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Jane Dee Hull
Secretary of State

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CHAPTER 88

HOUSE BILL 2546

AN ACT

AMENDING SECTIONS 49-426, 49-426.01, 49-480 AND 49-480.01, ARIZONA REVISED STATUTES; RELATING TO AIR QUALITY.

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

Section 1. Section 49-426, Arizona Revised Statutes, is amended to read:

49-426. Permits; duties of director; exceptions; applications; objections; fees

A. A permit shall:

1. Be issued by the director in compliance with the terms of this section.

2. Be required for any person seeking a compliance extension pursuant to section 49-426.03, subsection B, paragraph 3 and section 112(a)(5) of the clean air act and for any person commencing construction~~,~~ OR operating ~~or making a modification to~~ any source, except as prescribed in subsection B of this section or section 49-426.01.

B. The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, in the aggregate with other such equipment of the applicant at the same location or property other than a one or two family residence, is rated at less than five hundred thousand British thermal units per hour. The director may establish by rule additional sources or classifications of sources for which a permit is not required AND POLLUTANT-EMITTING ACTIVITIES AND EMISSIONS UNITS AT PERMITTED SOURCES THAT ARE NOT REQUIRED TO BE INCLUDED IN THE PERMIT. The director

shall not adopt such ~~a rule~~ RULES unless the director ~~finds~~ MAKES A WRITTEN FINDING WITH SUPPORTING FACTS that the EXEMPTED source, ~~or~~ class of sources, POLLUTANT-EMITTING ACTIVITIES OR EMISSIONS UNITS will have an insignificant adverse impact on air quality. In adopting these rules, the director may consider any rule that is adopted by the administrator pursuant to section 502 of the clean air act and that exempts one or more source categories from the requirement to obtain a permit UNDER TITLE V OF THE CLEAN AIR ACT.

C. Every application for a permit shall be filed in the manner and form prescribed by the director, and shall contain all the information necessary to enable the director to make the determination to grant or deny such application. The director shall establish by rule requirements for permit applications, including ~~a~~ THE standard application form FOR TITLE V SOURCES. The director shall establish by rule requirements for applications for general permits. An application FOR A PERMIT ISSUED PURSUANT TO TITLE V OF THE CLEAN AIR ACT shall include a compliance plan that describes how the applicant will comply with all of the applicable requirements of this chapter and the clean air act, including a schedule of compliance and a schedule under which progress reports will be submitted to the director at least every six months. The director may require that such application include all sources that are used or to be used by the applicant in a certain process or a single facility or location. Before acting on an application for a permit, the director may require the applicant to furnish further information or further plans or specifications. The director shall act, within a reasonable time, on such application and shall notify the applicant in writing of the proposed approval or denial of such application, except that the director may have a reasonable period of time in which to gather information, inspect premises, and issue such permits. The director shall adopt rules that establish procedures for determining when applications are complete, for processing applications and for reviewing permit actions. The director shall also establish by rule criteria for determining reasonable times for processing permit applications. Rules adopted pursuant to this subsection FOR PERMITS ISSUED PURSUANT TO TITLE V OF THE CLEAN AIR ACT shall conform to the requirements of section 505(a) of the clean air act.

D. The director shall give notice of ~~the proposed permit~~ A PROPOSED PERMIT FOR A SOURCE REQUIRED TO OBTAIN A PERMIT PURSUANT TO TITLE V OF THE CLEAN AIR ACT once each week for two consecutive weeks in two newspapers of general circulation in the county in which the source is or will be located. The notice shall describe the proposed permit and air contaminants to be emitted and shall state that any person may submit comments on the proposed permit and may request a public hearing. The director shall require the applicant at the time of the first notice to post the site where the source is or may be located. If permitted by federal, state and local law, the posting shall be prominently placed at a site that is under the applicant's legal control and that is adjacent to the nearest public roadway. The

posting shall be visible to the public using the public roadway and shall contain the information in the notice that is published by the director. If a public hearing is requested, the director shall require the applicant to place an additional posting that provides notice of the public hearing. A posting shall be maintained until the public comment period on the proposed permit is closed. The director shall make available to the public notices of proposed permits. Each public notice that is issued under this chapter shall be mailed to the permit applicant, to the affected federal, state and local agencies and to those persons who have requested in writing copies of proposed permit action notices. During the public comment period, any person may submit a request to the department to conduct a public hearing for the purpose of receiving oral or written comments on the proposed permit. A written comment shall state the name and mailing address of the person, shall be signed by the person, his agent or his attorney and shall clearly set forth reasons why the permit should or should not be issued. Grounds for comment are limited to whether the proposed permit meets the criteria for issuance prescribed in this section or in section 49-427. The department shall consider and prepare written responses to all comments received during the public comment period including comments made at a public hearing conducted by the department. At the time a final permit decision is made, copies of the department's responses shall be made available to the applicant and any person who commented on the proposed permit.

