

COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2691
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 49-175, Arizona Revised Statutes, is amended to
3 read:

4 49-175. Work plans

5 A. A work plan to address a release of a contaminant to the
6 environment shall include the following:

7 1. A summary of existing information on site characterization,
8 including references to known site characterization and assessment
9 information and information regarding any remediation previously conducted
10 at the site or portion of the site. The applicant shall provide copies of
11 the referenced reports to the department.

12 2. If the site or portion of the site addressed in the application
13 has not been characterized, a plan to conduct site characterization and a
14 schedule for completion. The applicant shall provide a schedule for the
15 submission of a work plan for remediation following approval of site
16 characterization.

17 3. If site characterization is completed for the site or portion of
18 the site addressed in the application, a plan for remediation which will
19 comply with subsection B of this section and a schedule for completion as
20 follows:

21 (a) The work plan shall describe how the remediation will comply
22 with subsection B of this section and how the completion of remediation
23 will be verified. The applicant and the department may agree on interim
24 performance goals. The interim performance goals shall be guidelines used

1 to determine the ongoing effectiveness of the remediation toward reaching
2 the final remediation levels.

3 (b) The work plan may provide for the remediation to be conducted in
4 phases or tasks that, if agreed to by the applicant, provide for the
5 department to review and approve a completed phase or task before
6 initiation of the next phase or task of the work plan.

7 4. A schedule for submission of progress reports to the department.
8 The progress reports shall be sufficient to allow the department to
9 determine the effectiveness of the characterization if it has not been
10 completed, followed by the remediation.

11 5. A proposal for community involvement as prescribed by section
12 49-176.

13 6. If known, a list of institutional or engineering controls
14 necessary during remediation and after completion of the proposed
15 remediation to control exposure to contaminants.

16 7. A proposal for monitoring of a site or portion of a site during
17 the remediation and after the remediation if necessary to verify whether
18 the approved remediation levels or controls have been attained and will be
19 maintained.

20 8. A list of any permits or legal requirements known by the
21 applicant to apply to the work to be performed or already performed by the
22 applicant.

23 9. If requested by the department, information regarding the
24 financial capability of the applicant to conduct the work identified in the
25 application.

26 B. Remediation levels or controls for remediation conducted pursuant
27 to this article shall be established in accordance with rules adopted
28 pursuant to section 49-282.06 unless one or more of the following ~~applies~~
29 **APPLY:**

30 1. The applicant demonstrates that remediation levels, institutional
31 controls or engineering controls for remediation of contaminated soil
32 comply with section 49-152 and the rules adopted pursuant to that section.

1 2. The applicant demonstrates that remediation levels, institutional
2 controls or engineering controls for remediation of landfills or other
3 facilities that contain materials that are not subject to section 49-152
4 and the rules adopted pursuant to that section will result in a condition
5 that does not exceed a cumulative excess lifetime cancer risk between $1 \times$
6 10^{-4} and 1×10^{-6} , and a hazard index no greater than 1. The excess
7 lifetime cancer risk shall be selected based on site-specific factors,
8 including the presence of multiple contaminants, the existence of multiple
9 pathways of exposure, the uncertainty of exposure and the sensitivity of
10 the exposed population. Approval of the use of institutional or
11 engineering controls shall require a demonstration that the controls will
12 be maintained and that the requirements of section 49-158 have been met.

13 3. The applicant demonstrates that on achieving remediation levels
14 or controls for a source or potential source of contamination to a
15 ~~navigable water~~ WOTUS, the source of contamination will not cause or
16 contribute to an exceedance of surface water quality standards, or if a
17 permit is required pursuant to 33 United States Code section 1342 for any
18 discharge from the source, that any discharges from the source will comply
19 with the permit. Approval of the use of institutional or engineering
20 controls shall require a demonstration that the controls will be maintained
21 and that the requirements of section 49-158 have been met.

22 4. The applicant demonstrates that, on achieving remediation levels
23 or controls for a source of contamination to an aquifer, the source will
24 not cause or contribute to an exceedance of aquifer water quality standards
25 beyond the boundary of the facility where the source is located. In
26 determining whether remediation levels or controls satisfy this
27 requirement, the department shall consider a demonstration by the applicant
28 that aquifer water quality standards are exceeded beyond the boundary of
29 the facility due to naturally occurring contamination or from sources
30 outside of the boundary. The applicant is not required to identify or
31 evaluate other sources. Approval of the use of institutional or

1 engineering controls shall require a demonstration that the controls will
2 be maintained and that the requirements of section 49-158 have been met.

3 C. The department, at its sole discretion, may waive any work plan
4 requirement under this section that it determines to be unnecessary to make
5 any of the determinations required under section 49-177. Decisions under
6 this subsection are not subject to appeal or dispute resolution under
7 section 49-185.

8 Sec. 2. Section 49-201, Arizona Revised Statutes, is amended to
9 read:

10 49-201. Definitions

11 In this chapter, unless the context otherwise requires:

12 1. "Administrator" means the administrator of the United States
13 environmental protection agency.

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

17 3. "Best management practices" means those methods, measures or
18 practices to prevent or reduce discharges and includes structural and
19 nonstructural controls and operation and maintenance procedures. Best
20 management practices may be applied before, during and after discharges to
21 reduce or eliminate the introduction of pollutants into receiving waters.
22 Economic, institutional and technical factors shall be considered in
23 developing best management practices.

24 4. "CERCLA" means the comprehensive environmental response,
25 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
26 2767; 42 United States Code sections 9601 through 9657), commonly known as
27 "superfund".

28 5. "Clean closure" means implementation of all actions specified in
29 an aquifer protection permit, if any, as closure requirements, as well as
30 elimination, to the greatest degree practicable, of any reasonable
31 probability of further discharge from the facility and of either exceeding
32 aquifer water quality standards at the applicable point of compliance or,

1 if an aquifer water quality standard is exceeded at the time the permit is
2 issued, causing further degradation of the aquifer at the applicable point
3 of compliance as provided in section 49-243, subsection B, paragraph 3.
4 Clean closure also means postclosure monitoring and maintenance are
5 unnecessary to meet the requirements in an aquifer protection permit.

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

9 7. "Closed facility" means:

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

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

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

18 8. "Concentrated animal feeding operation" means an animal feeding
19 operation that meets the criteria prescribed in 40 Code of Federal
20 Regulations part 122, appendix B for determining a concentrated animal
21 feeding operation for purposes of 40 Code of Federal Regulations sections
22 122.23 and 122.24, appendix C.

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

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

27 11. "Director" means the director of environmental quality or the
28 director's designee.

29 12. "Discharge" means the direct or indirect addition of any
30 pollutant to the waters of the state from a facility. For purposes of the
31 aquifer protection permit program prescribed by article 3 of this chapter,
32 discharge means the addition of a pollutant from a facility either directly

1 to an aquifer or to the land surface or the vadose zone in such a manner
2 that there is a reasonable probability that the pollutant will reach an
3 aquifer.

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

7 14. "Discharge limitation" means any restriction, prohibition,
8 limitation or criteria established by the director, through a rule, permit
9 or order, on quantities, rates, concentrations, combinations, toxicity and
10 characteristics of pollutants.

11 15. "EFFLUENT-DEPENDENT WATER" MEANS A SURFACE WATER OR PORTION OF A
12 SURFACE WATER THAT CONSISTS OF A POINT SOURCE DISCHARGE WITHOUT WHICH THE
13 SURFACE WATER WOULD BE EPHEMERAL. AN EFFLUENT-DEPENDENT WATER MAY BE
14 PERENNIAL OR INTERMITTENT DEPENDING ON THE VOLUME AND FREQUENCY OF THE
15 POINT SOURCE DISCHARGE OF TREATED WASTEWATER.

16 ~~15.~~ 16. "Environment" means ~~navigable waters~~ WOTUS, any other
17 surface waters, groundwater, drinking water supply, land surface or
18 subsurface strata or ambient air, within or bordering on this state.

19 17. "EPHEMERAL WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE
20 WATER THAT FLOWS OR POOLS ONLY IN DIRECT RESPONSE TO PRECIPITATION.

21 ~~16.~~ 18. "Existing facility" means a facility on which construction
22 began before August 13, 1986 and ~~which~~ THAT is neither a new facility nor a
23 closed facility. For the purposes of this definition, construction on a
24 facility has begun if the facility owner or operator has either:

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

28 (b) Entered a binding contractual obligation to purchase a building,
29 structure or equipment ~~which~~ THAT is intended to be used in its operation
30 within a reasonable time. Options to purchase or contracts ~~which~~ THAT can
31 be terminated or modified without substantial loss, and contracts for

1 feasibility engineering and design studies, do not constitute a contractual
2 obligation for purposes of this definition.

3 ~~17.~~ 19. "Facility" means any land, building, installation,
4 structure, equipment, device, conveyance, area, source, activity or
5 practice from which there is, or with reasonable probability may be, a
6 discharge.

7 ~~18.~~ 20. "Gray water" means wastewater that has been collected
8 separately from a sewage flow and that originates from a clothes washer or
9 a bathroom tub, shower or sink but that does not include wastewater from a
10 kitchen sink, dishwasher or toilet.

11 ~~19.~~ 21. "Hazardous substance" means:

12 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
13 307(a) of the clean water act.

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

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

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

20 (e) Any imminently hazardous chemical substance or mixture with
21 respect to which the administrator has taken action pursuant to section 7
22 of the federal toxic substances control act (15 United States Code section
23 2606).

24 (f) Any substance ~~which~~ THAT the director, by rule, either
25 designates as a hazardous substance following the designation of the
26 substance by the administrator under the authority described in
27 subdivisions (a) through (e) of this paragraph or designates as a hazardous
28 substance on the basis of a determination that such substance represents an
29 imminent and substantial endangerment to public health.

30 ~~20.~~ 22. "Inert material" means broken concrete, asphaltic pavement,
31 manufactured asbestos-containing products, brick, rock, gravel, sand and
32 soil. Inert material also includes material that when subjected to a water

1 leach test that is designed to approximate natural infiltrating waters will
2 not leach substances in concentrations that exceed numeric aquifer water
3 quality standards established pursuant to section 49-223, including
4 overburden and wall rock that is not acid generating, taking into
5 consideration acid neutralization potential, and that has not and will not
6 be subject to mine leaching operations.

7 23. "INTERMITTENT WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE
8 WATER THAT FLOWS CONTINUOUSLY DURING CERTAIN TIMES OF THE YEAR AND MORE
9 THAN IN DIRECT RESPONSE TO PRECIPITATION, SUCH AS WHEN IT RECEIVES WATER
10 FROM A SPRING, ELEVATED GROUNDWATER TABLE OR ANOTHER SURFACE SOURCE, SUCH
11 AS MELTING SNOWPACK.

12 ~~21.~~ 24. "Major modification" means a physical change in an existing
13 facility or a change in its method of operation that results in a
14 significant increase or adverse alteration in the characteristics or volume
15 of the pollutants discharged, or the addition of a process or major piece
16 of production equipment, building or structure that is physically separated
17 from the existing operation and that causes a discharge, provided that:

18 (a) A modification to a groundwater protection permit facility as
19 defined in section 49-241.01, subsection C that would qualify for an
20 area-wide permit pursuant to section 49-243 consisting of an activity or
21 structure listed in section 49-241, subsection B shall not constitute a
22 major modification solely because of that listing.

23 (b) For a groundwater protection permit facility as defined in
24 section 49-241.01, subsection C, a physical expansion that is accomplished
25 by lateral accretion or upward expansion within the pollutant management
26 area of the existing facility or group of facilities shall not constitute a
27 major modification if the accretion or expansion is accomplished through
28 sound engineering practice in a manner compatible with existing facility
29 design, taking into account safety, stability and risk of environmental
30 release. For a facility described in section 49-241.01, subsection C,
31 paragraph 1, expansion of a facility shall conform with the terms and
32 conditions of the applicable permit. For a facility described in section

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

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

8 ~~23.~~ 25. "New facility" means a previously closed facility that
9 resumes operation or a facility on which construction was begun after
10 August 13, 1986 on a site at which no other facility is located or to
11 totally replace the process or production equipment that causes the
12 discharge from an existing facility. A major modification to an existing
13 facility is deemed a new facility to the extent that the criteria in
14 section 49-243, subsection B, paragraph 1 can be practicably applied to
15 such modification. For the purposes of this definition, construction on a
16 facility has begun if the facility owner or operator has either:

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

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

26 ~~24.~~ 26. "Nonpoint source" means any conveyance ~~which~~ THAT is not a
27 point source from which pollutants are or may be discharged to ~~navigable~~
28 ~~waters~~ WOTUS.

29 27. "NON-WOTUS PROTECTED SURFACE WATER" MEANS A PROTECTED SURFACE
30 WATER THAT IS NOT A WOTUS.

31 28. "NON-WOTUS WATERS OF THE STATE" MEANS WATERS OF THE STATE THAT
32 ARE NOT WOTUS.

1 ~~25.~~ 29. "On-site wastewater treatment facility" means a
2 conventional septic tank system or alternative system that is installed at
3 a site to treat and dispose of wastewater of predominantly human origin
4 that is generated at that site.

5 30. "ORDINARY HIGH WATER MARK" MEANS THE LINE ON THE SHORE OF AN
6 INTERMITTENT OR PERENNIAL PROTECTED SURFACE WATER ESTABLISHED BY THE
7 FLUCTUATIONS OF WATER AND INDICATED BY PHYSICAL CHARACTERISTICS SUCH AS A
8 CLEAR, NATURAL LINE IMPRESSED ON THE BANK, SHELVING, CHANGES IN THE
9 CHARACTER OF SOIL, DESTRUCTION OF TERRESTRIAL VEGETATION, THE PRESENCE OF
10 LITTER AND DEBRIS OR OTHER APPROPRIATE MEANS THAT CONSIDER THE
11 CHARACTERISTICS OF THE CHANNEL, FLOODPLAIN AND RIPARIAN AREA.

12 31. "PERENNIAL WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE
13 WATER THAT FLOWS CONTINUOUSLY THROUGHOUT THE YEAR.

14 ~~26.~~ 32. "Permit" means a written authorization issued by the
15 director or prescribed by this chapter or in a rule adopted under this
16 chapter stating the conditions and restrictions governing a discharge or
17 governing the construction, operation or modification of a facility. FOR
18 THE PURPOSES OF REGULATING NON-WOTUS PROTECTED SURFACE WATERS, A PERMIT
19 SHALL NOT INCLUDE PROVISIONS GOVERNING THE CONSTRUCTION, OPERATION OR
20 MODIFICATION OF A FACILITY EXCEPT AS NECESSARY FOR THE PURPOSE OF ENSURING
21 THAT A DISCHARGE MEETS WATER QUALITY-RELATED EFFLUENT LIMITATIONS OR TO
22 REQUIRE BEST MANAGEMENT PRACTICES FOR THE PURPOSE OF ENSURING THAT A
23 DISCHARGE MEETS WATER QUALITY STANDARDS.

24 ~~27.~~ 33. "Person" means an individual, employee, officer, managing
25 body, trust, firm, joint stock company, consortium, public or private
26 corporation, including a government corporation, partnership, association
27 or state, a political subdivision of this state, a commission, the United
28 States government or any federal facility, interstate body or other entity.

29 ~~28.~~ 34. "Point source" means any discernible, confined and discrete
30 conveyance, including, ~~but not limited to,~~ any pipe, ditch, channel,
31 tunnel, conduit, well, discrete fissure, container, rolling stock,
32 concentrated animal feeding operation or vessel or other floating craft

1 from which pollutants are or may be discharged to ~~navigable waters~~ WOTUS OR
2 PROTECTED SURFACE WATER. Point source does not include return flows from
3 irrigated agriculture.

4 ~~29.~~ 35. "Pollutant" means fluids, contaminants, toxic wastes, toxic
5 pollutants, dredged spoil, solid waste, substances and chemicals,
6 pesticides, herbicides, fertilizers and other agricultural chemicals,
7 incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum
8 products, chemical wastes, biological materials, radioactive materials,
9 heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining,
10 industrial, municipal and agricultural wastes or any other liquid, solid,
11 gaseous or hazardous substances.

12 ~~30.~~ 36. "Postclosure monitoring and maintenance" means those
13 activities that are conducted after closure notification and that are
14 necessary to:

15 (a) Keep the facility in compliance with either the aquifer water
16 quality standards at the applicable point of compliance or, for any aquifer
17 water quality standard that is exceeded at the time the aquifer protection
18 permit is issued, the requirement to prevent the facility from further
19 degrading the aquifer at the applicable point of compliance as provided
20 under section 49-243, subsection B, paragraph 3.

21 (b) Verify that the actions or controls specified as closure
22 requirements in an approved closure plan or strategy are routinely
23 inspected and maintained.

24 (c) Perform any remedial, mitigative or corrective actions or
25 controls as specified in the aquifer protection permit or perform
26 corrective action as necessary to comply with this paragraph and article 3
27 of this chapter.

28 (d) Meet property use restrictions.

29 ~~31.~~ 37. "Practicably" means able to be reasonably done from the
30 standpoint of technical practicability and, except for pollutants addressed
31 in section 49-243, subsection I, economically achievable on an
32 industry-wide basis.

1 38. "PROTECTED SURFACE WATERS" MEANS WATERS OF THE STATE LISTED ON
2 THE PROTECTED SURFACE WATERS LIST UNDER SECTION 49-221, SUBSECTION G AND
3 ALL WOTUS.

4 39. "PUBLIC WATERS" MEANS WATERS OF THE STATE OPEN TO OR MANAGED FOR
5 USE BY MEMBERS OF THE GENERAL PUBLIC.

6 40. "RECHARGE PROJECT" MEANS A FACILITY NECESSARY OR CONVENIENT TO
7 OBTAIN, DIVERT, WITHDRAW, TRANSPORT, EXCHANGE, DELIVER, TREAT OR STORE
8 WATER TO INFILTRATE OR REINTRODUCE THAT WATER INTO THE GROUND.

9 ~~32.~~ 41. "Reclaimed water" means water that has been treated or
10 processed by a wastewater treatment plant or an on-site wastewater
11 treatment facility.

12 ~~33.~~ 42. "Regulated agricultural activity" means the application of
13 nitrogen fertilizer or a concentrated animal feeding operation.

14 ~~34.~~ 43. "Safe drinking water act" means the federal safe drinking
15 water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

16 ~~35.~~ 44. "Standards" means water quality standards, pretreatment
17 standards and toxicity standards established pursuant to this chapter.

18 ~~36.~~ 45. "Standards of performance" means performance standards,
19 design standards, best management practices, technologically based
20 standards and other standards, limitations or restrictions established by
21 the director by rule or by permit condition.

22 ~~37.~~ 46. "Tank" means a stationary device, including a sump, that is
23 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
24 material that provides substantial structural support, and that is designed
25 to contain an accumulation of solid, liquid or gaseous materials.

