

1 **WASTE AMENDMENTS**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Carlene M. Walker**

5 **This act modifies the Solid and Hazardous Waste Act by imposing a moratorium on**  
6 **applications for new landfills until March 1, 2003. This act also provides definitions of the**  
7 **classifications of landfills. The effective date of this act is upon approval.**

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

9 AMENDS:

10 **19-6-102**, as last amended by Chapter 353, Laws of Utah 1998

11 **19-6-108**, as last amended by Chapter 13, Laws of Utah 1998

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

13 Section 1. Section **19-6-102** is amended to read:

14 **19-6-102. Definitions.**

15 As used in this part:

16 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
17 19-1-106.

18 (2) "Class I landfill" means a noncommercial municipal landfill that is permitted by the  
19 executive secretary to receive any nonhazardous solid waste for disposal and receives, on a yearly  
20 average, over 20 tons of solid waste per day.

21 (3) "Class II landfill" means a noncommercial municipal landfill that is permitted by the  
22 executive secretary to receive any nonhazardous solid waste for disposal and receives, on a yearly  
23 average, 20 tons, or less, of solid waste per day.

24 (4) "Class III landfill" means a noncommercial landfill that is permitted by the executive  
25 secretary to receive only industrial solid waste for disposal, but does not include farms and  
26 ranches.

27 (5) "Class IV landfill" means a noncommercial landfill that is permitted by the executive



28 secretary to receive only construction and demolition waste, yard waste, inert waste, dead animals,  
29 or upon meeting the requirements of Section 19-6-804 and implementing rules, waste tires and  
30 materials derived from waste tires for disposal.

31 (6) "Class V landfill" means a commercial nonhazardous solid waste disposal facility, as  
32 defined by Subsection (8)(a) and not excluded by Subsection (8)(b), which receives nonhazardous  
33 solid waste for disposal. Class V landfills are divided into the following categories:

34 (a) "Class Va landfill" means a commercial nonhazardous solid waste landfill that is  
35 permitted by the executive secretary to receive nonhazardous solid waste for disposal.

36 (b) "Class Vb landfill" means a commercial nonhazardous solid waste landfill that is  
37 permitted by the executive secretary to receive exclusively the following nonhazardous solid waste,  
38 except under Subsection (8)(b)(ii):

39 (i) (A) inert waste;

40 (B) construction and demolition waste as defined in Subsection (9);

41 (C) yard waste; or

42 (D) upon meeting the requirements of Section 19-6-804 and implementing rules, waste  
43 tires and materials derived from waste tires for disposal.

44 (ii) The wastes under Subsection (8)(b)(i) do not include any nonhazardous solid waste  
45 restricted by board rule because the waste characteristics or toxicity of the waste are not consistent  
46 with state requirements regarding the facility's design, operation, monitoring, or closure.

47 ~~[(2)]~~ (7) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at  
48 which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or  
49 disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the  
50 facility or site.

51 ~~[(3)]~~ (8) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"  
52 means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or  
53 disposal.

54 (b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does  
55 not include a facility that:

56 (i) receives waste for recycling;

57 (ii) receives waste to be used as fuel, in compliance with federal and state requirements;

58 or

59 (iii) is solely under contract with a local government within the state to dispose of  
60 nonhazardous solid waste generated within the boundaries of the local government.

61 [~~(4)~~] (9) "Construction waste or demolition waste":

62 (a) means waste from building materials, packaging, and rubble resulting from  
63 construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and  
64 other structures, and from road building and land clearing; and

65 (b) does not include: asbestos; contaminated soils or tanks resulting from remediation or  
66 cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar hazardous or  
67 potentially hazardous materials.

68 [~~(5)~~] (10) "Demolition waste" has the same meaning as the definition of construction waste  
69 in this section.

70 [~~(6)~~] (11) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking,  
71 or placing of any solid or hazardous waste into or on any land or water so that the waste or any  
72 constituent of the waste may enter the environment, be emitted into the air, or discharged into any  
73 waters, including groundwaters.

