

HB0399S01 compared with HB0399

~~{deleted text}~~ shows text that was in HB0399 but was deleted in HB0399S01.

inserted text shows text that was not in HB0399 but was inserted into HB0399S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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- ▶ addresses legislative approval and automatic revocation of that approval ~~{if an application is withdrawn}~~; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

HB0399S01 compared with HB0399

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:

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Automatic revocation of approval -- Periodic review.

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

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

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

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

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

HB0399S01 compared with HB0399

operation plan if the initial approval is subsequent to January 1, 1990; or

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

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

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

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

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

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

(B) The director may not:

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

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

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

(b) (i) Except for a facility that receives the following wastes solely for the purpose of

HB0399S01 compared with HB0399

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

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

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

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

(C) cement kiln dust wastes.

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

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

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

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

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

(A) a commercial nonhazardous solid waste disposal facility;

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

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

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

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

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

(C) cement kiln dust wastes.

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

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

HB0399S01 compared with HB0399

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

~~(v) For legislative approval described in Subsection (3)(c)(i)(B) if issued on or after January 1, 2015, the required legislative approval for a facility described in Subsection (3)(c)(ii) is automatically revoked if it:~~

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

(B) after five years from the day on which the required legislative approval takes effect, the application for the facility is not approved by the division.

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

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

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

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

HB0399S01 compared with HB0399

this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0399S01 compared with HB0399

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

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

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

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

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

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

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

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

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

(c) consistent with the degree and duration of risks associated with the transfer, treatment, or disposal of nonhazardous solid waste or treatment, storage, or disposal of

HB0399S01 compared with HB0399

specified hazardous waste, evidence of financial responsibility in whatever form and amount that the director determines is necessary to ensure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, the reasonable measures consistent with the available knowledge will be taken to ensure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

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

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

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

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

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

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

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

- (i) land acquisition and leasing;
- (ii) construction;
- (iii) estimated annual operation;
- (iv) equipment;
- (v) ancillary structures;
- (vi) roads;

HB0399S01 compared with HB0399

(vii) transfer stations; and

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0399S01 compared with HB0399

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

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

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

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

(14) Subsections (10) and (11) do not apply to a hazardous waste facility in existence or to an application filed or pending in the department before April 24, 1989, that are determined by the executive secretary of the board on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.

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

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

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