

NEEDS ASSESSMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

LONG TITLE**General Description:**

This bill addresses a local government's ability to determine the necessity of a commercial nonhazardous solid waste facility.

Highlighted Provisions:

This bill:

▸ excludes from certain review requirements a commercial nonhazardous solid waste facility that a local government has determined is necessary.

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 2019, Chapter 152

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 -- Administrative and legislative 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 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)(iii).

(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 any 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

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

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

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

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

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

86 (C) cement kiln dust wastes.

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

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

(B) approval from the Legislature; 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 facilities that receive the following wastes 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: 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; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; or

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

(iii) 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

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

(iv) 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) Any 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. Section 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 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 each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of 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 it 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 all 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 it is submitted.

(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 plan or closure plan for any facility, the director determines that the proposed plan, or any part of it, will not comply with applicable rules, the director shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any 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. Section 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 it;

(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

183 or significantly contribute to an increase in mortality, an increase in serious irreversible or
184 incapacitating reversible illness, or pose a substantial present or potential hazard to human
185 health or the environment;

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

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

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

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

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

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

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

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

213 (i) land acquisition and leasing;

214 (ii) construction;
215 (iii) estimated annual operation;
216 (iv) equipment;
217 (v) ancillary structures;
218 (vi) roads;
219 (vii) transfer stations; and
220 (viii) using other operations that are not contiguous to the proposed facility but are
221 necessary to support the facility's construction and operation.

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

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

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

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

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

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

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

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

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

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

244 (c) compliance history of an owner or operator of a proposed commercial

nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which 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:

(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 all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to:

(a) hazardous waste facilities in existence or to applications filed or pending in the department prior to 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[-]; or

(b) a commercial nonhazardous solid waste facility operation plan that a local government demonstrates is necessary by providing the proposed nonhazardous solid waste facility with zoning permission and a conditional use permit.

(15) The provisions of 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 prior to 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 it is generated and which 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

276 nonhazardous solid waste generated within the boundaries of the local government, unless
277 disposal is approved by the director.

278 (17) This section may not be construed to exempt any facility from applicable
279 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
280 2114.