REFERENCE TITLE: hydraulic fracturing; prohibitions

State of Arizona House of Representatives Fifty-fifth Legislature Second Regular Session 2022

HB 2829

Introduced by Representative Tsosie

AN ACT

AMENDING SECTIONS 49-201 AND 49-203, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-211; AMENDING SECTIONS 49-245.01, 49-245.02 AND 49-701, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 49-201, Arizona Revised Statutes, is amended to read:

49-201. <u>Definitions</u>

In this chapter, unless the context otherwise requires:

- 1. "Administrator" means the administrator of the United States environmental protection agency.
- 2. "Aquifer" means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.
- 3. "Best management practices" means those methods, measures or practices to prevent or reduce discharges and includes structural and nonstructural controls and operation and maintenance procedures. Best management practices may be applied before, during and after discharges to reduce or eliminate the introduction of pollutants into receiving waters. Economic, institutional and technical factors shall be considered in developing best management practices.
- 4. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".
 - 5. "Clean closure" means:
- (a) Implementation of a11 actions specified in an aguifer protection permit, if any, as closure requirements, as well elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility THAT MAY REACH THE AQUIFER and of either exceeding aquifer water quality standards at the applicable point of compliance or, if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in section 49-243, subsection B, paragraph 3. Clean closure also means
- (b) Postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.
- 6. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended.
 - 7. "Closed facility" means:
- (a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation.
- (b) A facility that has been approved as a clean closure by the director.

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- (c) A facility at which any postclosure monitoring and maintenance plan, notifications and approvals required in a permit have been completed.
- 8. "Concentrated animal feeding operation" means an animal feeding operation that meets the criteria prescribed in 40 Code of Federal Regulations part 122, appendix B for determining a concentrated animal feeding operation for purposes of 40 Code of Federal Regulations sections 122.23 and 122.24, appendix C.
 - 9. "Department" means the department of environmental quality.
- 10. "Direct reuse" means the beneficial use of reclaimed water for specific purposes authorized pursuant to section 49-203, subsection A, paragraph 7.
- 11. "Director" means the director of environmental quality or the director's designee.
- 12. "Discharge" means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will MAY reach an aquifer.
- 13. "Discharge impact area" means the potential areal extent of pollutant migration, as projected on the land surface, as the result of a discharge from a facility.
- 14. "Discharge limitation" means any restriction, prohibition, limitation or criteria established by the director, through a rule, permit or order, on quantities, rates, concentrations, combinations, toxicity and characteristics of pollutants.
- 15. "Effluent-dependent water" means a surface water or portion of a surface water that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.
- 16. "Environment" means WOTUS, any other surface waters, groundwater, drinking water supply, land surface or subsurface strata or ambient air, within or bordering on this state.
- 17. "Ephemeral water" means a surface water or portion of surface water that flows or pools only in direct response to precipitation.
- 18. "Existing facility" means a facility on which construction began before August 13, 1986 and that is neither a new facility nor a closed facility. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:
- (a) Begun, or caused to begin, as part of a continuous on-site construction program any placement, assembly or installation of a building, structure or equipment.

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- (b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.
- 19. "Facility" means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.
- 20. "Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.
 - 21. "Hazardous substance" means:
- (a) Any substance designated pursuant to sections 311(b)(2)(A) and 307(a) of the clean water act.
- (b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.
- (c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
- (d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).
- (e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).
- (f) Any substance that the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.
- 22. "HYDRAULIC FRACTURING" MEANS THE PROCESS OF PUMPING A FLUID INTO OR UNDER THE SURFACE OF THE GROUND IN ORDER TO CREATE FRACTURES OR CAVITIES IN ROCK TO PRODUCE OR RECOVER OIL OR GASES.
 - 22. 23. "Inert material":
- (a) Means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also
- (b) Includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid

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neutralization potential, and that has not and will not be subject to mine leaching operations.

23. 24. "Intermittent water" means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, AN elevated groundwater table or another surface source, such as melting snowpack.

