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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION SECURITY J – LAW ENFORCEMENT

Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") files this motion for summary disposition of Utah Contention Security J "Law Enforcement" ("Security J") pursuant to 10 C.F.R. § 2.749. This motion is supported by a Statement of Material Facts as to which PFS asserts there is no genuine dispute.

I. BACKGROUND AND STATEMENT OF THE ISSUE

On April 13, 2001, the State of Utah ("State") requested that the Atomic Safety and Licensing Board ("Licensing Board" or "Board") admit Contention Security J, which maintained that a recently adopted State law voided the existing law enforcement agreement among Tooele County, the Bureau of Indian Affairs ("BIA"), and the Skull Valley Band of the Goshute Indians (the "Band") thereby preventing Tooele County as a matter of law from serving as the Local Law Enforcement Agency ("LLEA") for the PFS Facility ("PFSF").[1] PFS opposed admission of Security J as either (1) immaterial to the grant of a license because a suit by the Band and PFS against the State in Federal

[1] State of Utah's Request for Admission of Late-Filed Contention Utah Security J (Law Enforcement) (April 13, 2001) ("State Sec. J Mot.") at 6.

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District Court ("Court Suit")[2] would control the outcome; or (2) a challenge to the Commission's realism policy.[3] The Staff supported admission of Security J arguing the recent State law appeared to prohibit Tooele County from being the LLEA as called for under the PSF Physical Security Plan ("PSP").[4] The Board deferred admitting Security J, accepting the Applicant's view that resolution of the Court Suit would address and resolve the relevant issues presented by Security J and such a resolution would be a more efficient use of the parties' and Board's resources.[5] In the sixth of a series of joint status reports on the progress of the Court Suit, dated February 11, 2002, PFS, noting the uncertainty on the timing of the Court Suit's resolution,[6] requested the Board to rule on admitting Security J. On February 22, 2002, the Board admitted Security J and established a schedule for dispositive motions and responsive pleadings.[7] On April 11, 2002, U.S. District Court Judge Tena Campbell heard oral arguments in the Court Suit on plaintiffs' motions for summary judgment and other related motions and took the case under advisement.

As currently admitted, Security J asserts:

> The Applicant's Physical Security Plan does not comply with 10 CFR Part 73 because the Applicant does not have valid documented

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2 Skull Valley Band of Goshute Indians v. Leavitt, Case No. 2:01CV00270 (D. Utah filed Apr. 19, 2001)(hereinafter "Court Suit").

3 Applicant's Response to State of Utah's Request for Admission of Late-filed Contention Utah Security J – Law Enforcement ("PFS Sec. J Reply") (April 27, 2001) at 8.

4 NRC Staff's Response to State of Utah's Request for Admission of Late-Filed Contention Security J (April 27, 2001) at 9.

5 Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-20, 53 NRC 565, 571-572 (2001) (Deferring Admissibility Ruling on Late-Filed Contention Security-J).

6 On April 11, 2002, the Federal District Court took the Court Suit under advisement following oral argument on summary judgment motions. See Tr. 3790 (April 11, 2002).

7 Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-02-07, 55 NRC ___ (2002) (Admitting Contention Security-J); see also Board Order (Summary Disposition Briefing Schedule for Contention Security J) of March 8, 2002.

> liaison with a designated local law enforcement authority (LLEA), and redundant communications between onsite security force members and the LLEA, to provide timely response to unauthorized penetrations at the PFS facility. See 10 CFR §§ 72.180; 73.51(d)(6), (8) and (12); and Part 73, Appendix C.[8]

The basis for the contention is a Utah law enacted March 15, 2001, ("S.B. 81") that the State argues voids the Cooperative Law Enforcement Agreement ("CLEA") between the BIA, the Band, and Tooele County (**Attachment 1**). State Sec. J Mot. at 7.[9] "The enactment of laws prohibiting a county from providing law enforcement services to a high level nuclear waste storage facility means that PFS does not have ... documented liaison with an LLEA to permit timely response to unauthorized penetration or activities." Id. at 7-8. The State further asserts that S.B. 81 reopens its concerns "with respect to the Tooele County Sheriff's alleged lack of jurisdiction on the Band's reservation." Id. at 2.

Security J raises no genuine dispute as to material facts warranting a hearing as it is a purely legal issue. S.B. 81 is preempted by Federal law or invalid under the U.S. Constitution, or both, and thus can have no legal effect on the CLEA. Whether or not the Board decides the preemption/constitutionality issue, the assumptions underlying the Commission's realism doctrine provide reasonable assurance that, in the event of an actual security event, adequate LLEA response would occur notwithstanding S.B. 81.

II. LEGAL BASIS FOR SUMMARY DISPOSITION

The standards for motions for summary disposition have been set forth previously.[10] Contentions that raise purely legal issues are most appropriate for

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8 LBP-01-20, 53 NRC at 568.

9 S.B. 81 in its entirety is **Attachment 2.** Copies of the specific provisions cited by the State, Utah Code Ann. §§ 17-27-102, 17-34-1, 19-3-301 and 19-3-303 are **Attachment 3.**

10 See, e.g., Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-99-23, 49 NRC 485, 491 (1999).

resolution by summary disposition.[11] The Board recognized that Security J centered on purely a legal issue. "[T]he legal issue of the validity of the March 2001 Utah legislation ... will be the central – and likely dispositive – matter before the Board in any litigation regarding contention Security-J." LBP-01-20, 53 NRC at 571 (footnote omitted). Summary disposition is appropriate on Security J. See 10 C.F.R. § 2.749(d).

III. PFS IS ENTITLED TO SUMMARY DISPOSITION OF SECURITY J

Security J puts at issue in this forum the validity of S.B. 81. PFS maintains that S.B. 81 is invalid and unenforceable under Federal law and void under the U.S. Constitution. Therefore, the CLEA remains valid. Alternately, the assumptions underlying the Commission's realism doctrine provide as a matter of law the reasonable assurance of adequate LLEA response in the event of an actual security event notwithstanding S.B. 81. On either of these bases, PFS should be granted summary disposition with respect to the issues raised in Security J.

A. S.B. 81 Has No Legal Effect On The CLEA As the Municipal Contract Provisions Are Either Preempted By Federal Law Or Invalid Under The U.S. Constitution

Utah Code Ann. §§ 17-27-102(2), 17-34-1(3), 19-3-301(6) and (9) (the "Municipal Contract Provisions" of S.B. 81) purport to invalidate contracts for municipal services entered into by "any organization engaging in, or attempting to engage in the placement" of spent fuel within Utah's borders. **Attachment 3**, Utah Code Ann. § 19-3-301(9)(a)(i). The Municipal Contract Provisions also prohibit entering into or complying with a contract to provide municipal-type services, including law enforcement, to any area under consideration for a storage facility or transfer facility for the placement of high-level nuclear waste. See **Attachment 2**. As such, Utah purports that these

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[11] See, e.g., General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station) LBP-97-1, 45 NRC 7, 12-13 (1997); American Nuclear Corp. (Revision of Orders to Modify Source Materials Licenses) CLI-86-23, 50 Fed. Reg. 46,370 (1986).

provisions interfere with local government and PFS's ability to comply with various physical security plan requirements mandated by 10 C.F.R. Parts 72 and 73.

S.B. 81 was enacted as part of a comprehensive legislative scheme to prevent the transport and storage of spent nuclear fuel in Utah. In addition to S.B. 81, the Utah legislative scheme includes S.B. 78 (**Attachment 4**) and S.B. 196 (**Attachment 5**) (both passed in 1998), and S.B. 164 (**Attachment 6**) and S.B. 177 (**Attachment 7**) (both passed in 1999). The Utah Legislature expressly memorialized its objective of blocking the PFS facility in the "Legislative Intent" section of S.B. 81, which reads: "The state of Utah enacts this part to prevent the placement of any high-level nuclear waste . . . in Utah." **Attachment 2**, Utah Code Ann. § 19-3-302(1). In keeping with this intention, the Utah scheme directly prohibits the transport and storage of spent nuclear fuel in Utah. See **Attachment 3**, Utah Code Ann. § 19-3-301(1). In addition to the explicit ban, the scheme contains several fall-back devices that operate, in the event that the explicit ban fails a legal challenge, to ban the facility by other means. The Municipal Contract Provisions of S.B. 81 constitute one of these devices. As enacted, the Utah legislative scheme requires that the applicant for a State storage permit demonstrate the availability of appropriate emergency services. **Attachment 5**, Utah Code Ann. § 19-3-306(1). Then, in a classic "Catch 22", the Municipal Contract Provisions prohibit such services. **Attachment 3**, Utah Code Ann. § 19-3-301(9)(a)(i), see also Utah Code Ann. § 19-3-301(6)(b).

1. S.B. 81 Has No Legal Effect On the CLEA Since the Municipal Contract Provisions Are Preempted By the Atomic Energy Act.

The Atomic Energy Act (42 U.S.C. §§ 2011 et seq.) ("AEA") preempts S.B. 81's Municipal Contract Provisions. The AEA grants the NRC "exclusive jurisdiction to license the transfer, delivery, receipt, acquisition, possession, and use of nuclear materials." Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev.

Comm'n, 461 U.S. 190, 206-07 (1983).[12] Pursuant to its authority under the AEA, the NRC has issued comprehensive regulations governing away-from-reactor spent fuel storage installations. See 10 C.F.R. Parts 72, 73.

"The Supremacy Clause of Article VI of the Constitution provides Congress with the power to preempt state law." Colorado Pub. Util. Comm'n v. Harmon, 951 F.2d 1571, 1575 (10th Cir. 1991). Preemption exists in three independent circumstances, each of which, by itself, will render a state law unconstitutional and void:

> First, Congress can define explicitly the extent to which its enactments pre-empt state law [express preemption;] . . . [s]econd, in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively [field preemption; or third,] . . . state law is pre-empted to the extent that it actually conflicts with federal law [conflict preemption].

English v. General Electric Co., 496 U.S. 72, 78-79 (1990) (quotations and citations omitted). Only field preemption and conflict preemption are applicable here.

The Supreme Court summarized the history of federal regulation of nuclear energy in English, making it clear that no significant regulatory or licensing role was contemplated for the states:

> The AEC was given exclusive authority to license the transfer, delivery, receipt, acquisition, possession, and use of all nuclear materials. As was observed in Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 550 (1978): . . . "The [Federal Government's] prime area of concern in the licensing context . . . [was] national security, public health, and safety." With respect to these matters, no significant role was contemplated for the States. . . .

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[12] Pacific Gas, 461 U.S. at 212, discusses an "exception" allowing a possible role for state involvement in nuclear regulation. This exception does not apply to regulation of spent fuel because 42 U.S.C. § 2021(c) specifically excludes the states from regulating special nuclear material, which includes spent nuclear fuel. The storage of spent fuel in an ISFSI is explicitly not exempted from NRC regulation. 10 C.F.R. § 150.15(a)(7)(i).

Id. at 80-81 (emphasis added).

Other courts have consistently concluded that there is no role for state prohibitions or regulation with respect to the management of radioactive waste, including shipment and storage of spent fuel. See United States v. Kentucky, 252 F.3d 816, 822-25, 828 (6th Cir. 2001) (Atomic Energy Act preempted state attempt to regulate disposal of radioactive material for safety purposes); Washington State Bldg. & Constr. Trades Council v. Spellman, 684 F.2d 627, 629 (9th Cir. 1982) (parties conceded that "regulation of the disposal of high-level radioactive waste has been preempted by the federal government and that this area is therefore not susceptible to regulation by the states"); Illinois v. General Electric Co., 683 F.2d 206, 215 (7th Cir. 1982) (AEA "preempts state regulation of the storage, and shipment for storage, interstate and intrastate alike, of spent nuclear fuel"); Jersey Central Power & Light Co. v. Township of Lacey, 772 F.2d 1103, 1112 (3d Cir. 1985) (invalidating an ordinance prohibiting the importation of spent nuclear fuel or other radioactive waste for storage, and holding that it is "beyond dispute" that Congress intended "that federal law should regulate the radiological safety aspects of the nuclear power industry, including the storage and shipment of spent fuel"). State authorities also may not frustrate the NRC's ability to evaluate an emergency response plan, either passively, through nonacquiescence to the federal regulatory scheme, or actively, through a statutory prohibition that curtails safety and emergency response plans. See Long Island Lighting Co. v. County of Suffolk, New York, 628 F. Supp. 654, 664 (E.D.N.Y. 1986).

The foregoing body of case law demonstrates the invalidity of the Municipal Contract Provisions of S.B. 81. The Municipal Contract Provisions unquestionably fall within the preempted nuclear safety area. They are intended to ban the storage of spent nuclear fuel, and they purport to abolish PFS's ability to contract for safety services in Utah. "[S]tate regulation of matters directly affecting the radiological safety of nuclear-plant construction and operation, 'even if enacted out of nonsafety concerns, would

nevertheless [infringe upon] the NRC's exclusive authority.'" English, 496 U.S. at 84 (quoting Pacific Gas, 461 U.S. at 212). This case is precisely akin to Long Island Lighting, where the court held that a municipal ban on emergency response tests was preempted by the AEA. See 628 F. Supp. at 664. There, as here, such non-federal legislation affecting safety concerns is preempted by the AEA. See also Jersey Central, 772 F.2d at 1111-12; Illinois, 683 F.2d at 215 (holding non-federal regulatory bans on the storage of spent fuel are preempted).

