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Waste Programs Division – Solid Waste Rule Development Process Stakeholder Workshop on Articles 6 and 7 January 23, 2008

NOTES

A stakeholder workshop to obtain input and review possible modifications to articles 6, 7, and 8 of the draft Solid Waste Rule was held on January 23, 2008. Due to time constraints, Article 8 will be discussed at the workshop to be held on February 5 as noted below:

Tuesday, February 5, 2008, 1:30 to 4:30 p.m.

Article 8. Solid Waste Treatment Facilities (carried over from January 23)

Article 9. Solid Waste Composting Facilities

The workshops will be conducted using the draft rule text dated 9-10-07. The draft rule text can be found at: http://www.azdeq.gov/environ/waste/solid/download/swrule_091007.pdf

The stakeholder comments are noted below. Italicized comments were recorded from comment cards and other written comments submitted by attendees. A list of attendees is attached to this document.

Overview of Articles 6, 7, and 8

Mark Lewandowski reviewed the statutory authority of Article 6 and applicability. Exemptions can be found in ARS § 49-701(29)(a, b, c and j), which should exempt retailers such as grocery stores. Highlights included:

- Those who handle waste generated off-site are regulated under articles 7 and 8.
- Those who handle waste for the purpose of transferring waste are regulated under articles 7 and 8.
- Self-certification facilities are the “catch-all” category.
- Trash compacting would be covered under Article 6.
- Article 6 tries to encompass on-site generated waste.
- Exemptions involve time or volume.
- A retailer with a compactor meeting the 90-day limit would be exempt.
- The intent is for a facility to only be covered by one of articles (6-12).
- Sites may have more than one facility.
- Examples of typical on-site handling facilities include an auto production plant, chemical producing plant, chip production plant, etc. A county auto maintenance yard might qualify if it exceeds the exemptions.
- Articles must honor exemptions found in ARS § 49-701.

- We recognize that liquids are an inherent part of the municipal solid waste stream and are seeking a meaningful threshold.

Stakeholder comments and questions included:

- *At one point it was stated that articles 6-11 should only have one article apply. Later it was stated that you could have multiple activities which would each be regulated under different articles. We need to ensure that only one article (6 through 11) should apply.*
- Regarding applicability provisions, it is not clear what is regulated under articles 6, 8, or 10. What's intended?
- Pre-sorting or compacting becomes a treatment and is therefore no longer exempt.
- Multiple generators that use the same compactor on different sites would not qualify for this exemption.
- If compaction is a treatment, then grocery stores would be in. How do we recognize who is in and who is out? (*Staff note: We working on the issue of whether treatment of any type removes you from the exemptions.*)
- We are a waste tire recycling facility that includes collection of tires from counties and waste byproducts. Some components may sit for more than 90 days. (*Staff note: We need a mechanism that offers guidance on whether these facilities are in or out.*)
- We are a biosolids composting facility and want to make sure we don't become double- or triple-regulated. The eventual definition of solid waste will have a significant impact.
- This on-site definition will cover quite small operations, i.e. antifreeze stored for more than 90 days, which is then transferred. When does the 90-day count start? Smaller operations would be more likely to store these items for more than 90 days.
- Compaction and baling as a treatment concerns me. I would like to see if these could be excluded as a treatment.
- I don't want to have to do multiple notices for multiple "facilities" at my site. I would rather have "one-stop shopping."
- What kind of treatments can you do without getting under Article 6? Many facilities will discontinue those activities that are regulated because they are regulated.

Hazardous Waste in the Solid Waste Stream

Martha Seaman reviewed conditionally exempt small quantity generator (CESQG) and other hazardous waste. She encouraged stakeholders to review the website for additional comments and materials. Highlights included:

- Handling CESQG or other hazardous waste not required to be handled at a RCRA C facility does not necessarily make a facility a solid waste facility because of the operation of the exemptions from "solid waste facility."
- CESQG and other hazardous waste can be managed so that the site can avoid being defined as a solid waste facility.

Stakeholder comments and questions included:

- Someone compacting fluorescent lights would be subject to hazardous waste rules.
- I am concerned about conditionally exempt generators with a small amount of waste held more than 180 days. This is acceptable by the federal government. These rules

should not impose a greater burden than federal rules. However, once waste goes to a solid waste facility, more stringent rules can be imposed on the facility receiving CESQG wastes.