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

- (a) A modification to a groundwater protection permit facility as defined in section 49-241.01, subsection C that would qualify for an area-wide permit pursuant to section 49-243 consisting of an activity or structure listed in section 49-241, subsection B $\frac{1}{2}$ DOES not constitute a major modification solely because of that listing.
- (b) For a groundwater protection permit facility as defined in section 49-241.01, subsection C, a physical expansion that is accomplished by lateral accretion or upward expansion within the pollutant management area of the existing facility or group of facilities shall DOES not constitute a major modification if the accretion or expansion is accomplished through sound engineering practice in a manner compatible with existing facility design, taking into account safety, stability and risk of environmental release. For a facility described in section 49-241.01, subsection C, paragraph 1, expansion of a facility shall conform with the terms and conditions of the applicable permit. For a facility described in section 49-241.01, subsection C, paragraph 2, if the area of the contemplated expansion is not identified in the notice of disposal, the owner or operator of the facility shall submit to the director the information required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

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

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- (a) Begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly or installation of a building, structure or equipment.
- (b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.
- $\frac{26.}{100}$ 27. "Nonpoint source" means any conveyance that is not a point source from which pollutants are or may be discharged to WOTUS.
- 27. 28. "Non-WOTUS protected surface water" means a protected surface water that is not a WOTUS.
- $\frac{28.}{100}$ 29. "Non-WOTUS waters of the state" means waters of the state that are not WOTUS.
- 29. 30. "On-site wastewater treatment facility" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.
- 30. 31. "Ordinary high watermark" means the line on the shore of an intermittent or perennial protected surface water established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, OR the presence of litter and debris or BY other appropriate means that consider the characteristics of the channel, floodplain and riparian area.
- 31. 32. "Perennial water" means a surface water or portion of surface water that flows continuously throughout the year.
- 32. 33. "Permit" means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility. For the purposes of regulating non-WOTUS protected surface waters, a permit shall not include provisions governing the construction, operation or modification of a facility except as necessary for the purpose of ensuring that a discharge meets water quality-related effluent limitations or to require best management practices for the purpose of ensuring that a discharge does not cause an exceedance of an applicable surface water quality standard.
- 33. 34. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.

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 34. 35. "Point source":

- (a) Means any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged to WOTUS or protected surface water. Point source
 - (b) Does not include return flows from irrigated agriculture.
- 35. 36. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.
- 36. 37. "Postclosure monitoring and maintenance" means those activities that are conducted after closure notification and that are necessary to:
- (a) Keep the facility in compliance with either the aquifer water quality standards at the applicable point of compliance or, for any aquifer water quality standard that is exceeded at the time the aquifer protection permit is issued, the requirement to prevent the facility from further degrading the aquifer at the applicable point of compliance as provided under section 49-243, subsection B, paragraph 3.
- (b) Verify that the actions or controls specified as closure requirements in an approved closure plan or strategy are routinely inspected and maintained.
- (c) Perform any remedial, mitigative or corrective actions or controls as specified in the aquifer protection permit or perform corrective action as necessary to comply with this paragraph and article 3 of this chapter.
 - (d) Meet property use restrictions.
- 37. 38. "Practicably" means able to be reasonably done from the standpoint of technical practicability and, except for pollutants addressed in section 49-243, subsection I, economically achievable on an industry-wide basis.
- 38. "Protected surface waters" means waters of the state listed on the protected surface waters list under section 49-221, subsection G and all WOTUS.
- $\frac{39.}{40.}$ "Public waters" means waters of the state open to or managed for use by members of the general public.
- 40. 41. "Recharge project" means a facility necessary or convenient to obtain, divert, withdraw, transport, exchange, deliver, treat or store water to infiltrate or reintroduce that water into the ground.

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

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

 $\frac{43.}{44.}$ "Safe drinking water act" means the federal safe drinking water act OF 1974, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

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

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

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

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

 $\frac{48.}{49.}$ "Trade secret" means information to which all of the following apply:

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

 $\frac{49.}{100}$ 50. "Vadose zone" means the zone between the ground surface and any aquifer.

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

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

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

52. 53. "Wetland" means, for the purposes of non-WOTUS protected surface waters, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

53. 54. "WOTUS" means waters of the state that are also navigable waters as defined by section 502(7) of the clean water act.

54. 55. "WOTUS protected surface water" means a protected surface water that is a WOTUS.

Sec. 2. Section 49-203, Arizona Revised Statutes, is amended to read:

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

- A. The director shall:
- 1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
- 2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
- 3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:
- (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.
- (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
 - (c) Maintenance but not construction of drainage ditches.
 - (d) Construction and maintenance of irrigation ditches.
 - (e) Maintenance of structures such as dams, dikes and levees.
- 4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

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- 5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
- 6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
- 7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
- 8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.
- 9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49–210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:
- (a) The fees established by the department under the dredge and fill permit program.
- (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.
- 10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
- 11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

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- 12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of ADOPTING these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.
- 13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.
 - B. The director may:
- 1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.
- 2. Require any person who has discharged, is discharging or may discharge into the waters of the THIS state under article 3, 3.1, 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and

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nature of the discharge or indirect discharge or sewage sludge use or disposal.

