

FILED

State of Arizona
Senate
Forty-second Legislature
Second Regular Session
1996

**Jane Dee Hull
Secretary of State**

CHAPTER 171

SENATE BILL 1402

AN ACT

AMENDING SECTIONS 44-1304, 49-241, 49-701, 49-701.01 AND 49-723, ARIZONA REVISED STATUTES; REPEALING SECTION 49-761, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 261, SECTION 5 AND LAWS 1995, CHAPTER 202, SECTION 15; AMENDING TITLE 49, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 49-761; REPEALING SECTIONS 49-761.01 AND 49-761.02, ARIZONA REVISED STATUTES; REPEALING SECTION 49-762, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1994, CHAPTER 273, SECTION 7 AND LAWS 1995, CHAPTER 202, SECTION 16; RENUMBERING SECTION 49-762.01, ARIZONA REVISED STATUTES, AS SECTION 49-762.07; AMENDING TITLE 49, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 49-762 AND 49-762.01; AMENDING TITLE 49, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-762.02, 49-762.03, 49-762.04, 49-762.05 AND 49-762.06; AMENDING SECTION 49-762.07, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTION 49-763, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-763.01; AMENDING SECTIONS 49-766, 49-767, 49-770, 49-771, 49-772, 49-774, 49-782 AND 49-881, ARIZONA REVISED STATUTES; RELATING TO SOLID WASTE MANAGEMENT.

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

2 Section 1. Section 44-1304, Arizona Revised Statutes, is amended to
3 read:

4 44-1304. Disposal of waste tires

5 A. Beginning on January 1, 1992, the disposal of waste tires in
6 landfills and the incineration of those tires is prohibited, except as
7 provided in subsection C or D of this section or in accordance with rules

1 adopted by the director of the department of environmental quality.
2 Beginning on January 1, 1992, an owner or operator of a solid waste disposal
3 site shall not knowingly accept waste tires for disposal.

4 B. Beginning on January 1, 1992, a person shall not dispose of motor
5 vehicle waste tires unless the waste tires are disposed of at a waste tire
6 collection site or as provided in subsection C or D of this section or in
7 accordance with rules adopted by the director of the department of
8 environmental quality.

9 C. Off road motor vehicle waste tires shall not be disposed of or
10 reused except in accordance with the provisions of this article or rules
11 adopted by the director of the department of environmental quality. In the
12 absence of rules, off road motor vehicle waste tires shall not be disposed
13 of or put to beneficial use in a manner that results in an environmental
14 nuisance pursuant to section 49-141. MINING INDUSTRY OFF ROAD MOTOR VEHICLE
15 WASTE TIRES MAY BE DISPOSED OF BY BURIAL AT A MINING FACILITY IN THE SAME
16 MANNER PERMITTED BY RULE IN EFFECT ON FEBRUARY 1, 1996 UNTIL THE DIRECTOR
17 DETERMINES BY RULE ON-SITE RECYCLING METHODS THAT ARE TECHNICALLY FEASIBLE
18 AND ECONOMICALLY PRACTICAL.

19 D. The following are permissible methods of waste tire disposal:
20 1. Retreading or recapping.
21 2. Constructing collision barriers.
22 3. Controlling soil erosion or for flood control only if used in
23 accordance with approved engineering practices.
24 4. Chopping or shredding.
25 5. Grinding for use in asphalt and as a raw material for other
26 products.
27 6. Sludge composting.
28 7. Using as playground equipment.
29 8. Incinerating or using as a fuel or pyrolysis if permitted by laws,
30 regulations or ordinances relating to burning or fuel.
31 9. Hauling to out-of-state collection or processing sites.
32 10. Tire monofills if tires are chopped or shredded.
33 11. Use as a building material for building construction in accordance
34 with applicable city, town and county building codes.

35 E. For purposes of subsection D, paragraph 10 of this section, "tire
36 monofill" means a solid waste disposal facility or a part of a facility used
37 for the exclusive purpose of the disposal of waste tires which are chopped,
38 shredded or cut up for the purpose of disposal.

39 F. The director of the department of environmental quality, by rule,
40 may authorize other methods of disposal of waste tires. If the director of
41 the department of environmental quality authorizes disposal of waste tires
42 as daily cover material for a landfill, the director shall specify the size
43 of the parts into which the material must be cut.

1 G. Each county shall provide at least one designated waste tire
2 collection site in the county to receive waste tires from a seller of motor
3 vehicle tires or the seller's designee complying with section 44-1302.
4 Additional waste tire collection sites or disposal arrangements shall be
5 established by the county as necessary for the disposal of waste tires as
6 provided in subsection B of this section. All collection sites established
7 under this subsection shall comply with applicable zoning and ordinance
8 regulations. The county or private enterprise receiving waste tire fund
9 monies from a county shall not impose a tire tipping fee and shall not refuse
10 to accept waste tires from a seller of motor vehicle tires or the seller's
11 designee complying with section 44-1302, unless provided for in section
12 44-1302, subsection H.

13 Sec. 2. Section 49-241, Arizona Revised Statutes, is amended to read:

14 49-241. Permit required to discharge

15 A. Unless otherwise provided by this article, any person who
16 discharges or who owns or operates a facility that discharges shall obtain
17 an aquifer protection permit from the director.

18 B. Unless exempted under section 49-250 or subsection E of this
19 section, the following are considered to be discharging facilities and shall
20 be operated pursuant to either an individual permit or general permit,
21 including agricultural general permits, under this article:

22 1. Surface impoundments including holding, storage settling, treatment
23 or disposal pits, ponds and lagoons.

24 2. Solid waste disposal facilities.

25 3. Injection wells.

26 4. Land treatment facilities.

27 5. Facilities which add a pollutant to a salt dome formation, salt bed
28 formation, dry well or underground cave or mine.

29 6. Mine tailings piles and ponds.

30 7. Mine leaching operations.

31 8. Septic tank systems with a capacity of greater than two thousand
32 gallons per day.

33 9. Groundwater recharge projects and underground storage and recovery
34 projects.

35 10. Point source discharges to navigable waters.

36 11. Sewage or sludge ponds and wastewater treatment facilities.

37 C. Not later than January 1, 1992, the director shall publish a list
38 of the names and locations of existing facilities that are required to obtain
39 an aquifer protection permit. The list shall contain deadlines for the
40 submittal of applications for aquifer protection permits, based on the degree
41 of risk to the public health and welfare and the environment and based on a
42 work plan of the director designed to process all applications for an aquifer
43 protection permit no later than January 1, 2001.

1 D. Beginning January 1, 1993, the director shall publish annually the
2 fee schedule for aquifer protection permit applications and a list of the
3 names and locations of the facilities that have filed applications for
4 aquifer protection permits, with a description of the status of each
5 application.

6 E. Owners and operators of existing solid waste disposal facilities
7 are exempt from obtaining an aquifer protection permit if the facility
8 complies with all of the following:

9 1. THE FACILITY CEASES ACCEPTING WASTE BEFORE OCTOBER 9, 1997, AND
10 INSTALLS FINAL COVER ON THE FACILITY BY OCTOBER 9, 1998.

11 ~~2.~~ 2. A closure plan is submitted to the director by October 9, ~~1996~~
12 1997, with a closure date of not later than October 9, 1998. The closure
13 plan shall include appropriate site specific groundwater quality monitoring.

14 ~~3.~~ 3. The facility receives less than twenty tons per day of solid
15 waste on an annual average.

16 ~~4.~~ 4. There is no evidence of existing groundwater contamination from
17 the facility.

18 ~~5.~~ 5. Either of the following applies:

19 (a) The facility serves a community that experiences annually an
20 interruption in surface transportation for at least three consecutive months
21 that prevents access to a regional solid waste management facility.

22 (b) The facility serves a community that has no practicable waste
23 management alternative and the facility is located in an area that receives
24 twenty-five inches or less of precipitation annually.

25 F. If the director has reasonable cause to believe that groundwater
26 contamination is occurring from a solid waste facility that is closed
27 pursuant to subsection E of this section, the director may require the owner
28 or operator to investigate and, if necessary, remediate the contamination in
29 accordance with a plan approved by the director. If an owner or operator of
30 such a facility discovers information indicating that groundwater
31 contamination is discharging from the facility the information shall be
32 immediately submitted to the director.

33 G. The director shall prescribe the procedures for aquifer protection
34 permit applications and fee collection under this section. The director
35 shall transmit all monies collected under this section to the state treasurer
36 for deposit in a separate account of the water quality assurance revolving
37 fund established by section 49-282 and may authorize expenditures from the
38 account, subject to legislative appropriation, pursuant to section 49-282,
39 subsection C, paragraph 8, to pay reasonable and necessary costs of
40 processing and issuing permits and administering the registration program.

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

42 49-701. Definitions

43 In this chapter, unless the context otherwise requires:

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

5 2. "Administrator" means the administrator of the United States
6 environmental protection agency.

7 3. "APPROVED SOLID WASTE FACILITY" MEANS A SOLID WASTE FACILITY THAT
8 IS SUBJECT TO SECTION 49-762 AND THAT HAS RECEIVED DEPARTMENT APPROVAL OF A
9 SOLID WASTE FACILITY PLAN.

10 ~~3.~~ 4. "Closed solid waste facility" means any of the following:

11 (a) A solid waste facility that ceases storing, treating, processing
12 or ~~disposing of~~ RECEIVING FOR DISPOSAL solid waste before the effective date
13 of DESIGN AND OPERATION rules for that type of facility adopted pursuant to
14 section 49-761, ~~subsection A, paragraphs 2 and 4.~~

15 (b) A public solid waste landfill that meets any of the following
16 criteria:

17 (i) Ceased receiving solid waste prior to July 1, 1983.

18 (ii) Ceased receiving solid waste and received at least two feet of
19 cover material prior to January 1, 1986.

20 (iii) Received approval for closure from the department.

21 (c) A public composting plant or a public incinerating facility that
22 closed in accordance with an approved plan.

23 ~~4.~~ 5. "Conditionally exempt small quantity generator waste" means
24 hazardous waste in quantities as defined by rules adopted pursuant to section
25 49-922.

26 ~~5.~~ 6. "Construction debris" means solid waste derived from the
27 construction, repair or remodeling of buildings or other structures.

28 ~~6.~~ 7. "County" means:

29 (a) The board of supervisors in the context of the exercise of powers
30 or duties.

31 (b) The unincorporated areas in the context of area of jurisdiction.

32 ~~7.~~ 8. "Demolition debris" means solid waste derived from the
33 demolition of buildings or other structures.

34 ~~8.~~ 9. "Discharge" has the same meaning as prescribed in section
35 49-201.

36 ~~9.~~ 10. "Existing solid waste facility" means a solid waste facility
37 that begins construction or is in operation on the effective date of the
38 design and operation rules adopted by the director pursuant to section
39 49-761, ~~subsection A, paragraphs 2 and 4~~ for that type of solid waste
40 facility.

41 ~~10.~~ 11. "Facility plan" means any design or operating plan for a solid
42 waste facility or group of solid waste facilities.

43 12. "40 C.F.R. PART 257" MEANS 40 CODE OF FEDERAL REGULATIONS PART 257
44 IN EFFECT ON JANUARY 1, 1996.

1 13. "40 C.F.R. PART 258" MEANS 40 CODE OF FEDERAL REGULATIONS PART 258
2 IN EFFECT ON JANUARY 1, 1996.

3 ~~11-~~ 14. "Household hazardous waste" means solid waste as defined in
4 40 Code of Federal Regulations section 261.2 as adopted on July 1, 1991 that
5 is derived from households and is categorically exempt pursuant to 40 Code
6 of Federal Regulations section 261.4(B)(1) as adopted on July 1, 1991.

7 ~~12-~~ 15. "Household waste" means any solid waste including garbage,
8 rubbish and sanitary waste from septic tanks that is generated from
9 households including single and multiple family residences, hotels and
10 motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic
11 grounds and day use recreation areas, not including construction debris,
12 landscaping rubble or demolition debris.

13 ~~13-~~ 16. "Inert material" means:

14 (a) MEANS material that satisfies all of the following elements
15 CONDITIONS:

16 ~~(a)~~ (i) Is not flammable.

17 ~~(b)~~ (ii) Will not decompose.

18 ~~(c)~~ (iii) Will not leach substances in concentrations that exceed
19 applicable aquifer water quality standards ~~established pursuant to~~ PRESCRIBED
20 BY section ~~49-223~~ 49-201, PARAGRAPH 17 when subjected to a water leach test
21 that is designed to approximate natural infiltrating waters.

22 (b) ~~Inert material~~ Includes ~~broken~~ concrete, asphaltic pavement,
23 brick, rock, gravel, sand, ~~and~~ soil AND METAL, IF USED AS REINFORCEMENT IN
24 CONCRETE, but does not include special waste, HAZARDOUS WASTE, glass or OTHER
25 metal ~~that is not contained in concrete~~.

26 17. "LAND DISPOSAL" MEANS PLACEMENT OF SOLID WASTE IN OR ON LAND AND
27 INCLUDES PLACEMENT IN A LANDFILL, SURFACE IMPOUNDMENT, WASTE PILE, INJECTION
28 WELL, LAND TREATMENT FACILITY, SALT DOME FORMATION, SALT BED FORMATION,
29 UNDERGROUND MINE OR CAVE OR PLACEMENT IN A VAULT OR BUNKER THAT IS INTENDED
30 TO BE USED FOR DISPOSAL PURPOSES.

31 ~~14-~~ 18. "Landscaping rubble" means material that is derived from
32 landscaping or reclamation activities and that may contain inert material and
33 no more than ten per cent by volume of vegetative waste.

34 ~~15-~~ 19. "Management agency" means any person responsible for the day
35 to day operation, maintenance and management of a particular public facility
36 or group of public facilities.

37 ~~16-~~ 20. "Medical waste" means any solid waste which is generated in
38 the diagnosis, treatment or immunization of a human being or animal or in any
39 research relating to that diagnosis, treatment or immunization, or in the
40 production or testing of biologicals AND INCLUDES DISCARDED DRUGS, but DOES
41 not ~~including~~ INCLUDE hazardous waste as defined in section 49-921 OTHER THAN
42 HAZARDOUS WASTE GENERATED BY A CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR
43 AS DEFINED BY 40 CODE OF FEDERAL REGULATIONS SECTION 261.5.

1 ~~17-~~ 21. "Municipal solid waste landfill" means any solid waste
2 landfill that accepts household waste, household hazardous waste or
3 conditionally exempt small quantity generator waste.

4 ~~18-~~ 22. "New solid waste facility" means a solid waste facility that
5 begins construction or operation after the effective date of design and
6 operating rules that are adopted ~~by the director~~ pursuant to section 49-761,
7 ~~subsection A, paragraphs 2 and 4~~ for that type of solid waste facility.

