

LEGISLATIVE BILL 491

Approved by the Governor April 10, 1986

Introduced by Chizek, 31

AN ACT relating to environmental protection; to adopt the Low-level Radioactive Waste Disposal Act; to eliminate a provision relating to control of air pollution by a political subdivision; to repeal section 81-1528.01, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 39 of this act shall be known and may be cited as the Low-level Radioactive Waste Disposal Act.

Sec. 2. The Legislature hereby declares that it is the policy of the State of Nebraska, in furtherance of its responsibility to cooperate and coordinate with the Central Interstate Low-level Radioactive Waste Compact Commission and to protect the health, safety, and welfare of its citizens and the environment:

(1) To provide for the availability of capacity either within or outside the state for the commercial disposal of low-level radioactive waste generated within the state at commercial low-level radioactive waste disposal facilities as designated by the Central Interstate Low-level Radioactive Waste Compact Commission, except for waste generated as a result of defense or federal research and development activities;

(2) To recognize that low-level radioactive waste can be most safely and efficiently managed on a regional basis; and

(3) To institute and maintain a regulatory program for commercial disposal of low-level radioactive waste at such facilities.

Sec. 3. The purpose of the Low-level Radioactive Waste Disposal Act is to effectuate the policies set forth in section 2 of this act by providing:

(1) A program of effective regulation of disposal of low-level radioactive waste for the protection of the public health and safety; and

(2) A program to establish procedures for

assumption and performance of certain regulatory responsibilities with respect to disposal of low-level radioactive waste.

Nothing in the Low-level Radioactive Waste Disposal Act shall be intended to establish any other regulatory responsibilities pertaining to radioactive materials except for the licensing and regulation of a land disposal facility.

Sec. 4. For purposes of the Low-level Radioactive Waste Disposal Act, unless the context otherwise requires, the definitions found in sections 5 to 20 of this act shall be used.

Sec. 5. Byproduct material shall mean (1) any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Sec. 6. Closure or site closure and stabilization shall mean those actions that are taken upon completion of operations which prepare the disposal site for custodial care and which assure that the disposal site will remain stable and will not need ongoing active maintenance.

Sec. 7. Council shall mean the Environmental Control Council.

Sec. 8. Decommissioning shall mean final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.

Sec. 9. Department shall mean the Department of Environmental Control.

Sec. 10. Director shall mean the Director of Environmental Control.

Sec. 11. Disposal shall mean the isolation and final disposition of radioactive waste from the biosphere by emplacement in a land disposal facility.

Sec. 12. High-level radioactive waste shall mean (1) irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel, (3) solids into which such liquid wastes have been converted, and (4) other highly radioactive waste

material as defined by the United States Nuclear Regulatory Commission.

Sec. 13. Land disposal facility shall mean the land, buildings, and equipment which are intended to be used for the disposal of radioactive wastes.

Sec. 14. Low-level radioactive waste shall mean radioactive waste not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (2) of section 5 of this act.

Sec. 15. Person shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, public agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but shall not include federal governmental agencies.

Sec. 16. Radioactive material shall mean any material, solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material shall include accelerator-produced, byproduct, naturally occurring, source, and special nuclear materials.

Sec. 17. Source material shall mean (1) uranium or thorium or any combination thereof in any chemical or physical form or (2) ores which contain by weight one-twentieth of one per cent or more of uranium or thorium or any combination thereof. Source material shall not include special nuclear material.

Sec. 18. Special nuclear material shall mean (1) plutonium, uranium 233, and uranium enriched in the isotope 233 or in the isotope 235 but does not include source material or (2) any material artificially enriched by any of the foregoing, but shall not include source material.

Sec. 19. Spent nuclear fuel shall mean irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent fuel shall include the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

Sec. 20. Transuranic waste shall mean radioactive waste containing alpha emitting transuranic elements at levels determined by the United States Nuclear Regulatory Commission to be transuranic waste.

Sec. 21. The department shall be designated as the agency responsible for the administration of the Low-level Radioactive Waste Disposal Act.

Sec. 22. The department shall have and may exercise the following powers and duties to carry out the Low-level Radioactive Waste Disposal Act:

(1) Develop a program for the regulation of disposal of low-level radioactive waste;

(2) Issue, modify, or revoke licenses or orders;

(3) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation;

(4) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(5) Enter upon any private or public property at all reasonable times to determine compliance with the act and rules and regulations adopted and promulgated pursuant to the act;

(6) Institute training programs to qualify personnel to administer the act and make such personnel available for participation in any programs of the federal government, other states, or interstate agencies in furtherance of the purposes of the act;

(7) Enter into agreements with the federal government, other states, or interstate agencies by which the department agrees to perform inspections and other functions relating to the disposal of low-level radioactive waste on a cooperative basis with the federal government, other states, or interstate agencies;

(8) Require licensees to keep records relating to releases which cause or contribute to air, water, or land pollution and to make such records available for inspection;

(9) Require submission of plans, specifications, and other data for construction and operation of a land disposal facility;

(10) Require proper operation and maintenance of a land disposal facility; and

(11) Exercise all incidental powers necessary to carry out the purposes of the Low-level Radioactive Waste Disposal Act.

