House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 243

HOUSE BILL 2394

AN ACT

AMENDING SECTION 49-457, ARIZONA REVISED STATUTES; 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 49-457, Arizona Revised Statutes, is amended to read:

49-457. Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions

A. A best management practices committee for regulated agricultural activities is established.

B. The committee shall consist of:

1. The director of environmental quality or the director's designee.

2. The director of the Arizona department of agriculture or the director's designee.

3. The dean of the college of agriculture of the university of Arizona or the dean's designee.

4. The state director of the United States natural resources conservation service or the director's designee.

5. One person actively engaged in the production of citrus.

6. One person actively engaged in the production of vegetables.

7. One person actively engaged in the production of cotton.

8. One person actively engaged in the production of alfalfa.

9. One person actively engaged in the production of grain.

10. One soil taxonomist from the university of Arizona college of agriculture.

11. One person actively engaged in the operation of a beef cattle feed lot.

12. One person actively engaged in the operation of a dairy.

13. One person actively engaged in the operation of a poultry facility.

14. One person actively engaged in the operation of a swine facility.

15. One person who is employed by a county air quality department or agency.

C. The governor shall appoint the members designated pursuant to subsection B, paragraphs 5 through 15 of this section for a term of six years. Members may be reappointed. Members are not entitled to compensation for their services but are entitled to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The committee shall elect a chairman from the appointed members to serve a two year term.

E. The committee shall meet at the call of the chairman or at the request of a majority of the appointed members.

F. The department of environmental quality, the Arizona department of agriculture and the college of agriculture of the university of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The department of environmental quality shall provide the necessary staff support and meeting facilities for the committee.

G. A person who commences a regulated agricultural activity ~~after December 31, 2000~~ shall IMMEDIATELY comply with the AGRICULTURAL general permit ~~within eighteen months of commencing the activity~~ PRESCRIBED BY THIS SECTION.

H. The committee shall adopt, by rule, an agricultural general permit specifying best management practices, including record keeping and reporting requirements, for regulated agricultural activities to reduce PM-10 particulate emissions. A person who is subject to an agricultural general permit pursuant to this section is not subject to a permit issued pursuant to section 49-426 except as provided in subsection K of this section. The committee shall adopt by rule a list of best management practices, at least one of which shall be used in areas designated as moderate nonattainment for PM-10 particulate matter and at least two of which shall be used in areas designated as serious nonattainment for PM-10 particulate matter, to demonstrate compliance with applicable provisions of the general permit. Best management practices may vary within the regulated area, according to regional or geographical conditions or cropping patterns.

I. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has not previously been subject to a compliance order issued pursuant to this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the supervisors of the natural resource conservation district in which the person engages in the regulated activity that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

J. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has previously submitted a plan pursuant to subsection I of this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the department that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

K. If a person fails to comply with the plan submitted pursuant to subsection J of this section, the director may revoke the agricultural general permit for that person and require that the person obtain an

individual permit pursuant to section 49-426. A revocation becomes effective after the director has provided the person with notice and an opportunity for a hearing pursuant to title 41, chapter 6, article 10.

L. The committee may periodically reexamine, evaluate and modify best management practices. Any approved modifications shall be submitted to the United States environmental protection agency as a revision to the applicable implementation plan.

M. The committee shall develop and commence an education program. The education program shall be conducted by the director or the director's designee or designees.

N. A best management practice adopted pursuant to this section does not affect any applicable requirements in an applicable implementation plan or any other applicable requirements of the clean air act, including section 110(l) of the act (42 United States Code section 7410(l)).

O. The regulation of PM-10 particulate emissions produced by regulated agricultural activities is a matter of statewide concern. Accordingly, this section preempts further regulation of regulated agricultural activities by a county, city, town or other political subdivision of this state.

P. For the purposes of this section, unless the context otherwise requires:

1. "Agricultural general permit" means best management practices that:

(a) Reduce PM-10 particulate emissions from tillage practices and from harvesting on a commercial farm.

(b) Reduce PM-10 particulate emissions from those areas of a commercial farm that are not normally in crop production.

(c) Reduce PM-10 particulate emissions from those areas of a commercial farm that are normally in crop production including prior to plant emergence and when the land is not in crop production.

(d) ~~Reduces~~ REDUCE PM-10 particulate emissions from those areas of a commercial farm undergoing significant agricultural earthmoving activities.

(e) Reduce PM-10 particulate emissions from the activities of a dairy, a beef cattle feed lot, a poultry facility or a swine facility, including practices relating to the following:

(i) Unpaved access connections.

(ii) Unpaved roads or feed lanes.

(iii) Animal waste handling and transporting.

(iv) Arenas, corrals and pens.

(f) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, reduce PM-10 particulate emissions from the activities of an irrigation district governed by title 48, chapter 19 and affecting those lands and facilities that are under the jurisdiction and control of the district, including practices relating to the following:

(i) Unpaved operation and maintenance roads.

(ii) Canals.

(iii) Unpaved utility access roads.

2. "Applicable implementation plan" means that term as defined in 42 United States Code section 7601(q).

3. "Best management practices" means techniques that are verified by scientific research and that on a case by case basis are practical, economically feasible and effective in reducing PM-10 particulate emissions from a regulated agricultural activity.

4. "Maricopa PM-10 particulate nonattainment area" means the Phoenix planning area as set forth in 40 Code of Federal Regulations section 81.303.

5. "Regulated agricultural activities" means:

(a) Commercial farming practices that may produce PM-10 particulate emissions within the regulated area, including activities of a dairy, a beef cattle feed lot, a poultry facility and a swine facility.

(b) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, activities of an irrigation district that is governed by title 48, chapter 19.

6. "Regulated area" means any of the following:

(a) The Maricopa PM-10 particulate nonattainment area.

(b) Any portion of area A that is located in a county with a population of two million or more persons.

(c) Any other PM-10 particulate nonattainment area established in this state on or after June 1, 2009.

Sec. 2. Effective date

Section 49-457, Arizona Revised Statutes, as amended by this act, is effective from and after December 31, 2015.

APPROVED BY THE GOVERNOR APRIL 9, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2015.

Passed the House February 12, 2015

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Pro Tempore

Jim Drake

Chief Clerk of the House

Passed the Senate March 31, 2015

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Chairman Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of April, 2015

at 11:19 o'clock A. M.

Trista Guzman

Secretary to the Governor

Approved this 9th day of

April

at 1:28 o'clock P M.

Doug Ducey

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 10th day of April, 2015

at 3:15 o'clock A M.

Michele Reagan

Secretary of State

H.B. 2394