

**ERRATA SHEET**  
**COLORADO RADIATION CONTROL ACT (RCA) DRAFT DOCUMENT DATED 06/05/14**

Following posting of the Colorado Radiation Control Act draft document for public comment on the Department website in mid-June 2014, it was determined that there was an error in the regulatory reference cited in line 703 (Section 25-11-107(5)(j)).

Line 703 currently references "10 CFR 40.192".

During the draft development process, the above regulatory reference was transcribed incorrectly.

Line 703 should instead reference "40 CFR 192" which references the water quality standards of the U.S. Environmental Protection Agency. This error will be corrected prior to finalizing any draft documents for further consideration or action.

We apologize for any confusion which may have occurred as a result of the error in the draft document.

1 ARTICLE 11  
2 RADIATION CONTROL  
3  
4  
5 Cross references: For western interstate nuclear compact, see part 14 of  
6 article 60 of title 24.  
7  
8 Section  
9  
10 PART 1 GENERAL PROVISIONS  
11  
12 25-11-101. Definitions.  
13  
14 25-11-101.5. Coordination of regulatory interpretations regarding in situ  
15 leach uranium  
16 mining.  
17  
18 25-11-102. Agreements for transfer of functions from federal government to  
19 state  
20 government.  
21  
22 25-11-103. Radiation control agency - powers and duties.  
23  
24 25-11-104. Rules to be adopted - fees - fund created.  
25  
26 25-11-105. Radiation advisory committee.  
27  
28 25-11-105.5. Mammography quality assurance advisory committee - repeal.  
29 (Repealed)  
30  
31 25-11-106. Injunction proceedings.  
32  
33 25-11-107. Prohibited acts - violations - penalties - rules - cease-and-  
34 desist orders.  
35  
36 25-11-108. Exemptions.  
37  
38 25-11-109. Provisional license.  
39  
40 25-11-110. Financial assurance warranties - definitions.  
41  
42 25-11-111. Forfeiture of decommissioning warranties - use of funds.  
43  
44 25-11-112. Forfeiture of long-term care warranty - use of funds.  
45  
46 25-11-113. Forfeitures - deposit - radiation control - decommissioning  
47 fund - long-term care  
48 fund.  
49  
50 PART 2 RADIOACTIVE WASTE DISPOSAL  
51  
52 25-11-201. Definitions.  
53 25-11-202. Disposal of foreign radioactive waste prohibited.

**Comment [JJ1]: EDITORIAL NOTE 1:** ALL COMMENTS (SUCH AS THIS ONE) SHOWN IN THE RIGHT SIDE MARGIN OF THIS DRAFT DOCUMENT ARE FOR INFORMATION PURPOSES ONLY TO PROVIDE ADDITIONAL INFORMATION AND TO AID THE READER IN UNDERSTANDING THE PROPOSED CHANGE DURING THE DRAFT REVIEW AND COMMENT PROCESSES.

THESE SIDE MARGIN COMMENTS ARE NOT PART OF ANY PROPOSED CHANGES AND WILL BE REMOVED PRIOR TO FINALIZATION.

**EDITORIAL NOTE 2:** THIS DRAFT DOCUMENT REFLECTS THE 2014 LEGISLATIVE SESSION ADDED LANGUAGE (SEE SENATE BILL (SB) 14-192). THESE CHANGES ARE SHOWN IN "SMALL CAPS" FONT. THIS DRAFT DOES NOT REFLECT SB 14-192 DELETIONS OR THE FINAL NUMBERING OF SECTIONS/SUB-SECTIONS OF THE RADIATION CONTROL ACT. AS SUCH, PROPOSED LANGUAGE/CHANGES MAY USE PLACEHOLDERS IN LIEU OF ACTUAL NUMBERING IN SOME AREAS. (THE FINAL (2014), COMPLETE RADIATION CONTROL ACT WAS NOT AVAILABLE THROUGH THE COLORADO SECRETARY OF STATES OFFICE AT THE TIME THE DRAFT WAS INITIATED.)

**EDITORIAL NOTE 3:** THIS DRAFT DOCUMENT DOES NOT REFLECT THE 2014 LEGISLATIVE SESSION FINAL LEGISLATIVE HISTORY NOTATIONS AND INFORMATION (e.g., "ANNOTATION", "EDITOR'S NOTES" and "SOURCE") FOUND AT THE END OF EACH SECTION AS A RESULT OF SENATE BILL 14-192 (SB 14-192). THE FINAL (2014), COMPLETE RADIATION CONTROL ACT WAS NOT AVAILABLE THROUGH THE COLORADO SECRETARY OF STATES OFFICE AT THE TIME THIS DRAFT WAS INITIATED. THESE AREAS ARE SHOWN IN GRAY FONT.

**DRAFT 06/05/14**

54 25-11-203. Approval of facilities, sites, and shipments for disposal of  
55 radioactive waste.  
56  
57  
58 PART 3 DISPOSAL OF URANIUM MILL TAILINGS  
59  
60 25-11-301. Legislative declaration.  
61  
62 25-11-302. Terms defined.  
63  
64 25-11-303. Authorization to participate - implementation - repeal.  
65  
66 25-11-304. Financial participation.  
67  
68 25-11-305. Restriction - termination.  
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70  
71

72  
73 PART 1  
74 GENERAL PROVISIONS  
75  
76  
77 25-11-101. Definitions.

78  
79 As used in this part 1, unless the context otherwise requires:

80  
81 (1) "Byproduct material" means

82 (a) Any radioactive material (except special nuclear material) yielded  
83 in, or made radioactive by, exposure to the radiation incident to the  
84 process of producing or using special nuclear material;

85 (b) The tailings or wastes produced by the extraction or concentration  
86 of uranium or thorium from ore processed primarily for its source  
87 material content, including discrete surface wastes resulting from  
88 uranium solution extraction processes. Underground ore bodies depleted  
89 by these solution extraction operations do not constitute "byproduct  
90 material" within this definition;

91 (c) (I) Any discrete source of radium-226 that is produced, extracted,  
92 or converted after extraction, before, on, or after August 8, 2005,  
93 for use for a commercial, medical, or research activity; or

94 (II) Any material that-

95 (A) Has been made radioactive by use of a particle accelerator; and

96 (B) Is produced, extracted, or converted after extraction, before, on,  
97 or after August 8, 2005, for use for a commercial, medical, or  
98 research activity; and

99 (d) Any discrete source of naturally occurring radioactive material,  
100 other than source material, that-

101 (I) The United States nuclear regulatory commission, in consultation  
102 with the Administrator of the Environmental Protection Agency, the  
103 Secretary of Energy, the Secretary of Homeland Security, and the head  
104 of any other appropriate Federal agency, determines would pose a  
105 threat similar to the threat posed by a discrete source of radium-226  
106 to the public health and safety or the common defense and security;  
107 and

108 (II) Before, on, or after August 8, 2005, is extracted or converted  
109 after extraction for use in a commercial, medical, or research  
110 activity.

111  
112 (1.5) "Civil penalty" means a monetary penalty levied against a licensee  
113 or registrant because of a violation of a statute, rule, license, or  
114 registration certificate. "Civil penalty" does not include any criminal  
115 penalty levied under section 25-1-114 or 25-11-107 (3).

116 (2) "Department" means the department of public health and environment.

117 (2.5) "Mammographer" means a person who operates a machine source of  
118 radiation, commonly known as an "X-ray machine", in the conduct of a  
119 mammography exam.

120 (2.7) "Naturally occurring radioactive material" means any nuclide that is  
121 radioactive in its natural physical state and is not manufactured.

122 "Naturally occurring radioactive material" does not include source  
123 material, special nuclear material, or by-products of fossil fuel

**Comment [JJ2]:** As required by NRC for compatibility, a definition for "Byproduct material" is added, consistent with the equivalent definition found in 10 CFR 20.1003.

THIS IS AN NRC REQUIRED CHANGE.

Reference(s): NRC Letter dated 05/16/14; 10/24/11

**Comment [JJ3]:** The numbering of this definition is modified as a result of the addition of the definition of byproduct material above.

THIS IS NOT AN NRC REQUIRED CHANGE.

124 ~~combustion, including bottom ash, fly ash, and flue gas emission by~~  
125 ~~products~~product material].  
126 (3) "Radiation" means ionizing radiation, which includes gamma rays, X  
127 rays, alpha particles, beta particles, high-speed electrons, high-speed  
128 neutrons, high-speed protons, and other high-speed nuclear particles.  
129 (4) "Radiation machine" means a device capable of producing radiation;  
130 except that "radiation machine" does not include a device with radioactive  
131 material as its only source of radiation.  
132 (5) "Radioactive" means emitting radiation.  
133 (6) "Radioactive material" means any material, whether solid, liquid, or  
134 gas, that emits radiation spontaneously.  
135 (6.5) "Source material" means  
136 (a) Uranium or thorium or any combination of uranium and thorium in  
137 any physical or chemical form; including  
138 (b) Ores that contain, by weight, one-twentieth of 1 percent (0.05  
139 percent), or more, of uranium, thorium, or any combination of uranium  
140 and thorium. Source material does not include special nuclear  
141 material].  
142  
143 (7) "Specific license" means a license issued to a person to use,  
144 manufacture, produce, transfer, receive, acquire, own, or possess  
145 quantities of, or devices or equipment utilizing, radioactive materials  
146 occurring naturally or produced artificially.  
147 (7.5) "Special nuclear material" means  
148 (a) Plutonium, uranium-233, uranium enriched in the isotope 233 or in  
149 the isotope 235, and any other material that the Unites States nuclear  
150 regulatory commission, pursuant to the provisions of section 51 of the  
151 Atomic Energy Act of 1954, as amended, determines to be special  
152 nuclear material, but does not include source material; or  
153 (b) Any material artificially enriched by any of the foregoing but  
154 does not include source material].  
155  
156 (8) "State board" means the state board of health created in section 25-1-  
157 103.  
158 Source: L. 65: p. 716, § 1. C.R.S. 1963: § 66-26-1. L. 79: IP amended and  
159 (4) added, p. 1063, § 1, effective July 1; IP amended, p. 1070, § 3,  
160 effective January 1, 1980. L. 83: (1) R&RE and (1.5) added, p. 1084, §§ 1,  
161 2, effective July 1. L. 93: (2.7) added, p. 487, § 1, effective April 26;  
162 (2.5) added, p. 701, § 2, effective July 1. L. 94: (1.5) amended, p. 2791,  
163 § 525, effective July 1. L. 2010: Entire section amended, (HB 10-1149),  
164 ch. 282, p. 1309, § 1, effective May 26.  
165 Editor's note: (1) Subsection (2.7) was enacted as subsection (2.5) by  
166 Senate Bill 93-126, Session Laws of Colorado 1993, but was renumbered on  
167 revision for ease of location.  
168  
169 (2) Subsections (4), (5), and (6) were numbered as subsections (6), (4),  
170 and (5), respectively, in House Bill 10-1149 but were renumbered on  
171 revision to place defined terms in alphabetical order.  
172 Cross references: For the legislative declaration contained in the 1993  
173 act enacting subsection (2.7), see section 1 of chapter 184, Session Laws  
174 of Colorado 1993; for the legislative declaration contained in the 1994  
175 act enacting subsection (1.5), see section 1 of chapter 345, Session Laws  
176 of Colorado 1994.

**Comment [sft4]:** Language is deleted to align the definition with the national approach to regulation of "naturally occurring radioactive material" (NORM).  
  
THIS IS NOT AN NRC REQUIRED CHANGE.

**Comment [sft5]:** As required by NRC for compatibility, a definition for "Source material" is added, consistent with an equivalent definition in 10 CFR 20.1003  
  
THIS IS AN NRC REQUIRED CHANGE.  
  
Reference(s): NRC Letter dated 05/16/14; 10/24/11

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**Comment [sft6]:** As required by NRC for compatibility, a definition for "Special nuclear material" is added, consistent with an equivalent definition in 10 CFR 20.1003  
  
THIS IS AN NRC REQUIRED CHANGE.  
  
Reference(s): NRC Letter dated 05/16/14; 10/24/11  
  
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ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

25-11-101.5. Coordination of regulatory interpretations regarding in situ leach uranium mining.

The general assembly recognizes that the proper and orderly regulation of in situ leach mining, as defined in section 34-32-103, C.R.S., for uranium ore has aspects that may involve more than one regulatory agency of state government and that the statutes that each agency is responsible for administering may, due to the use of terms of art and other technical words, phrases, and definitions, hold the potential of being interpreted inconsistently or to be held in conflict with each other. It is the intent of the general assembly that, with regard to in situ leach mining for uranium ore, the relevant agencies coordinate to the maximum extent practicable to resolve any such conflicts or inconsistencies.

Source: L. 2010: Entire section added, (HB 10-1348), ch. 388, p. 1818, § 1, effective June 8.

Editor's note: Section 7 of chapter 388, Session Laws of Colorado 2010, provides that the act adding this section applies to applications currently filed or filed on or after June 8, 2010, and to operations currently permitted or permitted on or after June 8, 2010.

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 responsibilities within the state of Colorado relating to the protection of persons and property from the hazards of radioactive materials and other sources of 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 radiation.

(3) No such agreement entered into pursuant to the provisions of subsections (1) or (2) of this section shall transfer to, delegate to, or impose upon the department any power, authority, or responsibility that is not fully consistent with the provisions of this article.

