

Chapter 70A.310 RCW
MILL TAILINGS—LICENSING AND PERPETUAL CARE

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Nuclear energy and radiation: Chapter 70A.388 RCW.

Radioactive waste storage and transportation act of 1980: Chapter 70A.390 RCW.

RCW 70A.310.010 Legislative findings. The legislature finds that:

(1) The milling of uranium and thorium creates potential hazards to the health of the citizens of the state of Washington in that potentially hazardous radioactive isotopes, decay products of uranium and thorium, naturally occurring in relatively dispersed geologic formations, are brought to one location on the surface and pulverized in the process of mining and milling uranium and thorium.

(2) These radioactive isotopes, in addition to creating a field of gamma radiation in the vicinity of the tailings area, also exude potentially hazardous radioactive gas and particulates into the atmosphere from the tailings areas, and contaminate the milling facilities, thereby creating hazards which will be present for many generations.

(3) The public health and welfare of the citizens demands that the state assure that the public health be protected by requiring that: (a) Prior to the termination of any radioactive materials license, all milling facilities and associated tailings piles will be decommissioned in such a manner as to bring the potential public health hazard to a minimum; and (b) such environmental radiation monitoring as is necessary to verify the status of decommissioned facilities will be conducted. [1979 ex.s. c 110 § 1. Formerly RCW 70.121.010.]

Effective date—1979 ex.s. c 110: "This act shall take effect on January 1, 1980." [1979 ex.s. c 110 § 18.]

RCW 70A.310.020 Definitions. Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "License" means a radioactive materials license issued under chapter 70A.388 RCW and the rules adopted under chapter 70A.388 RCW.

(3) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(4) "Obligor-licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual surveillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(5) "Secretary" means the secretary of health.

(6) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(7) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor-licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor-licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed.

(8) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(9) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations. [2020 c 20 § 1368; 1991 c 3 § 372; 1987 c 184 § 1; 1982 c 78 § 1; 1979 ex.s. c 110 § 2. Formerly RCW 70.121.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.030 Licenses—Renewal—Hearings. (1) Any person who proposes to operate a uranium or thorium mill within the state of Washington after January 1, 1980, shall obtain a license from the department to mill thorium and uranium. The period of the license shall be determined by the secretary and shall be initially valid for not more than two years and renewable thereafter for periods of not more than five years. No license may be granted unless:

(a) The owner or operator of the mill submits to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill agrees to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(2) Any person operating a uranium or thorium mill on January 1, 1980, shall, at the time of application for renewal of his or her license to mill thorium or uranium, comply with the following conditions for continued operation of the mill:

(a) The owner or operator of the mill shall submit to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill shall agree to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(3) The department shall, after public notice and opportunity for written comment, hold a public hearing to consider the adequacy of the proposed plan to protect the safety and health of the public required by subsections (1) and (2) of this section. The proceedings shall be recorded and transcribed. The public hearing shall provide the opportunity for cross-examination by both the department and the person proposing the plan required under this section. The department shall make a written determination as to the licensing of the mill which is based upon the findings included in the determination and upon the evidence presented during the public comment period. The determination is subject to judicial review. If a declaration of nonsignificance is issued for a license renewal application under rules adopted under chapter 43.21C RCW, the public hearing is not required.

(4) The department shall set a schedule of license and amendment fees predicated on the cost of reviewing the license application and of monitoring for compliance with the conditions of the license. A permit for construction of a uranium or thorium mill may be granted by the secretary prior to licensing. [2012 c 117 § 427; 1979 ex.s. c 110 § 3. Formerly RCW 70.121.030.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.040 Facility operations and decommissioning—Monitoring. The secretary or his or her representative shall monitor the operations of the mill for compliance with the conditions of the license by the owner or operator. The mill owner or operator shall be responsible for compliance, both during the lifetime of the facility and at shutdown, including but not limited to such requirements as fencing and posting the site; contouring, covering, and stabilizing the pile; and for decommissioning the facility. [2012 c 117 § 428; 1979 ex.s. c 110 § 4. Formerly RCW 70.121.040.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition. On a quarterly basis on and after January 1, 1980, there shall be levied and the department shall collect a charge of five cents per pound on each pound of uranium or thorium compound milled out of the raw ore. All moneys paid to the department from these charges shall be deposited in a special security fund in the treasury of the state of Washington to be known as the "radiation perpetual maintenance fund." This security fund shall be used by the department when a licensee has ceased to operate and the site may still contain, or have associated with the site at which the licensed activity was conducted in spite of full compliance with RCW 70A.310.030, radioactive material which will require further maintenance, surveillance, or other care. If, with respect to a licensee, the department determines that the estimated total of these charges will be less than or greater than that required to defray the estimated cost of administration of this responsibility, the department may prescribe such an increased or decreased charge as is considered necessary for this purpose. If, at termination of the license, the department determines that by the applicable standards and practices then in effect, the charges which have been collected from the licensee and earnings generated therefrom are in excess of the amount required to defray the cost of this responsibility, the department may refund the excess portion to the licensee. If, at termination of the license or cessation of operation, the department determines, by the applicable standards and practices then in effect, that the charges which have been collected from the licensee and earnings generated therefrom are together insufficient to defray the cost of this responsibility, the department may collect the excess portion from the licensee. [2020 c 20 § 1369; 2012 c 187 § 8; 1987 c 184 § 2; 1979 ex.s. c 110 § 5. Formerly RCW 70.121.050.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.060 State authority to acquire property for surveillance sites. In order to provide for the proper care and surveillance of sites under RCW 70A.310.050, the state may acquire by gift or transfer from any government agency, corporation, partnership, or person, all lands, buildings, and grounds necessary to fulfill the purposes of this chapter. Any such gift or transfer shall be subject to approval by the department. In exercising the authority of this section, the department shall take into consideration the status of the ownership of the land and interests therein and the ability of the licensee to transfer title and custody thereof to the state. [2020 c 20 § 1370; 1979 ex.s. c 110 § 6. Formerly RCW 70.121.060.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.070 Status of acquired state property for surveillance sites. Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any

