

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 1 – Administration and General Provisions

Article 3 - Bodies of Water

45-131. Definitions

In this article, unless the context otherwise requires:

1. "Body of water" means a body of water in an active management area established under chapter 2 of this title, including a lake, pond, lagoon or swimming pool, that has a surface area greater than twelve thousand three hundred twenty square feet and that is filled or refilled for landscape, scenic or recreational purposes. A body of water that is used incidentally for landscape, scenic or recreational purposes is deemed not to be filled or refilled for landscape, scenic or recreational purposes. Only for the purpose of determining the surface area of a body of water, two or more bodies of water that are connected are considered to be one body of water.

2. "Swimming pool" means an artificially constructed pool for swimming purposes that meets the applicable design standards and specifications for swimming pools prescribed by the director of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

45-132. Filling large bodies of water for landscape, scenic or recreational purposes prohibited; exceptions; preemption

A. Except as provided in subsection B of this section, in an active management area established under chapter 2 of this title, a person shall not use any water for the purpose of filling or refilling all or a portion of a body of water.

B. This section does not apply to a body of water if any of the following applies:

1. The body of water was filled before January 1, 1987. If the surface area of the body of water is increased on or after January 1, 1987, this exception does not apply to the quantity of water that is added.

2. The director has determined that substantial capital investment has been made in the physical on-site construction of the body of water before January 1, 1987. If the surface area of the body of water is increased after it is initially filled, this exception does not apply to the quantity of water that is added.

3. The body of water is located in a recreational facility that is open to the public and owned or operated by the United States, this state, a city, town or county, a flood control district established under title 48, chapter 21 or a multi-county water conservation district established under title 48, chapter 22.

4. The body of water is filled and refilled exclusively with any one or any combination of the following:

(a) Effluent.

(b) Storm water runoff that is not subject to appropriation under section 45-141.

(c) Poor quality water used pursuant to a permit issued under subsections C and D of this section.

(d) Groundwater withdrawn pursuant to a drainage water withdrawal permit issued under section 45-519.

(e) Groundwater withdrawn in the first year of a temporary dewatering permit issued under section 45-518.

(f) Groundwater withdrawn as part of a remedial action under title 49, chapter 2, article 5, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to section 49-286.

(g) Water used pursuant to a permit for interim water use issued under section 45-133.

(h) Surface water except central Arizona project water that, as determined by the director, physically occurs at such times, in such quantities or under such other circumstances that it cannot be physically captured and beneficially used by any other holder of an appropriative right.

5. The body of water is an integral part of a golf course that complies with any applicable conservation requirements in the management plan for the active management area adopted under chapter 2, article 9 of this title.

6. The body of water is unsealed and is an integral part of an underground storage facility for which the director has issued a permit under chapter 3.1 of this title.

7. The body of water is a swimming pool that is owned and operated by a hotel, motel, country club or resort and has a surface area equal to or less than forty-three thousand five hundred sixty square feet. If a hotel, motel, country club or resort has more than one swimming pool, only one of those swimming pools may have a surface area greater than twelve thousand three hundred twenty square feet.

C. A person who seeks to use poor quality groundwater to fill or refill all or a portion of a body of water shall apply to the director for a permit to use the groundwater for that purpose. The director may issue a permit if the applicant demonstrates that all of the following apply:

1. The applicant otherwise has a right to use the proposed source of groundwater for the proposed purpose.

2. The groundwater because of its poor quality cannot be used for another beneficial purpose at the present time and it is not economically feasible to treat and transport the groundwater and use it for another beneficial purpose.

3. The withdrawal of the groundwater is consistent with the management plan and achievement of the management goal for the active management area.

D. A permit issued pursuant to subsection C of this section may be issued for a period of up to thirty-five years. The director shall determine the duration of the permit on the basis of the estimated life of the source of poor quality groundwater and the potential for future beneficial use. The director shall monitor the use of groundwater pursuant to the permit and shall terminate the permit if any of the conditions for issuance of the permit no longer applies. A permit may be renewed subject to the same criteria used in granting the original permit.

E. This section preempts all municipal and county laws, charters, ordinances, rules and regulations relating to the use of any water to fill or refill all or a portion of a body of water, except that this section does not preempt a law, charter, ordinance, rule or regulation that has previously been adopted, passed or enacted or is subsequently adopted, passed or enacted if the law, charter, ordinance, rule or regulation is more restrictive than this section.

