

## **Chapter 104E.**

### **North Carolina Radiation Protection Act.**

#### **§ 104E-1. Title.**

This Chapter shall be known and may be cited as the "North Carolina Radiation Protection Act." (1975, c. 718, s. 1.)

#### **§ 104E-2. Scope.**

Except as otherwise specifically provided, this Chapter applies to all persons who receive, possess, use, transfer, own or acquire any source of radiation within the State of North Carolina; provided, however, that nothing in this Chapter shall apply to any person to the extent such person is subject to regulation by the United States Nuclear Regulatory Commission or its successors. (1975, c. 718, s. 1.)

#### **§ 104E-3. Declaration of policy.**

It is the policy of the State of North Carolina in furtherance of its responsibility to protect the public health and safety:

- (1) To institute and maintain a program to permit development and utilization of sources of radiation for purposes consistent with the health and safety of the public; and
- (2) To prevent any associated harmful effects of radiation upon the public through the institution and maintenance of a regulatory program for all sources of radiation, providing for:
  - a. A single, effective system of regulation within the State;
  - b. A system consonant insofar as possible with those of other states; and
  - c. Compatibility with the standards and regulatory programs of the federal government for by-product, source and special nuclear materials. (1975, c. 718, s. 1.)

#### **§ 104E-4. Purpose.**

It is the purpose of this Chapter to effectuate the policies set forth in G.S. 104E-3 by providing for:

- (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; and
- (3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation. (1975, c. 718, s. 1.)

#### **§ 104E-5. Definitions.**

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

- (1) "Agreement materials" means those materials licensed by the State under agreement with the United States Nuclear Regulatory Commission and which include by-product, source or special nuclear materials in a quantity not sufficient to form a critical mass, as defined by the Atomic Energy Act of 1954 as amended.
- (2) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of section 274 of the Atomic Energy Act of 1954 as amended, as authorized by compatible state legislation providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such licensing activities by the United States Nuclear Regulatory Commission.
- (3) "Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear fusion or other atomic transformations.
- (4) "By-product material" means 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.
- (5) "Commission" means the Radiation Protection Commission.
- (6) "Department" means the Department of Health and Human Services.
- (7) "Emergency" means any condition existing outside the bounds of nuclear operating sites owned or licensed by a federal agency, and further any condition existing within or outside of the jurisdictional confines of a facility licensed by the Department and arising from the presence of by-product material, source material, special nuclear materials, or other radioactive materials, which is endangering or could reasonably be expected to endanger the health and safety of the public, or to contaminate the environment.
- (7a) "Engineered barrier" means a man-made structure or device that is intended to improve a disposal facility's ability to meet (i) the performance objectives of Subpart C, Title 10, Code of Federal Regulations Part 61 in effect on 1 January 1987, (ii) other requirements set out in G.S. 104E-25, and (iii) requirements of rules adopted by the Commission under this Chapter.
- (8) "General license" means a license effective pursuant to regulations promulgated under the provisions of this Chapter without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.
- (9) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear

particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

- (9a) "Low-level radioactive waste" means low-level radioactive waste as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240, 99 Stat. 1842, 42 U.S.C. 2021b et seq. and other waste, including waste containing naturally occurring and accelerator produced radioactive material, which is not regulated by the United States Nuclear Regulatory Commission or other agency of the federal government and which is determined to be low-level radioactive waste by the North Carolina Radiation Protection Commission.
- (9b) "Low-level radioactive waste facility" means a facility for the storage, collection, processing, treatment, recycling, recovery, or disposal of low-level radioactive waste.
- (9c) "Low-level radioactive waste disposal facility" means any low-level radioactive waste facility or any portion of such facility, including land, buildings, and equipment, which is used or intended to be used for the disposal of low-level radioactive waste on or in land in accordance with rules promulgated under this Chapter.
- (10) "Nonionizing radiation" means radiation in any portion of the electromagnetic spectrum not defined as ionizing radiation, including, but not limited to, such sources as laser, maser or microwave devices.
- (11) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, 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, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto.
- (12) "Radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wavelengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters.
- (13) "Radiation machine" means any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated.
- (14) "Radioactive material" means any solid, liquid, or gas which emits ionizing radiation spontaneously.

- (14a) "Shallow land burial" means disposal of low-level radioactive waste in subsurface trenches without the additional confinement of the waste as described in G.S. 104E-25.
- (14b) "Secretary" means the Secretary of Health and Human Services.
- (15) "Source material" means (i) uranium, thorium, or any other material which the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto has determined the material to be such; or (ii) ores containing one or more of the foregoing materials, in such concentration as the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.
- (16) "Special nuclear material" means (i) plutonium, uranium 233, uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (ii) any material artificially enriched by any of the foregoing, but does not include source material.
- (17) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or process quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially. Nothing in this Chapter shall require the licensing of individual natural persons involved in the use of radiation machines or radioactive materials for medical diagnosis or treatment.
- (18) Repealed by Session Laws 1987, c. 850, s. 3. (1975, c. 718, s. 1; 1981, c. 704, s. 8; 1987, c. 633, ss. 1-4; c. 850, s. 3; 1989, c. 727, s. 219(16); 1993, c. 501, s. 2.1; 1995, c. 504, s. 4; 1997-443, s. 11A.119(a); 2011-145, s. 13.3(ccc); 2015-241, s. 14.30(v); 2015-264, s. 54(a).)

**§ 104E-6. Designation of State radiation protection agency.**

The Department is hereby designated the State agency to administer a statewide radiation protection program consistent with the provisions of this Chapter. (1975, c. 718, s. 1.)