The Municipal Contract Provisions also fail under a conflict preemption analysis. If a conflict exists between the NRC's authority under the AEA and the Municipal Contract Provisions, the NRC's authority prevails. See Kerr-McGee Chem. Corp. v. West Chicago, 914 F.2d 820, 826 (7th Cir. 1990) ("Where it can be established that an actual conflict exists between the NRC's authority and the [non-federal] regulation, the NRC must prevail.") (internal quotations and emphasis omitted). The Municipal Contract Provisions would interfere with the construction and operation of the proposed facility in the event that a license is issued. See Utah Code Ann. § 19-3-301. Indeed, the State explicitly acknowledges the Municipal Contract Provisions would interfere with the license. State Sec. J Mot. at 6-7. The AEA clearly and absolutely preempts such state interference. See Kerr-McGee Chem. Corp., 914 F.2d at 826-7 (holding that local permit requirements tantamount to a frustration of the NRC's preference is preempted since otherwise the nonfederal governments would have "a veto power over the NRC's licensing scheme in contravention of express congressional intent").

2. S.B. 81 Has No Legal Effect On The CLEA As the Municipal Contract Provisions Violate the Commerce Clause.

The Municipal Contract Provisions violate the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, which has a "dormant" or "negative" aspect that prevents the states from imposing undue restraints on interstate commerce, even in the absence of congressional

action. See Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353, 359 (1992). Under the Commerce Clause, "'a virtually per se rule of invalidity' applies where a state law discriminates [against interstate commerce] facially, in its practical effect, or in its purpose." Environmental Tech. Council v. Sierra Club, 98 F.3d 774, 785 (4th Cir. 1996), cert. denied, 521 U.S. 1103 (1997) (quoting Wyoming v. Oklahoma, 502 U.S. 437 (1992) (quoting Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978)) (emphasis added); see also SDDS, Inc. v. South Dakota, 47 F.3d 263, 267-68 (8th Cir. 1995) (stating that statute may discriminate in three ways—on its face, in purpose, or in effect), cert. denied 521 U.S. 1103 (1997).

The U.S. Supreme Court has consistently invalidated state laws impeding the movement of waste among the states. In Philadelphia v. New Jersey, the Court addressed a New Jersey law banning the importation of "solid or liquid waste which originated or was collected outside the territorial limits of the State." 437 U.S. at 618. The Court began by articulating the foundational principle of the Commerce Clause, namely that "our economic unit is the Nation" and that "states are not separable economic units." Id. at 623. No state may attempt "to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade." Id. at 628. Observing that it has "consistently found parochial legislation of this kind to be constitutionally invalid," the Court held the restriction on solid waste invalid under the Commerce Clause. Id. at 627. See also Illinois, 683 F.2d at 214 (Illinois law violated the Commerce Clause by banning importation of spent fuel destined for storage at an Illinois storage facility).

Because the purpose of the statutes is discriminatory, the Municipal Contract Provisions are invalid under the strict scrutiny standard. See Wyoming, 502 U.S. at 454-455 and n.12. "State legislation may be found to be discriminatory on the basis of its purpose." Chambers Med. Techs. of South Carolina, Inc. v. Bryant, 52 F.3d 1252, 1259 (4th Cir. 1995). See also Philadelphia, 437 U.S. at 623-624, 626 (holding that protectionist legislation is virtually per se invalid, and that "the evil of protectionism can

reside in legislative means as well as legislative ends"). Courts assessing the purpose behind legislation challenged as violating the Commerce Clause look to the statements of lawmakers supporting the legislation, including statements made outside the traditional legislative setting. See Waste Mgmt. Holdings v. Gilmore, 87 F. Supp. 2d 536, 540, 545 (E.D. Va. 2000) (Governor's public statements and those of state lawmakers showed discriminatory motive behind landfill restrictions), aff'd in part, vacated in part 252 F.3d 316, 336-40 (8th Cir. 2001); National Solid Waste Mgmt. v. Williams, 877 F. Supp. 1367, 1378 (D. Minn. 1995) (legislative history was "brimming with protectionist rhetoric").

In this case, the history of S.B. 81, which contains the Municipal Contract Provisions, is certainly "brimming with protectionist rhetoric." See Williams, 877 F. Supp. at 1378; SDDS, 47 F.3d at 268. Indeed, it is impossible to imagine a more obvious case of protectionism. S.B. 81 was clearly motivated by the intent to keep spent nuclear fuel from entering Utah for storage. See **Attachments 8 to 11**. For this reason alone, the legislation triggers strict scrutiny and, failing to pass such scrutiny, is unconstitutional.

S.B. 81's Municipal Contract Provisions also are subject to strict scrutiny because they have a discriminatory effect against out-of-state interests. In similar contexts, courts have found discriminatory effects where a restriction on the importation of waste or other articles of commerce predominantly affect persons outside the state, even where the express language of the statute does not facially distinguish between in-state and interstate commerce. See SDDS, 47 F.3d at 265-71 (invalidating state law that required legislative approval of any large-scale solid waste facility in the state, though it was facially non-discriminatory, because 90-95% of the waste would be shipped from outside the state); Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 340, 351-54 (1986) (facially neutral apple-labeling statute found to have discriminatory effect where 100% of burden fell out-of-state); Chambers Med. Techs. of South Carolina, Inc. v. Jarrett, 841 F. Supp. 1402, 1414-16 (D. S.C. 1994) (facially neutral waste-shipping law

had discriminatory effect where 98-99% of subject medical waste came from out-of-state) aff'd in part, remanded on other grounds, 52 F.3d 1252 (4th Cir. 1995).

Here, there is no question that the prohibitory burdens of the Municipal Contract Provisions of S.B. 81 fall entirely on out-of-state interests. All of the spent fuel to be stored at the PFSF will be transported from outside Utah, causing the burdens imposed by S.B. 81 to fall entirely on out-of-state interests. By purporting to close Utah's doors to spent fuel, S.B. 81 is precisely the type of legislation that courts have consistently held unconstitutional under the Commerce Clause.

For either of the reasons stated above, the pervasive discrimination against interstate commerce by S.B. 81 means that strict scrutiny applies and the burden of proof shifts to the State to prove that less discriminatory alternatives are not available to serve their asserted local interests—in this case purported interests in radiological health and safety. See Hunt, 432 U.S. at 353. In a case such as this, where the doctrines of federal preemption apply, less restrictive means are always available because the State can always simply not legislate and allow its health and safety interests to be protected by the applicable federal regulation. Utah did not use the least restrictive means to achieve its local safety interest; therefore, the Municipal Contract Provisions are invalid under the Commerce Clause.[13]

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[13] S.B. 81, when interpreted as alleged by the State, also blatantly violates the Contracts Clause of the Constitution. U. S. Const. art. I, § 10, cl. 1. The Supreme Court has established a three-part test to determine the constitutionality of state legislation under the Contracts Clause. First, "[t]he threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.'" Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983) (quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244 (1978)). If this threshold is met, the burden shifts to the state to prove both (1) "a significant and legitimate public purpose behind the regulation," and (2) that the legislation is based upon "reasonable conditions and [is] of a character appropriate to the public purpose justifying the legislation's adoption." Id. at 411-412 (citations and internal punctuation omitted).

When the CLEA was entered into, the Utah legislation purportedly voiding municipal contracts did not exist. Further, the State is attempting to regulate in an area—the transfer and storage of high-level nuclear waste—that it has never before regulated and that is exclusively regulated by the federal government. The State cannot justify its impairment of the existing CLEA. Attempting to undermine

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B. Even If S.B. 81 Is Deemed or Assumed Valid, The PFS PSP Is Adequate As A Matter of Law Under The Commission's Realism Doctrine

The Commission's realism doctrine establishes, regardless of the position taken by state or local government officials during licensing hearings, that the NRC may assume, when evaluating radiological emergency plans for nuclear power facilities, that state and local government officials will exercise their best efforts to protect the health and safety of the public in the event of an actual emergency. 10 C.F.R. § 50.47(c)(1). Furthermore, those state and local officials are presumed to generally follow the utility's plan in an actual emergency unless this presumption is rebutted by a good faith proffer of an adequate and feasible alternate state or local plan. Id. By analogy, a similar best effort response to an emergency should also be assumed when evaluating security plans at an Independent Spent Fuel Storage Installation ("ISFSI"). A security event at an ISFSI is a health and safety (or common defense and security) concern to the extent it may be a precursor to a radiological emergency. Thus, the same logic that leads to assuming a "best effort" response by state and local officials in the event of a radiological emergency should apply to a security event that can also be a precursor to a similar emergency.

1. As the Underlying Principles Apply, the Realism Doctrine Applicable To Nuclear Power Plant Licensing Should Also Be Applicable To ISFSI Licensing

In determining whether a utility's nuclear reactor emergency plan is adequate, the NRC recognizes the reality that local officials will use their best efforts to respond to an actual emergency. 10 C.F.R. § 50.47(c)(1). By its terms, 10 C.F.R. § 50.47(c)(1) applies

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the well-established authority of the federal government to license an away-from-reactor spent fuel storage facility in Utah is not a legitimate public purpose. See **Attachment 10** (remarks of Rep. Urquhart that the purposes of S.B. 81 include challenging NRC licensing authority).

only to nuclear power plant licensing, since the need for the regulation arose during licensing hearings for two such plants. However, the Commission observed that "the rule is generic in the sense that it is of general applicability and future effect, covering future plants as well as existing plants."[14] The rule was based on two principles: (1) because deficiencies "in emergency planning do not automatically raise a 'substantial health or safety issue,'" reasonable evaluation of their significance prior to regulatory action is appropriate, and; (2) "it would be irrational for anyone to suppose that in a real radiological emergency, state and local public officials would refuse to do what they have always done in the event of emergencies of all kinds: do their best to help protect the affected public."[15] Such principles apply equally to an ISFSI as to a nuclear power plant; therefore, the realism doctrine should apply with equal force in this case.[16]

The Commission's realism doctrine on emergency planning ensures licensees are not penalized for lack of cooperation by a State, provided there exists reasonable

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14 *Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline to Participate in Off-Site Emergency Planning*, 52 Fed. Reg. 42,078, 42,081 (1987).

15 Id. at 42,082.

16 The criteria for invoking the realism doctrine for nuclear power plants provide guidelines on whether to invoke the realism doctrine in this case. For a nuclear reactor emergency plan to warrant the application of the realism doctrine, there must be: (i) state and/or local non-participation that makes compliance infeasible, (ii) a good faith effort by the applicant to secure and retain the participation of the pertinent local authorities, and (iii) reasonable assurance that the applicant's plan does not endanger public health and safety due to the operation of the facility. 10 C.F.R. § 50.47(c).

If the criteria were applied in this case, they would be fulfilled. Only the Sheriff can provide timely local law enforcement response to investigate, charge and detain law-breakers. As a private entity, PFS cannot provide law enforcement services like a LLEA, so no compensating measures are feasible. Compliance with the PSF PSP would be infeasible. The NRC Staff has suggested that PFS may be able to designate an alternate force. LBP-01-20, 53 NRC at 571 n.4. Although government licensees, such as the U.S. Dept. of Energy, may be able to designate alternate response forces with police powers, this option is not credible for a private party like PFS.

Second, PFS has pursued efforts to comply in good faith, as evidenced by the CLEA. Lastly, there is reasonable assurance of public health and safety as contentions challenging the PFS PSP have already been resolved in PFS's favor. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation) LBP-00-5, 51 NRC 64, 69 (2000).

assurance the utility-prepared emergency plan is protective of health and safety. See, e.g., 52 Fed. Reg. 42,078. Such reasonable assurance is present here in the form of the CLEA. The CLEA serves to convey jurisdiction on the Reservation to the County to supplement the security assets available to the Band. The State is asking the Board to assume: (1) that S.B. 81, by purporting to void this jurisdictional grant, impacts the Sheriff's response in the event of a security emergency at the PFSF; and (2) that this impact results in consequences for the adequacy of the PFS PSP. In contrast, the Commission has refused to take at face value such litigation positions of state and local officials. See e.g. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) CLI-86-13, 24 NRC 22, 29 n.9 (1986). Similarly, here, the Board should not take at face value the State's assertion that the Sheriff will not "investigate, charge and detain" law-breakers that attack the PFSF, but instead will passively stand by in the event of a security threat simply because S.B. 81 makes using local law enforcement to protect the PFSF "void as against public policy in the State of Utah."[17] Instead, the Commission's realism doctrine should be applied to provide the reasonable and rational assumption that in the event of a security emergency, the Sheriff will in fact respond to fulfill the law enforcement role called for by the CLEA.

In any instance where active measures are undertaken to neutralize a security threat, the PFS security force will prudently request assistance from the Sheriff.[18] It is both rational and responsible for the Board to assume the Sheriff will respond regardless of the purported prohibitions of S.B. 81. The alternative of leaving the PFS security force

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[17] State Sec. J Mot. at 7. The State may be asking the Board to make the even more irrational assumption that the Sheriff will not respond to a security emergency at the PFSF even when the Sheriff's response could prevent a loss of control of the PFSF such that it results in radiation release or loss of control over licensed material.

[18] Prudence dictates that such a request would be made in parallel with the facility response and so would be made regardless of whether the response is adequate. See 42 Fed. Reg. 64,103.

unsupported by law enforcement, with the possible result that attackers succeed and cause a radiological emergency, is simply too irresponsible to be credible. Given the straight-forward coordination required, the existence of the CLEA, and the potentially dire consequences of inaction, it is reasonable to assume that the Sheriff would respond to the PFSF in the event of an actual security event, notwithstanding the purported prohibitions of S.B. 81.

