

Senator Kevin T. Van Tassell proposes the following substitute bill:

SOLID WASTE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: Bill Wright

LONG TITLE

General Description:

This bill provides that if a person obtains approval to build a commercial nonhazardous solid waste disposal facility that requires approval by the Legislature and the governor, the approved facility shall be operational within five years of the governor's approval, or approval to build the facility is revoked.

Highlighted Provisions:

This bill:

- ▶ provides that if a person obtains each approval required to build a commercial nonhazardous solid waste disposal facility for a facility that requires approval by the Legislature and the governor, the approvals will be revoked unless the approved facility is operational:
 - within five years after the day on which the governor's approval is received, if the person receives the governor's approval on or after May 10, 2011; or
 - on or before May 10, 2016, if the person receives all required approvals before May 10, 2011;
- ▶ clarifies the approval process required to build certain commercial nonhazardous or hazardous waste facilities; and
- ▶ makes technical changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **19-6-108**, as last amended by Laws of Utah 2007, Chapter 72



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

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

36 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
37 **facility or site -- Administrative and legislative approval required -- Exemptions from**
38 **legislative and gubernatorial approval -- Time periods for review -- Information required**
39 **-- Other conditions -- Revocation of approval -- Periodic review.**

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

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

44 (b) an application for modification of a commercial hazardous waste incinerator if the
45 construction or the modification would increase the hazardous waste incinerator capacity above
46 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in
47 the operation plan application as of January 1, 1990, if no operation plan approval has been
48 issued as of January 1, 1990;

49 (c) an application for modification of a commercial nonhazardous solid waste
50 incinerator if the construction of the modification would cost 50% or more of the cost of
51 construction of the original incinerator or the modification would result in an increase in the
52 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity
53 or throughput that was approved in the operation plan as of January 1, 1990, or the initial
54 approved operation plan if the initial approval is subsequent to January 1, 1990; [or]

55 (d) an application for modification of a commercial nonhazardous solid or hazardous
56 waste treatment, storage, or disposal facility, other than an incinerator, if the modification

57 would be outside the boundaries of the property owned or controlled by the applicant, as shown
58 in the application or approved operation plan as of January 1, 1990, or the initial approved
59 operation plan if the initial approval is subsequent to January 1, 1990[-]; or

60 (e) a submission of an operation plan to construct a facility, if previous approvals of the
61 operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

62 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
63 tonnage specified for the trial burn in the operation plan or the operation plan application if no
64 operation plan approval has been issued as of January 1, 1990, and on annual operations of
65 7,000 hours.

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

70 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an
71 operation plan may submit to the executive secretary information, a report, a plan, or other
72 request for approval for a proposed activity under an operation plan:

73 (I) after obtaining the consent of any other permittee who is a current owner of the
74 facility or site; and

75 (II) without obtaining the consent of any other permittee who is not a current owner of
76 the facility or site.

77 (B) The executive secretary may not:

78 (I) withhold an approval of an operation plan requested by a permittee who is a current
79 owner of the facility or site on the grounds that another permittee who is not a current owner of
80 the facility or site has not consented to the request; or

81 (II) give an approval of an operation plan requested by a permittee who is not a current
82 owner before receiving consent of the current owner of the facility or site.

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

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

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

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

92 (C) cement kiln dust wastes.

93 (c) (i) No person may construct ~~[any]~~ a facility listed under Subsection (3)(c)(ii) until
94 ~~[he]~~ the person receives~~[-, in addition to and subsequent to]:~~

95 (A) local government approval and ~~[subsequent to]~~ the approval ~~[required]~~ described in
96 Subsection (3)(a)~~[-];~~

97 (B) approval from the Legislature; and

98 (C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B),

99 approval ~~[by]~~ from the governor ~~[and the Legislature].~~

100 (ii) ~~[Facilities]~~ A facility referred to in Subsection (3)(c)(i) ~~[are]~~ is:

101 (A) a commercial nonhazardous solid ~~[or hazardous]~~ waste ~~[treatment or]~~ disposal
102 ~~[facilities]~~ facility; [and]

103 (B) except for facilities that receive the following wastes solely for the purpose of
104 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,
105 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas
106 emission control waste generated primarily from the combustion of coal or other fossil fuels;
107 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln
108 dust wastes~~[-]; or~~

109 (C) a hazardous waste treatment, storage, or disposal facility.

110 (iii) The required approvals described in Subsection (3)(c)(i) for a facility described in
111 Subsection (3)(c)(ii)(A) or (3)(c)(ii)(B) are automatically revoked if:

112 (A) the governor's approval is received on or after May 10, 2011 and the facility is not
113 operational within five years after the day on which the governor's approval is received; or

114 (B) the governor's approval is received before May 10, 2011 and the facility is not
115 operational on or before May 10, 2016.

116 (d) No person need obtain gubernatorial or legislative approval for the construction of
117 a hazardous waste facility for which an operating plan has been approved by or submitted for
118 approval to the executive secretary under this section before April 24, 1989, and which has

119 been determined, on or before December 31, 1990, by the executive secretary to be complete,
120 in accordance with state and federal requirements for operating plans for hazardous waste
121 facilities even if a different geographic site is subsequently submitted.

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

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

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

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

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

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

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

149 (c) (i) If the plan for a class I or II facility is determined to be complete, the executive

150 secretary shall issue a notice of completeness.

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

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

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

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

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

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

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

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

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

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

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

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

175 (8) Any person who owns or operates a facility or site required to have an approved
176 hazardous waste operation plan under this section and who has pending a permit application
177 before the United States Environmental Protection Agency shall be treated as having an
178 approved plan until final administrative disposition of the permit application is made under this
179 section, unless the board determines that final administrative disposition of the application has
180 not been made because of the failure of the owner or operator to furnish any information

181 requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource
182 Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

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

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

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

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

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

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

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

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

211 (a) evidence that the proposed commercial facility has a proven market of

212 nonhazardous solid or hazardous waste, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste
246 facilities in existence or to applications filed or pending in the department prior to April 24,
247 1989, that are determined by the executive secretary on or before December 31, 1990, to be
248 complete, in accordance with state and federal requirements applicable to operation plans for
249 hazardous waste facilities.

250 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous
251 solid waste facility in existence or to an application filed or pending in the department prior to
252 January 1, 1990, that is determined by the executive secretary, on or before December 31,
253 1990, to be complete in accordance with state and federal requirements applicable to operation
254 plans for nonhazardous solid waste facilities.

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

261 (17) This section may not be construed to exempt any facility from applicable
262 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
263 2114.

FISCAL NOTE

S.B. 68 1st Sub. (Green)

SHORT TITLE: **Solid Waste Amendments**

SPONSOR: **Van Tassell, K.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.