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Jane Dee Hull
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CHAPTER 194

SENATE BILL 1401

AN ACT

AMENDING SECTIONS 26-301, 45-811.01 AND 45-871.01, ARIZONA REVISED STATUTES; AMENDING SECTION 49-201, ARIZONA REVISED STATUTES; AMENDING SECTION 49-203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 210, SECTION 1; REPEALING SECTION 49-203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 202, SECTION 4; AMENDING SECTION 49-221, ARIZONA REVISED STATUTES; AMENDING SECTION 49-241, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 202, SECTION 6; AMENDING SECTIONS 49-241.01, 49-243, 49-250 AND 49-251, ARIZONA REVISED STATUTES; REPEALING SECTION 49-245.03, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-252; REPEALING LAWS 1995, CHAPTER 202, SECTION 9; BLENDING MULTIPLE ENACTMENTS; RELATING TO THE ENVIRONMENT.

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

Section 1. Section 26-301, Arizona Revised Statutes, is amended to read:

26-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial nuclear generating station" means an electric power generating facility which is owned by a public service corporation, a municipal corporation or a consortium of public service corporations or municipal corporations and which produces electricity by means of a nuclear reactor.

2. "Council" means the state emergency council.

3. "Director" means the director of the division.

4. "Division" means the division of emergency management within the department of emergency and military affairs.

5. "Emergency functions" includes warning and communications services, relocation of persons from stricken areas, radiological defense, temporary restoration of utilities, plant protection, transportation, welfare, public works and engineering, search or rescue, health and medical services, law enforcement, fire fighting, mass care, resource support, urban search or rescue, hazardous materials, food and energy information and planning and other activities necessary or incidental thereto.

6. "Emergency management" means the preparedness, response, recovery and mitigation activities necessary to respond to and recover from disasters, emergencies or contingencies.

7. "Hazardous materials" means:

(a) Any hazardous material designated pursuant to the hazardous materials transportation act of 1974 (P.L. 93-633; 88 Stat. 2156; 49 United States Code section 1801).

(b) Any element, compound, mixture, solution or substance designated pursuant to the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9602).

(c) Any substance designated in the emergency planning and community right-to-know act of 1986 (P.L. 99-499; 100 Stat. 1613; 42 United States Code section 11002).

(d) Any substance designated in the water pollution control act (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1317(a) and 1321(b)(2)(A)).

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

(f) Any imminently hazardous chemical substance or mixture with respect to which action has been taken pursuant to the toxic substances control act (P.L. 94-469; 90 Stat. 2003; 15 United States Code section 2606).

(g) Any material or substance determined to be radioactive pursuant to the atomic energy act of 1954 (68 Stat. 919; 42 United States Code section 2011).

(h) Any substance designated as a hazardous substance pursuant to section 49-201~~, paragraph 16, subdivision (f)~~.

(i) Any highly hazardous chemical or regulated substance as listed in the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401-7671).

8. "Hazardous materials incident" means the uncontrolled, unpermitted release or potential release of hazardous materials that may present an imminent and substantial danger to the public health or welfare or to the environment.

9. "Local emergency" means the existence of conditions of disaster or of extreme peril to the safety of persons or property within the territorial limits of a county, city or town, which conditions are or are likely to be

beyond the control of the services, personnel, equipment and facilities of such political subdivision as determined by its governing body and which require the combined efforts of other political subdivisions.

10. "Mitigation" means measures taken to reduce the need to respond to a disaster and to reduce the cost of disaster response and recovery.

11. "Preparedness" means actions taken to develop the response capabilities needed for an emergency.

12. "Recovery" means short-term activities necessary to return vital systems and facilities to minimum operating standards and long-term activities required to return life to normal or improved levels.

13. "Response" means activities that are designed to provide emergency assistance, limit the primary effects, reduce the probability of secondary damage and speed recovery operations.

14. "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons or property within the state caused by air pollution, fire, flood or floodwater, storm, epidemic, riot, earthquake or other causes, except those resulting in a state of war emergency, which are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county, city or town, and which require the combined efforts of the state and the political subdivision.

15. "State of war emergency" means the condition which exists immediately whenever this nation is attacked or upon receipt by this state of a warning from the federal government indicating that such an attack is imminent.

Sec. 2. Section 45-811.01, Arizona Revised Statutes, is amended to read:

45-811.01. <u>Underground storage facility permit</u>

A. A person may apply to the director for a constructed underground storage facility permit or a managed underground storage facility permit and may operate an underground storage facility only pursuant to a permit.

