ARIZONA REVISED STATUTES

Title 49 - The Environment

Chapter 2 – Water Quality Control

Article 1.1 - Brownfields Cleanup Revolving Loan Fund Program

49-218. Definitions

In this article, unless the context otherwise requires:

1. "CERCLA brownfields cleanup revolving loan fund program" means the program established by the United States environmental protection agency to provide financial assistance in the form of loans or grants to eligible persons to remediate contamination at eligible sites as provided in section 104(k) of CERCLA and applicable guidance documents prepared by the United States environmental protection agency to implement this program.

2. "Eligible activities" means removal as defined by section 101(23) of CERCLA and includes required engineering evaluations, cost analysis of cleanup alternatives, public participation requirements and reasonable and necessary site monitoring activities during the remediation.

3. "Eligible person" means a person who is eligible to receive a loan or grant under the CERCLA brownfields cleanup revolving loan fund program.

4. "Eligible site" means a site that is a brownfields site as defined by section 101(39) of CERCLA, that is within an area designated in a cooperative agreement between the department and the United States environmental protection agency and that is one of the following:

(a) Accepted into the department's voluntary remediation program.

(b) Subject to a remediation agreement with the department's water quality assurance revolving fund program.

(c) Being addressed through another program or oversight mechanism that is approved by the department.

49-218.01. Brownfields cleanup revolving loan fund program; eligibility

A. The director may implement the Brownfields cleanup revolving loan fund program pursuant to the requirements of the CERCLA Brownfields cleanup revolving loan fund program.

B. The director may:

1. Enter into financial assistance agreements, as deemed appropriate, with eligible persons for the performance of eligible activities at eligible sites.

2. Apply for, accept and administer grants and other financial assistance from the federal government and from other public and private sources for the Brownfields cleanup revolving loan fund program.

3. Enter into agreements to administer the program.

4. Enter into agreements with the water infrastructure finance authority pursuant to section 49-1203 to perform any of the functions of the fund manager pursuant to the CERCLA Brownfields cleanup revolving loan fund program.

5. Assess fees to administer the Brownfields cleanup revolving loan fund program consistent with any cooperative agreement with the environmental protection agency.

C. Financial assistance monies shall be used to perform removal actions that meet the requirements of the applicable program or oversight mechanism, the CERCLA Brownfields cleanup revolving loan fund program and this article. To the extent possible, the department shall eliminate duplicative requirements among the programs.

D. The following are not eligible for the Brownfields cleanup revolving loan fund program:

1. A site listed or proposed for listing on the national priorities list.

2. A site that is subject to state or federal unilateral administrative orders, a court order, administrative orders on consent or a judicial consent decree issued to or entered into by parties under CERCLA or this title.

3. A site that is subject to the jurisdiction, custody or control of the United States government.

E. The director, through the attorney general, may take actions necessary to enforce the loan contract and achieve repayment of loans provided under this article.

49-218.02. Brownfields cleanup revolving loan fund

A. The Brownfields cleanup revolving loan fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.
2. Monies received from the federal government.
3. Monies received from loan recipients and loan repayments, interest and penalties.
4. Interest and other income received from investing monies in the fund.
5. Gifts, grants and donations received from any public or private source.

B. Monies in the fund may be used for the purposes provided in section 49-218.01.

C. The department may use monies in the fund for the department's costs in administering the Brownfields cleanup revolving loan fund program.

D. Disbursement of monies from the fund pursuant to a financial assistance agreement under this article is not subject to title 41, chapter 23.

E. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190, relating to lapsing of appropriations.

Article 1 - General Provisions

49-201. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.
2. "Aquifer" means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.
3. "Best management practices" means those methods, measures or practices to prevent or reduce discharges and includes structural and nonstructural controls and operation and maintenance procedures. Best management practices may be applied before, during and after discharges to reduce or eliminate the introduction of pollutants into receiving waters. Economic, institutional and technical factors shall be considered in developing best management practices.
4. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".
5. "Clean closure" means implementation of all actions specified in an aquifer protection permit, if any, as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards at the applicable point of compliance or, if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in section 49-243, subsection B, paragraph 3. Clean closure also means postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.
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.

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

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

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

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

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

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

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

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

16. "Existing facility" means a facility on which construction began before August 13, 1986 and which is neither a new facility nor a closed facility. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

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

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

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

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

19. "Hazardous substance" means:

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

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

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

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

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

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

20. "Inert material" means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

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

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

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

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

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

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

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

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

25. "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.

26. "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.

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

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

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

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

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

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

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

(d) Meet property use restrictions.

31. "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.

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

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

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

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

36. "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.

37. "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.

38. "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.

39. "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.

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

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

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

49-202. Designation of state agency

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

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through H of this section. Subsections C and D, subsection E, paragraph 3, subsection F, paragraph 3 and subsection H of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water

act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through H of this section apply to the certification of applications for or notices of coverage under those permits.

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

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

E. Until January 1, 1999:

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

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

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

F. Beginning January 1, 1999:

1. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for purposes of subsection H of this section. In all other instances, the application is complete on submission of the information requested by the department.

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

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

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

1. The name, address and telephone number of the applicant.

2. A description of the project to be certified, including an identification of the navigable waters in which the certified activities will occur.

3. The project location, including latitude, longitude and a legal description.

4. A United States geological service topographic map or other contour map of the project area, if available.

5. A map delineating the ordinary high watermark of navigable waters affected by the activity to be certified.

6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to navigable waters from those activities.

7. A description of the materials being discharged to or placed in navigable waters.

8. A copy of the application for a federal permit or license that is the subject of the requested certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The availability and effectiveness of alternative technologies.

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

3. The institutional considerations of alternative technologies.

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

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

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 that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. 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. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.

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

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

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

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

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

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

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

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

10. 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.

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

B. The director may:

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

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

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

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

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

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

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

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

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

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting 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 8 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.

49-204. Gray water reuse

A city, town or county may not further limit the use of gray water by rule or ordinance if the gray water use is allowed by a permit that is issued by the department for the direct reuse of reclaimed water, unless, in an initial active management area that has a groundwater management goal of safe yield and that does not contain a part of the central Arizona project aqueduct, effluent has been included in an assured water supply determination pursuant to section 45-576 and the use of gray water would reduce the volume of effluent available to satisfy assured water supply requirements applicable to that determination.

49-205. Availability of information to the public

A. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the director or a department employee, shall be available to the public, except that:

1. Income tax returns are confidential.

2. Drinking water system security vulnerability assessments that are submitted to the United States environmental protection agency, pursuant to Public Law 107-188, are exempt from disclosure under this chapter and title 39, chapter 1.

3. Other information, or a particular part of the information, shall be considered confidential on either:

(a) A showing, satisfactory to the director, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person.

(b) A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

B. Notwithstanding subsection A of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any pollutant discharge.

3. The existence or level of a concentration of a pollutant in drinking water or in the environment.

C. Notwithstanding subsection A of this section, and in addition to the information prescribed by subsection B of this section, the following information that is obtained by the department and that relates to discharges authorized by a permit issued under the program adopted pursuant to section 49-203, subsection A, paragraph 2 shall be made available to the public by the department:

1. Information required to be submitted in a permit application.

2. The frequency of the discharge.

3. The temperature and pH level of the discharge.

4. Other water quality characteristics that are required to be reported under the permit.

D. Notwithstanding subsection A of this section, the director may disclose any records, reports or information obtained from any person under this chapter, including records, reports or information obtained by the director or department employees, to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with the clean water act, the safe drinking water act, CERCLA or provisions and regulations relating to those acts.

49-206. Preservation of rights

This chapter shall not be construed to abridge or alter causes of action or remedies under the common law or statutory law, criminal or civil, nor shall any provision of this chapter, or any act done by virtue of this chapter, be construed so as to estop any person, this state or any political subdivision of this state, or owners of land having groundwater or surface water rights or otherwise, from exercising their rights or, under the common law or statutory law, from suppressing nuisances or preventing injury due to discharges.

49-207. Discrimination prohibited

A. No person may intimidate, threaten, restrain, coerce, blacklist, terminate or in any manner discriminate against any person because that person has filed a complaint or instituted, or caused to be instituted, a proceeding under this chapter or has testified or is about to testify in such a proceeding or has exercised, on behalf of himself or others, any right or protection afforded by this chapter.

B. A person who believes he has been discriminated against in violation of this section may, within one hundred eighty days after the violation, file a complaint with the attorney general. On receipt of the complaint, the attorney general may investigate as he deems appropriate. If, after investigation, the attorney general determines that this section has been violated, he may bring an action in superior court against any alleged violator.

C. In an action brought under this section, the court has jurisdiction to restrain a violation and order any appropriate relief, including rehiring or reinstatement of a person, with back pay and double damages.

49-208. Public participation

A. The director, by rule, shall prescribe procedures to assure adequate public participation in proceedings of the department under this chapter. The public participation procedures shall meet the requirements of the clean water act and safe drinking water act for permits issued under those acts. At a minimum, public participation procedures shall prescribe public notice requirements including the content and publication of the notice, provide an opportunity for public hearings and specify the procedures governing the hearings and require the public availability of relevant documents. Public hearings shall be held at places and times which afford a reasonable opportunity to persons to participate.

B. The director shall provide for and encourage public participation in developing such rules, plans and informational materials, including handbooks and guidance documents, as are required or necessary to implement the provisions of this chapter.

49-209. Industrial discharges to community sewer systems; registration; fee

A. Each person that is required to obtain a permit for discharges into a community sewer system under federal categorical industrial pretreatment regulations and standards shall register each year with the director and pay an annual registration fee of two hundred fifty dollars.

B. On or before January 31 each year each public or private entity that issues a permit for discharges into a community sewer system shall transmit to the director a list of current permittees and their addresses. The director shall prescribe a procedure for notifying permittees of the registration requirements of this section and collecting the prescribed fee.

C. The director shall deposit all monies collected under this section in the water quality assurance revolving fund established by section 49-282 and may authorize expenditures from the fund, pursuant to section 49-282, to pay the reasonable and necessary costs of administering the registration program.

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

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

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

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

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

1. The issuance of aquifer protection permits pursuant to section 49-241.
2. The aquifer protection permit registration fee procedures pursuant to section 49-242.
3. Dry well registration fee procedures pursuant to section 49-332.
4. Technical review fee procedures pursuant to section 49-353.
5. Inspection fee procedures pursuant to section 49-104, subsection C.
6. The issuance of permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.
7. Operator certification pursuant to sections 49-352 and 49-361.
8. Paying the cost of implementing section 49-203, subsection A, paragraph 6 and section 49-221, subsection E.
9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.
10. Implementation and administration of the underground injection control permit program established pursuant to article 3.3 of this chapter.
11. Implementation and administration of the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

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

Article 2.1 - Total Maximum Daily Loads

49-231. Definitions

In this article, unless the context otherwise requires:

1. "Impaired water" means a navigable water for which credible scientific data exists that satisfies the requirements of section 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute.

2. "Surface water quality standard" means a standard adopted for a navigable water pursuant to sections 49-221 and 49-222 and section 303(c) of the clean water act (33 United States Code section 1313(c)).

3. "TMDL implementation plan" means a written strategy to implement a total maximum daily load that is developed for an impaired water. TMDL implementation plans may rely on any combination of the following components that the department determines will result in achieving and maintaining compliance with applicable surface water quality standards in the most cost-effective and equitable manner:

(a) Permit limitations.
(b) Best management practices.
(c) Education and outreach efforts.
(d) Technical assistance.
(e) Cooperative agreements, voluntary measures and incentive-based programs.
(f) Load reductions resulting from other legally required programs or activities.
(g) Land management programs.

(h) Pollution prevention planning, waste minimization or pollutant trading agreements.

(i) Other measures deemed appropriate by the department.

4. "Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49-233. Priority ranking and schedule

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

B. In the first list submitted to the United States environmental protection agency after the effective date of this article, the schedule shall be sufficient to ensure that all required total maximum daily loads will be developed within fifteen years of the date the list is approved by the environmental protection agency. Total maximum daily loads that are required to be developed for

navigable waters that are included for the first time on subsequent lists shall be developed within fifteen years of the initial inclusion of the water on the list.

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

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

49-234. Total maximum daily loads; implementation plans

A. The department shall develop total maximum daily loads for those navigable waters listed as impaired pursuant to this article and for which total maximum daily loads are required to be adopted pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute. The department may estimate total maximum daily loads for navigable waters not listed as impaired pursuant to this article, for the purposes of developing information to satisfy the requirements of 33 United States Code section 1313(d)(3), only after it has developed total maximum daily loads for all navigable waters identified as impaired pursuant to this article or if necessary to support permitting of new point source discharges.

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

C. Each total maximum daily load shall:

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

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

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

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

D. For each impaired water, the department shall prepare a draft estimate of the total amount of each pollutant that causes the impairment from all sources and that may be added to the navigable water while still allowing the navigable water to achieve and maintain applicable surface water quality standards. In addition, the department shall determine draft allocations among the contributing sources that are sufficient to achieve the total loadings. The department shall provide public notice and allow for comment on each draft estimate and draft allocation and shall prepare written responses to comments received on the draft estimates and draft allocations. The department shall publish the determinations of total pollutant loadings that will not result in impairment and the draft allocations among the contributing sources that are sufficient to achieve the total loading that it intends to submit initially to the regional administrator, along with a summary of the responses to comments on the estimated loadings and allocations, in the Arizona administrative register at least forty-five days before submission of the loadings and allocations to the regional administrator. Notwithstanding this subsection, draft allocations shall be submitted to the regional administrator only if that submission is required by the rules that implement 33 United States Code section 1313(d).

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

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

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

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

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

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

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

loading from natural sources or significant loading resulting from discharges or activities that have already ceased.

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

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

49-235. Rules

The department shall adopt any rules necessary to implement this article.

49-236. Report

By September 1, 2005, the department shall submit a report to the governor, the speaker of the house of representatives and the president of the senate detailing progress made under this program and shall provide a copy to the secretary of state and the department of library, archives and public records. At a minimum, the report shall:

1. Evaluate the effectiveness of the total maximum daily load program and identify any recommended statutory changes to make the program more efficient, effective and equitable.

2. Assess the extent to which water quality problems that cannot be effectively addressed under the total maximum daily load program may be addressed under other federal or state laws.

3. Identify the number of appeals of department decisions under this article sought pursuant to title 41, chapter 6, article 10 and the disposition of those appeals, and assess the impact of those appeals on the department's ability to administer the program effectively.

49-237. Impact of successful judicial appeal of Arizona department of environmental quality decision

If a person appeals to court and succeeds in overturning or modifying a final administrative decision of the director pursuant to this article in an appeal initiated pursuant to title 41, chapter 6, article 10, within thirty days of the court's decision the department shall take the steps necessary to implement the court's decision, unless the director's decision that is overturned or modified was submitted to and approved by the regional administrator, in which case within thirty days of the court's decision the department shall request that the regional administrator modify the approval to reflect the court's decision.

49-238. Program termination

The program established by this article ends on July 1, 2020 pursuant to section 41-3102.

Article 2 - Water Quality Standards

49-221. Water quality standards in general

A. The director shall adopt, by rule, water quality standards for all navigable waters and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses.

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

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

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

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

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

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

1. The protection of public health and the environment.

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

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

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

1. "Agricultural water":

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

(b) Includes all of the following:

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

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

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

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

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

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

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

49-222. Water quality standards for navigable waters

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

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

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

49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric

standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.

49-224. Aquifer identification, classification and reclassification

A. Not later than June 30, 1987 the director shall, by rule, identify and define the boundaries of all aquifers in this state utilizing, to the maximum extent possible, data available from the department of water resources.

B. All aquifers in this state identified and defined under subsection A of this section and any other aquifers subsequently discovered, identified and defined shall be classified for drinking water protected use unless the classification is changed in the manner provided in subsection C of this section.

C. The director, after consulting with the appropriate groundwater users advisory council established pursuant to title 45, chapter 2, article 2 if the aquifer is in an active management area, and a public hearing held pursuant to section 49-208, may change the classification of an aquifer or part of an aquifer for a protected use other than drinking water on making all of the following findings:

1. The identified aquifer or part of an aquifer is or will be so hydrologically isolated from other aquifers or other parts of the same aquifer that there is no reasonable probability that poorer quality water from the identified aquifer or part of an aquifer will cause or contribute to a violation of aquifer water quality standards in other aquifers or parts of the same aquifer.

2. Water from the identified aquifer or part of an aquifer is not being used as drinking water.

3. The short-term and long-term benefits to the public that would result from the degradation of the quality of the water in the identified aquifer or part of an aquifer below standards established pursuant to section 49-223, subsections A and B would significantly outweigh the short-term and long-term costs to the public of such degradation. Benefits and costs to be considered include economic, social and environmental.

D. Owners or operators of facilities whose discharges are solely responsible for creating an aquifer may petition the director for a classification of the aquifer for a non-drinking water use. The director may, by rule, classify that aquifer for a non-drinking water use upon making the findings prescribed in subsection C, paragraphs 1 and 2 of this section.

E. The director shall provide for public participation in proceedings under this section pursuant to section 49-208 and shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification.

49-225. Water quality monitoring

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

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

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

Article 3.1 - Arizona Pollutant Discharge Elimination System Program

49-255. Definitions

In this article, unless the context otherwise requires:

1. "AZPDES" means the Arizona pollutant discharge elimination system program as adopted under section 402(b) of the clean water act.

2. "Discharge" means any addition of any pollutant to navigable waters from any point source.

3. "Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source that is regulated under section 307(b), (c) or (d) of the clean water act.

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

5. "Publicly owned treatment works" means a treatment works owned by this state or a municipality of this state as defined in section 502(4) of the clean water act.

6. "Sewage sludge":

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

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

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

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

8. "Upset":

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

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

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

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

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

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

B. The director shall adopt rules to establish an AZPDES permit program consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and no more stringent than the clean water act and this article.

C. The rules adopted by the director shall provide for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing

general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

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

49-255.02. Pretreatment program; rules and standards

A. The director shall adopt rules to establish a pretreatment program that is consistent with the requirements of sections 307, 308 and 402 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act.

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

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

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

3. Oversight by the director of local program implementation.

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

49-255.03. Sewage sludge program; rules and requirements

A. The director shall adopt rules to establish a sewage sludge program that is consistent with the requirements of sections 402 and 405 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act.

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

Article 3.2 - Dredge and Fill Permit Program

49-256. Adoption and enactment of federal definitions

(Conditionally Rpld.)

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

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

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

3. "Fill material" means:

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

(i) Replacing any portion of a navigable water with dry land; or

(ii) Changing the bottom elevation of any portion of a navigable water.

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

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

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

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

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

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

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

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

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

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

(Conditionally Rpld.)

A. For purposes of implementing the permit program established by 33 United States Code section 1344, the director may establish by rule a dredge and fill permit program that is consistent with and no more stringent than the clean water act dredge and fill program, including a permitting process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49-256.02. Compensatory mitigation

(Conditionally Rpld.)

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

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

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

Article 3.3 - Underground Injection Control Permit Program

49-257. Applicability of federal definitions

The definitions prescribed in the underground injection control program in part C of the safe drinking water act in effect on January 1, 2018 and in the implementing regulations contained in the Code of Federal Regulations in effect on January 1, 2018 apply to this article.

49-257.01. Underground injection control permit program; permits; prohibitions; exemptions; rules

A. The department shall establish an underground injection control permit program, including a permitting process.

B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.

C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.

D. Notwithstanding subsection A of this section, a class V well is exempt from this article if the well has an aquifer protection permit obtained pursuant to article 3 of this chapter and that permit satisfies federal underground injection control requirements for a class V well.

E. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).

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

Article 3 - Aquifer Protection Permits

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, is available to the public on request.

E. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

49-241.01. Groundwater protection permit facilities; schedule; definition

A. The director shall complete the issuance or denial of aquifer protection permits or clean closure approval for all groundwater protection permit facilities on the following schedule:

1. By January 1, 2004, for all groundwater protection permits for nonmining facilities.

2. By January 1, 2006, for all groundwater protection permits for mining facilities.

B. The failure by the director to issue or deny an aquifer protection permit for a groundwater protection permit facility within the time prescribed by this section does not excuse a person from continuing to comply with all statutory and regulatory requirements applicable to that person's facility.

C. For purposes of this section, "groundwater protection permit facility" means either of the following:

1. A facility for which a groundwater quality protection permit was issued pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

2. A facility for which a notice of disposal was filed pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

49-241.02. Payment for aquifer protection permit fees; definitions

A. Only for a one-time rule making after July 29, 2010, the director shall establish by rule fees for aquifer protection permits, including maximum fees and fees for individual or area-wide permits, complex and standard modifications to permits and clean closure of a nonpermitted facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

B. Each permit action application submitted by the applicant is subject to a maximum fee.

C. Notwithstanding any other provision in this section, an applicant may request that the department waive the applicable maximum fee for processing an application for a permit action. On requesting the waiver, the applicant agrees to pay the total direct costs incurred by the department in processing the application and the department may process the application for a permit action.

D. If the department contracts with a consultant under section 49-203, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and agreeing to pay to the department the costs of the consultant's services regardless of the other provisions of this section.

E. The department shall review the revenues derived from and expenses incurred for processing permit action applications through June 30, 2014 to determine the adequacy of the maximum fees, and by August 31, 2014, the department shall issue a report to the legislature on its findings.

F. For the purposes of this section:

1. "Complex modification" means, for purposes of the mining sector, any of the following:

(a) Any new tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance required to have an individual permit under this article, unless this new facility is within an approved passive containment capture zone under section 49-243, subsection G, paragraph 1.

(b) The expansion of the footprint of any tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance permitted under this article if the expanded facility is not located within a passive containment capture zone under section 49-243, subsection G, paragraph 1, and the expansion either:

(i) Requires expansion of the pollutant management area and a new or relocated point of compliance.

(ii) Extends over a geologic unit of higher hydraulic conductivity than the original facility, unless the original facility is lined and the same liner is extended to cover the entire expansion area.

(c) A new or expanded waste rock pile is not considered to be a discharging facility under section 49-241, subsection B and may be categorized as a complex modification for purposes of this section only if the department determines all of the following:

(i) The new or expanded waste rock pile otherwise qualifies as a discharging facility and is not exempted under section 49-250.

(ii) The new or expanded waste rock pile is located outside of a passive containment capture zone under section 49-243, subsection G, paragraph 1.

(iii) The new or expanded waste rock pile either requires expansion of the pollutant management area and a new or relocated point of compliance or it extends over a geologic unit of higher hydraulic conductivity than the original facility.

2. "Maximum fee" means the maximum amount the director establishes by rule for services for a permit action.

3. "Permit action" means:

(a) Issuance of an individual or area-wide aquifer protection permit to operate or to close.

(b) Issuance of a complex modification of an individual or area-wide aquifer protection permit.

(c) Issuance of a clean closure approval.

(d) Issuance of a standard modification of an individual or area-wide aquifer protection permit.

(e) Denial of any application.

(f) Processing any permit action application request that the applicant withdraws.

G. The department shall adopt a rule to define "complex modification" for other nonmining aquifer protection permit sectors.

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

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

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

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

D. Pending the issuance of individual or area-wide aquifer protection permits, each owner of a facility that is prescribed in subsection B or C of this section that is operating on September 27, 1990 pursuant to the filing of a notice of disposal or a groundwater quality protection permit issued

under title 36 shall register the notice of disposal or the permit with the director each year and shall pay an annual registration fee for each notice of disposal or permit based on the total daily influent or discharge of pollutants pursuant to subsection E of this section.

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

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

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

49-243. Information and criteria for issuing individual permit; definition

A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.
2. A description of how the facility will be operated.
3. Existing and proposed pollutant control measures.
4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.
5. The use of water from aquifers in the discharge impact area.
6. The existing quality of the water in the aquifers in the discharge impact area.
7. The characteristics of the pollutants discharged by the facility.
8. Closure strategy.
9. Any other relevant federal or state permits issued to the applicant.
10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance

with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.

(b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.

(c) The age of equipment and facilities involved.

(d) The industrial and control process employed.

(e) The engineering aspects of the application of various types of control techniques.

(f) Process changes.

(g) Non-water quality environmental impacts.

(h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.

3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for the purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For the purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.

2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241(b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.

2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).

3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director, by rule, may prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:

1. Monitoring requirements.
2. Record keeping and reporting requirements.
3. Contingency plan requirements.
4. Discharge limitations.
5. Compliance schedule requirements.
6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.
7. Alert levels that, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.
8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. With the consent of the applicant or permittee, the director may include in an aquifer protection permit for an existing facility the requirement that the applicant or permittee undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:

1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06 and the rules adopted pursuant to that section.

2. The pollutant that was discharged constituted a hazardous substance.

M. With the consent of the applicant or permittee, the director may include in an aquifer protection permit as a condition the mitigation measures authorized under section 49-286 instead of issuing a mitigation order under section 49-286.

