

**PROCESS FOR APPROVAL OF WASTE
DISPOSAL AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: J. Stuart Adams

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies the legislative and gubernatorial approval requirements for the disposal of certain commercial radioactive wastes, hazardous wastes, and nonhazardous solid wastes;

- ▶ requires that legislative approval be provided by statute;

- ▶ provides that gubernatorial approval is given if the statute giving legislative approval is not vetoed; and

- ▶ provides that gubernatorial approval is not required if the governor vetoes the statute giving legislative approval and the veto is overridden.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



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

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



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

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

33 **19-3-105. Definitions -- Legislative and gubernatorial approval required for**
34 **radioactive waste license -- Application for new, renewed, or amended license.**

35 (1) As used in this section:

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

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

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

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

40 picocuries per gram.

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

42 (A) uranium mill tailings;

43 (B) naturally occurring radioactive materials; or

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

46 (I) uranium-233; and

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

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

51 (Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive
52 waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special
53 nuclear material exemption order.

54 (c) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers,
55 stores, decays in storage, treats, or disposes of radioactive waste:

56 (A) commercially for profit; or

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

58 (ii) "Radioactive waste facility" does not include a facility that receives:

59 (A) alternate feed material for reprocessing; or

60 (B) radioactive waste from a location in the state designated as a processing site under
61 42 U.S.C. 7912(f).

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

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

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

69 (a) having received a radioactive waste license for the facility;

70 (b) meeting the requirements established by rule under Section 19-3-104;

71 (c) the approval of the governing body of the municipality or county responsible for
72 local planning and zoning where the radioactive waste is or will be located; and

73 (d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the
74 approval of the governor and the Legislature ~~§~~ **[as provided in Subsection (4)]** ~~←§~~ .

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

75c (a) Legislative approval shall be provided ←§ by statute.

76 (b) Gubernatorial approval required by Subsections (3)(d) is provided if the governor
77 does not veto the statute providing legislative approval.

78 (c) Gubernatorial approval under Subsection (3)(d) is not required if:

79 (i) the governor vetoes the statute providing legislative approval; and

80 (ii) the Legislature overrides the governor's veto by at least two-thirds majority of the
81 members elected to each house.

82 ~~[(4)]~~ (5) A new radioactive waste license application, or an application to renew or
83 amend an existing radioactive waste license, is subject to the requirements of Subsections
84 (3)(b) through (d) if the application, renewal, or amendment:

85 (a) specifies a different geographic site than a previously submitted application;

86 (b) would cost 50% or more of the cost of construction of the original radioactive
87 waste facility or the modification would result in an increase in capacity or throughput of a
88 cumulative total of 50% of the total capacity or throughput which was approved in the facility
89 license as of January 1, 1990, or the initial approval facility license if the initial license

90 approval is subsequent to January 1, 1990; or

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

95 [~~(5)~~] (6) The requirements of Subsection [~~(4)~~] (5)(c) do not apply to an application to
96 renew or amend an existing radioactive waste license if:

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

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

102 [~~(6)~~] (7) A radioactive waste facility which receives a new radioactive waste license
103 after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any
104 license application, renewal, or amendment that requests approval to receive, transfer, store,
105 decay in storage, treat, or dispose of radioactive waste not previously approved under an
106 existing license held by the facility.

107 [~~(7)~~] (8) If the board finds that approval of additional radioactive waste license
108 applications, renewals, or amendments will result in inadequate oversight, monitoring, or
109 licensure compliance and enforcement of existing and any additional radioactive waste
110 facilities, the board shall suspend acceptance of further applications for radioactive waste
111 licenses. The board shall report the suspension to the Legislative Management Committee.

112 [~~(8)~~] (9) The board shall review each proposed radioactive waste license application to
113 determine whether the application complies with the provisions of this chapter and the rules of
114 the board.

115 [~~(9)~~] (10) (a) If the radioactive waste license application is determined to be complete,
116 the board shall issue a notice of completeness.

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

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

121 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
122 **facility or site -- Administrative and legislative approval required -- Exemptions from**
123 **legislative and gubernatorial approval -- Time periods for review -- Information required**
124 **-- Other conditions -- Revocation of approval -- Periodic review.**

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

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

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

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

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

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

149 (3) (a) No person may own, construct, modify, or operate any facility or site for the
150 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of
151 hazardous waste without first submitting and receiving the approval of the executive secretary

152 for a nonhazardous solid or hazardous waste operation plan for that facility or site.

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

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

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

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

162 (C) cement kiln dust wastes.

163 (c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until ~~he~~
164 the person receives, in addition to and subsequent to local government approval and subsequent
165 to the approval required in Subsection (3)(a), approval by the governor and the Legislature ~~§→~~ **[as**
166 **provided in Subsection (3)(d)] ←§** .

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

168 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;
169 and

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

176 (d) ~~§→~~ **[(fi)] ←§** Legislative §→ and gubernatorial ←§ approval required by Subsection
176a (3)(c) §→ subsequent to executive secretary approval of an operation plan under Subsection
176b (3)(a) which is received by the executive secretary on or after July 1, 2007, ←§ shall be provided
176c **§→ as follows:**

176d (i) **Legislative approval shall be provided ←§** by statute.

177 (ii) Gubernatorial approval required by Subsections (3)(c) is provided if the governor
178 does not veto the statute providing legislative approval.

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

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

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

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

189 ~~[(e)]~~ (f) No person need obtain gubernatorial and legislative approval for the
190 construction of a commercial nonhazardous solid waste disposal facility for which an operation
191 plan has been approved by or submitted for approval to the executive secretary under this
192 section on or before January 1, 1990, and which, on or before December 31, 1990, the
193 executive secretary determines to be complete, in accordance with state and federal
194 requirements applicable to operation plans for nonhazardous solid waste facilities.

195 ~~[(f)]~~ (g) Any person owning or operating a facility or site on or before November 19,
196 1980, who has given timely notification as required by Section 3010 of the Resource
197 Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has
198 submitted a proposed hazardous waste plan under this section for that facility or site, may
199 continue to operate that facility or site without violating this section until the plan is approved
200 or disapproved under this section.

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

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

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

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

212 (b) Within 60 days after receipt of the plans, specifications, or other information
213 required by this section for a class I or II facility, the executive secretary shall determine

214 whether the plan is complete and contains all information necessary to process the plan for
215 approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (8) Any person who owns or operates a facility or site required to have an approved
243 hazardous waste operation plan under this section and who has pending a permit application
244 before the United States Environmental Protection Agency shall be treated as having an

245 approved plan until final administrative disposition of the permit application is made under this
246 section, unless the board determines that final administrative disposition of the application has
247 not been made because of the failure of the owner or operator to furnish any information
248 requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource
249 Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

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

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

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

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

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

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

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

275 (10) The executive secretary may not approve a commercial nonhazardous solid or

276 hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains
277 the information required by the board, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

328 (17) This section may not be construed to exempt any facility from applicable
329 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
330 2114.

Legislative Review Note
as of 1-17-06 11:40 AM

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 SB0070

Process for Approval of Waste Disposal Amendments

19-Jan-06

11:21 AM

State Impact

Provisions of this bill can be enacted within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst