

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0568.01 Kate Meyer

HOUSE BILL 10-1149

HOUSE SPONSORSHIP

Hullinghorst,

SENATE SPONSORSHIP

Foster,

House Committees

Health and Human Services
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION PRIOR TO DISPOSAL OF SOURCES THAT**
102 **EMIT RADIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill updates state radiation control laws as follows:

Section 1 of the bill defines the terms "radiation machine", "radioactive", and "state board", changes the defined term "ionizing radiation" to "radiation", and reorganizes existing definitions.

Sections 2 and 3 update various language, including references to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

radiation.

Section 4:

- ! Includes radiation machines among the items for which the state board of health (state board) must promulgate rules;
- ! Repeals specific provisions containing standards for mammographer rules and deeming a person who possesses a federally issued license to have an identical state-issued license;
- ! Adds certain application fees to the services for which the state board may establish a fee schedule;
- ! Requires the state board to set fees for radiation control services at an amount sufficient to reimburse the state for the entire cost of those services, rather than a partial reimbursement;
- ! Repeals specific rule-making mandates to the state board to establish minimum specifications of radiation machines and radiation machine inspectors and procedures for radiation machine inspection;
- ! Repeals provisions that prohibit any person not approved by the state board from performing mammographies; and
- ! Repeals the authorization to the state board to contract for audit inspections of radiation machines.

Section 5 adds, as grounds for an injunction, a violation of a license or registration issued under the state radiation control laws.

Section 6:

- ! Makes the attorney general, rather than a district or county attorney, the authority from whom the department of public health and environment (department) may request commencement of a civil action against a person for nonpayment of fees for radiation control services and credits civil penalties collected as penalty for such nonpayment to the general fund;
- ! Subjects persons violating radiation control laws to an administrative penalty of up to \$15,000 per violation per day;
- ! Requires the department to conduct an exit meeting with an alleged violator if an alleged violation is discovered during the course of an on-site inspection;
- ! Sets forth factors that the department must consider when determining the amount of an administrative penalty for a violation of radiation control laws;
- ! Allows the department to enter into settlement agreements regarding resolved penalties and claims under radiation control laws and permits the agreements to include payment of moneys to state or local agencies for

- environmentally beneficial purposes;
- ! Repeals provisions regarding orders for abatement; and
- ! Allows the department to issue a cease-and-desist order under certain conditions and describes procedures and standards for a stay of the order.

Section 7:

- ! Clarifies which minerals are exempt from the radiation control laws that set forth prohibited acts, violations, and penalties; and
- ! Repeals the exemptions from paying fees for licenses for radioactive materials.

Section 8 repeals current law governing provisional licenses, under which such licenses are deemed issued in certain circumstances, and instead places the creation and issuance of provisional licenses within the discretion of the state board.

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

2 **SECTION 1.** 25-11-101, Colorado Revised Statutes, is amended
3 to read:

4 **25-11-101. Definitions.** As used in this part 1, unless the context
5 otherwise requires:

6 (1) "Civil penalty" means ~~any~~ A monetary penalty levied against
7 a licensee or registrant because of ~~violations of statutes, regulations,~~
8 ~~licenses, or registration certificates~~ A VIOLATION OF A STATUTE, RULE,
9 LICENSE, OR REGISTRATION CERTIFICATE. "Civil penalty" does not include
10 any criminal penalty levied under section 25-1-114 or 25-11-107 (3).

11 ~~(1.5) "Department" means the department of public health and~~
12 ~~environment.~~

13 ~~(2) "Ionizing radiation" means gamma rays and X rays and alpha~~
14 ~~particles, beta particles, high-speed electrons, neutrons, protons, and other~~
15 ~~high-speed nuclear particles~~ "DEPARTMENT" MEANS THE DEPARTMENT OF
16 PUBLIC HEALTH AND ENVIRONMENT.

17 (2.5) "Mammographer" means a person who operates a machine

1 source of ~~ionizing~~ radiation, commonly known as an "X-ray machine", in
2 the conduct of a mammography exam.

3 (2.7) "Naturally occurring radioactive material" means any nuclide
4 that is radioactive in its natural physical state and is not manufactured.
5 "Naturally occurring radioactive material" does not include source
6 material, special nuclear material, or by-products of fossil fuel
7 combustion, including ~~but not limited to~~ bottom ash, fly ash, and flue-gas
8 emission by-products.

9 (3) "RADIATION" MEANS IONIZING RADIATION, WHICH INCLUDES
10 GAMMA RAYS, X RAYS, ALPHA PARTICLES, BETA PARTICLES, HIGH-SPEED
11 ELECTRONS, HIGH-SPEED NEUTRONS, HIGH-SPEED PROTONS, AND OTHER
12 HIGH-SPEED NUCLEAR PARTICLES.

13 (4) "RADIOACTIVE" MEANS EMITTING RADIATION.

14 ~~(3)~~ (5) "Radioactive material" means any material, WHETHER
15 solid, liquid, or gas, ~~which~~ THAT emits ~~ionizing~~ radiation spontaneously.

16 (6) "RADIATION MACHINE" MEANS A DEVICE CAPABLE OF
17 PRODUCING RADIATION; EXCEPT THAT "RADIATION MACHINE" DOES NOT
18 INCLUDE A DEVICE WITH RADIOACTIVE MATERIAL AS ITS ONLY SOURCE OF
19 RADIATION.

