

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 228

HOUSE BILL 2518

AN ACT

AMENDING SECTIONS 45-576 AND 49-201, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-204; AMENDING TITLE 49, CHAPTER 2, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-362; AMENDING SECTION 49-701, ARIZONA REVISED STATUTES; RELATING TO GRAY WATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-576, Arizona Revised Statutes, is amended to
3 read:

4 45-576. Certificate of assured water supply; designated cities,
5 towns and private water companies; exemptions;
6 definition

7 A. A person who proposes to offer subdivided lands, as defined in
8 section 32-2101, for sale or lease in an active management area shall apply
9 for and obtain a certificate of assured water supply from the director prior
10 to presenting the plat for approval to the city, town or county in which the
11 land is located, where such is required, and prior to filing with the state
12 real estate commissioner a notice of intention to offer such lands for sale
13 or lease, pursuant to section 32-2181, unless the subdivider has obtained a
14 written commitment of water service for the subdivision from a city, town or
15 private water company designated as having an assured water supply pursuant
16 to this section.

17 B. A city, town or county may approve a subdivision plat only if the
18 subdivider has obtained a certificate of assured water supply from the
19 director or the subdivider has obtained a written commitment of water service
20 for the subdivision from a city, town or private water company designated as
21 having an assured water supply pursuant to this section. The city, town or
22 county shall note on the face of the approved plat that a certificate of
23 assured water supply has been submitted with the plat or that the subdivider
24 has obtained a written commitment of water service for the proposed
25 subdivision from a city, town or private water company designated as having
26 an assured water supply pursuant to this section.

27 C. The state real estate commissioner may issue a public report
28 authorizing the sale or lease of subdivided lands only on compliance with
29 either of the following:

30 1. The subdivider, owner or agent has obtained a certificate of
31 assured water supply from the director and has paid any activation fee
32 required under section 48-3772, subsection A, paragraph 7, and any
33 replenishment reserve fee required under section 48-3774.01, subsection A,
34 paragraph 2.

35 2. If the subdivider has obtained a written commitment of water
36 service for the lands from a city, town or private water company designated
37 as having an assured water supply pursuant to this section and the
38 subdivider, owner or agent has paid any activation fee required under section
39 48-3772, subsection A, paragraph 7.

40 D. The director shall designate private water companies in active
41 management areas that have an assured water supply. If a city or town
42 acquires a private water company that has contracted for central Arizona
43 project water, the city or town shall assume the private water company's
44 contract for central Arizona project water.

1 E. The director shall designate cities and towns in active management
2 areas where an assured water supply exists. If a city or town has entered
3 into a contract for central Arizona project water, the city or town is deemed
4 to continue to have an assured water supply until December 31, 1997.
5 Commencing on January 1, 1998, the determination that the city or town has an
6 assured water supply is subject to review by the director and the director
7 may determine that a city or town does not have an assured water supply.

8 F. The director shall notify the mayors of all cities and towns in
9 active management areas and the chairmen of the boards of supervisors of
10 counties in which active management areas are located of the cities, towns
11 and private water companies designated as having an assured water supply and
12 any modification of that designation within thirty days of the designation or
13 modification. If the service area of the city, town or private water company
14 has qualified as a member service area pursuant to title 48, chapter 22,
15 article 4, the director shall also notify the conservation district of the
16 designation or modification and shall report the projected average annual
17 replenishment obligation for the member service area based on the projected
18 and committed average annual demand for water within the service area during
19 the effective term of the designation or modification subject to any
20 limitation in an agreement between the conservation district and the city,
21 town or private water company. For each city, town or private water company
22 that qualified as a member service area under title 48, chapter 22 and was
23 designated as having an assured water supply before January 1, 2004, the
24 director shall report to the conservation district on or before January 1,
25 2005 the projected average annual replenishment obligation based on the
26 projected and committed average annual demand for water within the service
27 area during the effective term of the designation subject to any limitation
28 in an agreement between the conservation district and the city, town or
29 private water company. Persons proposing to offer subdivided lands served by
30 those designated cities, towns and private water companies for sale or lease
31 are exempt from applying for and obtaining a certificate of assured water
32 supply.

33 G. This section does not apply in the case of the sale of lands for
34 developments that are subject to a mineral extraction and processing permit
35 or an industrial use permit pursuant to sections 45-514 and 45-515.