74 [~~(7)~~] (12) "Executive secretary" means the executive secretary of the board.

75 [~~(8)~~] (13) "Generation" or "generated" means the act or process of producing nonhazardous  
76 solid or hazardous waste.

77 [~~(9)~~] (14) "Hazardous waste" means a solid waste or combination of solid wastes other  
78 than household waste which, because of its quantity, concentration, or physical, chemical, or  
79 infectious characteristics may cause or significantly contribute to an increase in mortality or an  
80 increase in serious irreversible or incapacitating reversible illness or may pose a substantial present  
81 or potential hazard to human health or the environment when improperly treated, stored,  
82 transported, disposed of, or otherwise managed.

83 [~~(10)~~] (15) "Health facility" means hospitals, psychiatric hospitals, home health agencies,  
84 hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the  
85 mentally retarded, residential health care facilities, maternity homes or birthing centers, free  
86 standing ambulatory surgical centers, facilities owned or operated by health maintenance  
87 organizations, and state renal disease treatment centers including free standing hemodialysis units,  
88 the offices of private physicians and dentists whether for individual or private practice, veterinary  
89 clinics, and mortuaries.

90           ~~[(11)]~~ (16) "Household waste" means any waste material, including garbage, trash, and  
91 sanitary wastes in septic tanks, derived from households, including single-family and  
92 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,  
93 campgrounds, picnic grounds, and day-use recreation areas.

94           ~~[(12)]~~ (17) "Infectious waste" means a solid waste that contains or may reasonably be  
95 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by  
96 a susceptible host could result in an infectious disease.

97           ~~[(13)]~~ (18) "Manifest" means the form used for identifying the quantity, composition,  
98 origin, routing, and destination of hazardous waste during its transportation from the point of  
99 generation to the point of disposal, treatment, or storage.

100           ~~[(14)]~~ (19) "Mixed waste" means any material that is a hazardous waste as defined in this  
101 chapter and is also radioactive as defined in Section 19-3-102.

102           ~~[(15)]~~ (20) "Modification plan" means a plan under Section 19-6-108 to modify a facility  
103 or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing  
104 of hazardous waste.

105           ~~[(16)]~~ (21) "Operation plan" or "nonhazardous solid or hazardous waste operation plan"  
106 means a plan under Section 19-6-108 to own, construct, or operate a facility or site for the purpose  
107 of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

108           (22) "Permitted" means having received a plan approval from the executive secretary under  
109 this part.

110           ~~[(17)]~~ (23) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a  
111 waste treatment plant, water supply treatment plant, or air pollution control facility, or other  
112 discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from  
113 industrial, commercial, mining, or agricultural operations and from community activities but does  
114 not include solid or dissolved materials in domestic sewage or in irrigation return flows or  
115 discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under  
116 the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

117           (b) "Solid waste" does not include any of the following wastes unless the waste causes a  
118 public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

119           (i) certain large volume wastes, such as inert construction debris used as fill material;

120           (ii) drilling muds, produced waters, and other wastes associated with the exploration,

121 development, or production of oil, gas, or geothermal energy;

122 (iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste  
123 generated primarily from the combustion of coal or other fossil fuels;

124 (iv) solid wastes from the extraction, beneficiation, and processing of ores and minerals;

125 or

126 (v) cement kiln dust.

127 [~~(18)~~] (24) "Storage" means the actual or intended containment of solid or hazardous waste  
128 either on a temporary basis or for a period of years in such a manner as not to constitute disposal  
129 of the waste.

130 [~~(19)~~] (25) "Transportation" means the off-site movement of solid or hazardous waste to  
131 any intermediate point or to any point of storage, treatment, or disposal.

132 [~~(20)~~] (26) "Treatment" means a method, technique, or process designed to change the  
133 physical, chemical, or biological character or composition of any solid or hazardous waste so as  
134 to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for  
135 recovery, amenable to storage, or reduced in volume.