20 ~~(4)~~ (7) "Specific license" means a license issued to a person to
21 use, manufacture, produce, transfer, receive, acquire, own, or possess
22 quantities of, or devices or equipment utilizing, radioactive materials
23 occurring naturally or produced artificially.

24 (8) "STATE BOARD" MEANS THE STATE BOARD OF HEALTH
25 CREATED IN SECTION 25-1-103.

26 **SECTION 2.** 25-11-102 (1) and (2), Colorado Revised Statutes,
27 are amended to read:

1 **25-11-102. Agreements for transfer of functions from federal**
2 **government to state government.** (1) The governor, on behalf of this
3 state, is authorized, from time to time, to enter into agreements with the
4 federal government providing for the assumption by this state through the
5 department, and the discontinuance by the federal government, of any ~~and~~
6 ~~all~~ responsibilities within the state of Colorado relating to the protection
7 of persons and property from the hazards of radioactive materials and
8 other sources of ~~ionizing~~ radiation.

9 (2) The governor, on behalf of this state, is authorized, from time
10 to time, to enter into agreements with the federal government, other
11 states, or interstate agencies whereby the department shall perform, on a
12 cooperative basis with the federal government, other states, or interstate
13 agencies, inspections or other functions relating to control of sources of
14 ~~ionizing~~ radiation.

15 **SECTION 3.** 25-11-103 (2), (3), (5), and (6), Colorado Revised
16 Statutes, are amended to read:

17 **25-11-103. Radiation control agency - powers and duties.**

18 (2) Pursuant to rules ~~and regulations~~ adopted as provided in section
19 25-11-104, the department shall issue licenses pertaining to radioactive
20 materials, prescribe and collect fees for such licenses, and require
21 registration of other sources of ~~ionizing~~ radiation. No other agency or
22 branch of this state ~~shall have~~ HAS such power or authority.

23 (3) The department shall develop and conduct programs for
24 evaluation and control of hazards associated with the use of ~~any and all~~
25 radioactive materials and other sources of ~~ionizing~~ radiation, including
26 criteria for disposal of radioactive wastes and materials to be considered
27 in approving facilities and sites pursuant to part 2 of this article.

1 (5) In the event of an emergency relating to any source of ~~ionizing~~
2 radiation ~~which~~ THAT endangers the public peace, health, or safety, the
3 department ~~shall have~~ HAS the authority to issue such orders for the
4 protection of the public health and safety as may be appropriate, including
5 orders to lay an embargo upon or impound radioactive materials and other
6 sources of ~~ionizing~~ radiation in the possession of any person who is not
7 equipped to observe or who fails to ~~observe the provisions of~~ COMPLY
8 WITH this part 1 or any rules ~~or regulations~~ promulgated under this part 1.

9 (6) The department or its duly authorized representatives ~~shall~~
10 ~~have~~ HAS the power to enter at all reasonable times, in accordance with
11 applicable state or federal regulations, into the areas in which sources of
12 ~~ionizing~~ radiation are reasonably believed to be located for the purpose
13 of determining whether or not the owner, occupant, or licensee is in
14 compliance with or in violation of ~~the provisions of~~ this part 1 and the
15 rules ~~and regulations~~ promulgated under this part 1, and the owner,
16 occupant, or person in charge of such property shall permit such entry and
17 inspection.

18 **SECTION 4.** 25-11-104, Colorado Revised Statutes, is amended
19 to read:

20 **25-11-104. Rules to be adopted - fees - fund created.**

21 (1) (a) The state board ~~of health~~ shall formulate, adopt, and promulgate
22 rules ~~and regulations~~ as provided in subsections (2) and (2.5) of this
23 section ~~which shall~~ THAT cover subject matter relative to RADIATION
24 MACHINES AND radioactive materials, including ~~but not limited to~~
25 naturally occurring radioactive materials and other sources of ~~ionizing~~
26 radiation. The subject matter of ~~such~~ THE rules ~~and regulations~~ shall
27 include: ~~but not be limited to:~~ Licenses and registration; records;

1 permissible levels of exposure; notification and reports of accidents;
2 technical qualifications of personnel; technical qualifications of
3 mammographers; handling, transportation, and storage; waste disposal;
4 posting and labeling of hazardous sources and areas; surveys; monitoring;
5 and financial assurance warranties.

6 (b) The state board ~~of health~~ may adopt ~~regulations~~ RULES
7 concerning the disposal of naturally occurring radioactive materials at any
8 time after the promulgation by the federal environmental protection
9 agency or its successor of rules for the disposal of naturally occurring
10 radioactive materials.

11 (c) Notwithstanding any provision of section 25-11-103 (7) (h),
12 it is not necessary that a governmental entity own any site that is used for
13 the concentration, storage, or disposal of radioactive material that at the
14 time of its acceptance for concentration, storage, or disposal is owned or
15 generated by the United States department of energy and ~~that~~ is defined
16 as low-level radioactive waste under the federal "Low-level Radioactive
17 Waste Policy Act Amendments of 1986", as amended, ~~so long as~~ IF the
18 owner of ~~such~~ THE site complies with ~~regulations~~ RULES promulgated by
19 the board in accordance with this section. ~~Such regulations~~ THE RULES
20 shall ensure the long-term protection of the public health and safety and
21 may include ~~but are not limited to~~, financial assurance warranties
22 pursuant to this part 1, deed annotations and restrictions, easement
23 provisions, restrictive covenants, and adequate markers to warn of the
24 presence of radioactive materials.

25 (2) ~~All such regulations~~ RULES PROMULGATED UNDER THIS
26 SECTION shall be ~~modeled after and shall be neither more nor less~~
27 ~~stringent than those~~ CONSISTENT WITH REGULATIONS proposed by the

1 conference of radiation control program directors, inc., ~~4815 West~~
2 ~~Markham Street, Little Rock, Arkansas 72201~~ OR ITS SUCCESSOR, under
3 the title, "Suggested State Regulations for Control of Radiation"; except
4 that, ~~in the event said~~ IF THE STATE board concludes on the basis of
5 detailed findings that a substantial deviation from any of ~~said~~ THE
6 suggested state regulations is warranted and that a substitute ~~regulation~~
7 RULE or no ~~regulation~~ RULE would effectively permit maximum utilization
8 of sources of ~~ionizing~~ radiation consistent with the health and safety of
9 all persons who might otherwise become exposed to ~~such~~ THE radiation,
10 the STATE board need not maintain ~~such~~ THE suggested state regulation
11 or may ~~adopt and~~ promulgate ~~such~~ A substitute ~~regulation~~ RULE as the
12 case may be.

13 (2.5) ~~Regulations relating to mammographers shall provide that~~
14 ~~mammographers must obtain education and training through an~~
15 ~~organization specified by the state board of health or provide proof of~~
16 ~~experience as established by the board, or both. At a minimum said~~
17 ~~regulations shall provide that mammographers must have achieved a~~
18 ~~passing score on an examination for the limited scope of practice in~~
19 ~~radiography as administered by the American registry of radiological~~
20 ~~technologists or a similar institution approved by the state board. All~~
21 ~~regulations relating to the qualifications of mammographers shall be~~
22 ~~modeled after and shall be no less stringent than those adopted by the~~
23 ~~federal government pursuant to the federal "Mammography Quality~~
24 ~~Standards Act of 1992". The mammography quality assurance advisory~~
25 ~~committee referred to in section 25-11-105.5 shall review and make~~
26 ~~recommendations to the board regarding qualifications for~~
27 ~~mammographers.~~

1 (3) The rules ~~and regulations~~ adopted pursuant to this part 1 shall
2 never be construed to limit the kind or amount of radiation that may be
3 intentionally applied to a person for diagnostic or therapeutic purposes by
4 or under the direction of a duly licensed practitioner of the healing arts.

5 (4) ~~Any person who, on the effective date of an agreement under~~
6 ~~section 25-11-102, possesses a license issued by the federal government~~
7 ~~shall be deemed to possess an identical license issued pursuant to this part~~
8 ~~1 subject to termination upon ninety days' written notice of termination~~
9 ~~from the department.~~

10 (5) In adopting, ~~changing, and revoking said~~ AMENDING, OR
11 REPEALING rules ~~and regulations~~ UNDER THIS SECTION, the board shall
12 comply with ~~the provisions of~~ article 4 of title 24, C.R.S.

13 (6) (a) The state board of health shall ~~formulate, adopt, and~~
14 promulgate a fee schedule, IN ACCORDANCE WITH SECTION 24-4-103,
15 C.R.S., for radiation control services provided by the department.
16 Radiation control services for which fees may be established include
17 APPLICATION PROCESSING FOR QUALIFIED INSPECTORS, QUALIFIED
18 EXPERTS, AND SERVICE COMPANIES AS DEFINED BY THE STATE BOARD,
19 WHICH FEES SHALL BE PAID BY THE APPLICANTS OR SERVICE COMPANIES;
20 issuance of categories of specific licenses to accord with categories
21 established by the nuclear regulatory commission and which shall include
22 ~~but need not be limited to~~ licenses for special nuclear material, source
23 material, by-product material, well logging and surveys and tracer studies,
24 and for human use; and inspections of licensees as authorized by section
25 25-11-103 (6). Licenses and fees shall, WHERE APPROPRIATE, be in
26 accordance with policies and priorities of the nuclear regulatory
27 commission.

1 (b) The state board of health, ~~in determining the~~ SHALL SET fees
2 ~~shall~~ THAT provide for sufficient revenues ~~from such fees~~ to reimburse
3 the state for ~~partial~~ THE ACTUAL DIRECT AND INDIRECT costs of the
4 radiation control services as specified in paragraph (a) of this subsection
5 (6). ~~The fees shall be related to the actual costs incurred in administering~~
6 ~~such radiation control services.~~ In so doing, the state board of health shall
7 take into account any special arrangements between the state and the
8 licensee, another state, or a federal agency whereby the cost of the service
9 is otherwise recovered.

10 (c) All fees collected pursuant to this subsection (6) shall be
11 transmitted to the state treasurer, who shall credit the same to the
12 radiation control fund, which fund is hereby created. Moneys credited to
13 ~~said~~ THE RADIATION CONTROL fund, in amounts determined annually by
14 the general assembly by appropriation, shall be expended for radiation
15 control services as provided in this subsection (6).

