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## State NPDES Authority Statutes: *Arizona*



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# A National Agricultural Law Center Research Publication

## State NPDES Authority Statutes: Arizona

### A.R.S. §§ 49-255 – 49-255.05

### A.R.S. §§ 49-761 – 49-774

*Current through the 2022 legislative session.*

#### **§ 49-255. Definitions.**

In this article, unless the context otherwise requires:

1. “AZPDES” means the Arizona pollutant discharge elimination system program as adopted under § 402(b) of the clean water act for WOTUS and under § 49-255.04 for non-WOTUS protected surface water.

2. “Discharge”:

(a) Means any addition of any pollutant to protected surface waters from any point source.

(b) Does not include the addition of dredged material or fill material to non-WOTUS protected surface waters.

3. “Indirect discharge” means either of the following:

(a) The introduction of pollutants into a publicly owned treatment works from any nondomestic source that is regulated under § 307(b), (c) or (d) of the clean water act.

(b) For a publicly owned treatment works that discharges to non-WOTUS protected surface waters, the introduction of pollutants from any nondomestic source that would be regulated under § 307(b), (c) or (d) of the clean water act if the publicly owned treatment works were to discharge to a WOTUS.

4. “Industrial user” means a source of indirect discharge.

5. “Publicly owned treatment works” means a treatment works owned by this state or a municipality of this state as defined in § 502(4) of the clean water act or that discharges to a protected surface water.

6. “Sewage sludge”:

(a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.



(b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.

(c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works.

7. "Treatment works" means any devices and systems that are used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, the elements essential to providing a reliable recycled supply such as standby treatment units and clear well facilities, and any works that will be an integral part of the treatment process or that are used for residues resulting from that treatment. For the programs required by §§ 49-255.02 and 49-255.03, treatment works include intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment and any appurtenances, extensions, improvements, remodeling, additions and alterations.

8. "Upset":

(a) Means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit discharge limitations because of factors that are beyond the reasonable control of the permittee.

(b) Does not include noncompliance to the extent that it is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

## **§ 49-255.01. Arizona Pollutant Discharge Elimination System Program; Rules and Standards; Affirmative Defense; Fees; General Permit.**

**A.** A person shall not discharge except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article or rules authorized under § 49-203, subsection A, paragraph 2.

2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.

**B.** The director shall adopt rules to establish an AZPDES permit program for discharges to WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement for WOTUS that is more stringent than any requirement of the clean water act. The director shall not adopt any requirement that conflicts with any requirement of the clean water act. The director may adopt federal rules



pursuant to § 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and not more stringent than the clean water act and this article.

**C.** The rules adopted by the director under subsection B of this section shall provide for:

1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.
2. Establishment of permit conditions, discharge limitations and standards of performance as prescribed by § 49-203, subsection A, paragraph 8 including case-by-case effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).
3. Modifications and variances as allowed by the clean water act.
4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

**D.** This article does not affect the validity of any existing rules that are adopted by the director and that are equivalent to and consistent with the national pollutant discharge elimination system program authorized under section 402 of the clean water act until new rules for AZPDES discharges are adopted pursuant to this article.

**E.** An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:

1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:
  - (a) An upset occurred and that the permittee can identify the specific cause of the upset.
  - (b) The permitted facility was being properly operated at the time of the upset.
  - (c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours after the upset.
  - (d) The permittee has taken appropriate remedial measures including all reasonable steps to minimize or prevent any discharge or sewage sludge use or disposal that is in violation of the permit and that has a reasonable likelihood of adversely affecting human health or the environment.
2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.



**F.** Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:

1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.
2. Limitations for pollutants in WOTUS adopted pursuant to §§ 49-221 and 49-222, if the discharge of the pollutant is specifically limited in a permit issued pursuant to this article or the pollutant was specifically identified as present or potentially present in facility discharges during the application process for the permit.

**G.** Notwithstanding § 49-203, subsection D, permits that are issued under this article shall not be combined with permits issued under article 3 of this chapter.

**H.** The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

1. Within the thirty-day period, an appeal is filed with the water quality appeals board pursuant to § 49-323.
2. A later effective date is specified in the decision.

**I.** In addition to other reservations of rights provided by this chapter, this article does not impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

**J.** Only for a onetime rulemaking after July 29, 2010, the director shall establish by rule fees, including maximum fees, for processing, issuing and denying an application for a permit pursuant to this section. After the onetime rulemaking, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the water quality fee fund established by § 49-210.

**K.** Any permit conditions concerning threatened or endangered species shall be limited to those required by the endangered species act.

**L.** When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:



1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.
2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, “extreme event” means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.
3. The owner or operator complies with good housekeeping measures included in the general permit.
4. The owner or operator maintains the capacity of the retention basins.
5. Construction conforms to the standards prescribed by this section.

**M.** If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

#### **§ 49-255.02. Pretreatment Program; Rules and Standards.**

**A.** The director shall adopt rules to establish a pretreatment program that is consistent with the requirements of §§ 307, 308 and 402 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act, except the director shall apply the pretreatment program to publicly owned treatment works that discharge to a non-WOTUS protected surface water.

**B.** The rules adopted by the director shall provide for all of the following:

1. Development or modification of local pretreatment programs by the owners of publicly owned treatment works that discharge or as otherwise required under the clean water act or this article to prevent the use or disposal of sewage sludge produced by a publicly owned treatment works in violation of § 405 of the clean water act or requirements established pursuant to § 49-255.03, subsection A.
2. Approval by the director of new or modified local pretreatment programs or site-specific modifications to pretreatment standards.
3. Oversight by the director of local program implementation.



**C.** The rules adopted by the director shall provide for the department to ensure that any industrial user of any publicly owned treatment works will comply with the requirements of §§ 307 and 308 of the clean water act.

**§ 49-255.03. Sewage Sludge Program; Rules and Requirements.**

**A.** The director shall adopt rules to establish a sewage sludge program that is consistent with the requirements of §§ 402 and 405 of the clean water act. Except as otherwise required by this article, the director shall not adopt any requirement that is more stringent than any requirements of the clean water act. The director shall not adopt any requirement that conflicts with any requirement of the clean water act.

**B.** The rules adopted by the director shall provide for the regulation of all sewage sludge use or disposal practices used in this state.

**§ 49-255.04. Special Provisions for Discharges to Non-WOTUS Protected Surface Waters.**

**A.** Permits and conditions of permits for discharges to non-WOTUS protected surface waters shall not implement any sections of the clean water act, including §§ 301, 302, 306, 307, 308, 312, 318 and 405, and shall not be subject to review, approval or enforcement by the United States environmental protection agency.

**B.** The director shall apply the rules established pursuant to §§ 49-255.01, 49-255.02 and 49-255.03 to non-WOTUS protected surface waters until the director adopts rules for discharges to non-WOTUS protected surface waters, except the director is not required to follow any provisions related to United States environmental protection agency review, approval or involvement in permit review or approval. The director shall not adopt or apply rules regarding the following discharges to non-WOTUS protected surface waters:

1. Except as applied to discharges from publicly owned treatment works, requirements specific to new sources or new dischargers under the clean water act.
2. Except as applied to discharges from publicly owned treatment works, technology-based effluent limitations, standards or controls, including new source performance standards, under §§ 301(b), 304(b), and 306 of the clean water act.
3. Requirements to express all permit limitations, standards or prohibitions for a metal solely in terms of total recoverable metal.
4. Requirements for review and approval of permits by the United States environmental protection agency before issuance.

**C.** The director shall issue general permits or authorize coverage under existing general permits, subject to the limitations prescribed in subsection B of this section and § 49-221, subsection A, paragraph 1 for point source discharges of storm water from industrial or



construction activity to non-WOTUS protected surface waters. The director shall use a best management practices approach when issuing and implementing general permits for storm water discharges from industrial or construction activity to non-WOTUS protected surface waters and may include analytical monitoring and discharge limits if best management practices cannot achieve applicable surface water quality standards. The director may issue an individual permit for those discharges only if the director determines, using reasonably current credible and scientifically defensible data, that a particular discharge is a significant contributor of pollutants to a non-WOTUS protected surface water that causes the water to exceed one or more applicable water quality standards. When making this determination, the director shall consider the location of the discharge with respect to the non-WOTUS protected surface water, the size of the discharge and the quantity and nature of the pollutants discharged. If the director determines that an individual permit is required for a discharge of storm water from industrial or construction activity to a non-WOTUS protected surface water, the discharger must be notified in writing and informed of the reasons for the determination and the right to appeal the individual permit determination.

**D.** The director shall issue general permits or authorize coverage under existing general permits, subject to the limitations in subsection B of this section and § 49-221, subsection A, paragraph 1 for other categories of potential point source discharges, including de minimis discharges, to non-WOTUS protected surface waters that involve the same or substantially similar types of operations, contain the same or substantially similar types of pollutants and are more appropriately controlled under a general permit than under an individual permit.

**E.** The director may adopt rules for point source discharges to non-WOTUS protected surface waters. The rules adopted by the director under this subsection shall not include any requirement that is more stringent than requirements of the clean water act, shall provide for issuing, authorizing, denying, modifying, suspending or revoking individual or general permits and shall establish permit conditions to carry out the permit program established by this section.

**F.** The director shall not construe any rule to require oversight by the United States environmental protection agency of permits or portions of permits for discharges to non-WOTUS protected surface waters, and a rule shall not apply if it would require review, approval or enforcement by the United States environmental protection agency of discharges to non-WOTUS protected surface waters.

**G.** In permits for discharges to WOTUS and non-WOTUS protected surface waters, the director shall not impose duplicative permit requirements.

**H.** The director shall not delegate to any city, town or county the authority to require permits for point source discharges from construction activity to non-WOTUS protected surface waters.

#### **§ 49-255.05. Best Management Practices for Activities Within Non-WOTUS.**

**A.** The director shall adopt by rule best management practices and notification requirements to ensure that the activities prescribed in this section do not violate applicable surface water



quality standards. The director may include only those best management practices that extend to:

1. Activities conducted within the ordinary high watermark of perennial or intermittent non-WOTUS protected surface waters.
2. Activities conducted within the bed and banks of waters that materially impact downstream non-WOTUS protected surface waters. The director shall determine through rulemaking what constitutes a material impact and that rulemaking shall be based on factors that include distance and topography.
3. Activities that are not already regulated under this title.

**B.** The director may not adopt best management practices and notification requirements for the following:

1. Discharges to a non-WOTUS protected surface water incidental to a recharge project.
2. Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
3. Maintenance but not construction of drainage ditches.
4. Construction and maintenance of irrigation ditches.
5. Maintenance of structures such as dams, dikes and levees.

#### **§ 49-761. Rulemaking Authority for Solid Waste Facilities; Exemption; Financial Assurance; Recycling Facilities.**

**A.** The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to § 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in § 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with § 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

**B.** For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this



subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to § 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, [1](#) or if the standards are adopted pursuant to article 9 of this chapter  [2](#). Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.
2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to § 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to § 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257 if these standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of epidemiologic significance. The department shall consult with the department of health services in making this determination.



2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department may require payment of a fee for the licensure of a transporter of biohazardous medical waste. After July 20, 2011, the department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to §§ 35-146 and 35-147, in the solid waste fee fund established by § 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

**E.** The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

**F.** The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

**G.** The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in § 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

**H.** The department shall issue by rule best management practices for the classes of solid waste facilities set forth in § 49-762.02.

**I.** The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating any environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by § 49-762, 49-762.01 or 49-762.02 or exempted from the definition of solid waste facility in § 49-701 or from the definition of solid waste in § 49-



701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to § 49-141.

**J.** The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Deposit with the state treasurer.
8. Evidence of ability to meet any of the following:
  - (a) Corporate financial test.
  - (b) Local government financial test.
  - (c) Corporate guarantee test.
  - (d) Local government guarantee test.
  - (e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.
9. Multiple financial assurance mechanisms.
10. Additional financial assurance mechanisms that may be acceptable to the director.

**K.** The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

**L.** The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.



**M.** The department shall adopt facility design, construction, operation, closure and post closure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to § 49-762.

**§ 49-762. Facilities Requiring Solid Waste Facility Plans; Exemption.**

**A.** The owner or operator of the following solid waste facilities shall obtain approval of a solid waste facility plan in accordance with §§ 49-762.03 and 49-762.04:

1. Solid waste land disposal facilities.
2. Biosolids processing facilities.
3. Medical waste facilities.
4. Special waste facilities.
5. Municipal solid waste landfills.
6. Commercial or government-owned household waste composting facilities.
7. A site at which at least five hundred waste tires are stored on any day and any tire is stored for more than twelve months unless the site is a waste tire collection site owned by a municipality or a county.

**B.** Facilities that obtain and maintain coverage under a general permit established by the department pursuant to § 49-706 are exempt from submitting a solid waste facility plan pursuant to this section.

**§ 49-762.01. Facilities Requiring Self-Certification.**

The owner or operator of all solid waste facilities that are not listed in either § 49-762 or 49-762.02 shall comply with self-certification procedures prescribed by § 49-762.05. A waste tire facility that is not required to obtain solid waste facility plan approval pursuant to § 49-762, paragraph 7 must comply with self-certification procedures as prescribed in § 49-762.05.

**§ 49-762.02. Facilities Subject to Best Management Practices; Rules.**

The following solid waste facilities are subject to best management practices adopted in accordance with § 49-761, subsection H:

1. Transfer facilities that have a daily solid waste throughput of one hundred eighty cubic yards or less.



2. Recycling facilities that are located off site, that are used for the collection of recyclable material, that have a storage capacity of one hundred eighty cubic yards or less and that store the recyclable material for less than ninety days.
3. Recycling facilities that are located on site and that are used solely for the collection and storage of recyclable material for less than one hundred eighty days.
4. Closed loop recycling facilities that are located at the site of waste generation.
5. A site at which more than five hundred and fewer than five thousand waste tires are stored on any day and that is not required to obtain solid waste facility plan approval pursuant to § 49-762, subsection A, paragraph 7.
6. A solid waste facility where only asbestos-containing waste materials from manufactured products are stored, processed, treated or disposed. The best management practices for these facilities that shall apply are as follows:
  - (a) For solid waste facilities handling asbestos-containing waste materials that are regulated under the national emission standards for hazardous air pollutants in 40 Code of Federal Regulations part 61, subpart M:
    - (i) The national emission standards for hazardous air pollutants that are incorporated by reference in the rules adopted pursuant to chapter 3 of this title.
    - (ii) For solid waste land disposal facilities that are not municipal solid waste landfills, 40 Code of Federal Regulations part 257.
    - (iii) For solid waste land disposal facilities, financial assurance pursuant to the requirements and time frames of § 49-770.
    - (iv) Solid waste facility notification pursuant to § 49-762.05, subsection B, paragraph 5.
    - (v) Compliance with local zoning laws or § 49-767, if applicable.
  - (b) For solid waste facilities handling asbestos-containing waste materials that are not regulated under the national emission standards for hazardous air pollutants in 40 Code of Federal Regulations part 61, subpart M:
    - (i) Compliance with § 49-762.07.
    - (ii) Compliance with local zoning laws or § 49-767, if applicable.
7. Any other solid waste facility that the director determines by rule should be subject to best management practices.



### **§ 49-762.03. Solid Waste Facility Plan Approval.**

**A.** Except as provided in subsections C and E of this section, the owner or operator of a solid waste facility identified in § 49-762 shall obtain the department's approval of a solid waste facility plan as follows:

1. For a new solid waste facility and before commencing construction of the solid waste facility, the owner or operator shall obtain approval of a solid waste facility plan that satisfies rules adopted by the director.
2. For an existing solid waste facility, the owner or operator shall file with the department a solid waste facility plan within one hundred eighty days after the effective date of rules adopted pursuant to § 49-761 that contain design and operation standards for that type of solid waste facility. An existing solid waste facility may continue to operate while the department reviews the plan. For an existing public solid waste facility that is currently subject to rules that contain design and operation standards, the owner or operator shall file with the department a solid waste facility plan by October 1, 1996, if the facility has not received plan approval before that date.

**B.** For a solid waste facility subject to site approval pursuant to § 49-767, a solid waste facility plan shall not be submitted to the department until the site for the solid waste facility has been approved pursuant to § 49-767. For all new solid waste landfills, a solid waste facility plan shall provide evidence of compliance with or the inapplicability of city, town or county zoning ordinances.

**C.** The director shall grant temporary authorization to operate a new solid waste facility if in the director's opinion the solid waste facility is needed immediately and could not be properly planned in advance.

**D.** An owner or operator of more than one solid waste facility that conducts similar activities with similar waste streams may prepare and implement a single plan that covers all of its facilities if it has received prior approval from the director and has complied with rules regarding single plans that are adopted by the director.

**E.** The director by rule may exempt from some or all of the facility plan approval requirements those solid waste facilities that are located in unincorporated areas and that are used for disposal by any single family residence located on the same property or those solid waste facilities that do not present a threat to public health and safety and the environment.

**F.** The department shall collect from the applicant reasonable fees established by the director by rule for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan. After the effective date of this amendment to this section, the director shall establish by rule fees for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan and maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase those



fees by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to §§ 35-146 and 35-147, in the solid waste fee fund established by § 49-881.

**G.** The department may contract with private consultants for the purposes of assisting the department in reviewing solid waste facility plan approvals to determine whether a facility meets the criteria of § 49-762.04. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant. If the department contracts with a consultant under this section, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding § 49-881, fees collected by the department for expedited plan review shall be deposited, pursuant to §§ 35-146 and 35-147, in the solid waste fee fund established by § 49-881 and used for payment of the costs of the consultant services. Fees received for the purpose of expedited plan review are not subject to appropriation.

#### **§ 49-762.04. Solid Waste Facility Plan Review Procedures.**

**A.** The department shall review and approve or disapprove a solid waste facility plan as follows:

1. Within thirty days after receipt of a solid waste facility plan, the department shall issue a written determination of whether the plan is an administratively complete plan unless the department requests additional information in writing within the thirty day period. If the department requests additional information in writing within the thirty day period, the department shall issue a written administrative completeness determination within fifteen days after the receipt of the additional information. Failure of the department to make an administrative completeness determination within the time periods set forth in this paragraph is deemed to be a determination that the plan is administratively complete.
2. Within thirty days after an administrative completeness determination for a new solid waste facility, the department shall issue public notice of the proposed solid waste facility plan once each week for two consecutive weeks in a newspaper of general circulation in the area in which the new solid waste facility will be located. The notice shall describe the type of solid waste facility and request comments on the proposed plan. The comment period shall not exceed thirty days. Comments shall be limited to whether the proposed plan meets the criteria for approval prescribed in paragraph 5 of this subsection. Comments on the proposed plan shall include the name of the person making the comments and, if in writing, the signature of that person.
3. Within sixty days after an administrative completeness determination for a new solid waste facility or within one hundred twenty days for an existing solid waste facility, the department shall provide the applicant with a comprehensive list of any technical deficiencies in the plan, including a detailed rationale for each deficiency and a recommendation for correcting the deficiency. If the department provides the applicant with a comprehensive list of all technical deficiencies as prescribed in this paragraph,



the time limits prescribed by paragraph 4 of this subsection shall be suspended from the date of the applicant's receipt of the list of technical deficiencies until the date when the department receives the applicant's response to the list of technical deficiencies.

