

REFERENCE TITLE: state waters; rules; ecological services.

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2249

Introduced by
Representatives Mathis: De Los Santos, Villegas

AN ACT

AMENDING SECTIONS 49-203, 49-221, 49-222, 49-255.01, 49-255.02, 49-255.03,
49-255.04 AND 49-371, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-203, Arizona Revised Statutes, is amended to
3 read:

4 49-203. Powers and duties of the director and department

5 A. The director shall:

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

8 2. Adopt, by rule, a permit program for WOTUS that is consistent
9 with ~~but not~~ AND more stringent than the requirements of the clean water
10 act for the point source discharge of any pollutant or combination of
11 pollutants into WOTUS. The program and the rules shall be sufficient to
12 enable this state to administer the permit program identified in section
13 402(b) of the clean water act, including the sewage sludge requirements of
14 section 405 of the clean water act and as prescribed by article 3.1 of
15 this chapter.

16 3. Apply the program and rules authorized under paragraph 2 of this
17 subsection to point source discharges to non-WOTUS protected surface
18 waters, consistent with section 49-255.04, which establishes the program
19 components and rules that do not apply to non-WOTUS protected surface
20 waters. The following are exempt from the non-WOTUS protected surface
21 waters point source discharge program:

22 (a) Discharges to a non-WOTUS protected surface water incidental to
23 a recharge project.

24 (b) Established or ongoing farming, ranching and silviculture
25 activities such as plowing, seeding, cultivating, minor drainage or
26 harvesting for the production of food, fiber or forest products or upland
27 soil and water conservation practices.

28 (c) Maintenance but not construction of drainage ditches.

29 (d) Construction and maintenance of irrigation ditches.

30 (e) Maintenance of structures such as dams, dikes and levees.

31 4. Adopt, by rule, a program to control nonpoint source discharges
32 of any pollutant or combination of pollutants into WOTUS.

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

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

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

41 8. Adopt, by rule or as permit conditions, discharge limitations,
42 best management practice standards, new source performance standards,
43 toxic and pretreatment standards and other standards and conditions as
44 reasonable and necessary to carry out the permit programs and regulatory
45 duties described in paragraphs 2 through 6 of this subsection.

1 9. Assess and collect fees to revoke, issue, deny, modify or
2 suspend permits issued pursuant to this chapter and to process permit
3 applications. The director may also assess and collect costs reasonably
4 necessary if the director must conduct sampling or monitoring relating to
5 a facility because the owner or operator of the facility has refused or
6 failed to do so on order by the director. The director shall set fees
7 that are reasonably related to the department's costs of providing the
8 service for which the fee is charged. Monies collected from aquifer
9 protection permit fees and from Arizona pollutant discharge elimination
10 system permit fees shall be deposited, pursuant to sections 35-146 and
11 35-147, in the water quality fee fund established by section 49-210.
12 Monies from other permit fees shall be deposited, pursuant to sections
13 35-146 and 35-147, in the water quality fee fund unless otherwise provided
14 by law. Monies paid by an applicant for review by consultants for the
15 department pursuant to section 49-241.02, subsection B shall be deposited,
16 pursuant to sections 35-146 and 35-147, in the water quality fee fund
17 established by section 49-210. State agencies are exempt from all fees
18 imposed pursuant to this chapter.

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

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

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

35 13. Consider evidence gathered by the Arizona navigable stream
36 adjudication commission established by section 37-1121 when deciding
37 whether a permit is required to discharge pursuant to article 3.1 of this
38 chapter.

39 14. ESTABLISH A WATER QUALITY PROGRAM TO RESTORE AND MAINTAIN THE
40 CHEMICAL, PHYSICAL AND BIOLOGICAL INTEGRITY OF THIS STATE'S WATERS.

