

Senate Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 233

SENATE BILL 1287

AN ACT

AMENDING SECTIONS 49-241.02, 49-250 AND 49-701.01, ARIZONA REVISED STATUTES;
RELATING TO THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-241.02, Arizona Revised Statutes, is amended to
3 read:

4 49-241.02. Payment for aquifer protection permit fees;
5 definitions

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

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

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

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

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

32 F. For the purposes of this section:

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

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

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

1 (i) Requires expansion of the pollutant management area AND A NEW OR
2 RELOCATED POINT OF COMPLIANCE.

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

6 ~~(iii) Extends into another drainage.~~

7 (c) A NEW OR EXPANDED WASTE ROCK PILE IS NOT CONSIDERED TO BE A
8 DISCHARGING FACILITY UNDER SECTION 49-241, SUBSECTION B AND MAY BE
9 CATEGORIZED AS A COMPLEX MODIFICATION FOR PURPOSES OF THIS SECTION ONLY IF
10 THE DEPARTMENT DETERMINES ALL OF THE FOLLOWING:

11 (i) THE NEW OR EXPANDED WASTE ROCK PILE OTHERWISE QUALIFIES AS A
12 DISCHARGING FACILITY AND IS NOT EXEMPTED UNDER SECTION 49-250.

13 (ii) THE NEW OR EXPANDED WASTE ROCK PILE IS LOCATED OUTSIDE OF A
14 PASSIVE CONTAINMENT CAPTURE ZONE UNDER SECTION 49-243, SUBSECTION G,
15 PARAGRAPH 1.

16 (iii) THE NEW OR EXPANDED WASTE ROCK PILE EITHER REQUIRES EXPANSION OF
17 THE POLLUTANT MANAGEMENT AREA AND A NEW OR RELOCATED POINT OF COMPLIANCE OR
18 IT EXTENDS OVER A GEOLOGIC UNIT OF HIGHER HYDRAULIC CONDUCTIVITY THAN THE
19 ORIGINAL FACILITY.

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

22 3. "Permit action" means:

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

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

27 (c) Issuance of a clean closure approval.

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

30 (e) Denial of any application.

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

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

35 Sec. 2. Section 49-250, Arizona Revised Statutes, is amended to read:

36 49-250. Exemptions

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

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

- 1 1. Household and domestic activities.
- 2 2. Household gardening, lawn watering, lawn care, landscape
3 maintenance and related activities.
- 4 3. The noncommercial use of consumer products generally available to
5 and used by the public.
- 6 4. Ponds used for watering livestock and wildlife.
- 7 5. Mining overburden returned to the excavation site including any
8 common material which has been excavated and removed from the excavation site
9 and has not been subjected to any chemical or leaching agent or process of
10 any kind.
- 11 6. Facilities used solely for surface transportation or storage of
12 groundwater, surface water for beneficial use or reclaimed water that is
13 regulated pursuant to section 49-203, subsection A, paragraph 6 for
14 beneficial use.
- 15 7. Discharge to a community sewer system.
- 16 8. Facilities that are required to obtain a permit for the direct
17 reuse of reclaimed water.
- 18 9. Leachate resulting from the direct, natural infiltration of
19 precipitation through undisturbed regolith or bedrock if pollutants are not
20 added to the leachate as a result of any material or activity placed or
21 conducted by man on the ground surface.
- 22 10. Surface impoundments used solely to contain storm runoff, except
23 for surface impoundments regulated by the federal clean water act.
- 24 11. Closed facilities. However, if the facility ever resumes operation
25 the facility shall obtain an aquifer protection permit and the facility shall
26 be treated as a new facility for purposes of section 49-243.
- 27 12. Facilities for the storage of water pursuant to title 45, chapter
28 3.1 unless reclaimed water is added.
- 29 13. Facilities using central Arizona project water for underground
30 storage and recovery projects under title 45, chapter 3.1, article 6.
- 31 14. Water storage at a groundwater saving facility that has been
32 permitted under title 45, chapter 3.1.
- 33 15. Application of water from any source, including groundwater,
34 surface water or wastewater, to grow agricultural crops or for landscaping
35 purposes, except as provided in section 49-247.
- 36 16. Discharges to a facility that is exempt pursuant to paragraph 6 if
37 those discharges are regulated pursuant to 33 United States Code section
38 1342.
- 39 17. Solid waste and special waste facilities when rules addressing
40 aquifer protection are adopted by the director pursuant to section 49-761 or
41 49-855 and those facilities obtain plan approval pursuant to those rules.
42 This exemption shall only apply if the director determines that aquifer water
43 quality standards will be maintained and protected because the discharges
44 from those facilities are regulated under rules adopted pursuant to section
45 49-761 or 49-855 that provide aquifer water quality protection that is equal