26 ~~38.~~ 47. "Toxic pollutant" means a substance that will cause
27 significant adverse reactions if ingested in drinking water. Significant
28 adverse reactions are reactions that may indicate a tendency of a substance
29 or mixture to cause long lasting or irreversible damage to human health.

30 ~~39.~~ 48. "Trade secret" means information to which all of the
31 following apply:

1 (a) A person has taken reasonable measures to protect from
2 disclosure 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
8 to 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
11 competitive position.

12 ~~40.~~ 49. "Vadose zone" means the zone between the ground surface and
13 any aquifer.

14 ~~41.~~ 50. "Waters of the state" means all waters within the
15 jurisdiction of this state including all perennial or intermittent streams,
16 lakes, ponds, impounding reservoirs, marshes, watercourses, waterways,
17 wells, aquifers, springs, irrigation systems, drainage systems and other
18 bodies or accumulations of surface, underground, natural, artificial,
19 public or private water situated wholly or partly in or bordering on the
20 state.

21 ~~42.~~ 51. "Well" means a bored, drilled or driven shaft, pit or hole
22 whose depth is greater than its largest surface dimension.

23 52. "WETLAND" MEANS, FOR THE PURPOSES OF NON-WOTUS PROTECTED SURFACE
24 WATERS, AN AREA THAT IS INUNDATED OR SATURATED BY SURFACE OR GROUNDWATER AT
25 A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND UNDER NORMAL CONDITIONS
26 DOES SUPPORT, A PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR LIFE IN
27 SATURATED SOIL CONDITIONS.

28 53. "WOTUS" MEANS WATERS OF THE STATE THAT ARE ALSO NAVIGABLE WATERS
29 AS DEFINED BY SECTION 502(7) OF THE CLEAN WATER ACT.

30 54. "WOTUS PROTECTED SURFACE WATER" MEANS A PROTECTED SURFACE WATER
31 THAT IS A WOTUS.

1 Sec. 3. Section 49-202, Arizona Revised Statutes, is amended to
2 read:

3 49-202. Designation of state agency

4 A. The department is designated as the agency for this state for all
5 purposes of the clean water act, including section 505, the resource
6 conservation and recovery act, including section 7002, and the safe
7 drinking water act. The department may take all actions necessary to
8 administer and enforce these acts as provided in this section, including
9 entering into contracts, grants and agreements, ~~the adoption, modification~~
10 **ADOPTING, MODIFYING** or ~~repeal of~~ **REPEALING** rules, and initiating
11 administrative and judicial actions to secure to this state the benefits,
12 rights and remedies of such acts.

13 B. The department shall process requests under section 401 of the
14 clean water act for certification of permits required by section 404 of the
15 clean water act in accordance with subsections C through ~~H~~ **I** of this
16 section. Subsections C, ~~and D, subsection E, paragraph 3, subsection F,~~
17 ~~paragraph 3~~ **G** and ~~subsection H~~ **I** of this section apply to the
18 certification of nationwide or general permits issued under section 404 of
19 the clean water act. If the department has denied or failed to act on
20 certification of a nationwide permit or general permit, subsections C
21 through ~~H~~ **I** of this section apply to the certification of applications for
22 or notices of coverage under those permits.

23 C. The department shall review the application for section 401
24 certification solely to determine whether the effect of the discharge will
25 comply with the water quality standards for ~~navigable waters~~ **WOTUS**
26 established by department rules adopted pursuant to section 49-221,
27 subsection A, and section 49-222. The department's review shall extend
28 only to activities conducted within the ordinary high watermark of
29 ~~navigable waters~~ **WOTUS**. To the extent that any other standards are
30 considered applicable pursuant to section 401(a)(1) of the clean water act,
31 certification of these standards is waived.

1 D. The department may include only those conditions on certification
2 under section 401 of the clean water act that are required to ensure
3 compliance with the standards identified in subsection C of this section.
4 The department may impose reporting and monitoring requirements as
5 conditions of certification under section 401 of the clean water act only
6 in accordance with department rules.

7 ~~E. Until January 1, 1999:~~

8 ~~1. The department may request supplemental information from the~~
9 ~~section 401 certification applicant if the information is necessary to make~~
10 ~~the certification determination pursuant to subsection C of this section.~~
11 ~~The department shall request this information in writing within thirty~~
12 ~~calendar days after receipt of the application for section 401~~
13 ~~certification. The request shall specifically describe the information~~
14 ~~requested. Within fifteen calendar days after receipt of the applicant's~~
15 ~~written response to a request for supplemental information, the department~~
16 ~~shall either issue a written determination that the application is complete~~
17 ~~or request specific additional information. The applicant may deem any~~
18 ~~additional requests for supplemental information as a denial of~~
19 ~~certification for purposes of subsection H of this section. If the~~
20 ~~department fails to act within the time limits prescribed by this~~
21 ~~subsection, the application is deemed complete.~~

22 ~~2. The department shall grant or deny section 401 certification and~~
23 ~~shall send a written notice of the department's decision to the applicant~~
24 ~~within thirty calendar days after receipt of a complete application for~~
25 ~~certification. Written notice of a denial of section 401 certification~~
26 ~~shall include a detailed description of the reasons for denial.~~

27 ~~3. The department may waive its right to certification by giving~~
28 ~~written notice of that waiver to the applicant. The department's failure~~
29 ~~to grant or deny an application within the time limits prescribed by this~~
30 ~~section is deemed a waiver of certification pursuant to this subsection and~~
31 ~~section 401(a)(2) of the clean water act.~~

32 ~~F. Beginning January 1, 1999:~~

1 ~~1.~~ E. The department may request supplemental information from the
2 section 401 certification applicant if the information is necessary to make
3 the certification determination pursuant to subsection C of this
4 section. The department shall request this information in writing. The
5 request shall specifically describe the information requested. After
6 receipt of the applicant's written response to a request for supplemental
7 information, the department shall either issue a written determination that
8 the application is complete or request specific additional
9 information. The applicant may deem any additional requests for
10 supplemental information as a denial of certification for THE purposes of
11 subsection ~~H~~ I of this section. In all other instances, the application
12 is complete on submission of the information requested by the department.

13 ~~2.~~ F. The department shall grant or deny section 401 certification
14 and shall send a written notice of the department's decision to the
15 applicant after receipt of a complete application for
16 certification. Written notice of a denial of section 401 certification
17 shall include a detailed description of the reasons for denial.

18 ~~3.~~ G. The department may waive its right to certification by giving
19 written notice of that waiver to the applicant. The department's failure
20 to act on an application is deemed a waiver pursuant to this subsection and
21 section 401(a)(2) of the clean water act.

22 ~~4.~~ H. The department shall adopt rules specifying the information
23 the department requires an applicant to submit under this section in order
24 to make the determination required by subsections C and D of this
25 section. Until these rules are adopted, the department shall require an
26 applicant to submit only the following information for certification under
27 this section:

- 28 1. The name, address and telephone number of the applicant.
- 29 2. A description of the project to be certified, including an
30 identification of the ~~navigable waters~~ WOTUS in which the certified
31 activities will occur.

1 3. The project location, including latitude, longitude and a legal
2 description.

3 4. A United States geological service topographic map or other
4 contour map of the project area, if available.

5 5. A map delineating the ordinary high watermark of ~~navigable waters~~
6 WOTUS affected by the activity to be certified.

7 6. A description of any measures to be applied to the activities
8 being certified in order to control the discharge of pollutants to
9 ~~navigable waters~~ WOTUS from those activities.

10 7. A description of the materials being discharged to or placed in
11 ~~navigable waters~~ WOTUS.

12 8. A copy of the application for a federal permit or license that is
13 the subject of the requested certification.

14 ~~H.~~ I. Pursuant to title 41, chapter 6, article 10 an applicant for
15 certification may appeal a denial of certification or any conditions
16 imposed on certification. Any person who is or may be adversely affected
17 by the denial of or imposition of conditions on the certification of a
18 nationwide or general permit may appeal that decision pursuant to title 41,
19 chapter 6, article 10.

20 ~~I.~~ J. Certification under section 401 of the clean water act is
21 automatically granted for quarrying, crushing and screening of nonmetallic
22 minerals in ephemeral waters if all of the following conditions are
23 satisfied within the ordinary high watermark of jurisdictional waters:

24 1. There is no disposal of construction and demolition wastes and
25 contaminated wastewater.

26 2. Water for dust suppression, if used, does not contain
27 contaminants that could violate water quality standards.

28 3. Pollution from the operation of equipment in the mining area is
29 removed and properly disposed.

30 4. Stockpiles of processed materials containing ten ~~per cent~~ PERCENT
31 or more of particles of silt are placed or stabilized to minimize loss or
32 erosion during flow events. ~~As used in~~ FOR THE PURPOSES OF this paragraph,

1 "silt" means particles finer than 0.0625 millimeter diameter on a dry
2 weight basis.

3 5. Measures are implemented to minimize upstream and downstream
4 scour during flood events to protect the integrity of buried pipelines.

5 6. On completion of quarrying operations in an area, areas denuded
6 of shrubs and woody vegetation are revegetated to the maximum extent
7 practicable.

8 ~~J.~~ K. For THE purposes of subsection ~~I.~~ J of this section,
9 "ephemeral waters" means waters of the state that have been designated as
10 ephemeral in rules adopted by the department.

11 ~~K.~~ L. Certification under section 401 of the clean water act is
12 automatically granted for any license or permit required for:

13 1. Corrective actions taken pursuant to chapter 6, article 1 of this
14 title in response to a release of a regulated substance as defined in
15 section 49-1001 except for those off-site facilities that receive for
16 treatment or disposal materials that are contaminated with a regulated
17 substance and that are received as part of a corrective action.

18 2. Response or remedial actions undertaken pursuant to chapter 2,
19 article 5 of this title or pursuant to CERCLA.

20 3. Corrective actions taken pursuant to chapter 5, article 1 of this
21 title or the resource conservation AND recovery act of 1976, as amended (42
22 United States Code sections 6901 through 6992).

23 4. Other remedial actions that have been reviewed and approved by
24 the appropriate government authority and taken pursuant to applicable
25 federal or state laws.

26 ~~L.~~ M. The department of environmental quality is designated as the
27 state water pollution control agency for this state for all purposes of
28 CERCLA, except that the department of water resources has joint authority
29 with the department of environmental quality to conduct feasibility studies
30 and remedial investigations relating to groundwater quality and may enter
31 into contracts and cooperative agreements under section 104 of CERCLA for
32 such studies and remedial investigations. The department of environmental

1 quality may take all action necessary or appropriate to secure to this
2 state the benefits of the act, and all such action shall be taken at the
3 direction of the director of environmental quality as ~~his~~ THE DIRECTOR'S
4 duties are prescribed in this chapter.

5 ~~M.~~ N. The director and the department of environmental quality may
6 enter into an interagency contract or agreement with the director of water
7 resources under title 11, chapter 7, article 3 to implement the provisions
8 of section 104 of CERCLA and to carry out the purposes of subsection ~~+~~ M
9 of this section.

10 Sec. 4. Section 49-202.01, Arizona Revised Statutes, is amended to
11 read:

12 49-202.01. Surface water quality general grazing permit; best
13 management practices for grazing activities;
14 definition

15 A. As part of the duties established pursuant to section 49-203,
16 subsection A, paragraph ~~3~~ 4, the director shall implement a surface water
17 quality general grazing permit consisting of voluntary best management
18 practices for grazing activities.

19 B. The terms and conditions of the surface water quality general
20 grazing permit shall be voluntary best management practices that have been
21 determined by the committee to be the most practical and effective means of
22 reducing or preventing the nonpoint source discharge of pollutants into
23 ~~navigable waters~~ WOTUS by grazing activities.

24 C. In adopting voluntary grazing best management practices, the
25 committee shall consider:

26 1. The availability and effectiveness of alternative technologies.

27 2. The economic and social impacts of alternative technologies on
28 grazing and associated industries.

29 3. The institutional considerations of alternative technologies.

30 4. The potential nature and severity of discharges from grazing
31 activities and their effect on ~~navigable waters~~ WOTUS.

1 D. For the purposes of this section, "grazing activities" means the
2 feeding of all classes of domestic ruminant and nonruminant animals on
3 grasses, forbs and shrubs in Arizona watersheds.

4 Sec. 5. Section 49-203, Arizona Revised Statutes, is amended to
5 read:

6 49-203. Powers and duties of the director and department

7 A. The director shall:

8 1. Adopt, by rule, water quality standards in the form and subject
9 to the considerations prescribed by article 2 of this chapter.

10 2. Adopt, by rule, a permit program FOR WOTUS that is consistent
11 with but ~~no~~ NOT more stringent than the requirements of the clean water act
12 for the point source discharge of any pollutant or combination of
13 pollutants into ~~navigable waters~~ WOTUS. The program and the rules shall be
14 sufficient to enable this state to administer the permit program identified
15 in section 402(b) of the clean water act, including the sewage sludge
16 requirements of section 405 of the clean water act and as prescribed by
17 article 3.1 of this chapter.

18 3. APPLY THE PROGRAM AND RULES AUTHORIZED UNDER PARAGRAPH 2 OF THIS
19 SUBSECTION TO POINT SOURCE DISCHARGES TO NON-WOTUS PROTECTED SURFACE
20 WATERS, CONSISTENT WITH SECTION 49-255.04, WHICH ESTABLISHES THE PROGRAM
21 COMPONENTS AND RULES THAT DO NOT APPLY TO NON-WOTUS PROTECTED SURFACE
22 WATERS. THE FOLLOWING ARE EXEMPT FROM THE NON-WOTUS PROTECTED SURFACE
23 WATERS POINT SOURCE DISCHARGE PROGRAM:

24 (a) DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO
25 A RECHARGE PROJECT.

26 (b) ESTABLISHED OR ONGOING FARMING, RANCHING AND SILVICULTURE
27 ACTIVITIES SUCH AS PLOWING, SEEDING, CULTIVATING, MINOR DRAINAGE OR
28 HARVESTING FOR THE PRODUCTION OF FOOD, FIBER OR FOREST PRODUCTS OR UPLAND
29 SOIL AND WATER CONSERVATION PRACTICES.

30 (c) MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES.

31 (d) CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.

32 (e) MAINTENANCE OF STRUCTURES SUCH AS DAMS, DIKES AND LEVEES.

1 ~~3.~~ 4. Adopt, by rule, a program to control nonpoint source
2 discharges of any pollutant or combination of pollutants into ~~navigable~~
3 ~~waters~~ WOTUS.

4 ~~4.~~ 5. Adopt, by rule, an aquifer protection permit program to
5 control discharges of any pollutant or combination of pollutants that are
6 reaching or may with a reasonable probability reach an aquifer. The permit
7 program shall be as prescribed by article 3 of this chapter.

8 ~~5.~~ 6. Adopt, by rule, the permit program for underground injection
9 control described in the safe drinking water act.

10 ~~6.~~ 7. Adopt, by rule, technical standards for conveyances of
11 reclaimed water and a permit program for the direct reuse of reclaimed
12 water.

13 ~~7.~~ 8. Adopt, by rule or as permit conditions, discharge
14 limitations, best management practice standards, new source performance
15 standards, toxic and pretreatment standards and other standards and
16 conditions as reasonable and necessary to carry out the permit programs and
17 regulatory duties described in paragraphs 2 through ~~5~~ 6 of this
18 subsection.

19 ~~8.~~ 9. Assess and collect fees to revoke, issue, deny, modify or
20 suspend permits issued pursuant to this chapter and to process permit
21 applications. The director may also assess and collect costs reasonably
22 necessary if the director must conduct sampling or monitoring relating to a
23 facility because the owner or operator of the facility has refused or
24 failed to do so on order by the director. The director shall set fees that
25 are reasonably related to the department's costs of providing the service
26 for which the fee is charged. Monies collected from aquifer protection
27 permit fees and from Arizona pollutant discharge elimination system permit
28 fees shall be deposited, pursuant to sections 35-146 and 35-147, in the
29 water quality fee fund established by section 49-210. Monies from other
30 permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in
31 the water quality fee fund unless otherwise provided by law. Monies paid
32 by an applicant for review by consultants for the department pursuant to

1 section 49-241.02, subsection D shall be deposited, pursuant to sections
2 35-146 and 35-147, in the water quality fee fund established by section
3 49-210. State agencies are exempt from all fees imposed pursuant to this
4 chapter except for those fees associated with the dredge and fill permit
5 program established pursuant to article 3.2 of this chapter. For services
6 provided under the dredge and fill permit program, a state agency shall pay
7 either:

8 (a) The fees established by the department under the dredge and fill
9 permit program.

10 (b) The reasonable cost of services provided by the department
11 pursuant to an interagency service agreement.

12 ~~9.~~ 10. Adopt, modify, repeal and enforce other rules that are
13 reasonably necessary to carry out the director's functions under this
14 chapter.

15 ~~10.~~ 11. Require monitoring at an appropriate point of compliance
16 for any organic or inorganic pollutant listed under section 49-243,
17 subsection I if the director has reason to suspect the presence of the
18 pollutant in a discharge.

19 ~~11.~~ 12. Adopt rules establishing what constitutes a significant
20 increase or adverse alteration in the characteristics or volume of
21 pollutants discharged for purposes of determining what constitutes a major
22 modification to an existing facility under the definition of new facility
23 pursuant to section 49-201. Before the adoption of these rules, the
24 director shall determine whether a change at a particular facility results
25 in a significant increase or adverse alteration in the characteristics or
26 volume of pollutants discharged on a case-by-case basis, taking into
27 account site conditions and operational factors.

28 13. CONSIDER EVIDENCE GATHERED BY THE ARIZONA NAVIGABLE STREAM
29 ADJUDICATION COMMISSION ESTABLISHED BY SECTION 37-1121 WHEN DECIDING
30 WHETHER A PERMIT IS REQUIRED TO DISCHARGE PURSUANT TO ARTICLE 3.1 OF THIS
31 CHAPTER.

32 B. The director may:

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

24 2. Require any person who has discharged, is discharging or may
25 discharge into the waters of the state under article 3, 3.1, ~~or~~ 3.2 or 3.3
26 of this chapter and any person who is subject to pretreatment standards and
27 requirements or sewage sludge use or disposal requirements under article
28 3.1 of this chapter to collect samples, to establish and maintain records,
29 including photographs, and to install, use and maintain sampling and
30 monitoring equipment to determine the absence or presence and nature of the
31 discharge or indirect discharge or sewage sludge use or disposal.

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

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

10 5. Enter into contracts and agreements with the federal government
11 to implement federal environmental statutes and programs.

12 6. Enter into intergovernmental agreements pursuant to title 11,
13 chapter 7, article 3 if the agreement is necessary to more effectively
14 administer the powers and duties described in this chapter.