41 B. The director may:

42 1. On presentation of credentials, enter into, on or through any
43 public or private property from which a discharge has occurred, is
44 occurring or may occur or on which any disposal, land application of
45 sludge or treatment regulated by this chapter has occurred, is occurring

1 or may be occurring and any public or private property where records
2 relating to a discharge or records that are otherwise required to be
3 maintained as prescribed by this chapter are kept, as reasonably necessary
4 to ensure compliance with this chapter. The director or a department
5 employee may take samples, inspect and copy records required to be
6 maintained pursuant to this chapter, inspect equipment, activities,
7 facilities and monitoring equipment or methods of monitoring, take
8 photographs and take other action reasonably necessary to determine the
9 application of, or compliance with, this chapter. The owner or managing
10 agent of the property shall be afforded the opportunity to accompany the
11 director or department employee during inspections and investigations, but
12 prior notice of entry to the owner or managing agent is not required if
13 reasonable grounds exist to believe that notice would frustrate the
14 enforcement of this chapter. If the director or department employee
15 obtains any samples before leaving the premises, the director or
16 department employee shall give the owner or managing agent a receipt
17 describing the samples obtained and a portion of each sample equal in
18 volume or weight to the portion retained. If an analysis is made of
19 samples, or monitoring and testing are performed, a copy of the results
20 shall be furnished promptly to the owner or managing agent.

21 2. Require any person who has discharged, is discharging or may
22 discharge into the waters of the state under article 3, 3.1 or 3.3 of this
23 chapter and any person who is subject to pretreatment standards and
24 requirements or sewage sludge use or disposal requirements under article
25 3.1 of this chapter to collect samples, to establish and maintain records,
26 including photographs, and to install, use and maintain sampling and
27 monitoring equipment to determine the absence or presence and nature of
28 the discharge or indirect discharge or sewage sludge use or disposal.

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

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

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

40 6. Enter into intergovernmental agreements pursuant to title 11,
41 chapter 7, article 3 if the agreement is necessary to more effectively
42 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.

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 B, 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.

Sec. 2. Section 49-221, Arizona Revised Statutes, is amended to read:

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

A. The director shall:

1. Adopt, by rule, water quality standards for all WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. ~~For non-WOTUS protected surface waters, the director shall apply surface water quality standards established as of January 1, 2021, until specifically changed by the director pursuant to paragraph 2 of this subsection. Rules regarding the following shall not be adopted or applied as water quality standards for non-WOTUS protected surface waters:~~

~~(a) Antidegradation;~~

~~(b) Antidegradation criteria;~~

~~(c) Outstanding Arizona waters.~~

2. Adopt, by rule, water quality standards for non-WOTUS protected surface waters, ~~by December 31, 2022, consistent with paragraph 1 of this subsection and~~ as determined necessary in the rulemaking process. In adopting those standards, the director shall consider the unique characteristics of this state's surface waters and the economic, social

1 and environmental costs and benefits, INCLUDING ECOLOGICAL SERVICES, that
2 would result from the adoption of a water quality standard at a particular
3 level or for a particular water category. BEGINNING ON THE EFFECTIVE DATE
4 OF THIS AMENDMENT TO THIS SECTION, THE DEPARTMENT SHALL PROVIDE PUBLIC
5 NOTICE AND AN OPPORTUNITY TO COMMENT ON SURFACE WATER QUALITY STANDARDS
6 FOR NON-WOTUS PROTECTED SURFACE WATERS. THE DEPARTMENT SHALL PREPARE
7 WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE STANDARDS. THE DEPARTMENT
8 SHALL PUBLISH THE STANDARDS AND A SUMMARY OF THE RESPONSES TO COMMENTS ON
9 THE STANDARDS IN THE ARIZONA ADMINISTRATIVE REGISTER.

10 3. ADOPT, BY RULE, A PERMIT PROGRAM FOR THE DISCHARGE OF DREDGED OR
11 FILL MATERIAL INTO NON-WOTUS PROTECTED SURFACE WATER FOR THE PURPOSES OF
12 IMPLEMENTING A PERMIT PURSUANT TO 33 UNITED STATES CODE SECTION 1344.

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

23 C. In setting standards pursuant to subsection A or B of this
24 section, the director shall consider the following:

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

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

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

- 45 1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

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

1. "Agricultural water":

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

(b) Includes all of the following:

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

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

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

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

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

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

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

G. The director shall maintain and publish a protected surface waters list. The department shall publish the initial list on the department's website and in the Arizona administrative register. ~~within thirty days after September 29, 2021. Not later than December 31, 2022;~~ The department shall adopt by rule the protected surface waters list, including procedures for determining economic, social and environmental costs and benefits. NOT LATER THAN DECEMBER 31, 2027, THE DEPARTMENT SHALL BEGIN THE RULEMAKING PROCESS TO UPDATE THE PROTECTED SURFACE WATERS LIST. THE DIRECTOR SHALL PROVIDE PUBLIC NOTICE AND AN OPPORTUNITY TO COMMENT ON SURFACE WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS. THE DEPARTMENT SHALL PREPARE WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE STANDARDS. THE DEPARTMENT SHALL PUBLISH THE STANDARDS AND

1 A SUMMARY OF THE RESPONSES TO COMMENTS ON THE STANDARDS IN THE ARIZONA
 2 ADMINISTRATIVE REGISTER. Publication of the list in the Arizona
 3 administrative register is an appealable agency action pursuant to title
 4 41, chapter 6, article 10 and may be appealed by any party ~~that provides~~
 5 ~~evidence of an actual adverse effect that the party appealing the decision~~
 6 ~~would suffer as a result of the director's decision.~~ All of the following
 7 apply to the protected surface ~~water~~ WATERS list:

8 1. The protected surface waters list shall include:

9 (a) All WOTUS.

10 (b) Any perennial, intermittent and ephemeral reaches and any
 11 impoundments of the following rivers, not including tributaries or reaches
 12 of waters wholly within tribal jurisdiction or reaches of waters outside
 13 of the United States:

14 (i) The Bill Williams River, from the confluence of the Big Sandy
 15 and Santa Maria Rivers at 113°31'38.617"W, 34°18'22.373"N, to its
 16 confluence with the Colorado River at 114°8'9.854"W, 34°18'9.33"N.

17 (ii) The Colorado River, from the Arizona-Utah border at
 18 111°32'35.741"W, 36°58'51.698"N, to the Arizona-Mexico border at
 19 114°43'12.564"W, 32°43'6.218"N.

20 (iii) The Gila River, from the Arizona-New Mexico border at
 21 109°2'52.8"W, 32°41'11.2015"N, to the confluence with the Colorado River
 22 at 114°33'28.145"W, 32°43'14.408"N.

23 (iv) The Little Colorado River, from the confluence of the east and
 24 west forks of the Little Colorado River at 109°28'7.131"W, 33°59'39.852"N,
 25 to its confluence with the Colorado River at 111°49'4.693"W,
 26 36°12'10.243"N.

27 (v) The Salt River, from the confluence of the Black and White
 28 Rivers at 110°13'39.5"W, 33°44'6.082"N, to the confluence with the Gila
 29 River at 112°18'5.704"W, 33°22'42.978"N.

30 (vi) The San Pedro River, from the Arizona-Mexico border at
 31 110°9'1.704"W, 31°20'2.387"N, to the confluence with the Gila River at
 32 110°47'0.905"W, 32°59'5.671"N.

33 (vii) The Santa Cruz River, from its origins in the Canelo Hills of
 34 southeastern Arizona at 110°37'3.968"W, 31°27'39.21"N, to its confluence
 35 with the Gila River at 111°33'26.02"W, 32°41'39.058"N.

36 (viii) The Verde River, from Sullivan Lake at 112°28'10.588"W,
 37 34°52'11.136"N, to its confluence with the Salt River at 111°39'48.32"W,
 38 33°33'20.538"N.

39 (c) Any non-WOTUS waters of the state that are added under
 40 paragraphs 3 and 4 of this subsection.

41 2. Notwithstanding paragraph 1 of this subsection, the protected
 42 surface waters list shall not contain any of the following non-WOTUS
 43 waters:

44 (a) Canals in the Yuma project and ditches, canals, pipes,
 45 impoundments and other facilities that are operated by districts organized

under title 48, chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for human consumption, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner and operator of the ditch or canal until the owner and operator withdraws its request.

(b) Irrigated areas, including fields flooded for agricultural production.

(c) Ornamental and urban ponds and lakes such as those owned by homeowners' associations and golf courses, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request.

(d) Swimming pools and other bodies of water that are regulated pursuant to section 49-104, subsection B.

(e) Livestock and wildlife water tanks and aquaculture tanks that are not constructed within a protected surface water.

(f) Stormwater control features.

(g) Groundwater recharge, water reuse and wastewater recycling structures, including underground storage facilities and groundwater savings facilities permitted under title 45, chapter 3.1 and detention and infiltration basins, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the groundwater recharge, water reuse or wastewater recycling structure until the owner withdraws its request.

(h) Water-filled depressions created as part of mining or construction activities or pits excavated to obtain fill, sand or gravel.

(i) All waste treatment systems components, including constructed wetlands, lagoons and treatment ponds, such as settling or cooling ponds, designed to either convey or retain, concentrate, settle, reduce or remove pollutants, either actively or passively, from wastewater before discharge or to eliminate discharge.

