

REFERENCE TITLE: environment; budget reconciliation; 2012-2013

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2861

Introduced by
Representative Kavanagh (with permission of Committee on Rules)

AN ACT

AMENDING SECTIONS 44-1303, 44-1304.01, 49-104, 49-706, 49-747, 49-761, 49-762.03, 49-762.05, 49-855, 49-922 AND 49-931, ARIZONA REVISED STATUTES; MAKING A TRANSFER; RELATING TO ENVIRONMENT BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 44-1303, Arizona Revised Statutes, is amended to
3 read:

4 44-1303. Waste tire collection sites; registration

5 A. An owner or operator of a waste tire collection site, within six
6 months after September 27, 1990, shall register with the department of
7 environmental quality and provide the department with information concerning
8 the site's location and size and the approximate number of waste tires that
9 are stored at the site and shall initiate steps to comply with this article.

10 B. Any waste tire collection site that is established after ~~the~~
11 ~~effective date of this amendment to this section~~ JULY 20, 2011 shall register
12 with the department before beginning operation and shall pay a registration
13 fee. After ~~the effective date of this amendment to this section~~ JULY 20,
14 2011, the director shall establish by rule a registration fee, including a
15 maximum fee. As part of the rule making process, there must be public notice
16 and comment ~~and a review of the rule by the joint legislative budget~~
17 ~~committee. After September 30, 2013~~ BEGINNING JULY 1, 2012, the director
18 shall not increase that fee by rule without specific statutory authority for
19 the increase. Registration fees shall be deposited, pursuant to sections
20 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

21 Sec. 2. Section 44-1304.01, Arizona Revised Statutes, is amended to
22 read:

23 44-1304.01. Storage, disposal, discard or abandonment of used
24 motor vehicle tires; registration fees;
25 violation; classification; exception

26 A. It is unlawful to store one hundred or more used motor vehicle
27 tires outdoors as follows:

28 1. In any fashion that exceeds twenty feet in height.

29 2. In a pile that is more than one hundred fifty feet from a twenty
30 foot wide access route that allows fire control apparatus to approach the
31 pile. Access routes between and around tire piles shall be at least twenty
32 feet wide and maintained free of accumulations of rubbish, equipment or other
33 materials. Access routes shall be spaced so that a maximum grid system unit
34 of fifty feet by one hundred fifty feet is maintained.

35 3. Within three feet of any property line.

36 4. In any fashion that exceeds six feet in height if the used tires
37 are stored between three and ten feet of any property line.

38 5. Within fifty feet of any area in which smoking of tobacco or any
39 other substance by persons is permitted. "No smoking" signs shall be posted
40 in suitable and conspicuous locations.

41 6. At any area in which the used motor vehicle tires are stored and in
42 which electrical wiring, fixtures or appliances do not comply with the
43 national electrical code.

7. Without placing class "2A-10BC" type fire extinguishers at well marked points throughout the storage area so that the travel distance from any point in the storage area to a fire extinguisher is not more than seventy-five feet.

8. Without prior registration of the site with the department of environmental quality. The registration shall be on a form approved by the department and shall include the site's location, the name of the owner of the property, the name of the owner or operator of the business storing the waste tires, if applicable, and the type and approximate quantity of waste tires stored at the site. For any waste tire collection site that is operating on September 26, 2008, the owner of the property shall register pursuant to this paragraph on or before November 25, 2008. For any person who stores one hundred or more used motor vehicle tires outdoors after ~~the effective date of this amendment to this section~~ JULY 20, 2011, the operator shall pay a registration fee. After ~~the effective date of this amendment to this section~~ JULY 20, 2011, the department shall establish by rule a registration fee, including a maximum fee. As part of the rule making process, there must be public notice and comment ~~and a review of the rule by the joint legislative budget committee. After September 30, 2013~~ BEGINNING JULY 1, 2012, the department shall not increase that fee by rule without specific statutory authority for the increase. Registration fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

B. A person who knowingly discards or abandons five hundred or more motor vehicle tires, discards or abandons any motor vehicle tires for commercial purposes except as provided in section 44-1304, or otherwise knowingly performs any act prohibited by subsection A of this section involving five hundred or more motor vehicle tires is guilty of a class 5 felony.

C. The attorney general may enforce this section.

D. For the purposes of this section, used motor vehicle tires do not include tires that have been recapped and have not yet been put back into service.

Sec. 3. Section 49-104, Arizona Revised Statutes, is amended to read:

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

1 3. Conduct research on its own initiative or at the request of the
2 governor, the legislature or state or local agencies pertaining to any
3 department objectives.

4 4. Provide information and advice on request of any local, state or
5 federal agencies and private persons and business enterprises on matters
6 within the scope of the department.

7 5. Consult with and make recommendations to the governor and the
8 legislature on all matters concerning department objectives.

9 6. Promote and coordinate the management of air resources to assure
10 their protection, enhancement and balanced utilization consistent with the
11 environmental policy of this state.

12 7. Promote and coordinate the protection and enhancement of the
13 quality of water resources consistent with the environmental policy of this
14 state.

15 8. Encourage industrial, commercial, residential and community
16 development that maximizes environmental benefits and minimizes the effects
17 of less desirable environmental conditions.