4. For a new solid waste facility, the department shall issue a written decision to approve or disapprove the solid waste facility plan within ninety days of an administrative completeness determination. For an existing solid waste facility, the department shall issue a written decision to approve or disapprove the solid waste facility plan within one hundred eighty days of an administrative completeness determination. The department's decision to approve or disapprove a plan for an existing solid waste facility is effective immediately. A person who has submitted a solid waste facility plan for department approval may extend the time limits in this subsection for an additional period of up to sixty days.

5. The department shall use the following criteria in reviewing a solid waste facility plan:

- (a) The solid waste facility shall not pose a substantial endangerment to public health or safety or the environment.
- (b) The solid waste facility shall not cause an environmental nuisance.
- (c) The solid waste facility shall comply with this chapter and rules that are adopted pursuant to § 49-761 and that are applicable to that type of facility.

6. If there is sufficient public interest as evidenced by written comments submitted pursuant to paragraph 2 of this subsection in opposition to the proposed solid waste facility plan for a new solid waste facility, the department shall hold a public hearing on its decision to approve the solid waste facility plan within forty-five days after the date of approval. Notice of the public hearing shall be published in a newspaper of general circulation in the area where the new solid waste facility will be located during two consecutive weeks after the department's decision to approve the plan.

7. Testimony on the department's decision to approve a solid waste facility plan shall include the name of the person presenting the testimony and, if in writing, the signature of that person.

8. The department shall issue a responsiveness summary by first class mail to those persons who submitted written comments or presented testimony in response to the notices issued pursuant to this section or those persons who requested a copy of the summary. The summary shall be made public within thirty days after the department's decision to approve or disapprove a plan, or, if a public hearing is required, within thirty days after the public hearing. If as a result of testimony at a public hearing, the department becomes aware of a technical deficiency in the facility plan, the department, before the time the responsiveness summary is originally due, shall notify the applicant of that technical deficiency and shall provide a detailed rationale for each deficiency and a recommendation for correcting the deficiency. The department shall provide this notice to the applicant before the date that the responsiveness summary originally was due.



The time limits prescribed by this paragraph shall be suspended from the date of the applicant's receipt of the deficiency notice until the date the department receives the applicant's response to the deficiency notice. On receipt of the applicant's response, the department has either fifteen days or the remaining time in the original period, whichever is longer, within which to issue the responsiveness summary. The responsiveness summary shall include all of the following:

- (a) The public notices for the solid waste facility.
- (b) A summary of the significant public comments on whether the plan meets the criteria for approval prescribed by paragraph 5 of this subsection.
- (c) Specific responses of the department to the significant public comments on whether the plan meets the criteria for approval prescribed by paragraph 5 of this subsection.
- (d) The department's final decision on whether the plan is approved or disapproved. This decision is effective on the issuance of the responsiveness summary.

**B.** If the department disapproves a solid waste facility plan, it shall send to the owner or operator a complete written, detailed rationale for disapproval.

**§ 49-762.05. Self-Certification Procedures; Rules.**

**A.** The owner or operator of a solid waste facility identified in § 49-762.01 shall comply with the self-certification requirements prescribed by this section and rules adopted by the director.

**B.** The owner or operator of a new solid waste facility may be required by rule to submit some or all of the following information to the department before the start of construction:

1. Design and operational plans or other documents necessary to describe the design of the facility and the practices and methods that are or will be used to comply with the design and operation rules adopted by the director for that type of facility.
2. A demonstration of financial assurance in accordance with § 49-770.
3. A demonstration of compliance with either local zoning laws or § 49-767.
4. A demonstration of the issuance of other environmental permits that are required by statute.
5. A copy of the public notice in a newspaper of general circulation in the area in which a new solid waste facility will be located. The public notice shall state the intent to construct and operate a new solid waste facility pursuant to this subsection.

**C.** The owner or operator of an existing solid waste facility may be required by rule to submit some or all of the information described in subsection B, paragraphs 1 through 4 of this section within one hundred eighty days after the adoption of design and operation rules for that type of facility.



**D.** The owner or operator shall maintain all documents required by statute or rule at the solid waste facility or any other location as determined by rule, and those documents shall be made available for inspection pursuant to § 49-763.

**E.** An owner or operator making a substantial change to a solid waste facility shall submit documentation to the department before the start of construction stating that the facility will remain in compliance with the design and operation rules for that type of facility. The owner or operator of a solid waste facility that makes any changes in its compliance with subsection B, paragraph 2 or 3 of this section shall submit copies of those changes to the department.

**F.** A person making a submittal under this section shall certify in writing that the information submitted is true, accurate and complete to the best of the person's knowledge and belief.

**G.** Self-certified facilities identified in § 49-762.01 are not subject to the location restrictions of § 49-772.

**H.** The department shall collect from the applicant registration fees. After the effective date of this amendment to this section, the department shall establish by rule registration fees, including maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase those fees by rule without specific statutory authority for the increase. Fees collected pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the solid waste fee fund established by § 49-881.

**I.** An owner or operator of more than one solid waste facility identified in § 49-762.01 that conducts similar activities with similar waste streams may submit one self-certification filing for all such facilities if the owner or operator has received prior approval from the director and has complied with rules for self-certification that are adopted by the director.

#### **§ 49-762.06. Changes to Solid Waste Facilities and Amended Plans.**

**A.** The department shall adopt rules that establish the criteria to be used in determining the category type of a proposed change to a solid waste facility. The categories are as follows:

1. A type I change is an insignificant modification that does not require notification to the department. This includes changes to a facility that are not directly related to the physical management of solid waste or the replacement of equipment or structures with similar items.
2. A type II change is a minor modification that requires notification to the department. This includes changes to a facility that are directly related to the physical management of solid waste and that do not require detailed review by the department.
3. A type III change is a substantial change that does not require public notice. This includes changes that are significant, that require detailed review by the department and that are equally or more protective of the public health and environment, changes that



are required by statute or regulation or other substantial changes that are not type IV changes.

4. A type IV change is a substantial change that requires public notice. This includes significant changes in the total storage, process, treatment or disposal capacity of the solid waste facility. A type IV change also includes a lateral expansion of an existing solid waste landfill or the addition of a process or a major piece of equipment for which the net effect of the change will be an increase in discharges.

**B.** Before implementation, the director shall approve a type III or type IV change to the design or operation of an approved solid waste facility identified in § 49-762.

**C.** The owner or operator of an approved solid waste facility identified in § 49-762 shall submit a notice of any type II, type III or type IV change to the director. The notice shall describe the purpose and scope of the proposed change and shall state what category of change is requested. The director shall make the final determination of the category of change that is requested and whether an amended facility plan shall be submitted for a type III or type IV change. The director may request that additional information be submitted to assist in making the determination.

