

1 **CHANGES REGARDING EXISTING**
2 **HAZARDOUS WASTE FACILITIES**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Leonard M. Blackham**

6 AN ACT RELATING TO THE ENVIRONMENT; REMOVING REQUIREMENTS FOR
7 LEGISLATIVE AND GUBERNATORIAL APPROVAL FOR SPECIFIED CHANGES IN
8 THE WASTES ACCEPTED BY EXISTING HAZARDOUS AND RADIOACTIVE WASTE
9 FACILITIES.

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

11 AMENDS:

12 **19-3-105**, as last amended by Chapter 188, Laws of Utah 1994

13 **19-6-108**, as last amended by Chapter 230, Laws of Utah 1996

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

15 Section 1. Section **19-3-105** is amended to read:

16 **19-3-105. Legislative and gubernatorial approval required.**

17 (1) (a) A person may not own, construct, modify, or operate any facility for the purpose
18 of commercially transferring, storing, decaying in storage, treating, or disposing of radioactive
19 waste without first submitting and receiving the approval of the board for a radioactive material
20 license for the facility.

21 (b) A person may not construct a new commercial radioactive waste transfer, storage,
22 decay in storage, treatment, or disposal facility until:

23 (i) the requirements of Section 19-3-104 have been met;

24 (ii) in addition and subsequent to the approval required in Subsection (1)(a), the governor
25 and the Legislature have approved the facility; and

26 (iii) local planning and zoning has authorized the facility.

27 (c) For purposes of this section, the following items shall be treated as submission of a

1 new license application:

2 (i) the submission of a revised application specifying a different geographic site than a
3 previously submitted application;

4 (ii) an application for amendment of a commercial radioactive waste license for transfer,
5 storage, decay in storage, treatment, or disposal facilities, including incinerators, if the construction
6 would cost 50% or more of the cost of construction of the original transfer, storage, decay in
7 storage, treatment, or disposal facility or the modification would result in an increase in capacity
8 or throughput of a cumulative total of 50% of the total capacity or throughput which was approved
9 in the facility license as of January 1, 1990, or the initial approval facility license if the initial
10 license approval is subsequent to January 1, 1990; or

11 (iii) any request for approval for a commercial radioactive waste transfer, storage, decay
12 in storage, treatment, or disposal facility to receive class B or class C low-level radioactive waste,
13 including the submission of a new license application, revised license application, or major license
14 amendment.

15 (2) A person need not obtain gubernatorial or legislative approval for:

16 (a) the construction of a radioactive waste facility for which a license application has been
17 approved by the Department of Health or submitted to the federal Nuclear Regulatory Commission
18 and to the Department of Health for approval before January 1, 1990, and which has been
19 determined, on or before October 31, 1990, by the Department of Health to be complete in
20 accordance with state and federal requirements; or

21 (b) the addition of low-level radioactive waste, not greater than class A, to the waste
22 accepted at a hazardous waste facility for which an operating plan has been submitted and
23 approved or submitted and determined to be complete in accordance with Subsection
24 19-6-108(3)(d).

25 (3) The board shall suspend acceptance of further applications for commercial radioactive
26 waste facilities upon a finding that they cannot adequately oversee existing and additional
27 radioactive waste facilities for license compliance, monitoring, and enforcement. The board shall
28 report the suspension to the Legislative Management Committee.

29 (4) The board shall review each proposed radioactive waste license application to
30 determine whether the application complies with the provisions of this chapter and the rules of the
31 board.

1 (5) (a) If the radioactive license application is determined to be complete, the board shall
2 issue a notice of completeness.

3 (b) If the plan is determined by the board to be incomplete, the board shall issue a notice
4 of deficiency, listing the additional information to be provided by the applicant to complete the
5 application.

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

7 **19-6-108. New nonhazardous solid or hazardous waste operation plans for facility**
8 **or site -- Administrative and legislative approval required -- Time periods for review --**
9 **Information required -- Other conditions -- Revocation of approval -- Periodic review.**

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

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

14 (b) an application for modification of a commercial hazardous waste incinerator if the
15 construction or the modification would increase the hazardous waste incinerator capacity above
16 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the
17 operation plan application as of January 1, 1990, if no operation plan approval has been issued as
18 of January 1, 1990;

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

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

30 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage
31 specified for the trial burn in the operation plan or the operation plan application if no operation

1 plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

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

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

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

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

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

15 (C) cement kiln dust wastes.

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

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

20 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;

21 and

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

27 (d) No person need obtain gubernatorial or legislative approval for:

28 (i) the construction of a hazardous waste facility for which an operating plan has been
29 approved by or submitted for approval to the executive secretary under this section before April
30 24, 1989, and which has been determined, on or before December 31, 1990, by the executive
31 secretary to be complete, in accordance with state and federal requirements for operating plans for

1 hazardous waste facilities even if a different geographic site is subsequently submitted; or
2 (ii) the addition of hazardous waste to the waste accepted at a radioactive waste facility
3 for which a license plan has been submitted and approved or submitted and determined to be
4 complete in accordance with Subsection 19-3-105(2).

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

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

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

21 (ii) The executive secretary shall report any suspension to the Health Interim Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (9) No proposed nonhazardous solid or hazardous waste operation plan may be approved

1 unless it contains the information that the board requires, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid
2 waste facility in existence or to an application filed or pending in the department prior to January
3 1, 1990, that is determined by the executive secretary, on or before December 31, 1990, to be
4 complete in accordance with state and federal requirements applicable to operation plans for
5 nonhazardous solid waste facilities.

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

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

Legislative Review Note
as of 1-23-98 3:36 PM

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

Office of Legislative Research and General Counsel