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

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

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

25 C. Subject to section 38-503 and other applicable statutes and
26 rules, the department may contract with a private consultant ~~for the~~
27 ~~purposes of assisting~~ TO ASSIST the department in reviewing aquifer
28 protection permit applications and on-site wastewater treatment facilities
29 to determine whether a facility meets the criteria and requirements of this
30 chapter and the rules adopted by the director. Except as provided in
31 section 49-241.02, subsection D, the department shall not use a private
32 consultant if the fee charged for that service would be greater than the

1 fee the department would charge to provide that service. The department
2 shall pay the consultant for the services rendered by the consultant from
3 fees paid by the applicant or facility to the department pursuant to
4 subsection A, paragraph ~~8~~ 9 of this section.

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

10 Sec. 6. Section 49-210, Arizona Revised Statutes, is amended to
11 read:

12 49-210. Water quality fee fund; appropriation; exemption;
13 monies held in trust

14 A. The water quality fee fund is established consisting of monies
15 appropriated by the legislature and fees received pursuant to sections
16 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352,
17 49-353 and 49-361. The director shall administer the fund.

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

22 C. On notice from the director, the state treasurer shall invest and
23 divest monies in the fund as provided by section 35-313, and monies earned
24 from investment shall be credited to the fund.

25 D. Monies in the water quality fee fund shall be used for the
26 following purposes:

- 27 1. ~~The issuance of~~ TO ISSUE aquifer protection permits pursuant to
28 section 49-241.
- 29 2. The aquifer protection permit registration fee procedures
30 pursuant to section 49-242.
- 31 3. Dry well registration fee procedures pursuant to section 49-332.
- 32 4. Technical review fee procedures pursuant to section 49-353.

1 5. Inspection fee procedures pursuant to section 49-104,
2 subsection C.

3 6. ~~The issuance of~~ TO ISSUE permits under the Arizona pollutant
4 discharge elimination system program pursuant to section 49-255.01.

5 7. Operator certification pursuant to sections 49-352 and 49-361.

6 8. Paying the cost of implementing section 49-203, subsection A,
7 paragraph ~~6~~ 7 and section 49-221, subsection E.

8 9. Water quality monitoring pursuant to section 49-225 and reporting
9 of aquifer pollution information pursuant to section 49-249.

10 10. ~~Implementation~~ TO IMPLEMENT and ~~administration of~~ ADMINISTER the
11 underground injection control permit program established pursuant to
12 article 3.3 of this chapter.

13 11. ~~Implementation~~ TO IMPLEMENT and ~~administration of~~ ADMINISTER the
14 dredge and fill permit program established pursuant to article 3.2 of this
15 chapter, including review and analysis for issuing jurisdictional
16 determinations.

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

25 Sec. 7. Section 49-221, Arizona Revised Statutes, is amended to
26 read:

27 49-221. Water quality standards in general; protected surface
28 waters list

29 A. The director shall:

30 1. Adopt, by rule, water quality standards for all ~~navigable waters~~
31 WOTUS and for all waters in all aquifers to preserve and protect the
32 quality of those waters for all present and reasonably foreseeable future

1 uses. FOR NON-WOTUS PROTECTED SURFACE WATERS, THE DIRECTOR SHALL APPLY
2 SURFACE WATER QUALITY STANDARDS ESTABLISHED AS OF JANUARY 1, 2021, UNTIL
3 SPECIFICALLY CHANGED BY THE DIRECTOR PURSUANT TO PARAGRAPH 2 OF THIS
4 SUBSECTION. RULES REGARDING THE FOLLOWING SHALL NOT BE ADOPTED OR APPLIED
5 AS WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS:

6 (a) ANTIDegradation.

7 (b) ANTIDegradation CRITERIA.

8 (c) OUTSTANDING ARIZONA WATERS.

9 2. ADOPT, BY RULE, WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED
10 SURFACE WATERS, BY DECEMBER 31, 2022, CONSISTENT WITH PARAGRAPH 1 OF THIS
11 SUBSECTION AND AS DETERMINED NECESSARY IN THE RULEMAKING PROCESS. IN
12 ADOPTING THOSE STANDARDS, THE DIRECTOR SHALL CONSIDER THE UNIQUE
13 CHARACTERISTICS OF THIS STATE'S SURFACE WATERS AND THE ECONOMIC, SOCIAL AND
14 ENVIRONMENTAL COSTS AND BENEFITS THAT WOULD RESULT FROM THE ADOPTION OF A
15 WATER QUALITY STANDARD AT A PARTICULAR LEVEL OR FOR A PARTICULAR WATER
16 CATEGORY.

17 B. The director may adopt, by rule, water quality standards for
18 waters of the state other than those described in subsection A of this
19 section, including standards for the use of water pumped from an aquifer
20 that does not meet the standards adopted pursuant to section 49-223,
21 subsections A and B and that is put to a beneficial use other than drinking
22 water. These standards may include standards for the use of water pumped
23 as part of a remedial action. In adopting such standards, the director
24 shall consider the economic, social and environmental costs and benefits
25 that would result from the adoption of a water quality standard at a
26 particular level or for a particular water category.

27 C. In setting standards pursuant to subsection A or B of this
28 section, the director shall consider, ~~but not be limited to,~~ the following:

29 1. The protection of the public health and the environment.

30 2. The uses that have been made, are being made or with reasonable
31 probability may be made of these waters.

1 3. The provisions and requirements of the clean water act and safe
2 drinking water act and the regulations adopted pursuant to those acts.

3 4. The degree to which standards for one category of waters could
4 cause violations of standards for other, hydrologically connected, water
5 categories.

6 5. Guidelines, action levels or numerical criteria adopted or
7 recommended by the United States environmental protection agency or any
8 other federal agency.

9 6. Any unique physical, biological or chemical properties of the
10 waters.

11 D. Water quality standards shall be expressed in terms of the uses
12 to be protected and, if adequate information exists to do so, numerical
13 limitations or parameters, in addition to any narrative standards that the
14 director deems appropriate.

15 E. The director may adopt by rule water quality standards for the
16 direct reuse of reclaimed water. In establishing these standards, the
17 director shall consider the following:

18 1. The protection of public health and the environment.

19 2. The uses that are being made or may be made of the reclaimed
20 water.

21 3. The degree to which standards for the direct reuse of reclaimed
22 water may cause violations of water quality standards for other
23 hydrologically connected water categories.

24 F. If the director proposes to adopt water quality standards for
25 agricultural water, the director shall consult, cooperate, collaborate and,
26 if necessary, enter into interagency agreements and memoranda of
27 understanding with the Arizona department of agriculture relating to its
28 administration, pursuant to title 3, chapter 3, article 4.1, of this
29 state's authority relating to agricultural water under the United States
30 food and drug administration produce safety rule (21 Code of Federal
31 Regulations part 112, subpart E) and any other federal produce safety
32 regulation, order or guideline or other requirement adopted pursuant to the

1 FDA food safety modernization act (P.L. 111-353; 21 United States Code
2 sections 2201 through 2252). For the purposes of this subsection:

3 1. "Agricultural water":

4 (a) Means water that is used in a covered activity on produce where
5 water is intended to, or is likely to, contact produce or food contact
6 surfaces.

7 (b) Includes all of the following:

8 (i) Water used in growing activities, including irrigation water,
9 water used for preparing crop sprays and water used for growing sprouts.

10 (ii) Water used in harvesting, packing and holding activities,
11 including water used for washing or cooling harvested produce and water
12 used for preventing dehydration of produce.

13 2. "Covered activity" means growing, harvesting, packing or holding
14 produce. Covered activity includes processing produce to the extent that
15 the activity is within the meaning of farm as defined in section 3-525.

16 3. "Harvesting" has the same meaning prescribed in section 3-525.

17 4. "Holding" has the same meaning prescribed in section 3-525.

18 5. "Packing" has the same meaning prescribed in section 3-525.

19 6. "Produce" has the same meaning prescribed in section 3-525.

20 G. THE DIRECTOR SHALL MAINTAIN AND PUBLISH A PROTECTED SURFACE
21 WATERS LIST. THE DEPARTMENT SHALL PUBLISH THE INITIAL LIST ON THE
22 DEPARTMENT'S WEBSITE AND IN THE ARIZONA ADMINISTRATIVE REGISTER WITHIN
23 THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.
24 NOT LATER THAN DECEMBER 31, 2022, THE DEPARTMENT SHALL ADOPT BY RULE THE
25 PROTECTED SURFACE WATERS LIST, INCLUDING PROCEDURES FOR DETERMINING
26 ECONOMIC, SOCIAL AND ENVIRONMENTAL COSTS AND BENEFITS. PUBLICATION OF THE
27 LIST IN THE ARIZONA ADMINISTRATIVE REGISTER IS AN APPEALABLE AGENCY ACTION
28 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 AND MAY BE APPEALED BY ANY
29 PARTY THAT PROVIDES EVIDENCE OF AN ACTUAL ADVERSE EFFECT THAT THE PARTY
30 APPEALING THE DECISION WOULD SUFFER AS A RESULT OF THE DIRECTOR'S DECISION.
31 ALL OF THE FOLLOWING APPLY TO THE PROTECTED SURFACE WATER LIST:

32 1. THE PROTECTED SURFACE WATERS LIST SHALL INCLUDE:

1 (a) ALL WOTUS.

2 (b) ANY PERENNIAL, INTERMITTENT AND EPHEMERAL REACHES AND ANY
3 IMPOUNDMENTS OF THE FOLLOWING RIVERS, NOT INCLUDING TRIBUTARIES OR REACHES
4 OF WATERS WHOLLY WITHIN TRIBAL JURISDICTION OR REACHES OF WATERS OUTSIDE OF
5 THE UNITED STATES:

6 (i) THE BILL WILLIAMS RIVER, FROM THE CONFLUENCE OF THE BIG SANDY
7 AND SANTA MARIA RIVERS AT 113°31'38.617"W, 34°18'22.373"N, TO ITS
8 CONFLUENCE WITH THE COLORADO RIVER AT 114°8'9.854"W, 34°18'9.33"N.

9 (ii) THE COLORADO RIVER, FROM THE ARIZONA-UTAH BORDER AT
10 111°32'35.741"W, 36°58'51.698"N, TO THE ARIZONA-MEXICO BORDER AT 114°
11 43'12.564"W, 32°43'6.218"N.

12 (iii) THE GILA RIVER, FROM THE ARIZONA-NEW MEXICO BORDER AT
13 109°2'52.8"W, 32°41'11.2015"N, TO THE CONFLUENCE WITH THE COLORADO RIVER AT
14 114°33'28.145"W, 32°43'14.408"N.

15 (iv) THE LITTLE COLORADO RIVER, FROM THE CONFLUENCE OF THE EAST AND
16 WEST FORKS OF THE LITTLE COLORADO RIVER AT 109°28'7.131"W, 33°59'39.852"N,
17 TO ITS CONFLUENCE WITH THE COLORADO RIVER AT 111°49'4.693"W,
18 36°12'10.243"N.

19 (v) THE SALT RIVER, FROM THE CONFLUENCE OF THE BLACK AND WHITE
20 RIVERS AT 110°13'39.5"W, 33°44'6.082"N, TO THE CONFLUENCE WITH THE GILA
21 RIVER AT 112°18'5.704"W, 33°22'42.978"N.

22 (vi) THE SAN PEDRO RIVER, FROM THE ARIZONA-MEXICO BORDER AT
23 110°9'1.704"W, 31°20'2.387"N, TO THE CONFLUENCE WITH THE GILA RIVER AT
24 110°47'0.905"W, 32°59'5.671"N.

25 (vii) THE SANTA CRUZ RIVER, FROM ITS ORIGINS IN THE CANELO HILLS OF
26 SOUTHEASTERN ARIZONA AT 110 °37'3.968"W, 31 °27'39.21"N, TO ITS CONFLUENCE
27 WITH THE GILA RIVER AT 111 °33'26.02"W, 32 °41'39.058"N.

28 (viii) THE VERDE RIVER, FROM SULLIVAN LAKE AT 112°28'10.588"W,
29 34°52'11.136"N, TO ITS CONFLUENCE WITH THE SALT RIVER AT 111°39'48.32"W,
30 33°33'20.538"N.

31 (c) ANY NON-WOTUS WATERS OF THE STATE THAT ARE ADDED UNDER
32 PARAGRAPHS 3 AND 4 OF THIS SUBSECTION.

1 2. NOTWITHSTANDING PARAGRAPH 1 OF THIS SUBSECTION, THE PROTECTED
2 SURFACE WATERS LIST SHALL NOT CONTAIN ANY OF THE FOLLOWING NON-WOTUS
3 WATERS:

4 (a) CANALS IN THE YUMA PROJECT AND DITCHES, CANALS, PIPES,
5 IMPOUNDMENTS AND OTHER FACILITIES THAT ARE OPERATED BY DISTRICTS ORGANIZED
6 UNDER TITLE 48, CHAPTERS 18, 19, 20, 21 AND 22 AND THAT ARE NOT USED TO
7 DIRECTLY DELIVER WATER FOR HUMAN CONSUMPTION, EXCEPT WHEN ADDED PURSUANT TO
8 PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM
9 THE OWNER AND OPERATOR OF THE DITCH OR CANAL UNTIL THE OWNER AND OPERATOR
10 WITHDRAWS ITS REQUEST.

11 (b) IRRIGATED AREAS, INCLUDING FIELDS FLOODED FOR AGRICULTURAL
12 PRODUCTION.

13 (c) ORNAMENTAL AND URBAN PONDS AND LAKES SUCH AS THOSE OWNED BY
14 HOMEOWNERS' ASSOCIATIONS AND GOLF COURSES, EXCEPT WHEN ADDED PURSUANT TO
15 PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM
16 THE OWNER OF THE ORNAMENTAL OR URBAN POND OR LAKE UNTIL THE OWNER WITHDRAWS
17 ITS REQUEST.

18 (d) SWIMMING POOLS AND OTHER BODIES OF WATER THAT ARE REGULATED
19 PURSUANT TO SECTION 49-104, SUBSECTION B.

20 (e) LIVESTOCK AND WILDLIFE WATER TANKS AND AQUACULTURE TANKS THAT ARE
21 NOT CONSTRUCTED WITHIN A PROTECTED SURFACE WATER.

22 (f) STORMWATER CONTROL FEATURES.

23 (g) GROUNDWATER RECHARGE, WATER REUSE AND WASTEWATER RECYCLING
24 STRUCTURES, INCLUDING UNDERGROUND STORAGE FACILITIES AND GROUNDWATER
25 SAVINGS FACILITIES PERMITTED UNDER TITLE 45, CHAPTER 3.1 AND DETENTION AND
26 INFILTRATION BASINS, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS
27 SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE OWNER OF THE
28 GROUNDWATER RECHARGE, WATER REUSE OR WASTEWATER RECYCLING STRUCTURE UNTIL
29 THE OWNER WITHDRAWS ITS REQUEST.

30 (h) WATER-FILLED DEPRESSIONS CREATED AS PART OF MINING OR
31 CONSTRUCTION ACTIVITIES OR PITS EXCAVATED TO OBTAIN FILL, SAND OR GRAVEL.

1 (i) ALL WASTE TREATMENT SYSTEMS COMPONENTS, INCLUDING CONSTRUCTED
2 WETLANDS, LAGOONS AND TREATMENT PONDS, SUCH AS SETTLING OR COOLING PONDS,
3 DESIGNED TO EITHER CONVEY OR RETAIN, CONCENTRATE, SETTLE, REDUCE OR REMOVE
4 POLLUTANTS, EITHER ACTIVELY OR PASSIVELY, FROM WASTEWATER BEFORE DISCHARGE
5 OR TO ELIMINATE DISCHARGE.

6 (j) GROUNDWATER.

7 (k) EPHEMERAL WATERS EXCEPT FOR THOSE PRESCRIBED IN PARAGRAPH 1,
8 SUBDIVISION (b) OF THIS SUBSECTION.

9 (l) LAKES AND PONDS OWNED AND MANAGED BY THE UNITED STATES DEPARTMENT
10 OF DEFENSE, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION
11 AND IN RESPONSE TO A WRITTEN REQUEST FROM THE UNITED STATES DEPARTMENT OF
12 DEFENSE UNTIL IT WITHDRAWS ITS REQUEST.

13 3. UNLESS LISTED IN PARAGRAPH 2 OF THIS SUBSECTION, THE DIRECTOR
14 SHALL ADD THE FOLLOWING NON-WOTUS SURFACE WATERS TO THE PROTECTED SURFACE
15 WATERS LIST:

16 (a) ALL LAKES, PONDS AND RESERVOIRS THAT ARE PUBLIC WATERS USED AS A
17 DRINKING SOURCE, FOR RECREATIONAL OR COMMERCIAL FISH CONSUMPTION OR FOR
18 WATER-BASED RECREATION SUCH AS SWIMMING, WADING AND BOATING AND OTHER TYPES
19 OF RECREATION IN AND ON THE WATER.

20 (b) PERENNIAL WATERS OR INTERMITTENT WATERS OF THE STATE THAT ARE
21 USED AS A DRINKING WATER SOURCE, INCLUDING DITCHES AND CANALS.

22 (c) PERENNIAL OR INTERMITTENT TRIBUTARIES TO THE BILL WILLIAMS RIVER,
23 THE COLORADO RIVER, THE GILA RIVER, THE LITTLE COLORADO RIVER, THE SALT
24 RIVER, THE SAN PEDRO RIVER, THE SANTA CRUZ RIVER AND THE VERDE RIVER.

25 (d) PERENNIAL OR INTERMITTENT PUBLIC WATERS USED FOR RECREATIONAL OR
26 COMMERCIAL FISH CONSUMPTION.

27 (e) PERENNIAL OR INTERMITTENT PUBLIC WATERS USED FOR WATER-BASED
28 RECREATION SUCH AS SWIMMING, WADING, BOATING AND OTHER TYPES OF RECREATION
29 IN AND ON THE WATER.

30 (f) PERENNIAL OR INTERMITTENT WETLANDS ADJACENT TO WATERS ON THE
31 PROTECTED SURFACE WATERS LIST.

1 (g) PERENNIAL OR INTERMITTENT WATERS OF THE STATE THAT CROSS INTO
2 ANOTHER STATE, THE REPUBLIC OF MEXICO OR THE RESERVATION OF A FEDERALLY
3 RECOGNIZED TRIBE.

4 4. THE DIRECTOR MAY ADD ADDITIONAL NON-WOTUS SURFACE WATERS TO THE
5 PROTECTED SURFACE WATERS LIST IF ALL OF THE FOLLOWING APPLY:

6 (a) THE WATER IS NOT REQUIRED TO BE LISTED UNDER PARAGRAPH 3 OF THIS
7 SUBSECTION.

8 (b) THE WATER IS NOT EXCLUDED UNDER PARAGRAPH 2 OF THIS SUBSECTION.

9 (c) THE ECONOMIC, ENVIRONMENTAL AND SOCIAL BENEFITS OF ADDING THE
10 WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND SOCIAL COSTS OF EXCLUDING
11 THE WATER FROM THE LIST.