36 H. The director shall adopt rules to carry out the purposes of this
37 section ~~no later than January 1, 1995.~~ ON OR BEFORE JANUARY 1, 2008, THE
38 RULES SHALL PROVIDE FOR A REDUCTION IN WATER DEMAND FOR AN APPLICATION FOR A
39 DESIGNATION OF ASSURED WATER SUPPLY OR A CERTIFICATE OF ASSURED WATER SUPPLY
40 IF A GRAY WATER REUSE SYSTEM WILL BE INSTALLED THAT MEETS THE REQUIREMENTS OF
41 THE RULES ADOPTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR GRAY WATER
42 SYSTEMS AND IF THE APPLICATION IS FOR A CERTIFICATE OF ASSURED WATER SUPPLY,
43 THE LAND FOR WHICH THE CERTIFICATE IS SOUGHT MUST QUALIFY AS A MEMBER LAND IN
44 A CONSERVATION DISTRICT PURSUANT TO TITLE 48, CHAPTER 22, ARTICLE 4. FOR THE

1 PURPOSES OF THIS SUBSECTION, "GRAY WATER" HAS THE SAME MEANING PRESCRIBED IN
2 SECTION 49-201.

3 ~~+~~ I. If the director designates a municipal provider as having an
4 assured water supply under this section and the designation lapses or
5 otherwise terminates while the municipal provider's service area is a member
6 service area of a conservation district, the municipal provider or its
7 successor shall continue to comply with the consistency with management goal
8 requirements in the rules adopted by the director under subsection H of this
9 section as if the designation was still in effect with respect to the
10 municipal provider's designation uses. When determining compliance by the
11 municipal provider or its successor with the consistency with management goal
12 requirements in the rules, the director shall consider only water delivered
13 by the municipal provider or its successor to the municipal provider's
14 designation uses. A person is the successor of a municipal provider if the
15 person commences water service to uses that were previously designation uses
16 of the municipal provider. Any groundwater delivered by the municipal
17 provider or its successor to the municipal provider's designation uses in
18 excess of the amount allowed under the consistency with management goal
19 requirements in the rules shall be considered excess groundwater for purposes
20 of title 48, chapter 22. For the purposes of this subsection, "designation
21 uses" means all water uses served by a municipal provider on the date the
22 municipal provider's designation of assured water supply lapses or otherwise
23 terminates and all recorded lots within the municipal provider's service area
24 that were not being served by the municipal provider on that date but that
25 received final plat approval from a city, town or county on or before that
26 date. Designation uses do not include industrial uses served by an
27 irrigation district under section 45-497.

28 ~~+~~ J. For the purposes of this section, "assured water supply" means
29 all of the following:

30 1. Sufficient groundwater, surface water or effluent of adequate
31 quality will be continuously available to satisfy the water needs of the
32 proposed use for at least one hundred years. Beginning January 1 of the
33 calendar year following the year in which a groundwater replenishment
34 district is required to submit its preliminary plan pursuant to section
35 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a
36 member of the district, "sufficient groundwater" for the purposes of this
37 paragraph means that the proposed groundwater withdrawals that the applicant
38 will cause over a period of one hundred years will be of adequate quality and
39 will not exceed, in combination with other withdrawals from land in the
40 replenishment district, a depth to water of one thousand feet or the depth of
41 the bottom of the aquifer, whichever is less. In determining depth to water
42 for the purposes of this paragraph, the director shall consider the
43 combination of:

44 (a) The existing rate of decline.

45 (b) The proposed withdrawals.

1 (c) The expected water requirements of all recorded lots that are not
2 yet served water and that are located in the service area of a municipal
3 provider.

4 2. The projected groundwater use is consistent with the management
5 plan and achievement of the management goal for the active management area.

6 3. The financial capability has been demonstrated to construct the
7 water facilities necessary to make the supply of water available for the
8 proposed use, including a delivery system and any storage facilities or
9 treatment works. The director may accept evidence of the construction
10 assurances required by section 9-463.01, 11-806.01 or 32-2181 to satisfy this
11 requirement.

12 Sec. 2. Section 49-201, Arizona Revised Statutes, is amended to read:
13 49-201. Definitions

14 In this chapter, unless the context otherwise requires:

15 1. "Administrator" means the administrator of the United States
16 environmental protection agency.

