

House Engrossed

hazardous air pollutants program

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

## CHAPTER 60

# HOUSE BILL 2216

AN ACT

AMENDING SECTION 49-426.06, ARIZONA REVISED STATUTES; RELATING TO AIR QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-426.06, Arizona Revised Statutes, is amended  
3 to read:

4 49-426.06. State program for control of hazardous air  
5 pollutants

6 A. The director ~~shall~~ MAY by rule establish a state program for the  
7 control of hazardous air pollutants that meets the requirements of this  
8 section. The program established pursuant to this section shall apply to  
9 the following sources:

10 1. Sources that emit or have the potential to emit with controls  
11 ten tons per year or more of any hazardous air pollutant or twenty-five  
12 tons per year or more of any combination of hazardous air pollutants.

13 2. Sources that are within a category designated pursuant to  
14 section 49-426.05 and that emit or have the potential to emit with  
15 controls one ton per year or more of any hazardous air pollutant or two  
16 and one-half tons per year of any combination of hazardous air pollutants.

17 B. After rules adopted pursuant to subsection A of this section  
18 become effective pursuant to section 41-1032, a person shall not commence  
19 the construction or modification of a source that is subject to this  
20 section without first obtaining a permit or permit revision that complies  
21 with section 49-426 and subsection C or D of this section. For purposes  
22 of determining whether a change constitutes a modification, the director  
23 shall by rule establish appropriate de minimis amounts for hazardous air  
24 pollutants that are not federally listed hazardous air pollutants. In  
25 establishing de minimis amounts, the director shall consider any relevant  
26 guidelines or criteria promulgated by the administrator. A physical  
27 change to a source or change in the method of operation of a source is not  
28 a modification subject to this section if the change satisfies any of the  
29 following conditions:

30 1. The change complies with section 112(g)(1) of the clean air act.

31 2. The change, together with any other changes implemented or  
32 planned by the source, qualifies the source for an alternative emission  
33 limitation pursuant to section 112(i)(5) of the clean air act.

34 3. The change is required under a standard imposed pursuant to  
35 section 112(d) or 112(f) of the clean air act and the change is  
36 implemented after the administrator promulgates the standard.

37 C. A permit or permit revision issued to a new or modified source  
38 that is subject to the state hazardous air pollutant program under  
39 subsection A, paragraph 1 of this section shall impose the maximum  
40 achievable control technology for the new source or modification, unless  
41 the applicant demonstrates pursuant to subsection D of this section that  
42 the imposition of maximum achievable control technology is not necessary  
43 to avoid adverse effects to human health or adverse environmental  
44 effects. A permit or permit revision issued to a new or modified source  
45 that is subject to the state hazardous air pollutant program under

1 subsection A, paragraph 2 of this section shall impose hazardous air  
2 pollutant reasonably available control technology for the new source or  
3 modification, unless the applicant demonstrates pursuant to subsection D  
4 of this section that the imposition of hazardous air pollutant reasonably  
5 available control technology is not necessary to avoid adverse effects to  
6 human health or adverse environmental effects. When a reliable method of  
7 measuring emissions of a hazardous air pollutant subject to this section  
8 is not available, the director shall not require compliance with a numeric  
9 emission limit for the pollutant but shall instead require compliance with  
10 a design, equipment, work practice or operational standard, or a  
11 combination thereof. Standards imposed pursuant to this subsection shall  
12 apply only to hazardous air pollutants emitted in amounts exceeding the de  
13 minimis amounts established by the administrator or by the director  
14 pursuant to subsection B of this section. The director shall not impose a  
15 standard under this subsection that would require the application of  
16 measures that are incompatible with measures required under a standard  
17 imposed pursuant to section 49-426.03, subsection B.

18 D. If the owner or operator of a new source or modification subject  
19 to this section establishes that the imposition of maximum achievable  
20 control technology or hazardous air pollutant reasonably available control  
21 technology is not necessary to avoid adverse effects to human health or  
22 adverse environmental effects by conducting a scientifically sound risk  
23 management analysis and submitting the results to the director with the  
24 permit application for the new source or modification, the director shall  
25 exempt the source from the imposition of such technology. The risk  
26 management analysis may take into account the following factors:

- 27 1. The estimated actual exposure of persons living in the airshed  
28 of the source.
- 29 2. Available epidemiological or other health studies.
- 30 3. Risks presented by background concentrations of hazardous air  
31 pollutants.
- 32 4. Uncertainties in risk assessment methodology or other health  
33 assessment techniques.
- 34 5. Health or environmental consequences from efforts to reduce the  
35 risk.
- 36 6. The technological and commercial availability of control methods  
37 beyond those otherwise required for the source and the cost of such  
38 methods.

39 E. Where maximum achievable control technology or hazardous air  
40 pollutant reasonably available control technology has been established in  
41 a general permit for a defined class of sources pursuant to subsection C  
42 of this section and section 49-426, subsection H, the owner or operator of  
43 a source within that class may obtain a variance from the standard by  
44 complying with subsection D of this section at the time the source applies  
45 to be permitted under the general permit. If the owner or operator makes

1 the demonstration required by subsection D of this section and otherwise  
2 qualifies for the general permit, the director shall, in accordance with  
3 the procedures established pursuant to section 49-426, approve the  
4 application and issue a permit granting a variance from the specific  
5 provisions of the general permit relating to the standard. Except as  
6 otherwise modified by the variance, the general permit shall govern the  
7 source.

8 F. If the clean air act has established provisions, including  
9 specific schedules, for the regulation of source categories pursuant to  
10 section 112(e)(5) and 112(n) of the clean air act, those provisions and  
11 schedules shall apply to the regulation of those source categories under  
12 subsection B of this section.

13 G. For any category or subcategory of facilities licensed by the  
14 nuclear regulatory commission, the director shall not adopt or enforce any  
15 standard or limitation respecting emissions of radionuclides that is more  
16 stringent than the standard or limitation adopted by the administrator  
17 pursuant to section 112 of the clean air act.

18 H. For purposes of subsection A of this section, in determining  
19 potential to emit, the director shall consider controls that are  
20 enforceable under any federal law or regulation, state or local law or  
21 rule or that are inherent in the design of the source.

22 I. In determining whether emissions from a source or modification  
23 exceed the thresholds prescribed by subsection A or B of this section, the  
24 director shall exclude particulate matter emissions that consist of  
25 natural crustal material and are produced either by natural forces, such  
26 as wind or erosion, or by anthropogenic activities, such as agricultural  
27 operations, excavation, blasting, drilling, handling, storage, earth  
28 moving, crushing, grinding or traffic over paved or unpaved roads, or  
29 other similar activities. This subsection does not preclude the  
30 regulation of emissions of crustal materials as particulate matter  
31 pursuant to other sections of this chapter.

APPROVED BY THE GOVERNOR APRIL 17, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2023.