1 to or greater than aquifer water quality protection provided pursuant to this
2 article.

3 18. Facilities used in:

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

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

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

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

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

19 20. Storage, treatment or disposal of inert material.

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

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

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

28 (a) Fire fighting system testing and maintenance.

29 (b) Potable water sources, including waterline flushings.

30 (c) Irrigation drainage and lawn watering.

31 (d) Routine external building wash down without detergents.

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

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

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

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

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

1 25. ANY POINT SOURCE DISCHARGE CAUSED BY A STORM EVENT AND AUTHORIZED
2 IN A PERMIT ISSUED PURSUANT TO SECTION 402 OF THE CLEAN WATER ACT.

3 Sec. 3. Section 49-701.01, Arizona Revised Statutes, is amended to
4 read:

5 49-701.01. Definition of solid waste; exemptions

6 A. "Solid waste" means any garbage, trash, rubbish, waste tire,
7 refuse, sludge from a waste treatment plant, water supply treatment plant or
8 pollution control facility and other discarded material, including solid,
9 liquid, semisolid or contained gaseous material.

10 B. The following are exempt from the definition of solid waste:

11 1. Hazardous waste regulated pursuant to chapter 5 of this title.

12 2. Waste that contains radioactive materials subject to the atomic
13 energy act of 1954 (42 United States Code sections 2011 through 2297, 68
14 Stat. 919) or title 30, chapter 4.

15 3. Any discharge from a facility regulated pursuant to chapter 2,
16 article 3 of this title.

17 4. Any discharge regulated pursuant to section 402 or 404 of the clean
18 water act (33 United States Code sections 1342 and 1344).

19 5. Domestic sewage.

20 6. Discharges into a publicly or privately owned treatment works
21 including the treatment works and the sewer collection system.

22 7. Irrigation waters.

23 8. Irrigation return flows.

24 9. Reclaimed wastewater from wastewater reuse facilities.

25 10. Leachate resulting from the direct natural infiltration of
26 precipitation through undisturbed regolith or bedrock, if pollutants are not
27 added by man.

28 11. Storm water.

29 12. Substances and materials that remain on site as specifically
30 approved in a work plan or other approval by the department in the course of
31 remedial or corrective actions undertaken pursuant to any of the following:

32 (a) Chapter 2, articles 3 and 5 of this title.

33 (b) Chapters 5 and 6 of this title.

34 (c) The comprehensive environmental response, compensation, and
35 liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code
36 sections 9601 through 9675).

37 (d) The federal water pollution control act amendments of 1972 (P.L.
38 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1387).

39 (e) The resource conservation and recovery act of 1976 (P.L. 94-580;
40 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

41 (f) CHAPTER 1, ARTICLE 5 OF THIS TITLE.

42 13. Water used in gardening, lawn care, landscape maintenance and
43 related activities.

44 14. Discharges from ponds used for watering livestock and wildlife.

45 15. Landscaping rubble used to reclaim land.

1 16. Mining industry off-road waste tires that are larger than three
2 feet in outside diameter and that are buried at the site and rock, COPPER
3 CONCENTRATE, leachate material, tailing and slag that are EITHER OF THE
4 FOLLOWING:

5 (a) Produced and maintained at the site of the mining or metallurgical
6 operation.

7 (b) NOT MAINTAINED AT THE SITE OF A MINING OR METALLURGICAL OPERATION
8 AND THAT ARE CONSOLIDATED AT THE SITE OF A MINING OR METALLURGICAL OPERATION
9 THAT IS BOTH OF THE FOLLOWING:

10 (i) LOCATED WITHIN FIFTY MILES OF THE MATERIALS' CURRENT OFF-SITE
11 LOCATION, OR, ON WRITTEN APPROVAL OF THE DIRECTOR, LOCATED AT A SITE THAT IS
12 FARTHER THAN FIFTY MILES OF THE MATERIALS' CURRENT OFF-SITE LOCATION.

13 (ii) REGULATED BY A PERMIT ISSUED PURSUANT TO CHAPTER 2, ARTICLE 3 OF
14 THIS TITLE OR BY AN APPROVED WORK PLAN PURSUANT TO CHAPTER 1, ARTICLE 5 OF
15 THIS TITLE.

16 17. Inert material.

17 18. Effluent as defined in section 45-101.

18 19. Return flows from irrigated agriculture.

19 20. Materials THAT ARE generated on site AND that are processed or
20 reused on site if the following conditions are met:

21 (a) On-site processing or reuse of the materials is technically
22 feasible.

23 (b) At least seventy-five per cent by weight or volume of the
24 materials that are accumulated on site for processing or reuse each year are
25 processed or reused in that same year.

26 (c) Materials that are accumulated on site for processing or reuse are
27 managed in a manner that:

28 (i) Controls wind dispersion and other surface dispersion of the
29 materials so that the materials do not create a public nuisance or pose an
30 imminent and substantial endangerment to public health or the environment.
31 Visible materials that are dispersed beyond the boundaries of the site shall
32 be collected on a regular basis by the operator of the site.

33 (ii) Does not discharge hazardous substances as defined in section
34 49-281 to surface water, groundwater or subsurface soils in a manner that
35 creates a public nuisance or poses an imminent and substantial endangerment
36 to public health or the environment.

37 (iii) Controls vector breeding and fire hazards.

38 (iv) Controls public access to the materials by the use of reasonable
39 measures.

40 C. Any person may petition the director to exempt a substance as solid
41 waste by submitting a written request to the director. The request may be
42 for a statewide or site-specific exemption. Within ninety days after receipt
43 of a written request, the director shall determine whether to exempt the
44 substance. The director's determination shall be based on a demonstration

1 that the substance is unlikely to cause or substantially contribute to a
2 threat to the public health or the environment. The procedure is as follows:

3 1. Within thirty days after the director's determination to add a
4 substance on a site-specific basis, a notice of that determination shall be
5 published in the Arizona administrative register. A site-specific
6 determination is effective on the date of the director's determination.

7 2. Within thirty days after the director's determination to add a
8 substance on a statewide basis, the director shall initiate rule making to
9 add the substance to the list of exemptions. This rule making is exempt from
10 the requirements of title 41, chapter 6, except for the requirements
11 regarding public notice. The effective date for the final rule is the
12 effective date for the exemption.

13 D. Nothing in this section shall affect the department's authority to
14 require abatement of any environmental nuisance pursuant to chapter 1,
15 article 3 of this title.

~~APPROVED BY THE GOVERNOR APRIL 10, 2012.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2012.~~

Passed the House April 3, 2012,

Passed the Senate February 20, 2012,

by the following vote: 40 Ayes,
18 Nays, 2 Not Voting

by the following vote: 21 Ayes,
5 Nays, 4 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
5 day of April, 2012,

at 10:45 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 10th day of
April, 2012;

at 4:20 o'clock P M.
[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 11th day of April, 2012,

at 3:27 o'clock P M.
[Signature]
Secretary of State

S.B. 1287