18 9. Assure the preservation and enhancement of natural beauty and
19 man-made scenic qualities.

20 10. Provide for the prevention and abatement of all water and air
21 pollution including that related to particulates, gases, dust, vapors, noise,
22 radiation, odor, nutrients and heated liquids in accordance with article 3 of
23 this chapter and chapters 2 and 3 of this title.

24 11. Promote and recommend methods for the recovery, recycling and reuse
25 or, if recycling is not possible, the disposal of solid wastes consistent
26 with sound health, scenic and environmental quality policies. Beginning in
27 2014, the department shall report annually on its revenues and expenditures
28 relating to the solid and hazardous waste programs overseen or administered
29 by the department.

30 12. Prevent pollution through the regulation of the storage, handling
31 and transportation of solids, liquids and gases that may cause or contribute
32 to pollution.

33 13. Promote the restoration and reclamation of degraded or despoiled
34 areas and natural resources.

35 14. Assist the department of health services in recruiting and training
36 state, local and district health department personnel.

37 15. Participate in the state civil defense program and develop the
38 necessary organization and facilities to meet wartime or other disasters.

39 16. Cooperate with the Arizona-Mexico commission in the governor's
40 office and with researchers at universities in this state to collect data and
41 conduct projects in the United States and Mexico on issues that are within
42 the scope of the department's duties and that relate to quality of life,
43 trade and economic development in this state in a manner that will help the
44 Arizona-Mexico commission to assess and enhance the economic competitiveness
45 of this state and of the Arizona-Mexico region.

1 17. Unless specifically authorized by the legislature, ensure that
2 state laws, rules, standards, permits, variances and orders are adopted and
3 construed to be consistent with and no more stringent than the corresponding
4 federal law that addresses the same subject matter. This provision shall not
5 be construed to adversely affect standards adopted by an Indian tribe under
6 federal law.

7 B. The department, through the director, shall:

8 1. Contract for the services of outside advisers, consultants and
9 aides reasonably necessary or desirable to enable the department to
10 adequately perform its duties.

11 2. Contract and incur obligations reasonably necessary or desirable
12 within the general scope of department activities and operations to enable
13 the department to adequately perform its duties.

14 3. Utilize any medium of communication, publication and exhibition
15 when disseminating information, advertising and publicity in any field of its
16 purposes, objectives or duties.

17 4. Adopt procedural rules that are necessary to implement the
18 authority granted under this title, but that are not inconsistent with other
19 provisions of this title.

20 5. Contract with other agencies, including laboratories, in furthering
21 any department program.

22 6. Use monies, facilities or services to provide matching
23 contributions under federal or other programs that further the objectives and
24 programs of the department.

25 7. Accept gifts, grants, matching monies or direct payments from
26 public or private agencies or private persons and enterprises for department
27 services and publications and to conduct programs that are consistent with
28 the general purposes and objectives of this chapter. Monies received
29 pursuant to this paragraph shall be deposited in the department fund
30 corresponding to the service, publication or program provided.

31 8. Provide for the examination of any premises if the director has
32 reasonable cause to believe that a violation of any environmental law or rule
33 exists or is being committed on the premises. The director shall give the
34 owner or operator the opportunity for its representative to accompany the
35 director on an examination of those premises. Within forty-five days after
36 the date of the examination, the department shall provide to the owner or
37 operator a copy of any report produced as a result of any examination of the
38 premises.

39 9. Supervise sanitary engineering facilities and projects in this
40 state, authority for which is vested in the department, and own or lease land
41 on which sanitary engineering facilities are located, and operate the
42 facilities, if the director determines that owning, leasing or operating is
43 necessary for the public health, safety or welfare.

1 10. Adopt and enforce rules relating to approving design documents for
2 constructing, improving and operating sanitary engineering and other
3 facilities for disposing of solid, liquid or gaseous deleterious matter.

4 11. Define and prescribe reasonably necessary rules regarding the water
5 supply, sewage disposal and garbage collection and disposal for subdivisions.
6 The rules shall:

7 (a) Provide for minimum sanitary facilities to be installed in the
8 subdivision and may require that water systems plan for future needs and be
9 of adequate size and capacity to deliver specified minimum quantities of
10 drinking water and to treat all sewage.

11 (b) Provide that the design documents showing or describing the water
12 supply, sewage disposal and garbage collection facilities be submitted with a
13 fee to the department for review and that no lots in any subdivision be
14 offered for sale before compliance with the standards and rules has been
15 demonstrated by approval of the design documents by the department.

16 12. Prescribe reasonably necessary measures to prevent pollution of
17 water used in public or semipublic swimming pools and bathing places and to
18 prevent deleterious conditions at such places. The rules shall prescribe
19 minimum standards for the design of and for sanitary conditions at any public
20 or semipublic swimming pool or bathing place and provide for abatement as
21 public nuisances of premises and facilities that do not comply with the
22 minimum standards. The rules shall be developed in cooperation with the
23 director of the department of health services and shall be consistent with
24 the rules adopted by the director of the department of health services
25 pursuant to section 36-136, subsection H, paragraph 10.

