

REFERENCE TITLE: **drinking water standards; pollutants.**

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2461

Introduced by
Representatives Cano: Dalessandro, Hernandez M, Mathis, Quiñonez, Solorio,
Senators Gabaldon, Gonzales

AN ACT

**AMENDING SECTIONS 49-104 AND 49-223, ARIZONA REVISED STATUTES; RELATING TO
THE ENVIRONMENT.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

5 A. The department shall:

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

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

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

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

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

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

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

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

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

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

36 11. Promote and recommend methods for the recovery, recycling and
37 reuse or, if recycling is not possible, the disposal of solid wastes
38 consistent with sound health, scenic and environmental quality policies.
39 The department shall report annually on its revenues and expenditures
40 relating to the solid and hazardous waste programs overseen or
41 administered by the department.

42 12. Prevent pollution through ~~the regulation of~~ REGULATING the
43 storage, handling and transportation of solids, liquids and gases that may
44 cause or contribute to pollution.

1 13. Promote the restoration and reclamation of degraded or
2 despoiled areas and natural resources.

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

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

12 ~~16. Unless specifically authorized by the legislature, ensure that~~
13 ~~state laws, rules, standards, permits, variances and orders are adopted~~
14 ~~and construed to be consistent with and no more stringent than the~~
15 ~~corresponding federal law that addresses the same subject matter. This~~
16 ~~paragraph does not adversely affect standards adopted by an Indian tribe~~
17 ~~under federal law.~~

18 ~~17.~~ 16. Provide administrative and staff support for the oil and
19 gas conservation commission.

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

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

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

27 3. ~~Utilize~~ USE any medium of communication, publication and
28 exhibition when disseminating information, advertising and publicity in
29 any field of its purposes, objectives or duties.

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

33 5. Contract with other agencies, including laboratories, in
34 furthering any department program.

35 6. Use monies, facilities or services to provide matching
36 contributions under federal or other programs that further the objectives
37 and programs of the department.

38 7. Accept gifts, grants, matching monies or direct payments from
39 public or private agencies or private persons and enterprises for
40 department services and publications and to conduct programs that are
41 consistent with the general purposes and objectives of this chapter.
42 Monies received pursuant to this paragraph shall be deposited in the
43 department fund corresponding to the service, publication or program
44 provided.

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

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

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

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

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

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

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

41 13. Prescribe reasonable rules regarding sewage collection,
42 treatment, disposal and reclamation systems to prevent the transmission of
43 sewage borne 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
3 the systems.

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

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

21 (a) Prescribe minimum standards for human excreta storage,
22 handling, treatment, transportation and disposal and shall provide for
23 inspection of premises, processes and vehicles and for abating as public
24 nuisances any premises, processes or vehicles that do not comply with the
25 minimum 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. The department may
29 require payment of a fee as a condition of licensure. The department may
30 establish by rule a fee as a condition of licensure, including a maximum
31 fee. As part of the rulemaking process, there must be public notice and
32 comment and a review of the rule by the joint legislative budget
33 committee. The department shall not increase that fee by rule without
34 specific statutory authority for the increase. The fees shall be
35 deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee
36 fund established by section 49-881.

37 15. Perform the responsibilities of implementing and maintaining a
38 data automation management system to support the reporting requirements of
39 title III of the superfund amendments and reauthorization act of 1986
40 (P.L. 99-499) and article 2 of this chapter.

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

43 17. Establish or revise fees by rule pursuant to the authority
44 granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this
45 title for the department to adequately perform its duties. All fees shall

1 be fairly assessed and impose the least burden and cost to the parties
2 subject to the fees. In establishing or revising fees, the department
3 shall base the fees on:

4 (a) The direct and indirect costs of the department's relevant
5 duties, including employee salaries and benefits, professional and outside
6 services, equipment, in-state travel and other necessary operational
7 expenses directly related to issuing licenses as defined in title 41,
8 chapter 6 and enforcing the requirements of the applicable regulatory
9 program.

10 (b) The availability of other funds for the duties performed.

11 (c) The impact of the fees on the parties subject to the fees.

12 (d) The fees charged for similar duties performed by the
13 department, other agencies and the private sector.

14 18. Appoint a person with a background in oil and gas conservation
15 to act on behalf of the oil and gas conservation commission and administer
16 and enforce the applicable provisions of title 27, chapter 4 relating to
17 the oil and gas conservation commission.

18 C. The department may:

19 1. Charge fees to cover the costs of all permits and inspections it
20 performs to ensure compliance with rules adopted under section 49-203,
21 except that state agencies are exempt from paying those fees that are not
22 associated with the dredge and fill permit program established pursuant to
23 chapter 2, article 3.2 of this title. For services provided under the
24 dredge and fill permit program, a state agency shall pay either:

25 (a) The fees established by the department under the dredge and
26 fill permit program.