**D.** The determination required by subsection C of this section shall be made within the time limits prescribed by this subsection. If the director fails to make a determination within those time limits, the proposed change shall be deemed to be a type II change and in accordance with the facility's approved plan and may be implemented by the owner or operator without further review by the department. The time limits prescribed by this subsection do not apply if the proposed change conflicts with or is inconsistent with the requirements of 40 C.F.R. part 257 or 40 C.F.R. part 258. The time limits are as follows:

1. Fifteen days for solid waste facilities that are not landfills.
2. Thirty days for landfills that are not municipal solid waste landfills.
3. Sixty days for municipal solid waste landfills.

**E.** If the director determines that the change is a type IV change that requires a public notice, within thirty days after receipt of the amended plan the director shall give public notice of the substantial change as prescribed by § 49-762.04, subsection A, paragraph 2. If there is sufficient public interest as evidenced by written comments submitted pursuant to § 49-762.04, subsection A, paragraph 2 in opposition to the substantial change to the solid waste facility, the department shall hold a public hearing in accordance with the procedures in § 49-762.04, subsection A, paragraph 6. Testimony at a public hearing shall be limited to whether the substantial change to the plan meets the criteria prescribed in § 49-762.04, subsection A, paragraph 5. Testimony on the substantial change shall include the name and address of the person presenting the testimony and, if in writing, the signature of that person. The director shall issue a notice of any technical deficiencies and a responsiveness summary in accordance with § 49-762.04, subsection A, paragraph 8.



**F.** The director shall approve or deny the amended plan within ninety days after receipt of the amended plan. During the ninety day review period, the department shall comply with the procedures prescribed by § 49-762.04, subsection A, paragraph 3 for new solid waste facilities. If a public hearing is to be held, the director has an additional thirty days to hold the public hearing, issue a responsiveness summary and approve or disapprove the amended plan. A person who has submitted a type II, III or IV change to a solid waste facility plan for department approval may extend these time limits for an additional thirty days on a written request from the department that changes to the solid waste facility plan or additional information is needed before the department can make a decision to approve or deny the plan.

**§ 49-762.07. Notices; Exemptions; Extensions; Enforcement; Operating Standards.**

**A.** Except as provided in subsection B of this section, owners or operators of solid waste facilities in operation on September 1, 1996 shall submit to the director by September 1, 1996 a notice that contains the following information:

1. Facility name and mailing address.
2. Legal description by township, range and section and county assessor's book, map and parcel number.
3. Description of waste storage and treatment equipment and methods of waste management, including types and volumes of waste handled and time the waste remains on site.
4. Description of waste management practices used at the facility including measures taken to protect the environment and to protect the public health.
5. A diagram of the property showing the location of the solid waste facility or facilities.

**B.** Notices filed with the department before September 1, 1996 are deemed to satisfy the notice requirement of subsection A of this section unless there has been a substantial change to the solid waste facility before the notice deadline. A solid waste facility that has obtained a plan approval or that has filed an application for plan approval before September 1, 1996 is exempt from the notice requirement of subsection A of this section. Owners or operators of solid waste facilities that begin operations after September 1, 1996 shall submit a notice to the director containing the information specified in subsection A of this section no later than thirty days before beginning operation of a solid waste facility. Owners and operators of recycling facilities shall not be required to submit a notice pursuant to subsection A of this section or this subsection until rules for recycling facilities are adopted pursuant to § 49-761, subsection K.

**C.** The department may grant an extension of up to sixty days beyond the September 1, 1996 deadline on receipt of a written request from the owner or operator of a solid waste facility.

**D.** A solid waste facility that does not submit a notice as prescribed by subsection A or B of this section is subject to the enforcement provisions of article 5 of this chapter.



**E.** In the absence of design and operating rules adopted by the director pursuant to § 49-761 for solid waste landfills that are not municipal solid waste landfills, owners and operators of solid waste landfills that are not municipal solid waste landfills and that do not have coverage under an applicable general permit established by the department pursuant to § 49-706 shall comply with the provisions of 40 C.F.R. part 257.

**F.** In the absence of design and operating rules adopted by the director pursuant to § 49-761 for solid waste facilities other than solid waste landfills, owners and operators shall operate those facilities in a manner that:

1. Controls wind dispersion and other surface dispersion of solid waste from the facility so that the solid waste does not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment. Visible solid waste that is dispersed beyond the boundaries of the solid waste facility shall be collected on a regular basis by the operator of the solid waste facility.
2. Does not discharge hazardous substances as defined in § 49-281 to surface water, groundwater, or subsurface soil in a manner that creates a public nuisance or poses an imminent and substantial endangerment to public health or the environment.
3. Controls vector breeding and fire hazards.
4. Utilizes reasonable measures to control public access to:
  - (a) Medical waste generated by health care facilities.
  - (b) Special waste as defined in § 49-851, subsection A.

**§ 49-762.08. Corrective Actions; Application.**

**A.** Beginning July 1, 1998, the director, in the absence of applicable corrective action rules adopted pursuant to § 49-761 for solid waste facilities other than solid waste landfills, may require the owner or operator of a solid waste facility to conduct corrective action in response to a release, as defined in § 49-281, from a facility, if the release violates or results from a violation of § 49-762.07, subsection F or causes or threatens to cause a significant adverse effect on human health or the environment.

**B.** Corrective action taken pursuant to this section shall be conducted in accordance with standards described in § 49-282.06, subsection A, subsection B, paragraph 4, subdivisions (a) and (b) and subsections C, D and F.

**C.** This section shall not apply to the following:

1. Corrective or remedial action of groundwater that has been impacted by an off-site source.



2. A release subject to a corrective action pursuant to chapter 6 of this title relating to underground storage tanks.

3. A release from a facility subject to the provisions of 40 Code of Federal Regulations part 257 or part 258.

**D.** The department shall avoid practices or requirements that duplicate or are inconsistent with other applicable laws and rules, to the maximum extent practicable, for releases subject to corrective actions pursuant to any of the following:

1. Chapter 2, article 3 of this title<sup>1</sup> relating to aquifer protection permits.

2. Chapter 5 of this title relating to hazardous waste.

3. The federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 2795; 42 United States Code §§ 6901 through 6992).

**E.** For a release from a solid waste facility that was caused or contributed to by more than one responsible party, as defined in § 49-283, the director's authority to require corrective action under this section is limited to releases that occur after July 1, 1998, and when the owner or operator of the solid waste facility was subject to regulation pursuant to this chapter. Nothing in this subsection extends or limits the application of chapter 2, article 5 of this title.<sup>2</sup>

**F.** For a release from a solid waste facility subject to the provisions of 40 Code of Federal Regulations part 257 or part 258, the corrective action shall be conducted in accordance with the provisions of those regulations.

