantor shall notify the department not less than ninety days prior to any cancellation, termination, or revocation of the warranty, unless the department has authorized in writing the discontinuance of such warranties.

**Source: L. 97:** Entire section added, p. 1633, § 2, effective August 15. **L. 2010:** (5) amended, (HB 10-1348), ch. 388, p. 1819, § 3, effective June 8.

**Editor's note:** Section 7 of chapter 388, Session Laws of Colorado 2010, provides that the act amending subsection (5) applies to applications currently filed or filed on or after June 8, 2010, and to operations currently permitted or permitted on or after June 8, 2010.

### **25-11-111. Forfeiture of decommissioning warranties - use of funds.**

(1) A decommissioning warranty shall be subject to immediate forfeiture whenever the department determines that any one of the following circumstances exist:

(a) The licensee has violated an emergency, abatement, or cease-and-desist order or court-ordered injunction or temporary restraining order related to decommissioning, decontamination, or disposal and, if decommissioning, decontamination, or disposal was required in such order, has failed to complete such decommissioning, decontamination, or disposal although reasonable time to have done so has elapsed; or

(b) The licensee is in violation of decommissioning, decontamination, or disposal requirements as specified in the license and the regulations and has failed to cure such violation although the licensee has been given written notice thereof pursuant to section 25-11-107 (5) and has had reasonable time to cure such violation; or

(c) The licensee has failed to provide an acceptable replacement warranty when:

(I) The licensee's financial warrantor no longer has the financial ability to carry out obligations under this article; or

(II) The department has received notice or information that the financial warrantor intends to cancel, terminate, or revoke the warranty; or

(d) The licensee has failed to maintain its financial assurance warranty in good standing as required by section 25-11-110 (6) (a); or

(e) An emergency endangering public health or safety has been caused by or resulted from the licensee's use or possession of radioactive materials.

(2) (a) Upon determining that a decommissioning warranty should be forfeited under subsection (1) of this section, the department shall issue to the licensee an order forfeiting the decommissioning warranty. The order shall contain written findings of fact and conclusions of



law to support its decision and shall direct affected financial warrantors to deliver to the department the full amounts warranted by applicable decommissioning warranties within not more than thirty days after the date of the order.

(b) The licensee may request a hearing on the order of forfeiture that shall be conducted in accordance with section 24-4-105, C.R.S., and that, if the department alleges in the forfeiture order a violation of a license, regulation, or order, the hearing may be conducted in conjunction with a hearing requested under section 25-11-107 (5). Any request for a hearing pursuant to this part 1 shall be made within twenty days after the date of the order of forfeiture and shall not affect the obligation to submit to the department funds from decommissioning warranties forfeited by such order unless a stay of forfeiture is granted by the department or by administrative or judicial order.

(3) The department may request the attorney general, and the attorney general is authorized, to commence legal proceedings necessary to secure or recover amounts warranted by decommissioning warranties. The attorney general shall have the power to collect, foreclose upon, present for payment, take possession of, or dispose of pledged property, and otherwise reduce to cash any financial assurance arrangement required by this article.

(4) (a) Decommissioning funds recovered by the department pursuant to this section shall be immediately deposited into the decommissioning fund created in section 25-11-113 and shall be used solely for the disposal of radioactive materials for the facility covered by the forfeited financial assurance warranties; the decommissioning and decontamination of buildings, equipment, personal property, and lands covered by the forfeited financial assurance warranties; and to cover the department's reasonable attorney and administrative costs associated with disposal, decommissioning, and decontamination for such facility.

(b) The department or its agent shall have a right to enter property of the licensee to dispose of radioactive materials, decommission, and decontaminate buildings, equipment, personal property, and lands. Upon completion of disposal, decommissioning, and decontamination activities, the department shall present to the licensee a full accounting and shall refund all unspent decommissioning warranty moneys, including interest.

(5) Licensees shall remain liable for the total actual cost of disposal of, decommissioning, and decontaminating affected buildings, equipment, personal property, and lands, less any amounts expended by the department pursuant to subsection (4) of this section, notwithstanding any discharge of applicable financial assurance warranties.

**Source: L. 97:** Entire section added, p. 1635, § 2, effective August 15.

#### **25-11-112. Forfeiture of long-term care warranty - use of funds.**

(1) A long-term care warranty shall be subject to immediate forfeiture whenever the

department determines that any one of the following circumstances exist:

(a) The licensee is in violation of long-term care requirements as specified in the license and the regulations and has failed to cure such violation although the licensee has been given written notice thereof pursuant to section 25-11-107 (5) and has had reasonable time to cure such violation; or

(b) The licensee has failed to provide an acceptable replacement warranty when:

(I) The licensee's financial warrantor no longer has the financial ability to carry out obligations under this article; or

(II) The department has received notice or information that the financial warrantor intends to cancel, terminate, or revoke the warranty; or

(c) The licensee has failed to maintain its financial assurance warranty in good standing as required by section 25-11-110 (6) (a).

(2) (a) A long-term care warranty shall be subject to immediate use and expenditure by the department whenever the department determines that disposal, decommissioning, and decontamination requirements specified in the license conditions and regulations have been satisfied. The department shall give the licensee written notice of the department's intent to use the long-term care warranty for long-term care purposes. The notice shall contain findings of fact and conclusions of law to support its decision and shall direct affected financial warrantors to deliver to the department the full amounts warranted by applicable long-term care warranties within not more than thirty days after the date of the notice.

(b) The licensee may request a hearing on a notice under paragraph (a) of this subsection (2) that shall be conducted in accordance with section 24-4-105, C.R.S. Any request for a hearing under this subsection (2) shall be made within thirty days after the date of the notice and shall not affect the obligation to submit to the department funds from long-term care warranties unless a stay is granted by the department or by administrative or judicial order.

(3) The department may request the attorney general, and the attorney general is authorized, to commence legal proceedings necessary to secure or recover amounts warranted by long-term care warranties. The attorney general shall have the power to collect, foreclose upon, present for payment, take possession of, or dispose of pledged property, and otherwise reduce to cash any financial assurance arrangement required by this article.

(4) (a) Long-term care funds recovered by the department pursuant to this section shall be immediately deposited into the long-term care fund created in section 25-11-113 and shall be used solely for the long-term care for the facility covered by the financial assurance warranty and to cover the department's reasonable attorney and administrative costs associated with long-term care for such facility.

(b) The department or its agent shall have a right to enter property of the licensee to perform long-term care and monitoring. Upon completion of long-term care activities, the department shall present to the licensee a full accounting and shall refund all unspent warranty moneys, including interest.

**Source: L. 97:** Entire section added, p. 1637, § 2, effective August 15.

**25-11-113. Forfeitures - deposit - radiation control - decommissioning fund - long-term care fund.**

(1) The department is hereby authorized to collect funds from forfeited decommissioning warranties and from long-term care warranties.

(2) (a) A fund to be known as the decommissioning fund is hereby created in the state treasury. The fund shall be interest-bearing and invested to return the maximum income feasible as determined by the state treasurer and consistent with otherwise applicable state law. All moneys collected from decommissioning warranties pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the decommissioning fund. All moneys deposited in the fund and all interest earned on moneys in the fund shall remain in the fund for the purposes set forth in this article, and no part of the fund shall be expended or appropriated for any other purpose.

(b) The moneys in the fund shall be continuously appropriated for the purposes set forth in this part 1 and shall not be transferred to or revert to the general fund.

(3) Moneys in the decommissioning fund shall be available for use by the department for the sole purpose of disposing of radioactive materials and completing decontamination and decommissioning of affected buildings, fixtures, equipment, personal property, and lands, and to cover the department's reasonable attorney costs that may be incurred in successfully revoking, foreclosing, or realizing any decommissioning warranty, and reasonable administrative costs, including indirect costs, incurred by the department in conducting disposal, decontamination, and decommissioning.

(4) (a) A fund to be known as the long-term care fund is hereby created and established in the state treasury. Such fund shall be interest-bearing and invested to return the maximum income feasible as determined by the state treasurer and consistent with otherwise applicable state law. All moneys collected from long-term care warranties pursuant to this section shall be transmitted to the state treasurer who shall credit the same to the long-term care fund. All moneys deposited in the fund and all interest earned on moneys in the fund shall remain in the fund for the purposes set forth in this part 1 and no part thereof shall be expended or appropriated for any other purpose.

(b) Moneys in the long-term care fund shall be annually appropriated by the general

assembly to the department in an amount sufficient to implement the provisions of this part 1.

(c) Moneys in the long-term care fund shall be available for use by the department for the sole purposes of:

(I) Performing annual site inspections to confirm the integrity of the stabilized waste system, environmental monitoring, and maintenance of the waste disposal site, including fixtures, cover, and equipment;

(II) Covering the department's reasonable attorney costs that may be incurred in successfully collecting or realizing any long-term care warranty, and reasonable administrative costs, including indirect costs, incurred by the department in conducting long-term care of the disposal facility.

**Source: L. 97:** Entire section added, p. 1638, § 2, effective August 15. **L. 99:** (2)(a) and (4)(a) amended, p. 625, § 27, effective August 4. **L. 2010:** (2)(a) amended, (HB 10-1348), ch. 388, p. 1819, § 4, effective June 8.

**Editor's note:** Section 7 of chapter 388, Session Laws of Colorado 2010, provides that the act amending subsection (2)(a) applies to applications currently filed or filed on or after June 8, 2010, and to operations currently permitted or permitted on or after June 8, 2010.

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## **PART 2**

### **RADIOACTIVE WASTE DISPOSAL**

#### **25-11-201. Definitions.**

As used in this part 2, unless the context otherwise requires:

(1) (a) "Classified material" means radioactive materials that are one or more of the following types:

(I) "Type 2 byproduct material" as byproduct material is defined in 42 U.S.C. sec. 2014 (e) (2);

(II) Naturally occurring or technologically enhanced naturally occurring radioactive material;

(III) Non-11 e (2) material; or

(IV) Ore.

(b) Nothing in this subsection (1) shall be deemed to include the following naturally occurring radioactive materials or technologically enhanced naturally occurring radioactive materials:

(I) Residuals or sludges from the treatment of drinking water by aluminum, ferric chloride, or similar processes; except that the material may not contain hazardous substances that otherwise would preclude receipt;

(II) Sludges, soils, or pipe scale in or on equipment from oil and gas exploration, production, or development operations or drinking water or wastewater treatment operations; except that the material may not contain hazardous substances that otherwise would preclude receipt;

(III) Materials from or activities related to construction material mining regulated under article 32.5 of title 34, C.R.S.

