

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

CHAPTER 309
HOUSE BILL 2617

AN ACT

AMENDING SECTIONS 27-121, 41-1001.01, 41-1002, 41-1052 AND 41-1077, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3020.01; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 46; AMENDING SECTIONS 45-104, 45-132, 45-454.01, 45-471, 45-544, 45-596, 49-104, 49-109, 49-241, 49-243 AND 49-245.01, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-290.02; RELATING TO MINING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 27-121, Arizona Revised Statutes, is amended to
3 read:

4 27-121. Qualifications of mine inspector; duties; deputies;
5 salary; immunity

6 A. The state mine inspector shall be a resident of this state at least
7 two years before election, not under thirty years of age, and shall have been
8 practically engaged in, and acquainted with, mines and mining in this state,
9 and shall have had at least four years' experience in ~~underground~~ mining ~~and~~
10 ~~three additional years in either underground mining, smelting, open pit~~
11 ~~mining,~~ or experience in any industry under the jurisdiction of the state
12 mine inspector, **OR BOTH**.

13 B. No person may be an inspector or deputy inspector while an
14 employee, director or officer of a mining, milling or smelting company.

15 C. The inspector, and each deputy, shall devote full time to official
16 duties.

17 D. The inspector shall receive an annual salary pursuant to section
18 41-1904 and necessary traveling expenses when traveling in discharge of
19 official duties.

20 E. The mine inspector shall have a seal bearing the words "Mine
21 Inspector, State of Arizona", which shall be affixed to official documents.

22 F. Any claim or action against the mine inspector or the inspector's
23 deputies, agents or employees in their official capacity as described in this
24 title shall be brought against the state of Arizona and not against the mine
25 inspector, deputy, agent or employee individually.

26 Sec. 2. Section 41-1001.01, Arizona Revised Statutes, is amended to
27 read:

28 41-1001.01. Regulatory bill of rights

29 A. To ensure fair and open regulation by state agencies, a person:

30 1. Is eligible for reimbursement of fees and other expenses if the
31 person prevails by adjudication on the merits against an agency in a court
32 proceeding regarding an agency decision as provided in section 12-348.

33 2. Is eligible for reimbursement of the person's costs and fees if the
34 person prevails against any agency in an administrative hearing as provided
35 in section 41-1007.

36 3. Is entitled to have an agency not charge the person a fee unless
37 the fee for the specific activity is expressly authorized as provided in
38 section 41-1008.

39 4. Is entitled to receive the information and notice regarding
40 inspections prescribed in section 41-1009.

41 5. May review the full text or summary of all rule making activity,
42 the summary of substantive policy statements and the full text of executive
43 orders in the register as provided in article 2 of this chapter.

44 6. May participate in the rule making process as provided in articles
45 3, 4, 4.1 and 5 of this chapter, including:

1 (a) Providing written or oral comments on proposed rules to an agency
2 as provided in section 41-1023 and having the agency adequately address those
3 comments as provided in section 41-1052, subsection ~~E~~ D.

4 (b) FILING AN EARLY REVIEW PETITION WITH THE GOVERNOR'S REGULATORY
5 REVIEW COUNCIL AS PROVIDED IN ARTICLE 5 OF THIS CHAPTER.

6 ~~(b)~~ (c) Providing written or oral comments on rules to the governor's
7 regulatory review council DURING THE MANDATORY SIXTY-DAY COMMENT PERIOD as
8 provided in article 5 of this chapter.

9 7. Is entitled to have an agency not base a licensing decision in
10 whole or in part on licensing conditions or requirements that are not
11 specifically authorized by statute, rule or state tribal gaming compact as
12 provided in section 41-1030, subsection B.

13 8. Is entitled to have an agency not make a rule under a specific
14 grant of rule making authority that exceeds the subject matter areas listed
15 in the specific statute or not make a rule under a general grant of rule
16 making authority to supplement a more specific grant of rule making authority
17 as provided in section 41-1030, subsection C.

18 9. May allege that an existing agency practice or substantive policy
19 statement constitutes a rule and have that agency practice or substantive
20 policy statement declared void because the practice or substantive policy
21 statement constitutes a rule as provided in section 41-1033.

22 10. May file a complaint with the administrative rules oversight
23 committee concerning:

24 (a) A rule's, practice's or substantive policy statement's lack of
25 conformity with statute or legislative intent as provided in section 41-1047.

26 (b) An existing statute, rule, practice alleged to constitute a
27 rule or substantive policy statement that is alleged to be duplicative or
28 onerous as provided in section 41-1048.

29 11. May have the person's administrative hearing on contested cases and
30 appealable agency actions heard by an independent administrative law judge as
31 provided in articles 6 and 10 of this chapter.

32 12. May have administrative hearings governed by uniform administrative
33 appeal procedures as provided in articles 6 and 10 of this chapter.

34 13. May have an agency approve or deny the person's license application
35 within a predetermined period of time as provided in article 7.1 of this
36 chapter.

37 14. Is entitled to receive written notice from an agency on denial of a
38 license application:

39 (a) That justifies the denial with references to the statutes or rules
40 on which the denial is based as provided in section 41-1076.

41 (b) That explains the applicant's right to appeal the denial as
42 provided in section 41-1076.

43 15. Is entitled to receive information regarding the license
44 application process at the time the person obtains an application for a
45 license as provided in section 41-1079.

1 16. May receive public notice and participate in the adoption or
2 amendment of agreements to delegate agency functions, powers or duties to
3 political subdivisions as provided in section 41-1026.01 and article 8 of
4 this chapter.

5 17. May inspect all rules and substantive policy statements of an
6 agency, including a directory of documents, in the office of the agency
7 director as provided in section 41-1091.

8 18. May file a complaint or inquiry with the advocate for private
9 property rights regarding constitutional taking as provided in chapter 8,
10 article 1.1 of this title.

11 19. May file a complaint with the office of the ombudsman-citizens aide
12 to investigate administrative acts of agencies as provided in chapter 8,
13 article 5 of this title.

14 20. **UNLESS SPECIFICALLY AUTHORIZED BY STATUTE, MAY EXPECT STATE**
15 **AGENCIES TO AVOID DUPLICATION OF OTHER LAWS THAT DO NOT ENHANCE REGULATORY**
16 **CLARITY AND TO AVOID DUAL PERMITTING TO THE EXTENT PRACTICABLE AS PRESCRIBED**
17 **IN SECTION 41-1002.**

18 B. The enumeration of the rights listed in subsection A of this
19 section does not grant any additional rights that are not prescribed in the
20 sections referenced in subsection A of this section.

21 Sec. 3. Section 41-1002, Arizona Revised Statutes, is amended to read:
22 **41-1002. Applicability and relation to other law**

23 A. **THIS ARTICLE AND** articles ~~1~~ 2 through 5 of this chapter apply to
24 all agencies and all proceedings not expressly exempted.

25 B. This chapter creates only procedural rights and imposes only
26 procedural duties. They are in addition to those created and imposed by
27 other statutes. To the extent that any other statute would diminish a right
28 created or duty imposed by this chapter, the other statute is superseded by
29 this chapter, unless the other statute expressly provides otherwise.

30 C. An agency may grant procedural rights to persons in addition to
31 those conferred by this chapter so long as rights conferred on other persons
32 by any provision of law are not substantially prejudiced.

33 D. **UNLESS SPECIFICALLY AUTHORIZED BY STATUTE, AN AGENCY SHALL AVOID**
34 **DUPLICATION OF OTHER LAWS THAT DO NOT ENHANCE REGULATORY CLARITY AND SHALL**
35 **AVOID DUAL PERMITTING TO THE EXTENT PRACTICABLE.**

36 Sec. 4. Section 41-1052, Arizona Revised Statutes, is amended to read:
37 **41-1052. Council review and approval**

38 A. Before filing a final rule with the secretary of state, an agency
39 shall prepare, transmit to the council and the committee and obtain the
40 council's approval of the rule and its preamble and economic, small business
41 and consumer impact statement ~~which~~ **THAT** meets the requirements of section
42 41-1055.

43 B. **THE COUNCIL SHALL ACCEPT AN EARLY REVIEW PETITION OF A PROPOSED**
44 **RULE, IN WHOLE OR IN PART, IF THE PROPOSED RULE IS ALLEGED TO VIOLATE ANY OF**
45 **THE CRITERIA PRESCRIBED IN SUBSECTION D OF THIS SECTION AND IF THE EARLY**
46 **PETITION IS FILED BY A PERSON WHO WOULD BE ADVERSELY IMPACTED BY THE PROPOSED**

1 RULE. THE COUNCIL MAY DETERMINE WHETHER THE PROPOSED RULE, IN WHOLE OR IN
2 PART, VIOLATES ANY OF THE CRITERIA PRESCRIBED IN SUBSECTION D OF THIS
3 SECTION.

4 ~~B.~~ C. Within ~~ninety~~ ONE HUNDRED TWENTY days of receipt of the rule,
5 preamble and economic, small business and consumer impact statement, the
6 council shall review and approve or return, in whole or in part, the rule,
7 preamble or economic, small business and consumer impact statement. An
8 agency may resubmit a rule, preamble or economic, small business and consumer
9 impact statement if the council returns the rule, economic, small business
10 and consumer impact statement or preamble, in whole or in part, to the
11 agency.

12 ~~C.~~ D. The council shall not approve the rule unless:

13 1. The economic, small business and consumer impact statement contains
14 the information, data and analysis prescribed by this article.

15 2. The economic, small business and consumer impact statement is
16 generally accurate.

17 3. The probable benefits of the rule outweigh the probable costs of
18 the rule.

19 4. The rule is clear, concise and understandable.

20 5. The rule is not illegal, inconsistent with legislative intent or
21 beyond the agency's statutory authority.

22 6. The agency adequately addressed the comments on the proposed rule
23 and any supplemental proposals.

24 7. The rule is not a substantial change, considered as a whole, from
25 the proposed rule and any supplemental notices.

26 8. The preamble discloses a reference to any study relevant to the
27 rule that the agency reviewed and either did or did not rely on in the
28 agency's evaluation of or justification for the rule.

29 ~~D.~~ E. The council shall verify that a rule with new fees does not
30 violate section 41-1008. The council shall not approve a rule that contains
31 a fee increase unless two-thirds of the voting quorum present vote to approve
32 the rule.

33 ~~E.~~ F. The council shall verify that a rule with an immediate
34 effective date complies with section 41-1032. The council shall not approve
35 a rule with an immediate effective date unless two-thirds of the voting
36 quorum present vote to approve the rule.

37 ~~F.~~ G. The council may require a representative of an agency whose
38 rule is under examination to attend a council meeting and answer questions.
39 The council may also communicate to the agency its comments on any rule,
40 preamble or economic, small business and consumer impact statement and
41 require the agency to respond to its comments in writing.

