

From: [Rusty Lundberg](#)
To: [Erickson, Randy](#); [White, Duncan](#)
Cc: [Tharakan, Binesh](#); [Sollenberger, Dennis](#); [Schneider, Kathleen](#)
Subject: Utah -- Proposed Legislation -- NRC Review Request
Date: Tuesday, February 19, 2013 2:33:58 PM
Attachments: [HB0124S01.pdf](#)

Duncan & Randy,

Please find attached a copy of H.B. 124, 1st Substitute, Radiation Control Amendments, that is being considered by the Utah Legislature. We are providing this as a courtesy for your review and consideration with respect to Utah's Agreement with the Nuclear Regulatory Commission. The substitute bill was recently released.

The purpose of this bill is to address items identified in a performance audit of the Utah Division of Radiation Control and specifically covered in a report released last September by the Utah Legislative Auditor General (Number 2012-10). We would appreciate any comments or concerns that NRC observes with this bill.

The bill is scheduled for its initial legislative committee/public hearing in the House Natural Resources, Agriculture, and Environment Committee tomorrow at 2:00 p.m. (MST). (Audio webcast available from the Utah Legislature's main Web page at www.leg.utah.gov.)

The following proposed revisions to our state statute (Utah Radiation Control Act) have particular significance:

- Increases the maximum civil penalty from \$5,000 to \$10,000 per violation
- Establishes time frames for completeness reviews and reviews of licensee responses
- Charges the Utah Radiation Control Board to promulgate rules regarding categorizing different levels of applications, setting review time frames--with certain tolling provisions
- Requires generator site access permittees to allow our agency access to their facility as a condition of permit approval

Please feel free to contact me if you have any questions. Thank you for your timely consideration.

Sincerely,

Rusty

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Representative Brad L. Dee proposes the following substitute bill:

RADIATION CONTROL AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: _____

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



26 **19-3-105**, as last amended by Laws of Utah 2012, Chapter 360

27 **19-3-106.4**, as last amended by Laws of Utah 2012, Chapter 360

28 **19-3-109**, as last amended by Laws of Utah 2012, Chapter 360

29

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.

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

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

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

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

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

- (a) the radioactive waste facility requesting the renewal or amendment has received a license prior to January 1, 2004; and
- (b) the application to renew or amend its license is limited to a request to approve the receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level radioactive waste.

(6) A radioactive waste facility which receives a new radioactive waste license after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license application, renewal, or amendment that requests approval to receive, transfer, store, decay in

storage, treat, or dispose of radioactive waste not previously approved under an existing license held by the facility.

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

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

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

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

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

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

(b) a license application for a facility in existence as of December 31, 2006, unless the license application includes an area beyond the facility boundary approved in the license described in Subsection ~~[(10)]~~ (8)(a); or

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

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

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

(i) determine whether the application is complete and contains all the information 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;

(iii) for applications categorized under Subsection (10)(a)(iii), as follows:

(A) for a new radioactive waste license, within 540 days after the day on which the director receives the application;

(B) for a new groundwater permit issued by the director for a radioactive waste facility consistent with the provisions of Title 19, Chapter 5, Water Quality Act, within 540 days after the day on which the director receives the application;

(C) for a radioactive waste license renewal, within 365 days after the day on which the director receives the application;

(D) for a groundwater permit renewal issued by the director for a radioactive waste facility, within 365 days after the day on which the director receives the application;

(E) for an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell, within 365 days after the day on which the director receives the application;

(F) for an amendment to a radioactive waste license, or a groundwater discharge permit, for a radioactive waste facility to eliminate groundwater monitoring, within 365 days after the day on which the director receives the application; and

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

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

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

(ii) during a public comment period; or

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

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

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

19-3-106.4. Generator site access permits.

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

(2) The director may not grant a generator site access permit to a generator or broker

unless the generator or broker agrees to grant the division reasonable access to its facilities for the inspection and verification of radioactive waste using Nuclear Regulatory Commission approved accountability guidelines.

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

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

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

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

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

(iii) \$5,000 for brokers.

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

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

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

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

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

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

(3) In order to make demand for payment of a penalty assessed under this section, the director shall issue a notice of agency action, specifying, in addition to the requirements for 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.