

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 357

HOUSE BILL 2426

AN ACT

AMENDING SECTIONS 49-201, 49-203, 49-205 AND 49-208, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; AMENDING SECTIONS 49-261 AND 49-262, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-263.01 AND 49-263.02; AMENDING SECTIONS 49-321, 49-322, 49-323 AND 49-324, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-201, Arizona Revised Statutes, is amended to
3 read:

4 49-201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administrator" means the administrator of the United States
7 environmental protection agency.

8 2. "Aquifer" means a geologic unit that contains sufficient saturated
9 permeable material to yield usable quantities of water to a well or spring.

10 3. "Best management practices" means those methods, measures or
11 practices to prevent or reduce discharges and includes structural and
12 nonstructural controls and operation and maintenance procedures. Best
13 management practices may be applied before, during and after discharges to
14 reduce or eliminate the introduction of pollutants into receiving waters.
15 Economic, institutional and technical factors shall be considered in
16 developing best management practices.

17 4. "CERCLA" means the comprehensive environmental response,
18 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
19 2767; 42 United States Code sections 9601 through 9657), commonly known as
20 "superfund".

21 5. "Clean closure" means implementation of all actions specified in
22 a permit, if any, as closure requirements, as well as elimination, to the
23 greatest degree practicable, of any reasonable probability of further
24 discharge from the facility and of exceeding aquifer water quality standards
25 at the applicable point of compliance. Clean closure also means postclosure
26 monitoring and maintenance are unnecessary to meet the requirements of this
27 chapter.

28 6. "Clean water act" means the federal water pollution control act
29 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections
30 1251 through 1376), AS AMENDED.

31 7. "Closed facility" means:

32 (a) A facility that ceased operation before January 1, 1986, that is
33 not, on August 13, 1986, engaged in the activity for which the facility was
34 designed and that was previously operated and for which there is no intent
35 to resume operation.

36 (b) A facility that has been approved as a clean closure by the
37 director.

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

40 8. "Concentrated animal feeding operation" means an animal feeding
41 operation that meets the criteria prescribed in 40 Code of Federal
42 Regulations part 122, appendix B for determining a concentrated animal
43 feeding operation for purposes of 40 Code of Federal Regulations
44 sections 122.23 and 122.24, appendix C.

45 9. "Department" means the department of environmental quality.

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

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

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

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

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

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

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

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

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

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

38 18. "Hazardous substance" means:

39 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
40 307(a) of the clean water act.

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

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

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

3 (e) Any imminently hazardous chemical substance or mixture with
4 respect to which the administrator has taken action pursuant to section 7 of
5 the federal toxic substances control act (15 United States Code section
6 2606).

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

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

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

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

33 (b) For a groundwater protection permit facility as defined in section
34 49-241.01, subsection C, a physical expansion that is accomplished by lateral
35 accretion or upward expansion within the pollutant management area of the
36 existing facility or group of facilities shall not constitute a major
37 modification if the accretion or expansion is accomplished through sound
38 engineering practice in a manner compatible with existing facility design,
39 taking into account safety, stability and risk of environmental release. For
40 a facility described in section 49-241.01, subsection C, paragraph 1,
41 expansion of a facility shall conform with the terms and conditions of the
42 applicable permit. For a facility described in section 49-241.01, subsection
43 C, paragraph 2, if the area of the contemplated expansion is not identified
44 in the notice of disposal, the owner or operator of the facility shall submit

1 to the director the information required by section 49-243, subsection A,
2 paragraphs 1, 2, 3 and 7.

3 21. "Navigable waters" means the waters of the United States as defined
4 by section 502(7) of the clean water act (33 United States Code section
5 1362(7)).

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

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

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

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

26 24. "On-site wastewater treatment facility" means a conventional septic
27 tank system or alternative system that is installed at a site to treat and
28 dispose of wastewater of predominantly human origin that is generated at that
29 site.

30 25. "Permit" means a written authorization issued by the director OR
31 PRESCRIBED BY THIS CHAPTER OR IN A RULE ADOPTED UNDER THIS CHAPTER stating
32 the conditions and restrictions governing a discharge or governing the
33 construction, operation or modification of a facility.

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

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

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

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

11 (a) Keep the facility in compliance with aquifer water quality
12 standards at the applicable point of compliance.

13 (b) Verify that the closure design has eliminated discharge to the
14 extent intended.

15 (c) Perform any remedial or mitigative action necessary to comply with
16 this chapter.

17 (d) Meet property use restrictions.

18 30. "Practicably" means able to be reasonably done from the standpoint
19 of technical practicability and, except for pollutants addressed in section
20 49-243, subsection I, economically achievable on an industry-wide basis.

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

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

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

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

29 35. "Standards of performance" means performance standards, design
30 standards, best management practices, technologically based standards and
31 other standards, limitations or restrictions established by the director by
32 rule or by permit condition.

33 36. "Tank" means a stationary device, including a sump, that is
34 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
35 material that provides substantial structural support, and that is designed
36 to contain an accumulation of solid, liquid or gaseous materials.

37 37. "Toxic pollutant" means a substance that will cause significant
38 adverse reactions if ingested in drinking water. Significant adverse
39 reactions are reactions that may indicate a tendency of a substance or
40 mixture to cause long lasting or irreversible damage to human health.

41 38. "Trade secret" means information to which all of the following
42 apply:

43 (a) A person has taken reasonable measures to protect from disclosure
44 and the person intends to continue to take such measures.

1 (b) The information is not, and has not been, reasonably obtainable
2 without the person's consent by other persons, other than governmental
3 bodies, by use of legitimate means, other than discovery based on a showing
4 of special need in a judicial or quasi-judicial proceeding.

5 (c) No statute specifically requires disclosure of the information to
6 the public.

7 (d) The person has satisfactorily shown that disclosure of the
8 information is likely to cause substantial harm to the business's competitive
9 position.

10 39. "Vadose zone" means the zone between the ground surface and any
11 aquifer.

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

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

20 Sec. 2. Section 49-203, Arizona Revised Statutes, is amended to read:

21 49-203. Powers and duties of the director and department

22 A. The director shall:

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

25 2. Adopt, by rule, a permit program THAT IS CONSISTENT WITH BUT NO
26 MORE STRINGENT THAN THE REQUIREMENTS OF THE CLEAN WATER ACT for the point
27 source discharge of any pollutant or combination of pollutants into navigable
28 waters. The program and the rules shall be sufficient to enable this state
29 to administer the permit program described IDENTIFIED in SECTION 402(b) OF
30 the clean water act INCLUDING THE SEWAGE SLUDGE REQUIREMENTS OF SECTION 405
31 OF THE CLEAN WATER ACT AND AS PRESCRIBED BY ARTICLE 3.1 OF THIS CHAPTER.