(j) Groundwater.

~~(k) Ephemeral waters except for those prescribed in paragraph 1, subdivision (b) of this subsection.~~

~~(i)~~ (k) Lakes and ponds owned and managed by the United States department of defense and other surface waters located on and that do not leave United States department of defense property, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the United States department of defense until it withdraws its request.

3. Unless listed in paragraph 2 of this subsection, the director shall add the following non-WOTUS surface waters to the protected surface waters list:

(a) All lakes, ponds and reservoirs that are public waters used as a drinking source, for recreational or commercial fish consumption or for

1 water-based recreation such as swimming, wading and boating and other
2 types of recreation in and on the water.

3 (b) Perennial waters, EPHEMERAL WATERS or intermittent waters of
4 the state that are used as a drinking water source, including ditches and
5 canals.

6 (c) Perennial, EPHEMERAL or intermittent tributaries to the Bill
7 Williams River, the Colorado River, the Gila River, the Little Colorado
8 River, the Salt River, the San Pedro River, the Santa Cruz River and the
9 Verde River.

10 (d) Perennial, EPHEMERAL or intermittent public waters used for
11 recreational or commercial fish consumption.

12 (e) Perennial, EPHEMERAL or intermittent public waters used for
13 water-based recreation such as swimming, wading, boating and other types
14 of recreation in and on the water.

15 (f) Perennial, EPHEMERAL or intermittent wetlands adjacent to
16 waters on the protected surface waters list.

17 (g) Perennial, EPHEMERAL or intermittent waters of the state that
18 cross into another state, ~~the Republic of~~ Mexico or the reservation of a
19 federally recognized INDIAN tribe.

20 (h) ALL WATERS WITHIN THE JURISDICTION OF THIS STATE THAT HAVE
21 CULTURAL OR RELIGIOUS IMPORTANCE TO THE FEDERALLY RECOGNIZED INDIAN TRIBES
22 IN THIS STATE.

23 4. The director ~~may~~ SHALL add additional non-WOTUS surface waters
24 to the protected surface waters list if all of the following apply:

25 (a) The water is not required to be listed under paragraph 1 or 3
26 of this subsection.

27 (b) The water is not excluded under paragraph 2 of this subsection.

28 (c) ~~The~~ THERE ARE economic, environmental, INCLUDING ECOLOGICAL
29 SERVICES, and social benefits of adding the water ~~outweigh the economic,~~
30 ~~environmental and social costs of excluding the water from the list.~~

31 5. The director shall remove any erroneously listed, non-WOTUS
32 waters from the protected surface waters list when the water is excluded
33 under paragraph 2 of this subsection and shall not regulate discharges to
34 those waters in the interim.

35 ~~6. The director shall remove non-WOTUS waters from the protected~~
36 ~~surface waters list when the water is not required to be listed under~~
37 ~~paragraph 3 of this subsection and the economic, environmental and social~~
38 ~~benefits of removing the water outweigh the economic, environmental and~~
39 ~~social costs of retaining the water on the list.~~

40 6. THE DIRECTOR SHALL CONSIDER ANY CLAIM BY A FEDERALLY RECOGNIZED
41 INDIAN TRIBE THAT THE WATER IS OF CULTURAL OR RELIGIOUS IMPORTANCE TO THE
42 TRIBE.

43 7. The director, on an emergency basis, may add a water to the
44 protected surface waters list if the director discovers an imminent and
45 substantial danger to public health or welfare or the environment, if the

1 water would otherwise qualify to be added under paragraph 3 of this
 2 subsection. Notwithstanding any other law, the emergency addition shall
 3 take effect immediately on the director's determination that describes the
 4 imminent and substantial danger in writing. Within thirty days after the
 5 director's determination, the department shall publish a notice of that
 6 determination in the Arizona administrative register and on the
 7 department's website. Waters added under this subsection shall be
 8 incorporated into the protected surface waters list during the next
 9 rulemaking that follows the addition.

10 H. FOR THE PURPOSES OF THIS SECTION, "ECOLOGICAL SERVICES" MEANS
 11 THE MANY AND VARIED BENEFITS TO HUMANS PROVIDED BY THE NATURAL ENVIRONMENT
 12 AND FROM HEALTHY ECOSYSTEMS.