8 ~~19-~~ 23. "On site" means the same or geographically contiguous property
9 that may be divided by public or private right-of-way if the entrance and
10 exit between the properties is at a crossroads intersection and access is by
11 crossing the right-of-way and not by traveling along the right-of-way.
12 Noncontiguous properties that are owned by the same person and connected by
13 a right-of-way that is controlled by that person and to which the public does
14 not have access are deemed on site property. Noncontiguous properties that
15 are owned or operated by the same person regardless of right-of-way control
16 are also deemed on site property.

17 ~~20-~~ 24. "Person" means any public or private corporation, company,
18 partnership, firm, association or society of persons, the federal government
19 and any of its departments or agencies, this state or any of its agencies,
20 departments, political subdivisions, counties, towns or municipal
21 corporations, as well as a natural person.

22 ~~21-~~ 25. "Process" or "processing" means the reduction, separation,
23 recovery, conversion or recycling of solid waste.

24 ~~22-~~ 26. "Public SOLID WASTE facility" means A TRANSFER FACILITY AND
25 any site owned, ~~and~~ operated or utilized by any person for ~~resource~~
26 ~~conservation or recovery or for the collection, source separation,~~ THE
27 storage, ~~transportation, transfer,~~ processing, treatment or disposal of solid
28 waste that is not generated on site. ~~Public facility includes a public solid~~
29 ~~waste landfill.~~

30 27. "RECYCLING FACILITY" MEANS A SOLID WASTE FACILITY THAT IS OWNED,
31 OPERATED OR USED FOR THE STORAGE, TREATMENT OR PROCESSING OF RECYCLABLE SOLID
32 WASTE AND THAT HANDLES WASTES THAT HAVE A SIGNIFICANT ADVERSE EFFECT ON THE
33 ENVIRONMENT.

34 ~~23-~~ 28. "Salvaging" means the removal of solid waste from a solid
35 waste facility with the permission and in accordance with rules or ordinances
36 of the management agency for purposes of productive reuse.

37 ~~24-~~ 29. "Scavenging" means the unauthorized removal of solid waste
38 from a solid waste facility.

39 ~~25-~~ 30. "Solid waste facility" means A TRANSFER FACILITY AND any site
40 owned, operated or utilized by any person for the storage, processing,
41 treatment or disposal of solid waste, CONDITIONALLY EXEMPT SMALL QUANTITY
42 GENERATOR WASTE or household hazardous waste but does not include the
43 following:

1 (a) A site at which less than one ton of solid waste that is not
2 household waste, household hazardous waste, conditionally-exempt small
3 quantity generator waste, medical waste or special waste and that was
4 generated on site is stored, processed, treated or disposed in compliance
5 with section ~~49-762.01~~ 49-762.07, subsection F.

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

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

12 ~~(d) A transfer facility.~~

13 ~~(e) (d) A site that stores, receives, source separates, TREATS OR~~
14 ~~processes or reduces recyclable solid waste, including paper, glass, wood,~~
15 ~~cardboard, household textiles, scrap metal, plastic, tree trimmings,~~
16 ~~aluminum, steel or other recyclable material, and that has no significant~~
17 ~~adverse effect on the environment IS NOT A TRANSFER FACILITY OR A RECYCLING~~
18 ~~FACILITY.~~

19 ~~(f) (e) An agricultural~~ A site where sludge from a wastewater
20 treatment facility is applied to the land as a fertilizer or beneficial soil
21 amendment IN ACCORDANCE WITH SLUDGE APPLICATION REQUIREMENTS.

22 ~~(g) (f) A closed solid waste facility.~~

23 ~~(h) (g) A solid waste landfill that is performing or has completed~~
24 ~~postclosure care BEFORE JULY 1, 1996 in accordance with an approved~~
25 ~~postclosure plan.~~

26 ~~(i) (h) A closed solid waste landfill performing a onetime removal~~
27 ~~of solid waste from the closed solid waste landfill.~~

28 ~~(j) (i) A site where solid waste generated in street sweeping~~
29 ~~activities is stored, processed or treated prior to disposal at an approved~~
30 ~~solid waste facility.~~

31 ~~(k) (j) A site where solid waste generated at either a drinking water~~
32 ~~treatment facility or a wastewater treatment facility is stored, processed,~~
33 ~~or treated on site prior to disposal at an approved solid waste facility, and~~
34 ~~any discharge is regulated pursuant to chapter 2, article 3 of this title.~~

35 ~~(l) (k) A closed solid waste landfill where excavation or removal of~~
36 ~~solid waste is performed for maintenance and repair provided the following~~
37 ~~conditions are met:~~

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

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

1 (iii) ~~A~~ Protection has been provided to prevent remaining waste from
2 causing a vector, odor, litter or other environmental nuisance.

3 (iv) The operator provides a notice to the department containing the
4 information required by section ~~49-762.01~~ 49-762.07, subsection A, paragraphs
5 1, 2 and 5 and a brief description of the project.

6 (l) AGRICULTURAL ON-SITE DISPOSAL AS PROVIDED IN SECTION 49-766.

7 (m) THE USE, STORAGE, TREATMENT OR DISPOSAL OF BY-PRODUCTS OF
8 REGULATED AGRICULTURAL ACTIVITIES AS DEFINED IN SECTION 49-201 AND THAT ARE
9 SUBJECT TO BEST MANAGEMENT PRACTICES PURSUANT TO SECTION 49-247 OR
10 BY-PRODUCTS OF LIVESTOCK, RANGE LIVESTOCK AND POULTRY AS DEFINED IN SECTION
11 3-1201, PESTICIDE CONTAINERS THAT ARE REGULATED PURSUANT TO TITLE 3, CHAPTER
12 2, ARTICLE 6 OR OTHER AGRICULTURAL CROP RESIDUES.

13 (n) HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENTS HELD AT A TEMPORARY
14 SITE FOR NOT MORE THAN SIX DAYS IN ANY CALENDAR QUARTER.

15 (o) WASTEWATER TREATMENT FACILITIES AS DEFINED IN SECTION 49-371.

16 (p) AN ON-SITE SINGLE-FAMILY HOUSEHOLD WASTE COMPOSTING FACILITY.

17 ~~26-~~ 31. "Solid waste landfill" means a facility, area of land or
18 excavation in which solid wastes are placed for permanent disposal. Solid
19 waste landfill does not include a land application unit, surface impoundment,
20 injection well, compost pile or waste pile or an area containing ash from the
21 on-site combustion of coal that does not contain household waste, household
22 hazardous waste or conditionally exempt small quantity generator waste.

23 ~~27-~~ 32. "Solid waste management" means the systematic administration
24 of activities which provide for the collection, source separation, storage,
25 transportation, transfer, processing, treatment or disposal of solid waste
26 in a manner that protects public health and safety and the environment and
27 prevents and abates ~~public~~ ENVIRONMENTAL nuisances.

28 ~~28-~~ 33. "Solid waste management plan" means the plan which is adopted
29 pursuant to section 49-721 and which provides guidelines for the collection,
30 source separation, storage, transportation, processing, treatment,
31 reclamation and disposal of solid waste in a manner that protects public
32 health and safety and the environment and prevents and abates ~~public~~
33 ENVIRONMENTAL nuisances.

34 ~~29-~~ 34. "Storage" means the holding of solid waste.

35 ~~30-~~ 35. "Transfer facility" means a site that is owned, operated or
36 used by any person for the rehandling or storage for ninety days or less of
37 solid waste that was generated off site for the PRIMARY purpose of
38 transporting that solid waste. ~~Transfer facility does not include a site~~
39 ~~identified in paragraph 25, subdivision (d) of this section.~~ TRANSFER
40 FACILITY INCLUDES THOSE FACILITIES THAT INCLUDE SIGNIFICANT SOLID WASTE
41 TRANSFER ACTIVITIES THAT WARRANT THE FACILITY'S REGULATION AS A TRANSFER
42 FACILITY.

43 ~~31-~~ 36. "Treatment" means any method, technique, or process used to
44 change the physical, chemical or biological character of solid waste so as

1 to render that waste safer for transport, amenable for processing, amenable
2 for storage, or reduced in volume.

3 ~~32-~~ 37. "Vegetative waste" means waste derived from plants, including
4 tree limbs and branches, stumps, grass clippings and other waste plant
5 material. Vegetative waste does not include processed lumber, paper,
6 cardboard and other manufactured products that are derived from plant
7 material.

8 ~~33-~~ 38. "Waste pile" means any noncontainerized accumulation of solid,
9 nonflowing waste that is used for treatment or storage.

10 Sec. 4. Section 49-701.01, Arizona Revised Statutes, is amended to
11 read:

12 49-701.01. Definition of solid waste; exemptions

13 A. "Solid waste" means any garbage, trash, rubbish, refuse, sludge
14 from a waste treatment plant, water supply treatment plant or pollution
15 control facility and other discarded material, including solid, liquid,
16 semisolid or contained gaseous material.

17 B. The following are exempt from the definition of solid waste:

- 18 1. Hazardous waste regulated pursuant to chapter 5 of this title.
- 19 2. Waste that contains radioactive materials subject to the atomic
20 energy act of 1954 (42 United States Code sections 2011 through 2297, 68
21 Stat. 919), ~~as amended~~, or title 30, chapter 4.
- 22 3. Any discharge from a facility regulated pursuant to chapter 2,
23 article 3 of this title.
- 24 4. Any discharge regulated pursuant to section 402 or 404 of the clean
25 water act (33 United States Code sections 1342 and 1344), ~~as amended~~.
- 26 5. Domestic sewage.
- 27 6. Discharges into a publicly or privately owned treatment works
28 including the treatment works and the sewer collection system.
- 29 7. Irrigation waters.
- 30 8. Irrigation return flows.
- 31 9. Reclaimed wastewater from wastewater reuse facilities.
- 32 10. Leachate resulting from the direct natural infiltration of
33 precipitation through undisturbed regolith or bedrock, if pollutants are not
34 added by man.

35 11. Storm water.

36 12. ~~Residuals from~~ SUBSTANCES THAT REMAIN ON SITE AFTER BEING GENERATED
37 DURING on-site corrective actions undertaken pursuant to any of the
38 following:

- 39 (a) Chapter 2, articles 3 and 5 of this title.
- 40 (b) ~~Chapter~~ CHAPTERS 5 AND 6, ~~article 1~~ of this title.
- 41 (c) The comprehensive environmental response, compensation and
42 liability act OF 1980 (P.L. 96-510; 94 STAT. 2767; 42 United States Code
43 sections 9601 through 9675).

1 (d) The federal water pollution control act AMENDMENTS OF 1972 (P.L.
2 92-500; 86 STAT. 816; 33 United States Code sections 1251 through 1387).

3 (e) THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (P.L. 94-580;
4 90 STAT. 2795; 42 UNITED STATES CODE SECTIONS 6901 THROUGH 6992).

5 (f) ON-SITE SOILS THAT MEET THE SOIL CLEANUP STANDARDS ADOPTED BY THE
6 DEPARTMENT PURSUANT TO CHAPTER 1, ARTICLE 4 OF THIS TITLE.

7 ~~Off site facilities treating or disposing of such residuals are not covered~~
8 ~~by this exemption.~~

9 13. Water used in gardening, lawn care, landscape maintenance and
10 related activities.

11 14. Discharges from ponds used for watering livestock and wildlife.

12 15. LANDSCAPING RUBBLE USED TO RECLAIM LAND.

13 16. MINING INDUSTRY OFF-ROAD WASTE TIRES THAT ARE LARGER THAN THREE
14 FEET IN OUTSIDE DIAMETER AND THAT ARE BURIED AT THE SITE AND ROCK, LEACHATE
15 MATERIAL, TAILING AND SLAG THAT ARE PRODUCED AND MAINTAINED AT THE SITE OF
16 THE MINING OR METALLURGICAL OPERATION.

17 17. INERT MATERIAL.

18 18. EFFLUENT AS DEFINED IN SECTION 45-101.

19 19. RETURN FLOWS FROM IRRIGATED AGRICULTURE.

20 ~~C. The director, within ninety days of a receipt of a written request,~~
21 ~~shall determine if a substance can be added to the list of exemptions in~~
22 ~~subsection B. The director's determination shall be based on a demonstration~~
23 ~~that, on either a statewide or site specific basis, a substance is incapable~~
24 ~~or unlikely to cause or substantially contribute to a threat to the public~~
25 ~~health or the environment.~~

26 C. ANY PERSON MAY PETITION THE DIRECTOR TO EXEMPT A SUBSTANCE AS SOLID
27 WASTE BY SUBMITTING A WRITTEN REQUEST TO THE DIRECTOR. THE REQUEST MAY BE
28 FOR A STATEWIDE OR SITE-SPECIFIC EXEMPTION. WITHIN NINETY DAYS AFTER
29 RECEIPT OF A WRITTEN REQUEST, THE DIRECTOR SHALL DETERMINE WHETHER TO EXEMPT
30 THE SUBSTANCE. THE DIRECTOR'S DETERMINATION SHALL BE BASED ON A
31 DEMONSTRATION THAT THE SUBSTANCE IS UNLIKELY TO CAUSE OR SUBSTANTIALLY
32 CONTRIBUTE TO A THREAT TO THE PUBLIC HEALTH OR THE ENVIRONMENT. THE
33 PROCEDURE IS AS FOLLOWS:

34 1. WITHIN THIRTY DAYS AFTER THE DIRECTOR'S DETERMINATION TO ADD A
35 SUBSTANCE ON A SITE-SPECIFIC BASIS, A NOTICE OF THAT DETERMINATION SHALL BE
36 PUBLISHED IN THE ARIZONA ADMINISTRATIVE REGISTER. A SITE-SPECIFIC
37 DETERMINATION IS EFFECTIVE ON THE DATE OF THE DIRECTOR'S DETERMINATION.

38 2. WITHIN THIRTY DAYS AFTER THE DIRECTOR'S DETERMINATION TO ADD A
39 SUBSTANCE ON A STATEWIDE BASIS, THE DIRECTOR SHALL INITIATE RULE MAKING TO
40 ADD THE SUBSTANCE TO THE LIST OF EXEMPTIONS. THIS RULE MAKING IS EXEMPT FROM
41 THE REQUIREMENTS OF TITLE 41, CHAPTER 6, EXCEPT FOR THE REQUIREMENTS
42 REGARDING PUBLIC NOTICE. THE EFFECTIVE DATE FOR THE FINAL RULE IS THE
43 EFFECTIVE DATE FOR THE EXEMPTION.

