

1                                   **PROCESS FOR APPROVAL OF WASTE**  
2                                   **DISPOSAL AMENDMENTS**

3                                   2006 GENERAL SESSION  
4                                   STATE OF UTAH

5                                   **Chief Sponsor: Howard A. Stephenson**

6                                   House Sponsor: J. Stuart Adams



8   **LONG TITLE**

9   **General Description:**

10           This bill modifies legislative and gubernatorial approval requirements for the disposal  
11 of certain wastes.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ modifies the legislative and gubernatorial approval requirements for the disposal of
- 15 certain commercial radioactive wastes, hazardous wastes, and nonhazardous solid
- 16 wastes;
- 17           ▶ requires that legislative approval be provided by statute;
- 18           ▶ provides that gubernatorial approval is given if the statute giving legislative
- 19 approval is not vetoed; and
- 20           ▶ provides that gubernatorial approval is not required if the governor vetoes the
- 21 statute giving legislative approval and the veto is overridden.

22   **Monies Appropriated in this Bill:**

23           None

24   **Other Special Clauses:**

25           None

26   **Utah Code Sections Affected:**

27   AMENDS:

28           **19-3-105**, as last amended by Chapter 10, Laws of Utah 2005

29           **19-6-108**, as last amended by Chapter 43, Laws of Utah 2005

30

31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **19-3-105** is amended to read:33 **19-3-105. Definitions -- Legislative and gubernatorial approval required for**  
34 **radioactive waste license -- Application for new, renewed, or amended license.**

35 (1) As used in this section:

36 (a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

37 (b) (i) "Class A low-level radioactive waste" means:

38 (A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

39 (B) radium-226 up to a maximum radionuclide concentration level of 10,000

40 picocuries per gram.

41 (ii) "Class A low-level radioactive waste" does not include:

42 (A) uranium mill tailings;

43 (B) naturally occurring radioactive materials; or

44 (C) the following radionuclides if classified as "special nuclear material" under the  
45 Atomic Energy Act of 1954, 42 U.S.C. 2014:

46 (I) uranium-233; and

47 (II) uranium-235 with a radionuclide concentration level greater than the concentration  
48 limits for specific conditions and enrichments established by an order of the Nuclear  
49 Regulatory Commission:

50 (Aa) to ensure criticality safety for a radioactive waste facility in the state; and

51 (Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive  
52 waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special  
53 nuclear material exemption order.54 (c) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers,  
55 stores, decays in storage, treats, or disposes of radioactive waste:

56 (A) commercially for profit; or

57 (B) generated at locations other than the radioactive waste facility.

58 (ii) "Radioactive waste facility" does not include a facility that receives:  
59 (A) alternate feed material for reprocessing; or  
60 (B) radioactive waste from a location in the state designated as a processing site under  
61 42 U.S.C. 7912(f).

62 (d) "Radioactive waste license" or "license" means a radioactive material license issued  
63 by the executive secretary under Subsection 19-3-108(2)(c)(i), to own, construct, modify, or  
64 operate a radioactive waste facility.

65 (2) The provisions of this section are subject to the prohibition under Section  
66 19-3-103.7.

67 (3) A person may not own, construct, modify, or operate a radioactive waste facility  
68 without:

- 69 (a) having received a radioactive waste license for the facility;
- 70 (b) meeting the requirements established by rule under Section 19-3-104;
- 71 (c) the approval of the governing body of the municipality or county responsible for  
72 local planning and zoning where the radioactive waste is or will be located; and
- 73 (d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the  
74 approval of the governor and the Legislature.

75 (4) Legislative and gubernatorial approval required by Subsection (3)(d) for a new  
76 license, license renewal, or license amendment under Subsection (5) that is received by the  
77 executive secretary on or after July 1, 2007, shall be provided as follows:

- 78 (a) Legislative approval shall be provided by statute.
- 79 (b) Gubernatorial approval required by Subsection (3)(d) is provided if the governor  
80 does not veto the statute providing legislative approval.
- 81 (c) Gubernatorial approval under Subsection (3)(d) is not required if:
  - 82 (i) the governor vetoes the statute providing legislative approval; and
  - 83 (ii) the Legislature overrides the governor's veto by at least two-thirds majority of the  
84 members elected to each house.

85 [~~4~~] (5) A new radioactive waste license application, or an application to renew or

86 amend an existing radioactive waste license, is subject to the requirements of Subsections  
87 (3)(b) through (d) if the application, renewal, or amendment:

- 88 (a) specifies a different geographic site than a previously submitted application;
- 89 (b) would cost 50% or more of the cost of construction of the original radioactive  
90 waste facility or the modification would result in an increase in capacity or throughput of a  
91 cumulative total of 50% of the total capacity or throughput which was approved in the facility  
92 license as of January 1, 1990, or the initial approval facility license if the initial license  
93 approval is subsequent to January 1, 1990; or

- 94 (c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of  
95 radioactive waste having a higher radionuclide concentration limit than allowed, under an  
96 existing approved license held by the facility, for the specific type of waste to be received,  
97 transferred, stored, decayed in storage, treated, or disposed of.

