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. 10-0273.01 Thomas Morris **HOUSE BILL 10-1348**

HOUSE SPONSORSHIP

McFadyen, Massey

SENATE SPONSORSHIP

Kester and Bacon,

House Committees
Transportation & Energy

Senate Committees
Business, Labor and Technology

A BILL FOR AN ACT

CONCERNING INCREASED REGULATORY AUTHORITY REGARDING RADIOACTIVE MATERIALS.

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.)

Section 1 of the bill requires uranium mills, uranium processing facilities, and associated disposal facilities licensed for the disposal of radioactive waste originating outside of Colorado or the acceptance of classified material (uranium processing and disposal facilities) that have caused a release that exceeds groundwater standards to submit an annual

HOUSE
3rd Reading Unamended
April 5, 2010

HOUSE
Amended 2nd Reading
April 1, 2010

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.

report to the owners of wells located within a mile of the contaminated groundwater plume. **Section 2** requires such facilities to submit an annual report to the department of public health and environment (department) regarding the adequacy of the facilities' financial assurance warranties, adjusts the applicable hearing procedures relating to the warranties, and prohibits the receipt of classified material at such a facility that disputes the department's proposed adjustment of a warranty unless the facility posts a cash bond equal to the amount in dispute. **Section 3** amends the decommissioning fund to explicitly allow it to be used for uranium processing and disposal facilities.

Sections 4 and 5 modify the procedural requirements, including public notice, that a uranium processing and disposal facility must meet for license applications, renewals, and amendments. Section 4 also:

- Modifies the department's deadlines for determining such actions; and
- Modifies the procedural requirements, including public notice, that such a facility must meet to receive, store, process, or dispose of classified material.

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

SECTION 1. Part 1 of article 11 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25-11-101.5. Coordination of regulatory interpretations regarding in situ leach uranium mining. THE GENERAL ASSEMBLY RECOGNIZES THAT THE PROPER AND ORDERLY REGULATION OF IN SITU LEACH MINING, AS DEFINED IN SECTION 34-32-103, C.R.S., FOR URANIUM ORE HAS ASPECTS THAT MAY INVOLVE MORE THAN ONE REGULATORY AGENCY OF STATE GOVERNMENT AND THAT THE STATUTES THAT EACH AGENCY IS RESPONSIBLE FOR ADMINISTERING MAY, DUE TO THE USE OF TERMS OF ART AND OTHER TECHNICAL WORDS, PHRASES, AND DEFINITIONS, HOLD THE POTENTIAL OF BEING INTERPRETED INCONSISTENTLY OR TO BE IN HELD IN CONFLICT WITH EACH OTHER. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT, WITH REGARD TO IN SITU

LEACH MINING FOR URANIUM ORE, THE RELEVANT AGENCIES COORDINATE TO THE MAXIMUM EXTENT PRACTICABLE TO RESOLVE ANY SUCH CONFLICTS OR INCONSISTENCIES.

SECTION 2. 25-11-107 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25-11-107. Prohibited acts - violations - penalties. (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, UNLESS THE LICENSEE DEMONSTRATES THAT A DISTANCE LESS THAN ONE MILE IS WARRANTED.

SECTION 3. 25-11-110 (5), Colorado Revised Statutes, is amended to read:

25-11-110. Financial assurance warranties - definitions. (5) (a) The department shall take reasonable measures to assure the continued adequacy of any financial assurance warranty and may annually or for good cause increase or decrease the amount of required financial assurance warranties or require proof of THE value of existing warranties.

(b) THE LICENSEE SHALL SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT DEMONSTRATING PROOF OF THE VALUE OF EXISTING

WARRANTIES. THE ANNUAL REPORT SHALL DESCRIBE ANY CHANGES IN OPERATIONS, ESTIMATED COSTS, OR ANY OTHER CIRCUMSTANCES THAT MAY AFFECT THE AMOUNT OF THE REQUIRED FINANCIAL ASSURANCE WARRANTIES, INCLUDING ANY INCREASED OR DECREASED COSTS ATTRIBUTABLE TO INFLATION.

(c) PUBLIC NOTICE OF THE SUBMITTAL OF THE LICENSEE'S ANNUAL REPORT SHALL BE POSTED ON THE DEPARTMENT'S WEB SITE AND PUBLISHED BY THE OPERATOR IN THE LOCAL PAPER OF GENERAL CIRCULATION. ANY PERSON MAY SUBMIT WRITTEN COMMENTS TO THE DEPARTMENT CONCERNING THE ADEQUACY OF ANY FINANCIAL ASSURANCE WARRANTIES. THE ACT OF SUBMITTING SUCH COMMENTS DOES NOT PROVIDE A RIGHT TO ADMINISTRATIVE APPEAL CONCERNING THE FINANCIAL ASSURANCE WARRANTIES.

(d) The licensee shall have sixty days after the date of written notification by the department of a required adjustment to establish a warranty fulfilling all new requirements unless granted an extension by the department. If the licensee disputes the amount of the required financial assurance warranties, the licensee may request a hearing to be conducted in accordance with section 24-4-105, C.R.S.

