

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SENATE BILL 1274

AN ACT

AMENDING SECTIONS 49-201, 49-243, 49-244 AND 49-286, ARIZONA REVISED STATUTES; RELATING TO AQUIFER PROTECTION PERMITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-201, Arizona Revised Statutes, is amended to
3 read:

4 49-201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administrator" means the administrator of the United States
7 environmental protection agency.

8 2. "Aquifer" means a geologic unit that contains sufficient saturated
9 permeable material to yield usable quantities of water to a well or spring.

10 3. "Best management practices" means those methods, measures or
11 practices to prevent or reduce discharges and includes structural and
12 nonstructural controls and operation and maintenance procedures. Best
13 management practices may be applied before, during and after discharges to
14 reduce or eliminate the introduction of pollutants into receiving waters.
15 Economic, institutional and technical factors shall be considered in
16 developing best management practices.

17 4. "CERCLA" means the comprehensive environmental response,
18 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
19 2767; 42 United States Code sections 9601 through 9657), commonly known as
20 "superfund".

21 5. "Clean closure" means implementation of all actions specified in ~~a~~
22 AN AQUIFER PROTECTION permit, if any, as closure requirements, as well as
23 elimination, to the greatest degree practicable, of any reasonable
24 probability of further discharge from the facility and of EITHER exceeding
25 aquifer water quality standards at the applicable point of compliance OR, IF
26 AN AQUIFER WATER QUALITY STANDARD IS EXCEEDED AT THE TIME THE PERMIT IS
27 ISSUED, CAUSING FURTHER DEGRADATION OF THE AQUIFER AT THE APPLICABLE POINT OF
28 COMPLIANCE AS PROVIDED IN SECTION 49-243, SUBSECTION B, PARAGRAPH 3. Clean
29 closure also means postclosure monitoring and maintenance are unnecessary ~~to~~
30 ~~meet the requirements of this chapter~~ TO MEET THE REQUIREMENTS IN AN AQUIFER
31 PROTECTION PERMIT.

32 6. "Clean water act" means the federal water pollution control act
33 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections
34 1251 through 1376), as amended.

35 7. "Closed facility" means:

36 (a) A facility that ceased operation before January 1, 1986, that is
37 not, on August 13, 1986, engaged in the activity for which the facility was
38 designed and that was previously operated and for which there is no intent to
39 resume operation.

40 (b) A facility that has been approved as a clean closure by the
41 director.

42 (c) A facility at which any postclosure monitoring and maintenance
43 plan, notifications and approvals required in a permit have been completed.

44 8. "Concentrated animal feeding operation" means an animal feeding
45 operation that meets the criteria prescribed in 40 Code of Federal

1 Regulations part 122, appendix B for determining a concentrated animal
2 feeding operation for purposes of 40 Code of Federal Regulations sections
3 122.23 and 122.24, appendix C.

4 9. "Department" means the department of environmental quality.

5 10. "Direct reuse" means the beneficial use of reclaimed water for
6 specific purposes authorized pursuant to section 49-203, subsection A,
7 paragraph 6.

8 11. "Director" means the director of environmental quality or the
9 director's designee.

10 12. "Discharge" means the direct or indirect addition of any pollutant
11 to the waters of the state from a facility. For purposes of the aquifer
12 protection permit program prescribed by article 3 of this chapter, discharge
13 means the addition of a pollutant from a facility either directly to an
14 aquifer or to the land surface or the vadose zone in such a manner that there
15 is a reasonable probability that the pollutant will reach an aquifer.

16 13. "Discharge impact area" means the potential areal extent of
17 pollutant migration, as projected on the land surface, as the result of a
18 discharge from a facility.

19 14. "Discharge limitation" means any restriction, prohibition,
20 limitation or criteria established by the director, through a rule, permit or
21 order, on quantities, rates, concentrations, combinations, toxicity and
22 characteristics of pollutants.

23 15. "Environment" means navigable waters, any other surface waters,
24 groundwater, drinking water supply, land surface or subsurface strata or
25 ambient air, within or bordering on this state.

26 16. "Existing facility" means a facility on which construction began
27 before August 13, 1986 and which is neither a new facility nor a closed
28 facility. For the purposes of this definition, construction on a facility
29 has begun if the facility owner or operator has either:

30 (a) Begun, or caused to begin, as part of a continuous on-site
31 construction program any placement, assembly or installation of a building,
32 structure or equipment.

33 (b) Entered a binding contractual obligation to purchase a building,
34 structure or equipment which is intended to be used in its operation within a
35 reasonable time. Options to purchase or contracts which can be terminated or
36 modified without substantial loss, and contracts for feasibility engineering
37 and design studies, do not constitute a contractual obligation for purposes
38 of this definition.

39 17. "Facility" means any land, building, installation, structure,
40 equipment, device, conveyance, area, source, activity or practice from which
41 there is, or with reasonable probability may be, a discharge.

42 18. "Gray water" means wastewater that has been collected separately
43 from a sewage flow and that originates from a clothes washer or a bathroom
44 tub, shower or sink but that does not include wastewater from a kitchen sink,
45 dishwasher or toilet.

- 1 19. "Hazardous substance" means:
2 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
3 307(a) of the clean water act.
4 (b) Any element, compound, mixture, solution or substance designated
5 pursuant to section 102 of CERCLA.
6 (c) Any hazardous waste having the characteristics identified under or
7 listed pursuant to section 49-922.
8 (d) Any hazardous air pollutant listed under section 112 of the
9 federal clean air act (42 United States Code section 7412).
10 (e) Any imminently hazardous chemical substance or mixture with
11 respect to which the administrator has taken action pursuant to section 7 of
12 the federal toxic substances control act (15 United States Code section
13 2606).
14 (f) Any substance which the director, by rule, either designates as a
15 hazardous substance following the designation of the substance by the
16 administrator under the authority described in subdivisions (a) through (e)
17 of this paragraph or designates as a hazardous substance on the basis of a
18 determination that such substance represents an imminent and substantial
19 endangerment to public health.
- 20 20. "Inert material" means broken concrete, asphaltic pavement,
21 manufactured asbestos-containing products, brick, rock, gravel, sand and
22 soil. Inert material also includes material that when subjected to a water
23 leach test that is designed to approximate natural infiltrating waters will
24 not leach substances in concentrations that exceed numeric aquifer water
25 quality standards established pursuant to section 49-223, including
26 overburden and wall rock that is not acid generating, taking into
27 consideration acid neutralization potential, and that has not and will not be
28 subject to mine leaching operations.
- 29 21. "Major modification" means a physical change in an existing
30 facility or a change in its method of operation that results in a significant
31 increase or adverse alteration in the characteristics or volume of the
32 pollutants discharged, or the addition of a process or major piece of
33 production equipment, building or structure that is physically separated from
34 the existing operation and that causes a discharge, provided that:
35 (a) A modification to a groundwater protection permit facility as
36 defined in section 49-241.01, subsection C that would qualify for an
37 area-wide permit pursuant to section 49-243, ~~subsection P~~ consisting of an
38 activity or structure listed in section 49-241, subsection B shall not
39 constitute a major modification solely because of that listing.
40 (b) For a groundwater protection permit facility as defined in section
41 49-241.01, subsection C, a physical expansion that is accomplished by lateral
42 accretion or upward expansion within the pollutant management area of the
43 existing facility or group of facilities shall not constitute a major
44 modification if the accretion or expansion is accomplished through sound
45 engineering practice in a manner compatible with existing facility design,

1 taking into account safety, stability and risk of environmental release. For
2 a facility described in section 49-241.01, subsection C, paragraph 1,
3 expansion of a facility shall conform with the terms and conditions of the
4 applicable permit. For a facility described in section 49-241.01, subsection
5 C, paragraph 2, if the area of the contemplated expansion is not identified
6 in the notice of disposal, the owner or operator of the facility shall submit
7 to the director the information required by section 49-243, subsection A,
8 paragraphs 1, 2, 3 and 7.

9 22. "Navigable waters" means the waters of the United States as defined
10 by section 502(7) of the clean water act (33 United States Code section
11 1362(7)).

12 23. "New facility" means a previously closed facility that resumes
13 operation or a facility on which construction was begun after August 13, 1986
14 on a site at which no other facility is located or to totally replace the
15 process or production equipment that causes the discharge from an existing
16 facility. A major modification to an existing facility is deemed a new
17 facility to the extent that the criteria in section 49-243, subsection B,
18 paragraph 1 can be practicably applied to such modification. For the
19 purposes of this definition, construction on a facility has begun if the
20 facility owner or operator has either:

21 (a) Begun, or caused to begin as part of a continuous on-site
22 construction program, any placement, assembly or installation of a building,
23 structure or equipment.

24 (b) Entered a binding contractual obligation to purchase a building,
25 structure or equipment which is intended to be used in its operation within a
26 reasonable time. Options to purchase or contracts which can be terminated or
27 modified without substantial loss, and contracts for feasibility engineering
28 and design studies, do not constitute a contractual obligation for purposes
29 of this definition.

