

**RADIATION CONTROL AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad L. Dee**

Senate Sponsor: Ralph Okerlund

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the regulation of radioactive waste disposal.

**Highlighted Provisions:**

This bill:

- ▶ amends provisions relating to the funding of radioactive waste disposal regulation;
- ▶ grants rulemaking authority to the Radiation Control Board relating to radioactive waste licensing;
- ▶ increases civil penalties for the violation of certain provisions;
- ▶ provides for Division of Radiation Control access to radioactive waste disposal facilities under certain circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**19-1-108**, as last amended by Laws of Utah 2010, Chapter 17

**19-3-105**, as last amended by Laws of Utah 2012, Chapter 360

**19-3-106.4**, as last amended by Laws of Utah 2012, Chapter 360

**19-3-109**, as last amended by Laws of Utah 2012, Chapter 360

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

31 Section 1. Section **19-1-108** is amended to read:

32 **19-1-108. Creation of Environmental Quality Restricted Account -- Purpose of**  
33 **restricted account -- Sources of funds -- Uses of funds.**

34 (1) There is created the Environmental Quality Restricted Account.

35 (2) The sources of money for the restricted account are:

36 (a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4  
37 and other fees collected under Subsection 19-3-104(5);

38 (b) hazardous waste disposal fees collected under Section 19-6-118;

39 (c) PCB waste disposal fees collected under Section 19-6-118.5;

40 (d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and

41 (e) the investment income derived from money in the Environmental Quality  
42 Restricted Account.

43 (3) In each fiscal year, the first \$400,000 collected from the waste disposal fees listed  
44 in Subsection (2), collectively, shall be deposited in the General Fund as free revenue. The  
45 balance shall be deposited in the Environmental Quality Restricted Account.

46 (4) The Legislature may annually appropriate money from the Environmental Quality  
47 Restricted Account to:

48 (a) the department for the costs of administering radiation control programs;

49 (b) the department for the costs of administering solid and hazardous waste programs;  
50 and

51 (c) subject to Subsection [~~(5)~~] (6), the Hazardous Substances Mitigation Fund, up to  
52 \$400,000, to provide money to:

53 (i) meet the state's cost share requirements for cleanup under the Comprehensive  
54 Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq.  
55 as amended; and

56 (ii) respond to an emergency as provided in Section 19-6-309.

57 (5) After the requirements of Subsection (3) are met, sources of money for the

58 restricted account described in Subsection (2)(a) may only be used for the purpose described in  
59 Subsection (4)(a).

60 [~~5~~] (6) An annual request for money to be appropriated from the Environmental  
61 Quality Restricted Account to the Hazardous Substances Mitigation Fund may be made by the  
62 department only after the executive director's review of the Environmental Quality Restricted  
63 Account's or the Hazardous Substances Mitigation Fund's balance as of the end of the fiscal  
64 year immediately before the general session for which the request is made.

65 [~~6~~] (7) In order to stabilize funding for the radiation control program and the solid  
66 and hazardous waste program, the Legislature shall in years of excess revenues reserve in the  
67 Environmental Quality Restricted Account sufficient money to meet departmental needs in  
68 years of projected shortages.

69 [~~7~~] (8) The Legislature may not appropriate money from the General Fund to the  
70 department as a supplemental appropriation to cover the costs of the radiation control program  
71 and the solid and hazardous waste program in an amount exceeding 25% of the amount of  
72 waste disposal fees collected during the most recent prior fiscal year.

73 [~~8~~] (9) Money appropriated under this part that is not expended at the end of the  
74 fiscal year lapses into the Environmental Quality Restricted Account.

75 [~~9~~] (10) (a) The balance in the Environmental Quality Restricted Account may not  
76 exceed \$4,000,000 above the anticipated revenue need for the money in the restricted account  
77 for the fiscal year.

78 (b) Excess funds under Subsection [~~9~~] (10)(a) shall be credited on a proportionate  
79 basis to each person who paid money to the fund in the previous fiscal year.