12 5. THE DIRECTOR SHALL REMOVE ANY ERRONEOUSLY LISTED, NON-WOTUS
13 WATERS FROM THE PROTECTED SURFACE WATERS LIST WHEN THE WATER IS EXCLUDED
14 UNDER PARAGRAPH 2 OF THIS SUBSECTION AND SHALL NOT REGULATE DISCHARGES TO
15 THOSE WATERS IN THE INTERIM.

16 6. THE DIRECTOR SHALL REMOVE NON-WOTUS WATERS FROM THE PROTECTED
17 SURFACE WATERS LIST WHEN THE WATER IS NOT REQUIRED TO BE LISTED UNDER
18 PARAGRAPH 3 OF THIS SUBSECTION AND THE ECONOMIC, ENVIRONMENTAL AND SOCIAL
19 BENEFITS OF REMOVING THE WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND
20 SOCIAL COSTS OF RETAINING THE WATER ON THE LIST.

21 7. THE DIRECTOR, ON AN EMERGENCY BASIS, MAY ADD A WATER TO THE
22 PROTECTED SURFACE WATERS LIST IF THE DIRECTOR DISCOVERS AN IMMINENT AND
23 SUBSTANTIAL DANGER TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, IF THE
24 WATER WOULD OTHERWISE QUALIFY TO BE ADDED UNDER PARAGRAPH 3 OF THIS
25 SUBSECTION. NOTWITHSTANDING ANY OTHER LAW, THE EMERGENCY ADDITION SHALL
26 TAKE EFFECT IMMEDIATELY ON THE DIRECTOR'S DETERMINATION THAT DESCRIBES THE
27 IMMINENT AND SUBSTANTIAL DANGER IN WRITING. WITHIN THIRTY DAYS AFTER THE
28 DIRECTOR'S DETERMINATION, THE DEPARTMENT SHALL PUBLISH A NOTICE OF THAT
29 DETERMINATION IN THE ARIZONA ADMINISTRATIVE REGISTER AND ON THE
30 DEPARTMENT'S WEBSITE. WATERS ADDED UNDER THIS SUBSECTION SHALL BE
31 INCORPORATED INTO THE PROTECTED SURFACE WATERS LIST DURING THE NEXT
32 RULEMAKING THAT FOLLOWS THE ADDITION.

1 Sec. 8. Section 49-222, Arizona Revised Statutes, is amended to
2 read:

3 49-222. Water quality standards for WOTUS

4 A. Standards for the quality of ~~navigable waters~~ WOTUS shall assure
5 water quality, if attainable, which provides for protecting the public
6 health and welfare, and shall enhance the quality of water taking into
7 consideration its use and value for public water supplies, the propagation
8 of fish and wildlife and recreational, agricultural, industrial and other
9 purposes including navigation.

10 B. ~~Not later than January 1, 1990,~~ The director shall adopt
11 standards for the quality of all ~~navigable waters which~~ WOTUS THAT
12 establish numeric limitations on the concentrations of each of the toxic
13 pollutants listed by the administrator pursuant to section 307 of the clean
14 water act (33 United States Code section 1317).

15 C. In setting numeric standards for the quality of ~~navigable waters~~
16 WOTUS, the director may consider the effect of local water quality
17 characteristics on the toxicity of specific pollutants and the varying
18 sensitivities of local affected aquatic populations to such pollutants, and
19 the extent to which the natural flow of the stream is intermittent or
20 ephemeral, as a result of which the instream flow consists mostly of
21 treated wastewater effluent, except that such standards shall not, in any
22 event, be inconsistent with the clean water act. In applying such
23 standards the director may establish appropriate mixing zones.

24 Sec. 9. Section 49-225, Arizona Revised Statutes, is amended to
25 read:

26 49-225. Water quality monitoring

27 A. The director of environmental quality, with the advice and
28 cooperation of the Arizona department of agriculture and the director of
29 water resources when appropriate, shall conduct ongoing monitoring of the
30 waters of the state including the state's ~~navigable waters~~ WOTUS and
31 aquifers to detect the presence of new and existing pollutants, determine
32 compliance with applicable water quality standards, determine the

1 effectiveness of best management practices, agricultural best management
2 practices and best available demonstrated control technologies, evaluate
3 the effects of pollutants on public health or the environment and determine
4 water quality trends.

5 B. The director shall maintain a statewide database of groundwater
6 and soils sampled for pollutants. All agencies shall submit to the
7 director, in a timely manner, the results of any groundwater or soils
8 sampling for pollutants and the results of any groundwater or soils
9 sampling that detect any pollutants.

10 C. The director shall establish minimum requirements and schedules
11 for groundwater and soils sampling that will ensure precise and accurate
12 results. The requirements shall be distributed to all agencies that
13 conduct sampling. All sampling conducted shall meet the minimum
14 requirements established pursuant to this subsection.

15 Sec. 10. Section 49-231, Arizona Revised Statutes, is amended to
16 read:

17 49-231. Definitions

18 In this article, unless the context otherwise requires:

19 1. "Impaired water" means a ~~navigable~~ PROTECTED SURFACE water for
20 which credible scientific data exists that satisfies the requirements of
21 section 49-232, and that, IN THE CASE OF WOTUS, demonstrates that the water
22 should be identified pursuant to 33 United States Code section 1313(d) and
23 the regulations implementing that statute.

24 2. "Surface water quality standard" means a standard adopted for a
25 ~~navigable~~ PROTECTED SURFACE water pursuant to ~~sections SECTION 49-221 and~~
26 ~~49-222 and section 303(c) of the clean water act (33 United States Code~~
27 ~~section 1313(c)) AND, IN THE CASE OF WOTUS, PURSUANT TO SECTION 49-222.~~

28 3. "TMDL implementation plan" means a written strategy to implement
29 a total maximum daily load that is developed for an impaired water. TMDL
30 implementation plans may rely on any combination of the following
31 components that the department determines will result in achieving and

1 maintaining compliance with applicable surface water quality standards in
2 the most cost-effective and equitable manner:

3 (a) Permit limitations.

4 (b) Best management practices.

5 (c) Education and outreach efforts.

6 (d) Technical assistance.

7 (e) Cooperative agreements, voluntary measures and incentive-based
8 programs.

9 (f) Load reductions resulting from other legally required programs
10 or activities.

11 (g) Land management programs.

12 (h) Pollution prevention planning, waste minimization or pollutant
13 trading agreements.

14 (i) Other measures deemed appropriate by the department.

15 4. "Total maximum daily load" means an estimation of the total
16 amount of a pollutant from all sources that may be added to a water while
17 still allowing the water to achieve and maintain applicable surface water
18 quality standards. Each total maximum daily load shall include allocations
19 for sources that contribute the pollutant to the water. ~~, as required by~~
20 TOTAL MAXIMUM DAILY LOADS FOR WOTUS SHALL MEET THE REQUIREMENTS OF section
21 303(d) of the clean water act (33 United States Code section 1313(d)) and
22 regulations implementing that statute to achieve applicable surface water
23 quality standards. TOTAL MAXIMUM DAILY LOADS FOR NON-WOTUS PROTECTED
24 SURFACE WATERS SHALL NOT BE SUBJECT TO REVIEW, APPROVAL OR ENFORCEMENT BY
25 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

26 Sec. 11. Section 49-232, Arizona Revised Statutes, is amended to
27 read:

28 49-232. Lists of impaired waters; data requirements; rules

29 A. At least once every five years, the department shall prepare a
30 list of impaired ~~waters for the purpose of complying~~ WOTUS TO COMPLY with
31 section 303(d) of the clean water act (33 United States Code section
32 1313(d)). The department shall provide public notice and allow for comment

1 on a draft list of impaired ~~waters~~ WOTUS prior to its submission to the
2 United States environmental protection agency. The department shall
3 prepare written responses to comments received on the draft list. The
4 department shall publish the list of impaired ~~waters~~ WOTUS that it plans to
5 submit initially to the regional administrator and a summary of the
6 responses to comments on the draft list in the Arizona administrative
7 register at least forty-five days before submission of the list to the
8 regional administrator. Publication of the list in the Arizona
9 administrative register is an appealable agency action pursuant to title
10 41, chapter 6, article 10 that may be appealed by any party that submitted
11 written comments on the draft list. If the department receives a notice of
12 appeal of a listing pursuant to section ~~41-1092, subsection B~~ 41.1092.03
13 within forty-five days ~~of~~ AFTER the publication of the list in the Arizona
14 administrative register, the department shall not include the challenged
15 listing in its initial submission to the regional administrator. The
16 department may subsequently submit the challenged listing to the regional
17 administrator if the listing is upheld in the director's final
18 administrative decision pursuant to section 41-1092.08, or if the challenge
19 to the listing is withdrawn prior to a final administrative decision.

20 B. ON OR BEFORE DECEMBER 31, 2022 AND AT LEAST ONCE EVERY FIVE YEARS
21 THEREAFTER, THE DEPARTMENT SHALL PREPARE A LIST OF IMPAIRED NON-WOTUS
22 PROTECTED SURFACE WATERS. THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE AND
23 OPPORTUNITY TO COMMENT ON A DRAFT LIST OF IMPAIRED NON-WOTUS PROTECTED
24 SURFACE WATERS PREPARED UNDER THIS SUBSECTION. THE DEPARTMENT SHALL
25 PREPARE WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE DRAFT LIST. THE
26 DEPARTMENT SHALL PUBLISH THE LIST OF IMPAIRED NON-WOTUS PROTECTED SURFACE
27 WATERS AND A SUMMARY OF THE RESPONSES TO COMMENTS ON THE DRAFT LIST IN THE
28 ARIZONA ADMINISTRATIVE REGISTER. PUBLICATION OF THE LIST IN THE ARIZONA
29 ADMINISTRATIVE REGISTER IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE
30 41, CHAPTER 6, ARTICLE 10 AND MAY BE APPEALED BY ANY PARTY THAT SUBMITTED
31 WRITTEN COMMENTS ON THE DRAFT LIST.

1 ~~B~~. C. In determining whether a water is impaired, the department
2 shall consider only reasonably current credible and scientifically
3 defensible data that the department has collected or has received from
4 another source. Results of water sampling or other assessments of water
5 quality, including physical or biological health, shall be considered
6 credible and scientifically defensible data only if the department has
7 determined all of the following:

8 1. Appropriate quality assurance and quality control procedures were
9 followed and documented in collecting and analyzing the data.

10 2. The samples or analyses are representative of water quality
11 conditions at the time the data was collected.

12 3. The data consists of an adequate number of samples based on the
13 nature of the water in question and the parameters being analyzed.

14 4. The method of sampling and analysis, including analytical,
15 statistical and modeling methods, is generally accepted and validated in
16 the scientific community as appropriate for use in assessing the condition
17 of the water.

18 ~~C~~. D. The department shall adopt by rule the methodology to be used
19 in identifying waters as impaired. The rules shall specify all of the
20 following:

21 1. Minimum data requirements and quality assurance and quality
22 control requirements that are consistent with subsection ~~B~~ C of this
23 section and that must be satisfied in order for the data to serve as the
24 basis for listing and delisting decisions.

25 2. Appropriate sampling, analytical and scientific techniques that
26 may be used in assessing whether a water is impaired.

27 3. Any statistical or modeling techniques that the department uses
28 to assess or interpret data.

29 4. Criteria for including and removing waters from the list of
30 impaired waters, including any implementation procedures developed pursuant
31 to subsection ~~F~~ G of this section. The criteria for removing a water from

1 the list of impaired waters shall not be any more stringent than the
2 criteria for adding a water to that list.

3 ~~E.~~ E. In assessing whether a water is impaired, the department
4 shall consider the data available in light of the nature of the water in
5 question, including whether the water is an ephemeral water. A water in
6 which pollutant loadings from naturally occurring conditions alone are
7 sufficient to cause a violation of applicable surface water quality
8 standards shall not be listed as impaired.

9 ~~F.~~ F. If the department has adopted a numeric surface water quality
10 standard for a pollutant and that standard is not being exceeded in a
11 water, the department shall not list the water as impaired based on a
12 conclusion that the pollutant causes a violation of a narrative or
13 biological standard unless:

14 1. The department has determined that the numeric standard is
15 insufficient to protect water quality.

16 2. The department has identified specific reasons that are
17 appropriate for the water in question, that are based on generally accepted
18 scientific principles and that support the department's determination.

19 ~~F.~~ G. Before listing a ~~navigable~~ water as impaired based on a
20 violation of a narrative or biological surface water quality standard and
21 after providing an opportunity for public notice and comment, the
22 department shall adopt implementation procedures that specifically identify
23 the objective basis for determining that a violation of the narrative or
24 biological criterion exists. A total maximum daily load designed to
25 achieve compliance with a narrative or biological surface water quality
26 standard shall not be adopted until the implementation procedure for the
27 narrative or biological surface water quality standard has been adopted.

28 ~~G.~~ H. On request, the department shall make available to the public
29 data used to support the listing of a water as impaired and may charge a
30 reasonable fee to persons requesting the data.

31 ~~H.~~ I. By January 1, 2002, the department shall review the list of
32 waters identified as impaired as of January 1, 2000 to determine whether

1 the data that supports the listing of those waters complies with this
2 section. If the data that supports a listing does not comply with this
3 section, the listed water shall not be included on future lists submitted
4 to the United States environmental protection agency pursuant to 33 United
5 States Code section 1313(d) unless in the interim data that satisfies the
6 requirements of this section has been collected or received by the
7 department.

8 ~~J.~~ J. The department shall add a water to or remove a water from
9 the list using the process described in ~~section 49-232~~, subsection A OR B
10 OF THIS SECTION outside of the normal listing cycle if it collects or
11 receives credible and scientifically defensible data that satisfies the
12 requirements of this section and that demonstrates that the current
13 quality of the water is such that it should be removed from or added to the
14 list. A listed water may no longer warrant classification as impaired or
15 an unlisted water may be identified as impaired if the applicable surface
16 water quality standards, implementation procedures or designated uses have
17 changed or if there is a change in water quality.

18 K. THE DIRECTOR SHALL APPLY THE RULES ADOPTED PURSUANT TO SUBSECTION
19 D OF THIS SECTION FOR IDENTIFICATION OF IMPAIRED WATERS TO NON-WOTUS
20 PROTECTED SURFACE WATERS UNTIL SPECIFICALLY CHANGED BY RULE. THE DIRECTOR
21 SHALL AMEND RULES TO UPDATE THE IMPAIRED WATERS IDENTIFICATION RULES WITHIN
22 ONE YEAR AFTER ADOPTING SURFACE WATER QUALITY STANDARDS FOR NON-WOTUS
23 PROTECTED SURFACE WATERS PURSUANT TO SECTION 49-221, SUBSECTION A,
24 PARAGRAPH 2.

25 Sec. 12. Section 49-233, Arizona Revised Statutes, is amended to
26 read:

27 49-233. Priority ranking and schedule

28 A. Each list developed by the department pursuant to section 49-232
29 shall contain a priority ranking of ~~navigable waters~~ WOTUS identified as
30 impaired and for which total maximum daily loads are required pursuant to
31 section 49-234 and a schedule for the development of all required total
32 maximum daily loads.

1 B. In the first list submitted to the United States environmental
2 protection agency after ~~the effective date of this article~~ JULY 18, 2000,
3 the schedule shall be sufficient to ensure that all required total maximum
4 daily loads will be developed within fifteen years ~~of~~ AFTER the date the
5 list is approved by the environmental protection agency. Total maximum
6 daily loads that are required to be developed for ~~navigable waters~~ WOTUS
7 that are included for the first time on subsequent lists shall be developed
8 within fifteen years of the initial inclusion of the water on the list.

9 C. As part of the ~~rule making~~ RULEMAKING prescribed by section
10 49-232, subsection ~~C~~ D, the department shall identify the factors that it
11 will use to prioritize ~~navigable waters~~ WOTUS that require development of
12 total maximum daily loads. At a minimum and to the extent relevant data is
13 available, the department shall consider the following factors in
14 prioritizing ~~navigable waters~~ WOTUS for development of total maximum daily
15 loads:

- 16 1. The designated uses of the ~~navigable water~~ WOTUS.
- 17 2. The type and extent of risk from the impairment to human health
18 or aquatic life.
- 19 3. The degree of public interest and support, or its lack.
- 20 4. The nature of the ~~navigable water~~ WOTUS, including whether it is
21 an ephemeral, intermittent or effluent-dependent water.
- 22 5. The pollutants causing the impairment.
- 23 6. The severity, magnitude and duration of the violation of the
24 applicable surface water quality standard.
- 25 7. The seasonal variation caused by natural events such as storms or
26 weather patterns.
- 27 8. Existing treatment levels and management practices.
- 28 9. The availability of effective and economically feasible treatment
29 techniques, management practices or other pollutant loading reduction
30 measures.
- 31 10. The recreational and economic importance of the water.

1 11. The extent to which the impairment is caused by discharges or
2 activities that have ceased.

3 12. The extent to which natural sources contribute to the
4 impairment.

5 13. Whether the water is accorded special protection under federal
6 or state water quality law.

7 14. Whether action that is taken or that is likely to be taken under
8 other programs, including voluntary programs, is likely to make significant
9 progress toward achieving applicable standards even if a total maximum
10 daily load is not developed.

11 15. The time expected to be required to achieve compliance with
12 applicable surface water quality standards.

13 16. The availability of documented, effective analytical tools for
14 developing a total maximum daily load for the water with reasonable
15 accuracy.

16 17. Department resources and programmatic needs.

17 Sec. 13. Section 49-234, Arizona Revised Statutes, is amended to
18 read:

19 49-234. Total maximum daily loads; implementation plans

20 A. The department shall develop total maximum daily loads for those
21 ~~navigable~~ WOTUS listed as impaired pursuant to this article and for which
22 total maximum daily loads are required to be adopted pursuant to 33 United
23 States Code section 1313(d) and the regulations implementing that statute
24 OR THAT THE DEPARTMENT OTHERWISE DETERMINES ARE REQUIRED TO RESTORE AN
25 IMPAIRED WATER. The department may estimate total maximum daily loads for
26 ~~navigable~~ WOTUS not listed as impaired pursuant to this article, ~~for the~~
27 ~~purposes of developing~~ TO DEVELOP information to satisfy the requirements
28 of 33 United States Code section 1313(d)(3), ~~only~~ after it has developed
29 total maximum daily loads for all ~~navigable waters~~ WOTUS identified as
30 impaired pursuant to this article or if necessary to support permitting of
31 new point source discharges.

1 B. In developing total maximum daily loads, the department shall use
2 only statistical and modeling techniques that are properly validated and
3 broadly accepted by the scientific community. The modeling technique may
4 vary based on the type of water and the quantity and quality of available
5 data that meets the quality assurance and quality control requirements of
6 section 49-232. The department may establish the statistical and modeling
7 techniques in rules adopted pursuant to section 49-232, subsection ~~C~~ D.

8 C. Each total maximum daily load shall:

9 1. Be based on data and methodologies that comply with section
10 49-232.