32 3. Adopt, by rule, a program to control nonpoint source discharges of
33 any pollutant or combination of pollutants into navigable waters.

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

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

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

42 7. Adopt, by rule or as permit conditions, such discharge limitations,
43 best management practice standards, new source performance standards, toxic
44 and pretreatment standards and such other standards and conditions as are

1 reasonable and necessary to carry out the permit programs and regulatory
2 duties described in paragraphs 2 through 5 of this subsection.

3 8. EXCEPT AS PRESCRIBED BY SECTION 49-255.01, SUBSECTION J, assess and
4 collect fees to cover, as necessary, reasonable costs to revoke, issue, deny,
5 modify or suspend permits issued pursuant to this chapter and to process
6 permit applications. The director may also assess and collect costs
7 reasonably necessary if the director must conduct sampling or monitoring
8 relating to a facility because the owner or operator of the facility has
9 refused or failed to do so on order by the director. The director shall set
10 fees which are reasonably related to the department's costs of providing the
11 service for which the fee is charged. State agencies are exempt from all
12 fees imposed pursuant to this chapter. Monies collected from aquifer
13 protection permit fees shall be deposited, pursuant to sections 35-146 and
14 35-147, in the water quality fee fund established by section 49-210. Monies
15 from other permit fees shall be deposited, pursuant to sections 35-146 and
16 35-147, in the water quality fee fund unless otherwise provided by law.
17 Except for monies paid by an applicant for review by consultants for the
18 department pursuant to section 49-241.02, subsection D, monies collected from
19 all other fees shall be transmitted to the state treasurer for deposit in the
20 water quality fee fund established by section 49-210.

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

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

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

36 B. The director may:

37 1. On presentation of credentials, enter into, on or through any
38 public or private property from which a discharge has occurred, is occurring
39 or may occur OR ON WHICH ANY DISPOSAL, LAND APPLICATION OF SLUDGE OR
40 TREATMENT REGULATED BY THIS CHAPTER HAS OCCURRED, IS OCCURRING OR MAY BE
41 OCCURRING AND ANY PUBLIC OR PRIVATE PROPERTY WHERE RECORDS RELATING TO A
42 DISCHARGE OR RECORDS THAT ARE OTHERWISE REQUIRED TO BE MAINTAINED AS
43 PRESCRIBED BY THIS CHAPTER ARE KEPT, as is reasonably necessary to ensure
44 compliance with this chapter. The director or a department employee may take
45 samples, inspect and copy records required to be maintained pursuant to this

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

15 2. Require any person who has discharged, is discharging or may
16 discharge into the waters of the state UNDER ARTICLE 3 OR 3.1 OF THIS CHAPTER
17 AND ANY PERSON WHO IS SUBJECT TO PRETREATMENT STANDARDS AND REQUIREMENTS OR
18 SEWAGE SLUDGE USE OR DISPOSAL REQUIREMENTS UNDER ARTICLE 3.1 OF THIS CHAPTER
19 TO COLLECT SAMPLES, to establish and maintain records, including photographs,
20 ~~relating to the discharge~~ and to install, use and maintain sampling and
21 monitoring equipment to determine the absence or presence and nature of the
22 discharge OR INDIRECT DISCHARGE OR SEWAGE SLUDGE USE OR DISPOSAL.

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

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

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

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

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

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

43 C. Subject to the provisions of section 38-503 and other applicable
44 statutes and rules, the department may contract with a private consultant for
45 the purposes of assisting the department in reviewing aquifer protection

1 permit applications and on-site wastewater treatment facilities to determine
2 whether a facility meets the criteria and requirements of this chapter and
3 the rules adopted by the director. Except as provided in section 49-241.02,
4 subsection D, the department shall not use a private consultant if the fee
5 charged for that service would be greater than the fee the department would
6 charge to provide that service. The department shall pay the consultant for
7 the services rendered by the consultant from fees paid by the applicant or
8 facility to the department pursuant to subsection A, paragraph 8 of this
9 section.

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

15 Sec. 3. Section 49-205, Arizona Revised Statutes, is amended to read:

16 49-205. Availability of information to the public

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

21 1. Income tax returns are confidential.

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

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

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

31 B. Notwithstanding subsection A OF THIS SECTION, the following
32 information shall be available to the public:

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

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

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

38 C. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, AND IN ADDITION TO
39 THE INFORMATION PRESCRIBED BY SUBSECTION B OF THIS SECTION, THE FOLLOWING
40 INFORMATION THAT IS OBTAINED BY THE DEPARTMENT AND THAT RELATES TO DISCHARGES
41 AUTHORIZED BY A PERMIT ISSUED UNDER THE PROGRAM ADOPTED PURSUANT TO SECTION
42 49-203, SUBSECTION A, PARAGRAPH 2 SHALL BE MADE AVAILABLE TO THE PUBLIC BY
43 THE DEPARTMENT:

44 1. INFORMATION REQUIRED TO BE SUBMITTED IN A PERMIT APPLICATION.

45 2. THE FREQUENCY OF THE DISCHARGE.

1 3. THE TEMPERATURE AND pH LEVEL OF THE DISCHARGE.

2 4. OTHER WATER QUALITY CHARACTERISTICS THAT ARE REQUIRED TO BE
3 REPORTED UNDER THE PERMIT.

4 ~~C.~~ D. Notwithstanding subsection A OF THIS SECTION, the director may
5 disclose any records, reports or information obtained from any person under
6 this chapter, including records, reports or information obtained by the
7 director or department employees, to:

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

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

15 Sec. 4. Section 49-208, Arizona Revised Statutes, is amended to read:
16 49-208. Public participation

17 A. ~~Not later than January 1, 1988~~ The director, by rule, shall
18 prescribe procedures to assure adequate public participation in proceedings
19 of the department under this chapter. The public participation procedures
20 shall meet the requirements of the clean water act and safe drinking water
21 act for permits issued under those acts. At a minimum, public participation
22 procedures shall prescribe public notice requirements including the content
23 and publication of the notice, provide an opportunity for public hearings and
24 specify the procedures governing the hearings and require the public
25 availability of relevant documents. Public hearings shall be held at places
26 and times which afford a reasonable opportunity to persons to participate.

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

31 Sec. 5. Title 49, chapter 2, Arizona Revised Statutes, is amended by
32 adding article 3.1, to read:

33 ARTICLE 3.1. ARIZONA POLLUTANT DISCHARGE
34 ELIMINATION SYSTEM PROGRAM

35 49-255. Definitions

36 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

37 1. "AZPDES" MEANS THE ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
38 PROGRAM AS ADOPTED UNDER SECTION 402(b) OF THE CLEAN WATER ACT.