80 Section 2. Section **19-3-105** is amended to read:

81 **19-3-105. Definitions -- Legislative and gubernatorial approval required for**  
82 **radioactive waste license -- Exceptions -- Application for new, renewed, or amended**  
83 **license.**

84 (1) As used in this section:

85 (a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

86           **(b) "Approval application" means an application by a radioactive waste facility**  
87 **regulated under this chapter or Title 19, Chapter 5, Water Quality Act, for a permit, license,**  
88 **registration, certification, or other authorization.**

89           ~~(b)~~ **(c) (i) "Class A low-level radioactive waste" means:**

90           (A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

91           (B) radium-226 up to a maximum radionuclide concentration level of 10,000  
92 picocuries per gram.

93           (ii) "Class A low-level radioactive waste" does not include:

94           (A) uranium mill tailings;

95           (B) naturally occurring radioactive materials; or

96           (C) the following radionuclides if classified as "special nuclear material" under the  
97 Atomic Energy Act of 1954, 42 U.S.C. 2014:

98           (I) uranium-233; and

99           (II) uranium-235 with a radionuclide concentration level greater than the concentration  
100 limits for specific conditions and enrichments established by an order of the Nuclear  
101 Regulatory Commission:

102           (Aa) to ensure criticality safety for a radioactive waste facility in the state; and

103           (Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive  
104 waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special  
105 nuclear material exemption order.

106           ~~(c)~~ **(d) (i) "Radioactive waste facility" or "facility" means a facility that receives,**  
107 **transfers, stores, decays in storage, treats, or disposes of radioactive waste:**

108           (A) commercially for profit; or

109           (B) generated at locations other than the radioactive waste facility.

110           (ii) "Radioactive waste facility" does not include a facility that receives:

111           (A) alternate feed material for reprocessing; or

112           (B) radioactive waste from a location in the state designated as a processing site under  
113 42 U.S.C. 7912(f).

114           ~~[(d)]~~ (e) "Radioactive waste license" or "license" means a radioactive material license  
115 issued by the director under Subsection 19-3-108(2)(d), to own, construct, modify, or operate a  
116 radioactive waste facility.

117           (2) The provisions of this section are subject to the prohibition under Section  
118 19-3-103.7.

119           (3) Subject to Subsection ~~[(10)]~~ (8), a person may not own, construct, modify, or  
120 operate a radioactive waste facility without:

- 121           (a) having received a radioactive waste license for the facility;
- 122           (b) meeting the requirements established by rule under Section 19-3-104;
- 123           (c) the approval of the governing body of the municipality or county responsible for  
124 local planning and zoning where the radioactive waste is or will be located; and
- 125           (d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the  
126 approval of the governor and the Legislature.

127           (4) Subject to Subsection ~~[(10)]~~ (8), a new radioactive waste license application, or an  
128 application to renew or amend an existing radioactive waste license, is subject to the  
129 requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

- 130           (a) specifies a different geographic site than a previously submitted application;
- 131           (b) would cost 50% or more of the cost of construction of the original radioactive  
132 waste facility or the modification would result in an increase in capacity or throughput of a  
133 cumulative total of 50% of the total capacity or throughput which was approved in the facility  
134 license as of January 1, 1990, or the initial approval facility license if the initial license  
135 approval is subsequent to January 1, 1990; or
- 136           (c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of  
137 radioactive waste having a higher radionuclide concentration limit than allowed, under an  
138 existing approved license held by the facility, for the specific type of waste to be received,  
139 transferred, stored, decayed in storage, treated, or disposed of.

140           (5) The requirements of Subsection (4)(c) do not apply to an application to renew or  
141 amend an existing radioactive waste license if:

142 (a) the radioactive waste facility requesting the renewal or amendment has received a  
143 license prior to January 1, 2004; and

144 (b) the application to renew or amend its license is limited to a request to approve the  
145 receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level  
146 radioactive waste.

147 (6) A radioactive waste facility which receives a new radioactive waste license after  
148 May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license  
149 application, renewal, or amendment that requests approval to receive, transfer, store, decay in  
150 storage, treat, or dispose of radioactive waste not previously approved under an existing license  
151 held by the facility.

