

**WASTE REGULATION MODIFICATIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel Hemmert**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies regulations in regard to nonhazardous solid waste.

**Highlighted Provisions:**

This bill:

- ▶ provides conditions under which a constructed facility with an approved operation plan may change class of designation;
- ▶ modifies information that the director reviews before approving an operation plan;
- ▶ repeals provisions related to approval of certain plans; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**19-6-108**, as last amended by Laws of Utah 2017, Chapter 281

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

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

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



28 **facility or site -- Administrative and legislative approval required -- Exemptions from**  
29 **legislative and gubernatorial approval -- Time periods for review -- Information required**  
30 **-- Other conditions -- Revocation of approval -- Periodic review.**

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

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

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

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

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

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

53 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
54 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
55 operation plan approval has been issued as of January 1, 1990, and on annual operations of  
56 7,000 hours.

57 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the  
58 purpose of transferring, treating, or disposing of nonhazardous solid waste or treating, storing,

59 or disposing of hazardous waste without first submitting and receiving the approval of the  
60 director for an operation plan for that facility or site.

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

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

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

68 (B) The director may not:

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

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

74 (b) (i) Except for facilities that receive the following wastes solely for the purpose of  
75 recycling, reuse, or reprocessing, ~~no~~ a person may not own, construct, modify, or operate  
76 ~~any~~ a commercial facility that accepts for treatment or disposal, with the intent to make a  
77 profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and  
78 receiving the approval of the director for an operation plan for that facility site.

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

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

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

83 (C) cement kiln dust wastes.

84 (c) (i) ~~No~~ A person may not construct a facility listed under Subsection (3)(c)(ii) until  
85 the person receives:

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

87 (B) approval from the Legislature; and

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

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

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

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

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

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

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

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

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

108 (d) ~~[No]~~ A person does not need to obtain gubernatorial or legislative approval for the  
109 construction of a hazardous waste facility for which an operating plan has been approved by or  
110 submitted for approval to the executive secretary of the board under this section before April  
111 24, 1989, and which has been determined, on or before December 31, 1990, by the executive  
112 secretary of the board to be complete, in accordance with state and federal requirements for  
113 operating plans for hazardous waste facilities even if a different geographic site is subsequently  
114 submitted.

115 (e) ~~[No]~~ A person does not need to obtain gubernatorial and legislative approval for the  
116 construction of a commercial nonhazardous solid waste disposal facility for which an operation  
117 plan has been approved by or submitted for approval to the executive secretary of the board  
118 under this section on or before January 1, 1990, and which, on or before December 31, 1990,  
119 the executive secretary of the board determines to be complete, in accordance with state and  
120 federal requirements applicable to operation plans for nonhazardous solid waste facilities.

121 (f) ~~[Any]~~ A person owning or operating a facility or site on or before November 19,  
122 1980, who has given timely notification as required by Section 3010 of the Resource  
123 Conservation and Recovery Act of 1976, 42 U.S.C. ~~[Section]~~ Sec. 6921, et seq., and who has  
124 submitted a proposed hazardous waste plan under this section for that facility or site, may  
125 continue to operate that facility or site without violating this section until the plan is approved  
126 or disapproved under this section.

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

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

133 (h) A permittee may convert a class I facility to a class V nonhazardous solid waste  
134 facility without obtaining approval from the director of a new operation plan, a new permit, or  
135 a permit modification if:

136 (i) the director approved an operation plan for the class I facility;

137 (ii) the class I facility is constructed;

138 (iii) the Legislature approves the class V nonhazardous solid waste facility;

139 (iv) the governor approves the class V nonhazardous solid waste facility; and

140 (v) the wastes to be received at the class V facility for treatment or disposal are wastes  
141 that were approved in the original class I operation plan.

142 (4) The director shall review ~~[each]~~ a proposed nonhazardous solid or hazardous waste  
143 operation plan to determine whether that plan complies with ~~[the provisions of]~~ this part and  
144 the applicable rules of the board.

145 (5) (a) If the facility is a class I or class II facility, the director shall approve or  
146 disapprove that plan within 270 days from the date ~~[it]~~ the plan is submitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176 (8) ~~[Any]~~ A person who owns or operates a facility or site required to have an  
177 approved hazardous waste operation plan under this section and who has pending a permit  
178 application before the United States Environmental Protection Agency shall be treated as  
179 having an approved plan until final administrative disposition of the permit application is made  
180 under this section, unless the director determines that final administrative disposition of the  
181 application has not been made because of the failure of the owner or operator to furnish any  
182 information requested, or the facility's interim status has terminated under Section 3005 (e) of

183 the Resource Conservation and Recovery Act, 42 U.S.C. [~~Section~~] Sec. 6925 (e).

