

REFERENCE TITLE: aquifer protection permits; post-closure procedure

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

SB 1274

Introduced by

Senators Griffin, Barto, Burges, Crandell, Driggs, McGuire, Pierce;
Representatives Cardenas, Gowan, Pratt, Tobin; Senators Biggs, Farnsworth
D, Gallardo, McComish, Melvin, Pancrazi, Reagan, Shooter, Ward, Worsley,
Yarbrough, Yee; Representative Shope

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.

43 39. "Trade secret" means information to which all of the following
44 apply:

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

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

7 (c) No statute specifically requires disclosure of the information to
8 the public.

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

12 40. "Vadose zone" means the zone between the ground surface and any
13 aquifer.

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

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

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

23 49-243. Information and criteria for issuing individual permit;
24 definition

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

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

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

34 3. Existing and proposed pollutant control measures.

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

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

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

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

41 8. Closure strategy.

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

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

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

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

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

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

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

30 (d) The industrial and control process employed.

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

33 (f) Process changes.

34 (g) Non-water quality environmental impacts.

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

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

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

44 C. An applicant shall satisfy the requirements of subsection B,
45 paragraph 1 of this section either by making a demonstration that the

1 facility will meet the criteria of that paragraph or by agreeing to utilize
2 the appropriate presumptive controls adopted by the director pursuant to
3 section 49-243.01, subsection A.

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

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

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

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

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

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

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

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

41 1. Any organic substance listed by the secretary of the department of
42 health and human services pursuant to 42 United States Code section
43 241(b)(4), as known to be carcinogens or reasonably anticipated to be
44 carcinogens.

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

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

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

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

15 1. Monitoring requirements.

16 2. Record keeping and reporting requirements.

17 3. Contingency plan requirements.

18 4. Discharge limitations.

19 5. Compliance schedule requirements.

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

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

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

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

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

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

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

41 ~~N.~~ **M.** The director may deny a permit for a facility if the director
42 determines that the applicant is incapable of fully carrying out the terms
43 and conditions of the permit, including any conditions that require
44 monitoring or installing and maintaining discharge control measures. **THE**
45 **FOLLOWING APPLY TO AN APPLICATION FOR A PERMIT OR TO AN ISSUED PERMIT:**

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

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

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

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

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

40 4. THE PERMITTEE SHALL MAINTAIN ITS DEMONSTRATION OF FINANCIAL
41 RESPONSIBILITY PRESCRIBED IN THIS SUBSECTION FOR THE DURATION OF THE
42 INDIVIDUAL PERMIT. EXCEPT FOR A STATE OR FEDERAL AGENCY OR A COUNTY, CITY,
43 TOWN OR OTHER LOCAL GOVERNMENTAL ENTITY, THE PERMITTEE SHALL PERIODICALLY
44 DEMONSTRATE FINANCIAL RESPONSIBILITY AND REPORT TO THE DIRECTOR THAT THE
45 FINANCIAL ASSURANCE MECHANISM IS BEING MAINTAINED AS SCHEDULED IN THE PERMIT

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

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

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

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

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

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

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

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

41 3. For multiple facilities within the pollutant management area that
42 are substantially similar in nature and, considered alone, would have a small
43 discharge impact area compared to other facilities in the area, narrative
44 permit conditions may be used to define the best available demonstrated
45 control technology, processes, operating methods or other alternatives

1 consistent with subsection B, paragraph 1 of this section replacing the need
2 for an individual technical review.

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

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

26 Sec. 3. Section 49-244, Arizona Revised Statutes, is amended to read:
27 49-244. Point of compliance

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

42 1. Except as provided in paragraph 2 **OF THIS SECTION**, for a pollutant
43 that is a hazardous substance the point of compliance is the limit of the
44 pollutant management area. The pollutant management area is the limit
45 projected in the horizontal plane of the area on which pollutants are or will

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

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

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

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

26 (i) The property boundary.

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

29 (iii) Seven hundred fifty feet from the edge of the pollutant
30 management area.

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

41 Sec. 4. Section 49-286, Arizona Revised Statutes, is amended to read:

42 **49-286. Mitigation of non-hazardous releases**

43 A. If the director determines that a drinking water source is being or
44 is about to be rendered unusable without treatment as a drinking water source
45 by a non-hazardous substance that was disposed ~~before the effective date of~~

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