N. The director may deny a permit for a facility if the director determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The following apply to an application for a permit or to an issued permit:

1. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions.

2. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. Except for a state or federal agency or a county, city, town or other local governmental entity, the cost estimate shall be based on the cost for the applicant or permittee to hire a third party to conduct the closure strategy or plan unless the financial responsibility mechanism provided pursuant to this subsection is a self-assurance or a guarantee and the director determines that the applicant or permittee is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting postclosure monitoring and maintenance. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall update its cost estimate:

(a) For the duration of the permit on a periodic basis as scheduled in the permit but not more frequently than once every five years. The cost estimate shall be updated to adjust for inflation or as necessary to reflect increased or decreased costs resulting from changes to the facility or to the facility closure strategy or plan, or to any other relevant conditions related to the facility.

(b) For a significant amendment as defined by rule adopted by the director, if required to address incremental changes in the cost estimate that result from the significant amendment.

3. Except for a state or federal agency or a county, city, town or other local governmental entity, the applicant or permittee shall demonstrate financial responsibility to cover the estimated costs to close the facility and, if necessary, to conduct postclosure monitoring and maintenance by providing to the director for approval a financial assurance mechanism or combination of mechanisms as prescribed in rules adopted by the director or in 40 Code of Federal Regulations section 264.143 (f)(1) and (10) as of January 1, 2014. An applicant or permittee that demonstrates financial responsibility by means of a self-assurance or guarantee shall aggregate the estimated closure and postclosure costs for all aquifer protection permits in this state for which the applicant, permittee or guarantor has provided a self-assurance or a guarantee in order to determine whether the applicant, permittee or guarantor meets the applicable financial test.

4. The permittee shall maintain its demonstration of financial responsibility prescribed in this subsection for the duration of the individual permit. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall periodically demonstrate financial responsibility and report to the director that the financial assurance mechanism is being maintained as scheduled in the permit and as prescribed in paragraph 3 of this subsection but not more frequently than once every two years. The permit's applicable reporting schedule shall be based on the type of financial assurance mechanism that is selected pursuant to this subsection.

5. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section.

6. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required before completion of construction but shall be required before the department issues approval to operate. Financial assurance for a facility is not required pursuant to this section if substantially similar financial assurance for that facility is required and has been provided pursuant to other federal, state or local laws, and evidence of that financial assurance is filed with the director.

7. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and

regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1 of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:

1. A description of the pollutant management area and point or points of compliance.

2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and that are included in the area-wide permit.

3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.

4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

49-243.01. Presumptive best available demonstrated control technology

A. The director may establish, by rule, presumptive best available demonstrated control technology, processes, operating methods or other alternatives, consistent with section 49-243, subsection B, paragraph 1, for a class of facilities, if the director determines that the facilities in that class are substantially similar in nature. Once presumptive controls are established by rule for a particular class of facilities the director shall review those rules every five years and, if appropriate, revise the rules for that class of facilities.

B. An owner or operator of a facility who applies for an individual permit under section 49-243 shall be deemed to have demonstrated that the design meets the requirements of section 49-243, subsection B, paragraph 1, if the application incorporates the presumptive controls for that class of facilities established pursuant to subsection A of this section.

C. A person or group of persons who own or operate facilities that are required to obtain a permit pursuant to this article may petition the director to establish by rule presumptive best available demonstrated control technology, processes, operating methods or other alternatives for that class of facilities. The director may grant the petition if he determines that the following conditions have been met:

1. The petition identifies the class of facilities for which rule adoption is requested.

2. The petition includes a description of the presumptive controls for the requested class of facilities.

3. The petition complies with section 41-1033.

4. The class of facilities described in the petition satisfies subsection A of this section.

D. The owner or operator of a facility with a permit shall not be required to obtain a new or modified permit because of rules adopted or revised pursuant to subsection A of this section. Any complete application that is filed before the effective date of any rules adopted or revised pursuant to this section shall be processed by the department without requiring compliance with the rules adopted or revised pursuant to subsection A of this section.

49-244. Point of compliance

The director shall designate a point or points of compliance for each facility receiving a permit under this article. For the purposes of this chapter, the point of compliance is the point at which compliance must be determined for either the aquifer water quality standards or, if an aquifer water quality standard is exceeded at the time the aquifer protection permit is issued, the requirement that there be no further degradation of the aquifer as provided in section 49-243, subsection B, paragraph 3. The point of compliance shall be a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility. For an aquifer that has no existing or reasonably foreseeable drinking water beneficial use, the director may establish monitoring for compliance in another aquifer in lieu of monitoring in the uppermost aquifer. The point of compliance shall be determined as follows:

1. Except as provided in paragraph 2 of this section, for a pollutant that is a hazardous substance the point of compliance is the limit of the pollutant management area. The pollutant management area is the limit projected in the horizontal plane of the area on which pollutants are or will be placed. The pollutant management area includes horizontal space taken up by any liner, dike or other barrier designed to contain pollutants in the facility. If the facility contains more than one discharging activity, the pollutant management area is described by an imaginary line circumscribing the several discharging activities.

2. A point of compliance for hazardous substances other than that identified in paragraph 1 of this section may be approved by the director if the facility owner or operator can demonstrate either:

(a) That it is technically impracticable or inappropriate considering the likely fate or transport of a pollutant in an aquifer to monitor at the boundary specified in paragraph 1 of this section.

(b) The alternative point of compliance will allow installation and operation of the monitoring facilities that are substantially less costly. Such a request by a facility owner or operator under this paragraph must be supported by an analysis of the volume and characteristics of the pollutants that may be discharged and the ability of the vadose zone to attenuate the particular pollutants that may be discharged, including such factors as climate, hydrology, geology and soil chemistry. In no event shall an alternative point of compliance be further from the boundary specified in paragraph 1 of this section than is necessary for purposes of this paragraph, subdivisions (a) and (b) of this paragraph, and in no event shall it be so located as to result in an increased threat to an existing or reasonably foreseeable drinking water source. In addition an

alternate compliance point for a hazardous substance pursuant to this subdivision shall never be further downgradient than any of the following:

(i) The property boundary.

(ii) Any point of an existing or reasonably foreseeable future drinking water source.

(iii) Seven hundred fifty feet from the edge of the pollutant management area.

3. For pollutants that are not hazardous substances the director, in identifying a point of compliance, shall take into account the volume and characteristics of the pollutants, the practical difficulties associated with implementation of applicable water pollution control requirements, whether the facility is a new facility or an existing facility, water conservation and augmentation and the site-specific characteristics of the facility, including, but not limited to, climate, hydrology, geology, soil chemistry and pollutant levels in the aquifer. The point of compliance must be so located as to ensure protection of all current and reasonably foreseeable future uses of the aquifer.

49-245. Criteria for issuing general permit

A. The director may issue by rule a general permit for a defined class of facilities if all of the following apply:

1. The cost of issuing individual permits cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

2. The facilities, activities or practices in the class are substantially similar in nature.

3. The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity will meet the applicable requirements in section 49-243 or, as to facilities for which the director has established best management practices, section 49-246.

B. In addition to other applicable enforcement actions, if a person violates the conditions of a general permit, the director may revoke the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended at any time by the director if necessary to comply with this chapter.

C. Rules establishing a general permit shall include terms and conditions to ensure that all discharges and facilities will meet the requirements of this chapter and shall provide for the collective or individual revocation of the general permit if necessary to ensure compliance with this chapter.

D. Rules adopted pursuant to subsection A of this section may require a person who owns or operates a facility seeking coverage under a general permit to notify the director of the person's intent to operate the facility pursuant to the general permit and pay the applicable fee required pursuant to section 49-203.

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, 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 for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Point source discharges to waters of the United States 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.

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

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

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

49-246. Criteria for developing best management practices

A. Pursuant to section 49-245, the director may issue a general permit for facilities requiring implementation of best management practices appropriate to the class of discharges to be regulated. The director shall:

1. Identify the aquifer water quality problem which must be addressed and determine that protection of aquifer water quality standards can be accomplished through development and implementation of a best management practice for the class of discharge.

2. Assign a specific advisory committee to create the specific class best management practice to regulate the problem and report its recommendations to the director on a specified schedule.

3. On issuing a general permit containing best management practices, make a reasonable effort to notify persons conducting or managing the activity subject to the best management practices of the requirements of the best management practices contained in the general permit.

B. The director may establish best management practices for the following facilities or activities:

1. On-site facilities for urban runoff.
2. Storm sewers.
3. Urban runoff.
4. Silvicultural activities.
5. Septic tank systems.

C. The director may by rule establish best management practices for additional facilities or activities pursuant to this section, if all of the following apply:

1. The facilities or activities meet the criteria in section 49-245, subsection A, paragraphs 1 and 2.

2. The individual facilities or activities within the class are conducted over a large geographic area.

49-247. Agricultural general permits; best management practices for regulated agricultural activities

A. The director shall adopt by rule, pursuant to the requirements of this section, agricultural general permits consisting of best management practices for regulated agricultural activities. Agricultural general permits are not subject to section 49-245 or 49-246. Except as provided in subsection G of this section, a person is not required to obtain an individual permit for a regulated agricultural activity.

B. The terms and conditions of agricultural general permits adopted pursuant to this section shall be agricultural best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities. Agricultural best management practices may vary within the state, according to regional and hydrogeologic conditions. The director may waive the use of best management practices in a designated region if the director determines that existing regulated agricultural activities will not cause or contribute to a violation of the adopted water quality standards.

C. The director shall adopt, by rule, agricultural best management practices.

D. In adopting agricultural best management practices, the director shall consider:

1. The availability, the effectiveness and the economic and institutional considerations of alternative technologies.

2. The potential nature and severity of discharges from regulated agricultural activities and their effect on public health and the environment.

E. In adopting best management practices for regulated agricultural activities, the director shall require the application of all economically feasible best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities but shall not require application of more stringent practices if such a requirement would result in cessation of the regulated activity.

F. Compliance with best management practices adopted pursuant to this section constitutes compliance with this article.

G. If the director, after providing a person with notice and an opportunity for a hearing, determines that the person has violated the applicable best management practices, the director may revoke the agricultural general permit for that person and require that the person obtain a permit pursuant to section 49-241.

H. The director may periodically reexamine, evaluate and propose any modification to or waiver of agricultural best management practices necessary to meet the requirements of this article.

49-249. Aquifer pollution information

The director shall make available to the public upon request and on the agency's web site every five years the levels of pollutants in aquifers in this state and the effects of regulation under this chapter in general and best management practices in particular on controlling or reducing pollution in aquifers.

49-250. Exemptions

A. The director may, by rule, exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from the facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.

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

1. Household and domestic activities.

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

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

4. Ponds used for watering livestock and wildlife.

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

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

7. Discharge to a community sewer system.

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

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

10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.

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

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

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

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

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

16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.

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

18. Facilities used in:

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

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

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

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

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

20. Storage, treatment or disposal of inert material.

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

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

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

(a) Firefighting system testing and maintenance.

(b) Potable water sources, including waterline flushings.

(c) Irrigation drainage and lawn watering.

(d) Routine external building wash down without detergents.

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

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

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

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

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

25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

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

49-251. Temporary emergency waiver

A. A facility owner or operator may apply for, and the director may issue, a temporary emergency waiver of compliance with the requirement to obtain a permit or with any applicable permit requirement, surface or aquifer water quality standard or discharge limitation if the waiver will not endanger human health or welfare, and if the director finds any of the following:

1. That an emergency of such severity exists that water supplies for domestic uses will be inadequate to meet demand unless the facility is able to temporarily exceed one or more water quality standards or discharge limitations by its discharge into waters of the state.

2. That there has been a breakdown of equipment or upset of operations resulting in a discharge to waters of the state in excess of one or more water quality standards or discharge limitations, and both of the following apply:

(a) The breakdown or upset was beyond the control of the facility owner or operator and the facility was being operated in compliance with this chapter before the discharge.

(b) The breakdown or upset will be corrected in a reasonable period of time.

3. That the activity that is the subject of the waiver is necessary to protect human health or welfare or minimize potential adverse impacts to the environment.

B. A temporary emergency waiver of compliance issued by the director may be subject to such reasonable terms and conditions as the director deems necessary. The director may grant a waiver after the occurrence of the activity that is subject to the waiver if the applicant demonstrates that exigent circumstances made it impractical to secure the waiver in advance.

C. As a condition to the issuance of a temporary emergency waiver of compliance, the director may require the facility owner or operator to provide notice of the waiver to all downstream or downgradient users directly affected by both:

1. Publication on not less than three consecutive days, or on three consecutive weeks in the case of weekly publications, in a newspaper or newspapers of general circulation in the area in which the emergency or breakdown has occurred or is occurring.

2. Furnishing a copy of the publication to the radio and television stations serving the area in which the emergency or breakdown has occurred or is occurring.

D. The facility owner or operator shall furnish a copy of the publication to the director.

E. A temporary emergency waiver of compliance issued pursuant to this section shall remain in effect as long as necessary to accommodate the emergency but in no event longer than ninety days.

F. A person operating under a temporary emergency waiver is not subject to section 49-262 or 49-263 for discharges allowed under the temporary emergency waiver but is subject to article 5 of this chapter.

49-252. Closure notification and approval

A. A person who owns or operates a dry well subject to this article or a groundwater protection permit facility as defined in section 49-241.01, subsection C or a person who has been issued a permit pursuant to this article shall notify the director of the intent to permanently cease an activity for which the facility or a portion of the facility was designed or operated.

B. Within ninety days of the notification in subsection A of this section, the owner or operator shall submit a closure plan to the director.

C. Within sixty days of submittal of a complete closure plan, the director shall determine whether or not the closure plan is for a clean closure.

D. If the director determines that the closure plan is for a clean closure, the director shall send a letter of approval to the owner or operator and no aquifer protection permit shall be required.

E. If the director determines that the proposed closure plan achieves a closure condition other than clean closure, the owner or operator shall submit either an application for an aquifer protection permit or a request to modify a current aquifer protection permit in order to address closure activities and postclosure monitoring and maintenance at the facility. The director shall require submittal of a permit application or a request to modify a permit within ninety days or a reasonable time not to exceed one year, if the applicant can supply a scope of work justifying a schedule for collecting the technical information necessary to apply.

Article 4 – Enforcement

49-261. Compliance orders; appeal; enforcement

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

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

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

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

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

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

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

1. That a person is in violation of:

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

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

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

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

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

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

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

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

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

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

1. Undertaken a remedial or response action approved by the director or the administrator under this title or CERCLA in response to the release of a hazardous substance, pollutant or

contaminant that caused or contributed to the violation of article 2 of this chapter and is in compliance with that remedial or response action.

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

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

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

1. The seriousness of the violation or violations.
2. The economic benefit, if any, that results from the violation.
3. Any history of similar violations.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. The extent to which the violation was caused by a third party.
7. Other matters as justice may require.

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

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

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

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

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

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

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

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

49-263. Criminal violations; classification; definition

A. It is unlawful to:

1. Discharge without a permit or appropriate authority under this chapter.
2. Fail to monitor, sample or report discharges as required by a permit issued under this chapter.
3. Violate a discharge limitation specified in a permit issued under this chapter.
4. Violate a water quality standard.

5. Commence underground injection or construction of an underground injection well without a permit or other appropriate authority under this chapter.

6. Violate any underground injection standard or requirement that is required by a permit issued or authorized under this chapter.

B. A person who with criminal negligence performs an act prohibited under subsection A of this section is guilty of a class 6 felony.

C. A person who knowingly performs an act prohibited under subsection A of this section is guilty of a class 5 felony.

D. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act prohibited under subsection A of this section is guilty of a class 2 felony.

E. For a class II well, a person who knowingly violates any underground injection control permit program requirements prescribed by this chapter may be subject to pipeline (production) severance.

F. A violation of any provision of this chapter for which a penalty is not otherwise prescribed is a class 2 misdemeanor.

G. The attorney general may enforce this section.

H. Monetary criminal penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

I. For purposes of this section "person" has the meaning assigned to that term by section 13-105.

49-263.01. Arizona pollutant discharge elimination system program; violation; classification

A. It is unlawful for any person who is subject to section 49-255.01, 49-255.02 or 49-256.01 to knowingly or recklessly:

1. Discharge without a permit or appropriate authority under article 3.1 or 3.2 of this chapter.

2. Fail to monitor, sample or report discharges as required by a permit issued under article 3.1 or 3.2 of this chapter.

3. Violate a discharge limitation or standard specified in a permit issued under article 3.1 or 3.2 of this chapter.

4. Alter, modify or destroy any monitoring device, sampling method, analytical method or test result required in a permit issued under article 3.1 or 3.2 of this chapter in order to render the device or method inaccurate.

5. Fail to maintain, operate or repair any monitoring device required in a permit issued under article 3.1 or 3.2 of this chapter in order to render the device inaccurate, or fail to install any monitoring device required in a permit issued pursuant to article 3.1 or 3.2 of this chapter.

6. Bypass or divert waste streams from the treatment works or any portion of the treatment works resulting in a discharge, except as authorized by a permit issued under article 3.1 or 3.2 of this chapter.

7. Violate an effective compliance order issued for violations of article 3.1 or 3.2 of this chapter.

B. A reckless violation of subsection A of this section is a class 6 felony.

C. A knowing violation of subsection A of this section is a class 5 felony.

D. A person who, acting with criminal negligence, does any of the following is guilty of a class 1 misdemeanor:

1. Violates any condition of a permit issued under article 3.1 or 3.2 of this chapter.

2. Violates any applicable standard, limitation, filing or reporting requirement imposed under article 3.1 or 3.2 of this chapter.

E. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act that is prohibited under subsection A of this section is guilty of a class 2 felony and the following apply:

1. In determining whether a defendant who is an individual knowingly or recklessly manifests an extreme indifference for human life under this subsection:

(a) The person is responsible only for actual awareness or actual belief that the person possessed.

(b) Knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant, except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that affirmative steps were taken by the defendant to shield the defendant from relevant information.

2. It is an affirmative defense to prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either:

(a) An occupation, a business or a profession.

(b) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person had been made aware of the risks involved before giving consent.

A defense may be established pursuant to this paragraph by a preponderance of the evidence.

F. A person who knowingly introduces into a sewer system or into a treatment works any pollutant or hazardous substance that the person knew could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, that causes the treatment works to violate any discharge limitation or condition in a permit issued to the treatment works pursuant to article 3.1 of this chapter or section 402 of the clean water act is guilty of a class 5 felony.

G. A person who knowingly violates a pretreatment standard or pretreatment requirement imposed under article 3.1 of this chapter, or any other federal pretreatment standard or pretreatment requirement, or any state or municipal pretreatment standard or pretreatment requirement enacted to meet the state'□s or municipality's obligations pursuant to article 3.1 of this chapter is guilty of a class 5 felony.

H. Each day of violation of any provision of this section constitutes a separate offense.

I. The attorney general may enforce this section.

49-263.02. Sewage sludge program; violation; classification

A. It is unlawful for any person, knowingly or with criminal negligence to do any of the following with respect to generation, treatment, transportation, disposal, application and management of sewage sludge:

1. Apply sewage sludge in violation of rules adopted under article 3.1 of this chapter.

2. Violate any applicable standard or limitation set under article 3.1 of this chapter.

3. Violate any condition of a permit or other authorization granted under the sewage sludge provisions of article 3.1 of this chapter.

4. Fail to comply with any applicable filing or reporting requirement set under article 3.1 of this chapter.

5. Alter, modify or destroy any monitoring device or method required by the director under article 3.1 of this chapter in order to render the device or method inaccurate.

6. Fail to maintain, operate or repair any monitoring device required by the director under article 3.1 of this chapter in order to render the device inaccurate□, or fail to install any monitoring device required in a permit issued pursuant to article 3.1 of this chapter□.

7. Discharge without a permit or appropriate authority pursuant to article 3.1 of this chapter.

B. A criminally negligent violation of subsection A, paragraphs 1 through 6 of this section is a class 1 misdemeanor.

C. A knowing violation of subsection A, paragraph 5, 6 or 7 of this section is a class 5 felony.

D. Each day of violation of any provision of this section constitutes a separate offense.

E. The attorney general may enforce this section.

49-264. Private right of action; citizen suits; right to intervene

A. Except as provided in subsection B of this section, a person that has an interest that is or may be adversely affected by a violation of this chapter or a rule adopted or an order issued by the department pursuant to this chapter may commence a civil action in superior court on the person's own behalf against the director alleging a failure of the director to perform an act or duty under this chapter that is not discretionary with the director. The court shall have jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in any of the following cases:

1. Before one hundred twenty days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.

2. If after conducting an investigation the director determines within one hundred twenty days after receiving notice of the alleged violation from the plaintiff that no violation has occurred, or the director had determined before receiving the notice of the alleged violation that the violation had not occurred.

3. If the department has issued and is diligently processing a notice of violation or an order or has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.

4. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.

5. If the director is diligently pursuing the violation under another state or federal environmental law.

C. In an action commenced under this section the plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party that substantially prevails.

E. A person that is or may be adversely affected by a violation of any requirement of the underground injection control permit program established pursuant to article 3.3 of this chapter may intervene as a matter of right in any pending state civil or administrative enforcement action. A person's right to intervene is limited as follows:

1. A person may intervene only if the person is adversely affected by the violation that is named in the state's action.

2. A person may intervene only for purposes of obtaining the following remedies for the state:

(a) A temporary restraining order.

(b) Injunctive relief.

(c) Civil penalties.

(d) Any combination of the penalties prescribed in this paragraph.

49-265. Venue

All actions commenced under sections 49-261 and 49-262 shall be brought in the superior court in the county in which the alleged violation occurred or in which the department maintains an office.

Article 5 - Remedial Actions

49-281. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means any individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership or association, this state, a political subdivision of this state, or a commission of the United States government or a federal facility, an interstate body or any other entity that applies for a settlement under either section 49-292.01 or 49-292.02.

2. "Community" means the broad spectrum of persons determined by the director to be within an existing or proposed site placed on the registry pursuant to section 49-287.01.

3. "Community involvement area" means the geographical area that is within a site placed on the registry pursuant to section 49-287.01 and additional geographic areas as found appropriate in the director's discretion.

4. "Dispose" means the deposit, injection, dumping, spilling, leaking or placing of any pollutant into or on any land or water so that the pollutant or any constituent of the pollutant may enter the environment or be discharged into any waters, including aquifers.

5. "Eligible party" means a person who enters into a written agreement with the director to implement and complete a remedial investigation and feasibility study with respect to a site or portion of a site that was on the annual priority list on May 1, 1997 or any other person who incurs costs for a remedial action that is in substantial compliance with section 49-282.06 as determined by the director.

6. "Facility" means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice.

7. "Fund" means the water quality assurance revolving fund established by section 49-282.

8. "Hazardous substance" has the same meaning prescribed in section 49-201 but does not include petroleum as defined in section 49-1001, except to the extent that a constituent of petroleum is subject to section 49-283.02.

9. "Nonrecoverable costs" means any costs incurred by the director after June 30, 1997:

(a) That consist of salaries and benefits paid to state employees, including direct and indirect costs, except as specifically provided in section 49-282.05, section 49-285, subsection B, section 49-285.01, section 49-287.01, section 49-287.06, subsection H and section 49-287.07 and for epidemiological studies conducted by the department of health services.

(b) For activities conducted pursuant to section 49-287.02.

(c) For water monitoring activities conducted pursuant to section 49-225.

(d) For well inspections, but not other remedial actions, to determine whether vertical cross-contamination is resulting from a well pursuant to section 45-605 or 49-282.04.

(e) For rulemaking.

10. "Orphan shares" means the shares of the cost of a remedial action that are allocated to an identified person who is determined to be a responsible party and that are not paid or otherwise satisfied by that responsible party due to any of the following:

(a) The party cannot be located or no longer exists.

(b) The party has entered into a qualified business settlement pursuant to this article.

(c) The party has entered into a settlement pursuant to this article for an amount that is less than its allocated share.

(d) The director has determined that the share allocated to the party is uncollectible.

11. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment but excludes:

(a) Any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons.

(b) Emissions from the engine exhaust of any motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine.

(c) Release of source, by-product or special nuclear material, as those terms are defined in section 30-651, resulting from the operation of a production or utilization facility as defined in the atomic energy act of 1954 (68 Stat. 919; 42 United States Code sections 2011 through 2297), which is subject to the regulatory authority of the United States nuclear regulatory commission as specified in that act, and the agreement, dated March 30, 1967, entered into between the governor of this state and the United States atomic energy commission pursuant to section 30-656 and section 274 of the atomic energy act of 1954, as amended.

(d) The normal application of fertilizer.