- 3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
- 4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
- 5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
- 6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
- 7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
- 8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.
- 9. Adopt by rule a permit program for the discharge of dredged or fill material into WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.
- C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.
- D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

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Sec. 3. Title 49, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 49-211, to read:

49-211. <u>Hydraulic fracturing prohibited</u>

NOTWITHSTANDING ARTICLE 3.3 OF THIS CHAPTER, A PERSON MAY NOT ENGAGE IN HYDRAULIC FRACTURING IN THIS STATE AND MAY NOT COLLECT, STORE OR TREAT WATER IN THIS STATE IF THAT WATER IS USED IN, GENERATED BY OR RESULTING FROM THE PROCESS OF HYDRAULIC FRACTURING.

Sec. 4. Section 49-245.01, Arizona Revised Statutes, is amended to read:

49-245.01. Storm water general permit

- A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act or article 3.1 of this chapter, including catchments, impoundments and sumps, provided the following conditions are met:
- 1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for these types of permits for any storm water discharges at the facility.
- 2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
- 3. The owner or operator of the facility has in place any required storm water pollution prevention plan.
- B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.
- Sec. 5. Section 49-245.02, Arizona Revised Statutes, is amended to read:

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

- A. A general permit is issued for the following discharges:
- 1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

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- (a) The vadose zone injection wells are registered pursuant to section 49-332.
 - (b) The discharge occurs only in response to storm events.
- (c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aguifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone demonstrate continued compliance with injection wells shall subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made pursuant to subdivision (a) of this paragraph.
- (d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
- (e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
- (f) The vadose zone injection wells are not used for any other purpose.
- 2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:
- (a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
- (b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
- (c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.
- 3. Point source discharges to protected surface waters from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:
- (a) The discharges are subject to a valid national pollutant discharge elimination system permit or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter.
 - (b) The discharges occur only in response to storm events.
- (c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

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

Sec. 6. Section 49-701, Arizona Revised Statutes, is amended to read:

49-701. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.
- 2. "Administrator" means the administrator of the United States environmental protection agency.
 - 3. "Advanced recycling":
- (a) Means a manufacturing process for the conversion of TO CONVERT post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels and coatings and other products such as waxes and lubricants through processes that include pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis and other similar technologies.
- (b) Does not include solid waste management, σr processing, incineration or treatment.
 - 4. "Advanced recycling facility":
- (a) Means a facility that receives, stores and converts post-use polymers and recovered feedstocks using advanced recycling.
- (b) Includes a manufacturing facility that is subject to applicable provisions of law and department rules for air quality, water quality and waste and land use.
- (c) Does not include a solid waste facility, processing facility, treatment facility, materials recovery facility, recycling facility or incinerator.
 - 5. "Closed solid waste facility" means any of the following:
- (a) A solid waste facility that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.

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- (b) A public solid waste landfill that meets any of the following criteria:
 - (i) Ceased receiving solid waste before July 1, 1983.
- (ii) Ceased receiving solid waste and received at least two feet of cover material before January 1, 1986.
 - (iii) Received approval for closure from the department.
- (c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.
- 6. "Conditionally exempt small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.
- 7. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.
 - 8. "County" means:
- (a) The board of supervisors in the context of the exercise of powers or duties.
- (b) The unincorporated areas in the context of area of jurisdiction.
- 9. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.
- 10. "Depolymerization" means a manufacturing process through which post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate or final products, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels, waxes, lubricants, coatings and other basic hydrocarbons.
 - 11. "Discharge" has the same meaning prescribed in section 49-201.
- 12. "Existing solid waste facility" means a solid waste facility that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.
- 13. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities.
- 14. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257 in effect on May 1, 2004.
- 15. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.
- 16. "Gasification" means a manufacturing process through which recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

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- 17. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.
 - 18. "Household waste":
- (a) Means any solid waste, including garbage, rubbish and sanitary waste from septic tanks, that is generated from households, including single and multiple-family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and $\frac{day}{day}$ use DAY-USE recreation areas.
- (b) Does not include construction debris, landscaping rubble or demolition debris.
 - 19. "Inert material":
 - (a) Means material that satisfies all of the following conditions:
 - (i) Is not flammable.
 - (ii) Will not decompose.
- (iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 22 FOR INERT MATERIAL when subjected to a water leach test that is designed to approximate natural infiltrating waters.
- (b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete. , but
- (c) Does not include special waste, hazardous waste, glass or other metal.
 - 20. "Land disposal" means placement of solid waste in or on land.
- 21. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and not more than ten percent by volume of vegetative waste.
- 22. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.
 - 23. "Medical waste":
- (a) Means any solid waste that is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
 - (b) Includes discarded drugs.
- (c) Does not include hazardous waste as defined in section 49-921 other than conditionally exempt small quantity generator waste.
- 24. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or conditionally exempt small quantity generator waste.
- 25. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 for that type of solid waste facility.

