



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens
Director

Waste Programs Division – Solid Waste Rule Development Process Stakeholder Workshop on Articles 4, 5, and 18 January 10, 2008

NOTES

A stakeholder workshop to obtain input and review possible modifications to articles 4, 5, and 18 of the draft Solid Waste Rule was held on January 10, 2008. Future workshops scheduled include:

Wednesday, January 23, 2008, 1:30 to 4:30 p.m.

Article 6. On-site Solid Waste Handling Facilities
Article 7. Intermediate Solid Waste Handling Facilities
Article 8. Solid Waste Treatment Facilities

Tuesday, February 5, 2008, 1:30 to 4:30 p.m.

Article 9. Solid Waste Composting Facilities

Thursday, February 14, 2008, 1:30 to 4:30 p.m.

Article 10. Recycling Facilities

Wednesday, February 20, 2008, 1:30 to 4:30 p.m.

Article 11. Municipal Solid Waste Landfills; Solid Waste Land Disposal Facilities; Closure and Post-closure for Specified Facilities Subject to Plan Approval; Biosolids Processing Facilities

Thursday, March 6, 2008, 1:30 to 4:30 p.m.

Article 3. Solid Waste; General Requirements

Thursday, March 13, 2008, 1:30 to 4:30 p.m.

Miscellaneous topics; “cleanup” of outstanding issues

Thursday, April 10, 2008, 1:30 to 4:30 p.m.

Review of revised draft

These workshops will be conducted using the draft rule text dated 9-10-07. The draft rule text can be found at: http://www.azdeq.gov/environ/waste/solid/download/swrule_091007.pdf

The stakeholder comments are noted below. Italicized comments were recorded from comment cards submitted by attendees. A list of attendees is attached to this document.

General stakeholder comments and questions:

- Why is the rule being changed now?
- The handouts with the changes to the draft rule are helpful. We would prefer to receive these prior to the meeting if at all possible.
- There are numerous places where plans have to be submitted to ADEQ within a certain number of days. There is rarely a deadline set for ADEQ to reply that they have received submissions, or to approve or disapprove. Gaps in licensing time frames may not address all of these issues.
- Applicability provisions are very confusing. Clarify whether a facility falls under one, both, or neither area.

Statutory Basis of Tiered Regulatory Approach

Mark Lewandowski reviewed statutory definitions and key provisions of statutes related to this rulemaking. Statutes cannot be changed as part of rulemaking; however, they provide a starting point. Rules clarify and interpret statutes. He noted that exemptions function independently.

Stakeholder comments and questions included:

- Due to the fact that this is a temporary purpose, I believe that storing waste tires to be transported for recycling or disposal should not be included.
- Are we exempt if we store tires for less than 90 days?
- Does ADEQ intend to provide guidance on whether a material is not a waste unless it is “discarded”? I recommend adopting the RCRA/federal guidance on this point.
- Do dairy and cattle operations fall under ARS § 49-701(29)?
- Are closed landfills exempted under the definition of a solid waste facility under exemption K?
- It is important for ADEQ to understand that solid waste facility rules apply to recycling. If on-site recycling triggers regulation, then people will avoid recycling. The uncertainty of regulatory burden is also a deterrent to recycling.
- I disagree with the interpretation that if a facility is listed in ARS § 49-762(A) this list trumps the statutory exemptions.
- Where there are conflicts in statute, the first priority is in interpreting both statutes as best as possible. Stating that one trumps another is discouraging.

Draft Rule Implementation of the Tiered Regulatory Approach

Martha Seaman reviewed the tiered approach and the procedural matrix, “Integrated Solid Waste Regulatory Framework: Procedural Requirements Matrix.” She noted that areas of confusion are often those things that are not stated in rule.

Stakeholder comments and questions included:

- ARS § 49-762.02(6)(a) lists BMPs in statute for a particular kind of facility. I think numbers i through v suggest what the Legislature meant by “BMPs.”
- Other than plan approval, there is not much of a difference between procedures for a small and large facility. This is not how a tiered approach should be structured.
- These requirements could be quite a burden to a small facility. We have a registered transfer station in the category of less than 180 cubic yards. It would be a burden to

keep these records and create these solid waste contingency plans. (*Staff noted ARS § 49-701(22) applies.*)

