

REFERENCE TITLE: waste permits; disparate impact

State of Arizona
House of Representatives
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2001

HB 2457

Introduced by
Representatives Loredo, Avelar, Cardamone, Lopez L, Norris, Burton Cahill,
Brotherton, Landrum, Foster, Senator Valadez: Representatives Binder,
Camarot, Carruthers, Chase, Chevront, Clark, Giffords, Hershberger,
Laughter, Lugo, Pickens, Sedillo, Soltero, Tom, Weason, Senators Aguirre,
Jackson, Lopez J

AN ACT

AMENDING SECTIONS 49-761 AND 49-922, ARIZONA REVISED STATUTES; RELATING TO
THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-761, Arizona Revised Statutes, is amended to
3 read:

4 49-761. Rule making authority for solid waste facilities;
5 financial assurance; recycling facilities

6 A. The department shall adopt rules regarding the storage, processing,
7 treatment and disposal of solid waste as prescribed by subsections B through
8 M of this section. In adopting rules, the department shall consider the
9 nature of the waste streams at the facilities to be regulated. The
10 department shall also consider other applicable federal and state laws and
11 rules in an effort to avoid practices or requirements that duplicate, are
12 inconsistent with or will result in dual regulation with other applicable
13 rules and laws. In adopting rules for solid waste facilities, the director
14 may include requirements for corrective actions in response to a release, as
15 defined in section 49-281, from a solid waste facility that violates or
16 results in a violation of any provision of this chapter, rule ~~promulgated~~
17 **ADOPTED** pursuant to this chapter or solid waste facility plan approved
18 pursuant to this chapter. These rules shall be consistent with the
19 provisions of section 49-762.08, subsection B, subsection C, paragraphs 1 and
20 2, and subsections D and E.

21 B. For purposes of administering 42 United States Code section 6945,
22 as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference
23 except as prescribed by paragraph 2 of this subsection. This subsection, as
24 it applies to municipal solid waste landfills, governs if there is any
25 conflict between this subsection and any other statute relating to solid
26 waste. Municipal solid waste landfill facility plans submitted pursuant to
27 section 49-762 shall comply with this subsection. In administering this
28 subsection or in adopting or administering any rules adopted pursuant to this
29 subsection, the department shall ensure that any discretion allowed to a
30 director of an approved state pursuant to the federal regulations is
31 maintained. The following apply to the department's administration of 42
32 United States Code section 6945 and to the department's adoption of rules for
33 municipal solid waste landfills:

34 1. The department may adopt rules for municipal solid waste landfills.
35 Rules adopted pursuant to this paragraph shall not be more stringent than or
36 conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the
37 department may adopt aquifer protection standards that are more stringent
38 than 40 C.F.R. part 258 if those standards are consistent with and no more
39 stringent than standards developed pursuant to chapter 2, article 3 of this
40 title, or if the standards are adopted pursuant to article 9 of this chapter.
41 Rules adopted pursuant to this paragraph are effective on the concurrence of
42 the administrator with this state's municipal solid waste landfill program.

43 2. 40 C.F.R. part 258, table I is not adopted in its entirety. The
44 department shall use aquifer water quality standards that have been adopted
45 by the department pursuant to section 49-223 and shall use those portions of

1 table I that are more restrictive than the standards adopted pursuant to
2 section 49-223.

3 C. The department shall adopt rules for those solid waste land
4 disposal facilities that are not municipal solid waste landfills. Rules
5 adopted pursuant to this subsection shall not be more stringent than or
6 conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the
7 department may adopt aquifer protection standards that are more stringent
8 than 40 C.F.R. part 257 if these standards are consistent with and no more
9 stringent than standards developed pursuant to chapter 2, article 3 of this
10 title, or if the standards are adopted pursuant to article 9 of this chapter.
11 In administering this subsection, the department shall ensure that any
12 discretion allowed to a director of an approved state pursuant to the federal
13 regulations is maintained in the department's rules. Aquifer protection
14 provisions adopted pursuant to this subsection do not apply to an owner or
15 operator of a solid waste facility if the owner or operator submits an
16 administratively complete application for an aquifer protection permit
17 pursuant to chapter 2, article 3 of this title before the date that the owner
18 or operator is required to submit a solid waste facility plan.

