

~~groundwater permits; technical correction~~
(now: ADEQ; water quality program; WOTUS)

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

CHAPTER 325
HOUSE BILL 2691

AN ACT

AMENDING SECTIONS 49-175, 49-201, 49-202, 49-202.01, 49-203, 49-210, 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)

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

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

4 49-175. Work plans

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

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

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

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

21 (a) The work plan shall describe how the remediation will comply
22 with subsection B of this section and how the completion of remediation
23 will be verified. The applicant and the department may agree on interim
24 performance goals. The interim performance goals shall be guidelines used
25 to determine the ongoing effectiveness of the remediation toward reaching
26 the final remediation levels.

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

31 4. A schedule for submission of progress reports to the department.
32 The progress reports shall be sufficient to allow the department to
33 determine the effectiveness of the characterization if it has not been
34 completed, followed by the remediation.

35 5. A proposal for community involvement as prescribed by section
36 49-176.

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

40 7. A proposal for monitoring of a site or portion of a site during
41 the remediation and after the remediation if necessary to verify whether
42 the approved remediation levels or controls have been attained and will be
43 maintained.

1 8. A list of any permits or legal requirements known by the
2 applicant to apply to the work to be performed or already performed by the
3 applicant.

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

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

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

15 2. The applicant demonstrates that remediation levels,
16 institutional controls or engineering controls for remediation of
17 landfills or other facilities that contain materials that are not subject
18 to section 49-152 and the rules adopted pursuant to that section will
19 result in a condition that does not exceed a cumulative excess lifetime
20 cancer risk between 1×10^{-4} and 1×10^{-6} , and a hazard index no greater
21 than 1. The excess lifetime cancer risk shall be selected based on site-
22 specific factors, including the presence of multiple contaminants, the
23 existence of multiple pathways of exposure, the uncertainty of exposure
24 and the sensitivity of the exposed population. Approval of the use of
25 institutional or engineering controls shall require a demonstration that
26 the controls will be maintained and that the requirements of section
27 49-158 have been met.

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

37 4. The applicant demonstrates that, on achieving remediation levels
38 or controls for a source of contamination to an aquifer, the source will
39 not cause or contribute to an exceedance of aquifer water quality
40 standards beyond the boundary of the facility where the source is located.
41 In determining whether remediation levels or controls satisfy this
42 requirement, the department shall consider a demonstration by the
43 applicant that aquifer water quality standards are exceeded beyond the
44 boundary of the facility due to naturally occurring contamination or from
45 sources outside of the boundary. The applicant is not required to

1 identify or evaluate other sources. Approval of the use of institutional
2 or engineering controls shall require a demonstration that the controls
3 will be maintained and that the requirements of section 49-158 have been
4 met.

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

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

12 49-201. Definitions

13 In this chapter, unless the context otherwise requires:

14 1. "Administrator" means the administrator of the United States
15 environmental protection agency.

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

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

26 4. "CERCLA" means the comprehensive environmental response,
27 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
28 2767; 42 United States Code sections 9601 through 9657), commonly known as
29 "superfund".

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

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

43 7. "Closed facility" means:

44 (a) A facility that ceased operation before January 1, 1986, that
45 is not, on August 13, 1986, engaged in the activity for which the facility

1 was designed and that was previously operated and for which there is no
2 intent to resume operation.

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

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

8 8. "Concentrated animal feeding operation" means an animal feeding
9 operation that meets the criteria prescribed in 40 Code of Federal
10 Regulations part 122, appendix B for determining a concentrated animal
11 feeding operation for purposes of 40 Code of Federal Regulations sections
12 122.23 and 122.24, appendix C.

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

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

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

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

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

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

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

38 ~~15.~~ 16. "Environment" means ~~navigable waters~~ WOTUS, any other
39 surface waters, groundwater, drinking water supply, land surface or
40 subsurface strata or ambient air, within or bordering on this state.

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

43 ~~16.~~ 18. "Existing facility" means a facility on which construction
44 began before August 13, 1986 and ~~which~~ THAT is neither a new facility nor

1 a closed facility. For the purposes of this definition, construction on a
2 facility has begun if the facility owner or operator has either:

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

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

12 ~~17.~~ 19. "Facility" means any land, building, installation,
13 structure, equipment, device, conveyance, area, source, activity or
14 practice from which there is, or with reasonable probability may be, a
15 discharge.

16 ~~18.~~ 20. "Gray water" means wastewater that has been collected
17 separately from a sewage flow and that originates from a clothes washer or
18 a bathroom tub, shower or sink but that does not include wastewater from a
19 kitchen sink, dishwasher or toilet.

20 ~~19.~~ 21. "Hazardous substance" means:

21 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
22 307(a) of the clean water act.

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

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

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

29 (e) Any imminently hazardous chemical substance or mixture with
30 respect to which the administrator has taken action pursuant to section 7
31 of the federal toxic substances control act (15 United States Code section
32 2606).

33 (f) Any substance ~~which~~ THAT the director, by rule, either
34 designates as a hazardous substance following the designation of the
35 substance by the administrator under the authority described in
36 subdivisions (a) through (e) of this paragraph or designates as a
37 hazardous substance on the basis of a determination that such substance
38 represents an imminent and substantial endangerment to public health.

39 ~~20.~~ 22. "Inert material" means broken concrete, asphaltic pavement,
40 manufactured asbestos-containing products, brick, rock, gravel, sand and
41 soil. Inert material also includes material that when subjected to a
42 water leach test that is designed to approximate natural infiltrating
43 waters will not leach substances in concentrations that exceed numeric
44 aquifer water quality standards established pursuant to section 49-223,
45 including overburden and wall rock that is not acid generating, taking

1 into consideration acid neutralization potential, and that has not and
2 will not be subject to mine leaching operations.

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

8 ~~21.~~ 24. "Major modification" means a physical change in an existing
9 facility or a change in its method of operation that results in a
10 significant increase or adverse alteration in the characteristics or
11 volume of the pollutants discharged, or the addition of a process or major
12 piece of production equipment, building or structure that is physically
13 separated from the existing operation and that causes a discharge,
14 provided that:

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

20 (b) For a groundwater protection permit facility as defined in
21 section 49-241.01, subsection C, a physical expansion that is accomplished
22 by lateral accretion or upward expansion within the pollutant management
23 area of the existing facility or group of facilities shall not constitute
24 a major modification if the accretion or expansion is accomplished through
25 sound engineering practice in a manner compatible with existing facility
26 design, taking into account safety, stability and risk of environmental
27 release. For a facility described in section 49-241.01, subsection C,
28 paragraph 1, expansion of a facility shall conform with the terms and
29 conditions of the applicable permit. For a facility described in section
30 49-241.01, subsection C, paragraph 2, if the area of the contemplated
31 expansion is not identified in the notice of disposal, the owner or
32 operator of the facility shall submit to the director the information
33 required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

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

37 ~~23.~~ 25. "New facility" means a previously closed facility that
38 resumes operation or a facility on which construction was begun after
39 August 13, 1986 on a site at which no other facility is located or to
40 totally replace the process or production equipment that causes the
41 discharge from an existing facility. A major modification to an existing
42 facility is deemed a new facility to the extent that the criteria in
43 section 49-243, subsection B, paragraph 1 can be practicably applied to
44 such modification. For the purposes of this definition, construction on a
45 facility has begun if the facility owner or operator has either:

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

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

10 ~~24.~~ 26. "Nonpoint source" means any conveyance ~~which~~ THAT is not a
11 point source from which pollutants are or may be discharged to ~~navigable~~
12 ~~waters~~ WOTUS.

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

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

17 ~~25.~~ 29. "On-site wastewater treatment facility" means a
18 conventional septic tank system or alternative system that is installed at
19 a site to treat and dispose of wastewater of predominantly human origin
20 that is generated at that site.

