



State of Utah

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Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

February 25, 2016

Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal, and Rulemaking Programs
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
T8-E24
Washington, D.C. 20555-0001

Dear Ms. Henderson:

Please find enclosed a copy of draft legislation to be introduced into the Utah Legislature during the current 2016 General Session. We are requesting your expedited consideration of this legislation, even if it is informal. Because the 2016 General Session of the Utah Legislature concludes on March 10, 2016, and because a bill would have to be introduced well before that to be successful, we are requesting your review as quickly as possible.

The enclosed bill has not been publically released and therefore, has not been officially numbered by the Utah Legislature. However, we have the approval of the sponsor to provide the Nuclear Regulatory Commission (NRC) with an advanced copy of the draft bill. This draft legislation is important to our ability to address the finding and recommendation identified in the final IMPEP report approved by the NRC Management Review Board (MRB) and transmitted to our agency with a cover letter dated December 10, 2015. The MRB determined that Utah's statute regarding financial surety for low-level radioactive material licensees, as amended by legislation enacted during the 2015 General Session (SB 173) was not compatible with the NRC's financial surety requirements. Consequently, resolving this during this legislative session is extremely important to all those who have an interest in this matter.

We are requesting an expedited review of and a response to the proposed legislation in order to promptly inform the bill's sponsor of the NRC's perspective in satisfying the compatibility requirement. We believe the recent collaborative effort of all parties in reaching an agreement on the proposed statutory amendments results in a legislative change that resolves the concerns raised in the final IMPEP report.

We recognize the short time frame associated with our request and appreciate the consideration of the appropriate staff and management in reviewing and responding to our request. As an Agreement State, we value the need for regulatory compatibility within the radioactive materials program and believe the proposed bill achieves that objective.

DRC-2016-006321

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Printed on 100% recycled paper

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If you have any questions, please contact me at (801) 536-0203 or by email at standerson@utah.gov.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott T. Anderson", enclosed within a large, hand-drawn oval.

Scott T. Anderson, Director
Division of Waste Management and Radiation Control

STA/rl/jr

Enclosure: Proposed Legislation, 2016 General Session, Utah State Legislature

cc: Chris Einberg, NRC, NMSS, DMSSTR, ASPB
Randy Erickson, NRC, Region IV
Alan Matheson, UDEQ, Executive Director

WASTE MANAGEMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies provisions of the Radiation Control Act.

Highlighted Provisions:

This bill:

- defines "unlicensed facility";
- modifies financial assurance requirements for a licensed and an unlicensed facility,
- and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 19-3-102**, as last amended by Laws of Utah 2015, Chapter 451
- 19-3-104**, as last amended by Laws of Utah 2015, Chapters 441 and 451

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-3-102** is amended to read:

19-3-102. Definitions.

As used in this chapter:

- (1) "Board" means the Waste Management and Radiation Control Board created under 28 Section 19-1-106.
- (2) (a) "Broker" means a person who performs one or more of the following functions for a generator:
 - (i) arranges for transportation of the radioactive waste;
 - (ii) collects or consolidates shipments of radioactive waste; or

- 33 (iii) processes radioactive waste in some manner.
- 34 (b) "Broker" does not include a carrier whose sole function is to transport the
35 radioactive waste.
- 36 (3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).
- 37 (4) "Class B and class C low-level radioactive waste" has the same meaning as in 10 38
CFR 61.55.
- 39 (5) "Director" means the director of the Division of Waste Management and Radiation
40 Control.
- 41 (6) "Division" means the Division of Waste Management and Radiation Control,
42 created in Subsection 19-1-105(1)(d).
- 43 (7) "Generator" means a person who:
- 44 (a) possesses any material or component:
- 45 (i) that contains radioactivity or is radioactively contaminated; and
- 46 (ii) for which the person foresees no further use; and
- 47 (b) transfers the material or component to:
- 48 (i) a commercial radioactive waste treatment or disposal facility; or
- 49 (ii) a broker.
- 50 (8) (a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled
51 nuclear reactor components, and solid and liquid wastes from fuel reprocessing and
52 defense-related wastes.
- 53 (b) "High-level nuclear waste" does not include medical or institutional wastes,
54 naturally-occurring radioactive materials, or uranium mill tailings.
- 55 (9) (a) "Low-level radioactive waste" means waste material which contains radioactive
56 nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities
57 which exceed applicable federal or state standards for unrestricted release.
- 58 (b) "Low-level radioactive waste" does not include waste containing more than 100
59 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor
60 material classified as either high-level waste or waste which is unsuited for disposal by
61 near-surface burial under any applicable federal regulations.
- 62 (10) "Radiation" means ionizing and nonionizing radiation, including gamma rays,
63 X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

64 (11) "Radioactive" means any solid, liquid, or gas which emits radiation spontaneously
65 from decay of unstable nuclei.

