

**Representative Timothy D. Hawkes** proposes the following substitute bill:

**APPROVAL OF NONHAZARDOUS SOLID OR HAZARDOUS**

**WASTE FACILITIES**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Timothy D. Hawkes**

Senate Sponsor: Scott D. Sandall

**LONG TITLE**

**General Description:**

This bill addresses process of obtaining approval of nonhazardous solid or hazardous waste facilities.

**Highlighted Provisions:**

This bill:

- ▶ addresses legislative approval and automatic revocation of that approval; 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 2020, Chapter 256

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

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 -- Approval required -- Exemptions from legislative and gubernatorial**  
28 **approval -- Time periods for review -- Information required -- Other conditions --**  
29 **Automatic 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)(iv) or  
52 (v).

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) Except as specified in Subsection (3)(a)(ii)(C), a person may not own,  
58 construct, modify, or operate a facility or site for the purpose of transferring, treating, or  
59 disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste  
60 without first submitting and receiving the approval of the director for an operation plan for that  
61 facility or site.

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

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

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

69 (B) The director may not:

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

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

75 (C) A facility referred to in Subsection (3)(a)(i) does not include a facility when the  
76 waste from the extraction, beneficiation, and processing of ores and minerals listed in 40  
77 C.F.R. Sec. 261.4(b)(7)(ii), or cement kiln dust, is generated and the disposal occurs at an  
78 on-site location owned and operated by the generator of the waste.

79 (b) (i) Except for a facility that receives the following wastes solely for the purpose of  
80 recycling, reuse, or reprocessing, a person may not own, construct, modify, or operate any  
81 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any  
82 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving  
83 the approval of the director for an operation plan for that facility site.

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

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

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

88 (C) cement kiln dust wastes.

89 (c) (i) A person may not construct a facility listed under Subsection (3)(c)(ii) until the  
90 person receives:

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

92 (B) approval from the Legislature that, on and after May 5, 2021, is required to be  
93 obtained after the person submits an application under this section; and

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

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

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

98 (B) except for a facility that receives a waste listed in Subsection (3)(c)(iii), solely for  
99 the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for  
100 treatment or disposal, with the intent to make a profit; or

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

102 (iii) Subsection (3)(c)(ii)(B) applies to the following wastes:

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

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

106 (C) cement kiln dust wastes.

107 (iv) The required approvals described in Subsection (3)(c)(i) for a facility described in  
108 Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

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

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

113 (v) For legislative approval described in Subsection (3)(c)(i)(B), the required  
114 legislative approval for a facility described in Subsection (3)(c)(ii) is automatically revoked if;

115 (A) after receiving the legislative approval, the person seeking to construct the facility  
116 withdraws the application submitted under this section by providing the division a written  
117 statement of withdrawal for the facility that is the basis of the legislative approval; or

118 (B) after five years from the day on which the required legislative approval takes effect,

119 the application for the facility is not approved by the division.

120 [~~(v)~~] (vi) The required approvals described in Subsection (3)(c)(i) for a facility  
121 described in Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not  
122 transferrable to another person for five years after the day on which the governor's approval is  
123 received.

124 (d) A person need not obtain gubernatorial or legislative approval for the construction  
125 of a hazardous waste facility for which an operating plan has been approved by or submitted  
126 for approval to the executive secretary of the board under this section before April 24, 1989,  
127 and which has been determined, on or before December 31, 1990, by the executive secretary of  
128 the board to be complete, in accordance with state and federal requirements for operating plans  
129 for hazardous waste facilities even if a different geographic site is subsequently submitted.

130 (e) A person need not obtain gubernatorial and legislative approval for the construction  
131 of a commercial nonhazardous solid waste disposal facility for which an operation plan has  
132 been approved by or submitted for approval to the executive secretary of the board under this  
133 section on or before January 1, 1990, and which, on or before December 31, 1990, the  
134 executive secretary of the board determines to be complete, in accordance with state and  
135 federal requirements applicable to operation plans for nonhazardous solid waste facilities.

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

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

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

148 (4) The director shall review a proposed nonhazardous solid or hazardous waste  
149 operation plan to determine whether that plan complies with this part and the applicable rules

150 of the board.

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

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

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

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

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

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

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

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

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

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

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

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

175 (ii) time required for public participation and hearings for issuance of plan approvals;  
176 and

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

178 (7) If, within 365 days after receipt of a modification request or closure plan for any  
179 facility, the director determines that the proposed plan or request, or any part of the proposed  
180 plan or request, will not comply with applicable rules, the director shall issue an order

181 prohibiting any action under the proposed plan or request for modification or closure in whole  
182 or in part.

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

191 (9) The director may not approve a proposed nonhazardous solid or hazardous waste  
192 operation plan unless the plan contains the information that the board requires, including:

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

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

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

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

211 (e) plans, specifications, and other information that the director considers relevant to

212 determine whether the proposed nonhazardous solid or hazardous waste operation plan will  
213 comply with this part and the rules of the board;

214 (f) compliance schedules, when applicable, including schedules for corrective action or  
215 other response measures for releases from a solid waste management unit at the facility,  
216 regardless of the time the waste was placed in the unit;

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

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

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

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

228 (i) land acquisition and leasing;

229 (ii) construction;

230 (iii) estimated annual operation;

231 (iv) equipment;

232 (v) ancillary structures;

233 (vi) roads;

234 (vii) transfer stations; and

235 (viii) using other operations that are not contiguous to the proposed facility but are  
236 necessary to support the facility's construction and operation.

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

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

242 (i) information on the source, quantity, and price charged for treating, storing, and



243 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

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

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

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

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

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

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

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

257 and

258 (c) compliance history of an owner or operator of a proposed commercial  
259 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, that may be  
260 applied by the director in a nonhazardous solid or hazardous waste operation plan decision,  
261 including any plan conditions.

262 (11) The director may not approve a commercial nonhazardous solid or hazardous  
263 waste facility operation plan unless based on the application, and in addition to the  
264 determination required in Subsections (9) and (10), the director determines that:

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

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

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

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

273 (14) Subsections (10) and (11) do not apply to a hazardous waste facility in existence or

274 to an application filed or pending in the department before April 24, 1989, that are determined  
275 by the executive secretary of the board on or before December 31, 1990, to be complete, in  
276 accordance with state and federal requirements applicable to operation plans for hazardous  
277 waste facilities.

278 (15) Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility  
279 in existence or to an application filed or pending in the department before January 1, 1990, that  
280 is determined by the director, on or before December 31, 1990, to be complete in accordance  
281 with state and federal requirements applicable to operation plans for nonhazardous solid waste  
282 facilities.

283 (16) Nonhazardous solid waste generated outside of this state that is defined as  
284 hazardous waste in the state where the nonhazardous solid waste is generated and that is  
285 received for disposal in this state may not be disposed of at a nonhazardous waste disposal  
286 facility owned and operated by local government or a facility under contract with a local  
287 government solely for disposal of nonhazardous solid waste generated within the boundaries of  
288 the local government, unless disposal is approved by the director.

289 (17) This section may not be construed to exempt a facility from applicable regulation  
290 under the federal Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.