WEST VIRGINIA CODE CHAPTER 16 ARTICLE 27B

WV Legislature

§16-27B-1. Declaration of policy.

It is the policy of the state in furtherance of its responsibility to protect the occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the federal government, a single effective system of regulation within the state, and a system consonant insofar as possible with those of other states.

(2) To institute and maintain a program to permit development and use of sources of radiation for peaceful purposes consistent with the health and safety of the public.

(3) To provide for the availability of capacity outside the state for the disposal of low-level radioactive waste generated within the state except for waste generated as a result of defense or federal research and development activities and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis.

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§16-27B-2. Declaration of purpose.

This article is enacted to provide:

(1) A program of effective regulation of sources of radiation for the protection of the occupational and public health and safety.

(2) A program to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized.

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source and special nuclear materials, and radiation generating equipment.

(4) A program to permit use of sources of radiation consistent with the health and safety of the public.

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§16-27B-3. Definitions.

As used in this article unless the context requires a different meaning:

(1) "By-product material" means:

(A) 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;

(B) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity;

(C) Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(D) Any discrete source of naturally occurring radioactive material (NORM), other than source material that the United States Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security including conversion to technologically enhanced naturally occurring radioactive material (TENORM) through extraction, or conversion after extraction, for use for a commercial, medical, or research activity.

(2) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses, or registration certificates, but does not include criminal penalties.

(3) "Decommissioning" means 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 post-operational care.

(4) "Department" means the West Virginia Department of Health.

(5) "General license" means a license effective under rules promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, radioactive material.

(6) "High-level radioactive waste" means:

(A) Irradiated reactor fuel;

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(B) 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; or

(C) Solids into which such liquid wastes have been converted.

(7) "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

(8) "Licensing" means licensing with the department in accordance with rules and regulations adopted pursuant to this article.

(9) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material.

(10) "Person" means any individual, corporation, LLC, partnership, firm, association, trust, estate, public or private institution, group, agency of this state, other than the Department of Health, political subdivision of this state, any other state or political subdivision or department thereof, and any legal successor, representative, agent, or department of the foregoing, but not including federal government agencies.

(11) "Radiation" means ionizing radiation.

(12) "Radiation emergency" means any situation, excluding events resulting from nuclear warfare, which involves the possibility of accidental release of ionizing radiation that may pose a threat to public health and safety or the environment.

(13) "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system which during operation can generate or emit radiation except those which emit radiation only from radioactive material.

(14) "Radioactive material" means any material (solid, liquid, or gas) which emits ionizing radiation spontaneously. It includes accelerator-produced, byproduct, naturally occurring, and source and special nuclear materials.

(15) "Registration" means registration with the department in accordance with rules and regulations adopted pursuant to this article.

(16) "Secretary" means the secretary of the West Virginia Department of Health or his or her designee.

(17) "Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form; or ores that contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

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(18) "Sources of radiation" means, collectively, radioactive material and radiation generating equipment.

(19) "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or any successor thereto has determined to be such but does not include source material; or (ii) any material artificially enriched by any of the foregoing but not including source material.

(20) "Specific license" means a license, issued to a named person upon application filed under the rules promulgated pursuant to this article, to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices utilizing, radioactive material.

(21) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one year’s decay since being used as a source of energy in a power reactor. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

(22) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.

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§16-27B-4. Exemption.

The provisions of this article shall not apply to radioactive materials or facilities, including nuclear reactors, that are subject to exclusive licensing and regulation by the United States Nuclear Regulatory Commission.

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§16-27B-5. Department designated state radiation control agency; powers and duties.

(a) The Department of Health is hereby designated as the state radiation control agency.

(b) The secretary shall designate the director of the state radiation control agency who shall perform the functions vested in the state radiation control agency under the provisions of this article.

(c) In accordance with the laws of the state, the state radiation control agency may employ, compensate, and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this article.

(d) The state radiation control agency, for the protection of the occupational and public health and safety, and the environment shall:

(1) Develop programs for evaluation and control of hazards associated with use of sources of radiation.

