Part 3
Placement of High Level Nuclear Waste

19-3-301 Restrictions on nuclear waste placement in state.

(1) The placement, including transfer, storage, decay in storage, treatment, or disposal, within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste is prohibited.

(2) Notwithstanding Subsection (1) the governor, after consultation with the county executive and county legislative body of the affected county and with concurrence of the Legislature, may specifically approve the placement as provided in this part, but only if:

(a)

(i) the federal Nuclear Regulatory Commission issues a license, pursuant to the Nuclear Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A. 2011 et seq., for the placement within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste; and

(ii) the authority of the federal Nuclear Regulatory Commission to grant a license under Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent jurisdiction; or

(b) an agency of the federal government is transporting the waste, and all state and federal requirements to proceed with the transportation have been met.

(3) The requirement for the approval of a final court of competent jurisdiction shall be met in all of the following categories, in order for a state license proceeding regarding waste to begin:

(a) transfer or transportation, by rail, truck, or other mechanisms;

(b) storage, including any temporary storage at a site away from the generating reactor;

(c) decay in storage;

(d) treatment; and

(e) disposal.

(4)

(a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the governor, with the concurrence of the attorney general, shall certify in writing to the executive director of the Department of Environmental Quality that all of the requirements have been met, and that any necessary state licensing processes may begin.

(b) Separate certification under this Subsection (4) shall be given for each category in Subsection (3).

(5)

(a) The department shall make, by rule, a determination of the dollar amount of the health and economic costs expected to result from a reasonably foreseeable accidental release of waste involving a transfer facility or storage facility, or during transportation of waste, within the exterior boundaries of the state. The department may initiate rulemaking under this Subsection (5)(a) on or after March 15, 2001.

(b)

(i) The department shall also determine the dollar amount currently available to cover the costs as determined in Subsection (5)(a):

(A) under nuclear industry self-insurance;

(B) under federal insurance requirements; and

(C) in federal money.

(ii) The department may not include any calculations of federal money that may be appropriated in the future in determining the amount under Subsection (5)(b)(i).

(c) The department shall use the information compiled under Subsections (5)(a) and (b) to determine the amount of unfunded potential liability in the event of a release of waste from a storage or transfer facility, or a release during the transportation of waste.

(6)

(a) State agencies may not, for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste, enter into any contracts or any other agreements prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application proceeding for a storage facility or transfer facility.

(b) Political subdivisions of the state may not enter into any contracts or any other agreements for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste.

(c) This Subsection (6) does not prohibit a state agency from exercising the regulatory authority granted to it by law.

(7)

(a) Notwithstanding any other provision of law, any political subdivision may not be formed pursuant to the laws of Utah for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to the satisfaction of the conditions in Subsection (4). These political subdivisions include:

(i) a cooperative;

(ii) a special district authorized by Title 17B, Limited Purpose Local Government Entities - Special Districts;

(iii) a special service district under Title 17D, Chapter 1, Special Service District Act;

(iv) a limited purpose local governmental entity authorized by Title 17, Counties;

(v) any joint power agreement authorized by Title 11, Cities, Counties, and Local Taxing Units; and

(vi) the formation of a municipality, or any authority of a municipality authorized by Title 10, Utah Municipal Code.

(b)

(i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision authorized and formed under the laws of the state on or after March 15, 2001, which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility is formed in violation of Subsection (7)(a).

(ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political subdivision are considered to have knowingly violated a provision of this part, and the penalties of Section 19-3-312 apply.

(8)

(a) An organization may not be formed for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(b) A foreign organization may not be registered to do business in the state for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:
(i) the satisfaction of the conditions in Subsection (4); and
(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.
(c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:
(i) the formation of a new organization or registration of a foreign organization within the state, any of whose purposes are to provide goods, services, or municipal-type services to a storage facility or transfer facility may not be licensed or registered in the state, and the local or foreign organization is void and does not have authority to operate within the state;
(ii) any organization which is formed or registered on or after March 15, 2001, and which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility has been formed or registered in violation of Subsection (8)(a) or (b) respectively; and
(iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the organization or the principals of the foreign organization, are considered to have knowingly violated a provision of this part, and are subject to the penalties in Section 19-3-312.

(9)
(a)
(i) Any contract or agreement to provide any goods, services, or municipal-type services to any organization engaging in, or attempting to engage in the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state are declared to be against the greater public interest, health, and welfare of the state, by promoting an activity which has the great potential to cause extreme public harm.
(ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal, are declared to be void from inception, agreement, or execution as against public policy.
(b)
(i) Any contract or other agreement to provide goods, services, or municipal-type services to storage or transfer facilities may not be executed within the state.
(ii) Any contract or other agreement, existing or executed on or after March 15, 2001, is considered void from the time of agreement or execution.

(10)
(a) All contracts and agreements under Subsection (10)(b) are assessed an annual transaction fee of 75% of the gross value of the contract to the party providing the goods, services, or municipal-type services to the storage facility or transfer facility or transportation entity. The fee shall be assessed per calendar year, and is payable on a prorated basis on or before the last day of each month in accordance with rules established under Subsection (10)(d), and as follows:
(i) 25% of the gross value of the contract to the department; and
(ii) 50% of the gross value of the contract to the Department of Cultural and Community Engagement, to be used by the Utah Division of Indian Affairs as provided in Subsection (11).
(b) Contracts and agreements subject to the fee under Subsection (10)(a) are those contracts and agreements to provide goods, services, or municipal-type services to a storage or transfer facility, or to any organization engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste to a transfer facility or storage facility, and which:

(i) are in existence on March 15, 2001; or
(ii) become effective notwithstanding Subsection (9)(a).
(c) Any governmental agency which regulates the charges to consumers for services provided by utilities or other organizations shall require the regulated utility or organization to include the fees under Subsection (10)(a) in the rates charged to the purchaser of the goods, services, or municipal-type services affected by Subsection (10)(b).
(d)
(i) The department, in consultation with the State Tax Commission, shall establish rules for the valuation of the contracts and assessment and collection of the fees, and other rules as necessary to determine the amount of and collection of the fee under Subsection (10)(a). The department may initiate rulemaking under this Subsection (10)(d)(i) on or after March 15, 2001.
(ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall make a good faith estimate of the fee under Subsection (10)(a) for calendar year 2001, and remit that amount to the department on or before July 31, 2001.
(11)
(a) The portion of the fees imposed under Subsection (10) which is to be paid to the Department of Cultural and Community Engagement for use by the Utah Division of Indian Affairs shall be used for establishment of a statewide community and economic development program for the tribes of Native American people within the exterior boundaries of the state who have by tribal procedure established a position rejecting siting of any nuclear waste facility on their reservation lands.
(b) The program under Subsection (11)(a) shall include:
(i) educational services and facilities;
(ii) health care services and facilities;
(iii) programs of economic development;
(iv) utilities;
(v) sewer;
(vi) street lighting;
(vii) roads and other infrastructure; and
(viii) oversight and staff support for the program.
(12) It is the intent of the Legislature that this part does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a storage facility or transfer facility within the borders of the state for the placement of high-level nuclear waste or greater than class C radioactive waste.

Amended by Chapter 16, 2023 General Session

19-3-302 Legislative intent.
(1)
(a) The state enacts this part to prevent the placement of any high-level nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level nuclear waste or greater than class C radioactive waste may be placed within the exterior boundaries of the state, pursuant to a license from the federal government, or by the federal government itself, in violation of this state law.
(b) Due to this possibility, the state also enacts provisions in this part to regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste

and greater than class C radioactive waste in Utah, thereby asserting and protecting the state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law.

(2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste Policy Act specifically define authorized storage and disposal programs and activities. The state in enacting this part is not preempted by federal law, since any proposed facilities that would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance, this part is not contrary to or inconsistent with federal law or congressional intent.

(3) The state has environmental and economic interests which do not involve nuclear safety regulation, and which shall be considered and complied with in siting a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility and in transporting these wastes in the state.

(4) An additional primary purpose of this part is to ensure protection of the state from nonradiological hazards associated with any waste transportation, transfer, storage, decay in storage, treatment, or disposal.

(5) The state recognizes the sovereign rights of Indian tribes within the state. However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located on a reservation which directly affects and impacts state interests by creating off-reservation effects such as potential or actual degradation of soils and groundwater, potential or actual contamination of surface water, pollution of the ambient air, emergency planning costs, impacts on development, agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

(6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear waste or higher than class C radioactive waste. The state does have a long history of regulation of radioactive sources and natural resources and in the transfer, storage, treatment, and transportation of materials and wastes throughout the state. The state finds that its interests are even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands primarily to avoid state regulation and state authorities under federal law.

(7)

(a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.

(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.

(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.

(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state

is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

Amended by Chapter 297, 2011 General Session

19-3-303 Definitions.

As used in this part:

(1) "Final judgment" means a final ruling or judgment, including any supporting opinion, that determines the rights of the parties and concerning which all appellate remedies have been exhausted or the time for appeal has expired.

(2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.

(3) "Greater than class C radioactive waste" means low-level radioactive waste that has higher concentrations of specific radionuclides than allowed for class C waste.

(4) "Gross value of the contract" means the totality of the consideration received for any goods, services, or municipal-type services delivered or rendered in the state without any deduction for expense paid or accrued with respect to it.

(5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

(6) "Municipal-type services" includes, but is not limited to:

(a) fire protection service;

(b) waste and garbage collection and disposal;

(c) planning and zoning;

(d) street lighting;

(e) life support and paramedic services;

(f) water;

(g) sewer;

(h) electricity;

(i) natural gas or other fuel; or

(j) law enforcement.

(7) "Organization" means a corporation, limited liability company, partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise, whether or not for profit.

(8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or disposal.

(9) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

(10) "Rule" means a rule made by the department under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Service" or "services" means any work or governmental program which provides a benefit.

(12) "Storage facility" means any facility which stores, holds, or otherwise provides for the emplacement of waste regardless of the intent to recover that waste for subsequent use, processing, or disposal.

(13) "Transfer facility" means any facility which transfers waste from and between transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal transfer points.

(14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

Amended by Chapter 382, 2008 General Session

19-3-304 Licensing and approval by governor and Legislature -- Powers and duties of the department.

(1)
(a) A person may not construct or operate a waste transfer, storage, decay in storage, treatment, or disposal facility within the exterior boundaries of the state without applying for and receiving a construction and operating license from the state Department of Environmental Quality and also obtaining approval from the Legislature and the governor.
(b) The Department of Environmental Quality may issue the license, and the Legislature and the governor may approve the license, only upon finding the requirements and standards of this part have been met.

(2) The department shall by rule establish the procedures and forms required to submit an application for a construction and operating license under this part.

(3) The department may make rules implementing this part as necessary for the protection of the public health and the environment, including:
(a) rules for safe and proper construction, installation, repair, use, and operation of waste transfer, storage, decay in storage, treatment, and disposal facilities;
(b) rules governing prevention of and responsibility for costs incurred regarding accidents that may occur in conjunction with the operation of the facilities; and
(c) rules providing for disciplinary action against the license upon violation of any of the licensure requirements under this part or rules made under this part.

Enacted by Chapter 348, 1998 General Session

19-3-305 Application for license.

The application for a construction and operating license shall contain information required by department rules, which shall include:

(1) results of studies adequate to:
(a) identify the presence of any groundwater aquifers in the area of the proposed site;
(b) assess the quality of the groundwater of all aquifers identified in the area of the proposed site;
(c) provide reports on the monitoring of vadose zone and other near surface groundwater;
(d) provide reports on hydraulic conductivity tests; and
(e) provide any other information necessary to estimate adequately the groundwater travel distance;

(2) identification of transportation routes and transportation plans within the state and demonstration of compliance with federal, state, and local transportation requirements;

(3) estimates of the composition, quantities, and concentrations of waste to be generated by the activities covered by the license;

(4) the environmental, social, and economic impact of the facility in the area of the proposed facility and on the state as a whole;

(5) detailed engineering plans and specifications for the construction and operation of the facility and for the closure of the facility;

(6) detailed cost estimates and funding sources for construction, operation, and closure of the facility;

(7) a security plan that includes a detailed description of security measures that would be installed in and around the facility;

(8) a detailed description of site suitability, including a description of the geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the site and vicinity;

(9) specific identification of:
(a) the applicant, the wastes to be accepted, the sources of waste, and the owners and operators of the facility; and
(b) the persons or entities having legal responsibility for the facility and wastes;
(10) quantitative and qualitative environmental and health risk assessments for all proposed activities, including transfer, storage, and transportation of wastes;
(11) technical qualifications, including training and experience of the applicant, staff, and personnel who are to engage in the proposed activities;
(12) a quality assurance program, radiation safety program, and environmental monitoring program;
(13) a regional emergency plan for an area surrounding the facility having at least a 75-mile radius, but which may be greater, if required by department rule; and
(14) any other information and monitoring the department determines necessary to insure the protection of the public health and the environment.

Enacted by Chapter 348, 1998 General Session

19-3-306 Information and findings required for approval by the department.

The department may not issue a construction and operating license unless information in the application:
(1) demonstrates the availability and adequacy of emergency services, including medical, security, and fire response, and environmental cleanup capabilities both at and in the region of the proposed site and for areas involved in the transport of wastes within the state;
(2) establishes financial assurance for operation and closure of the facility and for responding to emergency conditions in transportation and at the facility as required by department rules, including proof the applicant:
(a) possesses substantial resources that are sufficient to respond to any reasonably foreseeable injury or loss resulting from operation of the facility; and
(b) will maintain these resources throughout the term of the facility;
(3) provides evidence the wastes will not cause or contribute to an increase in mortality, an increase in illness, or pose a present or potential hazard to human health or the environment;
(4) provides evidence the personnel employed at the facility have appropriate and sufficient education and training for the safe and adequate handling of the wastes;
(5) demonstrates the public benefits of the proposed facility, including the lack of other available sites or methods for the management of the waste that would be less detrimental to the public health or safety or to the quality of the environment;
(6) demonstrates the technical feasibility of the proposed waste management technology;
(7) demonstrates conformance with federal laws, regulations, and guidelines for a waste facility;
(8) demonstrates conclusively that any facility is temporary and provides identified plans and alternatives for closure of the facility with an enforceable schedule and identified dates for closure, including evidence that:
(a) an identified party has irrevocably agreed to accept the waste at the end of the temporary storage period; and
(b) the waste will be moved to another facility;
(9) demonstrates that:
(a) the applicant is not a limited liability company, limited partnership, or other entity with limited liability; and

(b) the applicant and its officers and directors and those principals or other entities that are participating in and associated with the applicant regarding the facility are willing to accept unlimited strict liability, consistent with federal law, for any financial losses or human losses or injuries resulting from operation of any proposed facility;

(10) provides evidence the applicant has posted a cash bond in the amount of at least two billion dollars or in a greater amount as determined by department rule to be necessary to adequately respond to any reasonably foreseeable releases or losses, or the closure of the facility;

(11) provides evidence the applicant and its officers and directors, the owners or entities responsible for the generation of the waste, principals, and any other entities participating in or associated with the applicant, including landowners, lessors, and contractors, consent in writing to the jurisdiction of the state courts of Utah for any claims, damages, private rights of action, state enforcement actions, or other proceedings relating to the construction, operation, and compliance of the proposed facility; and

(12) demonstrates that any person or entity which sends wastes to a facility shall remain the owner of and responsible for the waste and its ultimate disposal and is willing to accept unlimited, strict liability, consistent with federal law, for any financial or human losses, liabilities, or injuries resulting from the wastes for the entire time period the waste is at the facility.

Enacted by Chapter 348, 1998 General Session

19-3-307 Siting criteria.

(1) The department may not issue a construction and operating license to any waste transfer, storage, decay in storage, treatment, or disposal facility unless the facility location meets the siting criteria under Subsection (2).

(2) The facility may not be located:

(a) within or underlain by:

(i) national, state, or county parks; monuments or recreation areas; designated wilderness or wilderness study areas; or wild and scenic river areas;

(ii) ecologically or scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100-year flood plains;

(iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes, or salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas within five miles of existing permanent dwellings, residential areas, or other habitable structures, including schools, churches, or historic structures;

(x) areas within five miles of surface waters, including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas within 1,000 feet of archeological sites regarding which adverse impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing groundwater which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas;

(b) in areas:
(i) above or underlain by aquifers that:
(A) contain groundwater which has a total dissolved solids content of less than 500 mg/l; and
(B) do not exceed state groundwater standards for pollutants;
(ii) above or underlain by aquifers containing groundwater which has a total dissolved solids content between 3,000 and 10,000 mg/l, when the distance from the surface to the groundwater is less than 100 feet;
(iii) of extensive withdrawal of water, gas, or oil;
(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;
(v) above or underlain by karst terrains; or
(vi) where air space use and ground transportation routes present incompatible risks and uses; or
(c) within a distance to existing drinking water wells and watersheds for public water supplies of five years groundwater travel time plus 1,000 feet.
(3) An applicant for a license may request from the department an exemption from any of the siting criteria stated in this section upon demonstration that the modification would be protective of and have no adverse impacts on the public health and the environment.

Enacted by Chapter 348, 1998 General Session

19-3-308 Application fee and annual fees.
(1)
(a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.
(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.
(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63J-1-504, to be assessed:
(a) per ton of storage cask and high-level nuclear waste per year for storage, decay in storage, treatment, or disposal of high-level nuclear waste;
(b) per ton of transportation cask and high-level nuclear waste for each transfer of high-level nuclear waste;
(c) per ton of storage cask and greater than class C radioactive waste for the storage, decay in storage, treatment, or disposal of greater than class C radioactive waste; and
(d) per ton of transportation cask and greater than class C radioactive waste for each transfer of greater than class C radioactive waste.
(3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and Hazard Compensation Account, created in Subsection 19-3-309(3).

(4) The owner or operator of the facility shall pay the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.
(5) Annual fees due under this part accrue on July 1 of each year and shall be paid to the department by July 15 of that year.

Amended by Chapter 297, 2011 General Session

19-3-309 Restricted accounts.
(1) There is created within the General Fund a restricted account known as the "Nuclear Waste Facility Oversight Account" and referred to in this section as the "oversight account".
(2)
  (a) The oversight account shall be funded from the fees imposed and collected under Subsections 19-3-308(1)(a) and (b).
  (b) The department shall deposit in the oversight account all fees collected under Subsections 19-3-308(1)(a) and (b).
  (c) The Legislature may appropriate the funds in this oversight account to departments of state government as necessary for those departments to carry out their duties to implement this part.
  (d) The department shall account separately for money paid into the oversight account for each separate application made pursuant to Section 19-3-304.
(3)
  (a) There is created within the General Fund a restricted account known as the "Nuclear Accident and Hazard Compensation Account," to be referred to as the "compensation account" within this part.
  (b) The compensation account shall be funded from the fees assessed and collected under this part, except for Subsections 19-3-308(1)(a) and (b).
  (c) The department shall deposit in the compensation account all fees collected under this part, except for those fees under Subsections 19-3-308(1)(a) and (b).
  (d) The compensation account shall earn interest, which shall be deposited in the account.
  (e) The Legislature may appropriate the funds in the compensation account to the departments of state government as necessary for those departments to comply with the requirements of this part.
(4) On the date when a state license is issued in accordance with Subsection 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account attributable to that license into the compensation account.

Amended by Chapter 107, 2001 General Session

19-3-310 Benefits agreement.
(1) The department may not issue a construction and operating license under this part unless the applicant has entered into a benefits agreement with the department which is sufficient to offset adverse environmental, public health, social, and economic impacts to the state as a whole, and also specifically to the local area in which the facility is to be located.
(2)
  (a) The benefits agreement shall be attached to and made part of the terms of any license for the facility.

(b) Failure to adhere to the benefits agreement is a ground for the department to take enforcement action against the license, including permanent revocation of the license.
(3) This part may not be construed or interpreted to affect the rights of any person or entity to brings claims against or reach agreements with the applicant for impacts from the facility independent of the benefits agreement.

Enacted by Chapter 348, 1998 General Session

19-3-311 Length of license.
(1) Any construction and operating license shall be issued for a term established by department rule, but the term may not be longer than 20 years.
(2) The term of the license may be extended beyond 20 years only by approval of the department, the Legislature, and the governor.

Enacted by Chapter 348, 1998 General Session

19-3-312 Enforcement -- Penalties.
(1) When the department or the governor has probable cause to believe a person is violating or is about to violate any provision of this part, the department or the governor shall direct the state attorney general to apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity.
(2) In addition to being subject to injunctive relief, any person who violates any provision of this part is subject to a civil penalty of up to $10,000 per day for each violation.
(3) Any person who knowingly violates a provision of this part is guilty of a class A misdemeanor and subject to a fine of up to $10,000 per day.
(4) Any person or organization acting to facilitate a violation of any provision of this part regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is subject to a civil penalty of up to $10,000 per day for each violation, in addition to being subject to injunctive relief.
(5) Any person or organization who knowingly acts to facilitate a violation of this part regarding the regulation of high-level nuclear waste or greater than class C radioactive waste is guilty of a class A misdemeanor and is subject to a fine of up to $10,000 per day.
(6)
(a) This section does not impose a civil or criminal penalty on any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.
(b) Subsection (6)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.
(c) A member of any Utah-based nonprofit trade association is not exempt from any civil or criminal liability or penalty due to membership in the association.

Amended by Chapter 107, 2001 General Session

19-3-313 Reciprocity.

Waste may not be transported into and transferred, stored, decayed in storage, treated, or disposed of in the state if the state of origin of the waste or the state in which the waste was generated prohibits or limits similar actions within its own boundaries.

Enacted by Chapter 348, 1998 General Session

19-3-314 Local jurisdiction.

This part does not preclude any political subdivision of the state from establishing additional requirements under applicable state and federal law.

Enacted by Chapter 348, 1998 General Session

19-3-315 Transportation requirements.

(1) A person may not transport wastes in the state, including on highways, roads, rail, by air, or otherwise, without:
  (a) having received approval from the state Department of Transportation; and
  (b) having demonstrated compliance with rules of the state Department of Transportation.
(2) The Department of Transportation may:
  (a) make rules requiring a transport and route approval permit, weight restrictions, tracking systems, and state escort; and
  (b) assess appropriate fees as established under Section 63J-1-504 for each shipment of waste, consistent with the requirements and limitations of federal law.
(3) The Department of Environmental Quality shall establish any other transportation rules as necessary to protect the public health, safety, and environment.
(4) Unless expressly authorized by the governor, with the concurrence of the Legislature, an easement or other interest in property may not be granted upon any lands within the state for a right of way for any carrier transportation system that:
  (a) is not a class I common or contract rail carrier organized and doing business prior to January 1, 1999; and
  (b) transports high level nuclear waste or greater than class C radioactive waste to a storage facility within the state.

Amended by Chapter 183, 2009 General Session

19-3-316 Cost recovery.

The owner or transporter or any person in possession of waste is liable, consistent with the provisions of federal law, for any expense, damages, or injury incurred by the state, its political subdivisions, or any person as a result of a release of the waste.

Enacted by Chapter 348, 1998 General Session

19-3-317 Severability.

If any provision of this part is held to be invalid, unconstitutional, or otherwise held to be inconsistent with law, the remainder of this part is not affected and remains in full force.

Enacted by Chapter 348, 1998 General Session

19-3-318 No limitation of liability regarding businesses involved in high level radioactive waste.

(1) As used in this section:

(a) "Controlling interest" means:

(i) the direct or indirect possession of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting interests, by contract, or otherwise; or

(ii) the direct or indirect possession of a 10% or greater equity interest in an organization.

(b) "Equity interest holder" means a shareholder, member, partner, limited partner, trust beneficiary, or other person whose interest in an organization:

(i) is in the nature of an ownership interest;

(ii) entitles the person to participate in the profits and losses of the organization; or

(iii) is otherwise of a type generally considered to be an equity interest.

(c) "Organization" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise or activity, whether or not for profit.

(d) "Parent organization" means an organization with a controlling interest in another organization.

(e)

(i) "Subject activity" means:

(A) to arrange for or engage in the transportation or transfer of high level nuclear waste or greater than class C radioactive waste to or from a storage facility in the state; or

(B) to arrange for or engage in the operation or maintenance of a storage facility or a transfer facility for that waste.

(ii) "Subject activity" does not include the transportation of high level nuclear waste or greater than class C radioactive waste by a class I railroad that was doing business in the state as a common or contract carrier by rail prior to January 1, 1999.

(f) "Subsidiary organization" means an organization in which a parent organization has a controlling interest.

(2)

(a) The Legislature enacts this section because of the state's compelling interest in the transportation, transfer, and storage of high level nuclear waste and greater than class C radioactive waste in this state. Legislative intent supporting this section is further described in Section 19-3-302.

(b) Limited liability for equity interest holders is a privilege, not a right, under the law and is meant to benefit the state and its citizens. An organization engaging in subject activities has significant potential to affect the health, welfare, or best interests of the state and should not have limited liability for its equity interest holders. To shield equity interest holders from the debts and obligations of an organization engaged in subject activities would have the effect of attracting capital to enterprises whose goals are contrary to the state's interests.

(c) This section has the intent of revoking any and all statutory and common law grants of limited liability for an equity interest holder of an organization that chooses to engage in a subject activity in this state.

(d) This section shall be interpreted liberally to allow the greatest possible lawful recourse against an equity interest holder of an organization engaged in a subject activity in this state for the debts and liabilities of that organization.

(e) This section does not reduce or affect any liability limitation otherwise granted to an organization by Utah law if that organization is not engaged in a subject activity in this state.

(3) Notwithstanding any law to the contrary, if a domestic or foreign organization engages in a subject activity in this state, no equity interest holder of that organization enjoys any shield or limitation of liability for the acts, omissions, debts, and obligations of the organization incurred in this state. Each equity interest holder of the organization is strictly and jointly and severally liable for all these obligations.
(4) Notwithstanding any law to the contrary, each officer and director of an organization engaged in a subject activity in this state is individually liable for the acts, omissions, debts, and obligations of the organization incurred in this state.
(5)
(a) Notwithstanding any law to the contrary, if a subsidiary organization is engaged in a subject activity in this state, then each parent organization of the subsidiary is also considered to be engaged in a subject activity in this state. Each parent organization's equity interest holders and officers and directors are subject to this section to the same degree as the subsidiary's equity interest holders and officers and directors.
(b) Subsection (5)(a) applies regardless of the number of parent organizations through which the controlling interest passes in the relationship between the subsidiary and the ultimate parent organization that controls the subsidiary.
(6) This section does not excuse or modify the requirements imposed upon an applicant for a license by Subsection 19-3-306(9).

