

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE BILL 2278

AN ACT

AMENDING SECTIONS 27-318, 44-1304 AND 49-701, ARIZONA REVISED STATUTES;
RELATING TO ABANDONED MINES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 27-318, Arizona Revised Statutes, is amended to
3 read:

4 27-318. Abandoned and inactive mines to be secured; inspector
5 authority; violation; classification

6 A. Every mine operator or former mine operator or claimant who owns a
7 mine or mining claim or possesses a mine or mining claim under lease,
8 contract, permit or otherwise, who knowingly permits the existence on the
9 premises of an abandoned or inactive mining shaft, portal, pit or other
10 excavation ~~which~~ THAT is dangerous to persons legally on the premises, who
11 fails to cover, fence, fill or otherwise secure it and post warning signs,
12 within sixty days of notification by the inspector and who fails to keep it
13 so protected is guilty of a class 2 misdemeanor. If it is impossible or
14 impracticable to comply with this subsection within the required sixty days,
15 the operator may submit a written plan of action to the inspector ~~which~~ THAT
16 specifically outlines the measures that will be taken and the number of
17 additional days necessary to comply with this section. In no case may the
18 time extension granted by the inspector exceed an additional one hundred
19 eighty days.

20 B. The inspector may enter on such land to inspect for dangerous
21 conditions ~~which~~ THAT may present a health and safety hazard to the public.
22 If hazards exist, the inspector may erect warning signs across or near the
23 entrance of any mine shaft, portal, pit or other mine opening prohibiting the
24 entry of unauthorized persons or erect other protective devices as necessary.

25 C. If the mine operator cannot be located through reasonable efforts,
26 the owner of record is the responsible party for the purposes of this
27 section. If neither the mine operator or owner of record can be located
28 through reasonable efforts, the inspector shall erect warning signs across or
29 near the entrance of any mine shaft, portal, pit or other mine opening
30 prohibiting entry of unauthorized persons or erect other protective devices
31 as necessary.

32 D. A person who knowingly and without authority removes, destroys or
33 tampers with any warning sign, covering, fencing or other protection placed
34 on, around or over any shaft, portal or other excavation is guilty of a class
35 6 felony.

36 E. Any reasonable and necessary cost incurred by the state mine
37 inspector pursuant to this section may be recovered in a civil action brought
38 by the attorney general against any responsible party.

39 F. Inert material, as defined in section 49-701, including concrete,
40 asphaltic pavement, brick, rock, gravel, sand, soil and metal if used as
41 reinforcement in concrete and glass may be used as fill material for the
42 closure of abandoned mines with final cover consisting of earthen material
43 that is at least ten feet deep. THROUGH DECEMBER 31, 2014, AND IN COMPLIANCE
44 WITH SPECIFIC TERMS OF AUTHORIZATION BY THE INSPECTOR, WASTE TIRES MAY BE

1 PLACED IN ABANDONED MINES AS FILL MATERIAL FOR THE CLOSURE OF THE MINE WITH
2 FINAL COVER CONSISTING OF EARTHEN MATERIAL THAT IS AT LEAST TEN FEET DEEP.

3 Sec. 2. Section 44-1304, Arizona Revised Statutes, is amended to read:
4 44-1304. Disposal of waste tires

5 A. The disposal of waste tires in landfills and the incineration of
6 those tires is prohibited, except as provided in subsection C or D of this
7 section or in accordance with rules adopted by the director of the department
8 of environmental quality. An owner or operator of a solid waste disposal
9 site shall not knowingly accept waste tires for disposal.

10 B. A person shall not dispose of motor vehicle waste tires unless the
11 waste tires are disposed of at a waste tire collection site or as provided in
12 subsection C or D of this section or in accordance with rules adopted by the
13 director of the department of environmental quality.

14 C. Off-road motor vehicle waste tires shall not be disposed of or
15 reused except in accordance with ~~the provisions of~~ this article or rules
16 adopted by the director of the department of environmental quality. In the
17 absence of rules, off-road motor vehicle waste tires shall not be disposed of
18 or put to beneficial use in a manner that results in an environmental
19 nuisance pursuant to section 49-141. Mining industry off-road motor vehicle
20 waste tires may be disposed of by burial at a mining facility in the same
21 manner permitted by rule in effect on February 1, 1996 until the director by
22 rule determines on-site recycling methods that are technically feasible and
23 economically practical.