152 (7) If the board finds that approval of additional radioactive waste license applications,  
153 renewals, or amendments will result in inadequate oversight, monitoring, or licensure  
154 compliance and enforcement of existing and any additional radioactive waste facilities, the  
155 board shall suspend acceptance of further applications for radioactive waste licenses. The  
156 board shall report the suspension to the Legislative Management Committee.

157 ~~[(8) The director shall review each proposed radioactive waste license application to~~  
158 ~~determine whether the application complies with the provisions of this chapter and the rules of~~  
159 ~~the board.]~~

160 ~~[(9) (a) If the radioactive waste license application is determined to be complete, the~~  
161 ~~director shall issue a notice of completeness.]~~

162 ~~[(b) If the director determines that the radioactive waste license application is~~  
163 ~~incomplete, the director shall issue a notice of deficiency, listing the additional information to~~  
164 ~~be provided by the applicant to complete the application.]~~

165 ~~[(10)]~~ (8) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(11)  
166 do not apply to:

167 (a) a radioactive waste license that is in effect on December 31, 2006, including all  
168 amendments to the license that have taken effect as of December 31, 2006;

169 (b) a license application for a facility in existence as of December 31, 2006, unless the

170 license application includes an area beyond the facility boundary approved in the license  
171 described in Subsection ~~[(10)]~~ (8)(a); or

172 (c) an application to renew or amend a license described in Subsection ~~[(10)]~~ (8)(a),  
173 unless the renewal or amendment includes an area beyond the facility boundary approved in the  
174 license described in Subsection ~~[(10)]~~ (8)(a).

175 (9) (a) The director shall review an approval application to determine whether the  
176 application complies with the requirements of this chapter and the rules of the board.

177 (b) Within 60 days after the day on which the director receives an approval application  
178 described in Subsection (10)(a)(ii) or (iii), the director shall:

179 (i) determine whether the application is complete and contains all the information  
180 necessary to process the application for approval; and

181 (ii) (A) issue a notice of completeness to the applicant; or

182 (B) issue a notice of deficiency to the applicant and list the additional information  
183 necessary to complete the application.

184 (c) The director shall review information submitted in response to a notice of  
185 deficiency within 30 days after the day on which the director receives the information.

186 (10) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah  
187 Administrative Rulemaking Act, to:

188 (a) categorize approval applications as follows:

189 (i) approval applications that:

190 (A) are administrative in nature;

191 (B) require limited scrutiny by the director; and

192 (C) do not require public input;

193 (ii) approval applications that:

194 (A) require substantial scrutiny by the director;

195 (B) require public input; and

196 (C) are not described in Subsection (10)(a)(iii); and

197 (iii) approval applications for:

- 198           (A) the granting or renewal of a radioactive waste license;
- 199           (B) the granting or renewal of a groundwater permit issued by the director for a  
200 radioactive waste facility;
- 201           (C) an amendment to a radioactive waste license, or a groundwater permit, that allows  
202 the design and approval of a new disposal cell;
- 203           (D) an amendment to a radioactive waste license or groundwater discharge permit for a  
204 radioactive waste facility to eliminate groundwater monitoring; and
- 205           (E) a radioactive waste facility closure plan;
- 206           (b) provide time periods for the director to review, and approve or deny, an application  
207 described in Subsection (10)(a) as follows:
- 208           (i) for applications categorized under Subsection (10)(a)(i), within 30 days after the day  
209 on which the director receives the application;
- 210           (ii) for applications categorized under Subsection (10)(a)(ii), within 180 days after the  
211 day on which the director receives the application;
- 212           (iii) for applications categorized under Subsection (10)(a)(iii), as follows:
- 213           (A) for a new radioactive waste license, within 540 days after the day on which the  
214 director receives the application;
- 215           (B) for a new groundwater permit issued by the director for a radioactive waste facility  
216 consistent with the provisions of Title 19, Chapter 5, Water Quality Act, within 540 days after  
217 the day on which the director receives the application;
- 218           (C) for a radioactive waste license renewal, within 365 days after the day on which the  
219 director receives the application;
- 220           (D) for a groundwater permit renewal issued by the director for a radioactive waste  
221 facility, within 365 days after the day on which the director receives the application;
- 222           (E) for an amendment to a radioactive waste license, or a groundwater permit, that  
223 allows the design and approval of a new disposal cell, within 365 days after the day on which  
224 the director receives the application;
- 225           (F) for an amendment to a radioactive waste license, or a groundwater discharge