1 Sec. 5. Section 49-723, Arizona Revised Statutes, is amended to read:
2 49-723. Research and development

3 A. The department may initiate, conduct and support research,
4 development and demonstration projects and programs directed toward improving
5 solid waste management, resource conservation and resource recovery methods,
6 techniques, systems and facilities, or for preventing or mitigating the
7 adverse effects of environmental pollution ~~if the projects and programs do~~
8 ~~not duplicate those of other states or the United States.~~

9 B. Each county, city or town may conduct studies and investigations
10 regarding new or improved methods of solid waste management and MAY
11 coordinate the studies with other agencies.

12 C. IF THE RESEARCH, DEVELOPMENT OR DEMONSTRATION PROJECT IS SUBJECT
13 TO SOLID WASTE FACILITY PLAN REQUIREMENTS PURSUANT TO SECTION 49-762, THE
14 DEPARTMENT MAY EXEMPT THE PROJECT FROM SOME OR ALL OF THE PLAN REVIEW
15 REQUIREMENTS FOR NO MORE THAN ONE YEAR.

16 Sec. 6. Repeal

17 Section 49-761, Arizona Revised Statutes, as amended by Laws 1995,
18 chapter 261, section 5, and section 49-761, Arizona Revised Statutes, as
19 amended by Laws 1995, chapter 202, section 15, are repealed.

20 Sec. 7. Title 49, chapter 4, article 4, Arizona Revised Statutes, is
21 amended by adding a new section 49-761, to read:

22 49-761. Rule making authority for solid waste facilities;
23 financial assurance; recycling facilities

24 A. THE DEPARTMENT SHALL ADOPT RULES REGARDING THE STORAGE, PROCESSING,
25 TREATMENT AND DISPOSAL OF SOLID WASTE AS PRESCRIBED BY SUBSECTIONS B THROUGH
26 M OF THIS SECTION. IN ADOPTING RULES, THE DEPARTMENT SHALL CONSIDER THE
27 NATURE OF THE WASTE STREAMS AT THE FACILITIES TO BE REGULATED. THE
28 DEPARTMENT SHALL ALSO CONSIDER OTHER APPLICABLE FEDERAL AND STATE LAWS AND
29 RULES IN AN EFFORT TO AVOID PRACTICES OR REQUIREMENTS THAT DUPLICATE, ARE
30 INCONSISTENT WITH OR WILL RESULT IN DUAL REGULATION WITH OTHER APPLICABLE
31 RULES AND LAWS.

32 B. FOR PURPOSES OF ADMINISTERING 42 UNITED STATES CODE SECTION 6945,
33 AS AMENDED NOVEMBER 8, 1984, 40 C.F.R. PART 258 IS ADOPTED BY REFERENCE
34 EXCEPT AS PRESCRIBED BY PARAGRAPH 2 OF THIS SUBSECTION. THIS SUBSECTION, AS
35 IT APPLIES TO MUNICIPAL SOLID WASTE LANDFILLS, GOVERNS IF THERE IS ANY
36 CONFLICT BETWEEN THIS SUBSECTION AND ANY OTHER STATUTE RELATING TO SOLID
37 WASTE. MUNICIPAL SOLID WASTE LANDFILL FACILITY PLANS SUBMITTED PURSUANT TO
38 SECTION 49-762 SHALL COMPLY WITH THIS SUBSECTION. IN ADMINISTERING THIS
39 SUBSECTION OR IN ADOPTING OR ADMINISTERING ANY RULES ADOPTED PURSUANT TO THIS
40 SUBSECTION, THE DEPARTMENT SHALL ENSURE THAT ANY DISCRETION ALLOWED TO A
41 DIRECTOR OF AN APPROVED STATE PURSUANT TO THE FEDERAL REGULATIONS IS
42 MAINTAINED. THE FOLLOWING APPLY TO THE DEPARTMENT'S ADMINISTRATION OF 42
43 UNITED STATES CODE SECTION 6945 AND TO THE DEPARTMENT'S ADOPTION OF RULES FOR
44 MUNICIPAL SOLID WASTE LANDFILLS:

1 1. THE DEPARTMENT MAY ADOPT RULES FOR MUNICIPAL SOLID WASTE LANDFILLS.
2 RULES ADOPTED PURSUANT TO THIS PARAGRAPH SHALL NOT BE MORE STRINGENT THAN OR
3 CONFLICT WITH 40 C.F.R. PART 258 FOR NONPROCEDURAL STANDARDS, EXCEPT THAT THE
4 DEPARTMENT MAY ADOPT AQUIFER PROTECTION STANDARDS THAT ARE MORE STRINGENT
5 THAN 40 C.F.R. PART 258 IF THOSE STANDARDS ARE CONSISTENT WITH AND NO MORE
6 STRINGENT THAN STANDARDS DEVELOPED PURSUANT TO CHAPTER 2, ARTICLE 3 OF THIS
7 TITLE, OR IF THE STANDARD IS ADOPTED PURSUANT TO ARTICLE 9 OF THIS CHAPTER.
8 RULES ADOPTED PURSUANT TO THIS PARAGRAPH ARE EFFECTIVE ON THE CONCURRENCE OF
9 THE ADMINISTRATOR WITH THIS STATE'S MUNICIPAL SOLID WASTE LANDFILL PROGRAM.

10 2. 40 C.F.R. PART 258, TABLE I IS NOT ADOPTED IN ITS ENTIRETY. THE
11 DEPARTMENT SHALL USE AQUIFER WATER QUALITY STANDARDS THAT HAVE BEEN ADOPTED
12 BY THE DEPARTMENT PURSUANT TO SECTION 49-223 AND SHALL USE THOSE PORTIONS OF
13 TABLE I THAT ARE MORE RESTRICTIVE THAN THE STANDARDS ADOPTED PURSUANT TO
14 SECTION 49-223.

15 C. THE DEPARTMENT SHALL ADOPT RULES FOR THOSE SOLID WASTE LAND
16 DISPOSAL FACILITIES THAT ARE NOT MUNICIPAL SOLID WASTE LANDFILLS. RULES
17 ADOPTED PURSUANT TO THIS SUBSECTION SHALL NOT BE MORE STRINGENT THAN OR
18 CONFLICT WITH 40 C.F.R. PART 257 FOR NONPROCEDURAL STANDARDS, EXCEPT THAT THE
19 DEPARTMENT MAY ADOPT AQUIFER PROTECTION STANDARDS THAT ARE MORE STRINGENT
20 THAN 40 C.F.R. PART 257 IF THESE STANDARDS ARE CONSISTENT WITH AND NO MORE
21 STRINGENT THAN STANDARDS DEVELOPED PURSUANT TO CHAPTER 2, ARTICLE 3 OF THIS
22 TITLE, OR IF THE STANDARD IS ADOPTED PURSUANT TO ARTICLE 9 OF THIS CHAPTER.
23 IN ADMINISTERING THIS SUBSECTION, THE DEPARTMENT SHALL ENSURE THAT ANY
24 DISCRETION ALLOWED TO A DIRECTOR OF AN APPROVED STATE PURSUANT TO THE FEDERAL
25 REGULATIONS IS MAINTAINED IN THE DEPARTMENT'S RULES. AQUIFER PROTECTION
26 PROVISIONS ADOPTED PURSUANT TO THIS SUBSECTION DO NOT APPLY TO AN OWNER OR
27 OPERATOR OF A SOLID WASTE FACILITY IF THE OWNER OR OPERATOR SUBMITS AN
28 ADMINISTRATIVELY COMPLETE APPLICATION FOR AN AQUIFER PROTECTION PERMIT
29 PURSUANT TO CHAPTER 2, ARTICLE 3 OF THIS TITLE BEFORE THE DATE THAT THE OWNER
30 OR OPERATOR IS REQUIRED TO SUBMIT A SOLID WASTE FACILITY PLAN.

31 D. THE DEPARTMENT SHALL ADOPT RULES TO DEFINE BIOHAZARDOUS MEDICAL
32 WASTE AND TO REGULATE BIOHAZARDOUS MEDICAL WASTE AND MEDICAL SHARPS TO
33 INCLUDE ALL OF THE FOLLOWING:

34 1. A DEFINITION FOR BIOHAZARDOUS MEDICAL WASTE THAT INCLUDES WASTES
35 THAT CONTAIN MATERIAL THAT IS LIKELY TO TRANSMIT ETIOLOGIC AGENTS THAT HAVE
36 BEEN SHOWN TO CAUSE OR CONTRIBUTE TO INCREASED HUMAN MORBIDITY OR MORTALITY
37 OF EPIDEMIOLOGIC SIGNIFICANCE. THE DEPARTMENT SHALL CONSULT WITH THE
38 DEPARTMENT OF HEALTH SERVICES IN MAKING THIS DETERMINATION.

39 2. REASONABLY NECESSARY RULES REGARDING THE STORAGE, COLLECTION,
40 TRANSPORTATION, TREATMENT AND DISPOSAL OF BIOHAZARDOUS MEDICAL WASTE AND
41 MEDICAL SHARPS, BEGINNING WITH THE PLACEMENT BY THE GENERATOR OF THE WASTE
42 IN CONTAINERS FOR THE PURPOSE OF WASTE COLLECTION. IN THE CASE OF
43 SELF-HAULING OF WASTE BY THE GENERATOR, ALL STORAGE FACILITIES UNDER THE
44 GENERATOR'S CONTROL AND ALL WASTE HANDLING PRACTICES INCLUDING STORAGE,

1 TREATMENT AND TRANSPORTATION SHALL BE IN ACCORDANCE WITH THESE RULES. THE
2 DEPARTMENT SHALL ALSO ADOPT REASONABLY NECESSARY RULES REGARDING THE TRACKING
3 OF BIOHAZARDOUS MEDICAL WASTE AND MEDICAL SHARPS.

4 E. THE DEPARTMENT MAY ADOPT REASONABLY NECESSARY RULES REGARDING THE
5 STORAGE, COLLECTION, TRANSPORTATION, TREATMENT AND DISPOSAL OF
6 NONBIOHAZARDOUS MEDICAL WASTE BEGINNING WITH THE PLACEMENT BY THE GENERATOR
7 OF THE WASTE IN CONTAINERS FOR THE PURPOSE OF WASTE COLLECTION. IN THE CASE
8 OF SELF-HAULING OF THE WASTE BY THE GENERATOR, ALL STORAGE FACILITIES UNDER
9 THE GENERATOR'S CONTROL AND ALL WASTE HANDLING PRACTICES INCLUDING STORAGE,
10 TREATMENT AND TRANSPORTATION SHALL BE IN ACCORDANCE WITH THESE RULES.

11 F. THE DEPARTMENT SHALL ADOPT RULES FOR THE APPLICATION OF SLUDGE FROM
12 A WASTEWATER TREATMENT FACILITY TO LAND FOR USE AS FERTILIZER OR BENEFICIAL
13 SOIL AMENDMENT. FOR PURPOSES OF THIS SUBSECTION, "SLUDGE" HAS THE SAME
14 MEANING AS SEWAGE SLUDGE AS DEFINED IN 40 CODE OF FEDERAL REGULATIONS SECTION
15 122.2 IN EFFECT ON JANUARY 1, 1996.

16 G. THE DEPARTMENT SHALL ADOPT RULES REGARDING THE STORAGE, PROCESSING,
17 TREATMENT OR DISPOSAL OF SOLID WASTE AT SOLID WASTE FACILITIES THAT ARE
18 IDENTIFIED IN SECTION 49-762.01. THE RULES SHALL ALLOW THE OWNER OR OPERATOR
19 TO CERTIFY COMPLIANCE WITH THE DEPARTMENT'S STATUTES AND RULES IN LIEU OF
20 OBTAINING A SOLID WASTE FACILITY PLAN APPROVAL. THE RULES SHALL PROVIDE THAT
21 THE APPLICANT AT ITS OPTION MAY REQUEST APPROVAL OF A SOLID WASTE FACILITY
22 PLAN RATHER THAN CERTIFYING COMPLIANCE.

23 H. THE DEPARTMENT SHALL ISSUE BY RULE BEST MANAGEMENT PRACTICES FOR
24 THE CLASSES OF SOLID WASTE FACILITIES SET FORTH IN SECTION 49-762.02.

25 I. THE DEPARTMENT SHALL ADOPT REASONABLY NECESSARY RULES ESTABLISHING
26 MINIMUM STANDARDS FOR STORING, COLLECTING, TRANSPORTING, DISPOSING AND
27 RECLAIMING SOLID WASTE, INCLUDING GARBAGE, TRASH, RUBBISH, MANURE AND OTHER
28 OBJECTIONABLE WASTES. THESE RULES SHALL PROVIDE FOR INSPECTING PREMISES,
29 CONTAINERS, PROCESSES, EQUIPMENT AND VEHICLES, AND FOR ABATING AS
30 ENVIRONMENTAL NUISANCES ANY PREMISES, CONTAINERS, PROCESSES, EQUIPMENT OR
31 VEHICLES THAT DO NOT COMPLY WITH THE MINIMUM STANDARDS OF THESE RULES. THE
32 RULES ADOPTED PURSUANT TO THIS SUBSECTION DO NOT APPLY TO SITES THAT ARE
33 EITHER REGULATED BY SECTION 49-762, 49-762.01 OR 49-762.02 OR EXEMPTED BY
34 SECTION 49-701.01.

35 J. THE DEPARTMENT SHALL ADOPT RULES RELATING TO FINANCIAL ASSURANCE
36 REQUIREMENTS AS FOLLOWS:

37 1. THE RULES SHALL INDICATE THE TYPES OF FINANCIAL ASSURANCE
38 MECHANISMS TO BE REQUIRED AND THE CONTENT, TERMS AND CONDITIONS OF EACH
39 FINANCIAL MECHANISM, INCLUDING CIRCUMSTANCES UNDER WHICH THE DEPARTMENT MAY
40 TAKE ACTION ON THE FINANCIAL ASSURANCE MECHANISM FOR FACILITY CLOSURE,
41 POSTCLOSURE CARE IF NECESSARY AND CORRECTIVE ACTION FOR KNOWN RELEASES. THE
42 FINANCIAL ASSURANCE MECHANISMS SHALL INCLUDE ALL OF THE FOLLOWING:

- 43 (a) SURETY BOND.
- 44 (b) CERTIFICATE OF DEPOSIT.

