

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 permit, if any, as closure requirements, as well as elimination, to the
23 greatest degree practicable, of any reasonable probability of further
24 discharge from the facility and of exceeding aquifer water quality standards
25 at the applicable point of compliance. Clean closure also means postclosure
26 monitoring and maintenance are unnecessary ~~to meet the requirements of this~~
27 ~~chapter~~.

28 6. "Clean water act" means the federal water pollution control act
29 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections
30 1251 through 1376), as amended.

31 7. "Closed facility" means:

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

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

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

40 8. "Concentrated animal feeding operation" means an animal feeding
41 operation that meets the criteria prescribed in 40 Code of Federal
42 Regulations part 122, appendix B for determining a concentrated animal
43 feeding operation for purposes of 40 Code of Federal Regulations sections
44 122.23 and 122.24, appendix C.

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

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

4 11. "Director" means the director of environmental quality or the
5 director's designee.

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

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

15 14. "Discharge limitation" means any restriction, prohibition,
16 limitation or criteria established by the director, through a rule, permit or
17 order, on quantities, rates, concentrations, combinations, toxicity and
18 characteristics of pollutants.

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

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

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

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

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

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

42 19. "Hazardous substance" means:

43 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
44 307(a) of the clean water act.

1 (b) Any element, compound, mixture, solution or substance designated
2 pursuant to section 102 of CERCLA.

3 (c) Any hazardous waste having the characteristics identified under or
4 listed pursuant to section 49-922.

5 (d) Any hazardous air pollutant listed under section 112 of the
6 federal clean air act (42 United States Code section 7412).

7 (e) Any imminently hazardous chemical substance or mixture with
8 respect to which the administrator has taken action pursuant to section 7 of
9 the federal toxic substances control act (15 United States Code section
10 2606).

11 (f) Any substance which the director, by rule, either designates as a
12 hazardous substance following the designation of the substance by the
13 administrator under the authority described in subdivisions (a) through (e)
14 of this paragraph or designates as a hazardous substance on the basis of a
15 determination that such substance represents an imminent and substantial
16 endangerment to public health.

17 20. "Inert material" means broken concrete, asphaltic pavement,
18 manufactured asbestos-containing products, brick, rock, gravel, sand and
19 soil. Inert material also includes material that when subjected to a water
20 leach test that is designed to approximate natural infiltrating waters will
21 not leach substances in concentrations that exceed numeric aquifer water
22 quality standards established pursuant to section 49-223, including
23 overburden and wall rock that is not acid generating, taking into
24 consideration acid neutralization potential, and that has not and will not be
25 subject to mine leaching operations.

26 21. "Major modification" means a physical change in an existing
27 facility or a change in its method of operation that results in a significant
28 increase or adverse alteration in the characteristics or volume of the
29 pollutants discharged, or the addition of a process or major piece of
30 production equipment, building or structure that is physically separated from
31 the existing operation and that causes a discharge, provided that:

32 (a) A modification to a groundwater protection permit facility as
33 defined in section 49-241.01, subsection C that would qualify for an
34 area-wide permit pursuant to section 49-243, ~~subsection P~~ consisting of an
35 activity or structure listed in section 49-241, subsection B shall not
36 constitute a major modification solely because of that listing.

37 (b) For a groundwater protection permit facility as defined in section
38 49-241.01, subsection C, a physical expansion that is accomplished by lateral
39 accretion or upward expansion within the pollutant management area of the
40 existing facility or group of facilities shall not constitute a major
41 modification if the accretion or expansion is accomplished through sound
42 engineering practice in a manner compatible with existing facility design,
43 taking into account safety, stability and risk of environmental release. For
44 a facility described in section 49-241.01, subsection C, paragraph 1,
45 expansion of a facility shall conform with the terms and conditions of the

1 applicable permit. For a facility described in section 49-241.01, subsection
2 C, paragraph 2, if the area of the contemplated expansion is not identified
3 in the notice of disposal, the owner or operator of the facility shall submit
4 to the director the information required by section 49-243, subsection A,
5 paragraphs 1, 2, 3 and 7.

6 22. "Navigable waters" means the waters of the United States as defined
7 by section 502(7) of the clean water act (33 United States Code section
8 1362(7)).

