CHAPTER 325

HOUSE BILL 2691

AN ACT

AMENDING SECTIONS 49-175, 49-201, 49-202, 49-202.01, 49-203, 49-210, 49-211, 49-221, 49-222, 49-225, 49-231, 49-232, 49-233, 49-234, 49-242, 49-245.01, 49-245.02, 49-250, 49-255, 49-255.01, 49-255.02 AND 49-255.03, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 3.1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-255.04 AND 49-255.05; AMENDING SECTIONS 49-256, 49-256.01, 49-256.02, 49-261, 49-262, 49-371, 49-391 AND 49-701, 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 49-175, Arizona Revised Statutes, is amended to read:

49-175. Work plans

A. A work plan to address a release of a contaminant to the environment shall include the following:
   1. A summary of existing information on site characterization, including references to known site characterization and assessment information and information regarding any remediation previously conducted at the site or portion of the site. The applicant shall provide copies of the referenced reports to the department.
   2. If the site or portion of the site addressed in the application has not been characterized, a plan to conduct site characterization and a schedule for completion. The applicant shall provide a schedule for the submission of a work plan for remediation following approval of site characterization.
   3. If site characterization is completed for the site or portion of the site addressed in the application, a plan for remediation which will comply with subsection B of this section and a schedule for completion as follows:
      (a) The work plan shall describe how the remediation will comply with subsection B of this section and how the completion of remediation will be verified. The applicant and the department may agree on interim performance goals. The interim performance goals shall be guidelines used to determine the ongoing effectiveness of the remediation toward reaching the final remediation levels.
      (b) The work plan may provide for the remediation to be conducted in phases or tasks that, if agreed to by the applicant, provide for the department to review and approve a completed phase or task before initiation of the next phase or task of the work plan.
   4. A schedule for submission of progress reports to the department. The progress reports shall be sufficient to allow the department to determine the effectiveness of the characterization if it has not been completed, followed by the remediation.
   5. A proposal for community involvement as prescribed by section 49-176.
   6. If known, a list of institutional or engineering controls necessary during remediation and after completion of the proposed remediation to control exposure to contaminants.
   7. A proposal for monitoring of a site or portion of a site during the remediation and after the remediation if necessary to verify whether the approved remediation levels or controls have been attained and will be maintained.
8. A list of any permits or legal requirements known by the applicant to apply to the work to be performed or already performed by the applicant.

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

B. Remediation levels or controls for remediation conducted pursuant to this article shall be established in accordance with rules adopted pursuant to section 49-282.06 unless one or more of the following apply:

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

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

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

4. The applicant demonstrates that, on achieving remediation levels or controls for a source of contamination to an aquifer, the source will not cause or contribute to an exceedance of aquifer water quality standards beyond the boundary of the facility where the source is located. In determining whether remediation levels or controls satisfy this requirement, the department shall consider a demonstration by the applicant that aquifer water quality standards are exceeded beyond the boundary of the facility due to naturally occurring contamination or from sources outside of the boundary. The applicant is not required to
identify or evaluate other sources. Approval of the use of institutional or engineering controls shall require a demonstration that the controls will be maintained and that the requirements of section 49-158 have been met.

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

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

49-201. Definitions

In this chapter, unless the context otherwise requires:

1. “Administrator” means the administrator of the United States environmental protection agency.

2. “Aquifer” means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

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

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

5. "Clean closure" means implementation of all actions specified in an aquifer protection permit, if any, as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards at the applicable point of compliance or, if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in section 49-243, subsection B, paragraph 3. Clean closure also means postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.


7. "Closed facility" means:

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

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

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

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

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

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

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

12. "Discharge" means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

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

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

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

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

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

18. "Existing facility" means a facility on which construction began before August 13, 1986 and which is neither a new facility nor
a closed facility. For the purposes of this definition, construction on a
facility has begun if the facility owner or operator has either:
(a) Begun, or caused to begin, as part of a continuous on-site
construction program any placement, assembly or installation of a
building, structure or equipment.
(b) Entered a binding contractual obligation to purchase a
building, structure or equipment which is intended to be used in its
operation within a reasonable time. Options to purchase or contracts
which can be terminated or modified without substantial loss, and
contracts for feasibility engineering and design studies, do not
constitute a contractual obligation for purposes of this definition.
17. "Facility" means any land, building, installation,
structure, equipment, device, conveyance, area, source, activity or
practice from which there is, or with reasonable probability may be, a
discharge.
18. "Gray water" means wastewater that has been collected
separately from a sewage flow and that originates from a clothes washer or
a bathroom tub, shower or sink but that does not include wastewater from a
kitchen sink, dishwasher or toilet.
19. "Hazardous substance" means:
(a) Any substance designated pursuant to sections 311(b)(2)(A) and
307(a) of the clean water act.
(b) Any element, compound, mixture, solution or substance
designated pursuant to section 102 of CERCLA.
(c) Any hazardous waste having the characteristics identified under
or listed pursuant to section 49-922.
(d) Any hazardous air pollutant listed under section 112 of the
federal clean air act (42 United States Code section 7412).
(e) Any imminently hazardous chemical substance or mixture with
respect to which the administrator has taken action pursuant to section 7
of the federal toxic substances control act (15 United States Code section
2606).
(f) Any substance which the director, by rule, either
designates as a hazardous substance following the designation of the
substance by the administrator under the authority described in
subdivisions (a) through (e) of this paragraph or designates as a
hazardous substance on the basis of a determination that such substance
represents an imminent and substantial endangerment to public health.
20. "Inert material" means broken concrete, asphaltic pavement,
manufactured asbestos-containing products, brick, rock, gravel, sand and
soil. Inert material also includes material that when subjected to a
water leach test that is designed to approximate natural infiltrating
waters will not leach substances in concentrations that exceed numeric
aquifer water quality standards established pursuant to section 49-223,
including overburden and wall rock that is not acid generating, taking
into consideration acid neutralization potential, and that has not and
will not be subject to mine leaching operations.