E. Permits or revisions issued pursuant to this section or section 49-426.01 may be issued subject to such terms and conditions as are consistent with the requirements of this article, article 1 of this chapter and the clean air act and are found by the director to be necessary, following public notice and an opportunity for a public hearing as provided in subsection D or H of this section or in section 49-426.01, and subject to payment of a reasonable fee to be determined as follows:

1. For a source that is required to obtain a permit pursuant to title V of the clean air act, the director shall establish by rule a system of fees that is consistent with and equivalent to that prescribed by section 502 of the clean air act. These rules shall prescribe procedures for increasing the fee each year by the percentage if any by which the consumer price index for the immediately preceding calendar year exceeds the consumer price index for calendar year 1989.

2. For a facility that is required to obtain a permit pursuant to this chapter but that is not required to obtain a permit pursuant to title V of the clean air act, the director shall determine a fee based on the total actual cost of processing the permit application, but not exceeding twenty-five thousand dollars.

The director shall establish an annual inspection fee, not to exceed the average cost of inspection. The director shall adopt, by rule, criteria for determining fees and for public hearings.

F. Permits issued pursuant to this section shall be issued for a period of five years.

G. Except as provided in section 49-808, subsection ~~E~~ B and subsection ~~B~~ H of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel shall first obtain a permit from the director. Any permit issued by the director under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

H. The director may issue a general permit for a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions and if the following conditions are met:

1. A general permit shall comply with all of the requirements for permits prescribed by this section except for the requirements of subsection D of this section and shall be consistent with the clean air act.

2. The director shall give notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county. The notice shall describe the proposed general permit, the general class of sources that would be subject to the proposed permit and the air contaminants to be emitted. The notice shall also state that any person may submit comments on the proposed general permit and may request a public hearing. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued. Grounds for comment are limited to whether the proposed general permit meets the criteria for issuance prescribed in this section or section 49-427.

3. On issuance of a general permit any person seeking to permit a source under this subsection shall submit an application pursuant to subsection C of this section.

4. If the director approves an application to be permitted under a general permit, the director shall provide notice of the approval in a newspaper of general circulation in the county in which the source is or will be located.

5. If a person violates a general permit, the director may require the source to obtain a permit pursuant to subsection A of this section.

6. A general permit may be revoked or revised at any time by the director if necessary to comply with this chapter. If the director revokes or revises a general permit, the director shall notify all persons whose sources are affected by the revocation or revision and shall include notice of procedures to obtain a permit pursuant to subsection A of this section or notice of procedures for compliance with the revisions.

7. The director by rule shall adopt procedures for the issuance of general permits.

8. The director may adopt conditions in a general permit applicable to sources located in a specified geographic area either independently of or upon petition by a county air pollution control officer.

I. Permits issued pursuant to this section FOR A SOURCE REQUIRED TO OBTAIN A PERMIT UNDER TITLE V OF THE CLEAN AIR ACT shall contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.

2. Enforceable emission limitations and standards.

3. A schedule for compliance, if applicable.

4. The requirement to submit at least every six months the results of any required monitoring.

5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

J. The director may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

K. If an applicant has submitted a timely and complete application for a permit required under this section, but final action has not been taken on that application, failure to obtain a permit shall not be a violation of this chapter unless the delay in final action is due to the failure of the applicant to submit information required or requested to process the application. This subsection does not apply to any person required to obtain a permit before commencing construction of a source as required under this section or any person seeking a permit revision as provided under section 49-426.01.

