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**SOLID AND HAZARDOUS WASTE ACT**

**AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sheldon L. Killpack**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Solid and Hazardous Waste Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires a person subject to a waste permit to obtain consent of the current owner of a waste facility before submitting information to the executive secretary;
- ▶ authorizes the executive secretary to:
  - issue enforceable written assurances;
  - make determinations regarding corrective action; and
  - partition real property from a permit; and
- ▶ authorizes the Solid and Hazardous Waste Control Board to make rules.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an immediate effective date.

**Utah Code Sections Affected:**

AMENDS:

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



28           **19-6-108**, as last amended by Chapter 43, Laws of Utah 2005

29 ENACTS:

30           **19-6-108.3**, Utah Code Annotated 1953

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

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

34           **19-6-102. Definitions.**

35           As used in this part:

36           (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
37 19-1-106.

38           (2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at  
39 which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or  
40 disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the  
41 facility or site.

42           (3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"  
43 means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or  
44 disposal.

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

47           (i) receives waste for recycling;

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

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

52           (4) "Construction waste or demolition waste":

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

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

59 (5) "Demolition waste" has the same meaning as the definition of construction waste in  
60 this section.

61 (6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or  
62 placing of any solid or hazardous waste into or on any land or water so that the waste or any  
63 constituent of the waste may enter the environment, be emitted into the air, or discharged into  
64 any waters, including groundwaters.

65 (7) "Executive secretary" means the executive secretary of the board.

66 (8) "Generation" or "generated" means the act or process of producing nonhazardous  
67 solid or hazardous waste.

68 (9) "Hazardous waste" means a solid waste or combination of solid wastes other than  
69 household waste which, because of its quantity, concentration, or physical, chemical, or  
70 infectious characteristics may cause or significantly contribute to an increase in mortality or an  
71 increase in serious irreversible or incapacitating reversible illness or may pose a substantial  
72 present or potential hazard to human health or the environment when improperly treated,  
73 stored, transported, disposed of, or otherwise managed.

74 (10) "Health facility" means hospitals, psychiatric hospitals, home health agencies,  
75 hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for  
76 the mentally retarded, residential health care facilities, maternity homes or birthing centers, free  
77 standing ambulatory surgical centers, facilities owned or operated by health maintenance  
78 organizations, and state renal disease treatment centers including free standing hemodialysis  
79 units, the offices of private physicians and dentists whether for individual or private practice,  
80 veterinary clinics, and mortuaries.

81 (11) "Household waste" means any waste material, including garbage, trash, and  
82 sanitary wastes in septic tanks, derived from households, including single-family and  
83 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,  
84 campgrounds, picnic grounds, and day-use recreation areas.

85 (12) "Infectious waste" means a solid waste that contains or may reasonably be  
86 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by  
87 a susceptible host could result in an infectious disease.

88 (13) "Manifest" means the form used for identifying the quantity, composition, origin,  
89 routing, and destination of hazardous waste during its transportation from the point of

90 generation to the point of disposal, treatment, or storage.

91 (14) "Mixed waste" means any material that is a hazardous waste as defined in this  
92 chapter and is also radioactive as defined in Section 19-3-102.

93 (15) "Modification plan" means a plan under Section 19-6-108 to modify a facility or  
94 site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing  
95 of hazardous waste.

96 (16) "Operation plan" or "nonhazardous solid or hazardous waste operation plan"  
97 means a plan under Section 19-6-108 to own, construct, or operate a facility or site for the  
98 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of  
99 hazardous waste.

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

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

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

110 (ii) drilling muds, produced waters, and other wastes associated with the exploration,  
111 development, or production of oil, gas, or geothermal energy;

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

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

116 (v) cement kiln dust.

117 (18) "Storage" means the actual or intended containment of solid or hazardous waste  
118 either on a temporary basis or for a period of years in such a manner as not to constitute  
119 disposal of the waste.

120 (19) "Transportation" means the off-site movement of solid or hazardous waste to any

121 intermediate point or to any point of storage, treatment, or disposal.

122 (20) "Treatment" means a method, technique, or process designed to change the  
123 physical, chemical, or biological character or composition of any solid or hazardous waste so as  
124 to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for  
125 recovery, amenable to storage, or reduced in volume.

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

128 (22) "Waste permit" means an approved operation plan, closure plan, modification  
129 plan, or an approval issued by the executive secretary as authorized by Section 19-6-108, the  
130 Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or federal regulations  
131 authorized by the Resource Conservation and Recovery Act.

132 (23) "Waste permittee" means a person who has been issued a waste permit by the  
133 executive secretary.

