

CHAPTER 282

HEALTH AND ENVIRONMENT

HOUSE BILL 10-1149

BY REPRESENTATIVE(S) Hullinghorst, Court, Fischer, Frangas, Labuda, Pommer, Schafer S., Vigil, McFadyen;
also SENATOR(S) Foster, Boyd.

AN ACT

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

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

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

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

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

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

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

(2.5) "Mammographer" means a person who operates a machine source of ~~ionizing~~ radiation, commonly known as an "X-ray machine", in the conduct of a mammography exam.

(2.7) "Naturally occurring radioactive material" means any nuclide that is radioactive in its natural physical state and is not manufactured. "Naturally

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

occurring radioactive material" does not include source material, special nuclear material, or by-products of fossil fuel combustion, including ~~but not limited to~~ bottom ash, fly ash, and flue-gas emission by-products.

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

(4) "RADIOACTIVE" MEANS EMITTING RADIATION.

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

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

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

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

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

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

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

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

25-11-103. Radiation control agency - powers and duties. (2) Pursuant to rules ~~and regulations~~ adopted as provided in section 25-11-104, the department shall issue licenses pertaining to radioactive materials, prescribe and collect fees for such licenses, and require registration of other sources of ~~ionizing~~ radiation. No other agency or branch of this state ~~shall have~~ HAS such power or authority.

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

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

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

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

25-11-104. Rules to be adopted - fees - fund created. (1) (a) The state board ~~of health~~ shall formulate, adopt, and promulgate rules ~~and regulations~~ as provided in subsections (2) and (2.5) of this section ~~which shall~~ THAT cover subject matter relative to RADIATION MACHINES AND radioactive materials, including ~~but not limited to~~ naturally occurring radioactive materials and other sources of ~~ionizing~~ radiation. The subject matter of ~~such~~ THE rules ~~and regulations~~ shall include: ~~but not be limited to:~~ 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; and financial assurance warranties.

(b) The state board ~~of health~~ may adopt ~~regulations~~ 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.

(c) 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 that at the time of its acceptance for concentration, storage, or disposal is owned or generated by the United States department of energy and ~~that~~ is defined as low-level radioactive waste under the federal "Low-level Radioactive Waste Policy Act Amendments of 1986", as amended, ~~so long as~~ IF the owner of ~~such~~ THE site complies with ~~regulations~~ RULES promulgated by the board in accordance with this section. ~~Such regulations~~ THE RULES shall ensure the long-term protection of the public health and safety and may

include ~~but are not limited to~~, 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.

(2) ~~All such regulations~~ RULES PROMULGATED UNDER THIS SECTION shall be modeled after and shall be neither more nor less stringent than those CONSISTENT WITH REGULATIONS proposed by the conference of radiation control program directors, inc., 4815 West Markham Street, Little Rock, Arkansas 72201 OR ITS SUCCESSOR, under the title, "Suggested State Regulations for Control of Radiation"; except that, ~~in the event said~~ IF THE STATE board concludes on the basis of detailed findings that a substantial deviation from any of ~~said~~ THE suggested state regulations is warranted and that a substitute ~~regulation~~ RULE or no ~~regulation~~ RULE would effectively permit maximum utilization of sources of ~~ionizing~~ radiation consistent with the health and safety of all persons who might otherwise become exposed to ~~such~~ THE radiation, the STATE board need not maintain ~~such~~ THE suggested state regulation or may ~~adopt and~~ promulgate ~~such~~ A substitute ~~regulation~~ RULE as the case may be.

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

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

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

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

(6) (a) The state board ~~of health~~ shall formulate, adopt, and promulgate a fee schedule, IN ACCORDANCE WITH SECTION 24-4-103, C.R.S., for radiation control services provided by the department. Radiation control services for which fees may be established include APPLICATION PROCESSING FOR QUALIFIED INSPECTORS, QUALIFIED EXPERTS, AND SERVICE COMPANIES AS DEFINED BY THE STATE BOARD, WHICH FEES SHALL BE PAID BY THE APPLICANTS OR SERVICE COMPANIES; issuance

of categories of specific licenses to accord with categories established by the nuclear regulatory commission and which shall include ~~but need not be limited to~~ licenses for special nuclear material, source material, by-product material, well logging and surveys and tracer studies, and for human use; and inspections of licensees as authorized by section 25-11-103 (6). Licenses and fees shall, WHERE APPROPRIATE, be in accordance with policies and priorities of the nuclear regulatory commission.