12. "Remedial actions" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment, such actions as may be necessary to investigate, monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the environment that may otherwise result from a release or threat of release of a hazardous substance. Remedial actions include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, that are nonopportunistic and that are naturally occurring. Remedial actions may include community information and participation costs and providing an alternative drinking water supply.

13. "Remedy" means a remedial action selected in a record of decision issued pursuant to section 49-287.04.

14. "Site" means the geographical areal extent of contamination.

15. "Vertical cross-contamination" means the vertical migration of released hazardous substances in groundwater through a well from an aquifer or aquifer layer to another aquifer or aquifer layer.

49-282. Water quality assurance revolving fund

A. A water quality assurance revolving fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.
2. Fertilizer license fees allocated under section 3-272, subsection B, paragraph 2.
3. Pesticide registration fees allocated under section 3-351, subsection D, paragraph 2.
4. The tax on water use pursuant to section 42-5302.
5. Water quality assurance fees collected under section 45-616.
6. Industrial discharge registration fees collected under section 49-209.
7. Manifest resubmittal fees collected under section 49-922.01.
8. Hazardous waste facility registration fees collected under section 49-929.
9. Hazardous waste resource recovery facility registration fees collected under section 49-930.
10. Monies recovered from responsible parties as remedial action costs.
11. Monies received as costs for a review of remedial actions at the request of a person other than the state.
12. Monies received from the collection of corporate income taxes under title 43, chapter 11, article 2 as prescribed by subsection B of this section.
13. Prospective purchaser agreement fees collected under section 49-285.01.

B. The water quality assurance revolving fund shall be assured of an annual funding amount of eighteen million dollars. At the beginning of each fiscal year, the state treasurer shall

transfer the sum of fifteen million dollars to the water quality assurance revolving fund from the corporate income tax as collected pursuant to title 43, chapter 11, article 2. As custodian of the fund, the director shall certify to the governor, the state treasurer, the president of the senate and the speaker of the house of representatives at the end of that fiscal year the amount of monies deposited in the water quality assurance revolving fund pursuant to subsection A, paragraphs 1 through 9 of this section. At the end of the fiscal year the state treasurer shall adjust the fifteen million dollar transfer of corporate income tax so that, when combined with monies deposited in the fund during that fiscal year pursuant to subsection A, paragraphs 1 through 9 of this section, the fund receives eighteen million dollars each fiscal year. This adjustment shall occur as part of the year-end book closing process for that fiscal year. If sufficient monies from the corporate income tax are not available to make any necessary upward adjustments as part of the year-end book closing, the state treasurer shall transfer the monies necessary to achieve the eighteen million dollar funding level from the transaction privilege and severance tax clearing account pursuant to section 42-5029, subsection D, paragraph 4, to the water quality assurance revolving fund. Any transfers prescribed by this subsection shall not be deducted from the net proceeds distributed pursuant to section 43-206.

C. At the beginning of each fiscal year, the director of environmental quality shall contract with the department of water resources for the transfer of up to eight hundred thousand dollars from the water quality assurance revolving fund to the Arizona water quality fund established by section 45-618 for support services for the water quality assurance revolving fund program. The support services provided for the water quality assurance revolving fund program shall be determined by the director of water resources in consultation with the director of environmental quality.

D. Monies in the fund are exempt from lapsing under section 35-190. Interest earned on monies in the fund shall be credited to the fund.

E. Monies from the water quality assurance revolving fund shall be used for the following purposes:

1. To provide state matching monies or to meet such other obligations as are prescribed by section 104 of CERCLA.

2. For all reasonable and necessary costs to implement this article, including:

(a) Taking remedial actions.

(b) Conducting investigations of an area to determine if a release or a threatened release of a hazardous substance exists.

(c) Conducting remedial investigations, feasibility studies, health effect studies and risk assessments.

(d) Identifying and investigating potentially responsible parties and allocating liability among the responsible parties.

(e) Funding orphan shares.

(f) Participating in the allocation process, administrative appeals and court actions.

(g) Funding the community advisory boards and other community involvement activities.

(h) Remediating pollutants if necessary to remediate a hazardous substance.

3. For the reasonable and necessary costs of monitoring, assessing, identifying, locating and evaluating the degradation, destruction, loss of or threat to the waters of the state resulting from a release of a hazardous substance to the environment.

4. For the reasonable and necessary costs of administering the fund.

5. For the reasonable and necessary costs of administering the industrial discharge registration program under section 49-209.

6. For the costs of the water quality monitoring program described in section 49-225.

7. For compliance monitoring, investigation and enforcement activities pertaining to generating, transporting, treating, storing and disposing of hazardous waste. The amount to be

used pursuant to chapter 5 of this title is limited to the amount received in the prior fiscal year from the hazardous waste facility registration fee.

8. For emergency response use as prescribed in section 49-282.02.

9. For all reasonable and necessary costs of the preparation and execution of prospective purchaser agreements.

10. For all reasonable and necessary costs of the voluntary remediation program.

11. To reimburse a political subdivision of this state for its reasonable, necessary and cost-effective remedial action costs incurred in response to a release or threat of a release of a hazardous substance or pollutants that presents an immediate and substantial endangerment to the public health or the environment. The political subdivision is not eligible for reimbursement until it has taken all reasonable efforts to obtain reimbursement from the responsible party and the federal government. No more than two hundred fifty thousand dollars may be spent from the fund for this purpose in any fiscal year.

12. For all reasonable and necessary costs incurred by the department pursuant to section 49-282.04 and the department of water resources pursuant to section 45-605 for well inspections, remedial actions and review and approval of well construction necessary to prevent vertical cross-contamination. The director of environmental quality and the director of water resources shall enter into an agreement for the transfer of these costs.

13. For actions that are taken pursuant to section 49-282.03 before the selection of a remedy.

14. For the reasonable and necessary costs of the conveyance, use or discharge of water remediated as part of a remedy under this article.

15. For the reasonable and necessary costs incurred by the department of health services at the request of the director of environmental quality to assess and evaluate the effect of a release or threatened release of hazardous substances to the public health or welfare and the environment. The director of environmental quality and the director of the department of health services shall enter into an agreement for the transfer of these costs. The assessment and evaluation by the department of health services may include:

(a) Performing health effect studies and risk assessments.

(b) Evaluating and calculating cleanup standards.

(c) Assisting in communicating health and risk issues to the public.

16. For the reasonable and necessary costs incurred by the department of law to provide legal services at the request of the director of environmental quality.

17. For the reasonable and necessary costs of contracting for the goods and services to enable the director to implement this article.

18. For remediation demonstration projects that use bioremediation or other alternative technologies. The department may not use more than five hundred thousand dollars in a fiscal year pursuant to this paragraph.

F. Any political subdivision of this state that uses, used or may use waters of the state for drinking water purposes or any state agency, regardless of whether the political subdivision or state agency is a responsible party, may apply to the director for monies from the fund to be used for remedial action. An application to the fund for remedial action costs shall not be treated as an admission that a political subdivision or an agency of the state is a responsible party, but a political subdivision or a state agency that is a responsible party is liable for remedial action costs in the same manner, including reimbursement of the fund, as any other responsible party. The political subdivision shall commit a local matching amount at least equal to the amount sought from the fund.

G. The director of environmental quality shall prepare and submit a budget for the water quality assurance revolving fund program and the director of water resources shall prepare and submit a budget for the Arizona water quality fund with the departments' budgets that are required

pursuant to section 35-111. The committees on appropriations of the house of representatives and the senate shall review the water quality assurance revolving fund budget and the Arizona water quality fund budget to ensure that the departments' expenditures are made in accordance with the legislature's intent and that the departments are making adequate progress toward accomplishing that intent.

49-282.01. Maximum annual payments of fees and taxes by mines to water quality assurance revolving fund; definitions

A. Notwithstanding any other law, a person engaging in mining is not required to pay fees and taxes listed in section 49-282, subsection A, paragraphs 2 through 9 in excess of the lesser of:

1. Ten thousand dollars in a calendar year per individual mining site.
2. Twenty-five thousand dollars in a calendar year per mining entity.

B. A person who pays such fees and taxes for mining facilities or activities in the amount specified in subsection A of this section may submit evidence of such payment to the appropriate entity in lieu of paying additional fees and taxes for that calendar year for mining facilities or activities.

C. If a mining facility or activity is owned or operated by more than one person, the payment of fees or the compliance with this section for the facility or activity by one person constitutes compliance by all other owners and operators.

D. For purposes of this section:

1. "Individual mining site" means a mining facility or activity or group of mining activities or facilities located in a contiguous geographical area and owned or operated by the same person.
2. "Mining" means the exploration, extraction, beneficiation and processing, including smelting and refining, of ores and minerals and all incidental activities.
3. "Mining entity" means a person who owns or operates more than one individual mining site in this state.

49-282.02. Water quality assurance revolving fund; emergency response use; definitions

A. Notwithstanding any other statute, monies from the water quality assurance revolving fund may be used for all reasonable costs incurred in remedial actions taken in response to a release or threat of a release of a hazardous substance or pollutant that presents an emergency to the public health or the environment. Within ten days of the date that the first remedial action costs are incurred, the director shall make a written determination that an emergency exists or that an emergency existed at the time the remedial action costs were incurred. A remedial action funded as an emergency response shall be completed within one year of the director's written determination that an emergency exists.

B. Any reasonable, necessary and cost-effective remedial action costs incurred by the director pursuant to this section in response to a release or a threat of a release of a hazardous substance that presents an imminent and substantial endangerment to the public health or the environment may be recovered in a civil action brought by the attorney general against any responsible party as prescribed by section 49-285, subsection A. This subsection does not preclude the department from initiating actions under other provisions of state or federal law. With respect to any reasonable, necessary and cost-effective remedial action costs incurred by the director pursuant to this section in responding to a release or a threat of a release of a pollutant, the attorney general may recover those costs in a civil action against a person only to the extent otherwise permitted by statute or the common law and not pursuant to this article.

C. For purposes of this section:

1. "Imminent and substantial endangerment to the public health or the environment" means, for purposes of cost recovery, an immediate and significant risk of harm to the public health or the environment as a result of a release of a hazardous substance.

2. "Remedial actions" means those actions necessary to prevent, minimize or mitigate significant damage to public health or the environment that may result from a release or a threat of release, based on an evaluation of the factors prescribed in 40 Code of Federal Regulations section 300.415(b)(2) as amended as of January 1, 1992. Remedial actions include those actions consistent with appropriate removal action prescribed by 40 Code of Federal Regulations section 300.415(d) as amended as of January 1, 1992.

49-282.03. Interim remedial actions; reimbursement of the fund; rules

A. On the request of any person, the director may take interim remedial actions to address the loss or reduction of available water from a well before the selection of a remedy, including making grants from the water quality assurance revolving fund to provide alternative water supplies, well replacement or water treatment if the director determines that both of the following apply:

1. The well currently supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is currently part of a public water system.

2. The well produces water or, in the reasonably foreseeable future, will produce water that is not fit for its current or reasonably foreseeable end use without treatment due to the release of hazardous substances at or from a site on the registry established pursuant to section 49-287.01, subsection D.

B. The interim remedial action taken by the director pursuant to subsection A of this section shall be the minimum necessary to address the loss or reduction of available water until a remedy is selected. The director, to the extent possible, shall consider potential remedies when selecting the interim remedial action pursuant to subsection A of this section. The interim remedial action shall not include the costs of reimbursement for costs already incurred. The director may choose not to take interim remedial action pursuant to subsection A of this section if the director has sufficient information to reasonably establish that the person requesting the remedial action may be responsible under this article for the release of hazardous substances contaminating the well. Notwithstanding this section, the director shall select remedies pursuant to section 49-287.04.

C. Notwithstanding subsection A of this section, if the director, in the record of decision, determines that the remedial action taken pursuant to subsection A of this section was not necessary, based on the criteria in section 49-282.06 and the rules adopted pursuant to that section, or if the person requesting the remedial action pursuant to subsection A of this section is later determined to be responsible under this article for the release of hazardous substances which contaminated or threatened to contaminate the well, that person shall reimburse the water quality assurance revolving fund for the costs incurred in taking the remedial action. The person requesting the interim remedial action shall make arrangements for financial assurance for the obligation to the satisfaction of the director. The attorney general shall file an action for reimbursement of costs pursuant to this section if requested by the director and may file an action on his own initiative.

D. The director shall adopt rules governing when interim remedial action may be taken pursuant to subsection A of this section.

49-282.04. Cross-contamination inspection; remedial measures

A. The director of environmental quality, in consultation with the director of water resources, may inspect wells for vertical cross-contamination of groundwater by hazardous substances and may take appropriate remedial actions to prevent or mitigate this cross-

contamination at no cost to the well owner, subject to subsection D of this section. The director shall consult with and seek the voluntary compliance of affected well owners regarding well access, investigations and remedial actions. On receiving permission from the well owner or operator, the director or the director's designee may enter property owned or operated by the well owner at reasonable times under any of the following circumstances:

1. To inspect and collect samples from a well and to inspect and copy all documents or records relating to the well. If a sample is obtained pursuant to this section, the director, before leaving the property, shall give to the well owner or operator a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of these samples shall be furnished promptly to the well owner.

2. To conduct appropriate remedial actions regarding vertical cross-contamination or to investigate liability regarding contamination of groundwater caused by vertical cross-contamination.

B. The director of environmental quality shall notify the director of water resources of the results of the inspection and shall provide copies of its records and documents and the analysis of any samples taken. If it is determined that a well results in vertical cross-contamination, the director of environmental quality, upon receiving permission from the well owner or operator, may take appropriate remedial action, including well modification, abandonment or replacement, or provision of a replacement water supply.

C. A well owner who is not a responsible party pursuant to this article and who cooperates with the investigation and remedial activities of the director and the department of water resources to the extent possible consistent with its water delivery responsibilities and system operational requirements shall receive a covenant not to sue for secondary contamination resulting from the well unless the well owner had actual knowledge of groundwater contamination and constructed a well in violation of well construction requirements administered by the director of water resources, resulting in vertical cross-contamination of an aquifer.

D. Notwithstanding subsection C of this section, if the director takes remedial action pursuant to subsection A of this section and the well owner or operator is later determined to be responsible under this article for a release of hazardous substances which contaminated the well, the well owner or operator responsible for the release shall reimburse the fund for the owner or operator's proportionate share of the costs incurred in taking the action.

E. This section shall not be construed to limit the director's authority to take actions as authorized by other provisions in this article or any other law.

49-282.05. Agreements for work; suspension of remedial action

A. The department may enter into an agreement with any person to perform work at a site on the site registry if the work will be conducted in accordance with the rules adopted pursuant to section 49-282.06. The terms and conditions of the agreement may include a suspension of any remedial action by the director at the site to the extent determined by the director to be appropriate. The suspension shall be specifically stated in the agreement or the approval of work under the agreement and shall continue as long as the person is in compliance with the agreement.

B. As a condition of an agreement under this section, the department may require the person conducting the work to reimburse the director for the reasonable and necessary costs incurred in reviewing and overseeing the work, including costs consisting of salaries and benefits paid to state employees and other direct and indirect costs. A person who reimburses the department for costs pursuant to this subsection may recover those costs in any action brought pursuant to section 49-285, subsection H.

49-282.06. Remedial action criteria; rules

A. Remedial actions shall:

1. Assure the protection of public health and welfare and the environment.

2. To the extent practicable, provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state.

3. Be reasonable, necessary, cost-effective and technically feasible.

B. The director shall adopt rules necessary to implement this article. The director may adopt CERCLA rules, guidelines or procedures by reference to the extent consistent with this article. Rules adopted pursuant to this subsection shall include rules for:

1. The use of monies from the fund, including establishing priorities for the use of the monies from the fund.

2. The scoring and rescoring of sites or portions of sites.

3. The criteria for a finding of no further action for sites pursuant to section 49-287.01.

4. The selection of remedial actions including the establishment of the level and extent of cleanup at a site or a portion of a site. The rules shall provide for the selection of a remedial action by comparison of alternative remedial actions, which may include no action, monitoring, source control, controlled migration, physical containment, plume remediation and the consideration of the criteria in subsection C of this section. The rules also shall provide that the selected remedial action meet the requirements of subsection A of this section and the following:

(a) For remediation of soil, the selected remedial action shall be consistent with the soil remediation standards adopted pursuant to section 49-152.

(b) For remediation of waters of the state, the selected remedial action shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances. The specific measures to address any such well shall not reduce the supply of water available to the owner of the well.

5. Incentives for initiating early remedial actions and implementing innovative remedial technologies.

C. In adopting the rules required by this section and in selecting remedial actions, the director shall consider the following factors:

1. Population, environmental and welfare concerns at risk.

2. Routes of exposure.

3. Amount, concentration, hazardous properties, environmental fate, such as the ability to bioaccumulate, persistence and probability of reaching the waters of the state, and the form of the substance present.

4. Physical factors affecting human and environmental exposure such as hydrogeology, climate and the extent of previous and expected migration.

5. The extent to which the amount of water available for beneficial use will be preserved by a particular type of remedial action.

6. The technical practicality and cost-effectiveness of alternative remedial actions applicable to a site.

7. The availability of other appropriate federal or state remedial action and enforcement mechanisms, including, to the extent consistent with this article, funding sources established under CERCLA, to respond to the release.

D. Notwithstanding this article, the director may approve a remedial action that may result in water quality exceeding water quality standards after the completion of the remedy if the director finds that the remedial action meets the requirements of this section.

E. The director's approval pursuant to this section does not affect the classification of an aquifer pursuant to section 49-224.

F. Remedial actions required by this article shall be consistent with the requirements of title 45, chapter 2, except as provided in section 49-290.01.

49-283. Responsible party liability exemptions; definitions

A. For purposes of imposing liability under this article, and except as provided in this section, a person is deemed the party responsible for the release or threatened release of a hazardous substance if the person:

1. Owned or operated the facility:

(a) When the hazardous substance was placed or came to be located in or on the facility.

(b) When the hazardous substance was located in or on the facility but before the release.

(c) During the time of the release or threatened release.

2. Owned or possessed the hazardous substance and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance.

3. Accepted for transport to a disposal or treatment facility waste that contained a hazardous substance and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

B. Notwithstanding the provisions of subsection A, a person that owns real property is not a responsible party if there is a release or threatened release of a hazardous substance from a facility in or on the property unless one or more of the following applies to that person:

1. Was engaged in the business of generating, transporting, storing, treating or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility.

2. Permitted any person to use the facility for disposal of a hazardous substance.

3. Knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title or interest in the property was first acquired by the person and engaged in conduct by which he associated himself with the release. For the purpose of this paragraph, a written warranty, representation or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility. For purposes of this paragraph, "associated himself with the release" means having actual knowledge of the release and taking action or failing to take action that the person is authorized to take and that increases the volume or toxicity of the hazardous substance that has been released.

4. Took action which significantly contributed to the release after he knew or reasonably should have known that a hazardous substance was located in or on the facility.

C. Any liability which accrues to an owner of real property under this section does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title or interest in the real property. An owner of real property on which a public utility easement is located is not a responsible party with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

D. A person otherwise deemed a responsible party is not liable under this article if he can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the resulting damages were caused solely by:

1. An act of God.

2. An act of war.

3. An act or omission of a third party, whether lawful or unlawful including acts of vandalism or unlawful disposal of hazardous waste or hazardous substances, other than an employee or agent of that person or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with that person, unless the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, if that person establishes by a preponderance of the evidence that:

(a) He exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances.

(b) He took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

4. A release or threatened release which was subject to limits or conditions in a federal permit or a state permit relating to the protection of public health or the environment and the operation of the releasing facility has been and is in compliance with applicable limits or conditions.

5. The application of a pesticide product registered under the federal insecticide, fungicide, and rodenticide act (61 Stat. 163) and applied according to label requirements.

6. Liability has been assumed by the federal postclosure liability fund established under 42 United States Code section 9607(k).

7. Any combination of paragraphs 1 through 6 of this subsection.

E. A person is not a responsible party with respect to a hazardous substance that is located on or beneath property that is owned or occupied by that person if the hazardous substance is present solely because it migrated from property that is not owned or occupied by that person and that person is not otherwise a responsible party as prescribed by subsection A, paragraph 2 or 3.

F. A person is not liable for costs or damages incurred solely as a result of an action taken or omitted while rendering care, assistance or advice that is consistent with rules adopted by the director, is consistent with the national contingency plan or is under the direction of an on-scene coordinator appointed pursuant to the national contingency plan and that is rendered with respect to a release or a threat of a release of a hazardous substance that creates a danger to public health or the environment. This subsection does not preclude liability for costs or damages that result from that person's negligence.

G. A state or local government and its employees or authorized representatives are not liable for costs or damages incurred as a result of an action taken in response to an emergency created by the release or threatened release of a hazardous substance that is generated by or from a facility owned by another person. This subsection does not preclude liability for costs or damages that result from gross negligence or intentional misconduct by this state or local government. For purposes of this subsection, reckless, willful or wanton misconduct constitutes gross negligence.

H. A person who maintains indicia of ownership in a property primarily to protect a security interest in a facility and who does not participate in the management of the facility is not liable as an owner or operator of that facility pursuant to this section. This subsection does not apply to a person who does any of the following:

1. Through intentional misconduct or gross negligence causes, contributes to or aggravates the release of a hazardous substance.

2. Fails to disclose to the facility's purchaser the known presence of a release or a threatened release of a hazardous substance at the time of sale or divestiture of the facility or the security interest in the facility.

3. Fails to obtain a phase I environmental assessment of the facility that complies with standards adopted by rule pursuant to subsection K of this section at the time of or at a reasonable time before foreclosure. This paragraph does not apply to residential properties with fewer than five residential units.

4. Fails to do any of the following after acquiring ownership of the facility:

(a) Provide the department reasonable access so that the necessary remedial actions may be conducted.

(b) Undertake reasonable steps to control access to the area of known presence of a release of a hazardous substance to protect the public health and welfare and the environment.

(c) Act diligently to sell or otherwise divest the property within two years of the lender's possession or ownership, whichever is earlier.

I. A fiduciary is not personally liable as an owner or operator pursuant to this section. This section does not preclude claims against assets held in an estate, a trust or other fiduciary capacity for the release or a threatened release of a hazardous substance from one of the assets. This section does not apply if either of the following apply:

1. A fiduciary through intentional misconduct or gross negligence causes, aggravates or contributes to the release or threatened release of hazardous substances or permits others to do so, except that a fiduciary shall not be liable for the intentional misconduct or gross negligence of any nonemployee agent or independent contractor if the fiduciary has not specifically directed the nonemployee agent or independent contractor to perform the grossly negligent act or engage in the intentional misconduct.

2. The appointment of the fiduciary is for the purpose of avoiding liability under this article. It is prima facie evidence that the fiduciary was appointed to avoid liability under this article if the facility is the only substantial asset in the fiduciary estate.

J. Subsections F, G, H and I shall not be construed to affect the liability of any person who is otherwise liable with respect to the release or threat of release pursuant to this section.

K. The director may adopt rules to implement subsections H and I.

L. A fiduciary may not be a fiduciary and grantor of the same fiduciary estate.

M. A unit of state or local government is not liable for purposes of this section if that unit is not liable under section 101(35)(A)(ii) or section 101(20)(D) of CERCLA.

N. Nonmanagerial employees acting within the course and scope of their employment are not liable under this article.

O. For purposes of this section:

1. "Fiduciary" means:

(a) A trust company or bank certified or authorized to engage in the trust business pursuant to title 6, chapter 8, article 1.

(b) Any person appointed by a court or testamentary act to act as personal representative, executor, trustee, administrator, guardian, conservator, receiver or trustee in bankruptcy.

(c) Any person acting as a trustee of a deed of trust pursuant to section 33-803.

(d) Any person acting as a trustee pursuant to title 14, chapter 7.

(e) Any person acting pursuant to and subject to fiduciary obligations under the employee retirement income security act of 1974 (29 United States Code sections 1101 through 1114).

2. "Indicia of ownership" means legal or equitable title that has been acquired through or is incident to the default of a borrower.

49-283.01. Remediated water; liability; definitions

A. A provider or user of remediated water is not liable for damages caused or contributed to by the use or distribution of the remediated water except on a showing of wilful, malicious or grossly negligent conduct that was the direct cause of the damages.

B. For purposes of this section:

1. "Damages" means compensation for death or injury to a person or claims for medical monitoring or injury that a person may suffer or property damage.

2. "Provider" means an owner or operator of a constructed water conveyance system for industrial, municipal or irrigation purposes.

3. "Remediated water" means water that is distributed, transported or used in connection with a CERCLA remediation or a remediation performed pursuant to this title including water that meets applicable state or federal standards.

4. "User" means an entity that accepts remediated water and uses that water for industrial, municipal, irrigation or agricultural purposes.