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

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

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

(b) For a groundwater protection permit facility as defined in
section 49-241.01, subsection C, a physical expansion that is accomplished
by lateral accretion or upward expansion within the pollutant management
area of the existing facility or group of facilities shall not constitute
a major modification if the accretion or expansion is accomplished through
sound engineering practice in a manner compatible with existing facility
design, taking into account safety, stability and risk of environmental
release. For a facility described in section 49-241.01, subsection C,
paragraph 1, expansion of a facility shall conform with the terms and
conditions of the applicable permit. For a facility described in section
49-241.01, subsection C, paragraph 2, if the area of the contemplated
expansion is not identified in the notice of disposal, the owner or
operator of the facility shall submit to the director the information
required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

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

26. "New facility" means a previously closed facility that
resumes operation or a facility on which construction was begun after
August 13, 1986 on a site at which no other facility is located or to
totally replace the process or production equipment that causes the
discharge from an existing facility. A major modification to an existing
facility is deemed a new facility to the extent that the criteria in
section 49-243, subsection B, paragraph 1 can be practicably applied to
such modification. For the purposes of this definition, construction on a
facility has begun if the facility owner or operator has either:
(a) Begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly or installation of a building, structure or equipment.

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

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

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

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

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


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

32. "Permit" means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility. FOR THE PURPOSES OF REGULATING NON-WOTUS PROTECTED SURFACE WATERS, A PERMIT SHALL NOT INCLUDE PROVISIONS GOVERNING THE CONSTRUCTION, OPERATION OR MODIFICATION OF A FACILITY EXCEPT AS NECESSARY FOR THE PURPOSE OF ENSURING THAT A DISCHARGE MEETS WATER QUALITY-RELATED EFFLUENT LIMITATIONS OR TO REQUIRE BEST MANAGEMENT PRACTICES FOR THE PURPOSE OF ENSURING THAT A DISCHARGE DOES NOT CAUSE AN EXCEEDANCE OF AN APPLICABLE SURFACE WATER QUALITY STANDARD.

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

28. “Point source” means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged to navigable waters WOTUS OR PROTECTED SURFACE WATER. Point source does not include return flows from irrigated agriculture.

29. “Pollutant” means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

30. “Postclosure monitoring and maintenance” means those activities that are conducted after closure notification and that are necessary to:

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

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

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

(d) Meet property use restrictions.

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

38. “PROTECTED SURFACE WATERS” MEANS WATERS OF THE STATE LISTED ON THE PROTECTED SURFACE WATERS LIST UNDER SECTION 49-221, SUBSECTION G AND ALL WOTUS.

39. “PUBLIC WATERS” MEANS WATERS OF THE STATE OPEN TO OR MANAGED FOR USE BY MEMBERS OF THE GENERAL PUBLIC.
40. "RECHARGE PROJECT" MEANS A FACILITY NECESSARY OR CONVENIENT TO
OBTAIN, DIVERT, WITHDRAW, TRANSPORT, EXCHANGE, DELIVER, TREAT OR STORE
WATER TO INFILTRATE OR REINTRODUCE THAT WATER INTO THE GROUND.

42. "Reclaimed water" means water that has been treated or
processed by a wastewater treatment plant or an on-site wastewater
treatment facility.

43. "Regulated agricultural activity" means the application of
nitrogen fertilizer or a concentrated animal feeding operation.

44. "Safe drinking water act" means the federal safe drinking

45. "Standards" means water quality standards, pretreatment
standards and toxicity standards established pursuant to this chapter.

46. "Standards of performance" means performance standards,
design standards, best management practices, technologically based
standards and other standards, limitations or restrictions established by
the director by rule or by permit condition.

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

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

49. "Trade secret" means information to which all of the
following apply:
   (a) A person has taken reasonable measures to protect from
disclosure and the person intends to continue to take such measures.
   (b) The information is not, and has not been, reasonably obtainable
without the person's consent by other persons, other than governmental
bodies, by use of legitimate means, other than discovery based on a
showing of special need in a judicial or quasi-judicial proceeding.
   (c) No statute specifically requires disclosure of the information
to the public.
   (d) The person has satisfactorily shown that disclosure of the
information is likely to cause substantial harm to the business's
competitive position.

50. "Vadose zone" means the zone between the ground surface and
any aquifer.

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

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

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

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

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

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

49-202. Designation of state agency

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, adopting, modifying or repealing rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

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

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for navigable waters WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of navigable waters WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.
D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. Until January 1, 1999:
   1. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing within thirty calendar days after receipt of the application for section 401 certification. The request shall specifically describe the information requested. Within fifteen calendar days after receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for purposes of subsection H of this section. If the department fails to act within the time limits prescribed by this subsection, the application is deemed complete.
   2. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant within thirty calendar days after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.
   3. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to grant or deny an application within the time limits prescribed by this section is deemed a waiver of certification pursuant to this subsection and section 401(a)(2) of the clean water act.

F. Beginning January 1, 1999:
   1. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for THE purposes of subsection H I of this section. In all other instances, the application is complete on submission of the information requested by the department.
2. **F.** The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

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

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

1. The name, address and telephone number of the applicant.
2. A description of the project to be certified, including an identification of the navigable waters WOTUS in which the certified activities will occur.
3. The project location, including latitude, longitude and a legal description.
4. A United States geological service topographic map or other contour map of the project area, if available.
5. A map delineating the ordinary high watermark of navigable waters WOTUS affected by the activity to be certified.
6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to navigable waters WOTUS from those activities.
7. A description of the materials being discharged to or placed in navigable waters WOTUS.
8. A copy of the application for a federal permit or license that is the subject of the requested certification.

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

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

1. There is no disposal of construction and demolition wastes and contaminated wastewater.
2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.

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

4. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. As used in FOR THE PURPOSES OF this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.

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

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

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

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

1. 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.

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

3. 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).

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

M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as his DIRECTOR'S duties are prescribed in this chapter.

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

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

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

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

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

C. In adopting voluntary grazing best management practices, the committee shall consider:
   1. The availability and effectiveness of alternative technologies.
   2. The economic and social impacts of alternative technologies on grazing and associated industries.
   3. The institutional considerations of alternative technologies.
   4. The potential nature and severity of discharges from grazing activities and their effect on navigable waters WOTUS.

