

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 265

HOUSE BILL 2767

AN ACT

AMENDING SECTIONS 49-104, 49-203, 49-210, 49-241.02, 49-242, 49-255.01 AND 49-332, ARIZONA REVISED STATUTES; REPEALING LAWS 1991, CHAPTER 280, SECTION 5, AS AMENDED BY LAWS 1992, CHAPTER 126, SECTION 3; RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-104, Arizona Revised Statutes, is amended to
3 read:

4 49-104. Powers and duties of the department and director

5 A. The department shall:

6 1. Formulate policies, plans and programs to implement this title to
7 protect the environment.

8 2. Stimulate and encourage all local, state, regional and federal
9 governmental agencies and all private persons and enterprises that have
10 similar and related objectives and purposes, cooperate with those agencies,
11 persons and enterprises and correlate department plans, programs and
12 operations with those of the agencies, persons and enterprises.

13 3. Conduct research on its own initiative or at the request of the
14 governor, the legislature or state or local agencies pertaining to any
15 department objectives.

16 4. Provide information and advice on request of any local, state or
17 federal agencies and private persons and business enterprises on matters
18 within the scope of the department.

19 5. Consult with and make recommendations to the governor and the
20 legislature on all matters concerning department objectives.

21 6. Promote and coordinate the management of air resources to assure
22 their protection, enhancement and balanced utilization consistent with the
23 environmental policy of this state.

24 7. Promote and coordinate the protection and enhancement of the
25 quality of water resources consistent with the environmental policy of this
26 state.

27 8. Encourage industrial, commercial, residential and community
28 development that maximizes environmental benefits and minimizes the effects
29 of less desirable environmental conditions.

30 9. Assure the preservation and enhancement of natural beauty and
31 man-made scenic qualities.

32 10. Provide for the prevention and abatement of all water and air
33 pollution including that related to particulates, gases, dust, vapors, noise,
34 radiation, odor, nutrients and heated liquids in accordance with article 3 of
35 this chapter and chapters 2 and 3 of this title.

36 11. Promote and recommend methods for the recovery, recycling and reuse
37 or, if recycling is not possible, the disposal of solid wastes consistent
38 with sound health, scenic and environmental quality policies.

39 12. Prevent pollution through the regulation of the storage, handling
40 and transportation of solids, liquids and gases that may cause or contribute
41 to pollution.

42 13. Promote the restoration and reclamation of degraded or despoiled
43 areas and natural resources.

1 14. Assist the department of health services in recruiting and training
2 state, local and district health department personnel.

3 15. Participate in the state civil defense program and develop the
4 necessary organization and facilities to meet wartime or other disasters.

5 16. Cooperate with the Arizona-Mexico commission in the governor's
6 office and with researchers at universities in this state to collect data and
7 conduct projects in the United States and Mexico on issues that are within
8 the scope of the department's duties and that relate to quality of life,
9 trade and economic development in this state in a manner that will help the
10 Arizona-Mexico commission to assess and enhance the economic competitiveness
11 of this state and of the Arizona-Mexico region.

12 B. The department, through the director, shall:

13 1. Contract for the services of outside advisers, consultants and
14 aides reasonably necessary or desirable to enable the department to
15 adequately perform its duties.

16 2. Contract and incur obligations reasonably necessary or desirable
17 within the general scope of department activities and operations to enable
18 the department to adequately perform its duties.

19 3. Utilize any medium of communication, publication and exhibition
20 when disseminating information, advertising and publicity in any field of its
21 purposes, objectives or duties.

22 4. Adopt procedural rules that are necessary to implement the
23 authority granted under this title, but that are not inconsistent with other
24 provisions of this title.

25 5. Contract with other agencies, including laboratories, in furthering
26 any department program.

27 6. Use monies, facilities or services to provide matching
28 contributions under federal or other programs that further the objectives and
29 programs of the department.

30 7. Accept gifts, grants, matching monies or direct payments from
31 public or private agencies or private persons and enterprises for department
32 services and publications and to conduct programs that are consistent with
33 the general purposes and objectives of this chapter. Monies received
34 pursuant to this paragraph shall be deposited in the department fund
35 corresponding to the service, publication or program provided.