- A drop box should not be subject to such elaborate rules.
- It is problematic that some regulations apply to all facilities.
- A permit is essentially an approval. The problem with self-certification is that there is no regulatory certainty. Also, is there enough staff to handle permits if more facilities opted for the permit tier?
- Statute does state that the rules must distinguish based on type of facility and type of waste.
- ARS § 49-701.01(C) allows for exemptions for certain types of solid waste. Is the Director able to exempt any of the small sites, or allow for an exemption to certain requirements via petition in some similar manner? Perhaps non-environmentally threatening items could be excluded here.
- Could we volunteer a list of our operations, and have the agency tell us what tier we fall under?
- There may be a shortcoming in statutory language. Not all solid waste facilities are created equally. Can you consider a *de minimus* scheme that recognizes this?
- An increase in capacity exceeding 180 cubic yards triggers a difference in tier.
- 180 cubic yards is a throughput trigger, not a design capacity trigger.
- How do you measure cubic yards per day? On a true daily basis, or an average per day based on the yearly throughput?

Draft Rule Changes Based on Stakeholder Input & Additional Issues

Staff members reviewed possible draft rule text changes made in response to stakeholder input and discussed stakeholder concerns regarding articles 4, 5, and 18. Waste Programs Division Director Amanda Stone cautioned attendees that any draft language, as well as changes under consideration, are provisional during informal discussions such as these; all rule language is subject to the decisions that need to be made before formally proposing the rule. Stakeholder comments and questions are included below.

Article 4

- The details of Article 4 require an operator to create checks and reports, and do not recognize tiers.
- The type of waste should be considered. It is not considered in Article 4.
- Solid waste collection in rural areas may be reduced due to drop boxes being subject to these run-on/run-off requirements.

Section

R18-13-404

- Instead of having two documents, a solid waste facility plan and an operational plan, can't we take applicable measures and apply them?
 - Would changes in the operational plan be a Type III change?
 - What differentiates an operational procedural change from a Type III change? (*Staff note: Please see the list in 505 and provide input on what you think is appropriate.*)
- (B) – “Contingency plan.” – *Separate plan not needed with SWFP that covers emergency response.*

R18-13-407

- *Design 25-year and 24-hour is tough for small transfers and recycling. It will require a P.E.*
- Design requirements are actually more stringent than AZPDES.
- (C) – Facilities excluded from AZPDES are still subject to R18-13-407

R18-13-409

- *How will public drop boxes be addressed?*
(A) – *Open to the public, unmanned.*
(B) – *No site entrance, or container okay?*
(C) – *Unmanned or rural sites don't have these.*

R18-13-410

- Only a few areas of Article 6 apply, and the rest of the section is not applicable. (*Staff note: Non-applicable burning areas will be removed.*)
(A) – *“Establish a plan” for litter. A separate litter plan is not needed when the SWFP covers litter picking.*

R18-13-411

- How does this apply to tanks that are designed to drain liquid?
- Secondary containment should be no more stringent than spill prevention control and countermeasures (SPCC) requirements.
(B) – *How about a process “ancillary equipment” where semisolid waste is placed in a container that is designed to drain so that the now solid waste can be disposed of either (1) in that container or (2) removed from the container?*
(B)(2) – *Why not use revised (A)(3) for liquids as well? Liquids in ancillary equipment being liquid tight is an issue.*
(B)(3) – 280.11 only applies to tanks that carry certain types of liquids. 280.11 exemptions should be considered also.

Article 5

- Article 5 requires owner/operators to submit a significant amount of information, including making a demonstration and having this information sealed by a professional engineer. PEs would not be able to certify that all items required in Article 4 have been met. Some of Article 4 deals with operational, as opposed to design, matters
- The types of changes listed in Article 5 will mean that I have to notify ADEQ of a Type III change regarding stormwater maintenance. (*Staff note: We will consider how maintenance items are treated under types of changes.*)
- The procedural requirements for transfer facilities are regulatory overkill with no enhancement to the environment or public health.
- I am concerned about certification compliance – when regulations require demonstration vs. plan approval.
- What is design capacity?