42 ~~G.~~ H. AT ANY TIME DURING THE SIXTY DAYS IMMEDIATELY FOLLOWING RECEIPT
43 OF THE RULE, a person may submit written comments to the council that are
44 within the scope of subsection ~~C.~~ D, ~~D.~~ E or ~~E.~~ F of this section. The
45 council may permit oral comments at a council meeting within the scope of
46 subsection ~~C.~~ D, ~~D.~~ E or ~~E.~~ F of this section.

1 ~~H.~~ I. If the agency makes a good faith effort to comply with the
2 requirements prescribed in this article and has explained in writing the
3 methodology used to produce the economic, small business and consumer impact
4 statement, the rule may not be invalidated after it is finalized on the
5 ground that the contents of the economic, small business and consumer impact
6 statement are insufficient or inaccurate or on the ground that the council
7 erroneously approved the rule, except as provided for by section 41-1056.01.

8 ~~I.~~ J. The absence of comments pursuant to subsection ~~C~~ D, ~~D~~ E or ~~E~~
9 F of this section or article 4.1 of this chapter does not prevent the council
10 from acting pursuant to this section.

11 Sec. 5. Section 41-1077, Arizona Revised Statutes, is amended to read:
12 41-1077. Consequence for agency failure to comply with overall
13 time frame; refund; penalty

14 A. If an agency does not issue to an applicant the written notice
15 granting or denying a license within the overall time frame or within the
16 time frame extension pursuant to section 41-1075, the agency shall refund to
17 the applicant all fees charged for reviewing and acting on the application
18 for the license and shall excuse payment of any such fees that have not yet
19 been paid. The agency shall not require an applicant to submit an
20 application for a refund pursuant to this subsection. The refund shall be
21 made within thirty days after the expiration of the overall time frame or the
22 time frame extension. The agency shall continue to process the application
23 subject to subsection B of this section. Notwithstanding any other statute,
24 the agency shall make the refund from the fund in which the application fees
25 were originally deposited. This section applies only to license applications
26 that were subject to substantive review.

27 B. Except for license applications that were not subject to
28 substantive review, the agency shall pay a penalty to the state general fund
29 for each month after the expiration of the overall time frame or the time
30 frame extension until the agency issues written notice to the applicant
31 granting or denying the license. The agency shall pay the penalty from the
32 agency fund in which the application fees were originally deposited. The
33 penalty shall be ~~one~~ TWO AND ONE-HALF per cent of the total fees received by
34 the agency for reviewing and acting on the application for each license that
35 the agency has not granted or denied on the last day of each month after the
36 expiration of the overall time frame or time frame extension for that
37 license.

38 Sec. 6. Title 41, chapter 27, article 2, Arizona Revised Statutes, is
39 amended by adding section 41-3020.01, to read:

40 41-3020.01. Mining advisory council; termination July 1, 2020

41 A. THE MINING ADVISORY COUNCIL TERMINATES ON JULY 1, 2020.

42 B. TITLE 41, CHAPTER 46 IS REPEALED ON JANUARY 1, 2021.

43 Sec. 7. Title 41, Arizona Revised Statutes, is amended by adding
44 chapter 46, to read:

45 CHAPTER 46
46 MINING ADVISORY COUNCIL

ARTICLE 1. GENERAL PROVISIONS

41-4601. Mining advisory council

A. THE MINING ADVISORY COUNCIL IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:

1. THE STATE MINE INSPECTOR OR THE STATE MINE INSPECTOR'S DESIGNEE.

2. ONE MEMBER WHO REPRESENTS A SMALL COMPANY THAT IS ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

3. TWO MEMBERS WHO ARE ACTIVELY ENGAGED IN THE AGGREGATE MINING INDUSTRY AND WHO ARE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

4. TWO MEMBERS WHO REPRESENT LARGE COMPANIES THAT ARE ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO ARE APPOINTED BY THE PRESIDENT OF THE SENATE.

5. ONE MEMBER WHO REPRESENTS A MINING SUPPLIER COMPANY THAT IS ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO IS APPOINTED BY THE PRESIDENT OF THE SENATE.

6. TWO MEMBERS OF THE PUBLIC WHO HAVE NATURAL RESOURCES EXPERIENCE AND WHO ARE APPOINTED BY THE GOVERNOR.

B. THE INITIAL MEMBERS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 2 THROUGH 6 SHALL ASSIGN THEMSELVES BY LOT TO TWO, THREE, FOUR AND FIVE YEARS IN OFFICE. ALL SUBSEQUENT MEMBERS SERVE FIVE YEAR TERMS OF OFFICE. A MEMBER MAY CONTINUE TO SERVE UNTIL THE MEMBER'S SUCCESSOR IS APPOINTED AND ASSUMES OFFICE. A MEMBER MAY NOT BE APPOINTED TO MORE THAN ONE FULL TERM PLUS APPOINTMENT TO FILL A VACANCY FOR THE REMAINDER OF AN UNEXPIRED TERM.

C. THE APPOINTING AUTHORITY MAY REMOVE A MEMBER FOR CAUSE. IN ADDITION, A MEMBER IS DEEMED TO HAVE VACATED THE MEMBER'S OFFICE IF THE MEMBER:

1. CEASES TO ENGAGE IN THE MEMBER'S QUALIFYING OCCUPATION.

2. NO LONGER RESIDES IN THIS STATE.

3. IS ABSENT WITHOUT EXCUSE FROM THREE CONSECUTIVE REGULAR MEETINGS OF THE COUNCIL.

4. RESIGNS, DIES OR BECOMES UNABLE TO PERFORM THE MEMBER'S DUTIES.

D. MEMBERS OF THE ADVISORY COUNCIL ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2. THE ADVISORY COUNCIL IS A PUBLIC BODY FOR PURPOSES OF TITLE 38, CHAPTER 3, ARTICLE 3.1.

E. THE ADVISORY COUNCIL FUNCTIONS INCLUDE:

1. SELECTING A CHAIRPERSON AND VICE-CHAIRPERSON FROM AMONG ITS MEMBERS.

2. HOLDING MEETINGS AT THE CALL OF THE CHAIRPERSON OR A MAJORITY OF ITS MEMBERS.

3. REVIEWING MINING POLICY IN THIS STATE AS ESTABLISHED BY LAW AND AS ADMINISTERED IN ALL FUNCTIONAL AREAS OF STATE GOVERNMENT.

4. REVIEWING, ADVISING AND MAKING RECOMMENDATIONS TO STATE AGENCIES ON PROPOSED RULES AND BUDGET ALLOCATIONS AFFECTING MINING.

1 F. THE ADVISORY COUNCIL MAY CONDUCT PERIODIC ANALYSES OF AGENCY POLICY
2 AFFECTING MINING, INCLUDING POLICY AS REFLECTED BY DECISIONS OF
3 ADMINISTRATIVE LAW JUDGES AND AGENCY DIRECTORS.

4 G. IN ADOPTING ADMINISTRATIVE RULES AND BUDGETS, EACH STATE AGENCY MAY
5 INCLUDE THE COMMENTS OF THE ADVISORY COUNCIL IN THE OFFICIAL RECORD. IN
6 ADOPTING RULES AFFECTING MINING, EACH STATE AGENCY MAY CONSIDER THE
7 RECOMMENDATIONS OF THE ADVISORY COUNCIL.

8 Sec. 8. Section 45-104, Arizona Revised Statutes, is amended to read:

9 45-104. Department organization; deputy directors; employees;
10 legal counsel; branch offices; consultants

11 A. The director may establish and organize divisions within the
12 department and otherwise organize the department in the manner the director
13 deems necessary to make the operation of the department efficient and
14 effective.

15 B. The director may appoint a deputy director to each division or
16 organizational unit that the director may establish. Deputy directors are
17 exempt from the state personnel system, shall serve at the pleasure of the
18 director and are entitled to receive compensation pursuant to section 38-611.

19 C. The director, within the classification and pay scales adopted by
20 the state personnel board, may employ, define the duties of and prescribe the
21 terms and conditions of employment of such clerical, technical, professional
22 and administrative personnel as necessary to efficiently perform the
23 responsibilities of the department. Compensation for all employees shall be
24 pursuant to section 38-611.

25 D. The director may employ on a contract basis geologists,
26 hydrologists, consulting engineers, other expert consultants and engineering
27 and other assistants as the director deems advisable, who are not subject to
28 the classification provided for in title 41, chapter 4, article 5.

29 E. The director may utilize the services of accounting, legal or
30 engineering personnel made available by any department or agency of this
31 state, who shall serve without additional compensation.

32 F. The director may employ legal counsel to advise and represent the
33 department in connection with legal matters before other departments and
34 agencies of this state, and represent the department and this state in
35 litigation concerning affairs of the department. Legal counsel is not
36 subject to the classification provided for in title 41, chapter 4, article 5.

37 G. The director shall maintain the director's office in Phoenix and
38 may establish a branch office of the department in each active management
39 area established pursuant to chapter 2, article 2 of this title.

1 H. THE DIRECTOR ON BEHALF OF THE DEPARTMENT MAY CONTRACT WITH PRIVATE
2 CONSULTANTS FOR THE PURPOSES OF ASSISTING THE DEPARTMENT IN REVIEWING
3 APPLICATIONS FOR LICENSES, PERMITS OR OTHER AUTHORIZATIONS TO DETERMINE
4 WHETHER AN APPLICANT MEETS THE CRITERIA FOR ISSUANCE OF THE LICENSE, PERMIT
5 OR OTHER AUTHORIZATION. IF THE DEPARTMENT CONTRACTS WITH A CONSULTANT UNDER
6 THIS SUBSECTION, AN APPLICANT MAY REQUEST THAT THE DEPARTMENT EXPEDITE THE
7 APPLICATION REVIEW BY REQUESTING THAT THE DEPARTMENT USE THE SERVICES OF THE
8 CONSULTANT AND BY AGREEING TO PAY THE DEPARTMENT THE COSTS OF THE
9 CONSULTANT'S SERVICES. NOTWITHSTANDING ANY OTHER LAW, MONIES PAID BY
10 APPLICANTS FOR EXPEDITED REVIEWS PURSUANT TO THIS SUBSECTION ARE APPROPRIATED
11 TO THE DEPARTMENT FOR USE IN PAYING CONSULTANTS FOR SERVICES.

12 Sec. 9. Section 45-132, Arizona Revised Statutes, is amended to read:

13 45-132. Filling large bodies of water for landscape, scenic or
14 recreational purposes prohibited; exceptions;
15 preemption

16 A. Except as provided in subsection B of this section, in an active
17 management area established under chapter 2 of this title, a person shall not
18 use any water for the purpose of filling or refilling all or a portion of a
19 body of water.