30 24. "Nonpoint source" means any conveyance which is not a point source
31 from which pollutants are or may be discharged to navigable waters.

32 25. "On-site wastewater treatment facility" means a conventional septic
33 tank system or alternative system that is installed at a site to treat and
34 dispose of wastewater of predominantly human origin that is generated at that
35 site.

36 26. "Permit" means a written authorization issued by the director or
37 prescribed by this chapter or in a rule adopted under this chapter stating
38 the conditions and restrictions governing a discharge or governing the
39 construction, operation or modification of a facility.

40 27. "Person" means an individual, employee, officer, managing body,
41 trust, firm, joint stock company, consortium, public or private corporation,
42 including a government corporation, partnership, association or state, a
43 political subdivision of this state, a commission, the United States
44 government or any federal facility, interstate body or other entity.

1 28. "Point source" means any discernible, confined and discrete
2 conveyance, including, but not limited to, any pipe, ditch, channel, tunnel,
3 conduit, well, discrete fissure, container, rolling stock, concentrated
4 animal feeding operation or vessel or other floating craft from which
5 pollutants are or may be discharged to navigable waters. Point source does
6 not include return flows from irrigated agriculture.

7 29. "Pollutant" means fluids, contaminants, toxic wastes, toxic
8 pollutants, dredged spoil, solid waste, substances and chemicals, pesticides,
9 herbicides, fertilizers and other agricultural chemicals, incinerator
10 residue, sewage, garbage, sewage sludge, munitions, petroleum products,
11 chemical wastes, biological materials, radioactive materials, heat, wrecked
12 or discarded equipment, rock, sand, cellar dirt and mining, industrial,
13 municipal and agricultural wastes or any other liquid, solid, gaseous or
14 hazardous substances.

15 30. "Postclosure monitoring and maintenance" means those activities
16 that are conducted after closure notification and that are necessary to:

17 (a) Keep the facility in compliance with EITHER THE aquifer water
18 quality standards at the applicable point of compliance OR, FOR ANY AQUIFER
19 WATER QUALITY STANDARD THAT IS EXCEEDED AT THE TIME THE AQUIFER PROTECTION
20 PERMIT IS ISSUED, THE REQUIREMENT TO PREVENT THE FACILITY FROM FURTHER
21 DEGRADING THE AQUIFER AT THE APPLICABLE POINT OF COMPLIANCE AS PROVIDED UNDER
22 SECTION 49-243, SUBSECTION B, PARAGRAPH 3.

23 (b) Verify that the ACTIONS OR CONTROLS SPECIFIED AS CLOSURE
24 REQUIREMENTS IN AN APPROVED closure ~~design has eliminated discharge to the~~
25 ~~extent intended~~ PLAN OR STRATEGY ARE ROUTINELY INSPECTED AND MAINTAINED.

26 (c) Perform any remedial, ~~or~~ mitigative OR CORRECTIVE ~~action~~ ACTIONS
27 OR CONTROLS AS SPECIFIED IN THE AQUIFER PROTECTION PERMIT OR PERFORM
28 CORRECTIVE ACTION AS necessary to comply with this PARAGRAPH AND ARTICLE 3 OF
29 THIS chapter.

30 (d) Meet property use restrictions.

31 31. "Practicably" means able to be reasonably done from the standpoint
32 of technical practicability and, except for pollutants addressed in section
33 49-243, subsection I, economically achievable on an industry-wide basis.

34 32. "Reclaimed water" means water that has been treated or processed by
35 a wastewater treatment plant or an on-site wastewater treatment facility.

36 33. "Regulated agricultural activity" means the application of nitrogen
37 fertilizer or a concentrated animal feeding operation.

38 34. "Safe drinking water act" means the federal safe drinking water
39 act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

40 35. "Standards" means water quality standards, pretreatment standards
41 and toxicity standards established pursuant to this chapter.

42 36. "Standards of performance" means performance standards, design
43 standards, best management practices, technologically based standards and
44 other standards, limitations or restrictions established by the director by
45 rule or by permit condition.

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

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

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

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

7 8. Closure strategy.

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

10 10. Any other relevant information the director may require.

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

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

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

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

39 (c) The age of equipment and facilities involved.

40 (d) The industrial and control process employed.

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

43 (f) Process changes.

44 (g) Non-water quality environmental impacts.