- I am concerned about CESQG waste typically disposed of such as an aerosol can in a trash can. Do you expect a transfer facility to dig through waste? (*Staff note: We would rather have the generator separate waste; however, this is impractical and waste gets mixed when the garbage truck makes the pick up.*)
- Why does Arizona feel the need to regulate CESQG? Other states don't.
- New Mexico dropped proposed CESQG regulations due to complexity issues.
- There doesn't seem to be an environmental benefit in regulating CESQG, in part due to lined landfills.

Draft Rule Changes Based on Stakeholder Input & Additional Issues

Staff members reviewed possible draft rule text changes made in response to stakeholder input and discussed stakeholder concerns regarding articles 6 and 7. Draft language and changes under consideration are provisional during informal discussions such as these; all rule language is subject to the decisions that need to be made before formally proposing the rule. Highlights include:

- Those changes made to Article 6 are now more parallel with Article 7.
- Solid waste drop box information previously found in R18-13-704(F, G) have been moved to R18-13-705 and reframed as part of operational requirements.
- A hazardous products center at a landfill would be considered a separate solid waste facility from the landfill and must comply with articles 4, 18, and any other applicable area.
- Household hazardous waste is not necessarily regulated here. However, if a permanent HHW collection facility is established, that facility would be regulated under these rules.
- ARS § 49-701.02 includes various exemptions from the definition of "solid waste," but doesn't address soil on an impervious surface. Some soils are governed by special waste rules.
- The intent of addressing a waste pile of excavated contaminated soil is to complete the process in a timely manner.

General and article-specific stakeholder comments and questions included:

- *Impervious surface – earthen (i.e. clay), synthetic, concrete liner... engineered to xxx permeability requirements... that ~~prevents~~ protects ground and surface water and soil.*
- The EPA 257 rule revision incidentally imposed additional groundwater monitoring conditions.
- Operators may run the risk of a notice of violation. In rural counties, this may result in uncontrolled problems. The implication is that if something is in the drop box that shouldn't be there, it may end up in the desert.
- If the drop box is removed altogether, illegal dumping is a likely result.
- Signs addressing prohibited materials in drop boxes should be considered adequate.
- Use of drop boxes is a service we want to promote, not inhibit. Regulations will likely inhibit these positive activities.

- Some will interpret that once the hazardous waste is collected, they will become a large quantity generator.
- Considering my hazardous products center as a separate site from my landfill will create more work for me and ADEQ. We would prefer to prepare one document.
- “Sealed concrete” as listed as an impervious surface in articles 6 and 7 is problematic because it is not actually impervious. Suggested wording is, “...a surface which prevents...” Similarly, if the garbage is being handled indoors, it really doesn’t matter if it is on an impervious surface.
- In articles 6, 7, and 8, what is the purpose of dating stored liquids? This is an onerous requirement. (*Staff note: We will review this issue.*)
- On-site contaminated soil should fall under remediation activities.
- Take care in using “prevent” seepage, because even 12 inches of concrete does not completely prevent seepage.
- If soil is pulled into the plans and burdens associated with Article 4, it will beg the question: Should we dig up and remediate soil or just avoid regulations? There should be a tiered structure.
- Some containers are basically a large garbage can.
- Retailers will avoid allowing a rolloff to be placed in their parking lots if they have to comply with these regulations.
- The more roll-offs are regulated, the less these regulations will be able to be enforced. The more enforced, the less likely this service will be offered.
- All “treatment” does not have to be regulated in the same way.

Article 6

- *What operations are regulated under Article 6? Still unclear. We need better examples to understand the impacts.*
- *So this would include all industrial waste generators as most have “non-RCRA” that goes greater than 90 days?*
- *Why are waste piles not handled in Article 6? (Staff note: We will look at this.)*

Section

R18-13-603

- *It appears that the issue is leachate as indicated by “or waste likely to produce leachate.” How does that apply to “contaminate soil” that is fairly dry? The only way it would have a leachate is if it got rain/wet. Also, the soil could remain on the ground (in place) so it seems like overkill.*
 - *Suggested wording: “A surface which precludes soil, groundwater,...etc.”*
 - *Years ago, RCRA legislation resulted in tremendous impediments to soil remediation, which took 15 years of Band-Aids to address. Few mentions to soil here could result in either confusion or a position with another dysfunctional rule.*
 - *Petroleum-contaminated soil information here implies a structure. Is this the intent? If the intent is that a liner meets this standard, I don’t read that here.*
- (B)(1) – *Sealed coating will not stay.*
- (B)(1) – *The agency needs to consider the unintended consequences of requiring a paved surface for contaminated soil.*
- (B)(1) – *Is there a sealed concrete that will stand up to a bucket-loader?*

(B)(2) – *On-site accumulation/storage in a bin or trailer isn't leak proof. How does that fit with "impervious?"*

