

REFERENCE TITLE: storm water discharges; construction sites

State of Arizona
Senate
Fiftieth Legislature
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2012

SB 1289

Introduced by
Senators Griffin, Allen; Representatives Montenegro, Stevens: Senator
Gould; Representatives Brophy McGee, Carter, Crandell, Gowan

AN ACT

AMENDING SECTIONS 49-245.01 AND 49-255.01, ARIZONA REVISED STATUTES; RELATING
TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-245.01, Arizona Revised Statutes, is amended to
3 read:

4 49-245.01. Storm water general permit

5 A. A general permit is issued for facilities **THAT ARE** used solely for
6 the management of storm water and that are regulated by the clean water act,
7 including catchments, impoundments and sumps, provided the following
8 conditions are met:

9 1. The owner or operator of the facility has obtained a national
10 pollutant discharge elimination system permit **OR AN ARIZONA POLLUTANT**
11 **DISCHARGE ELIMINATION SYSTEM PERMIT** issued pursuant to the clean water act
12 for any storm water discharges at the facility, or that the facility has
13 applied, and not been denied coverage, for this type of permit for any storm
14 water discharges at the facility.

15 2. The owner or operator notifies the director that the facility has
16 met the requirements of paragraph 1 of this subsection.

17 3. The owner or operator of the facility has in place any required
18 storm water pollution prevention plan **UNLESS THE OWNER OR OPERATOR QUALIFIES**
19 **FOR A GENERAL PERMIT PURSUANT TO SECTION 49-255.01.**

20 B. If the director determines that discharges of storm water from a
21 facility or facilities covered by this general permit are causing a violation
22 of aquifer water quality standards at the applicable point of compliance, the
23 director may revoke the general permit of the facility or facilities or may
24 require that an individual permit be obtained pursuant to section 49-243. If
25 the director determines that discharges of storm water from a facility or
26 facilities covered by this general permit, with reasonable probability, may
27 cause a violation of aquifer water quality standards at the applicable point
28 of compliance, the director may require a facility or facilities covered by
29 the general permit to obtain an individual permit pursuant to section 49-243.

30 Sec. 2. Section 49-255.01, Arizona Revised Statutes, is amended to
31 read:

32 49-255.01. Arizona pollutant discharge elimination system
33 program; rules and standards; affirmative defense;
34 fees; general permit; exemption from termination

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

37 1. In conformance with a permit that is issued or authorized under
38 this article.

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

42 B. The director shall adopt rules to establish an AZPDES permit
43 program consistent with the requirements of sections 402(b) and 402(p) of the
44 clean water act. This program shall include requirements to ensure
45 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 that is more stringent than or conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and no more stringent than the clean water act and this article.

C. The rules adopted by the director 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 section 49-203, subsection A, paragraph 7, 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. NO LATER THAN JUNE 1, 2013 FOR FACILITIES THAT DO NOT DISCHARGE, A PROCEDURE THAT ALLOWS OWNERS OR OPERATORS OF THOSE FACILITIES TO OBTAIN A CERTIFICATION FROM THE DIRECTOR THAT THE FACILITY DOES NOT REQUIRE A PERMIT ISSUED PURSUANT TO THIS ARTICLE.

~~4.~~ 5. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

D. ~~Nothing in~~ This article ~~affects~~ 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 of 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.

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

3 1. All requirements in this article or rules adopted pursuant to this
4 article relating to state implementation of sections 301, 302, 306 and 307 of
5 the clean water act, except for any standard that is imposed under section
6 307 of the clean water act for a toxic pollutant that is injurious to human
7 health.

8 2. Limitations for pollutants in navigable waters adopted pursuant to
9 sections 49-221 and 49-222, if the discharge of the pollutant is specifically
10 limited in a permit issued pursuant to this article or the pollutant was
11 specifically identified as present or potentially present in facility
12 discharges during the application process for the permit.

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

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

23 1. Within the thirty day period, an appeal is filed with the water
24 quality appeals board pursuant to section 49-323.

25 2. A later effective date is specified in the decision.

26 I. In addition to other reservations of rights provided by this
27 chapter, nothing in this article shall impair or affect rights or the
28 exercise of rights to water claimed, recognized, permitted, certificated,
29 adjudicated or decreed pursuant to state or other law.

30 J. Only for a one-time rule making after ~~the effective date of this~~
31 ~~amendment to this section~~ JULY 29, 2010, the director shall establish by rule
32 fees, including maximum fees, for processing, issuing and denying an
33 application for a permit pursuant to this section. After the one-time rule
34 making, the director shall not increase those fees by rule without specific
35 statutory authority for the increase. Monies collected pursuant to this
36 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
37 water quality fee fund established by section 49-210.