136 [~~(21)~~] (27) "Underground storage tank" means a tank which is regulated under Subtitle I  
137 of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

138 Section 2. Section **19-6-108** is amended to read:

139 **19-6-108. New nonhazardous solid or hazardous waste operation plans for facility**  
140 **or site -- Administrative and legislative approval required -- Time periods for review --**  
141 **Information required -- Other conditions -- Revocation of approval -- Periodic review --**  
142 **Moratorium until March 1, 2003.**

143 (1) For purposes of this section, the following items shall be treated as submission of a  
144 new operation plan:

145 (a) the submission of a revised operation plan specifying a different geographic site than  
146 a previously submitted plan;

147 (b) an application for modification of a commercial hazardous waste incinerator if the  
148 construction or the modification would increase the hazardous waste incinerator capacity above  
149 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the  
150 operation plan application as of January 1, 1990, if no operation plan approval has been issued as  
151 of January 1, 1990;

152 (c) an application for modification of a commercial nonhazardous solid waste incinerator  
153 if the construction of the modification would cost 50% or more of the cost of construction of the  
154 original incinerator or the modification would result in an increase in the capacity or throughput  
155 of the incinerator of a cumulative total of 50% above the total capacity or throughput that was  
156 approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the  
157 initial approval is subsequent to January 1, 1990; or

158 (d) an application for modification of a commercial nonhazardous solid or hazardous waste  
159 treatment, storage, or disposal facility, other than an incinerator, if the modification would be  
160 outside the boundaries of the property owned or controlled by the applicant, as shown in the  
161 application or approved operation plan as of January 1, 1990, or the initial approved operation plan  
162 if the initial approval is subsequent to January 1, 1990.

163 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage  
164 specified for the trial burn in the operation plan or the operation plan application if no operation  
165 plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

166 (3) (a) No person may own, construct, modify, or operate any facility or site for the  
167 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous  
168 waste without first submitting and receiving the approval of the executive secretary for a  
169 nonhazardous solid or hazardous waste operation plan for that facility or site.

170 (b) (i) Except for facilities that receive the following wastes solely for the purpose of  
171 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any  
172 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of  
173 the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the  
174 approval of the executive secretary for an operation plan for that facility site.

175 (ii) Wastes referred to in Subsection (3)(b)(i) are:

176 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste  
177 generated primarily from the combustion of coal or other fossil fuels;

178 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

179 (C) cement kiln dust wastes.

180 (c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until he  
181 receives, in addition to local government approval and subsequent to the approval required in  
182 Subsection (a), approval by the governor and the Legislature.

183 (ii) Facilities referred to in Subsection (3)(c)(i) are:

184 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;  
185 and

186 (B) except for facilities that receive the following wastes solely for the purpose of  
187 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,  
188 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission  
189 control waste generated primarily from the combustion of coal or other fossil fuels; wastes from  
190 the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes.

191 (d) No person need obtain gubernatorial or legislative approval for the construction of a  
192 hazardous waste facility for which an operating plan has been approved by or submitted for  
193 approval to the executive secretary under this section before April 24, 1989, and which has been  
194 determined, on or before December 31, 1990, by the executive secretary to be complete, in  
195 accordance with state and federal requirements for operating plans for hazardous waste facilities  
196 even if a different geographic site is subsequently submitted.

197 (e) No person need obtain gubernatorial and legislative approval for the construction of  
198 a commercial nonhazardous solid waste disposal facility for which an operation plan has been  
199 approved by or submitted for approval to the executive secretary under this section on or before  
200 January 1, 1990, and which, on or before December 31, 1990, the executive secretary determines  
201 to be complete, in accordance with state and federal requirements applicable to operation plans for  
202 nonhazardous solid waste facilities.