Sec. 23. In order to carry out the purposes of the Low-level Radioactive Waste Disposal Act, the council shall adopt and promulgate rules and regulations for the disposal of low-level radioactive waste. In adopting such rules and regulations, the council shall



consider, but not be limited to, requirements for licensing, including terms, conditions, amendment, suspension, or revocation thereof, performance objectives and technical requirements, financial assurance, recordkeeping, reporting, testing, and such other requirements established by the United States Nuclear Regulatory Commission at 10 C.F.R. Part 61.

Sec. 24. (1) Each application for a license shall be in writing and shall state such information as the department may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant deemed reasonable and necessary to protect the public health and safety. The department may at any time after the filing of the application and before the expiration of the license require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee.

(2) No license issued under the Low-level Radioactive Waste Disposal Act shall be assigned or in any manner disposed of unless the department, after securing full information, finds that the transfer is in accordance with the act and gives its consent in writing.

(3) The department shall not approve any application for a license to receive radioactive waste from any person for disposal on land not owned by the state or federal government.

Sec. 25. (1) The state may accept or acquire, by gift, transfer, or purchase, from another governmental agency or private person, suitable sites including land and appurtenances for the disposal of low-level radioactive waste. Sites received by gift or transfer shall be subject to approval and acceptance by the department on behalf of the state.

(2) Lands and appurtenances which are used for the disposal of low-level radioactive waste shall be acquired in fee simple absolute and used exclusively for such purpose until the department determines that such exclusive use is not required to protect the public health, safety, welfare, or environment. Before such a site is leased for other use, the department shall require and assure that the radioactive waste history of the site be recorded in the permanent land records of the site. All radioactive material accepted for disposal at a radioactive waste disposal site shall become the property of the state.

(3) The state may contract for the operation of a disposal site owned by the state or acquired pursuant to subsection (1) of this section. The contract operator shall be subject to licensing by the department and shall be subject to the surety and long-term care funding provisions of section 26 of this act.

Sec. 26. (1) For licensed activities involving disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee to provide an adequate surety or other financial arrangement to comply with the requirements for decontamination, decommissioning, site closure and stabilization of sites, and structures and equipment used in conjunction with such licensed activity, in the event the licensee defaults for any reason in performing such requirements. Any arrangement which constitutes self-insurance shall not be allowed.

(2) All sureties required pursuant to subsection (1) of this section which are forfeited shall be paid to the department for deposit by the State Treasurer in a special fund called the Radiation Site Closure and Reclamation Fund, which is hereby created. Any money in the fund may be expended by the department as necessary to complete the requirements on which licensees have defaulted. Money in this fund shall not be used for normal operating expenses of the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

(3) For licensed activities involving the disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee, before termination of the license, to make available such funding arrangements as may be necessary to provide for long-term site surveillance and care.

(4) All funds collected from licensees pursuant to subsection (3) of this section shall be paid to the department for deposit by the State Treasurer in a special fund called the Radiation Long-term Care Fund, which is hereby created. All interest accrued on money deposited in the fund may be expended by the department for the continuing long-term surveillance, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the public health, safety, and environment. Notwithstanding any other provisions of this subsection, if title to and custody of any radioactive material and its disposal

site are transferred to the United States upon termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

(5) The department may by contract, agreement, lease, or license with the Department of Health provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

Sec. 27. (1) The department shall collect fees or surcharges established by the council for radiation protection services provided pursuant to the Low-level Radioactive Waste Disposal Act and the Central Interstate Low-level Radioactive Waste Compact. Services for which fees or surcharges may be established include (a) issuance, amendment, and renewal of licenses for disposal facilities, (b) inspection of licensees, (c) environmental surveillance activities to assess the radiological impact of activities conducted by licensees, and (d) the budget of the Central Interstate Low-level Radioactive Waste Compact Commission pursuant to Article IV, section (h)(2) of the compact.

(2) In determining the amount of such fees, the council shall set the fees in an amount sufficient to reimburse the state for its direct and indirect costs of the services specified in subsection (1) of this section. The council shall take into account any special arrangements between the state and a licensee, another state, or a federal agency from which the cost of the service is partially or fully recovered.