39 2. "DISCHARGE" MEANS ANY ADDITION OF ANY POLLUTANT TO NAVIGABLE WATERS
40 FROM ANY POINT SOURCE.

41 3. "INDIRECT DISCHARGE" MEANS THE INTRODUCTION OF POLLUTANTS INTO A
42 PUBLICLY OWNED TREATMENT WORKS FROM ANY NONDOMESTIC SOURCE THAT IS REGULATED
43 UNDER SECTION 307(b), (c) OR (d) OF THE CLEAN WATER ACT.

44 4. "INDUSTRIAL USER" MEANS A SOURCE OF INDIRECT DISCHARGE.

1 5. "PUBLICLY OWNED TREATMENT WORKS" MEANS A TREATMENT WORKS OWNED BY
2 THIS STATE OR A MUNICIPALITY OF THIS STATE AS DEFINED IN SECTION 502(4) OF
3 THE CLEAN WATER ACT.

4 6. "SEWAGE SLUDGE":

5 (a) MEANS SOLID, SEMISOLID OR LIQUID RESIDUE THAT IS GENERATED DURING
6 THE TREATMENT OF DOMESTIC SEWAGE IN A TREATMENT WORKS.

7 (b) INCLUDES DOMESTIC SEPTAGE, SCUM OR SOLIDS THAT ARE REMOVED IN
8 PRIMARY, SECONDARY OR ADVANCED WASTEWATER TREATMENT PROCESSES, AND ANY
9 MATERIAL DERIVED FROM SEWAGE SLUDGE.

10 (c) DOES NOT INCLUDE ASH THAT IS GENERATED DURING THE FIRING OF SEWAGE
11 SLUDGE IN A SEWAGE SLUDGE INCINERATOR OR GRIT AND SCREENINGS THAT ARE
12 GENERATED DURING PRELIMINARY TREATMENT OF DOMESTIC SEWAGE IN A TREATMENT
13 WORKS.

14 7. "TREATMENT WORKS" MEANS ANY DEVICES AND SYSTEMS THAT ARE USED IN
15 THE STORAGE, TREATMENT, RECYCLING AND RECLAMATION OF MUNICIPAL SEWAGE OR
16 INDUSTRIAL WASTES OF A LIQUID NATURE, THE ELEMENTS ESSENTIAL TO PROVIDING A
17 RELIABLE RECYCLED SUPPLY SUCH AS STANDBY TREATMENT UNITS AND CLEAR WELL
18 FACILITIES, AND ANY WORKS THAT WILL BE AN INTEGRAL PART OF THE TREATMENT
19 PROCESS OR THAT ARE USED FOR RESIDUES RESULTING FROM THAT TREATMENT. FOR THE
20 PURPOSES OF THE PROGRAMS REQUIRED BY SECTIONS 49-255.02 AND 49-255.03,
21 TREATMENT WORKS INCLUDE INTERCEPTING SEWERS, OUTFALL SEWERS, SEWAGE
22 COLLECTION SYSTEMS, PUMPING, POWER AND OTHER EQUIPMENT AND ANY APPURTENANCES,
23 EXTENSIONS, IMPROVEMENTS, REMODELING, ADDITIONS AND ALTERATIONS.

24 8. "UPSET":

25 (a) MEANS AN EXCEPTIONAL INCIDENT IN WHICH THERE IS UNINTENTIONAL AND
26 TEMPORARY NONCOMPLIANCE WITH TECHNOLOGY-BASED PERMIT DISCHARGE LIMITATIONS
27 BECAUSE OF FACTORS THAT ARE BEYOND THE REASONABLE CONTROL OF THE PERMITTEE.

28 (b) DOES NOT INCLUDE NONCOMPLIANCE TO THE EXTENT THAT IT IS CAUSED BY
29 OPERATIONAL ERROR, IMPROPERLY DESIGNED TREATMENT FACILITIES, INADEQUATE
30 TREATMENT FACILITIES, LACK OF PREVENTIVE MAINTENANCE OR CARELESS OR IMPROPER
31 OPERATION.

32 49-255.01. Arizona pollutant discharge elimination system
33 program; rules and standards; affirmative defense;
34 exemption from termination

35 A. A PERSON SHALL NOT DISCHARGE EXCEPT UNDER EITHER OF THE FOLLOWING
36 CONDITIONS:

37 1. IN CONFORMANCE WITH A PERMIT THAT IS ISSUED OR AUTHORIZED UNDER
38 THIS ARTICLE.

39 2. PURSUANT TO A PERMIT THAT IS ISSUED OR AUTHORIZED BY THE UNITED
40 STATES ENVIRONMENTAL PROTECTION AGENCY UNTIL A PERMIT THAT IS ISSUED OR
41 AUTHORIZED UNDER THIS ARTICLE TAKES EFFECT.

42 B. THE DIRECTOR SHALL ADOPT RULES TO ESTABLISH AN AZPDES PERMIT
43 PROGRAM CONSISTENT WITH THE REQUIREMENTS OF SECTIONS 402(b) AND 402(p) OF THE
44 CLEAN WATER ACT. THIS PROGRAM SHALL INCLUDE REQUIREMENTS TO ENSURE
45 COMPLIANCE WITH SECTION 307 AND REQUIREMENTS FOR THE CONTROL OF DISCHARGES

1 CONSISTENT WITH SECTIONS 318 AND 405(a) OF THE CLEAN WATER ACT. THE DIRECTOR
2 SHALL NOT ADOPT ANY REQUIREMENT THAT IS MORE STRINGENT THAN OR CONFLICTS WITH
3 ANY REQUIREMENT OF THE CLEAN WATER ACT. THE DIRECTOR MAY ADOPT FEDERAL RULES
4 PURSUANT TO SECTION 41-1028 OR MAY ADOPT RULES TO REFLECT LOCAL ENVIRONMENTAL
5 CONDITIONS TO THE EXTENT THAT THE RULES ARE CONSISTENT WITH AND NO MORE
6 STRINGENT THAN THE CLEAN WATER ACT AND THIS ARTICLE.

7 C. THE RULES ADOPTED BY THE DIRECTOR SHALL PROVIDE FOR:

8 1. ISSUING, AUTHORIZING, DENYING, MODIFYING, SUSPENDING OR REVOKING
9 INDIVIDUAL OR GENERAL PERMITS.