2. The Policy Underlying the Realism Doctrine Warrants the Board Assuming as a Matter of Law Best Effort Response By State And Local Officials In the Event of a Security Emergency

NRC requires licensees to establish and maintain a physical protection system with the objective of providing high assurance that activities involving spent nuclear fuel do not constitute an unreasonable risk to public health and safety. 10 C.F.R. § 73.51(b)(1). The Commission has stated that "'high assurance' ... is deemed to be comparable to the degree of assurance contemplated by the Commission in its safety review for protection against severe postulated accidents having potential consequences similar to the potential consequences from reactor sabotage."[19] The gravity of the safety concern is described in 10 C.F.R. § 73.51(b)(3) as the "loss of control of the facility that could be sufficient to cause a radiation exposure exceeding the dose described in § 72.106 [dose limits for design basis accidents involving IFSFI]." Assumptions made about the response of the American Red Cross ("ARC") in the Shoreham and Seabrook licensing proceedings provide guidance for this proceeding.

In the licensing proceedings for the Shoreham and Seabrook nuclear power plants, one issue was the extent that the ARC could be relied upon to provide assistance to evacuees in the event of a radiological emergency, despite the fact that State

[19] *Physical Protection Upgrade Rule*, 44 Fed. Reg. 68,184, 68,185 (1979).

intransigence prevented the ARC from engaging in preplanning for such an emergency. Long Island Lighting Co. (Shoreham Nuclear Power Station Unit 1) CLI-87-5, 25 NRC 884, 888 (1987); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2) LBP-89-32, 30 NRC 375, 586 (1989). In both cases, the NRC presumed as a matter of law that the ARC would be willing and able to adequately respond in the event of an actual emergency at the nuclear plant even absent planning specific for that plant. CLI-87-5, 25 NRC at 890; LBP-89-32, 30 NRC at 585. Factors considered in the decision were the charter and mission of the ARC, the ARC's planning for comparable disasters in the relevant area (such as hurricanes and nuclear war), and the absence of evidence that the local ARC chapters would be unable to respond to a radiological emergency at the specific nuclear plant in question. CLI-87-5, 25 NRC at 888-890; LBP-89-32, 30 NRC at 585-593.

In this case, an analogous presumption is warranted as the factors the NRC previously found controlling are also present here. First of all, the ARC has a charter and mission to respond to disasters, which the NRC held relevant in presuming adequate response to an actual emergency by the ARC. Similarly, the Tooele County Sheriff is established and has the mission of providing law enforcement functions no different from the functions called for under the CLEA. **Attachment 1**, Tooele County Resolution 98-13. Second, the Sheriff routinely provides comparable services on the Reservation in the vicinity of the PFSF. See, e.g., **Attachment 11**. The CLEA continues Tooele County's provision for law enforcement response on the Reservation in support of members of the Band. Support of members of the Band is not support of the PFSF and so is unaffected by S.B. 81. Therefore, independent of the effect of S.B. 81 with regard to the PFSF, the Sheriff will continue to provide comparable services on the Reservation. This is analogous to the finding in Shoreham and Seabrook that the ARC provides comparable planning and response to areas around the nuclear plants even if not planning specifically for an emergency at those plants. Finally, just as there was no evidence the ARC would

be unable to respond in an actual emergency, there is no evidence the Sheriff would be unable to respond to an actual security event at the PFSF.[20]

Like the response of the ARC in the Shoreham and Seabrook cases, the response of the Sheriff to an actual safeguards event at the PFSF should be presumed adequate as a matter of law. Otherwise, local officials would hold a *de jure* veto over NRC licensing decisions. The Shoreham case is instructive on this issue.

In Shoreham, the issue was raised whether a local ordinance that declared that the county would not participate in emergency planning required that the licensing proceeding be terminated as a matter of law. Long Island Lighting Co. (Shoreham Nuclear Power Station Unit 1) CLI-83-13, 17 NRC 741, 742 (1983). This was seen as amounting to a *de jure* veto by the county. In concluding that local authorities did not have a *de jure* veto over licensing decisions, the Commission stated, "the agency [NRC] is obligated to consider a utility plan submitted in the absence of State and local government-approved plans and has the ultimate authority to determine whether such a submission is sufficient to meet the prerequisites for the issuance of an operating license." Id. at 743. Like the county in Shoreham, the State here is arguing that S.B. 81 voids Tooele County's jurisdiction to provide law enforcement assistance to PFS, and that in effect S.B.81 is a *de jure* veto over NRC licensing proceedings. The potential consequences of the Board adhering to the State's argument is no less sweeping in this case than it was in Shoreham.[21] Just as any locality can take a position during licensing that it is not going to participate in emergency planning, any state can purport to carve out from the LLEA's jurisdiction the area where a nuclear facility is located.

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[20] In fact, the adequacy of the Sheriff's response under the PFS PSP has already been resolved in PFS's favor. LBP-00-5, 51 NRC at 69.

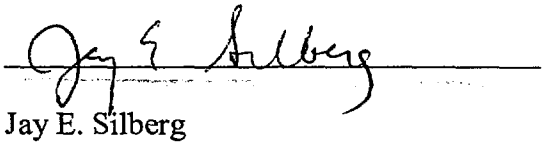
[21] See generally CLI-83-13, 17 NRC at 743 (noting, but not expressing an opinion on, the potential serious issues of federal preemption involved).

In evaluating a state's purported veto, this Board must evaluate the significance of such a grant against the NRC's goal to protect health and safety and common defense and security. The policy and principles underlying the Commission's realism doctrine call for the Board to make a reasonable and rational assumption as a matter of law that the Sheriff will respond to actual security threats on the Reservation when called.

IV. CONCLUSION

For the foregoing reasons, the Board should grant PFS summary disposition of Security J.

Respectfully submitted,



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Dated: April 30, 2002

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Motion For Summary Disposition Of Utah Contention Security J – Law Enforcement" were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 30th day of April, 2002.

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(Original and two copies)

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Jay E. Silberg

April 30, 2002

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 72-22
PRIVATE FUEL STORAGE L.L.C.	)	
	)	ASLBP No. 97-732-02-ISFSI
(Private Fuel Storage Facility)	)	

STATEMENT OF MATERIAL FACTS
ON WHICH NO GENUINE DISPUTE EXISTS

Applicant submits, in support of its motion for summary disposition of Security J, this statement of material facts as to which the Applicant contends there is no genuine issue to be heard.

1. On August 2, 1998, Tooele County, the Bureau of Indian Affairs ("BIA"), and the Skull Valley Band of the Goshute Indians (the "Band") entered into Tooele County Corporation Contract 98-08-01, the Cooperative Law Enforcement Agreement ("CLEA").

2. On September 2, 1998, Tooele County passed Resolution 98-13 that authorizes the county to engage in cooperative agreement with BIA and the Band to provide law enforcement services for the Skull Valley Reservation. The Resolution explicitly ratifies the CLEA previously executed.

3. The Tooele County Sheriff serves as the LLEA called for under the PSF Physical Security Plan. CLEA at 2.

4. On March 15, 2001, Utah enacted Senate Bill (S.B.) 81, "Provisions Relating to High-level Nuclear Waste." S.B. 81 purports to void the CLEA with regard to the PFS facility by invalidating contracts for municipal services entered into by "any organization engaging in, or attempting to engage in the placement" of spent fuel within Utah's borders.

5. Security J was admitted by the Board as a contention on February 22, 2002. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-02-07, 55 NRC ___ (2002) (Admitting Contention Security-J). As admitted, Security J asserts:

> The Applicant's Physical Security Plan does not comply with 10 CFR Part 73 because the Applicant does not have valid documented liaison with a designated local law enforcement authority (LLEA), and redundant communications between onsite security force members and the LLEA, to provide timely response to unauthorized penetrations at the PFS facility. See 10 CFR §§ 72.180; 73.51(d)(6), (8) and (12); and Part 73, Appendix C.

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RESOLUTION 98-13

A RESOLUTION APPROVING AND AUTHORIZING A COOPERATIVE LAW ENFORCEMENT AGREEMENT (CLEA) BETWEEN TOOELE COUNTY, THE BUREAU OF INDIAN AFFAIRS AND THE SKULL VALLEY BAND OF GOSHUTE INDIANS

WHEREAS, the Board of County Commissioners (Board) of Tooele County, Utah (County) hereby determines that it is in the public interest and welfare of the residents of the County that the County engage in a cooperative agreement with the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians for law enforcement detention for the Skull Valley Reservation; and

WHEREAS, a Cooperative Agreement (Agreement) has been approved by and between the County and the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians; and

WHEREAS, under the Utah Interlocal Cooperation Act, Utah Code Annotated 11-13-1, et seq., 1953, as amended, any two or more public agencies, as defined therein, may enter into agreements with one another for joint or cooperative action and may also contract with each other to perform any governmental services, activities or undertaking which each public agency entering into the contract is authorized by law to perform, but shall authorize such contracts by resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE COUNTY COMMISSION that the Agreement, as attached hereto, entitled "Cooperative Law Enforcement Agreement (CLEA) between Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians" is hereby accepted and approved. The Chair of the Board is authorized to execute and the County Clerk to attest and seal the Agreement for and in behalf of Tooele County. Any action taken by the county or Board on this Agreement previous to this resolution, including the execution thereof, is hereby ratified.

This Resolution shall take effect immediately upon its approval and adoption by the Board and its filing in the office of the Tooele County Clerk.

DATED this 2nd day of September, 1998.

ATTEST:

DENNIS D. EWING, Clerk

TOOELE COUNTY LEGISLATIVE BODY

TERYL HUNSAKER, Chairman

Commissioner Hunsaker voted aye
Commissioner Griffith voted aye
Commissioner McArthur voted aye

APPROVED AS TO FORM:

DOUGLAS J. AHLSTROM
Tooele County Attorney

TOOELE COUNTY CORPORATION
CONTRACT # 98-08-01

COOPERATIVE LAW ENFORCEMENT AGREEMENT (CLEA) BETWEEN TOOELE COUNTY, THE BUREAU OF INDIAN AFFAIRS AND THE SKULL VALLEY BAND OF GOSHUTE INDIANS

THIS AGREEMENT made and executed the _____ day of _____, 1998, to be effective on the ____ day of _____, 1998, by and between TOOELE COUNTY, a body politic and corporate of the State of Utah, (hereinafter "County"), the BUREAU OF INDIAN AFFAIRS, (hereinafter called the "Bureau"), and the SKULL VALLEY BAND OF GOSHUTE INDIANS, (hereinafter called the "Skull Valley Band").

WITNESSETH:

WHEREAS, the Skull Valley Band does not have all of the required resources and facilities to provide adequate law enforcement for the protection of the residents of the Skull Valley Reservation, Utah, and its resources; and

WHEREAS, the Bureau and the Skull Valley Band desire to utilize the Tooele County Sheriff's department to provide law enforcement and detention for the Skull Valley Reservation, Utah, pursuant to Title 25, Code of Federal Regulations, Part II; and

WHEREAS, the County is willing to provide the necessary services under certain terms and conditions.

NOW, THEREFORE, pursuant to Section 11-13-5, Utah Code Annotated 1953, and in consideration of mutual promises contained herein, and for other good and valuable consideration, the County, the Skull Valley Band and the Bureau, pursuant to its authority to provide for the maintenance of law enforcement services in Indian Country, hereby agree as follows:

1. The County will provide all necessary qualified personnel for law enforcement and detention services covered in this agreement. The County recognizes that many non-Indians work or travel through the Skull Valley Indian Reservation requiring law enforcement patrols.

2. The County is designated as the party to administer this agreement by and through the Tooele County Sheriff.

3. The County will provide all equipment, materials and facilities required for conducting the enforcement and detention services set forth in this agreement, and in the event of the termination of this agreement for any cause, all equipment, materials and facilities shall remain in the possession and ownership of the County.

4. The County will be responsible to investigate, charge and incarcerate persons charged with or alleged to be in violation of all offenses, whether enumerated under 18 U.S.C. or the Skull Valley Band of Goshute Indians Tribal Code, committed within the boundaries of the Skull Valley Indian Reservation, Utah, as established by Executive Order 1465, dated January 17, 1912; Executive Order 2699, dated September 7, 1917; and Executive Order 2809 dated February 15, 1918, and such other lands without such Reservation boundaries as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

5. The County will provide a minimum of three (3) regular patrols per week on the highway passing through the Skull Valley Indian Reservation and into the Village on the Reservation as part of regular patrols. The County will also include areas of patrol as requested by the Skull Valley Tribal Government.

6. The County will immediately notify the Criminal Investigator of the Uintah and Ouray Agency, Fort Duchesne, Utah, and the Federal Bureau of Investigations of all Federal offenses that occur within the boundaries of the Skull Valley Indian Reservation as set forth in paragraph 4 above. The County shall assist Federal law enforcement officials in the investigation of Federal offenses.

7. The County will provide the following reports and records to assist the Bureau and Skull Valley Band in preparing of the Bureau's quarterly and annual statistical report:

a. full investigation reports of all misdemeanors and felonies occurring on the Reservation involving Indians;

b. a booking log of all arrests made on the Reservation indicating (1) date of birth, (2) age, (3) charges, and (4) disposition for each Indian offender; and

c. a report on each incident responded to by the County on the Reservation.

