

AN ACT

H
B

8
4
9
P
a
g
e

1

RELATING TO RADIATION PROTECTION; PROVIDING THE SECRETARY OF ENVIRONMENT WITH AUTHORITY TO ENFORCE ORDERS; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE RADIATION PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-3-1 NMSA 1978 (being Laws 1971, Chapter 284, Section 1, as amended) is amended to read:

"74-3-1. SHORT TITLE.--Chapter 74, Article 3 NMSA 1978 may be cited as the "Radiation Protection Act"."

Section 2. Section 74-3-4 NMSA 1978 (being Laws 1971, Chapter 284, Section 4, as amended) is amended to read:

"74-3-4. DEFINITIONS.--As used in the Radiation Protection Act:

- A. "board" means the environmental improvement board;
- B. "agency" or "division" means the environmental protection division of the department of environment;
- C. "council" means the radiation technical advisory council;
- D. "radiation" includes particulate and electromagnetic radiation and ultrasound, but does not include audible sound;
- E. "radioactive material" includes any materials or sources, regardless of chemical or physical state, that emit radiation;
- F. "radiation equipment" means any device that is capable of producing radiation;

G. "agreement state" means any state with which the nuclear regulatory commission has entered into an agreement under Section 274(b) of the federal Atomic Energy Act of 1954, as amended;

H. "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal representatives, agents or assigns;

I. "continued care fund" means the radiation protection continued care fund;

J. "director" means the director of the division;

K. "nuclear regulatory commission" means the United States nuclear regulatory commission; and

L. "secretary" means the secretary of environment."

Section 3. A new section of the Radiation Protection Act is enacted to read:

"EMERGENCY POWERS OF THE SECRETARY.--

A. Notwithstanding any other provision of the Radiation Protection Act, if the secretary determines that a person is violating a condition of a license or registration issued by the agency, or administered by the agency pursuant to an agreement with the nuclear regulatory commission, or any regulation promulgated pursuant to the Radiation Protection Act, and determines that the violation may present an imminent and substantial endangerment to human health or safety, the secretary may bring suit to immediately restrain the person from the violation or take such other action as may be necessary or both. The secretary may also take other action, including issuing orders as may be necessary to protect human health and safety. The order shall be effective immediately; however, the person named in the

H
B
8
4
9
P
a
g
e
2

order may request an administrative hearing before the secretary within ten days after the order is served. If a timely request for a hearing is made, the secretary shall hold the hearing within thirty days. The secretary may commence an action in the appropriate district court to enforce an order.

H
B
8
4
9
P
a
g
e
3

B. A person who willfully violates an order of the secretary pursuant to Subsection A of this section may be fined not more than fifteen thousand dollars (\$15,000) per day for each violation of the order."

Section 4. A new section of the Radiation Protection Act is enacted to read:

"ENFORCEMENT--COMPLIANCE ORDERS--CIVIL PENALTIES.--

A. When, on the basis of any information, the secretary determines that a person has violated or is violating a requirement or prohibition set forth in the Radiation Protection Act, a regulation promulgated pursuant to that act or a condition of a license or registration issued pursuant to that act, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period, or assessing a civil penalty for a past or current violation, or both. The secretary may commence an action in the appropriate district court to enforce an order; or

(2) commence a civil action in district court for appropriate relief, including injunctive relief.

B. An order issued pursuant to Subsection A of this section may include a suspension or revocation of a license or registration, or portion thereof, issued by the secretary. A penalty assessed in the order shall not exceed fifteen thousand dollars (\$15,000) per day for each violation in the order. If a person named

in an order fails to comply with the order, the secretary may assess a civil penalty in an amount not to exceed fifteen thousand dollars (\$15,000) per day for each violation of the order.

C. In determining the amount of a penalty to be assessed pursuant to this section, the secretary shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and any other relevant factors.

D. An order issued pursuant to the provisions of Subsection A of this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a public hearing. The secretary shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward a recommendation based on the proceedings to the secretary. The secretary shall make a final decision.

E. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents. The secretary may also adopt rules for discovery procedures.

F. Penalties collected pursuant to an administrative order issued pursuant to this section shall be deposited in the state general fund."

Section 5. A new section of the Radiation Protection Act is enacted to read:

"ADMINISTRATIVE ACTIONS--APPEALS--

A. A person who is adversely affected by a final administrative action of the secretary may appeal to the court of appeals for further relief within thirty days

H
B
8
4
9
P
a
g
e
4

after the action. All appeals shall be on the administrative record developed by the secretary.

B. Upon appeal, the court of appeals shall set aside the action only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

C. A stay of enforcement of the action being appealed may be granted after hearing and upon good cause shown:

- (1) by the secretary; or
- (2) by the court of appeals if the secretary denies a stay or fails

to act upon an application for a stay within sixty days after receipt."

Section 6. A new section of the Radiation Protection Act is enacted to read:

"CRIMINAL PENALTIES.--

A. A person who knowingly commits a violation of the Radiation Protection Act or a regulation promulgated pursuant to that act is guilty of a misdemeanor and upon conviction shall be sentenced to a term of imprisonment not to exceed three hundred sixty-four days or the payment of a fine not to exceed ten thousand dollars (\$10,000), or both.

B. A person who knowingly makes a false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained pursuant to the Radiation Protection Act or any regulation promulgated pursuant to that act is guilty of a petty misdemeanor and upon conviction shall be sentenced to a term of imprisonment not to exceed six months or the payment

H
B

8

4

9

P

a

g

e

5

of a fine not to exceed ten thousand dollars (\$10,000), or both."

Section 7. REPEAL.--Sections 74-3-11 and 74-3-12 NMSA 1978 (being Laws 1971, Chapter 284, Section 9 and Laws 1977, Chapter 343, Section 12, as amended) are repealed.

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, ~~2009~~