10 2. ESTABLISHMENT OF PERMIT CONDITIONS, DISCHARGE LIMITATIONS AND
11 STANDARDS OF PERFORMANCE AS PRESCRIBED BY SECTION 49-203, SUBSECTION A,
12 PARAGRAPH 7, INCLUDING CASE BY CASE EFFLUENT LIMITATIONS THAT ARE DEVELOPED
13 IN A MANNER CONSISTENT WITH 40 CODE OF FEDERAL REGULATIONS SECTION 125.3(c).

14 3. MODIFICATIONS AND VARIANCES AS ALLOWED BY THE CLEAN WATER ACT.

15 4. OTHER PROVISIONS NECESSARY FOR MAINTAINING STATE PROGRAM AUTHORITY
16 UNDER SECTION 402(b) OF THE CLEAN WATER ACT.

17 D. NOTHING IN THIS ARTICLE AFFECTS THE VALIDITY OF ANY EXISTING RULES
18 THAT ARE ADOPTED BY THE DIRECTOR AND THAT ARE EQUIVALENT TO AND CONSISTENT
19 WITH THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM AUTHORIZED
20 UNDER SECTION 402 OF THE CLEAN WATER ACT UNTIL NEW RULES FOR AZPDES
21 DISCHARGES ARE ADOPTED PURSUANT TO THIS ARTICLE.

22 E. AN UPSET CONSTITUTES AN AFFIRMATIVE DEFENSE TO ANY ADMINISTRATIVE,
23 CIVIL OR CRIMINAL ENFORCEMENT ACTION BROUGHT FOR NONCOMPLIANCE WITH
24 TECHNOLOGY-BASED PERMIT DISCHARGE LIMITATIONS IF THE PERMITTEE COMPLIES WITH
25 ALL OF THE FOLLOWING:

26 1. THE PERMITTEE DEMONSTRATES THROUGH PROPERLY SIGNED CONTEMPORANEOUS
27 OPERATING LOGS OR OTHER RELEVANT EVIDENCE THAT:

28 (a) AN UPSET OCCURRED AND THAT THE PERMITTEE CAN IDENTIFY THE SPECIFIC
29 CAUSE OF THE UPSET.

30 (b) THE PERMITTED FACILITY WAS BEING PROPERLY OPERATED AT THE TIME OF
31 THE UPSET.

32 (c) IF THE UPSET CAUSES THE DISCHARGE TO EXCEED ANY DISCHARGE
33 LIMITATION IN THE PERMIT, THE PERMITTEE SUBMITTED NOTICE TO THE DEPARTMENT
34 WITHIN TWENTY-FOUR HOURS OF THE UPSET.

35 (d) THE PERMITTEE HAS TAKEN APPROPRIATE REMEDIAL MEASURES INCLUDING
36 ALL REASONABLE STEPS TO MINIMIZE OR PREVENT ANY DISCHARGE OR SEWAGE SLUDGE
37 USE OR DISPOSAL THAT IS IN VIOLATION OF THE PERMIT AND THAT HAS A REASONABLE
38 LIKELIHOOD OF ADVERSELY AFFECTING HUMAN HEALTH OR THE ENVIRONMENT.

39 2. IN ANY ADMINISTRATIVE, CIVIL OR CRIMINAL ENFORCEMENT ACTION, THE
40 PERMITTEE SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THE OCCURRENCE OF
41 AN UPSET CONDITION.

42 F. COMPLIANCE WITH A PERMIT ISSUED PURSUANT TO THIS ARTICLE SHALL BE
43 DEEMED COMPLIANCE WITH BOTH OF THE FOLLOWING:

44 1. ALL REQUIREMENTS IN THIS ARTICLE OR RULES ADOPTED PURSUANT TO THIS
45 ARTICLE RELATING TO STATE IMPLEMENTATION OF SECTIONS 301, 302, 306 AND 307

1 OF THE CLEAN WATER ACT, EXCEPT FOR ANY STANDARD THAT IS IMPOSED UNDER SECTION
2 307 OF THE CLEAN WATER ACT FOR A TOXIC POLLUTANT THAT IS INJURIOUS TO HUMAN
3 HEALTH.

4 2. LIMITATIONS FOR POLLUTANTS IN NAVIGABLE WATERS ADOPTED PURSUANT TO
5 SECTIONS 49-221 AND 49-222, IF THE DISCHARGE OF THE POLLUTANT IS SPECIFICALLY
6 LIMITED IN A PERMIT ISSUED PURSUANT TO THIS ARTICLE OR THE POLLUTANT WAS
7 SPECIFICALLY IDENTIFIED AS PRESENT OR POTENTIALLY PRESENT IN FACILITY
8 DISCHARGES DURING THE APPLICATION PROCESS FOR THE PERMIT.

9 G. NOTWITHSTANDING SECTION 49-203, SUBSECTION D, PERMITS THAT ARE
10 ISSUED UNDER THIS ARTICLE SHALL NOT BE COMBINED WITH PERMITS ISSUED UNDER
11 ARTICLE 3 OF THIS CHAPTER.

12 H. THE DECISION OF THE DIRECTOR TO ISSUE OR MODIFY A PERMIT TAKES
13 EFFECT ON ISSUANCE IF THERE WERE NO CHANGES REQUESTED IN COMMENTS THAT WERE
14 SUBMITTED ON THE DRAFT PERMIT UNLESS A LATER EFFECTIVE DATE IS SPECIFIED IN
15 THE DECISION. IN ALL OTHER CASES, THE DECISION OF THE DIRECTOR TO ISSUE,
16 DENY, MODIFY, SUSPEND OR REVOKE A PERMIT TAKES EFFECT THIRTY DAYS AFTER THE
17 DECISION IS SERVED ON THE PERMIT APPLICANT, UNLESS EITHER OF THE FOLLOWING
18 APPLIES:

19 1. WITHIN THE THIRTY DAY PERIOD, AN APPEAL IS FILED WITH THE WATER
20 QUALITY APPEALS BOARD PURSUANT TO SECTION 49-323.

21 2. A LATER EFFECTIVE DATE IS SPECIFIED IN THE DECISION.

22 I. IN ADDITION TO OTHER RESERVATIONS OF RIGHTS PROVIDED BY THIS
23 CHAPTER, NOTHING IN THIS ARTICLE SHALL IMPAIR OR AFFECT RIGHTS OR THE
24 EXERCISE OF RIGHTS TO WATER CLAIMED, RECOGNIZED, PERMITTED, CERTIFICATED,
25 ADJUDICATED OR DECREED PURSUANT TO STATE OR OTHER LAW.

