START\_STATUTE49-243.  Information and criteria for issuing individual permit; definition

A.  The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1.  The design of the discharge facility.  When formal as‑built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.

2.  A description of how the facility will be operated.

3.  Existing and proposed pollutant control measures.

4.  A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.

5.  The use of water from aquifers in the discharge impact area.

6.  The existing quality of the water in the aquifers in the discharge impact area.

7.  The characteristics of the pollutants discharged by the facility.

8.  Closure strategy.

9.  Any other relevant federal or state permits issued to the applicant.

10.  Any other relevant information the director may require.

B.  The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1.  That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants.  In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph.  The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49‑241, subsection B may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a)  Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.

(b)  The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.

(c)  The age of equipment and facilities involved.

(d)  The industrial and control process employed.

(e)  The engineering aspects of the application of various types of control techniques.

(f)  Process changes.

(g)  Non-water quality environmental impacts.

(h)  The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2.  That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.

3.  That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C.  An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49‑243.01, subsection A.

D.  In assessing technology, processes, operating methods and other alternatives for the purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E.  The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F.  Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G.  A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1.  The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For the purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.

2.  The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H.  The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49‑223 at the applicable point of compliance for the facility.

I.  With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1.  Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241(b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.

2.  Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94‑580; 90 Stat. 2795).

3.  Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short‑term or long-term human health threat.

J.  The director, by rule, may prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K.  The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:

1.  Monitoring requirements.

2.  Record keeping and reporting requirements.

3.  Contingency plan requirements.

4.  Discharge limitations.

5.  Compliance schedule requirements.

6.  Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.

7.  Alert levels that, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.

8.  Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L.  With the consent of the applicant or permittee, the director may include in an aquifer protection permit for an existing facility the requirement that the applicant or permittee undertake a remedial action, as defined in section 49‑281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:

1.  The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49‑282.06 and the rules adopted pursuant to that section.

2.  The pollutant that was discharged constituted a hazardous substance.

M.  With the consent of the applicant or permittee, the director may include in an aquifer protection permit as a condition the mitigation measures authorized under section 49-286 instead of issuing a mitigation order under section 49-286.

N.  The director may deny a permit for a facility if the director determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures.  The following apply to an application for a permit or to an issued permit:

1.  The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions.

2.  For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. Except for a state or federal agency or a county, city, town or other local governmental entity, the cost estimate shall be based on the cost for the applicant or permittee to hire a third party to conduct the closure strategy or plan unless the financial responsibility mechanism provided pursuant to this subsection is a self‑assurance or a guarantee and the director determines that the applicant or permittee is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting postclosure monitoring and maintenance. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall update its cost estimate:

(a)  For the duration of the permit on a periodic basis as scheduled in the permit but not more frequently than once every five years. The cost estimate shall be updated to adjust for inflation or as necessary to reflect increased or decreased costs resulting from changes to the facility or to the facility closure strategy or plan, or to any other relevant conditions related to the facility.

(b)  For a significant amendment as defined by rule adopted by the director, if required to address incremental changes in the cost estimate that result from the significant amendment.

3.  Except for a state or federal agency or a county, city, town or other local governmental entity, the applicant or permittee shall demonstrate financial responsibility to cover the estimated costs to close the facility and, if necessary, to conduct postclosure monitoring and maintenance by providing to the director for approval a financial assurance mechanism or combination of mechanisms as prescribed in rules adopted by the director or in 40 Code of Federal Regulations section 264.143 (f)(1) and (10) as of January 1, 2014.  An applicant or permittee that demonstrates financial responsibility by means of a self‑assurance or guarantee shall aggregate the estimated closure and postclosure costs for all aquifer protection permits in this state for which the applicant, permittee or guarantor has provided a self-assurance or a guarantee in order to determine whether the applicant, permittee or guarantor meets the applicable financial test.

4.  The permittee shall maintain its demonstration of financial responsibility prescribed in this subsection for the duration of the individual permit. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall periodically demonstrate financial responsibility and report to the director that the financial assurance mechanism is being maintained as scheduled in the permit and as prescribed in paragraph 3 of this subsection but not more frequently than once every two years. The permit's applicable reporting schedule shall be based on the type of financial assurance mechanism that is selected pursuant to this subsection.

5.  A demonstration of financial responsibility made for a facility as prescribed by section 49‑770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section.

6.  A demonstration of financial assurance or competence required under this section or section 49‑770 for a facility shall not be required before completion of construction but shall be required before the department issues approval to operate. Financial assurance for a facility is not required pursuant to this section if substantially similar financial assurance for that facility is required and has been provided pursuant to other federal, state or local laws, and evidence of that financial assurance is filed with the director.

7.  Financial information required to be supplied under this subsection is confidential.

O.  The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P.  The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1 of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area‑wide permit.  An area‑wide permit shall specify all of the following:

1.  A description of the pollutant management area and point or points of compliance.

2.  Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and that are included in the area‑wide permit.

3.  For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.

4.  A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q.  The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications. END\_STATUTE