Source: L. 65: p. 716, § 2. C.R.S. 1963: § 66-26-2. L. 2010: (1) and (2) amended, (HB 10-1149), ch. 282, p. 1310, § 2, effective May 26.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, § 1592

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231 25-11-103. Radiation control agency - powers and duties.

232  
233 (1) The department is designated as the radiation control agency of this  
234 state.

235 (2) Pursuant to rules adopted as provided in section 25-11-104, the  
236 department shall issue licenses pertaining to radioactive materials,  
237 prescribe and collect fees for such licenses, and require registration of  
238 other sources of radiation. No other agency or branch of this state has  
239 such power or authority.

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

245 (4) The department may institute training programs for the purpose of  
246 qualifying personnel to carry out the provisions of this part 1 and may  
247 make said personnel available for participation in any program of the  
248 federal government, other states, or interstate agencies in furtherance of  
249 the purposes of this part 1.

250 (5) In the event of an emergency relating to any source of radiation that  
251 endangers the public peace, health, or safety, the department has the  
252 authority to issue such orders for the protection of the public health and  
253 safety as may be appropriate, including orders to lay an embargo upon or  
254 impound radioactive materials and other sources of radiation in the  
255 possession of any person who is not equipped to observe or who fails to  
256 comply with this part 1 or any rules promulgated under this part 1.

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

265  
266 (7) (a) In order to provide for the concentration, storage, or permanent  
267 disposal of radioactive materials consistent with adequate protection of  
268 the public health and safety, the state, through the department, may  
269 acquire by gift, transfer from another state department or agency, or  
270 other transfer any and all lands, buildings, and grounds suitable for such  
271 purposes. Any such acquisition shall be subject to the provisions of  
272 paragraph (h) of this subsection (7).

273 (b) The state, through the department, may, by lease or license with  
274 private persons or corporations, provide for the operation of sites or  
275 facilities, for the purposes stated in paragraph (a) of this subsection  
276 (7), in, under, and upon lands and grounds acquired under said paragraph

277 (a) in accordance with rules and regulations established by the  
278 department; but no lease or license shall be authorized except with the  
279 prior approval of the state engineer. The department may permit the  
280 conduct thereon of other related activities involving radioactive  
281 materials not contrary to the public interest, health, and safety. Each  
282 such lease or license shall cover only one site or facility and shall  
283 provide for a term up to ninety-nine years, which shall be renewable. Each  
284 such lease or license shall provide for the payment to the state of a fee

285 based upon the quantity of radioactive material stored in the lands  
286 covered thereby. Such fee shall be established  
287 at such rate that interest on the sum of all fees reasonably anticipated  
288 as payable under any lease or license shall provide an annual amount equal  
289 to the anticipated reasonable costs to the state of such maintenance,  
290 monitoring, and other supervision of the lands and facilities covered by  
291 such lease or license, following the term thereof, as are required in the  
292 interest of the public health and safety. In arriving at the rate of the  
293 fee, the department shall consider the nature of the material to be  
294 stored, the storage space available, estimated future receipts, and  
295 estimated future expenses of maintenance, monitoring, and supervision.  
296 (c) Said lease shall include a payment in lieu of taxes which shall be  
297 paid over to local governmental units in compensation for loss of  
298 valuation for assessment. Said payment shall be adjusted annually to  
299 conform with current mill levies, assessment practices, and value of land  
300 and improvements.  
301 (d) All fees provided in this section shall be paid quarterly, as accrued,  
302 to the department, which shall receipt for the same and shall transmit  
303 such payment to the state treasurer and take his receipt therefor.  
304 (e) The department may require, as a condition to the issuance of any  
305 lease or license under paragraph (b) of this subsection (7), that the  
306 lessee or licensee give reasonable security for the payment of the amount  
307 of all fees reasonably anticipated during the full term of such lease or  
308 license, and the department may also require, as a condition to the  
309 issuance of any lease or license, that the lessee or licensee post a bond  
310 or other security under such regulation as the department may prescribe to  
311 cover any tortious act committed during the term of the lease or license.  
312  
313 (f) Prior to the issuance of any lease or license under paragraph (b) of  
314 this subsection (7), the department, at the expense of the applicant,  
315 shall hold a public hearing on the application, in the area of the  
316 proposed site or facility, after reasonable public notice.  
317 (g) The operation of any and all sites and appurtenant facilities  
318 established for the purposes of paragraph (a) of this subsection (7) shall  
319 be under the direct supervision of the department and shall be in  
320 accordance with rules and regulations adopted under section 25-11-104.  
321 (h) It is recognized by the general assembly that any site used for the  
322 concentration, disposal, or storage of radioactive material and the  
323 contents thereof will represent a continuing and perpetual responsibility  
324 involving the public health, safety, and general welfare and that  
325 ownership of said site and its contents must ultimately be reposed in a  
326 solvent government, without regard for the existence of any particular  
327 agency, instrumentality, department, division, or officer thereof. To this  
328 end and subject only to the terms of any lease or license issued under  
329 paragraph (b) of this subsection (7), all lands, buildings, and grounds  
330 acquired by the state under paragraph (a) of this subsection (7) which are  
331 used as sites for the concentration, storage, or disposal of radioactive  
332 materials shall be owned in fee simple absolute by the state and dedicated  
333 in perpetuity to such purposes, and all radioactive material received at  
334 such facility, upon permanent storage therein, shall become the property  
335 of the state and shall be in all respects administered, controlled, and  
336 disposed of, including transfer by sale, lease, loan, or otherwise, by the  
337 state, through the department, unless the general assembly shall designate

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338 another agency, instrumentality, department, or division of the state so  
339 to act.  
340 (8) The state board of health shall prescribe, revise periodically as  
341 appropriate, and provide for the collection of fees from any person for  
342 radiation control services provided by the department.  
343 Source: L. 65: p. 717, § 3. C.R.S. 1963: § 66-26-3. L. 67: p. 763, § 1. L.  
344 75: (6) amended, p. 884, § 1, effective July 14. L. 79: (2) to (6) amended  
345 and (8) added, p. 1063, § 2, effective July 1; (4) to (6) amended, p.  
346 1070, § 4, effective January 1, 1980. L. 2010: (2), (3), (5), and (6)  
347 amended, (HB 10-1149), ch. 282, p. 1310, § 3, effective May 26.

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348 ANNOTATION

349 Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, § 1592.

350  
351 County exercises a separate power from that of the department of public  
352 health and environment in the issuance of licenses under this section, and  
353 therefore has standing to challenge the department's licensing decisions.  
354 Adams Bd. of County Comm'rs v. Colo. Dept. of Pub. Health & Env't, 218  
355 P.3d 336 (Colo. 2009).

356 25-11-104. Rules to be adopted - fees - fund created.

357  
358 (1) (a) The state board shall formulate, adopt, and promulgate rules as  
359 provided in subsections (2) and (2.5) of this section that cover subject  
360 matter relative to radiation machines and radioactive materials, including  
361 naturally occurring radioactive materials and other sources of radiation.  
362 The subject matter of the rules shall include: Licenses and registration;  
363 records; permissible levels of exposure; notification and reports of  
364 accidents; technical qualifications of personnel; technical qualifications  
365 of mammographers; handling, transportation, and storage; waste disposal;  
366 posting and labeling of hazardous sources and areas; surveys; monitoring;  
367 security of materials; and financial assurance warranties.

Comment [sft7]: The phrase "security of materials" is added for consistency with NRC security requirements  
THIS IS NOT AN NRC REQUIRED CHANGE.

368 ~~(b) The state board may adopt rules concerning the disposal of naturally  
369 occurring radioactive materials at any time after the promulgation by the  
370 federal environmental protection agency or its successor of rules for the  
371 disposal of naturally occurring radioactive materials.~~

Comment [sft8]: Obsolete language is deleted, since EPA has failed to provide regulations, and may not have the authority to do so.  
THIS IS NOT AN NRC REQUIRED CHANGE.

372  
373 (e) Notwithstanding any provision of section 25-11-103 (7) (h), it is not  
374 necessary that a governmental entity own any site that is used for the  
375 concentration, storage, or disposal of radioactive material ~~that at the  
376 time of its acceptance for concentration, storage, or disposal is owned or  
377 generated by the United States department of energy and is defined as low-  
378 level radioactive waste under the federal "Low-level Radioactive Waste  
379 Policy Act Amendments of  
380 1986", as amended, if~~ the owner of the site complies with rules

Comment [JJ9]: The proposed change removes the limitation on non-governmental ownership of sites while retaining the necessary/required protections.  
THIS IS NOT AN NRC REQUIRED CHANGE.

381 promulgated by the board in accordance with this section. The rules shall  
382 ensure the long-term protection of the public health and safety and may  
383 include financial assurance warranties pursuant to this part 1, deed  
384 annotations and restrictions, easement provisions, restrictive covenants,  
385 and adequate markers to warn of the presence of radioactive materials.

Comment [JJ10]: Language is added to reaffirm alignment with NRC requirements through the 2740 Agreement and use of Suggested State Regulations where applicable.  
THIS IS NOT AN NRC REQUIRED CHANGE.

386 (2) Rules promulgated under this section shall be consistent with U.S.  
387 Nuclear Regulatory Commission requirements necessary to maintain Agreement  
388 State status and final regulations proposed by the conference of radiation

392 control program directors, inc., or its successor, under the title,  
393 "Suggested State Regulations for Control of Radiation"; except that, if  
394 the state board concludes on the basis of detailed findings that a  
395 substantial deviation from any of the suggested state regulations is  
396 warranted and that a substitute rule or no rule would effectively permit  
397 maximum utilization of sources of radiation consistent with the health and  
398 safety of all persons who might otherwise become exposed to the radiation,  
399 the state board need not maintain the suggested state regulation or may  
400 promulgate a substitute rule as the case may be.  
401 (2.5) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4,  
402 effective May 26, 2010.)  
403 (3) The rules adopted pursuant to this part 1 shall never be construed to  
404 limit the kind or amount of radiation that may be intentionally applied to  
405 a person for diagnostic or therapeutic purposes by or under the direction  
406 of a duly licensed practitioner of the healing arts.  
407 (4) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4,  
408 effective May 26, 2010.)  
409 (5) In adopting, amending, or repealing rules under this section, the  
410 board shall comply with article 4 of title 24, C.R.S.  
411 (6) (a) The state board shall promulgate a fee schedule, in accordance  
412 with section 24-4-103, C.R.S., for radiation control services provided by  
413 the department. Radiation control services for which fees may be  
414 established include application processing for qualified inspectors,  
415 qualified experts, and service companies as defined by the state board,  
416 which fees shall be paid by the applicants or service companies; issuance  
417 of categories of specific licenses to accord with categories established  
418 by the nuclear regulatory commission and which shall include licenses for  
419 special nuclear material, source material, by-product material, well  
420 logging and surveys and tracer studies, and for human use; and inspections  
421 of licensees as authorized by section 25-11-103 (6). Licenses and fees  
422 shall, where appropriate, be in accordance with policies and priorities of  
423 the nuclear regulatory commission.  
424 (b) The state board shall set fees that provide sufficient revenues to  
425 reimburse the state for the actual direct and indirect costs of the  
426 radiation control services specified in paragraph (a) of this subsection  
427 (6). In so doing, the state board shall take into account any special  
428 arrangements between the state and the licensee, another state, or a  
429 federal agency whereby the cost of the service is otherwise recovered.  
430 (c) All fees collected pursuant to this subsection (6) shall be  
431 transmitted to the state treasurer, who shall credit the same to the  
432 radiation control fund, which fund is hereby created. Moneys credited to  
433 the radiation control fund, in amounts determined annually by the general  
434 assembly by appropriation, shall be expended for radiation control  
435 services as provided in this subsection  
436 (6).  
437 (7) The state board shall promulgate rules as necessary to implement  
438 section 25-11-107 (5).  
439 (8) (a) The state board shall adopt rules requiring that all machine  
440 sources of radiation be inspected and certified by qualified inspectors as  
441 safe for the intended uses consistent with 42 U.S.C. sec. 263b and in  
442 compliance with the specifications of the state board and the equipment  
443 manufacturer. Rules shall include minimum specifications for radiation  
444 machines, minimum standards for the qualifications of individuals  
445 authorized to inspect and certify radiation machines, and procedures for

446 inspection of radiation machines. If a qualified inspector determines that  
447 a radiation machine fails to meet the required specifications, the  
448 inspector shall notify the owner or operator immediately and shall notify  
449 the department within three days after the determination. A radiation  
450 machine that fails to meet the required specifications and is determined  
451 by a qualified inspector to be unsafe for human use shall not thereafter  
452 be used for human use until subsequent certification, and the qualified  
453 inspector shall affix an official noncertification sticker issued by the  
454 department indicating that the machine is not authorized for human use. A  
455 certification or noncertification sticker shall be affixed on each  
456 radiation machine in a location conspicuous to machine operators and to  
457 persons on whom the machine is used.

458 (a.5) and (b) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p.  
459 1311, § 4, effective May 26, 2010.)

460 (c) In establishing or revising specifications for each type of machine  
461 that is a source of radiation, the standards for approval of qualified  
462 inspectors, and the procedures for making inspections, the department  
463 shall consult with manufacturers of radiation equipment, health care  
464 providers and operators who use the equipment in diagnostic and  
465 therapeutic treatment of humans, and qualified inspectors and individuals.

466 (d) The general assembly hereby finds that the setting of minimum  
467 specifications for radiation machines and the establishment of minimum  
468 standards for qualified inspectors of those machines are matters of  
469 statewide concern. Therefore, no other state agency, political  
470 subdivision, or local government shall establish any other specifications  
471 for radiation machines or standards for radiation machine inspectors, or  
472 impose any fees therefor.

473 Source: L. 65: p. 718, § 4. C.R.S. 1963: § 66-26-4. L. 79: (2) and (3)  
474 amended and (6) added, p. 1064, § 3, effective July 1; (3) amended, p.  
475 1071, § 5, effective January 1, 1980. L. 83: (6) (c) R&RE, p. 1087, § 1,  
476 effective July 1; (7) added, p. 1084, § 3, effective July 1. L. 88: (6) (c)  
477 amended and (8) added, p. 1045, § 1, effective July 1. L. 93: (1) amended,  
478 p. 487, § 2, effective April 26; (1) amended and (2.5) and (8) (a.5) added,  
479 p. 701, §§ 3, 4, effective July 1. L. 94: (1) (b)  
480 amended, p. 731, § 1, effective April 19. L. 97: (1) (a) amended and (1) (c)  
481 added, p. 1632, § 1, effective August 15. L. 98: IP(8) (a) and (8) (a) (III)  
482 amended, p. 1337, § 54, effective June 1. L. 2002: (8) (a) (II) and  
483 (8) (a) (III) amended, p. 533, § 1, effective May 24. L. 2003: IP(8) (a)  
484 amended, p. 711, § 43, effective July 1. L. 2007: IP(8) (a) amended, p.  
485 552, § 1, effective April 16. L. 2010: Entire section amended, (HB 10-  
486 1149), ch. 282, p. 1311, § 4, effective May 26.  
487 Editor's note: Amendments to subsection (1) by Senate Bill 93-126 and  
488 House Bill 93-1185 were harmonized.

490 Cross references: For the legislative declaration contained in the 1993  
491 act amending subsection (1) and enacting subsections (2.5) and (8) (a.5)  
492 see section 1 of chapter 184, Session Laws of Colorado 1993.

493 ANNOTATION

494  
495  
496 Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, § 1635. Law reviews.  
497 For article, "Regulation of Spills of Hazardous Materials", see 12 Colo.  
498 Law. 277 (1983).  
499

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500 25-11-105. Radiation advisory committee.

501

502 (1) The governor shall appoint a radiation advisory committee of nine  
503 members, no more than four of whom shall represent any one political party  
504 and three of whom shall represent industry, three the healing arts, and  
505 three the public and private institutions of higher education. Members of  
506 the committee shall serve at the discretion of the governor and shall be  
507 reimbursed for necessary and actual expenses incurred in attendance at  
508 meetings or for authorized business of the board. The committee shall  
509 furnish to the department such technical advice as may be desirable or  
510 required on matters relating to the radiation control program.

511

512 (2) Repealed.

513 Source: L. 65: p. 719, § 5. C.R.S. 1963: § 66-26-5. L. 86: Entire section  
514 amended, p. 420, § 43, effective March 26. L. 89: (2) repealed, p. 1147, §  
515 3, effective April 6.

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516

517 25-11-105.5. Mammography quality assurance advisory committee - repeal.  
518 (Repealed)

519

520 Source: L. 93: Entire section added, p. 702, § 5, effective July 1.

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521

522 Editor's note: Subsection (2) provided for the repeal of this section,  
523 effective July 1, 1998. (See L. 93, p. 702.)

524

525 25-11-106. Injunction proceedings.

526

527 If, in the judgment of the department, any person has engaged in or is  
528 about to engage in an act or practice that constitutes a violation of this  
529 part 1 or of any license, registration, rule, or order issued under this  
530 part 1, the attorney general shall, at the request of the department,  
531 apply to the district court for an order enjoining the act or practice or  
532 for an order directing compliance with this part 1 and all rules and  
533 orders and the terms and conditions of a license or registration issued  
534 under this part 1.

535

536 Source: L. 65: p. 719, § 6. C.R.S. 1963: § 66-26-6. L. 79: Entire section  
537 amended, p. 1065, § 4, effective July 1; entire section amended, p. 1071,  
538 § 6, effective January 1, 1980. L. 2010: Entire section amended, (HB 10-  
539 1149), ch. 282, p. 1315, § 5, effective May 26.

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541 ANNOTATION

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543 Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 2046, 2047.

544

545 Private parties who are adversely affected or aggrieved have standing to  
546 seek judicial review of the department's action. Nat'l Wildlife Fed'n v.  
547 Cotter Corp., 665 P.2d 598 (Colo. App. 1983).

548

549 25-11-107. Prohibited acts - violations - penalties - rules - cease-and-  
550 desist orders.

551

552 (1) Except as allowed by rule of the state board:

553 (a) No person shall acquire, own, possess, or use any radioactive  
554 material occurring naturally or produced artificially without having been  
555 granted a license therefor from the department; or

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

558 (2) Except as allowed by rule of the state board, no person shall  
559 knowingly use, manufacture, produce, transport, transfer, receive, send,  
560 acquire, own, or possess any source of radiation unless such person is  
561 licensed by or registered with the department. The exceptions promulgated  
562 by the state board shall include use of domestic television receivers,  
563 computer monitors, household microwave ovens, radiant heat devices,  
564 cellular telephones, incandescent gas mantles, and vacuum tubes.

565 (2.5) No person shall knowingly use any radiation machine to treat or  
566 diagnose any disease or conditions of the human body if the radiation  
567 machine is not certified for such treatment or diagnosis as provided in  
568 section 25-11-104 (8).

569 (3) Any person who violates the provisions of subsection (1), (2), or  
570 (2.5) of this section is guilty of a misdemeanor and, upon conviction  
571 thereof, shall be punished by a fine of not less than one hundred dollars  
572 nor more than five hundred dollars, or by imprisonment in the county jail  
573 for not less than thirty days nor more than ninety days, or by both such  
574 fine and imprisonment.

575 (4) If a person does not pay the fee for radiation control services, the  
576 department may request the attorney general to commence a civil action  
577 against the person. If the court finds in such action that such person has  
578 not paid the fee for radiation control services, the court shall require  
579 such person to pay the fee together with a penalty not greater than twice  
580 the amount of the fee or one thousand dollars, whichever is greater. All  
581 civil penalties collected pursuant to this subsection (4) shall be  
582 transmitted to the state treasurer, who shall credit them to the general  
583 fund.

584 (5) (a) Any person who violates subsection (1), (2), or (2.5) of this  
585 section, any licensing or registration provision, any rule or order issued  
586 under this part 1, or any term, condition, or limitation of any license or  
587 registration certificate issued pursuant to this part 1 is subject to an  
588 administrative penalty not to exceed fifteen thousand dollars per day for  
589 each violation.

590 (b) If the department has reason to believe, based upon facts available to  
591 it, that a person has committed any of the violations designated in  
592 paragraph (a) of this subsection (5), it shall send the person, within a  
593 reasonable time, a written notice of the violation specifying:

594 (I) The factual basis of each act or omission with which the person is  
595 charged; and

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

598 (c) (I) The department shall send the notice required by paragraph (b) of  
599 this subsection (5) by certified or registered mail, return receipt  
600 requested, to the last-known address of the alleged violator, or the  
601 department shall personally serve the notice of the violation upon the  
602 alleged violator or the alleged violator's agent.

603 (II) The alleged violator shall have thirty days following the receipt of  
604 the notice to submit a written response containing data, views, and  
605 arguments concerning the alleged violation and potential corrective  
606 measures.

607 (III) In addition, the alleged violator may request an informal conference  
608 with department personnel to discuss the notice of violation required by  
609 paragraph (b) of this subsection (5). The alleged violator shall request  
610 the informal conference within fifteen days after receiving the notice,  
611 and the conference shall be held within the thirty days allowed for a  
612 written response.

613 (IV) After consideration of any written response and informal conference,  
614 the department shall issue a letter, within thirty days after the date of  
615 the informal conference or the receipt of a written response, whichever is  
616 later, affirming or dismissing the violation. Any remaining corrective  
617 measures that are necessary, and any administrative penalty determined to  
618 be appropriate, will be incorporated into an administrative order.

619 (c.3) In determining the amount of any administrative penalty, the  
620 department shall consider the factors in subparagraphs (I) to (X) of this  
621 paragraph (c.3). The factors contained in subparagraphs (VII), (VIII), and  
622 (IX) of this paragraph (c.3) are mitigating factors and may be applied,  
623 with other factors, to reduce any administrative penalty. Such factors  
624 are:

625 (I) The seriousness of the violation;

626 (II) Whether the violation was intentional, reckless, or negligent;

627 (III) The impact on, or threat to, the public health or the environment as  
628 a result of the violation;

629 (IV) The degree of recalcitrance, if any, on the part of the violator;

630 (V) Whether the violator is a recidivist;

631 (VI) The economic benefit realized by the violator as a result of the  
632 violation;

633 (VII) The violator's voluntary, timely, and complete disclosure of the  
634 violation, if prior to the department's knowledge of the violation, and if  
635 all reports required pursuant to state environmental control laws have  
636 been submitted as required;

637 (VIII) The violator's full and prompt cooperation with the department  
638 following disclosure or discovery of a violation, including, when  
639 appropriate, entering into and implementing, in good faith, a legally  
640 enforceable agreement with the department to undertake compliance and  
641 remediation efforts;

642 (IX) The existence of a comprehensive regulatory compliance program or an  
643 audit program that the violator adopted in good faith and in a timely  
644 manner, which program includes measures determined by the department to be  
645 sufficient to identify and prevent future noncompliance; and

646 (X) Any other aggravating or mitigating circumstance.

647 (c.5) In accordance with article 4 of title 24, C.R.S., and based upon the  
648 factors enumerated in paragraph (c.3) of this subsection (5), the state  
649 board shall adopt rules for determining administrative penalties imposed  
650 under this subsection (5).

651 (c.7) The department may compromise, mitigate, or remit an administrative  
652 penalty imposed pursuant to this subsection (5). The department may enter  
653 into a settlement agreement regarding any penalty or claim resolved under  
654 this part 1. The settlement agreement may include the payment or  
655 contribution of moneys to state or local agencies for other  
656 environmentally beneficial purposes.

657 (d) If the circumstances warrant, the department shall issue an order  
658 containing the elements of both the notice of violation specified in  
659 paragraph (b) of this subsection (5) and the letter described in  
660 subparagraph (IV) of paragraph (c) of this subsection (5).

661 (e) (I) The letter issued pursuant to subparagraph (IV) of paragraph (c)  
662 of this subsection (5) and the order issued pursuant to paragraph (d) of  
663 this subsection (5) shall notify the alleged violator of the right to  
664 request a hearing within thirty days, which hearing shall be held in  
665 accordance with section 24-4-105, C.R.S., to determine any of the  
666 following:  
667 (A) Whether the alleged violation exists or did exist;  
668 (B) The reasonableness of the time set for abatement; and  
669 (C) Whether the administrative penalty is reasonable in light of the  
670 statutory criteria on which it is based.  
671 (II) The alleged violator shall address each alleged violation in the  
672 request for the hearing and shall specify which of the alleged violations  
673 the alleged violator is appealing. An allegation not addressed in the  
674 request for the hearing shall be deemed admitted.  
675 (III) No person engaged in conducting the hearing or participating in a  
676 decision or an initial decision shall be responsible for or subject to the  
677 supervision or direction of any department employee engaged in the  
678 performance of an investigatory or prosecuting function for the  
679 department.  
680 (IV) The final action of the department is subject to judicial review  
681 pursuant to section 24-4-106, C.R.S.  
682 (f) and (g) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p.  
683 1315, § 6, effective May 26, 2010.)  
684 (h) At the request of the department, the attorney general may institute  
685 a civil action to collect an administrative penalty imposed pursuant to  
686 this subsection (5).  
687 (i) Except as specified in paragraph (c.3) of this subsection (5), all  
688 administrative penalties collected pursuant to this subsection (5) shall  
689 be transmitted to the state treasurer, who shall credit them to the  
690 general fund.  
691 (j) For any site or facility licensed under part 2 of this article  
692 determined by the department to have caused a release to the groundwater  
693 that exceeds the basic standards for groundwater as established by the  
694 water quality control commission, until remediation has been completed,  
695 the licensee shall provide annual written notice of the status of the  
696 release and any remediation activities associated with the release, by  
697 certified or registered mail, return receipt requested, to the current  
698 address for each registered groundwater well within one mile of the  
699 release as identified in the corrective action monitoring program. UNDER NO  
700 CIRCUMSTANCES SHALL REMEDIATION BE DEEMED COMPLETE UNTIL ALL GROUNDWATER WELLS AFFECTED BY  
701 ANY RELEASE ASSOCIATED WITH THE SITE OR FACILITY ARE RESTORED TO AT LEAST THE NUMERIC  
702 GROUNDWATER STANDARDS AS ESTABLISHED BY THE WATER QUALITY CONTROL COMMISSION (AS  
703 STANDARDS ARE DEFINED IN 5 CCR 1002-41, C.R.S.), OR 10 CFR 40.192 THAT  
704 APPLY TO THE HISTORIC USES OF THE WELLS. THE LICENSEE SHALL REMEDIATE ANY RELEASE  
705 AFFECTING GROUNDWATER WELLS IN THE MOST EXPEDITED MANNER REASONABLY POSSIBLE USING BEST  
706 AVAILABLE ACTIVE RESTORATION AND GROUNDWATER MONITORING TECHNOLOGIES.  
707 (k) FOR ANY SITE OR FACILITY LICENSED UNDER PART 2 OF THIS ARTICLE, IN ADDITION TO ANY  
708 REPORTING REQUIREMENTS PROVIDED IN THE LICENSE OR RULES, THE LICENSEE SHALL PROVIDE NOTICE  
709 TO THE DEPARTMENT AS SOON AS PRACTICABLE UPON DISCOVERY OF ANY SPILL OR RELEASE INVOLVING  
710 TOXIC OR RADIOACTIVE MATERIALS AND SHALL PROVIDE AN INITIAL WRITTEN REPORT WITHIN SEVEN  
711 DAYS AFTER ANY SUCH DISCOVERY. THE DEPARTMENT SHALL POST ALL SUCH WRITTEN REPORTS ON THE  
712 DEPARTMENT'S WEB SITE AS SOON AS PRACTICABLE, AND IN NO CASE LATER THAN SEVEN DAYS AFTER  
713 RECEIPT BY THE DEPARTMENT.