(c) Nothing in this part 2 shall be deemed to apply to the treatment, storage, management, processing, or disposal of solid waste, which may include naturally occurring radioactive material as defined in section 25-11-101 (2.7), and term as defined in subsection (4) of this section, either pursuant to a certificate of designation issued under article 20 of title 30, C.R.S., or at a solid waste disposal site and facility considered approved or otherwise deemed to satisfy the requirement for a certificate of designation pursuant to article 20 of title 30, C.R.S., or section 25-15-204 (6).

(1.5) "Disposal" means burial in soil, release through a sanitary sewerage system, incineration, or long-term storage with no intention of or provision for subsequent removal;

except that, with regard to classified material, "disposal" shall not include release through a sanitary sewer or incineration at a facility.

(1.6) "Facility" means a uranium mill, processing, or disposal facility required to be licensed pursuant to this article and a site for such facility.

(1.7) "Non-11 e (2) material" means material that is not type 2 byproduct material or ore. "Non-11 e (2) byproduct material" does not include depleted or enriched uranium as defined by Colorado or federal statute or rule.

(1.8) "Ore" means naturally occurring uranium-bearing, thorium-bearing, or radium-bearing material in its natural form prior to chemical processing such as roasting, beneficiating, or refining, and specifically includes material that has been physically processed, such as by crushing, grinding, screening, or sorting.

(2) "Radioactive" means emitting alpha rays, beta rays, gamma rays, high-energy neutrons or protons, or other high-level radioactive particles. The term "radioactive" does not include material in which the estimated specific activity is not greater than .002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed.

(3) "Radioactive waste" means all radioactive materials which have no useful purpose and are to be discarded and are:

(a) Capable of producing radiation exposures with acute effects associated with the operation and decommissioning of nuclear reactors for commercial, military, research, and other purposes, including spent fuel if discarded, fuel reprocessing waste and radionuclides removed from associated process streams or effluents, and with the United States nuclear weapons program;

(b) Transuranic (radionuclides with atomic numbers greater than 92); and

(c) Radionuclides which have been used for industrial and research use, and material contaminated with them, and which are capable of producing radiation exposures with acute effects as determined by the department of public health and environment.

(4) "Technologically enhanced naturally occurring radioactive material" or "tenorm" means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. "Tenorm" does not include:

(a) Background radiation or the natural radioactivity of rocks or soils;

(b) "Byproduct material" or "source material", as defined by Colorado statute or rule; or

(c) Enriched or depleted uranium as defined by Colorado or federal statute or rule.

**Source: L. 79:** Entire part added, p. 1066, § 8, effective July 1. **L. 94:** (3)(c) amended, p. 2791, § 526, effective July 1. **L. 2002:** (1) amended and (1.5) added, p. 230, § 1, effective April 5. **L.**

**2003:** (1) and (1.5) amended and (1.6), (1.7), (1.8), and (4) added, p. 2188, § 1, effective June 3.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (3)(c), see section 1 of chapter 345, Session Laws of Colorado 1994.

**25-11-202. Disposal of foreign radioactive waste prohibited.**

The disposal of any radioactive waste which originates or has been used outside this state and has not been used in this state is prohibited except as provided in section 25-11-203.

**Source: L. 79:** Entire part added, p. 1067, § 8, effective July 1.

**ANNOTATION**

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, §§ 1158, 1610, 1611.

**25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste.**

(1) (a) No facility shall be constructed or site approved for the disposal of radioactive waste originating or used outside Colorado unless such facility or site has been approved as provided in subsection (3) of this section.

(b) (I) No facility shall dispose of or receive for storage incident to disposal or processing at the facility classified material unless such facility has received a license, a five-year license renewal, or license amendment pertaining to the facility's receipt of classified material, in accordance with sections 24-4-104 and 24-4-105, C.R.S., for such receipt, storage, processing, or disposal of classified material and such license, license renewal, or license amendment approves that type of classified material.

(II) Nothing in this paragraph (b) shall apply to a contract for the storage, processing, or disposal of less than the sum of one hundred ten tons of classified material per source or to a contract for a bench-scale or a pilot-scale testing project or a contract for less than a de minimis amount of classified material as determined by the department for storage, processing, or disposal.

(III) License amendments for the receipt of classified material at a facility are subject to subsections (2) and (3) of this section except when the material is from an approved source and such amendment would not result in a change in ownership, design, or operation of the facility. License amendments not subject to subsections (2) and (3) of this section are subject to subsection (4) of this section.

(2) (a) Any person desiring to have a facility or site referred to in subsection (1) of this section approved shall apply to the department of public health and environment for approval of

such facility or site. The application shall contain such information as the department requires and shall be accompanied by an application fee determined by the board pursuant to the provisions of part 1 of this article.

(b) In addition to the requirements of paragraph (a) of this subsection (2), each proposed license, five-year license renewal, or license amendment pertaining to the facility's receipt of classified material shall include a written application to the department and information relevant to the pending application, including:

(I) Transcripts of two public meetings hosted and presided over by a person selected upon agreement by the department, the board of county commissioners of the county where the facility is located, and the applicant. One or both of the meetings shall be a hearing conducted to comply with section 24-4-104 or 24-4-105, C.R.S. The reasonable, necessary, and documented expense of the meetings or hearing shall be paid by the facility. Such meetings shall not be held until the department determines that the application is substantially complete. The facility shall provide the public with:

(A) Pursuant to part 1 of article 70 of title 24, C.R.S., at least two weeks' written notice before the first meeting and an additional two weeks' written notice before the second meeting;

(B) At both meetings, summaries of the facility's license to receive, store, process, or dispose of classified material and the nature of the classified material, and an opportunity to be heard; and

(C) Access to make copies of a transcript of the meetings, and shall provide an electronic copy to the department in a manner that allows posting on the department's web site within ten days after receipt from the transcription service;

(II) An environmental assessment as defined in paragraph (c) of this subsection (2);

(III) A response, if any, to the environmental assessment written by the board of county commissioners of the county in which the classified material is proposed to be received for storage, processing, or disposal at a facility and provided to the facility within ninety days after the first public meeting. Upon request of and documentation of the expenditure by such board, the applicant shall provide the board with up to fifty thousand dollars, which shall be available to the board for the reasonable and necessary expenses during the pendency of the application to assist the board in responding to the application, including to pay for an independent environmental analysis by a disinterested party with appropriate environmental expertise to assist the board in preparing its response. The board's response may consider whether the approval of the license, five-year license renewal, or license amendment pertaining to the facility's receipt or disposal of the classified material will present any substantial adverse impact upon the safety or maintenance of transportation infrastructure or transportation facilities within the county.

(c) As used in paragraph (b) of this subsection (2), "environmental assessment" means a



report and assessment submitted to the department by a facility upon and in connection with application for a license, a five-year renewal, or license amendment pertaining to the facility's receipt of classified material, proposing to receive classified material for storage, processing, or disposal at a facility that addresses the impacts of the receipt for storage, processing, or disposal of such material. The environmental assessment shall contain all information deemed necessary by the department, and shall include, at a minimum:

(I) The identification of the types of classified material to be received, stored, processed, or disposed of;

(II) A representative presentation of the physical, chemical, and radiological properties of the type of classified material to be received, stored, processed, or disposed of;

(III) An evaluation of the short-term and long-range environmental impacts of such receipt, storage, processing, or disposal;

(IV) An assessment of the radiological and nonradiological impacts to the public health from the application;

(V) Any facility-related impact on any waterway and ground water from the application;

(VI) An analysis of the environmental, economic, social, technical, and other benefits of the proposed application against environmental costs and social effects while considering available alternatives;

(VII) A list of all material violations of local, state, or federal law at the facility since the submittal date of the previous license application or license renewal application;

(VIII) For an application for a license or license amendment pertaining to the facility's receipt of classified material for storage, processing, or disposal at the facility, a demonstration that:

(A) There are no outstanding material violations of any state or federal statutes, compliance orders, or court orders applicable to the facility, and any releases giving rise to any such violation have been remediated;

(B) The operator, after a good faith review of the facility and its operations, is not aware of any current license violation at the facility;

(C) There are no current releases to the air, ground, surface water, or groundwater that exceed permitted limits; and

(D) No conditions exist at the facility that would prevent the department of energy's receipt of title to the facility pursuant to the federal "Atomic Energy Act of 1954", 42 U.S.C. sec. 2113;

(IX) A list of all necessary permits and any changes to local land use ordinances that are needed to construct or operate the facility; and

(X) For sites or facilities placed on the national priority list pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act", 42 U.S.C. sec. 9605, a copy of the most recent five-year review and any associated updates that have been issued by the United States environmental protection agency.

(3) (a) Upon receipt of an application or notice as provided in subsection (2) of this section, the department of public health and environment shall notify the public and forward a copy of the application or notice to the governor and the general assembly, as appropriate.

(b) (I) No facility or site referred to in paragraph (a) of subsection (1) of this section shall be constructed or approved by the department of public health and environment unless the governor and the general assembly have approved such facility or site.

(II) The governor and the general assembly, in making their determination, shall consider criteria developed by the department of public health and environment for disposal of radioactive wastes pursuant to section 25-11-103 (3) in approving or disapproving the proposed facility or site.

(c) (I) In deciding whether to approve a license, five-year license renewal, or license amendment pertaining to the facility's receipt of classified material, the department shall consider the transcripts of the public meetings held pursuant to subparagraph (I) of paragraph (b) of subsection (2) of this section, the facility's license, any environmental assessment or analysis performed pursuant to this section, the facility's compliance with financial assurance requirements of section 25-11-110, and the board of county commissioners' response to the environmental assessment prepared pursuant to subparagraph (III) of paragraph (b) of subsection (2) of this section. The department shall deny or approve the application as a whole.

(II) The department may order reasonable mitigation measures to address any substantial adverse impacts to public health or the environment or transportation infrastructure or transportation facilities within the county attributable solely to approval of the license, five-year renewal, or license amendment pertaining to the facility's receipt of classified material.

(III) The applicant shall demonstrate that if the license, five-year renewal, or license amendment pertaining to the facility's receipt of classified material is approved, then the receipt, storage, processing, and disposal of classified material shall:

(A) Be conducted such that the exposures to workers and the public are within the dose limits of part 4 of the department's rules pertaining to radiation control for workers and the public;

(B) Not cause releases to the air, ground, or surface or ground water that exceed permitted limits; and

(C) Not prevent transfer of the facility to the United States in accordance with 42 U.S.C. sec. 2113 upon completion of decontamination, decommissioning, and reclamation of the facility.

(IV) No facility may be permitted as a hazardous waste treatment, storage, or disposal facility under part 3 of article 15 of this title.