21 30. "ORDINARY HIGH WATER MARK" MEANS THE LINE ON THE SHORE OF AN
22 INTERMITTENT OR PERENNIAL PROTECTED SURFACE WATER ESTABLISHED BY THE
23 FLUCTUATIONS OF WATER AND INDICATED BY PHYSICAL CHARACTERISTICS SUCH AS A
24 CLEAR, NATURAL LINE IMPRESSED ON THE BANK, SHELING, CHANGES IN THE
25 CHARACTER OF SOIL, DESTRUCTION OF TERRESTRIAL VEGETATION, THE PRESENCE OF
26 LITTER AND DEBRIS OR OTHER APPROPRIATE MEANS THAT CONSIDER THE
27 CHARACTERISTICS OF THE CHANNEL, FLOODPLAIN AND RIPARIAN AREA.

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

30 ~~26.~~ 32. "Permit" means a written authorization issued by the
31 director or prescribed by this chapter or in a rule adopted under this
32 chapter stating the conditions and restrictions governing a discharge or
33 governing the construction, operation or modification of a facility. FOR
34 THE PURPOSES OF REGULATING NON-WOTUS PROTECTED SURFACE WATERS, A PERMIT
35 SHALL NOT INCLUDE PROVISIONS GOVERNING THE CONSTRUCTION, OPERATION OR
36 MODIFICATION OF A FACILITY EXCEPT AS NECESSARY FOR THE PURPOSE OF ENSURING
37 THAT A DISCHARGE MEETS WATER QUALITY-RELATED EFFLUENT LIMITATIONS OR TO
38 REQUIRE BEST MANAGEMENT PRACTICES FOR THE PURPOSE OF ENSURING THAT A
39 DISCHARGE DOES NOT CAUSE AN EXCEEDANCE OF AN APPLICABLE SURFACE WATER
40 QUALITY STANDARD.

41 ~~27.~~ 33. "Person" means an individual, employee, officer, managing
42 body, trust, firm, joint stock company, consortium, public or private
43 corporation, including a government corporation, partnership, association
44 or state, a political subdivision of this state, a commission, the United

1 States government or any federal facility, interstate body or other
2 entity.

3 ~~28.~~ 34. "Point source" means any discernible, confined and discrete
4 conveyance, including, ~~but not limited to,~~ any pipe, ditch, channel,
5 tunnel, conduit, well, discrete fissure, container, rolling stock,
6 concentrated animal feeding operation or vessel or other floating craft
7 from which pollutants are or may be discharged to ~~navigable waters~~ WOTUS
8 OR PROTECTED SURFACE WATER. Point source does not include return flows
9 from irrigated agriculture.

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

18 ~~30.~~ 36. "Postclosure monitoring and maintenance" means those
19 activities that are conducted after closure notification and that are
20 necessary to:

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

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

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

34 (d) Meet property use restrictions.

35 ~~31.~~ 37. "Practicably" means able to be reasonably done from the
36 standpoint of technical practicability and, except for pollutants
37 addressed in section 49-243, subsection I, economically achievable on an
38 industry-wide basis.

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

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

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

4 ~~32.~~ 41. "Reclaimed water" means water that has been treated or
5 processed by a wastewater treatment plant or an on-site wastewater
6 treatment facility.

7 ~~33.~~ 42. "Regulated agricultural activity" means the application of
8 nitrogen fertilizer or a concentrated animal feeding operation.

9 ~~34.~~ 43. "Safe drinking water act" means the federal safe drinking
10 water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

11 ~~35.~~ 44. "Standards" means water quality standards, pretreatment
12 standards and toxicity standards established pursuant to this chapter.

13 ~~36.~~ 45. "Standards of performance" means performance standards,
14 design standards, best management practices, technologically based
15 standards and other standards, limitations or restrictions established by
16 the director by rule or by permit condition.

17 ~~37.~~ 46. "Tank" means a stationary device, including a sump, that is
18 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
19 material that provides substantial structural support, and that is
20 designed to contain an accumulation of solid, liquid or gaseous materials.

21 ~~38.~~ 47. "Toxic pollutant" means a substance that will cause
22 significant adverse reactions if ingested in drinking water. Significant
23 adverse reactions are reactions that may indicate a tendency of a
24 substance or mixture to cause long lasting or irreversible damage to human
25 health.

26 ~~39.~~ 48. "Trade secret" means information to which all of the
27 following apply:

28 (a) A person has taken reasonable measures to protect from
29 disclosure and the person intends to continue to take such measures.

30 (b) The information is not, and has not been, reasonably obtainable
31 without the person's consent by other persons, other than governmental
32 bodies, by use of legitimate means, other than discovery based on a
33 showing of special need in a judicial or quasi-judicial proceeding.

34 (c) No statute specifically requires disclosure of the information
35 to the public.

36 (d) The person has satisfactorily shown that disclosure of the
37 information is likely to cause substantial harm to the business's
38 competitive position.

39 ~~40.~~ 49. "Vadose zone" means the zone between the ground surface and
40 any aquifer.

41 ~~41.~~ 50. "Waters of the state" means all waters within the
42 jurisdiction of this state including all perennial or intermittent
43 streams, lakes, ponds, impounding reservoirs, marshes, watercourses,
44 waterways, wells, aquifers, springs, irrigation systems, drainage systems
45 and other bodies or accumulations of surface, underground, natural,

1 artificial, public or private water situated wholly or partly in or
2 bordering on the state.

3 ~~42.~~ 51. "Well" means a bored, drilled or driven shaft, pit or hole
4 whose depth is greater than its largest surface dimension.

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

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

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

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

16 49-202. Designation of state agency

17 A. The department is designated as the agency for this state for
18 all purposes of the clean water act, including section 505, the resource
19 conservation and recovery act, including section 7002, and the safe
20 drinking water act. The department may take all actions necessary to
21 administer and enforce these acts as provided in this section, including
22 entering into contracts, grants and agreements, ~~the adoption, modification~~
23 ~~ADOPTING, MODIFYING~~ or ~~repeat of~~ ~~REPEALING~~ rules, and initiating
24 administrative and judicial actions to secure to this state the benefits,
25 rights and remedies of such acts.

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

36 C. The department shall review the application for section 401
37 certification solely to determine whether the effect of the discharge will
38 comply with the water quality standards for ~~navigable waters~~ WOTUS
39 established by department rules adopted pursuant to section 49-221,
40 subsection A, and section 49-222. The department's review shall extend
41 only to activities conducted within the ordinary high watermark of
42 ~~navigable waters~~ WOTUS. To the extent that any other standards are
43 considered applicable pursuant to section 401(a)(1) of the clean water
44 act, certification of these standards is waived.

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

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

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

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

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

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

33 ~~1. E.~~ E. The department may request supplemental information from the
34 section 401 certification applicant if the information is necessary to
35 make the certification determination pursuant to subsection C of this
36 section. The department shall request this information in writing. The
37 request shall specifically describe the information requested. After
38 receipt of the applicant's written response to a request for supplemental
39 information, the department shall either issue a written determination
40 that the application is complete or request specific additional
41 information. The applicant may deem any additional requests for
42 supplemental information as a denial of certification for THE purposes of
43 subsection ~~H~~ I of this section. In all other instances, the application
44 is complete on submission of the information requested by the department.

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

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

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

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

33 ~~I.~~ I. Pursuant to title 41, chapter 6, article 10 an applicant for
34 certification may appeal a denial of certification or any conditions
35 imposed on certification. Any person who is or may be adversely affected
36 by the denial of or imposition of conditions on the certification of a
37 nationwide or general permit may appeal that decision pursuant to title
38 41, chapter 6, article 10.

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

- 43 1. There is no disposal of construction and demolition wastes and
44 contaminated wastewater.

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

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

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

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

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

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

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

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

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

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

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

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

44 ~~M.~~ N. The director and the department of environmental quality may
45 enter into an interagency contract or agreement with the director of water

1 resources under title 11, chapter 7, article 3 to implement the provisions
2 of section 104 of CERCLA and to carry out the purposes of subsection ~~4~~ M
3 of this section.