24 D. The following are permissible methods of waste tire disposal:

- 25 1. Retreading or recapping.
- 26 2. Constructing collision barriers.
- 27 3. Controlling soil erosion or for flood control only if used in
28 accordance with approved engineering practices.
- 29 4. Chopping or shredding for use as waste tire daily cover MATERIAL at
30 a solid waste landfill.
- 31 5. Grinding for use in asphalt and as a raw material for other
32 products.
- 33 6. Sludge composting.
- 34 7. Using as playground equipment.
- 35 8. Incinerating or using as a fuel or pyrolysis if permitted by laws,
36 regulations or ordinances relating to burning or fuel.
- 37 9. Hauling to out-of-state collection or processing sites.
- 38 10. Tire monofills if tires are chopped or shredded.
- 39 11. Use as a building material for building construction in accordance
40 with applicable city, town and county building codes.
- 41 12. Agricultural purposes as bumpers on agricultural equipment or as
42 ballast to maintain covers at an agricultural site.

1 13. USE AS FILL MATERIAL FOR THE CLOSURE OF ABANDONED MINES AS PROVIDED
2 BY SECTION 27-318, SUBSECTION F.

3 E. For THE purposes of subsection D, paragraph 10 of this section,
4 "tire monofill" means a solid waste disposal facility or a part of a facility
5 used for the exclusive purpose of the disposal of waste tires ~~which~~ THAT are
6 chopped, shredded or cut up for the purpose of disposal.

7 F. The director of the department of environmental quality, by rule,
8 may authorize other methods of disposal of waste tires. If used as daily
9 cover material for a solid waste landfill, the director shall specify the
10 size of the parts into which the material must be cut.

11 G. Each county shall provide at least one designated waste tire
12 collection site in the county to receive waste tires from a seller of motor
13 vehicle tires or the seller's designee complying with section 44-1302.
14 Additional waste tire collection sites or disposal arrangements shall be
15 established by the county as necessary for the disposal of waste tires as
16 provided in subsection B of this section. All collection sites established
17 under this subsection shall comply with applicable zoning and ordinance
18 regulations. The county or private enterprise receiving waste tire fund
19 monies from a county shall not impose a tire tipping fee and shall not refuse
20 to accept waste tires from a seller of motor vehicle tires or the seller's
21 designee complying with section 44-1302, unless provided for in section
22 44-1302, subsection H.

23 H. The director of the department of environmental quality shall issue
24 or revise a permit required pursuant to title 49, chapter 3, article 2 for a
25 facility that applies to the department of environmental quality for a permit
26 or a revision to a permit to burn a tire derived fuel if the applicant can
27 demonstrate that the burning of tire derived fuel will result in equal to or
28 lower emissions than the burning of other types of fuel for which the
29 department of environmental quality may issue permits and the applicant has
30 met all requirements of titles I and V of the clean air act. Any tests
31 involving tire derived fuel conducted by the United States environmental
32 protection agency or any test results involving tire derived fuel approved by
33 the United States environmental protection agency, including hazardous air
34 pollutant studies, shall be accepted by the department of environmental
35 quality. No duplicate testing by the applicant shall be required, except
36 that the applicant shall meet all testing requirements under titles I and V
37 of the clean air act. For THE purposes of this subsection, "clean air act"
38 has the same meaning prescribed in section 49-401.01.

39 Sec. 3. Section 49-701, Arizona Revised Statutes, is amended to read:

40 49-701. Definitions

41 In this chapter, unless the context otherwise requires:

42 1. "Administratively complete plan" means an application for a solid
43 waste facility plan approval that the department has determined contains each
44 of the components required by statute or rule but that has not undergone
45 technical review or public notice by the department.