B. A person applying to the director for a managed underground storage facility permit may request to have the facility designated as a facility that could add value to a national park, national monument or state park if that park or monument includes any portion of a natural channel of a stream or adjacent floodplain that would benefit from the facility.

C. The director may issue a permit to operate an underground storage facility if the director determines that all of the following apply:

1. The applicant has the technical and financial capability to construct and operate the facility.

2. Storage of the maximum amount of water that could be in storage at any one time at the facility is hydrologically feasible.

3. Storage at the facility will not cause unreasonable harm to land or other water users within the maximum area of impact of the maximum amount

of water that could be in storage at any one time at the underground storage facility over the duration of the permit.

4. The applicant has applied for and has received any required floodplain use permit from the county flood control district.

5. The director of environmental quality has determined that the facility is not in a location that will promote either the migration of a contaminant plume or the migration of a poor quality groundwater area so as to cause unreasonable harm or is not in a location that will result in pollutants being leached to the groundwater table so as to cause unreasonable harm, if the proposed water storage at the underground storage facility is exempt from the requirement for an aquifer protection permit under section 49-250, subsection B, paragraph 12, 13 OR 24. FOR ANY FACILITY EXEMPT UNDER SECTION 49-250, SUBSECTION B, PARAGRAPH 24, THE DIRECTOR MAY, AFTER CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, INCLUDE IN ANY SUCH PERMIT ANY REQUIREMENTS, INCLUDING OPERATION, MAINTENANCE, MONITORING, RECORDKEEPING, REPORTING, CONTINGENCY PLAN OR REMEDIAL ACTION REQUIREMENTS, AS THE DIRECTOR DEEMS NECESSARY.

D. The director may designate a managed underground storage facility as one that could add value to a national park, national monument or state park if the director finds that all of the following apply:

1. The applicant has agreed in writing to maintain a quantified, minimum base flow and annual discharge to the stream for the duration of the permit.

2. The project will benefit the groundwater basin as a whole.

Sec. 3. Section 45-871.01, Arizona Revised Statutes, is amended to read:

45-871.01. <u>Permit application; fee; notice of application; objections; hearing; appeal</u>

A. The director shall prescribe and furnish application forms for the permits prescribed by articles 2 and 3 of this chapter. The application forms shall require the applicant to submit the information needed by the director to determine whether the permit may be issued. The director shall establish and collect a reasonable fee from the applicant to cover the cost of administrative services and other expenses associated with evaluating and issuing each permit. All fees collected pursuant to this subsection shall be remitted pursuant to section 45-615, paragraph 1.

B. On receipt of an application for a permit pursuant to this chapter, the director shall endorse on the application the date of its receipt and shall keep a record of the application. The director shall conduct a review of the application within one hundred days of receipt of the application. If the director determines in the review that the application is incomplete or incorrect, the director shall notify the applicant and the review period is extended by fifteen days. The application is incomplete or incorrect until the applicant files the information requested in the application. The

director may conduct independent investigations as necessary to determine whether the application should be approved or rejected.

C. If the application is for water storage at an underground storage facility that is exempt from the requirement for an aquifer protection permit under section 49-250, subsection B, paragraph 12, 13 OR 24, the director of water resources shall consult with the director of environmental quality and shall develop a coordinated and unified permit review process, which conforms to the time schedule prescribed by this section, to determine whether the permit application is correct and whether the development of a plan of action for monitoring and data analysis shall be required.

D. Except as provided in subsection E of this section, if the application is determined to be complete and correct and the application is for a storage facility permit or a water storage permit, the director, within fifteen days of that determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the water storage. The director shall also give notice by first class mail to each city, town, private water company, irrigation district and electrical district that serves land within the area of impact of the stored water. The notice shall state that persons who may be adversely affected by the water storage may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth the reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing the permit being requested as prescribed by articles 2 and 3 of this chapter.

E. If the application is determined to be complete and correct and the application is for a water storage permit to store Colorado river water at a storage facility where storage of Colorado river water has previously been permitted, the director may issue the permit within twenty days of that determination if all of the following apply:

1. The holder of the storage facility permit with which the water storage permit will be affiliated has consented to the water storage.