- 1 (c) TRUST FUND WITH PAY-IN PERIOD.
- 2 (d) LETTER OF CREDIT.
- 3 (e) INSURANCE POLICY.
- 4 (f) CERTIFICATE OF SELF-INSURANCE.
- 5 (g) DEPOSIT WITH THE STATE TREASURER.
- 6 (h) EVIDENCE OF ABILITY TO MEET ANY OF THE FOLLOWING:
- 7 (i) CORPORATE FINANCIAL TEST.
- 8 (ii) LOCAL GOVERNMENT FINANCIAL TEST.
- 9 (iii) CORPORATE GUARANTEE TEST.
- 10 (iv) LOCAL GOVERNMENT GUARANTEE TEST.
- 11 (v) POLITICAL SUBDIVISION FINANCIAL TEST THAT SHALL REQUIRE THE
- 12 DEPARTMENT TO CONSIDER THE ENTITY'S BOND RATING, INCOME STREAM, ASSETS,
- 13 LIABILITIES AND ASSESSED VALUATION OF TAXABLE PROPERTY.
- 14 (i) MULTIPLE FINANCIAL ASSURANCE MECHANISMS.
- 15 (j) ADDITIONAL FINANCIAL ASSURANCE MECHANISMS THAT MAY BE ACCEPTABLE
- 16 TO THE DIRECTOR.
- 17 2. THE DEPARTMENT SHALL INITIATE RULE MAKING FOR FINANCIAL ASSURANCE
- 18 FOR MUNICIPAL SOLID WASTE LANDFILLS WITHIN THIRTY DAYS AFTER ADOPTION OF
- 19 FINANCIAL ASSURANCE REGULATIONS BY THE ADMINISTRATOR. THESE RULES SHALL BE
- 20 EFFECTIVE ON THE LATER OF:
- 21 (a) THE EFFECTIVE DATE FOR FINANCIAL ASSURANCE REGULATIONS ADOPTED BY
- 22 THE ADMINISTRATOR.
- 23 (b) THE DATE THAT THE DEPARTMENT'S FINAL RULES ARE PUBLISHED IN THE
- 24 ARIZONA ADMINISTRATIVE REGISTER.
- 25 K. THE DEPARTMENT SHALL ADOPT RULES THAT PRESCRIBE STANDARDS TO BE
- 26 USED IN DETERMINING IF A SITE IS A RECYCLING FACILITY.
- 27 L. THE DIRECTOR MAY ADOPT RULES THAT PRESCRIBE STANDARDS TO BE USED
- 28 IN DETERMINING IF A SOLID WASTE FACILITY INCLUDES SIGNIFICANT SOLID WASTE
- 29 TRANSFER ACTIVITIES THAT WARRANT THE FACILITY'S REGULATION AS A TRANSFER
- 30 FACILITY.
- 31 M. THE DEPARTMENT SHALL ADOPT FACILITY DESIGN, CONSTRUCTION,
- 32 OPERATION, CLOSURE AND POST-CLOSURE MAINTENANCE RULES FOR BIOSOLIDS
- 33 PROCESSING FACILITIES AND HOUSEHOLD WASTE COMPOSTING FACILITIES THAT MUST
- 34 OBTAIN PLAN APPROVAL PURSUANT TO SECTION 49-762.
- 35 Sec. 8. Repeal
- 36 Section 49-761.01 and 49-761.02, Arizona Revised Statutes, are
- 37 repealed.
- 38 Sec. 9. Repeal
- 39 Section 49-762, Arizona Revised Statutes, as amended by Laws 1994,
- 40 chapter 273, section 7, and section 49-762, Arizona Revised Statutes, as
- 41 amended by Laws 1995, chapter 202, section 16, are repealed.
- 42 Sec. 10. ReNUMBER
- 43 Section 49-762.01, Arizona Revised Statutes, is renumbered as section
- 44 49-762.07.

1 1. FOR A NEW SOLID WASTE FACILITY AND BEFORE COMMENCING CONSTRUCTION
2 OF THE SOLID WASTE FACILITY, THE OWNER OR OPERATOR SHALL OBTAIN APPROVAL OF
3 A SOLID WASTE FACILITY PLAN THAT SATISFIES RULES ADOPTED BY THE DIRECTOR.

4 2. FOR AN EXISTING SOLID WASTE FACILITY, THE OWNER OR OPERATOR SHALL
5 FILE WITH THE DEPARTMENT A SOLID WASTE FACILITY PLAN WITHIN ONE HUNDRED
6 EIGHTY DAYS AFTER THE EFFECTIVE DATE OF RULES ADOPTED PURSUANT TO SECTION
7 49-761 THAT CONTAIN DESIGN AND OPERATION STANDARDS FOR THAT TYPE OF SOLID
8 WASTE FACILITY. AN EXISTING SOLID WASTE FACILITY MAY CONTINUE TO OPERATE
9 WHILE THE DEPARTMENT REVIEWS THE PLAN. FOR AN EXISTING PUBLIC SOLID WASTE
10 FACILITY THAT IS CURRENTLY SUBJECT TO RULES THAT CONTAIN DESIGN AND OPERATION
11 STANDARDS, THE OWNER OR OPERATOR SHALL FILE WITH THE DEPARTMENT A SOLID WASTE
12 FACILITY PLAN BY OCTOBER 1, 1996, IF THE FACILITY HAS NOT RECEIVED PLAN
13 APPROVAL BEFORE THAT DATE.

14 B. FOR A SOLID WASTE FACILITY SUBJECT TO SITE APPROVAL PURSUANT TO
15 SECTION 49-767, A SOLID WASTE FACILITY PLAN SHALL NOT BE SUBMITTED TO THE
16 DEPARTMENT UNTIL THE SITE FOR THE SOLID WASTE FACILITY HAS BEEN APPROVED
17 PURSUANT TO SECTION 49-767. FOR ALL NEW SOLID WASTE LANDFILLS, A SOLID WASTE
18 FACILITY PLAN SHALL PROVIDE EVIDENCE OF COMPLIANCE WITH OR THE
19 INAPPLICABILITY OF CITY, TOWN OR COUNTY ZONING ORDINANCES.

20 C. THE DIRECTOR SHALL GRANT TEMPORARY AUTHORIZATION TO OPERATE A NEW
21 SOLID WASTE FACILITY IF IN THE DIRECTOR'S OPINION THE SOLID WASTE FACILITY
22 IS NEEDED IMMEDIATELY AND COULD NOT BE PROPERLY PLANNED IN ADVANCE.

23 D. AN OWNER OR OPERATOR OF MORE THAN ONE SOLID WASTE FACILITY THAT
24 CONDUCTS SIMILAR ACTIVITIES WITH SIMILAR WASTE STREAMS MAY PREPARE AND
25 IMPLEMENT A SINGLE PLAN THAT COVERS ALL OF ITS FACILITIES IF IT HAS RECEIVED
26 PRIOR APPROVAL FROM THE DIRECTOR AND HAS COMPLIED WITH RULES REGARDING SINGLE
27 PLANS THAT ARE ADOPTED BY THE DIRECTOR.

28 E. THE DIRECTOR BY RULE MAY EXEMPT FROM SOME OR ALL OF THE FACILITY
29 PLAN APPROVAL REQUIREMENTS THOSE SOLID WASTE FACILITIES THAT ARE LOCATED IN
30 UNINCORPORATED AREAS AND THAT ARE USED FOR DISPOSAL BY ANY SINGLE FAMILY
31 RESIDENCE LOCATED ON THE SAME PROPERTY OR THOSE SOLID WASTE FACILITIES THAT
32 DO NOT PRESENT A THREAT TO PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT.

33 F. THE DEPARTMENT SHALL COLLECT FROM THE APPLICANT A REASONABLE FEE
34 BASED ON THE DEPARTMENT'S REASONABLE DIRECT COSTS, NOT INCLUDING INDIRECT
35 COSTS FOR THE PROCESSING, REVIEW, APPROVAL OR DISAPPROVAL OF THE PLAN, TO BE
36 REVIEWED ON AN ANNUAL BASIS. THE DIRECTOR MAY AMEND AN EXISTING RULE OR
37 ADOPT A NEW RULE TO ESTABLISH CRITERIA FOR THOSE COSTS. THAT RULE MAKING IS
38 EXEMPT FROM TITLE 41, CHAPTER 6, EXCEPT THAT THE DIRECTOR SHALL PROVIDE FOR
39 REASONABLE NOTICE AND A HEARING.

40 G. THE DEPARTMENT MAY CONTRACT WITH PRIVATE CONSULTANTS FOR THE
41 PURPOSES OF ASSISTING THE DEPARTMENT IN REVIEWING SOLID WASTE FACILITY PLAN
42 APPROVALS TO DETERMINE WHETHER A FACILITY MEETS THE CRITERIA OF SECTION
43 49-762.04. THE DEPARTMENT SHALL PAY THE CONSULTANT FOR THE SERVICES RENDERED
44 BY THE CONSULTANT FROM FEES PAID BY THE APPLICANT. IF THE DEPARTMENT

1 CONTRACTS WITH A CONSULTANT UNDER THIS SECTION, AN APPLICANT MAY REQUEST THAT
2 THE DEPARTMENT EXPEDITE THE APPLICATION REVIEW BY REQUESTING THAT THE
3 DEPARTMENT USE THE SERVICES OF THE CONSULTANT AND BY AGREEING TO PAY THE
4 DEPARTMENT THE COSTS OF THE CONSULTANT'S SERVICES. NOTWITHSTANDING SECTION
5 49-881, FEES COLLECTED BY THE DEPARTMENT FOR EXPEDITED PLAN REVIEW SHALL BE
6 DEPOSITED IN THE SOLID WASTE FEE FUND AND USED FOR PAYMENT OF THE COSTS OF
7 THE CONSULTANT SERVICES. FEES RECEIVED FOR THE PURPOSE OF EXPEDITED PLAN
8 REVIEW ARE NOT SUBJECT TO APPROPRIATION.

9 49-762.04. Solid waste facility plan review procedures

10 A. THE DEPARTMENT SHALL REVIEW AND APPROVE OR DISAPPROVE A SOLID WASTE
11 FACILITY PLAN AS FOLLOWS:

12 1. WITHIN THIRTY DAYS AFTER RECEIPT OF A SOLID WASTE FACILITY PLAN,
13 THE DEPARTMENT SHALL ISSUE A WRITTEN DETERMINATION OF WHETHER THE PLAN IS AN
14 ADMINISTRATIVELY COMPLETE PLAN UNLESS THE DEPARTMENT REQUESTS ADDITIONAL
15 INFORMATION IN WRITING WITHIN THE THIRTY DAY PERIOD. IF THE DEPARTMENT
16 REQUESTS ADDITIONAL INFORMATION IN WRITING WITHIN THE THIRTY DAY PERIOD, THE
17 DEPARTMENT SHALL ISSUE A WRITTEN ADMINISTRATIVE COMPLETENESS DETERMINATION
18 WITHIN FIFTEEN DAYS AFTER THE RECEIPT OF THE ADDITIONAL INFORMATION. FAILURE
19 OF THE DEPARTMENT TO MAKE AN ADMINISTRATIVE COMPLETENESS DETERMINATION WITHIN
20 THE TIME PERIODS SET FORTH IN THIS PARAGRAPH IS DEEMED TO BE A DETERMINATION
21 THAT THE PLAN IS ADMINISTRATIVELY COMPLETE.

22 2. WITHIN THIRTY DAYS AFTER AN ADMINISTRATIVE COMPLETENESS
23 DETERMINATION FOR A NEW SOLID WASTE FACILITY, THE DEPARTMENT SHALL ISSUE
24 PUBLIC NOTICE OF THE PROPOSED SOLID WASTE FACILITY PLAN ONCE EACH WEEK FOR
25 TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA IN
26 WHICH THE NEW SOLID WASTE FACILITY WILL BE LOCATED. THE NOTICE SHALL
27 DESCRIBE THE TYPE OF SOLID WASTE FACILITY AND REQUEST COMMENTS ON THE
28 PROPOSED PLAN. THE COMMENT PERIOD SHALL NOT EXCEED THIRTY DAYS. COMMENTS
29 SHALL BE LIMITED TO WHETHER THE PROPOSED PLAN MEETS THE CRITERIA FOR APPROVAL
30 PRESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION. COMMENTS ON THE PROPOSED PLAN
31 SHALL INCLUDE THE NAME OF THE PERSON MAKING THE COMMENTS AND, IF IN WRITING,
32 THE SIGNATURE OF THAT PERSON.

33 3. WITHIN SIXTY DAYS AFTER AN ADMINISTRATIVE COMPLETENESS
34 DETERMINATION FOR A NEW SOLID WASTE FACILITY OR WITHIN ONE HUNDRED TWENTY
35 DAYS FOR AN EXISTING SOLID WASTE FACILITY, THE DEPARTMENT SHALL PROVIDE THE
36 APPLICANT WITH A COMPREHENSIVE LIST OF ANY TECHNICAL DEFICIENCIES IN THE
37 PLAN, INCLUDING A DETAILED RATIONALE FOR EACH DEFICIENCY AND A RECOMMENDATION
38 FOR CORRECTING THE DEFICIENCY. IF THE DEPARTMENT PROVIDES THE APPLICANT WITH
39 A COMPREHENSIVE LIST OF ALL TECHNICAL DEFICIENCIES AS PRESCRIBED IN THIS
40 PARAGRAPH, THE TIME LIMITS PRESCRIBED BY PARAGRAPH 4 OF THIS SUBSECTION SHALL
41 BE SUSPENDED FROM THE DATE OF THE APPLICANT'S RECEIPT OF THE LIST OF
42 TECHNICAL DEFICIENCIES UNTIL THE DATE WHEN THE DEPARTMENT RECEIVES THE
43 APPLICANT'S RESPONSE TO THE LIST OF TECHNICAL DEFICIENCIES.

1 4. FOR A NEW SOLID WASTE FACILITY, THE DEPARTMENT SHALL ISSUE A
2 WRITTEN DECISION TO APPROVE OR DISAPPROVE THE SOLID WASTE FACILITY PLAN
3 WITHIN NINETY DAYS OF AN ADMINISTRATIVE COMPLETENESS DETERMINATION. FOR AN
4 EXISTING SOLID WASTE FACILITY, THE DEPARTMENT SHALL ISSUE A WRITTEN DECISION
5 TO APPROVE OR DISAPPROVE THE SOLID WASTE FACILITY PLAN WITHIN ONE HUNDRED
6 EIGHTY DAYS OF AN ADMINISTRATIVE COMPLETENESS DETERMINATION. THE
7 DEPARTMENT'S DECISION TO APPROVE OR DISAPPROVE A PLAN FOR AN EXISTING SOLID
8 WASTE FACILITY IS EFFECTIVE IMMEDIATELY. A PERSON WHO HAS SUBMITTED A SOLID
9 WASTE FACILITY PLAN FOR DEPARTMENT APPROVAL MAY EXTEND THE TIME LIMITS IN
10 THIS SUBSECTION FOR AN ADDITIONAL PERIOD OF UP TO SIXTY DAYS.