(2) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials.

(3) Develop programs with due regard for consistency with federal programs for regulation of radiation generating equipment.

(4) Formulate, adopt, promulgate, and repeal rules and regulations, which may provide for licensing and/or registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the federal government.

(5) 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 the control of sources of radiation.

(6) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from public or private sources.

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation.

(8) Collect and disseminate information relating to the control of sources of radiation, including:

(A) Establish and maintain a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

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(B) Establish and maintain a file of registrants possessing sources of radiation requiring registration under the provisions of this article and any administrative or judicial action pertaining thereto; and

(C) Establish and maintain a file of all agency rules related to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

(9) Establish a database of registered and certified radiation producing devices, which shall include but not be limited to the name of the owner or operator and the location of the machine.

(10) Pursuant to its powers enumerated in §16-27B-6 of this code, provide for scheduled and random unannounced inspections of facilities that house radiation producing devices and radioactive sources and provide relevant services to ensure compliance with all applicable laws, rules, licenses, or conditions.

(11) Establish all necessary forms, including periodic radiation inspection reports.

(12) Develop programs for responding adequately to radiation emergencies and coordinate such programs with the emergency management agencies.

(13) Publish and make available a list of qualified physicists and vendors of radiation producing devices, radioactive supplies, and those qualified to perform work related to the same.

(14) Ensure compliance with all requirements under the Appalachian States Low-Level Radioactive Waste Compact pursuant to §29-1H-1 *et seq*. of this code and all federal laws.

(15) Promulgate all rules necessary under this article, in accordance with the provisions of §29A-3-1 *et seq*. of this code, related to (i) general or specific licenses necessary to use, store, dispose, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially, (ii) registration of the possession of a source of radiation and maintaining all related records, (iii) regulation of by-product, source and special nuclear material and (iv) compliance with Appalachian States Low-Level Radioactive Waste Compact pursuant to §29-1H-1 *et seq*. of this code and all federal laws.

(16) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this article.

(e) The department is authorized to require by rule, regulation, or order, the keeping of such records with respect to activities under licenses and registration certificates issued under this article as may be necessary to effectuate the purpose of this article. These records shall be made available for inspection by, or copies thereof shall be submitted to, the department on request.

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(f) The secretary shall establish fee schedules for licensures, registrations, inspections, and modifications thereto required pursuant to this article. All such fees collected shall be paid to the department for deposit in a special fund called the Radiation Licensure and Inspection Fund created pursuant to §16-27B-9 of this code.

(g) The secretary shall provide compensation, office space, staff, and office equipment as may be necessary to discharge the responsibilities imposed by this article.

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§16-27B-6. Licensing of radioactive material.

(a) All radioactive material not under the authority of the United States Nuclear Regulatory Commission, and devices or equipment utilizing such material, shall be licensed by the department under the rules promulgated by the department. Rules promulgated under this article shall provide for recognition of other Agreement State or federal licenses.

(b) It shall be unlawful for any person to use, store, dispose, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless licensed by or registered with the department in accordance with this article and with any rules promulgated by the department pursuant to this article. The disposal of radioactive waste material in a solid waste facility or in a commercial solid waste facility, as defined in §22-15-2 of this code, is prohibited.

(c) The department shall provide by rule or regulation for general or specific licensing of radioactive material or devices or equipment utilizing such material. Such rule or regulation shall provide for the amendment, suspension, or revocation of licenses.

(d) The department is authorized to require registration or licensing of other sources of radiation.

(e) The department is authorized to exempt certain sources of radiation or kinds of uses or users from the licensing or registering requirements set forth in this section when the department makes a finding that the exemption of such sources of radiation or kinds of use or users will not constitute a significant risk to public health and safety or the environment.

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§16-27B-7. Surety requirements.

(a) For licensed activities the department may, establish by rule or regulation standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the decontamination, closure, decommissioning and reclamation of sites, structures, and equipment used in conjunction with such licensed activity, in the event that the licensee should default for any reason in performing such requirements.

