STATE OF ARIZONA
HOUSE OF REPRESENTATIVES
FIFTY-FIFTH LEGISLATURE
SECOND REGULAR SESSION
2022

CHAPTER 204

HOUSE BILL 2406

AN ACT

AMENDING SECTIONS 49-203, 49-210, 49-241.02, 49-242 AND 49-255.01, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-203, Arizona Revised Statutes, is amended to read:

49-203. Powers and duties of the director and department
A. The director shall:
1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:
   (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.
   (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
   (c) Maintenance but not construction of drainage ditches.
   (d) Construction and maintenance of irrigation ditches.
   (e) Maintenance of structures such as dams, dikes and levees.
4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.
5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.
9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection B shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:
   (a) The fees established by the department under the dredge and fill permit program.
   (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.
10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.
13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.
B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1, 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

9. Adopt by rule a permit program for the discharge of dredged or fill material into WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

Sec. 2. Section 49-210, Arizona Revised Statutes, is amended to read:

49-210. Water quality fee fund; appropriation; exemption; monies held in trust

A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.

B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
D. Monies in the water quality fee fund shall be used for the following purposes ACTIVITIES REQUIRED TO IMPLEMENT THIS CHAPTER, EXCEPT FOR ARTICLES 1.1 AND 5 OF THIS CHAPTER, AND TO IMPLEMENT SECTION 49-104, SUBSECTION B, PARAGRAPHS 9 THROUGH 13 AND SUBSECTION C.:

1. To issue aquifer protection permits pursuant to section 49-241.
2. The aquifer protection permit registration fee procedures pursuant to section 49-242.
3. Dry well registration fee procedures pursuant to section 49-332.
4. Technical review fee procedures pursuant to section 49-353.
5. Inspection fee procedures pursuant to section 49-104, subsection C.
6. To issue permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.
7. Operator certification pursuant to sections 49-352 and 49-361.
8. Paying the cost of implementing section 49-203, subsection A, paragraph 7 and section 49-221, subsection E.
9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.
10. To implement and administer the underground injection control permit program established pursuant to article 3.3 of this chapter.
11. To implement and administer the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

Sec. 3. Section 49-241.02, Arizona Revised Statutes, is amended to read:

49-241.02. Aquifer protection permit program fees
A. Only for a one-time rule making after July 29, 2010, the director shall establish by rule fees for aquifer protection permits, including maximum fees and fees for individual or area-wide permits, complex and standard modifications to permits and clean closure of a nonpermitted facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase. THE DEPARTMENT SHALL ADOPT BY RULE FEES TO PAY THE EXPENSES INCURRED IN IMPLEMENTING THE AQUIFER PROTECTION PERMIT PROGRAM. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
B. Each permit action application submitted by the applicant is subject to a maximum fee.

C. Notwithstanding any other provision in this section, an applicant may request that the department waive the applicable maximum fee for processing an application for a permit action. On requesting the waiver, the applicant agrees to pay the total direct costs incurred by the department in processing the application and the department may process the application for a permit action.

D. If the department contracts with a consultant under section 49-203, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and agreeing to pay to the department the costs of the consultant's services regardless of the other provisions of this section.

E. The department shall review the revenues derived from and expenses incurred for processing permit action applications through June 30, 2014 to determine the adequacy of the maximum fees. and by August 31, 2014, the department shall issue a report to the legislature on its findings.

F. For the purposes of this section:
   i. “Complex modification” means, for purposes of the mining sector, any of the following:
      (a) Any new tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance required to have an individual permit under this article, unless this new facility is within an approved passive containment capture zone under section 49-243, subsection G, paragraph 1.
      (b) The expansion of the footprint of any tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance permitted under this article if the expanded facility is not located within a passive containment capture zone under section 49-243, subsection G, paragraph 1, and the expansion either:
          (i) Requires expansion of the pollutant management area and a new or relocated point of compliance.
          (ii) Extends over a geologic unit of higher hydraulic conductivity than the original facility, unless the original facility is lined and the same liner is extended to cover the entire expansion area.
      (c) A new or expanded waste rock pile is not considered to be a discharging facility under section 49-241, subsection B and may be categorized as a complex modification for purposes of this section only if the department determines all of the following:
          (i) The new or expanded waste rock pile otherwise qualifies as a discharging facility and is not exempted under section 49-250.
          (ii) The new or expanded waste rock pile is located outside of a passive containment capture zone under section 49-243, subsection G, paragraph 1.
(iii) The new or expanded waste rock pile either requires expansion of the pollutant management area and a new or relocated point of compliance or it extends over a geologic unit of higher hydraulic conductivity than the original facility.

2. “Maximum fee” means the maximum amount the director establishes by rule for services for a permit action.

3. “Permit action” means:
   (a) Issuance of an individual or area-wide aquifer protection permit to operate or to close.
   (b) Issuance of a complex modification of an individual or area-wide aquifer protection permit.
   (c) Issuance of a clean closure approval.
   (d) Issuance of a standard modification of an individual or area-wide aquifer protection permit.
   (e) Denial of any application.
   (f) Processing any permit action application request that the applicant withdraws.

G. The department shall adopt a rule to define “complex modification” for other nonmining aquifer protection permit sectors.