13 Sec. 3. Section 49-222, Arizona Revised Statutes, is amended to
 14 read:

15 49-222. Water quality standards for WOTUS

16 A. Standards for the quality of WOTUS shall assure water quality,
 17 if attainable, which provides for protecting the public health and
 18 welfare, and shall enhance the quality of water taking into consideration
 19 its use and value for public water supplies, the propagation of fish and
 20 wildlife and recreational, agricultural, industrial and other purposes
 21 including navigation.

22 B. THE DIRECTOR SHALL ESTABLISH WATER QUALITY STANDARDS THAT
 23 RESTORE AND MAINTAIN THE CHEMICAL, PHYSICAL AND BIOLOGICAL INTEGRITY OF
 24 THIS STATE'S WATERS.

25 ~~B.~~ C. The director shall adopt standards for the quality of all
 26 WOTUS that establish numeric limitations on the concentrations of each of
 27 the toxic pollutants listed by the administrator pursuant to section 307
 28 of the clean water act (33 United States Code section 1317).

29 ~~C.~~ D. In setting numeric standards for the quality of WOTUS, the
 30 director may consider the effect of local water quality characteristics on
 31 the toxicity of specific pollutants and the varying sensitivities of local
 32 affected aquatic populations to such pollutants, and the extent to which
 33 the natural flow of the stream is intermittent or ephemeral, as a result
 34 of which the instream flow consists mostly of treated wastewater effluent,
 35 except that such standards shall not, in any event, be inconsistent with
 36 the clean water act. In applying such standards the director may
 37 establish appropriate mixing zones.

38 Sec. 4. Section 49-255.01, Arizona Revised Statutes, is amended to
 39 read:

40 49-255.01. Arizona pollutant discharge elimination system
 41 program; rules and standards; affirmative
 42 defense; fees; general permit

43 A. A person shall not discharge except under either of the
 44 following conditions:

1 1. In conformance with a permit that is issued or authorized under
2 this article or rules authorized under section 49-203, subsection A,
3 paragraph 2.

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

7 B. The director shall adopt rules to establish an AZPDES permit
8 program for discharges to WOTUS consistent with the requirements of
9 sections 402(b) and 402(p) of the clean water act. This program shall
10 include requirements to ensure compliance with section 307 and
11 requirements for the control of discharges consistent with sections 318
12 and 405(a) of the clean water act. The director shall not adopt any
13 requirement for WOTUS that is ~~more~~ LESS stringent than any requirement of
14 the clean water act. The director shall not adopt any requirement that
15 conflicts with any requirement of the clean water act. The director may
16 adopt federal rules pursuant to section 41-1028 or may adopt rules to
17 reflect local environmental conditions to the extent that the rules are
18 consistent with and ~~not~~ more stringent than the clean water act and this
19 article.

20 C. The rules adopted by the director under subsection B of this
21 section shall provide for:

22 1. Issuing, authorizing, denying, modifying, suspending or revoking
23 individual or general permits.

24 2. Establishing permit conditions, discharge limitations and
25 standards of performance as prescribed by section 49-203, subsection A,
26 paragraph 8 including case-by-case effluent limitations that are developed
27 in a manner consistent with 40 Code of Federal Regulations section
28 125.3(c).

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

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

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

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

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

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

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

3 (c) If the upset causes the discharge to exceed any discharge
4 limitation in the permit, the permittee submitted notice to the department
5 within twenty-four hours after the upset.

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

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

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

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

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

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

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

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

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

39 I. In addition to other reservations of rights provided by this
40 chapter, this article does not impair or affect rights or the exercise of
41 rights to water claimed, recognized, permitted, certificated, adjudicated
42 or decreed pursuant to state or other law.

43 J. The director shall establish by rule fees, including maximum
44 fees, to pay expenses incurred in implementing the AZPDES PERMIT
45 program. Monies collected pursuant to this section shall be deposited,

1 pursuant to sections 35-146 and 35-147, in the water quality fee fund
2 established by section 49-210.

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

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

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

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

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

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

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

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

35 Sec. 5. Section 49-255.02, Arizona Revised Statutes, is amended to
36 read:

37 49-255.02. Pretreatment program; rules and standards

38 A. The director shall adopt rules to establish a pretreatment
39 program that is consistent with the requirements of sections 307, 308 and
40 402 of the clean water act. The director shall not adopt any requirement
41 that is ~~more~~ LESS stringent than or conflicts with any requirements of the
42 clean water act, except the director shall apply the pretreatment program
43 to publicly owned treatment works that discharge to a non-WOTUS protected
44 surface water.