particular agency or department thereof, all lands, buildings, and grounds acquired by the state under RCW 70A.310.060 shall be owned in fee simple by the state and dedicated in perpetuity to the purposes stated in RCW 70A.310.060. All radioactive material received at a site and located therein at the time of acquisition of ownership by the state shall become the property of the state. [2020 c 20 § 1371; 1979 ex.s. c 110 § 7. Formerly RCW 70.121.070.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.080 Payment for transferred sites for surveillance.

If a person licensed by any governmental agency other than the state or if any other governmental agency desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump sum payment shall be made to the radiation perpetual maintenance fund. The amount of the deposit shall be determined by the department taking into consideration the factors stated in RCW 70A.310.050. [2020 c 20 § 1372; 1979 ex.s. c 110 § 8. Formerly RCW 70.121.080.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.090 Authority for on-site inspections and monitoring. Each licensee under this chapter, as a condition of his or her license, shall submit to whatever reasonable on-site inspections and on-site monitoring as required in order for the department to carry out its responsibilities and duties under this chapter. Such on-site inspections and monitoring shall be conducted without the necessity of any further approval or any permit or warrant therefor. [2012 c 117 § 429; 1979 ex.s. c 110 § 9. Formerly RCW 70.121.090.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.100 Licensees' bond requirements. The secretary or the secretary's duly authorized representative shall require the posting of a bond by licensees to be used exclusively to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The secretary may establish bonding requirements by classes of licensees and by range of monetary amounts. In establishing these requirements, the secretary shall consider the potential for contamination, injury, cost of disposal, and reclamation of the property. The amount of the bond shall be sufficient to pay the costs of reclamation and perpetual maintenance. [1987 c 184 § 5; 1979 ex.s. c 110 § 10. Formerly RCW 70.121.100.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.110 Acceptable bonds. A bond shall be accepted by the department if it is a bond issued by a fidelity or surety company admitted to do business in the state of Washington and the fidelity or surety company is found by the state finance commission to be financially secure at licensing and licensing renewals, if it is a personal bond secured by such collateral as the secretary deems satisfactory and in accordance with RCW 70A.310.100, or if it is a cash bond. [2020 c 20 § 1373; 1987 c 184 § 6; 1979 ex.s. c 110 § 11. Formerly RCW 70.121.110.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.120 Forfeited bonds—Use of fund. All bonds forfeited shall be paid to the department for deposit in the radiation perpetual maintenance fund. All moneys in this fund may only be expended by the department as necessary for the protection of the public health and safety and shall not be used for normal operating expenses of the department. [1979 ex.s. c 110 § 12. Formerly RCW 70.121.120.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.130 Exemptions from bonding requirements. All state, local, or other governmental agencies, or subdivisions thereof, are exempt from the bonding requirements of this chapter. [1987 c 184 § 7; 1979 ex.s. c 110 § 13. Formerly RCW 70.121.130.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.140 Amounts owed to state—Lien created. If a licensee fails to pay the department within a reasonable time money owed to the state under this chapter, the obligation owed to the state shall constitute a lien on all property, both real and personal, owned by the obligor-licensee when the department records or files, pursuant to this section, a statement of claim against the obligor-licensee. The statement of claim against the obligor-licensee shall name the obligor-licensee, name the state as obligee, describe the obligation, and describe the property to be held in security for the obligation.

Statements of claim creating a lien on real property, fixtures, timber, agricultural products, oil, gas, or minerals shall be recorded with the county auditor in each county where the property is located. Statements of claim creating a lien in personal property, whether tangible or intangible, shall be filed with the department of licensing.

A lien recorded or filed pursuant to this section has priority over any lien, interest, or other encumbrance previously or thereafter recorded or filed concerning any property described in the statement of claim, to the extent allowed by federal law.

A lien created pursuant to this section shall continue in force until extinguished by foreclosure or bankruptcy proceedings or until a

release of the lien signed by the secretary is recorded or filed in the place where the statement of claim was recorded or filed. The secretary shall sign and record or file a release only after the obligation owed to the state under this chapter, together with accrued interest and costs of collection has been paid. [1987 c 184 § 3. Formerly RCW 70.121.140.]

RCW 70A.310.150 Amounts owed to the state—Collection by attorney general. The attorney general shall use all available methods of obtaining funds owed to the state under this chapter. The attorney general shall foreclose on liens made pursuant to this section, obtain judgments against obligor-licensees and pursue assets of the obligor-licensees found outside the state, consider pursuing the assets of parent corporations and shareholders where an obligor-licensee corporation is an underfinanced corporation, and pursue any other legal remedy available. [1987 c 184 § 4. Formerly RCW 70.121.150.]

RCW 70A.310.900 Construction. This chapter is cumulative and not exclusive, and no part of this chapter shall be construed to repeal any existing law specifically enacted for the protection of the public health and safety. [1979 ex.s. c 110 § 14. Formerly RCW 70.121.900.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.

RCW 70A.310.901 Short title. This chapter may be known as the "Mill Tailings Licensing and Perpetual Care Act of 1979". [1979 ex.s. c 110 § 15. Formerly RCW 70.121.905.]

Effective date—1979 ex.s. c 110: See note following RCW 70A.310.010.