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

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

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

A. The director shall:
   1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
   2. Adopt, by rule, a permit program FOR WOTUS that is consistent with but NOT more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. APPLY THE PROGRAM AND RULES AUTHORIZED UNDER PARAGRAPH 2 OF THIS SUBSECTION TO POINT SOURCE DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, CONSISTENT WITH SECTION 49-255.04, WHICH ESTABLISHES THE PROGRAM
COMPONENTS AND RULES THAT DO NOT APPLY TO NON-WOTUS PROTECTED SURFACE
WATERS. THE FOLLOWING ARE EXEMPT FROM THE NON-WOTUS PROTECTED SURFACE
WATERS POINT SOURCE DISCHARGE PROGRAM:
(a) DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO
A RECHARGE PROJECT.
(b) ESTABLISHED OR ONGOING FARMING, RANCHING AND SILVICULTURE
ACTIVITIES SUCH AS PLOWING, SEEDING, CULTIVATING, MINOR DRAINAGE OR
HARVESTING FOR THE PRODUCTION OF FOOD, FIBER OR FOREST PRODUCTS OR UPLAND
SOIL AND WATER CONSERVATION PRACTICES.
(c) MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES.
(d) CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.
(e) MAINTENANCE OF STRUCTURES SUCH AS DAMS, DIKES AND LEVEES.

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

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

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

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

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

8. Assess and collect fees to revoke, issue, deny, modify or
suspend permits issued pursuant to this chapter and to process permit
applications. The director may also assess and collect costs reasonably
necessary if the director must conduct sampling or monitoring relating to
a facility because the owner or operator of the facility has refused or
failed to do so on order by the director. The director shall set fees
that are reasonably related to the department's costs of providing the
service for which the fee is charged. Monies collected from aquifer
protection permit fees and from Arizona pollutant discharge elimination
system permit fees shall be deposited, pursuant to sections 35-146 and
35-147, in the water quality fee fund established by section 49-210.
Monies from other permit fees shall be deposited, pursuant to sections
35-146 and 35-147, in the water quality fee fund unless otherwise provided
by law. Monies paid by an applicant for review by consultants for the
department pursuant to section 49-241.02, subsection D shall be deposited,
pursuant to sections 35-146 and 35-147, in the water quality fee fund
established by section 49-210. State agencies are exempt from all fees
imposed pursuant to this chapter except for those fees associated with the
dredge and fill permit program established pursuant to article 3.2 of this
chapter. For services provided under the dredge and fill permit program,
a state agency shall pay either:
   (a) The fees established by the department under the dredge and
fill permit program.
   (b) The reasonable cost of services provided by the department
pursuant to an interagency service agreement.

§ 10. Adopt, modify, repeal and enforce other rules that are
reasonably necessary to carry out the director’s functions under this
chapter.

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

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

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

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

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

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

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

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

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

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

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

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

C. Subject to section 38-503 and other applicable statutes and
rules, the department may contract with a private consultant for the
purposes of assisting TO ASSIST the department in reviewing aquifer
protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 6—9 of this section.

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

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

49-210. Water quality fee fund; appropriation; exemption; monies held in trust
A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.
B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
D. Monies in the water quality fee fund shall be used for the following purposes:
1. The issuance of aquifer protection permits pursuant to section 49-241.
2. The aquifer protection permit registration fee procedures pursuant to section 49-242.
3. Dry well registration fee procedures pursuant to section 49-332.
4. Technical review fee procedures pursuant to section 49-353.
5. Inspection fee procedures pursuant to section 49-104, subsection C.
6. The issuance of permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.
7. Operator certification pursuant to sections 49-352 and 49-361.
8. Paying the cost of implementing section 49-203, subsection A, paragraph 6—7 and section 49-221, subsection E.
9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.

10. Implementation of the underground injection control permit program established pursuant to article 3.3 of this chapter.

11. Implementation of the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

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

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

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

A. The director shall:

1. Adopt, by rule, water quality standards for all navigable waters WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. FOR NON-WOTUS PROTECTED SURFACE WATERS, THE DIRECTOR SHALL APPLY SURFACE WATER QUALITY STANDARDS ESTABLISHED AS OF JANUARY 1, 2021, UNTIL SPECIFICALLY CHANGED BY THE DIRECTOR PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION. RULES REGARDING THE FOLLOWING SHALL NOT BE ADOPTED OR APPLIED AS WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS:

   (a) ANTIDEGRADATION.
   (b) ANTIDEGRADATION CRITERIA.
   (c) OUTSTANDING ARIZONA WATERS.

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

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

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

1. The protection of the public health and the environment.
2. The uses that have been made, are being made or with reasonable probability may be made of these waters.
3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.
4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.
5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.
6. Any unique physical, biological or chemical properties of the waters.

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

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

1. The protection of public health and the environment.
2. The uses that are being made or may be made of the reclaimed water.
3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration pursuant to title 3, chapter 3, article 4.1 of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to
the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":
   (a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.
   (b) Includes all of the following:
      (i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.
      (ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

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

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

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

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

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

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

1. THE PROTECTED SURFACE WATERS LIST SHALL INCLUDE:
   (a) ALL WOTUS.
   (b) ANY PERENNIAL, INTERMITTENT AND EPHEMERAL REACHES AND ANY IMPoundments OF THE FOLLOWING RIVERS, NOT INCLUDING TRIBUTARIES OR REACHES OF WATERS WHOLLY WITHIN TRIBAL JURISDICTION OR REACHES OF WATERS OUTSIDE OF THE UNITED STATES:
      (i) THE BILL WILLIAMS RIVER, FROM THE CONFLUENCE OF THE BIG SANDY AND SANTA MARIA RIVERS AT 113°31'38.617"W, 34°18'22.373"N, TO ITS CONFLUENCE WITH THE COLORADO RIVER AT 114°8'9.854"W, 34°18'9.33"N.
      (ii) THE COLORADO RIVER, FROM THE ARIZONA-UTAH BORDER AT 111°32'35.741"W, 36°58'51.698"N, TO THE ARIZONA-MEXICO BORDER AT 114°43'12.564"W, 32°43'6.218"N.
(iii) THE GILA RIVER, FROM THE ARIZONA-NEW MEXICO BORDER AT 109°2'52.8"W, 32°41'11.2015"N, TO THE CONFLUENCE WITH THE COLORADO RIVER AT 114°33'28.145"W, 32°43'14.408"N.