20 B. This section does not apply to a body of water if any of the
21 following applies:

22 1. The body of water was filled before January 1, 1987. If the
23 surface area of the body of water is increased on or after January 1, 1987,
24 this exception does not apply to the quantity of water that is added.

25 2. The director has determined that substantial capital investment has
26 been made in the physical on-site construction of the body of water before
27 January 1, 1987. If the surface area of the body of water is increased after
28 it is initially filled, this exception does not apply to the quantity of
29 water that is added.

30 3. The body of water is located in a recreational facility that is
31 open to the public and owned or operated by the United States, this state, a
32 city, town or county, a flood control district established under title 48,
33 chapter 21 or a multi-county water conservation district established under
34 title 48, chapter 22.

35 4. The body of water is filled and refilled exclusively with any one
36 or any combination of the following:

37 (a) Effluent.

38 (b) Storm water runoff that is not subject to appropriation under
39 section 45-141.

40 (c) Poor quality water used pursuant to a permit issued under
41 subsections C and D of this section.

42 (d) Groundwater withdrawn pursuant to a drainage water withdrawal
43 permit issued under section 45-519.

44 (e) Groundwater withdrawn in the first year of a temporary dewatering
45 permit issued under section 45-518.

1 (f) Groundwater withdrawn as part of a remedial action under title 49,
2 chapter 2, article 5, **INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE**
3 **UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL**
4 **QUALITY PURSUANT TO SECTION 49-286.**

5 (g) Water used pursuant to a permit for interim water use issued under
6 section 45-133.

7 (h) Surface water except central Arizona project water that, as
8 determined by the director, physically occurs at such times, in such
9 quantities or under such other circumstances that it cannot be physically
10 captured and beneficially used by any other holder of an appropriative right.

11 5. The body of water is an integral part of a golf course ~~which~~ **THAT**
12 **complies with any applicable conservation requirements in the management plan**
13 **for the active management area adopted under chapter 2, article 9 of this**
14 **title.**

15 6. The body of water is unsealed and is an integral part of an
16 underground storage facility for which the director has issued a permit under
17 chapter 3.1 of this title.

18 7. The body of water is a swimming pool that is owned and operated by
19 a hotel, motel, country club or resort and has a surface area equal to or
20 less than forty-three thousand five hundred sixty square feet. If a hotel,
21 motel, country club or resort has more than one swimming pool, only one of
22 those swimming pools may have a surface area greater than twelve thousand
23 three hundred twenty square feet.

24 C. A person who seeks to use poor quality groundwater to fill or
25 refill all or a portion of a body of water shall apply to the director for a
26 permit to use the groundwater for that purpose. The director may issue a
27 permit if the applicant demonstrates that all of the following apply:

28 1. The applicant otherwise has a right to use the proposed source of
29 groundwater for the proposed purpose.

30 2. The groundwater because of its poor quality cannot be used for
31 another beneficial purpose at the present time and it is not economically
32 feasible to treat and transport the groundwater and use it for another
33 beneficial purpose.

34 3. The withdrawal of the groundwater is consistent with the management
35 plan and achievement of the management goal for the active management area.

36 D. A permit issued pursuant to subsection C of this section may be
37 issued for a period of up to thirty-five years. The director shall determine
38 the duration of the permit on the basis of the estimated life of the source
39 of poor quality groundwater and the potential for future beneficial use. The
40 director shall monitor the use of groundwater pursuant to the permit and
41 shall terminate the permit if any of the conditions for issuance of the
42 permit no longer applies. A permit may be renewed subject to the same
43 criteria used in granting the original permit.

44 E. This section preempts all municipal and county laws, charters,
45 ordinances, rules and regulations relating to the use of any water to fill or
46 refill all or a portion of a body of water, except that this section does not

1 preempt a law, charter, ordinance, rule or regulation that has previously
2 been adopted, passed or enacted or is subsequently adopted, passed or enacted
3 if ~~the provisions of~~ the law, charter, ordinance, rule or regulation ~~are~~ IS
4 more restrictive than ~~the provisions of~~ this section.

5 Sec. 10. Section 45-454.01, Arizona Revised Statutes, is amended to
6 read:

7 45-454.01. Exemption of superfund remedial action activities;
8 use requirements; definition

9 A. New well construction and withdrawal, treatment and reinjection OF
10 GROUNDWATER into the aquifer ~~of groundwater~~ that occur as a part of and on
11 the site of a remedial action undertaken pursuant to CERCLA are exempt from
12 this chapter, except that:

13 1. A well that is exempt under this ~~section~~ SUBSECTION is subject to
14 sections 45-594, 45-595, 45-596, ~~and~~ 45-600 AND 45-605, but no authorization
15 to drill need be obtained before drilling.

16 2. If the groundwater that is withdrawn is not reinjected into the
17 aquifer, the groundwater shall be put to reasonable and beneficial use.

18 3. A person who uses groundwater withdrawn in an active management
19 area pursuant to this ~~section~~ SUBSECTION shall pay the groundwater withdrawal
20 fee for the groundwater the person withdrew or received and shall use the
21 groundwater only pursuant to articles 5 through 12 of this chapter. A city,
22 town, private water company or irrigation district that serves groundwater
23 pursuant to article 6 of this chapter is deemed to have used the groundwater
24 for purposes of this paragraph.

25 B. NEW WELL CONSTRUCTION AND WITHDRAWAL, TREATMENT AND REINJECTION OF
26 GROUNDWATER INTO THE AQUIFER THAT OCCUR AS PART OF A REMEDIAL ACTION RELATING
27 TO METAL MINING ACTIVITIES OR A MITIGATION ORDER RELATING TO METAL MINING
28 ACTIVITIES AND THAT ARE UNDERTAKEN PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 5
29 FOR THE PURPOSE OF PREVENTING THE MIGRATION OF A HAZARDOUS OR NONHAZARDOUS
30 SUBSTANCE ARE EXEMPT FROM THIS CHAPTER, EXCEPT THAT:

31 1. A WELL THAT IS EXEMPT UNDER THIS SUBSECTION IS SUBJECT TO SECTIONS
32 45-594, 45-595, 45-596, 45-600 AND 45-605, BUT AUTHORIZATION TO DRILL IS NOT
33 REQUIRED BEFORE DRILLING.

34 2. IF THE GROUNDWATER THAT IS WITHDRAWN IS NOT REINJECTED INTO THE
35 AQUIFER, THE GROUNDWATER SHALL BE PUT TO REASONABLE AND BENEFICIAL USE. IF
36 THE GROUNDWATER IS WITHDRAWN WITHIN AN ACTIVE MANAGEMENT AREA AND IS NOT
37 REINJECTED INTO THE AQUIFER, THE GROUNDWATER SHALL BE PUT TO REASONABLE AND
38 BENEFICIAL USE WITHIN THE SAME ACTIVE MANAGEMENT AREA AS FOLLOWS:

39 (a) AT THE METAL MINING FACILITY PURSUANT TO A GROUNDWATER WITHDRAWAL
40 PERMIT ISSUED UNDER SECTION 45-514 OR A TYPE 2 NON-IRRIGATION GRANDFATHERED
41 RIGHT ISSUED UNDER SECTION 45-464.

42 (b) AT ANOTHER LOCATION PURSUANT TO A GRANDFATHERED RIGHT ISSUED UNDER
43 ARTICLE 5 OF THIS CHAPTER OR A SERVICE AREA RIGHT UNDER ARTICLE 6 OF THIS
44 CHAPTER.

45 3. A PERSON WHO USES GROUNDWATER WITHDRAWN IN AN ACTIVE MANAGEMENT
46 AREA PURSUANT TO THIS SUBSECTION SHALL PAY THE GROUNDWATER WITHDRAWAL FEE FOR

1 THE GROUNDWATER THE PERSON WITHDREW OR RECEIVED. THE GROUNDWATER USE IS
2 SUBJECT TO ARTICLES 8, 8.1, 9, 10, 11 AND 12 OF THIS CHAPTER. A CITY, TOWN,
3 PRIVATE WATER COMPANY OR IRRIGATION DISTRICT THAT SERVES GROUNDWATER PURSUANT
4 TO ARTICLE 6 OF THIS CHAPTER IS DEEMED TO HAVE USED THE GROUNDWATER FOR THE
5 PURPOSES OF THIS PARAGRAPH.

6 ~~B-~~ C. For THE purposes of this section, "CERCLA" means the
7 comprehensive environmental response, compensation, and liability act of
8 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections
9 9601 through 9657), commonly known as "superfund".

10 Sec. 11. Section 45-471, Arizona Revised Statutes, is amended to read:

11 45-471. Use of type 2 non-irrigation grandfathered right by
12 owner

13 A. The owner of a type 2 non-irrigation grandfathered right pursuant
14 to section 45-464 may use groundwater withdrawn pursuant to the right for any
15 non-irrigation purpose at any location, subject to the provisions governing
16 transportation of groundwater in article 8 of this chapter, except that, if
17 the right is based on withdrawals of groundwater:

18 1. For the extraction or processing of minerals, the owner may use
19 groundwater withdrawn pursuant to the right only for the purpose of mineral
20 extraction or processing. FOR THE PURPOSES OF THIS ARTICLE, MINERAL
21 EXTRACTION AND PROCESSING USE OF GROUNDWATER MEANS ALL WITHDRAWALS AND USES
22 OF GROUNDWATER RELATED TO A MINING OPERATION INCLUDING COMPLIANCE WITH
23 APPLICABLE ENVIRONMENTAL CONTROLS.

24 2. For the generation of electrical energy, the owner may use
25 groundwater withdrawn pursuant to the right only for electrical energy
26 generation.

27 B. The owner of a type 2 non-irrigation grandfathered right may
28 withdraw groundwater pursuant to the right only from those wells listed on
29 the certificate of grandfathered right.

30 C. The owner of a type 2 non-irrigation grandfathered right may
31 request the director to issue a revised certificate to reflect new or
32 additional points of withdrawal. If a proposed new or additional point of
33 withdrawal is a well ~~which~~ THAT was drilled pursuant to a permit or notice of
34 intention to drill filed after June 12, 1980, the owner shall demonstrate
35 that the proposed withdrawals will not cause unreasonably increasing damage
36 to surrounding land or other water users, and in the Santa Cruz active
37 management area, that the proposed withdrawals will be consistent with the
38 management plan for the active management area.

39 D. If a type 2 non-irrigation grandfathered right is leased, the
40 lessee may use groundwater withdrawn pursuant to the right subject to ~~the~~
41 ~~provisions of~~ subsections A, B and C of this section.