66 (12) "Unlicensed facility" means a structure, road, or property:

67 (a) adjacent to, but outside of, a licensed or permitted area; and

68 (b) that is not used for waste disposal or waste management.

69 Section 2. Section **19-3-104** is amended to read:

70 **19-3-104. Registration and licensing of radiation sources by department --**

71 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria -- Indirect**
72 **and direct costs.**

73 (1) As used in this section:

74 (a) "Decommissioning" includes financial assurance.

75 (b) "Source material" and "byproduct material" have the same definitions as in the
76 Atomic Energy Act of 1954, 42 U.S.C. Sec. 2014, as amended.

77 (2) The division may require the registration or licensing of radiation sources that
78 constitute a significant health hazard.

79 (3) All sources of ionizing radiation, including ionizing radiation producing machines,
80 shall be registered or licensed by the department.

81 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
82 board may make rules:

83 (a) necessary for controlling exposure to sources of radiation that constitute a
84 significant health hazard;

85 (b) to meet the requirements of federal law relating to radiation control to ensure the
86 radiation control program under this part is qualified to maintain primacy from the federal
87 government;

88 (c) to establish certification procedure and qualifications for persons who survey
89 mammography equipment and oversee quality assurance practices at mammography facilities;
90 and

91 (d) as necessary regarding the possession, use, transfer, or delivery of source and
92 byproduct material and the disposal of byproduct material to establish requirements for:

93 (i) the licensing, operation, decontamination, and decommissioning, including financial
94 assurances; and

95 (ii) the reclamation of sites, structures, and equipment used in conjunction with the
96 activities described in this Subsection (4).

97 (5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and
98 byproduct material and the disposal of byproduct material at uranium mills or commercial
99 waste facilities, as provided in this Subsection (5).

100 (b) On and after January 1, 2003, through March 30, 2003:

101 (i) \$6,667 per month for uranium mills or commercial sites disposing of or
102 reprocessing byproduct material; and

103 (ii) \$4,167 per month for those uranium mills the director has determined are on
104 standby status.

105 (c) On and after March 31, 2003, through June 30, 2003, the same fees as in
106 Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah
107 an amendment for agreement state status for uranium recovery regulation on or before March
108 30, 2003.

109 (d) If the Nuclear Regulatory Commission does not grant the amendment for state
110 agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and
111 are not required to be paid until on and after the later date of:

112 (i) October 1, 2003; or

113 (ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for
114 agreement state status for uranium recovery regulation.

115 (e) For the payment periods beginning on and after July 1, 2003, the department shall
116 establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the
117 restrictions under Subsection (5)(d).

118 (f) The division shall deposit fees it receives under this Subsection (5) into the
119 Environmental Quality Restricted Account created in Section 19-1-108.

120 (6) (a) The division shall assess fees for registration, licensing, and inspection of
121 radiation sources under this section.

122 (b) The division shall comply with the requirements of Section 63J-1-504 in assessing
123 fees for licensure and registration.

124 (7) (a) Except as provided in Subsection (8), and in accordance with Title 63G,
125 Chapter 3, Utah Administrative Rulemaking Act, the board may not adopt rules, for the

126 purpose of the state assuming responsibilities from the United States Nuclear Regulatory
127 Commission with respect to regulation of sources of ionizing radiation, that are more stringent
128 than the corresponding federal regulations which address the same circumstances.

129 (b) In adopting those rules, the board may incorporate corresponding federal
130 regulations by reference.

131 (8) (a) The board may adopt rules more stringent than corresponding federal
132 regulations for the purpose described in Subsection (7) only if it makes a written finding after
133 public comment and hearing and based on evidence in the record that corresponding federal
134 regulations are not adequate to protect public health and the environment of the state.

135 (b) Those findings shall be accompanied by an opinion referring to and evaluating the
136 public health and environmental information and studies contained in the record which form
137 the basis for the board's conclusion.

138 (9) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
139 the board shall by rule:

140 (i) authorize independent qualified experts to conduct inspections required under this
141 chapter of x-ray facilities registered with the division; and

142 (ii) establish qualifications and certification procedures necessary for independent
143 experts to conduct these inspections.

144 (b) Independent experts under this Subsection (9) are not considered employees or
145 representatives of the division or the state when conducting the inspections.