(v) THE SALT RIVER, FROM THE CONFLUENCE OF THE BLACK AND WHITE RIVERS AT 110°13'39.5"W, 33°44'6.082"N, TO THE CONFLUENCE WITH THE GILA RIVER AT 112°18'5.704"W, 32°59'5.671"N.

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

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

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

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

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

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

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

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

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

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

(f) STORMWATER CONTROL FEATURES.

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

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

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

(j) GROUNDWATER.

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

(l) LAKES AND PONDS OWNED AND MANAGED BY THE UNITED STATES DEPARTMENT OF DEFENSE AND OTHER SURFACE WATERS LOCATED ON AND THAT DO NOT LEAVE UNITED STATES DEPARTMENT OF DEFENSE PROPERTY, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE UNITED STATES DEPARTMENT OF DEFENSE UNTIL IT WITHDRAWS ITS REQUEST.

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

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

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


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

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

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

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

4. THE DIRECTOR MAY ADD ADDITIONAL NON-WOTUS SURFACE WATERS TO THE PROTECTED SURFACE WATERS LIST IF ALL OF THE FOLLOWING APPLY:
(a) THE WATER IS NOT REQUIRED TO BE LISTED UNDER PARAGRAPH 1 OR 3 OF THIS SUBSECTION.
(b) THE WATER IS NOT EXCLUDED UNDER PARAGRAPH 2 OF THIS SUBSECTION.
(c) THE ECONOMIC, ENVIRONMENTAL AND SOCIAL BENEFITS OF ADDING THE WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND SOCIAL COSTS OF EXCLUDING THE WATER FROM THE LIST.
5. THE DIRECTOR SHALL REMOVE ANY ERRONEOUSLY LISTED, NON-WOTUS WATERS FROM THE PROTECTED SURFACE WATERS LIST WHEN THE WATER IS EXCLUDED UNDER PARAGRAPH 2 OF THIS SUBSECTION AND SHALL NOT REGULATE DISCHARGES TO THOSE WATERS IN THE INTERIM.
7. THE DIRECTOR, ON AN EMERGENCY BASIS, MAY ADD A WATER TO THE PROTECTED SURFACE WATERS LIST IF THE DIRECTOR DISCOVERS AN IMMINENT AND SUBSTANTIAL DANGER TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, IF THE WATER WOULD OTHERWISE QUALIFY TO BE ADDED UNDER PARAGRAPH 3 OF THIS SUBSECTION. NOTWITHSTANDING ANY OTHER LAW, THE EMERGENCY ADDITION SHALL TAKE EFFECT IMMEDIATELY ON THE DIRECTOR'S DETERMINATION THAT DESCRIBES THE IMMINENT AND SUBSTANTIAL DANGER IN WRITING. WITHIN THIRTY DAYS AFTER THE DIRECTOR'S DETERMINATION, THE DEPARTMENT SHALL PUBLISH A NOTICE OF THAT DETERMINATION IN THE ARIZONA ADMINISTRATIVE REGISTER AND ON THE DEPARTMENT'S WEBSITE. WATERS ADDED UNDER THIS SUBSECTION SHALL BE INCORPORATED INTO THE PROTECTED SURFACE WATERS LIST DURING THE NEXT RULEMAKING THAT FOLLOWS THE ADDITION.

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

49-222. Water quality standards for WOTUS
A. Standards for the quality of navigable waters WOTUS shall assure water quality, if attainable, which provides for protecting the public health and welfare, and shall enhance the quality of water taking into consideration its use and value for public water supplies, the propagation of fish and wildlife and recreational, agricultural, industrial and other purposes including navigation.
B. Not later than January 1, 1990. The director shall adopt standards for the quality of all navigable waters which WOTUS THAT establish numeric limitations on the concentrations of each of the toxic pollutants listed by the administrator pursuant to section 307 of the clean water act (33 United States Code section 1317).
C. In setting numeric standards for the quality of navigable waters WOTUS, the director may consider the effect of local water quality characteristics on the toxicity of specific pollutants and the varying sensitivities of local affected aquatic populations to such pollutants.
and the extent to which the natural flow of the stream is intermittent or
ephemeral, as a result of which the instream flow consists mostly of
treated wastewater effluent, except that such standards shall not, in any
event, be inconsistent with the clean water act. In applying such
standards the director may establish appropriate mixing zones.

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

49-225. Water quality monitoring
A. The director of environmental quality, with the advice and
cooperation of the Arizona department of agriculture and the director of
water resources when appropriate, shall conduct ongoing monitoring of the
waters of the state including the state's navigable waters WOTUS and
aquifers to detect the presence of new and existing pollutants, determine
compliance with applicable water quality standards, determine the
effectiveness of best management practices, agricultural best management
practices and best available demonstrated control technologies, evaluate
the effects of pollutants on public health or the environment and
determine water quality trends.
B. The director shall maintain a statewide database of groundwater
and soils sampled for pollutants. All agencies shall submit to the
director, in a timely manner, the results of any groundwater or soils
sampling for pollutants and the results of any groundwater or soils
sampling that detect any pollutants.
C. The director shall establish minimum requirements and schedules
for groundwater and soils sampling that will ensure precise and accurate
results. The requirements shall be distributed to all agencies that
conduct sampling. All sampling conducted shall meet the minimum
requirements established pursuant to this subsection.

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

49-231. Definitions
In this article, unless the context otherwise requires:
1. "Impaired water" means a navigable PROTECTED SURFACE water for
which credible scientific data exists that satisfies the requirements of
section 49-232, and that, IN THE CASE OF WOTUS, demonstrates that the
water should be identified pursuant to 33 United States Code section
1313(d) and the regulations implementing that statute.
2. "Surface water quality standard" means a standard adopted for a
navigable PROTECTED SURFACE water pursuant to sections SECTION 49-221 and
49-222 and section 303(c) of the clean water act (33 United States Code
section 1313(c)) AND, IN THE CASE OF WOTUS, PURSUANT TO SECTION 49-222.
3. "TMDL implementation plan" means a written strategy to implement
a total maximum daily load that is developed for an impaired water. TMDL
implementation plans may rely on any combination of the following
components that the department determines will result in achieving and
maintaining compliance with applicable surface water quality standards in the most cost-effective and equitable manner:

(a) Permit limitations.
(b) Best management practices.
(c) Education and outreach efforts.
(d) Technical assistance.
(e) Cooperative agreements, voluntary measures and incentive-based programs.
(f) Load reductions resulting from other legally required programs or activities.
(g) Land management programs.
(h) Pollution prevention planning, waste minimization or pollutant trading agreements.
(i) Other measures deemed appropriate by the department.