(b) All sureties or moneys made a part of any other financial arrangement required under subsection (a) which are forfeited shall be paid to the department for deposit in a special fund called the Radiation Site Closure and Reclamation Fund created pursuant to §16-27B-8 of this code.

(c) For licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease, the department may, establish by rule or regulation standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care.

(d) All funds collected from licensees under subsection (c) shall be paid to the department for deposit in a special fund called Radiation Site Closure and Reclamation Fund created under §16-27B-8 of this code.

(e) The sureties or other financial arrangements and funds required by subsections (a) and (c) shall be established in amounts sufficient to ensure compliance with those standards, if any, established by the United States Nuclear Regulatory Commission pertaining to closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(f) In order to provide for the proper care and surveillance of sites subject to subsection (c) of this section, the department may acquire by gift or transfer from another government agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the department.

(g) The department may by contract, agreement, lease, or license with any person, including another state or federal agency, 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.

(h) All federal, state, local, or other governmental agencies, shall be exempt from the requirements of subsection (a) and (c).

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§16-27B-8. Radiation Site Closure and Reclamation Fund.

(a) There is hereby created in the State Treasury a special revenue fund known as the Radiation Site Closure and Reclamation Fund. The fund shall be administered by and under the control of the Secretary of the Department of Health. Expenditures from the fund shall be solely for the purposes under this article of administration, acquisition, construction, decommission, decontamination, maintenance, surveillance, remediation, reclamation, closure, or other care on sites containing or associated with licensable radioactive material for the protection of public health and safety and the environment.

(b) The fund shall consist of moneys appropriated by the Legislature, moneys received from the federal government, moneys received from forfeited sureties, moneys received under §16-27B-7(a) or (d) of this code, and from private donations, grants, bequests, and all other moneys received from all sources for the purposes stated herein.

(c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the general revenue but shall remain in the fund solely for the purposes stated in this article.

(d) The moneys accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this code section.

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§16-27B-9. Radiation Licensure and Inspection Fund.

(a) There is hereby created in the State Treasury a special revenue fund known as the Radiation Licensure and Inspection Fund. The fund shall be administered by and under the control of the Secretary of the Department of Health. Expenditures from the fund shall be solely for the purposes under this article of administration, registration, licensing, and inspection of radioactive materials facilities and equipment for the protection of public health and safety and the environment.

(b) The fund shall consist of moneys appropriated by the Legislature, moneys received from the federal government, moneys received from licensing and registration fees, and from private donations, grants, bequests, and all other moneys received from all sources for the purposes stated herein. Moneys from forfeited sureties or which are part of other financial arrangements under §16-27B-7 of this code and any interest earned thereon shall not be deposited into this fund or used for normal operating expenses.

(c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the general revenue but shall remain in the fund solely for the purposes stated in this article.

(d) The moneys accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section.

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§16-27B-10. Impounding sources of ionizing radiation.

The department is authorized, in the event of an emergency or under other circumstances constituting a hazard to public health and safety or the environment, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this article, federal law, or any rules or regulations promulgated or issued thereunder.

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§16-27B-11. Authority of Governor to enter into agreements with federal government; effect on federal license.

(a) The Governor is authorized to enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for discontinuance of certain licensing and related regulatory authority of the U.S. Nuclear Regulatory Commission with respect to byproduct, source and special nuclear materials, and the assumption of regulatory authority therefore by this state.

(b) Any person who, on the effective date of an agreement under subsection (a) above, except those exempted under §16-27B-4 of this code, possesses a license issued by the U.S. Nuclear Regulatory Commission for radioactive materials subject to the agreement shall be deemed to possess a like license issued under this article, which shall expire either 90 days after receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the U.S. Nuclear Regulatory Commission license, whichever is earlier.

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§16-27B-12. Authority of department to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

(a) The department, with the prior approval of the Governor, is authorized to enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this state will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(b) The department, from funds provided by law, may institute programs for the purpose of training personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of this article.