L. The director may issue a single permit authorizing emissions from similar operations at multiple temporary locations, if the permit includes conditions that will assure compliance with all applicable requirements of this chapter and the clean air act at all locations. Any permit issued pursuant to this subsection shall require the applicant to notify the director in advance of each change in location. In issuing a single permit, the director may require a separate permit fee for operations at each location.

M. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the director shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The director shall require any revisions as expeditiously as practicable, but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

N. Any permit issued pursuant to the requirements of this article and title V of the clean air act to a unit subject to the provisions of title IV of the clean air act shall include conditions prohibiting all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or by the designated representative of the owners or operators.

2. ~~Exceedances~~ AMOUNTS IN EXCESS of applicable emission rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit.

O. THE DIRECTOR SHALL ADOPT A RULE SPECIFYING THE NOTICE, PUBLIC PARTICIPATION REQUIREMENTS AND OTHER PERMIT ISSUANCE PROCEDURES FOR PERMITS THAT ARE NOT ISSUED PURSUANT TO TITLE V OF THE CLEAN AIR ACT.

Sec. 2. Section 49-426.01, Arizona Revised Statutes, is amended to read:

49-426.01. Permits; changes within a source; revisions

A. The director shall establish by rule provisions to allow changes within a ~~permitted~~ source REQUIRED TO OBTAIN A PERMIT UNDER TITLE V OF THE CLEAN AIR ACT without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the director with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section FOR TITLE V SOURCES. Rules adopted pursuant to this section at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act and may prescribe a different time limit for notifications associated with emergency conditions.

B. A permit issued pursuant to section 49-426 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or termination or a notification filed pursuant to subsection A of this section does not stay an effective permit condition. ~~,~~The director may require~~,~~ that the applicant provide in writing within a reasonable time any information that the director identifies as necessary for the director to determine if cause exists for revising, revoking and reissuing, or terminating the permit or for determining compliance with permit conditions.

C. The director shall establish by rule procedures related to public ~~review of proposed changes to a source as provided in subsection A of this section and proposed permit revisions as provided in subsection B of this section. These~~ AND DEPARTMENTAL REVIEW OF CHANGES TO A PERMITTED SOURCE. FOR TITLE V SOURCES, THESE rules at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act. FOR CHANGES TO SOURCES THAT ARE NOT REQUIRED TO OBTAIN A PERMIT UNDER TITLE V OF THE CLEAN AIR ACT, THE NECESSITY FOR AND LEVEL OF PUBLIC AND DEPARTMENTAL REVIEW OF A CHANGE SHALL BE DETERMINED AS PRESCRIBED BY THIS CHAPTER AND THE ENVIRONMENTAL SIGNIFICANCE OF THE CHANGE.

Sec. 3. Section 49-480, Arizona Revised Statutes, is amended to read:

49-480. Permits; fees

A. The board of supervisors may adopt a program for the review, issuance, revision, administration and enforcement of permits and for public review of proposed permits for sources THAT ARE subject to section 49-426, subsection A, that are not under the jurisdiction of the state pursuant to section 49-402 and that are not otherwise exempt pursuant to section 49-426, subsection B AND SUBSECTION K OF THIS SECTION. This program shall include provisions for administration, inspection and enforcement of general permits issued pursuant to section 49-426, subsection H AND SUBSECTION J OF THIS SECTION.

B. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and required to be obtained pursuant to title V of the clean air act including sources that emit hazardous air pollutants shall be SUBSTANTIALLY identical to procedures for the review, issuance, revision and administration of permits issued by the department under this chapter. Such procedures shall comply with the requirements of sections 165, 173~~,~~ AND 408 and titles III and V of the clean air act and implementing regulations for sources subject to titles III and V of the clean air act. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to title V of the clean air act shall ~~be consistent with and equivalent to~~ IMPOSE NO GREATER PROCEDURAL BURDEN ON THE PERMIT APPLICANT THAN procedures for the review, issuance, revision and

administration of permits issued by the department under SECTIONS 49-426 AND 49-426.01 AND OTHER APPLICABLE PROVISIONS OF this chapter.

C. Upon adoption of a permit program by the board of supervisors pursuant to this section, no person may commence construction, operate or make a modification to any source subject to the permit program without complying with the requirements of that program.