17 2. "Aquifer" means a geologic unit that contains sufficient saturated
18 permeable material to yield usable quantities of water to a well or spring.

19 3. "Best management practices" means those methods, measures or
20 practices to prevent or reduce discharges and includes structural and
21 nonstructural controls and operation and maintenance procedures. Best
22 management practices may be applied before, during and after discharges to
23 reduce or eliminate the introduction of pollutants into receiving waters.
24 Economic, institutional and technical factors shall be considered in
25 developing best management practices.

26 4. "CERCLA" means the comprehensive environmental response,
27 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
28 2767; 42 United States Code sections 9601 through 9657), commonly known as
29 "superfund".

30 5. "Clean closure" means implementation of all actions specified in a
31 permit, if any, as closure requirements, as well as elimination, to the
32 greatest degree practicable, of any reasonable probability of further
33 discharge from the facility and of exceeding aquifer water quality standards
34 at the applicable point of compliance. Clean closure also means postclosure
35 monitoring and maintenance are unnecessary to meet the requirements of this
36 chapter.

37 6. "Clean water act" means the federal water pollution control act
38 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections
39 1251 through 1376), as amended.

40 7. "Closed facility" means:

41 (a) A facility that ceased operation before January 1, 1986, that is
42 not, on August 13, 1986, engaged in the activity for which the facility was
43 designed and that was previously operated and for which there is no intent to
44 resume operation.

1 (b) A facility that has been approved as a clean closure by the
2 director.

3 (c) A facility at which any postclosure monitoring and maintenance
4 plan, notifications and approvals required in a permit have been completed.

5 8. "Concentrated animal feeding operation" means an animal feeding
6 operation that meets the criteria prescribed in 40 Code of Federal
7 Regulations part 122, appendix B for determining a concentrated animal
8 feeding operation for purposes of 40 Code of Federal Regulations sections
9 122.23 and 122.24, appendix C.

10 9. "Department" means the department of environmental quality.

11 10. "Direct reuse" means the beneficial use of reclaimed water for
12 specific purposes authorized pursuant to section 49-203, subsection A,
13 paragraph 6.

14 11. "Director" means the director of environmental quality or the
15 director's designee.

16 12. "Discharge" means the direct or indirect addition of any pollutant
17 to the waters of the state from a facility. For purposes of the aquifer
18 protection permit program prescribed by article 3 of this chapter, discharge
19 means the addition of a pollutant from a facility either directly to an
20 aquifer or to the land surface or the vadose zone in such a manner that there
21 is a reasonable probability that the pollutant will reach an aquifer.

22 13. "Discharge impact area" means the potential areal extent of
23 pollutant migration, as projected on the land surface, as the result of a
24 discharge from a facility.

25 14. "Discharge limitation" means any restriction, prohibition,
26 limitation or criteria established by the director, through a rule, permit or
27 order, on quantities, rates, concentrations, combinations, toxicity and
28 characteristics of pollutants.

29 15. "Environment" means navigable waters, any other surface waters,
30 groundwater, drinking water supply, land surface or subsurface strata or
31 ambient air, within or bordering on this state.

32 16. "Existing facility" means a facility on which construction began
33 before August 13, 1986 and which is neither a new facility nor a closed
34 facility. For THE purposes of this definition, construction on a facility
35 has begun if the facility owner or operator has either:

36 (a) Begun, or caused to begin, as part of a continuous on-site
37 construction program any placement, assembly or installation of a building,
38 structure or equipment.

39 (b) Entered a binding contractual obligation to purchase a building,
40 structure or equipment which is intended to be used in its operation within a
41 reasonable time. Options to purchase or contracts which can be terminated or
42 modified without substantial loss, and contracts for feasibility engineering
43 and design studies, do not constitute a contractual obligation for purposes
44 of this definition.

1 17. "Facility" means any land, building, installation, structure,
2 equipment, device, conveyance, area, source, activity or practice from which
3 there is, or with reasonable probability may be, a discharge.