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

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

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

(8) (a) The state board of health shall adopt rules requiring that all machine sources of ionizing radiation be inspected and certified by qualified inspectors as safe for the intended uses CONSISTENT WITH 42 U.S.C. SEC. 263b and in compliance with the specifications of the state board and the equipment manufacturer. ~~Such~~ Rules shall include ~~the following:~~ MINIMUM SPECIFICATIONS FOR RADIATION MACHINES, MINIMUM STANDARDS FOR THE QUALIFICATIONS OF INDIVIDUALS AUTHORIZED TO INSPECT AND CERTIFY RADIATION MACHINES, AND PROCEDURES FOR INSPECTION OF RADIATION MACHINES. IF A QUALIFIED INSPECTOR DETERMINES THAT A RADIATION MACHINE FAILS TO MEET THE REQUIRED SPECIFICATIONS, THE INSPECTOR SHALL NOTIFY THE OWNER OR OPERATOR IMMEDIATELY AND SHALL NOTIFY THE DEPARTMENT WITHIN THREE DAYS AFTER THE DETERMINATION. A RADIATION MACHINE THAT FAILS TO MEET THE REQUIRED SPECIFICATIONS AND IS DETERMINED BY A QUALIFIED INSPECTOR TO BE UNSAFE FOR HUMAN USE SHALL NOT THEREAFTER BE USED FOR HUMAN USE UNTIL SUBSEQUENT CERTIFICATION, AND THE QUALIFIED INSPECTOR SHALL AFFIX AN OFFICIAL NONCERTIFICATION STICKER ISSUED BY THE DEPARTMENT INDICATING THAT THE MACHINE IS NOT AUTHORIZED FOR HUMAN USE. A CERTIFICATION OR NONCERTIFICATION STICKER SHALL BE AFFIXED ON EACH RADIATION MACHINE IN A LOCATION CONSPICUOUS TO MACHINE OPERATORS AND TO PERSONS ON WHOM THE MACHINE IS USED.

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

~~(H) The establishment of minimum standards for the qualification of individuals who are authorized to make inspections and to certify machines that are sources of ionizing radiation. Other than those individuals performing emergency, compliance, and enforcement inspections or inspection audits for the department, qualified inspectors shall not be employees of the department. The maximum annual fee that may be charged by the department to an individual seeking approval as a qualified inspector is eighty dollars. Such fee shall include the issuance of evidence of qualification, if applicable, and all other costs for qualifications. Such fees shall be credited to the radiation control fund.~~

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

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

~~(b) The department may make or contract for the making of audit inspections of machines which are sources of ionizing radiation to assure compliance with applicable specifications. Such audit inspections shall be made by a qualified~~

~~inspector under contract to the department or by the qualified department inspector on machines which are currently certified by a qualified inspector. Audit inspections shall be conducted on only a portion of all certified machines and shall be made on a routine, unannounced basis. The cost of the audit inspections shall be paid for out of the radiation control fund.~~

(c) In establishing or revising specifications for each type of machine ~~which~~ THAT is a source of ~~ionizing~~ radiation, the standards for approval of qualified inspectors, and the procedures for making inspections, the department shall consult with manufacturers of ~~ionizing~~ radiation equipment, health care providers and operators who use ~~such~~ THE equipment in diagnostic and therapeutic treatment of humans, and qualified inspectors and individuals.

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

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

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

SECTION 6. 25-11-107 (1), (2), (2.5), (4), (5), and (6), Colorado Revised Statutes, are amended, and the said 25-11-107 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25-11-107. Prohibited acts - violations - penalties - rules - cease-and-desist orders. (1) EXCEPT AS ALLOWED BY RULE OF THE STATE BOARD:

(a) No person shall acquire, own, possess, or use any radioactive material occurring naturally or produced artificially without having been granted a license therefor from the department; ~~nor shall he~~ OR

(b) Transfer to another or dispose of such material without first having been granted approval of the department therefor.

(2) EXCEPT AS ALLOWED BY RULE OF THE STATE BOARD, no person shall knowingly use, manufacture, produce, transport, transfer, receive, send, acquire, own, or possess any source of ~~ionizing~~ radiation unless such person is licensed by or registered with the department. THE EXCEPTIONS PROMULGATED BY THE STATE

BOARD SHALL INCLUDE USE OF DOMESTIC TELEVISION RECEIVERS, COMPUTER MONITORS, HOUSEHOLD MICROWAVE OVENS, RADIANT HEAT DEVICES, CELLULAR TELEPHONES, INCANDESCENT GAS MANTLES, AND VACUUM TUBES.