11 5. THE DEPARTMENT SHALL USE THE FOLLOWING CRITERIA IN REVIEWING A
12 SOLID WASTE FACILITY PLAN:

13 (a) THE SOLID WASTE FACILITY SHALL NOT POSE A SUBSTANTIAL ENDANGERMENT
14 TO PUBLIC HEALTH OR SAFETY OR THE ENVIRONMENT.

15 (b) THE SOLID WASTE FACILITY SHALL NOT CAUSE AN ENVIRONMENTAL
16 NUISANCE.

17 (c) THE SOLID WASTE FACILITY SHALL COMPLY WITH THIS CHAPTER AND RULES
18 THAT ARE ADOPTED PURSUANT TO SECTION 49-761 AND THAT ARE APPLICABLE TO THAT
19 TYPE OF FACILITY.

20 6. IF THERE IS SUFFICIENT PUBLIC INTEREST AS EVIDENCED BY WRITTEN
21 COMMENTS SUBMITTED PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION IN OPPOSITION
22 TO THE PROPOSED SOLID WASTE FACILITY PLAN FOR A NEW SOLID WASTE FACILITY, THE
23 DEPARTMENT SHALL HOLD A PUBLIC HEARING ON ITS DECISION TO APPROVE THE SOLID
24 WASTE FACILITY PLAN WITHIN FORTY-FIVE DAYS AFTER THE DATE OF APPROVAL.
25 NOTICE OF THE PUBLIC HEARING SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL
26 CIRCULATION IN THE AREA WHERE THE NEW SOLID WASTE FACILITY WILL BE LOCATED
27 DURING TWO CONSECUTIVE WEEKS AFTER THE DEPARTMENT'S DECISION TO APPROVE THE
28 PLAN.

29 7. TESTIMONY ON THE DEPARTMENT'S DECISION TO APPROVE A SOLID WASTE
30 FACILITY PLAN SHALL INCLUDE THE NAME OF THE PERSON PRESENTING THE TESTIMONY
31 AND, IF IN WRITING, THE SIGNATURE OF THAT PERSON.

32 8. THE DEPARTMENT SHALL ISSUE A RESPONSIVENESS SUMMARY BY FIRST CLASS
33 MAIL TO THOSE PERSONS WHO SUBMITTED WRITTEN COMMENTS OR PRESENTED TESTIMONY.
34 IN RESPONSE TO THE NOTICES ISSUED PURSUANT TO THIS SECTION OR THOSE PERSONS
35 WHO REQUESTED A COPY OF THE SUMMARY. THE SUMMARY SHALL BE MADE PUBLIC WITHIN
36 THIRTY DAYS AFTER THE DEPARTMENT'S DECISION TO APPROVE OR DISAPPROVE A PLAN,
37 OR, IF A PUBLIC HEARING IS REQUIRED, WITHIN THIRTY DAYS AFTER THE PUBLIC
38 HEARING. IF AS A RESULT OF TESTIMONY AT A PUBLIC HEARING, THE DEPARTMENT
39 BECOMES AWARE OF A TECHNICAL DEFICIENCY IN THE FACILITY PLAN, THE DEPARTMENT,
40 BEFORE THE TIME THE RESPONSIVENESS SUMMARY IS ORIGINALLY DUE, SHALL NOTIFY
41 THE APPLICANT OF THAT TECHNICAL DEFICIENCY AND SHALL PROVIDE A DETAILED
42 RATIONALE FOR EACH DEFICIENCY AND A RECOMMENDATION FOR CORRECTING THE
43 DEFICIENCY. THE DEPARTMENT SHALL PROVIDE THIS NOTICE TO THE APPLICANT BEFORE
44 THE DATE THAT THE RESPONSIVENESS SUMMARY ORIGINALLY WAS DUE. THE TIME LIMITS

1 PRESCRIBED BY THIS PARAGRAPH SHALL BE SUSPENDED FROM THE DATE OF THE
2 APPLICANT'S RECEIPT OF THE DEFICIENCY NOTICE UNTIL THE DATE THE DEPARTMENT
3 RECEIVES THE APPLICANT'S RESPONSE TO THE DEFICIENCY NOTICE. ON RECEIPT OF
4 THE APPLICANT'S RESPONSE, THE DEPARTMENT HAS EITHER FIFTEEN DAYS OR THE
5 REMAINING TIME IN THE ORIGINAL PERIOD, WHICHEVER IS LONGER, WITHIN WHICH TO
6 ISSUE THE RESPONSIVENESS SUMMARY. THE RESPONSIVENESS SUMMARY SHALL INCLUDE
7 ALL OF THE FOLLOWING:

8 (a) THE PUBLIC NOTICES FOR THE SOLID WASTE FACILITY.

9 (b) A SUMMARY OF THE SIGNIFICANT PUBLIC COMMENTS ON WHETHER THE PLAN
10 MEETS THE CRITERIA FOR APPROVAL PRESCRIBED BY PARAGRAPH 5 OF THIS SUBSECTION.

11 (c) SPECIFIC RESPONSES OF THE DEPARTMENT TO THE SIGNIFICANT PUBLIC
12 COMMENTS ON WHETHER THE PLAN MEETS THE CRITERIA FOR APPROVAL PRESCRIBED BY
13 PARAGRAPH 5 OF THIS SUBSECTION.

14 (d) THE DEPARTMENT'S FINAL DECISION ON WHETHER THE PLAN IS APPROVED
15 OR DISAPPROVED. THIS DECISION IS EFFECTIVE ON THE ISSUANCE OF THE
16 RESPONSIVENESS SUMMARY.

17 B. IF THE DEPARTMENT DISAPPROVES A SOLID WASTE FACILITY PLAN, IT SHALL
18 SEND TO THE OWNER OR OPERATOR A COMPLETE WRITTEN, DETAILED RATIONALE FOR
19 DISAPPROVAL.

20 49-762.05. Self-certification procedures: rules

21 A. THE OWNER OR OPERATOR OF A SOLID WASTE FACILITY IDENTIFIED IN
22 SECTION 49-762.01 SHALL COMPLY WITH THE SELF-CERTIFICATION REQUIREMENTS
23 PRESCRIBED BY THIS SECTION AND RULES ADOPTED BY THE DIRECTOR.

24 B. THE OWNER OR OPERATOR OF A NEW SOLID WASTE FACILITY MAY BE REQUIRED
25 BY RULE TO SUBMIT SOME OR ALL OF THE FOLLOWING INFORMATION TO THE DEPARTMENT
26 BEFORE THE START OF CONSTRUCTION:

27 1. DESIGN AND OPERATIONAL PLANS OR OTHER DOCUMENTS NECESSARY TO
28 DESCRIBE THE DESIGN OF THE FACILITY AND THE PRACTICES AND METHODS THAT ARE
29 OR WILL BE USED TO COMPLY WITH THE DESIGN AND OPERATION RULES ADOPTED BY THE
30 DIRECTOR FOR THAT TYPE OF FACILITY.

31 2. A DEMONSTRATION OF FINANCIAL ASSURANCE IN ACCORDANCE WITH SECTION
32 49-770.

33 3. A DEMONSTRATION OF COMPLIANCE WITH EITHER LOCAL ZONING LAWS OR
34 SECTION 49-767.

35 4. A DEMONSTRATION OF THE ISSUANCE OF OTHER ENVIRONMENTAL PERMITS THAT
36 ARE REQUIRED BY STATUTE.

37 5. A COPY OF THE PUBLIC NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION
38 IN THE AREA IN WHICH A NEW SOLID WASTE FACILITY WILL BE LOCATED. THE PUBLIC
39 NOTICE SHALL STATE THE INTENT TO CONSTRUCT AND OPERATE A NEW SOLID WASTE
40 FACILITY PURSUANT TO THIS SUBSECTION.

41 C. THE OWNER OR OPERATOR OF AN EXISTING SOLID WASTE FACILITY MAY BE
42 REQUIRED BY RULE TO SUBMIT SOME OR ALL OF THE INFORMATION DESCRIBED IN
43 SUBSECTION B, PARAGRAPHS 1 THROUGH 4 OF THIS SECTION WITHIN ONE HUNDRED

1 EIGHTY DAYS AFTER THE ADOPTION OF DESIGN AND OPERATION RULES FOR THAT TYPE
2 OF FACILITY.

3 D. THE OWNER OR OPERATOR SHALL MAINTAIN ALL DOCUMENTS REQUIRED BY
4 STATUTE OR RULE AT THE SOLID WASTE FACILITY OR ANY OTHER LOCATION AS
5 DETERMINED BY RULE, AND THOSE DOCUMENTS SHALL BE MADE AVAILABLE FOR
6 INSPECTION PURSUANT TO SECTION 49-763.

7 E. AN OWNER OR OPERATOR MAKING A SUBSTANTIAL CHANGE TO A SOLID WASTE
8 FACILITY SHALL SUBMIT DOCUMENTATION TO THE DEPARTMENT BEFORE THE START OF
9 CONSTRUCTION STATING THAT THE FACILITY WILL REMAIN IN COMPLIANCE WITH THE
10 DESIGN AND OPERATION RULES FOR THAT TYPE OF FACILITY. THE OWNER OR OPERATOR
11 OF A SOLID WASTE FACILITY THAT MAKES ANY CHANGES IN ITS COMPLIANCE WITH
12 SUBSECTION B, PARAGRAPH 2 OR 3 OF THIS SECTION SHALL SUBMIT COPIES OF THOSE
13 CHANGES TO THE DEPARTMENT.

14 F. A PERSON MAKING A SUBMITTAL UNDER THIS SECTION SHALL CERTIFY IN
15 WRITING THAT THE INFORMATION SUBMITTED IS TRUE, ACCURATE AND COMPLETE TO THE
16 BEST OF THE PERSON'S KNOWLEDGE AND BELIEF.

17 G. SELF-CERTIFIED FACILITIES IDENTIFIED IN SECTION 49-762.01 ARE NOT
18 SUBJECT TO THE LOCATION RESTRICTIONS OF SECTION 49-772.

19 H. THE DEPARTMENT SHALL COLLECT FROM THE APPLICANT AN INITIAL
20 REGISTRATION FEE OF FIVE HUNDRED DOLLARS FOR A SELF-CERTIFICATION FILING.
21 THE DEPARTMENT SHALL COLLECT FROM THE APPLICANT A REGISTRATION FEE OF TWO
22 HUNDRED DOLLARS FOR A SELF-CERTIFICATION FILING FOR A SUBSTANTIAL CHANGE.
23 FEES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE SOLID WASTE
24 FEE FUND ESTABLISHED BY SECTION 49-881.

25 49-762.06. Changes to solid waste facilities and amended plans

26 A. THE DEPARTMENT SHALL ADOPT RULES THAT ESTABLISH THE CRITERIA TO BE
27 USED IN DETERMINING THE CATEGORY TYPE OF A PROPOSED CHANGE TO A SOLID WASTE
28 FACILITY. THE CATEGORIES ARE AS FOLLOWS:

29 1. A TYPE I CHANGE IS AN INSIGNIFICANT MODIFICATION THAT DOES NOT
30 REQUIRE NOTIFICATION TO THE DEPARTMENT. THIS INCLUDES CHANGES TO A FACILITY
31 THAT ARE NOT DIRECTLY RELATED TO THE PHYSICAL MANAGEMENT OF SOLID WASTE OR
32 THE REPLACEMENT OF EQUIPMENT OR STRUCTURES WITH SIMILAR ITEMS.

33 2. A TYPE II CHANGE IS A MINOR MODIFICATION THAT REQUIRES NOTIFICATION
34 TO THE DEPARTMENT. THIS INCLUDES CHANGES TO A FACILITY THAT ARE DIRECTLY
35 RELATED TO THE PHYSICAL MANAGEMENT OF SOLID WASTE AND THAT DO NOT REQUIRE
36 DETAILED REVIEW BY THE DEPARTMENT.

37 3. A TYPE III CHANGE IS A SUBSTANTIAL CHANGE THAT DOES NOT REQUIRE
38 PUBLIC NOTICE. THIS INCLUDES CHANGES THAT ARE SIGNIFICANT, THAT REQUIRE
39 DETAILED REVIEW BY THE DEPARTMENT AND THAT ARE EQUALLY OR MORE PROTECTIVE OF
40 THE PUBLIC HEALTH AND ENVIRONMENT, CHANGES THAT ARE REQUIRED BY STATUTE OR
41 REGULATION OR OTHER SUBSTANTIAL CHANGES THAT ARE NOT TYPE IV CHANGES.

42 4. A TYPE IV CHANGE IS A SUBSTANTIAL CHANGE THAT REQUIRES PUBLIC
43 NOTICE. THIS INCLUDES SIGNIFICANT CHANGES IN THE TOTAL STORAGE, PROCESS,
44 TREATMENT OR DISPOSAL CAPACITY OF THE SOLID WASTE FACILITY. A TYPE IV CHANGE

1 ALSO INCLUDES A LATERAL EXPANSION OF AN EXISTING SOLID WASTE LANDFILL OR THE
2 ADDITION OF A PROCESS OR A MAJOR PIECE OF EQUIPMENT FOR WHICH THE NET EFFECT
3 OF THE CHANGE WILL BE AN INCREASE IN DISCHARGES.

4 B. BEFORE IMPLEMENTATION, THE DIRECTOR SHALL APPROVE A TYPE III OR
5 TYPE IV CHANGE TO THE DESIGN OR OPERATION OF AN APPROVED SOLID WASTE FACILITY
6 IDENTIFIED IN SECTION 49-762.

7 C. THE OWNER OR OPERATOR OF AN APPROVED SOLID WASTE FACILITY
8 IDENTIFIED IN SECTION 49-762 SHALL SUBMIT A NOTICE OF ANY TYPE II, TYPE III
9 OR TYPE IV CHANGE TO THE DIRECTOR. THE NOTICE SHALL DESCRIBE THE PURPOSE AND
10 SCOPE OF THE PROPOSED CHANGE AND SHALL STATE WHAT CATEGORY OF CHANGE IS
11 REQUESTED. THE DIRECTOR SHALL MAKE THE FINAL DETERMINATION OF THE CATEGORY
12 OF CHANGE THAT IS REQUESTED AND WHETHER AN AMENDED FACILITY PLAN SHALL BE
13 SUBMITTED FOR A TYPE III OR TYPE IV CHANGE. THE DIRECTOR MAY REQUEST THAT
14 ADDITIONAL INFORMATION BE SUBMITTED TO ASSIST IN MAKING THE DETERMINATION.