49-283.02. Petroleum liability

A release of petroleum or a constituent of petroleum, as defined in section 49-1001, that is a hazardous substance, as defined in section 49-201, shall be subject to the remedial and liability provisions of this article if the release is not otherwise subject to the corrective or remedial action provisions of section 49-1005, chapter 5 of this title or subchapter III of the federal act defined in section 49-921 (42 United States Code sections 6921 through 6939e), and the release has migrated in groundwater beyond the boundary of the property on which the release occurred.

49-284. Notice; reportable quantities; penalties

A. Notwithstanding any other requirement of state or federal law, any person who is the owner or operator of a facility shall, as soon as the person has knowledge of any release, other than a release in compliance with the limits or conditions in a federal or state permit, of a hazardous substance from such facility, immediately notify the director of the release if either:

1. The release is in a quantity equal to or greater than that which is required to be reported to the national response center under section 103 of CERCLA (42 United States Code section 9603).

2. The release is in a quantity equal to or greater than that determined pursuant to subsection B of this section and the release was not reported to the national response center before August 13, 1986.

B. The director shall, by rule, establish reportable quantities for those hazardous substances for which such quantities have not been established under section 102 of CERCLA (42 United States Code section 9602). The director may determine that one single quantity shall be the reportable quantity for that hazardous substance, regardless of the medium into which the hazardous substance is released.

C. Any person who fails to immediately notify the director as provided in subsection A of this section is subject to a civil penalty of not to exceed ten thousand dollars. The attorney general may, and at the request of the director shall, commence an action in superior court to recover civil penalties provided by this subsection. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement.

49-285. Liability for remedial actions costs; limitation of actions

A. Except as otherwise provided in section 49-283, a person who is a responsible party shall be strictly and severally liable for such reasonable, necessary and cost-effective expenditures for remedial actions as are incurred by this state, a political subdivision of this state or any other person in a manner consistent with the rules and procedures adopted under section 49-282.06, but not including nonrecoverable costs. A responsible party may be held liable for remedial action

costs for a release of a hazardous substance even though the conduct that resulted in the release or the release itself occurred before August 13, 1986.

B. In order to preserve any right to recover remedial action costs from responsible parties, remedial actions conducted by this state, a political subdivision of this state or any other person shall when evaluated as a whole be in substantial compliance with the rules and procedures adopted pursuant to section 49-282.06. The director's approval of a remedial action that is conducted by a person other than the state is not required to preserve any right to recover remedial action costs from potentially responsible parties. Any person other than the state who undertakes a remedial action may request that the director approve the remedial action as prescribed by rules adopted pursuant to section 49-282.06 at any time before, during or after the remedial action. The director's decision shall be in writing and shall specify the basis of the decision. Any remedial action so approved by the director shall be deemed to be in substantial compliance with the rules and procedures adopted pursuant to section 49-282.06. Any person who requests the director's approval of a remedial action shall reimburse the department for the total reasonable cost to the department for the review of the remedial action unless the director waives all or a part of the reimbursement. These monies shall be deposited in the water quality assurance revolving fund established by section 49-282. Costs that are reimbursed to the department by a party that obtains the director's approval of remedial actions pursuant to this subsection constitute remedial action costs that may be recovered from responsible parties.

C. Any person who is a defendant in an enforcement proceeding brought under section 49-287 may join in the action any other person who is or may be a responsible party.

D. Except as prescribed by section 49-283.01, this article does not affect or modify in any way the obligations or liability of any person, by reason of subrogation or otherwise, under any other provision of state or federal law, including common law, for damages, injury or loss resulting from a release of any hazardous substance or for remedial action costs, except that any person who receives compensation for remedial action costs pursuant to this article is precluded from recovering compensation for the same remedial action costs pursuant to any other federal or state law. Any person who receives compensation for remedial action costs pursuant to any other federal or state law is precluded from receiving compensation for the same remedial action costs as provided in this article.

E. In allocating several liability between two or more potentially responsible parties, the department, an allocator pursuant to section 49-287.06 or a court shall consider the following to determine each responsible party's allocated shares and the orphan shares:

1. The amount and concentration of each hazardous substance involved.

2. The degree of toxicity of each hazardous substance involved.

3. The degree of involvement by the responsible parties in the generation, transportation, treatment, storage or disposal of the hazardous substance.

F. After the allocated shares and the orphan shares are determined pursuant to subsection E of this section and reduced to writing, the department, an allocator or the court may consider the following factors to adjust the allocated shares of the responsible parties, except that any adjustment under this subsection shall not adjust the amount allocated to orphan shares:

1. The magnitude of the risk to human health or the environment caused by each hazardous substance involved.

2. The degree of cooperation by the responsible party with federal, state or local officials to prevent any harm to the public health or the environment.

3. Any other factors deemed relevant by the department, an allocator or the court in determining the liability of the parties under this section.

G. An action brought by a person other than the state to recover remedial action costs from a responsible party shall be brought within three years of the completion of the remedial action or

within six years of the initiation of on-site physical construction activities for the remediation, removal or disposal of hazardous substances, whichever is earlier.

H. In an action brought for recovery of remedial action costs incurred at a site not on the registry maintained pursuant to section 49-287.01 or that is brought pursuant to section 49-287.07, subsection A, paragraph 3, subdivision (a), (b) or (d), the court shall initially allocate costs among the responsible parties based on the factors listed in subsection E of this section. To the extent that the allocation results in costs being allocated to orphan shares, those costs shall be reallocated to the responsible parties based on such equitable factors as the court deems appropriate, including:

1. The factors listed in subsection F of this section.

2. Each responsible party's ability to pay.

3. The degree of care exercised by each responsible party with respect to the hazardous substance of concern and taking into account the characteristics of that substance.

49-285.01. Prospective purchaser agreements; assignment; notice; fees; rules

A. The department may provide, pursuant to section 49-292, to a prospective purchaser of a facility a written release and a covenant not to sue and may also agree to seek an order of the court granting approval of a settlement that includes immunity from contribution claims for any potential liability for existing contamination under this article or CERCLA if all of the following conditions are met:

1. The facility is within a site identified on the registry maintained by the department pursuant to section 49-287.01 or the department has been provided sufficient information to reasonably identify the extent of the contamination at the facility.

2. The person is not currently liable for an existing or threatened release of a hazardous substance at the facility.

3. The proposed redevelopment or reuse of the facility will not contribute to or exacerbate existing known contamination or unreasonably interfere with remedial measures necessary at the facility or cause the contamination to present a substantial health risk to the public.

4. The agreement will provide a substantial public benefit that may include any of the following:

(a) An agreement by the prospective purchaser to provide substantial funding or other resources to perform or facilitate remedial measures at the facility pursuant to this chapter.

(b) An agreement by the prospective purchaser to perform substantial remedial measures at the facility pursuant to this chapter.

(c) Productive reuse of a vacant or abandoned industrial or commercial facility.

(d) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose.

(e) Creation of conservation or recreation areas.

5. The department consults with local planning and zoning authorities with jurisdiction over the facility and considers reasonably anticipated future land uses at the facility and surrounding properties.

B. If the prospective purchaser of a facility is affiliated with any other person who is a party responsible for the release or threatened release of a hazardous substance under this chapter, through any familial relationship or any corporate or contractual relationship other than a contract to protect a security interest, the director may refuse to provide a written release or covenant not to sue or may refuse to seek an order of the court granting immunity from contribution claims under this section.

C. An agreement between the department and a prospective purchaser shall include provisions deemed necessary by the department and may include:

1. A representation by the prospective purchaser that the purchaser did not cause or contribute to the contamination or otherwise cause or contribute to a release or threatened release of a hazardous substance at the property before the purchaser acquired title.

2. If the prospective purchaser does not undertake remedial action, a representation that the purchaser will not exacerbate or contribute to the existing contamination.

3. An agreement that any activity that the prospective purchaser may conduct or direct on the contaminated property will not unreasonably interfere with any ongoing remedial actions that are being performed by a responsible party or the department and that the purchaser will cooperate with those activities.

4. An agreement to undertake those measures that constitute a public benefit as prescribed by subsection A, paragraph 4 of this section.

5. If remedial measures are to be performed under the agreement, an agreement to perform those measures in compliance with the applicable statutes and rules, including sections 49-151 and 49-152, and if pursuant to a consent judgment, under the department's supervision.

6. Unless the contamination was caused by this state, a waiver by the person of any claim or cause of action against this state that arises from contamination at the facility that exists as of the date of acquisition of ownership or operation of the facility.

7. A grant of an easement to the department and its authorized representatives for purposes of ensuring compliance with the agreement or for remedial measures authorized pursuant to this article in connection with contamination at the facility as of the date of acquisition of ownership or operation of the facility.

8. A reservation of rights as to any person who is not a party to the agreement.

9. The legal description of the property.

10. In any case in which the state conducts remedial actions and there are unrecovered response costs at a property for which the prospective purchaser is not liable, the state as a condition of the agreement may impose a lien upon that property for the unrecovered costs. The priority of the lien is as of the date the lien is recorded in the county where the property is located. The lien becomes due on the sale, assignment or transfer of the property by the prospective purchaser unless the new purchaser, assignee or transferor accepts and assumes the lien as a personal obligation with the department's prior written agreement.

D. Subject to satisfactory performance of the obligations under the agreement, the prospective purchaser is not liable to this state under this article for any release of a hazardous substance at the facility that exists on the date of acquisition of ownership or operation of the facility. The person shall bear the burden of proving that any hazardous substance existed on the facility as a result of releases of the hazardous substance before the date of acquisition of ownership or operation of the facility. This release from liability may be voided by the director if the person fails to perform any of the provisions of the prospective purchaser agreement.

E. The purchaser shall provide written notice to the department of any sale, assignment or other transfer of the property at least fifteen business days before the date of the transfer.

F. An agreement pursuant to this section is assignable if the assignee qualifies pursuant to subsections A and B of this section for a prospective purchaser agreement under this section and notice is given to the department as prescribed by subsection E of this section. On assignment, the assignee assumes the obligations and the benefits of the agreement. Unless the assignor has breached the agreement, the assignor retains the benefits of the agreement.

G. The department shall provide notice of a prospective purchaser agreement by publication in a newspaper of general circulation in the county in which the property is located at least fifteen business days before the execution of a prospective purchaser agreement. The notice shall include a general description of the contents of the agreement. Any interested person may comment on the proposed agreement in writing to the director.

H. The department may charge a reasonable fee for the preparation and execution of a prospective purchaser agreement. The director may adopt rules to implement this section.

49-286. Mitigation of non-hazardous releases

A. If the director determines that a drinking water source is being or is about to be rendered unusable without treatment as a drinking water source by a non-hazardous substance that was disposed by a person that would be a responsible party under section 49-283 if the substance were a hazardous substance, the director may order that person to perform one or more of the following mitigation measures:

1. Providing an alternative water supply.
2. Mixing or blending if economically practicable.
3. Economically and technically practicable treatment before ingesting the water.
4. Such other mutually agreeable mitigation measures as are necessary to achieve the purposes of this section.

B. The director's selection of mitigation measures shall balance the short-term and long-term public benefits of mitigation with the cost of each alternative measure. The director may only require the least costly alternative if more than one alternative may render water usable as a drinking water source.

C. A mitigation order issued under this section is enforceable under sections 49-261 and 49-264.

49-287. Enforcement; use of fund; inspections and information gathering; civil penalties

A. Except as provided in section 49-286, the provisions of this article are independent of and are not subject to the enforcement remedies of article 4 of this chapter and section 49-264.

B. This section does not preclude the director from initiating actions pursuant to section 505 of the clean water act and section 1449 of the safe drinking water act. The director shall not initiate any action under section 107(a) or 107(f) of CERCLA or section 7002 of the resource conservation and recovery act to the extent that the action is inconsistent with this article, except under any of the following circumstances:

1. In an action initiated by the director filing a complaint contemporaneously with a consent decree or any other agreement to provide contribution protection or a covenant not to sue under CERCLA.
2. In an action involving a facility at a site listed on the national priorities list on April 29, 1997. In an action involving a facility at a site on the national priorities list that is listed after April 29, 1997 the director may initiate an action if the facility is not being remediated pursuant to this article or any other provision of this title.
3. In a counterclaim action when the state is sued under section 107 (a) of CERCLA, but only against the party asserting the claim. For purposes of this paragraph, "state" does not include political subdivisions of the state.

C. The director may initiate an action to recover natural resource damages under section 107(f) of CERCLA but may recover only the proportionate share of these damages from a defendant who is also a responsible party under this article.

D. Judicial actions initiated pursuant to this section have precedence over all other civil proceedings.

E. If there is a release or the threat of a release of a hazardous substance which may present an imminent and substantial danger to the public health or welfare or the environment:

1. The director may take such remedial action as he deems necessary to protect the public health or welfare or the environment.

2. The attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health or welfare or the environment from the release.

3. The director may issue an order requiring abatement of such release or threat of a release and appropriate remedial action if the action is consistent with the criteria listed in and rules adopted pursuant to section 49-282.06 and before taking such action the director provides written notice to the responsible party, if known, and the owner of the real property where the facility is located if the owner is not a responsible party. The notice shall include:

(a) The reasons for the remedial action.

(b) A reasonable time for beginning and completing the actions, taking into account the urgency of the actions for protecting public health or welfare or the environment.

(c) The steps taken to comply with the criteria listed in and rules adopted pursuant to section 49-282.06.

(d) The intention of this state or a political subdivision to take remedial action and the possible liability of the responsible party for the costs of such actions if that action is not taken by the responsible party.

4. The director may take action pursuant to sections 49-287.01 through 49-287.07, or enter into a settlement under section 49-292 or any other applicable provision of this article. Actions taken by the director pursuant to sections 49-287.01 through 49-287.07 may substantially affect the rights and obligations of persons who may be liable under this article for the release or threatened release of a hazardous substance at a site or portion of a site for purposes of determining insurance coverage. Any action taken by the director pursuant to sections 49-287.01 through 49-287.07 is not appealable unless otherwise provided in this article.

F. A remedial action order issued under subsection E of this section becomes final and enforceable in the superior court for purposes of subsections I and J of this section unless, within thirty days after the receipt of the order, the recipient moves to quash or modify the order in the superior court. If the motion to quash or modify the order raises issues of fact, the recipient of the order and the state are entitled to conduct expedited discovery on application to the court and are entitled to a priority for trial. A party who undertakes the actions prescribed in a remedial action order issued pursuant to this section may obtain a court order to recover from the fund the reasonable and necessary costs of the actions if the party demonstrates to the court that the actions required by the order were arbitrary and capricious or otherwise were not in accordance with law, that the party is not a responsible party as prescribed by section 49-283 or for the amount of costs incurred that exceeded the party's share of liability pursuant to section 49-285.

G. If there is a release or the threat of a release of any pollutant which may present an imminent and substantial danger to the public health or welfare, the director may take such remedial action as he deems necessary to protect the public health or welfare or the environment.

H. Any remedial action costs, other than nonrecoverable costs, incurred by the director pursuant to the procedures in subsection E of this section may be recovered in a civil action brought by the attorney general against any responsible party pursuant to section 49-287.07.

I. A responsible party who wilfully violates or fails or refuses to comply with any order of the director under subsection E, paragraph 3 of this section may, in an action brought in the superior court in the appropriate county to enforce such order, be assessed a civil penalty of not more than five thousand dollars for each day in which the violation occurs or the failure to comply continues. All civil penalties assessed pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

J. A responsible party who fails, without sufficient cause, to properly provide remedial action on order of the director pursuant to subsection E, paragraph 3 of this section may be liable to this state for punitive damages in an amount up to three times the amount of any costs incurred by the director as a result of the failure to take proper action. The attorney general may commence a

civil action against the responsible party to recover the remedial action costs and the punitive damages. Any punitive damages received by this state pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The director's failure to comply with the requirements of section 49-282.06 or the director's order to take a remedial action that causes the responsible party to incur costs that exceed the responsible party's proportionate share of liability pursuant to section 49-285 is a defense to an action for punitive damages and the amount of the punitive damages requested may be reduced, in full or in part.

K. If the director may act pursuant to this section, he may undertake such investigations, monitoring, surveys, testing and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat of a release, the source and nature of the hazardous substances and the extent of danger to the public health or welfare or to the environment. In addition, the director may undertake such planning, legal, fiscal, economic, engineering, architectural and other studies or investigations as he may deem necessary or appropriate to plan and direct remedial actions, to recover the costs of remedial actions, other than nonrecoverable costs, and to enforce this article.

49-287.01. Investigation scoring and site registry; no further action

A. When information of a possible release or threatened release of a hazardous substance is received, the director may conduct a preliminary investigation to obtain additional information necessary to determine the potential risk to the public health or welfare or the environment in order to score the site or portion of the site and include it on the site registry. By written agreement, the director may allow any person to conduct any portion of the preliminary investigation.

B. After completing the preliminary investigation or at any time during the preliminary investigation, the director may suspend or terminate an investigation or determine that no further investigation or action is necessary. The director may reopen the preliminary investigation on a determination that the release or threatened release continues to present an imminent and substantial threat to the public health or welfare or the environment. If a preliminary investigation is completed, the director shall prepare a draft of the site registry report required under subsection D of this section. If the director drafts a site registry report pursuant to this section, the report shall contain a description of the site or portion of the site, including its geographical boundaries, and a score in accordance with the site scoring method established in rules adopted by the director.

C. Before finalizing the report and the score, the director shall furnish a copy to the current owners and operators of the site or portion of the site, if known, and shall provide fifteen days for review and comment. The director shall then place a copy in the public file and shall publish the score in a newspaper of general circulation within the county in which the site is located. The director shall provide thirty days for comment and shall consider any comments before issuing the final report and score.

D. The director shall maintain a registry of scored sites or portions of sites that includes a brief description of the site or portion of the site, its score and a brief description of the status of investigative and remedial actions. The scoring of a site or portion of the site, its relative score or its placement on the registry does not necessarily represent a determination that the release of a hazardous substance from the site poses a threat to human health or welfare or the environment. Prior to approving any remedy that may result in water quality exceeding water quality standards after completion of the remedy, the director shall place a notice in the registry established pursuant to this subsection that the remedy may result in water quality exceeding water quality standards.

E. New scores shall be added to the registry as soon as practicable. The registry shall be published annually by the secretary of state in the Arizona administrative register. The department shall also publish notice of the availability of the registry in a newspaper of general statewide circulation.

F. Any person may request that the director make a determination that a site or portion of a site requires no further action or should be rescored. The request shall include information, including the specific hazardous substances released at or from the site or portion of the site, and a geographical description of the site or portion of the site sufficient for a determination by the director regarding the requested action. The director may request additional information from the requesting party within ninety days after receiving the party's request, and the director shall provide the reasons for requesting the additional information. The person making the request shall submit the additional information within sixty days after receiving the director's request for additional information. Within thirty days of receipt of the additional information, the director shall notify the requesting party if the additional information is complete. The submission of incomplete information may result in a denial of the no further action request. The parties may agree in writing to additional time for responses. In addition to requesting information, the director or the director's authorized representative may conduct an investigation of the site or portion of the site and shall be given access to the portion of the site under the control of the requestor. The director or the director's authorized representative shall be allowed access to the site as a requirement for making a no further action request. The director shall deny a request for a no further action determination if access to the site is not provided. A request pursuant to this subsection may only be made once per calendar year. After determining that the information submitted is sufficient for action on the request, the director shall publish notice of the request for rescoring or determination of no further action on a site or portion of the site and shall provide thirty days for public comment. Based on the information and comments received, and within sixty days after the close of the public comment period, unless extended by the director for good cause, the director shall determine whether the score should be changed or a determination of no further action should be made and shall give notice of that decision to the person who made the request and any persons who provided comment. The director shall make a final decision on a no further action or rescoring request within three hundred days after receiving the request unless the time is extended in writing by the parties. The director's decision shall contain the factual, technical and legal grounds for the decision. Any changes to a score or determinations of no further action shall be published in the registry.

G. A determination of no further action shall be made if the director finds that the site or portion of the site does not present a significant risk to the public health or welfare or the environment. The director's determination on a no further action request shall be based on the rules adopted by the department pursuant to section 49-282.06. A determination of no further action shall state whether it is for soils or the groundwater, or both. A determination of no further action regarding a site or a portion of the site means that the department shall not proceed with or require further remedial action under this article for the specific hazardous substances within the geographical area covered by the determination, provided that the determination of no further action does not preclude the director from obtaining access to the area covered by the determination under this article or any other law. The department may reopen an investigation and take or require remedial action for any of the following reasons:

1. On discovery of new information that, based on the rules adopted by the department pursuant to section 49-282.06, would result in the potential denial of a no further action request.

2. That information submitted to the director pursuant to subsection F of this section was inaccurate, misleading or incomplete.

3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threat of a release of a hazardous substance that may present an imminent and substantial danger to the public health or welfare or the environment.

H. The director's decision under subsection F of this section may be appealed pursuant to section 49-298, subsection B by the person who made the request or any party who will be adversely affected by the action and who submitted comments. A person who has previously filed

an administrative appeal under this subsection or any provision of law in effect on or after April 29, 1997 concerning previous investigations by the director that resulted in the director's decision being upheld bears the burden of proving by clear and convincing evidence that the director's action that is being appealed was unsupported by the evidence in any further administrative appeals involving the same site or portion of the site and shall pay the director's cost of reviewing the request and the director's attorney fees and costs incurred in the appeal if the director's decision is upheld.

I. If the director determines that remediation of a site or a portion of a site will be addressed pursuant to a provision of this title other than this article, the director may suspend any further investigation or action under this article. If the site or portion of a site is listed on the registry, the suspension shall be reflected on the registry.

J. If a site has been placed on the registry and the director determines that remediation of a site or a portion of a site will be addressed pursuant to a provision of this title other than this article, the director may remove the site from the registry.

K. If the director determines that a site on the registry does not require further remedial action under this article, the director may remove the site from the registry.

L. The director shall maintain a list of sites removed from the registry. This list shall be available to the public.

M. A site that has been removed from the registry may be reopened and remedial action taken or required for any of the following reasons:

1. On discovery of new information that, based on the rules adopted by the department pursuant to section 49-282.06, would result in the potential denial of a no further action request.

2. Information submitted to the director pursuant to this section is inaccurate, misleading or incomplete.

3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threatened release of a hazardous substance that may present an imminent and substantial danger to the public health or welfare or the environment.

49-287.02. Responsible party search

A. If the director determines that a remedial investigation at a site or portion of the site may be necessary and the director determines that cost recovery may be appropriate, the department shall conduct an investigation to identify any person who may be liable under this article. The department shall use its best efforts to identify all persons who may be liable under this article for the release or threatened release at the site or portion of the site.

B. During the investigation, any person may provide the director with information regarding the identification and potential liability of any person or regarding any facility within the site from which a release of a hazardous substance may have occurred. If the director receives sufficient information, the director shall investigate the facts relating to the person's potential liability, including its share of liability under this article, without regard to the financial ability of the person. If the director receives sufficient information regarding a release of a hazardous substance from a facility within the site to indicate that it has contributed to contaminants of concern at the site or portion of the site being investigated pursuant to this section, the director shall investigate the release of the hazardous substance and the potential liability of persons under this article. If the director declines to investigate a person or facility, the director shall notify the person who provided the information of the director's decision not to investigate.

C. If the director declines to investigate a person or facility, any person who conducts an investigation and provides the results of the investigation to the director shall receive a credit for the reasonable and necessary cost of the investigation as an offset against any liability to the fund or to the state under this article if the investigation results in a settlement or a finding by the

director, the allocator or the court that this additional identified person is liable under this article with respect to the site or portion of the site being investigated pursuant to this section.

49-287.03. Remedial investigation and feasibility study

A. The department may conduct a remedial investigation and feasibility study of a scored site or portion of the site to assess conditions on the site or portion of the site and to evaluate alternative potential remedies to the extent necessary to select a final remedy in a manner consistent with the rules and procedures adopted pursuant to section 49-282.06.

B. Unless the director determines that the necessary remedial action can be completed within one hundred eighty days, before the department begins a remedial investigation and feasibility study for a site or a portion of a site, the department shall prepare a scope of work, a fact sheet and an outline of a community involvement plan. The scope of work shall generally describe the proposed scope of the remedial investigation and feasibility study. The outline of the community involvement plan shall address all of the elements of the community involvement plan requirements of section 49-289.03.

C. The department shall provide written notice to each person who, according to information available to the department, may be liable under this article that the scope of work is available for inspection and that any person by agreement with the department may develop and implement a work plan for the remedial investigation and the feasibility study. The department shall publish in a newspaper of general circulation in the county where the site is located a notice of the availability of the scope of work, fact sheet and outline of a community involvement plan for public comment. The notice shall provide an opportunity for a public meeting.

D. The department shall prepare a responsiveness summary before implementing the scope of work. Before the director implements a remedial investigation, unless the director determines that the necessary remedial action can be completed within one hundred eighty days, the department shall prepare and implement the community involvement plan based upon the outline and after considering the public comments, consistent with the requirements of section 49-289.03. The department shall update the community involvement plan at least every two years.

E. The remedial investigation shall collect the data necessary to adequately characterize the site or the portion of the site for the purpose of developing and evaluating effective remediation alternatives pursuant to the feasibility study requirements prescribed by subsection F of this section.

F. The feasibility study shall be fully integrated with the results of the remedial investigation and shall include an alternative screening step to select a reasonable number of alternatives in a manner consistent with the rules and procedures adopted pursuant to section 49-282.06.

49-287.04. Proposed remedial action plan; preliminary list of responsible parties; opportunity to comment; record of decision; appeal

A. After evaluating the site or portion of a site under section 49-287.03, the director shall prepare a proposed remedial action plan that describes all of the following:

1. The boundaries of the site or portion of the site that is the subject of the remedial action.
2. The results of the remedial investigation and feasibility study.
3. The proposed remedy and its estimated costs.
4. How the remediation goals and selection factors in section 49-282.06 and rules adopted by the director have been considered.

B. The director shall issue notice of the proposed remedial action plan pursuant to the community involvement plan. The notice shall:

1. Describe the proposed remedy and its estimated cost.

2. Identify where the proposed remedial action plan and remedial investigation and feasibility study report may be inspected.

3. Advise the public of the opportunity to provide comments on the proposed remedial action plan and the closing date for those comments.

C. A copy of the proposed remedial action plan shall also be sent to each person on the preliminary list of potentially responsible parties with a notice that includes the information required in subsection B of this section and that also shall:

1. Notify the recipients of the opportunity to propose alternative methods of allocation of liability among responsible parties.

2. Provide a preliminary list of potentially responsible parties and summarize the basis for each party's liability if the director determines that cost recovery may be appropriate.

3. Advise the recipient that all information known to the recipient regarding a person who may be liable under this article and any facility within the site from which a release of a hazardous substance may have occurred must be provided to the department within a reasonable period of time set by the department, but not less than sixty days. Failure to comply with this subsection precludes a person from introducing the evidence in an allocation hearing pursuant to section 49-287.06, and in an action brought pursuant to section 49-287.07, except as otherwise prescribed by those sections.

D. Within ninety days after the end of the public comment period, if the department has received sufficient information pursuant to section 49-287.02, subsection B identifying additional persons who may be responsible under this article or facilities where a release of a hazardous substance may have occurred, the director shall investigate that person or facility within the site as provided in section 49-287.02, subsection A or shall decline to investigate and shall notify the person providing the information in writing of the director's decision.

E. If, on the basis of new information or its investigation, the department believes there is sufficient evidence that an identified person is a responsible party under this article, the department shall provide the notice and proposed remedial action plan required by subsection C of this section to that party and a revised list of potentially responsible parties to the parties originally identified in the proposed remedial action plan. A newly identified potentially responsible party shall have the same opportunity for comment and the submission of information including information concerning additional responsible parties or releasing facilities as provided to the originally identified responsible parties under this section. If as a result of the submission of information by subsequently identified responsible parties or its own investigation the department believes that there are additional responsible parties, it shall provide the notice required by this subsection to those parties and the previously identified responsible parties and shall comply with the other procedures prescribed by this section.

F. After the conclusion of all public comment periods prescribed by this section, the director shall prepare a comprehensive responsiveness summary. The director shall prepare the record of decision regarding the remedial action plan.

G. The director shall serve written notice that a record of decision has been signed upon each person who submitted written comments on the proposed remedy selection and all persons identified as potentially responsible parties. A notice shall be published pursuant to the community involvement plan informing the public that the record of decision and comprehensive responsiveness summary have been prepared and are available for review.

H. A record of decision signed by the director is deemed to be a final administrative decision as defined in section 41-1092 as of the date it is served pursuant to subsection G of this section. There is no right to an administrative appeal, review or rehearing by the director on the record of decision. Any person who will be adversely affected by the record of decision and who commented on the proposed remedial action plan pursuant to this section may seek judicial review of the record of decision by filing a complaint in superior court pursuant to section 12-904,

subsection A. The plaintiff shall serve the notice required by section 12-904, subsection B on the director.

I. If a complaint is filed pursuant to subsection H of this section, the court action is stayed and no answer is required until twenty days after one of the following events occurs:

1. Ninety days after notice of the allocator's report is served pursuant to section 49-287.06, subsection G.

2. Notice that no allocation hearing will be held is served pursuant to section 49-287.06, subsection A.

3. Notice of termination of an allocation hearing is served pursuant to section 49-287.06, subsection I.

4. The director moves that the stay should be lifted and the court grants the motion.

J. If a complaint is filed pursuant to subsection H of this section, the director shall serve any notice required by section 49-287.06, subsection A, E or G on each person who commented on the proposed remedial action plan.

K. The director shall notify all parties to an appeal if the director intends to implement the remedy before the stay under subsection I of this section is lifted. If the director gives this notice, the stay of the action pursuant to subsection I of this section does not preclude any party from seeking a preliminary injunction against the director from implementing the remedy.

L. On termination of the stay of an action pursuant to subsection I of this section, the director shall transmit the record to the superior court. The record shall consist of the proposed remedial action plan, copies of all written comments on the proposed remedial action plan, the comprehensive responsiveness summary and the record of decision. Judicial review shall be pursuant to title 12, chapter 7, article 6. If an evidentiary hearing is held pursuant to section 12-910, subsection A, then notwithstanding section 12-910, subsection B, no evidence may be admitted by the court unless it supports a specific comment made before the conclusion of the public comment period pursuant to this section by the party seeking to introduce the evidence. Section 12-910, subsection C does not apply to the appeal.

49-287.05. Notice of liability allocation; eligibility

A. After signing the record of decision, if the director determines that cost recovery may be appropriate, the director shall notify each person that has been determined to be liable under this article of the following:

1. The boundaries of the site or portion of the site that is the subject of the notice.

2. The basis on which the director has determined the person to be a responsible party.

3. The names and addresses of all other persons who the director has determined to be responsible parties.

4. The method of allocation chosen by the director, the reason it was chosen and the percentage share of remedial action costs for which the department has determined each person to be liable, which shall total one hundred per cent. For each person's share, the department shall state the reasons for the consideration given to the factors of section 49-285, subsections E and F.

5. The record of decision selecting the remedial action and the estimated cost of the remedy. A copy of the record of decision and comprehensive responsiveness summary shall be included. The record of decision shall demonstrate that the requirements of section 49-282.06 were considered.

6. A list of all remedial action costs, other than nonrecoverable costs, incurred by the director at the site that is the subject of the notice.

7. A list of costs of approved remedial actions, other than nonrecoverable costs, incurred by the state or an eligible party at the site that is the subject of the notice.

8. A statement of the person's right to an allocation hearing pursuant to section 49-287.06 and the availability of a settlement pursuant to section 49-292, 49-292.01 or 49-292.02.

9. An offer to settle the person's liability pursuant to this article and CERCLA with respect to the site or portion of the site if the person agrees to pay seventy-five per cent of the share of remedial action costs allocated to the person by the department. If the settlement allows payment over time or satisfaction by performance of future work, the settlement shall be conditioned on the person making a substantial down payment and providing financial assurance that it can meet its obligations to satisfy the remainder of its share under the agreement. Each settlement shall be conditioned on cooperating with the department with respect to further proceedings under this article including providing access to its property for the remedial action and complying with section 49-288 except that the person may reserve the right to challenge the remedy selection. The department's offer to settle expires unless the written acceptance is received by the director within one hundred twenty days after service of notice on the person pursuant to this subsection. Any person who has been penalized under section 49-288, subsection G is not eligible to obtain a settlement under this paragraph. Settlements under this paragraph are voidable at the director's discretion if the settling party institutes an action to recover remedial action costs or response costs incurred at the subject site or facility before the time specified under section 49-287.07, subsection B.

B. If a person cannot be notified of the department's determination pursuant to this section because it no longer exists or cannot be found after reasonable efforts by the department, the department is relieved of its obligation to notify that person.

C. If a person accepts the department's offer to settle pursuant to this section within the time allowed, the department shall enter into a settlement with the person pursuant to section 49-292. The settlement shall include a covenant by the state not to sue under this article or CERCLA and, at the option of the person and subject to court approval, protection from contribution actions under this article and CERCLA. The department may revoke the settlement if the person and the department are unable to agree to reasonable terms and conditions of settlement within ninety days after the offer is accepted.

49-287.06. Allocation hearing

A. Ninety days after the issuance of notice pursuant to section 49-287.05, subsection A, the director shall issue a notice to each person who has not settled its liability with the department of the start of an allocation proceeding. The director shall propose the names of at least three allocators taken from a list maintained by the director. The director shall be entitled to be represented in the allocation proceeding but may waive this right. If all parties have settled, the director's notice shall advise all persons notified pursuant to section 49-287.05 that no allocation hearing will be held pursuant to this section.

B. Within fifteen days of receipt, each person receiving the notice of allocation proceeding shall respond to the director regarding the acceptability of any of the allocators on the director's list. If all of the parties cannot agree on one of the allocators proposed by the director, each party may provide the names of up to three other proposed allocators. If the director and all of the parties cannot agree on a proposed allocator within thirty days after the issuance of the director's notice pursuant to this section, the director shall request the presiding civil judge of the superior court in the county where the site is located to select an allocator. Within thirty days after the request, the presiding civil judge shall select an allocator and advise the director of the selection.

C. The director shall give all parties written notice of the selection of the allocator. The allocator shall set the date for hearing at least sixty and not more than one hundred twenty days after the date of the notice of selection of the allocator pursuant to this section. The allocator may continue the date of the hearing for good cause. Ex parte contact with the allocator regarding any of the evidence or issues in the allocation is prohibited.

D. The allocator shall conduct an allocation hearing and, on request of one or more of the parties, may conduct a mediation or settlement conference before the allocation hearing. The allocator has the power to administer oaths or affirmations to witnesses. In conducting the allocation hearing, the allocator has discretion to determine the procedures to be followed, except that:

1. Each party shall provide the allocator, the director and all parties with a disclosure statement at least thirty days before the date of the first scheduled hearing. The disclosure statement shall comply with rule 26.1, Arizona rules of civil procedure, and shall include a statement of the method of allocation proposed, a description of evidence supporting the factors listed in section 49-285, subsections E and F intended to be presented at the hearing and a description of any other relevant evidence known to the party, including information regarding the responsibility of any other person. Copies of any documentary evidence shall be included with the disclosure statement unless already in the department's public file on the site or a disclosure statement previously filed pursuant to this paragraph. Evidence that is not disclosed in a party's disclosure statement is inadmissible by that party at the hearing. Evidence that a party failed to provide the director pursuant to a request under section 49-288 is inadmissible by that party at the hearing. The liability allocation notice issued by the director pursuant to section 49-287.05, subsection A and the public record on file at the department may serve as the disclosure statement of the director and any persons who have settled their liability with the director. The director may supplement the liability allocation notice up to thirty days prior to the first scheduled hearing date. The allocator shall resolve disputes regarding the adequacy of disclosure statements.

2. The director has the burden of proving that all other parties are responsible parties under this article. The allocator shall allow each party to present evidence relevant to the liability and proportionate share of liability of any person, except as provided in paragraphs 8 and 9 of this subsection. There is no burden of proof as to the proportionate share of any person. The allocator shall hear all of the evidence and assign the proportionate shares in accordance with the considerations as specified in section 49-285, subsections E and F.

3. The allocator shall allow each party to cross-examine any other party's witnesses, except that the allocator may limit cross-examination to avoid needless delay or a needless presentation of cumulative evidence or to expedite the hearing.

4. The allocator may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil actions. Service of the subpoena is the responsibility of the person requesting the subpoena. Discovery shall not be permitted except on a showing of good cause and due diligence as determined by the allocator.

5. The allocator may request any additional information from any party if the allocator believes that this information is necessary to assist in making a determination regarding liability or the share of any person.

6. If, during the hearing or at its conclusion, the allocator believes that additional information is necessary to issue a report, the allocator may order the parties to exchange additional information and submit posthearing evidence for a period of not more than sixty days.

7. The allocator shall use the Arizona rules of civil procedure as guidance for hearing procedures, but may depart from these rules as prompt and fair resolution of the issues demand, and shall honor all privileges recognized under Arizona law. The allocator may allow any relevant evidence, including hearsay evidence, to be admitted and shall give appropriate weight to all of the evidence. The allocator may impose time limits on individual presentations and may require the consolidation of presentations or cross-examination if this consolidation can be justified by commonality of interests. The disclosure statements and the liability allocation notice sent by the

director pursuant to section 49-287.05 shall be admitted as evidence. The proceeding shall be recorded by a court reporter upon request by any party who agrees to pay the costs.

8. Except on a showing of good cause and due diligence as determined by the allocator, a party may not allege that a person is responsible for a share of liability unless that person was named in the director's list of liable persons issued pursuant to section 49-287.05 or was identified as a potentially liable person pursuant to section 49-287.04.

9. A party may not introduce evidence at the hearing regarding the liability or share of liability of any person under this article unless the director was notified of the existence of the information pursuant to section 49-287.04. The allocator may allow the introduction of that evidence if the party acquired the information after that time and if the party shows good cause and due diligence as determined by the allocator, if the party provided the evidence to the director promptly after it was acquired.

E. Within sixty days after the hearing or, if applicable, the end of the period for submitting posthearing evidence, the allocator shall issue a written allocation report identifying the persons who are liable and the proportionate share of liability of each person in accordance with section 49-285, subsections E and F in percentages adding up to one hundred per cent. The allocator shall send a copy of the report to each party.

F. All parties to the allocation shall bear an equal share of the allocator's fees and costs, which shall be specified in the allocator's report.

G. The director shall serve notice of the issuance of the allocator's report on all persons notified pursuant to subsection A of this section and on the persons who filed an appeal of the record of decision pursuant to section 49-287.04. The notice shall state that there shall be a period of ninety days after service of the notice for settlement discussions, that the allocator's findings are final unless a challenge is filed pursuant to section 49-287.07 and the period for challenging the allocator's findings as provided in section 49-287.07, subsection B.

H. The findings regarding liability and the proportionate share of liability for each person as set forth in the allocator's report are final unless a timely challenge regarding a person's liability or proportionate share is filed as provided in section 49-287.07, subsection B. The director or any other person with a claim for recovery of remedial action costs against a responsible party whose proportionate share as found by the allocator has become final pursuant to this subsection may obtain a judgment based on the proportionate share determined in the allocator's report. In any action to obtain such a judgment, the responsible party whose allocated share has become final may not dispute its proportionate share of liability as determined by the allocator, and the plaintiff may recover its costs and attorney fees incurred in obtaining and enforcing the judgment. The liability of any person that has become final pursuant to this subsection is not affected by any subsequent determination by a court in any action.

I. If all parties settle during a proceeding pursuant to this section, the director shall terminate the proceedings. If all parties, not including the director, fail or refuse to participate, the director may proceed with the allocation hearing or may terminate the proceedings. If the director terminates the proceedings, the director shall provide written notice within thirty days of termination of proceedings pursuant to this section to all persons who received notice pursuant to section 49-287.05.

49-287.07. Actions for allocation and recovery of remedial action costs; limitation of actions

A. The following actions shall be brought pursuant to this section:

1. An action by the director or any person with a claim for recovery of remedial action costs to challenge a determination of liability or proportionate share in an allocator's report pursuant to section 49-287.06.

2. An action by a person to challenge a determination of its liability or its proportionate share in an allocator's report issued pursuant to section 49-287.06.

3. An action by the director or any person for allocation and recovery of remedial action costs at any site or a portion of a site listed on the registry maintained pursuant to section 49-287.01, subsection D, except as follows:

(a) An action by a person or group of persons who have obtained a no further action determination for a site pursuant to section 49-287.01, subsections F and G, for both soil and groundwater. Such an action may be brought pursuant to section 49-285.

(b) An action by one or more responsible parties who have conducted or will conduct a voluntary remedial action pursuant to section 49-282.05 or who have entered into a settlement or agreement with the director under which the person or group of persons agree to undertake a remedy or any other remedial action and to reimburse the fund for the department's costs, if any. Such an action may be brought pursuant to section 49-285.

(c) An action by the director to enforce a settlement agreement.

(d) An action by the director to recover costs incurred in undertaking an emergency remedial action pursuant to section 49-282.02. Such an action may be brought pursuant to section 49-285.

B. If the action includes a challenge regarding a determination of liability or proportionate share of a party in an allocator's report pursuant to section 49-287.06, the action shall be commenced by filing a complaint not fewer than ninety days nor more than one hundred twenty days after notice of the allocator's report is served pursuant to section 49-287.06, subsection G. If the director issues a notice of termination of allocation proceedings pursuant to section 49-287.06, subsection I, the action may be brought any time after that notice is served. In all other cases, actions brought pursuant to this section shall be filed no fewer than ninety days after notice of the allocator's report is served pursuant to section 49-287.06, subsection G. All actions commenced under this section shall be brought in the superior court in the county where the site is located or in which the department maintains an office. Title 12, chapter 7, article 2 and title 41, chapter 6, articles 6 and 10 do not apply to the action. Within five calendar days after filing the complaint, the plaintiff shall serve written notice of the filing of the complaint by certified mail on the director and each person whose liability or proportionate share were determined in the allocator's report. In any action brought pursuant to this section, unless otherwise provided in this section, the parties shall bear their own costs, expert witness fees and attorney fees.

C. A plaintiff who is challenging its own proportionate share or a finding of its liability shall name the director as the defendant. The director or a plaintiff who is seeking recovery of remedial action costs shall name as a defendant each party whose liability or proportionate share as determined by the allocator is being challenged and any other person who the plaintiff alleges is a responsible party and who was not allocated a share of liability by the allocator. The plaintiff shall not name as a defendant any person who has entered into a settlement agreement with the director that includes contribution protection or whose proportionate share or liability as set forth in the allocator's report is not being challenged. On the entry of any judicially approved consent decree providing contribution protection to any defendant regarding the site or portion of the site that is the subject of a challenge under this section, the court shall dismiss that defendant from the action pursuant to this section. The complaint and answer shall be filed and served as provided in the applicable rules of civil procedure. The action shall be tried by the court without a jury.

D. The plaintiff has the burden of proving that each defendant is a responsible party under this article, except that in an action in which a person challenges a determination of its own liability in an allocator's report, the director has the burden of proving that the person is a responsible party under this article. There is no burden of proof as to the proportionate share of any person. The court shall receive evidence offered by any party regarding the allocation of liability among the parties and any other persons, except as provided in subsection I of this section. The liability allocation notice issued pursuant to section 49-287.05, subsection A and the allocator's report issued pursuant to section 49-287.06, subsection E shall be admitted as evidence. The court shall

issue an order establishing the proportionate share of liability of each party it determines to be a responsible party in accordance with section 49-285, subsections E and F. Notwithstanding a finding regarding the proportionate share of liability that differs from the allocator's report or any settlement, the court's order does not affect the liability of any person who has settled with the department pursuant to this article or whose proportionate share of liability has become final pursuant to section 49-287.06, subsection H.

E. In an action challenging a party's proportionate share of liability as determined in the allocator's report, if the party filing the challenge is not the prevailing party as determined by the court, the liability of the parties shall be adjusted pursuant to this subsection. If the parties have filed complaints against each other challenging the allocator's report, no adjustments may be made pursuant to this subsection. The court shall determine whether the plaintiff is the prevailing party based on whether the proportionate share determined by the court is closer to an offer of judgment pursuant to rule 68 of the Arizona rules of civil procedure made by one or both of the parties or to the proportionate share as determined in the allocator's report. If the plaintiff is not the prevailing party, the share of liability of the responsible party whose proportionate share is being challenged shall be adjusted as follows:

1. If the plaintiff is challenging its own proportionate share as stated in the allocator's report, the plaintiff is liable for the proportionate share contained in the court's order plus a premium of two per cent of the total remedial action costs at the site or, if applicable, a portion of the site, unless the court's order is for less than four per cent, then the premium is fifty per cent of the plaintiff's proportionate share as determined by the court.

2. If the plaintiff is the director who is challenging the proportionate share of a defendant, the defendant is liable for the proportionate share contained in the court's order minus a discount of two per cent of the total remedial action costs at the site or, if applicable, a portion of the site, unless the court's order is for less than four per cent, then the discount is fifty per cent of the defendant's proportionate share as determined by the court.

3. If the plaintiff, other than the director, is seeking recovery of remedial action costs and is challenging the proportionate share of a defendant, the defendant is liable for the proportionate share contained in the court's order, and the plaintiff is liable to the defendant for an amount equal to two per cent of the total remedial action costs at the site or, if applicable, a portion of the site.

F. In any action pursuant to this section, including an action to obtain a judgment based on a final allocator's determination pursuant to section 49-287.06, subsection H, or in any settlement after the conclusion of the allocation proceeding under section 49-287.06, a party who received notice pursuant to section 49-287.06, subsection A, who did not participate in the allocation proceeding under section 49-287.06 and who is found to be a responsible party under this article is liable for all of the following:

1. Its proportionate share of liability.

2. A premium of fifty per cent of that party's proportionate share.

3. The plaintiff's costs, attorney fees and expert fees incurred in both the allocation proceeding and the court action.

G. In any action brought pursuant to this section, if the superior court finds that a defendant is not a responsible party under this article, the plaintiff is liable for all of that defendant's reasonable costs, attorney fees and expert fees incurred in the court action.

H. If more than one action is filed under this section, the court shall join all actions into a single proceeding.

I. No party may allege that any other person is responsible for any portion of liability unless that person was identified to the director pursuant to section 49-287.04 except on a showing of good cause and due diligence.

J. No determination by the director or an allocator pursuant to this article as to the fact or extent of a person's liability under this article may be admitted into evidence or used in any judicial proceeding initiated against that person other than a proceeding pursuant to this section.

K. In any action brought pursuant to this section, on the request of any party with a claim for recovery of remedial action costs, the court shall award a judgment against the responsible party for its proportionate share of remedial action costs as prescribed by section 49-285. The judgment shall reflect any adjustments of amounts due pursuant to subsections E and F of this section.

49-288. Information gathering and access; enforcement; retaliatory action; civil penalties

A. The director may take an action authorized under subsection B or C of this section to determine the need for, to select or to undertake any remedial action pursuant to this article, to investigate and allocate the liability of any person under this article or to otherwise enforce the provisions of this article or a rule adopted pursuant to this article. Any such action taken regarding the release or threatened release of a pollutant shall not require a person to create information or documents not then in existence but may require sorting, organization, compilation or formatting of information in existence.

B. The director may require a person who has or may have information relevant to a release or threatened release of a hazardous substance, or pollutant as identified by the director in the request, or the liability of any person under this article including information relating to the ability of a person to pay for or to undertake remedial actions pursuant to this article, to furnish, after reasonable notice, information or documents relating to such release or threatened release or the liability of any person under this article or to grant access at all reasonable times, after reasonable notice, to a facility or other place owned or operated by the person to inspect and copy all documents or records relating to such release or threatened release or the liability of any person under this article. At the option of the person, the person may copy and furnish, at the person's expense, all such documents or records to the director. If any information under this section is claimed confidential pursuant to section 49-205, subsection A, the information shall be provided to the director but not made available to the public pending the determination of confidentiality pursuant to section 49-205. Written notice of the determination regarding confidentiality shall be provided to the person claiming confidentiality. If the person claiming confidentiality does not file an action for declaratory relief in superior court within thirty days of receiving this notice, the information shall be made available to the public.

C. The director or an agent designated by the director with appropriate documentation that identifies the person who has been given authority from the director, after reasonable notice, may enter a facility or other place at reasonable times under any of the following circumstances:

1. Where a hazardous substance or a regulated substance as defined in section 49-1001 may be or has been generated, stored, treated, disposed of or transported from and which may be related to a release or threatened release of a hazardous substance or regulated substance.

2. From which or to which a hazardous substance or a regulated substance as defined in section 49-1001 has been or may have been released or where such release is or may be threatened.

3. Where entry is needed to determine the need for remedial actions or the appropriate remedial actions or to effectuate remedial actions pursuant to this article.

4. To inspect and obtain samples of any suspected hazardous substance or a regulated substance as defined in section 49-1001 which has been or may have been released or where such release is or may be threatened, including samples of containers or labeling.

D. If a sample is obtained pursuant to subsection C, paragraph 4 of this section, the director shall, before leaving the premises, give to the owner, operator or other person in control of the

facility or other place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator or other person in control, if such person can be located. Inspections pursuant to subsection C, paragraph 4 of this section shall be completed with reasonable promptness.