#### **§ 49-763. Inspections.**

**A.** The department may conduct such inspections of solid waste facilities and sites that store, treat or process recyclable solid waste as are necessary. The department shall give the management agency or the owner or the operator of the facility the opportunity to have its representative accompany the inspector. Within forty-five days after the date of the inspection, the department shall provide to the facility owner or operator a copy of any inspection report produced as a result of an inspection of that facility that occurs as prescribed by this section.

**B.** Until the department adopts rules pursuant to § 49-761 for a particular type of solid waste facility, solid waste facilities and sites that store, treat or process recyclable solid waste shall be designed and operated as prescribed by § 49-762.07, subsection F. The department's right to inspect facilities operating pursuant to this subsection is limited to ensuring that the facility is in compliance with § 49-762.07, subsection F.

#### **§ 49-764. Orders; Monitoring; Pollution Control Devices.**



**A.** Except as otherwise provided in § 49-422 and chapter 3, article 3 of this title, the director may require by order the installation of necessary monitoring and pollution control devices at a solid waste facility if the requirements of subsection B of this section have been met.

**B.** Before issuing an order pursuant to subsection A of this section, the director shall determine in writing that all of the following conditions are met:

1. The solid waste facility may adversely affect public health or the environment.
2. A monitoring, sampling or quantification method or a pollution control device is technically feasible for the subject contaminant and the solid waste disposal facility.
3. An adequate scientific basis for the monitoring, sampling or quantification method or the pollution control device exists.
4. The monitoring, sampling or quantification method is reasonably accurate or the pollution control device is reasonably effective.
5. The cost of the method or device is reasonable in light of the use to be made of the data or the device.
6. The director has considered the relative cost and the relative accuracy or effectiveness of any alternative method or device that may be reasonable under the circumstances.

#### **§ 49-765. Local Regulation of Solid Waste Collection.**

Each county, city or town may establish regulations for private collection of solid waste within its area of jurisdiction, including standards for equipment, hours of operation, license fees and insurance requirements as necessary and appropriate to operate a solid waste collection program. Ordinances or regulations authorized by this section and § 49-704 shall be equal to or more stringent than this chapter and rules and regulations adopted by the department under this chapter. If authorized by statute, each county, city or town may provide for civil penalties for violation of such ordinances or regulations provided that such penalties do not exceed the penalties authorized by this chapter. A county, city or town may not provide for or enforce a criminal penalty against a person who refuses to purchase solid waste collection services from a private service provider unless the private service provider contracts with the county, city or town to provide solid waste collection services and the solid waste collection service is billed through the county, city or town.

#### **§ 49-766. Agricultural Landfills; Notice.**

**A.** A single family residence located on a farm or ranch of more than forty acres in an unincorporated area may operate on site a landfill for the disposal of solid waste resulting from



the residents' household activities. The owner or operator of the farm or ranch shall comply with all of the following:

1. The landfill does not violate the floodplain provisions of § 49-772, subsection C or the wetland provisions of § 49-772, subsection D.
2. The owner or operator submits to the local board of supervisors a location map and a written, general description of the landfill by October 21, 1994, or if solid waste disposal begins after April 24, 1994, within thirty days after disposing of solid waste.
3. The landfill does not create an environmental nuisance.

**B.** A person engaged in farming or ranching on at least forty acres in an unincorporated area may operate an agricultural landfill on the property for disposal of solid waste, but not hazardous waste, generated on the property. The person shall comply with all of the following:

1. The landfill does not accept household waste, household hazardous waste or conditionally exempt small generator waste.
2. The owner or operator submits to the board of supervisors or its designee a location map and a written, general description of the landfill by October 21, 1994, or if solid waste disposal begins after April 24, 1994, within thirty days after disposing of solid waste.
3. The landfill does not violate the floodplain provisions of § 49-772, subsection C or the wetland provisions of § 49-772, subsection D.
4. The landfill does not create an environmental nuisance.

#### **§ 49-767. Government Owned Solid Waste Facilities; Permission; Notice of Site to Property Owners; Hearing; Exemption.**

**A.** Any agency or political subdivision of this state which is required to select or is selecting a possible permanent site for a solid waste facility required to obtain approval pursuant to § 49-762 shall not select a site without obtaining approval of the city or town if the proposed permanent site is located within such city or town or the approval of the county in which the proposed permanent site is located if the proposed permanent site is located in the unincorporated area of the county.

**B.** An agency or political subdivision of this state which is required to select or which is selecting a possible permanent site for any solid waste facility required to obtain approval pursuant to § 49-762 shall post a notice in accordance with requirements specified by the department at the affected property so that the notices are visible from the public rights-of-way and shall send written notice of the selection of the possible permanent site by first class mail to property owners in the following areas:



1. If the proposed permanent site is in an unincorporated area, within a three mile radius of the outer boundaries of the proposed permanent site unless the three mile radius intersects a municipal corporate boundary. In such a case, property owners inside the municipal corporate boundary within one thousand feet of the outer boundary of the proposed permanent site shall be notified as well as those property owners outside the municipal corporate boundary within the three mile radius of the outer boundary of the proposed permanent site.
2. If the proposed permanent site is in an incorporated area, within a one thousand foot radius of the outer boundaries of the proposed permanent site.

**C.** The notice required by subsection B of this section shall be mailed to each owner of real property as shown on the list of property owners furnished by the county assessor and the department of revenue. Within fifteen days after a request for such a list, the county assessor and the department of revenue shall furnish to the agency or political subdivision a written list stating the name and address of each owner in the areas specified in subsection B of this section.

**D.** Before a political subdivision makes a final decision on a possible permanent site for a facility specified in subsection A of this section, the political subdivision shall hold a public hearing in the general vicinity of the proposed permanent site, at which interested persons may appear and present their views. The political subdivision shall give notice of the hearing, to include all of the following:

1. Publication of notice in a daily or weekly newspaper of general circulation in the area of the proposed permanent site published once each week, beginning at least two weeks before the hearing.
2. Mailed notice as provided in subsection B of this section sent at least two weeks before the hearing.
3. Posted notice as provided in subsection B of this section that shall include information on the time and location of the public hearing and a list of those permits that are required in order to operate that proposed solid waste facility.
4. Mailed notice at least two weeks before the hearing to the governing body of any city, town or unincorporated portion of a county that is located within a one-mile radius of the outer boundaries of the proposed solid waste landfill.