(3) When a licensee fails to pay the applicable fee or surcharge, the department may suspend or revoke the license or may issue an appropriate order.

(4) Any fees or surcharges collected pursuant to this section shall be deposited in the department's Low-level Radioactive Waste Cash Fund, which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 28. The Low-level Radioactive Waste Disposal Act shall supersede ordinances, resolutions, or regulations, now or hereafter in effect, of the governing body of a municipality or county or of state agencies which are inconsistent with the act.

Sec. 29. In any proceeding for the denial of

an application for license or for revocation, suspension, or modification of a license, the department shall provide to the applicant or licensee an opportunity for a hearing on the record.

Sec. 30. (1) For any application for licensing disposal of low-level radioactive wastes, the department shall provide an opportunity, after public notice, for written comments and a public hearing. The department shall issue a written determination of the action to be taken which is based upon findings to be included in the determination and upon evidence presented during the public comment period.

(2) The department shall prepare, for each licensed activity which has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The department shall prohibit any construction with respect to any activity for which an environmental impact analysis is required prior to completion of such analysis. The analysis shall be available to the public before the commencement of a hearing held pursuant to this section and shall include:

(a) An assessment of the radiological and nonradiological impacts to the public health;

(b) An assessment of any impact on any waterways and ground water;

(c) Consideration of alternatives to the activities to be conducted, including alternative sites and engineering methods; and

(d) Consideration of the long-term impacts, including closure, decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such closure, decommissioning, decontamination, and reclamation.

(3) Any final agency action or order may be appealed pursuant to section 84-917.

Sec. 31. Whenever the director finds that an emergency exists requiring immediate action to protect the public health and safety, the director may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency including, but not limited to, closure of the site. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director, such person shall be afforded a hearing not later than ten days after receipt



of such application. On the basis of such hearing, the director shall continue, modify, or revoke such order within thirty days after such hearing.

Sec. 32. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Low-level Radioactive Waste Disposal Act or any rule, regulation, or order issued pursuant to the act, the Attorney General or county attorney may apply to the district court for an order enjoining such acts or practices or for an order directing compliance. Upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Sec. 33. It shall be unlawful for any person to dispose of low-level radioactive waste unless licensed by the department pursuant to the Low-level Radioactive Waste Disposal Act.

Sec. 34. Any person who violates the Low-level Radioactive Waste Disposal Act or rules, regulations, or orders issued pursuant to the act shall upon conviction be guilty of a Class IV felony.

Sec. 35. (1) Any person who (a) violates any licensing provision of the Low-level Radioactive Waste Disposal Act, any rule, regulation, or order issued pursuant to the act, or any term, condition, or limitation of any license issued pursuant to the act or (b) commits any violation for which a license may be revoked under rules or regulations issued pursuant to the act may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

(2) Whenever the department proposes to subject a person to the imposition of a civil penalty under this section, the department shall notify such person in writing (a) setting forth the date, facts, and nature of each act or omission with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (c) specifying each penalty which the department proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the

department to the last-known address of such person. The person so notified may request a hearing, in writing, within thirty days of receipt of such notice. A hearing, if granted, shall be held in accordance with section 84-913. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may appeal such action pursuant to section 84-917. On the request of the department, the Attorney General or county attorney may institute a civil action to collect a penalty imposed pursuant to this section.

Sec. 36. The state's annual contribution to the Central Interstate Low-level Radioactive Waste Compact Commission's budget shall be paid by generators of low-level radioactive waste in this state which dispose of such waste in low-level radioactive waste disposal facilities through fees assessed by the department. Fees may be reasonably assessed on the basis of volume of the waste shipped and shall be deposited in the Low-level Radioactive Waste Cash Fund. Such fees shall be due the first of July beginning in 1986 and shall continue until surcharges are collected pursuant to Article IV, Section (h)(2) of the compact.

Sec. 37. Any person who violates any provision of the Central Interstate Low-level Radioactive Waste Compact shall be subject to a civil penalty of not more than ten thousand dollars per day of violation.

Sec. 38. Any person violating the provisions of the Central Interstate Low-level Radioactive Waste Compact may be enjoined from continuing such violation. An action may also be brought to compel performance of an obligation created by the compact. The court may require any person who is adjudged responsible to do and perform any and all things within his or her power which are reasonably necessary to fulfill the obligation.

Sec. 39. Any action for a violation of the Central Interstate Low-level Radioactive Waste Compact or an action to enjoin a violation or to compel performance under the compact shall be brought by the Attorney General in the name of the state.

Sec. 40. That section 81-1528.01, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 41. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.