

State of Arizona
Senate
Forty-second Legislature
Second Regular Session
1996

FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 2

SENATE BILL 1290

AN ACT

AMENDING SECTION 49-202, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

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

2 Section 1. Section 49-202, Arizona Revised Statutes, is amended to
3 read:

4 49-202. Designation of state agency

5 A. The department ~~of environmental quality~~ is designated as the agency
6 for this state for all purposes of the clean water act, including section
7 505, the resource conservation and recovery act, including section 7002, and
8 the safe drinking water act. The department may take all actions necessary
9 to administer and enforce these acts AS PROVIDED IN THIS SECTION, including
10 entering into contracts, grants and agreements, the adoption, modification
11 or repeal of rules, and initiating administrative and judicial actions to
12 secure to this state the benefits, rights and remedies of such acts.

13 B. THE DEPARTMENT SHALL PROCESS REQUESTS UNDER SECTION 401 OF THE
14 CLEAN WATER ACT FOR CERTIFICATION OF PERMITS REQUIRED BY SECTION 404 OF THE
15 CLEAN WATER ACT IN ACCORDANCE WITH SUBSECTIONS C THROUGH G OF THIS SECTION.
16 SUBSECTIONS C, D, SUBSECTION E, PARAGRAPH 3, SUBSECTION F, PARAGRAPH 3 AND
17 SUBSECTION G OF THIS SECTION APPLY TO THE CERTIFICATION OF NATIONWIDE OR
18 GENERAL PERMITS ISSUED UNDER SECTION 404 OF THE CLEAN WATER ACT. IF THE
19 DEPARTMENT HAS DENIED OR FAILED TO ACT ON CERTIFICATION OF A NATIONWIDE
20 PERMIT OR GENERAL PERMIT, SUBSECTIONS C THROUGH G OF THIS SECTION APPLY TO
21 THE CERTIFICATION OF APPLICATIONS FOR OR NOTICES OF COVERAGE UNDER THOSE
22 PERMITS.

1 C. THE DEPARTMENT SHALL REVIEW THE APPLICATION FOR SECTION 401
2 CERTIFICATION SOLELY TO DETERMINE WHETHER THE EFFECT OF THE DISCHARGE WILL
3 COMPLY WITH THE WATER QUALITY STANDARDS FOR NAVIGABLE WATERS ESTABLISHED BY
4 DEPARTMENT RULES ADOPTED PURSUANT TO SECTION 49-221, SUBSECTION A, AND
5 SECTION 49-222. THE DEPARTMENT'S REVIEW SHALL NOT EXTEND TO ACTIVITIES
6 CONDUCTED OUTSIDE OF NAVIGABLE WATERS. TO THE EXTENT THAT ANY OTHER
7 STANDARDS ARE CONSIDERED APPLICABLE PURSUANT TO SECTION 401(a)(1) OF THE
8 CLEAN WATER ACT, CERTIFICATION OF THESE STANDARDS IS WAIVED.

9 D. THE DEPARTMENT MAY INCLUDE ONLY THOSE CONDITIONS ON CERTIFICATION
10 UNDER SECTION 401 OF THE CLEAN WATER ACT THAT ARE REQUIRED TO ENSURE
11 COMPLIANCE WITH THE STANDARDS IDENTIFIED IN SUBSECTION C OF THIS SECTION.
12 THE DEPARTMENT MAY IMPOSE REPORTING AND MONITORING REQUIREMENTS AS CONDITIONS
13 OF CERTIFICATION UNDER SECTION 401 OF THE CLEAN WATER ACT ONLY IN ACCORDANCE
14 WITH DEPARTMENT RULES.

15 E. UNTIL JANUARY 1, 1999:

16 1. THE DEPARTMENT MAY REQUEST SUPPLEMENTAL INFORMATION FROM THE
17 SECTION 401 CERTIFICATION APPLICANT IF THE INFORMATION IS NECESSARY TO MAKE
18 THE CERTIFICATION DETERMINATION PURSUANT TO SUBSECTION C OF THIS SECTION.
19 THE DEPARTMENT SHALL REQUEST THIS INFORMATION IN WRITING WITHIN THIRTY
20 CALENDAR DAYS AFTER RECEIPT OF THE APPLICATION FOR SECTION 401 CERTIFICATION.
21 THE REQUEST SHALL SPECIFICALLY DESCRIBE THE INFORMATION REQUESTED. WITHIN
22 FIFTEEN CALENDAR DAYS AFTER RECEIPT OF THE APPLICANT'S WRITTEN RESPONSE TO
23 A REQUEST FOR SUPPLEMENTAL INFORMATION, THE DEPARTMENT SHALL EITHER ISSUE A
24 WRITTEN DETERMINATION THAT THE APPLICATION IS COMPLETE OR REQUEST SPECIFIC
25 ADDITIONAL INFORMATION. THE APPLICANT MAY DEEM ANY ADDITIONAL REQUESTS FOR
26 SUPPLEMENTAL INFORMATION AS A DENIAL OF CERTIFICATION FOR PURPOSES OF
27 SUBSECTION G OF THIS SECTION. IF THE DEPARTMENT FAILS TO ACT WITHIN THE TIME
28 LIMITS PRESCRIBED BY THIS SUBSECTION, THE APPLICATION IS DEEMED COMPLETE.

29 2. THE DEPARTMENT SHALL GRANT OR DENY SECTION 401 CERTIFICATION AND
30 SHALL SEND A WRITTEN NOTICE OF THE DEPARTMENT'S DECISION TO THE APPLICANT
31 WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF A COMPLETE APPLICATION FOR
32 CERTIFICATION. WRITTEN NOTICE OF A DENIAL OF SECTION 401 CERTIFICATION SHALL
33 INCLUDE A DETAILED DESCRIPTION OF THE REASONS FOR DENIAL.

34 3. THE DEPARTMENT MAY WAIVE ITS RIGHT TO CERTIFICATION BY GIVING
35 WRITTEN NOTICE OF THAT WAIVER TO THE APPLICANT. THE DEPARTMENT'S FAILURE TO
36 GRANT OR DENY AN APPLICATION WITHIN THE TIME LIMITS PRESCRIBED BY THIS
37 SECTION IS DEEMED A WAIVER OF CERTIFICATION PURSUANT TO THIS SUBSECTION AND
38 SECTION 401(a)(2) OF THE CLEAN WATER ACT.

39 F. BEGINNING JANUARY 1, 1999:

40 1. THE DEPARTMENT MAY REQUEST SUPPLEMENTAL INFORMATION FROM THE
41 SECTION 401 CERTIFICATION APPLICANT IF THE INFORMATION IS NECESSARY TO MAKE
42 THE CERTIFICATION DETERMINATION PURSUANT TO SUBSECTION C OF THIS SECTION.
43 THE DEPARTMENT SHALL REQUEST THIS INFORMATION IN WRITING. THE REQUEST SHALL
44 SPECIFICALLY DESCRIBE THE INFORMATION REQUESTED. AFTER RECEIPT OF THE

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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. AN APPLICANT FOR CERTIFICATION MAY APPEAL A DENIAL OF CERTIFICATION OR ANY CONDITIONS IMPOSED ON CERTIFICATION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. 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.

~~B-~~ H. 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.

~~C-~~ I. 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 ~~B-~~ H of this section.

Sec. 2. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR MARCH 1, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 1, 1996.