- Depending on the number of trucks I apply and length of the workday, I could push 3,000 tons out of a 2,000-ton design.
- What is the agency’s intent in requiring notice of changes when all we change is hours of operation (eg., changing throughput from 3,000 to 4,000 tons) ? (*Staff note: Physical change was the intent.*)

Section

R18-13-501

- (E)(1) – This is hard to determine especially in rural areas where there are seasonal issues and variations due to winter visitors.
- (E)(3) – *This is a deterrent to process improvement.*
- (E)(3) – This should be better defined. For example, what if my box changes from aluminum to steel?
- (E)(5) – *Should say a design change, not BMP (silt fence) change.*

R18-13-505

- *When mentioning landfill gas (testing frequency, etc.) make sure to clarify that landfill gas is “explosive gas” definitions under Solid Waste, not landfill gas from GCCS covered by Air Permits.*
- 505 implies an increase. What if I cut my operation in half?
- Operating more efficiently should not be a Type III change.
- Because this is a new rule, everything might be considered “new” and therefore a Type III change. The language should be clarified to show that this is not the intent.
- (C)(2) – *Examine closely the language requiring a Type III notification for addition or removal of pollution control devices. Stormwater pollution prevention plan (SWPPD) under NPDES contemplate timely clauses to SWPPD for runoff controls that must be revised under current and NPDES regulations. SWPPDs don’t routinely (or not at all) require department review.*
- (C) – Some of these items may not need “detailed review by department.” Concept of detailed review needs to be worked in.

Article 18

- *Captive insurance should be allowed. Arizona has a strong regulation on captive insurance.*
- *Security bond provision – prohibits a company from owning more than 10% of entity to whom providing the bond.*
- *Corporate financial test – foreign companies have to have 90% of assets in U.S.?*
- I didn’t realize this would apply to the Pima County rural collection centers and unstaffed drop boxes. I am concerned about the financial assurance plan and other regulations that will apply to these sites.
- The cost to small facilities to go through financial assurance demonstration may cost \$10,000 for a drop box.
- I would encourage the agency to consider a default minimum, or some other method to lessen the burden.
- No one understands Article 18, that is why there are so few questions.

- By requiring 90 percent of assets for financial assurance to be U.S.-based, this will limit foreign corporations from operating facilities. This serves to discriminate against those with corporate headquarters outside of the U.S.

Section

R18-13-1803

- Where did the “six times” figure come from?
 - This “six times” rule is applying hazardous waste rules to non-hazardous waste.
- (A)(10)(b) – *Government financial test. Federal government may not be able to provide identification of source of funding due to the Federal Anti-Deficiency Act, 31 USC 1341.*
- (A, B) – Where does the 10% come from? (*Staff note: We will review this.*)

Facilitator Theresa Gunn reviewed stakeholder themes. Highlights include:

- The size of the facility is not taken into consideration in the tiered approach, which smaller facilities find problematic.
- Flexibility to address facility size and environmental impact should be considered.

Attendees and those participating via conference call included:

Louis Andersen, Town of Gilbert
John T. Barlow, Arizona Strip Landfill Corp.
Dave Bearden, WMI
Joy Bell, City of Phoenix
Michael G. Benschoter, Town of Gilbert
J. S. Biedenharn, Coconino County
William Black, City of Mesa
Garth Bowers, Cornerstone Environmental Group
Donna Carlson, CRM
Alan R. Chamberlain, APS-Palo Verde
Dean Cooke, Arizona Strip Landfill Corp.
Curtis Cox, Arizona Attorney General's Office
Barton Day, Bryan Cave LLP
Jeff Drumm, City of Tucson -- E.S.
David Eaker, Pima County DEQ-SWM
Joe Giudice, City of Phoenix
Reg Glos, Pinal County
Michael D. Harrington, CRM
Larry Hawke, Pima County DEQ
Christopher Henke, MCESD -- Solid Waste
Stephanie Hinson, Salt River Landfill

Jon Kawaguchi, City of Glendale
James Livingston, City of Scottsdale
Nancy Mangone, Mangone Law Firm
Jim Mikolatis, Tucson Env. Services
John Moody Miller, LaSota & Peters
Matt Morales, City of Flagstaff
Donna Moran, Town of Gilbert
Kelvin Moss, CAFO Workgroup
Karl Moyers, Santa Cruz County
Daniel Musgrove, Universal Entech, LLC
Mark Prein, APS
Barry Rinehart, CAP
Steven Ritter, City of Tucson
Ken Robinson, City of Flagstaff
Sheree Sepulveda, City of Chandler
Stephen Smith, Hydro Geo Chem, Inc.
Jacqueline Strong, City of Chandler
Marguerite Tan, PFFJ
Rich Thompson, Allied Waste
Mike Traubert, ADOT Office Env. Services
Bob Wallace, WIH Resource Group
David Wallis, Gallagher & Kennedy
Paul Worlie, Liquid Environmental Solutions