**Comment [JJ11]:** This paragraph (~lines 700-713, excluding most of line 703) were added during the 2014 legislative session under SB 14-192.

**Comment [JJ12]:** This provision (in yellow highlight) and small caps font was added during the 2014 legislative session through SB 14-192. These changes resulted in comments and a requested change by NRC.

THIS WAS NOT AN NRC REQUIRED CHANGE.

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**Comment [JJ13]:** The added reference to 5 CCR...and 10 CFR... is added in order to address the (05/29/14) NRC comment pertaining to this provision added under SB 14-192. NRC noted that the provision as originally written was unclear as to its intent. NRC requested that the provision be deleted or modified for clarification. The department is proposing modification of the original language as shown.

THIS IS AN NRC REQUIRED CHANGE.

Reference(s): NRC Letter dated 05/29/14

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714 (6) Any qualified inspector who incorrectly certifies a machine that is a  
715 source of radiation as meeting the applicable specifications as required  
716 in section 25-11-104 (8) is subject to disciplinary action in accordance  
717 with section 24-4-104, C.R.S.

718 (7) If the department has reasonable cause to believe that a violation of  
719 this part 1 or of a license, registration, rule, or order issued under  
720 this part 1 has occurred or is occurring, the department may issue a  
721 cease-and-desist order setting forth the provision alleged to be violated,  
722 the facts alleged to constitute the violation, and the time by which the  
723 violation must cease.

724 Except for emergency orders issued to protect the public health or the  
725 environment, for which a person to whom the emergency order has been  
726 issued may request an immediate hearing pursuant to section 24-4-105 (12),  
727 C.R.S., a person to whom a cease-and-desist order has been issued may  
728 petition the district court for the district in which the violation is  
729 alleged to have occurred or be occurring for a stay of the order. The  
730 court shall grant the request to stay if the person demonstrates that  
731 immediate and irreparable injury will result if the stay is not granted  
732 and that granting the stay will not result in serious harm to the public  
733 health, safety, or welfare or the environment.

734 Source: L. 65: p. 719, § 7. C.R.S. 1963: § 66-26-7. L. 67: p. 764, § 2. L.  
735 79: (4) added, p. 1065, § 5, effective July 1. L. 83: (5) added, p. 1084,  
736 § 4, effective July 1. L. 88: (2.5) and (6) added and (3) amended, p.  
737 1047, § 2, effective July 1. L. 2010: (1), (2), (2.5), (4), (5), and (6)  
738 amended and (7) added, (HB 10-1149), ch. 282, p. 1315, § 6, effective May  
739 26; (5)(j) added, (HB 10-1348), ch. 388, p. 1818, § 2, effective June 8.

741 Editor's note: (1) Amendments to subsection (5) by House Bill 10-1149 and  
742 House Bill 10-1348 were harmonized.

743  
744 (2) Section 7 of chapter 388, Session Laws of Colorado 2010, provides  
745 that the act adding  
746 subsection (5)(j) applies to applications currently filed or filed on or  
747 after June 8, 2010, and to operations currently permitted or permitted on  
748 or after June 8, 2010.

749  
750 ANNOTATION

751  
752 Am. Jur.2d. See 61B Am. Jur.2d, Pollution Control, § 80.

753  
754 25-11-108. Exemptions.

755  
756 (1) The provisions of sections 25-11-103 and 25-11-104 shall not apply to  
757 the following sources or conditions:

758 (a) Electrical or other equipment or material that is not intended  
759 primarily to produce radiation and that, by nature of design, does not  
760 produce radiation at the point of nearest approach at a weekly rate higher  
761 than one-tenth the appropriate limit generally accepted by the medical  
762 profession for any critical organ exposed. The production testing or  
763 production servicing of such equipment shall not be exempt.

764 (b) Radiation machines during process of manufacture or in storage or  
765 transit. The production testing or production servicing of such machines  
766 shall not be exempt.

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767 ~~(e) Any radioactive material while being transported in conformity with~~  
768 ~~regulations adopted by the atomic energy commission, or any successor~~  
769 ~~thereto, or the surface transportation board and specifically applicable~~  
770 ~~to the transportation of such radioactive materials;~~

771 ~~(e)~~ Sound and radio waves and visible infrared and ultraviolet light.  
772 (2) No exemptions under this section are granted for those quantities or  
773 types of activities which do not comply with the established rules and  
774 regulations promulgated by the atomic energy commission or any successor  
775 thereto.

776 (3) Section 25-11-107 shall not apply to unmined minerals containing  
777 radioactive materials including such as are involved in mining operations.

778 (4) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1320, § 7,  
779 effective May 26, 2010.)

780 (5) Any person may file application for exemption under this section for  
781 activities including, but not limited to, licensed sources of radiation  
782 for educational or noncommercial public displays or scientific  
783 collections.

784 Source: L. 65: p. 719, § 8. C.R.S. 1963: § 66-26-8. L. 79: (3) amended and  
785 (4) and (5) added, p. 1066, § 6, effective July 1. L. 2001: (1)(c)

786 amended, p. 1275, § 38, effective June 5. L. 2010: (3) and (4) amended,  
787 (HB 10-1149), ch. 282, p. 1320, § 7, effective May 26.

788  
789 ~~25-11-109. Provisional license.~~

790  
791  
792 ~~In the event the department has failed to issue or has denied a request~~  
793 ~~for a license, or an amendment thereto, as authorized by this article,~~  
794 ~~within thirty days of the date of receipt by the department of a completed~~  
795 ~~application made on the appropriate forms designated by the department to~~  
796 ~~a hospital as licensed or certified pursuant to section 25-1.5-103 (1) (a)~~  
797 ~~(I) and (1)~~

798  
799  
800  
801 ~~(a) (II), a provisional license shall be deemed to have been issued by the~~  
802 ~~department. In the case of a denial, the department shall provide the~~  
803 ~~applicant in writing with information and substantive reasons in~~  
804 ~~explanation thereof. The provisional license shall be in effect for a~~  
805 ~~period of ninety days and may be continued for one additional ninety day~~  
806 ~~period. Such provisional license shall apply only to licensed or certified~~  
807 ~~hospitals when the purpose is to acquire, possess, and use radioactive~~  
808 ~~material for diagnostic or therapeutic human use.~~

809  
810 Source: L. 79: Entire section added, p. 1066, § 7, effective July 1. L.  
811 2003: Entire section amended, p. 711, § 44, effective July 1.

812  
813  
814 25-11-110. Financial assurance warranties - definitions.

815  
816 (1) As a part of any license, certificate, or authorization issued under  
817 this article and pursuant to regulations promulgated by the state board of  
818 health, the department may require financial assurance warranties.  
819 (2) As used in this section, unless the context otherwise requires:

**Comment [sft14]:** This removes obsolete language. The Colorado Rules and Regulations Pertaining to Radiation Control, Part 17 contains transportation requirements. As specified in regulatory Part 17, that rule is used in conjunction with the rules of the U.S. Department of Transportation in 49 CFR and the NRC at 10 CFR Part 71.

THIS IS NOT AN NRC REQUIRED CHANGE.

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**Comment [sft15]:** As required by NRC for compatibility, the obsolete language of this entire section (25-11-109) pertaining to provisional licenses is deleted.

While the legislation has permitted such provisional license issuance, the Department has never issued such licenses.

THIS IS AN NRC REQUIRED CHANGE.

Reference(s): NRC Letter dated 05/16/14; 10/24/11

820 (a) "Decommissioning warranty" means a financial assurance arrangement  
821 provided by a person licensed, certified, or authorized pursuant to this  
822 article that is required to ensure decommissioning and decontamination of  
823 a facility and proper disposal of radioactive materials to meet the  
824 requirements of this part 1, the regulations promulgated pursuant thereto,  
825 or the license.  
826 (b) "Financial assurance warranty" means a decommissioning warranty or a  
827 long-term care warranty.  
828 (c) "Indirect costs" means those costs established annually in accordance  
829 with federal circular A-87, or any applicable successor document.  
830 (d) "Long-term care warranty" means a financial assurance arrangement  
831 provided by a person licensed, certified, or authorized pursuant to this  
832 article that is required to cover the costs incurred by the department in  
833 conducting surveillance of a disposal site in perpetuity subsequent to the  
834 termination of the radioactive materials license for that site.  
835 (3) (a) Financial assurance warranties may be provided by the licensee or  
836 by a third party or combination of persons.  
837 (b) Any financial assurance warranty required pursuant to this section  
838 shall be in a form prescribed by the state board of health by regulation.  
839 (c) The department may refuse to accept any financial assurance warranty  
840 if:  
841 (I) The form, content, or terms of the warranty are other than as  
842 prescribed by the state board of health by regulation;  
843 (II) The financial institution providing the financial assurance  
844 instrument is an off-shore, nondomestic institution or does not have a  
845 registered agent in the state of Colorado;  
846 (III) The value of the financial assurance warranty offered is dependent  
847 upon the success, profitability, or continued operation of the licensed  
848 business or operation; or  
849 (IV) The department determines that the financial assurance warranty  
850 cannot be converted to cash within thirty days after forfeiture.  
851 (4) (a) The department shall determine the amount of financial assurance  
852 warranties required, taking into account the nature, extent, and duration  
853 of the licensed activities and the magnitude, type, and estimated cost for  
854 proper disposal of radioactive materials, decontamination, and  
855 decommissioning or long-term care.  
856 (b) The amount of a decommissioning warranty shall be sufficient to enable  
857 the department to dispose of radioactive materials and complete  
858 decontamination and decommissioning of affected buildings, fixtures,  
859 equipment, personal property, and lands if necessary.  
860 (c) The amount of the decommissioning warranty shall be based upon cost  
861 estimates of the total costs that would be incurred if an independent  
862 contractor were hired to perform the decommissioning, decontamination, and  
863 disposal work, and may include reasonable administrative costs, including  
864 indirect costs, incurred by the department in conducting or overseeing  
865 disposal, decontamination, and decommissioning and to cover the  
866 department's reasonable attorney costs that may be incurred in  
867 successfully revoking, foreclosing, or realizing the decommissioning  
868 warranty as authorized in section 25-11-111 (4).  
869 (d) The amount of a long-term care warranty shall be enough that, with an  
870 assumed ~~six-one~~ six-one percent annual real interest rate, the annual interest  
871 earnings will be sufficient to cover the annual costs of site surveillance  
872 by the department, including reasonable administrative costs incurred by

**Comment [sft16]:** As required by NRC for compatibility, the assumed annual real interest rate for a long-term care warranty (following closure of a site) shall be reduced from six percent to one percent. The existing six percent rate is less restrictive than that found in federal rule and will underestimate the amount of funding needed for long term surveillance following closure of a site. The one percent rate is consistent with that of 10 CFR Part 40, Appendix A, Criterion 10.

THIS IS AN NRC REQUIRED CHANGE.

Reference(s): NRC Letters dated 05/16/14; 01/14/14; 6/28/12; 10/24/11.