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- "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is right-of-way crossing the and not bу traveling along Noncontiguous properties that are owned by the same person right-of-way. and connected by a right-of-way that is controlled by that person and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.
- 27. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.
 - 28. "Post-use polymer":
 - (a) Means a plastic to which all of the following apply:
- (i) The plastic is derived from any industrial, commercial, agricultural or domestic activities.
- (ii) The plastic is not mixed with solid waste or hazardous waste on site or during processing at the advanced recycling facility.
- (iii) The plastic's use or intended use is as a feedstock for the manufacturing of crude oil, fuels, feedstocks, blendstocks, raw materials or other intermediate products or final products using advanced recycling.
- (iv) The plastic has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste such as organic material and incidental contaminants or impurities such as paper labels and metal rings.
- (v) The plastic is processed at an advanced recycling facility or held at $\frac{\text{such}}{\text{AN ADVANCED RECYCLING}}$ facility before processing.
 - (b) Does not include solid waste or municipal waste.
- 29. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.
- 30. "Public solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.
- 31. "Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted, are thermally decomposed and are then cooled, condensed and converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

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- 32. "Recovered feedstocks":
- (a) Means one or more of the following materials that $\frac{has}{has}$ HAVE been processed so that $\frac{it}{it}$ THEY may be used as feedstock in an advanced recycling facility:
 - (i) Post-use polymers.
- (ii) Materials for which the United States environmental protection agency has made a nonwaste determination pursuant to 40 Code of Federal Regulations section 241.3(c) or has otherwise determined are feedstocks and not solid waste.
 - (b) Does not include:
 - (i) Unprocessed municipal solid waste.
- (ii) Materials that are mixed with solid waste or hazardous waste on site or during processing at an advanced recycling facility.
- 33. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste and that handles wastes that have a significant adverse effect on the environment.
- 34. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.
- 35. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.
- 36. "Solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste, conditionally exempt small quantity generator waste or household hazardous waste but does not include the following:
- (a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, conditionally exempt small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.
- (b) A site at which solid waste that was generated on site is stored for ninety days or less.
- (c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.
- (d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.
- (e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

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- (f) A closed solid waste facility.
- (g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.
- (h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.
- (i) A site where solid waste generated in street sweeping activities is stored, processed or treated before disposal at a solid waste facility authorized under this chapter.
- (j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site before disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.
- (k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair if the following conditions are met:
- (i) When the project is completed there will not be an increase in leachate that would result in a discharge.
- (ii) When the project is completed the concentration of methane gas will not exceed twenty-five percent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.
- (iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.
- (iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.
 - (1) Agricultural on-site disposal as provided in section 49-766.
- (m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.
- (n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.
 - (o) Wastewater treatment facilities as defined in section 49-1201.
 - (p) An on-site single-family household waste composting facility.
 - (q) A site at which five hundred or fewer waste tires are stored.
- (r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996,

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until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.

- (s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.
- (t) An advanced recycling facility that converts recovered feedstocks to manufacture raw materials and intermediate and final products.
 - 37. "Solid waste landfill":
- (a) Means a facility, area of land or excavation in which solid wastes are placed for permanent disposal.
- (b) Does not include a land application unit, surface impoundment, injection well, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or conditionally exempt small quantity generator waste.
- 38. "Solid waste management" means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.
- 39. "Solid waste management plan" means the plan that is adopted pursuant to section 49-721 and that provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.
 - 40. "Solvolysis":
- (a) Means a manufacturing process through which post-use polymers are purified with the aid of solvents, allowing additives and contaminants to be removed and producing polymers capable of being recycled or reused without first being reverted to a monomer.
- (b) Includes hydrolysis, aminolysis, ammonoloysis, methanolysis and glycolysis.
 - 41. "Storage" means the holding of solid waste.
 - 42. "Transfer facility":
- (a) Means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste.
- (b) Includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

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- 43. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.
 - 44. "Vegetative waste":
- (a) Means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material.
- (b) Does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.
- 45. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.
- 46. Waste tire does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:
- (a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.
- (b) A tire that is removed from a motor vehicle and is retained for further use.
 - (c) A tire that has been chopped or shredded.
- 47. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

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