19 D. The department shall adopt rules to define biohazardous medical
20 waste and to regulate biohazardous medical waste and medical sharps to
21 include all of the following:

22 1. A definition for biohazardous medical waste that includes wastes
23 that contain material that is likely to transmit etiologic agents that have
24 been shown to cause or contribute to increased human morbidity or mortality
25 of epidemiologic significance. The department shall consult with the
26 department of health services in making this determination.

27 2. Reasonably necessary rules regarding the storage, collection,
28 transportation, treatment and disposal of biohazardous medical waste and
29 medical sharps, beginning with the placement by the generator of the waste in
30 containers for the purpose of waste collection. In the case of self-hauling
31 of waste by the generator, all storage facilities under the generator's
32 control and all waste handling practices including storage, treatment and
33 transportation shall be in accordance with these rules. The department shall
34 also adopt reasonably necessary rules regarding the tracking of biohazardous
35 medical waste and medical sharps.

36 E. The department may adopt reasonably necessary rules regarding the
37 storage, collection, transportation, treatment and disposal of
38 nonbiohazardous medical waste beginning with the placement by the generator
39 of the waste in containers for the purpose of waste collection. In the case
40 of self-hauling of the waste by the generator, all storage facilities under
41 the generator's control and all waste handling practices including storage,
42 treatment and transportation shall be in accordance with these rules.

43 F. The department shall adopt rules for the application of sludge from
44 a wastewater treatment facility to land for use as fertilizer or beneficial
45 soil amendment. For purposes of this subsection, "sludge" has the same

1 meaning as sewage sludge as defined in 40 Code of Federal Regulations section
2 122.2 in effect on January 1, 1998.

3 G. The department shall adopt rules regarding the storage, processing,
4 treatment or disposal of solid waste at solid waste facilities that are
5 identified in section 49-762.01. The rules shall allow the owner or operator
6 to certify compliance with the department's statutes and rules in lieu of
7 obtaining a solid waste facility plan approval. The rules shall provide that
8 the applicant at its option may request approval of a solid waste facility
9 plan rather than certifying compliance.

10 H. The department shall issue by rule best management practices for
11 the classes of solid waste facilities set forth in section 49-762.02.

12 I. The department shall adopt reasonably necessary rules establishing
13 minimum standards for storing, collecting, transporting, disposing and
14 reclaiming solid waste, including garbage, trash, rubbish, manure and other
15 objectionable wastes. These rules shall provide for inspecting premises,
16 containers, processes, equipment and vehicles, and for abating as
17 environmental nuisances any premises, containers, processes, equipment or
18 vehicles that do not comply with the minimum standards of these rules. The
19 rules adopted pursuant to this subsection do not apply to sites that are
20 either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted by
21 section 49-701, paragraph 29 or section 49-701.01. Notwithstanding any other
22 provision of this subsection, rules adopted pursuant to this subsection shall
23 apply to defining environmental nuisances pursuant to section 49-141.

24 J. The department shall adopt rules relating to financial assurance
25 requirements. The rules shall indicate the types of financial assurance
26 mechanisms to be required and the content, terms and conditions of each
27 financial mechanism, including circumstances under which the department may
28 take action on the financial assurance mechanism for facility closure,
29 postclosure care if necessary and corrective action for known releases. The
30 financial assurance mechanisms shall include all of the following:

- 31 1. Surety bond.
- 32 2. Certificate of deposit.
- 33 3. Trust fund with pay-in period.
- 34 4. Letter of credit.
- 35 5. Insurance policy.
- 36 6. Certificate of self-insurance.
- 37 7. Deposit with the state treasurer.
- 38 8. Evidence of ability to meet any of the following:
 - 39 (a) Corporate financial test.
 - 40 (b) Local government financial test.
 - 41 (c) Corporate guarantee test.
 - 42 (d) Local government guarantee test.
 - 43 (e) Political subdivision financial test that shall require the
44 department to consider the entity's bond rating, income stream, assets,
45 liabilities and assessed valuation of taxable property.

1 9. Multiple financial assurance mechanisms.

2 10. Additional financial assurance mechanisms that may be acceptable to
3 the director.

4 K. The department shall adopt rules that prescribe standards to be
5 used in determining if a site is a recycling facility.

6 L. The director may adopt rules that prescribe standards to be used in
7 determining if a solid waste facility includes significant solid waste
8 transfer activities that warrant the facility's regulation as a transfer
9 facility.