(V) (A) The department shall publish a determination as to whether an application submitted pursuant to paragraph (b) of subsection (2) of this section is substantially complete within forty-five days after receipt of the application.

(B) The first public meeting or hearing required by subparagraph (I) of paragraph (b) of subsection (2) of this section shall be convened within forty-five days after publication of its determination that the application is substantially complete. The second such public meeting or hearing shall be convened within thirty days after the first public meeting.

(C) The department shall approve, approve with conditions, or deny the application submitted under paragraph (b) of subsection (2) of this section within three hundred sixty days after the second public meeting; except that, for an applicant that has completed the second public meeting on or before June 8, 2010, the department shall act upon the application within the time frame prescribed by this sub-subparagraph (C) as it existed as of the date of the application.

(4) (a) (I) At least ninety days before a facility proposes to receive, store, process, or dispose of classified material in a license application or amendment that is not subject to subsections (2) and (3) of this section and for which a material acceptance report has not already been filed with the department, the facility shall notify the department, and the department shall notify the public and the board of county commissioners of the county in which the facility is located, of the specific classified material to be received, stored, processed, or disposed of. The notice shall include:

(A) A representative analysis of the physical, chemical, and radiological properties of the classified material;

(B) The material acceptance report that demonstrates that the classified material does not contain hazardous waste characteristics not found in uranium ore;

(C) A detailed plan for transport, acceptance, storage, handling, processing, and disposal of the material;

(D) A demonstration that the material contains technically and economically recoverable uranium, without taking into account its value as disposal material;

(E) The existing location of the classified material;

(F) The history of the classified material;

(G) A written statement by the applicant describing any pre-existing regulatory classification of the classified waste in the state of origin that describes all steps taken by the applicant to

identify such classification;

(H) A written statement from the United States department of energy or successor agency that the receipt, storage, processing, or disposal of the classified material at the facility will not adversely affect the department of energy's receipt of title to the facility pursuant to the federal "Atomic Energy Act of 1954 ", 42 U.S.C. sec. 2113;

(I) Documentation showing any necessary approvals of the United States environmental protection agency; and

(J) An environmental assessment as defined in paragraph (c) of subsection (2) of this section, which may incorporate by reference relevant information contained in an environmental assessment previously submitted for the facility.

(II) For classified material that would otherwise be subject to the "Low-level Radioactive Waste Act", part 22 of article 60 of title 24, C.R.S., the facility's notice shall also include written documentation that the rocky mountain low-level radioactive waste board has been notified that the classified material is being considered for disposal in the subject facility.

(b) Within thirty days after the department's receipt of notice pursuant to subparagraph (I) of paragraph (a) of this subsection (4), the department shall determine whether the notice is complete.

(c) Once the department determines that the notice is complete, the department shall publish the notice on its web site and provide a sixty-day public comment period for the receipt of written comments concerning the notice. A public hearing may be held, at the department's discretion, at the operator's expense.

(d) Within thirty days after the close of the written public comment period provided by paragraph (c) of this subsection (4), the department shall approve, approve with conditions, or deny the receipt, storage, processing, or disposal as described in the notice based on whether the material proposed for receipt, storage, processing, or disposal at the facility complies with the facility's license and meets the standards established pursuant to subparagraph (III) of paragraph (c) of subsection (3) of this section.

**Source: L. 79:** Entire part added, p. 1067, § 8, effective July 1. **L. 94:** (2) and (3) amended, p. 2791, § 527, effective July 1. **L. 97:** (3)(b) amended, p. 1023, § 44, effective August 6. **L. 2002:** Entire section amended, p. 231, § 2, effective April 5. **L. 2003:** (1)(b), (2)(b), (2)(c), and (3)(c) amended and (4) added, p. 2190, § 2, effective June 3. **L. 2010:** (1)(b)(III), (2)(b)(I)(C), (3)(a), (3)(c)(V), and (4) amended and (2)(c)(VII), (2)(c)(VIII), (2)(c)(IX), and (2)(c)(X) added, (HB 10-1348), ch. 388, pp. 1820, 1823, §§ 5, 6, effective June 8.

**Editor's note:** Section 7 of chapter 388, Session Laws of Colorado 2010, provides that the act amending subsections (1)(b)(III), (2)(b)(I)(C), (3)(a), (3)(c)(V), and (4) and adding subsections (2)(c)(VII), (2)(c)(VIII), (2)(c)(IX), and (2)(c)(X) applies to applications currently filed or filed on or after June 8, 2010,

and to operations currently permitted or permitted on or after June 8, 2010.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsections (2) and (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

#### **ANNOTATION**

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, §§ 1154, 1159, 1610, 1611.

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## **PART 3**

### **DISPOSAL OF URANIUM MILL TAILINGS**

**Law reviews:** For article, "Administrative Law", which discusses Tenth Circuit decisions dealing with administrative actions based upon agency findings of scientific fact, see 64 Den. U. L. Rev. 111 (1987).

#### **25-11-301. Legislative declaration.**

(1) The general assembly hereby finds and declares that the existence of uranium mill tailings at active and inactive mill operations poses a potential and significant radiation health hazard. This part 3 is therefore enacted to protect the public health, safety, and welfare by cooperating with the federal government in providing for the stabilization, disposal, and control of such tailings in a safe and environmentally sound manner to prevent or minimize other environmental impacts from such tailings.

(2) The general assembly recognizes the need for the state to expend such funds as are necessary to provide land annotation and site information for purposes of protecting prospective purchasers or users of mill sites designated for cleanup pursuant to public law 95-604. The general assembly therefore declares its intent to assist local governments with the identification, removal, storage, and disposal of tailing deposits associated with such designated mill sites for which remedial action is not taken pursuant to the federal "Uranium Mill Tailings Radiation Control Act of 1978".

**Source: L. 79:** Entire part added, p. 1069, § 1, effective January 1, 1980. **L. 97:** Entire section amended, p. 337, § 2, effective April 16.

#### **ANNOTATION**

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, § 1602.

#### **25-11-302. Terms defined.**

For the purposes of this part 3, the terms "processing site" and "residual radioactive material" shall have the meanings specified in section 101 (6) and (7), respectively, of Public Law 95-604, as from time to time amended.

**Source: L. 79:** Entire part added, p. 1069, § 1, effective January 1, 1980.

#### **ANNOTATION**

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, § 1602.

**25-11-303. Authorization to participate - implementation - repeal.**

(1) The general assembly hereby authorizes the department of public health and environment to participate in federal implementation of the "Uranium Mill Tailings Radiation Control Act of 1978", and for such purpose the department has the authority to:

(a) Enter into cooperative agreements with the secretary of energy to perform remedial actions at processing sites designated by the secretary;

(b) Obtain written consent from the record owner of a designated processing site to perform remedial actions at such site;

(c) Provide for reimbursement for the actual cost of any remedial action in accordance with the terms of Public Law 95-604;

(d) (I) Acquire by gift, transfer, exchange, or purchase pursuant to the requirements of article 56 of title 24, C.R.S., any designated processing site, including any interest in such site, and any site to be used for the permanent disposition and stabilization of residual radioactive materials. Acquisition of any such sites shall be for the purpose of performing remedial action and ultimate disposition of the site as required under the federal "Uranium Mill Tailings Radiation Control Act of 1978".

(II) If the negotiation procedures established in section 24-56-117, C.R.S., fail to accomplish acquisition of the site, the matter may be submitted to arbitration within ten days' notice by the fee title holder. The arbitration panel shall consist of one arbitrator chosen by the siteowner, one arbitrator chosen by the department, and one arbitrator chosen by the other two arbitrators. If the two arbitrators cannot agree within ten days on a third arbitrator, a request by either party shall be made to the district court for the judicial district of the county in which the site is located for appointment of a third impartial arbitrator. The department and the siteowner shall share equally the cost of the use of the third arbitrator. All arbitrators shall be residents of the county in which the land is located. The arbitration panel shall issue its decision thirty days after its appointment, and the decision shall be made in accordance with the criteria established in section 24-56-117 (1) (c), C.R.S., and the provisions of the federal "Uranium Mill Tailings Radiation Control Act of 1978". If the arbitration panel will not be able to issue its decision thirty days after its appointment, but at least two of the three arbitrators determine that the panel is near a decision, the panel shall be allowed fifteen days after the expiration of the initial thirty-day period to make its decision. Such decision shall be made by at least a majority of the arbitrators and shall not be binding on any court.

(III) If the acquisition of any such site is not accomplished pursuant to the arbitration procedures established in subparagraph (II) of this paragraph (d), the department is authorized to

obtain such site by condemnation proceedings pursuant to the provisions of article 1 of title 38, C.R.S. A decision made pursuant to the provisions of article 1 of title 38, C.R.S., shall be made in accordance with the criteria established in section 24-56-117 (1) (c), C.R.S., and the provisions of the federal "Uranium Mill Tailings Radiation Control Act of 1978".

(IV) This paragraph (d) is repealed, effective upon the acquisition of all of the nine currently designated sites, as certified by the executive director of the department, for purposes of participating in the federal "Uranium Mill Tailings Radiation Control Act of 1978";

(e) Participate in the selection and performance of remedial actions in which the state pays a portion of the cost;

(f) Participate in the following activities for which the state may pay any portion or all of the costs:

(I) Land annotation and information gathering, identification, removal, and disposal of tailing deposits associated with mill sites designated for cleanup pursuant to public law 95-604 that remain outside of the disposal cells constructed for remedial purposes pursuant to the federal "Uranium Mill Tailings Radiation Control Act of 1978"; and

(II) The groundwater restoration phase of the federal "Uranium Mill Tailings Radiation Control Act of 1978".

**Source:** **L. 79:** Entire part added, p. 1069, § 1, effective January 1, 1980. **L. 86:** (1)(d) R&RE, p. 980, § 1, effective May 16. **L. 94:** IP(1) amended, p. 2791, § 528, effective July 1. **L. 97:** (1)(f) added, p. 337, § 3, effective April 16.

**Editor's note:** As of the 2008 publication date, not all nine designated processing sites as specified in subsection (1)(d)(IV) have been acquired.

**Cross references:** For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

## ANNOTATION

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, § 1602.

**Although the policies specified in § 24-56-117 apply to condemnation of property under this section,** such policies are modified by the policies for state land acquisition included in the federal Uranium Mill Tailings Radiation Control Act. *The Mill v. State*, Dept. of Health, 868 P.2d 1099 (Colo. App. 1993).

**Notwithstanding the rule against consideration of enhanced value in determining fair value in condemnation proceedings,** determination of the fair value of property that is condemned under the federal Uranium Mill Tailings Radiation Control Act may include evidence of the value of the property if it were uncontaminated. *The Mill v. State*, Dept. of Health, 868 P.2d 1099 (Colo. App. 1993).



**25-11-304. Financial participation.**

(1) The general assembly accepts the provisions of section 107 (a) of Public Law 95-604 requiring the state to pay ten percent of the actual cost of any remedial action and administrative costs from nonfederal moneys.

(2) The state of Colorado may receive a share of the net profits derived from the recovery of minerals from residual radioactive materials at any designated processing site within the state in accordance with the provisions of section 108 (b) of Public Law 95-604.

**Source: L. 79:** Entire part added, p. 1070, § 1, effective January 1, 1980.

**ANNOTATION**

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, §§ 1602, 1603.

**25-11-305. Restriction - termination.**

(1) Nothing in this part 3 shall supersede the provisions of part 1 of this article.

(2) The authority to participate in federal implementation of remedial actions at designated processing sites shall terminate at such time as the authority of the federal government to perform remedial action terminates under the provisions of section 112 (a) of Public Law 95-604.

**Source: L. 79:** Entire part added, p. 1070, § 1, effective January 1, 1980.

**ANNOTATION**

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, §§ 1602, 1603.

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## CHAPTER 282

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**HEALTH AND ENVIRONMENT**

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**HOUSE BILL 10-1149**

BY REPRESENTATIVE(S) Hullinghorst, Court, Fischer, Frangas, Labuda, Pommer, Schafer S., Vigil, McFadyen;  
also SENATOR(S) Foster, Boyd.

**AN ACT****CONCERNING THE REGULATION PRIOR TO DISPOSAL OF SOURCES THAT EMIT RADIATION.**

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

**SECTION 1.** 25-11-101, Colorado Revised Statutes, is amended to read:

**25-11-101. Definitions.** As used in this part 1, unless the context otherwise requires:

(1) "Civil penalty" means ~~any~~ A monetary penalty levied against a licensee or registrant because of ~~violations of statutes, regulations, licenses, or registration certificates~~ A VIOLATION OF A STATUTE, RULE, LICENSE, OR REGISTRATION CERTIFICATE. "Civil penalty" does not include any criminal penalty levied under section 25-1-114 or 25-11-107 (3).

~~(1.5) "Department" means the department of public health and environment.~~

(2) ~~"Ionizing radiation" means gamma rays and X-rays and alpha particles, beta particles, high-speed electrons, neutrons, protons, and other high-speed nuclear particles~~ "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(2.5) "Mammographer" means a person who operates a machine source of ~~ionizing~~ radiation, commonly known as an "X-ray machine", in the conduct of a mammography exam.

(2.7) "Naturally occurring radioactive material" means any nuclide that is radioactive in its natural physical state and is not manufactured. "Naturally

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

occurring radioactive material" does not include source material, special nuclear material, or by-products of fossil fuel combustion, including ~~but not limited to~~ bottom ash, fly ash, and flue-gas emission by-products.

(3) "RADIATION" MEANS IONIZING RADIATION, WHICH INCLUDES GAMMA RAYS, X RAYS, ALPHA PARTICLES, BETA PARTICLES, HIGH-SPEED ELECTRONS, HIGH-SPEED NEUTRONS, HIGH-SPEED PROTONS, AND OTHER HIGH-SPEED NUCLEAR PARTICLES.

(4) "RADIOACTIVE" MEANS EMITTING RADIATION.

~~(3)~~(5) "Radioactive material" means any material, WHETHER solid, liquid, or gas, ~~which~~ THAT emits ~~ionizing~~ radiation spontaneously.

(6) "RADIATION MACHINE" MEANS A DEVICE CAPABLE OF PRODUCING RADIATION; EXCEPT THAT "RADIATION MACHINE" DOES NOT INCLUDE A DEVICE WITH RADIOACTIVE MATERIAL AS ITS ONLY SOURCE OF RADIATION.

~~(4)~~(7) "Specific license" means a license issued to a person to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing, radioactive materials occurring naturally or produced artificially.

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

**SECTION 2.** 25-11-102 (1) and (2), Colorado Revised Statutes, are amended to read:

**25-11-102. Agreements for transfer of functions from federal government to state government.** (1) The governor, on behalf of this state, is authorized, from time to time, to enter into agreements with the federal government providing for the assumption by this state through the department, and the discontinuance by the federal government, of any ~~and all~~ responsibilities within the state of Colorado relating to the protection of persons and property from the hazards of radioactive materials and other sources of ~~ionizing~~ radiation.

(2) The governor, on behalf of this state, is authorized, from time to time, to enter into agreements with the federal government, other states, or interstate agencies whereby the department shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ~~ionizing~~ radiation.

**SECTION 3.** 25-11-103 (2), (3), (5), and (6), Colorado Revised Statutes, are amended to read:

**25-11-103. Radiation control agency - powers and duties.** (2) Pursuant to rules ~~and regulations~~ adopted as provided in section 25-11-104, the department shall issue licenses pertaining to radioactive materials, prescribe and collect fees for such licenses, and require registration of other sources of ~~ionizing~~ radiation. No other agency or branch of this state ~~shall have~~ HAS such power or authority.

(3) The department shall develop and conduct programs for evaluation and control of hazards associated with the use of ~~any and all~~ radioactive materials and other sources of ~~ionizing~~ radiation, including criteria for disposal of radioactive wastes and materials to be considered in approving facilities and sites pursuant to part 2 of this article.

(5) In the event of an emergency relating to any source of ~~ionizing~~ radiation ~~which~~ THAT endangers the public peace, health, or safety, the department ~~shall have~~ HAS the authority to issue such orders for the protection of the public health and safety as may be appropriate, including orders to lay an embargo upon or impound radioactive materials and other sources of ~~ionizing~~ radiation in the possession of any person who is not equipped to observe or who fails to ~~observe the provisions of~~ COMPLY WITH this part 1 or any rules ~~or regulations~~ promulgated under this part 1.

(6) The department or its duly authorized representatives ~~shall have~~ HAS the power to enter at all reasonable times, in accordance with applicable state or federal regulations, into the areas in which sources of ~~ionizing~~ radiation are reasonably believed to be located for the purpose of determining whether or not the owner, occupant, or licensee is in compliance with or in violation of ~~the provisions of~~ this part 1 and the rules ~~and regulations~~ promulgated under this part 1, and the owner, occupant, or person in charge of such property shall permit such entry and inspection.

**SECTION 4.** 25-11-104, Colorado Revised Statutes, is amended to read:

**25-11-104. Rules to be adopted - fees - fund created.** (1) (a) The state board ~~of health~~ shall formulate, adopt, and promulgate rules ~~and regulations~~ as provided in subsections (2) and (2.5) of this section ~~which shall~~ THAT cover subject matter relative to RADIATION MACHINES AND radioactive materials, including ~~but not limited to~~ naturally occurring radioactive materials and other sources of ~~ionizing~~ radiation. The subject matter of ~~such~~ THE rules ~~and regulations~~ shall include: ~~but not be limited to:~~ Licenses and registration; records; permissible levels of exposure; notification and reports of accidents; technical qualifications of personnel; technical qualifications of mammographers; handling, transportation, and storage; waste disposal; posting and labeling of hazardous sources and areas; surveys; monitoring; and financial assurance warranties.

(b) The state board ~~of health~~ may adopt ~~regulations~~ RULES concerning the disposal of naturally occurring radioactive materials at any time after the promulgation by the federal environmental protection agency or its successor of rules for the disposal of naturally occurring radioactive materials.

(c) Notwithstanding any provision of section 25-11-103 (7) (h), it is not necessary that a governmental entity own any site that is used for the concentration, storage, or disposal of radioactive material that at the time of its acceptance for concentration, storage, or disposal is owned or generated by the United States department of energy and ~~that~~ is defined as low-level radioactive waste under the federal "Low-level Radioactive Waste Policy Act Amendments of 1986", as amended, ~~so long as~~ IF the owner of ~~such~~ THE site complies with ~~regulations~~ RULES promulgated by the board in accordance with this section. ~~Such regulations~~ THE RULES shall ensure the long-term protection of the public health and safety and may

include ~~but are not limited to~~, financial assurance warranties pursuant to this part 1, deed annotations and restrictions, easement provisions, restrictive covenants, and adequate markers to warn of the presence of radioactive materials.

(2) ~~All such regulations~~ RULES PROMULGATED UNDER THIS SECTION shall be modeled after and shall be neither more nor less stringent than those CONSISTENT WITH REGULATIONS proposed by the conference of radiation control program directors, inc., 4815 West Markham Street, Little Rock, Arkansas 72201 OR ITS SUCCESSOR, under the title, "Suggested State Regulations for Control of Radiation"; except that, ~~in the event said~~ IF THE STATE board concludes on the basis of detailed findings that a substantial deviation from any of ~~said~~ THE suggested state regulations is warranted and that a substitute ~~regulation~~ RULE or no ~~regulation~~ RULE would effectively permit maximum utilization of sources of ~~ionizing~~ radiation consistent with the health and safety of all persons who might otherwise become exposed to ~~such~~ THE radiation, the STATE board need not maintain ~~such~~ THE suggested state regulation or may ~~adopt and~~ promulgate ~~such~~ A substitute ~~regulation~~ RULE as the case may be.

(2.5) ~~Regulations relating to mammographers shall provide that mammographers must obtain education and training through an organization specified by the state board of health or provide proof of experience as established by the board, or both. At a minimum said regulations shall provide that mammographers must have achieved a passing score on an examination for the limited scope of practice in radiography as administered by the American registry of radiological technologists or a similar institution approved by the state board. All regulations relating to the qualifications of mammographers shall be modeled after and shall be no less stringent than those adopted by the federal government pursuant to the federal "Mammography Quality Standards Act of 1992". The mammography quality assurance advisory committee referred to in section 25-11-105.5 shall review and make recommendations to the board regarding qualifications for mammographers.~~

(3) The rules ~~and regulations~~ adopted pursuant to this part 1 shall never be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a duly licensed practitioner of the healing arts.

(4) Any person who, on the effective date of an agreement under section 25-11-102, possesses a license issued by the federal government shall be deemed to possess an identical license issued pursuant to this part 1 subject to termination upon ninety days' written notice of termination from the department.

(5) In adopting, ~~changing, and revoking said~~ AMENDING, OR REPEALING rules ~~and regulations~~ UNDER THIS SECTION, the board shall comply with ~~the provisions of~~ article 4 of title 24, C.R.S.