26 13. Prescribe reasonable rules regarding sewage collection, treatment,
27 disposal and reclamation systems to prevent the transmission of sewage borne
28 or insect borne diseases. The rules shall:

29 (a) Prescribe minimum standards for the design of sewage collection
30 systems and treatment, disposal and reclamation systems and for operating the
31 systems.

32 (b) Provide for inspecting the premises, systems and installations and
33 for abating as a public nuisance any collection system, process, treatment
34 plant, disposal system or reclamation system that does not comply with the
35 minimum standards.

36 (c) Require that design documents for all sewage collection systems,
37 sewage collection system extensions, treatment plants, processes, devices,
38 equipment, disposal systems, on-site wastewater treatment facilities and
39 reclamation systems be submitted with a fee for review to the department and
40 may require that the design documents anticipate and provide for future
41 sewage treatment needs.

42 (d) Require that construction, reconstruction, installation or
43 initiation of any sewage collection system, sewage collection system
44 extension, treatment plant, process, device, equipment, disposal system,

1 on-site wastewater treatment facility or reclamation system conform with
2 applicable requirements.

3 14. Prescribe reasonably necessary rules regarding excreta storage,
4 handling, treatment, transportation and disposal. The rules shall:

5 (a) Prescribe minimum standards for human excreta storage, handling,
6 treatment, transportation and disposal and shall provide for inspection of
7 premises, processes and vehicles and for abating as public nuisances any
8 premises, processes or vehicles that do not comply with the minimum
9 standards.

10 (b) Provide that vehicles transporting human excreta from privies,
11 septic tanks, cesspools and other treatment processes shall be licensed by
12 the department subject to compliance with the rules. The department may
13 require payment of a fee as a condition of licensure. After ~~the effective~~
14 ~~date of this amendment to this section~~ JULY 20, 2011, the department shall
15 establish by rule a fee as a condition of licensure, including a maximum fee.
16 As part of the rule making process, there must be public notice and comment
17 ~~and a review of the rule by the joint legislative budget committee. After~~
18 ~~September 30, 2013~~ BEGINNING JULY 1, 2012, the department shall not increase
19 that fee by rule without specific statutory authority for the increase. The
20 fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid
21 waste fee fund established by section 49-881.

22 15. Perform the responsibilities of implementing and maintaining a data
23 automation management system to support the reporting requirements of title
24 III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499)
25 and title 26, chapter 2, article 3.

26 16. Approve remediation levels pursuant to article 4 of this chapter.

27 17. Establish or revise fees by rule pursuant to the authority granted
28 under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for
29 the department to adequately perform its duties. All fees shall be fairly
30 assessed and impose the least burden and cost to the parties subject to the
31 fees. In establishing or revising fees, the department shall base the fees
32 on:

33 (a) The direct and indirect costs of the department's relevant duties,
34 including employees salaries and benefits, professional and outside services,
35 equipment, in-state travel and other necessary operational expenses directly
36 related to issuing licenses as defined in title 41, chapter 6 and enforcing
37 the requirements of the applicable regulatory program.

38 (b) The availability of other funds for the duties performed.

39 (c) The impact of the fees on the parties subject to the fees.

40 (d) The fees charged for similar duties performed by the department,
41 other agencies and the private sector.

42 C. The department may:

43 1. Charge fees to cover the costs of all permits and inspections it
44 performs to ensure compliance with rules adopted under section 49-203, except
45 that state agencies are exempt from paying the fees. Monies collected

pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

Sec. 4. Section 49-706, Arizona Revised Statutes, is amended to read:
49-706. Waste programs general permits; rules

A. The department may establish a general permit for any permit or license issued pursuant to this chapter. The general permit consists of the following:

1. The director may issue by rule a general permit for a defined class of facilities, activities or practices if all of the following apply:

(a) The cost of issuing individual permits or licenses cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

(b) The facilities, activities or practices in the class are substantially similar in nature.

(c) The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity or practice will meet the applicable requirements prescribed in this chapter for the facility, activity or practice.

2. In addition to other applicable enforcement actions, if a person is in substantial noncompliance with the conditions of a general permit, the director may revoke coverage under the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended by rule if the director determines that any of the conditions prescribed in paragraph 1 no longer apply.

1 3. Rules adopted pursuant to paragraph 1 may require a person seeking
2 coverage under a general permit to notify the director of the person's intent
3 to operate pursuant to the general permit and to pay the applicable fee
4 established by the director by rule.

5 B. After ~~the effective date of this amendment to this section~~ JULY 20,
6 2011, the director shall establish by rule fees for general permits pursuant
7 to this section, including maximum fees. As part of the rule making process,
8 there must be public notice and comment ~~and a review of the rule by the joint~~
9 ~~legislative budget committee. After September 30, 2013~~ BEGINNING JULY 1,
10 2012, the director shall not increase those fees by rule without specific
11 statutory authority for the increase. Fees collected pursuant to this
12 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
13 solid waste fee fund established by section 49-881.

14 Sec. 5. Section 49-747, Arizona Revised Statutes, is amended to read:
15 49-747. Annual registration of solid waste landfills; fee;
16 disposition of revenue

17 A. All solid waste landfills shall be registered annually with the
18 department.

19 B. The director shall establish a procedure for mailing registration
20 forms each year to the owners of all solid waste landfills. The registration
21 is valid for one year from the date of registration.