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

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

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

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

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

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

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

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

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

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

42 H. The director shall issue a permit to a person for water storage at
43 a storage facility proposed under title 45, chapter 3.1 if the person
44 demonstrates that the facility will be so designed, constructed and operated
45 as to ensure that the project will not cause or contribute to the violation

1 of any standard adopted pursuant to section 49-223 at the applicable point of
2 compliance for the facility.

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

7 1. Any organic substance listed by the secretary of the department of
8 health and human services pursuant to 42 United States Code section
9 241(b)(4), as known to be carcinogens or reasonably anticipated to be
10 carcinogens.

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

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

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

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

25 1. Monitoring requirements.

26 2. Record keeping and reporting requirements.

27 3. Contingency plan requirements.

28 4. Discharge limitations.

29 5. Compliance schedule requirements.

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

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

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

36 L. WITH THE CONSENT OF THE APPLICANT OR PERMITTEE, the director may
37 include in an aquifer protection permit for an existing facility the
38 requirement that the ~~owner or operator of the facility~~ APPLICANT OR PERMITTEE
39 undertake a remedial action, as defined in section 49-281, to prevent,
40 minimize or mitigate damage to the public health or welfare or to the waters
41 of the state resulting from a discharge that occurred before August 13, 1986,
42 if the following conditions are met:

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

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

3 ~~M. The director may include in an aquifer protection permit as a~~
4 ~~condition the mitigation measures described in an order issued under section~~
5 ~~49-286.~~

6 M. WITH THE CONSENT OF THE APPLICANT OR PERMITTEE, THE DIRECTOR MAY
7 INCLUDE IN AN AQUIFER PROTECTION PERMIT AS A CONDITION THE MITIGATION
8 MEASURES AUTHORIZED UNDER SECTION 49-286 INSTEAD OF ISSUING A MITIGATION
9 ORDER UNDER SECTION 49-286.

10 N. The director may deny a permit for a facility if the director
11 determines that the applicant is incapable of fully carrying out the terms
12 and conditions of the permit, including any conditions that require
13 monitoring or installing and maintaining discharge control measures. THE
14 FOLLOWING APPLY TO AN APPLICATION FOR A PERMIT OR TO AN ISSUED PERMIT:

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

19 2. For the purposes of evaluating an applicant's financial competence
20 for closure, the director may consider a closure strategy and cost estimate
21 rather than a detailed closure plan. EXCEPT FOR A STATE OR FEDERAL AGENCY OR
22 A COUNTY, CITY, TOWN OR OTHER LOCAL GOVERNMENTAL ENTITY, THE COST ESTIMATE
23 SHALL BE BASED ON THE COST FOR THE APPLICANT OR PERMITTEE TO HIRE A THIRD
24 PARTY TO CONDUCT THE CLOSURE STRATEGY OR PLAN UNLESS THE FINANCIAL
25 RESPONSIBILITY MECHANISM PROVIDED PURSUANT TO THIS SUBSECTION IS A
26 SELF-ASSURANCE OR A GUARANTEE AND THE DIRECTOR DETERMINES THAT THE APPLICANT
27 OR PERMITTEE IS TECHNICALLY AND FINANCIALLY CAPABLE OF CLOSING THE FACILITY
28 AT ITS OWN COST AND, IF NECESSARY, OF CONDUCTING POST-CLOSURE MONITORING AND
29 MAINTENANCE. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY, TOWN OR
30 OTHER LOCAL GOVERNMENTAL ENTITY, THE PERMITTEE SHALL UPDATE ITS COST
31 ESTIMATE:

32 (a) FOR THE DURATION OF THE PERMIT ON A PERIODIC BASIS AS SCHEDULED IN
33 THE PERMIT BUT NOT MORE FREQUENTLY THAN ONCE EVERY FIVE YEARS. THE COST
34 ESTIMATE SHALL BE UPDATED TO ADJUST FOR INFLATION OR AS NECESSARY TO REFLECT
35 INCREASED OR DECREASED COSTS RESULTING FROM CHANGES TO THE FACILITY OR TO THE
36 FACILITY CLOSURE STRATEGY OR PLAN, OR TO ANY OTHER RELEVANT CONDITIONS
37 RELATED TO THE FACILITY.

38 (b) FOR A SIGNIFICANT AMENDMENT AS DEFINED BY RULE ADOPTED BY THE
39 DIRECTOR, IF REQUIRED TO ADDRESS INCREMENTAL CHANGES IN THE COST ESTIMATE
40 THAT RESULT FROM THE SIGNIFICANT AMENDMENT.