16 (7) The state board of ~~health~~ shall promulgate rules ~~and~~
17 ~~regulations~~ as necessary to implement ~~the provisions of~~ section 25-11-107
18 (5).

19 (8) (a) The state board of ~~health~~ shall adopt rules requiring that all
20 machine sources of ~~ionizing~~ radiation be inspected and certified by
21 qualified inspectors as safe for the intended uses CONSISTENT WITH 42
22 U.S.C. SEC. 263b and in compliance with the specifications of the state
23 board and the equipment manufacturer. ~~Such~~ Rules shall include ~~the~~
24 ~~following:~~ MINIMUM SPECIFICATIONS FOR RADIATION MACHINES, MINIMUM
25 STANDARDS FOR THE QUALIFICATIONS OF INDIVIDUALS AUTHORIZED TO
26 INSPECT AND CERTIFY RADIATION MACHINES, AND PROCEDURES FOR
27 INSPECTION OF RADIATION MACHINES. IF A QUALIFIED INSPECTOR

1 DETERMINES THAT A RADIATION MACHINE FAILS TO MEET THE REQUIRED
2 SPECIFICATIONS, THE INSPECTOR SHALL NOTIFY THE OWNER OR OPERATOR
3 IMMEDIATELY AND SHALL NOTIFY THE DEPARTMENT WITHIN THREE DAYS
4 AFTER THE DETERMINATION. A RADIATION MACHINE THAT FAILS TO MEET
5 THE REQUIRED SPECIFICATIONS AND IS DETERMINED BY A QUALIFIED
6 INSPECTOR TO BE UNSAFE FOR HUMAN USE SHALL NOT THEREAFTER BE
7 USED FOR HUMAN USE UNTIL SUBSEQUENT CERTIFICATION, AND THE
8 QUALIFIED INSPECTOR SHALL AFFIX AN OFFICIAL NONCERTIFICATION
9 STICKER ISSUED BY THE DEPARTMENT INDICATING THAT THE MACHINE IS
10 NOT AUTHORIZED FOR HUMAN USE. A CERTIFICATION OR
11 NONCERTIFICATION STICKER SHALL BE AFFIXED ON EACH RADIATION
12 MACHINE IN A LOCATION CONSPICUOUS TO MACHINE OPERATORS AND TO
13 PERSONS ON WHOM THE MACHINE IS USED.

14 ~~(I) The establishment of minimum specifications that each type of~~
15 ~~machine which is a source of ionizing radiation shall meet. Such~~
16 ~~specifications shall include compliance with the manufacturer's~~
17 ~~specifications when such specifications can be determined and any~~
18 ~~additional specifications of the state board of health which are necessary~~
19 ~~to determine that the machine is safe for its designed and intended use.~~

20 ~~(H) The establishment of minimum standards for the qualification~~
21 ~~of individuals who are authorized to make inspections and to certify~~
22 ~~machines that are sources of ionizing radiation. Other than those~~
23 ~~individuals performing emergency, compliance, and enforcement~~
24 ~~inspections or inspection audits for the department, qualified inspectors~~
25 ~~shall not be employees of the department. The maximum annual fee that~~
26 ~~may be charged by the department to an individual seeking approval as~~
27 ~~a qualified inspector is eighty dollars. Such fee shall include the issuance~~

1 of evidence of qualification, if applicable, and all other costs for
2 qualifications. Such fees shall be credited to the radiation control fund.

3 (HH) ~~The establishment of procedures for the making of~~
4 ~~inspections for all types of machines that are sources of ionizing~~
5 ~~radiation. The procedures shall require that such machines be inspected~~
6 ~~only by a qualified inspector who shall record on a form provided by the~~
7 ~~department whether or not a machine being inspected meets the~~
8 ~~specifications of the manufacturer and the state board of health, and shall~~
9 ~~indicate the type of machine, the applicable specifications, and the~~
10 ~~machine specifications. If a machine meets the required specifications,~~
11 ~~a qualified inspector shall affix on the machine an official sticker issued~~
12 ~~by the department. If the machine fails to meet the required~~
13 ~~specifications, the qualified inspector shall notify the owner or operator~~
14 ~~immediately and shall so notify the department within three days. A~~
15 ~~machine that fails to meet the required specifications and is determined~~
16 ~~to be unsafe for human use shall not be used thereafter for human use~~
17 ~~until subsequent certification, and the qualified inspector shall affix an~~
18 ~~official noncertification sticker issued by the department indicating such~~
19 ~~machine is not authorized for human use. A certification or~~
20 ~~noncertification sticker shall be affixed on each machine in a location~~
21 ~~conspicuous to machine operators and persons on whom the machine is~~
22 ~~used. A fee of fifty dollars shall be charged for each certification or~~
23 ~~noncertification sticker issued by the department; except that the state~~
24 ~~board of health by rule or as otherwise provided by law may reduce the~~
25 ~~amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S.,~~
26 ~~to reduce the uncommitted reserves of the fund to which all or any portion~~
27 ~~of the fee is credited. After the uncommitted reserves of the fund are~~

1 sufficiently reduced, the state board of health by rule or as otherwise
2 provided by law may increase the amount of the fee as provided in section
3 ~~24-75-402 (4), C.R.S.~~ Such fee shall be credited to the radiation control
4 fund.

