

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  
45 may require that the design documents anticipate and provide for future  
46 sewage treatment needs.

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

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

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

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

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

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

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

27 D. The director may:

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

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

37 Sec. 2. Section 49-203, Arizona Revised Statutes, is amended to read:  
38 49-203. Powers and duties of the director and department

39 A. The director shall:

40 1. Adopt, by rule, water quality standards in the form and subject to  
41 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  
46 AUTHORITY FOR THE INCREASE. MONIES COLLECTED PURSUANT TO THIS SECTION SHALL

1 BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER QUALITY  
2 FEE FUND ESTABLISHED BY SECTION 49-210.

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

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

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

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

28 F. For the purposes of this section:

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

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

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

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

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

45 (iii) Extends into another drainage.

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

3           3. "Permit action" means:

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

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

8           (c) Issuance of a clean closure approval.

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

11          (e) Denial of any application.

12          (f) Processing any permit action application request that the  
13 applicant withdraws.

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

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

17          49-242. Procedural requirements for individual permits; annual  
18 registration of permittees; fee

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

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

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

38          D. Pending the issuance of individual or area-wide aquifer protection  
39 permits, each owner of a facility that is prescribed in subsection B or C of  
40 this section that is operating on September 27, 1990 pursuant to the filing  
41 of a notice of disposal or a groundwater quality protection permit issued  
42 under title 36 shall register the notice of disposal or the permit with the  
43 director each year and shall pay an annual registration fee for each notice  
44 of disposal or permit based on the total daily influent or discharge of  
45 pollutants ~~as prescribed by~~ PURSUANT TO subsection E of this section.

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

<del>Discharge or Influent Per Day</del>	<del>Annual Fee</del>
<del>Under the Permit or Notice</del>	
<del>of Disposal</del>	
<del>(In gallons)</del>	
<del>3,000 to 9,999</del>	<del>\$ 25</del>
<del>10,000 to 99,999</del>	<del>100</del>
<del>100,000 to 999,999</del>	<del>1,000</del>
<del>1,000,000 to 9,999,999</del>	<del>5,000</del>
<del>10,000,000 or more</del>	<del>8,500</del>

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

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

25 G. The director shall prescribe the procedures to register the notice  
 26 of disposal or permit and collect the fee under this section. The director  
 27 shall deposit, PURSUANT TO SECTIONS 35-146 AND 35-147, all monies collected  
 28 under this section in the water quality fee fund established by section  
 29 49-210 and may authorize expenditures from the fund to pay the reasonable and  
 30 necessary costs of administering the registration program.

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

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

36 A. A person shall not discharge except under either of the following  
 37 conditions:

38 1. In conformance with a permit that is issued or authorized under  
 39 this article.

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

43 B. The director shall adopt rules to establish an AZPDES permit  
 44 program consistent with the requirements of sections 402(b) and 402(p) of the  
 45 clean water act. This program shall include requirements to ensure  
 46 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 of  
46 the clean water act, except for any standard that is imposed under section

1 307 of the clean water act for a toxic pollutant that is injurious to human  
2 health.

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

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

11 H. The decision of the director to issue or modify a permit takes  
12 effect on issuance if there were no changes requested in comments that were  
13 submitted on the draft permit unless a later effective date is specified in  
14 the decision. In all other cases, the decision of the director to issue,  
15 deny, modify, suspend or revoke a permit takes effect thirty days after the  
16 decision is served on the permit applicant, unless either of the following  
17 applies:

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

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

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

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

28 J. ONLY FOR A ONE-TIME RULE MAKING AFTER THE EFFECTIVE DATE OF THIS  
29 AMENDMENT TO THIS SECTION, THE DIRECTOR SHALL ESTABLISH BY RULE FEES,  
30 INCLUDING MAXIMUM FEES, FOR PROCESSING, ISSUING AND DENYING AN APPLICATION  
31 FOR A PERMIT PURSUANT TO THIS SECTION. AFTER THE ONE-TIME RULE MAKING, THE  
32 DIRECTOR SHALL NOT INCREASE THOSE FEES BY RULE WITHOUT SPECIFIC STATUTORY  
33 AUTHORITY FOR THE INCREASE. MONIES COLLECTED PURSUANT TO THIS SECTION SHALL  
34 BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER QUALIFY  
35 FEE FUND ESTABLISHED BY SECTION 49-210.

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

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

39 Sec. 7. Section 49-332, Arizona Revised Statutes, is amended to read:  
40 49-332. Registration

41 A. A person who owns an existing dry well ~~which~~ THAT is or has been  
42 used for disposal shall register the well on a registration form provided by  
43 the director. This form shall be accompanied by a registration fee ~~of ten~~  
44 ~~dollars~~ ESTABLISHED BY THE DIRECTOR BY RULE IN A ONE-TIME RULE MAKING AFTER  
45 THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION. AFTER THE ONE-TIME  
46 RULE MAKING, THE DIRECTOR SHALL NOT INCREASE THAT FEE BY RULE WITHOUT

1 SPECIFIC STATUTORY AUTHORITY FOR THE INCREASE. Monies collected by the  
2 department shall be deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the  
3 water quality fee fund established by section 49-210. The registration form  
4 shall include information ~~which~~ THAT the director determines is necessary to  
5 meet the purpose of this article.

6 B. The director shall assign a registration number to each dry well  
7 registered pursuant to this section and shall maintain a permanent record of  
8 the information contained on the registration form and the registration  
9 number.

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

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

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

19 Sec. 8. Repeal

20 Laws 1991, chapter 280, section 5, as amended by Laws 1992, chapter  
21 126, section 3, is repealed.

22 Sec. 9. Department of environmental quality; continuing fee  
23 authority

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

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

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

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

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

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

42	1. Discharge or Influent Per Day	
43	Under the Permit or Notice	
44	of Disposal	
45	(In gallons)	Annual Fee
46	3,000 to 9,999	\$ 25