26 J. NOTWITHSTANDING SECTION 49-203, SUBSECTION A, PARAGRAPH 8, THE
27 DEPARTMENT SHALL NOT CHARGE A FEE TO ISSUE, DENY, MODIFY, SUSPEND OR REVOKE
28 A PERMIT UNDER THIS ARTICLE OR TO PROCESS PERMIT APPLICATIONS.

29 K. ANY PERMIT CONDITIONS CONCERNING THREATENED OR ENDANGERED SPECIES
30 SHALL BE LIMITED TO THOSE REQUIRED BY THE ENDANGERED SPECIES ACT.

31 L. THIS PROGRAM IS EXEMPT FROM SECTION 41-3102.

32 49-255.02. Pretreatment program; rules and standards

33 A. THE DIRECTOR SHALL ADOPT RULES TO ESTABLISH A PRETREATMENT PROGRAM
34 THAT IS CONSISTENT WITH THE REQUIREMENTS OF SECTIONS 307, 308 AND 402 OF THE
35 CLEAN WATER ACT. THE DIRECTOR SHALL NOT ADOPT ANY REQUIREMENT THAT IS MORE
36 STRINGENT THAN OR CONFLICTS WITH ANY REQUIREMENTS OF THE CLEAN WATER ACT.

37 B. THE RULES ADOPTED BY THE DIRECTOR SHALL PROVIDE FOR ALL OF THE
38 FOLLOWING:

39 1. DEVELOPMENT OR MODIFICATION OF LOCAL PRETREATMENT PROGRAMS BY THE
40 OWNERS OF PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGE OR AS OTHERWISE
41 REQUIRED UNDER THE CLEAN WATER ACT OR THIS ARTICLE TO PREVENT THE USE OR
42 DISPOSAL OF SEWAGE SLUDGE PRODUCED BY A PUBLICLY OWNED TREATMENT WORKS IN
43 VIOLATION OF SECTION 405 OF THE CLEAN WATER ACT OR REQUIREMENTS ESTABLISHED
44 PURSUANT TO SECTION 49-255.03, SUBSECTION A.

1 2. APPROVAL BY THE DIRECTOR OF NEW OR MODIFIED LOCAL PRETREATMENT
2 PROGRAMS OR SITE SPECIFIC MODIFICATIONS TO PRETREATMENT STANDARDS.

3 3. OVERSIGHT BY THE DIRECTOR OF LOCAL PROGRAM IMPLEMENTATION.

4 C. THE RULES ADOPTED BY THE DIRECTOR SHALL PROVIDE FOR THE DEPARTMENT
5 TO ENSURE THAT ANY INDUSTRIAL USER OF ANY PUBLICLY OWNED TREATMENT WORKS WILL
6 COMPLY WITH THE REQUIREMENTS OF SECTIONS 307 AND 308 OF THE CLEAN WATER ACT.

7 49-255.03. Sludge program; rules and standards

8 A. THE DIRECTOR SHALL ADOPT RULES TO ESTABLISH A SEWAGE SLUDGE PROGRAM
9 THAT IS CONSISTENT WITH THE REQUIREMENTS OF SECTIONS 402 AND 405 OF THE CLEAN
10 WATER ACT. THE DIRECTOR SHALL NOT ADOPT ANY REQUIREMENT THAT IS MORE
11 STRINGENT THAN OR CONFLICTS WITH ANY REQUIREMENTS OF THE CLEAN WATER ACT.

12 B. THE RULES ADOPTED BY THE DIRECTOR SHALL PROVIDE FOR THE REGULATION
13 OF ALL SEWAGE SLUDGE USE OR DISPOSAL PRACTICES USED IN THIS STATE.

14 Sec. 6. Section 49-261, Arizona Revised Statutes, is amended to read:

15 49-261. Compliance orders; appeal; enforcement

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

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

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

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

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

38 Sec. 7. Section 49-262, Arizona Revised Statutes, is amended to read:

39 49-262. Injunctive relief; civil penalties; recovery of
40 litigation costs

41 A. ~~If the director has reason to believe that a person is in violation~~
42 ~~of any provision of article 2 or 3 of this chapter, a rule adopted pursuant~~
43 ~~to section 49-203, subsection A, paragraph 6 from and after December 31,~~
44 ~~2000; a rule adopted pursuant to article 2 or 3 of this chapter, a discharge~~
45 ~~limitation or any other condition of a permit issued under article 2 or 3 of~~

1 ~~this chapter or believes that a person is creating an actual or potential~~
2 ~~endangerment to the public health or environment because of acts performed~~
3 ~~in violation of this chapter;~~ Whether or not the A person has requested a
4 hearing, the director, through the attorney general, may request a temporary
5 restraining order, a preliminary injunction, a permanent injunction or any
6 other relief necessary to protect the public health IF THE DIRECTOR HAS
7 REASON TO BELIEVE EITHER OF THE FOLLOWING:

8 1. THAT A PERSON IS IN VIOLATION OF:

9 (a) ANY PROVISION OF ARTICLE 2, 3 OR 3.1 OF THIS CHAPTER.

10 (b) A RULE ADOPTED PURSUANT TO SECTION 49-203, SUBSECTION A, PARAGRAPH
11 6.

12 (c) A RULE ADOPTED PURSUANT TO ARTICLE 2, 3 OR 3.1 OF THIS CHAPTER.

13 (d) A DISCHARGE LIMITATION OR ANY OTHER CONDITION OF A PERMIT ISSUED
14 UNDER ARTICLE 2, 3 OR 3.1 OF THIS CHAPTER.

15 2. THAT A PERSON IS CREATING AN ACTUAL OR POTENTIAL ENDANGERMENT TO
16 THE PUBLIC HEALTH OR ENVIRONMENT BECAUSE OF ACTS PERFORMED IN VIOLATION OF
17 THIS CHAPTER.

18 B. Notwithstanding any other provision of this chapter, if the
19 director, the county attorney or the attorney general has reason to believe
20 that a person is creating an imminent and substantial endangerment to the
21 public health or environment because of acts performed in violation of
22 article 2, or 3 OR 3.1 of this chapter or a rule adopted or a condition of
23 a permit issued pursuant to section 49-203, subsection A, paragraph 2, 6 OR
24 7, ~~from and after December 31, 2000~~, the county attorney or attorney general
25 may request a temporary restraining order, a preliminary injunction, a
26 permanent injunction or any other relief necessary to protect the public
27 health.

28 C. A person who violates any provision of article 2, or 3 OR 3.1 of
29 this chapter or a rule, permit, discharge limitation or order issued or
30 adopted pursuant to article 2, or 3 OR 3.1 of this chapter is subject to a
31 civil penalty of not to exceed twenty-five thousand dollars per day per
32 violation. ~~From and after December 31, 2000~~, A person who violates any rule
33 adopted or a condition of a permit issued pursuant to section 49-203,
34 subsection A, paragraph 6 is subject to a civil penalty of not to exceed five
35 thousand dollars per day per violation. The attorney general may, and at the
36 request of the director shall, commence an action in superior court to
37 recover civil penalties provided by this section.