4 18. "GRAY WATER" MEANS WASTEWATER THAT HAS BEEN COLLECTED SEPARATELY
5 FROM A SEWAGE FLOW AND THAT ORIGINATES FROM A CLOTHES WASHER OR A BATHROOM
6 TUB, SHOWER OR SINK BUT THAT DOES NOT INCLUDE WASTEWATER FROM A KITCHEN SINK,
7 DISHWASHER OR TOILET.

8 ~~18-~~ 19. "Hazardous substance" means:

9 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
10 307(a) of the clean water act.

11 (b) Any element, compound, mixture, solution or substance designated
12 pursuant to section 102 of CERCLA.

13 (c) Any hazardous waste having the characteristics identified under or
14 listed pursuant to section 49-922.

15 (d) Any hazardous air pollutant listed under section 112 of the
16 federal clean air act (42 United States Code section 7412).

17 (e) Any imminently hazardous chemical substance or mixture with
18 respect to which the administrator has taken action pursuant to section 7 of
19 the federal toxic substances control act (15 United States Code section
20 2606).

21 (f) Any substance which the director, by rule, either designates as a
22 hazardous substance following the designation of the substance by the
23 administrator under the authority described in subdivisions (a) through (e)
24 of this paragraph or designates as a hazardous substance on the basis of a
25 determination that such substance represents an imminent and substantial
26 endangerment to public health.

27 ~~19-~~ 20. "Inert material" means broken concrete, asphaltic pavement,
28 manufactured asbestos-containing products, brick, rock, gravel, sand and
29 soil. Inert material also includes material that when subjected to a water
30 leach test that is designed to approximate natural infiltrating waters will
31 not leach substances in concentrations that exceed numeric aquifer water
32 quality standards established pursuant to section 49-223, including
33 overburden and wall rock that is not acid generating, taking into
34 consideration acid neutralization potential, and that has not and will not be
35 subject to mine leaching operations.

36 ~~20-~~ 21. "Major modification" means a physical change in an existing
37 facility or a change in its method of operation that results in a significant
38 increase or adverse alteration in the characteristics or volume of the
39 pollutants discharged, or the addition of a process or major piece of
40 production equipment, building or structure that is physically separated from
41 the existing operation and that causes a discharge, provided that:

42 (a) A modification to a groundwater protection permit facility as
43 defined in section 49-241.01, subsection C that would qualify for an
44 area-wide permit pursuant to section 49-243, subsection P consisting of an

1 activity or structure listed in section 49-241, subsection B shall not
2 constitute a major modification solely because of that listing.

3 (b) For a groundwater protection permit facility as defined in section
4 49-241.01, subsection C, a physical expansion that is accomplished by lateral
5 accretion or upward expansion within the pollutant management area of the
6 existing facility or group of facilities shall not constitute a major
7 modification if the accretion or expansion is accomplished through sound
8 engineering practice in a manner compatible with existing facility design,
9 taking into account safety, stability and risk of environmental release. For
10 a facility described in section 49-241.01, subsection C, paragraph 1,
11 expansion of a facility shall conform with the terms and conditions of the
12 applicable permit. For a facility described in section 49-241.01, subsection
13 C, paragraph 2, if the area of the contemplated expansion is not identified
14 in the notice of disposal, the owner or operator of the facility shall submit
15 to the director the information required by section 49-243, subsection A,
16 paragraphs 1, 2, 3 and 7.

17 ~~21-~~ 22. "Navigable waters" means the waters of the United States as
18 defined by section 502(7) of the clean water act (33 United States Code
19 section 1362(7)).

20 ~~22-~~ 23. "New facility" means a previously closed facility that resumes
21 operation or a facility on which construction was begun after August 13, 1986
22 on a site at which no other facility is located or to totally replace the
23 process or production equipment that causes the discharge from an existing
24 facility. A major modification to an existing facility is deemed a new
25 facility to the extent that the criteria in section 49-243, subsection B,
26 paragraph 1 can be practicably applied to such modification. For THE
27 purposes of this definition, construction on a facility has begun if the
28 facility owner or operator has either:

29 (a) Begun, or caused to begin as part of a continuous on-site
30 construction program, any placement, assembly or installation of a building,
31 structure or equipment.

32 (b) Entered a binding contractual obligation to purchase a building,
33 structure or equipment which is intended to be used in its operation within a
34 reasonable time. Options to purchase or contracts which can be terminated or
35 modified without substantial loss, and contracts for feasibility engineering
36 and design studies, do not constitute a contractual obligation for purposes
37 of this definition.

