A BILL FOR AN ACT

CONCERNING ENHANCED PROTECTIONS REGARDING THE DISPOSAL OF
NATURALLY OCCURRING RADIOACTIVE MATERIALS, AND, IN
CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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://leg.colorado.gov.)

Current law allows the state board of health to adopt rules concerning the disposal of naturally occurring radioactive materials (NORM) only after the federal environmental protection agency (EPA) has adopted rules concerning the disposal of NORM. The EPA has not adopted the rules. The bill:
Requires the state board to adopt rules for the disposal of NORM and technologically enhanced NORM (TENORM); and

While the state board is conducting its rule-making investigation, temporarily prohibits the disposal of oil and gas exploration and production waste (EP waste) with potentially high concentrations of radionuclides at a facility that is not specifically approved and designated to receive the waste unless:

The generator of the waste has sampled and tested the EP waste on a per-shipment basis or in a representative and statistically valid manner approved by the state board; and

The results of the test indicate that the EP waste contains low levels of TENORM.

A generator of EP waste must file reports with the state board.

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

SECTION 1. In Colorado Revised Statutes, 25-11-104, amend (1) as follows:

25-11-104. Rules to be adopted - fees - fund created - definitions - repeal. (1) (a) The state board shall formulate, adopt, and promulgate rules as provided in subsection (2) of this section that cover subject matter relative to radiation machines and radioactive materials, including naturally occurring radioactive materials, TENORM, and other sources of radiation. The subject matter of the rules must include:

Licenses and registration; records; permissible levels of exposure; notification and reports of accidents; technical qualifications of personnel; technical qualifications of mammographers; handling, transportation, and storage; waste disposal; posting and labeling of hazardous sources and areas; surveys; monitoring; security of materials; and financial assurance warranties.

(b) The state board, may in consultation with the water
QUALITY CONTROL COMMISSION, THE SOLID AND HAZARDOUS WASTE
COMMISSION, AND THE COLORADO OIL AND GAS CONSERVATION
COMMISSION, SHALL adopt rules concerning the disposal of naturally
occurring radioactive materials, at any time after the promulgation by the
federal environmental protection agency or its successor of rules for the
disposal of naturally occurring radioactive materials INCLUDING
TENORM. THE RULES MUST INCLUDE REQUIREMENTS FOR GROUNDWATER
AND LEACHATE MONITORING FOR RADIONUCLIDES AT EACH DISPOSAL
FACILITY THAT ACCEPTS TENORM WASTE.

(c) BEFORE ADOPTING THE RULES SPECIFIED IN SUBSECTION (1)(b)
OF THIS SECTION, THE DEPARTMENT SHALL:

(I) CONVENE A STAKEHOLDER GROUP TO FACILITATE DECISIONS
AND APPROACHES TO THE HANDLING, TRANSPORTATION, BENEFICIAL USE,
AND DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIALS AND
TENORM THAT ARE BASED ON A REASONABLE RELATIONSHIP TO THE
ECONOMIC, ENVIRONMENTAL, ENERGY, AND PUBLIC HEALTH COSTS AND
BENEFITS OF THE DECISIONS AND APPROACHES AND TO DISCUSS THE
DEVELOPMENT OF PROPOSED RULES AND THE IMPACTS THE RULES MIGHT
HAVE ON THE REGULATED COMMUNITY AND THE PUBLIC;

(II) INVITE REPRESENTATIVES OF AT LEAST THE FOLLOWING
INTEREST GROUPS TO PARTICIPATE IN THE STAKEHOLDER GROUP: THE OIL
AND GAS INDUSTRY, MINING INDUSTRY, POWER GENERATORS AND
SUPPLIERS, PUBLIC WATER PROVIDERS, PUBLIC WASTEWATER TREATMENT
PROVIDERS, SOLID WASTE LANDFILL OPERATORS, AND OTHER INTERESTED
OR AFFECTED PARTIES;

(III) REQUIRE ALL GENERATORS OF TENORM WASTE TO:

(A) REPORT TO THE DEPARTMENT THE VOLUMES AND TYPES OF
TENORM waste they generate and the locations at which they dispose of the waste; and

(B) Make all TENORM waste streams available for representative sampling and data collection by an independent third party contracted with by the state;

(IV) Contract with an independent third party to prepare a comprehensive report, with input provided by the stakeholder group specified in subsection (1)(c)(I) of this section, that assesses the measurable public health impacts from naturally occurring radioactive materials and TENORM. The report must:

(A) Establish background radiation levels in various regions of the state, identify and quantify waste streams, analyze historical beneficial use and disposal practices, and evaluate current engineering practices and appropriate test methods;

(B) Identify data gaps and estimated economic impacts from regulating naturally occurring radioactive materials and TENORM generated by the interest groups specified in subsection (1)(c)(II) of this section; and

(C) Include a detailed regulatory review of how other states regulate the handling, transportation, beneficial use, and disposal of naturally occurring radioactive materials and TENORM.