5 (a.5) ~~No person shall perform a mammography exam nor shall~~
6 ~~anyone employ a person to perform a mammography exam unless said~~
7 ~~person has been approved by the department as meeting the qualifications~~
8 ~~for mammographers adopted by the state board of health pursuant to~~
9 ~~subsection (2.5) of this section. On or before December 31, 1993, the~~
10 ~~state board of health shall adopt rules requiring that all machine sources~~
11 ~~of ionizing radiation which are used in the conduct of a mammography~~
12 ~~exam be operated only by a qualified mammographer, that a list of~~
13 ~~qualified mammographers operating the machine be posted on or near~~
14 ~~said machines, and that said machines be inspected at least annually for~~
15 ~~compliance with the requirements of this subsection (8). Documentation~~
16 ~~establishing the qualifications of mammographers shall be available for~~
17 ~~inspection upon request.~~

18 (b) ~~The department may make or contract for the making of audit~~
19 ~~inspections of machines which are sources of ionizing radiation to assure~~
20 ~~compliance with applicable specifications. Such audit inspections shall~~
21 ~~be made by a qualified inspector under contract to the department or by~~
22 ~~the qualified department inspector on machines which are currently~~
23 ~~certified by a qualified inspector. Audit inspections shall be conducted~~
24 ~~on only a portion of all certified machines and shall be made on a routine,~~
25 ~~unannounced basis. The cost of the audit inspections shall be paid for out~~
26 ~~of the radiation control fund.~~

27 (c) In establishing or revising specifications for each type of

1 machine ~~which~~ THAT is a source of ~~ionizing~~ radiation, the standards for
2 approval of qualified inspectors, and the procedures for making
3 inspections, the department shall consult with manufacturers of ~~ionizing~~
4 radiation equipment, health care providers and operators who use ~~such~~
5 THE equipment in diagnostic and therapeutic treatment of humans, and
6 qualified inspectors and individuals.

7 (d) The general assembly hereby finds that the setting of minimum
8 specifications for RADIATION machines ~~which are sources of ionizing~~
9 ~~radiation~~ and the establishment of minimum standards for qualified
10 inspectors ~~for such~~ OF THOSE machines ~~is a matter~~ ARE MATTERS of
11 statewide concern. Therefore, no other state agency, political
12 subdivision, or local government shall establish any other specifications
13 for ~~sources of ionizing~~ radiation MACHINES or standards for RADIATION
14 MACHINE inspectors, ~~of such equipment~~, or impose any fees therefor.

15 **SECTION 5.** 25-11-106, Colorado Revised Statutes, is amended
16 to read:

17 **25-11-106. Injunction proceedings.** If, in the judgment of the
18 department, any person has engaged in or is about to engage in ~~any acts~~
19 AN ACT or ~~practices which constitute~~ PRACTICE THAT CONSTITUTES a
20 violation of ~~any provision of this part 1 or of any LICENSE, REGISTRATION,~~
21 rule, ~~or regulation~~ or order issued under this part 1, the attorney general
22 shall, at the request of the department, ~~make application~~ APPLY to the
23 district court for an order enjoining ~~such acts~~ THE ACT or ~~practices~~
24 PRACTICE or for an order directing compliance with ~~the provisions of this~~
25 part 1 and all rules ~~regulations~~, and orders AND THE TERMS AND
26 CONDITIONS OF A LICENSE OR REGISTRATION issued under this part 1.

27 **SECTION 6.** 25-11-107 (2), (2.5), (4), (5), and (6), Colorado

1 Revised Statutes, are amended, and the said 25-11-107 is further amended
2 BY THE ADDITION OF A NEW SUBSECTION, to read:

3 **25-11-107. Prohibited acts - violations - penalties - rules -**
4 **cease-and-desist orders.** (2) No person shall knowingly use,
5 manufacture, produce, transport, transfer, receive, send, acquire, own, or
6 possess any source of ~~ionizing~~ radiation unless such person is licensed by
7 or registered with the department.

8 (2.5) No person shall knowingly use any RADIATION machine
9 ~~which is a source of ionizing radiation which~~ TO TREAT OR DIAGNOSE ANY
10 DISEASE OR CONDITIONS OF THE HUMAN BODY IF THE RADIATION MACHINE
11 is not certified for SUCH treatment or diagnosis ~~of human conditions~~ as
12 provided in section 25-11-104 (8).

13 (4) If ~~any~~ A person does not pay the fee for radiation control
14 services, the department may request the ~~county attorney or the district~~
15 attorney GENERAL to commence a civil action against ~~such~~ THE person.
16 If the court finds in such action that such person has not paid the fee for
17 radiation control services, ~~it~~ THE COURT shall require such person to pay
18 ~~said~~ THE fee together with a penalty not greater than twice the amount of
19 the fee or one thousand dollars, whichever is greater. ALL CIVIL
20 PENALTIES COLLECTED PURSUANT TO THIS SUBSECTION (4) SHALL BE
21 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
22 THE GENERAL FUND.