873 the department, in perpetuity, subsequent to the termination of the  
874 radioactive materials license for that site.  
875 (e) If the state of Colorado is the long-term caretaker for the disposal  
876 facility pursuant to section 25-11-103 (7) (h), long-term care moneys  
877 shall be transferred, pursuant to section 25-11-113 (3), to the long-term  
878 care fund, created in section 25-11-113, prior to license termination and  
879 shall be used by the department to perform site surveillance and to cover  
880 the department's administrative and reasonable attorney costs.  
881 (f) The department is authorized to transfer a long-term care warranty to  
882 the United States department of energy or another federal agency if that  
883 agency will be the long-term caretaker for the disposal facility.  
884 (5) (a) The department shall take reasonable measures to assure the  
885 continued adequacy of any financial assurance warranty and may annually or  
886 for good cause increase or decrease the amount of required financial  
887 assurance warranties or require proof of the value of existing warranties.  
888 (b) The licensee shall submit an annual report to the department  
889 demonstrating proof of the value of existing warranties. The annual report  
890 shall describe any changes in operations, estimated costs, or any other  
891 circumstances that may affect the amount of the required financial  
892 assurance warranties, including any increased or decreased costs  
893 attributable to inflation.  
894 (c) Public notice of the submittal of the licensee's annual report shall  
895 be posted on the department's web site and published by the operator in  
896 the local paper of general circulation. Any person may submit written  
897 comments to the department concerning the adequacy of any financial  
898 assurance warranties. The act of submitting such comments does not provide  
899 a right to administrative appeal concerning the financial assurance  
900 warranties.  
901 (d) The licensee shall have sixty days after the date of written  
902 notification by the department of a required adjustment to establish a  
903 warranty fulfilling all new requirements unless granted an extension by  
904 the department. If the licensee disputes the amount of the required  
905 financial assurance warranties, the licensee may request a hearing to be  
906 conducted in accordance with section 24-4-105, C.R.S.  
907 (e) If the licensee requests a hearing, no new ore, alternate feed,  
908 equivalent feed or other radioactive material, classified material, as  
909 those terms are defined in section 25-11-201, may be brought on site  
910 for processing or disposal and no classified new radioactive material may  
911 be processed until the licensee's dispute over the financial assurance  
912 warranty is resolved, unless the licensee posts a bond in a form approved  
913 by the department equal to the amount in dispute.  
914 (6) (a) Financial assurance warranties shall be maintained in good  
915 standing until the department has authorized in writing the discontinuance  
916 of such warranties.  
917 (b) (I) If a financial warranty is provided by a corporate surety, the  
918 department shall require the surety to be A.M. Best rated "A-V" or better  
919 and listed on the United States treasury's federal register of companies  
920 holding certificates of authority as acceptable sureties on federal bonds;  
921 except that, the corporate surety shall notify the department and the  
922 licensee, in writing, as soon as practicable in the event its A.M. Best,  
923 or equivalent, rating deteriorates below an "A-V" rating or such corporate  
924 surety is removed from the department of the treasury's list of companies  
925 holding certificates of authority as acceptable sureties on federal bonds.

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Comment [sft17]: As requested by NRC for compatibility, the term "classified material" is removed and/or modified throughout this draft document. Per NRC, the term "classified material" groups 11e.(2) material with other materials that do not need to meet the additional requirements for 11e.(2) byproduct material under the Uranium Mill Tailings Radiation Control Act (UMTRCA) and 10 CFR Part 40. The term classified material is not used in the NRC's national regulatory scheme.

The proposed/modified language is intended to provide an equivalent level of requirements, while avoiding conflict with NRC definitions and requirements.

THIS IS AN NRC REQUIRED CHANGE.

Reference(s): NRC Letter dated 10/24/11.

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926 (II) The board may promulgate rules and regulations concerning other  
927 circumstances that may constitute an impairment of the warranties  
928 referenced in this article that would require reasonable notice to the  
929 department by the warrantor.

930  
931 (III) A financial warrantor shall notify the department not less than  
932 ninety days prior to any cancellation, termination, or revocation of the  
933 warranty, unless the department has authorized in writing the  
934 discontinuance of such warranties.

935 Source: L. 97: Entire section added, p. 1633, § 2, effective August 15. L.  
936 2010: (5) amended, (HB 10-1348), ch. 388, p. 1819, § 3, effective June 8.

937  
938 Editor's note: Section 7 of chapter 388, Session Laws of Colorado 2010,  
939 provides that the act amending subsection (5) applies to applications  
940 currently filed or filed on or after June 8, 2010, and to operations  
941 currently permitted or permitted on or after June 8, 2010.

942  
943 25-11-111. Forfeiture of decommissioning warranties - use of funds.

944  
945 (1) A decommissioning warranty shall be subject to immediate forfeiture  
946 whenever the department determines that any one of the following  
947 circumstances exist:

948 (a) The licensee has violated an emergency, abatement, or cease-and-desist  
949 order or court-ordered injunction or temporary restraining order related  
950 to decommissioning, decontamination, or disposal and, if decommissioning,  
951 decontamination, or disposal was required in such order, has failed to  
952 complete such decommissioning, decontamination, or disposal although  
953 reasonable time to have done so has elapsed; or

954 (b) The licensee is in violation of decommissioning, decontamination, or  
955 disposal requirements as specified in the license and the regulations and  
956 has failed to cure such violation although the licensee has been given  
957 written notice thereof pursuant to section 25-11-107 (5) and has had  
958 reasonable time to cure such violation; or

959 (c) The licensee has failed to provide an acceptable replacement warranty  
960 when:  
961 (I) The licensee's financial warrantor no longer has the financial ability  
962 to carry out obligations under this article; or

963 (II) The department has received notice or information that the financial  
964 warrantor intends to cancel, terminate, or revoke the warranty; or

965 (d) The licensee has failed to maintain its financial assurance warranty  
966 in good standing as required by section 25-11-110 (6) (a); or

967 (e) An emergency endangering public health or safety has been caused by or  
968 resulted from the licensee's use or possession of radioactive materials.

969 (2) (a) Upon determining that a decommissioning warranty should be  
970 forfeited under subsection (1) of this section, the department shall issue  
971 to the licensee an order forfeiting the decommissioning warranty. The  
972 order shall contain written findings of fact and conclusions of law to  
973 support its decision and shall direct affected financial warrantors to  
974 deliver to the department the full amounts warranted by applicable  
975 decommissioning warranties within not more than thirty days after the date  
976 of the order.

977  
978 (b) The licensee may request a hearing on the order of forfeiture that  
979 shall be conducted in accordance with section 24-4-105, C.R.S., and that,

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980 if the department alleges in the forfeiture order a violation of a  
981 license, regulation, or order, the hearing may be conducted in conjunction  
982 with a hearing requested under section 25-11-107 (5). Any request for a  
983 hearing pursuant to this part 1 shall be made within twenty days after the  
984 date of the order of forfeiture and shall not affect the obligation to  
985 submit to the department funds from decommissioning warranties forfeited  
986 by such order unless a stay of forfeiture is granted by the department or  
987 by administrative or judicial order.

988 (3) The department may request the attorney general, and the attorney  
989 general is authorized, to commence legal proceedings necessary to secure  
990 or recover amounts warranted by decommissioning warranties. The attorney  
991 general shall have the power to collect, foreclose upon, present for  
992 payment, take possession of, or dispose of pledged property, and otherwise  
993 reduce to cash any financial assurance arrangement required by this  
994 article.

995 (4) (a) Decommissioning funds recovered by the department pursuant to this  
996 section shall be immediately deposited into the decommissioning fund  
997 created in section 25-11-113 and shall be used solely for the disposal of  
998 radioactive materials for the facility covered by the forfeited financial  
999 assurance warranties; the decommissioning and decontamination of  
1000 buildings, equipment, personal property, and lands covered by the  
1001 forfeited financial assurance warranties; and to cover the department's  
1002 reasonable attorney and administrative costs associated with  
1003 disposal, decommissioning, and decontamination for such facility.

1004 (b) The department or its agent shall have a right to enter property of  
1005 the licensee to dispose of radioactive materials, decommission, and  
1006 decontaminate buildings, equipment, personal property, and lands. Upon  
1007 completion of disposal, decommissioning, and decontamination activities,  
1008 the department shall present to the licensee a full accounting and shall  
1009 refund all unspent decommissioning warranty moneys, including interest.

1010 (5) Licensees shall remain liable for the total actual cost of disposal  
1011 of, decommissioning, and decontaminating affected buildings, equipment,  
1012 personal property, and lands, less any amounts expended by the department  
1013 pursuant to subsection (4) of this section, notwithstanding any discharge  
1014 of applicable financial assurance warranties.

1015 Source: L. 97: Entire section added, p. 1635, § 2, effective August 15.

1016

1017 25-11-112. Forfeiture of long-term care warranty - use of funds.

1018

1019 (1) A long-term care warranty shall be subject to immediate forfeiture  
1020 whenever the department determines that any one of the following  
1021 circumstances exist:

1022

1023 (a) The licensee is in violation of long-term care requirements as  
1024 specified in the license and the regulations and has failed to cure such  
1025 violation although the licensee has been given written notice thereof  
1026 pursuant to section 25-11-107 (5) and has had reasonable time to cure such  
1027 violation; or

1028 (b) The licensee has failed to provide an acceptable replacement warranty  
1029 when:

1030 (I) The licensee's financial warrantor no longer has the financial ability  
1031 to carry out obligations under this article; or

1032 (II) The department has received notice or information that the financial  
1033 warrantor intends to cancel, terminate, or revoke the warranty; or (c) The

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1034 licensee has failed to maintain its financial assurance warranty in good  
1035 standing as required by section 25-11-110 (6) (a).  
1036 (2) (a) A long-term care warranty shall be subject to immediate use and  
1037 expenditure by the department whenever the department determines that  
1038 disposal, decommissioning, and decontamination requirements specified in  
1039 the license conditions and regulations have been satisfied. The department  
1040 shall give the licensee written notice of the department's intent to use  
1041 the long-term care warranty for long-term care purposes. The notice shall  
1042 contain findings of fact and conclusions of law to support its decision  
1043 and shall direct affected financial warrantors to deliver to the  
1044 department the full amounts warranted by applicable long-term care  
1045 warranties within not more than thirty days after the date of the notice.  
1046 (b) The licensee may request a hearing on a notice under paragraph (a) of  
1047 this subsection (2) that shall be conducted in accordance with section 24-  
1048 4-105, C.R.S. Any request for a hearing under this subsection (2) shall be  
1049 made within thirty days after the date of the notice and shall not affect  
1050 the obligation to submit to the department funds from long-term care  
1051 warranties unless a stay is granted by the department or by administrative  
1052 or judicial order.  
1053 (3) The department may request the attorney general, and the attorney  
1054 general is authorized, to commence legal proceedings necessary to secure  
1055 or recover amounts warranted by long-term care warranties. The attorney  
1056 general shall have the power to collect, foreclose upon, present for  
1057 payment, take possession of, or dispose of pledged property, and otherwise  
1058 reduce to cash any financial assurance arrangement required by this  
1059 article.  
1060 (4) (a) Long-term care funds recovered by the department pursuant to this  
1061 section shall be immediately deposited into the long-term care fund  
1062 created in section 25-11-113 and shall be used solely for the long-term  
1063 care for the facility covered by the financial assurance warranty and to  
1064 cover the department's reasonable attorney and administrative costs  
1065 associated with long-term care for such facility.  
1066 (b) The department or its agent shall have a right to enter property of  
1067 the licensee to perform long-term care and monitoring. Upon completion of  
1068 long-term care activities, the department shall present to the licensee a  
1069 full accounting and shall refund all unspent warranty moneys, including  
1070 interest.  
1071 | Source: L. 97: Entire section added, p. 1637, § 2, effective August 15. |  
1072  
1073 25-11-113. Forfeitures - deposit - radiation control - decommissioning  
1074 fund - long-term care fund.  
1075  
1076 (1) The department is hereby authorized to collect funds from forfeited  
1077 decommissioning warranties and from long-term care warranties.  
1078 (2) (a) A fund to be known as the decommissioning fund is hereby created  
1079 in the state treasury. The fund shall be interest-bearing and invested to  
1080 return the maximum income feasible as determined by the state treasurer  
1081 and consistent with otherwise applicable state law. All  
1082 moneys collected from decommissioning warranties pursuant to this section  
1083 shall be transmitted to the state treasurer, who shall credit the same to  
1084 the decommissioning fund. All moneys deposited in the fund and all  
1085 interest earned on moneys in the fund shall remain in the fund for the  
1086 purposes set forth in this article, and no part of the fund shall be  
1087 expended or appropriated for any other purpose.

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1088 (b) The moneys in the fund shall be continuously appropriated for the  
1089 purposes set forth in this part 1 and shall not be transferred to or  
1090 revert to the general fund.

1091 (3) Moneys in the decommissioning fund shall be available for use by the  
1092 department for the sole purpose of disposing of radioactive materials and  
1093 completing decontamination and decommissioning of affected buildings,  
1094 fixtures, equipment, personal property, and lands, and to cover the  
1095 department's reasonable attorney costs that may be incurred in  
1096 successfully revoking, foreclosing, or realizing any decommissioning  
1097 warranty, and reasonable administrative costs, including indirect costs,  
1098 incurred by the department in conducting disposal, decontamination, and  
1099 decommissioning.

1100 (4) (a) A fund to be known as the long-term care fund is hereby created  
1101 and established in the state treasury. Such fund shall be interest-bearing  
1102 and invested to return the maximum income feasible as determined by the  
1103 state treasurer and consistent with otherwise applicable state law. All  
1104 moneys collected from long-term care warranties pursuant to this section  
1105 shall be transmitted to the state treasurer who shall credit the same to  
1106 the long-term care fund. All moneys deposited in the fund and all interest  
1107 earned on moneys in the fund shall remain in the fund for the purposes set  
1108 forth in this part 1 and no part thereof shall be expended or appropriated  
1109 for any other purpose.

1110 (b) Moneys in the long-term care fund shall be annually appropriated by  
1111 the general assembly to the department in an amount sufficient to  
1112 implement the provisions of this part 1.

1113 (c) Moneys in the long-term care fund shall be available for use by the  
1114 department for the sole purposes of:

1115 (I) Performing annual site inspections to confirm the integrity of the  
1116 stabilized waste system, environmental monitoring, and maintenance of the  
1117 waste disposal site, including fixtures, cover, and equipment;

1118 (II) Covering the department's reasonable attorney costs that may be  
1119 incurred in successfully collecting or realizing any long-term care  
1120 warranty, and reasonable administrative costs, including indirect costs,  
1121 incurred by the department in conducting long-term care of the disposal  
1122 facility.