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

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

4 F. It shall be an affirmative defense to civil liability under this
5 section and section 49-261 for causing or contributing to a violation of a
6 water quality standard established pursuant to this chapter, or a violation
7 of a permit condition prohibiting a violation of an aquifer water quality
8 standard or limitation at the point of compliance or a surface water quality
9 standard if the release that caused or contributed to the violation came from
10 a facility owned or operated by a party that has either:

11 1. Undertaken a remedial or response action approved by the director
12 or the administrator under this title or CERCLA in response to the release
13 of a hazardous substance, pollutant or contaminant that caused or contributed
14 to the violation of article 2 of this chapter and is in compliance with that
15 remedial or response action.

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

22 G. IN DETERMINING THE AMOUNT OF A CIVIL PENALTY FOR A VIOLATION UNDER
23 ARTICLE 3 OR 3.1 OF THIS CHAPTER, THE COURT SHALL CONSIDER THE FOLLOWING
24 FACTORS:

25 1. THE SERIOUSNESS OF THE VIOLATION OR VIOLATIONS.

26 2. THE ECONOMIC BENEFIT IF ANY THAT RESULTS FROM THE VIOLATION.

27 3. ANY HISTORY OF SIMILAR VIOLATIONS.

28 4. ANY GOOD FAITH EFFORTS TO COMPLY WITH THE APPLICABLE REQUIREMENTS.

29 5. THE ECONOMIC IMPACT OF THE PENALTY ON THE VIOLATOR.

30 6. THE EXTENT TO WHICH THE VIOLATION WAS CAUSED BY A THIRD PARTY.

31 7. OTHER MATTERS AS JUSTICE MAY REQUIRE.

32 H. A SINGLE OPERATIONAL UPSET THAT LEADS TO SIMULTANEOUS VIOLATIONS
33 OF MORE THAN ONE POLLUTANT LIMITATION IN A PERMIT ISSUED OR AUTHORIZED
34 PURSUANT TO SECTION 49-255.01 CONSTITUTES A SINGLE VIOLATION FOR PURPOSES OF
35 ANY PENALTY CALCULATION.

36 I. IF A PERMITTEE HOLDS BOTH A PERMIT ISSUED OR AUTHORIZED PURSUANT
37 TO ARTICLE 3 OF THIS CHAPTER AND A PERMIT ISSUED OR AUTHORIZED PURSUANT TO
38 ARTICLE 3.1 OF THIS CHAPTER AND THE PERMITTEE VIOLATES A SIMILAR PROVISION
39 IN BOTH PERMITS SIMULTANEOUSLY, THE DEPARTMENT SHALL NOT RECOVER PENALTIES
40 FOR VIOLATIONS OF BOTH PERMITS BASED ON THE SAME ACT OR OMISSION.

1 PROVING THE DEFENDANT'S POSSESSION OF ACTUAL KNOWLEDGE, CIRCUMSTANTIAL
2 EVIDENCE MAY BE USED, INCLUDING EVIDENCE THAT AFFIRMATIVE STEPS WERE TAKEN
3 BY THE DEFENDANT TO SHIELD THE DEFENDANT FROM RELEVANT INFORMATION.

4 2. IT IS AN AFFIRMATIVE DEFENSE TO PROSECUTION UNDER THIS SUBSECTION
5 THAT THE CONDUCT CHARGED WAS CONSENTED TO BY THE PERSON ENDANGERED AND THAT
6 THE DANGER AND CONDUCT CHARGED WERE REASONABLY FORESEEABLE HAZARDS OF EITHER:

7 (a) AN OCCUPATION, A BUSINESS OR A PROFESSION.

8 (b) MEDICAL TREATMENT OR MEDICAL OR SCIENTIFIC EXPERIMENTATION
9 CONDUCTED BY PROFESSIONALLY APPROVED METHODS AND THE OTHER PERSON HAD BEEN
10 MADE AWARE OF THE RISKS INVOLVED BEFORE GIVING CONSENT.

11 A DEFENSE MAY BE ESTABLISHED PURSUANT TO THIS PARAGRAPH BY A PREPONDERANCE
12 OF THE EVIDENCE.

13 F. A PERSON WHO KNOWINGLY INTRODUCES INTO A SEWER SYSTEM OR INTO A
14 TREATMENT WORKS ANY POLLUTANT OR HAZARDOUS SUBSTANCE THAT THE PERSON KNEW
15 COULD CAUSE PERSONAL INJURY OR PROPERTY DAMAGE OR, OTHER THAN IN COMPLIANCE
16 WITH ALL APPLICABLE FEDERAL, STATE OR LOCAL REQUIREMENTS OR PERMITS, THAT
17 CAUSES THE TREATMENT WORKS TO VIOLATE ANY DISCHARGE LIMITATION OR CONDITION
18 IN A PERMIT ISSUED TO THE TREATMENT WORKS PURSUANT TO ARTICLE 3.1 OF THIS
19 CHAPTER OR SECTION 402 OF THE CLEAN WATER ACT IS GUILTY OF A CLASS 5 FELONY.

20 G. A PERSON WHO KNOWINGLY VIOLATES A PRETREATMENT STANDARD OR
21 PRETREATMENT REQUIREMENT IMPOSED UNDER ARTICLE 3.1 OF THIS CHAPTER, OR ANY
22 OTHER FEDERAL PRETREATMENT STANDARD OR PRETREATMENT REQUIREMENT, OR ANY STATE
23 OR MUNICIPAL PRETREATMENT STANDARD OR PRETREATMENT REQUIREMENT ENACTED TO
24 MEET THE STATE'S OR MUNICIPALITY'S OBLIGATIONS PURSUANT TO ARTICLE 3.1 OF
25 THIS CHAPTER IS GUILTY OF A CLASS 5 FELONY.

26 H. EACH DAY OF VIOLATION OF ANY PROVISION OF THIS SECTION CONSTITUTES
27 A SEPARATE OFFENSE.

28 I. THE ATTORNEY GENERAL MAY ENFORCE THIS SECTION.

29 49-263.02. Sewage sludge program; violation; classification

30 A. IT IS UNLAWFUL FOR ANY PERSON, KNOWINGLY OR WITH CRIMINAL
31 NEGLIGENCE TO DO ANY OF THE FOLLOWING WITH RESPECT TO GENERATION, TREATMENT,
32 TRANSPORTATION, DISPOSAL, APPLICATION AND MANAGEMENT OF SEWAGE SLUDGE:

33 1. APPLY SEWAGE SLUDGE IN VIOLATION OF RULES ADOPTED UNDER ARTICLE 3.1
34 OF THIS CHAPTER.