45-133. Permit for interim water use; application; fee; surcharge on use of groundwater

A. A person otherwise subject to the prohibitions of section 45-132 may use groundwater withdrawn pursuant to a type 1 or type 2 non-irrigation grandfathered right or water other than groundwater to fill or refill all or a portion of a body of water until sufficient effluent is available to fill or refill the body of water if the person applies for and obtains a permit for interim water use from the director. The director may issue a permit if the applicant demonstrates to the satisfaction of the director that all of the following apply:

1. The applicant otherwise has a right to use the water for the proposed purpose.

2. Sufficient effluent to fill or refill the body of water is not reasonably available but it has been demonstrated by clear and convincing evidence that sufficient effluent will be available no later than five years from the date the permit is issued.

3. The applicant has:

(a) Provided the necessary easements for an on-site treatment facility or access to an off-site treatment facility and for transportation of a permanent effluent supply to the body of water.

(b) Provided the site location for the facility and received approval for the facility from the department of environmental quality, if an on-site treatment facility will be used.

(c) Recorded the easements and any site location for an on-site treatment facility on the plat of record for the subdivision or development within which the body of water is located.

4. The body of water will store effluent that will be applied to grow landscaping plants on common areas or will be used for other beneficial purposes that would otherwise require use of surface water or groundwater.

5. The development or facility in which the body of water is located will include an effective water conservation program. The specific conservation requirements in the water conservation program shall be consistent with and shall not by this paragraph be required to be more strict than any specific conservation requirements in the applicable management plan.

6. The body of water otherwise complies with this article.

B. The director may issue a permit under this section for a period of up to three years. The director shall specify the amount of water that may be used each year pursuant to the permit. The director shall determine the duration of the permit and the amount of water that may be used pursuant to the permit on the basis of the estimated time until sufficient effluent will be available to fill and refill the body of water. The director shall monitor the use of water pursuant to the permit and shall modify the terms of the permit as necessary and terminate the permit if any of the conditions for issuance of the permit no longer apply. The director may renew a permit for no more than two successive one-year periods subject to the same criteria used in granting the original permit.

C. An application for a permit under this section shall be made on a form prescribed and furnished by the director. The director shall levy and collect a reasonable application fee to cover the costs of administrative services and expenses, which shall be remitted to the augmentation and conservation assistance fund described in section 45-615, paragraph 1.

D. The director shall levy and collect an annual surcharge from each holder of a permit for interim groundwater use. The amount of the surcharge shall be as follows:

1. For the first year following issuance of the permit, twenty-five dollars per acre-foot of groundwater withdrawn pursuant to the permit.

2. For the second year following issuance of the permit, fifty dollars per acre-foot of groundwater withdrawn pursuant to the permit.

3. For the third year following issuance of the permit, one hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

4. For the fourth year following issuance of the permit, two hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

5. For the fifth year following issuance of the permit, four hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

E. All monies collected pursuant to subsection D of this section shall be remitted as follows:

1. Fifty per cent to the augmentation and conservation assistance fund described in section 45-615, paragraph 1, or if a water district is organized in the active management area under title 48, chapter 28, to the general fund of the district.

2. Fifty per cent to the purchase and retirement fund described in section 45-615, paragraph 2.

F. If the holder of a permit for interim groundwater use fails to pay the surcharge levied pursuant to subsection D of this section by the date set by the director, the director shall revoke the permit.

45-134. Temporary emergency permit for use of surface water or groundwater in body of water

A. The director may issue a temporary, emergency permit authorizing the use of surface water or groundwater in a body of water that is exempt under section 45-132, subsection B, paragraph 4 and that is filled or refilled primarily with effluent if the director determines that:

1. The director of environmental quality has determined that all of the following apply:

(a) An emergency exists because the condition of the body of water is a threat to the public health or welfare.

(b) There is a reasonable probability that the temporary use of surface water or groundwater in the body of water will significantly reduce the threat to the public health or welfare.

(c) Actions other than the temporary use of surface water or groundwater would not significantly reduce the threat or are unreasonable under the circumstances.

2. The owner or operator of the body of water otherwise has a right to use surface water or groundwater for the proposed purpose.

3. If a temporary emergency permit has previously been issued for the body of water, the owner or operator of the body of water has undertaken reasonable measures to prevent the condition of the body of water from again becoming a threat to the public health or welfare.

B. The director may issue a permit under this section for a period of up to thirty days. The director shall specify any conditions on the use of water pursuant to the permit the director determines are necessary. The director shall monitor the use of water pursuant to the permit and shall terminate the permit if the conditions for issuance of the permit no longer apply.