11 2. Be established at a level that will achieve and maintain
12 compliance with applicable surface water quality standards.

13 3. Include a reasonable margin of safety that takes into account any
14 lack of knowledge concerning the relationship between effluent limitations
15 and water quality. The margin of safety shall not be used as a substitute
16 for adequate data when developing the total maximum daily load.

17 4. Account for seasonal variations that may include setting total
18 maximum daily loads that apply on a seasonal basis.

19 D. For each impaired water, EITHER OF THE FOLLOWING APPLIES:

20 1. FOR EACH IMPAIRED WOTUS, the department shall prepare a draft
21 estimate of the total amount of each pollutant that causes the impairment
22 from all sources and that may be added to the ~~navigable water~~ WOTUS while
23 still allowing the ~~navigable water~~ WOTUS to achieve and maintain applicable
24 surface water quality standards. In addition, the department shall
25 determine draft allocations among the contributing sources that are
26 sufficient to achieve the total loadings. The department shall provide
27 public notice and allow for comment on each draft estimate and draft
28 allocation and shall prepare written responses to comments received on the
29 draft estimates and draft allocations. The department shall publish the
30 determinations of total pollutant loadings that will not result in
31 impairment and the draft allocations among the contributing sources that
32 are sufficient to achieve the total loading that it intends to submit

1 initially to the regional administrator, along with a summary of the
2 responses to comments on the estimated loadings and allocations, in the
3 Arizona administrative register at least forty-five days before submission
4 of the loadings and allocations to the regional administrator.
5 Notwithstanding this subsection, draft allocations shall be submitted to
6 the regional administrator only if that submission is required by the rules
7 that implement 33 United States Code section 1313(d).

8 2. FOR NON-WOTUS IMPAIRED WATERS, THE DEPARTMENT MAY PREPARE A DRAFT
9 ESTIMATE OF THE TOTAL AMOUNT OF EACH POLLUTANT THAT CAUSES THE IMPAIRMENT
10 FROM ALL SOURCES AND THAT MAY BE ADDED TO THE WATER WHILE STILL ALLOWING
11 THE WATER TO ACHIEVE AND MAINTAIN APPLICABLE SURFACE WATER QUALITY
12 STANDARDS. IF THE DEPARTMENT CHOOSES TO PREPARE A DRAFT ESTIMATE FOR A
13 NON-WOTUS IMPAIRED WATER, THE DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

14 (a) DETERMINE DRAFT ALLOCATIONS AMONG CONTRIBUTING SOURCES THAT ARE
15 SUFFICIENT TO ACHIEVE TOTAL LOADINGS.

16 (b) PROVIDE PUBLIC NOTICE AND ALLOW FOR COMMENT ON THE DRAFT
17 ESTIMATES AND DRAFT ALLOCATIONS.

18 (c) PREPARE WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE DRAFT
19 ESTIMATES AND DRAFT ALLOCATIONS.

20 (d) PUBLISH THE DETERMINATIONS OF TOTAL POLLUTANT LOADINGS THAT WILL
21 NOT RESULT IN IMPAIRMENT AND THE DRAFT ALLOCATIONS AMONG THE CONTRIBUTING
22 SOURCES THAT ARE SUFFICIENT TO ACHIEVE THE TOTAL LOADING, ALONG WITH A
23 SUMMARY OF THE RESPONSES TO COMMENTS ON THE ESTIMATED LOADINGS AND
24 ALLOCATIONS, IN THE ARIZONA ADMINISTRATIVE REGISTER.

25 E. Publication of the loadings and allocations in the Arizona
26 administrative register is an appealable agency action pursuant to title
27 41, chapter 6, article 10 that may be appealed by any party that submitted
28 written comments on the estimated loadings and allocations. IN THE CASE OF
29 WOTUS, if the department receives a notice of appeal of a loading and
30 allocation pursuant to section 41-1092.03 within forty-five days ~~of~~ AFTER
31 the publication of the loading and allocations in the Arizona
32 administrative register, the department shall not submit the challenged

1 loading and allocations to the regional administrator until either the
2 challenge to the loading and allocation is withdrawn or the director has
3 made a final administrative decision pursuant to section 41-1092.08.

4 F. The department shall make reasonable and equitable allocations
5 among sources when developing total maximum daily loads. At a minimum, the
6 department shall consider the following factors in making allocations:

7 1. The environmental, economic and technological feasibility of
8 achieving the allocation.

9 2. The cost and benefit associated with achieving the allocation.

10 3. Any pollutant loading reductions that are reasonably expected to
11 be achieved as a result of other legally required actions or voluntary
12 measures.

13 G. For each total maximum daily load, the department shall establish
14 a TMDL implementation plan that explains how the allocations and any
15 reductions in existing pollutant loadings will be achieved. Any reductions
16 in loadings from nonpoint sources shall be achieved voluntarily. The
17 department shall provide for public notice and comment on each TMDL
18 implementation plan. Any sampling or monitoring components of a TMDL
19 implementation plan shall comply with section 49-232.

20 H. Each TMDL implementation plan shall provide the time frame in
21 which compliance with applicable surface water quality standards is
22 expected to be achieved. The plan may include a phased process with
23 interim targets for load reductions. Longer time frames are appropriate in
24 situations involving multiple dischargers, technical, legal or economic
25 barriers to achieving necessary load reductions, scientific uncertainty
26 regarding data quality or modeling, significant loading from natural
27 sources or significant loading resulting from discharges or activities that
28 have already ceased.

29 I. For ~~navigable~~ IMPAIRED waters that are impaired due in part to
30 historical factors that are difficult to address, including contaminated
31 sediments, the department shall consider those historical factors in
32 determining allocations for existing point source discharges of the

1 pollutant or pollutants that cause the impairment. In developing total
2 maximum daily loads for those ~~navigable~~ waters, the department shall use a
3 phased approach in which expected long-term loading reductions from the
4 historical sources are considered in establishing short-term allocations
5 for the point sources. While total maximum daily loads and TMDL
6 implementation plans are being completed, any permits issued for the point
7 sources are deemed consistent with this article if the permits require
8 reasonable reductions in the discharges of the pollutants causing the
9 impairment and are not required to include additional reductions if those
10 reductions would not significantly contribute to attainment of surface
11 water quality standards.

12 J. After a total maximum daily load and a TMDL implementation plan
13 have been adopted for a ~~navigable~~ PROTECTED SURFACE water, the department
14 shall review the status of the ~~navigable~~ PROTECTED SURFACE water at least
15 once every five years to determine if compliance with applicable surface
16 water quality standards has been achieved. If compliance with applicable
17 surface water quality standards has not been achieved, the department shall
18 evaluate whether modification of the total maximum daily load or TMDL
19 implementation plan is required.

20 Sec. 14. Section 49-242, Arizona Revised Statutes, is amended to
21 read:

22 49-242. Procedural requirements for individual permits; annual
23 registration of permittees; fee

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

29 B. Each owner of an injection well, a land treatment facility, a dry
30 well, an on-site wastewater treatment facility with a capacity of more than
31 three thousand gallons per day, a recharge facility or a facility that
32 discharges to ~~navigable~~ PROTECTED SURFACE waters to whom an individual or

1 area-wide permit is issued shall register the permit with the director each
2 year and pay an annual registration fee for each permit based on the total
3 daily discharge of pollutants pursuant to subsection E of this section.

4 C. Each owner of a surface impoundment, a facility that adds a
5 pollutant to a salt dome formation, salt bed formation, underground cave or
6 mine, a mine tailings pile or pond, a mine leaching operation, a sewage or
7 sludge pond or a wastewater treatment facility to whom an individual or
8 area-wide permit is issued shall register the permit with the director each
9 year and pay an annual registration fee for each permit based on the total
10 daily influent of pollutants pursuant to subsection E of this section.

11 D. Pending the issuance of individual or area-wide aquifer
12 protection permits, each owner of a facility that is prescribed in
13 subsection B or C of this section that is operating on September 27, 1990
14 pursuant to the filing of a notice of disposal or a groundwater quality
15 protection permit issued under title 36 shall register the notice of
16 disposal or the permit with the director each year and shall pay an annual
17 registration fee for each notice of disposal or permit based on the total
18 daily influent or discharge of pollutants pursuant to subsection E of this
19 section.

20 E. Only for a ~~one-time rule making~~ ONETIME RULEMAKING after ~~the~~
21 ~~effective date of this amendment to this section~~ JULY 29, 2010, the
22 director shall establish by rule an annual registration fee for facilities
23 prescribed by subsections B, C and D of this section. The fee shall be
24 measured in part by the amount of discharge or influent per day from the
25 facility. After the ~~one-time rule making~~ ONETIME RULEMAKING, the director
26 shall not increase those fees by rule without specific statutory authority
27 for the increase.

28 F. For a site with more than one permit subject to the requirements
29 of this section, the owner or operator of the facility at that site shall
30 pay the annual registration fee prescribed pursuant to subsection E of this
31 section based on the permit that covers the greatest gallons of discharge

1 or influent per day plus one-half of the annual registration fee for
2 gallons of discharge or influent for each additional permit.

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

9 Sec. 15. Section 49-245.01, Arizona Revised Statutes, is amended to
10 read:

11 49-245.01. Storm water general permit

12 A. A general permit is issued for facilities used solely for the
13 management of storm water and that are regulated by the clean water act **OR**
14 **ARTICLE 3.1 OF THIS CHAPTER**, including catchments, impoundments and sumps,
15 provided the following conditions are met:

16 1. The owner or operator of the facility has obtained a national
17 pollutant discharge elimination system permit issued pursuant to the clean
18 water act **OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT UNDER**
19 **ARTICLE 3.1 OF THIS CHAPTER** for any storm water discharges at the facility,
20 or that the facility has applied, and not been denied coverage, for ~~this~~
21 ~~type of permit~~ **THESE TYPES OF PERMITS** for any storm water discharges at the
22 facility.

23 2. The owner or operator notifies the director that the facility has
24 met the requirements of paragraph 1 of this subsection.

25 3. The owner or operator of the facility has in place any required
26 storm water pollution prevention plan.

27 B. If the director determines that discharges of storm water from a
28 facility or facilities covered by this general permit are causing a
29 violation of aquifer water quality standards at the applicable point of
30 compliance, the director may revoke the general permit of the facility or
31 facilities or may require that an individual permit be obtained pursuant to
32 section 49-243. If the director determines that discharges of storm water

1 from a facility or facilities covered by this general permit, with
2 reasonable probability, may cause a violation of aquifer water quality
3 standards at the applicable point of compliance, the director may require a
4 facility or facilities covered by the general permit to obtain an
5 individual permit pursuant to section 49-243.

6 Sec. 16. Section 49-245.02, Arizona Revised Statutes, is amended to
7 read:

8 49-245.02. General permit for certain discharges associated
9 with man-made bodies of water

10 A. A general permit is issued for the following discharges:

11 1. Disposal in vadose zone injection wells of storm water mixed with
12 reclaimed wastewater or groundwater, or both, from man-made bodies of water
13 associated with golf courses, parks and residential common areas, provided
14 that:

15 (a) The vadose zone injection wells are registered pursuant to
16 section 49-332.

17 (b) The discharge occurs only in response to storm events.

18 (c) With the exception of the aquifer water quality standard for
19 microbiological contaminants, the reclaimed wastewater meets aquifer water
20 quality standards before being placed into the body of water, as documented
21 by a water quality analysis submitted with the vadose zone injection well
22 registration. The owner or operator of the vadose zone injection wells
23 shall demonstrate continued compliance with this subdivision by submitting
24 to the department the results of any monitoring required as part of an
25 aquifer protection permit or wastewater reuse permit for any facility
26 providing reclaimed wastewater to the man-made body of water. For purposes
27 of this general permit, monitoring shall be conducted at least
28 semiannually. The monitoring results shall be submitted to the department
29 semiannually beginning six months after registration made PURSUANT to
30 subdivision (a) of this paragraph.

31 (d) The vadose zone injection wells shall be located at least one
32 hundred feet from any water supply well.

1 (e) A vertical separation of forty feet shall be provided between
2 the bottom of the vadose zone injection wells and the water table to allow
3 the aquifer water quality standard for microbiological contaminants to be
4 met in the uppermost aquifer.

5 (f) The vadose zone injection wells are not used for any other
6 purpose.

7 2. Subsurface discharges from man-made bodies of water associated
8 with golf courses, parks and residential common areas, provided that:

9 (a) The body of water contains only groundwater, storm water or
10 reclaimed wastewater, or a combination thereof.

11 (b) The reclaimed wastewater complies with the terms of a wastewater
12 reuse permit before being placed into the body of water.

13 (c) The body of water is lined and maintained to achieve a hydraulic
14 conductivity of 10^{-7} cm/sec or less.

15 3. Point source discharges to ~~waters of the United States~~ PROTECTED
16 SURFACE WATERS from man-made bodies of water associated with golf courses,
17 parks and residential common areas that contain only groundwater, storm
18 water or reclaimed wastewater, or a combination thereof, provided that:

19 (a) The discharges are subject to a valid national pollutant
20 discharge elimination system permit OR AN ARIZONA POLLUTANT DISCHARGE
21 ELIMINATION SYSTEM PERMIT UNDER ARTICLE 3.1 OF THIS CHAPTER.

22 (b) The discharges occur only in response to storm events.

23 (c) With the exception of the aquifer water quality standard for
24 microbiological contaminants, the reclaimed wastewater meets aquifer water
25 quality standards before being placed into the body of water.

26 B. If the director determines that discharges from a facility
27 covered by this general permit are causing a violation of aquifer water
28 quality standards, the director may revoke the general permit of the
29 facility or may require that an individual permit be obtained pursuant to
30 section 49-243. If the director determines that discharges from a facility
31 covered by this general permit may cause, with reasonable probability, a

1 violation of aquifer water quality standards, the director may require the
2 facility to obtain an individual permit pursuant to section 49-243

3 Sec. 17. Section 49-250, Arizona Revised Statutes, is amended to
4 read:

5 49-250. Exemptions

6 A. The director ~~may~~, by rule, MAY exempt specifically described
7 classes or categories of facilities from the aquifer protection permit
8 requirements of this article on a finding either that there is no
9 reasonable probability of degradation of the aquifer or that aquifer water
10 quality will be maintained and protected because the discharges from the
11 facilities are regulated under other federal or state programs that provide
12 the same or greater aquifer water quality protection as provided by this
13 article.

14 B. The following are exempt from the aquifer protection permit
15 requirement of this article:

- 16 1. Household and domestic activities.
- 17 2. Household gardening, lawn watering, lawn care, landscape
18 maintenance and related activities.
- 19 3. The noncommercial use of consumer products generally available to
20 and used by the public.
- 21 4. Ponds used for watering livestock and wildlife.
- 22 5. Mining overburden returned to the excavation site including any
23 common material that has been excavated and removed from the excavation
24 site and has not been subjected to any chemical or leaching agent or
25 process of any kind.
- 26 6. Facilities used solely for surface transportation or storage of
27 groundwater, surface water for beneficial use or reclaimed water that is
28 regulated pursuant to section 49-203, subsection A, paragraph ~~6~~ 7 for
29 beneficial use.
- 30 7. Discharge to a community sewer system.
- 31 8. Facilities that are required to obtain a permit for the direct
32 reuse of reclaimed water.

1 9. Leachate resulting from the direct, natural infiltration of
2 precipitation through undisturbed regolith or bedrock if pollutants are not
3 added to the leachate as a result of any material or activity placed or
4 conducted by man on the ground surface.

5 10. Surface impoundments used solely to contain storm runoff, except
6 for surface impoundments regulated by the federal clean water act **OR**
7 **ARTICLE 3.1 OF THIS CHAPTER.**

8 11. Closed facilities. However, if the facility ever resumes
9 operation the facility shall obtain an aquifer protection permit and the
10 facility shall be treated as a new facility for purposes of section 49-243.

11 12. Facilities for the storage of water pursuant to title 45,
12 chapter 3.1 unless reclaimed water is added.

13 13. Facilities using central Arizona project water for underground
14 storage and recovery projects under title 45, chapter 3.1, article 6.

15 14. Water storage at a groundwater saving facility that has been
16 permitted under title 45, chapter 3.1.

17 15. Application of water from any source, including groundwater,
18 surface water or wastewater, to grow agricultural crops or for landscaping
19 purposes, except as provided in section 49-247.

20 16. Discharges to a facility that is exempt pursuant to paragraph 6
21 **OF THIS SUBSECTION** if those discharges are regulated pursuant to 33 United
22 States Code section 1342 **OR ARTICLE 3.1 OF THIS CHAPTER.**

23 17. Solid waste and special waste facilities ~~when~~ **IF** rules
24 addressing aquifer protection are adopted by the director pursuant to
25 section 49-761 or 49-855 and those facilities obtain plan approval pursuant
26 to those rules. This exemption shall ~~only~~ **ONLY** if the director
27 determines that aquifer water quality standards will be maintained and
28 protected because the discharges from those facilities are regulated under
29 rules adopted pursuant to section 49-761 or 49-855 that provide aquifer
30 water quality protection that is equal to or greater than aquifer water
31 quality protection provided pursuant to this article.

32 18. Facilities used in:

1 (a) Corrective actions taken pursuant to chapter 6, article 1 of
2 this title in response to a release of a regulated substance as defined in
3 section 49-1001 except for those off-site facilities that receive for
4 treatment or disposal materials that are contaminated with a regulated
5 substance and that are received as part of a corrective action.

6 (b) Response or remedial actions undertaken pursuant to article 5 of
7 this chapter or pursuant to CERCLA.

8 (c) Corrective actions taken pursuant to chapter 5, article 1 of
9 this title or the resource conservation and recovery act of 1976, as
10 amended (42 United States Code sections 6901 through 6992).

11 (d) Other remedial actions that have been reviewed and approved by
12 the appropriate governmental authority and taken pursuant to applicable
13 federal or state laws.

14 19. Municipal solid waste landfills as defined in section 49-701
15 that have solid waste facility plan approval pursuant to section 49-762.

16 20. Storage, treatment or disposal of inert material.

17 21. Structures that are designed and constructed not to discharge
18 and that are built on an impermeable barrier that can be visually inspected
19 for leakage.

20 22. Pipelines and tanks designed, constructed, operated and
21 regularly maintained so as not to discharge.

22 23. Surface impoundments and dry wells that are used to contain
23 storm water in combination with discharges from one or more of the
24 following activities or sources:

25 (a) Firefighting system testing and maintenance.

26 (b) Potable water sources, including waterline flushings.

27 (c) Irrigation drainage and lawn watering.

28 (d) Routine external building wash down without detergents.

29 (e) Pavement wash water ~~where~~ IF no spills or leaks of toxic or
30 hazardous material have occurred unless all spilled material has first been
31 removed and no detergents have been used.

1 (f) Air conditioning, compressor and steam equipment condensate that
2 has not contacted a hazardous or toxic material.

