Arizona Legislature/ADEQ

ADEQ Regulatory Agenda: Rural Economic Development Initiative

ADEQ is looking to AZSWANA members for support in requesting funds from the Recycling Fund for recycling projects in the Governor's 2020-21 budget. This is a separate fund established by statute to support recycling programs from the $0.25/ton tipping fee at landfills. These funds historically have been swept for use in the State’s general fund. ADEQ is particularly interested in providing resources to rural recycling programs, with a focus on recycling materials management and less focus on collections programs. The attached flier describes the fund and its intended use.

Send your letter of support to: Hunter Moore, Natural Resource Policy Advisor, Office of Governor Doug Ducey, State of Arizona, 1700 W. Washington St. Phoenix, AZ 85007, Email: hmoore@az.gov

ADEQ Rulemaking on the Revised Definition of Solid Waste

The litigation surrounding EPA’s 2018 rulemaking to address sham recycling issues in the definition of a solid waste has been resolved, and ADEQ is moving forward with rulemaking to implement the new rule in Arizona. This rule addresses when hazardous secondary materials become solid wastes and subject to RCRA regulation. The result of the litigation is that EPA removed the “verified recycler” exclusion in the 2015 rule and replaced it with the “transfer-based” exclusion found in the 2008 rule. The new rule won’t become affective until adopted by states. Expect stakeholder workshops to be announced this fall.

Federal

Definition of Waters of the United States

On September 24, 2019, the EPA/USACE formally repealed the 2015 rule of definition of waters of the US, which included many ephemeral streams that have a high-water mark. The agencies are now moving forward with a 2018 definition that greatly limits the scope of Waters of the US leaving the protection of many surface waters to the purview of the State. ADEQ is looking to formally begin working on Waters of the State legislation and rulemaking next year.

Infrastructure Bill

A draft infrastructure bill, the Realizing Economic Opportunities and Value of Expanding Recycling (RECOVER) Act would provide a total of $500 million over 5 years to EPA to distribute to states in the form of competitive grants. States can then use the funds to expand investment in recycling infrastructure and programs via investments in state, county and municipal recycling programs, MRFs, secondary recovery facilities, recycling facilities and manufacturing facilities. Private entities that qualify must provide matching funds to receive grants, whereas public entities do not. The bill gives wide berth to both EPA and the states to determine the best end-uses. There are eligibility requirements for each of the types of entities that can qualify, which vary somewhat by entity. Should a state decide not to apply for funds, public entities could apply directly to EPA for the grants. That currently is not an option for private entities, however a proposed amendment would allow private entities to apply directly for grants.
AZ SWANA Legislative Update, October 24, 2019

Very close to having a Republican sponsor in the House Energy and Commerce Committee, will then need to have a Democratic sponsor. Working on sponsors in the Senate. Infrastructure bill has been struggling, but RECOVER Act may be able to work on its own or in combination with a bill on marine debris.

One of the biggest issues has been private entities vs public entities getting funding.

Udall/Lowenthal Plastic Crisis Legislation Proposal

On July 18 U.S. Senator Tom Udall (D-NM) and U.S. Representative Alan Lowenthal (D-CA) announced an intent to introduce comprehensive plastic waste legislation. The announcement was accompanied by a dozen proposed components, but without actual bill text. Below is a summary of the components as well as applicable SWANA technical policies. SWANA National has discussed the proposal with Congressional staff and will continue to engage on this as it proceeds.

1. Obligations for producers: Producers will be required to design, manage, and finance programs for end-of-life management of their products and packaging as a condition of sale. Producers will help cover the costs of waste management and clean-up, as well as awareness raising measures. T-2.1 – Product Stewardship.

2. Nationwide Container Deposit Requirements: Place a national deposit requirement on beverage containers (all materials, including glass, plastic and aluminum).

3. Carryout Bag Fee: A fee will be placed on the distribution of available carryout bags (paper bags and non-reusable bags). T-2.2 – Deposit Systems

4. Plastic ban of certain products: Where alternatives are readily available and affordable, the most commonly polluted single-use plastic products will be banned from the market.

5. Styrofoam: Ban use of expanded polystyrene.

6. Labelling Requirements: Consumer products made from plastic will require clear and standardized labelling which indicates how waste should be disposed and the presence of plastics in the products.

7. Awareness-raising measures: States will be encouraged to raise consumers’ awareness about the negative impact of littering as well as about available re-use systems and waste management option.


