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An Act

HOUSE BILL 15-1145

BY REPRESENTATIVE(S) Rankin, Coram, Becker K., Brown, Ginal, Mitsch Bush, Pettersen;
also SENATOR(S) Hodge, Aguilar, Grantham, Jahn, Jones, Lambert, Merrifield, Roberts.

CONCERNING THE REGULATION OF RADIOACTIVE MATERIALS, AND, IN CONNECTION THEREWITH, IMPLEMENTING AN AUDIT REPORT ISSUED BY THE FEDERAL NUCLEAR REGULATORY COMMISSION.

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

SECTION 1. In Colorado Revised Statutes, 25-11-101, **amend** (1) and (2.7); and **add** (1.5), (6.4), and (6.7) as follows:

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). "BYPRODUCT MATERIAL" MEANS:~~

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

(a) ANY RADIOACTIVE MATERIAL, EXCEPT SPECIAL NUCLEAR MATERIAL, YIELDED IN, OR MADE RADIOACTIVE BY, EXPOSURE TO THE RADIATION INCIDENT TO THE PROCESS OF PRODUCING OR USING SPECIAL NUCLEAR MATERIAL;

(b) THE TAILINGS OR WASTES PRODUCED BY THE EXTRACTION OR CONCENTRATION OF URANIUM OR THORIUM FROM ORE PROCESSED PRIMARILY FOR ITS SOURCE MATERIAL CONTENT, INCLUDING DISCRETE SURFACE WASTES RESULTING FROM URANIUM SOLUTION EXTRACTION PROCESSES. UNDERGROUND ORE BODIES DEPLETED BY THESE SOLUTION EXTRACTION OPERATIONS ARE NOT "BYPRODUCT MATERIAL".

(c) (I) ANY DISCRETE SOURCE OF RADIUM-226 THAT IS PRODUCED, EXTRACTED, OR CONVERTED AFTER EXTRACTION, BEFORE, ON, OR AFTER AUGUST 8, 2005, FOR USE FOR A COMMERCIAL, MEDICAL, OR RESEARCH ACTIVITY; OR

(II) ANY MATERIAL THAT:

(A) HAS BEEN MADE RADIOACTIVE BY USE OF A PARTICLE ACCELERATOR; AND

(B) IS PRODUCED, EXTRACTED, OR CONVERTED AFTER EXTRACTION, BEFORE, ON, OR AFTER AUGUST 8, 2005, FOR USE FOR A COMMERCIAL, MEDICAL, OR RESEARCH ACTIVITY; AND

(d) ANY DISCRETE SOURCE OF NATURALLY OCCURRING RADIOACTIVE MATERIAL, OTHER THAN SOURCE MATERIAL, THAT:

(I) THE UNITED STATES NUCLEAR REGULATORY COMMISSION, IN CONSULTATION WITH THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, THE SECRETARY OF ENERGY, THE SECRETARY OF HOMELAND SECURITY, AND THE HEAD OF ANY OTHER APPROPRIATE FEDERAL AGENCY, DETERMINES WOULD POSE A THREAT SIMILAR TO THE THREAT POSED BY A DISCRETE SOURCE OF RADIUM-226 TO THE PUBLIC HEALTH AND SAFETY OR THE COMMON DEFENSE AND SECURITY; AND

(II) BEFORE, ON, OR AFTER AUGUST 8, 2005, IS EXTRACTED OR CONVERTED AFTER EXTRACTION FOR USE IN A COMMERCIAL, MEDICAL, OR RESEARCH ACTIVITY.

(1.5) "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).

(2.7) "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, BYPRODUCT MATERIAL, or by-products of fossil fuel combustion, including bottom ash, fly ash, and flue-gas emission by-products.

(6.4) (a) "SOURCE MATERIAL" MEANS URANIUM OR THORIUM OR ANY COMBINATION OF URANIUM AND THORIUM IN ANY PHYSICAL OR CHEMICAL FORM, INCLUDING ORES THAT CONTAIN, BY WEIGHT, ONE-TWENTIETH OF ONE PERCENT, OR MORE, OF URANIUM, THORIUM, OR ANY COMBINATION OF URANIUM AND THORIUM.