**§ 104E-6.1. Conveyance of land used for low-level radioactive waste disposal facility to State.**

(a) No land may be used as a low-level radioactive waste disposal facility until fee simple title to the land has been conveyed to the State of North Carolina. In consideration for such conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. Such lease agreement shall specify that for an annual rent of fifty dollars (\$50.00), the lessee shall be allowed to use the land for the development and operation of a low-level radioactive waste disposal facility. Such lease agreement shall provide that the lessor or any person authorized by the lessor shall have at all times the right to enter without a search warrant or permission of the lessee upon

any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of Chapter 104E. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory requirements concerning insurance, bonding for closure and post-closure costs, monitoring and other financial or health and safety requirements as required by applicable law and regulations. The State, as lessor, shall be immune from liability except as otherwise provided by statute. The lease shall be transferrable with the written consent of the lessor, which consent will not be unreasonably withheld. In the case of such a transfer of the lease, the transferee shall be subject to all terms and conditions that the State deems necessary to ensure compliance with applicable laws and regulations. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, regulation, or license condition, or with any term or condition of the lease, the State may terminate the lease after giving the lessee written notice specifically describing the failure to comply and upon providing the lessee a reasonable time to comply. If the lessee does not effect compliance within the reasonable time allowed, the State may reenter and take possession of the premises.

(b) Notwithstanding the termination of the lease by either the lessee or the lessor for any reason, the lessee shall remain liable for, and be obligated to perform all acts necessary or required by law, regulation, license conditions or the lease for the permanent closure of the site until the site has either been permanently closed or until a substitute operator has been secured and assumed the obligations of the lessee.

(c) In the event of changes in laws or regulations applicable to the facility which make continued operation by the lessee impossible or economically infeasible, the lessee shall have the right to terminate the lease upon giving the State reasonable notice of not less than six months, in which case the lessor shall have the right to secure a substitute lessee and operator.

(d) In the event of termination of the lease by the lessor as provided in subsection (a) of this section, or by the lessee as provided in subsection (c) of this section, the lessee shall be paid the fair market value of any improvements made to the leased premises less the costs to the lessor resulting from termination of the lease and securing a substituted lessee and operator; provided, that the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility. (1981, c. 704, s. 9; 1987, c. 633, s. 5; 1989 (Reg. Sess., 1990), c. 1004, s. 5; 2007-495, s. 9.)

#### **§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of low-level radioactive waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of low-level radioactive waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including but not limited to those imposing taxes, fees, or charges or regulating health, environment, or land use, any local ordinance that prohibits or has the effect of prohibiting the establishment or operation of a low-level radioactive waste facility that the Secretary has preempted pursuant to subsections (b) through (f) of this section, shall be invalid to the extent necessary to effectuate the purposes of this Chapter. To this end, all provisions of special, local, or private acts or resolutions are repealed that:

- (1) Prohibit the transportation, treatment, storage, or disposal of low-level radioactive waste within any county, city, or other political subdivision.
- (2) Prohibit the siting of a low-level radioactive waste facility within any county, city, or other political subdivision.
- (3) Place any restriction or condition not placed by this Chapter upon the transportation, treatment, storage, or disposal of low-level radioactive waste, or upon the siting of a low-level radioactive waste facility within any county, city, or other political subdivision.
- (4) In any manner are in conflict or inconsistent with the provisions of this Chapter.

(a1) No special, local, or private acts or resolutions enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of this Chapter unless it expressly provides for such by specific references to the appropriate section of this Chapter. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste facility are invalidated to the extent preempted by the Secretary pursuant to this Section.

(b) When a low-level radioactive waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance, the operator of the proposed facility may petition the Secretary to review the matter. After receipt of a petition, the Secretary shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Secretary, the Secretary shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Secretary. The Secretary shall give notice of the public hearing by:

- (1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested notice. The Secretary shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Secretary, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c1) Any interested person may appear before the Secretary at the hearing to offer testimony. In addition to testimony before the Secretary, any interested person may submit written evidence to the Secretary for the Secretary's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(d) The Secretary shall determine whether or to what extent to preempt local ordinances so as to allow the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Secretary shall preempt a local ordinance only if the Secretary makes all five of the following findings:

- (1) That there is a local ordinance that would prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste facility.
- (2) That the proposed facility is needed in order to establish adequate capability to meet the current or projected low-level radioactive waste management needs of this State or to comply with the terms of any interstate agreement for the management of low-level radioactive waste to which the State is a party and therefore serves the interests of the citizens of the State as a whole.
- (3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.
- (4) That local citizens and elected officials have had adequate opportunity to participate in the siting process.
- (5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(d1) If the Secretary does not make all five findings set out above, the Secretary shall not preempt the challenged local ordinance. The Secretary's decision shall be in writing and shall identify the evidence submitted to the Secretary plus any additional evidence used in arriving at the decision.

(e) The decision of the Secretary shall be final unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by G.S. 7A-29 and this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Secretary, the Secretary's written decision, a complete transcript of the hearing, all written material presented to the Secretary regarding the location of the facility, the specific findings required by subsection (d) of this section, and any minority positions on the specific findings required by subsection (d) of this section. The scope of judicial review shall be that the court may affirm the decision of the Secretary, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

(e1) If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply. (1981, c. 704, s. 9; 1987, c.

633, s. 6; c. 850, s. 4; 1987 (Reg. Sess., 1988), c. 993, s. 24; c. 1082, s. 10; c. 1100, s. 40.5; 1989, c. 168, s. 14; 1993, c. 501, s. 3; 2001-474, s. 16.)

**§ 104E-7. Radiation Protection Commission – Creation and powers.**

(a) There is hereby created the North Carolina Radiation Protection Commission of the Department of Health and Human Services with the power to promulgate rules and regulations to be followed in the administration of a radiation protection program. All rules and regulations for radiation protection that were adopted by the Commission for Public Health and are not inconsistent with the provisions of this Chapter shall remain in full force and effect unless and until repealed or superseded by action of the Radiation Protection Commission. The Radiation Protection Commission is authorized:

- (1) To advise the Department in the development of comprehensive policies and programs for the evaluation, determination, and reduction of hazards associated with the use of radiation;
- (2) To adopt, promulgate, amend and repeal such rules, regulations and standards relating to the manufacture, production, transportation, use, handling, servicing, installation, storage, sale, lease, or other disposition of radioactive material and radiation machines as may be necessary to carry out the policy, purpose and provisions of this Chapter. To this end, the Commission is authorized to require licensing or registration of all persons who manufacture, produce, transport, use, handle, service, install, store, sell, lease, or otherwise dispose of radioactive material and radiation machines, as the Commission deems necessary to provide an adequate protection and supervisory program: provided, that prior to adoption of any regulation or standard, or amendment or repeal thereof, the Commission shall afford interested parties the opportunity, at a public hearing, as provided in G.S. 104E-13, to submit data or views orally or in writing. The recommendations of nationally recognized bodies in the field of radiation protection shall be taken into consideration in such standards relative to permissible dosage of radiation;
- (3) To require all sources of ionizing radiation to be shielded, transported, handled, used, stored, or disposed of in such a manner to provide compliance with the provisions of this Chapter and rules, regulations and standards adopted hereunder;
- (4) To require, on prescribed forms furnished by the Department, registration, periodic reregistration, licensing, or periodic relicensing of persons to use, manufacture, produce, transport, transfer, install, service, receive, acquire, own, or possess radiation machines and other sources of radiation;
- (5) To exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this Chapter when the Commission determines that the exemption of such sources of radiation



or kinds of uses or users will not constitute a significant risk to the health and safety of the public;

- (6) To promulgate rules and regulations pursuant to this Chapter which may provide for recognition of other state and federal licenses as the Commission shall deem desirable, subject to such registration requirements as it may prescribe; and exercise all incidental powers necessary to carry out the provisions of this Chapter;
- (7) To provide by rule and regulation for an electronic product safety program to protect the public health and safety, which program may authorize regulation and inspection of sources of nonionizing radiation throughout the State. The product safety program may include the establishment of minimum qualifications for the operators of these products or sources.
- (8) To adopt, amend, repeal or promulgate such rules, regulations, and standards relating to the nonradioactive, toxic and hazardous aspects of radioactive waste disposal, as may be necessary to protect the public health and safety.
- (9) To adopt regulations establishing financial responsibility requirements for maintenance, operation and long-term care of low-level radioactive waste facilities, including insurance during the operation of the facility and adequate assurance of availability of funds for facility closure and post-closure monitoring and corrective measures.
- (10) To adopt rules which exempt a generator of low-level radioactive waste who operates a low-level radioactive waste facility solely for the management of wastes he produces, from any requirement, made applicable by this Chapter or rules adopted pursuant to this Chapter to low-level radioactive waste facilities generally where, because of the low volume or activity of the wastes involved, such exemption would not endanger the public health or safety, or the environment.

(b) No license for a low-level radioactive waste facility that would accept low-level radioactive waste from the public, or from another person for a fee, shall be issued other than for a facility authorized by the General Assembly. (1975, c. 718, s. 1; 1979, c. 694, s. 3; 1981, c. 704, s. 10; 1987, c. 850, s. 5; 1989, c. 727, s. 219(17); 1991, c. 735, s. 3; 1997-443, s. 11A.119(a); 2001-474, s. 2; 2007-182, s. 2; 2015-241, s. 14.30(u); 2015-264, s. 54(b).)

**§ 104E-8. Radiation Protection Commission – Members; selections; removal; compensation; quorum; services.**

(a) The Commission shall consist of 11 voting public members and 10 nonvoting ex officio members. The 11 voting public members of the Commission shall be appointed by the Governor as follows:

- (1) One member who shall be actively involved in the field of environmental protection;

- (2) One member who shall be an employee of one of the licensed public utilities involved in the generation of power by atomic energy;
- (3) One member who shall have experience in the field of atomic energy other than power generation;
- (4) One member who shall be a scientist or engineer from the faculty of one of the institutions of higher learning in the State;
- (5) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Medical Society;
- (6) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Dental Society;
- (7) One member who shall have recognized knowledge in the field of radiation and its biological effects from the State at large;
- (8) One member who shall have recognized knowledge in the field of radiation and its biological effects and who shall be a practicing hospital administrator from the North Carolina Hospital Association;
- (9) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Chiropractic Association;
- (10) One member who shall have recognized knowledge in the clinical application of radiation, shall be a practicing radiologic technologist from the North Carolina Society of Radiologic Technologists, and shall be certified by the American Registry of Radiologic Technologists;
- (11) One member who shall have recognized knowledge in the clinical application of radiation and shall be a practicing podiatrist licensed by the North Carolina State Board of Podiatry Examiners.

(b) Public members so appointed shall serve terms of office of four years. Four of the initial members shall be appointed for two years, three members for three years, and three members for four years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a public member shall be for the balance of the unexpired term. At the expiration of each public member's term, the Governor shall reappoint or replace the member with a member of like qualifications. At its first meeting on or after July first of each year, the Commission shall designate by election one of its public members as chairman and one of its public members as vice-chairman to serve through June thirtieth of the following year.

(c) The 10 ex officio members shall be appointed by the Governor, shall be members or employees of the following State agencies or their successors, and shall serve at the Governor's pleasure:

- (1) The Utilities Commission.
- (2) The Commission for Public Health.
- (3) The Environmental Management Commission.
- (4) The Board of Transportation.

- (5) The Division of Emergency Management of the Department of Public Safety.
  - (6) The Division of Health Service Regulation of the Department.
  - (7) The Department of Labor.
  - (8) The Industrial Commission.
  - (9) The Department of Insurance.
  - (10) The Medical Care Commission.
- (d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13.
- (e) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.
- (f) A majority of the public members of the Commission shall constitute a quorum for the transaction of business.
- (g) All clerical and other services required by the Commission shall be supplied by the Secretary. (1975, c. 718, s. 1; 1989, c. 727, s. 219(18); 1989 (Reg. Sess., 1990), c. 1004, ss. 19(b), 41; 1991, c. 342, ss. 2, 3; 2002-70, s. 2; 2007-182, s. 2; 2011-145, ss. 13.3(ddd), 19.1(g); 2011-391, s. 27(c).)