- 1 2. "Administrator" means the administrator of the United States
2 environmental protection agency.
- 3 3. "Closed solid waste facility" means any of the following:
- 4 (a) A solid waste facility that ceases storing, treating, processing
5 or receiving for disposal solid waste before the effective date of design and
6 operation rules for that type of facility adopted pursuant to section 49-761.
- 7 (b) A public solid waste landfill that meets any of the following
8 criteria:
- 9 (i) Ceased receiving solid waste prior to July 1, 1983.
- 10 (ii) Ceased receiving solid waste and received at least two feet of
11 cover material prior to January 1, 1986.
- 12 (iii) Received approval for closure from the department.
- 13 (c) A public composting plant or a public incinerating facility that
14 closed in accordance with an approved plan.
- 15 4. "Conditionally exempt small quantity generator waste" means
16 hazardous waste in quantities as defined by rules adopted pursuant to section
17 49-922.
- 18 5. "Construction debris" means solid waste derived from the
19 construction, repair or remodeling of buildings or other structures.
- 20 6. "County" means:
- 21 (a) The board of supervisors in the context of the exercise of powers
22 or duties.
- 23 (b) The unincorporated areas in the context of area of jurisdiction.
- 24 7. "Demolition debris" means solid waste derived from the demolition
25 of buildings or other structures.
- 26 8. "Discharge" has the same meaning prescribed in section 49-201.
- 27 9. "Existing solid waste facility" means a solid waste facility that
28 begins construction or is in operation on the effective date of the design
29 and operation rules adopted by the director pursuant to section 49-761 for
30 that type of solid waste facility.
- 31 10. "Facility plan" means any design or operating plan for a solid
32 waste facility or group of solid waste facilities.
- 33 11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257
34 in effect on May 1, 2004.
- 35 12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258
36 in effect on May 1, 2004.
- 37 13. "Household hazardous waste" means solid waste as described in 40
38 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference
39 in the rules adopted pursuant to chapter 5 of this title.
- 40 14. "Household waste" means any solid waste including garbage, rubbish
41 and sanitary waste from septic tanks that is generated from households
42 including single and multiple family residences, hotels and motels,
43 bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and
44 day use recreation areas, not including construction debris, landscaping
45 rubble or demolition debris.

- 1 15. "Inert material":
2 (a) Means material that satisfies all of the following conditions:
3 (i) Is not flammable.
4 (ii) Will not decompose.
5 (iii) Will not leach substances in concentrations that exceed
6 applicable aquifer water quality standards prescribed by section 49-201,
7 paragraph 20 when subjected to a water leach test that is designed to
8 approximate natural infiltrating waters.
9 (b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand,
10 soil and metal, if used as reinforcement in concrete, but does not include
11 special waste, hazardous waste, glass or other metal.
12 16. "Land disposal" means placement of solid waste in or on land.
13 17. "Landscaping rubble" means material that is derived from
14 landscaping or reclamation activities and that may contain inert material and
15 no more than ten per cent by volume of vegetative waste.
16 18. "Management agency" means any person responsible for the day-to-day
17 operation, maintenance and management of a particular public facility or
18 group of public facilities.
19 19. "Medical waste" means any solid waste ~~which~~ THAT is generated in
20 the diagnosis, treatment or immunization of a human being or animal or in any
21 research relating to that diagnosis, treatment or immunization, or in the
22 production or testing of biologicals, and includes discarded drugs but does
23 not include hazardous waste as defined in section 49-921 other than
24 conditionally exempt small quantity generator waste.
25 20. "Municipal solid waste landfill" means any solid waste landfill
26 that accepts household waste, household hazardous waste or conditionally
27 exempt small quantity generator waste.
28 21. "New solid waste facility" means a solid waste facility that begins
29 construction or operation after the effective date of design and operating
30 rules that are adopted pursuant to section 49-761 for that type of solid
31 waste facility.
32 22. "On site" means the same or geographically contiguous property that
33 may be divided by public or private right-of-way if the entrance and exit
34 between the properties are at a crossroads intersection and access is by
35 crossing the right-of-way and not by traveling along the right-of-way.
36 Noncontiguous properties that are owned by the same person and connected by a
37 right-of-way that is controlled by that person and to which the public does
38 not have access are deemed on site property. Noncontiguous properties that
39 are owned or operated by the same person regardless of right-of-way control
40 are also deemed on site property.
41 23. "Person" means any public or private corporation, company,
42 partnership, firm, association or society of persons, the federal government
43 and any of its departments or agencies, this state or any of its agencies,
44 departments, political subdivisions, counties, towns or municipal
45 corporations, as well as a natural person.

1 24. "Process" or "processing" means the reduction, separation,
2 recovery, conversion or recycling of solid waste.

3 25. "Public solid waste facility" means a transfer facility and any
4 site owned, operated or utilized by any person for the storage, processing,
5 treatment or disposal of solid waste that is not generated on site.

6 26. "Recycling facility" means a solid waste facility that is owned,
7 operated or used for the storage, treatment or processing of recyclable solid
8 waste and that handles wastes that have a significant adverse effect on the
9 environment.

10 27. "Salvaging" means the removal of solid waste from a solid waste
11 facility with the permission and in accordance with rules or ordinances of
12 the management agency for purposes of productive reuse.

13 28. "Scavenging" means the unauthorized removal of solid waste from a
14 solid waste facility.