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

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

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

A. At least once every five years, the department shall prepare a list of impaired waters for the purpose of complying WOTUS TO COMPLY with section 303(d) of the clean water act (33 United States Code section 1313(d)). The department shall provide public notice and allow for comment on a draft list of impaired waters WOTUS prior to its submission to the United States environmental protection agency. The department shall prepare written responses to comments received on the draft list. The department shall publish the list of impaired waters WOTUS that it plans to submit initially to the regional administrator and a summary of the responses to comments on the draft list in the Arizona administrative register at least forty-five days before submission of the list to the regional administrator. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the draft list. If the department receives a notice of appeal of a listing pursuant to section 41-1092, subsection B
41.1092.03 within forty-five days of AFTER the publication of the list in the Arizona administrative register, the department shall not include the challenged listing in its initial submission to the regional administrator. The department may subsequently submit the challenged listing to the regional administrator if the listing is upheld in the director’s final administrative decision pursuant to section 41-1092.08, or if the challenge to the listing is withdrawn prior to a final administrative decision.

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

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

1. Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing the data.
2. The samples or analyses are representative of water quality conditions at the time the data was collected.
3. The data consists of an adequate number of samples based on the nature of the water in question and the parameters being analyzed.
4. The method of sampling and analysis, including analytical, statistical and modeling methods, is generally accepted and validated in the scientific community as appropriate for use in assessing the condition of the water.

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

1. Minimum data requirements and quality assurance and quality control requirements that are consistent with subsection B-C of this section and that must be satisfied in order for the data to serve as the basis for listing and delisting decisions.
2. Appropriate sampling, analytical and scientific techniques that may be used in assessing whether a water is impaired.

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

4. Criteria for including and removing waters from the list of impaired waters, including any implementation procedures developed pursuant to subsection (G) of this section. The criteria for removing a water from the list of impaired waters shall not be any more stringent than the criteria for adding a water to that list.

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

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

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

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

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

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

(I) By January 1, 2002, the department shall review the list of waters identified as impaired as of January 1, 2000 to determine whether the data that supports the listing of those waters complies with this section. If the data that supports a listing does not comply with this section, the listed water shall not be included on future lists submitted to the United States environmental protection agency pursuant to 33 United
States Code section 1313(d) unless in the interim data that satisfies the requirements of this section has been collected or received by the department.

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

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

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

49-233. Priority ranking and schedule

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

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

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

1. The designated uses of the navigable water WOTUS.
2. The type and extent of risk from the impairment to human health
or aquatic life.

3. The degree of public interest and support, or its lack.

4. The nature of the navigable water WOTUS, including whether it is
an ephemeral, intermittent or effluent-dependent water.

5. The pollutants causing the impairment.

6. The severity, magnitude and duration of the violation of the
applicable surface water quality standard.

7. The seasonal variation caused by natural events such as storms
or weather patterns.

8. Existing treatment levels and management practices.

9. The availability of effective and economically feasible
treatment techniques, management practices or other pollutant loading
reduction measures.

10. The recreational and economic importance of the water.

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

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

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

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

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

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

17. Department resources and programmatic needs.

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

49-234. Total maximum daily loads; implementation plans
A. The department shall develop total maximum daily loads for those
navigable WOTUS listed as impaired pursuant to this article and for which
total maximum daily loads are required to be adopted pursuant to 33 United
States Code section 1313(d) and the regulations implementing that statute
OR THAT THE DEPARTMENT OTHERWISE DETERMINES ARE REQUIRED TO RESTORE AN
IMPAIRED WATER. The department may estimate total maximum daily loads for
navigable WOTUS not listed as impaired pursuant to this article, for the
purposes of developing TO DEVELOP information to satisfy the requirements
of 33 United States Code section 1313(d)(3), only after it has developed
total maximum daily loads for all navigable waters WOTUS identified as
impaired pursuant to this article or if necessary to support permitting of new point source discharges.

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

C. Each total maximum daily load shall:
   1. Be based on data and methodologies that comply with section 49-232.
   2. Be established at a level that will achieve and maintain compliance with applicable surface water quality standards.
   3. Include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The margin of safety shall not be used as a substitute for adequate data when developing the total maximum daily load.
   4. Account for seasonal variations that may include setting total maximum daily loads that apply on a seasonal basis.

D. For each impaired water, EITHER OF THE FOLLOWING APPLIES:
   1. FOR EACH IMPAIRED WOTUS, the department shall prepare a draft estimate of the total amount of each pollutant that causes the impairment from all sources and that may be added to the navigable water WOTUS while still allowing the navigable water WOTUS to achieve and maintain applicable surface water quality standards. In addition, the department shall determine draft allocations among the contributing sources that are sufficient to achieve the total loadings. The department shall provide public notice and allow for comment on each draft estimate and draft allocation and shall prepare written responses to comments received on the draft estimates and draft allocations. The department shall publish the determinations of total pollutant loadings that will not result in impairment and the draft allocations among the contributing sources that are sufficient to achieve the total loading that it intends to submit initially to the regional administrator, along with a summary of the responses to comments on the estimated loadings and allocations, in the Arizona administrative register at least forty-five days before submission of the loadings and allocations to the regional administrator. Notwithstanding this subsection, draft allocations shall be submitted to the regional administrator only if that submission is required by the rules that implement 33 United States Code section 1313(d).
   2. FOR NON-WOTUS IMPAIRED WATERS, THE DEPARTMENT MAY PREPARE A DRAFT ESTIMATE OF THE TOTAL AMOUNT OF EACH POLLUTANT THAT CAUSES THE
IMPAIRMENT FROM ALL SOURCES AND THAT MAY BE ADDED TO THE WATER WHILE STILL ALLOWING THE WATER TO ACHIEVE AND MAINTAIN APPLICABLE SURFACE WATER QUALITY STANDARDS. IF THE DEPARTMENT Chooses TO PREPARE A DRAFT ESTIMATE FOR A NON-WOTUS IMPAIRED WATER, THE DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

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

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

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

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

E. Publication of the loadings and allocations in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the estimated loadings and allocations. IN THE CASE OF WOTUS, if the department receives a notice of appeal of a loading and allocation pursuant to section 41-1092.03 within forty-five days AFTER the publication of the loading and allocations in the Arizona administrative register, the department shall not submit the challenged loading and allocations to the regional administrator until either the challenge to the loading and allocation is withdrawn or the director has made a final administrative decision pursuant to section 41-1092.08.