10 M. The department shall adopt facility design, construction,
11 operation, closure and postclosure maintenance rules for biosolids processing
12 facilities and household waste composting facilities that must obtain plan
13 approval pursuant to section 49-762.

14 N. THE DEPARTMENT SHALL ADOPT RULES FOR THE SITING OF A FACILITY THAT
15 PROVIDE THAT BEFORE ISSUING A PERMIT PURSUANT TO THIS ARTICLE THE DEPARTMENT
16 SHALL CONSIDER WHETHER APPROVAL OF THE PROPOSED PERMIT WILL HAVE A DISPARATE
17 IMPACT OR WILL ADD TO AN EXISTING DISPARATE IMPACT ON A RACIAL OR ETHNIC
18 POPULATION. THE RULES SHALL PROVIDE FOR CONSIDERATION OF DEMOGRAPHIC,
19 GEOGRAPHIC, ECONOMIC, AND HUMAN HEALTH AND RISK FACTORS. THE DEPARTMENT
20 SHALL PROVIDE NOTICE TO THE APPLICANT OF ITS PRELIMINARY FINDINGS OF ANY
21 DISPARATE IMPACT AND SHALL PROVIDE THE APPLICANT AND ANY OTHER INTERESTED
22 PERSONS AT LEAST SIXTY DAYS TO COMMENT IN WRITING TO THE DEPARTMENT REGARDING
23 THE PRELIMINARY FINDINGS. THE DEPARTMENT MAY HOLD A HEARING TO RECEIVE
24 ADDITIONAL COMMENTS FROM THE APPLICANT AND OTHER INTERESTED PERSONS. THE
25 DEPARTMENT SHALL CONSIDER THE SUBMITTED COMMENTS AND THE DIRECTOR SHALL ISSUE
26 A DECISION WITHIN SIXTY DAYS AFTER THE END OF THE COMMENT PERIOD. IF THE
27 DIRECTOR DETERMINES THAT APPROVAL OF THE PROPOSED PERMIT WILL HAVE A
28 DISPARATE IMPACT OR WILL ADD TO AN EXISTING DISPARATE IMPACT ON A RACIAL OR
29 ETHNIC POPULATION, THE DIRECTOR SHALL DENY THE REQUESTED ACTION.

30 Sec. 2. Section 49-922, Arizona Revised Statutes, is amended to read:
31 49-922. Department rules and standards; prohibited permittees

32 A. The director shall adopt rules to establish a hazardous waste
33 management program equivalent to and consistent with the federal hazardous
34 waste regulations promulgated pursuant to subtitle C of the federal act.
35 Federal hazardous waste regulations may be adopted by reference. The
36 director shall not adopt a nonprocedural standard that is more stringent than
37 or conflicts with those found in 40 Code of Federal Regulations ~~sections~~
38 ~~PARTS~~ 260 through 268, 270 through 272, 279 and 124. The director shall not
39 identify a waste as hazardous, if not so identified in the federal hazardous
40 waste regulations, unless the director finds, based on all the factors in 40
41 Code of Federal Regulations section 261.11(a)(1), (2),~~—~~ or (3), that the
42 waste may cause or significantly contribute to an increase in serious
43 irreversible, or incapacitating reversible, illness or pose a substantial
44 present or potential hazard to human health or the environment when it is
45 improperly treated, stored, transported, disposed ~~OF~~ or otherwise managed.

1 B. These rules shall establish criteria and standards for the
2 characteristics, identification, listing, generation, transportation,
3 treatment, storage and disposal of hazardous waste within this state. In
4 establishing the standards the director shall, where appropriate, distinguish
5 between new and existing facilities. The criteria and standards shall
6 include requirements respecting:

7 1. Maintaining records of hazardous waste identified under this
8 article and the manner in which the waste is generated, transported, treated,
9 stored or disposed.

10 2. Submission of reports, data, manifests and other information
11 necessary to ensure compliance with such standards.

12 3. The transportation of hazardous waste, including appropriate
13 packaging, labeling and marking requirements and requirements respecting the
14 use of a manifest system, which are consistent with the regulations of the
15 state and United States departments of transportation governing the
16 transportation of hazardous materials.

17 4. The operation, maintenance, location, design and construction of
18 hazardous waste treatment, storage or disposal facilities, including such
19 additional qualifications as to ownership, continuity of operation,
20 contingency plans, corrective actions and abatement of continuing releases,
21 monitoring and inspection programs, personnel training, closure and
22 postclosure requirements and financial responsibility as may be necessary and
23 appropriate.