23 (5) (a) Any person who violates SUBSECTION (1), (2), OR (2.5) OF
24 THIS SECTION, any licensing or registration provision, ~~of section~~
25 ~~25-11-103 or 25-11-104,~~ or any rule ~~regulation,~~ or order issued ~~pursuant~~
26 ~~to either of such sections~~ UNDER THIS PART 1, or any term, condition, or
27 limitation of any license or registration certificate issued pursuant to

1 ~~either of such sections, except any person in violation of subsection (1)~~
2 ~~or (2) of this section, shall be~~ THIS PART 1 IS subject to the provisions of
3 ~~this subsection (5)~~ AN ADMINISTRATIVE PENALTY NOT TO EXCEED FIFTEEN
4 THOUSAND DOLLARS PER DAY FOR EACH VIOLATION.

5 (b) If the department has reason to believe, based upon facts
6 available to it, that a person has committed any of the violations
7 designated in paragraph (a) of this subsection (5), it shall ~~notify such~~
8 ~~SEND THE~~ person, ~~in writing~~ within a reasonable time, A WRITTEN NOTICE
9 OF THE VIOLATION specifying:

10 (I) The ~~date and~~ factual basis of each act or omission with which
11 ~~such~~ THE person is charged; and

12 (II) The particular provision of the statute, rule, ~~regulation,~~ order,
13 license, or registration certificate ~~violated.~~

14 [REDACTED]

15 [REDACTED]

16 (c) (I) The DEPARTMENT SHALL SEND THE notice required by
17 paragraph (b) of this subsection (5) ~~shall be sent by the department,~~ by
18 certified or registered mail, return receipt requested, to the last-known
19 address of the alleged violator, OR THE DEPARTMENT SHALL PERSONALLY
20 SERVE THE NOTICE OF THE VIOLATION UPON THE ALLEGED VIOLATOR OR
21 THE ALLEGED VIOLATOR'S AGENT.

22 (II) The alleged violator shall have thirty days following the
23 receipt of the notice to submit a written response containing data, views,
24 and arguments concerning the alleged ~~violation and a reasonable time for~~
25 ~~abatement~~ POTENTIAL CORRECTIVE MEASURES. [REDACTED]

26 (III) In addition, the alleged violator may request an informal
27 conference with department personnel to discuss ~~such matters, such~~ THE

1 NOTICE OF VIOLATION REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION
2 (5). THE ALLEGED VIOLATOR SHALL REQUEST THE INFORMAL CONFERENCE
3 WITHIN FIFTEEN DAYS AFTER RECEIVING THE NOTICE, AND THE CONFERENCE
4 ~~TO~~ SHALL BE HELD WITHIN THE THIRTY DAYS ALLOWED FOR A WRITTEN RESPONSE.

5 (IV) AFTER CONSIDERATION OF ANY WRITTEN RESPONSE AND
6 INFORMAL CONFERENCE, THE DEPARTMENT SHALL ISSUE A LETTER
7 AFFIRMING OR DISMISSING THE VIOLATION. ANY REMAINING CORRECTIVE
8 MEASURES THAT ARE NECESSARY, AND ANY ADMINISTRATIVE PENALTY
9 DETERMINED TO BE APPROPRIATE, WILL BE INCORPORATED INTO AN
10 ADMINISTRATIVE ORDER.

11 (c.3) IN DETERMINING THE AMOUNT OF ANY ADMINISTRATIVE
12 PENALTY, THE DEPARTMENT SHALL CONSIDER THE FOLLOWING FACTORS:

13 (A) THE SERIOUSNESS OF THE VIOLATION;

14 (B) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR
15 NEGLIGENT;

16 (C) THE IMPACT ON, OR THREAT TO, THE PUBLIC HEALTH OR THE
17 ENVIRONMENT AS A RESULT OF THE VIOLATION;

18 (D) THE DEGREE OF RECALCITRANCE, IF ANY, ON THE PART OF THE
19 VIOLATOR;

20 (E) WHETHER THE VIOLATOR IS A RECIDIVIST;

21 (F) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A
22 RESULT OF THE VIOLATION;

23 (G) THE VIOLATOR'S VOLUNTARY, TIMELY, AND COMPLETE
24 DISCLOSURE OF THE VIOLATION, IF PRIOR TO THE DEPARTMENT'S
25 KNOWLEDGE OF THE VIOLATION, AND IF ALL REPORTS REQUIRED PURSUANT
26 TO STATE ENVIRONMENTAL CONTROL LAWS HAVE BEEN SUBMITTED AS
27 REQUIRED;

1 (H) THE VIOLATOR'S FULL AND PROMPT COOPERATION WITH THE
2 DEPARTMENT FOLLOWING DISCLOSURE OR DISCOVERY OF A VIOLATION,
3 INCLUDING, WHEN APPROPRIATE, ENTERING INTO AND IMPLEMENTING, IN
4 GOOD FAITH, A LEGALLY ENFORCEABLE AGREEMENT WITH THE
5 DEPARTMENT TO UNDERTAKE COMPLIANCE AND REMEDIATION EFFORTS;

6 (I) THE EXISTENCE OF A COMPREHENSIVE REGULATORY
7 COMPLIANCE PROGRAM OR AN AUDIT PROGRAM THAT THE VIOLATOR
8 ADOPTED IN GOOD FAITH AND IN A TIMELY MANNER, WHICH PROGRAM
9 INCLUDES MEASURES DETERMINED BY THE DEPARTMENT TO BE SUFFICIENT
10 TO IDENTIFY AND PREVENT FUTURE NONCOMPLIANCE; AND

11 (J) ANY OTHER AGGRAVATING OR MITIGATING CIRCUMSTANCE.