(e) IF THE LICENSEE REQUESTS A HEARING, NO NEW CLASSIFIED MATERIAL, AS THAT TERM IS DEFINED IN SECTION 25-11-201, MAY BE BROUGHT ON SITE AND NO CLASSIFIED 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 4. 25-11-113 (2) (a), Colorado Revised Statutes, is amended to read:

25-11-113. Forfeitures - deposit - radiation control - decommissioning fund - long-term care fund. (2) (a) A fund to be known as the decommissioning fund is hereby created ~~and established~~ in the state treasury. ~~Such~~ THE fund shall be interest-bearing and invested to return the maximum income feasible as determined by the state treasurer and consistent with otherwise applicable state law. All moneys collected from decommissioning warranties pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the decommissioning fund. All moneys deposited in the fund and all interest earned on moneys in the fund shall remain in the fund for the purposes set forth in this ~~part 1~~ ARTICLE and no part ~~thereof~~ OF THE FUND shall be expended or appropriated for any other purpose.

SECTION 5. 25-11-203 (1) (b) (III), (2) (b) (I) (C), (3) (a), (3) (c) (V), and (4), Colorado Revised Statutes, are amended to read:

25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste. (1) (b) (III) ~~Nothing in this paragraph (b) shall apply to a licensed facility as of June 3, 2003, as it undergoes its current five-year license renewal; except that, during the period from June 3, 2003, until such license renewal is approved, such facility shall:~~ LICENSE AMENDMENTS FOR THE RECEIPT OF CLASSIFIED 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 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.

~~(A) Continue to substantially comply with its current license;~~

~~(B) For each type of classified material for which an application for storage, processing, or disposal has already been submitted to the department, provide to a library in the community in which the facility is located the material acceptance report prepared consistent with and containing the information required by the interim guidance on disposal of non-"Atomic Energy Act of 1954", section 11 e (2) byproduct material in tailings impoundments, RIS 2000-23, and interim position and guidance on the use of uranium mill feed material other than natural ores, RIS 2000-23, as such guidance documents are amended from time to time, which report has also been provided to the department;~~

~~(C) Meet the standards specified in subparagraph (III) of paragraph (c) of subsection (3) of this section for each type of classified material; and~~

~~(D) Comply with the provisions of subsection (4) of this section for classified material for which a material acceptance report has not already been filed with the department for receipt by the facility as of June 3, 2003.~~

(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 material shall 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. One or both of the meetings shall be a hearing conducted to comply with section 24-4-104 or 24-4-105, C.R.S. The reasonable,

necessary, and documented expense of the meetings or hearing shall be paid by the facility. Such meetings shall not be held until the department determines that the application is substantially complete. The facility shall provide the public with:

(C) Access to make copies of a transcript of the meetings, AND SHALL PROVIDE AN ELECTRONIC COPY TO THE DEPARTMENT IN A MANNER THAT ALLOWS POSTING ON THE DEPARTMENT'S WEB SITE WITHIN TEN DAYS AFTER RECEIPT FROM THE TRANSCRIPTION SERVICE;

(3) (a) Upon receipt of an application or notice as provided in subsection (2) of this section, the department of public health and environment shall NOTIFY THE PUBLIC AND forward a copy of ~~such~~ THE application or notice to the governor and the general assembly, as appropriate.

(c) (V) (A) The department shall ~~make~~ PUBLISH a determination as to whether an application submitted pursuant to paragraph (b) of subsection (2) of this section is substantially complete within ~~thirty~~ FORTY-FIVE days after receipt of ~~such~~ THE application.

(B) The first public meeting or hearing required by subparagraph (I) of paragraph (b) of subsection (2) of this section shall be convened within forty-five days after PUBLICATION OF its determination that the application is substantially complete. ~~and~~ The second such public meeting or hearing shall be convened within thirty days after the first public meeting.

(C) The department shall approve, approve with conditions, or deny the application submitted under paragraph (b) of subsection (2) of this section within ~~two hundred seventy days after the department's receipt of any response of the board of county commissioners to the~~

~~application prepared pursuant to subparagraph (III) of paragraph (b) of subsection (2) of this section and within~~ three hundred sixty days after the second public meeting; ~~or hearing if no timely response is received by the department from the board of county commissioners~~ EXCEPT THAT, FOR AN APPLICANT THAT HAS COMPLETED THE SECOND PUBLIC MEETING ON OR BEFORE THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (C), AS AMENDED, THE DEPARTMENT SHALL ACT UPON THE APPLICATION WITHIN THE TIME FRAME PRESCRIBED BY THIS SUB-SUBPARAGRAPH (C) AS IT EXISTED AS OF THE DATE OF THE APPLICATION.