22 C. At the time of registration the owner of a solid waste landfill
23 shall pay to the department an annual fee. After ~~the effective date of this~~
24 ~~amendment to this section~~ JULY 20, 2011, the department shall establish by
25 rule an annual fee, including a maximum fee. As part of the rule making
26 process, there must be public notice and comment ~~and a review of the rule by~~
27 ~~the joint legislative budget committee. After September 30, 2013~~ BEGINNING
28 JULY 1, 2012, the department shall not increase that fee by rule without
29 specific statutory authority for the increase.

30 D. All monies collected pursuant to this section shall be deposited,
31 pursuant to sections 35-146 and 35-147, in the solid waste fee fund
32 established by section 49-881. The director may authorize the expenditure of
33 monies from the solid waste fee fund to pay the reasonable and necessary
34 costs of administering the registration program pursuant to section 49-881.

35 Sec. 6. Section 49-761, Arizona Revised Statutes, is amended to read:
36 49-761. Rule making authority for solid waste facilities;
37 financial assurance; recycling facilities

38 A. The department shall adopt rules regarding the storage, processing,
39 treatment and disposal of solid waste as prescribed by subsections B through
40 M of this section. In adopting rules, the department shall consider the
41 nature of the waste streams at the facilities to be regulated. The
42 department shall also consider other applicable federal and state laws and
43 rules in an effort to avoid practices or requirements that duplicate, are
44 inconsistent with or will result in dual regulation with other applicable
45 rules and laws. In adopting rules for solid waste facilities, the director

1 may include requirements for corrective actions in response to a release, as
2 defined in section 49-281, from a solid waste facility that violates or
3 results in a violation of any provision of this chapter, rule adopted
4 pursuant to this chapter or solid waste facility plan approved pursuant to
5 this chapter. These rules shall be consistent with section 49-762.08,
6 subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

7 B. For purposes of administering 42 United States Code section 6945,
8 as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference
9 except as prescribed by paragraph 2 of this subsection. This subsection, as
10 it applies to municipal solid waste landfills, governs if there is any
11 conflict between this subsection and any other statute relating to solid
12 waste. Municipal solid waste landfill facility plans submitted pursuant to
13 section 49-762 shall comply with this subsection. In administering this
14 subsection or in adopting or administering any rules adopted pursuant to this
15 subsection, the department shall ensure that any discretion allowed to a
16 director of an approved state pursuant to the federal regulations is
17 maintained. The following apply to the department's administration of 42
18 United States Code section 6945 and to the department's adoption of rules for
19 municipal solid waste landfills:

20 1. The department may adopt rules for municipal solid waste landfills.
21 Rules adopted pursuant to this paragraph shall not be more stringent than or
22 conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the
23 department may adopt aquifer protection standards that are more stringent
24 than 40 C.F.R. part 258 if those standards are consistent with and no more
25 stringent than standards developed pursuant to chapter 2, article 3 of this
26 title, or if the standards are adopted pursuant to article 9 of this chapter.
27 Rules adopted pursuant to this paragraph are effective on the concurrence of
28 the administrator with this state's municipal solid waste landfill program.

29 2. 40 C.F.R. part 258, table I is not adopted in its entirety. The
30 department shall use aquifer water quality standards that have been adopted
31 by the department pursuant to section 49-223 and shall use those portions of
32 table I that are more restrictive than the standards adopted pursuant to
33 section 49-223.

34 C. The department shall adopt rules for those solid waste land
35 disposal facilities that are not municipal solid waste landfills. Rules
36 adopted pursuant to this subsection shall not be more stringent than or
37 conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the
38 department may adopt aquifer protection standards that are more stringent
39 than 40 C.F.R. part 257 if these standards are consistent with and no more
40 stringent than standards developed pursuant to chapter 2, article 3 of this
41 title, or if the standards are adopted pursuant to article 9 of this chapter.
42 In administering this subsection, the department shall ensure that any
43 discretion allowed to a director of an approved state pursuant to the federal
44 regulations is maintained in the department's rules. Aquifer protection
45 provisions adopted pursuant to this subsection do not apply to an owner or

1 operator of a solid waste facility if the owner or operator submits an
2 administratively complete application for an aquifer protection permit
3 pursuant to chapter 2, article 3 of this title before the date that the owner
4 or operator is required to submit a solid waste facility plan.

5 D. The department shall adopt rules to define biohazardous medical
6 waste and to regulate biohazardous medical waste and medical sharps to
7 include all of the following:

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

13 2. Reasonably necessary rules regarding the storage, collection,
14 transportation, treatment and disposal of biohazardous medical waste and
15 medical sharps, beginning with the placement by the generator of the waste in
16 containers for the purpose of waste collection. The department may require
17 payment of a fee for the licensure of a transporter of biohazardous medical
18 waste. After ~~the effective date of this amendment to this section~~ JULY 20,
19 2011, the department shall establish by rule a fee for the licensure of a
20 transporter of biohazardous medical waste, including a maximum fee. As part
21 of the rule making process, there must be public notice and comment ~~and a~~
22 ~~review of the rule by the joint legislative budget committee.~~ After
23 ~~September 30, 2013~~ BEGINNING JULY 1, 2012, the department shall not increase
24 that fee by rule without specific statutory authority for the increase. The
25 fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid
26 waste fee fund established by section 49-881. In the case of self-hauling of
27 waste by the generator, all storage facilities under the generator's control
28 and all waste handling practices including storage, treatment and
29 transportation shall be in accordance with these rules. The department shall
30 also adopt reasonably necessary rules regarding the tracking of biohazardous
31 medical waste and medical sharps.