3 (g) Foundation or footing drains in which flows are not contaminated
4 with process materials.

5 (h) Occupational safety and health administration or mining safety
6 and health administration safety equipment.

7 24. Industrial wastewater treatment facilities designed, constructed
8 and operated as required by section 49-243, subsection B, paragraph 1 and
9 using a treatment system approved by the director to treat wastewater to
10 meet aquifer water quality standards prior to discharge, if that water is
11 stored at a groundwater storage facility pursuant to title 45, chapter 3.1.

12 25. Any point source discharge caused by a storm event and
13 authorized in a permit issued pursuant to section 402 of the clean water
14 act OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT UNDER
15 ARTICLE 3.1 OF THIS CHAPTER.

16 26. Except for class V wells, any underground injection well covered
17 by a permit issued under article 3.3 of this chapter or under 42 United
18 State STATES Code section 300h-1(c). This exemption does not apply until
19 the date that the United States environmental protection agency approves
20 the department's underground injection control permit program established
21 pursuant to article 3.3 of this chapter.

22 Sec. 18. Section 49-255, Arizona Revised Statutes, is amended to
23 read:

24 49-255. Definitions

25 In this article, unless the context otherwise requires:

26 1. "AZPDES" means the Arizona pollutant discharge elimination system
27 program as adopted under section 402(b) of the clean water act FOR WOTUS
28 AND UNDER SECTION 49-255.04 FOR NON-WOTUS PROTECTED SURFACE WATER.

29 2. "Discharge":

30 (a) Means any addition of any pollutant to ~~navigable~~ PROTECTED
31 SURFACE waters from any point source.

1 (b) DOES NOT INCLUDE THE ADDITION OF DREDGED MATERIAL OR FILL
2 MATERIAL TO NON-WOTUS PROTECTED SURFACE WATERS.

3 3. "Indirect discharge" means EITHER OF THE FOLLOWING:

4 (a) The introduction of pollutants into a publicly owned treatment
5 works from any nondomestic source that is regulated under section 307(b),
6 (c) or (d) of the clean water act.

7 (b) FOR A PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGES TO
8 NON-WOTUS PROTECTED SURFACE WATERS, THE INTRODUCTION OF POLLUTANTS FROM ANY
9 NONDOMESTIC SOURCE THAT WOULD BE REGULATED UNDER SECTION 307(b), (c) OR (d)
10 OF THE CLEAN WATER ACT IF THE PUBLICLY OWNED TREATMENT WORKS WERE TO
11 DISCHARGE TO A WOTUS.

12 4. "Industrial user" means a source of indirect discharge.

13 5. "Publicly owned treatment works" means a treatment works owned by
14 this state or a municipality of this state as defined in section 502(4) of
15 the clean water act OR THAT DISCHARGES TO A PROTECTED SURFACE WATER.

16 6. "Sewage sludge":

17 (a) Means solid, semisolid or liquid residue that is generated
18 during the treatment of domestic sewage in a treatment works.

19 (b) Includes domestic septage, scum or solids that are removed in
20 primary, secondary or advanced wastewater treatment processes, and any
21 material derived from sewage sludge.

22 (c) Does not include ash that is generated during the firing of
23 sewage sludge in a sewage sludge incinerator or grit and screenings that
24 are generated during preliminary treatment of domestic sewage in a
25 treatment works.

26 7. "Treatment works" means any devices and systems that are used in
27 the storage, treatment, recycling and reclamation of municipal sewage or
28 industrial wastes of a liquid nature, the elements essential to providing a
29 reliable recycled supply such as standby treatment units and clear well
30 facilities, and any works that will be an integral part of the treatment
31 process or that are used for residues resulting from that treatment. For
32 the ~~purposes of the~~ programs required by sections 49-255.02 and 49-255.03,

1 treatment works include intercepting sewers, outfall sewers, sewage
2 collection systems, pumping, power and other equipment and any
3 appurtenances, extensions, improvements, remodeling, additions and
4 alterations.

5 8. "Upset":

6 (a) Means an exceptional incident in which there is unintentional
7 and temporary noncompliance with technology-based permit discharge
8 limitations because of factors that are beyond the reasonable control of
9 the permittee.

10 (b) Does not include noncompliance to the extent that it is caused
11 by operational error, improperly designed treatment facilities, inadequate
12 treatment facilities, lack of preventive maintenance or careless or
13 improper operation.

14 Sec. 19. Section 49-255.01, Arizona Revised Statutes, is amended to
15 read:

16 49-255.01. Arizona pollutant discharge elimination system
17 program; rules and standards; affirmative
18 defense; fees; general permit; exemption from
19 termination

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

22 1. In conformance with a permit that is issued or authorized under
23 this article **OR RULES AUTHORIZED UNDER SECTION 49-203, SUBSECTION A,**
24 **PARAGRAPH 2.**

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

28 B. The director shall adopt rules to establish an AZPDES permit
29 program **FOR DISCHARGES TO WOTUS** consistent with the requirements of
30 sections 402(b) and 402(p) of the clean water act. This program shall
31 include requirements to ensure compliance with section 307 and requirements
32 for the control of discharges consistent with sections 318 and 405(a) of

1 the clean water act. The director shall not adopt any requirement FOR
2 WOTUS that is more stringent than ~~or conflicts with~~ any requirement of the
3 clean water act. THE DIRECTOR SHALL NOT ADOPT ANY REQUIREMENT THAT
4 CONFLICTS WITH ANY REQUIREMENT OF THE CLEAN WATER ACT. The director may
5 adopt federal rules pursuant to section 41-1028 or may adopt rules to
6 reflect local environmental conditions to the extent that the rules are
7 consistent with and ~~no~~ NOT more stringent than the clean water act and this
8 article.

9 C. The rules adopted by the director UNDER SUBSECTION B OF THIS
10 SECTION shall provide for:

11 1. Issuing, authorizing, denying, modifying, suspending or revoking
12 individual or general permits.

13 2. Establishment of permit conditions, discharge limitations and
14 standards of performance as prescribed by section 49-203, subsection A,
15 paragraph ~~7, 8~~ including ~~case by case~~ CASE-BY-CASE effluent limitations
16 that are developed in a manner consistent with 40 Code of Federal
17 Regulations section 125.3(c).

18 3. Modifications and variances as allowed by the clean water act.

19 4. Other provisions necessary for maintaining state program
20 authority under section 402(b) of the clean water act.

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

26 E. An upset constitutes an affirmative defense to any
27 administrative, civil or criminal enforcement action brought for
28 noncompliance with technology-based permit discharge limitations if the
29 permittee complies with all of the following:

30 1. The permittee demonstrates through properly signed
31 contemporaneous operating logs or other relevant evidence that:

1 (a) An upset occurred and that the permittee can identify the
2 specific cause of the upset.

3 (b) The permitted facility was being properly operated at the time
4 of the upset.

5 (c) If the upset causes the discharge to exceed any discharge
6 limitation in the permit, the permittee submitted notice to the department
7 within twenty-four hours ~~of~~ AFTER the upset.

8 (d) The permittee has taken appropriate remedial measures including
9 all reasonable steps to minimize or prevent any discharge or sewage sludge
10 use or disposal that is in violation of the permit and that has a
11 reasonable likelihood of adversely affecting human health or the
12 environment.

13 2. In any administrative, civil or criminal enforcement action, the
14 permittee shall prove, by a preponderance of the evidence, the occurrence
15 of an upset condition.

16 F. Compliance with a permit issued pursuant to this article shall be
17 deemed compliance with both of the following:

18 1. All requirements in this article or rules adopted pursuant to
19 this article relating to state implementation of sections 301, 302, 306 and
20 307 of the clean water act, except for any standard that is imposed under
21 section 307 of the clean water act for a toxic pollutant that is injurious
22 to human health.

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

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

31 H. The decision of the director to issue or modify a permit takes
32 effect on issuance if there were no changes requested in comments that were

1 submitted on the draft permit unless a later effective date is specified in
2 the decision. In all other cases, the decision of the director to issue,
3 deny, modify, suspend or revoke a permit takes effect thirty days after the
4 decision is served on the permit applicant, unless either of the following
5 applies:

6 1. Within the ~~thirty day~~ THIRTY-DAY period, an appeal is filed with
7 the water quality appeals board pursuant to section 49-323.

8 2. A later effective date is specified in the decision.

9 I. In addition to other reservations of rights provided by this
10 chapter. ~~, nothing in~~ This article ~~shall~~ DOES NOT impair or affect rights
11 or the exercise of rights to water claimed, recognized, permitted,
12 certificated, adjudicated or decreed pursuant to state or other law.

13 J. Only for a ~~one-time rule making~~ ONETIME RULEMAKING after July 29,
14 2010, the director shall establish by rule fees, including maximum fees,
15 for processing, issuing and denying an application for a permit pursuant to
16 this section. After the ~~one-time rule making~~ ONETIME RULEMAKING, the
17 director shall not increase those fees by rule without specific statutory
18 authority for the increase. Monies collected pursuant to this section
19 shall be deposited, pursuant to sections 35-146 and 35-147, in the water
20 quality fee fund established by section 49-210.

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

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

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

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

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

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

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

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

22 N. This program is exempt from section 41-3102.

23 Sec. 20. Section 49-255.02, Arizona Revised Statutes, is amended to
24 read:

25 49-255.02. Pretreatment program; rules and standards

26 A. The director shall adopt rules to establish a pretreatment
27 program that is consistent with the requirements of sections 307, 308 and
28 402 of the clean water act. The director shall not adopt any requirement
29 that is more stringent than or conflicts with any requirements of the clean
30 water act, EXCEPT THE DIRECTOR SHALL APPLY THE PRETREATMENT PROGRAM TO
31 PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGE TO A NON-WOTUS PROTECTED
32 SURFACE WATER.

1 B. The rules adopted by the director shall provide for all of the
2 following:

3 1. Development or modification of local pretreatment programs by the
4 owners of publicly owned treatment works that discharge or as otherwise
5 required under the clean water act or this article to prevent the use or
6 disposal of sewage sludge produced by a publicly owned treatment works in
7 violation of section 405 of the clean water act or requirements established
8 pursuant to section 49-255.03, subsection A.

9 2. Approval by the director of new or modified local pretreatment
10 programs or site specific modifications to pretreatment standards.

11 3. Oversight by the director of local program implementation.

12 C. The rules adopted by the director shall provide for the
13 department to ensure that any industrial user of any publicly owned
14 treatment works will comply with the requirements of sections 307 and 308
15 of the clean water act.

16 Sec. 21. Section 49-255.03, Arizona Revised Statutes, is amended to
17 read:

18 49-255.03. Sewage sludge program; rules and requirements

19 A. The director shall adopt rules to establish a sewage sludge
20 program that is consistent with the requirements of sections 402 and 405 of
21 the clean water act. **EXCEPT AS OTHERWISE REQUIRED BY THIS ARTICLE,** the
22 director shall not adopt any requirement that is more stringent than ~~or~~
23 ~~conflicts with~~ any requirements of the clean water act. **THE DIRECTOR SHALL**
24 **NOT ADOPT ANY REQUIREMENT THAT CONFLICTS WITH ANY REQUIREMENT OF THE CLEAN**
25 **WATER ACT.**

26 B. The rules adopted by the director shall provide for the
27 regulation of all sewage sludge use or disposal practices used in this
28 state.

29 Sec. 22. Title 49, chapter 2, article 3.1, Arizona Revised Statutes,
30 is amended by adding sections 49-255.04 and 49-255.05, to read:

31 49-255.04. Special provisions for discharges to non-WOTUS
32 protected surface waters

1 A. PERMITS AND CONDITIONS OF PERMITS FOR DISCHARGES TO NON-WOTUS
2 PROTECTED SURFACE WATERS SHALL NOT IMPLEMENT ANY SECTIONS OF THE CLEAN
3 WATER ACT, INCLUDING SECTIONS 301, 302, 306, 307, 308, 312, 318 AND 405,
4 AND SHALL NOT BE SUBJECT TO REVIEW, APPROVAL OR ENFORCEMENT BY THE UNITED
5 STATES ENVIRONMENTAL PROTECTION AGENCY.

6 B. THE DIRECTOR SHALL APPLY THE RULES ESTABLISHED PURSUANT TO
7 SECTIONS 49-255.01, 49-255.02 AND 49-255.03 TO NON-WOTUS PROTECTED SURFACE
8 WATERS UNTIL THE DIRECTOR ADOPTS RULES FOR DISCHARGES TO NON-WOTUS
9 PROTECTED SURFACE WATERS, EXCEPT THE DIRECTOR IS NOT REQUIRED TO FOLLOW ANY
10 PROVISIONS RELATED TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REVIEW,
11 APPROVAL OR INVOLVEMENT IN PERMIT REVIEW OR APPROVAL. THE DIRECTOR SHALL
12 NOT ADOPT OR APPLY RULES REGARDING THE FOLLOWING DISCHARGES TO NON-WOTUS
13 PROTECTED SURFACE WATERS:

14 1. EXCEPT AS APPLIED TO DISCHARGES FROM PUBLICLY OWNED TREATMENT
15 WORKS, REQUIREMENTS SPECIFIC TO NEW SOURCES OR NEW DISCHARGERS UNDER THE
16 CLEAN WATER ACT.

17 2. EXCEPT AS APPLIED TO DISCHARGES FROM PUBLICLY OWNED TREATMENT
18 WORKS, TECHNOLOGY-BASED EFFLUENT LIMITATIONS, STANDARDS OR CONTROLS,
19 INCLUDING NEW SOURCE PERFORMANCE STANDARDS, UNDER SECTIONS 301(b), 304(b),
20 AND 306 OF THE CLEAN WATER ACT.

21 3. REQUIREMENTS TO EXPRESS ALL PERMIT LIMITATIONS, STANDARDS OR
22 PROHIBITIONS FOR A METAL SOLELY IN TERMS OF TOTAL RECOVERABLE METAL.

23 4. REQUIREMENTS FOR REVIEW AND APPROVAL OF PERMITS BY THE UNITED
24 STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE ISSUANCE.

25 C. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE
26 UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS PRESCRIBED IN
27 SUBSECTION B OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1
28 FOR POINT SOURCE DISCHARGES OF STORM WATER FROM INDUSTRIAL OR CONSTRUCTION
29 ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS. THE DIRECTOR SHALL USE A
30 BEST MANAGEMENT PRACTICES APPROACH WHEN ISSUING AND IMPLEMENTING GENERAL
31 PERMITS FOR STORM WATER DISCHARGES FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY
32 TO NON-WOTUS PROTECTED SURFACE WATERS AND MAY INCLUDE ANALYTICAL MONITORING

1 AND DISCHARGE LIMITS IF BEST MANAGEMENT PRACTICES CANNOT ACHIEVE APPLICABLE
2 SURFACE WATER QUALITY STANDARDS. THE DIRECTOR MAY ISSUE AN INDIVIDUAL
3 PERMIT FOR THOSE DISCHARGES ONLY IF THE DIRECTOR DETERMINES, USING
4 REASONABLY CURRENT CREDIBLE AND SCIENTIFICALLY DEFENSIBLE DATA, THAT A
5 PARTICULAR DISCHARGE IS A SIGNIFICANT CONTRIBUTOR OF POLLUTANTS TO A
6 NON-WOTUS PROTECTED SURFACE WATER THAT CAUSES THE WATER TO EXCEED ONE OR
7 MORE APPLICABLE WATER QUALITY STANDARDS. WHEN MAKING THIS DETERMINATION,
8 THE DIRECTOR SHALL CONSIDER THE LOCATION OF THE DISCHARGE WITH RESPECT TO
9 THE NON-WOTUS PROTECTED SURFACE WATER, THE SIZE OF THE DISCHARGE AND THE
10 QUANTITY AND NATURE OF THE POLLUTANTS DISCHARGED. IF THE DIRECTOR
11 DETERMINES THAT AN INDIVIDUAL PERMIT IS REQUIRED FOR A DISCHARGE OF STORM
12 WATER FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY TO A NON-WOTUS PROTECTED
13 SURFACE WATER, THE DISCHARGER MUST BE NOTIFIED IN WRITING AND INFORMED OF
14 THE REASONS FOR THE DETERMINATION AND THE RIGHT TO APPEAL THE INDIVIDUAL
15 PERMIT DETERMINATION.

16 D. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE
17 UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS IN SUBSECTION B
18 OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1 FOR OTHER
19 CATEGORIES OF POTENTIAL POINT SOURCE DISCHARGES, INCLUDING DE MINIMIS
20 DISCHARGES, TO NON-WOTUS PROTECTED SURFACE WATERS THAT INVOLVE THE SAME OR
21 SUBSTANTIALLY SIMILAR TYPES OF OPERATIONS, CONTAIN THE SAME OR
22 SUBSTANTIALLY SIMILAR TYPES OF POLLUTANTS AND ARE MORE APPROPRIATELY
23 CONTROLLED UNDER A GENERAL PERMIT THAN UNDER AN INDIVIDUAL PERMIT.

24 E. THE DIRECTOR MAY ADOPT RULES FOR POINT SOURCE DISCHARGES TO NON-
25 WOTUS PROTECTED SURFACE WATERS. THE RULES ADOPTED BY THE DIRECTOR UNDER
26 THIS SUBSECTION SHALL NOT INCLUDE ANY REQUIREMENT THAT IS MORE STRINGENT
27 THAN REQUIREMENTS OF THE CLEAN WATER ACT, SHALL PROVIDE FOR ISSUING,
28 AUTHORIZING, DENYING, MODIFYING, SUSPENDING OR REVOKING INDIVIDUAL OR
29 GENERAL PERMITS AND SHALL ESTABLISH PERMIT CONDITIONS TO CARRY OUT THE
30 PERMIT PROGRAM ESTABLISHED BY THIS SECTION.

31 F. THE DIRECTOR SHALL NOT CONSTRUE ANY RULE TO REQUIRE OVERSIGHT BY
32 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF PERMITS OR PORTIONS OF

1 PERMITS FOR DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, AND A RULE
2 SHALL NOT APPLY IF IT WOULD REQUIRE REVIEW, APPROVAL OR ENFORCEMENT BY THE
3 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF DISCHARGES TO NON-WOTUS
4 PROTECTED SURFACE WATERS.

5 G. IN PERMITS FOR DISCHARGES TO WOTUS AND NON-WOTUS PROTECTED
6 SURFACE WATERS, THE DIRECTOR SHALL NOT IMPOSE DUPLICATIVE PERMIT
7 REQUIREMENTS.

8 H. THE DIRECTOR SHALL NOT DELEGATE TO ANY CITY, TOWN OR COUNTY THE
9 AUTHORITY TO REQUIRE PERMITS FOR POINT SOURCE DISCHARGES FROM CONSTRUCTION
10 ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS.