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

6 49-202.01. Surface water quality general grazing permit; best
7 management practices for grazing activities;
8 definition

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

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

18 C. In adopting voluntary grazing best management practices, the
19 committee shall consider:

20 1. The availability and effectiveness of alternative technologies.

21 2. The economic and social impacts of alternative technologies on
22 grazing and associated industries.

23 3. The institutional considerations of alternative technologies.

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

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

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

31 49-203. Powers and duties of the director and department

32 A. The director shall:

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

35 2. Adopt, by rule, a permit program **FOR WOTUS** that is consistent
36 with but ~~no~~ NOT more stringent than the requirements of the clean water
37 act for the point source discharge of any pollutant or combination of
38 pollutants into ~~navigable waters~~ WOTUS. The program and the rules shall
39 be sufficient to enable this state to administer the permit program
40 identified in section 402(b) of the clean water act, including the sewage
41 sludge requirements of section 405 of the clean water act and as
42 prescribed by article 3.1 of this chapter.

43 **3. APPLY THE PROGRAM AND RULES AUTHORIZED UNDER PARAGRAPH 2 OF THIS**
44 **SUBSECTION TO POINT SOURCE DISCHARGES TO NON-WOTUS PROTECTED SURFACE**
45 **WATERS, CONSISTENT WITH SECTION 49-255.04, WHICH ESTABLISHES THE PROGRAM**

1 COMPONENTS AND RULES THAT DO NOT APPLY TO NON-WOTUS PROTECTED SURFACE
2 WATERS. THE FOLLOWING ARE EXEMPT FROM THE NON-WOTUS PROTECTED SURFACE
3 WATERS POINT SOURCE DISCHARGE PROGRAM:

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

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

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

11 (d) CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.

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

13 ~~3-~~ 4. Adopt, by rule, a program to control nonpoint source
14 discharges of any pollutant or combination of pollutants into ~~navigable~~
15 ~~waters~~ WOTUS.

16 ~~4-~~ 5. Adopt, by rule, an aquifer protection permit program to
17 control discharges of any pollutant or combination of pollutants that are
18 reaching or may with a reasonable probability reach an aquifer. The
19 permit program shall be as prescribed by article 3 of this chapter.

20 ~~5-~~ 6. Adopt, by rule, the permit program for underground injection
21 control described in the safe drinking water act.

22 ~~6-~~ 7. Adopt, by rule, technical standards for conveyances of
23 reclaimed water and a permit program for the direct reuse of reclaimed
24 water.

25 ~~7-~~ 8. Adopt, by rule or as permit conditions, discharge
26 limitations, best management practice standards, new source performance
27 standards, toxic and pretreatment standards and other standards and
28 conditions as reasonable and necessary to carry out the permit programs
29 and regulatory duties described in paragraphs 2 through ~~5-~~ 6 of this
30 subsection.

31 ~~8-~~ 9. Assess and collect fees to revoke, issue, deny, modify or
32 suspend permits issued pursuant to this chapter and to process permit
33 applications. The director may also assess and collect costs reasonably
34 necessary if the director must conduct sampling or monitoring relating to
35 a facility because the owner or operator of the facility has refused or
36 failed to do so on order by the director. The director shall set fees
37 that are reasonably related to the department's costs of providing the
38 service for which the fee is charged. Monies collected from aquifer
39 protection permit fees and from Arizona pollutant discharge elimination
40 system permit fees shall be deposited, pursuant to sections 35-146 and
41 35-147, in the water quality fee fund established by section 49-210.
42 Monies from other permit fees shall be deposited, pursuant to sections
43 35-146 and 35-147, in the water quality fee fund unless otherwise provided
44 by law. Monies paid by an applicant for review by consultants for the
45 department pursuant to section 49-241.02, subsection D shall be deposited,

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

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

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

11 ~~9.~~ 10. Adopt, modify, repeal and enforce other rules that are
12 reasonably necessary to carry out the director's functions under this
13 chapter.

14 ~~10.~~ 11. Require monitoring at an appropriate point of compliance
15 for any organic or inorganic pollutant listed under section 49-243,
16 subsection I if the director has reason to suspect the presence of the
17 pollutant in a discharge.

18 ~~11.~~ 12. Adopt rules establishing what constitutes a significant
19 increase or adverse alteration in the characteristics or volume of
20 pollutants discharged for purposes of determining what constitutes a major
21 modification to an existing facility under the definition of new facility
22 pursuant to section 49-201. Before the adoption of these rules, the
23 director shall determine whether a change at a particular facility results
24 in a significant increase or adverse alteration in the characteristics or
25 volume of pollutants discharged on a case-by-case basis, taking into
26 account site conditions and operational factors.

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

31 B. The director may:

32 1. On presentation of credentials, enter into, on or through any
33 public or private property from which a discharge has occurred, is
34 occurring or may occur or on which any disposal, land application of
35 sludge or treatment regulated by this chapter has occurred, is occurring
36 or may be occurring and any public or private property where records
37 relating to a discharge or records that are otherwise required to be
38 maintained as prescribed by this chapter are kept, as reasonably necessary
39 to ensure compliance with this chapter. The director or a department
40 employee may take samples, inspect and copy records required to be
41 maintained pursuant to this chapter, inspect equipment, activities,
42 facilities and monitoring equipment or methods of monitoring, take
43 photographs and take other action reasonably necessary to determine the
44 application of, or compliance with, this chapter. The owner or managing
45 agent of the property shall be afforded the opportunity to accompany the

1 director or department employee during inspections and investigations, but
2 prior notice of entry to the owner or managing agent is not required if
3 reasonable grounds exist to believe that notice would frustrate the
4 enforcement of this chapter. If the director or department employee
5 obtains any samples before leaving the premises, the director or
6 department employee shall give the owner or managing agent a receipt
7 describing the samples obtained and a portion of each sample equal in
8 volume or weight to the portion retained. If an analysis is made of
9 samples, or monitoring and testing are performed, a copy of the results
10 shall be furnished promptly to the owner or managing agent.

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

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

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

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

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

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

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

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

43 C. Subject to section 38-503 and other applicable statutes and
44 rules, the department may contract with a private consultant ~~for the~~
45 ~~purposes of assisting~~ TO ASSIST the department in reviewing aquifer

1 protection permit applications and on-site wastewater treatment facilities
2 to determine whether a facility meets the criteria and requirements of
3 this chapter and the rules adopted by the director. Except as provided in
4 section 49-241.02, subsection D, the department shall not use a private
5 consultant if the fee charged for that service would be greater than the
6 fee the department would charge to provide that service. The department
7 shall pay the consultant for the services rendered by the consultant from
8 fees paid by the applicant or facility to the department pursuant to
9 subsection A, paragraph ~~8~~ 9 of this section.

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

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

17 49-210. Water quality fee fund; appropriation; exemption;
18 monies held in trust

19 A. The water quality fee fund is established consisting of monies
20 appropriated by the legislature and fees received pursuant to sections
21 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352,
22 49-353 and 49-361. The director shall administer the fund.

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

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

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

32 1. ~~The issuance of~~ TO ISSUE aquifer protection permits pursuant to
33 section 49-241.

34 2. The aquifer protection permit registration fee procedures
35 pursuant to section 49-242.

36 3. Dry well registration fee procedures pursuant to section 49-332.

37 4. Technical review fee procedures pursuant to section 49-353.

38 5. Inspection fee procedures pursuant to section 49-104,
39 subsection C.

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

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

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

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

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

6 11. ~~Implementation TO IMPLEMENT~~ and ~~administration of ADMINISTER~~
7 the dredge and fill permit program established pursuant to article 3.2 of
8 this chapter, including review and analysis for issuing jurisdictional
9 determinations.

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

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

20 49-221. Water quality standards in general; protected surface
21 waters list

22 A. The director shall:

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

- 31 (a) ANTIDEGRADATION.
- 32 (b) ANTIDEGRADATION CRITERIA.
- 33 (c) OUTSTANDING ARIZONA WATERS.