41 3. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY, TOWN OR
42 OTHER LOCAL GOVERNMENTAL ENTITY, THE APPLICANT OR PERMITTEE SHALL DEMONSTRATE
43 FINANCIAL RESPONSIBILITY TO COVER THE ESTIMATED COSTS TO CLOSE THE FACILITY
44 AND, IF NECESSARY, TO CONDUCT POST-CLOSURE MONITORING AND MAINTENANCE BY
45 PROVIDING TO THE DIRECTOR FOR APPROVAL A FINANCIAL ASSURANCE MECHANISM OR

1 COMBINATION OF MECHANISMS AS PRESCRIBED IN RULES ADOPTED BY THE DIRECTOR OR
2 IN 40 CODE OF FEDERAL REGULATIONS SECTION 264.143 (f)(1) AND (10) AS OF
3 JANUARY 1, 2014. AN APPLICANT OR PERMITTEE THAT DEMONSTRATES FINANCIAL
4 RESPONSIBILITY BY MEANS OF A SELF-ASSURANCE OR GUARANTEE SHALL AGGREGATE THE
5 ESTIMATED CLOSURE AND POST-CLOSURE COSTS FOR ALL AQUIFER PROTECTION PERMITS
6 IN THIS STATE FOR WHICH THE APPLICANT, PERMITTEE OR GUARANTOR HAS PROVIDED A
7 SELF-ASSURANCE OR A GUARANTEE IN ORDER TO DETERMINE WHETHER THE APPLICANT,
8 PERMITTEE OR GUARANTOR MEETS THE APPLICABLE FINANCIAL TEST.

9 4. THE PERMITTEE SHALL MAINTAIN ITS DEMONSTRATION OF FINANCIAL
10 RESPONSIBILITY PRESCRIBED IN THIS SUBSECTION FOR THE DURATION OF THE
11 INDIVIDUAL PERMIT. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY,
12 TOWN OR OTHER LOCAL GOVERNMENTAL ENTITY, THE PERMITTEE SHALL PERIODICALLY
13 DEMONSTRATE FINANCIAL RESPONSIBILITY AND REPORT TO THE DIRECTOR THAT THE
14 FINANCIAL ASSURANCE MECHANISM IS BEING MAINTAINED AS SCHEDULED IN THE PERMIT
15 AND AS PRESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION BUT NOT MORE FREQUENTLY
16 THAN ONCE EVERY TWO YEARS. THE PERMIT'S APPLICABLE REPORTING SCHEDULE SHALL
17 BE BASED ON THE TYPE OF FINANCIAL ASSURANCE MECHANISM THAT IS SELECTED
18 PURSUANT TO THIS SUBSECTION.

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

22 6. A demonstration of financial assurance or competence required under
23 this section or section 49-770 for a facility shall not be required before
24 completion of construction but shall be required before the department issues
25 approval to operate. FINANCIAL ASSURANCE FOR A FACILITY IS NOT REQUIRED
26 PURSUANT TO THIS SECTION IF SUBSTANTIALLY SIMILAR FINANCIAL ASSURANCE FOR
27 THAT FACILITY IS REQUIRED AND HAS BEEN PROVIDED PURSUANT TO OTHER FEDERAL,
28 STATE OR LOCAL LAWS, AND EVIDENCE OF THAT FINANCIAL ASSURANCE IS FILED WITH
29 THE DIRECTOR.

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

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

38 P. The director may issue a single area-wide permit applicable to
39 facilities under common ownership and located in a contiguous geographic area
40 in lieu of an individual permit for each facility. In issuing an area-wide
41 permit, the demonstration required under subsection B, paragraphs 2 and 3 of
42 this section may be considered collectively for all facilities included in
43 the permit. The director may evaluate discharge reduction collectively for
44 existing facilities in the pollutant management area by considering any one
45 or all of the factors set forth in subsection B, paragraph 1 of this section.