11 49-255.05. Best management practices for activities within
12 non-WOTUS

13 A. THE DIRECTOR SHALL ADOPT BY RULE BEST MANAGEMENT PRACTICES AND
14 NOTIFICATION REQUIREMENTS TO ENSURE THAT THE ACTIVITIES PRESCRIBED IN THIS
15 SECTION DO NOT VIOLATE APPLICABLE SURFACE WATER QUALITY STANDARDS. THE
16 DIRECTOR MAY INCLUDE ONLY THOSE BEST MANAGEMENT PRACTICES THAT EXTEND TO:

17 1. ACTIVITIES CONDUCTED WITHIN THE ORDINARY HIGH WATERMARK OF
18 PERENNIAL OR INTERMITTENT NON-WOTUS PROTECTED SURFACE WATERS.

19 2. ACTIVITIES CONDUCTED WITHIN THE BED AND BANKS OF WATERS THAT
20 MATERIALLY IMPACT DOWNSTREAM NON-WOTUS PROTECTED SURFACE WATERS. THE
21 DIRECTOR SHALL DETERMINE THROUGH RULEMAKING WHAT CONSTITUTES A MATERIAL
22 IMPACT AND THAT RULEMAKING SHALL BE BASED ON FACTORS THAT INCLUDE DISTANCE
23 AND TOPOGRAPHY.

24 3. ACTIVITIES THAT ARE NOT ALREADY REGULATED UNDER THIS TITLE.

25 B. THE DIRECTOR MAY NOT ADOPT BEST MANAGEMENT PRACTICES AND
26 NOTIFICATION REQUIREMENTS FOR THE FOLLOWING:

27 1. DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO A
28 RECHARGE PROJECT.

29 2. ESTABLISHED OR ONGOING FARMING, RANCHING AND SILVICULTURE
30 ACTIVITIES SUCH AS PLOWING, SEEDING, CULTIVATING, MINOR DRAINAGE OR
31 HARVESTING FOR THE PRODUCTION OF FOOD, FIBER OR FOREST PRODUCTS OR UPLAND
32 SOIL AND WATER CONSERVATION PRACTICES.

1 3. MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES.

2 4. CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.

3 5. MAINTENANCE OF STRUCTURES SUCH AS DAMS, DIKES AND LEVEES.

4 Sec. 23. Section 49-256, Arizona Revised Statutes, is amended to
5 read:

6 49-256. Adoption and enactment of federal definitions

7 For the purposes of this article and for establishing primacy for
8 this state's dredge and fill permit program under 33 United States Code
9 section 1344, the following definitions are adopted and enacted as follows:

10 1. "Compensatory mitigation" means the restoration (re-establishment
11 or rehabilitation), establishment (creation), enhancement, and/or in
12 certain circumstances preservation of aquatic resources for the purposes of
13 offsetting unavoidable adverse impacts ~~which~~ THAT remain after all
14 appropriate and practicable avoidance and minimization has been achieved.

15 2. "Dredged material" means material that is excavated or dredged
16 from ~~navigable waters~~ WOTUS.

17 3. "Fill material" means:

18 (a) Except as specified in subdivision (c) of this definition, the
19 term fill material means material placed in ~~navigable waters~~ WOTUS where
20 the material has the effect of EITHER:

21 (i) Replacing any portion of a ~~navigable water~~ WOTUS with dry land.
22 ~~;~~ ~~OR~~

23 (ii) Changing the bottom elevation of any portion of a ~~navigable~~
24 ~~water~~ WOTUS.

25 (b) Examples of such fill material include, but are not limited to:
26 rock, sand, soil, clay, plastics, construction debris, wood chips,
27 overburden from mining or other excavation activities, and materials used
28 to create any structure or infrastructure in the ~~navigable waters~~ WOTUS.

29 (c) The term fill material does not include trash or garbage.

30 4. "General permit" means a permit authorizing a category of
31 discharges of dredged or fill material under this article. General permits
32 are permits for categories of discharge which are similar in nature, will

1 cause only minimal adverse environmental effects when performed separately,
2 and will have only minimal cumulative adverse effect on the environment.

3 5. "In-lieu fee program" means a program involving the restoration,
4 establishment, enhancement, and/or preservation of aquatic resources
5 through funds paid to a governmental or non-profit natural resources
6 management entity to satisfy compensatory mitigation requirements for
7 dredge and fill permits issued pursuant to this article. Similar to but
8 distinct from a mitigation bank, an in-lieu fee program sells compensatory
9 mitigation credits to permittees whose obligation to provide compensatory
10 mitigation is then transferred to the in-lieu program sponsor. The
11 operation and use of an in-lieu fee program are governed by an in-lieu fee
12 program instrument.

13 6. "Mitigation bank" means a site, or suite of sites, where
14 resources (e.g., wetlands, streams, riparian areas) are restored,
15 established, enhanced, and/or preserved for the purpose of providing
16 compensatory mitigation for impacts authorized by dredge and fill permits
17 issued pursuant to this article. In general, a mitigation bank sells
18 compensatory mitigation credits to permittees whose obligation to provide
19 compensatory mitigation is then transferred to the mitigation bank
20 sponsor. The operation and use of a mitigation bank are governed by a
21 mitigation banking instrument.

22 7. "Party affected by a jurisdictional determination" means a permit
23 applicant, landowner, a lease, easement or option holder, or other
24 individual who has an identifiable and substantial legal interest in the
25 property (or a person acting with the approval of any of the foregoing) who
26 has received an approved jurisdictional determination.

27 8. "Permittee-responsible mitigation" means an aquatic resource
28 restoration, establishment, enhancement, and/or preservation activity
29 undertaken by the permittee (or an authorized agent or contractor) to
30 provide compensatory mitigation for which the permittee retains full
31 responsibility.

1 the discharge of dredged or fill material into ~~navigable waters~~ WOTUS
2 regulated by this state under the clean water act for purposes of
3 implementing the permit program established by 33 United States Code
4 section 1344.

5 2. Establish permit conditions that ensure compliance with the
6 applicable requirements of section 404 of the clean water act, including
7 the guidelines issued under 33 United States Code section 1344(b)(1).

8 3. Establish maintenance, monitoring, sampling, reporting,
9 recordkeeping and any other permitting requirements as necessary to
10 maintain primary enforcement responsibility or to determine compliance with
11 this article.

12 4. Establish the following in accordance with 33 United States Code
13 section 1344:

14 (a) Circumstances and activities that do not require a dredge or
15 fill permit.

16 (b) Activities that are exempt from the requirements of this article
17 for any discharge or fill material that may result from those activities,
18 and the conditions under which those activities are exempt.

19 (c) Circumstances under which a discharge of dredged or fill
20 material shall not be permitted.

21 5. Establish procedures for the director to make jurisdictional
22 determinations that determine whether a wetland or waterbody is a ~~navigable~~
23 ~~water~~ WOTUS subject to regulatory jurisdiction under this article.
24 Jurisdictional determinations:

25 (a) Shall be in writing and be identified as either preliminary or
26 approved.

27 (b) Do not include determinations that a particular activity
28 requires a permit under this article.

29 6. Establish public notice and comment procedures as necessary to
30 maintain primacy for the dredge and fill PERMIT program and as the director
31 deems appropriate to inform the public.

1 7. Provide for any other provisions necessary to maintain state
2 primary enforcement responsibility under 33 United States Code section 1344
3 and to implement the provisions of this article.

4 D. Approved jurisdictional determinations are appealable agency
5 actions as defined by section 41-1092 and may be appealed by a party
6 affected by a jurisdictional determination. Preliminary jurisdictional
7 determinations are not appealable agency actions and notwithstanding
8 section 41-1092.03, the right to appeal an approved jurisdictional
9 determination does not extend to adjacent landowners or to third parties
10 that are not parties affected by a jurisdictional determination.

11 E. On assuming authority to administer the permit program
12 established by 33 United States Code section 1344, the department shall:

13 1. On request by a party affected by a jurisdictional determination,
14 recognize and adopt any existing approved jurisdictional determinations
15 that were originally issued by the United States army corps of engineers if
16 the federal definition of ~~navigable waters~~ WOTUS that is applicable in this
17 state has not changed since the issuance of the approved jurisdictional
18 determinations.

19 2. On request by a party affected by a jurisdictional determination,
20 renew approved jurisdictional determinations that were originally issued by
21 the United States army corps of engineers on the same terms as the original
22 unless:

23 (a) Physical changes have occurred affecting the determination that
24 are likely to alter the jurisdictional status.

25 (b) The federal definition of ~~navigable waters~~ WOTUS that is
26 applicable in this state has changed since the issuance of the approved
27 jurisdictional determinations.

28 (c) Additional field data show that the original determination was
29 based on inaccurate data and the new data warrant a revision to the
30 original determination.

31 F. The program established pursuant to this article is exempt from
32 section 41-3102.

1 Sec. 25. Section 49-256.02, Arizona Revised Statutes, is amended to
2 read:

3 49-256.02. Compensatory mitigation

4 A. As a part of the program established pursuant to section
5 49-256.01, and consistent with the guidelines established pursuant to
6 33 United States Code section 1344(b)(1), the director shall establish by
7 rule standards and criteria for the use of all types of compensatory
8 mitigation, including on-site and off-site permittee-responsible
9 mitigation, mitigation banks and in-lieu fee mitigation to offset
10 unavoidable impacts to ~~navigable waters~~ WOTUS authorized by permits issued
11 under this article.

12 B. Mitigation banks and in-lieu fee programs may be used to
13 compensate for unavoidable impacts to ~~navigable waters~~ WOTUS that are
14 authorized by general permits and individual permits, including
15 after-the-fact permits, in accordance with rules established pursuant to
16 this section. In addition to other potential injunctive relief or other
17 relief requested under section 49-262, mitigation banks and in-lieu fee
18 programs may be used to satisfy requirements arising from an enforcement
19 action under this article.

20 C. Rules established by the director pursuant to this section shall
21 identify alternative compensatory mitigation options for a permit applicant
22 if an approved mitigation bank or in-lieu fee program that is located in
23 the same watershed as the permit applicant's proposed discharge rejects
24 that permit applicant's participation in that mitigation bank or in-lieu
25 fee program.

26 Sec. 26. Section 49-261, Arizona Revised Statutes, is amended to
27 read:

28 49-261. Compliance orders; appeal; enforcement

29 A. If the director determines that a person is in violation of a
30 rule adopted or a condition of a permit issued pursuant to section 49-203,
31 subsection A, paragraph ~~6~~ 7, any provision of article 2, 3, 3.1, ~~or~~ 3.2 or
32 3.3 of this chapter, a rule adopted pursuant to article 2, 3, 3.1, ~~or~~ 3.2

1 or 3.3 of this chapter, a discharge limitation or any other condition of a
2 permit issued under article 2, 3, 3.1, ~~or~~ 3.2 or 3.3 of this chapter or is
3 creating an imminent and substantial endangerment to the public health or
4 environment, the director may issue an order requiring compliance within a
5 reasonable time period.

6 B. A compliance order shall state with reasonable specificity the
7 nature of the violation, a time for compliance if applicable and the right
8 to a hearing.

9 C. A compliance order shall be transmitted to the alleged violator
10 by certified mail, return receipt requested, or by personal service.

11 D. A compliance order becomes final and enforceable in the superior
12 court unless within thirty days after the receipt of the order the alleged
13 violator requests a hearing before an administrative law judge. If a
14 hearing is requested, the order does not become final until the
15 administrative law judge has issued a final decision on the appeal.
16 Appeals shall be conducted pursuant to section 49-321.

17 E. At the request of the director the attorney general may commence
18 an action in superior court to enforce orders issued under this section
19 once an order becomes final.

20 Sec. 27. Section 49-262, Arizona Revised Statutes, is amended to
21 read:

22 49-262. Injunctive relief; civil penalties; recovery of
23 litigation costs; affirmative defense

24 A. Whether or not a person has requested a hearing, the director,
25 through the attorney general, may request a temporary restraining order, a
26 preliminary injunction, a permanent injunction or any other relief
27 necessary to protect the public health if the director has reason to
28 believe either of the following:

29 1. That a person is in violation of:

30 (a) Any provision of article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

31 (b) A rule adopted pursuant to section 49-203, subsection A,
32 paragraph ~~6~~ 7.

1 (c) A rule adopted pursuant to article 2, 3, 3.1, 3.2 or 3.3 of this
2 chapter.

3 (d) A discharge limitation or any other condition of a permit issued
4 under article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

5 2. That a person is creating an actual or potential endangerment to
6 the public health or environment because of acts performed ~~in violation of~~
7 **THAT VIOLATE** this chapter.

8 B. Notwithstanding any other provision of this chapter, if the
9 director, the county attorney or the attorney general has reason to believe
10 that a person is creating an imminent and substantial endangerment to the
11 public health or environment because of acts performed ~~in violation of~~ **THAT**
12 **VIOLATE** article 2, 3, 3.1, 3.2 or 3.3 of this chapter or a rule adopted or
13 a condition of a permit issued pursuant to section 49-203, subsection A,
14 paragraph 2, ~~6- 7~~ or ~~7- 8~~, the county attorney or attorney general may
15 request a temporary restraining order, a preliminary injunction, a
16 permanent injunction or any other relief necessary to protect the public
17 health.

18 C. A person who violates any provision of article 2, 3, 3.1 or 3.2
19 of this chapter or a rule, permit, discharge limitation or order issued or
20 adopted pursuant to article 2, 3, 3.1 or 3.2 of this chapter is subject to
21 a civil penalty of not more than \$25,000 per day per violation. A person
22 who violates any rule adopted or a condition of a permit issued pursuant to
23 section 49-203, subsection A, paragraph ~~6- 7~~ is subject to a civil penalty
24 of not more than \$5,000 per day per violation. A person who violates any
25 rule adopted, permit condition or other provision of article 3.3 of this
26 chapter is subject to a civil penalty of not more than \$5,000 per day per
27 violation. The attorney general may, and at the request of the director
28 shall, commence an action in superior court to recover civil penalties
29 provided by this section.

30 D. The court, in issuing any final order in any civil action brought
31 under this section, may award costs of litigation, including reasonable
32 attorney and expert witness fees, to any substantially prevailing party if

1 the court determines such an award is appropriate. If a temporary
2 restraining order is sought, the court may require the filing of a bond or
3 equivalent security.

4 E. All civil penalties except litigation costs obtained under this
5 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
6 state general fund.

7 F. Except as applied to permits issued or authorized pursuant to
8 article 3.1, 3.2 or 3.3 of this chapter, it is an affirmative defense to
9 civil liability under this section and section 49-261 for causing or
10 contributing to a violation of a water quality standard established
11 pursuant to this chapter, or a violation of a permit condition prohibiting
12 a violation of an aquifer water quality standard or limitation at the point
13 of compliance or a surface water quality standard if the release that
14 caused or contributed to the violation came from a facility owned or
15 operated by a party that has either:

16 1. Undertaken a remedial or response action approved by the director
17 or the administrator under this title or CERCLA in response to the release
18 of a hazardous substance, pollutant or contaminant that caused or
19 contributed to the violation of article 2 of this chapter and is in
20 compliance with that remedial or response action.

21 2. Otherwise resolved its liability for the release of a hazardous
22 substance that caused or contributed to the violation of article 2 of this
23 chapter in whole or in part by the execution of a settlement agreement or
24 consent decree with the director or administrator under this article,
25 CERCLA or any other environmental law and is in compliance with that
26 settlement agreement or consent decree.

27 G. Subsection F of this section does not prevent the director from
28 taking an appropriate enforcement action to address the release of a
29 hazardous substance, pollutant or contaminant or the violation of a permit
30 condition before or as an element of an approved remedial or response
31 action, settlement agreement or consent decree.

1 H. In determining the amount of a civil penalty for a violation
2 under article 3, 3.1, 3.2 or 3.3 of this chapter, the court shall consider
3 the following factors:

- 4 1. The seriousness of the violation or violations.
- 5 2. The economic benefit, if any, that results from the violation.
- 6 3. Any history of similar violations.
- 7 4. Any good faith efforts to comply with the applicable
8 requirements.
- 9 5. The economic impact of the penalty on the violator.
- 10 6. The extent to which the violation was caused by a third party.
- 11 7. Other matters as justice may require.

12 I. A single operational upset that leads to simultaneous violations
13 of more than one pollutant limitation in a permit issued or authorized
14 pursuant to section 49-255.01 constitutes a single violation for purposes
15 of any penalty calculation.

16 J. If a permittee holds both a permit issued or authorized pursuant
17 to article 3 of this chapter and a permit issued or authorized pursuant to
18 article 3.1, 3.2 or 3.3 of this chapter and the permittee violates a
19 similar provision in both permits simultaneously, the department shall not
20 recover penalties for violations of both permits based on the same act or
21 omission.

22 K. For a wastewater treatment facility or system that is regulated
23 as a public service corporation by the corporation commission, the
24 department may make a written request to the corporation commission to take
25 necessary corrective actions within thirty calendar days after both of the
26 following occur:

- 27 1. The department does any one or more of the following:
 - 28 (a) Determines that the wastewater treatment facility or system is
29 out of compliance with an administrative order issued by the department for
30 a violation of this chapter.
 - 31 (b) Files a civil action against the owner or operator of the
32 wastewater treatment facility or system for a violation of this chapter.

1 (c) Determines that an emergency exists with respect to the
2 wastewater treatment facility or system.

3 2. The department determines that the corporation commission taking
4 necessary corrective actions would expedite the wastewater treatment
5 facility's or system's return to compliance with this chapter.

6 Sec. 28. Section 49-371, Arizona Revised Statutes, is amended to
7 read:

8 49-371. Local stormwater quality programs; authority;
9 limitations; fee; civil penalty; definition

10 A. A county that is required by the clean water act to obtain
11 coverage under a national or state pollutant discharge elimination system
12 stormwater program **OR A COUNTY THAT IS REQUIRED TO OBTAIN COVERAGE UNDER AN**
13 **ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PURSUANT TO ARTICLE**
14 **3.1 OF THIS CHAPTER** may do all of the following:

15 1. Develop and implement stormwater pollution prevention plans and
16 stormwater management programs as prescribed by the clean water act **OR**
17 **ARTICLE 3.1 OF THIS CHAPTER.**

18 2. Adopt, amend, repeal and implement any ordinances, rules or
19 regulations necessary to comply with the minimum requirements of the clean
20 water act **OR ARTICLE 3.1 OF THIS CHAPTER**, including the imposition and
21 collection of fees for issuing and administering permits, reviewing plans
22 and conducting inspections. Any fees imposed pursuant to this section
23 shall not exceed the reasonable costs of the county to issue and administer
24 permits, review plans and conduct inspections. Fees collected pursuant to
25 this section may not be used to fund stormwater infrastructure costs.

26 3. Adopt rules, regulations or ordinances regulating the use of
27 lands or rights-of-way owned or leased by the county as may be necessary to
28 implement and enforce its national or state pollutant discharge elimination
29 system stormwater management program. Rules, regulations or ordinances
30 adopted pursuant to this paragraph may include provisions for both of the
31 following:

1 (a) ~~Establishment~~ ESTABLISHING and ~~enforcement~~ ENFORCING ~~of~~ a county
2 permit program, including conditions for the review, issuance, revision,
3 renewal, revocation, administration and enforcement of a permit.