38 ~~23-~~ 24. "Nonpoint source" means any conveyance which is not a point
39 source from which pollutants are or may be discharged to navigable waters.

40 ~~24-~~ 25. "On-site wastewater treatment facility" means a conventional
41 septic tank system or alternative system that is installed at a site to treat
42 and dispose of wastewater of predominantly human origin that is generated at
43 that site.

1 ~~25-~~ 26. "Permit" means a written authorization issued by the director
2 or prescribed by this chapter or in a rule adopted under this chapter stating
3 the conditions and restrictions governing a discharge or governing the
4 construction, operation or modification of a facility.

5 ~~26-~~ 27. "Person" means an individual, employee, officer, managing
6 body, trust, firm, joint stock company, consortium, public or private
7 corporation, including a government corporation, partnership, association or
8 state, a political subdivision of this state, a commission, the United States
9 government or any federal facility, interstate body or other entity.

10 ~~27-~~ 28. "Point source" means any discernible, confined and discrete
11 conveyance, including, but not limited to, any pipe, ditch, channel, tunnel,
12 conduit, well, discrete fissure, container, rolling stock, concentrated
13 animal feeding operation or vessel or other floating craft from which
14 pollutants are or may be discharged to navigable waters. Point source does
15 not include return flows from irrigated agriculture.

16 ~~28-~~ 29. "Pollutant" means fluids, contaminants, toxic wastes, toxic
17 pollutants, dredged spoil, solid waste, substances and chemicals, pesticides,
18 herbicides, fertilizers and other agricultural chemicals, incinerator
19 residue, sewage, garbage, sewage sludge, munitions, petroleum products,
20 chemical wastes, biological materials, radioactive materials, heat, wrecked
21 or discarded equipment, rock, sand, cellar dirt and mining, industrial,
22 municipal and agricultural wastes or any other liquid, solid, gaseous or
23 hazardous substances.

24 ~~29-~~ 30. "Postclosure monitoring and maintenance" means those
25 activities that are conducted after closure notification and that are
26 necessary to:

27 (a) Keep the facility in compliance with aquifer water quality
28 standards at the applicable point of compliance.

29 (b) Verify that the closure design has eliminated discharge to the
30 extent intended.

31 (c) Perform any remedial or mitigative action necessary to comply with
32 this chapter.

33 (d) Meet property use restrictions.

34 ~~30-~~ 31. "Practicably" means able to be reasonably done from the
35 standpoint of technical practicability and, except for pollutants addressed
36 in section 49-243, subsection I, economically achievable on an industry-wide
37 basis.

38 ~~31-~~ 32. "Reclaimed water" means water that has been treated or
39 processed by a wastewater treatment plant or an on-site wastewater treatment
40 facility.

41 ~~32-~~ 33. "Regulated agricultural activity" means the application of
42 nitrogen fertilizer or a concentrated animal feeding operation.

1 ~~33-~~ 34. "Safe drinking water act" means the federal safe drinking
2 water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

3 ~~34-~~ 35. "Standards" means water quality standards, pretreatment
4 standards and toxicity standards established pursuant to this chapter.

5 ~~35-~~ 36. "Standards of performance" means performance standards, design
6 standards, best management practices, technologically based standards and
7 other standards, limitations or restrictions established by the director by
8 rule or by permit condition.

9 ~~36-~~ 37. "Tank" means a stationary device, including a sump, that is
10 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
11 material that provides substantial structural support, and that is designed
12 to contain an accumulation of solid, liquid or gaseous materials.

13 ~~37-~~ 38. "Toxic pollutant" means a substance that will cause
14 significant adverse reactions if ingested in drinking water. Significant
15 adverse reactions are reactions that may indicate a tendency of a substance
16 or mixture to cause long lasting or irreversible damage to human health.

17 ~~38-~~ 39. "Trade secret" means information to which all of the following
18 apply:

19 (a) A person has taken reasonable measures to protect from disclosure
20 and the person intends to continue to take such measures.

21 (b) The information is not, and has not been, reasonably obtainable
22 without the person's consent by other persons, other than governmental
23 bodies, by use of legitimate means, other than discovery based on a showing
24 of special need in a judicial or quasi-judicial proceeding.