1 Sec. 12. Section 45-544, Arizona Revised Statutes, is amended to read:

2 45-544. Transportation in areas not subject to active
3 management; damages; upper San Pedro water district;
4 Little Colorado river plateau, Parker and Coconino
5 plateau groundwater basins; definitions

6 A. Except as otherwise provided in this section, section 45-547 and
7 article 8.1 of this chapter, in areas outside of active management areas:

8 1. Groundwater may be transported:

9 (a) Within a subbasin of a groundwater basin or within a groundwater
10 basin, if there are no subbasins, without payment of damages.

11 (b) Between subbasins of a groundwater basin, subject to payment of
12 damages.

13 2. Groundwater shall not be transported away from a groundwater basin.

14 3. Groundwater shall not be transported away from the upper San Pedro
15 water district if established under title 48, chapter 37.

16 B. Notwithstanding subsection A, paragraph 2 or 3 of this section,
17 subject to payment of damages:

18 1. A person who at any time during the twelve months before January 1,
19 1991 was transporting away from the Little Colorado river plateau groundwater
20 basin or the Parker groundwater basin groundwater that was legally withdrawn
21 from a well in either groundwater basin has the right, subject to
22 subsection C of this section, to transport groundwater that is legally
23 withdrawn from the well or a replacement well in approximately the same
24 location to another groundwater basin in an annual amount equal to the
25 greater of the maximum amount of groundwater either:

26 (a) That was withdrawn from the well and transported by the person
27 away from the groundwater basin in any one of the five calendar years
28 immediately preceding January 1, 1991.

29 (b) That could have been withdrawn from the well during the twelve
30 month period, taking into account the pump capacity and specific capacity of
31 the well during that period, or twenty-five acre-feet, whichever is less.

32 2. A person may transport groundwater by motor vehicle from the Little
33 Colorado river plateau groundwater basin or the Parker groundwater basin to
34 an adjacent groundwater basin for domestic purposes or stock watering.

35 3. A city or town whose service area is located either in the Little
36 Colorado river plateau groundwater basin and an adjacent groundwater basin or
37 in the Parker groundwater basin and an adjacent groundwater basin may
38 transport groundwater that is withdrawn within that portion of its service
39 area located in the Little Colorado river plateau groundwater basin or the
40 Parker groundwater basin to the adjacent groundwater basin for the benefit of
41 landowners and residents within its service area.

42 4. A city, town or private water company whose service area is located
43 in two adjacent groundwater basins and provides water utility service to
44 landowners or residents in both basins as of July 1, 1993 may transport
45 groundwater between those adjacent groundwater basins.

1 5. The transportation of groundwater in which groundwater is
2 transported away from the groundwater basin and expansions of that transfer
3 by the same person or its successor for the same purpose are valid if that
4 transfer was occurring before September 1, 1993.

5 6. A city or town in the Coconino plateau groundwater basin with a
6 population of not more than eight thousand persons that was transporting
7 groundwater into its municipal water service area from an adjacent
8 groundwater basin as of January 1, 2001, from wells that the director
9 determines were erroneously drilled without knowledge that the wells were in
10 the adjacent groundwater basin, may continue and expand that transfer subject
11 to all of the following conditions:

12 (a) The groundwater may be withdrawn only from wells that are located
13 not more than two miles from the Coconino plateau groundwater basin boundary
14 and that are drilled to depths of at least two thousand five hundred feet
15 below land surface.

16 (b) The groundwater may be used only within the municipal water
17 service area of the city or town, and the city or town shall use available
18 surface water supplies within its municipal water service area to the extent
19 practicable.

20 (c) The total amount of groundwater that may be transported during a
21 year shall not exceed seven hundred acre-feet, except that a city or town may
22 apply to the director to increase the amount of groundwater that may be
23 transported during a year under this subdivision if additional groundwater is
24 needed to provide fire protection for the city or town because of an
25 emergency condition. The director shall post an application filed under this
26 subdivision on the department's website before approving or denying the
27 application. The director shall approve an application filed under this
28 subdivision if the city or town demonstrates to the satisfaction of the
29 director that an emergency condition exists that makes it necessary for the
30 city or town to transport groundwater in excess of the amount allowed under
31 this subdivision to provide adequate fire protection for the city or town.
32 If the director approves an application filed under this subdivision, the
33 director shall specify the amount of groundwater that the city or town may
34 transport in excess of the amount allowed under this subdivision and may
35 impose other conditions that the director deems appropriate.

36 (d) The city or town shall no longer transport any groundwater
37 pursuant to this paragraph if all of the following apply:

38 (i) After January 1, 2009, the city or town obtains the legal right to
39 receive a new supply of water originating from outside of its corporate
40 boundaries, other than groundwater pursuant to this paragraph.

41 (ii) The supply of water is physically available to the city or town
42 through a canal or pipeline.

43 (iii) The director determines that the supply of water, together with
44 other water supplies physically available to the city or town, other than
45 groundwater pursuant to this paragraph, is sufficient to provide a

1 sustainable water supply for the city or town, including projected growth,
2 and notifies the city or town of that determination.

3 7. Groundwater may be transported away from a groundwater basin for
4 mineral extraction and processing, except that no groundwater may be
5 transported away from the Parker groundwater basin or the Little Colorado
6 river plateau groundwater basin for that purpose and, if the district is
7 established, groundwater shall not be transported away from the upper San
8 Pedro water district for that purpose except as provided in ~~paragraph~~
9 ~~PARAGRAPHS 7- 8 AND 9~~ of this subsection.

10 8. If the upper San Pedro water district is established under title
11 48, chapter 37:

12 (a) A city, town or private water company whose service area is
13 located in the district and a groundwater basin adjacent to the district,
14 other than the upper San Pedro groundwater basin, and that provides water
15 utility service to landowners or residents in the district and that adjacent
16 groundwater basin as of July 1, 1993 may transport groundwater between the
17 district and that adjacent groundwater basin.

18 (b) The transportation of groundwater in which groundwater is
19 transported away from the district and away from the upper San Pedro
20 groundwater basin and expansions of that transfer by the same person or its
21 successor for the same purpose are valid if that transfer was occurring
22 before September 1, 1993.

23 (c) The transportation of groundwater in which groundwater is
24 transported away from the district but not away from the upper San Pedro
25 groundwater basin and expansions of that transfer by the same person or its
26 successor for the same purpose are valid if that transfer was occurring
27 before the date the district is established.

28 9. A METAL MINING FACILITY THAT IS LOCATED IN BOTH THE UPPER SAN PEDRO
29 AND DOUGLAS GROUNDWATER BASINS MAY TRANSPORT GROUNDWATER BETWEEN THE TWO
30 BASINS TO THE EXTENT THAT THE TRANSPORTATION IS NECESSARY TO COMPLY WITH AN
31 ORDER ISSUED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO TITLE 49,
32 CHAPTER 2, ARTICLE 5, INCLUDING AN ORDER ISSUED BY THE DIRECTOR OF
33 ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286. BEFORE TRANSPORTING
34 GROUNDWATER PURSUANT TO THIS PARAGRAPH, A METAL MINING FACILITY SHALL GIVE
35 WRITTEN NOTICE TO THE DIRECTOR OF WATER RESOURCES, WHICH SHALL INCLUDE A COPY
36 OF THE ORDER REQUIRING THE REMEDIAL ACTION OR MITIGATION ACTIVITIES.

37 C. The director may limit by order the amount of groundwater withdrawn
38 from a well in the Little Colorado river plateau groundwater basin for
39 transportation away from the basin pursuant to subsection B, paragraph 1 of
40 this section in any year in which the director determines that the projected
41 withdrawals from the well for that purpose will unreasonably increase damage
42 to surrounding land or other water users and if the well:

43 1. Was drilled on or before January 1, 1991.

44 2. Was not completed on January 1, 1991, but a notice of intention to
45 drill the well was on file on that date.

1 3. Is a replacement well, in approximately the same location, for a
2 well described in paragraph 1 or 2 of this subsection.

3 D. Groundwater may be withdrawn from a well drilled in the Little
4 Colorado river plateau groundwater basin after January 1, 1991, except a
5 replacement well in approximately the same location or a well drilled after
6 that date pursuant to a notice of intention to drill that was on file with
7 the department on that date, for transportation away from the basin pursuant
8 to subsection B, paragraph 1 of this section only if the location of the well
9 complies with the rules adopted pursuant to section 45-598, subsection A to
10 prevent unreasonably increasing damage to surrounding land or other water
11 users from the concentration of wells.

12 E. For the purposes of this section:

13 1. "Domestic purposes" means uses related to the supply, service and
14 activities of households and private residences and includes the application
15 of water to less than two acres of land to produce plants or parts of plants
16 for sale or human consumption, or for use as feed for livestock, range
17 livestock or poultry, as such terms are defined in section 3-1201.

18 2. "Stock watering" means the watering of livestock, range livestock
19 or poultry, as such terms are defined in section 3-1201.

20 Sec. 13. Section 45-596, Arizona Revised Statutes, is amended to read:

21 45-596. Notice of intention to drill; fee

22 A. In an area not subject to active management, a person may not drill
23 or cause to be drilled any well or deepen an existing well without first
24 filing notice of intention to drill pursuant to subsection C of this section
25 or obtaining a permit pursuant to section 45-834.01. Only one notice of
26 intention to drill is required for all wells that are drilled by or for the
27 same person to obtain geophysical, mineralogical or geotechnical data within
28 a single section of land.

29 B. In an active management area, a person may not drill or cause to be
30 drilled an exempt well, a replacement well in approximately the same location
31 or any other well for which a permit is not required under this article,
32 article 7 of this chapter or section 45-834.01 or deepen an existing well
33 without first filing a notice of intention to drill pursuant to subsection C
34 of this section. Only one notice of intention to drill is required for all
35 wells that are drilled by or for the same person to obtain geophysical,
36 mineralogical or geotechnical data within a single section of land.

37 C. A notice of intention to drill shall be filed with the director on
38 a form ~~which~~ THAT is prescribed and furnished by the director and ~~which~~ THAT
39 shall include:

40 1. The name and mailing address of the person filing the notice.

41 2. The legal description of the land ~~upon~~ ON which the well is
42 proposed to be drilled and the name and mailing address of the owner of the
43 land.

44 3. The legal description of the location of the well on the land.

45 4. The depth, diameter and type of casing of the proposed well.

- 1 5. Such legal description of the land ~~upon~~ ON which the groundwater is
2 proposed to be used as may be required by the director to administer this
3 chapter.
- 4 6. When construction is to begin.
- 5 7. The proposed uses to which the groundwater will be applied.
- 6 8. The name and well driller's license number of the well driller who
7 is to construct the well.
- 8 9. The design pumping capacity of the well.
- 9 10. If for a replacement well, the maximum capacity of the original
10 well and the distance of the replacement well from the original well.
- 11 11. Proof that the director determines to be satisfactory that the
12 person proposing to construct the well holds a valid license issued by the
13 registrar of contractors pursuant to title 32, chapter 10 and that the
14 license is of the type necessary to construct the well described in the
15 notice of intention to drill. If the proposed well driller does not hold a
16 valid license, the director may accept proof that the proposed well driller
17 is exempt from licensing as prescribed by section 32-1121.
- 18 12. If any water from the proposed well will be used for domestic
19 purposes as defined in section 45-454, evidence of compliance with the
20 requirements of subsection F of this section.
- 21 13. If for a second exempt well at the same location for the same use
22 pursuant to section 45-454, subsection I, proof that the requirements of that
23 subsection are met.
- 24 14. If for a well to obtain geophysical, mineralogical or geotechnical
25 data within a single section of land, the information prescribed by this
26 subsection for each well that will be included in that section of land before
27 each well is drilled.
- 28 15. Such other information as the director may require.
- 29 D. ~~Upon~~ ON receiving a notice of intention to drill and the fee
30 required by subsection L of this section, the director shall endorse on the
31 notice the date of its receipt. The director shall then determine whether
32 all information that is required has been submitted and whether the
33 requirements of subsection C, paragraphs 11 and 12 and subsection I of this
34 section have been met. If so, within fifteen days of receipt of the notice,
35 or such longer time as provided in subsection J of this section, the director
36 shall record the notice, mail a drilling card that authorizes the drilling of
37 the well to the well driller identified in the notice and mail written notice
38 of the issuance of the drilling card to the person filing the notice of
39 intention to drill at the address stated in the notice. ~~Upon~~ ON receipt of
40 the drilling card, the well driller may proceed to drill or deepen the well
41 as described in the notice of intention to drill. If the director determines
42 that the required information has not been submitted or that the requirements
43 of subsection C, paragraphs 11 and 12 or subsection I of this section have
44 not been met, the director shall mail a statement of the determination to the
45 person giving the notice to the address stated in the notice, and the person
46 giving the notice may not proceed to drill or deepen the well.

1 E. The well shall be completed within one year after the date of the
2 notice unless the director approves a longer period of time pursuant to this
3 subsection. If the well is not completed within one year or within the time
4 approved by the director pursuant to this subsection, the person shall file a
5 new notice before proceeding with further construction. At the time the
6 drilling card for the well is issued, the director may provide for and
7 approve a completion period that is greater than one year but not to exceed
8 five years from the date of the notice if both of the following apply:

9 1. The proposed well is a nonexempt well within an active management
10 area and qualifies as a replacement well in approximately the same location
11 as prescribed in rules adopted by the director pursuant to section 45-597.

12 2. The applicant has submitted evidence that demonstrates one of the
13 following:

14 (a) This state or a political subdivision of this state has acquired
15 or has begun a condemnation action to acquire the land on which the original
16 well is located.

17 (b) The original well has been rendered inoperable due to flooding,
18 subsidence or other extraordinary physical circumstances that are beyond the
19 control of the well owner.

20 F. If any water from a proposed well will be used for domestic
21 purposes as defined in section 45-454 on a parcel of land of five or fewer
22 acres, the applicant shall submit a well site plan of the property with the
23 notice of intention to drill. The site plan shall:

24 1. Include the county assessor's parcel identification number.

25 2. Show the proposed well location and the location of any septic tank
26 or sewer system that is either located on the property or within one hundred
27 feet of the proposed well site.

28 3. Show written approval by the county health authority that controls
29 the installation of septic tanks or sewer systems in the county, or by the
30 local health authority in areas where the authority to control installation
31 of septic tanks or sewer systems has been delegated to a local authority. In
32 areas where there is no local or county authority that controls the
33 installation of septic tanks or sewer systems, the applicant shall apply for
34 approval directly to the department of water resources.

35 G. Before approving a well site plan submitted pursuant to subsection
36 F of this section, the county or local health authority or the department of
37 water resources, as applicable, pursuant to subsection F of this section,
38 shall review the well site plan and determine whether the proposed well
39 location complies with applicable local laws, ordinances and regulations and
40 any laws or rules adopted under this title and title 49 regarding the
41 placement of wells and the proximity of wells to septic tanks or sewer
42 systems. If the health authority or the department of water resources, as
43 applicable, pursuant to subsection F of this section, finds that the proposed
44 well location complies with this title and title 49 and with local
45 requirements, it shall endorse the site plan and the proposed well placement
46 in a manner indicating approval. On endorsement, the director of water

1 resources shall approve the construction of the well, if all remaining
2 requirements have been met. If the health authority is unable to determine
3 whether the proposed well location complies with this title and title 49 and
4 local requirements, it shall indicate this on the site plan and the decision
5 to approve or reject the proposed construction rests with the director of
6 water resources. If parcel size, geology or location of improvements on the
7 property prevents the well from being drilled in accordance with this title
8 and title 49 or local requirements, the property owner may apply for a
9 variance. The property owner shall make the request for a variance to the
10 county or local authority if a county or local law, ordinance or regulation
11 prevents the proposed construction. If a law or rule adopted under this
12 title or title 49 prevents the proposed construction, the property owner
13 shall make the request for a variance directly to the department of water
14 resources. The request for a variance shall be in the form and shall contain
15 the information that the department of water resources, county or local
16 authority may require. The department of water resources, or the county or
17 local authority whose law, ordinance or regulation prevents the proposed
18 construction, may expressly require that a particular variance shall include
19 certification by a registered professional engineer or geologist that the
20 location of the well will not pose a health hazard to the applicant or
21 surrounding property or inhabitants. If all necessary variances are
22 obtained, the director of water resources shall approve the construction of
23 the well if all remaining requirements have been met.

24 H. If a well that was originally drilled as an exploration well, a
25 monitor well or a piezometer well or for any use other than domestic use is
26 later proposed to be converted to use for domestic purposes as defined in
27 section 45-454, the well owner shall file a notice of intention to drill and
28 shall comply with this section before the well is converted and any water
29 from that well is used for domestic purposes.

30 I. Except as prescribed in subsection K of this section, the director
31 shall not approve the drilling of the well if the director determines that
32 the well will likely cause the migration of contaminated groundwater from a
33 remedial action site to another well, resulting in unreasonably increasing
34 damage to the owner of the well or persons using water from the well. In
35 making this determination, the director of water resources shall follow the
36 applicable criteria in the rules adopted by the director of water resources
37 pursuant to section 45-598, subsection A and shall consult with the director
38 of environmental quality. For the purposes of this subsection:

39 1. "Contaminated groundwater" means groundwater that has been
40 contaminated by a release of a hazardous substance, as defined in section
41 49-201, or a pollutant, as defined in section 49-201.

1 2. "Remedial action site" means any of the following:

2 (a) The site of a remedial action undertaken pursuant to the
3 comprehensive environmental response, compensation, and liability act of
4 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections
5 9601 through 9657), commonly known as "superfund".

6 (b) The site of a corrective action undertaken pursuant to title 49,
7 chapter 6.

8 (c) The site of a voluntary remediation action undertaken pursuant to
9 title 49, chapter 1, article 5.

10 (d) The site of a remedial action undertaken pursuant to title 49,
11 chapter 2, article 5, **INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE**
12 **UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL**
13 **QUALITY PURSUANT TO SECTION 49-286.**

14 (e) The site of a remedial action undertaken pursuant to the resource
15 conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United
16 States Code sections 6901 through 6992).

17 (f) The site of remedial action undertaken pursuant to the department
18 of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10
19 United States Code section 2701).

20 J. Except as prescribed in subsection K of this section, the director
21 shall approve or deny the drilling of a well within forty-five days after
22 receipt of the notice of intention to drill if one of the following applies:

23 1. The proposed well is located within a remedial action site.

24 2. The proposed well is located within one mile of any of the
25 following remedial action sites:

26 (a) A remedial action undertaken pursuant to title 49, chapter 2,
27 article 5, **INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE UNDERTAKEN PURSUANT**
28 **TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO**
29 **SECTION 49-286.**

30 (b) A remedial action undertaken pursuant to the comprehensive
31 environmental response, compensation, and liability act of 1980, as amended
32 (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through
33 9657), commonly known as "superfund".

34 (c) A remedial action undertaken pursuant to the department of defense
35 environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United
36 States Code section 2701).

37 3. The proposed well is located within one-half mile of either of the
38 following remedial action sites:

39 (a) A remedial action undertaken pursuant to title 49, chapter 1,
40 article 5.

41 (b) A remedial action undertaken pursuant to the resource conservation
42 and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code
43 sections 6901 through 6992).

44 4. The proposed well is located within five hundred feet of the site
45 of a corrective action undertaken pursuant to title 49, chapter 6.

1 K. Subsections I and J of this section do not apply to the deepening
2 of a well or to the drilling of a replacement well in approximately the same
3 location.

4 L. A notice of intention to drill filed under this section shall be
5 accompanied by a filing fee of one hundred fifty dollars, except that a
6 notice filed for a proposed well that will not be located within an active
7 management area or an irrigation nonexpansion area, that will be used solely
8 for domestic purposes as defined in section 45-454 and that will have a pump
9 with a maximum capacity of not more than thirty-five gallons per minute shall
10 be accompanied by a filing fee of one hundred dollars. The director shall
11 deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant
12 to this subsection in the well administration and enforcement fund
13 established by section 45-606.

14 Sec. 14. Section 49-104, Arizona Revised Statutes, is amended to read:
15 49-104. Powers and duties of the department and director

16 A. The department shall:

17 1. Formulate policies, plans and programs to implement this title to
18 protect the environment.

19 2. Stimulate and encourage all local, state, regional and federal
20 governmental agencies and all private persons and enterprises that have
21 similar and related objectives and purposes, cooperate with those agencies,
22 persons and enterprises and correlate department plans, programs and
23 operations with those of the agencies, persons and enterprises.

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

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

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

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

35 7. Promote and coordinate the protection and enhancement of the
36 quality of water resources consistent with the environmental policy of this
37 state.

38 8. Encourage industrial, commercial, residential and community
39 development that maximizes environmental benefits and minimizes the effects
40 of less desirable environmental conditions.

41 9. Assure the preservation and enhancement of natural beauty and
42 man-made scenic qualities.

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

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

4 12. Prevent pollution through the regulation of the storage, handling
5 and transportation of solids, liquids and gases that may cause or contribute
6 to pollution.

7 13. Promote the restoration and reclamation of degraded or despoiled
8 areas and natural resources.