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

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

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

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

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

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

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

42 28. "Point source" means any discernible, confined and discrete
43 conveyance, including, but not limited to, any pipe, ditch, channel, tunnel,
44 conduit, well, discrete fissure, container, rolling stock, concentrated
45 animal feeding operation or vessel or other floating craft from which

1 pollutants are or may be discharged to navigable waters. Point source does
2 not include return flows from irrigated agriculture.

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

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

13 (a) Keep the facility in compliance with aquifer water quality
14 standards at the applicable point of compliance.

15 (b) Verify that the APPROVED closure design ~~has eliminated discharge~~
16 ~~to the extent intended~~ IS ROUTINELY INSPECTED AND MAINTAINED.

17 (c) Perform any ~~remedial or mitigative~~ CORRECTIVE action necessary to
18 comply with this PARAGRAPH AND ARTICLE 3 OF THIS chapter.

19 (d) Meet property use restrictions.

20 31. "Practicably" means able to be reasonably done from the standpoint
21 of technical practicability and, except for pollutants addressed in section
22 49-243, subsection I, economically achievable on an industry-wide basis.

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

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

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

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

31 36. "Standards of performance" means performance standards, design
32 standards, best management practices, technologically based standards and
33 other standards, limitations or restrictions established by the director by
34 rule or by permit condition.

35 37. "Tank" means a stationary device, including a sump, that is
36 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
37 material that provides substantial structural support, and that is designed
38 to contain an accumulation of solid, liquid or gaseous materials.

39 38. "Toxic pollutant" means a substance that will cause significant
40 adverse reactions if ingested in drinking water. Significant adverse
41 reactions are reactions that may indicate a tendency of a substance or
42 mixture to cause long lasting or irreversible damage to human health.

1 39. "Trade secret" means information to which all of the following
2 apply:

3 (a) A person has taken reasonable measures to protect from disclosure
4 and the person intends to continue to take such measures.

5 (b) The information is not, and has not been, reasonably obtainable
6 without the person's consent by other persons, other than governmental
7 bodies, by use of legitimate means, other than discovery based on a showing
8 of special need in a judicial or quasi-judicial proceeding.

9 (c) No statute specifically requires disclosure of the information to
10 the public.

11 (d) The person has satisfactorily shown that disclosure of the
12 information is likely to cause substantial harm to the business's competitive
13 position.

14 40. "Vadose zone" means the zone between the ground surface and any
15 aquifer.

16 41. "Waters of the state" means all waters within the jurisdiction of
17 this state including all perennial or intermittent streams, lakes, ponds,
18 impounding reservoirs, marshes, watercourses, waterways, wells, aquifers,
19 springs, irrigation systems, drainage systems and other bodies or
20 accumulations of surface, underground, natural, artificial, public or private
21 water situated wholly or partly in or bordering on the state.

22 42. "Well" means a bored, drilled or driven shaft, pit or hole whose
23 depth is greater than its largest surface dimension.

24 Sec. 2. Section 49-243, Arizona Revised Statutes, is amended to read:

25 49-243. Information and criteria for issuing individual permit;
26 definition

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

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

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

36 3. Existing and proposed pollutant control measures.

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

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

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

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

43 8. Closure strategy.

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

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

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

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

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

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

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

31 (d) The industrial and control process employed.

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

34 (f) Process changes.

35 (g) Non-water quality environmental impacts.

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

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

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

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

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

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

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

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

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

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

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

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

43 1. Any organic substance listed by the secretary of the department of
44 health and human services pursuant to 42 United States Code section

1 241(b)(4), as known to be carcinogens or reasonably anticipated to be
2 carcinogens.

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

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

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

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

17 1. Monitoring requirements.

18 2. Record keeping and reporting requirements.

19 3. Contingency plan requirements.

20 4. Discharge limitations.

21 5. Compliance schedule requirements.