R18-13-604

- This section is more stringent than federal rules.
 - How does the liquid wastes language work with industrial pretreatment regulations? What if the material is stored for discharge?
- (A)(4) – *Liquid waste. Need exception for household waste. Residents put partially used liquid consumer products in the trash. Facility should not be required to manually go through the waste stream and pull these out.*
- (B) – *Transfer facilities should not have to manually go through the household waste to remove small containers of liquids. The wording is confusing. The "handled as follows" applies to specific waste streams. In the first sentence there should be a period after "separated from other solid waste." This clarifies that any liquid wastes can be handled. Then start a new sentence for identifying requires for specific waste streams. (OLD TEXT.)*
- (B)(2) – *"Hazardous waste" should be replaced with "CESQG waste" since there is no other "hazardous waste" that is not regulated.*
- (B)(2) – *Clarify labeling requirement. Label as Hazardous Waste? It is exempt under federal law. Would this now make the solid waste facility a hazardous waste generator? (NEW TEXT.)*
- (C) – *The concept "kept separate" is not worded as we have discussed the intent here.*
- (C) – *CESQG generators are not required to segregate their waste streams. Why does the facility now have to go through the trash to attempt to identify CESQG waste? There seems to be a misunderstanding of what the "normal" municipal waste stream consists of. CESQG waste does not present a significant hazard or it would not be accepted by waste haulers. Most (if not all) haulers and landfills have a list of nonacceptable wastes. If ADEQ wants to regulate CESQG waste, they should address this through the RCRA rules, not thru the handling facilities. (OLD TEXT.)*

R18-13-605

- This creates weekly inspections, which is overly stringent and more stringent than hazardous waste rules.
- Suggest changing the weekly inspection to an item included in the operational plan. The type of waste could also be considered.

Article 7

- *Multiple sites, multiple generators using one compactor box. How is it regulated?*
- *Who has the burden of responsibility with Article 7? CESQG generators may not care that they are placing prohibited materials in drop boxes, therefore transfer facility operators will be responsible.*
- *Households may drop prohibited items in drop boxes as well. (Staff note: The intent is for the unmanned facility operator to put up a sign. Certain actions may result in inspector discussion.)*

- There are crossover issues if a rollout box is set out for hire from several sites, and it creates some issues regarding how that box is handled. (*Staff note: There may be an appropriate interpretation of on-site for a joint venture.*)
- Intermediate solid waste handling sites cause me a lot of consternation.
- Some roll-off collections are like a generation point serving several people.
- The statutes don't mention "intermediate solid waste handling facilities."
- Ensuring that everything is bagged will be a problem.
- At my unmanned sites, I can place signs up requiring bags, but I can't possibly enforce this. I do not want to see bagging as a requirement to be enforced, but rather as a public education effort.
- Is it clear what we mean by site, regarding the generation of solid waste? This may offer the agency a means to provide solutions through this language.
- The language "shall prohibit glass containers containing liquid" is problematic, because we can't actually prohibit this.
- It seems that the agency is trying to apply bulk liquids regulations to smaller amounts.

Section

R18-13-702

- *Should state "new" intermediate solid waste facilities. R18-13-403 only applies to facilities that begin operating after effective date of this section. R18-13-403 (3) ARS § 49-772 is specifically limited to the siting of landfills. It should not be expanded to include all types of solid waste facilities. This is particularly a problem for siting new transfer facilities (which will not impact groundwater quality) in former agricultural areas because of the prohibition on siting where there are grandfathered water rights.*

R18-13-703

- (A) – *The design and construction should be appropriate to the types of waste handled. Tire shreds, bumpers, rebar, etc. picked up from the roadway do not need to be protected from the wind, rain or snow. A compacted gravel surface should be adequate for that type of large debris. And is "easily cleanable" by removing the debris. The area should not have to be paved.*

R18-13-704

- (3)(1) – *Septage from emergency vacuuming of sewer lines is contained in a container (modified dumpster) designed to drain ("leak") into the sanitary sewer. When dried the solid is disposed of properly. This container would not meet the requirements for semi-solids in R18-13-411 – leak proof. This is a common municipal practice.*
- (C) – *The concept "kept separate" is not worded how we have discussed the intent here.*
- (D) – *Separation is also an issue here.*
- (D)(4) – *Suggest rephrasing: Waste being transported to a landfill for disposal shall not contain free liquids. If the facility is disposing of liquid waste, it will contain free liquid (inside the container). You cannot dictate a facility to use a MUNICIPAL solid waste landfill. There are commercial landfills too. More restrictive than federal hazardous waste requirements.*

R18-13-705

- *Should not require two sets of analytical data unless the waste pile has or is expected to substantially change during storage. One set should be adequate.*
- (4) – *Clarification. Does the driver count as the attendant? Some “facilities” are maintenance yards that are not staffed.*

Comments On Other Articles

Article 2

Section

R18-13-201

- I am not happy with the land applications of biosolids exemptions. I can't believe 201 is exempted.