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

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

(5) (a) Any person who violates SUBSECTION (1), (2), OR (2.5) OF THIS SECTION, any licensing or registration provision, ~~of section 25-11-103 or 25-11-104, or any rule regulation, or order issued pursuant to either of such sections~~ UNDER THIS PART 1, or any term, condition, or limitation of any license or registration certificate issued pursuant to ~~either of such sections, except any person in violation of subsection (1) or (2) of this section, shall be~~ THIS PART 1 IS subject to ~~the provisions of this subsection (5)~~ AN ADMINISTRATIVE PENALTY NOT TO EXCEED FIFTEEN THOUSAND DOLLARS PER DAY FOR EACH VIOLATION.

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

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

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

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

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

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

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

(IV) AFTER CONSIDERATION OF ANY WRITTEN RESPONSE AND INFORMAL CONFERENCE, THE DEPARTMENT SHALL ISSUE A LETTER, WITHIN THIRTY DAYS AFTER THE DATE OF THE INFORMAL CONFERENCE OR THE RECEIPT OF A WRITTEN RESPONSE, WHICHEVER IS LATER, AFFIRMING OR DISMISSING THE VIOLATION. ANY REMAINING CORRECTIVE MEASURES THAT ARE NECESSARY, AND ANY ADMINISTRATIVE PENALTY DETERMINED TO BE APPROPRIATE, WILL BE INCORPORATED INTO AN ADMINISTRATIVE ORDER.

(c.3) IN DETERMINING THE AMOUNT OF ANY ADMINISTRATIVE PENALTY, THE DEPARTMENT SHALL CONSIDER THE FACTORS IN SUBPARAGRAPHS (I) THROUGH (X) OF THIS PARAGRAPH (c.3). THE FACTORS CONTAINED IN SUBPARAGRAPHS (VII), (VIII), AND (IX) OF THIS PARAGRAPH (c.3) ARE MITIGATING FACTORS AND MAY BE APPLIED, WITH OTHER FACTORS, TO REDUCE ANY ADMINISTRATIVE PENALTY. SUCH FACTORS ARE:

(I) THE SERIOUSNESS OF THE VIOLATION;

(II) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR NEGLIGENT;

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

(IV) THE DEGREE OF RECALCITRANCE, IF ANY, ON THE PART OF THE VIOLATOR;

(V) WHETHER THE VIOLATOR IS A RECIDIVIST;

(VI) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A RESULT OF THE VIOLATION;

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

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

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

(X) ANY OTHER AGGRAVATING OR MITIGATING CIRCUMSTANCE.

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

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

~~(d) Within thirty days after the time allowed for a written response and informal conference, the department shall issue an order affirming or dismissing the violation and, if the violation is affirmed, setting a time for abatement. The time for abatement shall be that which is reasonably necessary to achieve compliance. Immediate abatement may be ordered to the extent necessary to remove an imminent danger to the public health, safety, or welfare. The department shall cause the order to be served personally on the alleged violator or his designated agent. If the circumstances warrant, the department shall issue an order containing the elements of both the notice of violation specified in paragraph (b) of this subsection (5) and the letter described in subparagraph (IV) of paragraph (c) of this subsection (5).~~

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

(A) WHETHER THE ALLEGED VIOLATION EXISTS OR DID EXIST;

(B) THE REASONABLENESS OF THE TIME SET FOR ABATEMENT; AND

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

(II) THE ALLEGED VIOLATOR SHALL ADDRESS EACH ALLEGED VIOLATION IN THE REQUEST FOR THE HEARING AND SHALL SPECIFY WHICH OF THE ALLEGED VIOLATIONS

THE ALLEGED VIOLATOR IS APPEALING. AN ALLEGATION NOT ADDRESSED IN THE REQUEST FOR THE HEARING SHALL BE DEEMED ADMITTED.

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

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

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

~~(g) (f) Following said conference, or upon the expiration of time allowed for requesting the conference if no conference is requested, the department shall order the penalty fixed and shall cause the order to be served personally on the alleged violator or his designated agent within forty-five days of the mailing of the notification of the proposed penalty. The order shall notify the alleged violator of the right to request a hearing within thirty days, such hearing to be held in accordance with section 24-4-105, C.R.S., to determine all or any of the following:~~

~~(A) Whether the alleged violation exists or did exist;~~

~~(B) Whether the time set for abatement was reasonable; and~~

~~(C) Whether the civil penalty is reasonable in light of the statutory criteria upon which it is based.~~

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

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

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

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

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

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

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

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

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

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

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

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.

Approved: May 26, 2010