2. The water storage permit will not require a modification of an affiliated water storage facility permit.

3. Colorado river water will be the only type of water stored under the water storage permit.

4. The applicant has the right to use the Colorado river water.

F. Except as provided in section 45-834.01, subsection D, if the application is determined to be complete and correct and the application is for a recovery well permit, the director, within fifteen days of the

determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county in which the applicant proposes to recover stored water. If the application is for a well within the area of impact of the stored water, the director shall also give notice by first class mail to each city, town, private water company, irrigation district or electrical district that serves land within the area of impact. If the applicant is a city, town, private water company or irrigation district and the application is for a well within the service area of the applicant but outside the area of impact of the stored water, the director shall also give notice to each city, town, private water company or irrigation district that serves land within the service area of the applicant. If the application is for a well located within three miles outside of the exterior boundaries of the service area of a city, town, private water company or irrigation district, the applicant shall give notice of the application by first class mail to each city, town, private water company or irrigation district within that distance. The applicant shall file proof of the notice with the director. The notice shall state that persons who may be adversely affected by the recovery well may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing a recovery well permit as set forth in section 45-834, subsection B. For the purposes of this subsection, if the proposed recovery well is located within three miles outside of the exterior boundaries of the service area of a city, town, private water company or irrigation district, a city, town, private water company or irrigation district within that distance shall be considered a person who may be adversely affected by the recovery well.

G. In appropriate cases, including cases in which a proper objection to the permit application has been filed, the director may hold a hearing. At least thirty days before the hearing, the director shall notify the applicant and any person who filed a proper objection to the issuance of the permit. The hearing shall be scheduled for at least sixty days but not more than ninety days after the expiration of the time in which to file objections. The hearing shall be conducted as provided in section 45-480, subsection B.

H. If a hearing is held, the director shall issue a decision and order either affirming or modifying the hearing officer's determination within six months of the notice of the hearing, or within ninety days in the case of an application under article 6 of this chapter. If a hearing is not held, the director shall issue a decision and order within six months of the date

notice of the application is first given pursuant to subsection D or F of this section, or within ninety days in the case of an application under article 6 of this chapter. The director shall record and endorse the approval or rejection of the application on the application. If the permit is denied, the director shall return a copy of the application to the applicant specifically stating the reasons for denial.

I. The applicant or any person who filed a proper objection to the application may appeal the decision to superior court as provided in section 45-405.

Sec. 4. Section 49-201, Arizona Revised Statutes, is amended to read:

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 A 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 EXCEEDING AQUIFER WATER QUALITY STANDARDS AT THE APPLICABLE POINT OF COMPLIANCE. CLEAN CLOSURE ALSO MEANS POST-CLOSURE MONITORING AND MAINTENANCE ARE UNNECESSARY TO MEET THE REQUIREMENTS OF THIS CHAPTER.

~~5.~~ 6. "Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376).

~~6.~~ 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 POST-CLOSURE MONITORING AND MAINTENANCE PLAN, NOTIFICATIONS AND APPROVALS REQUIRED IN A PERMIT HAVE BEEN COMPLETED.

~~7.~~ 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.

~~8.~~ 9. "Department" means the department of environmental quality.

~~9.~~ 10. "Director" means the director of environmental quality or the director's designee.

~~10.~~ 11. "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.

~~11.~~ 12. "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.

~~12.~~ 13. "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.

~~13.~~ 14. "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.

~~14.~~ 15. "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 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.

~~15.~~ 16. "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.

~~16.~~ 17. "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.

~~17.~~ 18. "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 ~~broken concrete, asphaltic pavement, brick, rock, gravel, sand,~~ 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~~, and soil~~.

19. "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, SUBSECTION P 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 THE INFORMATION REQUIRED BY SECTION 49-243, SUBSECTION A, PARAGRAPHS 1, 2, 3 AND 7 TO THE DIRECTOR.

~~18.~~ 20. "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)).

~~19.~~ 21. "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. ~~The following constitute major modifications:~~

~~(a) A physical change in an existing facility or change in its method of operation that results in a significant alteration in the characteristics or volume of the pollutants discharged.~~

~~(b) 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.~~ For purposes of this definition construction on a facility has begun if the facility owner or operator has either:

~~(i)~~ (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.

~~(ii)~~ (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.

~~20.~~ 22. "Nonpoint source" means any conveyance which is not a point source from which pollutants are or may be discharged to navigable waters.

~~21.~~ 23. "Permit" means a written authorization issued by the director stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility.

~~22.~~ 24. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private

corporation, including a government corporation, partnership, association, state, a political subdivision of this state, or commission or the United States government or a federal facility, interstate body or other entity.

~~23.~~ 25. "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.

~~24.~~ 26. "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.