36 8. Provide for the examination of any premises if the director has
37 reasonable cause to believe that a violation of any environmental law or rule
38 exists or is being committed on the premises. The director shall give the
39 owner or operator the opportunity for its representative to accompany the
40 director on an examination of those premises. Within forty-five days after
41 the date of the examination, the department shall provide to the owner or
42 operator a copy of any report produced as a result of any examination of the
43 premises.

1 9. Supervise sanitary engineering facilities and projects in this
2 state, authority for which is vested in the department, and own or lease land
3 on which sanitary engineering facilities are located, and operate the
4 facilities, if the director determines that owning, leasing or operating is
5 necessary for the public health, safety or welfare.

6 10. Adopt and enforce rules relating to approving design documents for
7 constructing, improving and operating sanitary engineering and other
8 facilities for disposing of solid, liquid or gaseous deleterious matter.

9 11. Define and prescribe reasonably necessary rules regarding the water
10 supply, sewage disposal and garbage collection and disposal for subdivisions.
11 The rules shall:

12 (a) Provide for minimum sanitary facilities to be installed in the
13 subdivision and may require that water systems plan for future needs and be
14 of adequate size and capacity to deliver specified minimum quantities of
15 drinking water and to treat all sewage.

16 (b) Provide that the design documents showing or describing the water
17 supply, sewage disposal and garbage collection facilities be submitted with a
18 fee to the department for review and that no lots in any subdivision be
19 offered for sale before compliance with the standards and rules has been
20 demonstrated by approval of the design documents by the department.

21 12. Prescribe reasonably necessary measures to prevent pollution of
22 water used in public or semipublic swimming pools and bathing places and to
23 prevent deleterious conditions at such places. The rules shall prescribe
24 minimum standards for the design of and for sanitary conditions at any public
25 or semipublic swimming pool or bathing place and provide for abatement as
26 public nuisances of premises and facilities that do not comply with the
27 minimum standards. The rules shall be developed in cooperation with the
28 director of the department of health services and shall be consistent with
29 the rules adopted by the director of the department of health services
30 pursuant to section 36-136, subsection H, paragraph 10.

31 13. Prescribe reasonable rules regarding sewage collection, treatment,
32 disposal and reclamation systems to prevent the transmission of sewage borne
33 or insect borne diseases. The rules shall:

34 (a) Prescribe minimum standards for the design of sewage collection
35 systems and treatment, disposal and reclamation systems and for operating the
36 systems.

37 (b) Provide for inspecting the premises, systems and installations and
38 for abating as a public nuisance any collection system, process, treatment
39 plant, disposal system or reclamation system that does not comply with the
40 minimum standards.

41 (c) Require that design documents for all sewage collection systems,
42 sewage collection system extensions, treatment plants, processes, devices,
43 equipment, disposal systems, on-site wastewater treatment facilities and
44 reclamation systems be submitted with a fee for review to the department and

1 may require that the design documents anticipate and provide for future
2 sewage treatment needs.

3 (d) Require that construction, reconstruction, installation or
4 initiation of any sewage collection system, sewage collection system
5 extension, treatment plant, process, device, equipment, disposal system,
6 on-site wastewater treatment facility or reclamation system conform with
7 applicable requirements.

8 14. Prescribe reasonably necessary rules regarding excreta storage,
9 handling, treatment, transportation and disposal. The rules shall:

10 (a) Prescribe minimum standards for human excreta storage, handling,
11 treatment, transportation and disposal and shall provide for inspection of
12 premises, processes and vehicles and for abating as public nuisances any
13 premises, processes or vehicles that do not comply with the minimum
14 standards.

15 (b) Provide that vehicles transporting human excreta from privies,
16 septic tanks, cesspools and other treatment processes shall be licensed by
17 the department subject to compliance with the rules.

18 15. Perform the responsibilities of implementing and maintaining a data
19 automation management system to support the reporting requirements of title
20 III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499)
21 and title 26, chapter 2, article 3.

22 16. Approve remediation levels pursuant to article 4 of this chapter.

23 C. The department may charge fees to cover the costs of all permits
24 and inspections it performs to ~~insure~~ ENSURE compliance with rules adopted
25 under section 49-203, ~~subsection A, paragraph 6~~, except that state agencies
26 are exempt from paying the fees. Monies collected pursuant to this
27 subsection shall be deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the
28 water quality fee fund established by section 49-210.