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

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

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

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

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

16 Sec. 6. Section 49-255.03, Arizona Revised Statutes, is amended to
17 read:

18 49-255.03. Sewage sludge program; rules and requirements

19 A. The director shall adopt rules to establish a sewage sludge
20 program that is consistent with the requirements of sections 402 and 405
21 of the clean water act. Except as otherwise required by this article, the
22 director shall not adopt any requirement that is ~~more~~ LESS stringent than
23 any requirements of the clean water act. The director shall not adopt any
24 requirement that conflicts with any requirement of the clean water act.

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

28 C. Notwithstanding any other law or rule, the director shall
29 require any land application of a substance that contains sewage or
30 septage to comply with the rules established pursuant to subsection A of
31 this section, including pathogen reduction requirements that ~~is~~ ARE
32 consistent with the clean water act.

33 D. Notwithstanding any other law or rule, a biosolid combined with
34 a solid waste shall be regulated as a solid waste pursuant to chapter 4 of
35 this title.

36 Sec. 7. Section 49-255.04, Arizona Revised Statutes, is amended to
37 read:

38 49-255.04. Special provisions for discharges to non-WOTUS
39 protected surface waters

40 A. Permits and conditions of permits for discharges to non-WOTUS
41 protected surface waters shall not implement any sections of the clean
42 water act, including sections 301, 302, 306, 307, 308, 312, 318 and 405,
43 and shall not be subject to review, approval or enforcement by the United
44 States environmental protection agency.

1 B. The director shall apply the rules established pursuant to
2 sections 49-255.01, 49-255.02 and 49-255.03 to non-WOTUS protected surface
3 waters until the director adopts rules for discharges to non-WOTUS
4 protected surface waters, except the director is not required to follow
5 any provisions related to United States environmental protection agency
6 review, approval or involvement in permit review or approval. The
7 director shall not adopt or apply rules regarding the following discharges
8 to non-WOTUS protected surface waters:

9 1. Except as applied to discharges from publicly owned treatment
10 works, requirements specific to new sources or new dischargers under the
11 clean water act.

12 2. Except as applied to discharges from publicly owned treatment
13 works, technology-based effluent limitations, standards or controls,
14 including new source performance standards, under sections 301(b), 304(b),
15 and 306 of the clean water act.

16 3. Requirements to express all permit limitations, standards or
17 prohibitions for a metal solely in terms of total recoverable metal.

18 4. Requirements for review and approval of permits by the United
19 States environmental protection agency before issuance.

20 C. The director shall issue general permits or authorize coverage
21 under existing general permits, subject to the limitations prescribed in
22 subsection B of this section ~~and section 49-221, subsection A, paragraph 1~~
23 for point source discharges of storm water from industrial or construction
24 activity to non-WOTUS protected surface waters. The director shall use a
25 best management practices approach when issuing and implementing general
26 permits for storm water discharges from industrial or construction
27 activity to non-WOTUS protected surface waters and may include analytical
28 monitoring and discharge limits if best management practices cannot
29 achieve applicable surface water quality standards. The director may
30 issue an individual permit for those discharges only if the director
31 determines, using reasonably current credible and scientifically
32 defensible data, that a particular discharge is a significant contributor
33 of pollutants to a non-WOTUS protected surface water that causes the water
34 to exceed one or more applicable water quality standards. When making
35 this determination, the director shall consider the location of the
36 discharge with respect to the non-WOTUS protected surface water, the size
37 of the discharge and the quantity and nature of the pollutants
38 discharged. If the director determines that an individual permit is
39 required for a discharge of storm water from industrial or construction
40 activity to a non-WOTUS protected surface water, the discharger must be
41 notified in writing and informed of the reasons for the determination and
42 the right to appeal the individual permit determination.

43 D. The director shall issue general permits or authorize coverage
44 under existing general permits, subject to the limitations in subsection B
45 of this section ~~and section 49-221, subsection A, paragraph 1~~ for other

1 categories of potential point source discharges, including de minimis
2 discharges, to non-WOTUS protected surface waters that involve the same or
3 substantially similar types of operations, contain the same or
4 substantially similar types of pollutants and are more appropriately
5 controlled under a general permit than under an individual permit.