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

39 F. The department shall adopt rules for the application of sludge from
40 a wastewater treatment facility to land for use as fertilizer or beneficial
41 soil amendment. For the purposes of this subsection, "sludge" has the same
42 meaning as sewage sludge as defined in 40 Code of Federal Regulations section
43 122.2 in effect on January 1, 1998.

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

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

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

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

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

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

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

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

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

13 Sec. 7. Section 49-762.03, Arizona Revised Statutes, is amended to
14 read:

15 49-762.03. Solid waste facility plan approval

16 A. Except as provided in subsections C and E of this section, the
17 owner or operator of a solid waste facility identified in section 49-762
18 shall obtain the department's approval of a solid waste facility plan as
19 follows:

20 1. For a new solid waste facility and before commencing construction
21 of the solid waste facility, the owner or operator shall obtain approval of a
22 solid waste facility plan that satisfies rules adopted by the director.

23 2. For an existing solid waste facility, the owner or operator shall
24 file with the department a solid waste facility plan within one hundred
25 eighty days after the effective date of rules adopted pursuant to section
26 49-761 that contain design and operation standards for that type of solid
27 waste facility. An existing solid waste facility may continue to operate
28 while the department reviews the plan. For an existing public solid waste
29 facility that is currently subject to rules that contain design and operation
30 standards, the owner or operator shall file with the department a solid waste
31 facility plan by October 1, 1996, if the facility has not received plan
32 approval before that date.

33 B. For a solid waste facility subject to site approval pursuant to
34 section 49-767, a solid waste facility plan shall not be submitted to the
35 department until the site for the solid waste facility has been approved
36 pursuant to section 49-767. For all new solid waste landfills, a solid waste
37 facility plan shall provide evidence of compliance with or the
38 inapplicability of city, town or county zoning ordinances.

39 C. The director shall grant temporary authorization to operate a new
40 solid waste facility if in the director's opinion the solid waste facility is
41 needed immediately and could not be properly planned in advance.

42 D. An owner or operator of more than one solid waste facility that
43 conducts similar activities with similar waste streams may prepare and
44 implement a single plan that covers all of its facilities if it has received

1 prior approval from the director and has complied with rules regarding single
2 plans that are adopted by the director.

3 E. The director by rule may exempt from some or all of the facility
4 plan approval requirements those solid waste facilities that are located in
5 unincorporated areas and that are used for disposal by any single family
6 residence located on the same property or those solid waste facilities that
7 do not present a threat to public health and safety and the environment.

8 F. The department shall collect from the applicant reasonable fees
9 established by the director by rule for the approval of the plan, including
10 costs for the processing, review, approval or disapproval of the plan. After
11 ~~the effective date of this amendment to this section~~ JULY 20, 2011, the
12 director shall establish by rule fees for the approval of the plan, including
13 costs for the processing, review, approval or disapproval of the plan and
14 maximum fees. As part of the rule making process, there must be public
15 notice and comment ~~and a review of the rule by the joint legislative budget~~
16 ~~committee. After September 30, 2013~~ BEGINNING JULY 1, 2012, the director
17 shall not increase those fees by rule without specific statutory authority
18 for the increase. The fees shall be deposited, pursuant to sections 35-146
19 and 35-147, in the solid waste fee fund established by section 49-881.

20 G. The department may contract with private consultants for the
21 purposes of assisting the department in reviewing solid waste facility plan
22 approvals to determine whether a facility meets the criteria of section
23 49-762.04. The department shall pay the consultant for the services rendered
24 by the consultant from fees paid by the applicant. If the department
25 contracts with a consultant under this section, an applicant may request that
26 the department expedite the application review by requesting that the
27 department use the services of the consultant and by agreeing to pay the
28 department the costs of the consultant's services. Notwithstanding section
29 49-881, fees collected by the department for expedited plan review shall be
30 deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee
31 fund established by section 49-881 and used for payment of the costs of the
32 consultant services. Fees received for the purpose of expedited plan review
33 are not subject to appropriation.

34 Sec. 8. Section 49-762.05, Arizona Revised Statutes, is amended to
35 read:

36 49-762.05. Self-certification procedures; rules

37 A. The owner or operator of a solid waste facility identified in
38 section 49-762.01 shall comply with the self-certification requirements
39 prescribed by this section and rules adopted by the director.

40 B. The owner or operator of a new solid waste facility may be required
41 by rule to submit some or all of the following information to the department
42 before the start of construction:

43 1. Design and operational plans or other documents necessary to
44 describe the design of the facility and the practices and methods that are or

1 will be used to comply with the design and operation rules adopted by the
2 director for that type of facility.