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

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

13 16. Cooperate with the Arizona-Mexico commission in the governor's
14 office and with researchers at universities in this state to collect data and
15 conduct projects in the United States and Mexico on issues that are within
16 the scope of the department's duties and that relate to quality of life,
17 trade and economic development in this state in a manner that will help the
18 Arizona-Mexico commission to assess and enhance the economic competitiveness
19 of this state and of the Arizona-Mexico region.

20 17. UNLESS SPECIFICALLY AUTHORIZED BY THE LEGISLATURE, ENSURE THAT
21 STATE LAWS, RULES, STANDARDS, PERMITS, VARIANCES AND ORDERS ARE ADOPTED AND
22 CONSTRUED TO BE CONSISTENT WITH AND NO MORE STRINGENT THAN THE CORRESPONDING
23 FEDERAL LAW THAT ADDRESSES THE SAME SUBJECT MATTER. THIS PROVISION SHALL NOT
24 BE CONSTRUED TO ADVERSELY AFFECT STANDARDS ADOPTED BY AN INDIAN TRIBE UNDER
25 FEDERAL LAW.

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

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

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

33 3. Utilize any medium of communication, publication and exhibition
34 when disseminating information, advertising and publicity in any field of its
35 purposes, objectives or duties.

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

39 5. Contract with other agencies, including laboratories, in furthering
40 any department program.

41 6. Use monies, facilities or services to provide matching
42 contributions under federal or other programs that further the objectives and
43 programs of the department.

44 7. Accept gifts, grants, matching monies or direct payments from
45 public or private agencies or private persons and enterprises for department
46 services and publications and to conduct programs that are consistent with

1 the general purposes and objectives of this chapter. Monies received
2 pursuant to this paragraph shall be deposited in the department fund
3 corresponding to the service, publication or program provided.

4 8. Provide for the examination of any premises if the director has
5 reasonable cause to believe that a violation of any environmental law or rule
6 exists or is being committed on the premises. The director shall give the
7 owner or operator the opportunity for its representative to accompany the
8 director on an examination of those premises. Within forty-five days after
9 the date of the examination, the department shall provide to the owner or
10 operator a copy of any report produced as a result of any examination of the
11 premises.

12 9. Supervise sanitary engineering facilities and projects in this
13 state, authority for which is vested in the department, and own or lease land
14 on which sanitary engineering facilities are located, and operate the
15 facilities, if the director determines that owning, leasing or operating is
16 necessary for the public health, safety or welfare.

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

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

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

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

32 12. Prescribe reasonably necessary measures to prevent pollution of
33 water used in public or semipublic swimming pools and bathing places and to
34 prevent deleterious conditions at such places. The rules shall prescribe
35 minimum standards for the design of and for sanitary conditions at any public
36 or semipublic swimming pool or bathing place and provide for abatement as
37 public nuisances of premises and facilities that do not comply with the
38 minimum standards. The rules shall be developed in cooperation with the
39 director of the department of health services and shall be consistent with
40 the rules adopted by the director of the department of health services
41 pursuant to section 36-136, subsection H, paragraph 10.

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

1 (a) Prescribe minimum standards for the design of sewage collection
2 systems and treatment, disposal and reclamation systems and for operating the
3 systems.

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

8 (c) Require that design documents for all sewage collection systems,
9 sewage collection system extensions, treatment plants, processes, devices,
10 equipment, disposal systems, on-site wastewater treatment facilities and
11 reclamation systems be submitted with a fee for review to the department and
12 may require that the design documents anticipate and provide for future
13 sewage treatment needs.

14 (d) Require that construction, reconstruction, installation or
15 initiation of any sewage collection system, sewage collection system
16 extension, treatment plant, process, device, equipment, disposal system,
17 on-site wastewater treatment facility or reclamation system conform with
18 applicable requirements.

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

21 (a) Prescribe minimum standards for human excreta storage, handling,
22 treatment, transportation and disposal and shall provide for inspection of
23 premises, processes and vehicles and for abating as public nuisances any
24 premises, processes or vehicles that do not comply with the minimum
25 standards.

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

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

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

34 C. The department may:

35 1. Charge fees to cover the costs of all permits and inspections it
36 performs to ~~insure~~ ENSURE compliance with rules adopted under section 49-203,
37 subsection A, paragraph 6, except that state agencies are exempt from paying
38 the fees. Monies collected pursuant to this subsection shall be deposited in
39 the water quality fee fund established by section 49-210.

40 2. CONTRACT WITH PRIVATE CONSULTANTS FOR THE PURPOSES OF ASSISTING THE
41 DEPARTMENT IN REVIEWING APPLICATIONS FOR LICENSES, PERMITS OR OTHER
42 AUTHORIZATIONS TO DETERMINE WHETHER AN APPLICANT MEETS THE CRITERIA FOR
43 ISSUANCE OF THE LICENSE, PERMIT OR OTHER AUTHORIZATION. IF THE DEPARTMENT
44 CONTRACTS WITH A CONSULTANT UNDER THIS PARAGRAPH, AN APPLICANT MAY REQUEST
45 THAT THE DEPARTMENT EXPEDITE THE APPLICATION REVIEW BY REQUESTING THAT THE
46 DEPARTMENT USE THE SERVICES OF THE CONSULTANT AND BY AGREEING TO PAY THE

1 DEPARTMENT THE COSTS OF THE CONSULTANT'S SERVICES. NOTWITHSTANDING ANY OTHER
2 LAW, MONIES PAID BY APPLICANTS FOR EXPEDITED REVIEWS PURSUANT TO THIS
3 PARAGRAPH ARE APPROPRIATED TO THE DEPARTMENT FOR USE IN PAYING CONSULTANTS
4 FOR SERVICES.

5 D. The director may:

6 1. If ~~he~~ THE DIRECTOR has reasonable cause to believe that a violation
7 of any environmental law or rule exists or is being committed, inspect any
8 person or property in transit through this state and any vehicle in which the
9 person or property is being transported and detain or disinfect the person,
10 property or vehicle as reasonably necessary to protect the environment if a
11 violation exists.

12 2. Authorize in writing any qualified officer or employee in the
13 department to perform any act that the director is authorized or required to
14 do by law.

15 Sec. 15. Section 49-109, Arizona Revised Statutes, is amended to read:

16 49-109. Certificate of disclosure of violations; remedies

17 A. The following persons shall file a certificate of disclosure with
18 the department as prescribed by this section:

19 1. A person who is engaged in an activity subject to regulation under
20 this title and who has been convicted of a felony involving laws related to
21 solid waste, special waste, hazardous waste, water quality or air quality in
22 any state or federal jurisdiction or for a violation of 42 United States Code
23 section 9603 within the five year period immediately preceding execution of
24 the certificate.

25 2. EXCEPT IN PROCEEDINGS IN WHICH THE DEPARTMENT, OR THIS STATE ON
26 BEHALF OF THE DEPARTMENT, IS OR WAS A PARTY, a person who is engaged in an
27 activity subject to regulation under this title and who is or has been
28 subject in any civil proceeding to an injunction, decree, judgment or
29 permanent order of any state or federal court within the five year period
30 immediately preceding the execution of the certificate that involved a
31 violation of laws of that jurisdiction relating to solid waste, special
32 waste, hazardous waste, used oil or used oil fuel, petroleum, water quality
33 or air quality, except for a misdemeanor violation of section 49-550, or a
34 violation of 42 United States Code section 9603.

35 B. The certificate of disclosure prescribed by subsection A of this
36 section shall contain the following:

37 1. Identification of that person, including without limitation present
38 full name, all prior names or aliases, including full birth name, present
39 house address and all prior addresses for the immediately preceding five year
40 period, date and location of birth and social security number.

41 2. The nature and description of each conviction or judicial action,
42 the date and location, the court and public agency involved, ~~and~~ and the file or
43 cause number of the case.

44 3. A written declaration that each signer swears to its contents under
45 penalty of perjury.

1 C. The certificate of disclosure submitted on behalf of a corporation
2 shall be executed by any two executive officers or directors of that
3 corporation.

4 D. For purposes of subsection A of this section, "person" means a
5 natural person, any public or private corporation, its officers, directors,
6 trustees, incorporators and persons controlling or holding over ten per cent
7 of the issued and outstanding common shares or ten per cent of any other
8 proprietary, beneficial or membership interest in the corporation, a
9 partnership, including all general partners and limited partners controlling
10 a ten per cent or more beneficial interest in the partnership, association or
11 society of persons, the federal government and any of its departments or
12 agencies, this state and any of its agencies, departments, political
13 subdivisions, counties, towns or municipal corporations.

14 E. Initial certificates shall be delivered to the department within
15 ninety days after the person first becomes subject to the disclosure
16 requirements of this section. Certificates shall be filed annually
17 thereafter within ninety days after the close of that person's fiscal year as
18 reported on the initial certificate.

19 F. By December 1 of each year, the department shall provide the
20 attorney general with a list of all persons who were convicted of the crimes
21 or who are the subject of the judicial actions described in subsection A of
22 this section, as indicated from the certificates of disclosure filed during
23 the preceding year.

24 G. In lieu of the certificate of disclosure prescribed by this
25 section, a corporation may submit to the director copies of annual reports
26 filed with the securities and exchange commission pursuant to section 13 or
27 15(d) of the securities exchange act of 1934 (15 United States Code section
28 78), commonly known as a "10-K form", within ninety days of filing the annual
29 report. The initial submission to the director shall include 10-K forms for
30 the preceding five years.

31 H. A person who contributes information for a certificate of
32 disclosure and who makes an untrue statement of material fact concerning the
33 requirements of subsection B of this section or withholds any material fact
34 concerning the requirements of subsection B of this section or a person who
35 is obligated to file a certificate of disclosure and who fails to file the
36 certificate is subject to the remedies prescribed in section 49-110.

37 Sec. 16. Section 49-241, Arizona Revised Statutes, is amended to read:
38 49-241. Permit required to discharge

39 A. Unless otherwise provided by this article, any person who
40 discharges or who owns or operates a facility that discharges shall obtain an
41 aquifer protection permit from the director.

42 B. Unless exempted under section 49-250, or unless the director
43 determines that the facility will be designed, constructed and operated so
44 that there will be no migration of pollutants directly to the aquifer or to
45 the vadose zone, the following are considered to be discharging facilities

1 and shall be operated pursuant to either an individual permit or a general
2 permit, including agricultural general permits, under this article:

3 1. Surface impoundments, including holding, storage settling,
4 treatment or disposal pits, ponds and lagoons.

5 2. Solid waste disposal facilities except for mining overburden and
6 wall rock that has not been and will not be subject to mine leaching
7 operations.

8 3. Injection wells.

9 4. Land treatment facilities.

10 5. Facilities ~~which~~ THAT add a pollutant to a salt dome formation,
11 salt bed formation, dry well or underground cave or mine.