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

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

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

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

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

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

I. For navigable IMPAIRED waters that are impaired due in part to historical factors that are difficult to address, including contaminated sediments, the department shall consider those historical factors in determining allocations for existing point source discharges of the pollutant or pollutants that cause the impairment. In developing total maximum daily loads for those navigable waters, the department shall use a phased approach in which expected long-term loading reductions from the historical sources are considered in establishing short-term allocations for the point sources. While total maximum daily loads and TMDL implementation plans are being completed, any permits issued for the point sources are deemed consistent with this article if the permits require reasonable reductions in the discharges of the pollutants causing the impairment and are not required to include additional reductions if those reductions would not significantly contribute to attainment of surface water quality standards.

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

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

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

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

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

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

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

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

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

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

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

49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act OR
ARTICLE 3.1 OF THIS CHAPTER, including catchments, impoundments and sumps, provided the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 17. 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 7 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 OR
ARTICLE 3.1 OF THIS CHAPTER.
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 OR ARTICLE 3.1 OF THIS CHAPTER.

17. Solid waste and special waste facilities when IF 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 ONLY 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 IF 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 OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT UNDER ARTICLE 3.1 OF THIS CHAPTER.

26. Except for class V wells, any underground injection well covered by a permit issued under article 3.3 of this chapter or under 42 United 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. 18. Section 49-255, Arizona Revised Statutes, is amended to read:

49-255. Definitions
In this article, unless the context otherwise requires:
1. “AZPDES” means the Arizona pollutant discharge elimination system program as adopted under section 402(b) of the clean water act FOR WOTUS AND UNDER SECTION 49-255.04 FOR NON-WOTUS PROTECTED SURFACE WATER.

2. "Discharge":
(a) Means any addition of any pollutant to navigable PROTECTED SURFACE waters from any point source.
(b) DOES NOT INCLUDE THE ADDITION OF DREDGED MATERIAL OR FILL MATERIAL TO NON-WOTUS PROTECTED SURFACE WATERS.

3. "Indirect discharge" means EITHER OF THE FOLLOWING:
(a) The introduction of pollutants into a publicly owned treatment works from any nondomestic source that is regulated under section 307(b), (c) or (d) of the clean water act.
(b) FOR A PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, THE INTRODUCTION OF POLLUTANTS FROM ANY NONDOMESTIC SOURCE THAT WOULD BE REGULATED UNDER SECTION 307(b), (c) OR (d) OF THE CLEAN WATER ACT IF THE PUBLICLY OWNED TREATMENT WORKS WERE TO DISCHARGE TO A WOTUS.

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

6. "Sewage sludge":
(a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.
(b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.
(c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works.

7. "Treatment works" means any devices and systems that are used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, the elements essential to providing a reliable recycled supply such as standby treatment units and clear well facilities, and any works that will be an integral part of the treatment process or that are used for residues resulting from that treatment. For the purposes of the programs required by sections 49-255.02 and 49-255.03, treatment works include intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment and any appurtenances, extensions, improvements, remodeling, additions and alterations.

8. "Upset":
(a) Means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit discharge limitations because of factors that are beyond the reasonable control of the permittee.
(b) Does not include noncompliance to the extent that it is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

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

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

A. A person shall not discharge except under either of the following conditions:
1. In conformance with a permit that is issued or authorized under this article OR RULES AUTHORIZED UNDER SECTION 49-203, SUBSECTION A, PARAGRAPH 2.
2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.

B. The director shall adopt rules to establish an AZPDES permit program FOR DISCHARGES TO WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement FOR WOTUS that is more stringent than any requirement of the clean water act. THE DIRECTOR SHALL NOT ADOPT ANY REQUIREMENT THAT CONFLICTS WITH ANY REQUIREMENT OF THE CLEAN WATER ACT. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and NOT more stringent than the clean water act and this article.

C. The rules adopted by the director UNDER SUBSECTION B OF THIS SECTION shall provide for:
   1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.
   2. Establishment of permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 7 including case-by-case CASE-BY-CASE effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).
   3. Modifications and variances as allowed by the clean water act.
   4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

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

E. An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:
   1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:
      (a) An upset occurred and that the permittee can identify the specific cause of the upset.
      (b) The permitted facility was being properly operated at the time of the upset.
(c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours of the upset.

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

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

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

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

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

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

H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

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

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

I. In addition to other reservations of rights provided by this chapter, nothing in this article shall impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

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

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

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

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

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

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

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

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

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

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

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

49-255.02. Pretreatment program; rules and standards

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

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

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

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

3. Oversight by the director of local program implementation.

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

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

49-255.03. Sewage sludge program; rules and requirements

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

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

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

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

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

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

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

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

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

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

C. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS PRESCRIBED IN SUBSECTION B OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1 FOR POINT SOURCE DISCHARGES OF STORM WATER FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS. THE DIRECTOR SHALL USE A BEST MANAGEMENT PRACTICES APPROACH WHEN ISSUING AND IMPLEMENTING GENERAL PERMITS FOR STORM WATER DISCHARGES FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS AND MAY INCLUDE ANALYTICAL MONITORING AND DISCHARGE LIMITS IF BEST MANAGEMENT PRACTICES CANNOT ACHIEVE APPLICABLE SURFACE WATER QUALITY STANDARDS. THE DIRECTOR MAY ISSUE AN INDIVIDUAL PERMIT FOR THOSE DISCHARGES ONLY IF THE DIRECTOR DETERMINES, USING REASONABLY CURRENT CREDIBLE AND SCIENTIFICALLY DEFENSIBLE DATA, THAT A PARTICULAR DISCHARGE IS A SIGNIFICANT CONTRIBUTOR OF POLLUTANTS TO A NON-WOTUS PROTECTED SURFACE WATER THAT CAUSES THE WATER TO EXCEED ONE OR MORE APPLICABLE WATER QUALITY STANDARDS. WHEN MAKING THIS DETERMINATION, THE DIRECTOR SHALL CONSIDER THE LOCATION OF THE DISCHARGE WITH RESPECT TO THE NON-WOTUS PROTECTED SURFACE WATER, THE SIZE OF THE DISCHARGE AND THE QUANTITY AND NATURE OF THE POLLUTANTS DISCHARGED. IF THE DIRECTOR DETERMINES THAT AN INDIVIDUAL PERMIT IS REQUIRED FOR A DISCHARGE OF STORM WATER FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY TO A NON-WOTUS PROTECTED SURFACE WATER, THE DISCHARGER MUST BE NOTIFIED IN WRITING AND INFORMED OF THE REASONS FOR THE DETERMINATION AND THE RIGHT TO APPEAL THE INDIVIDUAL PERMIT DETERMINATION.

D. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS IN SUBSECTION B OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1 FOR OTHER CATEGORIES OF POTENTIAL POINT SOURCE DISCHARGES, INCLUDING DE MINIMIS DISCHARGES, TO NON-WOTUS PROTECTED SURFACE WATERS THAT INVOLVE THE SAME OR SUBSTANTIALLY SIMILAR TYPES OF OPERATIONS, CONTAIN THE SAME OR SUBSTANTIALLY SIMILAR TYPES OF POLLUTANTS AND ARE MORE APPROPRIATELY CONTROLLED UNDER A GENERAL PERMIT THAN UNDER AN INDIVIDUAL PERMIT.
E. The Director may adopt rules for point source discharges to non-WOTUS protected surface waters. The rules adopted by the Director under this subsection shall not include any requirement that is more stringent than requirements of the Clean Water Act, shall provide for issuing, authorizing, denying, modifying, suspending or revoking individual or general permits and shall establish permit conditions to carry out the permit program established by this section.

F. The Director shall not construe any rule to require oversight by the United States Environmental Protection Agency of permits or portions of permits for discharges to non-WOTUS protected surface waters, and a rule shall not apply if it would require review, approval or enforcement by the United States Environmental Protection Agency of discharges to non-WOTUS protected surface waters.

G. In permits for discharges to WOTUS and non-WOTUS protected surface waters, the Director shall not impose duplicative permit requirements.

H. The Director shall not delegate to any city, town or county the authority to require permits for point source discharges from construction activity to non-WOTUS protected surface waters.

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

A. The Director shall adopt by rule best management practices and notification requirements to ensure that the activities prescribed in this section do not violate applicable surface water quality standards. The Director may include only those best management practices that extend to:

1. Activities conducted within the ordinary high watermark of perennial or intermittent non-WOTUS protected surface waters.

2. Activities conducted within the bed and banks of waters that materially impact downstream non-WOTUS protected surface waters. The Director shall determine through rulemaking what constitutes a material impact and that rulemaking shall be based on factors that include distance and topography.

3. Activities that are not already regulated under this title.

B. The Director may not adopt best management practices and notification requirements for the following:

1. Discharges to a non-WOTUS protected surface water incidental to a recharge project.

2. Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

3. Maintenance but not construction of drainage ditches.

4. Construction and maintenance of irrigation ditches.

5. Maintenance of structures such as dams, dikes and levees.
Sec. 23. Section 49-256, Arizona Revised Statutes, is amended to read:

49-256. Adoption and enactment of federal definitions

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

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

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

3. "Fill material" means:
   (a) Except as specified in subdivision (c) of this definition, the term fill material means material placed in navigable waters WOTUS where the material has the effect of EITHER:
       (i) Replacing any portion of a navigable water WOTUS with dry land.
       (ii) Changing the bottom elevation of any portion of a navigable water WOTUS.
   (b) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the navigable waters WOTUS.
   (c) The term fill material does not include trash or garbage.

4. "General permit" means a permit authorizing a category of discharges of dredged or fill material under this article. General permits are permits for categories of discharge which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

5. "In-lieu fee program" means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for dredge and fill permits issued pursuant to this article. Similar to but distinct from a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.
6. "Mitigation bank" means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by dredge and fill permits issued pursuant to this article. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

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

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

9. "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

10. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Sec. 24. Section 49-256.01, Arizona Revised Statutes, is amended to read:

49-256.01. Dredge and fill permit program; permits; rules; prohibitions; exemptions; exceptions; notice

A. For purposes of implementing the permit program established by 33 United States Code section 1344, the director may establish by rule a dredge and fill permit program that is consistent with and not more stringent than the clean water act dredge and fill program, including a permitting process.

B. During any period in which the state has been granted authority to administer the permit program established by 33 United States Code section 1344, a person may not discharge dredged or fill material unless the discharge is exempt under 33 United States Code section 1344(f) or rules adopted pursuant to this article, except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article.
2. Pursuant to a permit that is issued or authorized by the United States army corps of engineers until a permit that is issued or authorized under this article takes effect.

C. Rules adopted by the director for the purposes of a permit program for dredge and fill shall:

1. Provide for issuing, authorizing, denying, modifying, suspending or revoking individual permits, general permits and emergency permits for the discharge of dredged or fill material into navigable waters WOTUS regulated by this state under the clean water act for purposes of implementing the permit program established by 33 United States Code section 1344.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   (a) Physical changes have occurred affecting the determination that
       are likely to alter the jurisdictional status.
   (b) The federal definition of navigable waters WOTUS that is
       applicable in this state has changed since the issuance of the approved
       jurisdictional determinations.
   (c) Additional field data show that the original determination was
       based on inaccurate data and the new data warrant a revision to the
       original determination.

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

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

49-256.02. Compensatory mitigation

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

B. Mitigation banks and in-lieu fee programs may be used to
compensate for unavoidable impacts to navigable waters WOTUS that are
authorized by general permits and individual permits, including
after-the-fact permits, in accordance with rules established pursuant to
this section. In addition to other potential injunctive relief or other
relief requested under section 49-262, mitigation banks and in-lieu fee
programs may be used to satisfy requirements arising from an enforcement
action under this article.
C. Rules established by the director pursuant to this section shall identify alternative compensatory mitigation options for a permit applicant if an approved mitigation bank or in-lieu fee program that is located in the same watershed as the permit applicant's proposed discharge rejects that permit applicant's participation in that mitigation bank or in-lieu fee program.

