

1 **WASTE MANAGEMENT FACILITIES SITING AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ronda Rudd Menlove**

5 Senate Sponsor: Curtis S. Bramble

6

LONG TITLE

7 **General Description:**

8 This bill modifies provisions relating to the information required for a proposed
9 nonhazardous solid or hazardous waste operation plan.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies provisions relating to the information required for a proposed
- 13 nonhazardous solid or hazardous waste operation plan; and
- 14 ▶ makes technical changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **19-6-108**, as last amended by Laws of Utah 2012, Chapter 360

22

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

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

24 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
25 **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;

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; or

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51 operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

52 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
53 tonnage specified for the trial burn in the operation plan or the operation plan application if no
54 operation plan approval has been issued as of January 1, 1990, and on annual operations of
55 7,000 hours.

56 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the
57 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of
58 hazardous waste without first submitting and receiving the approval of the director for an

59 operation plan for that facility or site.

60 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an
61 operation plan may submit to the director information, a report, a plan, or other request for
62 approval for a proposed activity under an operation plan:

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

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

67 (B) The director may not:

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

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

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

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

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

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

82 (C) cement kiln dust wastes.

83 (c) (i) No person may construct a facility listed under Subsection (3)(c)(ii) until the
84 person receives:

85 (A) local government approval and the approval described in Subsection (3)(a);

86 (B) approval from the Legislature; and

87 (C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B),
88 approval from the governor.

89 (ii) A facility referred to in Subsection (3)(c)(i) is:

90 (A) a commercial nonhazardous solid waste disposal facility;

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

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

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

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

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

104 (iv) The required approvals described in Subsection (3)(c)(i) for a facility described in
105 Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to
106 another person for five years after the day on which the governor's approval is received.

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

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

119 (f) Any person owning or operating a facility or site on or before November 19, 1980,
120 who has given timely notification as required by Section 3010 of the Resource Conservation

121 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed
122 hazardous waste plan under this section for that facility or site, may continue to operate that
123 facility or site without violating this section until the plan is approved or disapproved under
124 this section.

125 (g) (i) The director shall suspend acceptance of further applications for a commercial
126 nonhazardous solid or hazardous waste facility upon a finding that the director cannot
127 adequately oversee existing and additional facilities for permit compliance, monitoring, and
128 enforcement.

129 (ii) The director shall report any suspension to the Natural Resources, Agriculture, and
130 Environment Interim Committee.

131 (4) The director shall review each proposed nonhazardous solid or hazardous waste
132 operation plan to determine whether that plan complies with the provisions of this part and the
133 applicable rules of the board.

134 (5) (a) If the facility is a class I or class II facility, the director shall approve or
135 disapprove that plan within 270 days from the date it is submitted.

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

139 (c) (i) If the plan for a class I or II facility is determined to be complete, the director
140 shall issue a notice of completeness.

141 (ii) If the plan is determined by the director to be incomplete, the director shall issue a
142 notice of deficiency, listing the additional information to be provided by the owner or operator
143 to complete the plan.

144 (d) The director shall review information submitted in response to a notice of
145 deficiency within 30 days after receipt.

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

148 (i) time awaiting response from the owner or operator to requests for information
149 issued by the director;

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

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

153 (6) (a) If the facility is a class III or class IV facility, the director shall approve or
154 disapprove that plan within 365 days from the date it is submitted.

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

156 (i) time awaiting response from the owner or operator to requests for information
157 issued by the director;

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

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

161 (7) If, within 365 days after receipt of a modification plan or closure plan for any
162 facility, the director determines that the proposed plan, or any part of it, will not comply with
163 applicable rules, the director shall issue an order prohibiting any action under the proposed plan
164 for modification or closure in whole or in part.

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

173 (9) ~~[No]~~ The director may not approve a proposed nonhazardous solid or hazardous
174 waste operation plan [may be approved] unless [it] the plan contains the information that the
175 board requires, including:

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

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

183 (c) consistent with the degree and duration of risks associated with the disposal of
184 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,
185 evidence of financial responsibility in whatever form and amount that the director determines is
186 necessary to insure continuity of operation and that upon abandonment, cessation, or
187 interruption of the operation of the facility or site, all reasonable measures consistent with the
188 available knowledge will be taken to insure that the waste subsequent to being treated, stored,
189 or disposed of at the site or facility will not present a hazard to the public or the environment;

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

192 (e) plans, specifications, and other information that the director considers relevant to
193 determine whether the proposed nonhazardous solid or hazardous waste operation plan will
194 comply with this part and the rules of the board; ~~and~~

195 (f) compliance schedules, where applicable, including schedules for corrective action
196 or other response measures for releases from any solid waste management unit at the facility,
197 regardless of the time the waste was placed in the unit[-];

198 (g) for a proposed operation plan submitted on or after July 1, 2013, for a new solid or
199 hazardous waste facility, a traffic impact study that:

200 (i) takes into consideration the safety, operation, and condition of roadways serving the
201 proposed facility; and

202 (ii) is reviewed and approved by the Department of Transportation or a local highway
203 authority, whichever has jurisdiction over each road serving the proposed facility, with the cost
204 of the review paid by the person who submits the proposed operation plan; and

205 (h) for a proposed operation plan submitted on or after July 1, 2013, for a new
206 nonhazardous solid waste facility owned or operated by a local government, financial
207 information that discloses all costs of establishing and operating the facility, including:

208 (i) land acquisition and leasing;

209 (ii) construction;

210 (iii) estimated annual operation;

211 (iv) equipment;

212 (v) ancillary structures;

213 (vi) roads;

214 (vii) transfer stations; and
215 (viii) using other operations that are not contiguous to the proposed facility but are
216 necessary to support the facility's construction and operation.

217 (10) The director may not approve a commercial nonhazardous solid or hazardous
218 waste operation plan that meets the requirements of Subsection (9) unless it contains the
219 information required by the board, including:

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

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

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

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

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

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

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

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

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

239 (c) compliance history of an owner or operator of a proposed commercial
240 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be
241 applied by the director in a nonhazardous solid or hazardous waste operation plan decision,
242 including any plan conditions.

243 (11) The director may not approve a commercial nonhazardous solid or hazardous
244 waste facility operation plan unless based on the application, and in addition to the

245 determination required in Subsections (9) and (10), the director determines that:

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

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

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

252 (13) The director shall review all approved nonhazardous solid and hazardous waste
253 operation plans at least once every five years.

254 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste
255 facilities in existence or to applications filed or pending in the department prior to April 24,
256 1989, that are determined by the executive secretary of the board on or before December 31,
257 1990, to be complete, in accordance with state and federal requirements applicable to operation
258 plans for hazardous waste facilities.

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

264 (16) Nonhazardous solid waste generated outside of this state that is defined as
265 hazardous waste in the state where it is generated and which is received for disposal in this
266 state may not be disposed of at a nonhazardous waste disposal facility owned and operated by
267 local government or a facility under contract with a local government solely for disposal of
268 nonhazardous solid waste generated within the boundaries of the local government, unless
269 disposal is approved by the director.

270 (17) This section may not be construed to exempt any facility from applicable
271 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
272 2114.

Legislative Review Note
as of 2-20-13 4:45 PM

Office of Legislative Research and General Counsel