**§ 104E-9. Powers and functions of Department of Health and Human Services.**

- (a) The Department of Health and Human Services is authorized:
- (1) To advise, consult and cooperate with other public agencies and with affected groups and industries.
  - (2) To encourage, participate in, or conduct studies, investigations, public hearings, training, research, and demonstrations relating to the control of sources of radiation, the measurement of radiation, the effect upon public health and safety of exposure to radiation and related problems.
  - (3) To require the submission of plans, specifications, and reports for new construction and material alterations on (i) the design and protective shielding of installations for radioactive material and radiation machines and (ii) systems for the disposal of radioactive waste materials, for the determination of any radiation hazard and may render opinions, approve or disapprove such plans and specifications.
  - (4) To collect and disseminate information relating to the sources of radiation, including but not limited to: (i) maintenance of a record of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations; and (ii) maintenance of a record of registrants and licensees possessing sources of radiation requiring registration or licensure under the provisions of this Chapter, and regulations hereunder, and any administrative or judicial action pertaining thereto; and to develop and implement a responsible data management program for the purpose of collecting and analyzing statistical information necessary to protect the public health and safety.

The Department may refuse to make public dissemination of information relating to the source of radiation within this State after the Department first determines that the disclosure of such information will contravene the stated policy and purposes of this Chapter and such disclosure would be against the health, welfare and safety of the public.

- (5) To respond to any emergency which involves possible or actual release of radioactive material; and to perform or supervise decontamination and otherwise protect the public health and safety in any manner deemed necessary. This section does not in any way alter or change the provisions of Chapter 166 of the North Carolina General Statutes concerning response during an emergency by the Department of Military and Veterans Affairs or its successor.
- (6) To develop and maintain a statewide environmental radiation program for monitoring the radioactivity levels in air, water, soil, vegetation, animal life, milk, and food as necessary to ensure protection of the public and the environment from radiation hazards.
- (7) To implement the provisions of this Chapter and the regulations duly promulgated under the Chapter.
- (8) To establish fees in accordance with G.S. 104E-19.
- (9) To enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a low-level radioactive waste facility or low-level radioactive disposal facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to such land or structures caused by such activities.
- (10) To encourage research and development and disseminate information on state-of-the-art means of handling and disposing of low-level radioactive waste.
- (11) To promote public education and public involvement in the decision-making process for the siting and permitting of proposed low-level radioactive waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(b) The Division of Health Service Regulation of the Department shall develop a training program for tanning equipment operators that meets the training rules adopted by the Commission. If the training program is provided by the Department, the Department may charge each person trained a reasonable fee to recover the actual cost of the training

program. (1975, c. 718, s. 1; 1979, c. 694, s. 4; 1981, c. 704, s. 10.1; 1987, c. 633, s. 7; 1987 (Reg. Sess., 1988), c. 993, s. 25; 1989, c. 727, s. 219(19); 1991, c. 735, s. 2; 1993, c. 501, s. 4; 1995, c. 509, s. 49; 1997-443, s. 11A.119(a); 2001-474, s. 3; 2002-70, s. 3; 2009-451, s. 13.3(b); 2011-145, s. 13.3(eee); 2011-391, s. 27(d).)

**§ 104E-9.1. Restrictions on use and operation of tanning equipment.**

(a) Operators of tanning equipment and owners of tanning facilities subject to rules adopted pursuant to this Chapter shall comply with or ensure compliance with the following:

- (1) The operator shall provide to each consumer a warning statement that defines the potential hazards and consequences of exposure to ultraviolet radiation. Before allowing the consumer's initial use of the tanning equipment, the operator shall obtain the signature of the consumer on the warning statement acknowledging receipt of the warning.
- (2) The operator shall not allow a person under 18 years of age to use tanning equipment.
- (3) Neither an operator nor an owner shall claim or distribute promotional materials that claim that using tanning equipment is safe or free from risk or that using tanning equipment will result in medical or health benefits.

(b) The Commission may adopt, and the Department shall enforce, rules to implement this section. The requirements of this section are in addition to other rules adopted pursuant to this Chapter that are applicable to tanning facilities and do not conflict with this section.

(c) As used in this section, unless the context requires otherwise, the term:

- (1) "Consumer" means any individual who is provided access to a tanning facility that is subject to registration and regulation under this Chapter.
- (2) "Tanning equipment" means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation.
- (3) "Tanning facility" means any location, place, area, structure, or business that provides consumers access to tanning equipment. For the purpose of this definition, tanning equipment registered to different persons at the same location and tanning equipment registered to the same person, but at separate locations, shall constitute separate tanning facilities. (2004-157, s. 1; 2015-21, s. 2.)

**§ 104E-10. Licensing of by-product, source, and special nuclear materials and other sources of ionizing radiation.**

(a) The Governor, on behalf of this State, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the responsibilities of the federal government with respect to sources of ionizing radiation and the assumption thereof by this State.

(b) Upon the signing of an agreement with the Nuclear Regulatory Commission or its successor as provided in subsection (a) above, the Commission shall provide by rule or regulation

for general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess by-product, source, or special nuclear materials or devices, installations, or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension, renewal or revocation of licenses. Each application for a specific license shall be in writing on forms prescribed by the Commission and furnished by the Department and shall state, and be accompanied by, such information or documents, including, but not limited to plans, specifications and reports for new construction or material alterations as the Commission may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The Commission may require all applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the Commission may deem necessary. No license issued under the authority of this Chapter and no right to possess or utilize sources of radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with the provisions of this Chapter.

(c) Any person who, on the effective date of an agreement under subsection (a) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this Chapter, 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 federal license, whichever is earlier.

(d) Repealed by Session Laws 1987, c. 850, s. 6. (1975, c. 718, s. 1; 1979, c. 694, s. 1; 1981, c. 704, s. 11.1; 1987, c. 850, s. 6.)

#### **§ 104E-10.1. Additional requirements for low-level radioactive waste facilities.**

(a) An applicant for a license for a low-level radioactive facility shall satisfy the Department that:

- (1) Any low-level radioactive waste facility heretofore constructed or operated by the applicant (or any parent or subsidiary corporation if the applicant is a corporation) has been operated in accordance with sound waste management practices and in substantial compliance with federal and state laws and regulations; and
- (2) The applicant (or any parent or subsidiary corporation if the applicant is a corporation) is financially qualified to operate the subject low-level radioactive waste facility.

(a1) The approval of a license shall be contingent upon the applicant first satisfying the Department that the applicant has met the above two requirements. In order to continue to hold a license under this Chapter, a licensee must remain financially qualified, and must provide any information requested by the Department to show that the licensee continues to be financially qualified.

(b) Each license applicant or license holder or any parent or subsidiary corporation if the license applicant or license holder is a corporation, as a condition of receiving or holding a license, shall have an independent annual audit by a firm of duly licensed certified public accountants carrying a minimum of five million dollars (\$5,000,000) professional liability insurance coverage, proof of which coverage shall be provided with the issuance of the audit report. Each license applicant or license holder referred to above shall also provide the Department with a copy of the report and shall submit a copy of the report to the State Auditor for approval regarding its adequacy

and completeness. As a minimum, the required report shall include the financial statements prepared in accordance with generally accepted accounting principles, all disclosures in the public interest required by law, and the auditor's opinion and comments relating to the financial statements. The audit shall be performed in conformity with generally accepted auditing standards.

(c) Within 10 days of receiving an application for a license or an amendment to a license to operate a low-level radioactive waste facility, the Department shall notify the clerk of the board of commissioners of the county or counties in which the facility is proposed to be located or is located, and, if the facility is to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed, and shall file a copy of the application with the clerk. Prior to issuing a license or an amendment to an existing license the Secretary or the Secretary's designee shall conduct a public hearing in the county, or in one of the counties, in which a person proposes to operate a low-level radioactive waste facility or to enlarge an existing facility. The Secretary shall give notice of the hearing at least 30 days prior to the date thereof by:

- (1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is to be located for three consecutive weeks beginning 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested such notice. The Department shall maintain a mailing list of persons who request notice pursuant to this subsection. (1981, c. 704, s. 11; 1985, c. 529; 1987, c. 24, ss. 1-3; c. 850, ss. 7, 8; 1989, c. 727, s. 219(20); 1997-443, s. 11A.119(a); 2007-495, s. 10.)

#### **§ 104E-10.2. Conveyance of property used for radioactive material disposal.**

A license to dispose of radioactive waste materials on land shall include a legal description of the disposal site that would be sufficient as a description in an instrument of conveyance. The license to dispose of radioactive waste materials shall not be effective unless the owner of the disposal site files a certified copy of the license in the register of deeds' office in the county or counties in which the site is located. The register of deeds shall record the certified copy of the license and index it in the grantor index under the name of the owner of the land. When any such site is sold, leased, conveyed or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a disposal site for radioactive waste materials and a reference by book and page to the recordation of the license. (1981, c. 480, s. 1.)

#### **§ 104E-10.3. Low-level radioactive waste facility access licenses.**

The Commission shall provide by regulation for the licensing of access to any low-level radioactive waste facility located in the State. No person shall send waste to a low-level radioactive waste facility unless licensed or otherwise authorized to do so by the Department. No low-level radioactive waste facility shall receive waste from any source not licensed by the Department except as may be otherwise specifically authorized by the Department. Such regulations shall provide, at a minimum, for amendment, suspension, or revocation of licenses, and for authorization for access to a low-level radioactive waste facility by the Department on a temporary or emergency basis. Each application for a license or amendment shall be in writing and shall include such information as may be required by regulation, and such additional information as the Department deems necessary. The application for a license shall set forth the manner in which the applicant plans to comply with the requirements of this Chapter and regulations promulgated thereunder. Upon receipt of an application under this section the

Department shall review the application and shall issue a license only if it finds that the applicant is fully qualified under all applicable laws and regulation. (1987, c. 850, s. 9.)

**§ 104E-11. Inspections, agreements, and educational programs.**

(a) Authorized representatives of the Department shall have the authority to enter upon any public or private property, other than a private dwelling, at all reasonable times for the purpose of determining compliance with the provisions of this Chapter and rules, regulations and standards adopted hereunder.

(b) After approval by the Commission, the Governor is authorized to enter into 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, emergency response to radiation accidents, and other functions related to the control of radiation.

(c) The Department is authorized to institute educational programs for the purpose of training or educating persons who may possess, use, handle, transport, or service radioactive materials or radiation machines. (1975, c. 718, s. 1.)

**§ 104E-12. Records.**

(a) The Commission is authorized to require each person who possesses or uses a source of radiation:

- (1) To maintain appropriate records relating to its receipt, storage, use, transfer, or disposal and maintain such other records as the Commission may require, subject to such exemptions as may be provided by the rules and regulations promulgated by the Commission; and
- (2) To maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring may be required by the Commission, subject to such exemptions as may be provided by the rules and regulations promulgated by the Commission.

Copies of all records required to be kept by this subsection shall be submitted to the Department or its duly authorized agents upon request.

(b) The Commission is authorized to require that any person possessing or using a source of radiation furnish to each employee for whom personnel monitoring is required a copy of such employee's personal exposure record upon the request of such employee, at any time such employee has received radiation exposure in excess of limits established in the rules and regulations promulgated by the Commission, and upon termination of employment. (1975, c. 718, s. 1.)

**§ 104E-13. Administrative procedures and judicial review.**

(a) The Department may refuse to grant a license as provided in G.S. 104E-7 or 104E-10 to any applicant who does not possess the requirements or qualifications which the Commission may prescribe in rules and regulations. The Department may suspend, revoke, or amend any license in the event that the person to whom such license was granted violates any of the rules and regulations of the Commission, or ceases, or fails to have the reasonable facilities prescribed by the Commission: Provided, that before any order is entered denying an application for a license or suspending, revoking, or amending a license previously granted, the applicant or person to whom such license was granted shall be given notice and granted a hearing as provided in Chapter 150B of the North Carolina General Statutes.



(b) Whenever the Department in its opinion determines that an emergency exists requiring immediate action to protect the public health and safety the Department 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. Notwithstanding any provision of this Chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, and on application to the Department shall be afforded a hearing within 10 days. On the basis of such hearing, the emergency order shall be continued, modified, or revoked within 30 days after such hearing, as the Department may deem appropriate under the evidence.

(c) Any applicant or person to whom a license was granted who shall be aggrieved by any order of the Department or its duly authorized agent denying such application or suspending, revoking, or amending such license may appeal directly to the superior court as provided in Chapter 150B of the North Carolina General Statutes. (1975, c. 718, s. 1; 1987, c. 850, s. 10.)

#### **§ 104E-14. Impounding of materials.**

(a) Authorized representatives of the Department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this Chapter or any rules or regulations promulgated by the Commission.