203 (f) Any person owning or operating a facility or site on or before November 19, 1980, who  
204 has given timely notification as required by Section 3010 of the Resource Conservation and  
205 Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed  
206 hazardous waste plan under this section for that facility or site, may continue to operate that facility  
207 or site without violating this section until the plan is approved or disapproved under this section.

208 (g) (i) The executive secretary shall suspend acceptance of further applications for a  
209 commercial nonhazardous solid or hazardous waste facility upon a finding that he cannot  
210 adequately oversee existing and additional facilities for permit compliance, monitoring, and  
211 enforcement.

212 (ii) The executive secretary shall report any suspension to the Natural Resources,  
213 Agriculture, and Environment Interim Committee.

214 (4) The executive secretary shall review each proposed nonhazardous solid or hazardous  
215 waste operation plan to determine whether that plan complies with the provisions of this part and  
216 the applicable rules of the board.

217 (5) (a) If the facility is a class I or class II facility, the executive secretary shall approve or  
218 disapprove that plan within 270 days from the date it is submitted.

219 (b) Within 60 days after receipt of the plans, specifications, or other information required  
220 by this section for a class I or II facility, the executive secretary shall determine whether the plan  
221 is complete and contains all information necessary to process the plan for approval.

222 (c) (i) If the plan for a class I or II facility is determined to be complete, the executive  
223 secretary shall issue a notice of completeness.

224 (ii) If the plan is determined by the executive secretary to be incomplete, he shall issue a  
225 notice of deficiency, listing the additional information to be provided by the owner or operator to  
226 complete the plan.

227 (d) The executive secretary shall review information submitted in response to a notice of  
228 deficiency within 30 days after receipt.

229 (e) The following time periods may not be included in the 270 day plan review period for  
230 a class I or II facility:

231 (i) time awaiting response from the owner or operator to requests for information issued  
232 by the executive secretary;

233 (ii) time required for public participation and hearings for issuance of plan approvals; and

234 (iii) time for review of the permit by other federal or state government agencies.

235 (6) (a) If the facility is a class III or class IV facility, the executive secretary shall approve  
236 or disapprove that plan within 365 days from the date it is submitted.

237 (b) The following time periods may not be included in the 365 day review period:

238 (i) time awaiting response from the owner or operator to requests for information issued  
239 by the executive secretary;

240 (ii) time required for public participation and hearings for issuance of plan approvals; and

241 (iii) time for review of the permit by other federal or state government agencies.

242 (7) If, within 365 days after receipt of a modification plan or closure plan for any facility,  
243 the executive secretary determines that the proposed plan, or any part of it, will not comply with  
244 applicable rules, the executive secretary shall issue an order prohibiting any action under the

245 proposed plan for modification or closure in whole or in part.

246 (8) Any person who owns or operates a facility or site required to have an approved  
247 hazardous waste operation plan under this section and who has pending a permit application before  
248 the United States Environmental Protection Agency shall be treated as having an approved plan  
249 until final administrative disposition of the permit application is made under this section, unless  
250 the board determines that final administrative disposition of the application has not been made  
251 because of the failure of the owner or operator to furnish any information requested, or the facility's  
252 interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery  
253 Act, 42 U.S.C. Section 6925 (e).

254 (9) No proposed nonhazardous solid or hazardous waste operation plan may be approved  
255 unless it contains the information that the board requires, including:

256 (a) estimates of the composition, quantities, and concentrations of any hazardous waste  
257 identified under this part and the proposed treatment, storage, or disposal of it;

258 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or  
259 disposal of hazardous waste will not be done in a manner that may cause or significantly contribute  
260 to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness,  
261 or pose a substantial present or potential hazard to human health or the environment;

262 (c) consistent with the degree and duration of risks associated with the disposal of  
263 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence  
264 of financial responsibility in whatever form and amount that the executive secretary determines  
265 is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption  
266 of the operation of the facility or site, all reasonable measures consistent with the available  
267 knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed  
268 of at the site or facility will not present a hazard to the public or the environment;

269 (d) evidence that the personnel employed at the facility or site have education and training  
270 for the safe and adequate handling of nonhazardous solid or hazardous waste;

271 (e) plans, specifications, and other information that the executive secretary considers  
272 relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan  
273 will comply with this part and the rules of the board; and

274 (f) compliance schedules, where applicable, including schedules for corrective action or  
275 other response measures for releases from any solid waste management unit at the facility,

276 regardless of the time the waste was placed in the unit.