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

49-261. Compliance orders; appeal; enforcement

A. If the director determines that a person is in violation of a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6-7, any provision of article 2, 3, 3.1, or 3.2 or 3.3 of this chapter, a rule adopted pursuant to article 2, 3, 3.1, or 3.2 or 3.3 of this chapter, a discharge limitation or any other condition of a permit issued under article 2, 3, 3.1, or 3.2 or 3.3 of this chapter or is creating an imminent and substantial endangerment to the public health or environment, the director may issue an order requiring compliance within a reasonable time period.

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

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

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

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

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

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

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

1. That a person is in violation of:

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

   (b) A rule adopted pursuant to section 49-203, subsection A, paragraph 6-7.
(c) A rule adopted pursuant to article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

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

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

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

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

D. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.

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

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

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

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

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

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

1. The seriousness of the violation or violations.

2. The economic benefit, if any, that results from the violation.

3. Any history of similar violations.

4. Any good faith efforts to comply with the applicable
requirements.

5. The economic impact of the penalty on the violator.

6. The extent to which the violation was caused by a third party.

7. Other matters as justice may require.

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

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

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

1. The department does any one or more of the following:
(a) Determines that the wastewater treatment facility or system is out of compliance with an administrative order issued by the department for a violation of this chapter.

(b) Files a civil action against the owner or operator of the wastewater treatment facility or system for a violation of this chapter.

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

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

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

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

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

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

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

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

   (a) Establishment and enforcement of a county permit program, including conditions for the review, issuance, revision, renewal, revocation, administration and enforcement of a permit.

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

4. Enforce the ordinances, rules or regulations adopted pursuant to this section consistent with section 49-372.
5. Seek a civil penalty of not more than two thousand five hundred dollars $2,500 for each violation. Each day of a violation constitutes a separate offense.

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

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

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

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

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

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

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

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

H. Before adopting any ordinance, rule or regulation pursuant to this section, a county shall file with the secretary of state a written statement including a summary of the proposed rule, ordinance or other regulation. The summary shall provide the name of the person with the county to contact with questions or comments. The secretary of state shall publish the written statement in the next issue of the Arizona
administrative register at no cost to the county. The county shall make
the text of the rule, ordinance or other regulation available to the
public at the same time it files the written summary of the rule,
ordinance or other regulation with the secretary of state as provided in
this subsection. The county shall also comply with the requirements of
section 49-112, subsection D, paragraphs 2, 3 and 4.
I. For the purposes of this article, "county" means a county that
operates a regulated small municipal separate stormwater system pursuant to 40 Code of Federal Regulations section 122.32. For
small municipal separate stormwater systems that discharge to non-WOTUS protected surface waters, this definition shall apply as if the small
municipal separate storm sewer system discharged to a WOTUS protected surface water.
Sec. 29. Section 49-391, Arizona Revised Statutes, is amended to
read:

49-391. Local enforcement of water pretreatment requirements; civil penalties
A. A city, town, county or sanitary district of this state may adopt, amend or repeal any ordinances necessary for implementing and enforcing the pretreatment requirements under the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended, and article 3.1 of this chapter and enforce the ordinances by imposing and recovering a civil penalty of not more than twenty-five thousand dollars $25,000 for each violation as prescribed by this section. For continuing violations, each
day may constitute a separate offense.
B. A city, town, county or sanitary district shall not receive civil penalties under this section if an interested person, the United States, this state, or another city, town, county or sanitary district has received civil penalties or is diligently prosecuting a civil penalty action in a court of the United States or this state, or in an administrative enforcement proceeding, with respect to the same allegations, standard, requirement, or order. This state and any city, town, county or sanitary district of this state that is or may be affected by a civil, judicial or administrative action, may intervene as a matter of right in any pending civil, judicial or administrative action for purposes of obtaining injunctive or declaratory relief.
C. The city, town, county or sanitary district may seek compliance with pretreatment ordinances and recovery of the civil penalties provided by this section either by an action in superior court or by a negotiated settlement agreement. Before a consent decree filed with superior court or a negotiated settlement becomes final, the city, town, county or sanitary district seeking compliance shall provide a period of thirty days for public comment. In determining the amount of a civil penalty the court and the city, town, county or sanitary district shall consider:
1. The seriousness of the violation.
2. The economic benefit, if any, resulting from the violation.
3. Any history of such violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. Such other factors as justice may require.
7. In addition to the remedies provided in this section, enforcement of such ordinances may include injunctive or other equitable relief.
8. All monies collected pursuant to an ordinance adopted under this section shall be deposited with the respective city, town, county or sanitary district.

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

**49-701. Definitions**

In this chapter, unless the context otherwise requires:
1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.
2. "Administrator" means the administrator of the United States environmental protection agency.
3. "Closed solid waste facility" means any of the following:
   (a) A solid waste facility that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.
   (b) A public solid waste landfill that meets any of the following criteria:
      (i) Ceased receiving solid waste prior to July 1, 1983.
      (ii) Ceased receiving solid waste and received at least two feet of cover material prior to January 1, 1986.
      (iii) Received approval for closure from the department.
   (c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.
4. "Conditionally exempt small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.
5. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.
6. "County" means:
   (a) The board of supervisors in the context of the exercise of powers or duties.
(b) The unincorporated areas in the context of area of jurisdiction.

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

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

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

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


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

15. "Inert material":

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

(i) Is not flammable.

(ii) Will not decompose.

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

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

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

17. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and NOT more than ten percent by volume of vegetative waste.

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

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

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

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

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

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

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

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

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

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

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

29. "Solid waste facility" means a transfer facility and any site
owned, operated or utilized by any person for the storage,
processing, treatment or disposal of solid waste, conditionally exempt
small quantity generator waste or household hazardous waste but does not
include the following:
(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, conditionally exempt small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

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

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

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

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

(f) A closed solid waste facility.

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

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

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

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

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

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

(ii) When the project is completed the concentration of methane gas will not exceed twenty-five percent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.
(iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.

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

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

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

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

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

(p) An on-site single-family household waste composting facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR MAY 5, 2021.