12 6. Mine tailings piles and ponds.

13 7. Mine leaching operations.

14 8. Underground water storage facilities.

15 ~~9. Point source discharges to navigable waters.~~

16 ~~10.~~ 9. Sewage treatment facilities, including on-site wastewater
17 treatment facilities.

18 ~~11.~~ 10. Wetlands designed and constructed to treat municipal and
19 domestic wastewater for underground storage.

20 C. The director shall provide public notice and an opportunity for
21 public comment on any request for a determination from the director under
22 subsection B of this section that there will be no migration of pollutants
23 from a facility. A public hearing may be held at the discretion of the
24 director if sufficient public comment warrants a hearing. The director may
25 inspect and may require reasonable conditions and appropriate monitoring and
26 reporting requirements for a facility managing pollutants that are determined
27 not to migrate under subsection B of this section. The director may identify
28 types of facilities, available technologies and technical criteria for
29 facilities that will qualify for such a determination. The director's
30 determination may be revoked on evidence that pollutants have migrated from
31 the facility. The director may impose a review fee for a determination under
32 subsection B of this section. Any issuance, denial or revocation of a
33 determination may be appealed pursuant to section 49-323.

34 D. The director shall publish a list of the names and locations of
35 existing facilities that are required to obtain an aquifer protection permit.
36 The director may revise the list as needed. Any revised list shall contain
37 deadlines for the submittal of applications for aquifer protection permits,
38 based on the degree of risk to the public health and welfare and the
39 environment and based on a work plan of the director designed to process all
40 applications for an aquifer protection permit no later than January 1, 2004
41 for nonmining facilities and no later than January 1, 2006 for mining
42 facilities.

43 E. The director shall annually make the fee schedule for aquifer
44 protection permit applications available to the public on request and on the
45 department's ~~web site~~ WEBSITE, and a list of the names and locations of the
46 facilities that have filed applications for aquifer protection permits, with

1 a description of the status of each application, shall be available to the
2 public on request.

3 F. The director shall prescribe the procedures for aquifer protection
4 permit applications and fee collection under this section. The director
5 shall deposit, pursuant to sections 35-146 and 35-147, all monies collected
6 under this section in the water quality fee fund established by section
7 49-210 and may authorize expenditures from the fund, subject to legislative
8 appropriation, to pay reasonable and necessary costs of processing and
9 issuing permits and administering the registration program.

10 Sec. 17. Section 49-243, Arizona Revised Statutes, is amended to read:

11 49-243. Information and criteria for issuing individual permit;
12 definition

13 A. The director shall consider, and the applicant for an individual
14 permit may be required to furnish with the application, the following
15 information:

16 1. The design of the discharge facility. When formal as-built
17 submittals are unavailable, the applicant shall provide sufficient
18 documentation to allow evaluation of those elements of the facility affecting
19 discharge pursuant to the demonstration required in subsection B, paragraph 1
20 of this section.

21 2. A description of how the facility will be operated.

22 3. Existing and proposed pollutant control measures.

23 4. A hydrogeologic study defining and characterizing the discharge
24 impact area, including the vadose zone.

25 5. The use of water from aquifers in the discharge impact area.

26 6. The existing quality of the water in the aquifers in the discharge
27 impact area.

28 7. The characteristics of the pollutants discharged by the facility.

29 8. Closure strategy.

30 9. Any other relevant federal or state permits issued to the
31 applicant.

32 10. Any other relevant information the director may require.

33 B. The director shall issue a permit to a person for a facility other
34 than water storage at a storage facility pursuant to title 45, chapter 3.1 if
35 the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3
36 of this subsection will be met:

37 1. That the facility will be so designed, constructed and operated as
38 to ensure the greatest degree of discharge reduction achievable through
39 application of the best available demonstrated control technology, processes,
40 operating methods or other alternatives, including, where practicable, a
41 technology permitting no discharge of pollutants. In determining best
42 available demonstrated control technology, processes, operating methods or
43 other alternatives, the director shall take into account any treatment
44 process contributing to the discharge, site specific hydrologic and geologic
45 characteristics and other environmental factors, the opportunity for water
46 conservation or augmentation and economic impacts of the use of alternative

1 technologies, processes or operating methods on an industry-wide basis. A
2 discharge reduction to an aquifer achievable solely by means of site specific
3 characteristics does not, in itself, constitute compliance with this
4 paragraph. The requirements of this paragraph for wetlands designed and
5 constructed to treat municipal and domestic wastewater for underground
6 storage pursuant to section 49-241, subsection B, ~~paragraph 11~~ may be met by
7 including seepage through the bottom of the facility if it is demonstrated
8 that site characteristics can act to achieve performance levels established
9 as the best available demonstrated control technology by the director. In
10 addition, the director shall consider the following factors for existing
11 facilities:

- 12 (a) Toxicity, concentrations and quantities of discharge likely to
13 reach an aquifer from various types of control technologies.
- 14 (b) The total costs of the application of the technology in relation
15 to the discharge reduction to be achieved from such application.
- 16 (c) The age of equipment and facilities involved.
- 17 (d) The industrial and control process employed.
- 18 (e) The engineering aspects of the application of various types of
19 control techniques.
- 20 (f) Process changes.
- 21 (g) Non-water quality environmental impacts.
- 22 (h) The extent to which water available for beneficial uses will be
23 conserved by a particular type of control technology.

24 2. That pollutants discharged will in no event cause or contribute to
25 a violation of aquifer water quality standards at the applicable point of
26 compliance for the facility.

27 3. That no pollutants discharged will further degrade at the
28 applicable point of compliance the quality of any aquifer that at the time of
29 the issuance of the permit violates the aquifer quality standard for that
30 pollutant.

31 C. An applicant shall satisfy the requirements of subsection B,
32 paragraph 1 of this section either by making a demonstration that the
33 facility will meet the criteria of that paragraph or by agreeing to utilize
34 the appropriate presumptive controls adopted by the director pursuant to
35 section 49-243.01, subsection A.

36 D. In assessing technology, processes, operating methods and other
37 alternatives for THE purposes of this section, "practicable" means able to be
38 reasonably done from the standpoint of technical practicality and, except for
39 pollutants addressed in subsection I of this section, economically achievable
40 on an industry-wide basis.

41 E. The determination of economic impact on an industry-wide basis for
42 purposes of subsection B, paragraph 1 of this section shall take into account
43 differences in industry sectors, the type and size of the operation and the
44 reasonableness of applying controls in an arid or semiarid setting.

45 F. Control measures designed to further reduce discharge may not be
46 required if the director determines that site specific conditions, in

1 conjunction with technology, processes, operating methods or other
2 alternatives are sufficient to meet the requirements of subsection B,
3 paragraph 1 of this section.

4 G. A discharging facility at an open pit mining operation shall be
5 deemed to satisfy the requirements of subsection B, paragraph 1 of this
6 section if the director determines that both of the following conditions are
7 satisfied:

8 1. The mine pit creates a passive containment that is sufficient to
9 capture the pollutants discharged and that is hydrologically isolated to the
10 extent that it does not allow pollutant migration from the capture zone. For
11 THE purposes of this paragraph, "passive containment" means natural or
12 engineered topographical, geological or hydrological control measures that
13 can operate without continuous maintenance. Monitoring and inspections to
14 confirm performance of the passive containment do not constitute maintenance.

15 2. The discharging facility employs additional processes, operating
16 methods or other alternatives to minimize discharge.

17 H. The director shall issue a permit to a person for water storage at
18 a storage facility proposed under title 45, chapter 3.1 if the person
19 demonstrates that the facility will be so designed, constructed and operated
20 as to ensure that the project will not cause or contribute to the violation
21 of any standard adopted pursuant to section 49-223 at the applicable point of
22 compliance for the facility.

23 I. With respect to the following pollutants, the permit applicant for
24 a new facility must meet the criteria of subsection B, paragraph 1 of this
25 section to limit discharges to the maximum extent practicable regardless of
26 cost:

27 1. Any organic substance listed by the secretary of the department of
28 health and human services pursuant to 42 United States Code section 241
29 (b)(4), as known to be carcinogens or reasonably anticipated to be
30 carcinogens.

31 2. Any organic substance listed in 40 Code of Federal Regulations
32 section 261.33(e), regardless of whether the substance is a waste subject to
33 regulation under the resource conservation recovery act (P.L. 94-580; 90
34 Stat. 2795).

35 3. Any organic toxic pollutant that the director lists by rule after
36 determining that minute amounts of that pollutant in drinking water will
37 present a substantial short-term or long-term human health threat.

38 J. The director ~~may~~, by rule, MAY prescribe requirements for issuing a
39 single permit applicable to all similar facilities under common ownership and
40 located in a contiguous geographic area in lieu of an individual permit for
41 each facility.

42 K. The director shall consider and may prescribe in the permit the
43 following terms and conditions as necessary to ensure compliance with this
44 article:

45 1. Monitoring requirements.

46 2. Record keeping and reporting requirements.

- 1 3. Contingency plan requirements.
- 2 4. Discharge limitations.
- 3 5. Compliance schedule requirements.
- 4 6. Closure requirements and, for a facility that cannot achieve clean
- 5 closure, postclosure monitoring and maintenance requirements.
- 6 7. Alert levels ~~which~~ THAT, when exceeded, may require adjustments of
- 7 permit conditions or appropriate actions as are required by the contingency
- 8 plans.
- 9 8. Such other terms and conditions as the director deems necessary to
- 10 ensure compliance with this article.
- 11 L. The director may include in an aquifer protection permit for an
- 12 existing facility the requirement that the owner or operator of the facility
- 13 undertake a remedial action, as defined in section 49-281, to prevent,
- 14 minimize or mitigate damage to the public health or welfare or to the waters
- 15 of the state resulting from a discharge that occurred before August 13, 1986,
- 16 if the following conditions are met:
- 17 1. The selection of remedial action, including the level and extent of
- 18 cleanup, was determined according to the criteria in section 49-282.06, ~~and~~
- 19 the rules adopted pursuant to that section.
- 20 2. The pollutant that was discharged constituted a hazardous
- 21 substance.
- 22 M. The director may include in an aquifer protection permit as a
- 23 condition the mitigation measures described in an order issued under section
- 24 49-286.
- 25 N. The director may deny a permit for a facility if ~~he~~ THE DIRECTOR
- 26 determines that the applicant is incapable of fully carrying out the terms
- 27 and conditions of the permit, including any conditions that require
- 28 monitoring or installing and maintaining discharge control measures. The
- 29 director may require the applicant to furnish information, such as past
- 30 performance, including compliance with or violations of similar laws or
- 31 rules, and technical and financial competence, relevant to its capability to
- 32 comply with the permit terms and conditions. For the purposes of evaluating
- 33 an applicant's financial competence for closure, the director may consider a
- 34 closure strategy and cost estimate rather than a detailed closure plan. A
- 35 demonstration of financial responsibility made for a facility as prescribed
- 36 by section 49-770 shall suffice, in whole or in part, for any demonstration
- 37 of financial responsibility prescribed by this section. A demonstration of
- 38 financial assurance or competence required under this section or section
- 39 49-770 for a facility shall not be required ~~prior to~~ BEFORE completion of
- 40 construction but shall be required before the department issues approval to
- 41 operate. Financial information required to be supplied under this subsection
- 42 is confidential.
- 43 O. The director shall require an applicant for an individual permit to
- 44 submit evidence that the discharging facility complies with applicable
- 45 municipal or county zoning ordinances and regulations. The director shall
- 46 not issue the permit unless it appears from the evidence submitted by the

1 applicant that the facility complies with the applicable zoning ordinances
2 and regulations.

