CHAPTER 23.1-03
IONIZING RADIATION DEVELOPMENT

23.1-03-01. Definitions.

For the purposes of this chapter:

1. "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and the tailings or wastes produced by the extraction, or concentration of uranium or thorium from any ore processed primarily for its source material content.
2. "Commission" means United States nuclear regulatory commission or any successor.
3. "Department" means the department of environmental quality.
4. "General license" means a license effective under rules adopted by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.
5. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.
6. "Person" has the same meaning as under section 1-01-49, except it does not mean the commission or federal government agencies licensed by the commission.
7. "Radioactive material" means any solid, liquid, or gas that emits ionizing radiation spontaneously.
8. "Registration" means submitting a satisfactory registration form and receiving a certificate of registration under chapter 23.1-02.
9. "Special nuclear material" means:
   a. Plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material the department declares by rule to be special nuclear material after the commission has determined the material to be such, but does not include source material; or
   b. Any material, other than source material, that is artificially enriched by plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material the department declares by rule to be special nuclear material after the commission has determined the material to be such.
10. "Specific license" means a license issued after application, to process, generate, dispose, use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.
11. "Source material" means uranium, thorium, or any other material the department declares by rule to be source material after the commission has determined the material to be such; or ores containing one or more of those materials, in such concentration as the department declares by rule to be source material after the commission has determined the material in such concentration to be source material.
12. "Surety" means cash deposits, surety bonds, certificates of deposit, deposits of government securities, letters of credit, and other surety mechanisms deemed acceptable by the department.

23.1-03-02. State radiation control agency.

The department of environmental quality shall administer the statewide licensing and regulatory radiation program under this chapter.

23.1-03-03. Powers and duties of the department.

For the protection of the public health and safety, the department shall:

1. Evaluate hazards associated with the use of sources of ionizing radiation by inspection and other means.

2. Conduct programs compatible with federal programs for the licensing and regulation of byproduct, source, special nuclear materials, and other radioactive materials.
3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Administer the statewide licensing and regulatory radiation program.

23.1-03-04. Licensing and registration of sources of ionizing radiation.

1. The department shall adopt rules for the department to provide general or specific licensing of persons to process, generate, dispose, use, manufacture, produce, acquire, own, receive, possess, or transfer byproduct, source, special nuclear material, and other radioactive materials occurring naturally or produced artificially, or devices or equipment utilizing such materials. The rules must allow the department to amend, suspend, and revoke licenses.
2. The department may exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements under this section and in chapter 23.1-02 when the department makes a finding that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

23.1-03-05. Custody of disposal sites.

1. Any radioactive materials license issued or renewed for any activity that results in processing, generating, or disposing of source material, byproduct material, or other radioactive material occurring naturally or produced artificially must contain any terms and conditions the department finds necessary to assure that, prior to termination of the license:
   a. The licensee will comply with any decontamination, decommissioning, and stabilization standards prescribed by the department, which must be equivalent to or more stringent than those of the commission for sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and
   b. Ownership of any disposal site and source material, byproduct material, or other radioactive material occurring naturally or produced artificially which resulted from the licensed activity must, subject to subsection 2, be transferred to the United States if provided by federal law, or this state if the state exercises the option to acquire land used for the disposal of the source material, byproduct material, or other radioactive material occurring naturally or produced artificially.
2. a. The department shall require by rule or order that before the termination of any license, title to the land and any interests in the land, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by the state, used for the disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially pursuant to a license, must be transferred to the United States if provided by federal law, or this state, unless the commission and the department determine before the termination that transfer of title is not necessary to protect the public health, safety, or welfare, or to minimize danger to life or property.
   b. If transfer to the state of title to the land, source material, byproduct material, or other radioactive material occurring naturally or produced artificially is required, the department shall maintain the material and land in a manner that will protect the public health, safety, and the environment.
   c. The department may undertake any monitoring, maintenance, and emergency measures necessary to protect the public health and safety for materials and property for which it has assumed custody under this chapter.
   d. The transfer of title to land or source material, byproduct material, or other radioactive material occurring naturally or produced artificially, to the state does

not relieve any licensee of liability for any fraudulent or negligent acts done prior to the transfer.

e. Material and land transferred to either the United States or the state under this section must be transferred without cost to the United States or the state other than administrative and legal costs incurred by the United States or the state in carrying out the transfer.

3. Land used for the disposal of technologically enhanced naturally occurring radioactive material is not subject to subsection 2.