25 (c) No statute specifically requires disclosure of the information to
26 the public.

27 (d) The person has satisfactorily shown that disclosure of the
28 information is likely to cause substantial harm to the business's competitive
29 position.

30 ~~39-~~ 40. "Vadose zone" means the zone between the ground surface and
31 any aquifer.

32 ~~40-~~ 41. "Waters of the state" means all waters within the jurisdiction
33 of this state including all perennial or intermittent streams, lakes, ponds,
34 impounding reservoirs, marshes, watercourses, waterways, wells, aquifers,
35 springs, irrigation systems, drainage systems and other bodies or
36 accumulations of surface, underground, natural, artificial, public or private
37 water situated wholly or partly in or bordering on the state.

38 ~~41-~~ 42. "Well" means a bored, drilled or driven shaft, pit or hole
39 whose depth is greater than its largest surface dimension.

40 Sec. 3. Title 49, chapter 2, article 1, Arizona Revised Statutes, is
41 amended by adding section 49-204, to read:

42 49-204. Gray water reuse

43 A CITY, TOWN OR COUNTY MAY NOT FURTHER LIMIT THE USE OF GRAY WATER BY
44 RULE OR ORDINANCE IF THE GRAY WATER USE IS ALLOWED BY A PERMIT THAT IS ISSUED
45 BY THE DEPARTMENT FOR THE DIRECT REUSE OF RECLAIMED WATER, UNLESS, IN AN

1 INITIAL ACTIVE MANAGEMENT AREA THAT HAS A GROUNDWATER MANAGEMENT GOAL OF SAFE
2 YIELD AND THAT DOES NOT CONTAIN A PART OF THE CENTRAL ARIZONA PROJECT
3 AQUEDUCT, EFFLUENT HAS BEEN INCLUDED IN AN ASSURED WATER SUPPLY DETERMINATION
4 PURSUANT TO SECTION 45-576 AND THE USE OF GRAY WATER WOULD REDUCE THE VOLUME
5 OF EFFLUENT AVAILABLE TO SATISFY ASSURED WATER SUPPLY REQUIREMENTS APPLICABLE
6 TO THAT DETERMINATION.

7 Sec. 4. Title 49, chapter 2, article 10, Arizona Revised Statutes, is
8 amended by adding section 49-362, to read:

9 49-362. Calculation of wastewater treatment capacity; gray
10 water; definition

11 A. THE DEPARTMENT MAY ADOPT RULES FOR CALCULATING A REDUCTION IN
12 CAPACITY OR DESIGN FLOW FOR SEWAGE TREATMENT FACILITIES IF GRAY WATER REUSE
13 INFRASTRUCTURE FOR A SUBDIVISION IS APPROVED BY THE DEPARTMENT.

14 B. FOR THE PURPOSES OF THIS SECTION, "SUBDIVISION" HAS THE SAME
15 MEANING PRESCRIBED IN SECTION 32-2101.

16 Sec. 5. Section 49-701, Arizona Revised Statutes, is amended to read:
17 49-701. Definitions

18 In this chapter, unless the context otherwise requires:

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

23 2. "Administrator" means the administrator of the United States
24 environmental protection agency.

25 3. "Closed solid waste facility" means any of the following:

26 (a) A solid waste facility that ceases storing, treating, processing
27 or receiving for disposal solid waste before the effective date of design and
28 operation rules for that type of facility adopted pursuant to section 49-761.

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

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

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

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

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

37 4. "Conditionally exempt small quantity generator waste" means
38 hazardous waste in quantities as defined by rules adopted pursuant to section
39 49-922.

40 5. "Construction debris" means solid waste derived from the
41 construction, repair or remodeling of buildings or other structures.

42 6. "County" means:

43 (a) The board of supervisors in the context of the exercise of powers
44 or duties.

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

1 7. "Demolition debris" means solid waste derived from the demolition
2 of buildings or other structures.

3 8. "Discharge" has the same meaning prescribed in section 49-201.

4 9. "Existing solid waste facility" means a solid waste facility that
5 begins construction or is in operation on the effective date of the design
6 and operation rules adopted by the director pursuant to section 49-761 for
7 that type of solid waste facility.

8 10. "Facility plan" means any design or operating plan for a solid
9 waste facility or group of solid waste facilities.