146 (10) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
147 the board may by rule establish criteria for siting commercial low-level radioactive waste
148 treatment or disposal facilities, subject to the prohibition imposed by Section 19-3-103.7.

149 (b) Subject to Subsection 19-3-105(10), any facility under Subsection (10)(a) for which
150 a radioactive material license is required by this section shall comply with those criteria.

151 (c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive
152 material license until siting criteria have been established by the board. The criteria also apply
153 to facilities that have applied for but not received a radioactive material license.

154 (11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
155 the board shall make rules that:

156 (a) establish financial assurance requirements for closure and postclosure care of

157 radioactive waste land disposal facilities[-];

158 (b) establish financial assurance requirements for closure and postclosure care of an
159 unlicensed facility; and

160 (12) The rules described in Subsection (11) shall include the following provisions:

161 (a) the financial assurance shall be based on an annual [~~calculation~~] estimate

162 and shall include [~~the costs of~~] closure and postclosure [~~care~~

163 ~~of radioactive waste land disposal facilities~~] costs in all areas subject to the licensed or

164 permitted portions of the facility;

165 (b) financial assurance [~~for closing the areas within the disposal embankments shall be~~

166 ~~limited to the cost of closing areas where waste has been disposed; and~~] for an unlicensed

167 facility that supports the operation of a licensed or permitted facility shall be limited to the

168 estimated cost of:

169 [~~(e) at the option of the licensee or permittee, the financial assurance requirements~~

170 ~~shall be based on:]~~

171 (i) removing structures;

172 (ii) testing structures, roads and property to ensure no radiological contamination has
occurred outside of the licensed

173 area; and

174 (iii) stabilization and water infiltration control.

175 (c) financial assurance cost estimates for a single approved waste disposal unit for

176 which the volume of waste already placed and proposed to be placed in the unit within the

177 surety period is less than the full waste capacity of the unit, shall reflect the closure and

178 postclosure costs for a waste disposal unit smaller than the approved waste disposal unit if the

179 unit could be reduced in size, meet closure requirements, and reduce closure costs;

180 (d) financial assurance cost estimates for two approved adjacent waste disposal units

181 that have been approved to be combined into a single unit and for which the combined volume

182 of waste already placed and proposed to be placed in the units within the surety period is less

183 than the combined waste capacity for the two separate units, shall reflect either two separate

184 waste disposal units or a single combined unit, whichever has the lowest closure and
185 postclosure costs;

186 (e) the licensee or permittee shall annually propose closure and postclosure costs upon
187 which financial assurance amounts are based, including costs of potential remediation at the
188 licensed or permitted facility and, notwithstanding the obligation limitations in (b)(i), any
189 unlicensed facility;

190 (f) to provide the information in Subsection (12)(e), the licensee or permittee shall
191 provide a proposed:

192 (i) [~~an~~] annual [~~calculation~~] cost estimate using the current edition of RS Means
193 Facilities Construction Cost Data or using a process, including an indirect cost multiplier,
194 previously agreed to between the licensee or permittee and the director; or

195 (ii) (A) for an initial financial assurance determination and for each financial assurance
196 determination every five years thereafter, a competitive site-specific bid for closure and
197 postclosure care of the facility at least once every five years; and

198 (B) for each year between a financial assurance determination [~~as~~] described in
199 Subsection [~~(12)(e)(ii)(A);~~] (12)(f)(ii)(A), the licensee shall submit a financial assurance
200 estimate that accounts for current site conditions and that includes an annual inflation
201 adjustment to the financial assurance determination using the Gross Domestic Product Implicit
202 Price Deflator of the Bureau of Economic Analysis, United States Department of Commerce,
203 calculated by dividing the latest annual deflator by the deflator for the previous year[-]; and

204 (g) the director shall:

205 (i) annually review the licensee's or permittee's proposed closure and postclosure
206 estimate; and

207 (ii) approve the estimate if the director determines that it would be sufficient to provide
208 for closure and postclosure costs.

209 (13) Subject to the financial assurance requirements described in Subsections (11) and
210 (12), if the director and the licensee or permittee do not agree on a final financial assurance
211 determination made by the director, the licensee or permittee may appeal the determination in:

212 (a) an arbitration proceeding governed by Title 78B, Chapter 11, Utah Uniform
213 Arbitration Act, with the costs of the arbitration to be split equally between the licensee or
214 permittee and the division, if both the licensee or permittee and the director agree in writing to

215 arbitration; or

216 (b) a special adjudicative proceeding under Section 19-1-301.5.