

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

**CHAPTER 115**  
**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  
46 Regulations part 122, appendix B for determining a concentrated animal

1 feeding operation for purposes of 40 Code of Federal Regulations sections  
2 122.23 and 122.24, appendix C.

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

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

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

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

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

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

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

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

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

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

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

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

45 19. "Hazardous substance" means:

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

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

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

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

9 (e) Any imminently hazardous chemical substance or mixture with  
10 respect to which the administrator has taken action pursuant to section 7 of  
11 the federal toxic substances control act (15 United States Code section  
12 2606).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 28. "Point source" means any discernible, confined and discrete  
44 conveyance, including, but not limited to, any pipe, ditch, channel, tunnel,  
45 conduit, well, discrete fissure, container, rolling stock, concentrated  
46 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 EITHER THE aquifer water  
14 quality standards at the applicable point of compliance OR, FOR ANY AQUIFER  
15 WATER QUALITY STANDARD THAT IS EXCEEDED AT THE TIME THE AQUIFER PROTECTION  
16 PERMIT IS ISSUED, THE REQUIREMENT TO PREVENT THE FACILITY FROM FURTHER  
17 DEGRADING THE AQUIFER AT THE APPLICABLE POINT OF COMPLIANCE AS PROVIDED UNDER  
18 SECTION 49-243, SUBSECTION B, PARAGRAPH 3.

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

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

26 (d) Meet property use restrictions.

27 31. "Practicably" means able to be reasonably done from the standpoint  
28 of technical practicability and, except for pollutants addressed in section  
29 49-243, subsection I, economically achievable on an industry-wide basis.

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

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

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

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

38 36. "Standards of performance" means performance standards, design  
39 standards, best management practices, technologically based standards and  
40 other standards, limitations or restrictions established by the director by  
41 rule or by permit condition.

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



1           8. Closure strategy.

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

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

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

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

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

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

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

34           (d) The industrial and control process employed.

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

37           (f) Process changes.

38           (g) Non-water quality environmental impacts.

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

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

44           3. That no pollutants discharged will further degrade at the  
45 applicable point of compliance the quality of any aquifer that at the time of

1 the issuance of the permit violates the aquifer quality standard for that  
2 pollutant.

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

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

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

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

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

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

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

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

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

45 1. Any organic substance listed by the secretary of the department of  
46 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 OR PERMITTEE, the director may  
29 include in an aquifer protection permit for an existing facility the  
30 requirement that the ~~owner or operator of the facility~~ APPLICANT OR PERMITTEE  
31 undertake a remedial action, as defined in section 49-281, to prevent,  
32 minimize or mitigate damage to the public health or welfare or to the waters  
33 of the state resulting from a discharge that occurred before August 13, 1986,  
34 if the following conditions 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 M. WITH THE CONSENT OF THE APPLICANT OR PERMITTEE, THE DIRECTOR MAY  
44 INCLUDE IN AN AQUIFER PROTECTION PERMIT AS A CONDITION THE MITIGATION  
45 MEASURES AUTHORIZED UNDER SECTION 49-286 INSTEAD OF ISSUING A MITIGATION  
46 ORDER UNDER SECTION 49-286.

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

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

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

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

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

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

45 4. THE PERMITTEE SHALL MAINTAIN ITS DEMONSTRATION OF FINANCIAL  
46 RESPONSIBILITY PRESCRIBED IN THIS SUBSECTION FOR THE DURATION OF THE

1 INDIVIDUAL PERMIT. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY,  
2 TOWN OR OTHER LOCAL GOVERNMENTAL ENTITY, THE PERMITTEE SHALL PERIODICALLY  
3 DEMONSTRATE FINANCIAL RESPONSIBILITY AND REPORT TO THE DIRECTOR THAT THE  
4 FINANCIAL ASSURANCE MECHANISM IS BEING MAINTAINED AS SCHEDULED IN THE PERMIT  
5 AND AS PRESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION BUT NOT MORE FREQUENTLY  
6 THAN ONCE EVERY TWO YEARS. THE PERMIT'S APPLICABLE REPORTING SCHEDULE SHALL  
7 BE BASED ON THE TYPE OF FINANCIAL ASSURANCE MECHANISM THAT IS SELECTED  
8 PURSUANT TO THIS SUBSECTION.

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

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

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

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

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

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

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

45 3. For multiple facilities within the pollutant management area that  
46 are substantially similar in nature and, considered alone, would have a small

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

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

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

29 Sec. 3. Section 49-244, Arizona Revised Statutes, is amended to read:  
30 49-244. Point of compliance

31 The director shall designate a point or points of compliance for each  
32 facility receiving a permit under this article. **FOR THE PURPOSES OF THIS**  
33 **CHAPTER, the point of compliance is the point at which compliance with MUST**  
34 **BE DETERMINED FOR EITHER THE** aquifer water quality standards ~~shall be~~  
35 ~~determined~~ **OR, IF AN AQUIFER WATER QUALITY STANDARD IS EXCEEDED AT THE TIME**  
36 **THE AQUIFER PROTECTION PERMIT IS ISSUED, THE REQUIREMENT THAT THERE BE NO**  
37 **FURTHER DEGRADATION OF THE AQUIFER AS PROVIDED IN SECTION 49-243, SUBSECTION**  
38 **B, PARAGRAPH 3.** The point of compliance shall be a vertical plane  
39 downgradient of the facility that extends through the uppermost aquifers  
40 underlying that facility. For an aquifer ~~which~~ **THAT** has no existing or  
41 reasonably foreseeable drinking water beneficial use, the director may  
42 establish monitoring for compliance in another aquifer in lieu of monitoring  
43 in the uppermost aquifer. The point of compliance shall be determined as  
44 follows:

45 1. Except as provided in paragraph 2 **OF THIS SECTION,** for a pollutant  
46 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.

43 Sec. 4. Section 49-286, Arizona Revised Statutes, is amended to read:  
44 49-286. Mitigation of non-hazardous releases

45 A. If the director determines that a drinking water source is being or  
46 is about to be rendered unusable without treatment as a drinking water source

1 by a non-hazardous substance that was disposed ~~before the effective date of~~  
2 ~~this chapter~~ by a person that would be a responsible party under section  
3 49-283 if the substance were a hazardous substance, the director may order  
4 that person to perform one or more of the following mitigation measures:  
5       1. Providing an alternative water supply.  
6       2. Mixing or blending if economically practicable.  
7       3. Economically and technically practicable treatment before ingesting  
8 the water.  
9       4. Such other mutually agreeable mitigation measures as are necessary  
10 to achieve the purposes of this section.  
11       B. The director's selection of mitigation measures shall balance the  
12 short-term and long-term public benefits of mitigation with the cost of each  
13 alternative measure. The director may only require the least costly  
14 alternative if more than one alternative may render water usable as a  
15 drinking water source.  
16       C. A mitigation order issued under this section is enforceable under  
17 sections 49-261 and 49-264.

APPROVED BY THE GOVERNOR APRIL 22, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2014.