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HOUSE BILL 849

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Danice Picraux

AN ACT

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. -- [~~Sections 12-9-1 through 12-9-12 NMSA 1953~~] 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:

underscored material = new
[bracketed material] = del ete

underscored material = new
[bracketed material] = delete

- 1 A. "board" means the environmental improvement
2 board;
- 3 B. "agency" or "division" means the environmental
4 [~~improvement agency~~] protection division of the department of
5 environment;
- 6 C. "council" means the radiation technical advisory
7 council;
- 8 D. "radiation" includes particulate and
9 electromagnetic radiation and ultrasound, but does not include
10 audible sound;
- 11 E. "radioactive material" includes any materials or
12 sources, regardless of chemical or physical state, [~~which~~] that
13 emit radiation;
- 14 F. "radiation equipment" means any device [~~which~~]
15 that is capable of producing radiation;
- 16 G. "agreement state" means any state with which the
17 nuclear regulatory commission [~~or its successor~~] has entered
18 into an agreement under Section 274(b) of the federal Atomic
19 Energy Act of 1954, as amended;
- 20 H. "person" means any individual, partnership,
21 firm, public or private corporation, association, trust,
22 estate, political subdivision or agency, or any other legal
23 entity or [~~their~~] its legal representatives, agents or assigns;
- 24 I. "continued care fund" means the radiation
25 protection continued care fund;

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[bracketed material] = delete

1 J. "director" means the director of the
2 [~~environmental improvement agency and~~] division;

3 K. "nuclear regulatory commission" means [~~the~~
4 ~~United States atomic energy commission~~] the United States
5 nuclear regulatory commission [~~or its successor~~]; and

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

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

9 "[NEW MATERIAL] EMERGENCY POWERS OF THE SECRETARY. --

10 A. Notwithstanding any other provision of the
11 Radiation Protection Act, if the secretary determines that a
12 person is violating a condition of a license or registration
13 issued by the agency, or administered by the agency pursuant to
14 an agreement with the nuclear regulatory commission, or any
15 regulation promulgated pursuant to the Radiation Protection
16 Act, and determines that the violation may present an imminent
17 and substantial endangerment to human health or safety, the
18 secretary may bring suit to immediately restrain the person
19 from the violation or take such other action as may be
20 necessary or both. The secretary may also take other action,
21 including issuing orders as may be necessary to protect human
22 health and safety. The secretary may commence an action in the
23 appropriate district court to enforce an order.

24 B. A person who willfully violates an order of the
25 secretary pursuant to Subsection A of this section may be fined

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1 not more than fifteen thousand dollars (\$15,000) per day for
2 each violation of the order. "

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

5 " [NEW MATERIAL] ENFORCEMENT--COMPLIANCE ORDERS--CIVIL
6 PENALTIES. --

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

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

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

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

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[bracketed material] = delete

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

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

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

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

25 F. Penalties collected pursuant to an

1 administrative order issued pursuant to this section shall be
2 deposited in the state general fund. "

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

5 "[NEW MATERIAL] CRIMINAL PENALTIES. --

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

12 B. A person who knowingly makes a false statement,
13 representation or certification in an application, record,
14 report, plan or other document filed or required to be
15 maintained pursuant to the Radiation Protection Act or any
16 regulation promulgated pursuant to that act is guilty of a
17 petty misdemeanor and upon conviction shall be sentenced to a
18 term of imprisonment not to exceed six months or the payment of
19 a fine not to exceed ten thousand dollars (\$10,000), or both. "

20 Section 6. REPEAL. -- Sections 74-3-11 and 74-3-12 NMSA
21 1978 (being Laws 1971, Chapter 284, Section 9 and Laws 1977,
22 Chapter 343, Section 12, as amended) are repealed.

23 Section 7. EFFECTIVE DATE. -- The effective date of the
24 provisions of this act is July 1, 2003.