8. The County shall be notified by telephone on all law enforcement matters, including emergencies.

9. The Bureau will pay five thousand six hundred dollars ($5,600) for the County's services to be rendered April 1, 1998, through March 31, 1999. Should this agreement extend to additional years, the Bureau shall pay in April of each year the base sum of five thousand six hundred dollars ($5,600), plus an amount equal to any percentage increase over the previous year in the Wasatch Front Cost of Living Index as published by First Security Bank, but not to exceed five percent (5%) in any given year. The Bureau will also pay the County thirty-five dollars ($35.00) per day, or any portion thereof, per person for the incarceration of persons at the County detention facility pursuant to this agreement. The Bureau will also pay such prisoner's medical costs. The County shall bill the Bureau for such costs with an itemized invoice listing of the prisoners and days they spend at the County detention facility, and any medical costs incurred.

10. The Bureau agrees to commission the Tooele County Sheriff and designated deputy sheriffs as Bureau of Indian Affairs Federal Law Enforcement Officers for the purpose of providing the services contained herein. The Skull Valley Band and the County agree to allow the County to call onto the Reservation such backup personnel from other law enforcement agencies as is necessary to carry out the terms of this agreement.

11. The Bureau and/or Tribal Attorney will provide technical assistance to the County in matters dealing with Tribal Government, Reservation jurisdiction, Federal jurisdiction and related matters.

12. The County, the Bureau and the Skull Valley Band will review this agreement annually on or before April 1st of each year for purposes of evaluating the services and effectiveness of the agreement.

13. Any party to this agreement may cancel or terminate this agreement upon thirty (30) days written notice to the other parties.

14. The term of this agreement shall be for one (1) year commencing April 1, 1998. It shall renew automatically thereafter for one year increments until such time as it is terminated pursuant to paragraph 13.

15. The County recognizes that the Skull Valley Indian Reservation is a separate sovereign political entity independent of the State of Utah.

16. This contract is contingent upon the appropriation of funds by Congress.

BUREAU OF INDIAN AFFAIRS:

_____
Superintendent

SKULL VALLEY BAND OF GOSHUTE INDIANS

_____
Tribal Chairman

_____
Tribal Vice-Chairman

COUNTY OF TOOELE, UTAH

_____
TERYL HUNSAKER, Chairman
Tooele County Commission

ATTEST:

_____
DENNIS D. EWING, Clerk

COUNTY OF TOOELE COUNTY CLERK STATE OF UTAH

APPROVED AS TO FORM:

DANNY QUINTANA
Tribal Attorney

APPROVED AS TO FORM:

DOUGLAS I. AHLSTROM
Tooele County Attorney

Approved as to form this 7th day of August, 1998.

FRANK SCHARMANN
Tooele County Sheriff

2

PROVISIONS RELATING TO HIGH-LEVEL NUCLEAR WASTE

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Environmental Quality Code, the County Land Use Development and Management Act, the Labor Code regarding drug and alcohol testing, and the Water and Irrigation Code regarding determination of water rights. The act prohibits the placement of high-level nuclear waste or greater than class C radioactive waste within the exterior borders of the state, and prohibits governmental entities or businesses from providing services to facilitate the placement of the waste in the state. However, should the federal government authorize such placement, the act requires mandatory planning by the site county, including a public hearing. The act provides that an entity may not apply for a state license for the transportation, transfer, or storage of high-level nuclear waste or greater than class C radioactive waste until a final court ruling is given regarding the state provisions. The act also prohibits a county from providing municipal-type services to a site under consideration for a facility, entering into contracts to provide the services, or creating political subdivisions to provide the services until a license is authorized. The act provides that persons or organizations acting in violation of these provisions are subject to penalties. The act requires the Department of Environmental Quality to determine the amount of unfunded potential liability regarding a release of the waste from a facility. Should a facility gain a license, the act imposes on any organization providing municipal-type services a transaction fee of 75% of the value of a contract. This fee is to be applied to the unfunded potential liability and is to be deposited in a restricted account created by this act. In addition, the license applicant is required to deposit in this account not less than 75% of the determined unfunded potential liability within 30 days of issuance of the license for the facility. The licensee is also required to pay an annual fee of the amount of workers' compensation to be paid for employees in the state, multiplied by the number of casks of nuclear waste brought into the state. This fee is also to be deposited in the account. The fee does not exempt the licensee from payments for workers' compensation. The act also

requires the licensee to test employees for drugs and alcohol, to protect the safety of the public. The act also provides for the state engineer to file an action in court to determine water rights for any area within the state's exterior boundaries regarding which any entity is actively seeking a license for a nuclear waste facility. This act takes effect upon approval. This act provides a coordination clause to specify the effective date.

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

AMENDS:

17-27-102, as last amended by Chapter 93, Laws of Utah 1992

17-27-301, as last amended by Chapter 34, Laws of Utah 2000

17-27-303, as last amended by Chapter 23, Laws of Utah 1992

17-34-1, as repealed and reenacted by Chapter 199, Laws of Utah 2000

17-34-3, as last amended by Chapter 199, Laws of Utah 2000

19-3-301, as last amended by Chapter 348, Laws of Utah 1998

19-3-302, as enacted by Chapter 348, Laws of Utah 1998

19-3-303, as enacted by Chapter 348, Laws of Utah 1998

19-3-308, as enacted by Chapter 348, Laws of Utah 1998

19-3-309, as enacted by Chapter 348, Laws of Utah 1998

19-3-312, as enacted by Chapter 348, Laws of Utah 1998

34-38-3, as enacted by Chapter 234, Laws of Utah 1987

73-4-1, Utah Code Annotated 1953

ENACTS:

17-27-308, Utah Code Annotated 1953

17-34-6, Utah Code Annotated 1953

19-3-319, Utah Code Annotated 1953

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

Section 1. Section **17-27-102** is amended to read:

17-27-102. Purpose.

(1) To accomplish the purpose of this chapter, and in order to provide for the health, safety,

and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the county and its present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, counties may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the county, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

(2) A county shall comply with the mandatory provisions of this part before any agreement or contract to provide goods, services, or municipal-type services to any storage facility or transfer facility for high-level nuclear waste, or greater than class C radioactive waste, may be executed or implemented.

Section 2. Section **17-27-301** is amended to read:

17-27-301. General plan.

(1) In order to accomplish the purposes set forth in this chapter, each county shall prepare and adopt a comprehensive general plan for:

(a) the present and future needs of the county; and

(b) the growth and development of the land within the county or any part of the county, including uses of land for urbanization, trade, industry, residential, agricultural, wildlife habitat, and other purposes.

(2) The plan may provide for:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;

(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;

(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and

(ii) drainage, sanitary, and other facilities and resources;

(d) the use of energy conservation and solar and renewable energy resources;

(e) the protection of urban development;

(f) the protection and promotion of air quality; and

(g) an official map, pursuant to Title 72, Chapter 5, Part 4, Transportation Corridor Preservation.

(3) (a) The plan shall include specific provisions related to any areas within, or partially within, the exterior boundaries of the county, or contiguous to the boundaries of a county, which are proposed for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive nuclear waste, as these wastes are defined in Section 19-3-303. The provisions shall address the effects of the proposed site upon the health and general welfare of citizens of the state, and shall provide:

(i) the information identified in Section 19-3-305;

(ii) information supported by credible studies that demonstrates that the provisions of Subsection 19-3-307(2) have been satisfied; and

(iii) specific measures to mitigate the effects of high-level nuclear waste and greater than class C radioactive waste and guarantee the health and safety of the citizens of the state.

(b) A county may, in lieu of complying with Subsection (3)(a), adopt an ordinance indicating that all proposals for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the county are rejected.

(c) A county may adopt the ordinance listed in Subsection (3)(b) at any time.

(d) The county shall send a certified copy of the ordinance under Subsection (3)(b) to the executive director of the Department of Environmental Quality by certified mail within 30 days of enactment.

(e) If a county repeals an ordinance adopted pursuant to Subsection (3)(b) the county shall:

(i) comply with Subsection (3)(a) as soon as reasonably possible; and

(ii) send a certified copy of the repeal to the executive director of the Department of

Environmental Quality by certified mail within 30 days after the repeal.

[~~(3)~~] (4) The plan may define the county's local customs, local culture, and the components necessary for the county's economic stability.

[~~(4)~~] (5) The county may determine the comprehensiveness, extent, and format of the general plan.

Section 3. Section **17-27-303** is amended to read:

17-27-303. Plan adoption.

(1) (a) After completing a proposed general plan for all or part of the area within the county, the planning commission shall schedule and hold a public hearing on the proposed plan.

(b) The planning commission shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(c) After the public hearing, the planning commission may make changes to the proposed general plan.

(2) The planning commission shall then forward the proposed general plan to the legislative body.

(3) (a) The legislative body shall hold a public hearing on the proposed general plan recommended to it by the planning commission.

(b) The legislative body shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(4) (a) (i) In addition to the requirements of Subsections (1), (2), and (3), the legislative body shall hold a public hearing in Salt Lake City on provisions of the proposed county plan regarding Subsection 17-27-301(3). The hearing procedure shall comply with this Subsection (4).

(ii) The hearing format shall allow adequate time for public comment at the actual public hearing, and shall also allow for public comment in writing to be submitted to the legislative body for not fewer than 90 days after the date of the public hearing.

(b) (i) The legislative body shall give notice of the hearing in accordance with this Subsection (4) when the proposed plan provisions required by Subsection 17-27-301(3) are complete.

(ii) Direct notice of the hearing shall be given, in writing, to the governor, members of the state Legislature, executive director of the Department of Environmental Quality, the state planning coordinator under Section 63-28-1, the Resource Development Coordinating Committee pursuant to Section 63-28a-2, and any other citizens or entities who specifically request notice in writing.

(iii) Public notice shall be given by publication in at least one major Utah newspaper having broad general circulation in the state, and also in at least one Utah newspaper having a general circulation focused mainly on the county where the proposed high-level nuclear waste or greater than class C radioactive waste site is to be located.

(iv) The notice in these newspapers shall be published not fewer than 180 days prior to the date of the hearing to be held under this Subsection (4), to allow reasonable time for interested parties and the state to evaluate the information regarding the provisions of Subsection 17-27-301(3).

[~~(4)~~] (5) (a) After [~~the~~] a public hearing under this section, the legislative body may make any modifications to the proposed general plan that it considers appropriate.

(b) The legislative body shall respond in writing and in a substantive manner to all those providing comments as a result of the hearing required by Subsection (4).

[~~(5)~~] (6) The legislative body may:

(a) adopt the proposed general plan without amendment;

(b) amend the proposed general plan and adopt or reject it as amended; or

(c) reject the proposed general plan.

[~~(6)~~] (7) (a) The general plan is an advisory guide for land use decisions, except for the provision required by Subsection 17-27-301(3), which the legislative body shall adopt.

(b) The legislative body may adopt an ordinance mandating compliance with the general plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection 17-27-301(3).

Section 4. Section **17-27-308** is enacted to read:

17-27-308. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage

or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

Section 5. Section **17-34-1** is amended to read:

17-34-1. Counties may provide municipal services -- First class counties required to provide paramedic services.

(1) For purposes of this chapter, [~~"municipal-type~~] except as otherwise provided in Subsection (3):

(a) "Greater than class C radioactive waste" has the same meaning as in Section 19-3-303.

(b) "High-level nuclear waste" has the same meaning as in Section 19-3-303.

(c) "Municipal-type services" means:

[~~(a)~~] (i) fire protection service;

[~~(b)~~] (ii) waste and garbage collection and disposal;

[~~(c)~~] (iii) planning and zoning;

[~~(d)~~] (iv) street lighting;

[~~(e)~~] (v) in a county of the first class, advanced life support and paramedic services; and

[~~(f)~~] (vi) all other services and functions that are required by law to be budgeted, appropriated, and accounted for from a municipal services fund or a municipal capital projects fund

as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

(d) "Placement" has the same meaning as in Section 19-3-303.

(e) "Storage facility" has the same meaning as in Section 19-3-303.

(f) "Transfer facility" has the same meaning as in Section 19-3-303.

(2) A county may:

(a) provide municipal-type services to areas of the county outside the limits of cities and towns without providing the same services to cities or towns;

(b) fund those services by:

(i) levying a tax on taxable property in the county outside the limits of cities and towns; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(3) A county may not:

(a) provide, contract to provide, or agree in any manner to provide municipal-type services, as these services are defined in Section 19-3-303, to any area under consideration for a storage facility or transfer facility for the placement of high-level nuclear waste, or greater than class C radioactive waste; or

(b) seek to fund services for these facilities by:

(i) levying a tax; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

[~~(3)~~] (4) Each county of the first class shall provide advanced life support and paramedic services to the area of the county outside the limits of cities and towns.

Section 6. Section **17-34-3** is amended to read:

17-34-3. Taxes or service charges.

(1) (a) If a county furnishes the municipal-type services and functions described in Section 17-34-1 to areas of the county outside the limits of incorporated cities or towns, the entire cost of the services or functions so furnished shall be defrayed from funds that the county has derived from either:

(i) taxes which the county may lawfully levy or impose outside the limits of incorporated towns or cities;

(ii) service charges or fees the county may impose upon the persons benefited in any way by the services or functions; or

(iii) a combination of these sources.

(b) As the taxes or service charges or fees are levied and collected, they shall be placed in a special revenue fund of the county and shall be disbursed only for the rendering of the services or functions established in Section 17-34-1 within the unincorporated areas of the county.

(2) For the purpose of levying taxes, service charges, or fees provided in this section, the county legislative body may establish a district or districts in the unincorporated areas of the county.

(3) Nothing contained in this chapter may be construed to authorize counties to impose or levy taxes not otherwise allowed by law.

