

## LEGISLATIVE BILL 1201

Approved by the Governor April 16, 1996

Introduced by Beutler, 28

AN ACT relating to low-level radioactive waste; to amend sections 81-1578, 81-1581, 81-1584.01, 81-15,101, 81-15,102, and 81-15,105.01, Reissue Revised Statutes of Nebraska, section 71-3508.02, Revised Statutes Supplement, 1994, and sections 71-3503 and 81-15,103, Revised Statutes Supplement, 1995; to define and redefine terms; to change provisions relating to facilities, facility operators, and remedial cleanup costs; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-3503, Revised Statutes Supplement, 1995, is amended to read:

71-3503. For purposes of the Radiation Control Act, unless the context otherwise requires:

(1) Radiation means ionizing radiation and nonionizing radiation as follows:

(a) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation means (i) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (ii) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment;

(2) Radioactive material means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material includes, but is not limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material;

(4) Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material;

(5) Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department;

(6) Person means any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing;

(7) Registration means registration with the department pursuant to the Radiation Control Act;

(8) Department means the Department of Health;

(9) Coordinator means the Director of Health;

(10) Council means the radiation advisory council provided for in section 71-3506;

(11) Electronic product means any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(12) License means:

(a) A general license issued pursuant to rules and regulations adopted and promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials;

(b) A specific license, issued to a named person upon application

filed with the department pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials;

(c) A license issued to a radon measurement specialist, radon measurement technician, radon mitigation specialist, radon mitigation technician, radon measurement business, or radon mitigation business; or

(d) A license issued to a medical radiographer or limited radiographer;

(13) Byproduct material means:

(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 utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute byproduct material;

(14) Source material means:

(a) Uranium or thorium or any combination thereof in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material;

(15) Special nuclear material means:

(a) Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235 and any other material that the United States Nuclear Regulatory Commission pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(b) Any material artificially enriched by any material listed in subdivision (15)(a) of this section but does not include source material;

(16) Users of sources of radiation means:

(a) Physicians using radioactive material or radiation-generating equipment for human use;

(b) Natural persons using radioactive material or radiation-generating equipment for education, research, or development purposes;

(c) Natural persons using radioactive material or radiation-generating equipment for manufacture or distribution purposes;

(d) Natural persons using radioactive material or radiation-generating equipment for industrial purposes; and

(e) Natural persons using radioactive material or radiation-generating equipment for any other similar purpose;

(17) Civil penalty means any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates but does not include criminal penalties;

(18) Closure means all activities performed at a waste handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(19) Decommissioning means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(20) Disposal means the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(21) Generate means to produce low-level radioactive waste when used in relation to low-level radioactive waste;

(22) High-level radioactive waste means:

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(23) Low-level radioactive waste means radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as

defined in subdivision (13)(b) of this section;

(24) Management of low-level radioactive waste means the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner, except the commercial disposal of low-level radioactive waste in a disposal facility, designated by the Central Interstate Low-Level Radioactive Waste Compact Commission;

(25) Source material mill tailings or mill tailings means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;

(26) Source material milling means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;

(27) Spent nuclear fuel means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;

(28) Transuranic waste means radioactive waste containing alpha-emitting transuranic elements, with radioactive half-lives greater than five years, in excess of one hundred nanocuries per gram;

(29) Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician;

(30) X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system;

(31) Limited radiographer means a person licensed to practice medical radiography pursuant to subsection (2) of section 71-3515.01. Limited radiographer does not include a person certified under section 71-176.01;

(32) Medical radiographer means a person licensed to practice medical radiography pursuant to subsection (1) of section 71-3515.01; and

(33) Medical radiography means the application of radiation to humans for diagnostic purposes, including, but not limited to, adjustment or manipulation of X-ray systems and accessories including image receptors, positioning of patients, processing of films, and any other action that materially affects the radiation dose to patients; and

(34) Licensed facility operator means any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the Department of Environmental Quality.

Sec. 2. Section 71-3508.02, Revised Statutes Supplement, 1994, is amended to read:

71-3508.02. (1) In addition to the provisions of the Low-Level Radioactive Waste Disposal Act, the state may accept or acquire, by gift, transfer, or purchase, from another governmental agency or private person, suitable sites including land and appurtenances for the management of low-level radioactive waste. Sites received by gift or transfer shall be subject to approval and acceptance by the Legislature.