15 D. THE DETERMINATION REQUIRED BY SUBSECTION C OF THIS SECTION SHALL
16 BE MADE WITHIN THE TIME LIMITS PRESCRIBED BY THIS SUBSECTION. IF THE
17 DIRECTOR FAILS TO MAKE A DETERMINATION WITHIN THOSE TIME LIMITS, THE PROPOSED
18 CHANGE SHALL BE DEEMED TO BE A TYPE II CHANGE AND IN ACCORDANCE WITH THE
19 FACILITY'S APPROVED PLAN AND MAY BE IMPLEMENTED BY THE OWNER OR OPERATOR
20 WITHOUT FURTHER REVIEW BY THE DEPARTMENT. THE TIME LIMITS PRESCRIBED BY THIS
21 SUBSECTION DO NOT APPLY IF THE PROPOSED CHANGE CONFLICTS WITH OR IS
22 INCONSISTENT WITH THE REQUIREMENTS OF 40 C.F.R. PART 257 OR 40 C.F.R. PART
23 258. THE TIME LIMITS ARE AS FOLLOWS:

24 1. FIFTEEN DAYS FOR SOLID WASTE FACILITIES THAT ARE NOT LANDFILLS.

25 2. THIRTY DAYS FOR LANDFILLS THAT ARE NOT MUNICIPAL SOLID WASTE
26 LANDFILLS.

27 3. SIXTY DAYS FOR MUNICIPAL SOLID WASTE LANDFILLS.

28 E. IF THE DIRECTOR DETERMINES THAT THE CHANGE IS A TYPE IV CHANGE THAT
29 REQUIRES A PUBLIC NOTICE, WITHIN THIRTY DAYS AFTER RECEIPT OF THE AMENDED
30 PLAN THE DIRECTOR SHALL GIVE PUBLIC NOTICE OF THE SUBSTANTIAL CHANGE AS
31 PRESCRIBED BY SECTION 49-762.04, SUBSECTION A, PARAGRAPH 2. IF THERE IS
32 SUFFICIENT PUBLIC INTEREST AS EVIDENCED BY WRITTEN COMMENTS SUBMITTED
33 PURSUANT TO SECTION 49-762.04, SUBSECTION A, PARAGRAPH 2 IN OPPOSITION TO THE
34 SUBSTANTIAL CHANGE TO THE SOLID WASTE FACILITY, THE DEPARTMENT SHALL HOLD A
35 PUBLIC HEARING IN ACCORDANCE WITH THE PROCEDURES IN SECTION 49-762.04,
36 SUBSECTION A, PARAGRAPH 6. TESTIMONY AT A PUBLIC HEARING SHALL BE LIMITED
37 TO WHETHER THE SUBSTANTIAL CHANGE TO THE PLAN MEETS THE CRITERIA PRESCRIBED
38 IN SECTION 49-762.04, SUBSECTION A, PARAGRAPH 5. TESTIMONY ON THE
39 SUBSTANTIAL CHANGE SHALL INCLUDE THE NAME AND ADDRESS OF THE PERSON
40 PRESENTING THE TESTIMONY AND, IF IN WRITING, THE SIGNATURE OF THAT PERSON.
41 THE DIRECTOR SHALL ISSUE A NOTICE OF ANY TECHNICAL DEFICIENCIES AND A
42 RESPONSIVENESS SUMMARY IN ACCORDANCE WITH SECTION 49-762.04, SUBSECTION A,
43 PARAGRAPH 8.

1 F. THE DIRECTOR SHALL APPROVE OR DENY THE AMENDED PLAN WITHIN NINETY
2 DAYS AFTER RECEIPT OF THE AMENDED PLAN. DURING THE NINETY DAY REVIEW PERIOD,
3 THE DEPARTMENT SHALL COMPLY WITH THE PROCEDURES PRESCRIBED BY SECTION
4 49-762.04, SUBSECTION A, PARAGRAPH 3 FOR NEW SOLID WASTE FACILITIES. IF A
5 PUBLIC HEARING IS TO BE HELD, THE DIRECTOR HAS AN ADDITIONAL THIRTY DAYS TO
6 HOLD THE PUBLIC HEARING, ISSUE A RESPONSIVENESS SUMMARY AND APPROVE OR
7 DISAPPROVE THE AMENDED PLAN. A PERSON WHO HAS SUBMITTED A TYPE II, III OR
8 IV CHANGE TO A SOLID WASTE FACILITY PLAN FOR DEPARTMENT APPROVAL MAY EXTEND
9 THESE TIME LIMITS FOR AN ADDITIONAL THIRTY DAYS ON A WRITTEN REQUEST FROM THE
10 DEPARTMENT THAT CHANGES TO THE SOLID WASTE FACILITY PLAN OR ADDITIONAL
11 INFORMATION IS NEEDED BEFORE THE DEPARTMENT CAN MAKE A DECISION TO APPROVE
12 OR DENY THE PLAN.

13 Sec. 13. Section 49-762.07, Arizona Revised Statutes, as renumbered
14 by this act, is amended to read:

15 49-762.07. Notices; exemptions; extensions; enforcement;
16 operating standards

17 A. Except as provided in subsection B of this section, owners or
18 operators of solid waste facilities in operation on September 1, ~~1994~~ 1996
19 shall submit to the director by September 1, ~~1994~~ 1996 a notice that contains
20 the following information:

- 21 1. Facility name and mailing address.
- 22 2. Legal description by township, range and section, and county
23 assessor's book, map and parcel number.
- 24 3. Description of waste storage and treatment equipment and methods
25 of waste management, including types and volumes of waste handled and time
26 the waste remains on site.
- 27 4. Description of waste management practices used at the facility
28 including measures taken to protect the environment and to protect the public
29 health.
- 30 5. A diagram of the property showing the location of the solid waste
31 facility or facilities.

32 B. Notices filed with the department before ~~April 1, 1994~~ SEPTEMBER
33 1, 1996 are deemed to satisfy the notice requirement of subsection A of this
34 section unless there has been a substantial change to the solid waste
35 facility before the notice deadline. A solid waste facility that has
36 obtained a plan approval or that has filed an application for plan approval
37 before September 1, ~~1994~~ 1996 is exempt from the notice requirement of
38 subsection A of this section. Owners or operators of solid waste facilities
39 that begin operations after September 1, ~~1994~~ 1996 shall submit a notice to
40 the director containing the information specified in subsection A of this
41 section no later than thirty days prior to beginning operation of a solid
42 waste facility. OWNERS AND OPERATORS OF RECYCLING FACILITIES SHALL NOT BE
43 REQUIRED TO SUBMIT A NOTICE PURSUANT TO SUBSECTIONS A OR B OF THIS SECTION

1 UNTIL RULES FOR RECYCLING FACILITIES ARE ADOPTED PURSUANT TO SECTION 49-761,
2 SUBSECTION K.

3 C. The department may grant an extension of up to sixty days beyond
4 the September 1, ~~1994~~ 1996 deadline on receipt of a written request from the
5 owner or operator of a solid waste facility.

6 D. A solid waste facility that does not submit a notice as prescribed
7 by subsection A or B of this section is subject to the enforcement provisions
8 of article 5 of this chapter.

9 E. In the absence of design and operating rules adopted by the
10 director pursuant to section 49-761 for ~~nonmunicipal~~ solid waste landfills
11 THAT ARE NOT MUNICIPAL SOLID WASTE LANDFILLS, owners and operators of
12 ~~nonmunicipal~~ solid waste landfills THAT ARE NOT MUNICIPAL SOLID WASTE
13 LANDFILLS shall comply with the provisions of 40 ~~Code of Federal Regulations~~
14 C.F.R. part 257 ~~in effect on October 1, 1993.~~

15 F. In the absence of design and operating rules adopted by the
16 director pursuant to section 49-761 for ~~that type of~~ solid waste ~~facility~~
17 FACILITIES other than ~~a~~ solid waste ~~landfill~~ LANDFILLS, owners and operators
18 shall operate ~~the solid waste~~ THOSE facilities in a manner that:

19 1. Controls wind dispersion of solid waste so that the solid waste
20 does not create a public nuisance or pose an imminent and substantial
21 endangerment to public health or the environment. Visible solid waste that
22 is dispersed beyond the boundaries of the solid waste facility shall be
23 collected on a regular basis by the operator of the solid waste facility.

24 2. Does not discharge hazardous substances as defined in section
25 49-281 to surface water, groundwater, or subsurface soil in a manner that
26 creates a public nuisance or poses an imminent and substantial endangerment
27 to public health or the environment.

28 3. Controls vector breeding and fire hazards.

29 Sec. 14. Section 49-763, Arizona Revised Statutes, is amended to read:
30 49-763. Inspections

31 A. The department may conduct such inspections of solid waste
32 facilities, ~~premises and equipment~~ AND SITES THAT STORE, TREAT OR PROCESS
33 RECYCLABLE SOLID WASTE as are necessary. The department shall give the
34 management agency or the owner or the operator of the facility the
35 opportunity to have its representative accompany the inspector. Within
36 forty-five days after the date of the inspection, the department shall
37 provide to the facility owner or operator a copy of any inspection report
38 produced as a result of an inspection of that facility that occurs as
39 prescribed by this section.

40 B. UNTIL THE DEPARTMENT ADOPTS RULES PURSUANT TO SECTION 49-761 FOR
41 A PARTICULAR TYPE OF SOLID WASTE FACILITY, SOLID WASTE FACILITIES AND SITES
42 THAT STORE, TREAT OR PROCESS RECYCLABLE SOLID WASTE SHALL BE DESIGNED AND
43 OPERATED AS PRESCRIBED BY SECTION 49-762.07, SUBSECTION F. THE DEPARTMENT'S
44 RIGHT TO INSPECT FACILITIES OPERATING PURSUANT TO THIS SUBSECTION IS LIMITED

1 TO ENSURING THAT THE FACILITY IS IN COMPLIANCE WITH SECTION 49-762.07,
2 SUBSECTION F.

3 Sec. 15. Title 49, chapter 4, article 4, Arizona Revised Statutes, is
4 amended by adding section 49-763.01, to read:

5 49-763.01. Variances

6 WITHIN NINETY DAYS AFTER RECEIPT OF A WRITTEN REQUEST FOR A VARIANCE
7 FROM A SOLID WASTE FACILITY OWNER, OPERATOR OR MANAGEMENT AGENCY, THE
8 DEPARTMENT MAY GRANT A VARIANCE FROM SOLID WASTE MANAGEMENT RULES AND
9 STANDARDS IF THE DEPARTMENT CONCLUDES THAT NO VIOLATION OF HEALTH STANDARDS
10 WILL OCCUR. THE DEPARTMENT MAY CONSIDER WHETHER AN ENVIRONMENTAL NUISANCE
11 WILL RESULT. IF THE REQUEST IS DENIED, THE DEPARTMENT SHALL PREPARE AND MAKE
12 AVAILABLE TO THE MANAGEMENT AGENCY OR FACILITY OWNER OR OPERATOR A WRITTEN
13 DECISION INCLUDING RELEVANT DATA AND A TECHNICAL ANALYSIS SUPPORTING THE
14 DENIAL. THE DEPARTMENT SHALL NOT GRANT ANY VARIANCE OR TEMPORARY
15 AUTHORIZATION TO OPERATE UNDER THE PROVISIONS OF THIS CHAPTER IF THE PROPOSED
16 VARIANCE CONFLICTS OR IS INCONSISTENT WITH THE REQUIREMENTS OF 40 C.F.R. PART
17 257 OR 40 C.F.R. PART 258.

18 Sec. 16. Section 49-766, Arizona Revised Statutes, is amended to read:

19 49-766. Agricultural landfills: notice

20 A. A single family residence located on a farm or ranch of more than
21 forty acres in an unincorporated area may operate on site a landfill for the
22 disposal of solid waste resulting from the residents' household activities.
23 The owner or operator of the farm or ranch shall comply with all of the
24 following:

25 1. The landfill does not violate the floodplain provisions of section
26 49-772, subsection B- C or the wetland provisions of section 49-772,
27 subsection ~~E~~ D.

28 2. The owner or operator submits to the local board of supervisors a
29 location map and a written, general description of the landfill ~~within one~~
30 ~~hundred eighty days after the effective date of this section~~ BY OCTOBER 21,
31 1994, or if solid waste disposal begins after ~~the effective date of this~~
32 ~~section~~ APRIL 24, 1994, within thirty days after disposing of solid waste.

33 3. The landfill does not create an environmental nuisance.

34 B. A person engaged in farming or ranching on at least forty acres in
35 an unincorporated area may operate an agricultural landfill on the property
36 for disposal of solid waste, but not hazardous waste, generated on the
37 property. The person shall comply with all of the following:

38 1. The landfill does not accept household waste, household hazardous
39 waste or conditionally exempt small generator waste.

40 2. The owner or operator submits to the board of supervisors or its
41 designee a location map and a written, general description of the landfill
42 ~~within one hundred eighty days after the effective date of this section~~ BY
43 OCTOBER 21, 1994, or if solid waste disposal begins after ~~the effective date~~

1 ~~of this section~~ APRIL 24, 1994, within thirty days after disposing of solid
2 waste.

3 3. The landfill does not violate the floodplain provisions of section
4 49-772, subsection ~~B~~ C or the wetland provisions of section 49-772,
5 subsection ~~C~~ D.

6 4. The landfill does not create an environmental nuisance.

7 Sec. 17. Section 49-767, Arizona Revised Statutes, is amended to read:

8 49-767. Government owned solid waste facilities; permission;
9 notice of site to property owners; hearing; exemption

10 A. Any agency or political subdivision of this state which is required
11 to select or is selecting a possible permanent site for a solid waste
12 facility required to obtain approval pursuant to section 49-762 shall not
13 select a site without obtaining approval of the city or town if the proposed
14 permanent site is located within such city or town or the approval of the
15 county in which the proposed permanent site is located if the proposed
16 permanent site is located in the unincorporated area of the county.