(4) (a) A county required under Subsection 17-34-1[~~(3)~~](4) to provide advanced life support and paramedic services to the unincorporated area of the county and that previously paid for those services through a countywide levy may increase its levy under Subsection (1)(a)(i) to generate in the unincorporated area of the county the same amount of revenue as the county loses from that area due to the required decrease in the countywide certified tax rate under Subsection 59-2-924(2)(h)(i).

(b) An increase in tax rate under Subsection (4)(a) is exempt from the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

Section 7. Section **17-34-6** is enacted to read:

17-34-6. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement

of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

Section 8. Section **19-3-301** is amended to read:

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

(1) The [~~state may not approve the~~] placement, including transfer, storage, decay in storage, treatment, or disposal, [~~in~~] within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste [~~unless~~] 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 [~~approves~~] 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 the effective date of this act.

(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 monies.

(ii) The department may not include any calculations of federal monies 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 17A, Special Districts;

(iii) a limited purpose local governmental entities authorized by Title 17, Counties;

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

(v) 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 the effective date of this act 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 the effective date of this act, 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 the effective date of this act, 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 Community and Economic Development, 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 the effective date of this act; 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 (d)(i) on or after the effective date of this act.

(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 calender 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 Community and Economic Development 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.

Section 9. Section **19-3-302** is amended to read:

19-3-302. Legislative intent.

(1) (a) The state of Utah 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 of Utah 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 of Utah has environmental and economic interests which do not involve nuclear safety regulation, and which must 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 of Utah. 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.

Section 10. Section **19-3-303** is amended to read:

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.

[~~(1)~~] (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.

[~~(2)~~] (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.

[~~(3)~~] (10) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

[~~(4)~~] (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.

[~~(5)~~] (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.

[~~(6)~~] (14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

Section 11. Section **19-3-308** is amended to read:

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, but not limited to 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 63-38-3.2, 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 Waste Facility Oversight Restricted~~] Nuclear Accident and Hazard Compensation Account, created in [~~Section~~] 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.

Section 12. Section **19-3-309** is amended to read:

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 [~~this part~~] Subsections 19-3-308(1)(a) and(b).

(b) The department shall deposit in the oversight account all fees collected under [~~this part in the account~~] 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 [~~account shall earn interest, which shall be deposited in the account~~] department shall account separately for monies 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.

Section 13. Section **19-3-312** is amended to read:

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.

Section 14. Section **19-3-319** is enacted to read:

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, 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, 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.

Section 15. Section **34-38-3** is amended to read:

34-38-3. Testing for drugs or alcohol.

(1) It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this chapter, as a condition of hiring or continued employment. However, employers and management in general [~~must~~] shall submit to the testing themselves on a periodic basis.

(2) (a) Any organization which is operating a storage facility or transfer facility or which is engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste

within the exterior boundaries of the state shall establish a mandatory drug testing program regarding drugs and alcohol for prospective and existing employees as a condition of hiring any employee or the continued employment of any employee. As a part of the program, employers and management in general shall submit to the testing themselves on a periodic basis. The program shall implement testing standards and procedures established under Subsection (2)(b).

(b) The executive director of the Department of Environmental Quality, in consultation with the Labor Commission under Section 34A-1-103, shall by rule establish standards for timing of testing and dosage for impairment for the drug and alcohol testing program under this Subsection (2). The standards shall address the protection of the safety, health, and welfare of the public.

Section 16. Section **73-4-1** is amended to read:

73-4-1. By engineer on petition of users.

(1) Upon a verified petition to the state engineer, signed by five or more or a majority of water users upon any stream or water source, requesting the investigation of the relative rights of the various claimants to the waters of such stream or water source, it shall be the duty of the state engineer, if upon such investigation he finds the facts and conditions are such as to justify a determination of said rights, to file in the district court an action to determine the various rights. In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.

(2) (a) As used in this section, "executive director" means the executive director of the Department of Environmental Quality.

(b) The executive director, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.

(c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file the action in the district court.

(d) If a general adjudication has been filed in the state district court regarding the area requested pursuant to Subsection (2)(b), the state engineer and the state attorney general shall join the United States as a party to the action.

Section 17. **Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 18. **Coordination clause.**

It is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel is directed to replace the language, "the effective date of this act," in Section 19-3-301 with the actual effective date of this act.

3

UTAH CODE, 1953
TITLE 17. COUNTIES
CHAPTER 27. COUNTY LAND USE DEVELOPMENT AND MANAGEMENT ACT
PART 1. GENERAL PROVISIONS

Current through the 2001 Supplement (2001 First Special Session)

17-27-102 Purpose.

(1) To accomplish the purpose of this chapter, and in order to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the county and its present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, counties may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the county, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

(2) A county shall comply with the mandatory provisions of this part before any agreement or contract to provide goods, services, or municipal-type services to any storage facility or transfer facility for high-level nuclear waste, or greater than class C radioactive waste, may be executed or implemented.

History: C. 1953, 17-27-102, enacted by L. 1991, ch. 235, § 57; 1992, ch. 93, § 4; 2001, ch. 107, § 1.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 2001 amendment, effective March 15, 2001, designated Subsection (1) and added Subsection (2).

NOTES TO DECISIONS

ANALYSIS

Zoning power in general.
Cited.

Zoning power in general.

In pursuing its authority to zone a county, a county commission is performing a legislative function and has wide discretion. The action of the zoning authority is endowed with a presumption of validity and the courts will not interfere with a commission action unless it clearly appears to be beyond its power or is unconstitutional. Gayland v. Salt Lake County, 11 Utah 2d 307, 358 P.2d 633 (1961).

Exercise of zoning power is a legislative function to be exercised by the legislative bodies of municipalities; the wisdom of a zoning plan, its necessity, and the nature and boundaries of the zoned district are all matters within the legislative discretion, and Supreme Court will avoid substituting its judgment for that of the zoning authority. Crestview-Holladay Homeowners Ass'n v. Engh Floral Co., 545 P.2d 1150 (Utah 1976).

Cited in Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah Ct. App. 1995).

U.C.A. 1953 § 17-27-102

UT ST § 17-27-102

END OF DOCUMENT

UTAH CODE, 1953
TITLE 17. COUNTIES
CHAPTER 34. MUNICIPAL-TYPE SERVICES TO UNINCORPORATED AREAS

Current through the 2001 Supplement (2001 First Special Session)

17-34-1 Counties may provide municipal services --Limitation --First class counties required to provide paramedic and detective investigative services.

(1) For purposes of this chapter, except as otherwise provided in Subsection (3):

(a) "Greater than class C radioactive waste" has the same meaning as in Section 19-3-303.

(b) "High-level nuclear waste" has the same meaning as in Section 19-3- 303.

(c) "Municipal-type services" means:

(i) fire protection service;

(ii) waste and garbage collection and disposal;

(iii) planning and zoning;

(iv) street lighting;

(v) in a county of the first class:

(A) advanced life support and paramedic services; and

(B) detective investigative services; and

(vi) all other services and functions that are required by law to be budgeted, appropriated, and accounted for from a municipal services fund or a municipal capital projects fund as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

(d) "Placement" has the same meaning as in Section 19-3-303.

(e) "Storage facility" has the same meaning as in Section 19-3-303.

(f) "Transfer facility" has the same meaning as in Section 19-3-303.

(2) A county may:

(a) provide municipal-type services to areas of the county outside the limits of cities and towns without providing the same services to cities or towns;

(b) fund those services by:

(i) levying a tax on taxable property in the county outside the limits of cities and towns; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(3) A county may not:

(a) provide, contract to provide, or agree in any manner to provide municipal-type services, as these services are defined in Section 19-3- 303, to any area under consideration for a storage facility or transfer facility for the placement of high-level nuclear waste, or greater than class C radioactive waste; or

(b) seek to fund services for these facilities by:

(i) levying a tax; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(4) Each county of the first class shall provide to the area of the county outside the limits of cities and towns:

(a) advanced life support and paramedic services; and

(b) detective investigative services.

History: C. 1953, 17-34-1, enacted by L. 2000, ch. 199, § 1; 2001, ch. 107, § 5; 2001, ch. 258, § 1.

NOTES, REFERENCES, AND ANNOTATIONS

Repeals and Reenactments. --Laws 2000, ch.199, § 1 repeals former § 17-34-1, as last amended by Laws 1991, ch. 104, § 1, authorizing counties to furnish services outside incorporated municipalities and prescribing the methods for funding such services, and enacts the present section, effective May 1, 2000.

Amendment Notes. --The 2001 amendment by ch. 107, effective March 15, 2001, added definitions for all items in Subsection (1) except municipal-type services; redesignated the items under municipal-type services; inserted Subsection (3); and redesignated old Subsection (3) as (4).

The 2001 amendment by ch. 258, effective April 30, 2001, added Subsection (1)(e)(ii) (Subsection (1)(c)(v)(B) in the reconciled version); deleted the language in Subsection (3) which read "advanced life support and paramedic services" following "shall provide"; added Subsections (3)(a) and (b) (Subsections (4)(a) and (b) in the reconciled version); and made related changes.

This section has been reconciled by the Office of Legislative Research and General Counsel.

Cross-References. --County service areas, § 17A-2-401 et seq.

Fire protection districts, § 17A-2-601 et seq.

NOTES TO DECISIONS

Funding for services.

When a county decides to provide municipal services pursuant to statute, it must finance those services by resorting to the methods of taxation specified therein. Salt Lake City Corp. v. Salt Lake County, 550 P.2d 1291 (Utah 1976).

COLLATERAL REFERENCES

C.J.S. --20 C.J.S. Counties § 41.

U.C.A. 1953 § 17-34-1

UT ST § 17-34-1

END OF DOCUMENT

UTAH CODE, 1953
TITLE 19. ENVIRONMENTAL QUALITY CODE
CHAPTER 3. RADIATION CONTROL ACT
PART 3. PLACEMENT OF HIGH LEVEL NUCLEAR WASTE

Current through the 2001 Supplement (2001 First Special Session)

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 monies.

(ii) The department may not include any calculations of federal monies 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 17A, Special Districts;

(iii) a limited purpose local governmental entities authorized by Title 17, Counties;

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

(v) 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 Community and Economic Development, 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 (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 calender 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 Community and Economic Development 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.

History: L. 1981, ch. 125, § 1; c. 1953, 26-14-17; renumbered by L. 1991, ch. 112, § 84; 1993, ch. 227, § 283; 1998, ch. 348, § 1; 2001, ch. 107, § 8.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1998 amendment, effective May 4, 1998, substituted "may" for "shall" after "state"; inserted "including transfer, storage, decay in storage, treatment, or disposal" before "in Utah" and "or greater than class C radioactive waste" before "unless"; added "as provided in this part" at the end; and made a stylistic change.

The 2001 amendment, effective March 15, 2001, added the phrase "but only if" to the introductory paragraph in Subsection (2), added Subsections (2)(a)(i), (ii), and Subsections (3) through (12), and made stylistic changes.

Coordination clause.--Laws 2001, ch. 107, § 18 directed the Office of Legislative Research and General Counsel to replace the phrase "the effective date of this act," occurring several times in the amendment by ch. 107, with the actual effective date, which was March 15, 2001.

COLLATERAL REFERENCES

Utah Law Review. --Legislative Development: Environmental Law, 1998 Utah L. Rev. 729.

U.C.A. 1953 § 19-3-301

UT ST § 19-3-301

END OF DOCUMENT

UTAH CODE, 1953
TITLE 19. ENVIRONMENTAL QUALITY CODE
CHAPTER 3. RADIATION CONTROL ACT
PART 3. PLACEMENT OF HIGH LEVEL NUCLEAR WASTE

Current through the 2001 Supplement (2001 First Special 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 63, Chapter 46a, 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.

History: C. 1953, 19-3-303, enacted by L. 1998, ch. 348, § 3; 2001, ch. 107, § 10.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 2001 amendment, effective March 15, 2001, redesignated the existing subsections and added Subsections (1), (2), (4), (6), (7), (8), (9), and (11).

Effective Dates. --Laws 1998, ch. 348 became effective on May 4, 1998, pursuant

to Utah Const., Art. VI, Sec. 25.

U.C.A. 1953 § 19-3-303

UT ST § 19-3-303

END OF DOCUMENT

4

MASTER ROAD - STATE HIGHWAY LIST

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John P. Holmgren

AN ACT RELATING TO HIGHWAYS; AMENDING CERTAIN STATE HIGHWAY DESIGNATIONS; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

27-12-31.1, as last amended by Chapter 32, Laws of Utah 1996

27-12-44.1, as last amended by Chapter 18, Laws of Utah 1995

27-12-47.1, as last amended by Chapter 26, Laws of Utah 1992

27-12-50.1, as last amended by Chapter 32, Laws of Utah 1996

27-12-60.1, as last amended by Chapter 26, Laws of Utah 1992

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

Section 1. Section **27-12-31.1** is amended to read:

27-12-31.1. State highways -- SR-6, SR-8 to SR-10.

The following named roads are designated as state highways:

(1) SR-6. From the Utah-Nevada state line easterly via Delta and Tintic Junction to the northbound ramps of the North Santaquin Interchange of Route 15; then commencing again at the Moark Connection Interchange of Route 15 easterly via Spanish Fork Canyon and Price to Route 70 west of Green River.

(2) SR-8. From Route 18 in St. George on Sunset Boulevard to Dixie Downs Road, beginning again at the south boundary of Snow Canyon State Park to Route 18.

[~~(2)~~] (3) SR-9. From a junction with Route 15 at Harrisburg Junction easterly to Zion National Park south boundary, and from Zion National Park east boundary to Route 89 at Mt. Carmel Junction.

[~~(3)~~] (4) SR-10. From a junction with Route 70 near Fremont Junction northeasterly to Route 55 in Price.

Section 2. Section **27-12-44.1** is amended to read:

27-12-44.1. State highways -- SR-131 to SR-134, SR-136 to SR-140.

The following named roads are designated as state highways:

(1) SR-131. From .21 miles west of Route 15 east [via] on 400 North Street in Bountiful to Route 106.

(2) SR-132. From Route 6 in Lynndyl northeasterly via Leamington to Nephi; thence southeasterly via Fountain Green and Moroni to Route 89 at Pigeon Hollow Junction.

(3) SR-133. From Kanosh south city limits north via Meadow to Route 15 north of Meadow.

(4) SR-134. From Route 37 at Kanesville northerly to Plain City; thence easterly to Route 89 in Pleasant View.

(5) SR-136. From a junction with Route 50 and 125 east of Delta north to Route 6 [~~(unconstructed)~~].

(6) SR-137. From Route 89 in Gunnison easterly to Mayfield; thence northerly to Route 89.

(7) SR-138. From Route 80 at Stansbury Interchange southeasterly via Grantsville to Route 36 at Mills Junction.

(8) SR-139. From Route 6 northerly to Route 157 near Spring Glen.

(9) SR-140. From Route 68 at Bluffdale easterly coincident with the Bluffdale Road to the on and off access ramps on the east side of Route 15.

Section 3. Section **27-12-47.1** is amended to read:

27-12-47.1. State highways -- SR-161, SR-163 to SR-165, SR-167, SR-168.

The following named roads are designated as state highways:

(1) SR-161. From Route 70 near Cove Fort northwesterly to Route 15.

(2) SR-163. From the Utah-Arizona state line southwest of Mexican Hat northeasterly to Route 191 near Bluff and commencing again on Route 191 at Bluff easterly to Route 262 at Montezuma Creek.

(3) SR-164. From Route 15 southwest of Spanish Fork easterly to Route [6] 198 one-half mile south of Spanish Fork.

(4) SR-165. From Paradise northerly via Hyrum and Nibley to Route 91 in Logan.

(5) SR-167. From Route 84 near Mountain Green northerly coincident with the Trappers Loop Road to Route 39 south of Huntsville.

(6) SR-168. From the north entrance of Hill Air Force Base northerly to Route 60 in Riverdale.

Section 4. Section **27-12-50.1** is amended to read:

27-12-50.1. State highways -- SR-191, SR-193, SR-195 through SR-200.

The following named roads are designated as state highways:

(1) SR-191. From the Utah-Arizona state line south of Bluff northerly via Blanding, Monticello, and Moab to Route 70 at Crescent Junction; then commencing again from Route 6 north of Helper northerly via Indian Canyon to Route 40 at Duchesne; then commencing again from Route 40 at Vernal northerly via Greendale Junction and Dutch John to the Utah-Wyoming state line.

(2) SR-193. From Route 126 in Clearfield east via south entrance to Hill Air Force Base to Route 89.

(3) SR-195. From Route 266 near Holladay north via Twenty-third East Street to Route 80.

(4) SR-196. From Route 199 near the control gate at Dugway Proving Grounds northerly via the Skull Valley Road to the west bound on and off ramps of Route 80 at the Rowley Junction Interchange.

[~~(4)~~] (5) SR-197. From Route 73 northerly via Fifth West Street to Route 89 in Lehi.

[~~(5)~~] (6) SR-198. From Route 15 northbound ramps of the North Santaquin Interchange northeasterly via Spring Lake, to 100 North in Payson; then easterly and northeasterly via Salem to 300 South in Spanish Fork; then easterly and southeasterly to Route 6 at Moark Junction.

[~~(6)~~] (7) SR-199. From Dugway Proving Grounds main gate northeasterly via Clover to Route 36.

[~~(7)~~] (8) SR-200. From Route 61 in Lewiston, approximately three miles west of Route 91, north to the Utah-Idaho state line.

Section 5. Section **27-12-60.1** is amended to read:

27-12-60.1. State highways -- SR-291 to SR-299.

The following named roads are designated as state highways:

(1) SR-291. The Institute for the Blind. From Route 203, Harrison Boulevard, near Seventh Street in Ogden easterly and southerly to the hospital, including the loop on the southwest side of the hospital.

(2) SR-292. At Salt Lake Community College.

(a) From 2200 West Street easterly via 4520 South for 0.17 miles; commencing again at 0.47 mile easterly via 4520 South to Route 68.

(b) From Route 68 westerly via 4600 South for 0.80 miles; thence northerly via 1900 West to 4520 South.

(c) From 4600 South northerly paralleling Route 68 to 4520 South.

(d) From 2200 West easterly via Bruin Boulevard to Route 68.

(3) SR-293. At State Capitol Building. All roads and parking areas within the capitol grounds.

(4) SR-294. At State Mental Hospital. From the main gate on Center Street in Provo easterly to the administration building.

(5) SR-295. Those roads used for drivers' tests at 1200 West in Orem City.

(6) SR-296. At American Fork Training School. From 700 North in American Fork northerly.

(7) SR-297. At State Fair Grounds.

(a) The roadway commencing at the main gate of the Fair Grounds at 1st North Street and 9th West Street in Salt Lake City, west to the roadway on the east side of the Coliseum; thence south to the roadway on the north side of the Coliseum; thence west to the roadway on the west side of the Coliseum; thence south to the roadway on the north side of the cattle barns; thence east to the horticulture building; thence north to the roadway on the south side of the drivers' license building; thence east to the roadway on the east side of the drivers' license building; thence north to the roadway near the main gate, providing a peripheral road around the fair grounds area.

(b) The roadway from the peripheral road on the south, north to the peripheral road on the north.

(c) The roadway from the peripheral road on the west, east via the south side of the Coliseum

to Route 297-b.

(d) The roadway from Route 297-c north via the east side of the Coliseum to the peripheral road.

(e) The roadway from Route 297-d near the main entrance to the Coliseum, east to Route 297-b.

(f) The roadway from Route 297-b east to the peripheral road near the southwest corner of the drivers' license building.

(g) The roadway, including the parking area, on the west side of the drivers' license building, from Route 297-f north to the peripheral road.

(8) SR-298. Roads at the Browning Armory in South Ogden used for automotive drivers' ability tests including parking areas.

(9) SR-299. Those roads used for drivers' tests at 2780 West and 4700 South in Salt Lake County.

[~~(10) SR-300. From the southwest boundary of Snow Canyon State Park northerly via Snow Canyon to Route 18.~~]

Section 6. **Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

5

HIGH LEVEL NUCLEAR WASTE DISPOSAL

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig A. Peterson

AN ACT RELATING TO THE ENVIRONMENT AND HEALTH; PROVIDING LEGISLATIVE INTENT; ESTABLISHING PROCEDURES, REQUIREMENTS, AND FEES FOR LICENSURE TO OPERATE A HIGH LEVEL NUCLEAR WASTE FACILITY OR A GREATER THAN CLASS C RADIOACTIVE WASTE FACILITY IN THE STATE; REQUIRING CERTAIN SAFETY ASSURANCES IN ORDER TO TRANSPORT THESE WASTES WITHIN THE STATE; AND SPECIFYING REQUIREMENTS REGARDING TRANSPORTATION, SURETY FOR MAINTENANCE OF A FACILITY, AND FINANCIAL RESPONSIBILITY FOR ANY RELEASES OF THE NUCLEAR WASTE.

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

AMENDS:

19-3-301, as last amended by Chapter 227, Laws of Utah 1993

ENACTS:

19-3-302, Utah Code Annotated 1953

19-3-303, Utah Code Annotated 1953

19-3-304, Utah Code Annotated 1953

19-3-305, Utah Code Annotated 1953

19-3-306, Utah Code Annotated 1953

19-3-307, Utah Code Annotated 1953

19-3-308, Utah Code Annotated 1953

19-3-309, Utah Code Annotated 1953

19-3-310, Utah Code Annotated 1953

19-3-311, Utah Code Annotated 1953

19-3-312, Utah Code Annotated 1953

19-3-313, Utah Code Annotated 1953

19-3-314, Utah Code Annotated 1953

19-3-315, Utah Code Annotated 1953

19-3-316, Utah Code Annotated 1953

19-3-317, Utah Code Annotated 1953

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

Section 1. Section **19-3-301** is amended to read:

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

The state [~~shall~~] may not approve the placement, including transfer, storage, decay in storage, treatment, or disposal, in Utah of high level nuclear waste or greater than class C radioactive waste unless the governor, after consultation with the county executive and county legislative body of the affected county and with concurrence of the Legislature, specifically approves [~~such~~] the placement as provided in this part.

Section 2. Section **19-3-302** is enacted to read:

19-3-302. Legislative intent.

(1) The state of Utah enacts 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.

(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 of Utah 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 of Utah has environmental and economic interests which do not involve nuclear safety regulation, and which must 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 of Utah. 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.

Section 3. Section **19-3-303** is enacted to read:

19-3-303. Definitions.

As used in this part:

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

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

(3) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) "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.

(5) "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.

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

Section 4. Section **19-3-304** is enacted to read:

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.

Section 5. Section **19-3-305** is enacted to read:

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.

Section 6. Section **19-3-306** is enacted to read:

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.

Section 7. Section **19-3-307** is enacted to read:

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.

Section 8. Section **19-3-308** is enacted to read:

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, but not limited to 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 63-38-3.2, 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 Waste Facility Oversight Restricted Account, created in Section 19-3-309.

(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.

Section 9. Section **19-3-309** is enacted to read:

19-3-309. Restricted account.

(1) There is created within the General Fund a restricted account known as the "Nuclear Waste Facility Oversight Account."

(2) (a) The account shall be funded from the fees imposed under this part.

(b) The department shall deposit all fees collected under this part in the account.

(c) The Legislature may appropriate the funds in this account to departments of state government as necessary for those departments to carry out their duties to implement this part.

(d) The account shall earn interest, which shall be deposited in the account.

Section 10. Section **19-3-310** is enacted to read:

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.

Section 11. Section **19-3-311** is enacted to read:

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.

Section 12. Section **19-3-312** is enacted to read:

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.

Section 13. Section **19-3-313** is enacted to read:

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.

Section 14. Section **19-3-314** is enacted to read:

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.

Section 15. Section **19-3-315** is enacted 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) 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 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.

Section 16. Section **19-3-316** is enacted to read:

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.

Section 17. Section **19-3-317** is enacted to read:

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.

6

STATE ROADS DESIGNATED

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Peter C. Knudson

AN ACT RELATING TO TRANSPORTATION; PROVIDING FOR STATEWIDE PUBLIC SAFETY INTEREST HIGHWAYS; AND DESIGNATING CERTAIN HIGHWAYS.

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

ENACTS:

72-3-301, Utah Code Annotated 1953

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

Section 1. Section **72-3-301** is enacted to read:

Part 3. Statewide Public Safety Interest Highways

72-3-301. Statewide public safety interest highway defined -- Designations -- Control -- Maintenance -- Improvement restrictions -- Formula funding provisions.

(1) As used in this part, "statewide public safety interest highway" means a designated state highway that serves a compelling statewide public safety interest.

(2) Statewide public safety interest highways include:

(a) SR-900. From near the east bound on and off ramps of the I-80 Delle Interchange on the I-80 south frontage road, traversing northwesterly, westerly, and northeasterly, including on portions of a county road and a Bureau of Land Management road for a distance of 9.24 miles. Then beginning again at the I-80 south frontage road traversing southwesterly and northwesterly on a county road for a distance of 4.33 miles. Then beginning again at the I-80 south frontage road traversing southwesterly, northerly, northwesterly, westerly, and northeasterly on a county road and a Bureau of Land Management road to near the east bound on and off ramps of I-80 Low/Lakeside Interchange for a distance of 2.61 miles. The entire length of SR-900 is a total distance of 16.18 miles.

(b) SR-901. From SR-196 traversing westerly and northwesterly on a county road to a junction with a Bureau of Land Management road described as part of SR-901, then northwesterly to a junction with a county road for a distance of 8.70 miles. Then beginning again at a junction

with SR-901 traversing northwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 6.52 miles. Then beginning again at a junction with SR-901 traversing southwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 5.44 miles. Then beginning again from a junction with SR-901 traversing southwesterly on a county road to a junction with a county road a distance of 11.52 miles. Then beginning again at a junction with SR-196 traversing westerly on a Bureau of Land Management road to a junction with a county road for a distance of 11.30 miles. The entire length of SR-901 is a total distance of 43.48 miles.

(3) The department has jurisdiction and control over all statewide public safety interest highways.

(4) (a) A county shall maintain the portions of a statewide public safety interest highway that was a class B county road under the county's jurisdiction prior to the designation under this section.

(b) Notwithstanding the provisions of Section 17-5-232, a county may not abandon any portion of a statewide public safety interest highway.

(c) Except under written authorization of the executive director of the department, a statewide public safety interest highway shall remain the same class of highway that it was prior to the designation under this section with respect to grade, drainage, surface, and improvements and it may not be upgraded or improved to a higher class of highway.

(5) A class B county road that is designated a statewide public safety interest highway under this section is considered a class B county road for the purposes of the distribution formula and distributions of funds. The amount of funds received by any jurisdiction from the class B and C roads account under Section 72-2-107 may not be affected by the provisions of this section.