24 5. Requiring a permit for a hazardous waste treatment, storage or
25 disposal facility including the modification and termination of permits, the
26 authority to continue activities and permits existing on July 27, 1983
27 consistent with the federal hazardous waste regulations, and the payment of a
28 reasonable application fee. The director shall establish and collect a
29 reasonable fee from the applicant to cover the cost of administrative
30 services and other expenses associated with evaluating the application and
31 issuing or denying the permit.

32 6. Providing the right of entry for inspection and sampling to ensure
33 compliance with the standards.

34 7. Providing for appropriate public participation in developing,
35 revising, implementing, amending and enforcing any rule, guideline,
36 information or program under this article consistent with the federal
37 hazardous waste program.

38 C. The director may refuse to issue a permit for a facility for
39 storage, treatment or disposal of hazardous waste to a person if any of the
40 following applies:

41 1. The person fails to demonstrate sufficient reliability, expertise,
42 integrity and competence to operate a hazardous waste facility.

43 2. The person has been convicted of, or pled guilty or no contest to,
44 a felony in any state or federal court during the five years before the date
45 of the permit application.

1 3. In the case of a corporation or business entity, if any of its
2 officers, directors, partners, key employees or persons or business entities
3 holding ten per cent or more of its equity or debt liability has been
4 convicted of, or pled guilty or no contest to, a felony in any state or
5 federal court during the five years before the date of the permit
6 application.

7 D. THE DEPARTMENT SHALL ADOPT RULES FOR THE SITING OF A FACILITY THAT
8 PROVIDE THAT BEFORE ISSUING A PERMIT PURSUANT TO THIS ARTICLE THE DEPARTMENT
9 SHALL CONSIDER WHETHER APPROVAL OF THE PROPOSED PERMIT WILL HAVE A DISPARATE
10 IMPACT OR WILL ADD TO AN EXISTING DISPARATE IMPACT ON A RACIAL OR ETHNIC
11 POPULATION. THE RULES SHALL PROVIDE FOR CONSIDERATION OF DEMOGRAPHIC,
12 GEOGRAPHIC, ECONOMIC, AND HUMAN HEALTH AND RISK FACTORS. THE DEPARTMENT
13 SHALL PROVIDE NOTICE TO THE APPLICANT OF ITS PRELIMINARY FINDINGS OF ANY
14 DISPARATE IMPACT AND SHALL PROVIDE THE APPLICANT AND ANY OTHER INTERESTED
15 PERSONS AT LEAST SIXTY DAYS TO COMMENT IN WRITING TO THE DEPARTMENT REGARDING
16 THE PRELIMINARY FINDINGS. THE DEPARTMENT MAY HOLD A HEARING TO RECEIVE
17 ADDITIONAL COMMENTS FROM THE APPLICANT AND OTHER INTERESTED PERSONS. THE
18 DEPARTMENT SHALL CONSIDER THE SUBMITTED COMMENTS AND THE DIRECTOR SHALL ISSUE
19 A DECISION WITHIN SIXTY DAYS AFTER THE END OF THE COMMENT PERIOD. IF THE
20 DIRECTOR DETERMINES THAT APPROVAL OF THE PROPOSED PERMIT WILL HAVE A
21 DISPARATE IMPACT OR WILL ADD TO AN EXISTING DISPARATE IMPACT ON A RACIAL OR
22 ETHNIC POPULATION, THE DIRECTOR SHALL DENY THE REQUESTED ACTION.

23 ~~D.~~ E. Nothing in this article shall affect the validity of any
24 existing rules adopted by the director that are equivalent to and consistent
25 with the federal hazardous waste regulations until new rules for hazardous
26 waste are adopted.

27 ~~E.~~ F. Nothing in this article shall authorize the regulation of small
28 quantity generators as defined by 40 Code of Federal Regulations section
29 261.5 in a manner inconsistent with the federal hazardous waste regulations.
30 However, the director may require reports of any small quantity generator or
31 group of small quantity generators regarding the treatment, storage,
32 transportation, disposal or management of hazardous waste if the hazardous
33 waste of such generator or generators may pose a substantial present or
34 potential hazard to human health or the environment when it is improperly
35 treated, stored, transported, disposed OF or otherwise managed.