6 E. The director may adopt rules for point source discharges to
7 non-WOTUS protected surface waters. The rules adopted by the director
8 under this subsection shall not include any requirement that is ~~more~~ LESS
9 stringent than requirements of the clean water act, shall provide for
10 issuing, authorizing, denying, modifying, suspending or revoking
11 individual or general permits and shall establish permit conditions to
12 carry out the permit program established by this section.

13 F. The director shall not construe any rule to require oversight by
14 the United States environmental protection agency of permits or portions
15 of permits for discharges to non-WOTUS protected surface waters, and a
16 rule shall not apply if it would require review, approval or enforcement
17 by the United States environmental protection agency of discharges to
18 non-WOTUS protected surface waters.

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

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

25 Sec. 8. Section 49-371, Arizona Revised Statutes, is amended to
26 read:

27 49-371. Local stormwater quality programs; authority;
28 limitations; fee; civil penalty; definition

29 A. A county that is required by the clean water act to obtain
30 coverage under a national or state pollutant discharge elimination system
31 stormwater program or a county that is required to obtain coverage under
32 an Arizona pollutant discharge elimination system permit pursuant to
33 article 3.1 of this chapter may do all of the following:

34 1. Develop and implement stormwater pollution prevention plans and
35 stormwater management programs as prescribed by the clean water act or
36 article 3.1 of this chapter.

37 2. Adopt, amend, repeal and implement any ordinances, rules or
38 regulations necessary to comply with the minimum requirements of the clean
39 water act or article 3.1 of this chapter, including the imposition and
40 collection of fees for issuing and administering permits, reviewing plans
41 and conducting inspections. Any fees imposed pursuant to this section
42 shall not exceed the reasonable costs of the county to issue and
43 administer permits, review plans and conduct inspections. Fees collected
44 pursuant to this section may not be used to fund stormwater infrastructure
45 costs.

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

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

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

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

5. Seek a civil penalty of not more than \$2,500 for each violation. Each day of a violation constitutes a separate offense.

B. An ordinance, rule or regulation adopted pursuant to this section, or a stormwater management program developed and implemented by a county pursuant to this section, shall not be ~~more~~ LESS stringent than or conflict with any requirement of the clean water act or article 3.1 of this chapter. A city, town or county may not regulate under this section any activity that does not discharge to a protected surface water.

C. A county that operates a regulated small municipal separate storm sewer system that discharges to a protected surface water shall conduct its pollutant discharge elimination system stormwater management program and shall limit the application of any ordinance, rule or regulation as follows:

1. In urbanized areas as described in 40 Code of Federal Regulations section 122.32 as necessary to meet the requirements of 40 Code of Federal Regulations section 122.34(b)(3). For small municipal separate storm sewer systems that discharge to non-WOTUS protected surface waters, the county shall apply this paragraph as if the small municipal separate storm sewer system discharged to a WOTUS protected surface water.

2. As necessary to meet the requirements of public education and outreach, public involvement and participation as provided by the clean water act or article 3.1 of this chapter.

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

E. Except as required by 40 Code of Federal Regulations section 122.34, a county may not regulate any person or activity exempt under 33 United States Code section 1342(1), 40 Code of Federal Regulations section 122.3 or Arizona administrative code R18-9-A902(G).

1 F. If adopting an ordinance, rule or regulation pursuant to this
2 section, a county shall use the definitions prescribed in section 49-255.

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

7 H. Before adopting any ordinance, rule or regulation pursuant to
8 this section, a county shall file with the secretary of state a written
9 statement including a summary of the proposed rule, ordinance or other
10 regulation. The summary shall provide the name of the person with the
11 county to contact with questions or comments. The secretary of state
12 shall publish the written statement in the next issue of the Arizona
13 administrative register at no cost to the county. The county shall make
14 the text of the rule, ordinance or other regulation available to the
15 public at the same time it files the written summary of the rule,
16 ordinance or other regulation with the secretary of state as provided in
17 this subsection. The county shall also comply with the requirements of
18 section 49-112, subsection D, paragraphs 2, 3 and 4.

19 I. For the purposes of this article, "county" means a county that
20 operates a regulated small municipal separate storm sewer system pursuant
21 to 40 Code of Federal Regulations section 122.32. For small municipal
22 separate storm sewer systems that discharge to non-WOTUS protected surface
23 waters, this definition shall apply as if the small municipal separate
24 storm sewer system discharged to a WOTUS protected surface water.