(2) Lands and appurtenances which are used for the management of low-level radioactive waste shall be acquired and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state pursuant to subsection (1) of section 81-15.102. Such lands and appurtenances shall be and used exclusively for such purpose the disposal of low-level radioactive waste until the department determines that such exclusive use is not required to protect the occupational and public health and safety or the environment. Before such site is leased for other use, the radioactive waste history of the site shall be recorded in the permanent land records of the site.

(3) (2) The department may contract with third parties for management of a low-level radioactive waste site, acquired pursuant to subsection (2) of this section or which is already owned by the state. A contract operator contractor shall be subject to the surety and long-term care funding provisions of section 71-3508.04 and to appropriate licensing by the federal Nuclear Regulatory Commission or by the department.

(4) The department shall not approve any application for a license to receive radioactive waste from other persons for disposal on land not owned by the state or federal government.

Sec. 3. Section 81-1578, Reissue Revised Statutes of Nebraska, is amended to read:

81-1578. Sections 81-1578 to 81-15,116 and section 5 of this act shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

Sec. 4. Section 81-1581, Reissue Revised Statutes of Nebraska, is amended to read:

81-1581. For purposes of the Low-Level Radioactive Waste Disposal Act, unless the context otherwise requires, the definitions found in sections 81-1582 to 81-1597 and section 5 of this act shall be used.

Sec. 5. Licensed facility operator shall mean any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the department.

Sec. 6. Section 81-1584.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-1584.01. Custodial care shall mean the continued observation, monitoring, and care of a facility for a minimum of one hundred years following transfer of the ownership of the facility from the operator to this state the operational life of the facility and closure pursuant to the rules and regulations of the department.

Sec. 7. Section 81-15,101, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,101. (1) Each application for a license shall be in writing and shall state such information as the department may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant deemed reasonable and necessary to protect the public health and environment with an adequate margin of safety. The applicant shall also describe the funding arrangements such applicant will make to provide for custodial care. The department may at any time after the filing of the application and before the expiration of the license require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee.

(2) No license issued under the Low-Level Radioactive Waste Disposal Act shall be assigned or in any manner disposed of unless the department, after securing full information, finds that the transfer is in accordance with the act and gives its consent in writing.

(3) If any person becomes the legal or beneficial owner of more than fifty percent of any class of the issued and outstanding equity securities of an applicant or licensee at any time after the application has been made and before the expiration of the license, the department shall conduct a review which shall include, but not be limited to, the environmental compliance record and financial responsibility of such person. At the conclusion of the review, the department shall issue a report of its findings, including its conclusions regarding the adequacy of such person to fulfill the provisions of the application or license and all laws, rules, and regulations. Copies of the report shall be sent to the Governor, Legislature, and local monitoring committee.

(4) The department shall not approve any application for a license to receive radioactive waste from any person for disposal on land not owned by the state or federal government.

Sec. 8. Section 81-15,102, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,102. (1) The state shall ~~may~~ accept or acquire, by gift, transfer, or purchase, from the licensed facility operator, title to the another governmental agency or private person, suitable sites including land and appurtenances used for the disposal of low-level radioactive waste after the expiration of both the operational life and closure period of the facility, if:

(a) Both the Department of Health and the Department of Environmental Quality determine that (i) the requirements for site closure, decommissioning, and decontamination adopted pursuant to rules and regulations of the Department of Health and the Department of Environmental Quality which are allowed under federal law have been met by the licensed facility operator and (ii) such operator is in compliance with all financial requirements; and

(b) The amendments to the Central Interstate Low-Level Radioactive Waste Compact made by Laws 1991, LB 837, section 4, codified in section

71-3521, are in effect and have been ratified by Congress.

The title to the land and appurtenances shall be transferred without cost to the state. Such transfer of title to the state does not relieve the developer, licensed facility operator, or generators of such waste from liability for their actions that occurred whether known or unknown during the design, construction, operation, and closure of the facility. Sites received by gift or transfer shall be subject to approval and acceptance by the Legislature on behalf of the state.

(2) The applicant shall notify the Governor and the Legislature before beginning any onsite geological activity, such as soil core sampling, to determine the suitability of a site in the State of Nebraska for use as a facility.