1123 Source: L. 97: Entire section added, p. 1638, § 2, effective August 15. L.  
1124 99: (2) (a) and (4) (a) amended, p. 625, § 27, effective August 4. L. 2010:  
1125 (2) (a) amended, (HB 10-1348), ch. 388, p. 1819, § 4, effective June 8.

1126  
1127 Editor's note: Section 7 of chapter 388, Session Laws of Colorado 2010,  
1128 provides that the act amending subsection (2) (a) applies to applications  
1129 currently filed or filed on or after June 8, 2010, and to operations  
1130 currently permitted or permitted on or after June 8, 2010.  
1131  
1132

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1133 PART 2  
1134 RADIOACTIVE WASTE DISPOSAL  
1135

1136  
1137 25-11-201. Definitions.  
1138

1139 As used in this part 2, unless the context otherwise requires:  
1140

1141 ~~(1) (a) "Classified material" means radioactive materials that are one or~~  
1142 ~~more of the~~  
1143 ~~following types:~~

1144 ~~(I) "Type 2 byproduct material" as byproduct material is defined in 42~~  
1145 ~~U.S.C. sec. 2014 (e) (2);~~

1146 ~~(II) Naturally occurring or technologically enhanced naturally occurring~~  
1147 ~~radioactive material;~~

1148 ~~(III) Non-11 e (2) material~~

1149 ~~or~~

1150 ~~(IV) Ore.~~  
1151

1152 (1b) Nothing in this subsection ~~(1) Part 2~~ shall be deemed to include the  
1153 following naturally occurring radioactive materials or technologically  
1154 enhanced naturally occurring radioactive materials:

1155 (I) Residuals or sludges from the treatment of drinking water by aluminum,  
1156 ferric chloride, or similar processes; except that the material may not  
1157 contain hazardous substances that otherwise would preclude receipt;

1158 (II) Sludges, soils, or pipe scale in or on equipment from oil and gas  
1159 exploration, production, or development operations or drinking water or  
1160 wastewater treatment operations; except that the material may not contain  
1161 hazardous substances that otherwise would preclude receipt;

1162 (III) Materials from or activities related to construction material mining  
1163 regulated under article 32.5 of title 34, C.R.S.

1164 (1.2e) Nothing in this part 2 shall be deemed to apply to the treatment,  
1165 storage, management, processing, or disposal of solid waste, which may  
1166 include naturally occurring radioactive material as defined in section 25-  
1167 11-101 (2.7), and term as defined in subsection (43) of this section,  
1168 either pursuant to a certificate of designation issued under article 20 of  
1169 title 30, C.R.S., or at a solid waste disposal site and facility  
1170 considered approved or otherwise deemed to satisfy the requirement for a  
1171 certificate of designation pursuant to article 20 of title 30, C.R.S., or  
1172 section 25-15-204 (6).  
1173

1174 (1.3) "Alternate feed" which means material other than natural ore  
1175 from which source material is extracted in a licensed uranium or  
1176 thorium mill, does not contain a listed hazardous waste, and is  
1177 processed primarily for its source-material content;

1178  
1179 (1.54) "Disposal" means burial in soil, release through a sanitary  
1180 sewerage system, incineration, or long-term storage with no intention of  
1181 or provision for subsequent removal; ~~except that, with regard to~~  
1182 ~~classified material, "disposal" shall not include release through a~~  
1183 ~~sanitary sewer or incineration at a facility.~~  
1184

**Comment [sft18]:** As requested by NRC for compatibility, the term "classified material" is removed and/or modified throughout the draft. The term "classified material" groups 11e.(2) material with other materials that do not need to meet the additional requirements for 11e.(2) byproduct material under the Uranium Mill Tailings Radiation Control Act (UMTRCA) and 10 CFR Part 40. The term classified material is not used in the NRC's national regulatory scheme.

The proposed/modified language is intended to provide an equivalent level of requirements, while avoiding conflict with NRC definitions and requirements.

THIS IS AN NRC REQUIRED CHANGE.

Reference(s): NRC Letter dated 05/16/14; 10/24/11.

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**Comment [sft19]:** The language is modified to reference Part 1 of the Radiaton Control Act where a definition for byproduct material has been inserted.

**Comment [JJ20]:** The definition "Type 2 byproduct material" has been relocated later in this section.

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**Comment [sft21]:** As requested by NRC for compatibility, the term "classified material" is removed throughout the draft.

The terms "Alternate feed" and "Equivalent feed", are added, consistent with similar language used by NRC.

The intent is to modify the language to adhere to the same level of requirements but without conflict with NRC.

Reference(s): NRC Letter dated 10/24/11

**Comment [sft22]:** As originally written, this definition would prohibit disposal/discharge of materials such as NORM/TENORM by water treatment facilities.

THIS IS NOT AN NRC REQUIRED CHANGE.\*\* (\*\*Deletion of "classified material" is an NRC required change).

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1185 (1.5) "Equivalent feed" means water treatment resins from which source  
 1186 material is extracted in a licensed uranium or thorium mill that are:  
 1187 (a) physically and chemically essentially the same as the resin  
 1188 being processed at the facility;  
 1189 (b) using existing equipment, processed the same way as the resins  
 1190 processed at the facility; and  
 1191 (c) processing does not exceed the uranium production limits in the  
 1192 license and stays within the existing safety and environmental  
 1193 review envelope for the facility.

**Comment [JJ23]:** The term "equivalent feed" is added to ensure that similar requirements are in place for other non-ore type materials and as an alternative to the use of the term "classified material" which has been determined to be unacceptable to NRC.

WHILE THE ADDITION OF EQUIVALENT FEED IS NOT AN NRC REQUIREMENT, THE ELIMINATION OF CLASSIFIED MATERIAL IS.

1194  
 1195 (1.6) "Facility" means a uranium OR THORIUM mill, processing, or disposal  
 1196 facility required to be licensed pursuant to this article and a site for  
 1197 such facility.

**Comment [JJ24]:** The phrase "or thorium" was added during 2014 legislative session (SB 14-192).

1198 ~~(1.7) "Non-11e (2) material" means material that is not type 2 byproduct~~  
 1199 ~~material or ore. "Non-11e (2) byproduct material" does not include~~  
 1200 ~~depleted or enriched uranium as defined by Colorado or federal statute or~~  
 1201 ~~rule.~~

**Comment [sft25]:** This definition is eliminated as deletion of the term "classified material" and the addition of other terms negates the need for the non-11e(2) definition.

THIS IS NOT AN NRC REQUIRED CHANGE.

1202 (1.8) "Ore" means naturally occurring uranium-bearing, thorium-bearing, or  
 1203 radium-bearing material in its natural form prior to chemical processing  
 1204 such as roasting, beneficiating, or refining, and specifically includes  
 1205 material that has been physically processed, such as by crushing,  
 1206 grinding, screening, or sorting.

1207 (2) "Radioactive" means emitting alpha ~~particles~~rays, beta ~~particles~~rays,  
 1208 gamma rays, high-energy neutrons or protons, or other ~~high-level~~  
 1209 radioactive particles. ~~The term "radioactive" does not include material in~~  
 1210 ~~which the estimated specific activity is not greater than .002 microcuries~~  
 1211 ~~per gram of material, and in which the radioactivity is essentially~~  
 1212 ~~uniformly distributed.~~

**Comment [JJ26]:** For technical clarity and consistency with similar definitions, the words "rays" is deleted. "High-level" is deleted as it is technically incorrect.

THIS IS NOT AN NRC REQUIRED CHANGE.

1213  
 1214 (3) "Radioactive ~~waste~~" means ~~all radioactive materials which have no~~  
 1215 ~~useful purpose and are to be discarded and are:~~

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1216 ~~(a) Capable of producing radiation exposures with acute effects associated~~  
 1217 ~~with the operation and decommissioning of nuclear reactors for commercial,~~  
 1218 ~~military, research, and other purposes, including spent fuel if discarded,~~  
 1219 ~~fuel reprocessing waste and radionuclides removed from associated process~~  
 1220 ~~streams or effluents, and with the United States nuclear weapons program;~~

**Comment [sft27]:** As required by NRC for compatibility, the definition for "radioactive" is modified.

The second sentence of this definition is deleted as it was determined to be inconsistent with the responsibilities and authority assumed by Colorado under the 274b Agreement and may create a gap in the orderly pattern of regulations on a national basis.

THIS IS AN NRC REQUIRED CHANGE.

Reference(s): NRC Letter dated 05/16/14; 10/24/11.

1221 ~~(b) Transuranic (radionuclides with atomic numbers greater than 92); and~~  
 1222 ~~(c) Radionuclides which have been used for industrial and research use,~~  
 1223 ~~and material contaminated with them, and which are capable of producing~~  
 1224 ~~radiation exposures with acute effects as determined by the department of~~  
 1225 ~~public health and environment.~~ those low-level radioactive wastes

1226 containing source, special nuclear, or byproduct material that are  
 1227 acceptable for disposal in a land disposal facility. For the purposes of  
 1228 this definition, low-level radioactive waste means radioactive waste not  
 1229 classified as high-level radioactive waste, transuranic waste, spent  
 1230 nuclear fuel, or byproduct material as defined in sub-paragraphs (b), (c),  
 1231 and (d) of the definition of byproduct material set forth in 25-11-101.

**Comment [sft28]:** As required by NRC for compatibility, the original definition is revised to meet the compatibility requirement and definition for "waste" found in 10 CFR 61.2.

THIS IS AN NRC REQUIRED CHANGE.

1232  
 1233 (4) "Technologically enhanced naturally occurring radioactive material" or  
 1234 "tenorm" means naturally occurring radioactive material whose radionuclide  
 1235 concentrations are increased by or as a result of past or present human  
 1236 practices. "Tenorm" does not include:

Reference(s): NRC Letter dated 05/16/14; 10/24/11.

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1237 (a) Background radiation or the natural radioactivity of rocks or soils;  
1238 (b) "Byproduct material" or "source material", as defined by Colorado  
1239 statute or rule; or  
1240 (c) Enriched or depleted uranium as defined by Colorado or federal statute  
1241 or rule.

1242 (4) "Type 2 byproduct material" means byproduct material as defined in  
1243 Section (1) (b) of Part 1.

1244  
1245 Source: L. 79: Entire part added, p. 1066, § 8, effective July 1. L. 94:  
1246 (3) (c) amended, p. 2791, § 526, effective July 1. L. 2002: (1) amended and  
1247 (1.5) added, p. 230, § 1, effective April 5. L. 2003: (1) and (1.5)  
1248 amended and (1.6), (1.7), (1.8), and (4) added, p. 2188, § 1, effective  
1249 June 3.

1250  
1251 Cross references: For the legislative declaration contained in the 1994  
1252 act amending subsection (3) (c), see section 1 of chapter 345, Session Laws  
1253 of Colorado 1994.

1254  
1255 25-11-202. Disposal of foreign radioactive waste prohibited.

1256  
1257 The disposal of any radioactive waste which originates or has been used  
1258 outside this state and has not been used in this state is prohibited  
1259 except as provided in section 25-11-203.

1260  
1261 Source: L. 79: Entire part added, p. 1067, § 8, effective July 1.

1262  
1263 ANNOTATION

1264  
1265 Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 1158, 1610, 1611.

1266  
1267 25-11-203. Approval of facilities, sites, and shipments for disposal of  
1268 radioactive waste.

1269  
1270 (1) (a) No facility shall be constructed or site approved for the disposal  
1271 of radioactive waste originating or used outside Colorado unless such  
1272 facility or site has been approved as provided in subsection (3) of this  
1273 section.

1274 (b) Radioactive materials that may be authorized for processing at a  
1275 uranium or thorium mill include type 2 byproduct material; NORM; TENORM;  
1276 alternate feed; equivalent feed; or ore.

1277 (I) No facility shall dispose of or receive for storage incident to  
1278 disposal or processing at the facility classified any radioactive  
1279 material, except for non-processing operational purposes (such as  
1280 radioactive standards, samples for analysis, or materials contained in  
1281 fixed or portable gauges), unless such facility has received a license, a  
1282 five-year license renewal, or license amendment pertaining to the  
1283 facility's receipt of classified the material, in accordance with sections  
1284 24-4-104 and 24-4-105, C.R.S., for such receipt, storage, processing, or  
1285 disposal of classified material and such license, license renewal, or  
1286 license amendment approves that type of classified material activity.

1287 (II) Nothing in this paragraph (b) shall apply to a contract for the  
1288 storage, processing, or disposal of less than the sum of one hundred ten  
1289 tons of classified radioactive material per source or to a contract for a  
1290 bench-scale or a pilot-scale testing project or a contract for less than a

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Comment [JJ29]: This definition is relocated from (1)(a) of this section and was previously a part of the definition of classified material. The original wording is modified to reference Part 1 of the act which now includes a definition for byproduct material rather than referencing federal rule/statute.

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Comment [sft30]: Refer to prior comments relating to deletion of classified material term.

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Comment [JJ31]: The added language is intended to clarify that the facility may receive certain specified radioactive materials, if authorized by the license, that would be for non-processing purposes.

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Comment [JJ32]: Licenses may be issued for periods greater than 5 years.

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1291 | de minimis amount of ~~classified~~ material as determined by the department  
1292 | for storage, processing, or disposal.