7

HIGH LEVEL NUCLEAR WASTE

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

AN ACT RELATING TO STATE AFFAIRS AND THE ENVIRONMENT; DENYING LIMITED LIABILITY FOR ORGANIZATIONS INVOLVED IN THE TRANSFER OR STORAGE OF HIGH LEVEL NUCLEAR WASTE OR CERTAIN RADIOACTIVE WASTE WITHIN THE STATE; AND REQUIRING THAT CERTAIN REQUESTS BY THESE ORGANIZATIONS REGARDING TRANSPORTATION, SUCH AS GRADE CROSSINGS, EMINENT DOMAIN, AND PROPERTY EASEMENTS MAY NOT BE GRANTED WITHOUT THE APPROVAL OF THE GOVERNOR WITH THE CONCURRENCE OF THE LEGISLATURE.

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

AMENDS:

19-3-315, as enacted by Chapter 348, Laws of Utah 1998

54-4-15, as last amended by Chapter 9, Laws of Utah 1975, First Special Session

78-34-6, Utah Code Annotated 1953

ENACTS:

19-3-318, 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) 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 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 **19-3-318** is enacted to read:

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).

Section 3. Section **54-4-15** is amended to read:

54-4-15. Establishment and regulation of grade crossings.

(1) No track of any railroad shall be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without the permission of the Department of Transportation having first been secured; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The department shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

(2) The department shall have the power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad and of each crossing of a public road or highway by a railroad or street railroad, and of a street by a railroad or vice versa, and to alter or abolish any such crossing, to restrict the use of such crossings to certain types of traffic in the interest of public safety and is vested with power and it shall be its duty to designate the railroad crossings to be traversed by school buses and motor vehicles carrying passengers for hire, and to require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected, or between such corporations and the state, county, municipality or other public authority in interest.

(3) Whenever the department shall find that public convenience and necessity demand the establishment, creation or construction of a crossing of a street or highway over, under or upon the tracks or lines of any public utility, the department may by order, decision, rule or decree require the establishment, construction or creation of such crossing, and such crossing shall thereupon become a public highway and crossing.

(4) (a) The commission [~~shall retain~~] retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (4)(b).

(b) If a petition is filed by a person or entity engaged in a subject activity, as defined in Section 19-3-318, the commission's decision under Subsection (4)(a) regarding resolution of a dispute requires the concurrence of the governor and the Legislature in order to take effect.

Section 4. Section **78-34-6** is amended to read:

78-34-6. Complaint -- Contents.

The complaint must contain:

(1) the name of the corporation, association, commission or person in charge of the public

use for which the property is sought, who must be styled plaintiff[~~:~~];

(2) the names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants[~~:~~];

(3) a statement of the right of the plaintiff[~~:~~];

(4) if a right of way is sought, the complaint must show its location, general route and termini, and must be accompanied by a map thereof, so far as the same is involved in the action or proceeding[~~:~~];

(5) if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318:

(a) the permission of the governor with the concurrence of the Legislature authorizing:

(i) use of the site for a subject activity; and

(ii) use of the proposed route for a subject activity; and

(b) the proposed route as required by Subsection (4); and

[~~(5)~~] (6) a description of each piece of land sought to be taken, and whether the same includes the whole or only part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

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Deseret News TUESDAY, ...N. 27, 1998

JEFFREY D. ALLRED, DESERET NEWS

Shoshone Nation singers drum and sing in front of the Utah Capitol in a protest over the storage of nuclear waste in Utah.

Utah officials join N-opposition

Fourth in a six-part series.

By Jerry Spangler
Deseret News staff writer

NUCLEAR REALITIES

WAYNESBORO, Ga. — The sign in front of the Southern Baptist church reminds the faithful that Jesus is the good fisherman. "First he catches them, then he cleans them."

It is an expression of faith that defines life in the Deep South, where moss hangs from picturesque cypress trees, and folks accustomed to economic depression are religiously loyal to corporate institutions that offer the prospect of steady paychecks.

It is difficult to find even a whisper of opposition here. You don't hear people complaining about the onerous smell of paper mills, and even the accidental release of toxins from a local chemical plant generates only mild public reaction.

"There is no local reaction whatsoever to the Alvin W. Vogtle Electric Generating Plant, a massive 2,420-megawatt nuclear power plant nestled against the Savannah River less than an hour outside of Augusta.

In southeastern Georgia, people love their nuclear power. It's more than just the cheap electricity it affords. It's the well-paying jobs and the tax revenue that swells local coffers.

"We take pride in being good corporate citizens," says Ellie Daniel, public affairs officer for Georgia Power, which owns most of the Vogtle nuclear power plant. "We've never had any opposition. None."

Like nuclear power plants everywhere, the Vogtle plant has the potential to generate considerable controversy. But it doesn't.

"People are just happy to have jobs," said Karin Schill, who covers the nuclear industry for the Augusta Chronicle. "It is no accident these plants are located in areas of poverty. The support of the plants is unconditional, even if people do not know a whole lot about nuclear power or nuclear waste."

For example, people here do not know that Vogtle is one of 12 nuclear power plants that are part of a consortium that hopes to ship nuclear waste to Skull Valley about 40 miles west of Salt Lake City. Nor do they really care.

Western opposition

The hotbeds of organized opposition — opposition to nuclear power, to nuclear waste and to transportation of nuclear waste — are typically found in urban areas that are not economically dependent on the utility giants. It isn't unusual to find opposition in places like Atlanta and Minneapolis and Washington, D.C.

But now, because of the proposal by Private Fuel Storage to ship nuclear waste to Skull Valley on the Goshute Indian Reservation west of Salt Lake City, Utah officials have joined the opposition.

"Our position is and has been that there is risk involved in the transportation of nuclear waste, that there is inherent risk in its existence, and that there is value in dispersing the risk rather than in concentrating that risk at one site," said Utah Gov. Mike Leavitt.

"And then there is the permanency issue. They represent it as a temporary storage site, but I have a high level of skepticism about the word 'temporary' in this case," he added.

Leavitt has vowed to use every means at his disposal to block the shipment of nuclear waste to Utah. One pre-emptive

Please see OPPOSITION on A3

Continued from A1

strike occurred when the state confiscated a county access road that could be used for access to the Skull Valley site.

Leavitt has also asked state lawmakers for more than $600,000 to battle Private Fuel Storage. Much of that money would go to hire scientific and legal experts who would challenge PFS's application, which is pending before the Nuclear Regulatory Commission.

The governor has been using his close political relationships with other Western governors to try to muster regional opposition. And he has ordered state officials to look closely at what other Western states have done — in particular New Mexico — to block nuclear waste dumps in their states.

"I intend to use every avenue of influence to make sure that waste does not come to Utah," he said.

Leavitt's reasoning is simple: Utah did not create the waste, and therefore Utah should not become a national dumping ground for wastes that remain lethally toxic for thousands of years. Especially when there are no guarantees the waste would ever be removed.

Opposition in Washington

Utah's congressional delegation has also jumped into the fray, thwarting one attempt that would have made it easier for PFS to locate a temporary storage site at Skull Valley. House members removed language from a bill that would have ordered the U.S. energy secretary to give priority to private, temporary nuclear waste storage sites — sites like Skull Valley.

An aide to Rep. Chris Cannon, R-Utah, said he believes Private Fuel Storage is pushing the fast-track language to rush a decision by the Nuclear Regulatory Commission before Utah can formalize its opposition.

While the Clinton administration's official policy acknowledges the need for a permanent nuclear waste storage site, Cannon's aide said the administration is quietly encouraging private entities — like Private Fuel Storage — to fight the battles to get a temporary storage site.

Clinton has promised to veto legislation that would create a temporary waste storage site at Yucca Mountain in Nevada.

Rep. Merrill Cook, R-Utah, has introduced HR2083 to fight the PFS proposal by preventing radioactive waste from entering the state. Cook's aides believe — and state officials privately agree — that the sovereign nature of the Goshute Indian Reservation probably prevents the state from blocking a dump there.

"R2083 would not stop the Goshutes id PFS from developing the waste storage site, but it would prevent such waste from ever entering Utah.

However, that approach is tanta- [illegible] waste, and there is little chance the bill will pass on its own. But it could, with the help of a few congressional allies, be attached to other legislation in the Transportation Committee, where Cook sits.

Legacy of opposition

Residents who live near and work for nuclear power plants may see the utilities as benefactors. But those good feelings often do not extend to nuclear waste.

In fact, local opposition to nuclear waste is nothing new to the utilities, who routinely skirmish with state regulators, local governments and citizen groups over waste issues.

Quite simply, even the people who have embraced nuclear energy do not want the waste that goes with it.

A case in point occurred in Minnesota in 1994 when Northern States Power announced it wanted to store nuclear waste from its Prairie Island facility in above-ground, NRC-approved steel casks.

The state Legislature got involved. So did environmental activists, a local Native American tribe and singer Bonnie Raitt. Thousands of opposition voices responded.

Busloads of industry supporters, most of them from communities surrounding the power plant, answered back.

In the end, the Minnesota Legislature *granted* NSP the authority to implement dry cask storage, but only if the utility conducted feasibility studies of storage sites other than the Prairie Island plant in Red Wing.

Officials looked at as many as 18 sites in various communities in the area around Red Wing, and in every instance but one the public responded with "not in my back yard." In fact, in most instances town councils voted unanimously to keep the waste out.

The township of Florence even went so far as to file a lawsuit against Northern States Power and to petition the Nuclear Regulatory Commission to fine the company $1 million for its "inadequate and incomplete" application to store waste there.

Northern States Power eventually determined the existing Prairie Island plant site was the best place to store the waste. It was no coincidence that the only community not to oppose the waste casks was Red Wing, which reaps huge tax benefits from having the power plant within its city limits.

"We wanted it. We saw that the opposition was based on emotion, not on scientific fact," explains Jeff Haubrich, the assistant to the Red Wing City Council. "The anti-nuclear movement relied on fear and emotion, and we saw science come down on the side of industry and technology. For us, it was a very simple decision."

To date, seven dry casks have been filled at the Prairie Island plant and five more are being built. All are within the city limits. "We are perfectly comfortable with them being there," Haubrich said.

Leave it where it is

Leavitt's attitude all along has been that nuclear waste should stay put at Red Wing and every other locality with a nuclear power plant. "The logic of moving it twice (once to Utah and then to a permanent site, presumably in Nevada) doesn't make any sense at all," he said.

"Those power plants already have temporary storage now. Why move it twice when they can use the same dry casks and keep it where it is?"

The nuclear industry argues that Leavitt's attitude is naive, ill-informed and based more on emotion than scientific fact. And they have reams of scientific studies to bolster their position.

Leavitt has read some of those reports, but he remains entrenched in his opposition.

"It is much more than an emotional argument," Leavitt said. "That area (Tooele County) already has 44 percent of the nation's chemical munitions. Now they want to put tons of nuclear waste in same area. How much of a target for mischief do we want to be?"

Deseret News Washington correspondent Lee Davidson contributed to this report.

Tommorrow: Nuclear power is the most environmentally friendly way to generate electrical power known to man.

NA000237

TRANSCRIPT OF SENATE DEBATE, SECOND READING OF SENATE BILL 81 "PROVISIONS RELATING TO HIGH LEVEL NUCLEAR WASTE" SPONSORED BY SENATOR TERRY SPENCER ON MONDAY, FEBRUARY 19, 2001

PREPARED FOR PRIVATE FUEL STORAGE
BY LARRY D. BUNKALL, GOVERNMENT RELATIONS DIRECTOR
PARSON BHELE & LATIMER
MARCH 30, 2001

President Al Mansell	First Substitute Senate Bill 81.
Reading Clerk	Substitute Senate Bill 81, "Provisions Relating to High Level Nuclear Waste, Senator Spencer.
Mr. President	Senator Spencer.
Sen. Spencer	Thank you, Mr. President. This is an affirmation of a year's work between the Governor's office; Legislative Research and General Counsel; various attorneys, private attorneys around town; and myself. This is the longest short title I have ever seen, 35 lines long. But it does various things and if I could just quickly go through those. It makes it clear that Utah has a public policy of not accepting high level nuclear waste. Any attempts to bring high level waste to Utah are a violation of that policy. It prohibits the formulation of any business entity such as a corporation or limited liability company to deal with high level waste. Therefore making each individual, who works for a corporation or has anything to do with any entity dealing with that waste, personally liable. It makes it illegal for any corporation or person or a business entity to bring the materials to Utah or even assist in providing goods or services to any proposed disposal site and there are both criminal and civil penalties for the violation of these new statutes. It makes each person involved in the transportation of high level nuclear waste personally liable, including any employee, company, or even shareholder of the company. Assuming that we lose the fight in court, which I really doubt that we will, it makes any person or business who wishes to bring these materials to Utah to deposit, in cash, approximately $150 billion. It requires a public hearing in both Tooele County and Salt Lake County, with substantial notice prior to the issuance of any state required permits so the public has ample opportunity to weight in on this subject. It requires any county wishing you have nuclear waste, to have a nuclear waste depository, to generate a plan to deal with nuclear waste accidents including answering all public comments on the issue and, the killer, it imposes a 75 percent gross receipts tax on any business that wishes to supply goods and services to the high level nuclear waste site. So, we have tried to find everything we could possibly find

	There is a aspect of the bill, however, that I don't necessarily agree with or at least we should come to our attention and that's the part that we do not provide for municipal services. I have talked with Senator Spencer about that. We would be denying the Goshutes municipal services in terms of fire protection, waste and garbage collection, street lighting, etc. There are no municipal services out there and I want the members of this body to be aware of that. We have got to find a way to be more respectful to our indigenous tribes and find ways to help them. To simply...they don't even have a water system out there and that's all I wanted to say. Thank you.
Mr. President	Thank you.
Sen. Spencer	If I could, Mr. President.
Mr. President	Sure.
Sen. Spencer	I think we have taken care of that particular issue in Senate Bill 198 and 199, trying to provide some alternatives to the Goshutes. But if I could respond to Senate Steele's comments, this isn't an anti-nuclear energy bill. This just simply says, if you generate the waste somewhere else, let it stay somewhere else. You're the one benefiting from that energy now. We don't want your garbage here. Certainly, if we were generate the waste here, it should stay here. It would be our garbage. But I don't want to see, garbage coming from Massachusetts, or Minnesota, or other places here where they have no responsibility for it, as Senator Allen as said, they've tried to set up a shell corporation so far. The estimates from DEQ on what an accident would cost to clean up are anywhere from $14 billion to the $313 billion. There would be way to collect that money for the citizens of the state, therefore, you would be required to pay that debt for a private company and the private company's garbage. I'd be happy to answer any more questions.
Mr. President	Any other questions for the Senator? I see none, Senator.
Sen. Spencer	Call the question, Mr. President.
Mr. President	And the question is shall First Substitute Senate Bill 81 be read for the Third time? Roll call vote.
Voting Clerk	[roll call vocal vote of each Senator.]
Mr. President	First Substitute Senate Bill 81 has received 23 aye votes, three no votes [three absent] and passes to the Third Reading calendar.