D. Permits issued pursuant to a program adopted under this section are subject to payment of a reasonable fee to be determined as follows:

1. For any source required to obtain a permit under title V of the clean air act, the board of supervisors shall establish by rule a system of fees consistent with and equivalent to that prescribed under section 502 of the clean air act. Such system shall prescribe procedures for increasing the fee each year by the percentage, if any by which the consumer price index for the most recent calendar year ending before the beginning of such year exceeds the consumer price index for the calendar year 1989.

2. For any facility subject to the permitting requirements of this chapter but not required to obtain a permit under title V of the clean air act, the board of supervisors shall determine a permit fee based on all reasonable direct and indirect costs required to administer the permit, but not exceeding twenty-five thousand dollars.

The board of supervisors shall establish an annual inspection fee, not to exceed the average cost of services.

E. Funds received for permits issued pursuant to this section shall be deposited in a special public health fund and shall be used by the control officer to defray the costs of implementing this article.

F. Permits issued pursuant to this section FOR A SOURCE REQUIRED TO OBTAIN A PERMIT UNDER TITLE V OF THE CLEAN AIR ACT shall, AND FOR A SOURCE THAT IS NOT REQUIRED TO OBTAIN A TITLE V PERMIT MAY, contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.

2. Enforceable emission limitations and standards.

3. A schedule for compliance, if applicable.

4. The requirement to submit at least every six months the results of any required monitoring.

5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

G. The control officer may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

H. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major

source, the control officer shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The control officer shall require any revisions as expeditiously as practicable but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of the standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

I. Except as provided in section 49-808, subsection E, section 49-426, subsection B and subsection A of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel shall first obtain a permit from the control officer. Any permit issued by the control officer under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

J. THE BOARD OF SUPERVISORS MAY AUTHORIZE BY RULE THE CONTROL OFFICER TO ISSUE A GENERAL PERMIT FOR A DEFINED CLASS OF FACILITIES IF THAT CLASS OF FACILITIES HAS NOT BEEN ISSUED A GENERAL PERMIT BY THE DIRECTOR FOR SOURCES IN THAT COUNTY PURSUANT TO SECTION 49-426, SUBSECTION H. THE CRITERIA FOR ISSUANCE OF A GENERAL PERMIT ARE THOSE APPLICABLE TO THE DIRECTOR PURSUANT TO SECTION 49-426, SUBSECTION G.

K. THE BOARD OF SUPERVISORS MAY IDENTIFY BY RULE SOURCES OR CLASSIFICATIONS OF SOURCES FOR WHICH A PERMIT IS NOT REQUIRED AND POLLUTANT-EMITTING ACTIVITIES AND EMISSIONS UNITS AT PERMITTED SOURCES THAT ARE NOT SUBJECT TO INCLUSION IN THE PERMIT. THE CRITERIA FOR EXEMPTIONS GRANTED PURSUANT TO THIS SUBSECTION ARE THOSE APPLICABLE TO EXEMPTIONS GRANTED BY THE DIRECTOR PURSUANT TO SECTION 49-426, SUBSECTION B.

Sec. 4. Section 49-480.01, Arizona Revised Statutes, is amended to read:

49-480.01. <u>Permits; changes within a source; revisions</u>

A. The board of supervisors shall establish by rule provisions to allow changes within a ~~permitted~~ source REQUIRED TO OBTAIN A PERMIT UNDER TITLE V OF THE CLEAN AIR ACT without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the control officer with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section. Rules adopted pursuant to this section FOR TITLE V SOURCES may prescribe a different time limit for notifications associated with emergency conditions.

B. Any permit issued pursuant to section 49-480 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or a termination, or a notification filed pursuant to subsection A does not stay any effective permit condition. The control officer may require in writing that the applicant provide within a reasonable time any information that the control officer identifies as necessary for the control officer to determine if cause exists for revising, revoking and reissuing, or terminating, the permit, or to determine compliance with permit conditions.

C. THE BOARD OF SUPERVISORS SHALL ESTABLISH BY RULE PROCEDURES RELATED TO PUBLIC AND DEPARTMENTAL REVIEWS OF CHANGES TO A PERMITTED SOURCE. THE PROCEDURES SHALL IMPOSE NO GREATER PROCEDURAL BURDEN ON THE PERMITTEE THAN THE PROCEDURES ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 49-426.01, SUBSECTION C.

APPROVED BY THE GOVERNOR APRIL 3, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 1996