23.1-03-06. Surety requirements.

1. The department shall establish by rule standards and instructions it deems necessary or appropriate to ensure:
   a. The licensee will provide adequate surety for the completion of all requirements established by the department for the decontamination, decommissioning, and stabilization of sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and
   b. If the department determines any long-term maintenance and monitoring is necessary, the licensee will make available the funds required for the necessary maintenance and monitoring, before termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially.
2. Any funds for long-term site surveillance and control must be available to the state if title and custody of source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to the state under subsection 1 of section 23.1-03-05. The funds must be transferred to the United States if title and custody of the source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to the United States upon termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially. These funds include sums collected for long-term surveillance and if necessary, maintenance. The funds do not include moneys held as surety where no default had occurred and the reclamation or other bonded activity has been performed.
3. If the department requires a surety for stabilization or funds for long-term surveillance or maintenance, the amounts must be sufficient to ensure compliance with the standards established by the commission and the department pertaining to financial arrangements to ensure adequate stabilization and long-term management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site.

23.1-03-07. Procedural requirements.

In licensing and regulating the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially, the department shall provide:

1. In the cases of licenses:
   a. An opportunity, after public notice, for written comments and a public hearing, with a transcript.
   b. A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period, and which is subject to judicial review.
   c. For each licensed activity that has a significant impact on the human environment, a written analysis prepared by the department which must be available to the public before commencement of hearings, of the impact of the licensed activity on the environment. The analysis must include:
      (1) An assessment of the radiological and nonradiological impacts to the public health.

(2) An assessment of any impact on any waterway and ground water.
(3) Consideration of alternatives to the activities to be conducted.
(4) Consideration of the long-term impacts of the licensed activities.

d. A prohibition of any major construction related to the licensed activities before completing the action under this subsection.

e. An assurance that management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially is carried out in conformance with applicable standards adopted by the department, the commission, and the United States environmental protection agency.

2. In the case of rulemaking:

a. An opportunity for public participation through written comments or a public hearing.

b. An opportunity for judicial review.

23.1-03-08. Additional authorities.

The department may require persons exempt from licensing to conduct monitoring, perform remedial work, and to comply with any other measures the department deems necessary or desirable to protect health or minimize danger to life or property.

23.1-03-09. Fees deposited in operating fund.

The department, by rule, may prescribe and provide for the payment and collection of reasonable fees to issue licenses and registration certificates. The fees must be based on the anticipated cost of filing and processing the application, of taking action on the requested license or registration certificate, and of conducting an inspection program to determine compliance or noncompliance with the license or registration certificate.

Any moneys collected for permit or registration fees must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-03-10. Federal-state agreements.

1. The governor, on behalf of this state, may enter agreements with the federal government for discontinuance of certain responsibilities of the federal government with respect to sources of ionizing radiation and the assumption of the responsibilities by the state.
2. Any person who, on the effective date of an agreement under subsection 1, possesses a license issued by the federal government must be deemed to possess the same license issued under this chapter, and the license must expire either ninety days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

23.1-03-11. Administrative procedures and judicial review.

Any proceeding under this chapter to issue or modify rules, including emergency orders relating to control of sources of ionizing radiation; grant, suspend, revoke, or amend any license; or determine compliance with rules of the department must be conducted in accordance with chapter 28-32. If an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring action necessary to meet the emergency be taken. Notwithstanding any provision of this chapter, the order must be effective immediately. A person to which the order is directed shall comply with the order immediately, but may apply to the department for a hearing. The department shall provide the hearing within ten days of the application. On the basis of such hearing, the emergency order must be continued, modified, or revoked within thirty days after such hearing.

23.1-03-12. Injunction proceedings.

Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of this chapter, or any rule or order issued under this chapter, the department may initiate an action in the name of the state enjoining the acts or practices, or requesting an order directing compliance. Upon a showing by the department that the person has engaged or is about to engage in the acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

23.1-03-13. Prohibited uses.

It is unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless registered with or licensed by the department under this chapter.

23.1-03-14. Impounding of materials.

In the event of an emergency, the department may impound or order the impounding of sources of ionizing radiation in the possession of any person not equipped to observe or which fails to observe the provisions of this chapter or any rules issued under this chapter.

23.1-03-15. Penalties.

1. Any person violating this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person willfully violating any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person willfully making any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or falsifying, tampering with, or willfully rendering inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.