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

42 B. The director may adopt, by rule, water quality standards for
43 waters of the state other than those described in subsection A of this
44 section, including standards for the use of water pumped from an aquifer
45 that does not meet the standards adopted pursuant to section 49-223,

1 subsections A and B and that is put to a beneficial use other than
2 drinking water. These standards may include standards for the use of
3 water pumped as part of a remedial action. In adopting such standards,
4 the director shall consider the economic, social and environmental costs
5 and benefits that would result from the adoption of a water quality
6 standard at a particular level or for a particular water category.

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

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

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

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

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

36 F. If the director proposes to adopt water quality standards for
37 agricultural water, the director shall consult, cooperate, collaborate
38 and, if necessary, enter into interagency agreements and memoranda of
39 understanding with the Arizona department of agriculture relating to its
40 administration, ~~pursuant to title 3, chapter 3, article 4.1,~~ of this
41 state's authority relating to agricultural water under the United States
42 food and drug administration produce safety rule (21 Code of Federal
43 Regulations part 112, subpart E) and any other federal produce safety
44 regulation, order or guideline or other requirement adopted pursuant to

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

3 1. "Agricultural water":

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

7 (b) Includes all of the following:

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

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

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

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

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

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

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

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

32 1. THE PROTECTED SURFACE WATERS LIST SHALL INCLUDE:

33 (a) ALL WOTUS.

34 (b) ANY PERENNIAL, INTERMITTENT AND EPHEMERAL REACHES AND ANY
35 IMPOUNDMENTS OF THE FOLLOWING RIVERS, NOT INCLUDING TRIBUTARIES OR REACHES
36 OF WATERS WHOLLY WITHIN TRIBAL JURISDICTION OR REACHES OF WATERS OUTSIDE
37 OF THE UNITED STATES:

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

41 (ii) THE COLORADO RIVER, FROM THE ARIZONA-UTAH BORDER AT
42 111°32'35.741"W, 36°58'51.698"N, TO THE ARIZONA-MEXICO BORDER AT 114°
43 43'12.564"W, 32°43'6.218"N.

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

4 (iv) THE LITTLE COLORADO RIVER, FROM THE CONFLUENCE OF THE EAST AND
5 WEST FORKS OF THE LITTLE COLORADO RIVER AT 109°28'7.131"W, 33°59'39.852"N,
6 TO ITS CONFLUENCE WITH THE COLORADO RIVER AT 111°49'4.693"W,
7 36°12'10.243"N.

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

11 (vi) THE SAN PEDRO RIVER, FROM THE ARIZONA-MEXICO BORDER AT
12 110°9'1.704"W, 31°20'2.387"N, TO THE CONFLUENCE WITH THE GILA RIVER AT
13 110°47'0.905"W, 32°59'5.671"N.

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

17 (viii) THE VERDE RIVER, FROM SULLIVAN LAKE AT 112°28'10.588"W,
18 34°52'11.136"N, TO ITS CONFLUENCE WITH THE SALT RIVER AT 111°39'48.32"W,
19 33°33'20.538"N.

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

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

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

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

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

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

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

43 (f) STORMWATER CONTROL FEATURES.

44 (g) GROUNDWATER RECHARGE, WATER REUSE AND WASTEWATER RECYCLING
45 STRUCTURES, INCLUDING UNDERGROUND STORAGE FACILITIES AND GROUNDWATER

1 SAVINGS FACILITIES PERMITTED UNDER TITLE 45, CHAPTER 3.1 AND DETENTION AND
2 INFILTRATION BASINS, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS
3 SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE OWNER OF THE
4 GROUNDWATER RECHARGE, WATER REUSE OR WASTEWATER RECYCLING STRUCTURE UNTIL
5 THE OWNER WITHDRAWS ITS REQUEST.

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

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

13 (j) GROUNDWATER.

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

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

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

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

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

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

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

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

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

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

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

1 (a) THE WATER IS NOT REQUIRED TO BE LISTED UNDER PARAGRAPH 1 OR 3 OF
2 THIS SUBSECTION.

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

4 (c) THE ECONOMIC, ENVIRONMENTAL AND SOCIAL BENEFITS OF ADDING THE
5 WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND SOCIAL COSTS OF EXCLUDING
6 THE WATER FROM THE LIST.

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

11 6. THE DIRECTOR SHALL REMOVE NON-WOTUS WATERS FROM THE PROTECTED
12 SURFACE WATERS LIST WHEN THE WATER IS NOT REQUIRED TO BE LISTED UNDER
13 PARAGRAPH 3 OF THIS SUBSECTION AND THE ECONOMIC, ENVIRONMENTAL AND SOCIAL
14 BENEFITS OF REMOVING THE WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND
15 SOCIAL COSTS OF RETAINING THE WATER ON THE LIST.

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

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

30 49-222. Water quality standards for WOTUS

31 A. Standards for the quality of ~~navigable waters~~ WOTUS shall assure
32 water quality, if attainable, which provides for protecting the public
33 health and welfare, and shall enhance the quality of water taking into
34 consideration its use and value for public water supplies, the propagation
35 of fish and wildlife and recreational, agricultural, industrial and other
36 purposes including navigation.

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

42 C. In setting numeric standards for the quality of ~~navigable waters~~
43 WOTUS, the director may consider the effect of local water quality
44 characteristics on the toxicity of specific pollutants and the varying
45 sensitivities of local affected aquatic populations to such pollutants,

1 and the extent to which the natural flow of the stream is intermittent or
2 ephemeral, as a result of which the instream flow consists mostly of
3 treated wastewater effluent, except that such standards shall not, in any
4 event, be inconsistent with the clean water act. In applying such
5 standards the director may establish appropriate mixing zones.

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

8 49-225. Water quality monitoring

9 A. The director of environmental quality, with the advice and
10 cooperation of the Arizona department of agriculture and the director of
11 water resources when appropriate, shall conduct ongoing monitoring of the
12 waters of the state including the state's ~~navigable waters~~ WOTUS and
13 aquifers to detect the presence of new and existing pollutants, determine
14 compliance with applicable water quality standards, determine the
15 effectiveness of best management practices, agricultural best management
16 practices and best available demonstrated control technologies, evaluate
17 the effects of pollutants on public health or the environment and
18 determine water quality trends.

19 B. The director shall maintain a statewide database of groundwater
20 and soils sampled for pollutants. All agencies shall submit to the
21 director, in a timely manner, the results of any groundwater or soils
22 sampling for pollutants and the results of any groundwater or soils
23 sampling that detect any pollutants.

24 C. The director shall establish minimum requirements and schedules
25 for groundwater and soils sampling that will ensure precise and accurate
26 results. The requirements shall be distributed to all agencies that
27 conduct sampling. All sampling conducted shall meet the minimum
28 requirements established pursuant to this subsection.

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

31 49-231. Definitions

32 In this article, unless the context otherwise requires:

33 1. "Impaired water" means a ~~navigable~~ PROTECTED SURFACE water for
34 which credible scientific data exists that satisfies the requirements of
35 section 49-232, and that, IN THE CASE OF WOTUS, demonstrates that the
36 water should be identified pursuant to 33 United States Code section
37 1313(d) and the regulations implementing that statute.