(6) (a) The state board ~~of health~~ shall formulate, adopt, and promulgate a fee schedule, IN ACCORDANCE WITH SECTION 24-4-103, C.R.S., for radiation control services provided by the department. Radiation control services for which fees may be established include APPLICATION PROCESSING FOR QUALIFIED INSPECTORS, QUALIFIED EXPERTS, AND SERVICE COMPANIES AS DEFINED BY THE STATE BOARD, WHICH FEES SHALL BE PAID BY THE APPLICANTS OR SERVICE COMPANIES; issuance

of categories of specific licenses to accord with categories established by the nuclear regulatory commission and which shall include ~~but need not be limited to~~ licenses for special nuclear material, source material, by-product material, well logging and surveys and tracer studies, and for human use; and inspections of licensees as authorized by section 25-11-103 (6). Licenses and fees shall, WHERE APPROPRIATE, be in accordance with policies and priorities of the nuclear regulatory commission.

(b) The state board of health, ~~in determining the~~ SHALL SET fees ~~shall~~ THAT provide for sufficient revenues ~~from such fees~~ to reimburse the state for ~~partial~~ THE ACTUAL DIRECT AND INDIRECT costs of the radiation control services ~~as specified in paragraph (a) of this subsection (6). The fees shall be related to the actual costs incurred in administering such radiation control services.~~ In so doing, the state board of health shall take into account any special arrangements between the state and the licensee, another state, or a federal agency whereby the cost of the service is otherwise recovered.

(c) All fees collected pursuant to this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the radiation control fund, which fund is hereby created. Moneys credited to ~~said~~ THE RADIATION CONTROL fund, in amounts determined annually by the general assembly by appropriation, shall be expended for radiation control services as provided in this subsection (6).

(7) The state board of health shall promulgate rules ~~and regulations~~ as necessary to implement ~~the provisions of~~ section 25-11-107 (5).

(8) (a) The state board of health shall adopt rules requiring that all machine sources of ionizing radiation be inspected and certified by qualified inspectors as safe for the intended uses CONSISTENT WITH 42 U.S.C. SEC. 263b and in compliance with the specifications of the state board and the equipment manufacturer. ~~Such~~ Rules shall include ~~the following:~~ MINIMUM SPECIFICATIONS FOR RADIATION MACHINES, MINIMUM STANDARDS FOR THE QUALIFICATIONS OF INDIVIDUALS AUTHORIZED TO INSPECT AND CERTIFY RADIATION MACHINES, AND PROCEDURES FOR INSPECTION OF RADIATION MACHINES. IF A QUALIFIED INSPECTOR DETERMINES THAT A RADIATION MACHINE FAILS TO MEET THE REQUIRED SPECIFICATIONS, THE INSPECTOR SHALL NOTIFY THE OWNER OR OPERATOR IMMEDIATELY AND SHALL NOTIFY THE DEPARTMENT WITHIN THREE DAYS AFTER THE DETERMINATION. A RADIATION MACHINE THAT FAILS TO MEET THE REQUIRED SPECIFICATIONS AND IS DETERMINED BY A QUALIFIED INSPECTOR TO BE UNSAFE FOR HUMAN USE SHALL NOT THEREAFTER BE USED FOR HUMAN USE UNTIL SUBSEQUENT CERTIFICATION, AND THE QUALIFIED INSPECTOR SHALL AFFIX AN OFFICIAL NONCERTIFICATION STICKER ISSUED BY THE DEPARTMENT INDICATING THAT THE MACHINE IS NOT AUTHORIZED FOR HUMAN USE. A CERTIFICATION OR NONCERTIFICATION STICKER SHALL BE AFFIXED ON EACH RADIATION MACHINE IN A LOCATION CONSPICUOUS TO MACHINE OPERATORS AND TO PERSONS ON WHOM THE MACHINE IS USED.

(f) ~~The establishment of minimum specifications that each type of machine which is a source of ionizing radiation shall meet. Such specifications shall include compliance with the manufacturer's specifications when such specifications can be determined and any additional specifications of the state board of health which are necessary to determine that the machine is safe for its designed and intended use.~~

~~(H) The establishment of minimum standards for the qualification of individuals who are authorized to make inspections and to certify machines that are sources of ionizing radiation. Other than those individuals performing emergency, compliance, and enforcement inspections or inspection audits for the department, qualified inspectors shall not be employees of the department. The maximum annual fee that may be charged by the department to an individual seeking approval as a qualified inspector is eighty dollars. Such fee shall include the issuance of evidence of qualification, if applicable, and all other costs for qualifications. Such fees shall be credited to the radiation control fund.~~

~~(HH) The establishment of procedures for the making of inspections for all types of machines that are sources of ionizing radiation. The procedures shall require that such machines be inspected only by a qualified inspector who shall record on a form provided by the department whether or not a machine being inspected meets the specifications of the manufacturer and the state board of health, and shall indicate the type of machine, the applicable specifications, and the machine specifications. If a machine meets the required specifications, a qualified inspector shall affix on the machine an official sticker issued by the department. If the machine fails to meet the required specifications, the qualified inspector shall notify the owner or operator immediately and shall so notify the department within three days. A machine that fails to meet the required specifications and is determined to be unsafe for human use shall not be used thereafter for human use until subsequent certification, and the qualified inspector shall affix an official noncertification sticker issued by the department indicating such machine is not authorized for human use. A certification or noncertification sticker shall be affixed on each machine in a location conspicuous to machine operators and persons on whom the machine is used. A fee of fifty dollars shall be charged for each certification or noncertification sticker issued by the department; except that the state board of health by rule or as otherwise provided by law may reduce the amount of the fee 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 the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board of health by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S. Such fee shall be credited to the radiation control fund.~~

~~(a.5) No person shall perform a mammography exam nor shall anyone employ a person to perform a mammography exam unless said person has been approved by the department as meeting the qualifications for mammographers adopted by the state board of health pursuant to subsection (2.5) of this section. On or before December 31, 1993, the state board of health shall adopt rules requiring that all machine sources of ionizing radiation which are used in the conduct of a mammography exam be operated only by a qualified mammographer, that a list of qualified mammographers operating the machine be posted on or near said machines, and that said machines be inspected at least annually for compliance with the requirements of this subsection (8). Documentation establishing the qualifications of mammographers shall be available for inspection upon request.~~

~~(b) The department may make or contract for the making of audit inspections of machines which are sources of ionizing radiation to assure compliance with applicable specifications. Such audit inspections shall be made by a qualified~~

~~inspector under contract to the department or by the qualified department inspector on machines which are currently certified by a qualified inspector. Audit inspections shall be conducted on only a portion of all certified machines and shall be made on a routine, unannounced basis. The cost of the audit inspections shall be paid for out of the radiation control fund.~~

(c) In establishing or revising specifications for each type of machine ~~which~~ THAT is a source of ~~ionizing~~ radiation, the standards for approval of qualified inspectors, and the procedures for making inspections, the department shall consult with manufacturers of ~~ionizing~~ radiation equipment, health care providers and operators who use ~~such~~ THE equipment in diagnostic and therapeutic treatment of humans, and qualified inspectors and individuals.

(d) The general assembly hereby finds that the setting of minimum specifications for RADIATION machines ~~which are sources of ionizing radiation~~ and the establishment of minimum standards for qualified inspectors ~~for such~~ OF THOSE machines ~~is a matter~~ ARE MATTERS of statewide concern. Therefore, no other state agency, political subdivision, or local government shall establish any other specifications for ~~sources of ionizing~~ radiation MACHINES or standards for RADIATION MACHINE inspectors, ~~of such equipment~~, or impose any fees therefor.

**SECTION 5.** 25-11-106, Colorado Revised Statutes, is amended to read:

**25-11-106. Injunction proceedings.** If, in the judgment of the department, any person has engaged in or is about to engage in ~~any acts~~ AN ACT or ~~practices which constitute~~ PRACTICE THAT CONSTITUTES a violation of ~~any provision of~~ this part 1 or of any LICENSE, REGISTRATION, rule, or ~~regulation~~ or order issued under this part 1, the attorney general shall, at the request of the department, ~~make application~~ APPLY to the district court for an order enjoining ~~such acts~~ THE ACT or ~~practices~~ PRACTICE or for an order directing compliance with ~~the provisions of~~ this part 1 and all rules ~~regulations~~; and orders AND THE TERMS AND CONDITIONS OF A LICENSE OR REGISTRATION issued under this part 1.

**SECTION 6.** 25-11-107 (1), (2), (2.5), (4), (5), and (6), Colorado Revised Statutes, are amended, and the said 25-11-107 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-11-107. Prohibited acts - violations - penalties - rules - cease-and-desist orders.** (1) EXCEPT AS ALLOWED BY RULE OF THE STATE BOARD:

(a) No person shall acquire, own, possess, or use any radioactive material occurring naturally or produced artificially without having been granted a license therefor from the department; ~~nor shall he~~ OR

(b) Transfer to another or dispose of such material without first having been granted approval of the department therefor.

(2) EXCEPT AS ALLOWED BY RULE OF THE STATE BOARD, no person shall knowingly use, manufacture, produce, transport, transfer, receive, send, acquire, own, or possess any source of ~~ionizing~~ radiation unless such person is licensed by or registered with the department. THE EXCEPTIONS PROMULGATED BY THE STATE



BOARD SHALL INCLUDE USE OF DOMESTIC TELEVISION RECEIVERS, COMPUTER MONITORS, HOUSEHOLD MICROWAVE OVENS, RADIANT HEAT DEVICES, CELLULAR TELEPHONES, INCANDESCENT GAS MANTLES, AND VACUUM TUBES.

(2.5) No person shall knowingly use any RADIATION machine ~~which is a source of ionizing radiation which~~ TO TREAT OR DIAGNOSE ANY DISEASE OR CONDITIONS OF THE HUMAN BODY IF THE RADIATION MACHINE is not certified for SUCH treatment or diagnosis ~~of human conditions~~ as provided in section 25-11-104 (8).

(4) If ~~any~~ A person does not pay the fee for radiation control services, the department may request the ~~county attorney or the district~~ attorney GENERAL to commence a civil action against ~~such~~ THE person. If the court finds in such action that such person has not paid the fee for radiation control services, ~~it~~ THE COURT shall require such person to pay ~~said~~ THE fee together with a penalty not greater than twice the amount of the fee or one thousand dollars, whichever is greater. ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS SUBSECTION (4) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE GENERAL FUND.

