ADEQ Rulemaking

ADEQ has a busy 2020 agenda planned for solid waste rulemaking, pending exemption from the Governor’s moratorium on rulemaking (probably in January). Look for stakeholder workshops being scheduled for the following:

- Definition of a solid waste; which will implement the 2018 EPA rule addressing sham recycling issues in the definition of a solid waste. This rule addresses when hazardous secondary materials become solid wastes and subject to RCRA regulation.
- Pharma rule: New universal waste regulations for small quantity generators (or larger) of hazardous pharmaceutical waste.
- Airbag rule: EPA has developed a rule to manage undeployed airbags in manufacturer recalls as universal wastes. This is a result of the 2015 Takata airbag recall and Takata’s bankruptcy, which created hazardous waste management issues in storing recalled airbags. Arizona will be developing its own rule to implement the federal rule.
- Aerosol cans: EPA rule to be effective February 2, 2020 allowing waste aerosol cans to be managed as universal waste. The new rule is intended to ease regulations for retail stores and others that discard aerosol cans and promote the collection and recycling of aerosol cans. It also encourages the development of municipal and commercial programs to reduce the quantity of aerosol wastes going to MSWLFs. ADEQ will be developing a state implementing rule.

Arizona’s new Multi-Sector Industrial General Stormwater Permit

ADEQ’s updated multi-sector general permit covering stormwater discharges from industrial facilities will become effective January 1, 2020. Coverage under the expiring permit will continue through February 28, 2020. Facilities need to file a new notice of intent under the new permit and update their pollution prevention plans to include new permit conditions.

Waters of the State Rule

New federal definition of Waters of the U.S. rule expected to come out in January. ADEQ estimates that this will remove federal protection for somewhere between 83% and 97% of waters currently protected as waters of the U.S. ADEQ expects the rule will be held up for some time in litigation, plans on working with stakeholders to develop an Arizona program for protecting at least some of the waters no longer designated WOUS. ADEQ is interested in knowing whether currently permitted facilities have any concerns about losing permit protections for industrial discharges.

State Authorization of CWA 404 Permits

ADEQ has decided not to pursue a state program implementing federal requirements for dredge and fill permits (404 permits). Determined that there was insufficient stakeholder interest in Arizona assuming the program. These permits will continue to be managed by the Corps of Engineers.
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. Expect the final rule to be released in January.

Infrastructure Bill

SWANA is lobbying for congressional support of the Realizing Economic Opportunities and Value of Expanding Recycling (RECOVER) Act in the House of Representatives and the RECYCLE Act in the Senate. RECOVER would provide a total of $500 million over 5 years and RECYCLE would provide up to $15M/yr for 5 years to EPA to distribute to states in the form of competitive grants. States can 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. Under RECOVER, 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.

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.

NESHAP Standard for LFG Flaring

EPA has completed its review and determined that the existing rule is adequate. Regarding overlapping rules, proposed bumping the temperature requirement, but enhanced the temperature requirement. Industry has submitted a substantive comment on these changes as technically and economically unviable. EPA has a March 13 deadline to finalize the rule.

Review of State Plans for Emissions Guidelines from MSWLFs

EPA has formally approved the state plans finalized by New Mexico and West Virginia. EPA has indicated that they have 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, which is close to the Cf regulation. 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 is completed.

**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.