Article 4

- Zoning becomes an issue with Article 4 issues unless they are exempt as a facility.
- A special use permit allows for zoning for a solid waste facility.
- I believe ADEQ is trying to ensure that local government accepts these activities. The agency should not try to insert itself into zoning.
- This article could be scaled back to minimal requirements to address all facilities, then enhance articles 5-12.

Section

R18-13-403

- A solid waste facility zoned “for that use” is an issue.
- (1) – *Zoning criteria. Confirm that property zoned for government is “zoned for that use.”*
- (3) – *ARS § 49-772 is specifically limited to the siting of landfills. It should not be expanded to include all types of solid waste facilities. This is particularly a problem for siting new transfer facilities (which will not impact groundwater quality) in former agricultural areas because of the prohibition on siting where there are grandfathered water rights.*

Article 8

- *Assume ADEQ will make changes to this section consistent with the changes made in the revised sections sent out.*

Section

R18-13-802

- *Should state “new” solid waste treatment facilities. R18-13-403 only applies to facilities that begin operating after effective date of this section. R18-13-403 (3) ARS § 49-772 is specifically limited to the siting of landfills. It should not be expanded to include all types of solid waste facilities. This is particularly a problem for siting new*

facilities that will not impact groundwater quality in former agricultural areas because of the prohibition on siting where there are grandfathered water rights.

- *The ADEQ policy to Protect Children from Toxic Facilities does not specify the one-mile radius. The type and quantity of wastes being treated should be evaluated to determine appropriate distance. Not at a risk assessment level, unless that is appropriate. One mile appears to be arbitrary and capricious. ADEQ should be completing that evaluation during its review of the Plan for facilities required to submit one.*

Facilitator Theresa Gunn obtained stakeholder consensus on the following themes:

- ADEQ should not be concerned about CESQG in drop boxes.
- If roll-offs were eliminated from Article 4, stakeholders would accept reasonable BMPs, such as signage and litter control.

Attendees and those participating via conference call included:

Joe Abate, NSWMA	Douglas Junk, Cornerstone
Harlan Agnew, Pima County Attorney	Environmental Group
John T. Barlow, AZ Strip Landfill Corp.	Mark King, City of Chandler
Vance Barlow, AZ Strip Landfill Corp.	Lorrie Loder, Synagro
Dave Bearden, WMI	Ken Miller, Pinnacle West
J. S. Biedenbarn, Coconino County	Robert Mills, APS
Colby Black, City of Mesa	John Moody, Miller, LaSota & Peters
Pat Bourque, City of Flagstaff	Matt Morales, City of Flagstaff
Garth Bowers, Cornerstone	Donna Moran, Town of Gilbert
Environmental Group	Karl Moyers, Santa Cruz County
Donna Carlson, CRM	Connie Murray, Envirosure for Metal
Don Cassano, Waste Management	Management
Curtis Cox, Arizona Attorney General's	Kent Norton, Phelps Dodge Miami Inc.
Office	James Peck, SWANA
Barton Day, Bryan Cave LLP	Mark Prein, APS
Scott Donovan, City of Flagstaff	Marlene Rayner, Sierra Club
Steve Doss, Allied Waste	Ken Robinson, City of Flagstaff
Jeff Drumm, City of Tucson -- E.S.	Catalina Sanchez, City of Tucson -- E.S.
Lana Fretz, Freeport	Mariane Sandoval, Attorney General's
Colby Fryar, Pima County	Office
James Garvin, HDR Engineering	Chris Schlabaugl, City of Chandler SWS
Karen Gaylord, Salman Lewis &	Sheree Sepulveda, City of Chandler
Weldon	Stephen Smith, Hydro Geo Chem, Inc.
Joe Giudice, City of Phoenix	Jacqueline Strong, City of Chandler
Chuck Hamstra, City of Phoenix	Marguerite Tan, PFFJ
Marty Haverty, Cochise County	Scott Thomas, Fennemore Craig
Larry Hawke, Pima County DEQ	Hugh D. Walker, SCS Engineers
Thomas Hillmer, APS	Bob Wallace, WIH Resource Group
Julie Hoffman, MAG	David Wallis, Gallagher & Kennedy