29 D. The director may:

30 1. If ~~he~~ THE DIRECTOR has reasonable cause to believe that a violation
31 of any environmental law or rule exists or is being committed, inspect any
32 person or property in transit through this state and any vehicle in which the
33 person or property is being transported and detain or disinfect the person,
34 property or vehicle as reasonably necessary to protect the environment if a
35 violation exists.

36 2. Authorize in writing any qualified officer or employee in the
37 department to perform any act that the director is authorized or required to
38 do by law.

39 Sec. 2. Section 49-203, Arizona Revised Statutes, is amended to read:
40 49-203. Powers and duties of the director and department

41 A. The director shall:

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

1 2. Adopt, by rule, a permit program that is consistent with but no
2 more stringent than the requirements of the clean water act for the point
3 source discharge of any pollutant or combination of pollutants into navigable
4 waters. The program and the rules shall be sufficient to enable this state
5 to administer the permit program identified in section 402(b) of the clean
6 water act including the sewage sludge requirements of section 405 of the
7 clean water act and as prescribed by article 3.1 of this chapter.

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

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

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

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

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

23 8. ~~Except as prescribed by section 49-255.01, subsection J, Assess and~~
24 ~~collect fees to cover, as necessary, reasonable costs to revoke, issue, deny,~~
25 ~~modify or suspend permits issued pursuant to this chapter and to process~~
26 ~~permit applications. The director may also assess and collect costs~~
27 ~~reasonably necessary if the director must conduct sampling or monitoring~~
28 ~~relating to a facility because the owner or operator of the facility has~~
29 ~~refused or failed to do so on order by the director. The director shall set~~
30 ~~fees which THAT are reasonably related to the department's costs of providing~~
31 ~~the service for which the fee is charged. State agencies are exempt from all~~
32 ~~fees imposed pursuant to this chapter. Monies collected from aquifer~~
33 ~~protection permit fees AND FROM ARIZONA POLLUTANT DISCHARGE ELIMINATION~~
34 ~~SYSTEM PERMIT FEES shall be deposited, pursuant to sections 35-146 and~~
35 ~~35-147, in the water quality fee fund established by section 49-210. Monies~~
36 ~~from other permit fees shall be deposited, pursuant to sections 35-146 and~~
37 ~~35-147, in the water quality fee fund unless otherwise provided by law.~~
38 ~~Except for Monies paid by an applicant for review by consultants for the~~
39 ~~department pursuant to section 49-241.02, subsection D, monies collected from~~
40 ~~all other fees shall be transmitted to the state treasurer for deposit~~
41 ~~DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, in the water quality fee~~
42 ~~fund established by section 49-210.~~

43 9. Adopt, modify, repeal and enforce other rules ~~which~~ THAT are
44 reasonably necessary to carry out the director's functions under this
45 chapter.

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

5 11. Adopt rules establishing what constitutes a significant increase or
6 adverse alteration in the characteristics or volume of pollutants discharged
7 for purposes of determining what constitutes a major modification to an
8 existing facility under the definition of new facility pursuant to section
9 49-201. ~~Prior to~~ BEFORE the adoption of these rules, the director shall
10 determine whether a change at a particular facility results in a significant
11 increase or adverse alteration in the characteristics or volume of pollutants
12 discharged on a case by case basis, taking into account site conditions and
13 operational factors.

14 B. The director may:

15 1. On presentation of credentials, enter into, on or through any
16 public or private property from which a discharge has occurred, is occurring
17 or may occur or on which any disposal, land application of sludge or
18 treatment regulated by this chapter has occurred, is occurring or may be
19 occurring and any public or private property where records relating to a
20 discharge or records that are otherwise required to be maintained as
21 prescribed by this chapter are kept, as is reasonably necessary to ensure
22 compliance with this chapter. The director or a department employee may take
23 samples, inspect and copy records required to be maintained pursuant to this
24 chapter, inspect equipment, activities, facilities and monitoring equipment
25 or methods of monitoring, take photographs and take other action reasonably
26 necessary to determine the application of, or compliance with, this chapter.
27 The owner or managing agent of the property shall be afforded the opportunity
28 to accompany the director or department employee during inspections and
29 investigations, but prior notice of entry to the owner or managing agent is
30 not required if reasonable grounds exist to believe that such notice would
31 frustrate the enforcement of this chapter. If the director or department
32 employee obtains any samples before leaving the premises, ~~he~~ THE DIRECTOR OR
33 DEPARTMENT EMPLOYEE shall give the owner or managing agent a receipt
34 describing the samples obtained and a portion of each sample equal in volume
35 or weight to the portion retained. If an analysis is made of samples, or
36 monitoring and testing are performed, a copy of the results shall be
37 furnished promptly to the owner or managing agent.