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

135 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**  
136 **facility or site -- Administrative and legislative approval required -- Exemptions from**  
137 **legislative and gubernatorial approval -- Time periods for review -- Information required**  
138 **-- Other conditions -- Revocation of approval -- Periodic review.**

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

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

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

148 (c) an application for modification of a commercial nonhazardous solid waste  
149 incinerator if the construction of the modification would cost 50% or more of the cost of  
150 construction of the original incinerator or the modification would result in an increase in the  
151 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity

152 or throughput that was approved in the operation plan as of January 1, 1990, or the initial  
153 approved operation plan if the initial approval is subsequent to January 1, 1990; or

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

159 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
160 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
161 operation plan approval has been issued as of January 1, 1990, and on annual operations of  
162 7,000 hours.

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

168 (ii) (A) A waste permittee who is the present owner of a facility or site that is subject to  
169 a permit may submit to the executive secretary information, a report, or a plan for a proposed  
170 activity under a permit without obtaining the consent of any other permittee who is not also a  
171 present owner of the facility or site.

172 (B) A permittee who is not the present owner of a facility or site that is subject to a  
173 permit must first obtain consent of the permittee who is the present owner before submitting to  
174 the executive secretary any information, report, or plan for a proposed activity under a permit.

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

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

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

183 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or  
184 (C) cement kiln dust wastes.

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

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

189 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;  
190 and

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

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

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

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

214 this section.

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

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

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

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

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

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

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

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

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

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

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

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

244 (6) (a) If the facility is a class III or class IV facility, the executive secretary shall

245 approve or disapprove that plan within 365 days from the date it is submitted.

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

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

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

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

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

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

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

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

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

273 (c) consistent with the degree and duration of risks associated with the disposal of  
274 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,  
275 evidence of financial responsibility in whatever form and amount that the executive secretary

276 determines is necessary to insure continuity of operation and that upon abandonment, cessation,  
277 or interruption of the operation of the facility or site, all reasonable measures consistent with  
278 the available knowledge will be taken to insure that the waste subsequent to being treated,  
279 stored, or disposed of at the site or facility will not present a hazard to the public or the  
280 environment;

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

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

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

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

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

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

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

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

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

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

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

305 (iii) the reduction of nonhazardous solid or hazardous waste management methods,  
306 which are less suitable for the environment, that would be made possible by the proposed

307 facility; and

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

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

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

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

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

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

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

326 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste  
327 facilities in existence or to applications filed or pending in the department prior to April 24,  
328 1989, that are determined by the executive secretary on or before December 31, 1990, to be  
329 complete, in accordance with state and federal requirements applicable to operation plans for  
330 hazardous waste facilities.

331 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous  
332 solid waste facility in existence or to an application filed or pending in the department prior to  
333 January 1, 1990, that is determined by the executive secretary, on or before December 31,  
334 1990, to be complete in accordance with state and federal requirements applicable to operation  
335 plans for nonhazardous solid waste facilities.

336 (16) Nonhazardous solid waste generated outside of this state that is defined as  
337 hazardous waste in the state where it is generated and which is received for disposal in this

338 state shall not be disposed of at a nonhazardous waste disposal facility owned and operated by  
339 local government or a facility under contract with a local government solely for disposal of  
340 nonhazardous solid waste generated within the boundaries of the local government, unless  
341 disposal is approved by the executive secretary.

342 (17) This section may not be construed to exempt any facility from applicable  
343 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through  
344 2114.

345 Section 3. Section **19-6-108.3** is enacted to read:

346 **19-6-108.3. Executive secretary to issue written assurances, make determinations,**  
347 **and partition permits -- Board to make rules.**

348 (1) Based upon risk to human health or the environment from potential exposure to  
349 hazardous waste, the executive secretary may:

350 (a) issue an enforceable written assurance to a prospective purchaser, tenant, or lender  
351 acquiring an interest in real property covered by a waste permit that the person to whom the  
352 assurance is issued:

353 (i) is not a permittee under the waste permit; and

354 (ii) will not be subject to an enforcement action under this part regarding the real  
355 property covered by the waste permit;

356 (b) determine that corrective action to the real property covered by a waste permit is:

357 (i) complete;

358 (ii) unnecessary with an environmental covenant; or

359 (iii) unnecessary without an environmental covenant; and

360 (c) partition or delist from a waste permit a portion of real property subject to the waste  
361 permit after determining that corrective action for that portion of real property is:

362 (i) complete;

363 (ii) unnecessary with an environmental covenant; or

364 (iii) unnecessary without an environmental covenant.

365 (2) If the executive secretary determines that an environmental covenant is necessary  
366 under Subsection (1)(b) or (c), the executive secretary shall require that the real property be  
367 subject to an environmental covenant according to Title 57, Chapter 25, Uniform  
368 Environmental Covenants Act.

369           (3) An assurance issued under Subsection (1) protects the person to whom the  
370 assurance is issued from any cost recovery and contribution action under state law.

371           (4) By following the procedures and requirements of Title 63, Chapter 46b,  
372 Administrative Procedures Act, the board may adopt rules to administer this section.

373           Section 4. **Effective date.**

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

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**Legislative Review Note**  
as of 2-20-07 8:15 AM

**Office of Legislative Research and General Counsel**

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**S.B. 271 - Solid and Hazardous Waste Act Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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