38 2. "Surface water quality standard" means a standard adopted for a
39 ~~navigable~~ PROTECTED SURFACE water pursuant to ~~sections SECTION 49-221 and~~
40 ~~49-222 and section 303(c) of the clean water act (33 United States Code~~
41 ~~section 1313(c)) AND, IN THE CASE OF WOTUS, PURSUANT TO SECTION 49-222.~~

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

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

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

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

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

29 49-232. Lists of impaired waters; data requirements; rules

30 A. At least once every five years, the department shall prepare a
31 list of impaired ~~waters for the purpose of complying~~ WOTUS TO COMPLY with
32 section 303(d) of the clean water act (33 United States Code section
33 1313(d)). The department shall provide public notice and allow for
34 comment on a draft list of impaired ~~waters~~ WOTUS prior to its submission
35 to the United States environmental protection agency. The department
36 shall prepare written responses to comments received on the draft list.
37 The department shall publish the list of impaired ~~waters~~ WOTUS that it
38 plans to submit initially to the regional administrator and a summary of
39 the responses to comments on the draft list in the Arizona administrative
40 register at least forty-five days before submission of the list to the
41 regional administrator. Publication of the list in the Arizona
42 administrative register is an appealable agency action pursuant to title
43 41, chapter 6, article 10 that may be appealed by any party that submitted
44 written comments on the draft list. If the department receives a notice
45 of appeal of a listing pursuant to section ~~41-1092, subsection B~~

1 41.1092.03 within forty-five days ~~of~~ AFTER the publication of the list in
2 the Arizona administrative register, the department shall not include the
3 challenged listing in its initial submission to the regional
4 administrator. The department may subsequently submit the challenged
5 listing to the regional administrator if the listing is upheld in the
6 director's final administrative decision pursuant to section 41-1092.08,
7 or if the challenge to the listing is withdrawn prior to a final
8 administrative decision.

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

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

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

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

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

34 4. The method of sampling and analysis, including analytical,
35 statistical and modeling methods, is generally accepted and validated in
36 the scientific community as appropriate for use in assessing the condition
37 of the water.

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

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

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

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

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

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

16 ~~E~~ F. If the department has adopted a numeric surface water
17 quality standard for a pollutant and that standard is not being exceeded
18 in a water, the department shall not list the water as impaired based on a
19 conclusion that the pollutant causes a violation of a narrative or
20 biological standard unless:

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

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

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

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

40 ~~H~~ I. By January 1, 2002, the department shall review the list of
41 waters identified as impaired as of January 1, 2000 to determine whether
42 the data that supports the listing of those waters complies with this
43 section. If the data that supports a listing does not comply with this
44 section, the listed water shall not be included on future lists submitted
45 to the United States environmental protection agency pursuant to 33 United

1 States Code section 1313(d) unless in the interim data that satisfies the
2 requirements of this section has been collected or received by the
3 department.

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

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

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

23 49-233. Priority ranking and schedule

24 A. Each list developed by the department pursuant to section
25 49-232 shall contain a priority ranking of ~~navigable waters~~ WOTUS
26 identified as impaired and for which total maximum daily loads are
27 required pursuant to section 49-234 and a schedule for the development of
28 all required total maximum daily loads.

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

38 C. As part of the ~~rule-making~~ RULEMAKING prescribed by section
39 49-232, subsection ~~e~~ D, the department shall identify the factors that it
40 will use to prioritize ~~navigable waters~~ WOTUS that require development of
41 total maximum daily loads. At a minimum and to the extent relevant data
42 is available, the department shall consider the following factors in
43 prioritizing ~~navigable waters~~ WOTUS for development of total maximum daily
44 loads:

1. The designated uses of the ~~navigable water~~ WOTUS.

- 1 2. The type and extent of risk from the impairment to human health
- 2 or aquatic life.
- 3 3. The degree of public interest and support, or its lack.
- 4 4. The nature of the ~~navigable water~~ WOTUS, including whether it is
- 5 an ephemeral, intermittent or effluent-dependent water.
- 6 5. The pollutants causing the impairment.
- 7 6. The severity, magnitude and duration of the violation of the
- 8 applicable surface water quality standard.
- 9 7. The seasonal variation caused by natural events such as storms
- 10 or weather patterns.
- 11 8. Existing treatment levels and management practices.
- 12 9. The availability of effective and economically feasible
- 13 treatment techniques, management practices or other pollutant loading
- 14 reduction measures.
- 15 10. The recreational and economic importance of the water.
- 16 11. The extent to which the impairment is caused by discharges or
- 17 activities that have ceased.
- 18 12. The extent to which natural sources contribute to the
- 19 impairment.
- 20 13. Whether the water is accorded special protection under federal
- 21 or state water quality law.
- 22 14. Whether action that is taken or that is likely to be taken under
- 23 other programs, including voluntary programs, is likely to make
- 24 significant progress toward achieving applicable standards even if a total
- 25 maximum daily load is not developed.
- 26 15. The time expected to be required to achieve compliance with
- 27 applicable surface water quality standards.
- 28 16. The availability of documented, effective analytical tools for
- 29 developing a total maximum daily load for the water with reasonable
- 30 accuracy.
- 31 17. Department resources and programmatic needs.

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

34 49-234. Total maximum daily loads; implementation plans

35 A. The department shall develop total maximum daily loads for those
36 ~~navigable~~ WOTUS listed as impaired pursuant to this article and for which
37 total maximum daily loads are required to be adopted pursuant to 33 United
38 States Code section 1313(d) and the regulations implementing that statute
39 ~~OR THAT THE DEPARTMENT OTHERWISE DETERMINES ARE REQUIRED TO RESTORE AN~~
40 ~~IMPAIRED WATER~~. The department may estimate total maximum daily loads for
41 ~~navigable~~ WOTUS not listed as impaired pursuant to this article, ~~for the~~
42 ~~purposes of developing~~ TO DEVELOP information to satisfy the requirements
43 of 33 United States Code section 1313(d)(3), ~~only~~ only after it has developed
44 total maximum daily loads for all ~~navigable waters~~ WOTUS identified as

1 impaired pursuant to this article or if necessary to support permitting of
2 new point source discharges.

3 B. In developing total maximum daily loads, the department shall
4 use only statistical and modeling techniques that are properly validated
5 and broadly accepted by the scientific community. The modeling technique
6 may vary based on the type of water and the quantity and quality of
7 available data that meets the quality assurance and quality control
8 requirements of section 49-232. The department may establish the
9 statistical and modeling techniques in rules adopted pursuant to section
10 49-232, subsection ~~C~~ D.

11 C. Each total maximum daily load shall:

12 1. Be based on data and methodologies that comply with section
13 49-232.

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

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

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

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

24 1. FOR EACH IMPAIRED WOTUS, the department shall prepare a draft
25 estimate of the total amount of each pollutant that causes the impairment
26 from all sources and that may be added to the ~~navigable water~~ WOTUS while
27 still allowing the ~~navigable water~~ WOTUS to achieve and maintain
28 applicable surface water quality standards. In addition, the department
29 shall determine draft allocations among the contributing sources that are
30 sufficient to achieve the total loadings. The department shall provide
31 public notice and allow for comment on each draft estimate and draft
32 allocation and shall prepare written responses to comments received on the
33 draft estimates and draft allocations. The department shall publish the
34 determinations of total pollutant loadings that will not result in
35 impairment and the draft allocations among the contributing sources that
36 are sufficient to achieve the total loading that it intends to submit
37 initially to the regional administrator, along with a summary of the
38 responses to comments on the estimated loadings and allocations, in the
39 Arizona administrative register at least forty-five days before submission
40 of the loadings and allocations to the regional administrator.
41 Notwithstanding this subsection, draft allocations shall be submitted to
42 the regional administrator only if that submission is required by the
43 rules that implement 33 United States Code section 1313(d).

44 2. FOR NON-WOTUS IMPAIRED WATERS, THE DEPARTMENT MAY PREPARE A
45 DRAFT ESTIMATE OF THE TOTAL AMOUNT OF EACH POLLUTANT THAT CAUSES THE

1 IMPAIRMENT FROM ALL SOURCES AND THAT MAY BE ADDED TO THE WATER WHILE STILL
2 ALLOWING THE WATER TO ACHIEVE AND MAINTAIN APPLICABLE SURFACE WATER
3 QUALITY STANDARDS. IF THE DEPARTMENT CHOOSES TO PREPARE A DRAFT ESTIMATE
4 FOR A NON-WOTUS IMPAIRED WATER, THE DEPARTMENT SHALL DO ALL OF THE
5 FOLLOWING:

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

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

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

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

17 E. Publication of the loadings and allocations in the Arizona
18 administrative register is an appealable agency action pursuant to title
19 41, chapter 6, article 10 that may be appealed by any party that submitted
20 written comments on the estimated loadings and allocations. IN THE CASE
21 OF WOTUS, if the department receives a notice of appeal of a loading and
22 allocation pursuant to section 41-1092.03 within forty-five days ~~of~~ AFTER
23 the publication of the loading and allocations in the Arizona
24 administrative register, the department shall not submit the challenged
25 loading and allocations to the regional administrator until either the
26 challenge to the loading and allocation is withdrawn or the director has
27 made a final administrative decision pursuant to section 41-1092.08.