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

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

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

28 L. WITH THE CONSENT OF THE APPLICANT, the director may include in an
29 aquifer protection permit for an existing facility the requirement that the
30 ~~owner or operator of the facility~~ APPLICANT undertake a remedial action, as
31 defined in section 49-281, to prevent, minimize or mitigate damage to the
32 public health or welfare or to the waters of the state resulting from a
33 discharge that occurred before August 13, 1986, if the following conditions
34 are met:

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

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

40 ~~M. The director may include in an aquifer protection permit as a~~
41 ~~condition the mitigation measures described in an order issued under section~~
42 ~~49-286.~~

43 ~~N.~~ M. The director may deny a permit for a facility if the director
44 determines that the applicant is incapable of fully carrying out the terms
45 and conditions of the permit, including any conditions that require

1 monitoring or installing and maintaining discharge control measures. THE
2 FOLLOWING APPLY TO AN APPLICATION FOR A PERMIT OR TO AN ISSUED PERMIT:

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

7 2. For the purposes of evaluating an applicant's financial competence
8 for closure, the director may consider a closure strategy and cost estimate
9 rather than a detailed closure plan. EXCEPT FOR A STATE OR FEDERAL AGENCY OR
10 A COUNTY, CITY, TOWN OR OTHER LOCAL GOVERNMENTAL ENTITY, THE COST ESTIMATE
11 SHALL BE BASED ON THE COST FOR THE APPLICANT OR PERMITEE TO HIRE A THIRD
12 PARTY TO CONDUCT THE CLOSURE STRATEGY OR PLAN UNLESS THE FINANCIAL
13 RESPONSIBILITY MECHANISM PROVIDED PURSUANT TO THIS SUBSECTION IS A
14 SELF-ASSURANCE OR A GUARANTEE AND THE DIRECTOR DETERMINES THAT THE APPLICANT
15 OR PERMITEE IS TECHNICALLY AND FINANCIALLY CAPABLE OF CLOSING THE FACILITY
16 AT ITS OWN COST AND, IF NECESSARY, OF CONDUCTING POST-CLOSURE MONITORING AND
17 MAINTENANCE. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY, TOWN OR
18 OTHER LOCAL GOVERNMENTAL ENTITY, THE PERMITEE SHALL UPDATE ITS COST
19 ESTIMATE:

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

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

29 3. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY, TOWN OR
30 OTHER LOCAL GOVERNMENTAL ENTITY, THE APPLICANT OR PERMITEE SHALL DEMONSTRATE
31 FINANCIAL RESPONSIBILITY TO COVER THE ESTIMATED COSTS TO CLOSE THE FACILITY
32 AND, IF NECESSARY, TO CONDUCT POST-CLOSURE MONITORING AND MAINTENANCE BY
33 PROVIDING TO THE DIRECTOR FOR APPROVAL A FINANCIAL ASSURANCE MECHANISM OR
34 COMBINATION OF MECHANISMS AS PRESCRIBED IN RULES ADOPTED BY THE DIRECTOR OR
35 IN 40 CODE OF FEDERAL REGULATIONS SECTION 264.143 (f)(1) AND (10) AS ADOPTED
36 ON JANUARY 1, 2014. AN APPLICANT OR PERMITEE THAT DEMONSTRATES FINANCIAL
37 RESPONSIBILITY BY MEANS OF A SELF-ASSURANCE OR GUARANTEE SHALL AGGREGATE THE
38 ESTIMATED CLOSURE AND POST-CLOSURE COSTS FOR ALL AQUIFER PROTECTION PERMITS
39 IN THIS STATE FOR WHICH THE APPLICANT, PERMITEE OR GUARANTOR HAS PROVIDED A
40 SELF-ASSURANCE OR A GUARANTEE IN ORDER TO DETERMINE WHETHER THE APPLICANT,
41 PERMITEE OR GUARANTOR MEETS THE APPLICABLE FINANCIAL TEST.

42 4. THE PERMITEE SHALL MAINTAIN ITS DEMONSTRATION OF FINANCIAL
43 RESPONSIBILITY PRESCRIBED IN THIS SUBSECTION FOR THE DURATION OF THE
44 INDIVIDUAL PERMIT. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY,
45 TOWN OR OTHER LOCAL GOVERNMENTAL ENTITY, THE PERMITEE SHALL PERIODICALLY

1 DEMONSTRATE FINANCIAL RESPONSIBILITY AND REPORT TO THE DIRECTOR THAT THE
2 FINANCIAL ASSURANCE MECHANISM IS BEING MAINTAINED AS SCHEDULED IN THE PERMIT
3 AND AS PRESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION BUT NOT MORE FREQUENTLY
4 THAN ONCE EVERY TWO YEARS. THE PERMIT'S APPLICABLE REPORTING SCHEDULE SHALL
5 BE BASED ON THE TYPE OF FINANCIAL ASSURANCE MECHANISM THAT IS SELECTED
6 PURSUANT TO THIS SUBSECTION.