4 (b) ~~Establishment~~ ESTABLISHING ~~of~~ fees for the use of lands or
5 rights-of-way and the discharge of stormwater or other waters onto or
6 across those lands or rights-of-way pursuant to a permit.

7 4. Enforce the ordinances, rules or regulations adopted pursuant to
8 this section consistent with section 49-372.

9 5. Seek a civil penalty of not more than ~~two thousand five hundred~~
10 ~~dollars~~ \$2,500 for each violation. Each day of a violation constitutes a
11 separate offense.

12 B. An ordinance, rule or regulation adopted pursuant to this
13 section, or a stormwater management program developed and implemented by a
14 county pursuant to this section, shall not be more stringent than or
15 conflict with any requirement of the clean water act OR ARTICLE 3.1 OF THIS
16 CHAPTER. A CITY, TOWN OR COUNTY MAY NOT REGULATE UNDER THIS SECTION ANY
17 ACTIVITY THAT DOES NOT DISCHARGE TO A PROTECTED SURFACE WATER.

18 C. A county that operates a regulated small municipal separate storm
19 sewer system THAT DISCHARGES TO A PROTECTED SURFACE WATER shall conduct its
20 pollutant discharge elimination system stormwater management program and
21 shall limit the application of any ordinance, rule or regulation as
22 follows:

23 1. In urbanized areas as described in 40 Code of Federal Regulations
24 section 122.32 as necessary to meet the requirements of 40 Code of Federal
25 Regulations section 122.34(b)(3). FOR SMALL MUNICIPAL SEPARATE STORM SEWER
26 SYSTEMS THAT DISCHARGE TO NON-WOTUS PROTECTED SURFACE WATERS, THE COUNTY
27 SHALL APPLY THIS PARAGRAPH AS IF THE SMALL MUNICIPAL SEPARATE STORM SEWER
28 SYSTEM DISCHARGED TO A WOTUS PROTECTED SURFACE WATER.

29 2. As necessary to meet the requirements of public education and
30 outreach, public involvement and participation as provided by the clean
31 water act OR ARTICLE 3.1 OF THIS CHAPTER.

1 D. ~~For the purposes of this section and~~ Except as required by the
2 clean water act, a county may not require a permit from any person with a
3 federal or state pollutant discharge elimination system permit regulating
4 the same activity at the same location.

5 E. ~~For the purposes of this section and~~ Except as required by 40
6 Code of Federal Regulations section 122.34, a county may not regulate any
7 person or activity exempt under 33 United States Code section 1342(l), 40
8 Code of Federal Regulations section 122.3 or Arizona administrative code
9 ~~18-9-A902(G)~~ R18-9-A902(G).

10 F. ~~For the purposes of~~ IF adopting an ordinance, rule or regulation
11 pursuant to this section, a county shall use the definitions prescribed in
12 section 49-255.

13 G. Fees received by a county pursuant to an ordinance or rule
14 adopted pursuant to this article shall be deposited with the county for use
15 in administering the programs or plans developed and implemented pursuant
16 to this section.

17 H. Before adopting any ordinance, rule or regulation pursuant to
18 this section, a county shall file with the secretary of state a written
19 statement including a summary of the proposed rule, ordinance or other
20 regulation. The summary shall provide the name of the person with the
21 county to contact with questions or comments. The secretary of state shall
22 publish the written statement in the next issue of the Arizona
23 administrative register at no cost to the county. The county shall make
24 the text of the rule, ordinance or other regulation available to the public
25 at the same time it files the written summary of the rule, ordinance or
26 other regulation with the secretary of state as provided in this
27 subsection. The county shall also comply with the requirements of section
28 49-112, subsection D, paragraphs 2, 3 and 4.

29 I. For the purposes of this article, "county" means a county that
30 operates a regulated small municipal separate ~~stormwater~~ STORM SEWER system
31 pursuant to 40 Code of Federal Regulations section 122.32. FOR SMALL
32 MUNICIPAL SEPARATE STORM SEWER SYSTEMS THAT DISCHARGE TO NON-WOTUS

1 PROTECTED SURFACE WATERS, THIS DEFINITION SHALL APPLY AS IF THE SMALL
2 MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGED TO A WOTUS PROTECTED
3 SURFACE WATER.

4 Sec. 29. Section 49-391, Arizona Revised Statutes, is amended to
5 read:

6 49-391. Local enforcement of water pretreatment requirements;
7 civil penalties

8 A. A city, town, county or sanitary district of this state may
9 adopt, amend or repeal any ordinances necessary for implementing and
10 enforcing the pretreatment requirements under the federal water pollution
11 control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States
12 Code sections 1251 through 1376), as amended, AND ARTICLE 3.1 OF THIS
13 CHAPTER and enforce the ordinances by imposing and recovering a civil
14 penalty of not more than ~~twenty-five thousand dollars~~ \$25,000 for each
15 violation as prescribed by this section. For continuing violations, each
16 day may constitute a separate offense.

17 B. A city, town, county or sanitary district shall not receive civil
18 penalties under this section if an interested person, the United States,
19 this state, or another city, town, county or sanitary district has received
20 civil penalties or is diligently prosecuting a civil penalty action in a
21 court of the United States or this state, or in an administrative
22 enforcement proceeding, with respect to the same allegations, standard,
23 requirement, or order. This state, and any city, town, county or
24 sanitary district of this state that is or may be affected by a civil,
25 judicial or administrative action, may intervene as a matter of right in
26 any pending civil, judicial or administrative action for purposes of
27 obtaining injunctive or declaratory relief.

28 C. The city, town, county or sanitary district may seek compliance
29 with pretreatment ordinances and recovery of the civil penalties provided
30 by this section either by an action in superior court or by a negotiated
31 settlement agreement. Before a consent decree filed with superior court or
32 a negotiated settlement becomes final, the city, town, county or sanitary

1 district seeking compliance shall provide a period of thirty days for
2 public comment. In determining the amount of a civil penalty the court and
3 the city, town, county or sanitary district shall consider:

- 4 1. The seriousness of the violation.
- 5 2. The economic benefit, if any, resulting from the violation.
- 6 3. Any history of such violation.
- 7 4. Any good faith efforts to comply with the applicable
8 requirements.
- 9 5. The economic impact of the penalty on the violator.
- 10 6. Such other factors as justice may require.

11 D. In addition to the remedies provided in this section, enforcement
12 of such ordinances may include injunctive or other equitable relief.

13 E. All monies collected pursuant to an ordinance adopted under this
14 section shall be deposited with the respective city, town, county or
15 sanitary district.

16 Sec. 30. Section 49-701, Arizona Revised Statutes, is amended to
17 read:

18 49-701. Definitions

19 In this chapter, unless the context otherwise requires:

20 1. "Administratively complete plan" means an application for a solid
21 waste facility plan approval that the department has determined contains
22 each of the components required by statute or rule but that has not
23 undergone technical review or public notice by the department.

24 2. "Administrator" means the administrator of the United States
25 environmental protection agency.

26 3. "Closed solid waste facility" means any of the following:

27 (a) A solid waste facility that ceases storing, treating, processing
28 or receiving for disposal solid waste before the effective date of design
29 and operation rules for that type of facility adopted pursuant to section
30 49-761.

31 (b) A public solid waste landfill that meets any of the following
32 criteria:

1 (i) Ceased receiving solid waste prior to July 1, 1983.

2 (ii) Ceased receiving solid waste and received at least two feet of
3 cover material prior to January 1, 1986.

4 (iii) Received approval for closure from the department.

5 (c) A public composting plant or a public incinerating facility that
6 closed in accordance with an approved plan.

7 4. "Conditionally exempt small quantity generator waste" means
8 hazardous waste in quantities as defined by rules adopted pursuant to
9 section 49-922.

10 5. "Construction debris" means solid waste derived from the
11 construction, repair or remodeling of buildings or other structures.

12 6. "County" means:

13 (a) The board of supervisors in the context of the exercise of
14 powers or duties.

15 (b) The unincorporated areas in the context of area of jurisdiction.

16 7. "Demolition debris" means solid waste derived from the demolition
17 of buildings or other structures.

18 8. "Discharge" has the same meaning prescribed in section 49-201.

19 9. "Existing solid waste facility" means a solid waste facility that
20 begins construction or is in operation on the effective date of the design
21 and operation rules adopted by the director pursuant to section 49-761 for
22 that type of solid waste facility.

23 10. "Facility plan" means any design or operating plan for a solid
24 waste facility or group of solid waste facilities.

25 11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part
26 257 in effect on May 1, 2004.

27 12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part
28 258 in effect on May 1, 2004.

29 13. "Household hazardous waste" means solid waste as described in 40
30 Code of Federal Regulations section 261.4(b)(1) as incorporated by
31 reference in the rules adopted pursuant to chapter 5 of this title.

1 14. "Household waste" means any solid waste including garbage,
2 rubbish and sanitary waste from septic tanks that is generated from
3 households including single and ~~multiple-family~~ MULTIPLE-FAMILY residences,
4 hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds,
5 picnic grounds and day use recreation areas, not including construction
6 debris, landscaping rubble or demolition debris.

7 15. "Inert material":

8 (a) Means material that satisfies all of the following conditions:

9 (i) Is not flammable.

10 (ii) Will not decompose.

11 (iii) Will not leach substances in concentrations that exceed
12 applicable aquifer water quality standards prescribed by section 49-201,
13 paragraph ~~20~~ 22 when subjected to a water leach test that is designed to
14 approximate natural infiltrating waters.

15 (b) Includes concrete, asphaltic pavement, brick, rock, gravel,
16 sand, soil and metal, if used as reinforcement in concrete, but does not
17 include special waste, hazardous waste, glass or other metal.

18 16. "Land disposal" means placement of solid waste in or on land.

19 17. "Landscaping rubble" means material that is derived from
20 landscaping or reclamation activities and that may contain inert material
21 and ~~no~~ NOT more than ten ~~per-cent~~ PERCENT by volume of vegetative waste.

22 18. "Management agency" means any person responsible for the
23 day-to-day operation, maintenance and management of a particular public
24 facility or group of public facilities.

25 19. "Medical waste" means any solid waste ~~which~~ THAT is generated in
26 the diagnosis, treatment or immunization of a human being or animal or in
27 any research relating to that diagnosis, treatment or immunization, or in
28 the production or testing of biologicals, and includes discarded drugs but
29 does not include hazardous waste as defined in section 49-921 other than
30 conditionally exempt small quantity generator waste.

1 20. "Municipal solid waste landfill" means any solid waste landfill
2 that accepts household waste, household hazardous waste or conditionally
3 exempt small quantity generator waste.

4 21. "New solid waste facility" means a solid waste facility that
5 begins construction or operation after the effective date of design and
6 operating rules that are adopted pursuant to section 49-761 for that type
7 of solid waste facility.

8 22. "On site" means the same or geographically contiguous property
9 that may be divided by public or private right-of-way if the entrance and
10 exit between the properties are at a crossroads intersection and access is
11 by crossing the right-of-way and not by traveling along the right-of-way.
12 Noncontiguous properties that are owned by the same person and connected by
13 a right-of-way that is controlled by that person and to which the public
14 does not have access are deemed on site property. Noncontiguous properties
15 that are owned or operated by the same person regardless of right-of-way
16 control are also deemed on site property.

17 23. "Person" means any public or private corporation, company,
18 partnership, firm, association or society of persons, the federal
19 government and any of its departments or agencies, this state or any of its
20 agencies, departments, political subdivisions, counties, towns or municipal
21 corporations, as well as a natural person.

22 24. "Process" or "processing" means the reduction, separation,
23 recovery, conversion or recycling of solid waste.

24 25. "Public solid waste facility" means a transfer facility and any
25 site owned, operated or utilized by any person for the storage, processing,
26 treatment or disposal of solid waste that is not generated on site.

27 26. "Recycling facility" means a solid waste facility that is owned,
28 operated or used for the storage, treatment or processing of recyclable
29 solid waste and that handles wastes that have a significant adverse effect
30 on the environment.

1 27. "Salvaging" means the removal of solid waste from a solid waste
2 facility with the permission and in accordance with rules or ordinances of
3 the management agency for purposes of productive reuse.

4 28. "Scavenging" means the unauthorized removal of solid waste from
5 a solid waste facility.

6 29. "Solid waste facility" means a transfer facility and any site
7 owned, operated or ~~utilized~~ USED by any person for the storage, processing,
8 treatment or disposal of solid waste, conditionally exempt small quantity
9 generator waste or household hazardous waste but does not include the
10 following:

11 (a) A site at which less than one ton of solid waste that is not
12 household waste, household hazardous waste, conditionally exempt small
13 quantity generator waste, medical waste or special waste and that was
14 generated on site is stored, processed, treated or disposed in compliance
15 with section 49-762.07, subsection F.

16 (b) A site at which solid waste that was generated on site is stored
17 for ninety days or less.

18 (c) A site at which nonputrescible solid waste that was generated on
19 site in amounts of less than one thousand kilograms per month per type of
20 nonputrescible solid waste is stored and contained for one hundred eighty
21 days or less.

22 (d) A site that stores, treats or processes paper, glass, wood,
23 cardboard, household textiles, scrap metal, plastic, vegetative waste,
24 aluminum, steel or other recyclable material and that is not a waste tire
25 facility, a transfer facility or a recycling facility.

26 (e) A site where sludge from a wastewater treatment facility is
27 applied to the land as a fertilizer or beneficial soil amendment in
28 accordance with sludge application requirements.

29 (f) A closed solid waste facility.

1 (g) A solid waste landfill that is performing or has completed
2 postclosure care before July 1, 1996 in accordance with an approved
3 postclosure plan.

4 (h) A closed solid waste landfill performing a onetime removal of
5 solid waste from the closed solid waste landfill, if the operator provides
6 a written notice that describes the removal project to the department
7 within thirty days after completion of the removal project.

8 (i) A site where solid waste generated in street sweeping activities
9 is stored, processed or treated prior to disposal at a solid waste facility
10 authorized under this chapter.

11 (j) A site where solid waste generated at either a drinking water
12 treatment facility or a wastewater treatment facility is stored, processed,
13 or treated on site prior to disposal at a solid waste facility authorized
14 under this chapter, and any discharge is regulated pursuant to chapter 2,
15 article 3 of this title.

16 (k) A closed solid waste landfill where development activities occur
17 on the property or where excavation or removal of solid waste is performed
18 for maintenance and repair provided the following conditions are met:

19 (i) When the project is completed there will not be an increase in
20 leachate that would result in a discharge.

21 (ii) When the project is completed the concentration of methane gas
22 will not exceed twenty-five ~~percent~~ PERCENT of the lower explosive limit
23 in on-site structures, or the concentration of methane gas will not exceed
24 the lower explosive limit at the property line.

25 (iii) Protection has been provided to prevent remaining waste from
26 causing any vector, odor, litter or other environmental nuisance.

27 (iv) The operator provides a notice to the department containing the
28 information required by section 49-762.07, subsection A, paragraphs 1, 2
29 and 5 and a brief description of the project.

1 (l) Agricultural on-site disposal as provided in section 49-766.

2 (m) The use, storage, treatment or disposal of by-products of
3 regulated agricultural activities as defined in section 49-201 and that are
4 subject to best management practices pursuant to section 49-247 or
5 by-products of livestock, range livestock and poultry as defined in section
6 3-1201, pesticide containers that are regulated pursuant to title 3,
7 chapter 2, article 6 or other agricultural crop residues.

8 (n) Household hazardous waste collection events held at a temporary
9 site for not more than six days in any calendar quarter.

10 (o) Wastewater treatment facilities as defined in section 49-1201.

11 (p) An on-site ~~single-family~~ SINGLE-FAMILY household waste
12 composting facility.

13 (q) A site at which five hundred or fewer waste tires are stored.

14 (r) A site at which mining industry off-road waste tires are stored
15 or are disposed of as prescribed by rules in effect on February 1, 1996,
16 until the director by rule determines that on-site recycling methods exist
17 that are technically feasible and economically practical.

18 (s) A site at which underground piping, conduit, pipe covering or
19 similar structures are abandoned in place in accordance with applicable
20 state and federal laws.

21 30. "Solid waste landfill" means a facility, area of land or
22 excavation in which solid wastes are placed for permanent disposal. Solid
23 waste landfill does not include a land application unit, surface
24 impoundment, injection well, compost pile or waste pile or an area
25 containing ash from the on-site combustion of coal that does not contain
26 household waste, household hazardous waste or conditionally exempt small
27 quantity generator waste.

28 31. "Solid waste management" means the systematic administration of
29 activities ~~which~~ THAT provide for the collection, source separation,
30 storage, transportation, transfer, processing, treatment or disposal of
31 solid waste in a manner that protects public health and safety and the
32 environment and prevents and abates environmental nuisances.

1 32. "Solid waste management plan" means the plan ~~which~~ THAT is
2 adopted pursuant to section 49-721 and ~~which~~ THAT provides guidelines for
3 the collection, source separation, storage, transportation, processing,
4 treatment, reclamation and disposal of solid waste in a manner that
5 protects public health and safety and the environment and prevents and
6 abates environmental nuisances.

7 33. "Storage" means the holding of solid waste.

8 34. "Transfer facility" means a site that is owned, operated or used
9 by any person for the rehandling or storage for ninety days or less of
10 solid waste that was generated off site for the primary purpose of
11 transporting that solid waste. Transfer facility includes those facilities
12 that include significant solid waste transfer activities that warrant the
13 facility's regulation as a transfer facility.

14 35. "Treatment" means any method, technique or process used to
15 change the physical, chemical or biological character of solid waste so as
16 to render that waste safer for transport, amenable for processing, amenable
17 for storage or reduced in volume.

18 36. "Vegetative waste" means waste derived from plants, including
19 tree limbs and branches, stumps, grass clippings and other waste plant
20 material. Vegetative waste does not include processed lumber, paper,
21 cardboard and other manufactured products that are derived from plant
22 material.

23 37. "Waste pile" means any noncontainerized accumulation of solid,
24 nonflowing waste that is used for treatment or storage.

25 38. "Waste tire" does not include tires used for agricultural
26 purposes as bumpers on agricultural equipment or as ballast to maintain
27 covers at an agricultural site, or any tire disposed of using any of the
28 methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8
29 and 11 and means any of the following:

30 (a) A tire that is no longer suitable for its original intended
31 purpose because of wear, damage or defect.

1 (b) A tire that is removed from a motor vehicle and is retained for
2 further use.

3 (c) A tire that has been chopped or shredded.

4 39. "Waste tire facility" means a solid waste facility at which five
5 thousand or more waste tires are stored outdoors on any day."

6 Amend title to conform

And, as so amended, it do pass

GAIL GRIFFIN
CHAIRMAN

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