(5) (a) Any person who violates SUBSECTION (1), (2), OR (2.5) OF THIS SECTION, any licensing or registration provision, ~~of section 25-11-103 or 25-11-104, or any rule regulation, or order issued pursuant to either of such sections~~ UNDER THIS PART 1, or any term, condition, or limitation of any license or registration certificate issued pursuant to ~~either of such sections, except any person in violation of subsection (1) or (2) of this section, shall be~~ THIS PART 1 IS subject to ~~the provisions of this subsection~~ (5) AN ADMINISTRATIVE PENALTY NOT TO EXCEED FIFTEEN THOUSAND DOLLARS PER DAY FOR EACH VIOLATION.

(b) If the department has reason to believe, based upon facts available to it, that a person has committed any of the violations designated in paragraph (a) of this subsection (5), it shall ~~notify such~~ SEND THE person, ~~in writing~~ within a reasonable time, A WRITTEN NOTICE OF THE VIOLATION specifying:

(I) The ~~date and~~ factual basis of each act or omission with which ~~such~~ THE person is charged; and

(II) The particular provision of the statute, rule, ~~regulation~~, order, license, or registration certificate violated.

(c) (I) The DEPARTMENT SHALL SEND THE notice required by paragraph (b) of this subsection (5) ~~shall be sent by the department~~, by certified or registered mail, return receipt requested, to the last-known address of the alleged violator, OR THE DEPARTMENT SHALL PERSONALLY SERVE THE NOTICE OF THE VIOLATION UPON THE ALLEGED VIOLATOR OR THE ALLEGED VIOLATOR'S AGENT.

(II) The alleged violator shall have thirty days following the receipt of the notice to submit a written response containing data, views, and arguments concerning the alleged violation and ~~a reasonable time for abatement~~ POTENTIAL CORRECTIVE MEASURES.

(III) In addition, the alleged violator may request an informal conference with department personnel to discuss ~~such matters, such~~ THE NOTICE OF VIOLATION

REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (5). THE ALLEGED VIOLATOR SHALL REQUEST THE INFORMAL CONFERENCE WITHIN FIFTEEN DAYS AFTER RECEIVING THE NOTICE, AND THE CONFERENCE ~~TO~~ SHALL BE HELD WITHIN THE THIRTY DAYS ALLOWED FOR A WRITTEN RESPONSE.

(IV) AFTER CONSIDERATION OF ANY WRITTEN RESPONSE AND INFORMAL CONFERENCE, THE DEPARTMENT SHALL ISSUE A LETTER, WITHIN THIRTY DAYS AFTER THE DATE OF THE INFORMAL CONFERENCE OR THE RECEIPT OF A WRITTEN RESPONSE, WHICHEVER IS LATER, AFFIRMING OR DISMISSING THE VIOLATION. ANY REMAINING CORRECTIVE MEASURES THAT ARE NECESSARY, AND ANY ADMINISTRATIVE PENALTY DETERMINED TO BE APPROPRIATE, WILL BE INCORPORATED INTO AN ADMINISTRATIVE ORDER.

(c.3) IN DETERMINING THE AMOUNT OF ANY ADMINISTRATIVE PENALTY, THE DEPARTMENT SHALL CONSIDER THE FACTORS IN SUBPARAGRAPHS (I) THROUGH (X) OF THIS PARAGRAPH (c.3). THE FACTORS CONTAINED IN SUBPARAGRAPHS (VII), (VIII), AND (IX) OF THIS PARAGRAPH (c.3) ARE MITIGATING FACTORS AND MAY BE APPLIED, WITH OTHER FACTORS, TO REDUCE ANY ADMINISTRATIVE PENALTY. SUCH FACTORS ARE:

(I) THE SERIOUSNESS OF THE VIOLATION;

(II) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR NEGLIGENT;

(III) THE IMPACT ON, OR THREAT TO, THE PUBLIC HEALTH OR THE ENVIRONMENT AS A RESULT OF THE VIOLATION;

(IV) THE DEGREE OF RECALCITRANCE, IF ANY, ON THE PART OF THE VIOLATOR;

(V) WHETHER THE VIOLATOR IS A RECIDIVIST;

(VI) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A RESULT OF THE VIOLATION;

(VII) THE VIOLATOR'S VOLUNTARY, TIMELY, AND COMPLETE DISCLOSURE OF THE VIOLATION, IF PRIOR TO THE DEPARTMENT'S KNOWLEDGE OF THE VIOLATION, AND IF ALL REPORTS REQUIRED PURSUANT TO STATE ENVIRONMENTAL CONTROL LAWS HAVE BEEN SUBMITTED AS REQUIRED;

(VIII) THE VIOLATOR'S FULL AND PROMPT COOPERATION WITH THE DEPARTMENT FOLLOWING DISCLOSURE OR DISCOVERY OF A VIOLATION, INCLUDING, WHEN APPROPRIATE, ENTERING INTO AND IMPLEMENTING, IN GOOD FAITH, A LEGALLY ENFORCEABLE AGREEMENT WITH THE DEPARTMENT TO UNDERTAKE COMPLIANCE AND REMEDIATION EFFORTS;

(IX) THE EXISTENCE OF A COMPREHENSIVE REGULATORY COMPLIANCE PROGRAM OR AN AUDIT PROGRAM THAT THE VIOLATOR ADOPTED IN GOOD FAITH AND IN A TIMELY MANNER, WHICH PROGRAM INCLUDES MEASURES DETERMINED BY THE DEPARTMENT TO BE SUFFICIENT TO IDENTIFY AND PREVENT FUTURE NONCOMPLIANCE; AND

(X) ANY OTHER AGGRAVATING OR MITIGATING CIRCUMSTANCE.

(c.5) IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND BASED UPON THE FACTORS ENUMERATED IN PARAGRAPH (c.3) OF THIS SUBSECTION (5), THE STATE BOARD SHALL ADOPT RULES FOR DETERMINING ADMINISTRATIVE PENALTIES IMPOSED UNDER THIS SUBSECTION (5).

(c.7) THE DEPARTMENT MAY COMPROMISE, MITIGATE, OR REMIT AN ADMINISTRATIVE PENALTY IMPOSED PURSUANT TO THIS SUBSECTION (5). THE DEPARTMENT MAY ENTER INTO A SETTLEMENT AGREEMENT REGARDING ANY PENALTY OR CLAIM RESOLVED UNDER THIS PART 1. THE SETTLEMENT AGREEMENT MAY INCLUDE THE PAYMENT OR CONTRIBUTION OF MONEYS TO STATE OR LOCAL AGENCIES FOR OTHER ENVIRONMENTALLY BENEFICIAL PURPOSES.

~~(d) Within thirty days after the time allowed for a written response and informal conference, the department shall issue an order affirming or dismissing the violation and, if the violation is affirmed, setting a time for abatement. The time for abatement shall be that which is reasonably necessary to achieve compliance. Immediate abatement may be ordered to the extent necessary to remove an imminent danger to the public health, safety, or welfare. The department shall cause the order to be served personally on the alleged violator or his designated agent. If the circumstances warrant, the department shall issue an order containing the elements of both the notice of violation specified in paragraph (b) of this subsection (5) and the letter described in subparagraph (IV) of paragraph (c) of this subsection (5).~~

~~(e) Any person failing to comply with an order issued pursuant to paragraph (d) of this subsection (5) shall be subject to a civil penalty of not more than five thousand dollars for each violation after the date for abatement specified in the order. Each violation shall be a separate offense. The amount of the civil penalty shall be based on the alleged violator's history of previous violations, the good faith of the alleged violator in attempting to achieve rapid compliance after notification of the violation, the gravity and willfulness of the violation, the potential deterrent effect of the civil penalty, and such other considerations as may be specified by the department. The department shall have the power to compromise, mitigate, or remit any such civil penalty.~~ (I) THE LETTER ISSUED PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF THIS SUBSECTION (5) AND THE ORDER ISSUED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (5) SHALL NOTIFY THE ALLEGED VIOLATOR OF THE RIGHT TO REQUEST A HEARING WITHIN THIRTY DAYS, WHICH HEARING SHALL BE HELD IN ACCORDANCE WITH SECTION 24-4-105, C.R.S., TO DETERMINE ANY OF THE FOLLOWING:

(A) WHETHER THE ALLEGED VIOLATION EXISTS OR DID EXIST;

(B) THE REASONABLENESS OF THE TIME SET FOR ABATEMENT; AND

(C) WHETHER THE ADMINISTRATIVE PENALTY IS REASONABLE IN LIGHT OF THE STATUTORY CRITERIA ON WHICH IT IS BASED.

(II) THE ALLEGED VIOLATOR SHALL ADDRESS EACH ALLEGED VIOLATION IN THE REQUEST FOR THE HEARING AND SHALL SPECIFY WHICH OF THE ALLEGED VIOLATIONS

THE ALLEGED VIOLATOR IS APPEALING. AN ALLEGATION NOT ADDRESSED IN THE REQUEST FOR THE HEARING SHALL BE DEEMED ADMITTED.

(III) NO PERSON ENGAGED IN CONDUCTING THE HEARING OR PARTICIPATING IN A DECISION OR AN INITIAL DECISION SHALL BE RESPONSIBLE FOR OR SUBJECT TO THE SUPERVISION OR DIRECTION OF ANY DEPARTMENT EMPLOYEE ENGAGED IN THE PERFORMANCE OF AN INVESTIGATORY OR PROSECUTING FUNCTION FOR THE DEPARTMENT.

(IV) THE FINAL ACTION OF THE DEPARTMENT IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106, C.R.S.

~~(f) Upon determining that a person has failed to comply with an order issued pursuant to paragraph (d) of this subsection (5), the department shall notify the person within ten days by certified or registered mail of the proposed amount of any civil penalty. Such person shall have ten days after receipt of the notification of the proposed penalty within which to request in writing an informal conference in which all relevant information concerning the violation and penalty, including all information which the alleged violator may submit, shall be reviewed by the alleged violator and an authorized representative of the department.~~

~~(g) (f) Following said conference, or upon the expiration of time allowed for requesting the conference if no conference is requested, the department shall order the penalty fixed and shall cause the order to be served personally on the alleged violator or his designated agent within forty-five days of the mailing of the notification of the proposed penalty. The order shall notify the alleged violator of the right to request a hearing within thirty days, such hearing to be held in accordance with section 24-4-105, C.R.S., to determine all or any of the following:~~

~~(A) Whether the alleged violation exists or did exist;~~

~~(B) Whether the time set for abatement was reasonable; and~~

~~(C) Whether the civil penalty is reasonable in light of the statutory criteria upon which it is based.~~

~~(H) No person engaged in conducting the hearing or participating in a decision or an initial decision shall be responsible for or subject to the supervision or direction of any department employee engaged in the performance of an investigatory or prosecuting function for the department. Upon the request for such a hearing, the order shall be stayed pending the results of the hearing and any subsequent judicial review.~~

(h) At the request of the department, the attorney general may institute a civil action to collect ~~any civil~~ AN ADMINISTRATIVE penalty imposed pursuant to this subsection (5).