45-135. Inspections; investigations

A. The director or the director's authorized representative may enter at reasonable times on private or public property where a body of water is located, and the owner, manager or occupant of the property shall permit such entry, to:

1. Inspect the body of water.
2. Ascertain compliance with this article.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that the notice would frustrate the enforcement of this article. The director shall adopt rules for conducting inspections and obtaining warrants under this section. The director may apply for and obtain warrants. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this article.

C. The director shall provide a written report of each inspection and investigation under this section to the person subject to such action.

45-136. Cease and desist order; temporary cease and desist order; hearings; injunctive relief

A. Except as provided by subsection B of this section, if the director has reason to believe that a person is violating or has violated any provision of this article, a permit or order issued pursuant to this article or a rule adopted to carry out the purposes of this article, the director may give the person written notice that the person may appear and show cause at an administrative hearing not less than thirty days after the date of service of the notice why the person should not be ordered to cease and desist from the violation. The notice shall inform the person of the date, time and place of the hearing and the consequences of failure to appear.

B. If the director finds that a person is filling or refilling all or a portion of a body of water in violation of any provision of this article, a permit or order issued pursuant to this article or a rule adopted to carry out the purposes of this article, the director may issue a temporary order for the person to cease and desist the filling or refilling pending final action by the director pursuant to subsection C of this section. The order shall include written notice to the person of the date, time and place where the person may appear at an administrative hearing to show cause why the temporary order should be vacated. The hearing shall be held within fifteen days of the date of the order unless the person consents to a longer period.

C. The decision and order of the director under subsections A and B of this section may take such form as the director determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The person affected may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court in the county in which the violation is alleged to have occurred.

D. If the person continues the violation after the director has issued a final decision and order pursuant to subsection C of this section or a temporary order pursuant to subsection B of this section, the director may apply for a temporary restraining order or preliminary or permanent injunction from the superior court according to the Arizona rules of civil procedure. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

E. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

45-137. Civil penalties

A. A person who is determined pursuant to section 45-136 to be in violation of any provision of this article, a permit or order issued pursuant to this article or a rule adopted to carry out the purpose of this article may be assessed a civil penalty in an amount not exceeding:

1. One hundred dollars per day of violation not directly related to the illegal filling or refilling of all or a portion of a body of water.
2. Ten thousand dollars per day of violation directly related to the illegal filling or refilling of all or a portion of a body of water.

B. An action to recover penalties under this section shall be brought by the director in the superior court in the county in which the violation occurred.

C. In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or wilful, the past conduct of the defendant, whether the defendant should have been on notice of the violation, whether the defendant has taken steps to cease, remove or mitigate the violation and any other relevant information.

45-138. Burden of proof

A person who claims in a hearing held pursuant to section 45-136 or in a civil action that he is not violating or has not violated any provision of this article, a permit or order issued pursuant to this article or a rule adopted to carry out the purpose of this article on the ground that he qualifies for an exemption under section 45-132, subsection B, paragraph 4 has the burden of proving that he qualifies for the exemption.

45-139. Violation: classification

A. Unless otherwise specified, a person who knowingly violates or refuses to comply with any provision of this article, a permit or order issued pursuant to this article or a rule adopted to carry out the purpose of this article is guilty of a class 2 misdemeanor. A person who, after notice of violation, continues in violation of any provision of this article, a permit or order issued pursuant to this article or a rule adopted to carry out the purpose of this article is guilty of a separate offense for each day of violation.

B. A person who knowingly and intentionally fills or refills all or a portion of a body of water in violation of this article is guilty of:

1. A class 6 felony if the amount of water illegally used is one thousand acre-feet or more.
2. A class 1 misdemeanor if the amount of water illegally used is more than one hundred acre-feet but less than one thousand acre-feet.
3. A class 3 misdemeanor if the amount of water illegally used is one hundred acre-feet or less.

45-139.01. Notice of source of water used to fill or refill body of water

A person who, after December 31, 1986, begins the physical on-site construction of a body of water located in a subdivision as defined in section 32-2101 and which will be filled or refilled with a source of water identified in section 45-132, subsection B, paragraph 4, shall:

1. Make written disclosure to prospective purchasers of property within the subdivision of the source of water to be used to fill or refill the body of water, the legal basis for access to the source of water and the duration of any permit or contract under which the source of water is obtained. If a public report for the subdivision is issued under section 32-2183, the disclosure may be made in the public report.

2. Include in the agreement or contract for the purchase of property within the subdivision a provision stating the source of water to be used to fill or refill the body of water and have the purchaser of the property acknowledge this provision by signing or initialing the provision.

45-139.02. Effect on legal status of effluent

Nothing in this article shall be construed to determine the legal status of effluent.