17 ~~B. Any solid waste facility required to obtain approval pursuant to~~
18 ~~section 49-762 shall not be issued a permit pursuant to section 49-241,~~
19 ~~subsection A, receive a plan approval pursuant to section 49-762 or be placed~~
20 ~~on any site if any of the following apply:~~

21 1. ~~An irrigation grandfathered right created pursuant to title 45,~~
22 ~~chapter 2, article 5 is appurtenant to all or any part of the site.~~

23 2. ~~Any part of that facility is within one-half mile of a one hundred~~
24 ~~year floodplain that has one hundred year flows in excess of twenty five~~
25 ~~thousand cubic feet per second, as determined by the federal emergency~~
26 ~~management agency.~~

27 ~~C. Subsection B, paragraph 2 of this section does not apply to:~~

28 1. ~~A site used solely for any of the following:~~

29 (a) ~~Reclamation of land through the introduction of landscaping rubble~~
30 ~~or inert material.~~

31 (b) ~~Material produced in connection with a mining or mineral~~
32 ~~processing operation.~~

33 (c) ~~Agricultural on-site disposal as provided in section 49-766.~~

34 (d) ~~Solid waste transfer or recycling or any other use which does not~~
35 ~~involve permanent storage, treatment or disposal of solid waste.~~

36 (e) ~~Receipt of solid waste for application to agricultural land as~~
37 ~~fertilizer or other beneficial soil amendment.~~

38 2. ~~Except for a solid waste landfill as defined in section 49-701, a~~
39 ~~solid waste facility that is not open to the general public and that is in~~
40 ~~existence on October 9, 1993.~~

41 ~~D.~~ B. An agency or political subdivision of this state which is
42 required to select or which is selecting a possible permanent site for any
43 solid waste facility required to obtain approval pursuant to section 49-762
44 shall post a notice in accordance with requirements specified by the

1 department at the affected property so that the notices are visible from the
2 public rights-of-way and shall send written notice of the selection of the
3 possible permanent site by first class mail to property owners in the
4 following areas:

5 1. If the proposed permanent site is in an unincorporated area, within
6 a three mile radius of the outer boundaries of the proposed permanent site
7 unless the three mile radius intersects a municipal corporate boundary. In
8 such a case, property owners inside the municipal corporate boundary within
9 one thousand feet of the outer boundary of the proposed permanent site shall
10 be notified as well as those property owners outside the municipal corporate
11 boundary within the three mile radius of the outer boundary of the proposed
12 permanent site.

13 2. If the proposed permanent site is in an incorporated area, within
14 a one thousand foot radius of the outer boundaries of the proposed permanent
15 site.

16 ~~E~~ C. The notice required by subsection ~~D~~ B of this section shall
17 be mailed to each owner of real property as shown on the list of property
18 owners furnished by the county assessor and the department of revenue.
19 Within fifteen days after a request for such a list, the county assessor and
20 the department of revenue shall furnish to the agency or political
21 subdivision a written list stating the name and address of each owner in the
22 areas specified in subsection ~~D~~ B of this section.

23 ~~F~~ D. Before a political subdivision makes a final decision on a
24 possible permanent site for a facility specified in subsection A of this
25 section, the political subdivision shall hold a public hearing in the general
26 vicinity of the proposed permanent site, at which interested persons may
27 appear and present their views. The political subdivision shall give notice
28 of the hearing, to include all of the following:

29 1. Publication of notice in a daily or weekly newspaper of general
30 circulation in the area of the proposed permanent site published once each
31 week, beginning at least two weeks before the hearing.

32 2. Mailed notice as provided in subsection ~~D~~ B of this section sent
33 at least two weeks before the hearing.

34 3. Posted notice as provided in subsection ~~D~~ B of this section that
35 shall include information on the time and location of the public hearing and
36 a list of those permits that are required in order to operate that proposed
37 solid waste facility.

38 4. Mailed notice at least two weeks before the hearing to the
39 governing body of any city, town or unincorporated portion of a county that
40 is located within a one-mile radius of the outer boundaries of the proposed
41 solid waste landfill.

42 ~~G~~ E. Any agency or political subdivision that is holding a hearing
43 that may result in the approval of or a permit for the siting of a solid
44 waste landfill shall mail notice at least two weeks before the hearing to the

1 governing body of any city, town or unincorporated portion of a county that
2 is located within a one-mile radius of the outer boundaries of the proposed
3 solid waste landfill.

4 ~~H. Before any agency of this state grants a final permit for a~~
5 ~~facility specified in subsection A or D of this section, the agency shall:~~

6 ~~1. If the applicant is a political subdivision, require the applicant~~
7 ~~to certify that a public hearing concerning a possible permanent site~~
8 ~~selection for the facility has been held in the general vicinity of the~~
9 ~~proposed permanent site, at which interested persons were allowed to appear~~
10 ~~and present their views.~~

11 ~~2. Hold a public hearing at least thirty days before a final decision~~
12 ~~concerning the permanent site, if such a hearing is warranted by the public~~
13 ~~interest, to be held in the general vicinity of the proposed permanent site,~~
14 ~~at which interested persons may appear and present their views. If such a~~
15 ~~hearing is held the agency shall send written notice of the selection of the~~
16 ~~possible permanent site as provided in subsection D of this section.~~

17 ~~3. Issue a responsiveness summary by first class mail to those persons~~
18 ~~who submitted comments in response to the notices issued pursuant to this~~
19 ~~subsection and subsection D of this section or to those persons who requested~~
20 ~~a copy of the responsiveness summary. The responsiveness summary shall be~~
21 ~~made public at the same time that the agency of this state notifies the~~
22 ~~applicant of its final decision on the proposed action. The responsiveness~~
23 ~~summary shall:~~

24 ~~(a) Identify the public participation activities conducted.~~

25 ~~(b) Summarize the views, significant comments, criticisms and~~
26 ~~suggestions of the public.~~

27 ~~(c) Provide the specific responses of the department to comments of~~
28 ~~the public in terms of modifications to the proposed actions or an~~
29 ~~explanation for rejection of proposals made by the public.~~

30 ~~I. This section shall not be construed to apply to any facility which~~
31 ~~receives funding under section 201 of the federal clean water act, as amended~~
32 ~~(P.L. 97-117).~~

33 Sec. 18. Section 49-770, Arizona Revised Statutes, is amended to read:

34 49-770. Financial assurance requirements for solid waste
35 facilities

36 A. Beginning one hundred eighty days after the effective date of the
37 design and operation rules adopted by the director for that type of solid
38 waste facility pursuant to section 49-761, ~~subsection A, paragraphs 2 and 4,~~
39 a solid waste facility may not be operated unless financial responsibility
40 has been demonstrated for the costs of closure, postclosure care, if
41 necessary, and any corrective action as a result of known releases from the
42 facility. Financial assurance for municipal solid waste landfills shall be
43 required pursuant to section 49-761.01, subsection ~~D~~ B. All municipal solid
44 waste landfills operating on the date the rules become effective pursuant to

1 section 49-761.01, subsection ~~D~~, B shall be required to comply with those
2 rules.

3 B. Within one hundred eighty days after the effective date of the
4 design and operation rules adopted by the director for that type of solid
5 waste facility pursuant to section 49-761, ~~subsection A, paragraphs 2 and 4,~~
6 existing solid waste facilities shall modify and submit existing facility
7 plans to the department to demonstrate the financial responsibility required
8 by this section. A solid waste facility in operation before the effective
9 date of the design and operation rules adopted by the director for that type
10 of solid waste facility pursuant to section 49-761, ~~subsection A, paragraphs~~
11 ~~2 and 4~~ may continue to operate while the department reviews the modified
12 plan.

13 C. A demonstration of financial responsibility made for a solid waste
14 facility under chapter 2, article 3 of this title shall suffice, in whole or
15 in part, for any demonstration of financial responsibility prescribed by this
16 section. A demonstration of financial assurance or competence required under
17 this section or under chapter 2, article 3 of this title for a solid waste
18 facility shall not be required prior to completion of construction but shall
19 be required before the department issues approval to operate.

20 ~~D. The director shall adopt rules indicating the types of financial~~
21 ~~assurance mechanisms to be required as part of a facility plan and the~~
22 ~~content, terms and conditions of each financial mechanism, including~~
23 ~~circumstances under which the department may take action on the financial~~
24 ~~assurance mechanism for facility closure, postclosure care if necessary and~~
25 ~~corrective action for known releases. The financial assurance mechanisms~~
26 ~~shall include the following:~~

- 27 ~~1. Surety bond.~~
- 28 ~~2. Certificate of deposit.~~
- 29 ~~3. Trust fund with pay in period.~~
- 30 ~~4. Letter of credit.~~
- 31 ~~5. Insurance policy.~~
- 32 ~~6. Certificate of self insurance.~~
- 33 ~~7. Deposit with the state treasurer.~~
- 34 ~~8. Evidence of ability to meet corporate financial test.~~
- 35 ~~9. Evidence of ability to meet local government financial test.~~
- 36 ~~10. Evidence of ability to meet corporate guarantee test.~~
- 37 ~~11. Evidence of ability to meet local government guarantee test.~~
- 38 ~~12. Evidence of ability to meet the political subdivision financial~~
39 ~~test.~~
- 40 ~~13. Multiple financial assurance mechanisms.~~
- 41 ~~14. Additional financial assurance mechanisms that may be acceptable~~
42 ~~to the director.~~

43 ~~E. The director shall adopt rules establishing a political subdivision~~
44 ~~financial test. The rules establishing the political subdivision financial~~

1 ~~test shall require the director to consider the entity's bond rating, income~~
2 ~~stream, assets, liabilities and assessed valuation of taxable property.~~

3 ~~F.~~ D. The terms and conditions adopted by the director for each
4 financial assurance mechanism shall provide:

5 1. The amount in current dollars equal to the cost of hiring a third
6 party to complete site closure and, if necessary, continued postclosure
7 monitoring and maintenance consistent with the plan and any factor to be
8 applied for inflation. Amounts shall be updated annually for landfills and
9 every three years for all other solid waste facilities to adjust for
10 inflation or as necessary to reflect increased costs resulting from changes
11 to the facility plan or facility conditions.

12 2. The period after closure for which financial assurance is required.

13 ~~G.~~ E. The approved financial assurance mechanism shall not be
14 released unless the plan specified closure and postclosure requirements have
15 been completed or unless new financial assurance has been submitted by a new
16 owner or operator of the solid waste facility and approved by the director.
17 The owner or operator of the solid waste facility:

18 1. Shall receive any accrued interest on financial assurance
19 instruments retained by the department.

20 2. May request a reduction in financial assurance requirements on
21 completion of closure or portions of postclosure monitoring and maintenance
22 that are approved by the director.

23 3. Shall justify any reduction in closure or postclosure cost
24 estimates in the facility plan.

25 4. Shall assure that the period of coverage of the financial assurance
26 instrument exceeds by a minimum of ninety days the applicable one or three
27 year time period required in subsection D of this section.

28 5. Shall be released from closure or postclosure financial
29 responsibility on certification by a registered professional engineer or
30 other environmental professional deemed acceptable by the director that the
31 specific activities of closure or postclosure have been completed in
32 accordance with the approved facility plan and placed in the operating record
33 of the facility plan.

34 Sec. 19. Section 49-771, Arizona Revised Statutes, is amended to read:

35 49-771. Restrictive covenants for solid waste landfills

36 A. Beginning October 9, 1993, the director may grant plan approval for
37 operation of a solid waste landfill only if a restrictive covenant has been
38 placed on the disposal area of the facility. An existing solid waste
39 landfill shall comply with this section by October 9, 1993. The director and
40 all of the owners of the tract of land on which the solid waste landfill is
41 located shall execute the restrictive covenant. ~~If a certified copy of the~~
42 ~~restrictive covenant recorded pursuant to subsection B of this section is not~~
43 ~~received by the director within sixty days of execution, the plan is deemed~~
44 ~~void.~~ A CERTIFIED COPY OF THE RECORDED COVENANT SHALL BE SUBMITTED TO THE

1 DIRECTOR WITHIN SIXTY DAYS AFTER EXECUTION. IF THE DIRECTOR DOES NOT RECEIVE
2 THE COPY WITHIN SIXTY DAYS, THE DIRECTOR SHALL SEND WRITTEN NOTICE INDICATING
3 THE DEFICIENCY TO THE OWNERS OF THE REAL PROPERTY. IF A CERTIFIED COPY OF
4 THE RECORDED COVENANT IS NOT RECEIVED WITHIN THIRTY DAYS OF THAT WRITTEN
5 NOTICE, THE PLAN IS DEEMED VOID.

6 B. The owner of the tract of land on which the solid waste landfill
7 is or will be located shall record the instrument imposing the restrictive
8 covenant in the county recorder's office in the county in which the solid
9 waste landfill is located. If the director does not grant plan approval for
10 operation of a solid waste landfill or the application for plan approval is
11 withdrawn, and the tract of land was not used as a solid waste landfill, the
12 owner and the director shall revoke the restrictive covenant.

13 C. The restrictive covenant shall state that the land described in the
14 covenant has been or will be used as a solid waste landfill and that the
15 property owners, their agents or employees or any of their heirs, successors,
16 lessees or assignees shall not engage in filling, grading, excavating,
17 drilling or mining of the solid waste landfill after closure without the
18 approval of the director unless provided for in the approved facility closure
19 or postclosure plan. In making this determination the director shall
20 consider factors such as the original design, type of operation, material
21 deposited, energy recovery from methane gas and stage of decomposition of the
22 disposal area. The director shall not make any such determination if it will
23 increase the potential for threat to public health and the environment.

24 D. The director may waive the restrictive covenant prescribed by this
25 section if the land is federal land or if contracts that exist between the
26 landowner and the lessee on October 9, 1993 are not renegotiable.

27 Sec. 20. Section 49-772, Arizona Revised Statutes, is amended to read:

28 49-772. Location restrictions for solid waste landfills:
29 definitions

30 A. A SOLID WASTE FACILITY THAT IS REQUIRED TO OBTAIN APPROVAL PURSUANT
31 TO SECTION 49-762 SHALL NOT BE ISSUED A PERMIT PURSUANT TO SECTION 49-241,
32 SUBSECTION A, RECEIVE A PLAN APPROVAL PURSUANT TO SECTION 49-762 OR BE PLACED
33 ON ANY SITE IF ANY OF THE FOLLOWING APPLIES:

34 1. AN IRRIGATION GRANDFATHERED RIGHT CREATED PURSUANT TO TITLE 45,
35 CHAPTER 2, ARTICLE 5 IS APPURTENANT TO ALL OR ANY PART OF THE SITE.

36 2. ANY PART OF THAT FACILITY IS WITHIN ONE-HALF MILE OF A ONE
37 HUNDRED-YEAR FLOODPLAIN THAT HAS ONE HUNDRED YEAR FLOWS IN EXCESS OF
38 TWENTY-FIVE THOUSAND CUBIC FEET PER SECOND, AS DETERMINED BY THE FEDERAL
39 EMERGENCY MANAGEMENT AGENCY, EXCEPT FOR A SITE USED FOR ANY OF THE FOLLOWING
40 ACTIVITIES:

41 (a) RECLAMATION OF LAND THROUGH THE INTRODUCTION OF LANDSCAPING RUBBLE
42 OR INERT MATERIAL.

43 (b) MATERIAL PRODUCED IN CONNECTION WITH A MINING OR MINERAL
44 PROCESSING OPERATION.

1 (c) AGRICULTURAL ON-SITE DISPOSAL AS PROVIDED IN SECTION 49-766.

2 (d) SOLID WASTE TRANSFER OR RECYCLING OR ANY OTHER USE THAT DOES NOT
3 INVOLVE TREATMENT OR DISPOSAL OF SOLID WASTE.

