

Senator Carlene M. Walker proposes the following substitute bill:

WASTE AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

This act modifies the Environmental Quality Code by providing definitions of the classes of landfills. This act also requires that the Department of Environmental Quality apply the permit classification under the definitions that describes the current permitted authority and status of each landfill.

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

AMENDS:

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

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

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

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

19-6-102. Definitions.

As used in this part:

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

(2) "Class I landfill" means a non-commercial municipal landfill that is permitted to receive any nonhazardous solid waste for disposal and receives, on a yearly average, over 20 tons of solid waste per day.

(3) "Class II landfill" means a non-commercial municipal landfill that is permitted to receive any nonhazardous waste for disposal and receives, on a yearly average, 20 tons, or less, of solid waste per day.

(4) "Class III landfill" means a non-commercial landfill that is permitted to receive only



26 industrial solid waste for disposal, excluding farms and ranches.

27 (5) "Class IV landfill" means a non-commercial landfill that is permitted to receive only
28 construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the
29 requirements of Section 19-6-804 and implementing rules, waste tires and materials derived from
30 waste tires for disposal.

31 (6) (a) "Class V Landfill" means a commercial nonhazardous solid waste landfill as
32 defined by Subsection 19-6-102(9)(a) and not otherwise excluded by 19-6-102(9)(b) that is
33 permitted to receive exclusively the following nonhazardous solid waste, except as otherwise
34 limited by Subsection (6)(b) and by board rule:

35 (i) inert waste;

36 (ii) construction and demolition waste as defined in Section 19-6-102;

37 (iii) yard waste; or

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

40 (b) The wastes under Subsections (6)(a)(i) through (iv) do not include any nonhazardous
41 solid waste restricted by board rule because the waste characteristics or toxicity of the waste are
42 not consistent with state requirements regarding the facility's design, operation, monitoring, or
43 closure.

44 (7) "Class VI Landfill" means a commercial nonhazardous solid waste landfill as defined
45 by Subsection 19-6-102(9)(a) and not otherwise excluded by 19-6-102(9)(b) that is permitted to
46 receive nonhazardous solid waste for disposal.

47 ~~[(2)]~~ (8) "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)]~~ (9) (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)~~] (10) "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)~~] (11) "Demolition waste" has the same meaning as the definition of construction waste
69 in this section.

70 [~~(6)~~] (12) "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)~~] (13) "Executive secretary" means the executive secretary of the board.

75 [~~(8)~~] (14) "Generation" or "generated" means the act or process of producing nonhazardous
76 solid or hazardous waste.

77 [~~(9)~~] (15) "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)~~] (16) "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)]~~ (17) "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)]~~ (18) "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)]~~ (19) "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)]~~ (20) "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)]~~ (21) "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)]~~ (22) "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 (23) "Permitted" means having received a plan approval from the executive secretary under
109 this part.

110 ~~[(17)]~~ (24) (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~~] (25) "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~~] (26) "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~~] (27) "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~~] (28) "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 (1) For purposes of this section, the following items shall be treated as submission of a

143 new operation plan:

144 (a) the submission of a revised operation plan specifying a different geographic site than

145 a previously submitted plan;

146 (b) an application for modification of a commercial hazardous waste incinerator if the

147 construction or the modification would increase the hazardous waste incinerator capacity above

148 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the

149 operation plan application as of January 1, 1990, if no operation plan approval has been issued as

150 of January 1, 1990;

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

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

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

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

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

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

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

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

178 (C) cement kiln dust wastes.

179 (c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until he
180 receives, in addition to local government approval and subsequent to the approval required in

181 Subsection (a), approval by the governor and the Legislature.

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

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

184 and

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

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

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

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

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

211 (ii) The executive secretary shall report any suspension to the Natural Resources,

212 Agriculture, and Environment Interim Committee.

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

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

218 (b) Within 60 days after receipt of the plans, specifications, or other information required
219 by this section for a class I or II facility, the executive secretary shall determine whether the plan
220 is complete and contains all information necessary to process the plan for 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 a
224 notice of deficiency, listing the additional information to be provided by the owner or operator to
225 complete the plan.

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

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

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

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

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

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

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

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

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

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

241 (7) If, within 365 days after receipt of a modification plan or closure plan for any facility,
242 the executive secretary determines that the proposed plan, or any part of it, will not comply with

243 applicable rules, the executive secretary shall issue an order prohibiting any action under the
244 proposed plan for modification or closure in whole or in part.

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

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

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

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

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

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

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

273 (f) compliance schedules, where applicable, including schedules for corrective action or

274 other response measures for releases from any solid waste management unit at the facility,
275 regardless of the time the waste was placed in the unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

329 (18) On or before June 30, 2002, the department shall review each landfill permitted under
330 this part and shall apply the permit classification under the definitions in Section 19-6-102 that
331 describes the current permitted authority and status of each landfill.