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1293 | (III) License amendments for the receipt of ~~classified~~ material at a  
1294 | facility are subject to subsections (2) and (3) of this section except  
1295 | when the material is from an approved source and such amendment would not  
1296 | result in a change in ownership, design, or operation of the facility.  
1297 | License amendments not subject to subsections (2) and (3) of this section  
1298 | are subject to subsection (4) of this section.

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1299 | (2) (a) Any person desiring to have a facility or site referred to in  
1300 | subsection (1) of this section approved shall apply to the department of  
1301 | public health and environment for approval of such facility or site. The  
1302 | application shall contain such information as the department requires and  
1303 | shall be accompanied by an application fee determined by the board  
1304 | pursuant to the provisions of part 1 of this article.

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1306 | (b) In addition to the requirements of paragraph (a) of this subsection  
1307 | (2), each proposed license, ~~five-year~~ license renewal, or license  
1308 | amendment pertaining to the facility's receipt of ~~classified any~~  
1309 | ~~radioactive~~ material MUST include a written application to the department  
1310 | and information relevant to the pending application, including:

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1311 | (I) Transcripts of two public meetings hosted and presided over by a  
1312 | person selected upon agreement by the department, the board of county  
1313 | commissioners of the county where the facility is located, and the  
1314 | applicant. The APPLICANT SHALL PAY THE reasonable, necessary, and documented  
1315 | expense of the meetings. ~~THE~~ meetings shall not be held until the  
1316 | department determines that the application is substantially complete. The  
1317 | APPLICANT shall provide the public with:

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1318 | (A) Pursuant to part 1 of article 70 of title 24, C.R.S., at least two  
1319 | weeks' written notice before the first meeting and an additional two  
1320 | weeks' written notice before the second meeting;

1321 | (B) At both meetings, summaries of the facility's license to receive,  
1322 | store, process, or dispose of ~~classified the~~ material and the nature of  
1323 | the ~~classified~~ material, and an opportunity to be heard; and

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1324 | (C) Access to make copies of a transcript of the meetings, and shall  
1325 | provide an electronic copy to the department in a manner that allows  
1326 | posting on the department's web site within ten days after receipt from  
1327 | the transcription service;

1328 | (II) An environmental assessment as defined in paragraph (c) of this  
1329 | subsection (2);

1330 | (III) A response, if any, to the environmental assessment written by the  
1331 | board of county commissioners of the county in which the ~~classified~~  
1332 | material is proposed to be received for storage, processing, or disposal  
1333 | at a facility and provided to the facility within ninety days after the  
1334 | first public meeting. Upon request of and documentation of the expenditure  
1335 | by such board, the applicant shall provide the board with up to fifty  
1336 | thousand dollars, AS ADJUSTED FOR INFLATION SINCE 2003, which is available to  
1337 | the board for the reasonable and necessary expenses during the pendency of  
1338 | the application to assist the board in responding to the application,  
1339 | including to pay for an independent environmental analysis by a  
1340 | disinterested party with appropriate environmental expertise to assist the  
1341 | board in preparing its response. The board's response may consider whether  
1342 | the approval of the license, ~~five-year~~ license renewal, or license  
1343 | amendment pertaining to the facility's receipt or disposal of the  
1344 | ~~classified~~ material will present any substantial adverse impact upon the

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1345 safety or maintenance of transportation infrastructure or transportation  
1346 facilities within the county.  
1347 (c) As used in paragraph (b) of this subsection (2), "environmental  
1348 assessment" means a report and assessment submitted to the department by a  
1349 facility upon and in connection with application for a license, a ~~five-~~  
1350 ~~year-~~renewal, or license amendment pertaining to the facility's receipt of  
1351 ~~classified~~ material, proposing to receive ~~classified material~~any material  
1352 for storage, processing, or disposal at a facility that addresses the  
1353 impacts of the receipt for storage, processing, or disposal of such  
1354 material. The environmental assessment shall contain all information  
1355 deemed necessary by the department, and shall include, at a minimum:  
1356

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1357 (I) The identification of the types of ~~classified~~ material to be received,  
1358 stored, processed, or disposed of;

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1359 (II) A representative presentation of the physical, chemical, and  
1360 radiological properties of the type of ~~classified~~ material to be received,  
1361 stored, processed, or disposed of;

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1362 (III) An evaluation of the short-term and long-range environmental impacts  
1363 of such receipt, storage, processing, or disposal;

1364 (IV) An assessment of the radiological and nonradiological impacts to the  
1365 public health from the application;

1366 (V) Any facility-related impact on any waterway and ground water from the  
1367 application;

1368 (VI) An analysis of the environmental, economic, social, technical, and  
1369 other benefits of the proposed application against environmental costs and  
1370 social effects while considering available alternatives;

1371 (VII) A list of all material violations of local, state, or federal law at  
1372 the facility since the submittal date of the previous license application  
1373 or license renewal application;

1374 (VIII) For an application for a license or license amendment pertaining to  
1375 the facility's receipt of ~~classified~~the material for storage, processing,  
1376 or disposal at the facility, a demonstration that:

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1377 (A) There are no outstanding material violations of any state or federal  
1378 statutes, compliance orders, or court orders applicable to the facility,  
1379 and any releases giving rise to any such violation have been remediated;

1380 (B) The operator, after a good faith review of the facility and its  
1381 operations, is not aware of any current license violation at the facility;

1382 (C) There are no current releases to the air, ground, surface water, or  
1383 groundwater that exceed permitted limits; and

1384 (D) No conditions exist at the facility that would prevent the department  
1385 of energy's receipt of title to the facility pursuant to the federal  
1386 "Atomic Energy Act of 1954", 42 U.S.C. sec. 2113;

1387 (IX) A list of all necessary permits and any changes to local land use  
1388 ordinances that are needed to construct or operate the facility; and

1389 (X) For sites or facilities placed on the national priority list pursuant  
1390 to the federal "Comprehensive Environmental Response, Compensation, and  
1391 Liability Act", 42 U.S.C. sec. 9605, a copy of the most recent five-year  
1392 review and any associated updates that have been issued by the United  
1393 States environmental protection agency.

1394 (3) (a) Upon receipt of an application or notice as provided in subsection  
1395 (2) of this section, the department of public health and environment shall  
1396 notify the public and forward a copy of the application or notice to the  
1397 governor and the general assembly, as appropriate.

1398 (b) (I) No facility or site referred to in paragraph (a) of subsection (1)  
1399 of this section shall be constructed or approved by the department of  
1400 public health and environment unless the governor and the general assembly  
1401 have approved such facility or site.

1402 (II) The governor and the general assembly, in making their determination,  
1403 shall consider criteria developed by the department of public health and  
1404 environment for disposal of radioactive wastes pursuant to section 25-11-  
1405 103 (3) in approving or disapproving the proposed facility or site.

1406 (c) (I) In deciding whether to approve a license, ~~five-year~~ license  
1407 renewal, or license amendment pertaining to the facility's receipt of  
1408 ~~classified-radioactive~~ material, the department shall consider the  
1409 transcripts of the public meetings held pursuant to subparagraph (I) of  
1410 paragraph (b) of subsection (2) of this section, the facility's license,  
1411 any environmental assessment or analysis performed pursuant to this  
1412 section, the facility's compliance with financial assurance requirements  
1413 of section 25-11-110, and the board of county commissioners' response to  
1414 the environmental assessment prepared pursuant to subparagraph (III) of  
1415 paragraph (b) of subsection (2) of this section. The department shall deny  
1416 or approve the application as a whole.

1417 (II) The department may order reasonable mitigation measures to address  
1418 any substantial adverse impacts to public health or the environment or  
1419 transportation infrastructure or transportation facilities within the  
1420 county attributable solely to approval of the license, ~~five-year~~ renewal,  
1421 or license amendment pertaining to the facility's receipt of ~~the~~  
1422 ~~classified~~ material.

1423 (III) The applicant shall demonstrate that if the license, ~~five-year~~  
1424 renewal, or license amendment pertaining to the facility's receipt of  
1425 ~~classified-the~~ material is approved, then the receipt, storage,  
1426 processing, and disposal of ~~the classified~~ material shall:

1427 (A) Be conducted such that the exposures to workers and the public are  
1428 within the dose limits of part 4 of the department's rules pertaining to  
1429 radiation control for workers and the public;

1430 (B) Not cause releases to the air, ground, or surface or ground water that  
1431 exceed permitted limits; and

1432 (C) Not prevent transfer of the facility to the United States in  
1433 accordance with 42 U.S.C. sec. 2113 upon completion of decontamination,  
1434 decommissioning, and reclamation of the facility.

1435 (IV) No facility may be permitted as a hazardous waste treatment,  
1436 storage, or disposal facility under part 3 of article 15 of this title.

1437 (V) (A) The department shall publish a determination as to whether an  
1438 application submitted pursuant to paragraph (b) of subsection (2) of this  
1439 section is substantially complete within forty-five days after receipt of  
1440 the application.

1441 (B) The DEPARTMENT SHALL CONVENE THE first public meeting required by  
1442 subparagraph (I) of paragraph (b) of subsection (2) of this section within  
1443 forty-five days after publication of its determination that the  
1444 application is substantially complete. ~~The DEPARTMENT SHALL CONVENE THE second~~  
1445 such public meeting within thirty days after GIVING PUBLIC NOTICE OF A DRAFT  
1446 DECISION AS DESCRIBED IN SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (V).

1447 (C) The department shall ~~INITIATE A FINAL PUBLIC COMMENT PROCESS BY POSTING ON THE~~  
1448 DEPARTMENT'S WEB SITE AN INITIAL DRAFT DECISION TO approve, approve with  
1449 conditions, or deny the application submitted under paragraph (b) of  
1450 subsection (2) of this section ~~ALONG WITH ALL REQUIRED FINAL TECHNICAL AND~~  
1451 ENVIRONMENTAL IMPACT ANALYSES CONDUCTED BY THE DEPARTMENT, ALL REQUESTS FROM THE DEPARTMENT

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Comment [JJ33]: The changes in this subsection (B), (C), and (D) (Selected lines ~1444 - 1466) as shown in small caps font, are the result of the 2014 legislative changes (SB 14-192).

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1452 SEEKING INFORMATION FROM THE APPLICANT, ALL OF THE APPLICANT'S RESPONSES, ALL PUBLIC  
1453 COMMENTS, A DRAFT LICENSE FOR ANY PROPOSED APPROVAL, AND ANY ADDITIONAL INFORMATION THAT  
1454 MAY ASSIST THE PUBLIC REVIEW OF THE DEPARTMENT'S DRAFT DECISION.  
1455 (D) AFTER REVIEW OF ALL FINAL PUBLIC COMMENTS, THE DEPARTMENT SHALL ISSUE A FINAL DRAFT  
1456 DECISION AND PROVIDE AFFECTED PARTIES, INCLUDING THE APPLICANT IN THE CASE OF APPROVAL WITH  
1457 CONDITIONS OR DENIAL, AN OPPORTUNITY TO REQUEST AND ADJUDICATORY HEARING IN ACCORDANCE WITH  
1458 SECTIONS 24-4-104 AND 24-4-105, C.R.S. IF NO PARTY SEEKS A HEARING, THE FINAL DRAFT  
1459 DECISION BECOMES FINAL AGENCY ACTION. IF ANY PARTY SEEKS A HEARING, RESOLUTION OF ALL  
1460 MATERIAL ISSUES OF FACT, LAW, OR DISCRETION PRESENTED BY THE RECORD AND THE APPROPRIATE  
1461 ORDER, SANCTION, RELIEF, OR DENIAL THEREOF MUST BE THROUGH AN INITIAL DECISION OF A HEARING  
1462 OFFICER. THE APPLICANT SHALL PAY ALL REASONABLE, NECESSARY, AND DOCUMENTED EXPENSES OF THE  
1463 HEARING. UPON ISSUANCE OF THE INITIAL DECISION OF THE HEARING OFFICER, AND AFTER ANY  
1464 ALLOWABLE APPEAL TO THE EXECUTIVE DIRECTOR, THE DEPARTMENT SHALL ISSUE WITHIN A REASONABLE  
1465 TIME A FINAL DECISION TO APPROVE, APPROVE WITH CONDITIONS, OR DENY THE APPLICATION. THE  
1466 FINAL DECISION IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106, C.R.S.  
1467 (4) (a) (I) At least ninety days before a facility proposes to receive,  
1468 store, process, or dispose of classified radioactive material in a license  
1469 application or amendment that is not subject to subsections (2) and (3) of  
1470 this section and for which a material acceptance report has not already  
1471 been filed with the department, the facility shall notify the department,  
1472 and the department shall notify the public and the board of county  
1473 commissioners of the county in which the facility is located, of the  
1474 specific classified material to be received, stored, processed, or  
1475 disposed of. The notice shall include:  
1476 (A) A representative analysis of the physical, chemical, and radiological  
1477 properties of the classified material;  
1478 (B) The material acceptance report that demonstrates that the classified  
1479 material does not contain hazardous waste characteristics not found in  
1480 uranium ore;  
1481 (C) A detailed plan for transport, acceptance, storage, handling,  
1482 processing, and disposal of the material;  
1483 (D) A demonstration that the material contains technically and  
1484 economically recoverable uranium, without taking into account its value as  
1485 disposal material;  
1486 (E) The existing location of the classified material;  
1487 (F) The history of the classified material;  
1488 (G) A written statement by the applicant describing any pre-existing  
1489 regulatory classification of the classified wastematerial in the state of  
1490 origin that describes all steps taken by the applicant to identify such  
1491 classification;  
1492  
1493 (H) A written statement from the United States department of energy or  
1494 successor agency that the receipt, storage, processing, or disposal of the  
1495 classified material at the facility will not adversely affect the  
1496 department of energy's receipt of title to the facility pursuant to the  
1497 federal "Atomic Energy Act of 1954 ", 42 U.S.C. sec. 2113;  
1498 (I) Documentation showing any necessary approvals of the United States  
1499 environmental protection agency; and  
1500 (J) An environmental assessment as defined in paragraph (c) of subsection  
1501 (2) of this section, which may incorporate by reference relevant  
1502 information contained in an environmental assessment previously submitted  
1503 for the facility.  
1504 (II) For classified material that would otherwise be subject to the "Low-  
1505 level Radioactive Waste Act", part 22 of article 60 of title 24, C.R.S.,

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**Comment [JJ34]:** Consistent with the phrasing used earlier in this section, the word "waste" is changed to material.