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

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

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

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

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

44 H. Each TMDL implementation plan shall provide the time frame in
45 which compliance with applicable surface water quality standards is

1 expected to be achieved. The plan may include a phased process with
2 interim targets for load reductions. Longer time frames are appropriate in
3 situations involving multiple dischargers, technical, legal or economic
4 barriers to achieving necessary load reductions, scientific uncertainty
5 regarding data quality or modeling, significant loading from natural
6 sources or significant loading resulting from discharges or activities
7 that have already ceased.

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

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

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

33 49-242. Procedural requirements for individual permits;
34 annual registration of permittees; fee

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

41 B. Each owner of an injection well, a land treatment facility, a
42 dry well, an on-site wastewater treatment facility with a capacity of more
43 than three thousand gallons per day, a recharge facility or a facility
44 that discharges to ~~navigable~~ PROTECTED SURFACE waters to whom an
45 individual or area-wide permit is issued shall register the permit with

1 the director each year and pay an annual registration fee for each permit
2 based on the total daily discharge of pollutants pursuant to subsection E
3 of this section.

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

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

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

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

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

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

43 49-245.01. Storm water general permit

44 A. A general permit is issued for facilities used solely for the
45 management of storm water and that are regulated by the clean water act OR

1 ARTICLE 3.1 OF THIS CHAPTER, including catchments, impoundments and sumps,
2 provided the following conditions are met:

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

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

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

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

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

27 49-245.02. General permit for certain discharges associated
28 with man-made bodies of water

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

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

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

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

37 (c) With the exception of the aquifer water quality standard for
38 microbiological contaminants, the reclaimed wastewater meets aquifer water
39 quality standards before being placed into the body of water, as
40 documented by a water quality analysis submitted with the vadose zone
41 injection well registration. The owner or operator of the vadose zone
42 injection wells shall demonstrate continued compliance with this
43 subdivision by submitting to the department the results of any monitoring
44 required as part of an aquifer protection permit or wastewater reuse
45 permit for any facility providing reclaimed wastewater to the man-made

1 body of water. For purposes of this general permit, monitoring shall be
2 conducted at least semiannually. The monitoring results shall be
3 submitted to the department semiannually beginning six months after
4 registration made PURSUANT to subdivision (a) of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

43 49-250. Exemptions

44 A. The director ~~may~~, by rule, MAY exempt specifically described
45 classes or categories of facilities from the aquifer protection permit

1 requirements of this article on a finding either that there is no
2 reasonable probability of degradation of the aquifer or that aquifer water
3 quality will be maintained and protected because the discharges from the
4 facilities are regulated under other federal or state programs that
5 provide the same or greater aquifer water quality protection as provided
6 by this article.

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

9 1. Household and domestic activities.

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

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

14 4. Ponds used for watering livestock and wildlife.

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

19 6. Facilities used solely for surface transportation or storage of
20 groundwater, surface water for beneficial use or reclaimed water that is
21 regulated pursuant to section 49-203, subsection A, paragraph ~~6~~ 7 for
22 beneficial use.

23 7. Discharge to a community sewer system.

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

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

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

33 11. Closed facilities. However, if the facility ever resumes
34 operation the facility shall obtain an aquifer protection permit and the
35 facility shall be treated as a new facility for purposes of section
36 49-243.

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

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

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

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

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

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

13 18. Facilities used in:

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

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

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

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

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

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

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

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

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

38 (a) Firefighting system testing and maintenance.

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

40 (c) Irrigation drainage and lawn watering.

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

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

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

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

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

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

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

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

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

25 49-255. Definitions

26 In this article, unless the context otherwise requires:

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

30 2. "Discharge":

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

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

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

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

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

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

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

4 6. "Sewage sludge":

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

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

10 (c) Does not include ash that is generated during the firing of
11 sewage sludge in a sewage sludge incinerator or grit and screenings that
12 are generated during preliminary treatment of domestic sewage in a
13 treatment works.

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

25 8. "Upset":

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

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

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

36 49-255.01. Arizona pollutant discharge elimination system
37 program; rules and standards; affirmative
38 defense; fees; general permit; exemption from
39 termination

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

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

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

4 B. The director shall adopt rules to establish an AZPDES permit
5 program FOR DISCHARGES TO WOTUS consistent with the requirements of
6 sections 402(b) and 402(p) of the clean water act. This program shall
7 include requirements to ensure compliance with section 307 and
8 requirements for the control of discharges consistent with sections 318
9 and 405(a) of the clean water act. The director shall not adopt any
10 requirement FOR WOTUS that is more stringent than ~~or conflicts with~~ any
11 requirement of the clean water act. THE DIRECTOR SHALL NOT ADOPT ANY
12 REQUIREMENT THAT CONFLICTS WITH ANY REQUIREMENT OF THE CLEAN WATER ACT.
13 The director may adopt federal rules pursuant to section 41-1028 or may
14 adopt rules to reflect local environmental conditions to the extent that
15 the rules are consistent with and ~~no~~ NOT more stringent than the clean
16 water act and this article.

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

19 1. Issuing, authorizing, denying, modifying, suspending or revoking
20 individual or general permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 J. Only for a ~~one-time rule making~~ ONETIME RULEMAKING after July
42 29, 2010, the director shall establish by rule fees, including maximum
43 fees, for processing, issuing and denying an application for a permit
44 pursuant to this section. After the ~~one-time rule making~~ ONETIME
45 RULEMAKING, the director shall not increase those fees by rule without

1 specific statutory authority for the increase. Monies collected pursuant
2 to this section shall be deposited, pursuant to sections 35-146 and
3 35-147, in the water quality fee fund established by section 49-210.

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

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

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

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

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

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

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

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

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

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

39 49-255.02. Pretreatment program; rules and standards

40 A. The director shall adopt rules to establish a pretreatment
41 program that is consistent with the requirements of sections 307, 308 and
42 402 of the clean water act. The director shall not adopt any requirement
43 that is more stringent than or conflicts with any requirements of the
44 clean water act, EXCEPT THE DIRECTOR SHALL APPLY THE PRETREATMENT PROGRAM

1 TO PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGE TO A NON-WOTUS PROTECTED
2 SURFACE WATER.

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

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

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

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

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

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

20 49-255.03. Sewage sludge program; rules and requirements

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

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

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

33 49-255.04. Special provisions for discharges to non-WOTUS
34 protected surface waters

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

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

1 DIRECTOR SHALL NOT ADOPT OR APPLY RULES REGARDING THE FOLLOWING DISCHARGES
2 TO NON-WOTUS PROTECTED SURFACE WATERS:

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

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

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

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

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

37 D. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE
38 UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS IN SUBSECTION B
39 OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1 FOR OTHER
40 CATEGORIES OF POTENTIAL POINT SOURCE DISCHARGES, INCLUDING DE MINIMIS
41 DISCHARGES, TO NON-WOTUS PROTECTED SURFACE WATERS THAT INVOLVE THE SAME OR
42 SUBSTANTIALLY SIMILAR TYPES OF OPERATIONS, CONTAIN THE SAME OR
43 SUBSTANTIALLY SIMILAR TYPES OF POLLUTANTS AND ARE MORE APPROPRIATELY
44 CONTROLLED UNDER A GENERAL PERMIT THAN UNDER AN INDIVIDUAL PERMIT.