3 2. A demonstration of financial assurance in accordance with section
4 49-770.

5 3. A demonstration of compliance with either local zoning laws or
6 section 49-767.

7 4. A demonstration of the issuance of other environmental permits that
8 are required by statute.

9 5. A copy of the public notice in a newspaper of general circulation
10 in the area in which a new solid waste facility will be located. The public
11 notice shall state the intent to construct and operate a new solid waste
12 facility pursuant to this subsection.

13 C. The owner or operator of an existing solid waste facility may be
14 required by rule to submit some or all of the information described in
15 subsection B, paragraphs 1 through 4 of this section within one hundred
16 eighty days after the adoption of design and operation rules for that type of
17 facility.

18 D. The owner or operator shall maintain all documents required by
19 statute or rule at the solid waste facility or any other location as
20 determined by rule, and those documents shall be made available for
21 inspection pursuant to section 49-763.

22 E. An owner or operator making a substantial change to a solid waste
23 facility shall submit documentation to the department before the start of
24 construction stating that the facility will remain in compliance with the
25 design and operation rules for that type of facility. The owner or operator
26 of a solid waste facility that makes any changes in its compliance with
27 subsection B, paragraph 2 or 3 of this section shall submit copies of those
28 changes to the department.

29 F. A person making a submittal under this section shall certify in
30 writing that the information submitted is true, accurate and complete to the
31 best of the person's knowledge and belief.

32 G. Self-certified facilities identified in section 49-762.01 are not
33 subject to the location restrictions of section 49-772.

34 H. The department shall collect from the applicant registration
35 fees. After ~~the effective date of this amendment to this section~~ JULY 20,
36 2011, the department shall establish by rule registration fees, including
37 maximum fees. As part of the rule making process, there must be public notice
38 and comment ~~and a review of the rule by the joint legislative budget~~
39 ~~committee. After September 30, 2013~~ BEGINNING JULY 1, 2012, the department
40 shall not increase those fees by rule without specific statutory authority
41 for the increase. Fees collected pursuant to this section shall be
42 deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee
43 fund established by section 49-881.

1 I. An owner or operator of more than one solid waste facility
2 identified in section 49-762.01 that conducts similar activities with similar
3 waste streams may submit one self-certification filing for all such
4 facilities if the owner or operator has received prior approval from the
5 director and has complied with rules for self-certification that are adopted
6 by the director.

7 Sec. 9. Section 49-855, Arizona Revised Statutes, is amended to read:
8 49-855. Best management practices; fee; criteria

9 A. The director shall adopt, by rule, best management practices for
10 the treatment, storage and disposal of each waste to be designated as a
11 special waste pursuant to this article.

12 B. In adopting best management practices for a special waste, the
13 director shall consider:

14 1. The availability, effectiveness, economic feasibility and technical
15 feasibility of alternative handling or management technologies and practice.

16 2. The potential nature and severity of the effect on public health
17 and the environment resulting from the special waste.

18 3. Circumstances under which the practices shall be applied including
19 climatological, geological and hydrogeological conditions.

20 4. Consistency with other federal and state laws, rules and
21 regulations in an effort to avoid practices or requirements that duplicate,
22 are inconsistent with or result in dual regulation under other federal and
23 state laws, rules and regulations.

24 C. The best management practices adopted by the director shall contain
25 procedures necessary for the protection of public health and the environment
26 for the transportation, treatment, storage and disposal of special wastes.
27 Additional items to be contained in the best management practices shall
28 include at least:

29 1. A designated time of not less than ninety days beyond which a waste
30 may not be stored.

31 2. A fee for each ton of special waste that is transported to a
32 facility in this state for treatment, storage or disposal. After ~~the~~
33 ~~effective date of this amendment to this section~~ JULY 20, 2011, the
34 department shall establish by rule a fee for each ton of special waste that
35 is transported to a facility in this state for treatment, storage or
36 disposal, including a maximum fee. As part of the rule making process, there
37 must be public notice and comment ~~and a review of the rule by the joint~~
38 ~~legislative budget committee. After September 30, 2013~~ BEGINNING JULY 1,
39 2012, the department shall not increase that fee by rule without specific
40 statutory authority for the increase. The fees shall be deposited, pursuant
41 to sections 35-146 and 35-147, in the solid waste fee fund established by
42 section 49-881.

43 D. The director may adopt special waste best management practices that
44 apply to the treatment, storage or disposal of those wastes that are not
45 regulated as hazardous wastes under federal laws or regulations.

E. The director may enact special waste best management practices that are more stringent than federal laws or regulations that govern polychlorinated biphenyls pursuant to the toxic substances control act (15 United States Code section 2605) if the director determines in writing that:

1. The additional regulation is necessary to protect public health or the environment.

2. There is a scientific basis for the additional regulation based upon appropriate environment testing and analytical data.

3. The additional regulation is technically feasible.

F. Nothing in this section shall preclude the director from adopting best management practices under this article which incorporate management practices applicable to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

Sec. 10. Section 49-922, Arizona Revised Statutes, is amended to read:

49-922. Department rules and standards; prohibited permittees

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

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

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

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

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

1 4. The operation, maintenance, location, design and construction of
2 hazardous waste treatment, storage or disposal facilities, including such
3 additional qualifications as to ownership, continuity of operation,
4 contingency plans, corrective actions and abatement of continuing releases,
5 monitoring and inspection programs, personnel training, closure and
6 postclosure requirements and financial responsibility as may be necessary and
7 appropriate.

8 5. Requiring a permit for a hazardous waste treatment, storage or
9 disposal facility including the modification and termination of permits, the
10 authority to continue activities and permits existing on July 27, 1983
11 consistent with the federal hazardous waste regulations, and the payment of
12 reasonable fees. The director shall establish and collect reasonable fees
13 from the applicant to cover the cost of administrative services and other
14 expenses associated with evaluating the application and issuing or denying
15 the permit. After ~~the effective date of this amendment to this section~~ JULY
16 20, 2011, the director shall establish by rule an application fee to cover
17 the cost of administrative services and other expenses associated with
18 evaluating the application and issuing or denying the permit, including a
19 maximum fee. As part of the rule making process, there must be public notice
20 and comment ~~and a review of the rule by the joint legislative budget~~
21 ~~committee. After September 30, 2013~~ BEGINNING JULY 1, 2012, the director
22 shall not increase that fee by rule without specific statutory authority for
23 the increase. The fees shall be deposited, pursuant to sections 35-146 and
24 35-147, in the hazardous waste management fund established by section 49-927.

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

27 7. Providing for appropriate public participation in developing,
28 revising, implementing, amending and enforcing any rule, guideline,
29 information or program under this article consistent with the federal
30 hazardous waste program.

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

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

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

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

1 D. Nothing in this article shall affect the validity of any existing
2 rules adopted by the director that are equivalent to and consistent with the
3 federal hazardous waste regulations until new rules for hazardous waste are
4 adopted.

5 E. Nothing in this article shall authorize the regulation of small
6 quantity generators as defined by 40 Code of Federal Regulations section
7 261.5 in a manner inconsistent with the federal hazardous waste regulations.
8 However, the director may require reports of any small quantity generator or
9 group of small quantity generators regarding the treatment, storage,
10 transportation, disposal or management of hazardous waste if the hazardous
11 waste of such generator or generators may pose a substantial present or
12 potential hazard to human health or the environment when it is improperly
13 treated, stored, transported, disposed or otherwise managed.

14 Sec. 11. Section 49-931, Arizona Revised Statutes, is amended to read:

15 49-931. Hazardous waste fees; definitions

16 A. The following fees apply:

17 1. A person who generates hazardous waste that is shipped off site
18 shall pay a fee for each ton of waste generated. After ~~the effective date of~~
19 ~~this amendment to this section~~ JULY 20, 2011, the department shall establish
20 by rule a fee for the generation of hazardous waste that is shipped off site,
21 including a maximum fee. As part of the rule making process, there must be
22 public notice and comment ~~and a review of the rule by the joint legislative~~
23 ~~budget committee.~~ After September 30, 2013 BEGINNING JULY 1, 2012, the
24 department shall not increase that fee by rule without specific statutory
25 authority for the increase. Hazardous waste that is shipped off site to a
26 facility that is in this state and that is owned or operated by the same
27 person who generates the waste is exempt from the fees in this paragraph.

28 2. An owner or operator of a facility that disposes of hazardous waste
29 shall pay a fee for each ton of waste disposed. After ~~the effective date of~~
30 ~~this amendment to this section~~ JULY 20, 2011, the department shall establish
31 by rule a fee for an owner or operator of a facility that disposes of
32 hazardous waste, including a maximum fee. As part of the rule making
33 process, there must be public notice and comment ~~and a review of the rule by~~
34 ~~the joint legislative budget committee.~~ After September 30, 2013 BEGINNING
35 JULY 1, 2012, the department shall not increase that fee by rule without
36 specific statutory authority for the increase. Hazardous waste that is
37 disposed at a facility that is owned or operated by the same person who
38 generates the waste is exempt from the fee in this paragraph.

39 3. A person who generates hazardous waste that is retained on site for
40 disposal or that is shipped off site for disposal to a facility that is owned
41 or operated by that generator shall pay a fee for each ton of hazardous waste
42 delivered to the disposal facility. After ~~the effective date of this~~
43 ~~amendment to this section~~ JULY 20, 2011, the department shall establish by
44 rule a fee for each ton of hazardous waste delivered to the disposal
45 facility, including a maximum fee. As part of the rule making process, there

1 must be public notice and comment ~~and a review of the rule by the joint~~
2 ~~legislative budget committee. After September 30, 2013~~ BEGINNING JULY 1,
3 2012, the department shall not increase that fee by rule without specific
4 statutory authority for the increase.

5 4. Until July 1, 2012, in lieu of the fees prescribed in paragraphs 1
6 and 3 of this subsection, a person who generates hazardous waste and who
7 complies with the pollution prevention planning requirements of article 4 of
8 this chapter shall pay one-half of the prescribed fee for each ton of
9 hazardous waste. In lieu of the fees prescribed in paragraph 2 of this
10 subsection, an owner or operator of a facility that receives hazardous waste
11 from a person who complies with the pollution prevention planning
12 requirements of article 4 of this chapter shall collect and pay one-half of
13 the prescribed fee for each ton of hazardous waste received. These reduced
14 fees apply only if the person submits written certification of that
15 compliance. This certificate of compliance shall be submitted with the
16 manifest that accompanies the hazardous waste transported off site for
17 disposal and shall accompany the copy of the manifest that is filed by the
18 generator with the department.

19 B. Each operator or person who is required to pay a fee as prescribed
20 by this section shall make the fee payment as determined by the department.

21 C. The department shall collect all fees due under this section and
22 shall deposit, pursuant to sections 35-146 and 35-147, those fees in the
23 hazardous waste management fund established in section 49-927. Each fee
24 payment shall be accompanied by a form furnished by the department and
25 completed by the operator or person. The form shall state the total volume
26 or weight of hazardous waste generated or disposed at that facility during
27 the payment period and shall provide any other information deemed necessary
28 by the department. The operator or person shall sign the form.

29 D. If an operator or person fails to pay the fee prescribed by this
30 section, the operator or person is additionally liable for interest on the
31 unpaid amount at the rate prescribed by section 44-1201.

32 E. State agencies, including state universities, are not exempt from
33 the fees prescribed by this section.

34 F. For the purposes of this section:

35 1. "Generates" means the act or process of producing hazardous waste
36 and includes importing hazardous waste into this state for disposal.

37 2. "Off site" means any transportation that is not on site as defined
38 in section 49-851.

39 3. "Person" means an individual, trust, firm, joint stock company,
40 corporation, including a government corporation, partnership, association,
41 state, municipality, commission, political subdivision of this state,
42 interstate body or federal facility.

Sec. 12. Off-highway vehicle recreation fund; use

Notwithstanding section 28-1176, Arizona Revised Statutes, the Arizona state parks board may spend up to \$692,100 from the Arizona state parks board portion of the off-highway vehicle recreation fund in fiscal year 2012-2013 for parks board operating expenses.

Sec. 13. Underground storage tank assurance account; transfer of monies; uses

Notwithstanding any other law, the administrative cap established in section 49-1051, subsection B, paragraphs 2 and 3, Arizona Revised Statutes, is suspended for fiscal year 2012-2013, and the department of environmental quality may transfer \$6,531,000 from the assurance account of the underground storage tank revolving fund for administrative costs of the underground storage tank leak prevention program and for the used oil program.

Sec. 14. Agricultural fees; intent; exemption from rule making

A. Notwithstanding any other law, the director of the Arizona department of agriculture, with the assistance of the agriculture advisory council, may continue existing fees from 2011-2012 in fiscal year 2012-2013 for services provided in fiscal year 2012-2013.

B. It is the intent of the legislature that the additional revenue generated by the fees established as prescribed in subsection A of this section shall not exceed \$218,000 to the state general fund, \$113,000 to the pesticide fund and \$26,000 to the dangerous plants, pests and diseases fund.

C. The Arizona department of agriculture is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of establishing fees pursuant to this section until July 1, 2013.

Sec. 15. Water resources fees; intent; exemption from rule making

A. Notwithstanding any other law, the director of the department of water resources may increase fees in fiscal year 2012-2013 for services in fiscal year 2012-2013, except that no fees may be increased pursuant to this subsection for any municipality subject to the fee assessed and collected pursuant to section 45-118, Arizona Revised Statutes.

B. It is the intent of the legislature that the revenue generated by the fees collected pursuant to subsection A of this section and section 45-118, Arizona Revised Statutes, shall not exceed \$7,000,000.

C. The department of water resources is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of establishing fees pursuant to this section until July 1, 2013.

Sec. 16. Arizona state parks board; availability of monies

Notwithstanding section 41-511.11, Arizona Revised Statutes, or any other law, all state parks enhancement fund monies are available in fiscal year 2012-2013 for the operation of state parks as appropriated by the legislature in the general appropriations act or for capital needs as determined by the Arizona state parks board with the prior approval of the joint committee on capital review to acquire and develop real property and

1 improvements as state parks consistent with the purposes and objectives
2 prescribed in section 41-511.03, Arizona Revised Statutes.

3 Sec. 17. Use of risk management revolving fund

4 In addition to the purposes specified in section 41-622, Arizona
5 Revised Statutes, of the monies appropriated in the general appropriations
6 act for fiscal year 2012-2013 to the department of administration from the
7 risk management revolving fund, \$80,000 may be used in fiscal year 2012-2013
8 to allow the Arizona navigable stream adjudication commission to pay one-time
9 unpaid obligations relating to legal fees.

10 Sec. 18. Appropriation reduction; water quality assurance
11 revolving fund

12 Notwithstanding section 49-282, Arizona Revised Statutes, the
13 appropriation from the state general fund to the water quality assurance
14 revolving fund for fiscal year 2012-2013 shall not exceed \$7,000,000.

15 Sec. 19. Retroactivity

16 Sections 44-1303, 44-1304.01, 49-104, 49-706, 49-747, 49-761,
17 49-762.03, 49-762.05, 49-855, 49-922 and 49-931, Arizona Revised Statutes, as
18 amended by this act, apply retroactively to from and after June 30, 2012.