(c) The West Virginia Department of Environmental Protection (WVDEP) shall, upon request from the Secretary of the Department of Health, provide technical guidance and support to the department to implement sound and scientific principles for the program based upon the WVDEP's expertise in the coal, oil, and gas industries. The WVDEP shall also provide technical guidance and support to the department on issues related to air and water pollution generated from radiation sources regulated by the department.

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§16-27B-13. Effect upon local ordinances, etc.

Ordinances, resolutions, or rules, now or hereafter in effect, of the governing body of a county, political subdivision, municipality, other state agencies, or other local government body relating to by-product, source, and special nuclear materials shall not be superseded by this article, provided that such ordinances or rules are and continue to be consistent with the provisions of this article, amendments thereto and rules thereunder.

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§16-27B-14. Enforcement; civil penalties.

(a) Any person who violates any licensing or registration provision of this article or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this article may be subject to a civil penalty, to be imposed by the department, not to exceed $10,000. If any violation is a continuing one, each day of such violation shall constitute a separate and distinct violation for the purposes of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

(b) Whenever the department proposes to subject a person to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing;

(1) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(2) Specifically identifying the particular provision or provisions of the article, rule, regulation, order, license, or registration certificate involved in the violation; and

(3) Advising of 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 shall be granted an opportunity to show in writing, within such reasonable period as the department shall by rule prescribe, why such penalty should not be imposed. 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 under §29A-1-1 *et seq*. of this code.

(c) The department, or upon the request of the department, the Attorney General, is authorized in the name of the state to institute a civil action to collect a penalty imposed pursuant to this section. The department, or upon the request of the department, the Attorney General, shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred for collection.

(d) All moneys collected from civil penalties shall be deposited in the Radiation Licensure and Inspection Fund created pursuant to §16-27B-9 of this code.

(e) In addition to the provisions of §16-27B-5 of this code, the department shall have the power to enter at all reasonable times, or in cases of an emergency, upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this article and rules issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

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§16-27B-15. Felony created; criminal penalties; injunctions; civil penalties; charges for violations.

(a) Any person who willfully violates any of the provisions of the rules, regulations, or orders of the department or secretary or any provision under this article is guilty of a felony, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $25,000, for each day of such violation, or imprisoned not less than one nor more than five years, or both fined and imprisoned. Upon a second or subsequent conviction, the person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $5,000 nor more than $50,000 for each day of such violation, or imprisoned not less than two nor more than ten years, or both fined and imprisoned.

(b) Any person who violates or intends to violate, or fails, neglects, or refuses to obey any law, lawful rule, or order of the department or secretary or any provision of this article may be compelled in a proceeding instituted in an appropriate court by the department or secretary to obey such rule, order or provision of this article and to comply therewith by injunction, mandamus, or other appropriate remedy.

(c) Without limiting the remedies which may be obtained in subsection (b) of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection (b) shall be subject, in the discretion of the court, to a civil penalty not to exceed $25,000 for each violation, which shall be paid to the Radiation Licensure and Inspection Fund created pursuant to §16-27B-8 of this code. Each day of violation shall constitute a separate and distinct offense.

(d) With the consent of any person who has violated or failed, neglected, or refused to obey any rule or order of the department or secretary or any provision of this article, the department or secretary may provide, in an order issued by the department or secretary against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in §16-27B-14 of this code. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under §16-27B-14 of this code.

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§16-27B-16. Administrative procedure and judicial review.

(a) In any proceeding for the denial of an application for license or for revocation, suspension, or modification or a license, the department shall provide to the applicant or licensee an opportunity for a hearing on the record.

(b) Whenever the department finds that an emergency exists requiring immediate action to protect the environment and the public health and safety, the department may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this article, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the department shall be afforded a hearing within five business days. On the basis of such hearing, the emergency regulation or order shall be continued, modified, or revoked within 30 days after such hearing.

(c) Any final department action or order entered in any proceeding under subsections (a) or (b) of this section shall be subject to appeal to the Board of Review, set forth in §16B-2-2 of this code, within 30 days after receipt of written notice of a final action or order. The provisions of §29A-5-1 *et seq*. of this code shall apply to such appeals.

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