277 (10) The executive secretary may not approve a commercial nonhazardous solid or  
278 hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains  
279 the information required by the board, including:

280 (a) evidence that the proposed commercial facility has a proven market of nonhazardous  
281 solid or hazardous waste, including:

282 (i) information on the source, quantity, and price charged for treating, storing, and  
283 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

284 (ii) a market analysis of the need for a commercial facility given existing and potential  
285 generation of nonhazardous solid or hazardous waste in the state and regionally; and

286 (iii) a review of other existing and proposed commercial nonhazardous solid or hazardous  
287 waste facilities regionally and nationally that would compete for the treatment, storage, or disposal  
288 of the nonhazardous solid or hazardous waste;

289 (b) a description of the public benefits of the proposed facility, including:

290 (i) the need in the state for the additional capacity for the management of nonhazardous  
291 solid or hazardous waste;

292 (ii) the energy and resources recoverable by the proposed facility;

293 (iii) the reduction of nonhazardous solid or hazardous waste management methods, which  
294 are less suitable for the environment, that would be made possible by the proposed facility; and

295 (iv) whether any other available site or method for the management of hazardous waste  
296 would be less detrimental to the public health or safety or to the quality of the environment; and

297 (c) compliance history of an owner or operator of a proposed commercial nonhazardous  
298 solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the  
299 executive secretary in a nonhazardous solid or hazardous waste operation plan decision, including  
300 any plan conditions.

301 (11) The executive secretary may not approve a commercial nonhazardous solid or  
302 hazardous waste facility operation plan unless based on the application, and in addition to the  
303 determination required in Subsections (9) and (10), the executive secretary determines that:

304 (a) the probable beneficial environmental effect of the facility to the state outweighs the  
305 probable adverse environmental effect; and

306 (b) there is a need for the facility to serve industry within the state.

307 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked,  
308 in whole or in part, if the person to whom approval of the plan has been given fails to comply with  
309 that plan.

310 (13) The executive secretary shall review all approved nonhazardous solid and hazardous  
311 waste operation plans at least once every five years.

312 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste  
313 facilities in existence or to applications filed or pending in the department prior to April 24, 1989,  
314 that are determined by the executive secretary on or before December 31, 1990, to be complete,  
315 in accordance with state and federal requirements applicable to operation plans for hazardous  
316 waste facilities.

317 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid  
318 waste facility in existence or to an application filed or pending in the department prior to January  
319 1, 1990, that is determined by the executive secretary, on or before December 31, 1990, to be  
320 complete in accordance with state and federal requirements applicable to operation plans for  
321 nonhazardous solid waste facilities.

322 (16) Nonhazardous solid waste generated outside of this state that is defined as hazardous  
323 waste in the state where it is generated and which is received for disposal in this state shall not be  
324 disposed of at a nonhazardous waste disposal facility owned and operated by local government or  
325 a facility under contract with a local government solely for disposal of nonhazardous solid waste  
326 generated within the boundaries of the local government, unless disposal is approved by the  
327 executive secretary.

328 (17) This section may not be construed to exempt any facility from applicable regulation  
329 under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

330 (18) On and after the effective date of this act, the executive secretary may not receive or  
331 approve any applications for class V, Va, or Vb landfills, as defined in Section 19-6-102, until on  
332 or after March 1, 2003.

333 **Section 3. Effective date.**

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

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**Legislative Review Note**  
**as of 2-25-02 12:09 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**