(b) "SOURCE MATERIAL" DOES NOT INCLUDE SPECIAL NUCLEAR MATERIAL.

(6.7) (a) "SPECIAL NUCLEAR MATERIAL" MEANS:

(I) PLUTONIUM, URANIUM-233, URANIUM ENRICHED IN THE ISOTOPE 233 OR IN THE ISOTOPE 235, AND ANY OTHER MATERIAL THAT THE UNITED STATES NUCLEAR REGULATORY COMMISSION, PURSUANT TO SECTION 51 OF THE FEDERAL "ATOMIC ENERGY ACT OF 1954", AS AMENDED, 42 U.S.C. SEC. 2071, DETERMINES TO BE SPECIAL NUCLEAR MATERIAL; OR

(II) ANY MATERIAL ARTIFICIALLY ENRICHED BY ANY OF THE MATERIAL SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (6.7), "SPECIAL NUCLEAR MATERIAL" DOES NOT INCLUDE SOURCE MATERIAL.

SECTION 2. In Colorado Revised Statutes, 25-11-104, **amend** (1) (a), (1) (c), and (2) as follows:

25-11-104. Rules to be adopted - fees - fund created. (1) (a) The state board shall formulate, adopt, and promulgate rules as provided in subsection (2) 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~~ MUST 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; SECURITY OF MATERIALS; and financial assurance warranties.

(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~~ MUST 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~~ MUST be consistent with UNITED STATES NUCLEAR REGULATORY COMMISSION REQUIREMENTS NECESSARY TO MAINTAIN AGREEMENT STATE STATUS AND FINAL 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.

SECTION 3. In Colorado Revised Statutes, 25-11-107, **amend** (5)

(j) as follows:

25-11-107. Prohibited acts - violations - penalties - rules - cease-and-desist orders. (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 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. Under no circumstances shall remediation be deemed complete until all groundwater wells affected by any release associated with the site or facility are restored to at least the numeric groundwater standards as established by the water quality control commission that apply to the historic uses of the wells. PRIOR TO THE APPLICATION OF ANY NUMERIC GROUNDWATER STANDARD DIFFERENT FROM THE BASELINE STANDARD CONTAINED IN 10 CFR PART 40, THE STANDARD MUST HAVE BEEN APPROVED BY THE UNITED STATES NUCLEAR REGULATORY COMMISSION IN ACCORDANCE WITH SECTION 2740 OF THE FEDERAL "ATOMIC ENERGY ACT OF 1954", 42 U.S.C. SEC. 2021 (o). The licensee shall remediate any release affecting groundwater wells in the most expedited manner reasonably possible using best available active restoration and groundwater monitoring technologies.

SECTION 4. In Colorado Revised Statutes, 25-11-108, **amend** (1) introductory portion; and **repeal** (1) (c) as follows:

25-11-108. Exemptions. (1) ~~The provisions of Sections 25-11-103 and 25-11-104 shall~~ DO not apply to the following sources or conditions:

(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;~~

SECTION 5. In Colorado Revised Statutes, **repeal** 25-11-109 as follows:

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.~~

SECTION 6. In Colorado Revised Statutes, 25-11-110, **amend** (4) (d) and (5) (e) as follows:

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

(4) (d) The amount of a long-term care warranty ~~shall~~ **MUST** be enough that, with an assumed ~~six~~ **ONE** 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.