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

8 F. THE DIRECTOR SHALL NOT CONSTRUE ANY RULE TO REQUIRE OVERSIGHT BY
9 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF PERMITS OR PORTIONS
10 OF PERMITS FOR DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, AND A
11 RULE SHALL NOT APPLY IF IT WOULD REQUIRE REVIEW, APPROVAL OR ENFORCEMENT
12 BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF DISCHARGES TO
13 NON-WOTUS PROTECTED SURFACE WATERS.

14 G. IN PERMITS FOR DISCHARGES TO WOTUS AND NON-WOTUS PROTECTED
15 SURFACE WATERS, THE DIRECTOR SHALL NOT IMPOSE DUPLICATIVE PERMIT
16 REQUIREMENTS.

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

20 49-255.05. Best management practices for activities within
21 non-WOTUS

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

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

28 2. ACTIVITIES CONDUCTED WITHIN THE BED AND BANKS OF WATERS THAT
29 MATERIALLY IMPACT DOWNSTREAM NON-WOTUS PROTECTED SURFACE WATERS. THE
30 DIRECTOR SHALL DETERMINE THROUGH RULEMAKING WHAT CONSTITUTES A MATERIAL
31 IMPACT AND THAT RULEMAKING SHALL BE BASED ON FACTORS THAT INCLUDE DISTANCE
32 AND TOPOGRAPHY.

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

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

36 1. DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO
37 A RECHARGE PROJECT.

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

42 3. MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES.

43 4. CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.

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

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

3 49-256. Adoption and enactment of federal definitions

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

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

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

16 3. "Fill material" means:

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

20 (i) Replacing any portion of a ~~navigable water~~ WOTUS with dry land.

21 ~~; or~~

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

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

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

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

35 5. "In-lieu fee program" means a program involving the restoration,
36 establishment, enhancement, and/or preservation of aquatic resources
37 through funds paid to a governmental or non-profit natural resources
38 management entity to satisfy compensatory mitigation requirements for
39 dredge and fill permits issued pursuant to this article. Similar to but
40 distinct from a mitigation bank, an in-lieu fee program sells compensatory
41 mitigation credits to permittees whose obligation to provide compensatory
42 mitigation is then transferred to the in-lieu program sponsor. The
43 operation and use of an in-lieu fee program are governed by an in-lieu fee
44 program instrument.

1 6. "Mitigation bank" means a site, or suite of sites, where
2 resources (e.g., wetlands, streams, riparian areas) are restored,
3 established, enhanced, and/or preserved for the purpose of providing
4 compensatory mitigation for impacts authorized by dredge and fill permits
5 issued pursuant to this article. In general, a mitigation bank sells
6 compensatory mitigation credits to permittees whose obligation to provide
7 compensatory mitigation is then transferred to the mitigation bank
8 sponsor. The operation and use of a mitigation bank are governed by a
9 mitigation banking instrument.

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

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

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

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

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

30 49-256.01. Dredge and fill permit program; permits; rules;
31 prohibitions; exemptions; exceptions; notice

32 A. ~~For purposes of implementing~~ TO IMPLEMENT the permit program
33 established by 33 United States Code section 1344, the director may
34 establish by rule a dredge and fill permit program that is consistent with
35 and ~~no~~ NOT more stringent than the clean water act dredge and fill
36 program, including a permitting process.

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

43 1. In conformance with a permit that is issued or authorized under
44 this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 7. Provide for any other provisions necessary to maintain state
40 primary enforcement responsibility under 33 United States Code section
41 1344 and to implement the provisions of this article.

42 D. Approved jurisdictional determinations are appealable agency
43 actions as defined by section 41-1092 and may be appealed by a party
44 affected by a jurisdictional determination. Preliminary jurisdictional
45 determinations are not appealable agency actions and notwithstanding

1 section 41-1092.03, the right to appeal an approved jurisdictional
2 determination does not extend to adjacent landowners or to third parties
3 that are not parties affected by a jurisdictional determination.

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

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

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

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

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

21 (c) Additional field data show that the original determination was
22 based on inaccurate data and the new data warrant a revision to the
23 original determination.

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

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

28 49-256.02. Compensatory mitigation

29 A. As a part of the program established pursuant to section
30 49-256.01, and consistent with the guidelines established pursuant to
31 33 United States Code section 1344(b)(1), the director shall establish by
32 rule standards and criteria for the use of all types of compensatory
33 mitigation, including on-site and off-site permittee-responsible
34 mitigation, mitigation banks and in-lieu fee mitigation to offset
35 unavoidable impacts to ~~navigable waters~~ WOTUS authorized by permits issued
36 under this article.

37 B. Mitigation banks and in-lieu fee programs may be used to
38 compensate for unavoidable impacts to ~~navigable waters~~ WOTUS that are
39 authorized by general permits and individual permits, including
40 after-the-fact permits, in accordance with rules established pursuant to
41 this section. In addition to other potential injunctive relief or other
42 relief requested under section 49-262, mitigation banks and in-lieu fee
43 programs may be used to satisfy requirements arising from an enforcement
44 action under this article.

1 C. Rules established by the director pursuant to this section shall
2 identify alternative compensatory mitigation options for a permit
3 applicant if an approved mitigation bank or in-lieu fee program that is
4 located in the same watershed as the permit applicant's proposed discharge
5 rejects that permit applicant's participation in that mitigation bank or
6 in-lieu fee program.

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

9 49-261. Compliance orders; appeal; enforcement

10 A. If the director determines that a person is in violation of a
11 rule adopted or a condition of a permit issued pursuant to section 49-203,
12 subsection A, paragraph ~~6~~ 7, any provision of article 2, 3, 3.1, ~~or~~ 3.2
13 or 3.3 of this chapter, a rule adopted pursuant to article 2, 3, 3.1, ~~or~~
14 3.2 or 3.3 of this chapter, a discharge limitation or any other condition
15 of a permit issued under article 2, 3, 3.1, ~~or~~ 3.2 or 3.3 of this chapter
16 or is creating an imminent and substantial endangerment to the public
17 health or environment, the director may issue an order requiring
18 compliance within a reasonable time period.

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

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

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

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

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

35 49-262. Injunctive relief; civil penalties; recovery of
36 litigation costs; affirmative defense

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

42 1. That a person is in violation of:

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

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

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

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

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

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

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

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

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

39 F. Except as applied to permits issued or authorized pursuant to
40 article 3.1, 3.2 or 3.3 of this chapter, it is an affirmative defense to
41 civil liability under this section and section 49-261 for causing or
42 contributing to a violation of a water quality standard established
43 pursuant to this chapter, or a violation of a permit condition prohibiting
44 a violation of an aquifer water quality standard or limitation at the
45 point of compliance or a surface water quality standard if the release

1 that caused or contributed to the violation came from a facility owned or
2 operated by a party that has either:

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

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

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

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

22 1. The seriousness of the violation or violations.

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

24 3. Any history of similar violations.

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

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

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

29 7. Other matters as justice may require.

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

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

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

45 1. The department does any one or more of the following:

1 (a) Determines that the wastewater treatment facility or system is
2 out of compliance with an administrative order issued by the department
3 for a violation of this chapter.

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

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

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

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

13 49-371. Local stormwater quality programs; authority;
14 limitations; fee; civil penalty; definition

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

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

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

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

38 (a) ~~Establishment~~ **ESTABLISHING** and ~~enforcement~~ **ENFORCING** of a
39 county permit program, including conditions for the review, issuance,
40 revision, renewal, revocation, administration and enforcement of a permit.

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

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

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

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

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

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

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

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

28 E. ~~For the purposes of this section and~~ Except as required by 40
29 Code of Federal Regulations section 122.34, a county may not regulate any
30 person or activity exempt under 33 United States Code section 1342(l), 40
31 Code of Federal Regulations section 122.3 or Arizona administrative code
32 ~~18-9-A902(G)~~ R18-9-A902(G).