E. If consent is not granted regarding any request made by the director under subsections A through C of this section, then the director may issue an order requiring compliance with the request within a specified time period that the director determines is appropriate under the circumstances. The order shall provide that the time period for compliance shall be extended for good cause shown as determined by the director. The order may not be issued until an opportunity for consultation as is reasonably appropriate under the circumstances has been afforded to the person to whom the request is made.

F. The director may ask the attorney general to commence a civil action to compel compliance with a request made pursuant to subsections A through C of this section or an order issued pursuant to subsection E of this section.

G. The court may enjoin acts of noncompliance or may assess a civil penalty of not to exceed five thousand dollars for each day of noncompliance against any person who unreasonably fails to comply with an order issued pursuant to subsection E of this section. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The attorney general, at the request of the director, may commence an action in superior court to recover civil penalties provided for in this subsection. In determining the amount of a civil penalty under this subsection, the court shall consider:

1. The seriousness of the act of noncompliance under this section.
2. As an aggravating factor only, the economic benefit, if any, resulting from the act of noncompliance under this section.
3. Any history of such violation.
4. Any good faith efforts to comply with the order.
5. The economic impact of the penalty on the person.
6. Such other factors as the court deems relevant.

H. No person shall fire or otherwise discriminate against any employee with respect to wages, hours, duties, responsibilities or employment position by reason of the fact that the employee provided information to the state, has testified or may testify, in any administrative, allocation or judicial proceeding commenced pursuant to this article. Any employee alleging a violation of this section may bring an action in superior court to obtain reinstatement, back pay, compensatory damages, and reasonable attorney fees. An action must be commenced within one year of the alleged violation and shall constitute the exclusive recourse for the violation.

I. Nothing in this section shall preclude the director from securing access or obtaining information in any other lawful manner.

49-289. Fund financed remedial action; definition

A. The director shall assure that remedial actions taken pursuant to this article are pursued and completed as expeditiously as possible, consistent with the criteria in section 49-282.06 and the rules adopted pursuant to that section. A remedial action shall not be financed in whole or in part from monies in the water quality assurance revolving fund unless the remedial action plan proposed pursuant to section 49-287.04, subsection A and each record of decision prepared pursuant to section 49-287.04, subsection F specify:

1. A time for commencing the implementation of the remedy after conclusion of settlements and allocation of liability.
2. A specific time period for completing the remedy.

B. The director may amend any record of decision to change the remedial action selected or the time periods for commencing implementation and completing the remedial actions after considering the criteria in section 49-282.06 and the rules adopted under that section and subsection A of this section. Before amending a record of decision, the director shall give notice as required in section 49-287.04, subsection B and written notice to all persons who have entered into a settlement with the director regarding the site or who have otherwise been determined to be responsible parties pursuant to this article and who have not fully satisfied their obligations and to any persons who have served a notice pursuant to section 49-264 regarding the site.

C. After the conclusion of the public comment period, the director shall prepare a comprehensive responsiveness summary and an amended record of decision regarding the remedial action plan. The amended record of decision is a final agency action as of the date the director signs the final record of decision.

D. The director shall serve written notice of the amended record of decision pursuant to section 49-287.04, subsection G.

E. Any notice of appeal of the amended record of decision shall be made pursuant to section 49-287.04, subsection I.

F. A person who is or may be adversely affected by a remedial action selected in a record of decision may file an action in the superior court against the director and any political subdivision that has been awarded fund monies pursuant to section 49-282,subsection F in order to enforce the time periods for commencing implementation and completing a remedial action that are contained in a record of decision. This action shall be filed in the same manner as provided in section 49-264.

49-289.01. Site boundary adjustment petitions; rules

A. A person who owns property within a site may petition the director to adjust the boundaries to exclude the person's property from the site boundaries. The geographic area covered by the boundary adjustment petition shall be described by legal description.

B. The director shall review the petition based on the results of the remedial investigation. If the director determines that the property is either entirely or partially within the area of contamination or is predicted to be either entirely or partially within the area of contamination within two years, the director shall deny the petition to adjust the boundaries of the site. If the director determines based upon the results of the remedial investigation that the property is not within the area of contamination and is not predicted to be within the area of contamination within two years, the director shall grant the petition to adjust the boundaries of the site.

C. The director shall adopt rules to implement this section.

49-289.02. Community information; public notice and comment

A. The director shall establish a preliminary community involvement area for each site on the registry established pursuant to section 49-287.01, subsection D, within ninety days after the site is entered into the registry.

B. The director shall provide written notice by mail or other delivery to residents, commercial occupants and owners of wells operated pursuant to groundwater withdrawal rights or permits within a preliminary community involvement area. If two or more community involvement areas are adjacent or overlapping, the director may make a single notice to avoid duplicate notice. This notice shall contain an opportunity for the recipient to elect to be added to the site's mailing list and to identify other persons who should receive similar notice. This notice also shall contain:

1. Available information regarding the hazardous substance contamination in the area.

2. The site's score and a brief statement regarding the actual and potential risk and routes of exposure to the contaminants at the site and the possible health impacts of that exposure, if any.

3. Identification of department personnel to be contacted for further information regarding the site.

49-289.03. Community involvement plan; community advisory boards; rules

A. The public shall receive notice and be provided an opportunity to comment to the director regarding the following actions taken by the director:

1. The placement of a site on the registry as provided in section 49-287.01.

2. The selection of a remedy as provided in section 49-287.04.

3. Entering into a prospective purchaser agreement with a person pursuant to section 49-285.01.

4. Entering into a settlement with a responsible party pursuant to section 49-292, 49-292.01 or 49-292.02.

B. The director shall adopt rules to implement this section and to govern the provision of information to communities and community involvement areas that include how to disseminate information, the location of public information repositories and notice requirements.

C. Before it implements a remedial investigation as provided in section 49-287.03, subsection D the department shall develop a community involvement plan for each site that does all of the following:

1. Establishes a community advisory board.

2. Designates a spokesperson to inform the public and to act as a liaison between the department, the local government and the responsible party.

3. Provides for newsletters with current information about the status of remedial action at the site and other pertinent information to be distributed to residents within the site.

4. Schedules community advisory board meetings and participates in the scheduling of public meetings pursuant to section 49-287.01, subsection E.

D. A selection committee shall be established for each site that is required to have a community involvement plan pursuant to section 49-287.03, subsection D. The selection committee shall consist of the following members:

1. One representative of the department.

2. One representative of a potentially responsible party, an owner or operator of a facility within the site or an affected business or industry.

3. One local elected official.

4. Two community members who are not employees of any responsible party, the department or the local government.

E. Each community advisory board shall advise the department, the public and the responsible parties of issues, concerns and opportunities related to the expeditious cleanup of the site. Each community advisory board shall be composed of at least five but not more than twenty members. The members of the community advisory board shall be chosen to represent a diversified cross section of the community with an appropriate balance of interested parties and affected groups. Applications for membership on the community advisory board and the names of the applicants shall be publicly available. Community advisory board members may serve on more than one community advisory board and multiple sites may share a community advisory board to avoid unnecessary multiple boards.

F. Each community advisory board shall:

1. Within ninety days after appointment of members by the selection committee, elect cochairpersons and other officers if needed and shall develop a charter defining at a minimum operating procedures, membership terms and obligations, goals for developing issues, concerns and opportunities related to expeditious cleanup of the site, and any other anticipated activities of the board for identifying and improving the public's access and understanding of information regarding the remediation processes at the site.

2. Meet at least four times each year with the department and any identified responsible parties to receive site briefings, progress reports and other pertinent information.

3. Coordinate with the department to establish local repositories for the dissemination of information about the site.

G. Each community advisory board may:

1. Make site visits and participate in public meetings related to cleanup opportunities and remedy selection decisions.

2. Participate in an annual meeting held by the department in each county that has a site undergoing a remedial investigation and feasibility study under section 49-287.03 or in the process of selecting or implementing a remedy for the purpose of facilitating public involvement and identifying funding priorities for site cleanups.

49-290. Exemption from permit requirements; definition

A. Notwithstanding any other statute, a person who performs a remedial action or a portion of a remedial action that has been approved by the department if that action or portion is conducted in compliance with this article is not subject to any requirement to obtain any permit or approval that may otherwise be required by the department.

B. Except as prescribed in subsection D of this section, a person who conducts a portion of a remedial action, where that portion is entirely on site and is conducted in compliance with this article, may be exempted from a requirement to obtain any other state or local permit or approval, other than any requirement of title 45, at the written request of the person conducting the remedial action. The written request shall identify the specific permit to be exempted and the reasons the exemption is requested. The permit may be exempted if the director finds both of the following:

1. The requirement does not arise out of any permit or regulatory program that is required pursuant to the laws of the United States.

2. The requirement presents a substantial impediment to effective performance of the remedial action selected by the department.

C. The director may waive any regulatory requirement adopted pursuant to this title with respect to a site or portion of a site as part of a record of decision adopted pursuant to section 49-287.04 for that site or portion of a site if the regulatory requirement conflicts with the implementation of the selected remedy, provided that the waiver does not result in adverse impacts to public health or the environment. No waiver may be granted under this subsection if it is prohibited by federal law or if the waiver would jeopardize the continued delegation to the state of authority to implement a federal environmental program.

D. Discharge of wastewater to off-site publicly owned treatment works and sewer systems does not constitute an activity conducted entirely on site for purposes of subsection B of this section.

E. The director shall give written notice of any request for exemption made pursuant to subsection B of this section to the remedial action coordinator designated pursuant to subsection G of this section by the governmental entity whose permit requirements are the subject of the request. Before making any finding pursuant to subsection B of this section, the director or the director's designee shall meet and confer with the remedial action coordinator and the person conducting the remedial action to identify alternatives to exemption.

F. Any finding made by the director pursuant to subsection B of this section shall be in writing. The governmental entity whose permit requirement is preempted as a result of such finding is not liable for property damage, personal injury damage or violations of state or local law resulting from the exemption. The director shall notify the affected governmental entity of any finding made pursuant to subsection B of this section. A finding of the director made pursuant to subsection B of this section is a final administrative decision as defined in section 41-1092 and is subject to judicial review pursuant to title 12, chapter 7, article 6.

G. Each city, town and county shall designate a remedial action coordinator who shall have responsibility for monitoring and facilitating any remedial actions conducted within its jurisdiction. The designated remedial action coordinator shall:

1. Regularly consult, as needed, with the department and the person conducting a remedial action throughout the duration of the remedial action.

2. Expedite the processing and issuance of permits, approvals or other authorizations required by the governmental entity represented by the remedial action coordinator, to facilitate the prompt conduct of a remedial action.

3. Provide information to the department and the person conducting the remedial action regarding applicable requirements of the governmental entity represented by the remedial action coordinator and the potential for waiver of such requirements.

H. In order to encourage remediation activities under this article and to conserve the fund, neither this state nor any county that imposes an excise or similar tax that is levied at a rate applied as a percentage of the rates on each business class subject to the tax imposed by title 42, chapter 5, article 1 may impose a tax on the sale or purchase of tangible personal property incorporated or fabricated into any real property, structure, project, development or improvement under a contract specified in section 42-5075, subsection B, paragraph 6.

I. For purposes of this section, "on site" means the areal extent of contamination and all suitable areas in close proximity to the contamination that are reasonably necessary for implementation of the remedial action.

49-290.01. Applicability of requirements; Arizona department of water resources

A. Notwithstanding section 49-290, any person conducting a remedial action shall obtain and comply with applicable permits, approvals or other authorizations required by the department of water resources. On consultation with the director of environmental quality, the director of water resources may waive its applicable permits, approvals or authorizations if the director of water resources determines that the permit, approval or other authorization unreasonably limits the completion of a remedial action and if the waiver does not conflict with the statutory intent of the permit, approval or other authorization. The department of water resources shall expedite the processing and issuance of permits, approvals or authorizations to facilitate the prompt conduct of approved remedial actions. If the department of water resources fails to issue or deny a permit within one hundred twenty days of the date of receipt of a complete application for a permit, approval or authorization required for the remedial action or subsequent implementing work plan approved by the department, the department may authorize the party conducting the approved remedial action to proceed with that action and that person shall not be subject to any penalties for failure to obtain the permit, approval or authorization from the department of water resources, but shall be required to comply with the substantive requirements of such permit, approval or authorization. The determination of whether an application for a permit is complete shall be made by the department of water resources. The person conducting the approved remedial action who uses groundwater withdrawn in an active management area as part of an approved remedial action shall continue to pay the groundwater withdrawal fee for the groundwater the person withdrew and used or received and used.

B. The director of environmental quality and the director of water resources shall enter into a memorandum of understanding which establishes a procedure for expediting the review and issuance of permits issued under title 45 when the director of environmental quality has made a determination that a delay in the issuance of a permit required by title 45 will result in the continuance of an imminent and substantial endangerment to the public health or welfare or the environment.

C. The director of environmental quality and the director of water resources shall coordinate their efforts to expedite remedial actions, including obtaining information pertinent to

site investigations, remedial investigations, site management and beneficial use of remediated water.

D. The director of water resources may waive any regulatory requirement adopted pursuant to title 45 with respect to a site or portion of a site as part of a record of decision adopted pursuant to section 49-287.04 for that site or portion of a site if the regulatory requirement conflicts with the implementation of the selected remedy, provided that the waiver does not result in adverse impacts to other land and water users. No waiver may be granted under this subsection if it is prohibited by federal law or if the waiver would jeopardize the continued delegation to the state of authority to implement a federal environmental program.

49-290.02. Applicability of Arizona department of water resources requirements; metal mining facilities

A. A metal mining facility conducting mitigation activities pursuant to an order issued by the director of environmental quality pursuant to section 49-286 shall obtain and comply with applicable permits, approvals or other authorizations required by the department of water resources. On consultation with the director of environmental quality, the director of water resources may waive its applicable permits, approvals or authorizations if the director of water resources determines that the permit, approval or other authorization unreasonably limits the completion of mitigation activities undertaken by a metal mining facility pursuant to an order issued pursuant to section 49-286 and if the waiver does not conflict with the statutory intent of the permit, approval or other authorization. The department of water resources shall expedite the processing and issuance of permits, approvals or authorizations to facilitate the prompt conduct of approved mitigation activities undertaken by a metal mining facility pursuant to an order issued pursuant to section 49-286. If the department of water resources fails to issue or deny a permit within one hundred twenty days of the date of receipt of a complete application for a permit, approval or authorization required for completion of the mitigation activities approved by the department of environmental quality pursuant to an order issued pursuant to section 49-286, the department of environmental quality may authorize the metal mining facility conducting the approved mitigation activities to proceed with those activities and that metal mining facility shall not be subject to any penalties for failure to obtain the permit, approval or authorization from the department of water resources, but shall be required to comply with the substantive requirements of such permit, approval or authorization. The determination of whether an application for a permit is complete shall be made by the department of water resources. A metal mining facility conducting mitigation activities pursuant to an order issued by the department of environmental quality pursuant to section 49-286 that uses groundwater withdrawn in an active management area shall continue to pay any applicable groundwater withdrawal fee for the groundwater the metal mining facility withdrew and used or received and used.

B. The director of environmental quality and the director of water resources shall coordinate their efforts to expedite mitigation activities undertaken by a metal mining facility pursuant to an order issued pursuant to section 49-286, including obtaining information pertinent to site investigations, site management and beneficial use of water withdrawn for mitigation purposes.

C. With respect to mitigation activities undertaken by a metal mining facility pursuant to an order issued by the department of environmental quality pursuant to section 49-286, the director of water resources may waive any regulatory requirement adopted pursuant to title 45 with respect to a site or portion of a site as part of a mitigation order issued by the department of environmental quality pursuant to section 49-286 for that site or portion of a site if the regulatory requirement conflicts with the implementation of the ordered mitigation activities, provided that the waiver does not result in adverse impacts to other land and water users. No waiver may be

granted under this subsection if it is prohibited by federal law or if the waiver would jeopardize the continued delegation to the state of authority to implement a federal environmental program.

49-292. Settlement; authority and effect

A. The director shall consider any offer of settlement by a person who is potentially liable for remedial action costs under this article and CERCLA. The director shall consider the factors in section 49-282.06 and section 49-285, subsections E and F in determining whether to settle any person's liability. In determining the settlement amount, the director shall take into account any past costs incurred for remedial actions at the site by the person. Costs of remedial actions that are incurred by an eligible party as defined in section 49-281, that are or have been approved by the director pursuant to section 49-285, subsection B and that are conducted under the oversight of the director shall be used as a credit against that eligible party's liability. Nothing in this section requires the director to reimburse from the fund the orphan share of costs of approved remedial actions incurred by an eligible party before June 30, 1997. The director may enter into a settlement agreement or consent decree with a potentially responsible party or with a prospective purchaser pursuant to section 49-285.01 without making an express finding in the settlement agreement or consent decree regarding an imminent and substantial endangerment to the public health or welfare, the waters of this state or the environment.

B. In any settlement agreement or consent decree entered into pursuant to subsection A of this section, the director may provide any potentially responsible party with a covenant not to sue concerning any liability to the state under this article or under CERCLA including future liability that may result from a release or threat of a release of a hazardous substance addressed by a remedial action whether that action is on site or off site. A covenant not to sue takes effect when the settlement agreement or consent decree becomes final. A covenant not to sue with respect to future liability shall include an exception that allows the director to sue the responsible party concerning future liability from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown to the director at the time the director enters into the covenant. A covenant not to sue does not preclude the director from suing the potentially responsible party for failure to comply with the terms of the settlement agreement or consent decree in which the covenant was included.

C. A potentially responsible party who has resolved its liability to the state that arises from this article or from CERCLA in a judicially approved consent decree is not liable for claims for contribution or cost recovery regarding matters addressed in the consent decree. Any such judicially approved consent decree does not discharge other potentially responsible parties unless its terms so provide, but such a settlement does reduce the potential liability of other potentially responsible parties by the amount of the settlement. If a potentially responsible party receives an allocation pursuant to section 49-287.06 or 49-287.07 that is less than the amount the potentially responsible party agreed to pay the state pursuant to a settlement agreement or consent decree, the excess amount paid by the potentially responsible party shall be credited to the fund. Any payment by a potentially responsible party in excess of the allocation shall not reduce the proportionate liability of any other potentially responsible party.

D. If the state has obtained less than complete relief from a potentially responsible party who has resolved its liability to the state, the state may bring an action against any other potentially responsible party pursuant to section 49-287.07 who has not so resolved its liability.

E. A potentially responsible party who has resolved its liability to the state may seek contribution for matters addressed in the settlement from any person who is not a party to a settlement entered into under this section.

F. In any action under this section, the rights of any potentially responsible party who has resolved its liability to the state in a judicially approved consent decree or a settlement agreement

are subordinate to the rights of the state for matters addressed in the settlement agreement or consent decree, unless otherwise provided in the settlement agreement or consent decree. If a potentially responsible party who has resolved its liability to the state in a settlement agreement or a consent decree provides written notice to the department that it has initiated a lawsuit to recover some or all of its remedial action costs from other potentially responsible parties, the department within thirty days shall provide written notice to the party filing the lawsuit of the department's intent to assert any superior claims the department may have against the other potentially responsible parties. If practicable, the written notice shall include the anticipated dollar amount of the department's claims against each party.

G. The court shall not approve a consent decree entered into pursuant to this section for a period of thirty days after the date that notice of the terms of the consent decree is provided to the public to allow for public comment. Any comment shall be filed with the court and a copy shall be sent by mail to the director and to the settling party. After the expiration of the thirty day public comment period, the director through the attorney general may petition the court for entry of the consent order.

H. A person's decision to enter into a settlement agreement pursuant to this article shall not be construed as an admission in any other judicial proceeding as to the fact or extent of that person's liability with respect to the releases or threatened releases that are covered by the settlement.

49-292.01. Qualified business settlements; definition

A. The director shall enter into a settlement under this article and section 107 of CERCLA with a person that qualifies pursuant to this section without regard to the extent of its liability except for a person whose liability under this article arose from criminal acts.

B. An applicant seeking settlement under this section shall have identifiable gross income as defined in section 61 of the internal revenue code greater than one dollar in each of the two years prior to the application and in each of the two years preceding the year that an investigation of the applicant's share was initiated by either the department or the United States environmental protection agency. The applicant shall submit a letter to the director requesting a qualified business settlement on a form provided by the director. The request letter shall include the applicant's tax returns for the time periods provided in subsection J of this section. The director may require additional information to verify the applicant's eligibility for a settlement under this section. Financial information submitted by the applicant pursuant to this section and marked "confidential" shall be kept confidential by the director.

C. If the director verifies that the applicant meets the definition of a qualified business, the director shall enter into a settlement within ninety days after receipt of the request letter and other information required under this section. The settlement shall meet the requirements of section 49-292, but without regard to the extent of its liability, and shall require that:

1. The qualified business pay ten per cent of its average annual gross income for the two years preceding the year that a request was submitted by the applicant including the income from money or assets transferred by the applicant within the two years preceding the application. The director shall allow the settlement amount to be paid over time, up to a maximum of ten years, subject to payment of interest at the rate of six per cent per year. If the settlement amount is paid in full within the first five years, the payments shall not be subject to the payment of interest. An applicant may file a petition with the director to modify the payment schedule.

2. The qualified business cooperate with the director in providing reasonable access and information necessary for the director to carry out the requirements of this article.

D. Notice of the settlement shall be published as provided in section 49-292. The notice shall provide a general description of the contents of the agreement. Any interested person may

comment on whether the applicant is a qualified business in writing to the director. The director may withdraw from a settlement after considering the comments.

E. If the director determines that the business does not qualify for the qualified business settlement pursuant to this section, the director shall notify the applicant in writing within ninety days of the receipt of all information required under subsection B of this section stating the reasons for denial. If the director does not notify the applicant within ninety days, the application is deemed denied. A denial of a settlement under this section may be appealed to the office of administrative hearings pursuant to section 49-298. In any appeal made pursuant to section 49-298, the documents submitted by the applicant under subsection B of this section are not confidential.

F. In reviewing a proposed settlement, the United States district court or superior court shall give deference to the department's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person who challenges a proposed settlement bears the burden of proving that the proposed settlement does not meet applicable legal standards for court approval. If a settlement is reached with an applicant, the confidential information supplied to the director under this section may be submitted under seal to the court for in camera review.

G. In determining the applicant's gross income for purposes of determining eligibility pursuant to subsection J of this section, the income of all concerns in which the applicant maintains ownership, control or management may be considered by the director. Any transfer of money or assets by the applicant within the two years preceding the application shall be presumed void for purposes of determining eligibility under this section. This presumption may be rebutted by the applicant if the applicant submits a written presumption rebuttal statement that includes the reasons why the transfer of money or assets within this time period should not be presumed void for purposes of determining eligibility. The department shall consider this statement and provide a written record of decision to the applicant that either affirms or denies the applicant's reasons provided in the presumption rebuttal statement.

H. The director may adopt rules to implement this section. A settlement under this section applies only to the applicant and does not release or affect in any way the liability of any other person.

I. If a settlement is made pursuant to this section, the director shall not file a lien pursuant to section 49-295 for an amount greater than the settlement.

J. For the purposes of this section, "qualified business" means an applicant who meets both of the following conditions:

1. The applicant's gross income as defined by section 61 of the internal revenue service code is less than two million dollars per year and greater than one dollar per year.

2. The applicant complies with the definition for the average of the two years preceding the year that an investigation of the applicant's share was initiated by either the department or the United States environmental protection agency, and for each of the two years preceding the year that a request was submitted by the applicant pursuant to subsection B of this section.

If a person does not qualify as a qualified business under this section, the person is eligible to settle its liability under this article and section 107 of CERCLA for less than its proportionate share under section 49-285 on a demonstration of financial hardship under section 49-292.02.

49-292.02. Financial hardship settlement

A. The director shall consider any offer by a person who may be potentially liable for remedial action costs under this article or section 107(a) of CERCLA without regard to the extent of that person's liability. In order to obtain a settlement under this section, a person must demonstrate a financial hardship with respect to payment of a potential liability under this article or under CERCLA. A person whose liability under this article arose or could arise from criminal acts

is not eligible to request a settlement under this section. In considering a person's ability to pay, the director shall consider all of the following:

1. The financial resources of the person, including available insurance.

2. The person's ability to continue in business after payment of a settlement amount.

3. Whether liability for the settlement amount would require the person to seek protection under federal bankruptcy law.

B. An applicant seeking settlement under this section shall submit a letter to the director requesting a financial hardship settlement on a form provided by the director. The request letter shall include the applicant's tax returns and all schedules, financial statements, balance statements and other information concerning the person's gross income and net worth for the five years preceding the date of the application on a form provided by the director. Within ninety days of the application, the director may require additional information to verify the applicant's eligibility for settlement under this section. The applicant may provide any additional information the applicant believes to be relevant. Financial information submitted by the applicant pursuant to this section and marked "confidential" shall be kept confidential by the director. If the director or the attorney general disputes a claim of confidentiality, written notice shall be provided to the person claiming the confidentiality that the claim is disputed. If the person claiming the confidentiality does not file an action for declaratory relief in superior court within thirty days after receiving this notice, the information shall be made available to the public. An applicant who submits false or intentionally misleading information is not eligible for a settlement pursuant to this section.

C. If the director verifies that the applicant has demonstrated a financial hardship with respect to payment of a potential liability under this article or CERCLA, the director shall enter into a settlement within ninety days after receipt of the request letter and other information required under this section. The settlement shall meet the requirements of section 49-292, but without regard to the extent of the person's liability, and shall be made pursuant to subsection A of this section. The director shall allow the settlement amount to be paid over time, up to a maximum of ten years, subject to payment of interest at the rate of six per cent per year. If the settlement amount is paid in full within the first five years, the payments shall not be subject to the payment of interest. An applicant may file a petition with the director to modify the payment schedule.

D. The applicant shall cooperate with the director in providing reasonable access and information necessary for the director to carry out the requirements of this article.

E. Notice of the settlement shall be published as provided in section 49-292. The notice shall provide a general description of the contents of the agreement. Any interested person may comment on whether the applicant qualifies for a settlement pursuant to this section in writing to the director. The director may withdraw from a settlement after considering the comments.

F. If the director determines that the applicant does not qualify for a settlement pursuant to this section, the director shall notify the applicant in writing within ninety days of the receipt of all information required under subsection B of this section stating the reasons. If the director does not notify the applicant within ninety days, the application is deemed denied. A denial of settlement under this section may be appealed to the office of administrative hearings pursuant to section 49-298. In any appeal made pursuant to section 49-298, the documents submitted by the applicant under subsection B of this section are not confidential. The appeal shall determine only the amount the applicant is able to pay.

G. In reviewing a proposed settlement, the federal district court or superior court shall give deference to the director's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person challenging a proposed settlement shall bear the burden of proving that the proposed settlement does not meet the applicable legal standards for court approval. If a settlement is reached with an applicant, the confidential information supplied to the director under this section may be submitted under seal to the court for in camera review.

H. In determining the applicant's financial resources, the financial resources of all concerns in which the applicant maintains ownership, control or management may be considered by the director. A settlement under this section applies only to the applicant and does not release, affect or increase the liability of any other person. The director may adopt rules to implement this section.

I. If a settlement is made pursuant to this section, the director shall not file a lien pursuant to section 49-295 for an amount greater than the settlement.

J. Within thirty days after the director has proposed an allocation share under section 49-287.05 or a share has been allocated under section 49-287.06 to a person who has previously settled with the department pursuant to this section, the director may request that the previous settlement be reopened to determine whether the person who has settled can pay an amount that is greater than the previous settlement amount but not more than the allocated share. A decision by the director to initiate a review of the previous settlement shall be published in a newspaper of general circulation twice within a one week period. The notice shall provide a general description of the director's reasons for initiating a review of the previous settlement. Any interested person may comment in writing to the director on whether the settlement should be reopened and whether the person who previously settled with the department pursuant to this section should be required to pay a different amount from the previous settlement amount. Public comments must be received by the director within thirty days of the last date of publication. The person who settled shall submit updated versions of the documents prescribed by subsection B of this section to provide financial information since the previous settlement. Within ninety days after receipt of the information prescribed by this subsection, the director shall notify the person whether the original settlement amount will be revised. If the director determines that the original settlement amount will be revised, the director shall provide the person with the revised settlement amount and the basis for that revision. Any monies paid pursuant to the original settlement shall be credited toward any revised settlement amount. If the director does not notify the person who settled within ninety days, the original settlement amount is not subject to revision. Within thirty days after the director's decision to revise the original settlement amount, the director must petition the court having jurisdiction over the settlement. The court shall determine whether the settlement amount shall be reopened and what the settlement amount shall be, but it shall not be more than the allocated share.

49-294. Use of monies obtained through consent decrees or litigation

A. All monies obtained by the director as the result of a settlement entered into pursuant to this article or through filing an action in state or federal court under this article or under CERCLA shall be deposited, pursuant to sections 35-146 and 35-147. Monies recovered pursuant to this section for the department's remedial action costs that are incurred before the date of a settlement or a court judgment shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality assurance revolving fund. Monies recovered pursuant to this section for the department's remedial action costs that are to be incurred after the date of a settlement or court judgment may be deposited in separate accounts, and any interest earned on monies in these accounts shall be credited to those accounts for use for remedial action at the specific site or facility from which the monies were generated, including reasonable and necessary costs, and legal costs for administration of the account for that site or facility. If a specific site's or facility's account contains monies at the completion of the remedial action, the director may use these excess monies in the manner and for the purposes prescribed in section 49-282.

B. This section and sections 49-292, 49-295 and 49-296 shall not be construed to limit the authority of the director to take any action under federal law or under other provisions of this title.

49-295. Environmental liens

A. In addition to other rights or remedies available to this state, and in order to protect the state's interest in recovering monies expended by the state for remedial action, all remedial action costs for which a person is liable to the state for the remedial actions conducted at that facility by the state under this article constitute a lien in favor of the state against only the property that is a facility subject to or affected by that remedial action and in which the person who is liable has an ownership interest.

B. The director may request the attorney general to file an action in the superior court in the county in which the property is located for an order establishing an environmental lien. The application for an environmental lien may be filed and recorded pursuant to subsection H of this section. The application for an environmental lien shall include the following information:

1. The name of the record owner of the real property on which the environmental lien is requested, the name of the person purportedly liable, if different, and the person's ownership interest.

2. The legal description of the real property where the environmental lien attaches.

3. The amount and an itemization of remedial action costs that have been incurred by this state as of the time the application is filed.

4. A statement of the evidence demonstrating that the person is liable for remedial action costs incurred by the state under this article.

C. On the filing of an application for an environmental lien, the court shall set a hearing date at least thirty but not more than forty-five days from the date the application is filed with the court. The hearing may be rescheduled if all parties agree to a different date. Service of the application and notice of the hearing date on the purportedly liable person and the record owner of the subject real property, if different, shall be in the manner prescribed in the Arizona rules of civil procedure.

D. On a showing by the state of probable cause that the person is liable for remedial action costs incurred by the state under this article and the amount of the remedial action costs and that the person has an ownership interest in the real property that is the subject of the application for an environmental lien, the court may issue an order establishing an environmental lien in favor of the state.

E. The order establishing an environmental lien shall be filed and recorded as provided in subsection H of this section. If the state records the application for an environmental lien as provided in subsection H of this section, the environmental lien shall be deemed to attach as of the date of recording of the application for the environmental lien, once the order establishing the environmental lien is filed and recorded. If the state does not record the application for the environmental lien, the environmental lien attaches only on the recording of the order establishing the lien as provided in subsection H of this section.

F. If after establishment of an environmental lien the state incurs additional remedial action costs for which the person is liable under this article, the state may seek to amend the existing lien to include in the amount of the lien the additional remedial action costs incurred. The state shall file a statement itemizing the costs incurred with the court, with service as prescribed in subsection C of this section. On a showing by the state of probable cause with respect to the amount of those additional remedial action costs, the court may increase the amount of the environmental lien by the amount of those additional remedial action costs.

G. Any person that has been determined liable for remedial action costs in a probable cause hearing for purposes of establishing a lien and that owns an interest in real property that is the subject of an environmental lien established under this section shall notify the state in writing at least sixty days before alienating the interest. If the state believes that it will incur future remedial action costs at the facility, the state may within thirty days of receipt of the notification request a probable cause hearing pursuant to subsection C of this section. The court shall schedule the requested hearing before expiration of the sixty day period beginning on the date the state received

notice that the person intends to alienate its interest, unless the parties agree to a continuance. Unless the person giving notice to the state withdraws that notice before the scheduled date of the hearing, the court shall conduct a hearing to estimate the state's future remedial action costs and may issue an order amending the lien to include total future remedial action costs that the state appears reasonably likely to incur. Any order increasing the amount of an existing lien pursuant to this subsection may be filed and recorded as provided in subsection H of this section. Any person having an ownership interest in the property that may be adversely affected by the order increasing the environmental lien may challenge the increased lien amount by filing a motion to quash pursuant to subsection I of this section. If the state fails to request a probable cause hearing with respect to estimated future remedial action costs within thirty days of receipt of the notification, any person subsequently purchasing an interest in real property that is subject to an environmental lien takes that interest subject only to existing, unsatisfied liens, and that person is liable to the state for future remedial action costs only to the extent it is liable for those costs because it is a responsible party under section 49-283 or because it is otherwise liable under other federal, state or common law.

H. Any application, order, lien, release or other document required to be recorded under this section shall be recorded in the office of the county recorder of the county where the real property is located. A filing fee or other charge is not required for filing any document pursuant to this section. The filing or mailing of any document pursuant to this section is the responsibility of the director or the director's designee. A copy of an environmental lien shall also be sent by certified mail to any other person including an owner, purchaser, holder of a mortgage or security interest or judgment lien creditor whose interest was perfected and recorded before an application for an environmental lien was recorded.

I. If a court issues an order establishing an environmental lien, any person having an interest in the real property that may be adversely affected by establishment of the lien may file a motion to quash the lien. The court retains jurisdiction to resolve any issue of fact or law raised by the motion to quash. If the motion to quash raises issues of fact, the person challenging the lien and the state are entitled to conduct expedited discovery on application to the court and are entitled to a priority for trial.

J. At any time after the lien is recorded any person having an ownership interest in real property subject to an environmental lien may move the court to substitute other security for the lien. The court shall retain jurisdiction to determine the sufficiency of the substituted security. On approval of the substituted security, the environmental lien shall be released.

K. Notwithstanding any other provision of this section, an environmental lien does not apply to real property that is used primarily for or that is under construction for use in single or multi-family housing at the time the environmental lien is recorded.

L. The director shall release an environmental lien if the lien or a claim or judgement for the remedial action costs is satisfied. If the lien or a claim or judgement for the remedial action costs has been partially but not wholly satisfied, the director on request of any person having an ownership interest in the property shall reduce the amount of the lien by the amount satisfied. The director may release an environmental lien if the director determines that the lien is not in the best interest of the state.

M. If the court refuses to issue an order establishing an environmental lien, any person having an interest in the property against which an environmental lien was sought is not entitled to attorney fees or damages against the state if the court determines that there was reasonable cause for the application.

N. Any determination of any issue by the court in a hearing held pursuant to this section shall not be considered binding in any future judicial or administrative proceeding except that any issue litigated in a motion to quash filed pursuant to this section shall not be litigated again in any subsequent motion to quash filed pursuant to this section that is filed by the same party.

O. An environmental lien is subject to any other lien that is perfected and recorded before the attachment date of the environmental lien as determined pursuant to subsection E of this section.

P. On entry of a final judgment in favor of the state for remedial action costs, an environmental lien may be foreclosed in the manner provided for foreclosure of mortgages pursuant to title 33, chapter 6, article 2. The state may combine an action to recover remedial action costs with an action to foreclose an environmental lien established under this section.

Q. This section does not preclude the state from initiating other actions under this title or under federal law.

49-296. Settlement agreements

A settlement agreement made pursuant to this article may provide that the director shall reimburse a party to the agreement from the fund for the costs of specific remedial actions that the party has agreed to perform. In appropriate cases, the director may make reasonable efforts pursuant to this article to recover any fund expenditures from responsible parties who are not involved in the settlement agreement. A decision by the director not to reimburse a party from the fund for the costs of conducting a remedial action that is contained in a settlement agreement is not subject to judicial review.

49-298. Appealable agency actions; licenses

A. Nothing in this article is an appealable agency action as defined in section 41-1092 or a contested case as defined in section 41-1001 except for the following:

1. A determination by the director that a person does not qualify for a settlement pursuant to section 49-292.01 or 49-292.02.

2. A no further action determination pursuant to section 49-287.01, subsection H.

B. An appeal shall be initiated by filing a notice of appeal with the director pursuant to section 41-1092.03, subsection B.

C. Nothing in this article constitutes a license as defined in section 41-1001.

Article 6 Pesticide Contamination Prevention

49-301. Definitions

In this article, unless the context otherwise requires:

1. "Active ingredient" has the meaning assigned to the term by title 7 United States Code section 136.

2. "Applicant" means any person who applies for a registration or amended registration pursuant to title 3, chapter 2, article 5 or a conditional registration pursuant to section 49-310.

3. "Chemigation" means a method of irrigation by which a pesticide is mixed with irrigation water before the water is applied to the crop or the soil.

4. "Degradation product" means a substance resulting from the transformation of a pesticide by physicochemical or biochemical means.

5. "Groundwater protection data gap" means that a pesticide for agricultural use has been registered with the Arizona department of agriculture without the director of environmental quality finding that the information submitted pursuant to section 49-302 meets the requirements of this article.

6. "Henry's law constant" means an indicator of the escaping tendency of dilute solutes from water which is approximated by the ratio of the vapor pressure to the water solubility at the same temperature.

7. "New pesticide" means a pesticide that contains an active ingredient for which the information required under section 49-302, subsection A has not been submitted by the applicant for registration and that has not been approved by the director of environmental quality.

8. "Pesticide" means any substance or mixture of substances intended for either:

(a) Preventing, destroying, repelling or mitigating any pest.

(b) Use as a plant regulator, defoliant or desiccant.

9. "Pollution" means the introduction into the groundwaters of this state of an active ingredient, other specified product or degradation product of an active ingredient at above a level, with an adequate margin of safety, that does not cause adverse effects on human health or safety.

10. "Registrant" means a person that has registered a pesticide pursuant to title 3, chapter 2, article 5.

11. "Soil adsorption coefficient" means a measure of the tendency of a pesticide, or its biologically active transformation products, to bond to the surfaces of soil particles.

49-302. Information submittal

A. An applicant shall submit to the director information that enables the department of environmental quality to determine whether a pesticide has the potential to pollute the groundwater in this state. This information shall include all of the following information for each active ingredient in the pesticide intended for registration with the Arizona department of agriculture:

1. Water solubility.

2. Vapor pressure.

3. Octanol-water partition coefficient.

4. Soil adsorption coefficient.

5. Henry's law constant.

6. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, under conditions in this state or similar environmental use conditions, if that information exists in studies and conclusions from other states or the United States government.

7. The director may by rule require additional information that is required by the United States environmental protection agency for environmental fate parameters necessary to gain full registration under federal law.

B. The director may also require the information prescribed in subsection A for other specified ingredients and degradation products of an active ingredient in any pesticide, and all information submitted shall comply with subsection C. Any studies submitted pursuant to this subsection shall meet the same testing methods required for studies conducted on active ingredients. The director may also require testing protocols that are specific or adaptable to soil and climatic conditions in this state.

C. Information submitted pursuant to subsection A shall comply with all of the following:

1. Information shall be presented in English and summarized in tabular form with the actual studies, including methods and protocols, attached.

2. All information and studies concerning product chemistry and environmental fate shall at a minimum meet the testing methods and reporting guidelines established by the United States environmental protection agency.

3. With approval from the director, applicants may use specified alternative protocols as permitted by the United States environmental protection agency guidelines if the director finds use of the protocol is consistent with and accomplishes the objective of this article as stated in subsection A.

4. The director may accept information, studies and conclusions from other states and the federal government if the director finds them to be derived from standard protocol procedures consistent with the objective of this article as stated in subsection A.

D. The director may waive any information required by subsection A if the director determines that the applicant has demonstrated either of the following:

1. That due to the nature of the active ingredient, it is not scientifically possible to obtain meaningful results in the test or tests required to obtain the particular information for which a waiver is sought.

2. That due to the application or cultural practices for the active ingredient, it is not necessary to obtain the particular information for which a waiver is sought.

E. On approval of the director, an applicant may submit alternative information to satisfy a data requirement of subsection A. This alternative information shall accurately describe the relevant data requirement for each active ingredient of the pesticide under conditions in this state or under similar environmental use conditions.

F. Information requirements that the director waives pursuant to subsection D shall not constitute a groundwater protection data gap.

49-303. Pesticide evaluation process; reporting requirements

A. After satisfying the requirements of section 49-302, a registrant may use any of the following processes to demonstrate to the director whether the pesticide has the potential to pollute groundwater:

1. The use of specific numeric values established by the director for pesticides regarding water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism and field dissipation. The director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources may revise the numeric values if the director of environmental quality finds that the revision is necessary to protect the groundwater of this state. The numeric values shall be at least as stringent as the values used by the United States environmental protection agency at the time the values are established or revised.

2. If adopted in rule, use of a procedure for establishing specific numeric values other than those established pursuant to paragraph 1 of this subsection. Any numeric values adopted by the director of environmental quality pursuant to this paragraph shall be at least as stringent as the numeric values used by the United States environmental protection agency.

3. If adopted in rule, use of an alternate procedure other than the use of specific numeric values to evaluate the potential of a pesticide to pollute groundwater. This procedure shall be consistent with the objective of this article.

B. In consultation with the Arizona department of agriculture and the department of water resources, the director of environmental quality shall adopt rules necessary to implement this section.

C. The director shall report on December 1 of each year the following information to the legislature for each pesticide registered for agricultural use:

1. A list of each active ingredient, other specified ingredient or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

2. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient which is greater than one or more of the numeric values established pursuant to subsection A of this section, or is less than the numeric value in the case of soil adsorption coefficient, in both of the following categories:

(a) Water solubility or soil adsorption coefficient.

(b) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism or field dissipation.

3. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient that has been determined by an alternate procedure that is adopted pursuant to subsection B of this section to have the potential to pollute groundwater.

4. For each pesticide listed pursuant to paragraph 2 or 3 of this subsection for which information is available, a list of the amount of the pesticide that was applied to soil in this state during the most recent year, where it was applied and for what purpose the pesticide was used.

D. The director of environmental quality in consultation with the Arizona department of agriculture, the department of water resources and the department of health services may determine to the extent possible the toxicological significance of the degradation products and other specified ingredients identified pursuant to subsection C, paragraphs 2 and 3 of this section.

49-304. Penalty for groundwater protection data gap

A. A registrant of a pesticide is subject to a penalty of up to ten thousand dollars for each day that a groundwater protection data gap exists unless the information was waived pursuant to section 49-302, subsection D or a conditional registration was granted pursuant to section 49-310. In determining the amount of the penalty, the following shall be considered:

1. The extent to which the registrant has made every effort to submit the valid, complete and adequate information.

2. Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete and adequate information.

B. If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap, the director or registrant shall submit the issues of the dispute to the water quality appeals board pursuant to section 49-323. The water quality appeals board shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater protection data gap exists.

C. The attorney general may enforce this section.

D. Any monetary penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

49-305. Groundwater protection list; regulation of pesticides on list

A. The director shall establish a groundwater protection list of pesticides that have the potential to pollute groundwater. The director shall immediately place all pesticides identified in section 49-303, subsection C, paragraphs 2 and 3 on the groundwater protection list and shall regulate the use of these pesticides if the pesticide is intended for application to or injection into the soil by ground based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be followed within seventy-two hours by flood or furrow irrigation. The director shall adopt rules to carry out this section.

B. On notice from the director, a person who uses a pesticide on the groundwater protection list is required to report the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established by the Arizona department of agriculture for reporting custom applications.

C. If a pesticide has not been detected in groundwater anywhere in this state in tests conducted by a governmental agency or other reliable source, the director may remove that pesticide from the groundwater protection list as provided in rule.

49-306. Groundwater protection data gap; cancellation of registration

A. The director shall notify the Arizona department of agriculture to cancel the registration of a pesticide for agricultural use if there is a groundwater protection data gap for that pesticide.

B. If a registrant no longer manufactures the active ingredient or pesticide in question or if it has been voluntarily withdrawn from the Arizona market, the registration of that product shall be cancelled.

49-307. Monitoring and testing

A. In order to more accurately determine the mobility and persistence of the pesticides identified pursuant to section 49-303, subsection C, paragraphs 2 and 3 and those pesticides whose continued use is allowed pursuant to section 49-309 and to determine if these pesticides have migrated into groundwaters of this state, the director shall conduct soil and groundwater monitoring statewide in areas of this state where the pesticide is primarily used or where other factors identified pursuant to section 49-302, including physicochemical characteristics and use practices of pesticides, indicate a probability that the pesticide may migrate into the groundwaters of this state. The monitoring shall begin within one year after the pesticide is placed on the groundwater protection list and shall be conducted according to standard protocol and testing procedures established pursuant to subsection B of this section. Monitoring programs shall replicate conditions under which the pesticide is normally used in the area of monitoring. In developing a monitoring program, the director shall coordinate activities with other agencies that conduct soil and groundwater monitoring.

B. Within ninety days after a pesticide is placed on the groundwater protection list pursuant to section 49-305, the director, in consultation with the department of health services, shall expeditiously develop a standard protocol and testing procedure for each pesticide identified pursuant to section 49-305.

C. The director shall determine the probable source of the pesticides, specified ingredients or degradation products. The analysis of the pesticides, specified ingredients or degradation products shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and method of applying the pesticide, irrigation practices related to use of the pesticide and types of soil in areas where the pesticide is applied.

D. The director shall report all monitoring results to the Arizona department of agriculture.

49-308. Enforcement

A. Within ninety days after a pesticide that is listed pursuant to section 49-305 is found pursuant to section 49-307 under any of the conditions listed in paragraph 1, 2 or 3 of this subsection, the director shall determine whether the pesticide resulted from agricultural use according to state and federal laws and regulations and shall state in writing the reasons for the determination that:

1. An active ingredient of a pesticide has been found at or below the deepest of the following depths:

(a) Eight feet below the soil surface.

(b) Below the root zone of the crop where the active ingredient was found.

2. An active ingredient of a pesticide has been found in the groundwaters of this state.

3. The pesticide has degradation products or other specified ingredients which pose a threat to public health and which have been found under the conditions specified for active ingredients in either paragraph 1 or 2 of this subsection.

B. On a determination by the director that a pesticide meets any of the conditions specified in subsection A of this section as a result of agricultural use according to state and federal laws and regulations, the director shall immediately notify the registrant of the determination. A pesticide that meets any of the conditions in subsection A of this section is subject to section 49-309.

C. For the purposes of this section, any finding of a pesticide shall result from an analytical method approved by the United States environmental protection agency and shall be verified, within thirty days, by a second analytical laboratory approved by the director.

D. The point of compliance prescribed by section 49-244 does not apply to this section.

49-309. Cancellation of pesticide registration; hearing for reconsideration and continued use

A. If the director determines the pesticide which meets any of the conditions specified in section 49-308 is carcinogenic, mutagenic, teratogenic or toxic to humans in concentrations found at depths prescribed in section 49-308, subsection A and the pesticide label cannot be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwaters of this state, the director shall notify the Arizona department of agriculture to cancel the registration of the pesticide.

B. For any other pesticide which meets any of the conditions specified in section 49-308 the registrant may request a hearing within forty-five days of notification that the director has made a determination pursuant to section 49-308, subsection B. At the same time the registrant shall submit a report and documented evidence which demonstrates either of the following:

1. The presence in the soil of any active ingredient, other specified ingredient or degradation product does not threaten to pollute the groundwaters of this state in any region in this state or that the pesticide label can be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwaters of this state.

2. Any active ingredient, other specified ingredient or degradation product that has been found in groundwater has not polluted, and does not threaten to pollute, the groundwater of this state in any region in this state in which the pesticide may be used according to the terms under which it is registered or that the pesticide label can be modified to change the approved use and

application of the active ingredient to ensure that it does not threaten to pollute the groundwater of this state.

C. The director of environmental quality, after a public hearing and in consultation with the director of water resources, the director of the department of health services and the director of the Arizona department of agriculture, may allow the continued registration, sale and use of a pesticide, other than those identified in subsection A of this section, which meets any of the conditions specified in section 49-308 if the director determines any of the following:

1. Either of the conditions prescribed in subsection B of this section exist and apply to the pesticide.

2. There are no alternative products or practices that can be effectively used in substitution for the pesticide and the cancellation or modification will cause severe economic hardship on one or more segments of the agricultural industry in this state.

D. Notwithstanding subsection C of this section, the director shall not allow the continued registration, sale or use of a pesticide if it would cause a violation of water quality standards at the applicable point of compliance.

E. The Arizona department of agriculture shall cancel the registration of any pesticide identified pursuant to section 49-308 unless continued under subsection C of this section.

49-310. New pesticides; conditional registration; reports

A. The director may provide for the conditional registration of a new pesticide for one year with an option to renew annually for a period not to exceed three years under the following conditions:

1. The new pesticide is registered pursuant to the federal insecticide, fungicide and rodenticide act as amended (7 United States Code section 136; P.L. 100-532; 102 Stat. 2654) and is registered for use in one or more other states.