226 permit, for a radioactive waste facility to eliminate groundwater monitoring, within 365 days  
227 after the day on which the director receives the application; and

228 (G) for a radioactive waste facility closure plan, within 365 days after the day on which  
229 the director receives the application;

230 (c) toll the time periods described in Subsection (10)(b):

231 (i) while an owner or operator of a facility responds to the director's request for  
232 information;

233 (ii) during a public comment period; or

234 (iii) while the federal government reviews the application; and

235 (d) require the director to prepare a detailed written explanation of the basis for the  
236 director's approval or denial of an approval application.

237 Section 3. Section **19-3-106.4** is amended to read:

238 **19-3-106.4. Generator site access permits.**

239 (1) A generator or broker may not transfer radioactive waste to a commercial  
240 radioactive waste treatment or disposal facility in the state without first obtaining a generator  
241 site access permit from the director.

242 (2) The director may not grant a generator site access permit to a generator or broker  
243 unless the generator or broker agrees to grant the division reasonable access to its facilities for  
244 the inspection and verification of radioactive waste using Nuclear Regulatory Commission  
245 approved accountability guidelines.

246 ~~[(2)]~~ (3) The board may make rules [pursuant to Section 19-3-104] in accordance with  
247 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing a generator site access  
248 permit program.

249 ~~[(3)]~~ (4) (a) Except as provided in Subsection [3] (4)(b), the division shall establish  
250 fees for generator site access permits in accordance with Section 63J-1-504.

251 (b) On and after July 1, 2001 through June 30, 2002, the fees are:

252 (i) \$1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per  
253 year;

254 (ii) \$500 for generators transferring less than 1,000 cubic feet of radioactive waste per  
255 year; and

256 (iii) \$5,000 for brokers.

257 (c) The division shall deposit fees received under this section into the Environmental  
258 Quality Restricted Account created in Section 19-1-108.

259 [~~4~~] (5) This section does not apply to a generator or broker transferring radioactive  
260 waste to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source  
261 Material.

262 Section 4. Section **19-3-109** is amended to read:

263 **19-3-109. Civil penalties -- Appeals.**

264 (1) A person who violates [~~any~~] a provision of [~~Sections 19-3-104 through 19-3-113;~~  
265 ~~any~~] this part, a rule or order issued under the authority of [~~those sections~~] this part, or the  
266 terms of a license, permit, or registration certificate issued under the authority of [~~those~~  
267 ~~sections~~] this part is subject to a civil penalty not to exceed [~~\$5,000~~] \$10,000 for each  
268 violation.

269 (2) The director may assess and make a demand for payment of a penalty under this  
270 section and may compromise or remit that penalty.

271 (3) In order to make demand for payment of a penalty assessed under this section, the  
272 director shall issue a notice of agency action, specifying, in addition to the requirements for  
273 notices of agency action contained in Title 63G, Chapter 4, Administrative Procedures Act:

274 (a) the date, facts, and nature of each act or omission charged;

275 (b) the provision of the statute, rule, order, license, permit, or registration certificate  
276 that is alleged to have been violated;

277 (c) each penalty that the director proposes to impose, together with the amount and  
278 date of effect of that penalty; and

279 (d) that failure to pay the penalty or respond may result in a civil action for collection.

280 (4) A person notified according to Subsection (3) may request an adjudicative  
281 proceeding.

282           (5) Upon request by the director, the attorney general may institute a civil action to  
283 collect a penalty imposed under this section.

284           (6) (a) Except as provided in Subsection (6)(b), the department shall deposit all money  
285 collected from civil penalties imposed under this section into the General Fund.

286           (b) The department may reimburse itself and local governments from money collected  
287 from civil penalties for extraordinary expenses incurred in environmental enforcement  
288 activities.

289           (c) The department shall regulate reimbursements by making rules that:

290           (i) define qualifying environmental enforcement activities; and

291           (ii) define qualifying extraordinary expenses.