

House Engrossed

aquifer protection permits; injection wells

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

## CHAPTER 32

# 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)

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

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

4 49-250. Exemptions

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

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

15 1. Household and domestic activities.

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

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

20 4. Ponds used for watering livestock and wildlife.

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

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

29 7. Discharge to a community sewer system.

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

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

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

38 11. Closed facilities. However, if the facility ever resumes  
39 operation the facility shall obtain an aquifer protection permit and the  
40 facility shall be treated as a new facility for purposes of section  
41 49-243.

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

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

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

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

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

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

18           18. Facilities used in:

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

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

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

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

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

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

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

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

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

43           (a) Firefighting system testing and maintenance.

- 1 (b) Potable water sources, including waterline flushings.
- 2 (c) Irrigation drainage and lawn watering.
- 3 (d) Routine external building wash down without detergents.
- 4 (e) Pavement wash water where no spills or leaks of toxic or
- 5 hazardous material have occurred unless all spilled material has first
- 6 been removed and no detergents have been used.
- 7 (f) Air conditioning, compressor and steam equipment condensate
- 8 that has not contacted a hazardous or toxic material.
- 9 (g) Foundation or footing drains in which flows are not
- 10 contaminated with process materials.
- 11 (h) Occupational safety and health administration or mining safety
- 12 and health administration safety equipment.

13 24. Industrial wastewater treatment facilities designed,

14 constructed and operated as required by section 49-243, subsection B,

15 paragraph 1 and using a treatment system approved by the director to treat

16 wastewater to meet aquifer water quality standards prior to discharge, if

17 that water is stored at a groundwater storage facility pursuant to title

18 45, chapter 3.1.

19 25. Any point source discharge caused by a storm event and

20 authorized in a permit issued pursuant to section 402 of the clean water

21 act.

22 26. Except for class V wells **THAT ARE OPERATING AS PRESCRIBED BY**

23 **RULES ADOPTED PURSUANT TO ARTICLE 3.3 OF THIS CHAPTER OR 42 UNITED STATES**

24 **CODE SECTION 300h-1(c)**, any underground injection well covered by a permit

25 issued under article 3.3 of this chapter or under 42 United ~~State~~ **STATES**

26 **Code section 300h-1(c)**. ~~This exemption does not apply until the date that~~

27 ~~the United States environmental protection agency approves the~~

28 ~~department's underground injection control permit program established~~

29 ~~pursuant to article 3.3 of this chapter.~~

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

31 read:

32 49-257.01. **Underground injection control permit program:**

33 **permits; prohibitions; rules**

34 A. The department shall establish an underground injection control

35 permit program, including a permitting process.

36 B. An underground injection is prohibited unless the underground

37 injection is into a well authorized by rule or unless it is authorized by

38 a permit issued pursuant to this article or by a permit issued by the

39 United States environmental protection agency. A person may not construct

40 any well that is required to have a permit until the person is issued the

41 permit or is otherwise authorized under the permit program established

42 pursuant to this article or federal law.

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

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

9 ~~E.~~ D. The director shall adopt rules for the purposes of  
10 establishing and operating the underground injection control permit  
11 program pursuant to this article. Rules adopted by the director shall  
12 meet the minimum requirements prescribed by 42 United States Code section  
13 300h(b).

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

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

18 49-324. Stay pending appeal; standard of review

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR FEBRUARY 24, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE FEBRUARY 24, 2021.