

House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 262

SENATE BILL 1289

AN ACT

AMENDING SECTION 49-255.01, 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 49-255.01, Arizona Revised Statutes, is amended to
3 read:
4 49-255.01. Arizona pollutant discharge elimination system
5 program; rules and standards; affirmative defense;
6 fees; general permit; exemption from termination
7 A. A person shall not discharge except under either of the following
8 conditions:
9 1. In conformance with a permit that is issued or authorized under
10 this article.
11 2. Pursuant to a permit that is issued or authorized by the United
12 States environmental protection agency until a permit that is issued or
13 authorized under this article takes effect.
14 B. The director shall adopt rules to establish an AZPDES permit
15 program consistent with the requirements of sections 402(b) and 402(p) of the
16 clean water act. This program shall include requirements to ensure
17 compliance with section 307 and requirements for the control of discharges
18 consistent with sections 318 and 405(a) of the clean water act. The director
19 shall not adopt any requirement that is more stringent than or conflicts with
20 any requirement of the clean water act. The director may adopt federal rules
21 pursuant to section 41-1028 or may adopt rules to reflect local environmental
22 conditions to the extent that the rules are consistent with and no more
23 stringent than the clean water act and this article.
24 C. The rules adopted by the director shall provide for:
25 1. Issuing, authorizing, denying, modifying, suspending or revoking
26 individual or general permits.
27 2. Establishment of permit conditions, discharge limitations and
28 standards of performance as prescribed by section 49-203, subsection A,
29 paragraph 7, including case by case effluent limitations that are developed
30 in a manner consistent with 40 Code of Federal Regulations section 125.3(c).
31 3. Modifications and variances as allowed by the clean water act.
32 4. Other provisions necessary for maintaining state program authority
33 under section 402(b) of the clean water act.
34 D. ~~Nothing in~~ This article affects DOES NOT AFFECT the validity of any
35 existing rules that are adopted by the director and that are equivalent to
36 and consistent with the national pollutant discharge elimination system
37 program authorized under section 402 of the clean water act until new rules
38 for AZPDES discharges are adopted pursuant to this article.
39 E. An upset constitutes an affirmative defense to any administrative,
40 civil or criminal enforcement action brought for noncompliance with
41 technology-based permit discharge limitations if the permittee complies with
42 all of the following:
43 1. The permittee demonstrates through properly signed contemporaneous
44 operating logs or other relevant evidence that:

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

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

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

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

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

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

17 1. All requirements in this article or rules adopted pursuant to this
18 article relating to state implementation of sections 301, 302, 306 and 307 of
19 the clean water act, except for any standard that is imposed under section
20 307 of the clean water act for a toxic pollutant that is injurious to human
21 health.

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

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

30 H. The decision of the director to issue or modify a permit takes
31 effect on issuance if there were no changes requested in comments that were
32 submitted on the draft permit unless a later effective date is specified in
33 the decision. In all other cases, the decision of the director to issue,
34 deny, modify, suspend or revoke a permit takes effect thirty days after the
35 decision is served on the permit applicant, unless either of the following
36 applies:

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

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

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

44 J. Only for a one-time rule making after ~~the effective date of this~~
45 ~~amendment to this section~~ JULY 29, 2010, the director shall establish by rule

1 fees, including maximum fees, for processing, issuing and denying an
2 application for a permit pursuant to this section. After the one-time rule
3 making, the director shall not increase those fees by rule without specific
4 statutory authority for the increase. Monies collected pursuant to this
5 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
6 water quality fee fund established by section 49-210.

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

9 L. WHEN DEVELOPING A GENERAL PERMIT FOR DISCHARGES OF STORM WATER FROM
10 CONSTRUCTION ACTIVITY, THE DIRECTOR SHALL PROVIDE FOR REDUCED CONTROL
11 MEASURES AT SITES THAT RETAIN STORM WATER IN A MANNER THAT ELIMINATES
12 DISCHARGES FROM THE SITE, EXCEPT FOR THE OCCURRENCE OF AN EXTREME EVENT.
13 REDUCED CONTROL MEASURES SHALL BE AVAILABLE IF ALL OF THE FOLLOWING
14 CONDITIONS ARE MET:

15 1. THE NEAREST DOWNSTREAM RECEIVING WATER IS EPHEMERAL AND THE
16 CONSTRUCTION SITE IS A SUFFICIENT DISTANCE FROM A WATER WARRANTING ADDITIONAL
17 PROTECTION AS DESCRIBED IN THE GENERAL PERMIT.