15 29. "Solid waste facility" means a transfer facility and any site
16 owned, operated or utilized by any person for the storage, processing,
17 treatment or disposal of solid waste, conditionally exempt small quantity
18 generator waste or household hazardous waste but does not include the
19 following:

20 (a) A site at which less than one ton of solid waste that is not
21 household waste, household hazardous waste, conditionally exempt small
22 quantity generator waste, medical waste or special waste and that was
23 generated on site is stored, processed, treated or disposed in compliance
24 with section 49-762.07, subsection F.

25 (b) A site at which solid waste that was generated on site is stored
26 for ninety days or less.

27 (c) A site at which nonputrescible solid waste that was generated on
28 site in amounts of less than one thousand kilograms per month per type of
29 nonputrescible solid waste is stored and contained for one hundred eighty
30 days or less.

31 (d) A site that stores, treats or processes paper, glass, wood,
32 cardboard, household textiles, scrap metal, plastic, vegetative waste,
33 aluminum, steel or other recyclable material and that is not a waste tire
34 facility, a transfer facility or a recycling facility.

35 (e) A site where sludge from a wastewater treatment facility is
36 applied to the land as a fertilizer or beneficial soil amendment in
37 accordance with sludge application requirements.

38 (f) A closed solid waste facility.

39 (g) A solid waste landfill that is performing or has completed
40 postclosure care before July 1, 1996 in accordance with an approved
41 postclosure plan.

42 (h) A closed solid waste landfill performing a onetime removal of
43 solid waste from the closed solid waste landfill, if the operator provides a
44 written notice that describes the removal project to the department within
45 thirty days after completion of the removal project.

1 (i) A site where solid waste generated in street sweeping activities
2 is stored, processed or treated prior to disposal at a solid waste facility
3 authorized under this chapter.

4 (j) A site where solid waste generated at either a drinking water
5 treatment facility or a wastewater treatment facility is stored, processed,
6 or treated on site prior to disposal at a solid waste facility authorized
7 under this chapter, and any discharge is regulated pursuant to chapter 2,
8 article 3 of this title.

9 (k) A closed solid waste landfill where development activities occur
10 on the property or where excavation or removal of solid waste is performed
11 for maintenance and repair, provided the following conditions are met:

12 (i) When the project is completed there will not be an increase in
13 leachate that would result in a discharge.

14 (ii) When the project is completed the concentration of methane gas
15 will not exceed twenty-five per cent of the lower explosive limit in on-site
16 structures, or the concentration of methane gas will not exceed the lower
17 explosive limit at the property line.

18 (iii) Protection has been provided to prevent remaining waste from
19 causing any vector, odor, litter or other environmental nuisance.

20 (iv) The operator provides a notice to the department containing the
21 information required by section 49-762.07, subsection A, paragraphs 1, 2 and
22 5 and a brief description of the project.

23 (l) Agricultural on-site disposal as provided in section 49-766.

24 (m) The use, storage, treatment or disposal of by-products of
25 regulated agricultural activities as defined in section 49-201 and that are
26 subject to best management practices pursuant to section 49-247 or
27 by-products of livestock, range livestock and poultry as defined in section
28 3-1201, pesticide containers that are regulated pursuant to title 3, chapter
29 2, article 6 or other agricultural crop residues.

30 (n) Household hazardous waste collection events held at a temporary
31 site for not more than six days in any calendar quarter.

32 (o) Wastewater treatment facilities as defined in section 49-1201.

33 (p) An on-site single family household waste composting facility.

34 (q) A site at which five hundred or fewer waste tires are stored.

35 (r) A site at which mining industry off-road waste tires are stored or
36 are disposed of as prescribed by rules in effect on February 1, 1996, until
37 the director by rule determines that on-site recycling methods exist that are
38 technically feasible and economically practical.

39 (s) A site at which underground piping, conduit, pipe covering or
40 similar structures are abandoned in place in accordance with applicable state
41 and federal laws.

42 (t) AN ABANDONED MINE CONTAINING WASTE TIRES AS FILL MATERIAL AS
43 PROVIDED BY SECTION 27-318, SUBSECTION F.

44 30. "Solid waste landfill" means a facility, area of land or excavation
45 in which solid wastes are placed for permanent disposal. Solid waste

1 landfill does not include a land application unit, surface impoundment,
2 injection well, compost pile or waste pile or an area containing ash from the
3 on-site combustion of coal that does not contain household waste, household
4 hazardous waste or conditionally exempt small quantity generator waste.