12 (c.5) IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND
13 BASED UPON THE FACTORS ENUMERATED IN PARAGRAPH (c.3) OF THIS
14 SUBSECTION (5), THE STATE BOARD SHALL ADOPT RULES FOR
15 DETERMINING ADMINISTRATIVE PENALTIES IMPOSED UNDER THIS
16 SUBSECTION (5).

17 (c.7) THE DEPARTMENT MAY COMPROMISE, MITIGATE, OR REMIT
18 AN ADMINISTRATIVE PENALTY IMPOSED PURSUANT TO THIS SUBSECTION
19 (5). THE DEPARTMENT MAY ENTER INTO A SETTLEMENT AGREEMENT
20 REGARDING ANY PENALTY OR CLAIM RESOLVED UNDER THIS PART 1. THE
21 SETTLEMENT AGREEMENT MAY INCLUDE THE PAYMENT OR CONTRIBUTION
22 OF MONEYS TO STATE OR LOCAL AGENCIES FOR OTHER ENVIRONMENTALLY
23 BENEFICIAL PURPOSES.

24 (d) ~~Within thirty days after the time allowed for a written response~~
25 ~~and informal conference, the department shall issue an order affirming or~~
26 ~~dismissing the violation and, if the violation is affirmed, setting a time for~~
27 ~~abatement. The time for abatement shall be that which is reasonably~~

1 necessary to achieve compliance. Immediate abatement may be ordered
2 to the extent necessary to remove an imminent danger to the public
3 health, safety, or welfare. The department shall cause the order to be
4 served personally on the alleged violator or his designated agent. IF THE
5 CIRCUMSTANCES WARRANT, THE DEPARTMENT SHALL ISSUE AN ORDER
6 CONTAINING THE ELEMENTS OF BOTH THE NOTICE OF VIOLATION SPECIFIED
7 IN PARAGRAPH (b) OF THIS SUBSECTION (5) AND THE LETTER DESCRIBED
8 IN SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF THIS SUBSECTION (5).

9 (e) Any person failing to comply with an order issued pursuant to
10 paragraph (d) of this subsection (5) shall be subject to a civil penalty of
11 not more than five thousand dollars for each violation after the date for
12 abatement specified in the order. Each violation shall be a separate
13 offense. The amount of the civil penalty shall be based on the alleged
14 violator's history of previous violations, the good faith of the alleged
15 violator in attempting to achieve rapid compliance after notification of the
16 violation, the gravity and willfulness of the violation, the potential
17 deterrent effect of the civil penalty, and such other considerations as may
18 be specified by the department. The department shall have the power to
19 compromise, mitigate, or remit any such civil penalty. (I) THE LETTER
20 ISSUED PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF THIS
21 SUBSECTION (5) AND THE ORDER ISSUED PURSUANT TO PARAGRAPH (d) OF
22 THIS SUBSECTION (5) SHALL NOTIFY THE ALLEGED VIOLATOR OF THE RIGHT
23 TO REQUEST A HEARING WITHIN THIRTY DAYS, WHICH HEARING SHALL BE
24 HELD IN ACCORDANCE WITH SECTION 24-4-105, C.R.S., TO DETERMINE
25 ANY OF THE FOLLOWING:

- 26 (A) WHETHER THE ALLEGED VIOLATION EXISTS OR DID EXIST;
- 27 (B) THE REASONABLENESS OF THE TIME SET FOR ABATEMENT; AND

1 (C) WHETHER THE ADMINISTRATIVE PENALTY IS REASONABLE IN
2 LIGHT OF THE STATUTORY CRITERIA ON WHICH IT IS BASED.

3 (II) THE ALLEGED VIOLATOR SHALL ADDRESS EACH ALLEGED
4 VIOLATION IN THE REQUEST FOR THE HEARING AND SHALL SPECIFY WHICH
5 OF THE ALLEGED VIOLATIONS THE ALLEGED VIOLATOR IS APPEALING. AN
6 ALLEGATION NOT ADDRESSED IN THE REQUEST FOR THE HEARING SHALL BE
7 DEEMED ADMITTED.

8 (III) NO PERSON ENGAGED IN CONDUCTING THE HEARING OR
9 PARTICIPATING IN A DECISION OR AN INITIAL DECISION SHALL BE
10 RESPONSIBLE FOR OR SUBJECT TO THE SUPERVISION OR DIRECTION OF ANY
11 DEPARTMENT EMPLOYEE ENGAGED IN THE PERFORMANCE OF AN
12 INVESTIGATORY OR PROSECUTING FUNCTION FOR THE DEPARTMENT.

13 (IV) THE FINAL ACTION OF THE DEPARTMENT IS SUBJECT TO
14 JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106, C.R.S.