(5) (e) If the licensee requests a hearing, ~~no new classified material; as that term is defined in section 25-11-201; ORE OR OTHER RADIOACTIVE MATERIAL may be brought on site FOR PROCESSING OR DISPOSAL and no classified NEW RADIOACTIVE 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 7. In Colorado Revised Statutes, **amend** 25-11-201 as follows:

25-11-201. Definitions - scope. (1) 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);~~

~~(H) Naturally occurring or technologically enhanced naturally occurring radioactive material;~~

~~(HH) 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;~~

~~(H) 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;~~

~~(HH) 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., or section 25-15-204 (6).~~

~~(1.5) (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; ~~except that, with regard to classified material, "disposal" shall not include release through a sanitary sewer or incineration at a facility.~~

~~(1.6) (b) "Facility" means a uranium or thorium mill, processing, or disposal facility required to be licensed pursuant to this article and a site for such THE 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) (c) "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) (d) "Radioactive" means emitting alpha rays PARTICLES, beta rays PARTICLES, 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.~~

(e) "RADIOACTIVE WASTE" MEANS LOW-LEVEL RADIOACTIVE WASTES CONTAINING SOURCE, SPECIAL NUCLEAR, OR BYPRODUCT MATERIAL THAT ARE ACCEPTABLE FOR DISPOSAL IN A LAND DISPOSAL FACILITY. FOR THE PURPOSES OF THIS PARAGRAPH (e), "LOW-LEVEL RADIOACTIVE WASTE" MEANS RADIOACTIVE WASTE NOT CLASSIFIED AS HIGH-LEVEL RADIOACTIVE WASTE, TRANSURANIC WASTE, SPENT NUCLEAR FUEL, OR BYPRODUCT MATERIAL, AS THAT TERM IS DEFINED IN SECTION 25-11-101 (1) (b), (1) (c), AND (1) (d).

~~(4)~~ (f) "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)~~ (I) Background radiation or the natural radioactivity of rocks or soils;

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

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

(g) "TYPE 2 BYPRODUCT MATERIAL" MEANS THE SUBCATEGORY OF BYPRODUCT MATERIAL SPECIFIED IN SECTION 25-11-101 (1) (b).

(2) NOTHING IN THIS PART 2 APPLIES TO, INCLUDES, OR AFFECTS:

(a) THE FOLLOWING NATURALLY OCCURRING RADIOACTIVE MATERIALS OR TENORM:

(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.; OR

(b) THE TREATMENT, STORAGE, MANAGEMENT, PROCESSING, OR DISPOSAL OF SOLID WASTE, WHICH MAY INCLUDE NATURALLY OCCURRING RADIOACTIVE MATERIAL AND TENORM, 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).

SECTION 8. In Colorado Revised Statutes, 25-11-203, **amend** (1) (b), (2) (b) introductory portion, (2) (b) (I) (B), (2) (b) (III), (2) (c) introductory portion, (2) (c) (I), (2) (c) (II), (2) (c) (VIII) introductory portion, (3) (c) (I), (3) (c) (II), (3) (c) (III) introductory portion, (3) (c) (V) (D), and (4) (a) as follows:

25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste. (1) (b) (I) ~~No~~ A facility shall NOT dispose of or receive for storage incident to disposal or processing at the facility ~~classified~~ RADIOACTIVE material, EXCEPT FOR NONPROCESSING OPERATIONAL PURPOSES SUCH AS RADIOACTIVE STANDARDS, SAMPLES FOR ANALYSIS, OR MATERIALS CONTAINED IN FIXED OR PORTABLE GAUGES, unless ~~such~~ THE facility has received a license, a five-year license renewal, or license amendment pertaining to the facility's receipt of ~~classified~~ RADIOACTIVE material, in accordance with sections 24-4-104 and TO 24-4-105, C.R.S., for such receipt, storage, processing, or disposal of ~~classified~~ RADIOACTIVE material and ~~such~~ THE license, license renewal, or license amendment approves that type of ~~classified material~~ ACTIVITY.

(II) Nothing in this paragraph (b) ~~shall apply~~ APPLIES to a contract for the storage, processing, or disposal of less than the sum of one hundred ten tons of ~~classified~~ RADIOACTIVE 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~~ RADIOACTIVE material as determined by the department for storage, processing, or disposal.