27. "POST-CLOSURE MONITORING AND MAINTENANCE" MEANS THOSE ACTIVITIES CONDUCTED AFTER CLOSURE NOTIFICATION THAT ARE NECESSARY TO:

(a) KEEP THE FACILITY IN COMPLIANCE WITH AQUIFER WATER QUALITY STANDARDS AT THE APPLICABLE POINT OF COMPLIANCE.

(b) VERIFY THAT THE CLOSURE DESIGN HAS ELIMINATED DISCHARGE TO THE EXTENT INTENDED.

(c) PERFORM ANY REMEDIAL OR MITIGATIVE ACTION NECESSARY TO COMPLY WITH THIS CHAPTER.

(d) MEET PROPERTY USE RESTRICTIONS.

~~25.~~ 28. "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.

~~26.~~ 29. "Regulated agricultural activity" means the application of nitrogen fertilizer or a concentrated animal feeding operation.

~~27.~~ 30. "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).

~~28.~~ 31. "Standards" means water quality standards, pretreatment standards and toxicity standards established pursuant to this chapter.

~~29.~~ 32. "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.

33. "TANK" MEANS A STATIONARY DEVICE, INCLUDING A SUMP, WHICH IS CONSTRUCTED OF CONCRETE, STEEL, PLASTIC, FIBERGLASS, OR OTHER NON-EARTHEN MATERIALS THAT PROVIDE SUBSTANTIAL STRUCTURAL SUPPORT, AND THAT IS DESIGNED TO CONTAIN AN ACCUMULATION OF SOLID, LIQUID OR GASEOUS MATERIALS.

~~30.~~ 34. "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.

~~31.~~ 35. "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.

~~32.~~ 36. "Vadose zone" means the zone between the ground surface and any aquifer.

~~33.~~ 37. "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.

~~34.~~ 38. "Well" means a bored, drilled or driven shaft, pit or hole whose depth is greater than its largest surface dimension.

Sec. 5. Section 49-203, Arizona Revised Statutes, as amended by Laws 1995, chapter 210, section 1, is amended to read:

49-203. <u>Powers and duties of the director and department</u>

A. The director shall:

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

2. Adopt, by rule, a permit program for 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 described in the clean water act.

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

7. Assess and collect fees to cover, as necessary, reasonable costs 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 which are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees shall be transmitted to the state treasurer for deposit in the water quality ~~assurance revolving~~ FEE fund established in section ~~49-282~~ 49-210. Monies from other permit fees shall be transmitted to the state treasurer for deposit in the ~~state general~~ WATER QUALITY FEE fund unless otherwise provided by law. Except for monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D or 49-362, monies collected from all other fees shall be transmitted to the state treasurer for deposit in the water quality ~~assurance revolving~~ FEE fund established pursuant to section ~~49-282~~ 49-210.

8. Adopt, modify, repeal and enforce other rules which are reasonably necessary to carry out his functions under this chapter.

9. 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.

10. 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. Prior to 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, as is 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 such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, he 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 to establish and maintain records, including photographs, relating to the discharge and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge.

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.

C. Subject to the provisions of 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 and section 49-362, 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 section 49-203, subsection A, paragraph 7.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection which are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

Sec. 6. Repeal

Section 49-203, Arizona Revised Statutes, as amended by Laws 1995, chapter 202, section 4, is repealed.

Sec. 7. Section 49-221, Arizona Revised Statutes, is amended to read:

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, the director shall consider, but not be limited to, the following:

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

2. The uses which 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 which the director may deem appropriate.

Sec. 8. Section 49-241, Arizona Revised Statutes, as amended by Laws 1995, chapter 202, section 6, is amended to read:

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 subsection E of this section, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or 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 AND WILL NOT BE SUBJECT TO MINE LEACHING OPERATIONS.

3. Injection wells.

4. Land treatment facilities.

5. Facilities which 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. Septic tank systems with a capacity of greater than two thousand gallons per day.

~~9. Groundwater recharge projects and underground storage and recovery projects.~~

9. UNDERGROUND WATER STORAGE FACILITIES.

10. Point source discharges to navigable waters.

11. Sewage or ~~sludge ponds and~~ wastewater treatment facilities.

C. Not later than January 1, 1992, the director shall publish a list of the names and locations of existing facilities that are required to obtain an aquifer protection permit. The list shall contain deadlines for the submittal of applications for aquifer protection permits, based on the degree of risk to the public health and welfare and the environment and based on a work plan of the director designed to process all applications for an aquifer protection permit no later than January 1, 2001.

