



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

January 12, 2017

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 proposed legislation (S.B. 79) to be introduced into the Utah Legislature during the upcoming 2017 General Session, which begins on January 23, 2017 and concludes on March 9, 2017.

This legislation is important because it addresses the Nuclear Regulatory Commission's finding and recommendation identified in the NRC Management Review Board's final report that was 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 (S.B. 173) was not compatible with the NRC's financial surety requirements. Consequently, resolving this during this upcoming legislative session is extremely important to all those who have an interest in this matter.

This draft bill (S.B. 79) has three changes compared to the bill (S.B. 231, introduced but pulled) reviewed by the NRC last March and contains the language requested by the NRC in a letter dated March 9, 2016 (ML16062A065). First, on line 170, the phrase "shall include" replaces the phrase "shall be limited to." Second, on line 199, the phrase "competitive site-specific bid" is replaced by "proposed competitive site-specific estimate." Third, other technical changes have been made to provide clarity (see lines 38-41, 58, 60 and 78-79). We believe these proposed changes resolve the incompatibility finding of the MRB.

As an Agreement State, we value the need for regulatory compatibility with the associated national financial assurance standards and requirements in the radioactive materials program and believe the proposed draft bill achieves that objective.

DRC-2017-000344

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Please review the enclosed draft bill and provide any comments as early as possible in order to proceed with the legislative process. If you have any questions, please contact me at (801) 536-0203 or by email at standerson@utah.gov.

Sincerely,



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

STA/rl

Enclosure: S.B. 79 Proposed Legislation, 2017 General Session, Utah State Legislature

c: Paul Michalak, NRC, NMSS, DMSTR, ASPB
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WASTE MANAGEMENT AMENDMENTS

2017 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~~] means the same as that term is
39 defined in 42 U.S.C. Sec. 2014(e)(2).

40 (4) "Class B and class C low-level radioactive waste" [~~has the same meaning as~~] means
41 the same as that term is defined in 10 CFR 61.55.

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

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

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

47 (a) possesses any material or component:

48 (i) that contains radioactivity or is radioactively contaminated; and

49 (ii) for which the person foresees no further use; and

50 (b) transfers the material or component to:

51 (i) a commercial radioactive waste treatment or disposal facility; or

52 (ii) a broker.

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

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

58 (9) (a) "Low-level radioactive waste" means waste material [~~which~~] that contains

59 radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or
60 quantities [~~which~~] that exceed applicable federal or state standards for unrestricted release.

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

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

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

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

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

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

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

73 **19-3-104. Registration and licensing of radiation sources by department --**

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

76 (1) As used in this section:

77 (a) "Decommissioning" includes financial assurance.

78 (b) "Source material" and "byproduct material" [~~have the same definitions as~~] mean the
79 same as those terms are defined in the Atomic Energy Act of 1954, 42 U.S.C. Sec. 2014, as
80 amended.

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

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

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

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

89 (b) to meet the requirements of federal law relating to radiation control to ensure the

90 radiation control program under this part is qualified to maintain primacy from the federal
91 government;

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

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

97 (i) the licensing, operation, decontamination, and decommissioning, including financial
98 assurances; and

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

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

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

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

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

109 (c) On and after March 31, 2003, through June 30, 2003, the same fees as in
110 Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah
111 an amendment for agreement state status for uranium recovery regulation on or before March
112 30, 2003.

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

116 (i) October 1, 2003; or

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

119 (e) For the payment periods beginning on and after July 1, 2003, the department shall
120 establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the

121 restrictions under Subsection (5)(d).

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

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

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

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

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

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

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

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

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

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

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

150 (10) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
151 the board may by rule establish criteria for siting commercial low-level radioactive waste

152 treatment or disposal facilities, subject to the prohibition imposed by Section 19-3-103.7.

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

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

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

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

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

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

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

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

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

174 (i) the removal of structures;

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

177 (iii) stabilization and water infiltration control;

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

183 (d) financial assurance cost estimates for two approved adjacent waste disposal units
184 that have been approved to be combined into a single unit and for which the combined volume
185 of waste already placed and proposed to be placed in the units within the surety period is less
186 than the combined waste capacity for the two separate units shall reflect either two separate
187 waste disposal units or a single combined unit, whichever has the lowest closure and
188 postclosure costs;

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

193 (f) to provide the information in Subsection (12)(e), the licensee or permittee shall
194 provide:

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

198 (ii) (A) for an initial financial assurance determination and for each financial assurance
199 determination every five years thereafter, a proposed competitive site-specific [~~bid~~] estimate
200 for closure and postclosure care of the facility at least once every five years; and

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

207 (g) the director shall:

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

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

212 (13) Subject to the financial assurance requirements described in Subsections (11) and
213 (12), if the director and the licensee or permittee do not agree on a final financial assurance

214 determination made by the director, the licensee or permittee may appeal the determination in:
215 (a) an arbitration proceeding governed by Title 78B, Chapter 11, Utah Uniform
216 Arbitration Act, with the costs of the arbitration to be split equally between the licensee or
217 permittee and the division, if both the licensee or permittee and the director agree in writing to
218 arbitration; or
219 (b) a special adjudicative proceeding under Section 19-1-301.5.

Legislative Review Note
Office of Legislative Research and General Counsel