3 P. The director may issue a single area-wide permit applicable to
4 facilities under common ownership and located in a contiguous geographic area
5 in lieu of an individual permit for each facility. In issuing an area-wide
6 permit, the demonstration required under subsection B, paragraphs 2 and 3 of
7 this section may be considered collectively for all facilities included in
8 the permit. The director may evaluate discharge reduction collectively for
9 existing facilities in the pollutant management area by considering any one
10 or all of the factors set forth in subsection B, paragraph 1, ~~subdivisions~~
11 ~~(a) through (h)~~ of this section. The director may consolidate those permit
12 conditions listed in subsection K of this section that have general
13 applicability to the facilities included in the area-wide permit. An
14 area-wide permit shall specify all of the following:

15 1. A description of the pollutant management area and point or points
16 of compliance.

17 2. Those facilities that have been evaluated individually for meeting
18 the criteria in subsection B, paragraph 1 of this section and **THAT** are
19 included in the area-wide permit.

20 3. For multiple facilities within the pollutant management area that
21 are substantially similar in nature and, considered alone, would have a small
22 discharge impact area compared to other facilities in the area, narrative
23 permit conditions may be used to define the best available demonstrated
24 control technology, processes, operating methods or other alternatives
25 consistent with subsection B, paragraph 1 of this section replacing the need
26 for an individual technical review.

27 4. A compliance schedule for submittal and evaluation of information
28 regarding design and discharge for existing facilities within the pollutant
29 management area that, because of the small size, quantity or quality of
30 discharge, or physical location with regard to the point or points of
31 compliance, the director has determined that review for the purposes of
32 subsection B, paragraph 1 of this section shall be conducted in the future.
33 In determining the requirements and length of a compliance schedule for an
34 area-wide permit, the director shall consider the character and impact of the
35 discharge, the nature of the activities necessary to prepare appropriate
36 technical submittals, the number of persons potentially affected by the
37 discharge, the current state of treatment technology, and the age of the
38 facility.

39 Q. The director may expedite processing of an aquifer protection
40 permit application by a permit applicant who proposes a new facility to
41 discharge liquids that do not contain any pollutant in a concentration that
42 exceeds a numeric aquifer water quality standard. The director shall not
43 require the applicant to complete a hydrogeologic study in order to obtain
44 the permit unless the permit applicant is relying on site specific
45 characteristics to meet the requirements of subsection B, paragraph 1 of this
46 section or unless the study is necessary to demonstrate compliance with

1 narrative aquifer water quality standards. Applications made pursuant to
2 this subsection shall have precedence and be considered by the department
3 before all other aquifer protection permit applications.

4 Sec. 18. Section 49-245.01, Arizona Revised Statutes, is amended to
5 read:

6 49-245.01. Storm water general permit

7 A. A general permit is issued for facilities used solely for the
8 management of storm water and that are regulated by the clean water act,
9 including catchments, impoundments and sumps, provided the following
10 conditions are met:

11 1. The owner or operator of the facility has obtained a national
12 pollutant discharge elimination system permit issued pursuant to the clean
13 water act for any storm water discharges at the facility, or that the
14 facility has applied, and not been denied coverage, for this type of permit
15 for any storm water discharges at the facility.

16 2. The owner or operator notifies the director that the facility has
17 met the requirements of paragraph 1 of this subsection.

18 3. The owner or operator of the facility has in place any required
19 storm water pollution prevention plan.

20 B. If the director determines that discharges of storm water from a
21 facility or facilities covered by this general permit are causing a violation
22 of aquifer water quality standards **AT THE APPLICABLE POINT OF COMPLIANCE**, the
23 director may revoke the general permit of the facility or facilities or may
24 require that an individual permit be obtained pursuant to section 49-243. If
25 the director determines that discharges of storm water from a facility or
26 facilities covered by this general permit **may**, with reasonable probability,
27 **MAY** cause a violation of aquifer water quality standards **AT THE APPLICABLE**
28 **POINT OF COMPLIANCE**, the director may require a facility or facilities
29 covered by the general permit to obtain an individual permit pursuant to
30 section 49-243.

31 Sec. 19. Title 49, chapter 2, article 5, Arizona Revised Statutes, is
32 amended by adding section 49-290.02, to read:

33 49-290.02. Applicability of Arizona department of water
34 resources requirements; metal mining facilities

35 A. A METAL MINING FACILITY CONDUCTING MITIGATION ACTIVITIES PURSUANT
36 TO AN ORDER ISSUED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO
37 SECTION 49-286 SHALL OBTAIN AND COMPLY WITH APPLICABLE PERMITS, APPROVALS OR
38 OTHER AUTHORIZATIONS REQUIRED BY THE DEPARTMENT OF WATER RESOURCES. ON
39 CONSULTATION WITH THE DIRECTOR OF ENVIRONMENTAL QUALITY, THE DIRECTOR OF
40 WATER RESOURCES MAY WAIVE ITS APPLICABLE PERMITS, APPROVALS OR AUTHORIZATIONS
41 IF THE DIRECTOR OF WATER RESOURCES DETERMINES THAT THE PERMIT, APPROVAL OR
42 OTHER AUTHORIZATION UNREASONABLY LIMITS THE COMPLETION OF MITIGATION
43 ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED
44 PURSUANT TO SECTION 49-286 AND IF THE WAIVER DOES NOT CONFLICT WITH THE
45 STATUTORY INTENT OF THE PERMIT, APPROVAL OR OTHER AUTHORIZATION. THE
46 DEPARTMENT OF WATER RESOURCES SHALL EXPEDITE THE PROCESSING AND ISSUANCE OF

1 PERMITS, APPROVALS OR AUTHORIZATIONS TO FACILITATE THE PROMPT CONDUCT OF
2 APPROVED MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT
3 TO AN ORDER ISSUED PURSUANT TO SECTION 49-286. IF THE DEPARTMENT OF WATER
4 RESOURCES FAILS TO ISSUE OR DENY A PERMIT WITHIN ONE HUNDRED TWENTY DAYS OF
5 THE DATE OF RECEIPT OF A COMPLETE APPLICATION FOR A PERMIT, APPROVAL OR
6 AUTHORIZATION REQUIRED FOR COMPLETION OF THE MITIGATION ACTIVITIES APPROVED
7 BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO AN ORDER ISSUED
8 PURSUANT TO SECTION 49-286, THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY
9 AUTHORIZE THE METAL MINING FACILITY CONDUCTING THE APPROVED MITIGATION
10 ACTIVITIES TO PROCEED WITH THOSE ACTIVITIES AND THAT METAL MINING FACILITY
11 SHALL NOT BE SUBJECT TO ANY PENALTIES FOR FAILURE TO OBTAIN THE PERMIT,
12 APPROVAL OR AUTHORIZATION FROM THE DEPARTMENT OF WATER RESOURCES, BUT SHALL
13 BE REQUIRED TO COMPLY WITH THE SUBSTANTIVE REQUIREMENTS OF SUCH PERMIT,
14 APPROVAL OR AUTHORIZATION. THE DETERMINATION OF WHETHER AN APPLICATION FOR A
15 PERMIT IS COMPLETE SHALL BE MADE BY THE DEPARTMENT OF WATER RESOURCES. A
16 METAL MINING FACILITY CONDUCTING MITIGATION ACTIVITIES PURSUANT TO AN ORDER
17 ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286
18 THAT USES GROUNDWATER WITHDRAWN IN AN ACTIVE MANAGEMENT AREA SHALL CONTINUE
19 TO PAY ANY APPLICABLE GROUNDWATER WITHDRAWAL FEE FOR THE GROUNDWATER THE
20 METAL MINING FACILITY WITHDREW AND USED OR RECEIVED AND USED.

21 B. THE DIRECTOR OF ENVIRONMENTAL QUALITY AND THE DIRECTOR OF WATER
22 RESOURCES SHALL COORDINATE THEIR EFFORTS TO EXPEDITE MITIGATION ACTIVITIES
23 UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED PURSUANT TO
24 SECTION 49-286, INCLUDING OBTAINING INFORMATION PERTINENT TO SITE
25 INVESTIGATIONS, SITE MANAGEMENT AND BENEFICIAL USE OF WATER WITHDRAWN FOR
26 MITIGATION PURPOSES.

27 C. WITH RESPECT TO MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING
28 FACILITY PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL
29 QUALITY PURSUANT TO SECTION 49-286, THE DIRECTOR OF WATER RESOURCES MAY WAIVE
30 ANY REGULATORY REQUIREMENT ADOPTED PURSUANT TO TITLE 45 WITH RESPECT TO A
31 SITE OR PORTION OF A SITE AS PART OF A MITIGATION ORDER ISSUED BY THE
32 DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286 FOR THAT SITE
33 OR PORTION OF A SITE IF THE REGULATORY REQUIREMENT CONFLICTS WITH THE
34 IMPLEMENTATION OF THE ORDERED MITIGATION ACTIVITIES, PROVIDED THAT THE WAIVER
35 DOES NOT RESULT IN ADVERSE IMPACTS TO OTHER LAND AND WATER USERS. NO WAIVER
36 MAY BE GRANTED UNDER THIS SUBSECTION IF IT IS PROHIBITED BY FEDERAL LAW OR IF
37 THE WAIVER WOULD JEOPARDIZE THE CONTINUED DELEGATION TO THE STATE OF
38 AUTHORITY TO IMPLEMENT A FEDERAL ENVIRONMENTAL PROGRAM.

39 Sec. 20. Purpose

40 Pursuant to section 41-2955, subsection E, Arizona Revised Statutes,
41 the purpose of the mining advisory council is to review mining policy in this
42 state and provide assistance to state agencies regarding rules affecting
43 mining in this state.

H.B. 2617

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.