D. Beginning January 1, 1993, the director shall publish annually the fee schedule for aquifer protection permit applications 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.

E. Owners and operators of existing solid waste disposal facilities are exempt from obtaining an aquifer protection permit if the facility complies with all of the following:

1. A closure plan is submitted to the director by October 9, ~~1996~~ 1997, with a closure date of not later than October 9, 1998. The closure plan shall include appropriate site specific groundwater quality monitoring.

2. The facility receives less than twenty tons per day of solid waste on an annual average.

3. There is no evidence of existing groundwater contamination from the facility.

4. Either of the following applies:

(a) The facility serves a community that experiences annually an interruption in surface transportation for at least three consecutive months that prevents access to a regional solid waste management facility.

(b) The facility serves a community that has no practicable waste management alternative and the facility is located in an area that receives twenty-five inches or less of precipitation annually.

F. If the director has reasonable cause to believe that groundwater contamination is occurring from a solid waste facility that is closed pursuant to subsection E of this section, the director may require the owner or operator to investigate and, if necessary, remediate the contamination in accordance with a plan approved by the director. If an owner or operator of such a facility discovers information indicating that groundwater contamination is discharging from the facility the information shall be immediately submitted to the director.

G. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall transmit all monies collected under this section to the state treasurer for deposit 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.

Sec. 9. Section 49-241.01, Arizona Revised Statutes, is amended to read:

49-241.01. <u>Groundwater protection permit facilities; schedule; definition</u>

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, 1995, at least one-third of all groundwater protection permit facilities.

2. By January 1, 1998, at least two-thirds of all groundwater protection permit facilities.

3. By January 1, 2001, all groundwater protection permit 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.

Sec. 10. Section 49-243, Arizona Revised Statutes, is amended to read:

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.

~~8.~~ 9. Any other relevant federal or state permits issued to the applicant.

~~9.~~ 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 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. ~~However,~~ A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. 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 ~~already~~ 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 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 ~~design~~ 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 ~~the design does~~ 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 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 may, by rule, 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:

1. Monitoring requirements.

2. Record keeping and reporting requirements.

3. Contingency plan requirements.

4. Discharge limitations.

5. Compliance schedule requirements.

~~6. Post-closure plan.~~

6. CLOSURE REQUIREMENTS AND, FOR A FACILITY THAT CANNOT ACHIEVE CLEAN CLOSURE, POST-CLOSURE MONITORING AND MAINTENANCE REQUIREMENTS.

7. Alert levels which, 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.

L. The director may include in an aquifer protection permit for an existing facility the requirement that the owner or operator of the facility 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, subsection E and the rules adopted pursuant to that subsection.

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

M. The director may include in an aquifer protection permit as a condition the mitigation measures described in an order issued under section 49-286.

N. The director may deny a permit for a facility if he 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 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. 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. 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. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required prior to completion of construction but shall be required before the department issues approval to operate. 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, SUBDIVISIONS (a) THROUGH (h) 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 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 SUCH A 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 SUCH A 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.

Sec. 11. Repeal

Section 49-245.03, Arizona Revised Statutes, is repealed.

Sec. 12. Section 49-250, Arizona Revised Statutes, is amended to read:

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 such 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 which 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 surface water for beneficial use or groundwater. This exemption does not apply if effluent from any waste treatment facility that is regulated

pursuant to sections 49-361 and 49-362 is added to the water after its original point of diversion.

7. Discharge to a community sewer system.

8. Facilities which are defined and required to obtain a permit to reuse reclaimed wastewater.

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 that is transported or stored in a facility which is exempt pursuant to paragraph 6 of this subsection.

13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter ~~3~~ 3.1, article ~~2~~ 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 of this subsection 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 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.

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 designed and constructed not to discharge, which 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) FIRE FIGHTING 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.

Sec. 13. Section 49-251, Arizona Revised Statutes, is amended to read:

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, ~~and any applicable~~ SURFACE OR AQUIFER water quality standard or discharge limitation if the waiver will not endanger human health or welfare, and if the director finds ~~either~~ 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 ~~must notify~~ 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.

Sec. 14. Title 49, chapter 2, article 3, Arizona Revised Statutes, is amended by adding section 49-252, to read:

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 POST-CLOSURE 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.

Sec. 15. Repeal

Laws 1995, chapter 202, section 9 is repealed.

Sec. 16. Retroactivity

Section 15 of this act is effective retroactively to from and after June 30, 1996.

APPROVED BY THE GOVERNOR APRIL 16, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 1996