

## SB0079S01 compared with SB0079

~~text~~ shows text that was in SB0079 but was deleted in SB0079S01.

Inserted text shows text that was not in SB0079 but was inserted into SB0079S01.

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Representative Mike K. McKell proposes the following substitute bill:

### WASTE MANAGEMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: ~~\_\_\_\_\_~~ Mike K. McKell

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#### LONG TITLE

##### General Description:

This bill modifies provisions of the Radiation Control Act.

##### Highlighted Provisions:

This bill:

- ▶ defines "unlicensed facility" and "radioactive waste facility";
- ▶ modifies financial assurance requirements for a licensed and an unlicensed facility;  
and
- ▶ makes technical and conforming changes.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

None

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### Utah Code Sections Affected:

#### AMENDS:

**19-3-102**, as last amended by Laws of Utah 2015, Chapter 451

**19-3-104**, as last amended by Laws of Utah 2015, Chapters 441 and 451

**19-3-105**, as last amended by Laws of Utah 2015, Chapter 451

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

Section 1. Section **19-3-102** is amended to read:

#### **19-3-102. Definitions.**

As used in this chapter:

(1) "Board" means the Waste Management and Radiation Control Board created under Section 19-1-106.

(2) (a) "Broker" means a person who performs one or more of the following functions for a generator:

- (i) arranges for transportation of the radioactive waste;
- (ii) collects or consolidates shipments of radioactive waste; or
- (iii) processes radioactive waste in some manner.

(b) "Broker" does not include a carrier whose sole function is to transport the radioactive waste.

(3) "Byproduct material" [~~has the same meaning as~~] means the same as that term is defined in 42 U.S.C. Sec. 2014(e)(2).

(4) "Class B and class C low-level radioactive waste" [~~has the same meaning as~~] means the same as that term is defined in 10 CFR 61.55.

(5) "Director" means the director of the Division of Waste Management and Radiation Control.

(6) "Division" means the Division of Waste Management and Radiation Control, created in Subsection 19-1-105(1)(d).

(7) "Generator" means a person who:

- (a) possesses any material or component:
  - (i) that contains radioactivity or is radioactively contaminated; and
  - (ii) for which the person foresees no further use; and

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(b) transfers the material or component to:

- (i) a commercial radioactive waste treatment or disposal facility; or
- (ii) a broker.

(8) (a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and defense-related wastes.

(b) "High-level nuclear waste" does not include medical or institutional wastes, naturally[=] occurring radioactive materials, or uranium mill tailings.

(9) (a) "Low-level radioactive waste" means waste material [~~which~~] that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities [~~which~~] that exceed applicable federal or state standards for unrestricted release.

(b) "Low-level radioactive waste" does not include waste containing more than 100 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(10) "Radiation" means ionizing and nonionizing radiation, including gamma rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

(11) "Radioactive" means any solid, liquid, or gas which emits radiation spontaneously from decay of unstable nuclei.

(12) "Unlicensed facility" means a structure, road, or property:

- (a) adjacent to, but outside of, a licensed or permitted area; and
- (b) that is not used for waste disposal or waste management.

Section 2. Section **19-3-104** is amended to read:

**19-3-104. Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria -- Indirect and direct costs.**

(1) As used in this section:

(a) "Decommissioning" includes financial assurance.

(b) "Source material" and "byproduct material" [~~have the same definitions as~~] mean the same as those terms are defined in the Atomic Energy Act of 1954, 42 U.S.C. Sec. 2014, as amended.

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(2) The division may require the registration or licensing of radiation sources that constitute a significant health hazard.

(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules:

(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;

(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government;

(c) to establish certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities; and

(d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:

(i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and

(ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).

(5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).

(b) On and after January 1, 2003, through March 30, 2003:

(i) \$6,667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and

(ii) \$4,167 per month for those uranium mills the director has determined are on standby status.

(c) On and after March 31, 2003, through June 30, 2003, the same fees as in Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March

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30, 2003.

(d) If the Nuclear Regulatory Commission does not grant the amendment for state agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not required to be paid until on and after the later date of:

(i) October 1, 2003; or

(ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.

(e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the restrictions under Subsection (5)(d).

(f) The division shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

(6) (a) The division shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The division shall comply with the requirements of Section 63J-1-504 in assessing fees for licensure and registration.

(7) (a) Except as provided in Subsection (8), and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(8) (a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (7) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(9) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

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the board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.

(b) Independent experts under this Subsection (9) are not considered employees or representatives of the division or the state when conducting the inspections.

(10) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section 19-3-103.7.

(b) Subject to Subsection 19-3-105(10), any facility under Subsection (10)(a) for which a radioactive material license is required by this section shall comply with those criteria.

(c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

(11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules that:

(a) establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities[-]; and

(b) establish financial assurance requirements for closure and postclosure care of an unlicensed facility.