(i) EXCEPT AS SPECIFIED IN PARAGRAPH (c.3) OF THIS SUBSECTION (5), all ~~civil~~ ADMINISTRATIVE penalties collected pursuant to this subsection (5) shall be transmitted to the state treasurer, who shall credit ~~the same~~ THEM to the general fund.

(6) Any qualified inspector who incorrectly certifies a machine ~~which~~ THAT is a source of ~~ionizing~~ radiation as meeting the applicable specifications as required in section 25-11-104 (8) ~~shall be~~ IS subject to disciplinary ~~provisions~~ ACTION in accordance with section 24-4-104, C.R.S.

(7) IF THE DEPARTMENT HAS REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF THIS PART 1 OR OF A LICENSE, REGISTRATION, RULE, OR ORDER ISSUED UNDER THIS PART 1 HAS OCCURRED OR IS OCCURRING, THE DEPARTMENT MAY ISSUE A CEASE-AND-DESIST ORDER SETTING FORTH THE PROVISION ALLEGED TO BE VIOLATED, THE FACTS ALLEGED TO CONSTITUTE THE VIOLATION, AND THE TIME BY WHICH THE VIOLATION MUST CEASE. EXCEPT FOR EMERGENCY ORDERS ISSUED TO PROTECT THE PUBLIC HEALTH OR THE ENVIRONMENT, FOR WHICH A PERSON TO WHOM THE EMERGENCY ORDER HAS BEEN ISSUED MAY REQUEST AN IMMEDIATE HEARING PURSUANT TO SECTION 24-4-105 (12), C.R.S., A PERSON TO WHOM A CEASE-AND-DESIST ORDER HAS BEEN ISSUED MAY PETITION THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED OR BE OCCURRING FOR A STAY OF THE ORDER. THE COURT SHALL GRANT THE REQUEST TO STAY IF THE PERSON DEMONSTRATES THAT IMMEDIATE AND IRREPARABLE INJURY WILL RESULT IF THE STAY IS NOT GRANTED AND THAT GRANTING THE STAY WILL NOT RESULT IN SERIOUS HARM TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT.

**SECTION 7.** 25-11-108 (3) and (4), Colorado Revised Statutes, are amended to read:

**25-11-108. Exemptions.** (3) ~~The provisions of~~ Section 25-11-107 shall not apply to unmined minerals containing radioactive materials including such as are involved in mining operations.

~~(4) Fees for licenses for radioactive materials shall not be required for:~~

~~(a) An agency of the state or any political subdivision thereof;~~

~~(b) Any person who the department, by rule or regulation, determines is exempt as authorized by law and such exemption is in the public interest;~~

~~(c) Any person who is operating within the state under the reciprocal recognition of licenses provisions of the rules and regulations adopted in accord with section 25-11-104.~~

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2010

## CHAPTER 388

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**NATURAL RESOURCES**

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**HOUSE BILL 10-1348**

BY REPRESENTATIVE(S) McFadyen, Massey, Frangas, Hullinghorst, Kefalas, Kerr A., Labuda, Levy, Looper, Merrifield, Pace, Primavera, Vigil, Fischer, Kagan, King S., Nikkel, Pommer, Tipton;  
also SENATOR(S) Kester and Bacon, Carroll M., Foster, Newell, Penry, Williams.

**AN ACT****CONCERNING INCREASED REGULATORY AUTHORITY REGARDING RADIOACTIVE MATERIALS.**

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

**SECTION 1.** Part 1 of article 11 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**25-11-101.5. Coordination of regulatory interpretations regarding in situ leach uranium mining.** THE GENERAL ASSEMBLY RECOGNIZES THAT THE PROPER AND ORDERLY REGULATION OF IN SITU LEACH MINING, AS DEFINED IN SECTION 34-32-103, C.R.S., FOR URANIUM ORE HAS ASPECTS THAT MAY INVOLVE MORE THAN ONE REGULATORY AGENCY OF STATE GOVERNMENT AND THAT THE STATUTES THAT EACH AGENCY IS RESPONSIBLE FOR ADMINISTERING MAY, DUE TO THE USE OF TERMS OF ART AND OTHER TECHNICAL WORDS, PHRASES, AND DEFINITIONS, HOLD THE POTENTIAL OF BEING INTERPRETED INCONSISTENTLY OR TO BE HELD IN CONFLICT WITH EACH OTHER. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT, WITH REGARD TO IN SITU LEACH MINING FOR URANIUM ORE, THE RELEVANT AGENCIES COORDINATE TO THE MAXIMUM EXTENT PRACTICABLE TO RESOLVE ANY SUCH CONFLICTS OR INCONSISTENCIES.

**SECTION 2.** 25-11-107 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**25-11-107. Prohibited acts - violations - penalties.** (5) (j) FOR ANY SITE OR FACILITY LICENSED UNDER PART 2 OF THIS ARTICLE DETERMINED BY THE DEPARTMENT TO HAVE CAUSED A RELEASE TO THE GROUNDWATER THAT EXCEEDS THE BASIC STANDARDS FOR GROUNDWATER AS ESTABLISHED BY THE WATER QUALITY CONTROL COMMISSION, UNTIL REMEDIATION HAS BEEN COMPLETED, THE

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

LICENSEE SHALL PROVIDE ANNUAL WRITTEN NOTICE OF THE STATUS OF THE RELEASE AND ANY REMEDIATION ACTIVITIES ASSOCIATED WITH THE RELEASE, BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO THE CURRENT ADDRESS FOR EACH REGISTERED GROUNDWATER WELL WITHIN ONE MILE OF THE RELEASE AS IDENTIFIED IN THE CORRECTIVE ACTION MONITORING PROGRAM, UNLESS THE LICENSEE DEMONSTRATES THAT A DISTANCE LESS THAN ONE MILE IS WARRANTED.

**SECTION 3.** 25-11-110 (5), Colorado Revised Statutes, is amended to read:

**25-11-110. Financial assurance warranties - definitions.** (5) (a) The department shall take reasonable measures to assure the continued adequacy of any financial assurance warranty and may annually or for good cause increase or decrease the amount of required financial assurance warranties or require proof of THE value of existing warranties.

(b) THE LICENSEE SHALL SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT DEMONSTRATING PROOF OF THE VALUE OF EXISTING WARRANTIES. THE ANNUAL REPORT SHALL DESCRIBE ANY CHANGES IN OPERATIONS, ESTIMATED COSTS, OR ANY OTHER CIRCUMSTANCES THAT MAY AFFECT THE AMOUNT OF THE REQUIRED FINANCIAL ASSURANCE WARRANTIES, INCLUDING ANY INCREASED OR DECREASED COSTS ATTRIBUTABLE TO INFLATION.

(c) PUBLIC NOTICE OF THE SUBMITTAL OF THE LICENSEE'S ANNUAL REPORT SHALL BE POSTED ON THE DEPARTMENT'S WEB SITE AND PUBLISHED BY THE OPERATOR IN THE LOCAL PAPER OF GENERAL CIRCULATION. ANY PERSON MAY SUBMIT WRITTEN COMMENTS TO THE DEPARTMENT CONCERNING THE ADEQUACY OF ANY FINANCIAL ASSURANCE WARRANTIES. THE ACT OF SUBMITTING SUCH COMMENTS DOES NOT PROVIDE A RIGHT TO ADMINISTRATIVE APPEAL CONCERNING THE FINANCIAL ASSURANCE WARRANTIES.

(d) The licensee shall have sixty days after the date of written notification by the department of a required adjustment to establish a warranty fulfilling all new requirements unless granted an extension by the department. If the licensee disputes the amount of the required financial assurance warranties, the licensee may request a hearing to be conducted in accordance with section 24-4-105, C.R.S.

(e) IF THE LICENSEE REQUESTS A HEARING, NO NEW CLASSIFIED MATERIAL, AS THAT TERM IS DEFINED IN SECTION 25-11-201, MAY BE BROUGHT ON SITE AND NO CLASSIFIED MATERIAL MAY BE PROCESSED UNTIL THE LICENSEE'S DISPUTE OVER THE FINANCIAL ASSURANCE WARRANTY IS RESOLVED, UNLESS THE LICENSEE POSTS A BOND IN A FORM APPROVED BY THE DEPARTMENT EQUAL TO THE AMOUNT IN DISPUTE.

**SECTION 4.** 25-11-113 (2) (a), Colorado Revised Statutes, is amended to read:

**25-11-113. Forfeitures - deposit - radiation control - decommissioning fund - long-term care fund.** (2) (a) A fund to be known as the decommissioning fund is hereby created ~~and established~~ in the state treasury. ~~Such~~ THE fund shall be interest-bearing and invested to return the maximum income feasible as determined by the state treasurer and consistent with otherwise applicable state law. All moneys collected from decommissioning warranties pursuant to this section shall be

transmitted to the state treasurer, who shall credit the same to the decommissioning fund. All moneys deposited in the fund and all interest earned on moneys in the fund shall remain in the fund for the purposes set forth in this ~~part 1~~ ARTICLE and no part ~~thereof~~ OF THE FUND shall be expended or appropriated for any other purpose.

**SECTION 5.** 25-11-203 (1) (b) (III), (2) (b) (I) (C), (3) (a), (3) (c) (V), and (4), Colorado Revised Statutes, are amended to read:

**25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste.** (1) (b) (III) ~~Nothing in this paragraph (b) shall apply to a licensed facility as of June 3, 2003, as it undergoes its current five-year license renewal; except that, during the period from June 3, 2003, until such license renewal is approved, such facility shall:~~ LICENSE AMENDMENTS FOR THE RECEIPT OF CLASSIFIED MATERIAL AT A FACILITY ARE SUBJECT TO SUBSECTIONS (2) AND (3) OF THIS SECTION EXCEPT WHEN THE MATERIAL IS FROM AN APPROVED SOURCE AND SUCH AMENDMENT WOULD NOT RESULT IN A CHANGE IN OWNERSHIP, DESIGN, OR OPERATION OF THE FACILITY. LICENSE AMENDMENTS NOT SUBJECT TO SUBSECTIONS (2) AND (3) OF THIS SECTION ARE SUBJECT TO SUBSECTION (4) OF THIS SECTION.