35 2. VIOLATE ANY APPLICABLE STANDARD OR LIMITATION SET UNDER ARTICLE 3.1
36 OF THIS CHAPTER.

37 3. VIOLATE ANY CONDITION OF A PERMIT OR OTHER AUTHORIZATION GRANTED
38 UNDER THE SEWAGE SLUDGE PROVISIONS OF ARTICLE 3.1 OF THIS CHAPTER.

39 4. FAIL TO COMPLY WITH ANY APPLICABLE FILING OR REPORTING REQUIREMENT
40 SET UNDER ARTICLE 3.1 OF THIS CHAPTER.

41 5. ALTER, MODIFY OR DESTROY ANY MONITORING DEVICE OR METHOD REQUIRED
42 BY THE DIRECTOR UNDER ARTICLE 3.1 OF THIS CHAPTER IN ORDER TO RENDER THE
43 DEVICE OR METHOD INACCURATE.

44 6. FAIL TO MAINTAIN, OPERATE OR REPAIR ANY MONITORING DEVICE REQUIRED
45 BY THE DIRECTOR UNDER ARTICLE 3.1 OF THIS CHAPTER IN ORDER TO RENDER THE

1 DEVICE INACCURATE, OR FAIL TO INSTALL ANY MONITORING DEVICE REQUIRED IN A
2 PERMIT ISSUED PURSUANT TO ARTICLE 3.1 OF THIS CHAPTER.

3 7. DISCHARGE WITHOUT A PERMIT OR APPROPRIATE AUTHORITY PURSUANT TO
4 ARTICLE 3.1 OF THIS CHAPTER.

5 B. A CRIMINALLY NEGLIGENT VIOLATION OF SUBSECTION A, PARAGRAPHS 1
6 THROUGH 6 OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

7 C. A KNOWING VIOLATION OF SUBSECTION A, PARAGRAPH 5, 6 OR 7 OF THIS
8 SECTION IS A CLASS 5 FELONY.

9 D. EACH DAY OF VIOLATION OF ANY PROVISION OF THIS SECTION CONSTITUTES
10 A SEPARATE OFFENSE.

11 E. THE ATTORNEY GENERAL MAY ENFORCE THIS SECTION.

12 Sec. 9. Section 49-321, Arizona Revised Statutes, is amended to read:

13 49-321. Appeals

14 A. An order of the director under this chapter is subject to appeal
15 pursuant to title 41, chapter 6, article 10.

16 B. Except as provided in section 41-1092.08, subsection H, final
17 administrative decisions are subject to appeal to superior court pursuant to
18 title 12, chapter 7, article 6. For the benefit of the people of this state,
19 appeals under this section have precedence, in every court, over all other
20 civil proceedings. The presiding judge for the county in which the appeal
21 has been made shall assign the appeal to the appropriate judge designated by
22 the chief justice of the supreme court pursuant to section 45-406 to hear
23 appeals relating to groundwater.

24 C. EXCEPT AS PROVIDED IN SECTION 49-324, SUBSECTION E, the decision
25 shall not be stayed pending appeal, except that the judge to whom the appeal
26 is assigned may stay the decision, with or without bond, on a showing of good
27 cause. In determining whether good cause exists under the circumstances, the
28 court may consider whether:

29 1. The public interest will be adversely affected by a stay.

30 2. The stay will harm others.

31 3. There is a high probability that the appellant will succeed on the
32 merits.

33 4. The appellant will suffer irreparable harm before a decision on the
34 merits can be rendered.

35 D. The final decision of the superior court is appealable in the same
36 manner as in civil actions generally and shall be governed by the rules of
37 appellate procedure.

38 Sec. 10. Section 49-322, Arizona Revised Statutes, is amended to read:

39 49-322. Water quality appeals board

40 A. A water quality appeals board is established in the department of
41 administration consisting of three members appointed by the governor pursuant
42 to section 38-211 to terms of three years. One member of the board shall be
43 an attorney licensed to practice law in this state, and all members shall
44 possess technical competence to perform the duties of the board. Board
45 members are entitled to compensation determined under section 38-611.

1 B. Members of the board are subject to title 38, chapter 3, article
2 8 and shall not receive a significant portion of their income directly or
3 indirectly from persons subject to individual permits or enforcement orders
4 under this chapter. In addition, the members shall not have been employed
5 by such persons, other than public STATE agencies, within two years before
6 appointment and may not be employed by such persons, other than public STATE
7 agencies, within two years after their appointment expires. For purposes of
8 this subsection "significant portion of income" means ten per cent or more
9 of gross personal income for a calendar year or fifty per cent or more of
10 gross personal income for a calendar year if the recipient is over sixty
11 years of age and is receiving that portion under retirement, pension or
12 similar benefits.

13 C. The board may employ a staff. The real party in interest shall
14 represent the board in any appeals from decisions of the board.

15 D. ~~Not later than January 1, 1988~~ The board shall adopt rules of
16 procedure to govern the conduct of hearings before the board.

17 Sec. 11. Section 49-323, Arizona Revised Statutes, is amended to read:

18 49-323. Appeals to the board; judicial review

19 A. An appeal to the appeals board may be taken from any grant, denial,
20 modification or revocation of any individual permit issued under this
21 chapter, from any issuance, denial or revocation of a determination pursuant
22 to section 49-241, subsections B and C or from the establishment of numeric
23 values and data gap issues for pesticides pursuant to sections 49-303 and
24 49-304, by any person who is ~~or may be~~ ADVERSELY AFFECTED BY THE ACTION OR
25 BY ANY PERSON WHO MAY WITH REASONABLE PROBABILITY BE adversely affected by
26 the action AND WHO HAS EXERCISED ANY RIGHT TO COMMENT ON THE ACTION as
27 provided in section 41-1092.03. Any interested person may intervene in the
28 appeal as a matter of right. THE BOARD SHALL HOLD A HEARING IF QUESTIONS OF
29 MATERIAL FACT ARE AT ISSUE IN THE APPEAL. NOTICE AND HEARING PROCEDURES ARE
30 SUBJECT TO TITLE 41, CHAPTER 6, ARTICLE 10.