5 31. "Solid waste management" means the systematic administration of
6 activities ~~which~~ THAT provide for the collection, source separation, storage,
7 transportation, transfer, processing, treatment or disposal of solid waste in
8 a manner that protects public health and safety and the environment and
9 prevents and abates environmental nuisances.

10 32. "Solid waste management plan" means the plan ~~which~~ THAT is adopted
11 pursuant to section 49-721 and ~~which~~ THAT provides guidelines for the
12 collection, source separation, storage, transportation, processing,
13 treatment, reclamation and disposal of solid waste in a manner that protects
14 public health and safety and the environment and prevents and abates
15 environmental nuisances.

16 33. "Storage" means the holding of solid waste.

17 34. "Transfer facility" means a site that is owned, operated or used by
18 any person for the rehandling or storage for ninety days or less of solid
19 waste that was generated off site for the primary purpose of transporting
20 that solid waste. Transfer facility includes those facilities that include
21 significant solid waste transfer activities that warrant the facility's
22 regulation as a transfer facility.

23 35. "Treatment" means any method, technique or process used to change
24 the physical, chemical or biological character of solid waste so as to render
25 that waste safer for transport, amenable for processing, amenable for storage
26 or reduced in volume.

27 36. "Vegetative waste" means waste derived from plants, including tree
28 limbs and branches, stumps, grass clippings and other waste plant
29 material. Vegetative waste does not include processed lumber, paper,
30 cardboard and other manufactured products that are derived from plant
31 material.

32 37. "Waste pile" means any noncontainerized accumulation of solid,
33 nonflowing waste that is used for treatment or storage.

34 38. "Waste tire" does not include tires used for agricultural purposes
35 as bumpers on agricultural equipment or as ballast to maintain covers at an
36 agricultural site, or any tire disposed of using any of the methods in
37 section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8, ~~and~~ 11 AND 13
38 and means any of the following:

39 (a) A tire that is no longer suitable for its original intended purpose
40 because of wear, damage or defect.

41 (b) A tire that is removed from a motor vehicle and is retained for
42 further use.

43 (c) A tire that has been chopped or shredded.

1 39. "Waste tire facility" means a solid waste facility at which five
2 thousand or more waste tires are stored outdoors on any day.

3 Sec. 4. Demonstration project using used tires as fill in
4 abandoned mines; evaluation; abandoned mines
5 demonstration project trust fund

6 A. Pursuant to section 27-318, subsection F, Arizona Revised Statutes,
7 as amended by this act, the state mine inspector shall select up to five
8 abandoned mines in dispersed locations in this state in which to place waste
9 tires as fill material for evaluation pursuant to subsection C of this
10 section.

11 B. The state mine inspector shall convene an abandoned mine
12 reclamation working group to evaluate the use of waste tires as fill material
13 in the permanent closure of abandoned mines. The working group shall
14 include:

- 15 1. The state fire marshal or the marshal's designee.
- 16 2. The director of environmental quality or the director's designee.
- 17 3. The director of water resources or the director's designee.
- 18 4. The director of the department of mines and mineral resources or
19 the director's designee.
- 20 5. A representative of a county waste tire collection facility.
- 21 6. At the inspector's discretion, one or more representatives of the
22 mining industry or related commercial enterprises.

23 C. The working group established under subsection B of this section
24 shall evaluate the effectiveness of waste tires as fill material for
25 abandoned mines and determine any public safety and water quality
26 consequences from the underground presence of waste tires.

27 D. The abandoned mines demonstration project trust fund is established
28 consisting of gifts, grants and contributions specifically designated for the
29 fund. Monies in the fund are exempt from the provisions of section 35-190,
30 Arizona Revised Statutes, relating to lapsing of appropriations. The state
31 mine inspector shall administer the fund. Monies in the fund shall be held
32 in trust and are continuously appropriated to the inspector for the sole
33 purposes of this section, in addition to any monies available from the
34 abandoned mines safety fund pursuant to section 27-131, Arizona Revised
35 Statutes.

36 Sec. 5. Delayed repeal; transfer of monies

37 A. Section 4 of this act, relating to the demonstration project using
38 used tires as fill in abandoned mines, is repealed from and after December
39 31, 2014.

40 B. On December 31, 2014, any monies remaining unexpended and
41 unencumbered in the abandoned mines demonstration project trust fund
42 established by this act are transferred to the abandoned mines safety fund
43 established by section 27-131, Arizona Revised Statutes.