(III) License amendments for the receipt of ~~classified~~ RADIOACTIVE 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~~ THE 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) (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~~ ANY RADIOACTIVE material must 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. The applicant shall pay the reasonable, necessary, and documented expense of the meetings. The meetings shall not be held until the department determines that the application is substantially complete. The applicant shall provide the public with:

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

(III) A response, if any, to the environmental assessment written by the board of county commissioners of the county in which the ~~classified~~ RADIOACTIVE 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~~ THE board, the applicant shall provide the board with up to fifty thousand dollars, as adjusted for inflation since 2003, which is 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~~ RADIOACTIVE 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 LICENSE renewal, or license amendment pertaining to the facility's receipt of ~~classified~~ RADIOACTIVE material, proposing to receive ~~classified~~ ANY RADIOACTIVE material for storage, processing, or disposal at a facility that addresses the impacts of the receipt for storage, processing, or disposal of ~~such~~ THE RADIOACTIVE 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~~ RADIOACTIVE 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~~ RADIOACTIVE material to be received, stored, processed, or disposed of;

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

(3)(c)(I) In deciding whether to approve a license, five-year license renewal, or license amendment pertaining to the facility's receipt of ~~classified~~ RADIOACTIVE 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 LICENSE renewal, or license amendment pertaining to the facility's receipt of ~~classified~~ THE RADIOACTIVE material.

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

(V) (D) After review of all final public comments, the department shall issue a final draft decision and provide affected parties, including the applicant in the case of approval with conditions or denial, an opportunity to request an adjudicatory hearing in accordance with ~~sections 24-4-104 and~~ SECTION 24-4-105, C.R.S. If no party seeks a hearing, the final draft decision becomes final agency action. If any party seeks a hearing, resolution of all material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial ~~thereof~~ OF THE MATERIAL ISSUES must be through an initial decision of a hearing officer OR ADMINISTRATIVE LAW JUDGE. The applicant shall pay all reasonable, necessary, and documented expenses of the hearing. Upon issuance of the initial decision of the hearing officer OR ADMINISTRATIVE LAW JUDGE, and after any allowable appeal to the executive director, the department shall issue within a reasonable time a final decision to approve, approve with conditions, or deny the application. The final decision is subject to judicial review pursuant to section 24-4-106, C.R.S.

(4) (a) (I) At least ninety days before a facility proposes to receive, store, process, or dispose of ~~classified~~ RADIOACTIVE 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~~ RADIOACTIVE material to be received, stored, processed, or disposed of.

The notice shall MUST include:

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

(B) The material acceptance report that demonstrates that the ~~classified~~ RADIOACTIVE 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~~ RADIOACTIVE material;

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

(G) A written statement by the applicant describing any preexisting regulatory classification of the ~~classified-waste~~ RADIOACTIVE MATERIAL in the state of origin that describes all steps taken by the applicant to identify ~~such~~ THE 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~~ RADIOACTIVE 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~~ RADIOACTIVE 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 MUST also include written documentation that the Rocky Mountain low-level radioactive waste board has been notified that the ~~classified~~ RADIOACTIVE material is being considered for disposal in the subject facility.

SECTION 9. In Colorado Revised Statutes, 25-11-303, **repeal** (1) (d) as follows:

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

(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:

~~(d) (F) 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".~~

~~(H) 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) Repealed.~~

SECTION 10. In Colorado Revised Statutes, **repeal** 38-1-202 (1) (b) (IV) (E) as follows:

38-1-202. Governmental entities, corporations, and persons authorized to use eminent domain. (1) The following governmental entities, types of governmental entities, and public corporations, in accordance with all procedural and other requirements specified in this article and articles 2 to 7 of this title and to the extent and within any time frame specified in the applicable authorizing statute, may exercise the power of eminent domain:

(b) The state:

(IV) By action of the general assembly or by action of any of the following officers and agencies of the state:

~~(E) The department of public health and environment as authorized in section 25-11-303 (1) (d), C.R.S.;~~

SECTION 11. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or

part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO