

HIGH LEVEL NUCLEAR SHIPMENT SAFETY

PROVISIONS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Karen W. Morgan

This act modifies the Transportation Code by requiring waste generators to purchase a single trip transport and route approval permit for transporting high level nuclear waste or greater than class C radioactive waste in the state. This act sets the permit fee at \$1,500 and allows additional fees to be charged for the costs associated with implementing the permit related oversight functions. This act requires the Department of Transportation to issue the permits, collect the fees, and deposit the fees in the Nuclear Waste Facility Oversight Account. This act requires the Department of Transportation to establish procedures to protect the public from the risks of transporting high level nuclear waste and greater than class C radioactive waste by complying with state and federal law, cooperating with governmental agencies, and by making rules for a single trip transport and route approval permit, weight restrictions, tracking systems, and state-required escort vehicles. This act makes technical changes. This act takes effect on July 1, 2003.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

19-3-315, as last amended by Chapter 190, Laws of Utah 1999

ENACTS:

72-7-410, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-3-315** is amended to read:

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) shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, requiring a transport and route approval permit, weight restrictions, tracking systems, and state required escort vehicles as provided in Section 72-7-410; and

(b) in addition to the single trip transport and route approval permit fee established under Section 72-7-410, may assess appropriate fees as established under Section 63-38-3.2 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.

Section 2. Section **72-7-410** is enacted to read:

72-7-410. Department standard, plans, and procedures for protection of the public from the risks of transporting high level nuclear waste and greater than class C radioactive waste -- Compliance with federal and state law -- Cooperation with government agencies -- Rulemaking -- Escort vehicles -- Permits -- Disposition of fees.

(1) The department shall establish and implement standards, plans, and procedures for the protection of the traveling public and the citizens of the state and for the mitigation from actual and potential risk of the transportation of high level nuclear waste and greater than class C radioactive waste on the highways and railways of the state by:

(a) complying with the provisions of federal and state law including this title and Title 19, Chapter 3, Radiation Control Act;

(b) coordinating and cooperating with government agencies including the federal Department of Energy, the federal Department of Transportation, the Department of Environmental Quality, the Department of Public Safety, the state official designated by the governor as authorized by the Nuclear Regulatory Commission and other federal, state, and local agencies; and

(c) making rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, in consultation with the Department of Environmental Quality, and consistent with requirements and limitations of federal law for:

(i) a single trip transport and route approval permit under Subsection (3), including the establishment of procedures for the purchase, collection, and enforcement of the permits and fees under this section and Section 19-3-315;

(ii) vehicle size, weight, and load restrictions in accordance with this part;

(iii) tracking systems for the benefit of emergency response, security, and clean-up mitigation teams; and

(iv) state required escort vehicles under Subsection (2).

(2) The rules made under Subsection (1)(c)(iv) for state required escort vehicles shall be made in accordance with federal law to:

(a) prevent and reduce hazardous or potentially hazardous incidences on the highway or railway;

(b) respond to hazardous or potentially hazardous incidences if they occur; and

(c) reduce damage from any incidence that occurs.

(3) (a) The generator of waste as defined in Section 19-3-102 shall purchase from the Department of Transportation a single trip transport and route approval permit for each cask transfer in or through the state of:

(i) high level nuclear waste as defined in Section 19-3-102; or

(ii) greater than class C radioactive waste as defined in Section 19-3-303.

(b) The fee is \$1,500 for a single trip permit issued under this Subsection (3) plus the fee determined under Subsection 19-3-315(2). The permit is valid for not more than 96 continuous hours or until the cask leaves the state, whichever is sooner.

(c) Each single trip permit fee collected under this Subsection (3) shall be deposited in the Nuclear Waste Facility Oversight Account created in Section 19-3-309.

90 Section 3. **Effective date.**
91 This act takes effect on July 1, 2003.

Legislative Review Note
as of 2-11-03 1:16 PM

This legislation requires a permit fee and state escorts for greater than class C radioactive waste and high level nuclear waste shipments. The United States Supreme Court has interpreted the Supremacy Clause of Article VI of the United States Constitution to provide that federal law generally preempts state law where Congress has shown an intent to occupy the entire subject area. Although Congress has occupied the field of transporting hazardous material, it appears that 49 U.S.C. Sec. 5125 permits states to impose a fee related to transporting hazardous material if the fee is fair and used for a purpose related to transporting hazardous material. It also appears that in at least one other state, fees and escort programs have withstood a preemption challenge. Wisconsin Electric Power Co., 52 F.R. 36200 (Sept. 25, 1987)(final admin. action).

Office of Legislative Research and General Counsel

State Impact

Provisions of this bill sets a fee of \$1,500 for a single trip permit to transport high level nuclear waste. It is estimated that at least ten of these shipments occur in the state each year. If facility sighting permits are issued for high-level nuclear waste facilities in western Utah and Nevada those shipments could increase to several hundred annually. Fees collected are to be deposited into the Nuclear Waste Facility Oversight Account. It is estimated rulemaking required by the bill can be handled within existing budgets.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Other	\$0	\$0	\$15,000	\$15,000
TOTAL	\$0	\$0	\$15,000	\$15,000

Individual and Business Impact

There will be a \$1,500 expense with each shipment of nuclear waste incurred by individuals or businesses required by provisions of this bill.

Office of the Legislative Fiscal Analyst