4 (e) RECEIPT OF SOLID WASTE FOR APPLICATION TO AGRICULTURAL LAND AS
5 FERTILIZER OR OTHER BENEFICIAL SOIL AMENDMENT.

6 (f) THE STORAGE, TREATMENT OR PROCESSING OF SOLID WASTE AT A SITE THAT
7 IS NOT OPEN TO THE GENERAL PUBLIC AND THAT IS IN EXISTENCE ON OCTOBER 9,
8 1993.

9 ~~A.~~ B. ~~Beginning October 9, 1993,~~ Owners and operators of new and
10 existing solid waste landfills THAT ARE NOT MUNICIPAL SOLID WASTE LANDFILLS
11 AND that are located within ten thousand feet of any airport runway end used
12 by turbojet aircraft or within five thousand feet of any airport runway end
13 used by only piston-type aircraft shall demonstrate in the facility plan that
14 the facility is designed and operated so that it does not pose a bird hazard
15 to aircraft. Owners and operators of solid waste landfills that are located
16 within a five mile radius of any airport runway end used by turbojet or
17 piston-type aircraft shall notify the affected airport and the federal
18 aviation administration.

19 ~~B.~~ C. In addition to siting requirements established pursuant to
20 ~~section 49-767~~ SUBSECTION A OF THIS SECTION, ~~beginning October 9, 1993,~~
21 owners and operators of new and existing solid waste landfills THAT ARE NOT
22 MUNICIPAL SOLID WASTE LANDFILLS AND that are located in a one hundred-year
23 floodplain shall demonstrate in the facility plan that the facility will not
24 restrict the flow of the one hundred-year flood, reduce the temporary water
25 storage capacity of the floodplain or result in a washout of solid waste so
26 as to pose a hazard to human health and the environment.

27 ~~C.~~ D. ~~Beginning October 9, 1993,~~ New solid waste landfills ~~and~~
28 ~~existing~~ THAT ARE NOT municipal solid waste landfills shall not be located
29 in wetlands, unless the owner or operator can demonstrate all of the
30 following:

31 1. A practicable alternative site that does not involve wetlands is
32 not available.

33 2. The construction and operation of the solid waste landfill does not
34 cause, contribute to the violation of any applicable state water quality
35 standard, toxic effluent standard or prohibition, or jeopardize endangered
36 or threatened species or critical habitat.

37 3. The construction and operation of the facility do not cause or
38 contribute to significant degradation of wetlands. ~~In demonstrating the~~
39 ~~integrity of the facility and its effect on the ecological resources of the~~
40 ~~wetlands, the owners and operators of municipal solid waste landfills shall~~
41 ~~address the following factors:~~

42 ~~(a) Erosion, stability and migration potential of native wetland~~
43 ~~soils, muds and deposits used to support the municipal solid waste landfill.~~

1 ~~(b) Erosion, stability and migration potential of dredged and fill~~
2 ~~materials used to support the municipal solid waste landfill.~~

3 ~~(e) The volume and chemical nature of the waste accepted in the~~
4 ~~municipal solid waste landfill.~~

5 ~~(d) Impacts on fish, wildlife and other aquatic resources and their~~
6 ~~habitats from the release of the the solid waste.~~

7 ~~(e) The potential effects of catastrophic releases of waste to the~~
8 ~~wetland and the resulting effects on the environment.~~

9 ~~(f) Any additional factors as necessary to demonstrate that ecological~~
10 ~~resources in the wetland are sufficiently protected.~~

11 4. To the extent required under section 404 of the clean water act or
12 applicable state wetland laws, steps have been taken to attempt to achieve
13 no net loss of wetlands as defined in acreage and function by first avoiding
14 impacts to wetlands to the maximum extent practicable pursuant to paragraph
15 1 of this subsection and offsetting remaining unavoidable wetland impacts
16 through all appropriate and practicable compensatory mitigation actions.

17 ~~D. E. Beginning October 9, 1993, New solid waste landfills and~~
18 ~~existing THAT ARE NOT municipal solid waste landfills shall not be located:~~

19 1. Within two hundred feet of a fault that has had displacement in
20 holocene time unless the owner or operator can demonstrate in the facility
21 plan that an alternative setback distance of less than two hundred feet will
22 prevent damage to the structural integrity of the facility and will protect
23 public health and the environment.

24 2. In seismic impact zones unless the owner or operator can
25 demonstrate in the facility plan that all containment structures, including
26 liners, leachate collection systems and surface water control systems, are
27 designed to resist the maximum horizontal acceleration in lithified earth
28 material for the site.

29 ~~E. F. Beginning October 9, 1993, Owners and operators of new and~~
30 ~~existing solid waste landfills THAT ARE NOT MUNICIPAL SOLID WASTE LANDFILLS~~
31 ~~AND that are located in an unstable area shall demonstrate in the facility~~
32 ~~plan that engineering measures have been incorporated into the facility~~
33 ~~design to ensure that the integrity of the structural components of the~~
34 ~~facility will not be disrupted, including at a minimum an analysis of the~~
35 ~~following:~~

36 1. On-site or local soil conditions that may result in significant
37 differential settling.

38 2. On-site or local geologic or geomorphologic features.

39 3. On-site or local man-made surface or subsurface features or events.

40 ~~F. Owners and operators of existing municipal solid waste landfills~~
41 ~~that cannot make the demonstration prescribed in subsection A of this section~~
42 ~~relating to airports, subsection B of this section relating to floodplains~~
43 ~~or subsection E of this section relating to unstable areas shall close by~~
44 ~~October 9, 1996 in compliance with rules adopted by the department and shall~~

1 ~~conduct postclosure activities in compliance with rules adopted by the~~
2 ~~department.~~

3 ~~G. The time for closure prescribed by subsection F of this section may~~
4 ~~be extended by the director for no more than two years if both of the~~
5 ~~following are demonstrated in the facility plan:~~

6 ~~1. There is no available alternative disposal capacity.~~

7 ~~2. There is no immediate threat to human health and the environment.~~

8 G. SUBSECTIONS C THROUGH F AND H OF THIS SECTION APPLY UNTIL THE
9 DIRECTOR ADOPTS RULES FOR SOLID WASTE LANDFILLS THAT ARE NOT MUNICIPAL SOLID
10 WASTE LANDFILLS.

11 H. For purposes of this section, unless the context otherwise
12 requires:

13 1. "Airport" means a public use airport open to the public without
14 prior permission and without restrictions within the physical capacities of
15 available facilities.

16 2. "Areas susceptible to mass movement" means those areas of influence
17 where the movement of earth material at, beneath or adjacent to the solid
18 waste landfill because of natural or human-induced events results in the
19 downslope transport of soil and rock material due to gravity. Areas of mass
20 movement may include landslides, avalanches, debris slides and flows, soil
21 fluxion, block sliding and rock fall.

22 3. "Bird hazard" means an increase in the likelihood of bird and
23 aircraft collisions that may cause damage to the aircraft or injuries to its
24 occupants.

25 4. "Displacement" means the relative movement of any two sides of a
26 fault measured in any direction.

27 5. "Fault" means a fracture or a zone of fractures in any material
28 along which strata on one side have been displaced with respect to that on
29 the other side.

30 6. "Floodplain" means the areas adjoining inland waters or including
31 areas where drainage is or may be restricted by man-made structures that have
32 been or may be covered partially or wholly by floodwaters from the one
33 hundred-year flood.

34 7. "Holocene" means the most recent epoch of the quaternary period,
35 extending from the end of the pleistocene epoch to the present.

36 8. "Karst terranes" means areas where karst topography with its
37 characteristic surface and subterranean features is developed as a result of
38 dissolution of limestone, dolomite or other soluble rock. Characteristic
39 physiographic features present in karst terranes include sinkholes, sinking
40 streams, caves, large springs and blind valleys.

41 9. "Lithified earth material" means all rock, including all naturally
42 occurring and naturally formed aggregates or masses of minerals or small
43 particles of older rock that formed by crystallization of magma or by
44 induration of loose sediments. Lithified earth material does not include

1 man-made materials such as fill, concrete and asphalt or unconsolidated earth
2 materials, soil or regolith lying at or near the earth surface.

3 10. "Maximum horizontal acceleration in lithified earth material" means
4 the maximum expected horizontal acceleration depicted on a seismic hazard
5 map, with a ninety per cent or greater probability that the acceleration will
6 not be exceeded in two hundred fifty years, or the maximum expected
7 horizontal acceleration based on a site specific seismic risk assessment.

8 11. "One hundred-year flood" or "base flood" means a flood that has a
9 one per cent chance of being equalled or exceeded in a one-year period, based
10 on criteria established by the director of the department of water resources.

11 12. "Poor foundation conditions" means those areas where features exist
12 that indicate that a natural or human-induced event may result in inadequate
13 foundation support for the structural components of a solid waste disposal
14 facility.

15 13. "Seismic impact zone" means an area with a ten per cent or greater
16 probability that the maximum horizontal acceleration in lithified earth
17 material, expressed as a percentage of the earth's gravitational pull, will
18 exceed 0.10g in two hundred fifty years.

19 14. "Structural components" means liners, leachate collection systems,
20 final covers, run-on or run-off systems, flood control components and any
21 other components used in the construction and operation of the solid waste
22 disposal facility that are necessary for protection of public health and the
23 environment.

24 15. "Unstable area" means a location that is susceptible to natural or
25 human-induced events or forces capable of impairing the integrity of some or
26 all of the landfill structural components responsible for preventing releases
27 from a landfill. Unstable areas may include poor foundation conditions,
28 areas susceptible to mass movements and karst terranes.

29 16. "Washout" means the carrying away of solid waste by surface water
30 runoff.

31 17. "Wetlands" means those areas that are defined in 40 Code of Federal
32 Regulations section 232.2(r).

33 Sec. 21. Section 49-774, Arizona Revised Statutes, is amended to read:

34 49-774. Landfill washout; abatement costs; definitions

35 A. If a washout of solid waste from a solid waste landfill occurs, the
36 director shall issue a cease and desist order pursuant to section 49-142 to
37 the owner or the operator of the solid waste landfill and to any person who
38 disposed of solid waste at that landfill.

39 B. The director may order the owner or the operator of the landfill
40 and any person who disposed of solid waste at that landfill to abate the
41 washout within a time specified in the order and at the expense of the owner,
42 operator or other person named in the order. If such persons refuse to
43 comply with the order to abate, the department may recover from the owner and
44 the operator of the landfill and any person who disposed at the landfill the

1 reasonable costs of abating the washout. No person who disposed of solid
2 waste at the landfill shall be liable for a larger proportion of the
3 abatement cost than the person's proportionate share of solid waste at the
4 landfill. Chapter 1, article 3 of this title, relating to environmental
5 nuisances, shall apply to any action filed by the director and any person who
6 is named in the order.

7 C. This section does not apply to any washout that occurred before
8 October 9, 1993.

9 D. This section does not apply to an operation that is exempt from
10 this article ~~pursuant to section 49-762, subsection H~~ on October 9, 1993.

11 E. The authority provided to the director by this section is in
12 addition to the remedies and authority otherwise provided by law.

13 F. For purposes of this section:

14 1. "Person who disposed" means any person who transported solid waste
15 to the landfill or who made the decision to use the landfill but does not
16 include a natural person.

17 2. "Washout" means the carrying away of solid waste off the property
18 of the owner or operator of the landfill by storm water or surface water
19 runoff.

20 Sec. 22. Section 49-782, Arizona Revised Statutes, is amended to read:

21 49-782. Actions on approval to operate

22 A. The director may suspend, amend, withdraw, condition or revoke an
23 approval to operate a solid waste facility if the director determines that
24 the facility is in violation of any rule adopted pursuant to this chapter.

25 B. The suspension, amendment, withdrawal, conditions or revocation of
26 an approval to operate a solid waste facility shall comply with title 41,
27 chapter 6.

28 C. THE DIRECTOR MAY REQUIRE ANY PERSON WHO VIOLATES A BEST MANAGEMENT
29 PRACTICE THAT IS ADOPTED PURSUANT TO SECTION 49-761, SUBSECTION H TO COMPLY
30 WITH THE SELF-CERTIFICATION REQUIREMENTS PRESCRIBED BY SECTION 49-761,
31 SUBSECTION G AND THE RULES ADOPTED PURSUANT TO THAT SECTION. THE DIRECTOR
32 MAY REQUIRE COMPLIANCE WITHIN A REASONABLE TIME.

33 D. THE DIRECTOR MAY REQUIRE ANY PERSON WHO VIOLATES SECTION 49-761,
34 SUBSECTION G OR ANY RULE ADOPTED PURSUANT TO THAT SECTION TO COMPLY WITH THE
35 FACILITY PLAN APPROVAL REQUIREMENTS PRESCRIBED BY SECTION 49-762.04 WITHIN
36 A REASONABLE TIME.

37 Sec. 23. Section 49-881, Arizona Revised Statutes, is amended to read:

38 49-881. Solid waste fee fund; uses; exemption

39 A. A solid waste fee fund is established in the state treasury. The
40 director shall administer the fund. The fund consists of legislative
41 appropriations, donations, gifts, grants, waste tire administrative monies
42 distributed pursuant to section 44-1305, subsection B, paragraph 1, solid
43 waste landfill registration fees from section 49-747, solid waste fees
44 collected pursuant to section ~~49-762~~ 49-762.03, subsection ~~K~~ F, used oil

1 penalties apportioned pursuant to section 49-814, subsection D, paragraph 1,
2 special waste management plan fees collected pursuant to section 49-857,
3 special waste management fees collected pursuant to section 49-863, private
4 consultants expedited plan review FEES COLLECTED pursuant to section ~~49-761,~~
5 ~~subsection E 49-762.03, SUBSECTION G and solid waste landfill disposal fees~~
6 ~~pursuant to section 49-836, subsection A~~ SELF-CERTIFICATION FILING FEES
7 COLLECTED PURSUANT TO SECTION 49-762:05, SUBSECTION H.

8 B. Monies in the fund are subject to legislative appropriation for
9 solid waste control programs established in the funding sources pursuant to
10 subsection A of this section and as determined by the director.

11 C. On notice from the director, the state treasurer shall invest and
12 divest monies in the fund as provided in section 35-313, and monies earned
13 from investment shall be credited to the fund. Monies deposited in the fund
14 are exempt from the provisions of section 35-190 relating to lapsing of
15 appropriations.

16 Sec. 24. Existing facilities and standards

17 Public solid waste landfills, municipal solid waste landfills, public
18 composting facilities and public incineration facilities are currently
19 subject to the design and operation standards prescribed in title 49, chapter
20 4, Arizona Revised Statutes, and rules adopted pursuant to that chapter.

APPROVED BY THE GOVERNOR APRIL 11, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 1996