(3) Lands and appurtenances which are used for the disposal of low-level radioactive waste shall be acquired and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state pursuant to subsection (1) of this section. Such lands and appurtenances shall be and used exclusively for such purpose the disposal of low-level radioactive waste until the department determines that such exclusive use is not required to protect the public health, safety, welfare, or environment. Before such a site is leased for other use, the department shall require and assure that the radioactive waste history of the site be recorded in the permanent land records of the site. Remedial cleanup costs which become necessary during the period of custodial care shall be assessed first to the licensed facility operator, then proportionately against the generators of the radioactive waste and as set out in the Central Interstate Low-Level Radioactive Waste Compact found in section 71-3521.

(4) The state may contract for the operation management of a disposal site, owned by the state or acquired pursuant to subsection (1) of this section. The contract operator contractor shall be subject to licensing by the department and shall be subject to the surety and custodial care funding provisions of section 81-15,103.

Sec. 9. Section 81-15,103, Revised Statutes Supplement, 1995, is amended to read:

81-15,103. (1) For licensed activities involving disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee to provide an adequate surety or other financial arrangement sufficient to accomplish any necessary corrective action or cleanup on real or personal property caused by releases of radiation from a disposal site during the operational life and closure period of the facility and to comply with the requirements for decontamination, decommissioning, site closure, and stabilization of sites, and structures and equipment used in conjunction with such licensed activity, in the event the licensee abandons the facility or defaults for any reason in performing its operational, closure, or other such requirements. Such sureties required under the license shall be compatible with applicable federal financial assurance regulations and shall be reviewed by the department at the time of license review under subsection (1) of section 81-15,106. Any arrangement which constitutes self-insurance shall not be allowed. In addition to the surety requirements, the licensee shall purchase property and third-party liability insurance and pay the necessary periodic premiums at all times in such amounts as determined by the council pursuant to rules and regulations adopted and promulgated pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) All sureties required pursuant to subsection (1) of this section which are forfeited shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Site Closure and Reclamation Fund which is hereby created. Any money in the fund may be expended by the department as necessary to complete the requirements on which licensees have defaulted. Money in this fund shall not be used for normal operating expenses of the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) For licensed activities involving the disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee, before termination of the license, to make available such funding arrangements as may be necessary to provide for custodial care.

(4)(a) Remedial cleanup costs which become necessary during the operational life and closure of the facility shall be the responsibility of the licensed facility operator either directly or through applicable surety bonds, insurance, and other financial arrangements required pursuant to

subsection (1) of this section, and (b) any remaining remedial cleanup costs which become necessary during the operational life and closure of the facility and which exceed funds available under subdivision (a) of this subsection shall be assessed proportionately by waste volume against the generators, then proportionately by waste volume against the party states as provided by the Central Interstate Low-Level Radioactive Waste Compact.

(5) Remedial cleanup costs which become necessary during the period of custodial care shall be assessed (a) first, against the funds established pursuant to this section and any surety bonds, insurance, or other financial arrangements established for the facility, excluding such funds reserved for custodial care, (b) second, against the licensed facility operator, (c) third, against the generators based on proportionate waste volume, and (d) fourth, against the party states based on proportionate waste volume as provided by the Central Interstate Low-Level Radioactive Waste Compact.

~~(4)~~ (6) All funds collected from licensees pursuant to subsection (3) of this section and subsection (1) of section 81-15,101 shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Custodial Care Fund which is hereby created. All interest accrued on money deposited in the fund may be expended by the department for the continuing custodial care, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the public health, safety, and environment. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

~~(5)~~ (7) The department may, by contract, agreement, lease, or license with the Department of Health, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

Sec. 10. Section 81-15,105.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,105.01. No waste shall be accepted by the facility until the amendments to the Central Interstate Low-Level Radioactive Waste Compact contained in Laws 1991, LB 837, are in effect in Kansas, Oklahoma, Louisiana, and Arkansas and have been ratified by Congress. Any party state as defined in the Central Interstate Low-Level Radioactive Waste Compact which does not adopt the amendments made by laws 1991, LB837, to the compact may be denied access to the facility by the host state as defined in the compact.

Sec. 11. Original sections 81-1578, 81-1581, 81-1584.01, 81-15,101, 81-15,102, and 81-15,105.01, Reissue Revised Statutes of Nebraska, section 71-3508.02, Revised Statutes Supplement, 1994, and sections 71-3503 and 81-15,103, Revised Statutes Supplement, 1995, are repealed.