10 11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257
11 in effect on May 1, 2004.

12 12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258
13 in effect on May 1, 2004.

14 13. "Household hazardous waste" means solid waste as described in 40
15 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference
16 in the rules adopted pursuant to chapter 5 of this title.

17 14. "Household waste" means any solid waste including garbage, rubbish
18 and sanitary waste from septic tanks that is generated from households
19 including single and multiple family residences, hotels and motels,
20 bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and
21 day use recreation areas, not including construction debris, landscaping
22 rubble or demolition debris.

23 15. "Inert material":

24 (a) Means material that satisfies all of the following conditions:

25 (i) Is not flammable.

26 (ii) Will not decompose.

27 (iii) Will not leach substances in concentrations that exceed
28 applicable aquifer water quality standards prescribed by section 49-201,
29 paragraph ~~19~~ 20 when subjected to a water leach test that is designed to
30 approximate natural infiltrating waters.

31 (b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand,
32 soil and metal, if used as reinforcement in concrete, but does not include
33 special waste, hazardous waste, glass or other metal.

34 16. "Land disposal" means placement of solid waste in or on land.

35 17. "Landscaping rubble" means material that is derived from
36 landscaping or reclamation activities and that may contain inert material and
37 no more than ten per cent by volume of vegetative waste.

38 18. "Management agency" means any person responsible for the day-to-day
39 operation, maintenance and management of a particular public facility or
40 group of public facilities.

41 19. "Medical waste" means any solid waste which is generated in the
42 diagnosis, treatment or immunization of a human being or animal or in any
43 research relating to that diagnosis, treatment or immunization, or in the
44 production or testing of biologicals, and includes discarded drugs but does

1 not include hazardous waste as defined in section 49-921 other than
2 conditionally exempt small quantity generator waste.

3 20. "Municipal solid waste landfill" means any solid waste landfill
4 that accepts household waste, household hazardous waste or conditionally
5 exempt small quantity generator waste.

6 21. "New solid waste facility" means a solid waste facility that begins
7 construction or operation after the effective date of design and operating
8 rules that are adopted pursuant to section 49-761 for that type of solid
9 waste facility.

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

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

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

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

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

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

36 28. "Scavenging" means the unauthorized removal of solid waste from a
37 solid waste facility.

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

43 (a) A site at which less than one ton of solid waste that is not
44 household waste, household hazardous waste, conditionally exempt small
45 quantity generator waste, medical waste or special waste and that was

1 generated on site is stored, processed, treated or disposed in compliance
2 with section 49-762.07, subsection F.

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

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

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

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

16 (f) A closed solid waste facility.

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

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

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

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

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

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

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

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

43 (iv) The operator provides a notice to the department containing the
44 information required by section 49-762.07, subsection A, paragraphs 1, 2 and
45 5 and a brief description of the project.

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

2 (m) The use, storage, treatment or disposal of by-products of
3 regulated agricultural activities as defined in section 49-201 and that are
4 subject to best management practices pursuant to section 49-247 or
5 by-products of livestock, range livestock and poultry as defined in section
6 3-1201, pesticide containers that are regulated pursuant to title 3, chapter
7 2, article 6 or other agricultural crop residues.

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

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

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

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

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

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

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

26 31. "Solid waste management" means the systematic administration of
27 activities which provide for the collection, source separation, storage,
28 transportation, transfer, processing, treatment or disposal of solid waste in
29 a manner that protects public health and safety and the environment and
30 prevents and abates environmental nuisances.

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

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

38 34. "Transfer facility" means a site that is owned, operated or used by
39 any person for the rehandling or storage for ninety days or less of solid
40 waste that was generated off site for the primary purpose of transporting
41 that solid waste. Transfer facility includes those facilities that include
42 significant solid waste transfer activities that warrant the facility's
43 regulation as a transfer facility.

44 35. "Treatment" means any method, technique or process used to change
45 the physical, chemical or biological character of solid waste so as to render

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

3 36. "Vegetative waste" means waste derived from plants, including tree
4 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 37. "Waste pile" means any noncontainerized accumulation of solid,
9 nonflowing waste that is used for treatment or storage.

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

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

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

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

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

APPROVED BY THE GOVERNOR APRIL 26, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2006.