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

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

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

20 ~~0.~~ N. The director shall require an applicant for an individual
21 permit to submit evidence that the discharging facility complies with
22 applicable municipal or county zoning ordinances and regulations. The
23 director shall not issue the permit unless it appears from the evidence
24 submitted by the applicant that the facility complies with the applicable
25 zoning ordinances and regulations.

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

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

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

43 3. For multiple facilities within the pollutant management area that
44 are substantially similar in nature and, considered alone, would have a small
45 discharge impact area compared to other facilities in the area, narrative

1 permit conditions may be used to define the best available demonstrated
2 control technology, processes, operating methods or other alternatives
3 consistent with subsection B, paragraph 1 of this section replacing the need
4 for an individual technical review.

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

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

28 Sec. 3. Section 49-244, Arizona Revised Statutes, is amended to read:
29 49-244. Point of compliance

30 The director shall designate a point or points of compliance for each
31 facility receiving a permit under this article. The point of compliance is
32 the point at which compliance with aquifer water quality standards shall be
33 determined. **FOR THE PURPOSES OF THIS CHAPTER**, the point of compliance shall
34 be a vertical plane downgradient of the facility that extends through the
35 uppermost aquifers underlying that facility. **THE AQUIFER WATER QUALITY
36 STANDARD SHALL BE EQUIVALENT TO THE APPLICABLE AQUIFER WATER QUALITY STANDARD
37 ADOPTED PURSUANT TO SECTION 49-221 OR 49-223 OR TO ANY LIMIT ESTABLISHED BY
38 THE DIRECTOR FOR THE PURPOSES OF AN AQUIFER PROTECTION PERMIT PURSUANT TO
39 SECTION 49-243, SUBSECTION B, PARAGRAPH 3.** For an aquifer ~~which~~ THAT has no
40 existing or reasonably foreseeable drinking water beneficial use, the
41 director may establish monitoring for compliance in another aquifer in lieu
42 of monitoring in the uppermost aquifer. The point of compliance shall be
43 determined as follows:

44 1. Except as provided in paragraph 2 **OF THIS SECTION**, for a pollutant
45 that is a hazardous substance the point of compliance is the limit of the

1 pollutant management area. The pollutant management area is the limit
2 projected in the horizontal plane of the area on which pollutants are or will
3 be placed. The pollutant management area includes horizontal space taken up
4 by any liner, dike or other barrier designed to contain pollutants in the
5 facility. If the facility contains more than one discharging activity, the
6 pollutant management area is described by an imaginary line circumscribing
7 the several discharging activities.

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

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

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

28 (i) The property boundary.

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

31 (iii) Seven hundred fifty feet from the edge of the pollutant
32 management area.

33 3. For pollutants that are not hazardous substances the director, in
34 identifying a point of compliance, shall take into account the volume and
35 characteristics of the pollutants, the practical difficulties associated with
36 implementation of applicable water pollution control requirements, whether
37 the facility is a new facility or an existing facility, water conservation
38 and augmentation and the site-specific characteristics of the facility,
39 including, but not limited to, climate, hydrology, geology, soil chemistry
40 and pollutant levels in the aquifer. The point of compliance must be so
41 located as to ensure protection of all current and reasonably foreseeable
42 future uses of the aquifer.

1 Sec. 4. Section 49-286, Arizona Revised Statutes, is amended to read:
2 49-286. Mitigation of non-hazardous releases

3 A. If the director determines that a drinking water source is being or
4 is about to be rendered unusable without treatment as a drinking water source
5 by a non-hazardous substance that was disposed ~~before the effective date of~~
6 ~~this chapter~~ by a person that would be a responsible party under section
7 49-283 if the substance were a hazardous substance, the director may order
8 that person to perform one or more of the following mitigation measures:

9 1. Providing an alternative water supply.
10 2. Mixing or blending if economically practicable.
11 3. Economically and technically practicable treatment before ingesting
12 the water.

13 4. Such other mutually agreeable mitigation measures as are necessary
14 to achieve the purposes of this section.

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

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