2. The director determines that a conditional registration will result in use of the new pesticide in this state that is sufficient to generate acceptable data to complete the permanent registration of the new pesticide pursuant to section 49-302. An applicant who submits data shall commit to develop and generate new data for the department's review and approval. The new data shall address the deficiency previously identified by the department in its initial review and approval process. The commitment shall be in the form of a contract with the department.

3. The new pesticide in question shall be important to agriculture as determined by the director of environmental quality after consultation with the Arizona department of agriculture.

B. Each registrant who holds a conditional registration shall submit a report to the director annually as specified by the director that describes the progress made in developing each item of required data. The director may require that additional data be included in the reports.

C. On receipt of the prescribed reports, the director may determine that the conditional registration status be continued for an additional year or be canceled if the reports indicate a lack of

progress. If the conditional registration is canceled, all product in the state, including product at the user level, shall be removed from sale or distribution.

D. Conditional registration shall not be granted more than one time per pesticide.

E. Conditional registrants shall not voluntarily cancel the conditional registration.

Article 7 Water Quality Appeals

A. An order of the director under this chapter is subject to appeal pursuant to title 41, chapter 6, article 10.

B. Except as provided in section 41-1092.08, subsection H, final administrative decisions are subject to appeal to superior court pursuant to title 12, chapter 7, article 6. For the benefit of the people of this state, appeals under this section have precedence, in every court, over all other civil proceedings. The presiding judge for the county in which the appeal has been made shall assign the appeal to the appropriate judge designated by the chief justice of the supreme court pursuant to section 45-406 to hear appeals relating to groundwater.

C. Except as provided in section 49-324, subsection E, the decision shall not be stayed pending appeal, except that the judge to whom the appeal is assigned may stay the decision, with or without bond, on a showing of good cause. In determining whether good cause exists under the circumstances, the court may consider whether:

1. The public interest will be adversely affected by a stay.

2. The stay will harm others.

3. There is a high probability that the appellant will succeed on the merits.

4. The appellant will suffer irreparable harm before a decision on the merits can be rendered.

D. The final decision of the superior court is appealable in the same manner as in civil actions generally and shall be governed by the rules of appellate procedure.

49-322. Water quality appeals board

A. A water quality appeals board is established in the department of administration consisting of three members appointed by the governor pursuant to section 38-211 to terms of three years. One member of the board shall be an attorney licensed to practice law in this state, and all members shall possess technical competence to perform the duties of the board. Board members are entitled to compensation determined under section 38-611.

B. Members of the board are subject to title 38, chapter 3, article 8 and shall not receive a significant portion of their income directly or indirectly from persons subject to individual permits or enforcement orders under this chapter. In addition, the members shall not have been employed by such persons, other than state agencies, within two years before appointment and may not be employed by such persons, other than state agencies, within two years after their appointment expires. For purposes of this subsection "significant portion of income" means ten per cent or more

of gross personal income for a calendar year or fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension or similar benefits.

C. The board may employ a staff. The real party in interest shall represent the board in any appeals from decisions of the board.

D. The board shall adopt rules of procedure to govern the conduct of hearings before the board.

49-323. Appeals to the board; judicial review

A. An appeal to the appeals board may be taken from any grant, denial, modification or revocation of any individual permit issued under this chapter, from any issuance, denial or revocation of a determination pursuant to section 49-241, subsections B and C or from the establishment of numeric values and data gap issues for pesticides pursuant to sections 49-303 and 49-304, by any person who is adversely affected by the action or by any person who may with reasonable probability be adversely affected by the action and who has exercised any right to comment on the action as provided in section 41-1092.03. Any interested person may intervene in the appeal as a matter of right. The board shall hold a hearing if questions of material fact are at issue in the appeal. Notice and hearing procedures are subject to title 41, chapter 6, article 10.

B. Final decisions of the board are subject to appeal to superior court pursuant to title 12, chapter 7, article 6. For the benefit of the people of this state, appeals under this section have precedence, in every court, over all other civil proceedings. The presiding judge for the county in which the appeal has been made shall assign the appeal to the appropriate judge designated by the chief justice of the supreme court pursuant to section 45-406 to hear appeals relating to groundwater.

49-324. Stay pending appeal; standard of review

A. If an appeal is taken from the director's decision to issue a permit for a new facility, the facility may not discharge any pollutants inconsistent with the director's decision until the appeal process is completed.

B. Except as provided in subsections D and E of this section:

1. If an appeal is taken from the director's decision to grant or deny a permit for an existing facility under circumstances in which that facility was previously subject to a permit, the facility may continue to operate pending final disposition of the appeal if there is no increase in the amount of pollutants discharged or change in the characteristics of the discharge.

2. If an appeal is taken from the director's decision to grant, deny, modify or revoke a permit for a facility already subject to a permit, the facility may continue to operate as long as the operation complies with the conditions of the existing permit until final disposition of the appeal.

C. Decisions by the director shall be affirmed by the appeals board unless, considering the entire record before the board, it concludes that the director's decision is arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid.

D. The director or any interested person who has appealed or intervened before the board may apply to the superior court for an order requiring cessation of discharge or conditions for

continued discharge pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health and the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

E. Notwithstanding section 41-1092.11, if a notice of appeal of a permit that is issued under article 3.1 of this chapter is filed, those permit provisions that are specifically identified in the notice of appeal as being contested and those other permit provisions that cannot be severed from the contested provisions are automatically stayed while the appeal is pending, including during any court proceedings. Uncontested permit provisions that are severable from the contested provisions are effective and enforceable thirty days after the director serves notice on the applicant, the water quality appeals board and any party who commented on the proposed action of the conditions that are uncontested and severable.

Article 8 Dry Wells

49-331. Definitions

In this article, unless the context otherwise requires:

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

2. "Director" means the director of the department of environmental quality.

3. "Dry well" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Dry wells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the federal underground injection control program (P.L. 93-523, part C), as amended.

4. "Owner" means a person who owns a dry well or a person who owned a dry well immediately before the discontinuation of its use.

49-332. Registration

A. A person who owns an existing dry well that is or has been used for disposal shall register the well on a registration form provided by the director. This form shall be accompanied by a registration fee established by the director by rule in a one-time rule making after the effective date of this amendment to this section. After the one-time rule making, the director shall not increase that fee by rule without specific statutory authority for the increase. Monies collected by the department shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The registration form shall include information that the director determines is necessary to meet the purpose of this article.

B. The director shall assign a registration number to each dry well registered pursuant to this section and shall maintain a permanent record of the information contained on the registration form and the registration number.

C. An owner who brings a dry well into operation after August 13, 1986 shall register the well on a registration form provided by the director and shall pay the registration fee established by the director by rule within thirty days of beginning operations.

D. A person who installs a dry well shall notify the owner of the registration requirements of subsection C of this section.

E. This article shall not be construed to legalize any dry well that exists on August 13, 1986 and that is not in compliance with this chapter and chapter 5 of this title.

49-333. Regulation of dry wells; license to drill

A. The director may adopt rules establishing standards for new and existing dry wells pertaining to their performance, operation, construction, design, closure, location and inspection.

B. Dry wells shall not be used for the disposal of hazardous substances as defined in the comprehensive environmental response, compensation, and liability act (P.L. 96-510), as amended, or oil as defined in the federal water pollution control act (P.L. 92-500), as amended.

C. New dry well construction and modifications of existing dry wells shall be performed under the direct and personal supervision of a well driller who holds an appropriate contractor's license issued pursuant to title 32, chapter 10.

49-334. Enforcement and penalties; appeals

A. If the director determines that a person is violating this article or any rule adopted pursuant to this article the director may issue an order requiring compliance within a reasonable time. A compliance order becomes final thirty days after the order is served unless within thirty days of service the person named on the order requests a hearing. A hearing shall be conducted pursuant to title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, the director's final decision may be appealed by any party to the superior court pursuant to title 12, chapter 7, article 6.

B. The director may file an action in the superior court to enforce this article. The director may seek all appropriate relief including temporary and permanent injunctions.

49-335. Rules

The director shall adopt rules necessary to provide procedures for the administration of this article and to implement the program for the regulation of dry wells established by this article.

49-336. Exemption; golf courses

Provisions of this article shall not apply to dry wells used in conjunction with golf course maintenance.

Article 9 Potable Water Systems

49-351. Designation of responsible state agency

A. The department of environmental quality is designated as the responsible agency for this state to take all actions necessary or appropriate to ensure that all potable water distributed or sold to the public through public water systems is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease causing substances or organisms. All such actions shall be taken at the direction of the director of the department.

B. All state agencies and any local health agencies involved with water quality, at the request of the director, shall provide to the department any assistance requested to ensure that this article is effectuated.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes.

B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.

B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:

1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.

2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.

3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.

4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.

2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.

3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.

2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.

2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.

3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.

4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.

5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

49-354. Enforcement; violation; classification; compliance orders; judicial review; injunctive relief; civil administrative penalties; civil penalties

A. A person who violates this article or a rule adopted pursuant to this article is guilty of a class 2 misdemeanor for each violation. In the instance of a continuing violation, each day a violation continues constitutes a separate offense.

B. If the director determines that a person is in violation of this article or a rule adopted pursuant to this article, the director may issue an order requiring compliance immediately or within a specified time period. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing. The director shall transmit the compliance order to the alleged violator by certified mail, return receipt requested, or by hand delivery. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge pursuant to title 41, chapter 6, article 10. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Except as provided in section 41-1092.08, subsection H, a final administrative decision is subject to judicial review pursuant to title 12, chapter 7, article 6. At the request of the director the attorney general may begin an action in superior court to enforce orders issued under this subsection after an order becomes final.

C. If the director determines that a person is in violation of this article or a rule adopted pursuant to this article to implement the requirements contained in 40 Code of Federal Regulations parts 141 and 142, including the national primary drinking water regulations, the director may issue a compliance order pursuant to subsection B of this section imposing a civil administrative penalty. All penalty amounts shall be calculated as follows:

1. If the violator is a public water system that serves more than ten thousand persons, the director may impose a civil administrative penalty of up to $1,000 per day per violation up to $10,000 per violation.

2. If the violator is a public water system that serves five hundred to ten thousand persons, the director may impose a civil administrative penalty that does not exceed $500 per day per violation up to $5,000 per violation.

3. If the violator is a public water system that serves fewer than five hundred persons, the director may impose a civil administrative penalty that does not exceed $100 per day per violation up to $1,000 per violation.

D. When determining the amount of a civil administrative penalty pursuant to subsection C of this section, the director shall consider all of the following:

1. The size of the public water system.

2. Any good faith effort by the public water system to maintain compliance with national primary drinking water regulations.

3. The seriousness of the violation.

4. Any history of violation of the national primary drinking water regulations.

5. Any history of recalcitrance by the violator.

6. Any economic benefit resulting from the violation, as an aggravating factor only.

7. Any other factor deemed relevant.

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

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

(a) Determines that the facility is out of compliance with an administrative order issued by the department for a violation of this chapter.

(b) Files a civil action against the owner or operator of the public water system for a violation of this chapter.

(c) Determines that an emergency exists with respect to the public water system.

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

F. Civil administrative penalties may not be recovered pursuant to subsection C of this section if civil penalties are sought pursuant to subsection H of this section for the same violation.

G. All civil administrative penalties obtained pursuant to subsection C of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

H. In addition to the authority provided in subsection C of this section, the attorney general may, and at the request of the director shall, begin an action in superior court to recover civil penalties in an amount of not more than $500 per violation per day from any person who violates this article or a rule adopted pursuant to this article. All civil penalties obtained under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. Civil penalties may not be recovered pursuant to this subsection if civil administrative penalties are sought pursuant to subsection C of this section for the same violation.

I. If the director has reason to believe that a person is in violation of this article or a rule adopted or an order issued pursuant to this article or believes that a person is creating an actual or potential

endangerment to the public health because of acts performed in violation of this article or a rule adopted pursuant to this article, the director, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.

49-355. Small drinking water systems fund; grants; definition

A. The small drinking water systems fund is established in the water infrastructure finance authority of Arizona. The fund consists of monies appropriated by the legislature. Monies in the fund are exempt from lapsing under section 35-190. Interest earned on monies in the fund shall be credited to the fund.

B. Monies from the small drinking water systems fund shall be used to provide grants, including emergency grants, to interim operators, interim managers or owners of small drinking water systems to repair, replace or upgrade water infrastructure as required for compliance with title 40, chapter 2, this chapter or any rule adopted under title 40, chapter 2 or this chapter.

C. On recommendation of the department in consultation with the corporation commission, the water infrastructure finance authority of Arizona may approve a grant from the fund to an interim operator, an interim manager or an owner of a small drinking water system pursuant to this section only if the interim operator, the interim manager or the owner demonstrates that it requires financial assistance to replace, make repairs to, rehabilitate or upgrade the drinking water system infrastructure in order to correct or avoid an interruption in water service or to comply with title 40, chapter 2, this chapter or any rule adopted under title 40, chapter 2 or this chapter. The department shall include in its recommendation to the water infrastructure finance authority of Arizona a written statement that is signed by the director and that includes a detailed assessment of the direct public benefit of the grant, a certification that disbursement of monies is in the best interests of this state and, if applicable, a determination that the grant is in response to an emergency.

D. Before disbursing monies to an authorized recipient pursuant to this section, the water infrastructure finance authority of Arizona shall enter into a written grant agreement with the recipient. The terms of the agreement shall include at least the following:

1. Performance targets and target dates for matters associated with the grant as determined by the department.

2. Terms for payment of monies to the recipient and repayment to this state as prescribed by subsection F of this section.

E. The written grant agreement may require that a reasonable percentage of the total amount of the grant be withheld until the recipient meets specified performance targets.

F. The water infrastructure finance authority of Arizona may require repayment to this state of a portion or all of the grant monies with interest at an agreed rate and on agreed terms. The repayment may be required if either of the following applies:

1. The water infrastructure finance authority of Arizona in coordination with the department finds that the grant recipient has not met performance targets specified in the written grant agreement on or before the dates specified in the agreement.

2. The written grant agreement prescribes the repayment.

G. Emergency grants made pursuant to this section are exempt from title 41, chapter 23.

H. For the purposes of this section, "small drinking water system" means a public water system as prescribed in section 49-352 that serves ten thousand or fewer persons.

49-356. Water systems; designating lead agency; coordinating council

A. The department of environmental quality is designated as the lead agency to review the operations of water systems and the practices of governmental agencies that oversee and regulate them.

B. A water systems coordinating council is established in the department of environmental quality consisting of representatives of at least the following governmental entities and agencies or private water systems:

1. The department of environmental quality.

2. The corporation commission.

3. The state real estate department.

4. The department of water resources.

5. The department of health services.

6. The office of the state fire marshal in the Arizona department of forestry and fire management.

7. One representative of the health department of a county having a population exceeding one million five hundred thousand persons.

8. One representative of the health department of a county having a population exceeding five hundred thousand but not exceeding one million five hundred thousand persons.

9. One member who is appointed by the director and who represents county planning and zoning departments.

10. One member who is appointed by the director and who represents a city or town with a population of less than ten thousand.

11. One member who is appointed by the director and who represents investor owned water systems.

C. The determination of the number and appointment of representatives for the departments designated in subsection B, paragraphs 1, 4 and 5 of this section shall be made by the director of the respective departments. The determination of the number and appointment of representatives of the state real estate department shall be made by the commissioner of the state

real estate department. The determination of the number and appointment of representatives of the office of the state fire marshal shall be made by the state forester. The appointment of representatives under subsection B, paragraphs 7 and 8 of this section shall be made by the director of the department of health services.

D. Additional members may be appointed at the discretion of the council. A representative from the department of environmental quality, selected by the director, shall serve as chairman of the council. The council shall meet at least quarterly and may meet more often to conduct its business.

E. The council shall:

1. Develop public education and information programs for owners, operators and customers of water systems.

2. Identify programs to advise and assist owners and operators of water systems in management, accounting, engineering and other technical areas.

3. Integrate and coordinate information databases among member agencies.

4. Evaluate the statutory and regulatory authority of governmental entities regarding water systems and recommend appropriate changes.

5. Develop any other programs and recommendations that would benefit the owners, operators and customers of water systems and the statutory and regulatory practices of government agencies.

6. Identify sources of funding to accomplish the purposes of this section.

7. Investigate mechanisms to ensure the financial viability of new water systems before they begin operation.

49-357. Joint monitoring and testing

The department may allow water systems that are subject to this article to cooperate in testing for and monitoring water contaminants for compliance with this article if the director determines that the water systems are located in the same general area and that the area is hydrologically connected.

49-358. Water system compliance assistance program

A. The department shall establish a water system compliance assistance program to assist water systems in complying with standards imposed by federal and state law, rules and regulations. The program shall provide information and technical assistance to water systems.

B. The department may contract with a nonprofit organization which provides on-site technical assistance to small water systems and which is dedicated to preserving and enhancing water quality in Arizona.

49-360. Monitoring assistance program for public water systems; fees; monitoring assistance fund; safe drinking water program fund; rules

(Rpld. 1/1/21)

A. The department shall establish a monitoring assistance program to assist public water systems in complying with monitoring requirements under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613; 42 United States Code sections 300f through 300j-26), as amended. The program shall provide for the collection, transportation and analysis of baseline samples from public water systems in a frequency sufficient to keep the systems in compliance with the federal safe drinking water act requirements. At a minimum, the program shall include monitoring for the following categories of contaminants:

1. Volatile organic chemicals.

2. Synthetic organic chemicals.

3. Inorganic chemicals except for copper and lead.

4. Radiochemicals.

B. The department shall contract with one or more private parties or statewide nonprofit organizations representing water systems to implement the monitoring assistance program subject to available funding. Contracts shall be awarded for up to three years, beginning January 1, 1999. Entities with which the department contracts shall:

1. Provide updated monitoring schedules, developed in conjunction with the department, to participating water systems.

2. Take samples for participating water systems, allow for certified operators to take samples and train system personnel to take samples.

3. Assist participating water systems when resampling is required by the federal safe drinking water act.

4. Assist participating water systems to apply for and qualify for available interim monitoring relief and waivers.

5. Provide any other on-site technical assistance necessary to help the participating water systems comply with the monitoring requirements of the federal safe drinking water act.

C. Any public water systems serving more than ten thousand persons may elect to participate in the monitoring assistance program subject to the payment of the fees pursuant to subsection F of this section.

D. The department shall use licensed environmental laboratories as defined in section 36-495 or laboratories certified or designated by the United States environmental protection agency to analyze samples collected under the monitoring assistance program. The department shall establish specific criteria for measuring contractor qualifications and performance.

E. Each environmental laboratory that the department uses pursuant to subsection D of this section shall deliver copies of the analysis results to the water system owner, the monitoring assistance program contractor and the department.

F. The director shall establish fees for the monitoring assistance program to be collected from all public water systems serving up to ten thousand persons. The participating water systems shall remit these fees to the department for deposit in the monitoring assistance fund.

G. The monitoring assistance fund is established consisting of fees collected from participating public water systems pursuant to subsection F of this section. The director shall administer the fund. If the fund has a surplus after execution of the previous year's contract, any surplus in excess of two hundred thousand dollars in any year shall be used to reduce the fee for the subsequent year in a manner consistent with the program invoicing system. Monies in the fund shall be used to pay the monitoring assistance program contractors, the environmental laboratories used for the purposes of this section and administrative costs incurred by the department. Monies in the fund are exempt from lapsing pursuant to section 35-190. Interest earned on monies in the fund shall be credited to the fund. The allowable administrative costs of the department are limited to no more than fifteen percent of monies deposited in the fund annually or one hundred eighty-four thousand dollars, whichever is less. As used in this subsection, administrative costs include only those costs necessary to do the following:

1. Ensure contractor performance and quality control.

2. Administer the contracts.

3. Collect fees as provided in subsection F of this section.

4. Provide direct technical assistance related to the implementation of the monitoring assistance program only to the extent the department's assistance is required by this section.

H. The safe drinking water program fund is established consisting of monies deposited in the fund pursuant to section 42-5304. The director shall administer the fund. Subject to legislative appropriation, monies in the fund shall be used to pay for the costs of programs required by this article incurred by the department. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. Interest earned on monies in the fund shall be credited to the fund.

I. The department shall adopt rules for the monitoring assistance program.

J. Any site visit made pursuant to this section by a monitoring assistance program contractor shall not be regarded as an inspection or investigation. Enforcement actions shall not be taken as a result of these site visits, except that this section does not affect the authority of the department to enforce this article pursuant to section 49-354.

Article 10 Sewage Treatment Plants

49-361. Sewage treatment plants; operator certification

The department shall adopt and enforce rules to classify sewage collection systems and treatment plants and to certify operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, and the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The rules apply to all sewage treatment plants that receive and treat wastes from common collection sewers and industrial plants but do not apply to septic tanks, to devices that serve a single home or to industrial treatment devices that are used to perform or allow recycling or impounding wastes within the boundaries of the industry's property.

49-362. Calculation of wastewater treatment capacity; gray water; definition

A. The department may adopt rules for calculating a reduction in capacity or design flow for sewage treatment facilities if gray water reuse infrastructure for a subdivision is approved by the department.

B. For the purposes of this section, "subdivision" has the same meaning prescribed in section 32-2101.

Article 11 Local Stormwater Quality Programs

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

A. A county that is required by the clean water act to obtain coverage under a national or state pollutant discharge elimination system stormwater program may do all of the following:

1. Develop and implement stormwater pollution prevention plans and stormwater management programs as prescribed by the clean water act.

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

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

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

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

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

5. Seek a civil penalty of not more than two thousand five hundred dollars for each violation. Each day of a violation constitutes a separate offense.

B. An ordinance, rule or regulation adopted pursuant to this section, or a stormwater management program developed and implemented by a county pursuant to this section, shall not be more stringent than or conflict with any requirement of the clean water act.

C. A county that operates a regulated small municipal separate storm sewer system 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).

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

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

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

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

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

H. Before adopting any ordinance, rule or regulation pursuant to this section, a county shall file with the secretary of state a written statement including a summary of the proposed rule, ordinance or other regulation. The summary shall provide the name of the person with the county to contact with questions or comments. The secretary of state shall publish the written statement in the next issue of the Arizona administrative register at no cost to the county. The county shall make the text of the rule, ordinance or other regulation available to the public at the same time it files the written summary of the rule, ordinance or other regulation with the secretary of state as provided

in this subsection. The county shall also comply with the requirements of section 49-112, subsection D, paragraphs 2, 3 and 4.

I. For the purposes of this article, "county" means a county that operates a regulated small municipal separate stormwater system pursuant to 40 Code of Federal Regulations section 122.32.

49-372. Administrative director; enforcement

A. A county may designate and authorize an administrative director for the program or plan prescribed by section 49-371 to perform enforcement duties. If the administrative director determines that a person is in violation of an ordinance, rule or regulation adopted pursuant to section 49-371 or a permit authorized pursuant to that section, the administrative director may take actions consistent with this article and section 49-261.

B. A county that adopts ordinances, rules or regulations pursuant to section 49-371 may enforce those ordinances, rules or regulations as prescribed by sections 49-261, 49-262 and 49-263 for violations of this article as if this article were referenced in sections 49-261, 49-262 and 49-263 except for the following:

1. Appeals under section 49-261, subsection D shall be filed in the superior court.

2. Section 49-262, subsections F, G, H, I and J do not apply.

3. Any other section of statute prescribed in section 49-261, 49-262 or 49-263 does not apply.

C. The county's attorney and the county's designated administrative director have the authority prescribed for the attorney general and the director of environmental quality, respectively, pursuant to sections 49-261, 49-262 and 49-263.

D. Notwithstanding sections 49-262 and 49-263, penalties obtained pursuant to this article by a county shall be deposited into the county general fund.

E. A county shall not receive civil penalties under this section if an interested person, the United States, this state or another political subdivision or agency of this state has received civil penalties or is diligently prosecuting a civil penalty action in a court of the United States or this state, or in an administrative enforcement proceeding, with respect to the same allegations, standard, requirement or order. This state, and any political subdivision or agency of this state that is or may be affected by a civil, judicial or administrative action, may intervene as a matter of right in any pending civil, judicial or administrative action for purposes of obtaining injunctive or declaratory relief.

Article 12 Local Water Pretreatment

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

A. A city, town, county or sanitary district of this state may adopt, amend or repeal any ordinances necessary for implementing and enforcing the pretreatment requirements under the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended, and enforce the ordinances by imposing and

recovering a civil penalty of not more than twenty-five thousand dollars for each violation as prescribed by this section. For continuing violations, each day may constitute a separate offense.

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

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

1. The seriousness of the violation.

2. The economic benefit, if any, resulting from the violation.

3. Any history of such violation.

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

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

6. Such other factors as justice may require.

D. In addition to the remedies provided in this section, enforcement of such ordinances may include injunctive or other equitable relief.

E. All monies collected pursuant to an ordinance adopted under this section shall be deposited with the respective city, town, county or sanitary district.