184 (9) The director may not approve a proposed nonhazardous solid or hazardous waste  
185 operation plan unless the [~~plan contains the information that the board requires, including~~]  
186 director has reviewed the following:

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

189 (b) evidence that the transfer, treatment, or disposal of nonhazardous solid waste or  
190 treatment, storage, or disposal of hazardous waste;

191 (i) will not be done in a manner that may cause or significantly contribute to an  
192 increase in mortality[;];

193 (ii) an increase in serious irreversible or incapacitating reversible illness[;]; or

194 (iii) pose a substantial present or potential hazard to human health or the environment;

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

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

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

208 (f) compliance schedules, where applicable, including schedules for corrective action  
209 or other response measures for releases from any solid waste management unit at the facility,  
210 regardless of the time the waste was placed in the unit; and

211 (g) for a proposed operation plan submitted on or after July 1, 2013, for a new solid or  
212 hazardous waste facility other than a water treatment facility that treats, stores, or disposes  
213 site-generated solid or hazardous waste onsite, a traffic impact study that:

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

216 (ii) is reviewed and approved by the Department of Transportation or a local highway  
217 authority, whichever has jurisdiction over each road serving the proposed facility, with the cost  
218 of the review paid by the person who submits the proposed operation plan~~[-and].~~

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

222 ~~[(i) land acquisition and leasing;]~~

223 ~~[(ii) construction;]~~

224 ~~[(iii) estimated annual operation;]~~

225 ~~[(iv) equipment;]~~

226 ~~[(v) ancillary structures;]~~

227 ~~[(vi) roads;]~~

228 ~~[(vii) transfer stations; and]~~

229 ~~[(viii) using other operations that are not contiguous to the proposed facility but are  
230 necessary to support the facility's construction and operation.]~~

231 ~~[(10) The director may not approve a commercial nonhazardous solid or hazardous  
232 waste operation plan that meets the requirements of Subsection (9) unless it contains the  
233 information required by the board, including:]~~

234 ~~[(a) evidence that the proposed commercial facility has a proven market of  
235 nonhazardous solid or hazardous waste, including:]~~

236 ~~[(i) information on the source, quantity, and price charged for treating, storing, and  
237 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;]~~

238 ~~[(ii) a market analysis of the need for a commercial facility given existing and potential  
239 generation of nonhazardous solid or hazardous waste in the state and regionally; and]~~

240 ~~[(iii) a review of other existing and proposed commercial nonhazardous solid or  
241 hazardous waste facilities regionally and nationally that would compete for the treatment,  
242 storage, or disposal of the nonhazardous solid or hazardous waste;]~~

243 ~~[(b) a description of the public benefits of the proposed facility, including:]~~

244 ~~[(i) the need in the state for the additional capacity for the management of~~



245 ~~nonhazardous solid or hazardous waste;~~

246 ~~[(ii) the energy and resources recoverable by the proposed facility;]~~

247 ~~[(iii) the reduction of nonhazardous solid or hazardous waste management methods,~~

248 ~~which are less suitable for the environment, that would be made possible by the proposed~~

249 ~~facility; and]~~

250 ~~[(iv) whether any other available site or method for the management of hazardous~~

251 ~~waste would be less detrimental to the public health or safety or to the quality of the~~

252 ~~environment; and]~~

253 ~~[(c)] (10) The director may not approve a proposed nonhazardous solid or hazardous~~

254 ~~waste operation plan unless the director has reviewed the~~ compliance history of an owner or

255 operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage,

256 or disposal facility, which may be applied by the director in a nonhazardous solid or hazardous

257 waste operation plan decision, including any plan conditions.

258 ~~[(11) The director may not approve a commercial nonhazardous solid or hazardous~~

259 ~~waste facility operation plan unless based on the application, and in addition to the~~

260 ~~determination required in Subsections (9) and (10), the director determines that:]~~

261 ~~[(a) the probable beneficial environmental effect of the facility to the state outweighs~~

262 ~~the probable adverse environmental effect; and]~~

263 ~~[(b) there is a need for the facility to serve industry within the state:]~~

264 ~~[(12)] (11) Approval of a nonhazardous solid or hazardous waste operation plan may~~

265 be revoked, in whole or in part, if the person to whom approval of the plan has been given fails

266 to comply with that plan.

267 ~~[(13)] (12) The director shall review all approved nonhazardous solid and hazardous~~

268 ~~waste operation plans at least once every five years.~~

269 ~~[(14)] (13) [The provisions of Subsections (10) and (11) do]~~ Subsection (10) does not

270 apply to hazardous waste facilities in existence or to applications filed or pending in the

271 department [prior to] before April 24, 1989, that are determined by the executive secretary of

272 the board on or before December 31, 1990, to be complete, in accordance with state and federal

273 requirements applicable to operation plans for hazardous waste facilities.

274 ~~[(15)] (14) [The provisions of] Subsections (9)[,] and (10)[, and (11)] do not apply to a~~

275 nonhazardous solid waste facility in existence or to an application filed or pending in the

276 department [~~prior to~~] before January 1, 1990, that is determined by the director, on or before  
277 December 31, 1990, to be complete in accordance with state and federal requirements  
278 applicable to operation plans for nonhazardous solid waste facilities.

279 [~~(16)~~] (15) Nonhazardous solid waste generated outside of this state that is defined as  
280 hazardous waste in the state where it is generated and which is received for disposal in this  
281 state may not be disposed of at a nonhazardous waste disposal facility owned and operated by  
282 local government [~~or a facility under contract with a local government solely for disposal of~~  
283 ~~nonhazardous solid waste generated within the boundaries of the local government~~], unless  
284 disposal is approved by the director.

285 [~~(17)~~] (16) This section may not be construed to exempt [~~any~~] a facility from  
286 applicable regulation under the federal Atomic Energy Act, 42 U.S.C. [~~Sections~~] Sec. 2014 and  
287 2021 through 2114.