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

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

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

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

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

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

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

21 C. Subject to ~~the provisions of~~ section 38-503 and other applicable
22 statutes and rules, the department may contract with a private consultant for
23 the purposes of assisting the department in reviewing aquifer protection
24 permit applications and on-site wastewater treatment facilities to determine
25 whether a facility meets the criteria and requirements of this chapter and
26 the rules adopted by the director. Except as provided in section 49-241.02,
27 subsection D, the department shall not use a private consultant if the fee
28 charged for that service would be greater than the fee the department would
29 charge to provide that service. The department shall pay the consultant for
30 the services rendered by the consultant from fees paid by the applicant or
31 facility to the department pursuant to subsection A, paragraph 8 of this
32 section.

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

38 Sec. 3. Section 49-210, Arizona Revised Statutes, is amended to read:

39 49-210. Water quality fee fund; appropriation; exemption;
40 monies held in trust

41 A. The water quality fee fund is established consisting of monies
42 appropriated by the legislature and fees received pursuant to sections
43 49-104, 49-203, 49-241, 49-242, 49-255.01, 49-332 and 49-353. The director
44 shall administer the fund.

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

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

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

9 1. The issuance of aquifer protection permits pursuant to section
10 49-241.

11 2. The aquifer protection permit registration fee procedures pursuant
12 to section 49-242.

13 3. Dry well registration fee procedures pursuant to section 49-332.

14 4. Technical review fee procedures pursuant to section 49-353.

15 5. Inspection fee procedures pursuant to section 49-104, subsection C.

16 6. THE ISSUANCE OF PERMITS UNDER THE ARIZONA POLLUTANT DISCHARGE
17 ELIMINATION SYSTEM PROGRAM PURSUANT TO SECTION 49-255.01.

18 E. ANY FEE, ASSESSMENT OR OTHER LEVY THAT IS AUTHORIZED BY LAW OR
19 ADMINISTRATIVE RULE AND THAT IS COLLECTED AND DEPOSITED IN THE WATER QUALITY
20 FEE FUND SHALL BE HELD IN TRUST. THE MONIES IN THE FUND MAY BE USED ONLY FOR
21 THE PURPOSES PRESCRIBED BY STATUTE AND SHALL NOT BE APPROPRIATED OR
22 TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE
23 OR TO OTHERWISE MEET THE OBLIGATIONS OF THE GENERAL FUND OF THIS STATE. THIS
24 SUBSECTION DOES NOT APPLY TO ANY TAXES OR OTHER LEVIES THAT ARE IMPOSED
25 PURSUANT TO TITLE 42 OR 43.

26 Sec. 4. Section 49-241.02, Arizona Revised Statutes, is amended to
27 read:

28 49-241.02. Payment for aquifer protection permit fees;
29 definitions

30 ~~A. The maximum fees for processing, issuing or denying permit action~~
31 ~~applications shall be:~~

32 ~~1. For an individual or area-wide aquifer protection permit, one~~
33 ~~hundred thousand dollars.~~

34 ~~2. For an application for a complex modification to an individual or~~
35 ~~area-wide aquifer protection permit, one hundred thousand dollars.~~

36 ~~3. For the clean closure of a facility without an aquifer protection~~
37 ~~permit, thirty five thousand dollars.~~

38 ~~4. For a standard application to modify an individual or area-wide~~
39 ~~aquifer protection permit, fifteen thousand dollars.~~

40 A. ONLY FOR A ONE-TIME RULE MAKING AFTER THE EFFECTIVE DATE OF THIS
41 AMENDMENT TO THIS SECTION, THE DIRECTOR SHALL ESTABLISH BY RULE FEES FOR
42 AQUIFER PROTECTION PERMITS, INCLUDING MAXIMUM FEES AND FEES FOR INDIVIDUAL OR
43 AREA-WIDE PERMITS, COMPLEX AND STANDARD MODIFICATIONS TO PERMITS AND CLEAN
44 CLOSURE OF A NONPERMITTED FACILITY. AFTER THE ONE-TIME RULE MAKING, THE
45 DIRECTOR SHALL NOT INCREASE THOSE FEES BY RULE WITHOUT SPECIFIC STATUTORY

1 AUTHORITY FOR THE INCREASE. MONIES COLLECTED PURSUANT TO THIS SECTION SHALL
2 BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER QUALITY
3 FEE FUND ESTABLISHED BY SECTION 49-210.