18 2. THE CONSTRUCTION ACTIVITY OCCURS ON A SITE DESIGNED SO THAT ALL
19 STORM WATER GENERATED BY DISTURBED AREAS OF THE SITE EXCLUSIVE OF PUBLIC
20 RIGHTS-OF-WAY IS DIRECTED TO ONE OR MORE RETENTION BASINS THAT ARE DESIGNED
21 TO RETAIN THE RUNOFF FROM AN EXTREME EVENT. FOR THE PURPOSES OF THIS
22 SUBSECTION, "EXTREME EVENT" MEANS A RAINFALL EVENT THAT MEETS OR EXCEEDS THE
23 LOCAL ONE HUNDRED-YEAR, TWO-HOUR STORM EVENT AS CALCULATED BY AN ARIZONA
24 REGISTERED PROFESSIONAL ENGINEER USING INDUSTRY PRACTICES.

25 3. THE OWNER OR OPERATOR COMPLIES WITH GOOD HOUSEKEEPING MEASURES
26 INCLUDED IN THE GENERAL PERMIT.

27 4. THE OWNER OR OPERATOR MAINTAINS THE CAPACITY OF THE RETENTION
28 BASINS.

29 5. CONSTRUCTION CONFORMS TO THE STANDARDS PRESCRIBED BY THIS SECTION.

30 M. IF THE DIRECTOR COMMENCES PROCEEDINGS FOR THE RENEWAL OF A GENERAL
31 PERMIT ISSUED PURSUANT TO THIS ARTICLE, THE EXISTING GENERAL PERMIT SHALL NOT
32 EXPIRE AND COVERAGE MAY CONTINUE TO BE OBTAINED BY NEW DISCHARGERS UNTIL THE
33 PROCEEDINGS HAVE RESULTED IN A FINAL DETERMINATION BY THE DIRECTOR. IF THE
34 PROCEEDINGS RESULT IN A DECISION NOT TO RENEW THE GENERAL PERMIT, THE
35 EXISTING GENERAL PERMIT SHALL CONTINUE IN EFFECT UNTIL THE LAST DAY FOR
36 FILING FOR REVIEW OF THE DECISION OF THE DIRECTOR NOT TO RENEW THE PERMIT OR
37 UNTIL ANY LATER DATE THAT IS FIXED BY COURT ORDER.

38 ~~L.~~ N. This program is exempt from section 41-3102.

39 Sec. 2. Legislative intent; review of rules, programs and
40 permits

41 A. The public policy of this state and the intent of title 49,
42 chapter 2, Arizona Revised Statutes, is to limit duplicative and unnecessary
43 regulation. The legislature finds that as the national pollutant discharge
44 elimination system and Arizona pollutant discharge elimination system storm
45 water programs have evolved, construction activity has become subject to

1 overlapping state and local regulation. The legislature further finds that
2 for consistency and ease of compliance, regulation of construction activity
3 is best accomplished through a single state permitting system and regulation
4 can be reduced, provided that operators of construction activity comply with
5 state requirements.

6 B. In accordance with the foregoing, the legislature directs the
7 director of the department of environmental quality to review the rules,
8 programs and permits developed or issued under title 49, chapter 2, article
9 3.1, Arizona Revised Statutes, and to eliminate duplicative regulation of
10 construction activity by the director and operators of municipal separate
11 storm sewer systems. At a minimum, such rules, programs and permits shall be
12 revised so as to require a single permit for discharges of storm water from
13 construction activity and prohibit municipal separate storm sewer systems
14 from requiring duplicative permits for the same construction activity,
15 provide that compliance with a permit issued by the director under title 49,
16 chapter 2, article 3.1, Arizona Revised Statutes, satisfies requirements for
17 waste, erosion and sediment control included in a program developed by an
18 operator of a municipal separate storm sewer system and provide that review
19 of site plans by the director satisfies site plan review requirements
20 included in a program developed by an operator of a municipal separate storm
21 sewer system. The director may delegate inspection authority to the operator
22 of a municipal separate storm sewer system for construction activity
23 permitted by the director and that discharges to that municipal separate
24 storm sewer system. The director's review and revision of the rules,
25 programs and permits developed or issued under title 49, chapter 2, article
26 3.1, Arizona Revised Statutes, shall be complete by July 1, 2017.

APPROVED BY THE GOVERNOR APRIL 12, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2012.

Passed the House April 4, 2012,

by the following vote: 38 Ayes,

17 Nays, 5 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate February 9, 2012,

by the following vote: 19 Ayes,

10 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
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~~

S.B. 1289

~~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~~

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 10, 2012

by the following vote: 21 Ayes,

9 Nays, 0 Not Voting

Steve Fene
President of the Senate

Charmian Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

10 day of April, 2012

at 12:00 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 12th day of

April

at 2:12 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 12th day of April, 2012

at 4:51 o'clock P M.

[Signature]
Secretary of State

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