**E.** Any agency or political subdivision that is holding a hearing that may result in the approval of or a permit for the siting of a solid waste landfill shall mail notice at least two weeks before the hearing to the governing body of any city, town or unincorporated portion of a county that is located within a one-mile radius of the outer boundaries of the proposed solid waste landfill.

**F.** A site for a solid waste facility that has obtained zoning approval pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6, article 2,2 is exempt from this section. This subsection shall not apply to agencies and political subdivisions of the state.



### **§ 49-768. Civil Penalties.**

A person who violates a provision of a rule, material permit condition or requirement for approval relating to medical waste is subject to a civil penalty of not more than ten thousand dollars for each day for each violation. The attorney general, at the request of the director, shall file an action in the superior court in the county in which the violation occurred or in a county in which the department maintains an office to recover civil penalties provided for in this section.

### **§ 49-769. Agency Orders; Appeal.**

Except as provided in § 41-1092.08, subsection H, any final agency order issued pursuant to this article is subject to judicial review pursuant to title 12, chapter 7, article 6.

### **§ 49-770. Financial Assurance Requirements for Solid Waste Facilities.**

**A.** Beginning one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to § 49-761, a solid waste facility may not be operated unless financial responsibility has been demonstrated for the costs of closure, postclosure care, if necessary, and any corrective action as a result of known releases from the facility. Financial assurance for municipal solid waste landfills shall be required pursuant to § 49-761, subsection B.[1](#) This subsection applies to small municipal solid waste landfills on October 9, 1997. For all other municipal solid waste landfills, this subsection shall apply on September 1, 1997 unless the director establishes an alternative date pursuant to § 49-761, subsection B on a facility specific basis.

**B.** Within one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to § 49-761, existing solid waste facilities shall modify and submit existing facility plans to the department to demonstrate the financial responsibility required by this section. A solid waste facility in operation before the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to § 49-761 may continue to operate while the department reviews the modified plan.

**C.** A demonstration of financial responsibility made for a solid waste facility under chapter 2, article 3 of this title shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section. A demonstration of financial assurance or competence required under this section or under chapter 2, article 3 of this title for a solid waste facility shall not be required prior to completion of construction but shall be required before the department issues approval to operate.

**D.** The terms and conditions adopted by the director for each financial assurance mechanism shall provide:



1. The amount in current dollars equal to the cost of hiring a third party to complete site closure and, if necessary, continued postclosure monitoring and maintenance consistent with the plan and any factor to be applied for inflation. Amounts shall be updated annually for landfills and every three years for all other solid waste facilities to adjust for inflation or as necessary to reflect increased costs resulting from changes to the facility plan or facility conditions.

2. The period after closure for which financial assurance is required.

**E.** The approved financial assurance mechanism shall not be released unless the plan specified closure and postclosure requirements have been completed or unless new financial assurance has been submitted by a new owner or operator of the solid waste facility and approved by the director. The owner or operator of the solid waste facility:

1. Shall receive any accrued interest on financial assurance instruments retained by the department.
2. May request a reduction in financial assurance requirements on completion of closure or portions of postclosure monitoring and maintenance that are approved by the director.
3. Shall justify any reduction in closure or postclosure cost estimates in the facility plan.
4. Shall assure that the period of coverage of the financial assurance instrument exceeds by a minimum of ninety days the applicable one or three year time period required in subsection D of this section.
5. Shall be released from closure or postclosure financial responsibility on certification by a registered professional engineer or other environmental professional deemed acceptable by the director that the specific activities of closure or postclosure have been completed in accordance with the approved facility plan and placed in the operating record of the facility plan.

#### **§ 49-771. Restrictive Covenants for Solid Waste Landfills.**

**A.** The director may grant plan approval for operation of a solid waste landfill only if a restrictive covenant has been placed on the disposal area of the facility. An existing solid waste landfill for which a restrictive covenant is executed before July 1, 1998, is deemed to have satisfied this requirement. The director and all of the owners of the tract of land on which the solid waste landfill is located shall execute the restrictive covenant. A certified copy of the recorded covenant shall be submitted to the director within sixty days after execution. If the director does not receive the copy within sixty days, the director shall send written notice indicating the deficiency to the owners of the real property. If a certified copy of the recorded covenant is not received within thirty days of that written notice, the plan is deemed void.

**B.** The owner of the tract of land on which the solid waste landfill is or will be located shall record the instrument imposing the restrictive covenant in the county recorder's office in the



county in which the solid waste landfill is located. If the director does not grant plan approval for operation of a solid waste landfill or the application for plan approval is withdrawn, and the tract of land was not used as a solid waste landfill, the owner and the director shall revoke the restrictive covenant.

**C.** The restrictive covenant shall state that the land described in the covenant has been or will be used as a solid waste landfill and that the property owners, their agents or employees or any of their heirs, successors, lessees or assignees shall not engage in development on or in filling, grading, excavating, drilling or mining of the solid waste landfill after closure without the approval of the director unless provided for in the approved facility closure or postclosure plan. In making this determination the director shall consider factors such as the original design, type of operation, material deposited, energy recovery from methane gas and stage of decomposition of the disposal area. The director shall not make any such determination if it will increase the potential for threat to public health and the environment.

**D.** The director may waive the restrictive covenant prescribed by this section if the land is federal land or if a contract that exists between the landowner and the lessee on October 9, 1993 does not allow the lessee to place an encumbrance on the disposal area.

#### **§ 49-772. Location Restrictions for Solid Waste Landfills; Definitions.**

**A.** A solid waste facility that is required to obtain approval pursuant to § 49-762 shall not be issued a permit pursuant to § 49-241, subsection A, receive a plan approval pursuant to § 49-762 or be placed on any site if any of the following applies:

1. An irrigation grandfathered right created pursuant to title 45, chapter 2, article 5 is appurtenant to all or any part of the site.
2. Any part of that facility is within one-half mile of a one-hundred-year floodplain that has one hundred year flows in excess of twenty-five thousand cubic feet per second, as determined by the federal emergency management agency, except for a site used for any of the following activities:
  - (a) Reclamation of land through the introduction of landscaping rubble or inert material.
  - (b) Material produced in connection with a mining or mineral processing operation.
  - (c) Agricultural on-site disposal as provided in § 49-766.
  - (d) Solid waste transfer or recycling or any other use that does not involve treatment or disposal of solid waste.
  - (e) Receipt of solid waste for application to agricultural land as fertilizer or other beneficial soil amendment.