15 ~~(f) Upon determining that a person has failed to comply with an~~
16 ~~order issued pursuant to paragraph (d) of this subsection (5), the~~
17 ~~department shall notify the person within ten days by certified or~~
18 ~~registered mail of the proposed amount of any civil penalty. Such person~~
19 ~~shall have ten days after receipt of the notification of the proposed penalty~~
20 ~~within which to request in writing an informal conference in which all~~
21 ~~relevant information concerning the violation and penalty, including all~~
22 ~~information which the alleged violator may submit, shall be reviewed by~~
23 ~~the alleged violator and an authorized representative of the department.~~

24 ~~(g) (f) Following said conference, or upon the expiration of time~~
25 ~~allowed for requesting the conference if no conference is requested, the~~
26 ~~department shall order the penalty fixed and shall cause the order to be~~
27 ~~served personally on the alleged violator or his designated agent within~~

1 ~~forty-five days of the mailing of the notification of the proposed penalty.~~
2 ~~The order shall notify the alleged violator of the right to request a hearing~~
3 ~~within thirty days, such hearing to be held in accordance with section~~
4 ~~24-4-105, C.R.S., to determine all or any of the following:~~

- 5 ~~(A) Whether the alleged violation exists or did exist;~~
- 6 ~~(B) Whether the time set for abatement was reasonable; and~~
- 7 ~~(C) Whether the civil penalty is reasonable in light of the statutory~~
8 ~~criteria upon which it is based.~~

9 ~~(H) No person engaged in conducting the hearing or participating~~
10 ~~in a decision or an initial decision shall be responsible for or subject to~~
11 ~~the supervision or direction of any department employee engaged in the~~
12 ~~performance of an investigatory or prosecuting function for the~~
13 ~~department. Upon the request for such a hearing, the order shall be stayed~~
14 ~~pending the results of the hearing and any subsequent judicial review.~~

15 (h) At the request of the department, the attorney general may
16 institute a civil action to collect ~~any civil~~ AN ADMINISTRATIVE penalty
17 imposed pursuant to this subsection (5).

18 (i) EXCEPT AS SPECIFIED IN PARAGRAPH (c.3) OF THIS SUBSECTION
19 (5), all ~~civil~~ ADMINISTRATIVE penalties collected pursuant to this
20 subsection (5) shall be transmitted to the state treasurer, who shall credit
21 ~~the same~~ THEM to the general fund.

22 (6) Any qualified inspector who incorrectly certifies a machine
23 ~~which~~ THAT is a source of ~~ionizing~~ radiation as meeting the applicable
24 specifications as required in section 25-11-104 (8) ~~shall be~~ IS subject to
25 disciplinary ~~provisions~~ ACTION in accordance with section 24-4-104,
26 C.R.S.

27 (7) IF THE DEPARTMENT HAS REASONABLE CAUSE TO BELIEVE THAT

1 A VIOLATION OF THIS PART 1 OR OF A LICENSE, REGISTRATION, RULE, OR
2 ORDER ISSUED UNDER THIS PART 1 HAS OCCURRED OR IS OCCURRING, THE
3 DEPARTMENT MAY ISSUE A CEASE-AND-DESIST ORDER SETTING FORTH THE
4 PROVISION ALLEGED TO BE VIOLATED, THE FACTS ALLEGED TO CONSTITUTE
5 THE VIOLATION, AND THE TIME BY WHICH THE VIOLATION MUST CEASE.
6 EXCEPT FOR EMERGENCY ORDERS ISSUED TO PROTECT THE PUBLIC HEALTH
7 OR THE ENVIRONMENT, FOR WHICH A PERSON TO WHOM THE EMERGENCY
8 ORDER HAS BEEN ISSUED MAY REQUEST AN IMMEDIATE HEARING
9 PURSUANT TO SECTION 24-4-105 (12), C.R.S., A PERSON TO WHOM A
10 CEASE-AND-DESIST ORDER HAS BEEN ISSUED MAY PETITION THE DISTRICT
11 COURT FOR THE DISTRICT IN WHICH THE VIOLATION IS ALLEGED TO HAVE
12 OCCURRED OR BE OCCURRING FOR A STAY OF THE ORDER. THE COURT
13 SHALL GRANT THE REQUEST TO STAY IF THE PERSON DEMONSTRATES THAT
14 IMMEDIATE AND IRREPARABLE INJURY WILL RESULT IF THE STAY IS NOT
15 GRANTED AND THAT GRANTING THE STAY WILL NOT RESULT IN SERIOUS
16 HARM TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR THE
17 ENVIRONMENT.

18 **SECTION 7.** 25-11-108 (3) and (4), Colorado Revised Statutes,
19 are amended to read:

20 **25-11-108. Exemptions.** (3) ~~The provisions of~~ Section
21 25-11-107 shall not apply to unmined minerals containing radioactive
22 materials including such as are involved in mining operations.

23 (4) ~~Fees for licenses for radioactive materials shall not be required~~
24 ~~for:~~

25 (a) ~~An agency of the state or any political subdivision thereof;~~

26 (b) ~~Any person who the department, by rule or regulation,~~
27 ~~determines is exempt as authorized by law and such exemption is in the~~

1 public interest;

2 (c) ~~Any person who is operating within the state under the~~
3 ~~reciprocal recognition of licenses provisions of the rules and regulations~~
4 ~~adopted in accord with section 25-11-104.~~

5

6 **SECTION 8. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.