House Engrossed
aquifer protection permits; injection wells

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HOUSE BILL 2042

AN ACT

AMENDING SECTIONS 49-250, 49-257.01 AND 49-324, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-250, Arizona Revised Statutes, is amended to read:

49-250. Exemptions

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

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

1. Household and domestic activities.

2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.

3. The noncommercial use of consumer products generally available to and used by the public.

4. Ponds used for watering livestock and wildlife.

5. Mining overburden returned to the excavation site including any common material that has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.

6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.

7. Discharge to a community sewer system.

8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.

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

10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.

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

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

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

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

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

16. Discharges to a facility that is exempt pursuant to paragraph 6 OF THIS SUBSECTION if those discharges are regulated pursuant to 33 United States Code section 1342.

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

18. Facilities used in:

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

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

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

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

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

20. Storage, treatment or disposal of inert material.

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

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

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

(a) Firefighting system testing and maintenance.

(b) Potable water sources, including waterline flushings.

(c) Irrigation drainage and lawn watering.

(d) Routine external building wash down without detergents.

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

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

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

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

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

25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

26. Except for class V wells THAT ARE OPERATING AS PRESCRIBED BY RULES ADOPTED PURSUANT TO ARTICLE 3.3 OF THIS CHAPTER OR 42 UNITED STATES CODE SECTION 300h-1(c), any underground injection well covered by a permit issued under article 3.3 of this chapter or under 42 United ~~State~~ STATES Code section 300h-1(c). ~~This exemption does not apply until the date that the United States environmental protection agency approves the department's underground injection control permit program established pursuant to article 3.3 of this chapter.~~

Sec. 2. Section 49-257.01, Arizona Revised Statutes, is amended to read:

49-257.01. Underground injection control permit program; permits; prohibitions; rules

A. The department shall establish an underground injection control permit program, including a permitting process.

B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.

C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.

~~D. Notwithstanding subsection A of this section, a class V well is exempt from this article if the well has an aquifer protection permit obtained pursuant to article 3 of this chapter and that permit satisfies federal underground injection control requirements for a class V well.~~

~~E.~~ D. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).

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

Sec. 3. Section 49-324, Arizona Revised Statutes, is amended to read:

49-324. Stay pending appeal; standard of review

A. If an appeal is taken from the director's decision to issue a permit for a new facility, the facility may not discharge any pollutants inconsistent with the director's decision until the appeal process is completed.

B. Except as provided in subsections D and E of this section:

1. If an appeal is taken from the director's decision to grant or deny a permit for an existing facility under circumstances in which that facility was previously subject to a permit, the facility may continue to operate pending final disposition of the appeal if there is no increase in the amount of pollutants discharged or change in the characteristics of the discharge.

2. If an appeal is taken from the director's decision to grant, deny, modify or revoke a permit for a facility already subject to a permit, the facility may continue to operate as long as the operation complies with the conditions of the existing permit until final disposition of the appeal.

C. Decisions by the director shall be affirmed by the appeals board unless, considering the entire record before the board, it concludes that the director's decision is arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid.

D. The director or any interested person who has appealed or intervened before the board may apply to the superior court for an order requiring cessation of discharge or conditions for continued discharge pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health and the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

E. Notwithstanding section 41-1092.11, if a notice of appeal of a permit that is issued under article 3.1 of this chapter is filed WITH THE WATER QUALITY APPEALS BOARD, those permit provisions that are specifically identified in the notice of appeal as being contested and those other permit provisions that cannot be severed from the contested provisions are automatically stayed while the appeal is pending~~, including during any court proceedings~~ BEFORE THE BOARD. Uncontested permit provisions that are severable from the contested provisions are effective and enforceable thirty days after the director serves notice on the applicant, the water quality appeals board and any party who commented on the proposed action of the conditions that are uncontested and severable.