~~(A) Continue to substantially comply with its current license;~~

~~(B) For each type of classified material for which an application for storage, processing, or disposal has already been submitted to the department, provide to a library in the community in which the facility is located the material acceptance report prepared consistent with and containing the information required by the interim guidance on disposal of non-"Atomic Energy Act of 1954", section 11 e (2) byproduct material in tailings impoundments, RIS 2000-23, and interim position and guidance on the use of uranium mill feed material other than natural ores, RIS 2000-23, as such guidance documents are amended from time to time, which report has also been provided to the department;~~

~~(C) Meet the standards specified in subparagraph (III) of paragraph (c) of subsection (3) of this section for each type of classified material; and~~

~~(D) Comply with the provisions of subsection (4) of this section for classified material for which a material acceptance report has not already been filed with the department for receipt by the facility as of June 3, 2003.~~

(2) (b) In addition to the requirements of paragraph (a) of this subsection (2), each proposed license, five-year license renewal, or license amendment pertaining to the facility's receipt of classified material shall include a written application to the department and information relevant to the pending application, including:

(I) Transcripts of two public meetings hosted and presided over by a person selected upon agreement by the department, the board of county commissioners of the county where the facility is located, and the applicant. One or both of the meetings shall be a hearing conducted to comply with section 24-4-104 or 24-4-105, C.R.S. The reasonable, necessary, and documented expense of the meetings or hearing shall be paid by the facility. Such meetings shall not be held until the department determines that the application is substantially complete. The facility



shall provide the public with:

(C) Access to make copies of a transcript of the meetings, AND SHALL PROVIDE AN ELECTRONIC COPY TO THE DEPARTMENT IN A MANNER THAT ALLOWS POSTING ON THE DEPARTMENT'S WEB SITE WITHIN TEN DAYS AFTER RECEIPT FROM THE TRANSCRIPTION SERVICE;

(3) (a) Upon receipt of an application or notice as provided in subsection (2) of this section, the department of public health and environment shall NOTIFY THE PUBLIC AND forward a copy of ~~such~~ THE application or notice to the governor and the general assembly, as appropriate.

(c) (V) (A) The department shall ~~make~~ PUBLISH a determination as to whether an application submitted pursuant to paragraph (b) of subsection (2) of this section is substantially complete within ~~thirty~~ FORTY-FIVE days after receipt of ~~such~~ THE application.

(B) The first public meeting or hearing required by subparagraph (I) of paragraph (b) of subsection (2) of this section shall be convened within forty-five days after PUBLICATION OF its determination that the application is substantially complete. ~~and~~ The second such public meeting or hearing shall be convened within thirty days after the first public meeting.

(C) The department shall approve, approve with conditions, or deny the application submitted under paragraph (b) of subsection (2) of this section within ~~two hundred seventy days after the department's receipt of any response of the board of county commissioners to the application prepared pursuant to subparagraph (H) of paragraph (b) of subsection (2) of this section and within~~ three hundred sixty days after the second public meeting; ~~or hearing if no timely response is received by the department from the board of county commissioners~~ EXCEPT THAT, FOR AN APPLICANT THAT HAS COMPLETED THE SECOND PUBLIC MEETING ON OR BEFORE THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (C), AS AMENDED, THE DEPARTMENT SHALL ACT UPON THE APPLICATION WITHIN THE TIME FRAME PRESCRIBED BY THIS SUB-SUBPARAGRAPH (C) AS IT EXISTED AS OF THE DATE OF THE APPLICATION.

(4) (a) (I) At least ~~sixty~~ NINETY days before a facility proposes to receive, store, process, or dispose of classified material IN A LICENSE APPLICATION OR AMENDMENT THAT IS NOT SUBJECT TO SUBSECTIONS (2) AND (3) OF THIS SECTION AND for which a material acceptance report has not already been filed with the department, the facility shall ~~provide notice to~~ NOTIFY the department, and the department shall ~~provide notice to~~ NOTIFY the PUBLIC AND THE board of county commissioners of the county in which the facility is located, of ~~identification of~~ the specific classified material to be received, stored, processed, or disposed of. ~~Such~~ THE notice shall include:

(A) A representative analysis ~~suitable to the department,~~ of the physical, chemical, and radiological properties of the classified material;

(B) The material acceptance report ~~prepared consistent with and containing the information required by, the interim guidance on disposal of non-"Atomic Energy Act of 1954", section 11 e (2) byproduct material in tailings impoundments, RIS~~

~~2000-23, and interim position and guidance on the use of uranium mill feed material other than natural ores, RIS 2000-23, as such guidance documents are amended or superseded from time to time~~ THAT DEMONSTRATES THAT THE CLASSIFIED MATERIAL DOES NOT CONTAIN HAZARDOUS WASTE CHARACTERISTICS NOT FOUND IN URANIUM ORE;

(C) A DETAILED PLAN FOR TRANSPORT, ACCEPTANCE, STORAGE, HANDLING, PROCESSING, AND DISPOSAL OF THE MATERIAL;

(D) A DEMONSTRATION THAT THE MATERIAL CONTAINS TECHNICALLY AND ECONOMICALLY RECOVERABLE URANIUM, WITHOUT TAKING INTO ACCOUNT ITS VALUE AS DISPOSAL MATERIAL;

~~(E)~~ (E) The existing location of the classified material;

~~(F)~~ (F) The history of the classified material;

~~(G)~~ (G) ~~If available,~~ A WRITTEN STATEMENT BY THE APPLICANT DESCRIBING any pre-existing regulatory classification of the classified waste in the state of origin THAT DESCRIBES ALL STEPS TAKEN BY THE APPLICANT TO IDENTIFY SUCH CLASSIFICATION;

~~(H)~~ (H) A written statement from the United States department of energy or successor agency that the receipt, storage, processing, or disposal of the classified material at the facility will not adversely affect the department of energy's receipt of title to the facility pursuant to the federal "Atomic Energy Act of 1954 ", 42 U.S.C. sec. 2113; ~~and~~

~~(I)~~ (I) Documentation showing any necessary approvals of the United States environmental protection agency; AND

(J) AN ENVIRONMENTAL ASSESSMENT AS DEFINED IN PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION, WHICH MAY INCORPORATE BY REFERENCE RELEVANT INFORMATION CONTAINED IN AN ENVIRONMENTAL ASSESSMENT PREVIOUSLY SUBMITTED FOR THE FACILITY.

(II) For classified material that would otherwise be subject to the "Low-level Radioactive Waste Act", part 22 of article 60 of title 24, C.R.S., the facility's notice shall also include written documentation that the rocky mountain low-level radioactive waste board has been notified that the classified material is being considered for disposal in the subject facility.

(b) Within ~~five~~ THIRTY days after the department's receipt of notice pursuant to subparagraph (I) of paragraph (a) of this subsection (4), the department shall ~~publish a notice of~~ DETERMINE WHETHER THE NOTICE IS COMPLETE.

(c) ONCE THE DEPARTMENT DETERMINES THAT THE NOTICE IS COMPLETE, THE DEPARTMENT SHALL PUBLISH THE NOTICE ON ITS WEB SITE AND PROVIDE a ~~thirty-day~~ SIXTY-DAY public comment period for the receipt of written comments ~~only~~, concerning the notice. A PUBLIC HEARING MAY BE HELD, AT THE DEPARTMENT'S DISCRETION, AT THE OPERATOR'S EXPENSE.

~~(c)~~ (d) Within thirty days after the close of the written public comment period provided by paragraph ~~(b)~~ (c) of this subsection (4), the department shall ~~confirm whether~~ APPROVE, APPROVE WITH CONDITIONS, OR DENY THE RECEIPT, STORAGE, PROCESSING, OR DISPOSAL AS DESCRIBED IN THE NOTICE BASED ON WHETHER the material proposed for receipt, storage, processing, or disposal at the facility complies with the facility's license and meets the standards established pursuant to subparagraph (III) of paragraph (c) of subsection (3) of this section. ~~and no further approval shall be required for the facility to receive, store, process, or dispose of the classified material described in the notice.~~

**SECTION 6.** 25-11-203 (2) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS to read:

**25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste.** (2) (c) As used in paragraph (b) of this subsection (2), "environmental assessment" means a report and assessment submitted to the department by a facility upon and in connection with application for a license, a five-year renewal, or license amendment pertaining to the facility's receipt of classified material, proposing to receive classified material for storage, processing, or disposal at a facility that addresses the impacts of the receipt for storage, processing, or disposal of such material. The environmental assessment shall contain all information deemed necessary by the department, and shall include, at a minimum:

(VII) A LIST OF ALL MATERIAL VIOLATIONS OF LOCAL, STATE, OR FEDERAL LAW AT THE FACILITY SINCE THE SUBMITTAL DATE OF THE PREVIOUS LICENSE APPLICATION OR LICENSE RENEWAL APPLICATION;

(VIII) FOR AN APPLICATION FOR A LICENSE OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL FOR STORAGE, PROCESSING, OR DISPOSAL AT THE FACILITY, A DEMONSTRATION THAT:

(A) THERE ARE NO OUTSTANDING MATERIAL VIOLATIONS OF ANY STATE OR FEDERAL STATUTES, COMPLIANCE ORDERS, OR COURT ORDERS APPLICABLE TO THE FACILITY, AND ANY RELEASES GIVING RISE TO ANY SUCH VIOLATION HAVE BEEN REMEDIATED;

(B) THE OPERATOR, AFTER A GOOD FAITH REVIEW OF THE FACILITY AND ITS OPERATIONS, IS NOT AWARE OF ANY CURRENT LICENSE VIOLATION AT THE FACILITY;

(C) THERE ARE NO CURRENT RELEASES TO THE AIR, GROUND, SURFACE WATER, OR GROUNDWATER THAT EXCEED PERMITTED LIMITS; AND

(D) NO CONDITIONS EXIST AT THE FACILITY THAT WOULD PREVENT THE DEPARTMENT OF ENERGY'S RECEIPT OF TITLE TO THE FACILITY PURSUANT TO THE FEDERAL "ATOMIC ENERGY ACT OF 1954", 42 U.S.C. SEC. 2113;

(IX) A LIST OF ALL NECESSARY PERMITS AND ANY CHANGES TO LOCAL LAND USE ORDINANCES THAT ARE NEEDED TO CONSTRUCT OR OPERATE THE FACILITY; AND

(X) FOR SITES OR FACILITIES PLACED ON THE NATIONAL PRIORITY LIST PURSUANT

TO THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT", 42 U.S.C. SEC. 9605, A COPY OF THE MOST RECENT FIVE-YEAR REVIEW AND ANY ASSOCIATED UPDATES THAT HAVE BEEN ISSUED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

**SECTION 7. Applicability.** This act shall apply to applications currently filed or filed on or after the effective date of this act and to operations currently permitted or permitted on or after the effective date of this act.

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 8, 2010