(12) The rules described in Subsection (11) shall include the following provisions:

(a) the financial assurance shall be based on an annual [~~calculation~~] estimate and shall include [~~the costs of~~] closure and postclosure [~~care of radioactive waste land disposal facilities~~] costs in all areas subject to the licensed or permitted portions of the facility;

(b) financial assurance [~~for closing the areas within the disposal embankments shall be limited to the cost of closing areas where waste has been disposed; and~~] for an unlicensed facility that supports the operation of a licensed or permitted facility shall include the estimated cost of:

~~[(c) at the option of the licensee or permittee, the financial assurance requirements shall be based on:]~~

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(i) the removal of structures;

(ii) the testing of structures, roads, and property to ensure no radiological contamination has occurred outside of the licensed area; and

(iii) stabilization and water infiltration control;

(c) financial assurance cost estimates for a single approved waste disposal unit for which the volume of waste already placed and proposed to be placed in the unit within the surety period is less than the full waste capacity of the unit shall reflect the closure and postclosure costs for a waste disposal unit smaller than the approved waste disposal unit, if the unit could be reduced in size, meet closure requirements, and reduce closure costs;

(d) financial assurance cost estimates for two approved adjacent waste disposal units that have been approved to be combined into a single unit and for which the combined volume of waste already placed and proposed to be placed in the units within the surety period is less than the combined waste capacity for the two separate units shall reflect either two separate waste disposal units or a single combined unit, whichever has the lowest closure and postclosure costs;

(e) the licensee or permittee shall annually propose closure and postclosure costs upon which financial assurance amounts are based, including costs of potential remediation at the licensed or permitted facility and, notwithstanding the obligation limitations described in Subsection (12)(b), any unlicensed facility;

(f) to provide the information in Subsection (12)(e), the licensee or permittee shall provide:

(i) [~~an annual calculation~~] a proposed annual cost estimate using the current edition of RS Means Facilities Construction Cost Data or using a process, including an indirect cost multiplier, previously agreed to between the licensee or permittee and the director; or

(ii) (A) for an initial financial assurance determination and for each financial assurance determination every five years thereafter, a proposed competitive site-specific [~~bid~~] estimate for closure and postclosure care of the facility at least once every five years; and

(B) for each year between a financial assurance determination [~~as~~] described in Subsection [~~(12)(c)(ii)(A);~~] (12)(f)(ii)(A), a proposed financial assurance estimate that accounts for current site conditions and that includes an annual inflation adjustment to the financial assurance determination using the Gross Domestic Product Implicit Price Deflator of the

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Bureau of Economic Analysis, United States Department of Commerce, calculated by dividing the latest annual deflator by the deflator for the previous year[-]; and

(g) the director shall:

(i) annually review the licensee's or permittee's proposed closure and postclosure estimate; and

(ii) approve the estimate if the director determines that the estimate would be sufficient to provide for closure and postclosure costs.

(13) Subject to the financial assurance requirements described in Subsections (11) and (12), if the director and the licensee or permittee do not agree on a final financial assurance determination made by the director, the licensee or permittee may appeal the determination in:

(a) an arbitration proceeding governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act, with the costs of the arbitration to be split equally between the licensee or permittee and the division, if both the licensee or permittee and the director agree in writing to arbitration; or

(b) a special adjudicative proceeding under Section 19-1-301.5.

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### Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 3. Section 19-3-105 is amended to read:

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

(1) As used in this section:

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

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

(c) (i) "Class A low-level radioactive waste" means:



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

(B) radium-226 up to a maximum radionuclide concentration level of 10,000

picocuries per gram.

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

(A) uranium mill tailings;

(B) naturally occurring radioactive materials; or

(C) the following radionuclides if classified as "special nuclear material" under the

Atomic Energy Act of 1954, 42 U.S.C. 2014:

(I) uranium-233; and

(II) uranium-235 with a radionuclide concentration level greater than the concentration

limits for specific conditions and enrichments established by an order of the Nuclear

Regulatory Commission:

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

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

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

(A) commercially for profit; or

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

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

(A) alternate feed material for reprocessing; or

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

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

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

(3) Subject to Subsection (8), a person may not own, construct, modify, or operate a

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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 (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 radioactive waste in storage, treat radioactive waste, 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~~] that 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,~~]

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decay radioactive waste in storage, treat radioactive waste, 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 requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(10) 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 (8)(a); or

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

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

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

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

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

(a) categorize approval applications as follows:

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(i) approval applications that:

(A) are administrative in nature;

(B) require limited scrutiny by the director; and

(C) do not require public input;

(ii) approval applications that:

(A) require substantial scrutiny by the director;

(B) require public input; and

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

(iii) approval applications for:

(A) the granting or renewal of a radioactive waste license;

(B) the granting or renewal of a groundwater permit issued by the director for a radioactive waste facility;

(C) an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell;

(D) an amendment to a radioactive waste license or groundwater discharge permit for a radioactive waste facility to eliminate groundwater monitoring; and

(E) a radioactive waste facility closure plan;

(b) provide time periods for the director to review, and approve or deny, an application described in Subsection (10)(a) as follows:

(i) for applications categorized under Subsection (10)(a)(i), within 30 days after the day on which the director receives the application;

(ii) for applications categorized under Subsection (10)(a)(ii), within 180 days after the 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;

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(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.