(4) (a) (I) At least ~~sixty~~ NINETY days before a facility proposes to receive, store, process, or dispose of classified 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 ~~provide notice to~~ NOTIFY the department, and the department shall ~~provide notice to~~ NOTIFY the PUBLIC AND THE board of county commissioners of the county in which the facility is located, of ~~identification of~~ the specific classified material to be received, stored, processed, or disposed of. ~~Such~~ THE notice shall include:

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

(B) The material acceptance report ~~prepared consistent with~~ ~~and containing the information required by, the interim guidance on disposal of non-"Atomic Energy Act of 1954", section 11 e (2) byproduct material in tailings impoundments, RIS 2000-23, and interim position and guidance on the use of uranium mill feed material other than natural ores, RIS 2000-23, as such guidance documents are amended or superceded~~

~~from time to time~~ THAT DEMONSTRATES THAT THE CLASSIFIED 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;

~~(C)~~ (E) The existing location of the classified material;

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

~~(E)~~ (G) ~~If available,~~ A WRITTEN STATEMENT BY THE APPLICANT DESCRIBING any pre-existing regulatory classification of the classified waste in the state of origin THAT DESCRIBES ALL STEPS TAKEN BY THE APPLICANT TO IDENTIFY SUCH CLASSIFICATION;

~~(F)~~ (H) A written statement from the United States department of energy or successor agency that the receipt, storage, processing, or disposal of the classified 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; ~~and~~

~~(G)~~ (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 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 also include written documentation that the rocky mountain low-level radioactive waste board has been notified that the classified material is being considered for disposal in the subject facility.

(b) Within ~~five~~ THIRTY days after the department's receipt of notice pursuant to subparagraph (I) of paragraph (a) of this subsection (4), the department shall ~~publish a notice of~~ DETERMINE WHETHER THE NOTICE IS COMPLETE.

(c) ONCE THE DEPARTMENT DETERMINES THAT THE NOTICE IS COMPLETE, THE DEPARTMENT SHALL PUBLISH THE NOTICE ON ITS WEB SITE AND PROVIDE a ~~thirty-day~~ SIXTY-DAY public comment period for the receipt of written comments ~~only,~~ concerning the notice. A PUBLIC HEARING MAY BE HELD, AT THE DEPARTMENT'S DISCRETION, AT THE OPERATOR'S EXPENSE.

~~(c)~~ (d) Within thirty days after the close of the written public comment period provided by paragraph ~~(b)~~ (c) of this subsection (4), the department shall ~~confirm whether~~ APPROVE, APPROVE WITH CONDITIONS, OR DENY THE RECEIPT, STORAGE, PROCESSING, OR DISPOSAL AS DESCRIBED IN THE NOTICE BASED ON WHETHER the material proposed for receipt, storage, processing, or disposal at the facility complies with the facility's license and meets the standards established pursuant to subparagraph (III) of paragraph (c) of subsection (3) of this section. ~~and no further approval shall be required for the facility to receive, store, process, or dispose of the classified material described in the notice.~~

SECTION 6. 25-11-203 (2) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS to read:

25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste. (2) (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 renewal, or license amendment pertaining to the facility's receipt of classified material, proposing to receive classified material for storage, processing, or disposal at a facility that addresses the impacts of the receipt for storage, processing, or disposal of such material. The environmental assessment shall contain all information deemed necessary by the department, and shall include, at a minimum:

(VII) A LIST OF ALL MATERIAL VIOLATIONS OF LOCAL, STATE, OR FEDERAL LAW AT THE FACILITY SINCE THE SUBMITTAL DATE OF THE PREVIOUS LICENSE APPLICATION OR LICENSE RENEWAL APPLICATION;

(VIII) FOR AN APPLICATION FOR A LICENSE OR LICENSE AMENDMENT PERTAINING TO THE FACILITY'S RECEIPT OF CLASSIFIED MATERIAL FOR STORAGE, PROCESSING, OR DISPOSAL AT THE FACILITY, A DEMONSTRATION THAT:

(A) THERE ARE NO OUTSTANDING MATERIAL VIOLATIONS OF ANY STATE OR FEDERAL STATUTES, COMPLIANCE ORDERS, OR COURT ORDERS APPLICABLE TO THE FACILITY, AND ANY RELEASES GIVING RISE TO ANY SUCH VIOLATION HAVE BEEN REMEDIATED;

(B) THE OPERATOR, AFTER A GOOD FAITH REVIEW OF THE FACILITY AND ITS OPERATIONS, IS NOT AWARE OF ANY CURRENT LICENSE VIOLATION AT THE FACILITY;

(C) THERE ARE NO CURRENT RELEASES TO THE AIR, GROUND, SURFACE WATER, OR GROUNDWATER THAT EXCEED PERMITTED LIMITS;

AND

(D) NO CONDITIONS EXIST AT THE FACILITY THAT WOULD PREVENT 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;

(IX) A LIST OF ALL NECESSARY PERMITS AND ANY CHANGES TO LOCAL LAND USE ORDINANCES THAT ARE NEEDED TO CONSTRUCT OR OPERATE THE FACILITY; AND

(X) FOR SITES OR FACILITIES PLACED ON THE NATIONAL PRIORITY LIST PURSUANT TO THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT", 42 U.S.C. SEC. 9605, A COPY OF THE MOST RECENT FIVE-YEAR REVIEW AND ANY ASSOCIATED UPDATES THAT HAVE BEEN ISSUED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

SECTION 7. Applicability. This act shall apply to applications currently filed or filed on or after the effective date of this act and to operations currently permitted or permitted on or after the effective date of this act.

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