Sec. 4. Section 49-242, Arizona Revised Statutes, is amended to read:
49-242. Procedural requirements for individual permits; annual registration of permittees; fee

A. The director shall prescribe by rule requirements for issuing, denying, suspending or modifying individual permits, including requirements for submitting notices, permit applications and any additional information necessary to determine whether an individual permit should be issued, and shall prescribe conditions and requirements for individual permits.

B. Each owner of an injection well, a land treatment facility, a dry well, an on-site wastewater treatment facility with a capacity of more than three thousand gallons per day, a recharge facility or a facility that discharges to protected surface waters to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily discharge of pollutants pursuant to subsection E of this section.

C. Each owner of a surface impoundment, a facility that adds a pollutant to a salt dome formation, salt bed formation, underground cave or mine, a mine tailings pile or pond, a mine leaching operation, a sewage or sludge pond or a wastewater treatment facility to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily influent of pollutants pursuant to subsection E of this section.
D. Pending the issuance of individual or area-wide aquifer protection permits, each owner of a facility that is prescribed in subsection B or C of this section that is operating on September 27, 1990 pursuant to the filing of a notice of disposal or a groundwater quality protection permit issued under title 36 shall register the notice of disposal or the permit with the director each year and shall pay an annual registration fee for each notice of disposal or permit based on the total daily influent or discharge of pollutants pursuant to subsection E of this section.

E. Only for a onetime rulemaking after July 29, 2010, the director shall establish by rule an annual registration fee for facilities prescribed by subsections B, C and D of this section. The fee shall be measured in part by the amount of discharge or influent per day from the facility. After the onetime rulemaking, the director shall not increase those fees by rule without specific statutory authority for the increase.

F. For a site with more than one permit subject to the requirements of this section, the owner or operator of the facility at that site shall pay the annual registration fee prescribed pursuant to subsection E of this section based on the permit that covers the greatest gallons of discharge or influent per day plus one-half of the annual registration fee for gallons of discharge or influent for each additional permit.

G. The director shall prescribe the procedures to register the notice of disposal or permit and collect the fee under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund to pay the reasonable and necessary costs of administering the registration program.

Sec. 5. Section 49-255.01, Arizona Revised Statutes, is amended to read:

49-255.01. Arizona pollutant discharge elimination system program; rules and standards; affirmative defense; fees; general permit

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

1. In conformance with a permit that is issued or authorized under this article or rules authorized under section 49-203, subsection A, paragraph 2.

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

B. The director shall adopt rules to establish an AZPDES permit program for discharges to WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318
and 405(a) of the clean water act. The director shall not adopt any
requirement for WOTUS that is more stringent than any requirement of the
clean water act. The director shall not adopt any requirement that
conflicts with any requirement of the clean water act. The director may
adopt federal rules pursuant to section 41-1028 or may adopt rules to
reflect local environmental conditions to the extent that the rules are
consistent with and not more stringent than the clean water act and this
article.

C. The rules adopted by the director under subsection B of this
section shall provide for:
   1. Issuing, authorizing, denying, modifying, suspending or revoking
      individual or general permits.
   2. Establishment of permit conditions, discharge
      limitations and standards of performance as prescribed by section 49-203,
      subsection A, paragraph 8 including case-by-case effluent limitations that
      are developed in a manner consistent with 40 Code of Federal Regulations
      section 125.3(c).
   3. Modifications and variances as allowed by the clean water act.
   4. Other provisions necessary for maintaining state program
      authority under section 402(b) of the clean water act.

D. This article does not affect the validity of any existing rules
that are adopted by the director and that are equivalent to and consistent
with the national pollutant discharge elimination system program
authorized under section 402 of the clean water act until new rules for
AZPDES discharges are adopted pursuant to this article.

E. An upset constitutes an affirmative defense to any
administrative, civil or criminal enforcement action brought for
noncompliance with technology-based permit discharge limitations if the
permittee complies with all of the following:
   1. The permittee demonstrates through properly signed
      contemporaneous operating logs or other relevant evidence that:
      (a) An upset occurred and that the permittee can identify the
      specific cause of the upset.
      (b) The permitted facility was being properly operated at the time
      of the upset.
      (c) If the upset causes the discharge to exceed any discharge
      limitation in the permit, the permittee submitted notice to the department
      within twenty-four hours after the upset.
      (d) The permittee has taken appropriate remedial measures including
      all reasonable steps to minimize or prevent any discharge or sewage sludge
      use or disposal that is in violation of the permit and that has a
      reasonable likelihood of adversely affecting human health or the
      environment.
2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.

F. Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:
1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.

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

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

H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:
1. Within the thirty-day period, an appeal is filed with the water quality appeals board pursuant to section 49-323.
2. A later effective date is specified in the decision.

I. In addition to other reservations of rights provided by this chapter, this article does not impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

J. Only for a onetime rulemaking after July 29, 2010, The director shall establish by rule fees, including maximum fees, for processing, issuing and denying an application for a permit pursuant to this section TO PAY EXPENSES INCURRED IN IMPLEMENTING THE AZPDES PROGRAM. After the onetime rulemaking, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

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

L. When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates
discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:

1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.

2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, "extreme event" means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.

3. The owner or operator complies with good housekeeping measures included in the general permit.

4. The owner or operator maintains the capacity of the retention basins.

5. Construction conforms to the standards prescribed by this section.

M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

APPROVED BY THE GOVERNOR APRIL 29, 2022.