

**CHAPTER 237. REBUTTABLE PRESUMPTION OF LIABILITY OF THE OPERATOR OF THE REGIONAL LOW-LEVEL WASTE FACILITY**

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**Authority**

The provisions of this Chapter 237 issued under the Low-Level Radioactive Waste Disposal Regional Facility Act (35 P. S. §§ 7130.101—7130.703); the Radiation Protection Act (35 P. S. §§ 7110.101—7110.504); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

**Source**

The provisions of this Chapter 237 adopted October 15, 1993, effective October 16, 1993, 23 Pa.B. 4885, unless otherwise noted.

**Subchapter A. GENERAL PROVISIONS**

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**GENERAL**

**§ 237.1. Scope.**

(a) This chapter addresses the rebuttable presumption of liability of the operator of a regional low-level radioactive waste disposal facility for all damages and radioactive contamination within 3 miles of the regional facility boundary. This chapter establishes terms, conditions and criteria for the implementation of section 319 of the act (35 P. S. § 7130.319).

(b) The presumption of liability of the regional facility operator applies only to civil and administrative proceedings initiated under the act to the extent the actions provide for recovery for damages, the abatement of radioactive contamination or the replacement of a contaminated water supply. The presumption of liability may be invoked by the Department, county and municipal officials and by private citizens instituting the legal actions under the act.

(c) The regional facility operator may not engage in an activity, operation or process prohibited by the act.

**§ 237.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101—7130.905).

*Contributes to the damage*—A causal connection between the damage to a person or property and regional facility operations.

*Damages*—A pecuniary compensation or indemnity which may be recovered under the act in a court of competent jurisdiction by a person who has actually sustained a loss, detriment or injury, whether to one's person or property, real or personal, associated with exposure to radioactive material.

*Operator*—A person who operates a regional facility.

*Person*—An individual, corporation, partnership, association, public or private institution, cooperative enterprise, municipal authority, public utility, trust, estate, group, Federal Government or agency, State institution or agency or another legal entity which is recognized by law as the subject of rights and duties. The term also includes officers and directors of a corporation or another legal entity having officers and directors.

*Preoperational survey*—The results of sampling, monitoring and data analysis to assess the presence of radioactive material in air, soil, surface water, groundwater, drinking water supply, buildings or other structures, performed by the operator-licensee designate prior to the acceptance of waste at the regional facility. The term also includes other appropriate measures performed by the operator of the regional facility to assess environmental radiation, birth defects, cancer and other disease rates within 5 miles of the regional facility prior to the acceptance of waste.

*Radioactive contamination*—The deposition of radioactive material into the air, soil, surface water, groundwater, drinking water supply, equipment, buildings or other structures, or on a person in concentrations or mixtures, or both, that exceed background radiation measurements established during preoperational environmental or health surveys.

*Radioactive material*—A material which spontaneously emits alpha, beta or gamma radiation, X-rays, neutrons, protons, high energy electrons or other atomic particles.

*Rebuttable presumption*—A presumption that can be overcome upon an affirmative showing of clear and convincing evidence.

*Regional facility*—A facility which has been approved by the Appalachian States Low-Level Radioactive Waste Commission and licensed under the act. The term includes “disposal facility” and “facility site” as defined in § 236.2 (relating to definitions).

*Regional facility boundary*—The outer limits of the licensed disposal site established by land survey.

*Regional facility operations*—Activities, operations or processes conducted within the regional facility boundary which are attributable to the receipt, handling, management, storage or disposal of low-level radioactive waste.

**Subchapter B. LIABILITY OF THE OPERATOR**

Sec.

237.101. Presumption of liability.

237.102. Defenses to overcome the presumption.

**§ 237.101. Presumption of liability.**

It is a rebuttable presumption of law that the regional facility operator is liable and responsible for all damages and radioactive contamination within 3 miles of the regional facility boundary without proof of fault, negligence or causation.

**§ 237.102. Defenses to overcome the presumption.**

(a) *Damages.* To rebut the presumption of liability for damages, the regional facility operator shall affirmatively prove, by clear and convincing evidence, that the operator did not contribute to the damage.

(b) *Radioactive contamination.* To rebut the presumption of liability for radioactive contamination within 3 miles of the boundary of the regional facility, the regional facility operator shall prove, by clear and convincing evidence, one of the following three defenses:

- (1) The radioactive contamination existed prior to disposal operations on the site of the regional facility as determined by a preoperational survey.
- (2) The landowner has refused to allow the regional facility operator access to the landowner's property to conduct a preoperational survey.
- (3) The radioactive contamination occurred as a result of some cause other than regional facility operations.

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