(f) The storage, treatment or processing of solid waste at a site that is not open to the general public and that is in existence on October 9, 1993.

**B.** Owners and operators of new and existing solid waste landfills that are not municipal solid waste landfills and that are located within ten thousand feet of any airport runway end used by turbojet aircraft or within five thousand feet of any airport runway end used by only piston-type aircraft shall demonstrate in the facility plan that the facility is designed and operated so that it does not pose a bird hazard to aircraft. Owners and operators of solid waste landfills that are located within a five mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the federal aviation administration.

**C.** In addition to siting requirements established pursuant to subsection A of this section, owners and operators of new and existing solid waste landfills that are not municipal solid waste landfills and that are located in a one hundred-year floodplain shall demonstrate in the facility plan that the facility will not restrict the flow of the one hundred-year flood, reduce the temporary water storage capacity of the floodplain or result in a washout of solid waste so as to pose a hazard to human health and the environment.

**D.** New solid waste landfills that are not municipal solid waste landfills shall not be located in wetlands, unless the owner or operator can demonstrate all of the following:

1. A practicable alternative site that does not involve wetlands is not available.
2. The construction and operation of the solid waste landfill does not cause, contribute to the violation of any applicable state water quality standard, toxic effluent standard or prohibition, or jeopardize endangered or threatened species or critical habitat.
3. The construction and operation of the facility do not cause or contribute to significant degradation of wetlands.
4. To the extent required under § 404 of the clean water act or applicable state wetland laws, steps have been taken to attempt to achieve no net loss of wetlands as defined in acreage and function by first avoiding impacts to wetlands to the maximum extent practicable pursuant to paragraph 1 of this subsection and offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions.

**E.** New solid waste landfills that are not municipal solid waste landfills shall not be located:

1. Within two hundred feet of a fault that has had displacement in holocene time unless the owner or operator can demonstrate in the facility plan that an alternative setback distance of less than two hundred feet will prevent damage to the structural integrity of the facility and will protect public health and the environment.
2. In seismic impact zones unless the owner or operator can demonstrate in the facility plan that all containment structures, including liners, leachate collection systems and



surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

**F.** Owners and operators of new and existing solid waste landfills that are not municipal solid waste landfills and that are located in an unstable area shall demonstrate in the facility plan that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted, including at a minimum an analysis of the following:

1. On-site or local soil conditions that may result in significant differential settling.
2. On-site or local geologic or geomorphologic features.
3. On-site or local man-made surface or subsurface features or events.

**G.** Subsections C through F and H of this section apply until the director adopts rules for solid waste landfills that are not municipal solid waste landfills.

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

1. "Airport" means a public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
2. "Areas susceptible to mass movement" means those areas of influence where the movement of earth material at, beneath or adjacent to the solid waste landfill because of natural or human-induced events results in the downslope transport of soil and rock material due to gravity. Areas of mass movement may include landslides, avalanches, debris slides and flows, soil fluxion, block sliding and rock fall.
3. "Bird hazard" means an increase in the likelihood of bird and aircraft collisions that may cause damage to the aircraft or injuries to its occupants.
4. "Displacement" means the relative movement of any two sides of a fault measured in any direction.
5. "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.
6. "Floodplain" means the areas adjoining inland waters or including areas where drainage is or may be restricted by man-made structures that have been or may be covered partially or wholly by floodwaters from the one hundred-year flood.
7. "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.
8. "Karst terranes" means areas where karst topography with its characteristic surface and subterranean features is developed as a result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features present in karst terranes include sinkholes, sinking streams, caves, large springs and blind valleys.



9. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. Lithified earth material does not include man-made materials such as fill, concrete and asphalt or unconsolidated earth materials, soil or regolith lying at or near the earth surface.
10. "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety per cent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site specific seismic risk assessment.
11. "One hundred-year flood" or "base flood" means a flood that has a one per cent chance of being equalled or exceeded in a one-year period, based on criteria established by the director of the department of water resources.
12. "Poor foundation conditions" means those areas where features exist that indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a solid waste disposal facility.
13. "Seismic impact zone" means an area with a ten per cent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.
14. "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, flood control components and any other components used in the construction and operation of the solid waste disposal facility that are necessary for protection of public health and the environment.
15. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements and karst terranes.
16. "Washout" means the carrying away of solid waste by surface water runoff.
17. "Wetlands" means those areas that are defined in 40 Code of Federal Regulations § 232.2(r).

#### **§ 49-773. Disposal of Waste; Definition.**

**A.** No person other than a natural person shall dispose of solid waste at a solid waste landfill within the boundaries of this state unless the facility meets the applicable requirements of titles III and IV of the Federal Water Pollution Control Act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code § 1151), and one of the following:



1. 40 Code of Federal Regulations part 257 as amended on October 9, 1991 and October 1, 1993 and, if applicable, beginning October 9, 1993, 40 Code of Federal Regulations part 258, as promulgated on October 9, 1991 and amended on October 1, 1993.
2. A solid waste facility plan approval pursuant to § 49-762 that was issued after October 1, 1993.

**B.** For the purposes of this section, unless the context otherwise requires, “solid waste” has the same meaning as provided in § 49-701.

**§ 49-774. Landfill Washout; Abatement Costs; Definitions.**

**A.** If a washout of solid waste from a solid waste landfill occurs, the director shall issue a cease and desist order pursuant to § 49-142 to the owner or the operator of the solid waste landfill and to any person who disposed of solid waste at that landfill.

**B.** The director may order the owner or the operator of the landfill and any person who disposed of solid waste at that landfill to abate the washout within a time specified in the order and at the expense of the owner, operator or other person named in the order. If such persons refuse to comply with the order to abate, the department may recover from the owner and the operator of the landfill and any person who disposed at the landfill the reasonable costs of abating the washout. No person who disposed of solid waste at the landfill shall be liable for a larger proportion of the abatement cost than the person's proportionate share of solid waste at the landfill. Chapter 1, article 3 of this title, relating to environmental nuisances, shall apply to any action filed by the director and any person who is named in the order.

**C.** This section does not apply to any washout that occurred before October 9, 1993.

**D.** This section does not apply to an operation that is exempt from this article on October 9, 1993.

**E.** The authority provided to the director by this section is in addition to the remedies and authority otherwise provided by law.

**F.** For purposes of this section:

1. “Person who disposed” means any person who transported solid waste to the landfill or who made the decision to use the landfill but does not include a natural person.
2. “Washout” means the carrying away of solid waste off the property of the owner or operator of the landfill by storm water or surface water runoff.