4 B. Each permit action application submitted by the applicant is
5 subject to a maximum fee. ~~The maximum fees prescribed in subsection A of~~
6 ~~this section apply for any pending permit action application submitted to the~~
7 ~~department before the effective date of this amendment to this section and~~
8 ~~the maximum fees prescribed in subsection A of this section supersede any~~
9 ~~maximum fee specified by the department in any letter dated before the~~
10 ~~effective date of this amendment to this section. The department shall~~
11 ~~notify the applicant by letter of any change in the maximum fee for an~~
12 ~~application. The notice shall be sent within sixty days after the effective~~
13 ~~date of this amendment to this section.~~

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

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

25 E. The department shall review the revenues derived from and expenses
26 incurred for processing permit action applications through June 30, 2009 2014
27 to determine the adequacy of the maximum fees, and by August 31, 2009 2014,
28 the department shall issue a report to the legislature on its findings.

29 F. For the purposes of this section:

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

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

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

42 (i) Requires expansion of the pollutant management area.

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

4 (iii) Extends into another drainage.

5 2. "Maximum fee" means the maximum amount the department is authorized
6 to charge DIRECTOR ESTABLISHES BY RULE for services for a permit action.

7 3. "Permit action" means:

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

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

12 (c) Issuance of a clean closure approval.

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

15 (e) Denial of any application.

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

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

20 Sec. 5. Section 49-242, Arizona Revised Statutes, is amended to read:

21 49-242. Procedural requirements for individual permits; annual
22 registration of permittees; fee

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

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

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

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

1 under title 36 shall register the notice of disposal or the permit with the
2 director each year and shall pay an annual registration fee for each notice
3 of disposal or permit based on the total daily influent or discharge of
4 pollutants as prescribed by PURSUANT TO subsection E of this section.

5 ~~E. The annual registration fee shall be determined as follows:~~

6 ~~Discharge or Influent Per Day~~

7 ~~Under the Permit or Notice~~

8 ~~of Disposal~~

9 ~~(In gallons)~~

Annual Fee

10 ~~3,000 to 9,999~~ \$ ~~25~~

11 ~~10,000 to 99,999~~ 100

12 ~~100,000 to 999,999~~ 1,000

13 ~~1,000,000 to 9,999,999~~ 5,000

14 ~~10,000,000 or more~~ 8,500

15 E. ONLY FOR A ONE-TIME RULE MAKING AFTER THE EFFECTIVE DATE OF THIS
16 AMENDMENT TO THIS SECTION, THE DIRECTOR SHALL ESTABLISH BY RULE AN ANNUAL
17 REGISTRATION FEE FOR FACILITIES PRESCRIBED BY SUBSECTIONS B, C AND D OF THIS
18 SECTION. THE FEE SHALL BE MEASURED IN PART BY THE AMOUNT OF DISCHARGE OR
19 INFLUENT PER DAY FROM THE FACILITY. AFTER THE ONE-TIME RULE MAKING, THE
20 DIRECTOR SHALL NOT INCREASE THOSE FEES BY RULE WITHOUT SPECIFIC STATUTORY
21 AUTHORITY FOR THE INCREASE.

22 F. For a site with more than one permit subject to the requirements of
23 this section, the owner or operator of the facility at that site shall pay
24 the annual registration fee prescribed by PURSUANT TO subsection E of this
25 section based on the permit that covers the greatest gallons of discharge or
26 influent per day plus ~~an annual registration fee equal to the lesser of the~~
27 ~~amount prescribed by subsection E of this section or one thousand dollars for~~
28 ~~each additional permit~~ ONE-HALF OF THE ANNUAL REGISTRATION FEE FOR GALLONS OF
29 DISCHARGE OR INFLUENT FOR EACH ADDITIONAL PERMIT.

30 G. The director shall prescribe the procedures to register the notice
31 of disposal or permit and collect the fee under this section. The director
32 shall deposit, PURSUANT TO SECTIONS 35-146 AND 35-147, all monies collected
33 under this section in the water quality fee fund established by section
34 49-210 and may authorize expenditures from the fund to pay the reasonable and
35 necessary costs of administering the registration program.

36 Sec. 6. Section 49-255.01, Arizona Revised Statutes, is amended to
37 read:

38 49-255.01. Arizona pollutant discharge elimination system
39 program; rules and standards; affirmative defense;
40 fees; exemption from termination

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

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

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

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

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

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

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

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

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

24 D. Nothing in this article affects the validity of any existing rules
25 that are adopted by the director and that are equivalent to and consistent
26 with the national pollutant discharge elimination system program authorized
27 under section 402 of the clean water act until new rules for AZPDES
28 discharges are adopted pursuant to this article.

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

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

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

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

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

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

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

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

6 1. All requirements in this article or rules adopted pursuant to this
7 article relating to state implementation of sections 301, 302, 306 and 307 of
8 the clean water act, except for any standard that is imposed under section
9 307 of the clean water act for a toxic pollutant that is injurious to human
10 health.

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

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

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

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

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

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

33 ~~J. Notwithstanding section 49-203, subsection A, paragraph 8, the~~
34 ~~department shall not charge a fee to issue, deny, modify, suspend or revoke a~~
35 ~~permit under this article or to process permit applications.~~

36 J. ONLY FOR A ONE-TIME RULE MAKING AFTER THE EFFECTIVE DATE OF THIS
37 AMENDMENT TO THIS SECTION, THE DIRECTOR SHALL ESTABLISH BY RULE FEES,
38 INCLUDING MAXIMUM FEES, FOR PROCESSING, ISSUING AND DENYING AN APPLICATION
39 FOR A PERMIT PURSUANT TO THIS SECTION. AFTER THE ONE-TIME RULE MAKING, THE
40 DIRECTOR SHALL NOT INCREASE THOSE FEES BY RULE WITHOUT SPECIFIC STATUTORY
41 AUTHORITY FOR THE INCREASE. MONIES COLLECTED PURSUANT TO THIS SECTION SHALL
42 BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER QUALIFY
43 FEE FUND ESTABLISHED BY SECTION 49-210.

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

3 L. This program is exempt from section 41-3102.

4 Sec. 7. Section 49-332, Arizona Revised Statutes, is amended to read:
5 49-332. Registration

6 A. A person who owns an existing dry well ~~which~~ THAT is or has been
7 used for disposal shall register the well on a registration form provided by
8 the director. This form shall be accompanied by a registration fee ~~of ten~~
9 ~~dollars~~ ESTABLISHED BY THE DIRECTOR BY RULE IN A ONE-TIME RULE MAKING AFTER
10 THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION. AFTER THE ONE-TIME
11 RULE MAKING, THE DIRECTOR SHALL NOT INCREASE THAT FEE BY RULE WITHOUT
12 SPECIFIC STATUTORY AUTHORITY FOR THE INCREASE. Monies collected by the
13 department shall be deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the
14 water quality fee fund established by section 49-210. The registration form
15 shall include information ~~which~~ THAT the director determines is necessary to
16 meet the purpose of this article.

17 B. The director shall assign a registration number to each dry well
18 registered pursuant to this section and shall maintain a permanent record of
19 the information contained on the registration form and the registration
20 number.

21 C. An owner who brings a dry well into operation after August 13, 1986
22 shall register the well on a registration form provided by the director and
23 shall pay the registration fee ~~of ten dollars~~ ESTABLISHED BY THE DIRECTOR BY
24 RULE within thirty days of beginning operations.

25 D. A person who installs a dry well shall notify the owner of the
26 registration requirements of subsection C of this section.

27 E. This article shall not be construed to legalize any dry well
28 ~~existing~~ THAT EXISTS on August 13, 1986 and ~~which~~ THAT is not in compliance
29 with this chapter and chapter 5 of this title.