(V) Submit a detailed summary of the report required by subsection (1)(c)(IV) of this section to the General Assembly's committees of reference with jurisdiction over public health and natural resources no later than December 31, 2020, which

(VI) BASED ON THE FEEDBACK OF THE STAKEHOLDER GROUP, THE REPORT PREPARED PURSUANT TO SUBSECTION (1)(c)(IV) OF THIS SECTION, AND THE HEARING HELD PURSUANT TO SUBSECTION (1)(c)(V) OF THIS SECTION, PROPOSE DRAFT RULES CONCERNING:

(A) THE CONCENTRATION OF RADIONUCLIDES IN SOLID WASTE BELOW WHICH TENORM-CONTAINING WASTE MAY BE DISPOSED OF AT A SOLID WASTES DISPOSAL SITE AND FACILITY, AT AN EP WASTE DISPOSAL FACILITY, BY ANY OTHER MEANS OF LAND DISPOSAL THAT IS NOT SPECIFICALLY APPROVED AND DESIGNATED TO RECEIVE THE WASTE, OR BY DISCHARGE INTO STATE WATERS;

(B) THE CONCENTRATION OF RADIONUCLIDES IN SOLID WASTE ABOVE WHICH TENORM-CONTAINING WASTE MUST BE DISPOSED OF AT A FACILITY SPECIFICALLY APPROVED AND DESIGNATED TO RECEIVE THE WASTE; AND

(C) THE MINIMUM TECHNICAL SPECIFICATIONS NECESSARY FOR THE SAFE DISPOSAL OF TENORM-CONTAINING WASTE AND OTHER SUBJECTS RELATED TO THE CHARACTERIZATION AND SAFE DISPOSAL OF TENORM-CONTAINING WASTES.

(d) UNTIL THE STATE BOARD ADOPTS THE RULES SPECIFIED IN SUBSECTION (1)(b) OF THIS SECTION;

(I) A PERSON SHALL COMPLY WITH THE "INTERIM POLICY AND
GUIDANCE PENDING RULEMAKING FOR THE CONTROL AND DISPOSITION OF TECHNOLOGICALLY-ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS IN COLORADO, issued by the department, dated February 2007; and

(II) If the solid waste was generated from oil and gas exploration and production, the person shall also comply with the letters dated November 7, 2017, and November 14, 2017, from the manager of the department’s solid waste and materials management program regarding management and disposal of TENORM wastes generated by oil and gas exploration and production.

(e) Subsections (1)(c) and (1)(d) of this section and this subsection (1)(e) will be repealed if the state board adopts the rules specified in subsection (1)(b) of this section. The state board shall notify the revisor of statutes in writing of the date on which the rules specified in this subsection (1)(e) become effective by e-mailing the notice to revisorofstatutes.ga@state.co.us. Subsections (1)(c) and (1)(d) of this section and this subsection (1)(e) are repealed, effective upon the date identified in the notice that the rules became effective or, if the notice does not specify that date, upon the date of the notice to the revisor of statutes.

(f) This subsection (1) is enforceable pursuant to sections 30-20-113 and 30-20-114.

(g) For purposes of this subsection (1):

(I) "EP WASTE DISPOSAL FACILITY" has the meaning established in section 30-20-109 (1.5)(a)(II).
(II) "Radionuclides" includes radium 226 and radium 228, combined; natural thorium; and natural uranium.

(III) "Solid waste" has the meaning established in section 30-20-101 (6).

(IV) "Solid wastes disposal site and facility" has the meaning established in section 30-20-101 (8).

(V) "State waters" has the meaning established in section 25-8-103 (19).

(VI) "TENORM" means naturally occurring radioactive materials that have been concentrated or exposed to the accessible environment as a result of human activities such as manufacturing, mineral extraction, or water processing.

"TENORM" does not include background radiation of the accessible environment; "byproduct material" or "source material", as defined by Colorado statute or rule; or enriched or depleted uranium as defined by Colorado or federal statute or rule.

(e)(h) Notwithstanding any provision of section 25-11-103 (7)(h), it is not necessary that a governmental entity own any site that is used for the concentration, storage, or disposal of radioactive material if the owner of the site complies with rules promulgated by the state board in accordance with this section. The rules must ensure the long-term protection of the public health and safety and may include financial assurance warranties pursuant to this part 1, deed annotations and restrictions, easement provisions, restrictive covenants, and adequate markers to warn of the presence of radioactive materials.

SECTION 2. Appropriation. For the 2018-19 state fiscal year,
$16,596,405 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the general fund. To implement this act, the division may use this appropriation for personal services related to radiation management.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 110 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.