

1 **LOCAL GOVERNMENT APPROVAL FOR SOLID**
2 **NONHAZARDOUS AND HAZARDOUS WASTE**
3 **DISPOSAL**

4 2005 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Beverly Ann Evans**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions of the Solid and Hazardous Waste Act.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ clarifies that local government approval of a commercial nonhazardous solid or
14 hazardous waste treatment or disposal facility is required before obtaining
15 legislative and gubernatorial approval.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **19-6-108**, as last amended by Chapter 311, Laws of Utah 2003

23
24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **19-6-108** is amended to read:

26 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
27 **facility or site -- Administrative and legislative approval required -- Exemptions from**



28 **legislative and gubernatorial approval -- Time periods for review -- Information required**
29 **-- Other conditions -- Revocation of approval -- Periodic review.**

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

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

34 (b) an application for modification of a commercial hazardous waste incinerator if the
35 construction or the modification would increase the hazardous waste incinerator capacity above
36 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in
37 the operation plan application as of January 1, 1990, if no operation plan approval has been
38 issued as of January 1, 1990;

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

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

50 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
51 tonnage specified for the trial burn in the operation plan or the operation plan application if no
52 operation plan approval has been issued as of January 1, 1990, and on annual operations of
53 7,000 hours.

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

58 (b) (i) Except for facilities that receive the following wastes solely for the purpose of

59 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any
60 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any
61 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving
62 the approval of the executive secretary for an operation plan for that facility site.

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

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

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

67 (C) cement kiln dust wastes.

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

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

72 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;
73 and

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

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

86 (e) No person need obtain gubernatorial and legislative approval for the construction of
87 a commercial nonhazardous solid waste disposal facility for which an operation plan has been
88 approved by or submitted for approval to the executive secretary under this section on or before
89 January 1, 1990, and which, on or before December 31, 1990, the executive secretary

90 determines to be complete, in accordance with state and federal requirements applicable to
91 operation plans for nonhazardous solid waste facilities.

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

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

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

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

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

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

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

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

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

120 (e) The following time periods may not be included in the 270 day plan review period

121 for a class I or II facility:

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

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

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

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

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

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

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

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

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

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

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

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

151 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or

152 disposal of hazardous waste will not be done in a manner that may cause or significantly
153 contribute to an increase in mortality, an increase in serious irreversible or incapacitating
154 reversible illness, or pose a substantial present or potential hazard to human health or the
155 environment;

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

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

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

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

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

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

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

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

181 (iii) a review of other existing and proposed commercial nonhazardous solid or
182 hazardous waste facilities regionally and nationally that would compete for the treatment,

183 storage, or disposal of the nonhazardous solid or hazardous waste;

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

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

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

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

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

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

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

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

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

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

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

209 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste
210 facilities in existence or to applications filed or pending in the department prior to April 24,
211 1989, that are determined by the executive secretary on or before December 31, 1990, to be
212 complete, in accordance with state and federal requirements applicable to operation plans for
213 hazardous waste facilities.

214 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous
215 solid waste facility in existence or to an application filed or pending in the department prior to
216 January 1, 1990, that is determined by the executive secretary, on or before December 31,
217 1990, to be complete in accordance with state and federal requirements applicable to operation
218 plans for nonhazardous solid waste facilities.

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

225 (17) This section may not be construed to exempt any facility from applicable
226 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
227 2114.

Legislative Review Note**as of 11-27-04 2:27 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0081

**Local Government Approval for Solid and Nonhazardous and
Hazardous Waste Disposal**

14-Jan-05
2:47 PM

State Impact

Provisions of this bill can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst