

REFERENCE TITLE: air quality; begin actual construction

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2442

Introduced by
Representatives Gowan, Stevens, Thorpe, Senator Griffin: Representative
Shope

AN ACT

AMENDING SECTION 49-401.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 287, SECTION 16 AND CHAPTER 315, SECTION 1; AMENDING LAWS 2010, CHAPTER 315, SECTION 4; RELATING TO AIR QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 49-401.01, Arizona Revised Statutes, as amended by
3 Laws 2010, chapter 287, section 16 and chapter 315, section 1, is amended to
4 read:
5 49-401.01. Definitions
6 In this chapter, unless the context otherwise requires:
7 1. "Administrator" means the administrator of the United States
8 environmental protection agency.
9 2. "Adverse effects to human health" means those effects that result
10 in or significantly contribute to an increase in mortality or an increase in
11 serious irreversible or incapacitating reversible illness, including adverse
12 effects that are known to be or may reasonably be anticipated to be caused by
13 substances that are acutely toxic, chronically toxic, carcinogenic,
14 mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.
15 3. "Adverse environmental effect" means any significant and widespread
16 adverse effect that may reasonably be anticipated on wildlife, aquatic life,
17 or other natural resources, including adverse impacts on populations of
18 endangered or threatened species or significant degradation of environmental
19 quality over broad areas.
20 4. "Arizona Grand Canyon visibility transport commission class I
21 areas" means the following four mandatory federal class I areas in this state
22 that were the subject of recommendations made by the Grand Canyon visibility
23 transport commission pursuant to the clean air act:
24 (a) Grand Canyon national park.
25 (b) Petrified Forest national park.
26 (c) Sycamore Canyon Wilderness.
27 (d) Mount Baldy Wilderness.
28 5. "Arizona mandatory federal class I areas" means the following eight
29 national parks and wilderness areas that are designated as mandatory federal
30 class I areas in this state pursuant to the clean air act and does not
31 include the Arizona Grand Canyon visibility transport commission class I
32 areas:
33 (a) Pine Mountain Wilderness.
34 (b) Mazatzal Wilderness.
35 (c) Sierra Ancha Wilderness.
36 (d) Superstition Wilderness.
37 (e) Saguaro Wilderness.
38 (f) Galiuro Wilderness.
39 (g) Chiricahua Wilderness.
40 (h) Chiricahua National Monument Wilderness.
41 6. "Attainment area" means any area in this state that has been
42 identified in regulations promulgated by the administrator as being in
43 compliance with national ambient air quality standards.
44 7. "Begin actual construction" means initiation of physical on-site
45 construction activities on an emissions unit ~~that~~ WHICH are of a permanent

1 nature. ~~as follows~~ WITH RESPECT TO A CHANGE IN METHOD OF OPERATION, THIS
2 TERM REFERS TO THOSE ON-SITE ACTIVITIES, OTHER THAN PREPARATORY ACTIVITY,
3 WHICH MARK THE INITIATION OF THE CHANGE:

4 (a) For purposes of title I, parts C and D and section 112 of the
5 clean air act and for purposes of applicants that require permits containing
6 limits designed to avoid the application of title I, parts C and D and
7 section 112 of the clean air act, these activities include installation of
8 building supports and foundations, laying of underground pipework and
9 construction of permanent storage structures but do not include any of the
10 following, subject to section ~~49-247~~ 49-427, subsection D:

11 (i) Clearing and grading, including demolition and removal of existing
12 structures and equipment, stripping and stockpiling of topsoil.

13 (ii) Installation of access roads, driveways and parking lots.

14 (iii) Installation of ancillary structures, including fences, office
15 buildings and temporary storage structures, that are not a necessary
16 component of an emissions unit or associated air pollution control equipment
17 for which the permit is required.

18 (iv) Ordering and on-site storage of materials and equipment.

19 (b) For purposes other than for those applicants prescribed in
20 subdivision (a) of this paragraph, these activities do not include the
21 following, subject to section ~~49-247~~ 49-427, subsection D:

22 (i) Clearing and grading, including demolition and removal of existing
23 structures and equipment, stripping and stockpiling of topsoil and earthwork
24 cut and fill for foundations.

25 (ii) Installation of access roads, parking lots, driveways and storage
26 areas.

27 (iii) Ordering and on-site storage of materials and equipment.

28 (iv) Installation of underground pipework, including water, sewer,
29 electric and telecommunications utilities.

30 (v) Installation of ancillary structures, including fences,
31 warehouses, storerooms and office buildings, ~~if~~ PROVIDED none of these
32 structures impact the design of any emissions unit or associated air
33 pollution control equipment.

34 (vi) Installation of building and equipment supports, including
35 concrete forms, footers, pilings, foundations, pads and platforms, ~~if~~
36 PROVIDED none of these ~~structures~~ SUPPORTS impact the design of ~~and~~ ANY
37 emissions unit or associated air pollution control equipment.

38 8. "Building", "structure", "facility" or "installation" means all of
39 the pollutant-emitting activities that belong to the same industrial
40 grouping, are located on one or more contiguous or adjacent properties and
41 are under the control of the same person or persons under common control
42 except the activities of any vessel. Pollutant-emitting activities shall be
43 considered as part of the same industrial grouping if they belong to the same
44 major group that has the same two digit code, as described in the standard
45 industrial classification manual, 1972, as amended by the 1977 supplement.

1 9. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42
2 United States Code sections 7401 through 7671) as amended by the clean air
3 act amendments of 1990 (P.L. 101-549).

4 10. "Commence" means, as applied to construction of a source:

5 (a) For purposes other than title IV of the clean air act, that the
6 owner or operator has obtained all necessary preconstruction approval or
7 permits required by federal law and this chapter and has done either of the
8 following:

9 (i) Begun or caused to begin a continuous program of physical on-site
10 construction of the source to be completed within a reasonable time.

11 (ii) Entered into binding agreements or contractual obligations, which
12 cannot be cancelled or modified without substantial loss to the owner or
13 operator, to undertake a program of construction of the source to be
14 completed within a reasonable time.

15 (b) For purposes of title IV of the clean air act, that the owner or
16 operator has undertaken a continuous program of construction or that an owner
17 or operator has entered into a contractual obligation to undertake and
18 complete within a reasonable time a continuous program of construction.

19 11. "Construction" means any physical change in a source or change in
20 the method of operation of a source including fabrication, erection,
21 installation or demolition of a source that would result in a change in
22 actual emissions.

23 12. "Conventional air pollutant" means any pollutant for which the
24 administrator has promulgated a primary or secondary national ambient air
25 quality standard.

26 13. "Federally listed hazardous air pollutant" means any air pollutant
27 adopted pursuant to section 49-426.03, subsection A and not deleted pursuant
28 to that subsection.

29 14. "Grand Canyon visibility transport commission" means the visibility
30 transport commission established pursuant to section 169B of the clean air
31 act for the region affecting the visibility of the Grand Canyon national
32 park.

33 15. "Grand Canyon visibility transport commission class I areas" means
34 the following sixteen mandatory federal class I areas in the region of Grand
35 Canyon national park that were the subject of recommendations by the Grand
36 Canyon visibility transport commission pursuant to the clean air act:

37 (a) Grand Canyon national park in Arizona.

38 (b) Sycamore Canyon Wilderness in Arizona.

39 (c) Petrified Forest national park in Arizona.

40 (d) Mount Baldy Wilderness in Arizona.

41 (e) San Pedro Parks Wilderness in New Mexico.

42 (f) Mesa Verde national park in Colorado.

43 (g) Weminuche Wilderness in Colorado.

44 (h) Black Canyon of the Gunnison Wilderness in Colorado.

45 (i) West Elk Wilderness in Colorado.

- 1 (j) Maroon Bells-Snowmass Wilderness in Colorado.
 - 2 (k) Flat Tops Wilderness in Colorado.
 - 3 (l) Arches national park in Utah.
 - 4 (m) Canyonlands national park in Utah.
 - 5 (n) Capitol Reef national park in Utah.
 - 6 (o) Bryce Canyon national park in Utah.
 - 7 (p) Zion national park in Utah.
- 8 16. "Hazardous air pollutant" means any federally listed hazardous air
9 pollutant and any air pollutant that the director has designated as a
10 hazardous air pollutant pursuant to section 49-426.04, subsection A and has
11 not deleted pursuant to section 49-426.04, subsection B.
- 12 17. "Hazardous air pollutant reasonably available control technology"
13 means an emissions standard for hazardous air pollutants that the director,
14 acting pursuant to section 49-426.06, subsection C, or the control officer,
15 acting pursuant to section 49-480.04, subsection C, determines is reasonably
16 available for a source. In making the foregoing determination the director
17 or control officer shall take into consideration the estimated actual air
18 quality impact of the standard, the cost of complying with the standard, the
19 demonstrated reliability and widespread use of the technology required to
20 meet the standard and any non-air quality health and environmental impacts
21 and energy requirements. For the purposes of this definition, an emissions
22 standard may be expressed as a numeric emissions limitation or as a design,
23 equipment, work practice or operational standard.
- 24 18. "Maintenance area" means any nonattainment area that has been
25 redesignated by the administrator to attainment status.
- 26 19. "Major source" means a stationary source or a group of stationary
27 sources that is located within a contiguous area, that is under common
28 control and that is defined as a major source in section 501(2) of the clean
29 air act or that is a major emitting facility as defined in title I, part C of
30 the clean air act or that is defined in department rules as a major source
31 consistent with the clean air act.
- 32 20. "Mandatory federal class I areas" means those national parks,
33 monuments and wilderness areas that are included in 40 Code of Federal
34 Regulations sections 81.400 through 81.436 pursuant to the clean air act.
- 35 21. "Maximum achievable control technology" means an emission standard
36 that requires the maximum degree of reduction in emissions of the hazardous
37 air pollutants subject to this chapter, including a prohibition on such
38 emissions where achievable, and that the director, after considering the cost
39 of achieving such emission reduction and any non-air quality health and
40 environmental impacts and energy requirements, determines to be achievable by
41 an affected source to which such standard applies, through application of
42 measures, processes, methods, systems or techniques including measures that:
43 (a) Reduce the volume of, or eliminate emissions of, such pollutants
44 through process changes, substitution of materials or other modifications.
45 (b) Enclose systems or processes to eliminate emissions.

- 1 (c) Collect, capture or treat such pollutants when released from a
2 process, stack, storage or fugitive emissions point.
- 3 (d) Are design, equipment, work practice, or operational standards,
4 including requirements for operator training or certification.
- 5 (e) Are a combination of the above.
- 6 22. "Minor source" means any stationary or portable source that is not
7 a major source.
- 8 23. "Mobile source" means any combustion engine, device, machine or
9 equipment that operates during transport and that emits or generates air
10 contaminants whether in motion or at rest.
- 11 24. "Modification" or "modify" means a physical change in or change in
12 the method of operation of a source that increases the emissions of any
13 regulated air pollutant emitted by such source by more than any relevant de
14 minimis amount or that results in the emission of any regulated air pollutant
15 not previously emitted by more than such de minimis amount. An increase in
16 emissions at a minor source shall be determined by comparing the source's
17 potential to emit before and after the modification. The following
18 exemptions apply:
- 19 (a) A physical or operational change does not include routine
20 maintenance, repair or replacement.
- 21 (b) An increase in the hours of operation or if the production rate is
22 not considered an operational change unless such increase is prohibited under
23 any federally enforceable permit condition or other permit condition that is
24 enforceable as a practical matter.
- 25 (c) A change in ownership at a source is not considered a
26 modification.
- 27 25. "National ambient air quality standard" means the ambient air
28 pollutant concentration limits established by the administrator pursuant to
29 42 United States Code section 7409.
- 30 26. "Nonattainment area" means any area in this state that is
31 designated as prescribed by section 49-405 and where violations of national
32 ambient air quality standards have been measured.
- 33 27. "Nonattainment area plan" means an air pollution control plan
34 developed in accordance with 42 United States Code sections 7501 through
35 7515.
- 36 28. "Permitting authority" means the department or a county department
37 or agency that is charged with enforcing a permit program adopted pursuant to
38 section 49-480, subsection A.
- 39 29. "Planning agency" means an organization designated by the governor
40 pursuant to 42 United States Code section 7504.
- 41 30. "Portable source" means any stationary source that is capable of
42 being transported and operated in more than one county of this state.
- 43 31. "Potential to emit" means the maximum capacity of a stationary
44 source to emit a pollutant, excluding secondary emissions, under its physical
45 and operational design. Any physical or operational limitation on the

1 capacity of the source to emit a pollutant, including air pollution control
2 equipment and restrictions on hours of operation or on the type or amount of
3 material combusted, stored, or processed, shall be treated as part of its
4 design if the limitation or the effect it would have on emissions is
5 enforceable as a practical matter.

6 32. "Primary standard attainment date" means the date defined within a
7 nonattainment area plan in accordance with 42 United States Code sections
8 7401 through 7515 or applicable regulations adopted by the United States
9 environmental protection agency by January 1, 1999 and after which date
10 primary national ambient air quality standards may not be violated.

11 33. "Reasonable further progress" means the schedule of emission
12 reductions defined within a nonattainment area plan as being necessary to
13 come into compliance with a national ambient air quality standard by the
14 primary standard attainment date.

15 34. "Source" means any building, structure, facility or installation
16 that may cause or contribute to air pollution or the use of which may
17 eliminate, reduce or control the emission of air pollution.

18 35. "State implementation plan" means the accumulated record of
19 enforceable air pollution control measures, programs and plans adopted by the
20 director and submitted to the administrator pursuant to 42 United States Code
21 section 7410.

22 36. "Stationary source" means any facility, building, equipment, device
23 or machine that operates at a fixed location and that emits or generates air
24 contaminants.

25 37. "Unclassifiable area" means all areas of this state for which
26 inadequate ambient air quality data exist to determine compliance with the
27 national ambient air quality standards.

28 Sec. 2. Laws 2010, chapter 315, section 4 is amended to read:

29 Sec. 4. Conditional enactment; revisions to state
30 implementation plan; notice

31 A. ~~Sections 49-401.01 and~~ SECTION 49-427, Arizona Revised Statutes, as
32 amended by this act, ~~are~~ IS not effective unless on or before October 1, 2013
33 the United States environmental protection agency approves revisions to this
34 state's air quality implementation plan that incorporate the changes made by
35 this act.

36 B. The director of the department of environmental quality shall
37 promptly provide written notice of the date of that approval or the failure
38 to receive that approval to the director of the Arizona legislative council.

39 Sec. 3. Retroactivity

40 Section 2 of this act is effective retroactively to from and after
41 September 30, 2013.