House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

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

CHAPTER 267

HOUSE BILL 2442

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 49-401.01, Arizona Revised Statutes, as amended by Laws 2010, chapter 287, section 16 and chapter 315, section 1, is amended to read:

49-401.01. Definitions

In this chapter, unless the context otherwise requires:

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

2. "Adverse effects to human health" means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means any significant and widespread adverse effect that may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Arizona Grand Canyon visibility transport commission class I areas" means the following four mandatory federal class I areas in this state that were the subject of recommendations made by the Grand Canyon visibility transport commission pursuant to the clean air act:

(a) Grand Canyon national park.

(b) Petrified Forest national park.

(c) Sycamore Canyon Wilderness.

(d) Mount Baldy Wilderness.

5. "Arizona mandatory federal class I areas" means the following eight national parks and wilderness areas that are designated as mandatory federal class I areas in this state pursuant to the clean air act and does not include the Arizona Grand Canyon visibility transport commission class I areas:

(a) Pine Mountain Wilderness.

(b) Mazatzal Wilderness.

(c) Sierra Ancha Wilderness.

(d) Superstition Wilderness.

(e) Saguaro Wilderness.

(f) Galiuro Wilderness.

(g) Chiricahua Wilderness.

(h) Chiricahua National Monument Wilderness.

6. "Attainment area" means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.

7. "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit ~~that~~ WHICH are of a permanent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Grand Canyon national park in Arizona.

(b) Sycamore Canyon Wilderness in Arizona.

(c) Petrified Forest national park in Arizona.

(d) Mount Baldy Wilderness in Arizona.

(e) San Pedro Parks Wilderness in New Mexico.

(f) Mesa Verde national park in Colorado.

(g) Weminuche Wilderness in Colorado.

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

(i) West Elk Wilderness in Colorado.

(j) Maroon Bells-Snowmass Wilderness in Colorado.
(k) Flat Tops Wilderness in Colorado.
(l) Arches national park in Utah.
(m) Canyonlands national park in Utah.
(n) Capitol Reef national park in Utah.
(o) Bryce Canyon national park in Utah.
(p) Zion national park in Utah.

16. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a hazardous air pollutant pursuant to section 49-426.04, subsection A and has not deleted pursuant to section 49-426.04, subsection B.

17. "Hazardous air pollutant reasonably available control technology" means an emissions standard for hazardous air pollutants that the director, acting pursuant to section 49-426.06, subsection C, or the control officer, acting pursuant to section 49-480.04, subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard and any non-air quality health and environmental impacts and energy requirements. For the purposes of this definition, an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.

18. "Maintenance area" means any nonattainment area that has been redesignated by the administrator to attainment status.

19. "Major source" means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title I, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.

20. "Mandatory federal class I areas" means those national parks, monuments and wilderness areas that are included in 40 Code of Federal Regulations sections 81.400 through 81.436 pursuant to the clean air act.

21. "Maximum achievable control technology" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, and that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures that:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.

(b) Enclose systems or processes to eliminate emissions.

(c) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.

(d) Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.

(e) Are a combination of the above.

22. "Minor source" means any stationary or portable source that is not a major source.

23. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest.

24. "Modification" or "modify" means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:

(a) A physical or operational change does not include routine maintenance, repair or replacement.

(b) An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any federally enforceable permit condition or other permit condition that is enforceable as a practical matter.

(c) A change in ownership at a source is not considered a modification.

25. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the administrator pursuant to 42 United States Code section 7409.

26. "Nonattainment area" means any area in this state that is designated as prescribed by section 49-405 and where violations of national ambient air quality standards have been measured.

27. "Nonattainment area plan" means an air pollution control plan developed in accordance with 42 United States Code sections 7501 through 7515.

28. "Permitting authority" means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to section 49-480, subsection A.

29. "Planning agency" means an organization designated by the governor pursuant to 42 United States Code section 7504.

30. "Portable source" means any stationary source that is capable of being transported and operated in more than one county of this state.

31. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the

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

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

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

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

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

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

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

Sec. 2. Repeal

Laws 2010, chapter 315, section 4 is repealed.

Sec. 3. Retroactivity

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

APPROVED BY THE GOVERNOR APRIL 30, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2014.

Passed the House March 4, 2014

by the following vote: 45 Ayes,

10 Nays, 5 Not Voting

Speaker of the House

Pro Tempore

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 22, 2014

by the following vote: 22 Ayes,

6 Nays, 2 Not Voting

President of the Senate

Chauncey Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

24 day of April, 2014

at 9:40 o'clock A M.

Mikhaila Howard

Secretary to the Governor

Approved this 30th day of

April

at 12:28 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 30th day of April, 2014

at 4:21 o'clock P M.

Ken Bennett

Secretary of State

H.B. 2442