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

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

40 H. Before adopting any ordinance, rule or regulation pursuant to
41 this section, a county shall file with the secretary of state a written
42 statement including a summary of the proposed rule, ordinance or other
43 regulation. The summary shall provide the name of the person with the
44 county to contact with questions or comments. The secretary of state
45 shall publish the written statement in the next issue of the Arizona

1 administrative register at no cost to the county. The county shall make
2 the text of the rule, ordinance or other regulation available to the
3 public at the same time it files the written summary of the rule,
4 ordinance or other regulation with the secretary of state as provided in
5 this subsection. The county shall also comply with the requirements of
6 section 49-112, subsection D, paragraphs 2, 3 and 4.

7 I. For the purposes of this article, "county" means a county that
8 operates a regulated small municipal separate ~~stormwater~~ STORM SEWER
9 system pursuant to 40 Code of Federal Regulations section 122.32. FOR
10 SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS THAT DISCHARGE TO NON-WOTUS
11 PROTECTED SURFACE WATERS, THIS DEFINITION SHALL APPLY AS IF THE SMALL
12 MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGED TO A WOTUS PROTECTED
13 SURFACE WATER.

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

16 49-391. Local enforcement of water pretreatment requirements;
17 civil penalties

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

27 B. A city, town, county or sanitary district shall not receive
28 civil penalties under this section if an interested person, the United
29 States, this state, or another city, town, county or sanitary district has
30 received civil penalties or is diligently prosecuting a civil penalty
31 action in a court of the United States or this state, or in an
32 administrative enforcement proceeding, with respect to the same
33 allegations, standard, requirement, or order. This state, and any city,
34 town, county or sanitary district of this state that is or may be affected
35 by a civil, judicial or administrative action, may intervene as a matter
36 of right in any pending civil, judicial or administrative action for
37 purposes of obtaining injunctive or declaratory relief.

38 C. The city, town, county or sanitary district may seek compliance
39 with pretreatment ordinances and recovery of the civil penalties provided
40 by this section either by an action in superior court or by a negotiated
41 settlement agreement. Before a consent decree filed with superior court
42 or a negotiated settlement becomes final, the city, town, county or
43 sanitary district seeking compliance shall provide a period of thirty days
44 for public comment. In determining the amount of a civil penalty the
45 court and the city, town, county or sanitary district shall consider:

- 1 1. The seriousness of the violation.
- 2 2. The economic benefit, if any, resulting from the violation.
- 3 3. Any history of such violation.
- 4 4. Any good faith efforts to comply with the applicable
- 5 requirements.
- 6 5. The economic impact of the penalty on the violator.
- 7 6. Such other factors as justice may require.
- 8 D. In addition to the remedies provided in this section,
- 9 enforcement of such ordinances may include injunctive or other equitable
- 10 relief.
- 11 E. All monies collected pursuant to an ordinance adopted under this
- 12 section shall be deposited with the respective city, town, county or
- 13 sanitary district.
- 14 Sec. 30. Section 49-701, Arizona Revised Statutes, is amended to
- 15 read:
- 16 49-701. Definitions
- 17 In this chapter, unless the context otherwise requires:
- 18 1. "Administratively complete plan" means an application for a
- 19 solid waste facility plan approval that the department has determined
- 20 contains each of the components required by statute or rule but that has
- 21 not undergone technical review or public notice by the department.
- 22 2. "Administrator" means the administrator of the United States
- 23 environmental protection agency.
- 24 3. "Closed solid waste facility" means any of the following:
- 25 (a) A solid waste facility that ceases storing, treating,
- 26 processing or receiving for disposal solid waste before the effective date
- 27 of design and operation rules for that type of facility adopted pursuant
- 28 to section 49-761.
- 29 (b) A public solid waste landfill that meets any of the following
- 30 criteria:
- 31 (i) Ceased receiving solid waste prior to July 1, 1983.
- 32 (ii) Ceased receiving solid waste and received at least two feet of
- 33 cover material prior to January 1, 1986.
- 34 (iii) Received approval for closure from the department.
- 35 (c) A public composting plant or a public incinerating facility
- 36 that closed in accordance with an approved plan.
- 37 4. "Conditionally exempt small quantity generator waste" means
- 38 hazardous waste in quantities as defined by rules adopted pursuant to
- 39 section 49-922.
- 40 5. "Construction debris" means solid waste derived from the
- 41 construction, repair or remodeling of buildings or other structures.
- 42 6. "County" means:
- 43 (a) The board of supervisors in the context of the exercise of
- 44 powers or duties.

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

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

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

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

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

12 11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part
13 257 in effect on May 1, 2004.

14 12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part
15 258 in effect on May 1, 2004.

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

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

25 15. "Inert material":

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

27 (i) Is not flammable.

28 (ii) Will not decompose.

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

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

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

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

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

43 19. "Medical waste" means any solid waste ~~which~~ THAT is generated in
44 the diagnosis, treatment or immunization of a human being or animal or in
45 any research relating to that diagnosis, treatment or immunization, or in

1 the production or testing of biologicals, and includes discarded drugs but
2 does not include hazardous waste as defined in section 49-921 other than
3 conditionally exempt small quantity generator waste.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (f) A closed solid waste facility.

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

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

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

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

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

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

41 (ii) When the project is completed the concentration of methane gas
42 will not exceed twenty-five ~~per cent~~ PERCENT of the lower explosive limit
43 in on-site structures, or the concentration of methane gas will not exceed
44 the lower explosive limit at the property line.

- 1 (iii) Protection has been provided to prevent remaining waste from
2 causing any vector, odor, litter or other environmental nuisance.
- 3 (iv) The operator provides a notice to the department containing
4 the information required by section 49-762.07, subsection A, paragraphs 1,
5 2 and 5 and a brief description of the project.
- 6 (l) Agricultural on-site disposal as provided in section 49-766.
- 7 (m) The use, storage, treatment or disposal of by-products of
8 regulated agricultural activities as defined in section 49-201 and that
9 are subject to best management practices pursuant to section 49-247 or
10 by-products of livestock, range livestock and poultry as defined in
11 section 3-1201, pesticide containers that are regulated pursuant to title
12 3, chapter 2, article 6 or other agricultural crop residues.
- 13 (n) Household hazardous waste collection events held at a temporary
14 site for not more than six days in any calendar quarter.
- 15 (o) Wastewater treatment facilities as defined in section 49-1201.
- 16 (p) An on-site ~~single-family~~ SINGLE-FAMILY household waste
17 composting facility.
- 18 (q) A site at which five hundred or fewer waste tires are stored.
- 19 (r) A site at which mining industry off-road waste tires are stored
20 or are disposed of as prescribed by rules in effect on February 1, 1996,
21 until the director by rule determines that on-site recycling methods exist
22 that are technically feasible and economically practical.
- 23 (s) A site at which underground piping, conduit, pipe covering or
24 similar structures are abandoned in place in accordance with applicable
25 state and federal laws.
- 26 30. "Solid waste landfill" means a facility, area of land or
27 excavation in which solid wastes are placed for permanent disposal. Solid
28 waste landfill does not include a land application unit, surface
29 impoundment, injection well, compost pile or waste pile or an area
30 containing ash from the on-site combustion of coal that does not contain
31 household waste, household hazardous waste or conditionally exempt small
32 quantity generator waste.
- 33 31. "Solid waste management" means the systematic administration of
34 activities ~~which~~ THAT provide for the collection, source separation,
35 storage, transportation, transfer, processing, treatment or disposal of
36 solid waste in a manner that protects public health and safety and the
37 environment and prevents and abates environmental nuisances.
- 38 32. "Solid waste management plan" means the plan ~~which~~ THAT is
39 adopted pursuant to section 49-721 and ~~which~~ THAT provides guidelines for
40 the collection, source separation, storage, transportation, processing,
41 treatment, reclamation and disposal of solid waste in a manner that
42 protects public health and safety and the environment and prevents and
43 abates environmental nuisances.
- 44 33. "Storage" means the holding of solid waste.

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

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

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

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

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

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

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

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

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

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