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TRANSCRIPT OF FLOOR DEBATE OF SECOND SUBSTITUTE SENATE BILL 81 BEFORE THE UTAH HOUSE OF REPRESENTATIVES ON WEDNESDAY, 28 FEBRUARY 2001

PREPARED FOR PRIVATE FUEL STORAGE
BY LARRY D. BUNKALL, GOVERNMENT RELATIONS DIRECTOR
PARSONS BEHLE & LATIMER
MARCH 14, 2001

Mr. Speaker [Rep. Kevin Garn serving as Speaker pro tem]	...The motion is that we circle First Substitute Senate Bill 198. Discussion to the motion. Seeing no discussion. All in favor of circling First Substitute Senate Bill 198, say aye. Aye. Any opposed? The motion carries. First Substitute Senate Bill 198 will be circled. Madam reading clerk.
Reading Clerk	Second Substitute Senate Bill 81 - "Provisions Relating to High Level Nuclear Waste," Terry Spencer.
Mr. Speaker	Representative Urquhart [House sponsor of 2subSB 81].
Rep. Urquhart	Thank you, Mr. Speaker pro tem. Most houses have a junk closet where unwanted clutter is thrown to make the rest of the house appear well ordered. This bill asks the question whether Utah is content to be the junk closet for the nation's unwanted nuclear waste. The bill takes three actions--first, in case there is any question, it clearly states that we do not want this material within the state and we prohibit it. Second, should we lose on that blunt statement of our position, the bill challenges the authority of the Nuclear Regulatory Commission to license a private entity to move and store this waste within our state. Third, should we lose the licensing battle, the bill creates a licensing process. That process prevents to some degree the private limited liability corporation from externalizing its real costs onto the citizens of this state. With that, I am open to questions.
Mr. Speaker	Thank you, Rep. Urquhart. Rep. Winn?
Rep. Winn	Personal privilege?
Mr. Speaker	Personal privilege granted.
Rep. Winn	Thank you, Mr. Speaker. Representatives, I would like to introduce to you Troop 1172 from Pleasant Grove, Utah. If they could please stand. Thank you very much. (Applause)
Mr. Speaker	Welcome to the House of Representatives. We are happy to have you here this evening. Discussion to Second Substitute Senate Bill 81? Rep. Lockhart.

Rep. Cox	Thank you, I appreciate that. Line 214 says, "a county may not . . . ." Does that mean that a nearby, does this leave a gap here where a nearby municipality could not provide a contract or provide those services?
Rep. Urquhart	It doesn't. We have sured that up elsewhere in the bill saying that a county can't, a municipality can't, anything akin thereto, you can form a special service district; you know, no one that is a state or subdivision of the state can provide these type services.
Rep. Cox	What about the federal government? Could they do that?
Rep. Urquhart	They sure could. That's an issue I'd like to get into. Again, if I take too long on this, again apologies to Rep. Dayton and I think I bored her to tears with my one answer, but the federal government, they have a supremacy clause so they can, unfortunately, as we have learned on our BLM lands, do whatever they want. We talked a bit about Indian sovereignty. You need to understand that that is a concurrent sovereignty. For example, here this isn't an Indian enterprise. Were this an Indian enterprise, their sovereignty would be, a sovereignty that would be tough to deal with. This is not a tribal enterprise; instead, they're leasing ground and we have an LC that is operating on that ground, and we can regulate that entity. We do it all the time. When Indian lands are leased to Conoco, Texaco, for mineral exploration, those entities they answer to the state for regulations. So, here frankly, the Goshutes are trying to have it both ways. Your question, were they to do this as a tribal enterprise, the federal government would regulate it. BIA would regulate it, Department of Interior would closely regulate it; DOE would closely regulate it. This is not a tribal enterprise, so they get around a lot of that regulation. So they haven't exerted, they have chosen not to exert their full sovereignty, yet they are trying to exploit a gap by saying state, even though we don't have this tight federal regulation, you can't regulate us because of our sovereignty. So again, to recap--were the federal government to do this, were this to be their project, unfortunately we would have very little to say about that. It is not a federal project. The tribe has chosen not to exert its full jurisdiction; therefore we have concurrent jurisdiction. We will regulate this entity just as we regulate all sorts of entities that lease tribal lands.
Rep. Cox	Thank you. That helps me quite a bit. There is just one final question I would have. There are companies that make contracts with individuals, with organizations that provide municipal-type services. You have talked about requiring this entity, if they were to be able to get licensed to do this, to be able to, that they would have to provide their own kind of services, but there are organizations out there, or companies that make

	private contracts with individuals land organizations for products and services. Will, if Second Substitute Senate Bill 81 passes, will that make those private companies, that enter into those kind of contracts to provide those kind of services, criminals because they then do business under contract, in this example, out in west desert, with, for example, private fuel storage.
Rep. Urquhart	Yes. We are not recognizing those contracts. Again, there are certain things that we view to be ultra-harmful to the citizens of our state. Smut of all forms, we have made a decision, you know, certain marriages we dealt with this session, certain things we say we just don't want any part of that, therefore, if you try to make a contract for it, we are just flat not going to recognize it and in a lot of cases, because you are breaking our law, we will punish you for that. And so this is one where we're saying, we're putting it in that category, this is something that can affect all of our citizens for 10,000 years. So, today we are erecting a monument one way or another and we're making a stand saying we want nothing to do with this, don't even bother entering into contracts for it because we are not going to recognize them.
Rep. Cox	Thank you.
Mr. Speaker	Further discussion. Representative Seitz.
Rep. Seitz	Thank you, Mr. Speaker, I move previous question.
Mr. Speaker	Previous question on the bill has been called. This will have the effect of cutting off debate on the bill. Those in favor of previous questions, say aye. Aye. Opposed say no. No. Motion passes. By more than two-thirds. Rep. Urquhart, for summation on the bill.
Rep. Urquhart	Thank you, Mr. Speaker. Today we take an important action. We take an action that will affect our children, our grandchildren, our great grandchildren. This is material that is the most deadly stuff on earth. Now we have a lot of assurances that it is going to be perfectly fine but understand that it is going to sit there and be potent for 10,000 years and, frankly, I think we have very little reason in this state to believe those assurances. Just a matter of a few years ago, we had a federal government assure us that we were not going to get a monument in southern Utah. We were receiving those assurances as the dais was being constructed. Some 50 years ago, in my community in St. George, we were strafed by a very ugly series of atomic tests. In 1953, the entire community was subject to enormous amounts of radiation; the government worker there, his monitor was pegged off the scale. He was instructed to take certain precautions, simple precautions that could have saved lives. Yet, two years later, the federal government made a massive public

	relations effort. That public relations effort could they have instructed the citizens to take the same precautions. Instead, it said that the best course of action was not to worry about fallout. So, frankly I think we have great reason to be skeptical about such assurances. We should act today to put roadblocks in the way of this material coming to be permanently sited in this state. In no way does this bill affect transportation through the state. You received a letter on that from Congressman Hansen. We could not affect that if we wanted to because of the commerce clause but what we are saying is this stuff will not be sited in our state. We don't want it and I ask your support of this bill.
Mr. Speaker	Thank you, Rep. Urquhart. Voting is open on Second Substitute . . . state your point, Representative Bryson.
Rep. Bryson	There is no constitutional note on this, and as we look at this, are we not voting for an appropriation that has already been approved? Should there not be a constitutional note on this bill?
Mr. Speaker	Rep. Bryson, if our Office of Leg. Research and General Counsel does not put a constitutional note on the bill, then apparently it doesn't need a constitutional note. I don't know how to answer that question.
Rep. Bryson	Well, is there not an appropriation that is attached to this bill now that has been placed in SB 1, HB 1.
Mr. Speaker	No, apparently there is not, not one attached to this bill. Now there may be one in SB3 or SB1. What I understood is that it went to 198, but we're debating the bill right now. What is your point?
Rep. Bryson	I'm sorry, I'm only looking at the fact that if we're looking at any kind of a fiscal note where we are going to get into litigation, I expected there would be a constitutional note on the bill.
Mr. Speaker	Okay. Voting is open. Seeing all present having voted, Rep. Siddoway, Rep. Johnson, Rep. Allen, voting will be closed. Second Substitute Senate Bill 81 having received 60 "yes" votes and 12 "no" votes, passes this body and will be referred to the Senate for further consideration. Madam reading clerk.

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W.S. Adamson and Associates, Inc.

Tooele Transcript Bulletin Online Edition
Headlines March 15, 2001

Does Leavitt's N-waste bill break county vows?

by Jeff Schmerker
Staff Writer

Gov. Michael Leavitt on Tuesday signed a bill into law which the state hopes once and for all will keep nuclear waste out of the Skull Valley.

After years of threats, seized roads and broken promises on the part of legislators, Leavitt signed Senate Bill 81, Sen. Terry Spencer's anti-nuke piece de resistance.

Senate Bill 81 prohibits the storage of high-level nuclear waste in Utah, prohibits any local government from providing municipal services to any nuke waste site, charges extraordinary fees to waste storers and places a $10,000 fine on any person who breaks the rules.

"The bills I sign today represent our commitment to block the storage of high-level nuclear waste in Utah," Leavitt said while signing the bill. "We don't want it here, and we will continue to use every legal, environmental, legislative and political tool available to ban nuclear fuel rods from this state."

But the bill also brings a host of consequences that neither the state nor the county may be prepared to handle, and even now, two weeks after the bill passed both the House and Senate by nearly unanimous votes, no one on either the county or state level seems exactly sure what it means for either the state, Tooele County, the Goshute Indians or Private Fuel Storage.

The bill's consequences are so severe, say county officials, that they preclude the sheriff's department from responding to any public safety situation on the Skull Valley Band of Goshutes Indian Reservation.

"I do not want to face a $10,000 fine," said Tooele County Sheriff Frank Scharmann. "If we have an emergency call, we will respond to the (reservation boundary) line."

For years if not decades, said Tooele County Attorney Doug Ahlstrom, the county has had an agreement with the Skull Valley tribe to handle law enforcement and fire response on the reservation. Sheriff Scharmann said the contract calls for deputies to patrol the reservation at least three times a week, though in reality they probably at least pass through the reservation several times a day. The contract also requires the county to respond to any fire on the reservation, and one occurs almost every year, Scharmann added.

Now, said Ahlstrom, that agreement has apparently been forcefully broken by the state.

Last year, ebullient county commissioners sign an agreement with Private Fuel Storage which says the county will lend political and infrastructure support to the storage site in exchange for up to $300 million in lieu of taxes over the promised 40-year life of the storage facility. The contract, said commissioners, was essentially a way for the county to get a piece of the lucrative nuke waste storage pie. Without any prior agreement, said commissioners, the county stood the chance of having the waste come with no compensation.

A clause in the PFS agreement allows that private energy consortium to void the agreement if the state blocks the deal. A spokeswoman said the waste firm has no intentions of backing out of the deal.

Similarly, a provision in the state law allows the county to easily avoid any penalties if it simply passes a resolution saying it will not allow nuclear waste storage.

On Wednesday, Phil Pugsley, Utah's assistant attorney general, and Dianne Nielsen, the director of the state Department of Environmental Quality, told Tooele County leaders that the bill's intent was not to prevent the county from responding to Goshute emergencies but rather to sever the county-PFS contract. Pugsley said in all reality that despite the bill's harsh language the county would not be held responsible for responding to an emergency on the reservation.

"Dianne and the attorney assured me it is not the intent of the bill to cut off services to the reservation," said Ahlstrom on Thursday. "But regardless of what the intent was the language was still there in the bill and so I still have some concerns."

Even Tooele County Commissioner Gene White, who opposes the nuclear waste storage plan, does not know what SB-81 will mean for the county, the state, PFS or the Goshutes.

"It is a legal quagmire," he said. "It appears as though the Legislature has violated our contracts."

Part of the problem, say both Ahlstrom and White, is that the bill's language is so broad when defining what is banned where that the county will have an extremely difficult time rewriting a law enforcement services contract with the Goshutes to specify where officers can patrol and respond and where they can not.

Further complicating any future contract is that the exact location of some parts of the storage project have not been determined. For example, at some point the nuclear waste will have to be switched from one train to another or from train to truck. The location of that station has not been determined, and it could be adjacent to Interstate 80 at the north end of the valley or closer to the reservation.