THE ELIMINATION OF THE TERM CLASSIFIED MATERIAL IS AN NRC REQUIRED CHANGE.

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1506 the facility's notice shall also include written documentation that the  
 1507 rocky mountain low-level radioactive waste board has been notified that  
 1508 the ~~classified~~ material is being considered for disposal in the subject  
 1509 facility.  
 1510 (b) Within thirty days after the department's receipt of notice pursuant  
 1511 to subparagraph (I) of paragraph (a) of this subsection (4), the  
 1512 department shall determine whether the notice is complete.  
 1513 (c) Once the department determines that the notice is complete, the  
 1514 department shall publish the notice on its web site and provide a sixty-  
 1515 day public comment period for the receipt of written comments concerning  
 1516 the notice. A public hearing may be held, at the department's discretion,  
 1517 at the operator's expense.  
 1518 (d) Within thirty days after the close of the written public comment  
 1519 period provided by paragraph (c) of this subsection (4), the department  
 1520 shall approve, approve with conditions, or deny the receipt, storage,  
 1521 processing, or disposal as described in the notice based on whether the  
 1522 material proposed for receipt, storage, processing, or disposal at the  
 1523 facility complies with the facility's license and meets the standards  
 1524 established pursuant to subparagraph (III) of paragraph (c) of subsection  
 1525 (3) of this section.  
 1526

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1527 Source: L. 79: Entire part added, p. 1067, § 8, effective July 1. L. 94:  
 1528 (2) and (3) amended, p. 2791, § 527, effective July 1. L. 97: (3) (b)  
 1529 amended, p. 1023, § 44, effective August 6. L. 2002: Entire section  
 1530 amended, p. 231, § 2, effective April 5. L. 2003: (1) (b), (2) (b), (2) (c),  
 1531 and (3) (c) amended and (4) added, p. 2190, § 2, effective June 3. L. 2010:  
 1532 (1) (b) (III), (2) (b) (I) (C), (3) (a), (3) (c) (V), and (4) amended and  
 1533 (2) (c) (VII), (2) (c) (VIII), (2) (c) (IX), and (2) (c) (X) added, (HB 10-1348),  
 1534 ch. 388, pp. 1820, 1823, §§ 5, 6, effective June 8. ▲  
 1535

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1536 Editor's note: Section 7 of chapter 388, Session Laws of Colorado 2010,  
 1537 provides that the act amending subsections (1) (b) (III), (2) (b) (I) (C),  
 1538 (3) (a), (3) (c) (V), and (4) and adding subsections (2) (c) (VII),  
 1539 (2) (c) (VIII), (2) (c) (IX), and (2) (c) (X) applies to applications currently  
 1540 filed or filed on or after June 8, 2010, and to operations currently  
 1541 permitted or permitted on or after June 8, 2010. ▲

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1542 Cross references: For the legislative declaration contained in the 1994  
 1543 act amending subsections (2) and (3), see section 1 of chapter 345,  
 1544 Session Laws of Colorado 1994. ▲

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1545 ANNOTATION

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1546 Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 1154, 1159, 1610,  
 1547 1611.

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1548 PART 3  
1549 DISPOSAL OF URANIUM MILL TAILINGS  
1550

1551  
1552 Law reviews: For article, "Administrative Law", which discusses Tenth  
1553 Circuit decisions dealing with administrative actions based upon agency  
1554 findings of scientific fact, see 64 Den. U. L. Rev. 111 (1987).  
1555

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1556 25-11-301. Legislative declaration.  
1557

1558 (1) The general assembly hereby finds and declares that the existence of  
1559 uranium mill tailings at active and inactive mill operations poses a  
1560 potential and significant radiation health hazard. This part 3 is  
1561 therefore enacted to protect the public health, safety, and welfare by  
1562 cooperating with the federal government in providing for the  
1563 stabilization, disposal, and control of such tailings in a safe and  
1564 environmentally sound manner to prevent or minimize other environmental  
1565 impacts from such tailings.

1566 (2) The general assembly recognizes the need for the state to expend such  
1567 funds as are necessary to provide land annotation and site information for  
1568 purposes of protecting prospective purchasers or users of mill sites  
1569 designated for cleanup pursuant to public law 95-604. The general assembly  
1570 therefore declares its intent to assist local governments with the  
1571 identification, removal, storage, and disposal of tailing deposits  
1572 associated with such designated mill sites for which remedial action is  
1573 not taken pursuant to the federal "Uranium Mill Tailings Radiation Control  
1574 Act of 1978".

1575 Source: L. 79: Entire part added, p. 1069, § 1, effective January 1, 1980.  
1576 L. 97: Entire section amended, p. 337, § 2, effective April 16.

1577  
1578 ANNOTATION  
1579

1580 Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, § 1602.  
1581

1582 25-11-302. Terms defined.  
1583

1584 For the purposes of this part 3, the terms "processing site" and "residual  
1585 radioactive material" shall have the meanings specified in section 101 (6)  
1586 and (7), respectively, of Public Law 95-604, as from time to time amended.  
1587

1588 Source: L. 79: Entire part added, p. 1069, § 1, effective January 1, 1980.  
1589

1590 ANNOTATION

1591 Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, § 1602.  
1592

1593 25-11-303. Authorization to participate - implementation - repeal.  
1594

1595 (1) The general assembly hereby authorizes the department of public health  
1596 and environment to participate in federal implementation of the "Uranium  
1597 Mill Tailings Radiation Control Act of 1978", and for such purpose the  
1598 department has the authority to:

1599 (a) Enter into cooperative agreements with the secretary of energy to  
1600 perform remedial actions at processing sites designated by the secretary;

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1601 (b) Obtain written consent from the record owner of a designated  
1602 processing site to perform remedial actions at such site;  
1603 (c) Provide for reimbursement for the actual cost of any remedial action  
1604 in accordance with the terms of Public Law 95-604;  
1605 ~~(d) (I) Acquire by gift, transfer, exchange, or purchase pursuant to the~~  
1606 ~~requirements of article 56 of title 24, C.R.S., any designated processing~~  
1607 ~~site, including any interest in such site, and any site to be used for the~~  
1608 ~~permanent disposition and stabilization of residual radioactive materials.~~  
1609  
1610  
1611 ~~(II) If the negotiation procedures established in section 24-56-117,~~  
1612 ~~C.R.S., fail to accomplish~~  
1613 ~~acquisition of the site, the matter may be submitted to arbitration within~~  
1614 ~~ten days' notice by the~~  
1615 ~~fee title holder. The arbitration panel shall consist of one arbitrator~~  
1616 ~~chosen by the siteowner, one~~  
1617 ~~arbitrator chosen by the department, and one arbitrator chosen by the~~  
1618 ~~other two arbitrators. If the~~  
1619 ~~two arbitrators cannot agree within ten days on a third arbitrator, a~~  
1620 ~~request by either party shall~~  
1621 ~~be made to the district court for the judicial district of the county in~~  
1622 ~~which the site is located for~~  
1623 ~~appointment of a third impartial arbitrator. The department and the~~  
1624 ~~siteowner shall share equally~~  
1625 ~~the cost of the use of the third arbitrator. All arbitrators shall be~~  
1626 ~~residents of the county in which~~  
1627 ~~the land is located. The arbitration panel shall issue its decision thirty~~  
1628 ~~days after its appointment,~~  
1629 ~~and the decision shall be made in accordance with the criteria established~~  
1630 ~~in section 24-56-117~~  
1631 ~~(1) (c), C.R.S., and the provisions of the federal "Uranium Mill Tailings~~  
1632 ~~Radiation Control Act~~  
1633 ~~of 1978". If the arbitration panel will not be able to issue its decision~~  
1634 ~~thirty days after its~~  
1635 ~~appointment, but at least two of the three arbitrators determine that the~~  
1636 ~~panel is near a decision,~~  
1637 ~~the panel shall be allowed fifteen days after the expiration of the~~  
1638 ~~initial thirty-day period to make~~  
1639 ~~its decision. Such decision shall be made by at least a majority of the~~  
1640 ~~arbitrators and shall not be~~  
1641 ~~binding on any court.~~  
1642  
1643 ~~(III) If the acquisition of any such site is not accomplished pursuant to~~  
1644 ~~the arbitration~~  
1645 ~~procedures established in subparagraph (II) of this paragraph (d), the~~  
1646 ~~department is authorized to~~  
1647 ~~obtain such site by condemnation proceedings pursuant to the provisions of~~  
1648 ~~article 1 of title 38,~~  
1649 ~~C.R.S. A decision made pursuant to the provisions of article 1 of title~~  
1650 ~~38, C.R.S., shall be made~~  
1651 ~~in accordance with the criteria established in section 24-56-117 (1) (c),~~  
1652 ~~C.R.S., and the~~

**Comment [sft35]:** Consistent with subparagraph (IV), below, this sub-section (d) is deleted, due to being obsolete

THIS IS NOT AN NRC REQUIRED CHANGE.

1653 | ~~provisions of the federal "Uranium Mill Tailings Radiation Control Act of~~  
1654 | ~~1978".~~

1655 |  
1656 | ~~(IV) This paragraph (d) is repealed, effective upon the acquisition of all~~  
1657 | ~~of the nine currently~~  
1658 | ~~designated sites, as certified by the executive director of the~~  
1659 | ~~department, for purposes of~~  
1660 | ~~participating in the federal "Uranium Mill Tailings Radiation Control Act~~  
1661 | ~~of 1978";~~  
1662 |

1663 | (ed) Participate in the selection and performance of remedial actions in  
1664 | which the state pays a portion of the cost;

1665 | (fe) Participate in the following activities for which the state may pay  
1666 | any portion or all of the costs:

1667 | (I) Land annotation and information gathering, identification, removal,  
1668 | and disposal of tailing deposits associated with mill sites designated for  
1669 | cleanup pursuant to public law 95-604 that remain outside of the disposal  
1670 | cells constructed for remedial purposes pursuant to the federal "Uranium  
1671 | Mill Tailings Radiation Control Act of 1978"; and

1672 | (II) The groundwater restoration phase of the federal "Uranium Mill  
1673 | Tailings Radiation Control Act of 1978".

1674 | Source: L. 79: Entire part added, p. 1069, § 1, effective January 1, 1980.  
1675 | L. 86: (1)(d) R&RE, p. 980, § 1, effective May 16. L. 94: IP(1) amended,  
1676 | p. 2791, § 528, effective July 1. L. 97: (1)(f) added, p. 337, § 3,  
1677 | effective April 16.

1678 | Editor's note: As of the 2008 publication date, not all nine designated  
1679 | processing sites as specified in subsection (1)(d)(IV) have been  
1680 | chapter 345, Session Laws of Colorado 1994.

1681 | ANNOTATION

1682 | Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, § 1602.

1683 | Although the policies specified in § 24-56-117 apply to condemnation of  
1684 | property under this section, such policies are modified by the policies  
1685 | for state land acquisition included in the federal Uranium Mill Tailings  
1686 | Radiation Control Act. The Mill v. State, Dept. of Health, 868 P.2d 1099  
1687 | (Colo. App. 1993).

1688 | Notwithstanding the rule against consideration of enhanced value in  
1689 | determining fair value in condemnation proceedings, determination of the  
1690 | fair value of property that is condemned under the federal Uranium Mill  
1691 | Tailings Radiation Control Act may include evidence of the value of the  
1692 | property if it were uncontaminated. The Mill v. State, Dept. of Health,  
1693 | 868 P.2d 1099 (Colo. App. 1993).

1694 | 25-11-304. Financial participation.

1695 | (1) The general assembly accepts the provisions of section 107 (a) of  
1696 | Public Law 95-604 requiring the state to pay ten percent of the actual  
1697 | cost of any remedial action and administrative costs from nonfederal  
1698 | moneys.

1699 | ANNOTATION

1700 | 25-11-305. Restriction - termination.

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▲(1) Nothing in this part 3 shall supersede the provisions of part 1 of this article. ▲

▲(2) The authority to participate in federal implementation of remedial actions at designated processing sites shall terminate at such time as the authority of the federal government to perform remedial action terminates under the provisions of section 112 (a) of Public Law 95-604. ▲

▲Source: L. 79: Entire part added, p. 1070, § 1, effective January 1, 1980. ▲

▲ANNOTATION ▲

▲Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 1602, 1603. ▲

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