9. Requirements: Set requirements for certain products to be made of 100% recyclable materials and others made from a significant percentage post-consumer recycled product.

10. Federal Fund: A federal fund will ensure resources are available for pollution reduction, remediation programs and innovation research.

11. Protect Local Governments and Political Subdivisions: States that prohibit local governments from implementing measures to reduce plastic products will lose federal funding.

12. Encourage Local Government Action: Create Clean Cities Program to use smart technology and social media to help local governments cost-effectively identify pollution hot spots and implement source reduction solutions.
Save Our Seas 2.0 Act

The Save Our Seas 2.0 Act has been introduced in the Senate as a bill intended to strengthen domestic infrastructure to prevent the creation of new marine debris and would direct the EPA to develop a strategy within one year to improve waste management and recycling infrastructure, harmonize waste collection and recycling protocols, strengthen markets for recycled plastic, and identify barriers to increasing the collection of recyclable materials. Additionally, it would create a Waste Management Revolving Fund and a Waste Management Infrastructure Grant program. SWANA is currently engaging with the offices of the sponsoring legislators and will provide further updates on this bill as it develops. Currently in the Senate Committee on Commerce, Science, and Transportation.

Zero Waste Act

The Zero Waste Act was introduced in the U.S. House of Representatives by Representative Ilhan Omar (D-MN) on July 25th in order to create federal grants to support municipalities in recycling and waste reduction efforts. The program would be carried out by the U.S. EPA and would be funded with up to $250 million from 2020 through 2027. Similar legislation was previously introduced in 2017 as the “Zero Waste Development and Expansion Act.” This legislation was described as another component of the Green New Deal.

Review of State Plans for Emissions Guidelines from MSWLFs

On May 6, 2019, a federal district court has ordered EPA to implement the 2016 MSWLF NSPS and EGs. EPA has approved Arizona’s methane plan, which ADEQ expects will become effective around the end of the year. EPA has draft regulations to implement a federal plan for states that haven’t submitted plans as of November 6, 2019. Comments on the new regulations are now closed. Maricopa County is working on developing a plan. There may be a period in which the federal plan is implemented in Maricopa County. Pima County will likely adopt the federal plan.

Petition for reconsideration is still moving forward. Ideally in conjunction with the review of the NESHAP standard, which should be in the Federal Register next month. Some of the XXX review issues may even be in the Federal Register notice. Most likely the NSPS issues will be postponed until after the NESHAP review tentatively scheduled for March 2020.

EPA Regulatory Agenda

Draft rule to list hazardous waste aerosol cans as a universal waste rather than managing as a RCRA hazardous waste. Final rule expected in September 2019.

Notice that EPA is considering revising the flash point test for determining flammability of liquids to avoid the use of mercury thermometers.

PFAS Regulation

These contaminants are of growing concern in groundwater contamination. These compounds are present in many landfilled consumer products. EPA is working on recommendations for addressing PFAS issues. A variety of bills introduced in Congress. It would mostly impact groundwater monitoring requirements at landfills. Some states are developing limits on PFAS in leachate. Another issue may be
emissions from flares. ADEQ has indicated that they have no intentions to engage in rulemaking until EPA issues a MCL for water quality.

**Federal Motor Carrier Safety Administration revision to short-haul regulation:**

FMCSA has proposed rules changing the hours of service requirements for drivers:

- change the short-haul exception available to certain commercial drivers by lengthening the drivers' maximum on-duty period from 12 to 14 hours and extending the distance limit within which the driver may operate from 100 air miles to 150 air miles;
- Modify the adverse driving conditions exception by extending by 2 hours the maximum window during which driving is permitted;
- Increase flexibility for the 30-minute break rule by tying the break requirement to 8 hours of driving time without an interruption for at least 30 minutes, and allowing the break to be satisfied by a driver using "on duty, not driving" status, rather than "off duty" only;
- Modify the sleeper-berth exception to allow drivers to split their required 10 hours off duty into two periods: one period of at least 7 consecutive hours in the sleeper berth and the other period of not less than 2 consecutive hours, either off duty or in the sleeper berth. Neither period would count against the driver's 14-hour driving window; and,
- Allow one off-duty break of at least 30 minutes, but not more than 3 hours, that would pause a truck driver's 14-hour driving window, provided the driver takes 10 consecutive hours off-duty at the end of the work shift.

Comment period closed October 7, 2019.