1 The director may consolidate those permit conditions listed in subsection K
2 of this section that have general applicability to the facilities included in
3 the area-wide permit. An area-wide permit shall specify all of the
4 following:

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

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

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

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

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

40 Sec. 3. Section 49-244, Arizona Revised Statutes, is amended to read:

41 49-244. Point of compliance

42 The director shall designate a point or points of compliance for each
43 facility receiving a permit under this article. **FOR THE PURPOSES OF THIS**
44 **CHAPTER**, the point of compliance is the point at which compliance ~~with~~ **MUST**
45 **BE DETERMINED FOR EITHER THE** aquifer water quality standards ~~shall be~~

1 ~~determined~~ OR, IF AN AQUIFER WATER QUALITY STANDARD IS EXCEEDED AT THE TIME
2 THE AQUIFER PROTECTION PERMIT IS ISSUED, THE REQUIREMENT THAT THERE BE NO
3 FURTHER DEGRADATION OF THE AQUIFER AS PROVIDED IN SECTION 49-243, SUBSECTION
4 B, PARAGRAPH 3. The point of compliance shall be a vertical plane
5 downgradient of the facility that extends through the uppermost aquifers
6 underlying that facility. For an aquifer ~~which~~ THAT has no existing or
7 reasonably foreseeable drinking water beneficial use, the director may
8 establish monitoring for compliance in another aquifer in lieu of monitoring
9 in the uppermost aquifer. The point of compliance shall be determined as
10 follows:

11 1. Except as provided in paragraph 2 OF THIS SECTION, for a pollutant
12 that is a hazardous substance the point of compliance is the limit of the
13 pollutant management area. The pollutant management area is the limit
14 projected in the horizontal plane of the area on which pollutants are or will
15 be placed. The pollutant management area includes horizontal space taken up
16 by any liner, dike or other barrier designed to contain pollutants in the
17 facility. If the facility contains more than one discharging activity, the
18 pollutant management area is described by an imaginary line circumscribing
19 the several discharging activities.

20 2. A point of compliance for hazardous substances other than that
21 identified in paragraph 1 OF THIS SECTION may be approved by the director if
22 the facility owner or operator can demonstrate either:

23 (a) That it is technically impracticable or inappropriate considering
24 the likely fate or transport of a pollutant in an aquifer to monitor at the
25 boundary specified in paragraph 1 OF THIS SECTION.

26 (b) The alternative point of compliance will allow installation and
27 operation of the monitoring facilities that are substantially less costly.
28 Such a request by a facility owner or operator under this paragraph must be
29 supported by an analysis of the volume and characteristics of the pollutants
30 that may be discharged and the ability of the vadose zone to attenuate the
31 particular pollutants that may be discharged, including such factors as
32 climate, hydrology, geology and soil chemistry. In no event shall an
33 alternative point of compliance be further from the boundary specified in
34 paragraph 1 OF THIS SECTION than is necessary for purposes of this paragraph,
35 subdivisions (a) and (b) OF THIS PARAGRAPH, and in no event shall it be so
36 located as to result in an increased threat to an existing or reasonably
37 foreseeable drinking water source. In addition an alternate compliance point
38 for a hazardous substance pursuant to this subdivision shall never be further
39 downgradient than any of the following:

40 (i) The property boundary.

41 (ii) Any point of an existing or reasonably foreseeable future
42 drinking water source.

43 (iii) Seven hundred fifty feet from the edge of the pollutant
44 management area.

1 3. For pollutants that are not hazardous substances the director, in
2 identifying a point of compliance, shall take into account the volume and
3 characteristics of the pollutants, the practical difficulties associated with
4 implementation of applicable water pollution control requirements, whether
5 the facility is a new facility or an existing facility, water conservation
6 and augmentation and the site-specific characteristics of the facility,
7 including, but not limited to, climate, hydrology, geology, soil chemistry
8 and pollutant levels in the aquifer. The point of compliance must be so
9 located as to ensure protection of all current and reasonably foreseeable
10 future uses of the aquifer.

11 Sec. 4. Section 49-286, Arizona Revised Statutes, is amended to read:
12 49-286. Mitigation of non-hazardous releases

13 A. If the director determines that a drinking water source is being or
14 is about to be rendered unusable without treatment as a drinking water source
15 by a non-hazardous substance that was disposed ~~before the effective date of~~
16 ~~this chapter~~ by a person that would be a responsible party under section
17 49-283 if the substance were a hazardous substance, the director may order
18 that person to perform one or more of the following mitigation measures:

- 19 1. Providing an alternative water supply.
- 20 2. Mixing or blending if economically practicable.
- 21 3. Economically and technically practicable treatment before ingesting
22 the water.
- 23 4. Such other mutually agreeable mitigation measures as are necessary
24 to achieve the purposes of this section.

25 B. The director's selection of mitigation measures shall balance the
26 short-term and long-term public benefits of mitigation with the cost of each
27 alternative measure. The director may only require the least costly
28 alternative if more than one alternative may render water usable as a
29 drinking water source.

30 C. A mitigation order issued under this section is enforceable under
31 sections 49-261 and 49-264.