98 [~~(5)~~] (6) The requirements of Subsection [~~(4)~~] (5)(c) do not apply to an application to  
99 renew or amend an existing radioactive waste license if:

- 100 (a) the radioactive waste facility requesting the renewal or amendment has received a  
101 license prior to January 1, 2004; and

- 102 (b) the application to renew or amend its license is limited to a request to approve the  
103 receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level  
104 radioactive waste.

105 [~~(6)~~] (7) A radioactive waste facility which receives a new radioactive waste license  
106 after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any  
107 license application, renewal, or amendment that requests approval to receive, transfer, store,  
108 decay in storage, treat, or dispose of radioactive waste not previously approved under an  
109 existing license held by the facility.

110 [~~(7)~~] (8) If the board finds that approval of additional radioactive waste license  
111 applications, renewals, or amendments will result in inadequate oversight, monitoring, or  
112 licensure compliance and enforcement of existing and any additional radioactive waste  
113 facilities, the board shall suspend acceptance of further applications for radioactive waste

114 licenses. The board shall report the suspension to the Legislative Management Committee.

115 [~~(8)~~] (9) The board shall review each proposed radioactive waste license application to  
116 determine whether the application complies with the provisions of this chapter and the rules of  
117 the board.

118 [~~(9)~~] (10) (a) If the radioactive waste license application is determined to be complete,  
119 the board shall issue a notice of completeness.

120 (b) If the board determines that the radioactive waste license application is incomplete,  
121 the board shall issue a notice of deficiency, listing the additional information to be provided by  
122 the applicant to complete the application.

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

124 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**  
125 **facility or site -- Administrative and legislative approval required -- Exemptions from**  
126 **legislative and gubernatorial approval -- Time periods for review -- Information required**  
127 **-- Other conditions -- Revocation of approval -- Periodic review.**

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

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

132 (b) an application for modification of a commercial hazardous waste incinerator if the  
133 construction or the modification would increase the hazardous waste incinerator capacity above  
134 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in  
135 the operation plan application as of January 1, 1990, if no operation plan approval has been  
136 issued as of January 1, 1990;

137 (c) an application for modification of a commercial nonhazardous solid waste  
138 incinerator if the construction of the modification would cost 50% or more of the cost of  
139 construction of the original incinerator or the modification would result in an increase in the  
140 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity  
141 or throughput that was approved in the operation plan as of January 1, 1990, or the initial

142 approved operation plan if the initial approval is subsequent to January 1, 1990; or

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

148 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
149 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
150 operation plan approval has been issued as of January 1, 1990, and on annual operations of  
151 7,000 hours.

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

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

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

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

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

165 (C) cement kiln dust wastes.

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

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

170 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;  
171 and

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

178 (d) Legislative and gubernatorial approval required by Subsection (3)(c) subsequent to  
179 executive secretary approval of an operation plan under Subsection (3)(a) which is received by  
180 the executive secretary on or after July 1, 2007, shall be provided as follows:

181 (i) Legislative approval shall be provided by statute.

182 (ii) Gubernatorial approval required by Subsection (3)(c) is provided if the governor  
183 does not veto the statute providing legislative approval.

184 (iii) Gubernatorial approval under Subsection (3)(c) is not required if:

185 (A) the governor vetoes the statute providing legislative approval; and

186 (B) the Legislature overrides the governor's veto by at least two-thirds majority of the  
187 members elected to each house.

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

194 [~~e~~] (f) No person need obtain gubernatorial and legislative approval for the  
195 construction of a commercial nonhazardous solid waste disposal facility for which an operation  
196 plan has been approved by or submitted for approval to the executive secretary under this  
197 section on or before January 1, 1990, and which, on or before December 31, 1990, the

198 executive secretary determines to be complete, in accordance with state and federal  
199 requirements applicable to operation plans for nonhazardous solid waste facilities.

200       ~~[(f)]~~ (g) Any person owning or operating a facility or site on or before November 19,  
201 1980, who has given timely notification as required by Section 3010 of the Resource  
202 Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has  
203 submitted a proposed hazardous waste plan under this section for that facility or site, may  
204 continue to operate that facility or site without violating this section until the plan is approved  
205 or disapproved under this section.

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

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

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

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

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

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

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

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

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

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

232 (ii) time required for public participation and hearings for issuance of plan approvals;  
233 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  
236 approve 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  
239 issued by the executive secretary;

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

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

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

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

254 Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

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

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

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

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

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

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

277 (f) compliance schedules, where applicable, including schedules for corrective action  
278 or other response measures for releases from any solid waste management unit at the facility,  
279 regardless of the time the waste was placed in the unit.

280 (10) The executive secretary may not approve a commercial nonhazardous solid or  
281 hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains

282 the information required by the board, including:

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

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

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

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

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

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

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

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

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

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

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

309 (a) the probable beneficial environmental effect of the facility to the state outweighs

310 the probable adverse environmental effect; and

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

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

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

317 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste  
318 facilities in existence or to applications filed or pending in the department prior to April 24,  
319 1989, that are 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 hazardous waste facilities.

322 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous  
323 solid waste facility in existence or to an application filed or pending in the department prior to  
324 January 1, 1990, that is determined by the executive secretary, on or before December 31,  
325 1990, to be complete in accordance with state and federal requirements applicable to operation  
326 plans for nonhazardous solid waste facilities.

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

333 (17) This section may not be construed to exempt any facility from applicable  
334 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through  
335 2114.