

TITLE 32: ENERGY
CHAPTER II: ILLINOIS EMERGENCY MANAGEMENT AGENCY
SUBCHAPTER b: RADIATION PROTECTION

PART 334
FEES FOR BY-PRODUCT MATERIAL LICENSES

Section

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- 334.30 Payment of Fees into the By-Product Material Safety Fund
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AUTHORITY: Implementing and authorized by the Uranium and Thorium Mill Tailings Control Act (see P.A. 88-638, effective September 9, 1994 [420 ILCS 42]).

SOURCE: Emergency rule adopted at 19 Ill. Reg. 6014, effective April 11, 1995, for a maximum of 150 days; new Part adopted at 19 Ill. Reg. 11466, effective July 28, 1995; recodified from the Department of Nuclear Safety to the Illinois Emergency Management Agency at 27 Ill. Reg. 13641.

Section 334.10 Purpose and Scope

- a) The purpose of this Part is to establish *an annual fee which shall be imposed on the owner or operator of any property that has been used in whole or in part for the milling of source material and is being used for the storage or disposal of by-product material, equal to \$2 per cubic foot of by-product material being stored or disposed of by the facility. However, no fees shall be collected from any State, county, municipal, or local governmental agency. Moneys collected shall be deposited by the Department into the By-product Material Safety Fund (Fund). [420 ILCS 42/15]*
- b) The Department is authorized to spend money from the Fund for the following purposes:
 - (1) *the costs of monitoring, inspecting, and otherwise regulating the storage and disposal of by-product material, wherever located;*
 - (2) *the costs of undertaking any necessary maintenance, decommissioning activities, cleanup, responses to radiation emergencies, or remedial action that may be necessary in connection with by-product materials;*
 - (3) *the costs incurred by the Department arising from the transportation of the by-product material from a storage or unlicensed disposal location to a licensed permanent disposal facility. [420 ILCS 42/15(b)]*

- c) *In addition, the Department may reimburse to the owner or operator of any facility used for the storage or disposal of by-product material for costs incurred by the owner or operator in connection with the decontamination or decommissioning of the storage or disposal facility or other properties contaminated with by-product material. However, the amount of the reimbursements paid to the owner or operator of a by-product material storage or disposal facility shall not exceed the amount of money paid into the Fund by that owner or operator plus the interest accrued in the Fund attributable to amounts paid by that owner or operator [420 ILCS 42/15(b)(4)]. Section 334.40 sets out the procedures to be taken by the owner or operator in requesting reimbursement from the Fund.*

Section 334.20 Definitions

As used in this Part, the following definitions apply:

"Act" means the Uranium and Thorium Mill Tailings Control Act [420 ILCS 42].

"By-product material" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes but not including underground ore bodies depleted by such solution extraction processes.

"Department" means the Department of Nuclear Safety.

"Director" means the Director of the Department of Nuclear Safety.

"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.

"Source material" means uranium, thorium, or any other material that the Department declares by order to be source material after the United States Nuclear Regulatory Commission or its successor has determined the material to be source material; or ores containing one or more of those materials in such concentration as the Department declares by order to be source material after the United States Nuclear Regulatory Commission or its successor has determined the material in such concentration to be source material.

Section 334.30 Payment of Fees into the By-Product Material Safety Fund

The storage fees assessed under this Part are separate and distinct from any license fees imposed under 32 Ill. Adm. Code 331.

- a) The annual fee of \$2 per cubic foot shall be assessed on the quantity of by-product material in the owner or operator's possession on January 1 of each year. The Department shall provide notice of the amount of the fee to each owner by certified mail by February 1 of each year.
- b) The quantity of material for the assessment in subsection (a) above does not include by-product material that has been at the facility for 180 days or less.
- c) *In connection with settling litigation regarding the amount of the fee to be imposed, the Director may enter into an agreement with the owner or operator of any facility specifying that the fee to be imposed shall not exceed \$26,000,000 in any calendar year [420 ILCS 42/15(a)].*
- d) Beginning in 1995, the annual fee shall be payable in equal installments on June 1, 1995, September 1, 1995, December 1, 1995 and December 31, 1995.
- e) Beginning in 1996, the annual fee shall be payable in equal quarterly installments due March 31, June 30, September 30 and December 31.
- f) Payments shall be by check or money order made payable to the Illinois Department of Nuclear Safety.
- g) If the owner or operator wishes to contest the annual fee assessment, the owner or operator may petition the Department to request a hearing. This petition must be received by the Department on or before the date the payment is due. If a hearing is granted, it shall be conducted in accordance with 32 Ill. Adm. Code 200.
- h) Any person failing to pay the fees as specified in this Section may be issued a Preliminary Order and Notice of Opportunity for Hearing, and may be subject to a civil penalty. This civil penalty shall *not exceed 4 times the amount of the fees not paid* [420 ILCS 42/40(b)].

Section 334.40 Reimbursement of Fees from the By-Product Material Safety Fund

- a) An owner or operator who incurs costs in connection with the decontamination or decommissioning of the storage or disposal facility or other properties contaminated with by-product material is entitled to have those costs promptly reimbursed from the Fund.
- b) An owner or operator of a facility shall submit a request for reimbursement to the Director subject to audit by the Director.
- c) The Director shall, upon receipt of a request, give written notice approving or

disapproving each of the owner or operator's request for reimbursement within 60 days.

- d) The Director shall approve requests for reimbursement unless:
 - 1) The Director finds that the amount is excessive, erroneous, or otherwise inconsistent with subsection (b) above; or
 - 2) The Director finds that the amount is inconsistent with any license or license amendments issued in connection with that owner or operator's decontamination or decommissioning plan.
- e) Upon approval of a reimbursement request, the Director shall prepare and certify to the Comptroller the disbursement of the approved sums from the Fund to the owners or operators.
- f) If the Director disapproves a reimbursement request, the Director shall inform the owner or operator, in writing, the reasons for disapproval.
- g) The owner or operator may resubmit to the Department a disapproved reimbursement request with additional information to respond to the reasons for disapproval and for further consideration by the Director.
- h) Disapproval of a reimbursement request shall constitute final action for purposes of the Administrative Review Law unless the owner or operator resubmits the denied request within 35 days after receipt of denial.