Enacted by Chapter 190, 1999 General Session

19-3-319 State response to nuclear release and hazards.
(1) The state finds that the placement of high-level nuclear waste inside the exterior boundaries of the state is an ultra-hazardous activity which may result in catastrophic economic and environmental damage and irreparable human injury in the event of a release of waste, and which may result in serious long-term health effects to workers at any transfer or storage facility, or to workers involved in the transportation of the waste.
(2)
(a) The state finds that procedures for providing funding for the costs incurred by any release of waste, or for the compensation for the costs of long-term health effects are not adequately addressed by existing law.
(b) Due to these concerns, the state has established a restricted account under Subsection 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to in this section as the compensation account. One of the purposes of this account is to partially or wholly compensate workers for these potential costs, as funds are available and appropriated for these purposes.
(3)
(a) The department shall require the applicant, and parent and subsidiary organizations of the applicant, to pay to the department not less than 75% of the unfunded potential liability, as determined under Subsection 19-3-301(5), in the form of cash or cash equivalents. The payment shall be made within 30 days after the date of the issuance of a license under this part.
(b) The department shall credit the amount due under Subsection 19-3-306(10) against the amount due under this Subsection (3).
(c) If the payments due under this Subsection (3) are not made within 30 days, as required, the executive director of the department shall cancel the license.
(4)

(a) The department shall also require an annual fee from the holder of any license issued under this part. This annual fee payment shall be calculated as:

(i) the aggregate amount of the annual payments required by Title 34A, Chapter 2, Workers' Compensation Act, of the licensee and of all parties contracted to provide goods, services, or municipal-type services to the licensee, regarding their employees who are working within the state at any time during the calendar year; and

(ii) multiplied by the number of storage casks of waste present at any time and for any period of time within the exterior borders of the state during the year for which the fee is assessed.

(b)

(i) The licensee shall pay the fee under Subsection (4)(a) to the department. The department shall deposit the fee in the compensation account created in Subsection 19-3-309(3).

(ii) The fee shall be paid to the department on or before March 31 of each calendar year.

(5) The department shall use the fees paid under Subsection (4) to provide medical or death benefits, or both, as is appropriate to the situation, to the following persons for death or any long term health conditions of an employee proximately caused by the presence of the high-level nuclear waste or greater than class C radioactive waste within the state, or a release of this waste within the state that affects an employee's physical health:

(a) any employee of the holder of any license issued under this part, or employees of any parties contracting to provide goods, services, transportation, or municipal-type services to the licensee, if the employee is within the state at any time during the calendar year as part of his employment; or

(b) that employee's family or beneficiaries.

(6) Payment of the fee under Subsection (4) does not exempt the licensee from compliance with any other provision of law, including Title 34A, Chapter 2, Workers' Compensation Act, regarding workers' compensation.

(7)

(a) An agreement between an employer and an employee, the employee's family, or beneficiaries requiring the employee to waive benefits under this section, requiring the employee to seek third party coverage, or requiring an employee contribution is void.

(b) Any employer attempting to secure any agreement prohibited under Subsection (7)(a) is subject to the penalties of Section 19-3-312.

(8)

(a) The department, in consultation with the Division of Industrial Accidents within the Labor Commission, shall by rule establish procedures regarding application for benefits, standards for eligibility, estimates of annual payments, and payments.

(b) Payments under this section are in addition to any other payments or benefits allowed by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, Workers' Compensation Act, regarding workers' compensation.

(c) Payments or obligations to pay under this section may not exceed funds appropriated for these purposes by the Legislature.

(9)

(a) Any fee or payment imposed under this section does not apply to any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (9)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any fee or payment under this section due to membership in the association.

Enacted by Chapter 107, 2001 General Session

19-3-320 Efforts to prevent siting of any nuclear waste facility to include economic development study regarding Native American reservation lands within the state.

(1) It is the intent of the Legislature that the department, in its efforts to prevent the siting of a nuclear waste facility within the exterior borders of the state, include in its work the study under Subsection (2) and the report under Subsection (3).

(2) It is the intent of the Legislature that the Department of Environmental Quality, in coordination with the office of the governor, and in cooperation with the Departments of Cultural and Community Engagement, Human Services, Health, Workforce Services, Agriculture and Food, Natural Resources, and Transportation, the State Board of Education, and the Utah Board of Higher Education:

(a) study the needs and requirements for economic development on the Native American reservations within the state; and

(b) prepare, on or before November 30, 2001, a long-term strategic plan for economic development on the reservations.

(3) It is the intent of the Legislature that this plan, prepared under Subsection (2)(b), shall be distributed to the governor and the members of the Legislature on or before December 31, 2001.

Amended by Chapter 184, 2021 General Session