

WASTE MANAGEMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

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.



28 As used in this chapter:

29 (1) "Board" means the Waste Management and Radiation Control Board created under
30 Section 19-1-106.

31 (2) (a) "Broker" means a person who performs one or more of the following functions
32 for a generator:

- 33 (i) arranges for transportation of the radioactive waste;
- 34 (ii) collects or consolidates shipments of radioactive waste; or
- 35 (iii) processes radioactive waste in some manner.

36 (b) "Broker" does not include a carrier whose sole function is to transport the
37 radioactive waste.

38 (3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).

39 (4) "Class B and class C low-level radioactive waste" has the same meaning as in 10
40 CFR 61.55.

41 (5) "Director" means the director of the Division of Waste Management and Radiation
42 Control.

43 (6) "Division" means the Division of Waste Management and Radiation Control,
44 created in Subsection 19-1-105(1)(d).

45 (7) "Generator" means a person who:

- 46 (a) possesses any material or component:
 - 47 (i) that contains radioactivity or is radioactively contaminated; and
 - 48 (ii) for which the person foresees no further use; and
- 49 (b) transfers the material or component to:
 - 50 (i) a commercial radioactive waste treatment or disposal facility; or
 - 51 (ii) a broker.

52 (8) (a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled
53 nuclear reactor components, and solid and liquid wastes from fuel reprocessing and
54 defense-related wastes.

55 (b) "High-level nuclear waste" does not include medical or institutional wastes,
56 naturally-occurring radioactive materials, or uranium mill tailings.

57 (9) (a) "Low-level radioactive waste" means waste material which contains radioactive
58 nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities

59 which exceed applicable federal or state standards for unrestricted release.

60 (b) "Low-level radioactive waste" does not include waste containing more than 100
61 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor
62 material classified as either high-level waste or waste which is unsuited for disposal by
63 near-surface burial under any applicable federal regulations.

64 (10) "Radiation" means ionizing and nonionizing radiation, including gamma rays,
65 X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

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

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

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

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

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

72 **19-3-104. Registration and licensing of radiation sources by department --**

73 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria -- Indirect**
74 **and direct costs.**

75 (1) As used in this section:

76 (a) "Decommissioning" includes financial assurance.

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

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

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

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

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

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

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

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

95 (i) the licensing, operation, decontamination, and decommissioning, including financial
96 assurances; and

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

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

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

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

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

107 (c) On and after March 31, 2003, through June 30, 2003, the same fees as in
108 Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah
109 an amendment for agreement state status for uranium recovery regulation on or before March
110 30, 2003.

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

114 (i) October 1, 2003; or

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

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

120 (f) The division shall deposit fees it receives under this Subsection (5) into the

121 Environmental Quality Restricted Account created in Section 19-1-108.

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

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

126 (7) (a) Except as provided in Subsection (8), and in accordance with Title 63G,
127 Chapter 3, Utah Administrative Rulemaking Act, the board may not adopt rules, for the
128 purpose of the state assuming responsibilities from the United States Nuclear Regulatory
129 Commission with respect to regulation of sources of ionizing radiation, that are more stringent
130 than the corresponding federal regulations which address the same circumstances.

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

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

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

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

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

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

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

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

151 (b) Subject to Subsection 19-3-105(10), any facility under Subsection (10)(a) for which

152 a radioactive material license is required by this section shall comply with those criteria.

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

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

158 (a) establish financial assurance requirements for closure and postclosure care of
159 radioactive waste land disposal facilities[-]; and

160 (b) establish financial assurance requirements for closure and postclosure care of an
161 unlicensed facility.

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

163 (a) the financial assurance shall be based on an annual [~~calculation~~] estimate and shall
164 include [~~the costs of~~] closure and postclosure [~~care of radioactive waste land disposal facilities~~]
165 costs in all areas subject to the licensed or permitted portions of the facility;

166 (b) financial assurance [~~for closing the areas within the disposal embankments shall be~~
167 ~~limited to the cost of closing areas where waste has been disposed; and~~] for an unlicensed
168 facility that supports the operation of a licensed or permitted facility shall be limited to the
169 estimated cost of:

170 [~~(c) at the option of the licensee or permittee, the financial assurance requirements~~
171 ~~shall be based on:~~]

172 (i) removing structures;

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

175 (iii) stabilization and water infiltration control;

176 (c) financial assurance cost estimates for a single approved waste disposal unit for
177 which the volume of waste already placed and proposed to be placed in the unit within the
178 surety period is less than the full waste capacity of the unit, shall reflect the closure and
179 postclosure costs for a waste disposal unit smaller than the approved waste disposal unit if the
180 unit could be reduced in size, meet closure requirements, and reduce closure costs;

181 (d) financial assurance cost estimates for two approved adjacent waste disposal units
182 that have been approved to be combined into a single unit and for which the combined volume

183 of waste already placed and proposed to be placed in the units within the surety period is less
184 than the combined waste capacity for the two separate units, shall reflect either two separate
185 waste disposal units or a single combined unit, whichever has the lowest closure and
186 postclosure costs;

187 (e) the licensee or permittee shall annually propose closure and postclosure costs upon
188 which financial assurance amounts are based, including costs of potential remediation at the
189 licensed or permitted facility and, notwithstanding the obligation limitations described in
190 Subsection (12)(b), any unlicensed facility;

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

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

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

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

205 (g) the director shall:

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

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

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

213 (a) an arbitration proceeding governed by Title 78B, Chapter 11, Utah Uniform

214 Arbitration Act, with the costs of the arbitration to be split equally between the licensee or
215 permittee and the division, if both the licensee or permittee and the director agree in writing to
216 arbitration; or
217 (b) a special adjudicative proceeding under Section [19-1-301.5](#).

Legislative Review Note
Office of Legislative Research and General Counsel