(b) The Department may release such sources of radiation to the owner thereof upon terms and conditions in accordance with the provisions of this Chapter and rules and regulations adopted hereunder or may bring an action in the appropriate superior court for an order condemning such sources of radiation and providing for the destruction or other disposition so as to protect the public health and safety. (1975, c. 718, s. 1.)

#### **§ 104E-15. Transportation of radioactive materials.**

(a) The Radiation Protection Commission is authorized to adopt, promulgate, amend, and repeal rules and regulations governing the transportation of radioactive materials in North Carolina, which, in the judgment of the Commission, shall promote the public health, safety, or welfare and protect the environment.

(1) Such rules and regulations may include, but shall not be limited to, provisions for the use of signs designating radioactive material cargo; for the packing, marking, loading, and handling of radioactive materials, and the precautions necessary to determine whether the material when offered is in proper condition for transport, and may include designation of routes in this State which are to be used for the transportation of radioactive materials.

(2) Such rules and regulations shall not include the carrier vehicle or its equipment, the licensing of packages, nor shall they apply to the handling or transportation of radioactive material within the confines of a facility licensed by or owned by a federal agency.

(3) The Commission is authorized to adopt by reference, in whole or in part, such federal rules and regulations governing the transportation of radioactive material which are established by the United States Nuclear Regulatory Commission, the United States Department of Transportation, or the United States Postal Service (or any federal agency

which is a successor to any of the foregoing agencies), as such federal rules may be amended from time to time.

(b) The Department is authorized to enter into agreements with the respective federal agencies designed to avoid conflict or duplication of effort in enforcement and inspection activities so that:

- (1) Rules and regulations adopted by the Commission pursuant to this section of this Chapter may be enforced, within their respective jurisdictions, by any authorized representatives of the Department of Health and Human Services and the Department of Transportation, according to mutual understandings between such departments of their respective responsibilities and authorities.
- (2) The Department, through any authorized representative, is authorized to inspect any records of persons engaged in the transportation of radioactive materials during the hours of business operation when such records reasonably relate to the method or contents of packing, marking, loading, handling, or shipping of radioactive materials within the State.
- (3) The Department, through any authorized representative, may enter upon and inspect the premises or vehicles of any person engaged in the transportation of radioactive materials during hours of business operation, with or without a warrant, for the purpose of determining compliance with the provisions of this Chapter and the rules and regulations promulgated by the Commission.

(c) Upon a determination by the Department that any provision of this section, or the rules and regulations promulgated by the Commission are being violated or that any practice in the transportation of radioactive materials constitutes a clear and imminent danger to the public health, property, or safety, it shall issue an order requiring correction as provided in G.S. 104E-13(b). (1975, c. 716, s. 7; c. 718, s. 1; 1989, c. 727, s. 219(22); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u); 2015-264, s. 54(c).)

#### **§ 104E-16. Nonreverting Radiation Protection Fund.**

(a) There is hereby established under the control and direction of the Department a Nonreverting Radiation Protection Fund which shall be used to defray the expenses of any project or activity for:

- (1) Emergency response to and decontamination of radiation accidents as provided in G.S. 104E-9(a)(5), or
- (2) Perpetual maintenance and custody of radioactive materials as the Department may undertake.

In addition to any moneys that shall be appropriated or otherwise made available to it, the Fund may be maintained by fees, charges, or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Chapter, except for the clear proceeds of penalties. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, or other payments authorized by this Chapter, except for the clear proceeds of penalties, shall be paid to the Radiation Protection Fund in an amount equal to the sum expended for the projects or activities in subdivisions (1) and (2) above.

(b) Repealed by Session Laws 1987, c. 850, s. 11. (1975, c. 718, s. 1; 1981, c. 704, s. 11.2; 1987, c. 633, s. 8; c. 850, s. 11; 1998-215, s. 47(b).)

**§ 104E-17. Payments to State and local agencies.**

Upon completion of any project or activity stated in G.S. 104E-16(a)(1), and from time to time during any project or activity stated in G.S. 104E-16(a)(2), each State and local agency that has participated by furnishing personnel, equipment or material shall deliver to the Department a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary of Health and Human Services to each such agency from the Radiation Protection Fund. Upon completion of any project or activity stated in G.S. 104E-16(a)(1), and from time to time during any project or activity stated in G.S. 104E-16(a)(2), the Secretary of Health and Human Services shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the radioactive materials or the release thereof which necessitated said project or activity. Any person having control over the radioactive materials or the release thereof and any other person causing or contributing to an incident necessitating any project or activity stated in G.S. 104E-16 shall be directly liable to the State for the necessary expenses incurred thereby and the State shall have a cause of action to recover from any or all such persons. If the person having control over the radioactive materials or the release thereof shall fail or refuse to pay the sum expended by the State, the Secretary of Health and Human Services shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the project or activity was undertaken by the State, to recover such cost and expenses.

In any action instituted by the Attorney General under this section, a verified and itemized statement of the expenses incurred by the State in any project or activity stated in G.S. 104E-16 shall be filed with the complaint and shall constitute prima facie the amount due the State; and any judgment for the State thereon shall be for such amount in the absence of allegation and proof on the part of the defendant or defendants that the statement of expenses incurred by and the amount due the State is not correct because of an error in:

- (1) Calculating the amount due, or
- (2) Not properly crediting the account with any cash payment or payments or other satisfaction which may have been made thereon. (1975, c. 718, s. 1; 1989, c. 727, s. 219(23); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2015-264, s. 54(d).)

**§ 104E-18. Security for emergency response and perpetual maintenance costs.**

(a) No person shall use, manufacture, produce, transport, transfer, receive, acquire, own, possess or dispose of radioactive material until that person shall have procured and filed with the Department such bond, insurance or other security as the Commission may by regulation require. Such bond, insurance or other security shall:

- (1) Run in favor of the Radiation Protection Fund in the amount of the estimated total cost as established by the Commission that may be incurred by the State in any project or activity stated in G.S. 104E-16, and
  - (2) Have as indemnitor on such bond or insurance an insurance company licensed to do business in the State of North Carolina.
- (b) The Commission may from time to time:
- (1) Cause an audit to be made of any person that insures itself by means of other security as provided for in subsection (a) above;
  - (2) Amend or modify the estimated total cost for security established pursuant to this section; and
  - (3) Provide by regulation for the discontinuance of indemnification by one insurer and the assumption thereof by another insurer, as the Commission deems necessary to carry out the provisions of this Chapter and rules and regulations adopted and promulgated hereunder.
- (c) Repealed by Session Laws 2001-474, s. 4. (1975, c. 718, s. 1; 1981, c. 704, s. 12; 1987, c. 850, s. 12; 1987 (Reg. Sess., 1988), c. 1082, s. 11; 2001-474, s. 4.)

**§ 104E-19. (See Editor's notes) Fees.**

(a) An annual fee in the amount set by the Department is imposed on a person who is required to be registered or licensed under this Chapter. The Department must set the fees at amounts that provide revenue to offset its costs in performing its duties under this Chapter.

(b) Repealed by Session Laws 1987, c. 850, s. 13.

(c) The annual fees under subsection (a) of this section shall not exceed the maximum amounts as follows:

- (1) For tanning facilities: two hundred dollars (\$200.00) for the first piece of tanning equipment and thirty dollars (\$30.00) for each additional piece of tanning equipment.
- (2) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: clinics, chiropractors, dentists, educational, government, podiatrists, industrial, physicians, veterinarians, and other; two hundred dollars (\$200.00) for the first X-ray tube or piece of X-ray equipment and thirty dollars (\$30.00) for each additional X-ray tube or piece of X-ray equipment.
- (3) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: industrial medical, health departments, and service; three hundred dollars (\$300.00) for the first X-ray tube or piece of X-ray equipment and forty dollars (\$40.00) for each additional X-ray tube or piece of X-ray equipment.
- (4) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: hospitals and industrial radiography; four hundred dollars (\$400.00) for the first X-ray tube or piece of X-ray equipment and fifty dollars (\$50.00) for each additional X-ray tube or piece of X-ray equipment. (1975, c. 718, s. 1; 1981, c. 704, s. 13; 1987, c. 633, s. 9; c. 850, s. 13; 1987 (Reg. Sess., 1988), c. 993, s. 26; 2001-474, s. 5; 2009-451, s. 13.3(a).)

**§ 104E-20. Prohibited uses and facilities.**

(a) It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own or possess any source of radiation unless licensed, registered or exempted

by the Department in accordance with the provisions of this Chapter and the rules and regulations adopted and promulgated hereunder.

(b) Shallow land burial is prohibited. (1975, c. 718, s. 1; 1987, c. 633, s. 10.)

#### **§ 104E-21. Conflicting laws.**

(a) Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or board of health relating to by-product, source and special nuclear materials shall not be superseded by this Chapter. Provided, that such ordinances or regulations are and continue to be consistent and compatible with the provisions of this Chapter, as amended, and rules and regulations promulgated by the Commission.

(b) It is the intent of the General Assembly to prescribe a uniform system for the management of low-level radioactive waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of low-level radioactive waste by special, local or private acts or resolutions as provided in G.S. 143B-216.10(b). (1975, c. 718, s. 1; 1981, c. 704, s. 25.)

#### **§ 104E-22. Tort claims against persons rendering emergency assistance.**

Any and all tort claims against any person which arise while that person is rendering assistance during an emergency (i) at the request of any authorized representative of the State of North Carolina or (ii) pursuant to a mutual radiological assistance agreement as provided for in G.S. 104E-11(b), shall constitute claims against this State; and the disposition thereof shall be governed by the provisions of Article 31 of Chapter 143 of the General Statutes. In any civil action brought against said person, the provisions of Article 31A of Chapter 143 of the General Statutes shall apply as if such person were an employee of this State. (1975, c. 718, s. 1.)

#### **§ 104E-23. Penalties; injunctive relief.**

(a) Any person who violates the provisions of G.S. 104E-15 or 104E-20, or who hinders, obstructs, or otherwise interferes with any authorized representative of the Department in the discharge of his official duties in making inspections as provided in G.S. 104E-11, or in impounding materials as provided in G.S. 104E-14, shall be guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be punished as provided by law. Any person who willfully violates the provisions of G.S. 104E-10.2 shall be guilty of a Class 1 misdemeanor and, upon conviction, shall be punished as provided by law.

(b) The Secretary may, either before or after the institution of any other action or proceedings authorized by law, institute a civil action in the superior court of the county in which the defendant in said action resides for injunctive relief to prevent a threatened or continued violation of any provision of this Chapter or any order or regulation issued pursuant to this Chapter. (1975, c. 718, s. 1; 1979, c. 694, s. 5; 1981, c. 480, s. 2; 1993, c. 539, s. 685; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 104E-24. Administrative penalties.**

- (a) The Department may impose an administrative penalty on any person:
- (1) Who fails to comply with this Chapter, any order issued hereunder, or any rules adopted pursuant to this Chapter;
  - (2) Who refuses to allow an authorized representative of the Radiation Protection Commission or the Department of Health and Human Services

a right of entry as provided for in G.S. 104E-11 or impounding materials as provided for in G.S. 104E-14.

(b) Each day of a continuing violation shall constitute a separate violation. Such penalty shall not exceed ten thousand dollars (\$10,000) per day. In determining the amount of the penalty, the Department shall consider the degree and extent of the harm caused by the violation. Any person assessed a penalty shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment.

(c) Any person wishing to contest a penalty or order issued under this section shall be entitled to an administrative hearing and judicial review in accordance with the procedures outlined in Articles 3, 3A, and 4 of Chapter 150B of the General Statutes.

(d) The Secretary may bring a civil action in the superior court of the county in which such violation is alleged to have occurred to recover the amount of administrative penalty whenever a person:

- (1) Who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150B-36.

(e) The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1981, c. 704, s. 14; 1987, c. 850, s. 14; 1989, c. 727, s. 219(24); 1997-443, s. 11A.119(a); 1998-215, s. 47(a); 2015-241, s. 14.30(u); 2015-264, s. 54(e).)

**§ 104E-25. Performance objectives, technical requirements and design criteria applicable to low-level radioactive waste disposal facilities; engineered barriers.**

(a) As used in this section, the term "Part 61" means Title 10, Code of Federal Regulations Part 61 in effect on 1 January 1987. Unless a different meaning is required by definitions generally applicable to this Chapter or by the context, terms defined or used in Part 61 shall have the same meaning in this section as in Part 61.

(b) The Commission shall adopt rules for low-level radioactive waste disposal facilities which incorporate and are consistent with the performance objectives and technical requirements set out in Subparts C and D of Part 61. In the event that Part 61 is amended, the Commission shall amend its rules at least to the extent necessary to maintain the State's status as an agreement state. The Commission may adopt rules which exceed the requirements of applicable federal statutes and regulations.

(c) Low-level radioactive waste disposal facilities shall incorporate engineered barriers for all waste classifications. The Commission shall specify minimum design criteria for engineered barriers. Different engineered barrier design criteria may be specified for different waste classifications. In the event that a single disposal unit is used for the disposal of wastes having more than one waste classification, the engineered barrier employed shall be that specified for the highest waste classification in the disposal unit.

(d) Engineered barriers shall be designed and constructed to complement and, where appropriate, improve the ability of the disposal facility to meet the performance objectives of this section. The site for a low-level radioactive waste disposal facility shall meet all hydrogeological and other criteria and standards applicable to disposal site suitability as though engineered barriers

were not required. Engineered barriers shall not substitute for a suitable site or compensate for any deficiency in a site.

(e) Engineered barriers shall be designed and constructed of materials having physical and chemical properties so as to provide reasonable assurance that the barriers will maintain their functional integrity under all reasonably foreseeable conditions for at least the institutional control period. To the maximum extent possible, engineered barriers shall be chemically nonreactive with waste, waste containers and surrounding soil. Engineered barriers shall not detract from the ability of the disposal facility to meet the performance objectives adopted by the Commission under this Chapter. The Commission shall determine the appropriate design life of engineered barriers, which may exceed the institutional control period; however no reliance may be placed on engineered barriers beyond the end of the institutional control period.

(f) Disposal units and the incorporated engineered barriers shall be designed and constructed to meet the following objectives:

- (1) Prevention of the migration of water into the disposal unit.
- (2) Prevention of the migration of waste or waste contaminated water out of the disposal unit.
- (3) Detection of water and other fluids in the disposal unit.
- (4) Temporary collection and retention of water and other liquids for a time sufficient to allow for their detection and removal or other remedial measures without contamination of groundwater or surrounding soil.
- (5) Facilitation of remedial measures without disturbing other disposal units.
- (6) Facilitation of recovery of waste, other than Class A waste, in the packing or container in which the waste was placed for disposal.
- (7) Reasonable assurance that waste will be isolated for at least the institutional control period.
- (8) Prevention of contact between waste and the surrounding earth, except for earth that may be used as fill within the disposal unit.

(g) The term "container" means any portable device into which waste is placed for storage, transportation, treatment, disposal, or other handling and includes the first enclosure which encompasses the waste. All waste shall be packed in containers for disposal. The Commission shall adopt standards for the design and construction of containers for disposal which are consistent with applicable federal standards. Standards for containers may vary for different types and classifications of waste. The standards for disposal containers may supplement or duplicate any of the requirements for engineered barriers set out in this section; however the requirements for engineered barriers are separate and cumulative, and engineered barriers and containers may not substitute for or replace one another.

(h) Waste shall be converted into a form for disposal which is as chemically stable, nonreactive, and physically stable as can be reasonably achieved, as determined by the Commission, taking into consideration costs and available technology. All liquid waste shall be solidified prior to disposal.

(i) In adopting rules specifying performance objectives, technical requirements, and design criteria and standards for a low-level radioactive waste disposal facility, the Commission shall consider the possibility of unforeseen differences between expected and actual performance of the facility. The Commission shall consider best available technology and costs.

(j) The Commission shall require that the bottom of a low-level radioactive waste disposal facility shall be at least seven feet above the seasonal high water table. The Commission shall

require additional separation wherever necessary to adequately protect the public health and the environment. (1987, c. 633, s. 11.)

**§ 104E-26. Standards and criteria for licensing low-level radioactive waste facilities.**

Standards and criteria for licensing low-level radioactive waste facilities shall be developed by the Commission. Such standards and criteria shall be developed with public participation and shall be incorporated into rules adopted by the Commission for the licensing of such facilities. Standards and criteria shall be consistent with all applicable federal and State law, including statutes, regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

- (1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, climate and earthquake faults;
- (2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;
- (3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;
- (4) Local land uses;
- (5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;
- (6) Aesthetic factors, including the visibility, appearance, and noise level of the facility. (1987, c. 850, s. 15.)

**§ 104E-27. Volume reduction required.**

(a) The Commission shall develop and adopt rules that require generators of low-level radioactive waste to implement best management practices, including prevention, minimization, reduction, segregation, and hold-for-decay storage, as a condition of access to any low-level radioactive waste disposal facility located in this State.

(b) Repealed by Session Laws 2001-474, s. 6.

(c) The Department shall periodically review the State's comprehensive low-level radioactive waste management system and make recommendations to the Governor, cognizant State agencies, and the General Assembly on ways to improve waste management; reduce the amount of waste generated; and minimize the amount of low-level radioactive waste that must be disposed of. (1987, c. 850, s. 15.1; 1993, c. 501, s. 5; 2001-474, s. 6.)

**§ 104E-28. Limited liability for volunteers in low-level radioactive waste abatement.**

Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to civil liability and penalties pursuant to this Chapter. (1987, c. 269, s. 4.)

**§ 104E-29. Confidential information protected.**

(a) The following information received or prepared by the Department in the course of carrying out its duties and responsibilities under this Chapter is confidential information and shall not be subject to disclosure under G.S. 132-6:



- (1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.
- (2) Information that is confidential under any provision of federal or state law.
- (3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.

(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the Department or the requesting agency or when relevant in any proceeding under this Chapter.

(c) Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a Class 1 misdemeanor and shall be removed from office or discharged from employment. (1991, c. 745, s. 1; 1993, c. 539, s. 686; 1994, Ex. Sess., c. 24, s. 14(c).)