31 B. ~~Except as provided in section 41-1092.08, subsection H,~~ Final
32 decisions of the board are subject to appeal to superior court pursuant to
33 title 12, chapter 7, article 6. For the benefit of the people of this state,
34 appeals under this section have precedence, in every court, over all other
35 civil proceedings. The presiding judge for the county in which the appeal
36 has been made shall assign the appeal to the appropriate judge designated by
37 the chief justice of the supreme court pursuant to section 45-406 to hear
38 appeals relating to groundwater.

39 Sec. 12. Section 49-324, Arizona Revised Statutes, is amended to read:

40 49-324. Stay pending appeal; standard of review

41 A. If an appeal is taken from the director's decision to issue a
42 permit for a new facility, the facility may not discharge any pollutants
43 inconsistent with the director's decision until the appeal process is
44 completed.

1 B. Except as provided in subsection SUBSECTIONS D AND E OF THIS
2 SECTION:

3 1. If an appeal is taken from the director's decision to grant or deny
4 a permit for an existing facility under circumstances in which that facility
5 was previously subject to a permit, the facility may continue to operate
6 pending final disposition of the appeal if there is no increase in the amount
7 of pollutants discharged or change in the characteristics of the discharge.

8 2. If an appeal is taken from the director's decision to grant, deny,
9 modify or revoke a permit for a facility already subject to a permit, the
10 facility may continue to operate as long as the operation complies with the
11 conditions of the existing permit until final disposition of the appeal.

12 C. Decisions by the director shall be affirmed by the appeals board
13 unless, considering the entire record before the board, it concludes that the
14 director's decision is arbitrary, unreasonable, unlawful or based upon a
15 technical judgment that is clearly invalid.

16 D. The director or any interested person who has appealed or
17 intervened before the board may apply to the superior court for an order
18 requiring cessation of discharge or conditions for continued discharge
19 pending final disposition of the appeal as necessary to prevent an imminent
20 and substantial endangerment to public health and the environment. The court
21 shall determine the matter under the standards applicable for granting
22 preliminary injunctions.

23 E. NOTWITHSTANDING SECTION 41-1092.11, IF A NOTICE OF APPEAL OF A
24 PERMIT THAT IS ISSUED UNDER ARTICLE 3.1 OF THIS CHAPTER IS FILED, THOSE
25 PERMIT PROVISIONS THAT ARE SPECIFICALLY IDENTIFIED IN THE NOTICE OF APPEAL
26 AS BEING CONTESTED AND THOSE OTHER PERMIT PROVISIONS THAT CANNOT BE SEVERED
27 FROM THE CONTESTED PROVISIONS ARE AUTOMATICALLY STAYED WHILE THE APPEAL IS
28 PENDING, INCLUDING DURING ANY COURT PROCEEDINGS. UNCONTESTED PERMIT
29 PROVISIONS THAT ARE SEVERABLE FROM THE CONTESTED PROVISIONS ARE EFFECTIVE AND
30 ENFORCEABLE THIRTY DAYS AFTER THE DIRECTOR SERVES NOTICE ON THE APPLICANT,
31 THE WATER QUALITY APPEALS BOARD AND ANY PARTY WHO COMMENTED ON THE PROPOSED
32 ACTION OF THE CONDITIONS THAT ARE UNCONTESTED AND SEVERABLE.

33 Sec. 13. Transition from federal permits to state permits

34 A. Beginning on the date of approval of the Arizona pollutant
35 discharge elimination system program by the United States environmental
36 protection agency, the department of environmental quality as the permitting
37 authority shall process all requests to modify or renew an existing national
38 pollutant discharge elimination system program permit or to issue a new
39 permit under the Arizona pollutant discharge elimination system program
40 pursuant to title 49, chapter 2, article 3.1, Arizona Revised Statutes, as
41 added by this act.

42 B. If a timely application for a permit has been submitted to the
43 United States environmental protection agency before approval of the Arizona
44 pollutant discharge elimination system program, the applicant may elect to
45 continue the process with the United States environmental protection agency

1 or may request the department of environmental quality to act on the
2 application.

3 C. After approval of the Arizona pollutant discharge elimination
4 system program, for permits in which the United States environmental
5 protection agency processes the application, the department of environmental
6 quality will be the permit issuing authority.

7 Sec. 14. Public comment on memorandum of agreement with
8 environmental protection agency

9 The department of environmental quality shall provide at least thirty
10 days for receipt of written public comment before submitting to the region
11 9 office of the United States environmental protection agency the memorandum
12 of agreement that is necessary to obtain approval of the Arizona pollutant
13 discharge elimination system program. The department shall prepare written
14 responses to comments that are received. The governor's regulatory review
15 council shall hold a hearing and accept oral and written comments on the
16 proposed memorandum of agreement before it is submitted to region 9 of the
17 environmental protection agency. The purpose of the hearing is to evaluate
18 whether the memorandum of agreement is consistent with legislative intent and
19 the department of environmental quality's statutory authority and that the
20 department responded to comments.

21 Sec. 15. Legislative review of Arizona pollutant discharge
22 elimination system program

23 A. If the Arizona pollutant discharge elimination system program is
24 approved by the United States environmental protection agency, the committee
25 of reference that is assigned by the joint legislative audit committee to
26 review programs and issues relating to the department of environmental
27 quality shall hold at least one public hearing within five years of the date
28 of that approval.

29 B. The committee of reference shall:

30 1. Evaluate the effectiveness of the state program.

31 2. Assess whether the program is being implemented in a manner
32 consistent with statutory intent as reflected in this act.

33 3. Recommend statutory, regulatory or process changes to improve the
34 performance of the program and make it more effective or consistent with
35 statutory intent.

36 C. The committee of reference may request information from the
37 department of environmental quality to assist it in making its evaluation,
38 including the following:

39 1. The number of individual permits issued and the average time needed
40 to process permits.

41 2. The cost of issuing permits.

42 3. The number of permits that are appealed and the disposition of
43 those appeals.

Passed the House March 19, 2001,

Passed the Senate April 27, 2001,

by the following vote: 31 Ayes,

by the following vote: 20 Ayes,

25 Nays, 4 Not Voting

9 Nays, 1 Not Voting

Jake Flaks
Speaker of the House
Pro Tempore

Kondan Grant
President of the Senate

Norman L. Moore
Chief Clerk of the House

ASST Norma Lowe
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

H.B. 2426

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State
this day of , 20 ,

at o'clock M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 01, 2001,

by the following vote: 42 Ayes,

16 Nays, 2 Not Voting

John Flake
Speaker of the House
Pro Tempore
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
1 day of May, 2001,

at 3:35 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 7 day of

May, 2001,

at 2:44 o'clock P M.

Janice Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 7 day of May, 2001,

at 5:00 o'clock P M.

Debra Bayless
Secretary of State

H.B. 2426