30 Sec. 8. Repeal

31 Laws 1991, chapter 280, section 5, as amended by Laws 1992, chapter
32 126, section 3, is repealed.

33 Sec. 9. Department of environmental quality; continuing fee
34 authority

35 A. Notwithstanding any other law, beginning on the effective date of
36 this act through June 30, 2011, the department of environmental quality has
37 continuing authority to collect the following maximum fees for processing,
38 issuing or denying aquifer protection permits:

39 1. For an individual or area-wide aquifer protection permit, one
40 hundred thousand dollars.

41 2. For an application for a complex modification to an individual or
42 area-wide aquifer protection permit, one hundred thousand dollars.

1 3. For the clean closure of a facility without an aquifer protection
2 permit, thirty-five thousand dollars.

3 4. For a standard application to modify an individual or area-wide
4 aquifer protection permit, fifteen thousand dollars.

5 B. Notwithstanding any other law, beginning on the effective date of
6 this act through June 30, 2011, the department of environmental quality has
7 continuing authority to collect the following maximum fees for each owner of
8 a facility that is prescribed in section 49-242, subsections B, C or D,
9 Arizona Revised Statutes, as amended by this act, for annual registration and
10 for a site with more than one permit:

11	1. Discharge or Influent Per Day	
12	Under the Permit or Notice	
13	of Disposal	
14	(In gallons)	Annual Fee
15	3,000 to 9,999	\$ 25
16	10,000 to 99,999	100
17	100,000 to 999,999	1,000
18	1,000,000 to 9,999,999	5,000
19	10,000,000 or more	8,500

20 2. For a site with more than one permit that is subject to the
21 requirements of section 49-242, Arizona Revised Statutes, as amended by this
22 act, the owner or operator of the facility at that site shall pay the annual
23 registration fee prescribed by paragraph 1 of this subsection based on the
24 permit that covers the greatest gallons of discharge or influent per day plus
25 an annual registration fee equal to the lesser of the amount prescribed by
26 paragraph 1 of this subsection or one thousand dollars for each additional
27 permit.

28 C. Notwithstanding any other law, beginning on the effective date of
29 this act through June 30, 2011, the department of environmental quality has
30 continuing authority to collect the following fees relating to dry wells:

31 1. A person who owns an existing dry well that is or has been used for
32 disposal shall register the well and pay a registration fee of ten dollars.

33 2. An owner who brings a dry well into operation after August 13, 1986
34 shall register the well and shall pay the registration fee of ten dollars
35 within thirty days of beginning operations.

36 Sec. 10. Department of environmental quality; water quality
37 fees; authority

38 In addition to any other appropriations made in fiscal year 2010-2011,
39 all water quality permit administration revenues received by the department
40 of environmental quality in fiscal year 2010-2011 are appropriated to the
41 department. Before the expenditure of water quality permit administration
42 receipts, the department of environmental quality shall report the intended
43 use of the monies to the joint legislative budget committee.

1 Sec. 11. Legislative intent

2 If the legislature authorizes the department of environmental quality
3 to collect or impose a fee, assessment or other levy to be used for a
4 specific purpose and not to fund the state general fund, the monies so
5 collected must be used only for the purposes authorized by law. This act is
6 intended to restore the trust of the people of this state and the businesses
7 that operate in this state and that have paid and will be required to pay
8 those fees, assessments and other levies that those monies will be used for
9 the stated purpose and not for some other purpose.

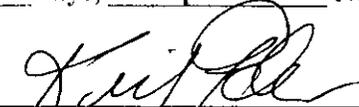
APPROVED BY THE GOVERNOR MAY 7, 2010.

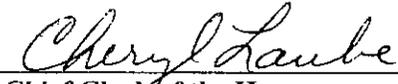
FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.

Passed the House March 29, 2010

by the following vote: 38 Ayes,

18 Nays, 4 Not Voting


Speaker of the House


Chief Clerk of the House

Passed the Senate April 28, 2010

by the following vote: 20 Ayes,

9 Nays, 1 Not Voting


President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

H.B. 2767

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 29, 2010,

by the following vote: 51 Ayes,

7 Nays, 2 Not Voting

[Signature]
Speaker of the House
Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

30 day of April, 2010

at 9:10 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 7 day of

May, 2010,

at 11:00 o'clock A. M.

[Signature]
Governor of Arizona

H.B. 2767

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7th day of May, 2010,

at 4:30 o'clock P. M.

[Signature]
Secretary of State