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

40 L. A GENERAL PERMIT IS ISSUED FOR DISCHARGES OF STORM WATER FROM
41 CONSTRUCTION ACTIVITY SITES THAT PROVIDE FOR RETENTION OF STORM WATER FROM
42 THE CONSTRUCTION SITE IN A MANNER THAT ELIMINATES DISCHARGES FROM THE SITE,
43 EXCEPT FOR THE OCCURRENCE OF AN EXTREME EVENT, IF ALL OF THE FOLLOWING
44 CONDITIONS ARE MET:

1 1. THE NEAREST DOWNSTREAM RECEIVING WATER IS EPHEMERAL.

2 2. THE CONSTRUCTION ACTIVITY OCCURS ON A SITE DESIGNED SO THAT ALL
3 STORM WATER GENERATED BY DISTURBED SURFACES IS DIRECTED TO ONE OR MORE
4 RETENTION BASINS THAT ARE DESIGNED TO RETAIN THE RUNOFF FROM AN EXTREME
5 EVENT. FOR THE PURPOSES OF THIS SUBSECTION, "EXTREME EVENT" MEANS A RAINFALL
6 EVENT THAT MEETS OR EXCEEDS THE LOCAL ONE HUNDRED-YEAR, TWO-HOUR STORM EVENT
7 AS CALCULATED BY A REGISTERED PROFESSIONAL ENGINEER USING STANDARD INDUSTRY
8 PRACTICES.

9 3. CONSTRUCTION ACTIVITY IS PHASED IN A MANNER THAT PROVIDES FOR
10 INSTALLATION OF THE RETENTION BASINS AT THE COMMENCEMENT OF CONSTRUCTION AND
11 SUFFICIENT GRADING IS COMPLETED WITHIN THIRTY DAYS AFTER COMMENCEMENT OF
12 CONSTRUCTION SO THAT ALL RUNOFF FROM DISTURBED AREAS OF THE SITE FLOWS TOWARD
13 THE RETENTION BASINS.

14 4. THE OWNER OR OPERATOR SUBMITS A NOTICE OF INTENT TO BE COVERED BY
15 THE GENERAL PERMIT TO THE DIRECTOR ON A FORM PROVIDED BY THE DIRECTOR. THE
16 FORM SHALL INCLUDE A CERTIFICATION FROM A REGISTERED PROFESSIONAL ENGINEER
17 THAT THE SITE DESIGN AND THE GRADING PLANS MEET THE STANDARDS PRESCRIBED BY
18 THIS SECTION.

19 5. CONSTRUCTION CONFORMS TO THE STANDARDS PRESCRIBED BY THIS SECTION.

20 M. AN OWNER OR OPERATOR WHO IS ISSUED A PERMIT BY THE DIRECTOR
21 PURSUANT TO THIS ARTICLE OR WHO QUALIFIES FOR GENERAL PERMIT COVERAGE UNDER
22 THIS SECTION OR UNDER THIS ARTICLE SHALL NOT BE REQUIRED BY THE DIRECTOR, A
23 POLITICAL SUBDIVISION OR A POLITICAL SUBDIVISION ACTING UNDER THE AUTHORITY
24 OF A PERMIT ISSUED BY THE DIRECTOR TO OBTAIN A PERMIT UNDER THIS ARTICLE OR
25 ANY LOCAL GOVERNMENT EQUIVALENT PERMIT FROM A POLITICAL SUBDIVISION OF THIS
26 STATE FOR THE SAME DISCHARGE.

27 N. IF THE DIRECTOR COMMENCES PROCEEDINGS FOR THE RENEWAL OF A GENERAL
28 PERMIT ISSUED PURSUANT TO THIS ARTICLE, THE EXISTING GENERAL PERMIT SHALL NOT
29 EXPIRE AND COVERAGE MAY CONTINUE TO BE OBTAINED BY NEW DISCHARGERS UNTIL THE
30 PROCEEDINGS HAVE RESULTED IN A FINAL DETERMINATION BY THE DIRECTOR. IF THE
31 PROCEEDINGS RESULT IN A DECISION NOT TO RENEW THE GENERAL PERMIT, THE
32 EXISTING GENERAL PERMIT SHALL CONTINUE IN EFFECT UNTIL THE LAST DAY FOR
33 FILING FOR REVIEW OF THE DECISION OF THE DIRECTOR NOT TO RENEW THE PERMIT OR
34 UNTIL ANY LATER DATE THAT IS FIXED BY COURT ORDER.

35 ~~1.~~ 0. This program is exempt from section 41-3102.