27 (b) The reasonable cost of services provided by the department
28 pursuant to an interagency service agreement.

29 2. Monies collected pursuant to this subsection shall be deposited,
30 pursuant to sections 35-146 and 35-147, in the water quality fee fund
31 established by section 49-210.

32 3. Contract with private consultants for the purposes of assisting
33 the department in reviewing applications for licenses, permits or other
34 authorizations to determine whether an applicant meets the criteria for
35 issuance of the license, permit or other authorization. If the department
36 contracts with a consultant under this paragraph, an applicant may request
37 that the department expedite the application review by requesting that the
38 department use the services of the consultant and by agreeing to pay the
39 department the costs of the consultant's services. Notwithstanding any
40 other law, monies paid by applicants for expedited reviews pursuant to
41 this paragraph are appropriated to the department for use in paying
42 consultants for services.

1 D. The director may:

2 1. If the director has reasonable cause to believe that a violation
3 of any environmental law or rule exists or is being committed, inspect any
4 person or property in transit through this state and any vehicle in which
5 the person or property is being transported and detain or disinfect the
6 person, property or vehicle as reasonably necessary to protect the
7 environment if a violation exists.

8 2. Authorize in writing any qualified officer or employee in the
9 department to perform any act that the director is authorized or required
10 to do by law.

11 Sec. 2. Section 49-223, Arizona Revised Statutes, is amended to
12 read:

13 49-223. Aquifer water quality standards

14 A. Primary drinking water maximum contaminant levels established by
15 the administrator before August 13, 1986 are adopted as drinking water
16 aquifer water quality standards. The director may only adopt additional
17 aquifer water quality standards by rule. Within one year after the
18 administrator establishes additional primary drinking water maximum
19 contaminant levels, the director shall open a ~~rule making~~ RULEMAKING
20 docket pursuant to section 41-1021 ~~for adoption of~~ TO ADOPT those maximum
21 contaminant levels as drinking water aquifer water quality standards. If
22 substantial opposition is demonstrated in the ~~rule making~~ RULEMAKING
23 docket regarding a particular constituent, the director may adopt for that
24 constituent the maximum contaminant level as a drinking water aquifer
25 water quality standard ~~upon~~ ON making a finding that this level is
26 appropriate for adoption in Arizona as an aquifer water quality standard.
27 In making this finding, the director shall consider whether the
28 assumptions about technologies, costs, sampling and analytical
29 methodologies and public health risk reduction used by the administrator
30 in developing and implementing the maximum contaminant level are
31 appropriate for establishing a drinking water aquifer water quality
32 standard. For purposes of this subsection "substantial opposition" means
33 information submitted to the director that explains with reasonable
34 specificity why the maximum contaminant level is not appropriate as an
35 aquifer water quality standard.

36 B. The director may adopt by rule numeric drinking water aquifer
37 water quality standards for pollutants for which the administrator has not
38 established primary drinking water maximum contaminant levels or for which
39 a maximum contaminant level has been established but the director has
40 determined it to be inappropriate as an aquifer water quality standard
41 pursuant to subsection A of this section. These standards shall be based
42 on ~~the protection of~~ PROTECTING human health. In establishing numeric
43 drinking water aquifer water quality standards, the director shall rely on
44 technical protocols appropriate for ~~the development of~~ DEVELOPING aquifer

1 water quality standards and shall base the standards on credible medical
2 and toxicological evidence that has been subjected to peer review.

3 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, THE DIRECTOR SHALL
4 ESTABLISH DRINKING WATER AQUIFER WATER QUALITY STANDARDS FOR THE FOLLOWING
5 POLLUTANTS:

- 6 1. PERFLUOROOCETANESULFONIC ACID.
- 7 2. PERFLUOROOCETANOIC ACID.
- 8 3. CHROMIUM-6.
- 9 4. 1,4 DIOXANE.

10 5. OTHER SUBSTANCES THAT ARE CATEGORIZED AS PERFLUOROALKYL AND
11 POLYFLUOROALKYL SUBSTANCES AND THAT ARE DETECTED IN A SYSTEM THAT IS
12 CLASSIFIED AS A PUBLIC WATER SYSTEM AS PRESCRIBED BY SECTION 49-352.

13 D. IN DEVELOPING THE DRINKING WATER AQUIFER WATER QUALITY STANDARDS
14 PRESCRIBED BY SUBSECTION C OF THIS SECTION, THE DEPARTMENT SHALL:

15 1. REVIEW THE STANDARDS AND MAXIMUM CONTAMINANT LEVELS ADOPTED IN
16 OTHER STATES AND CONSIDER ADOPTING STANDARDS FOR ANY POLLUTANT FOR WHICH
17 TWO OR MORE OTHER STATES HAVE ADOPTED STANDARDS OR OTHERWISE ISSUED
18 GUIDANCE.

19 2. REVIEW STUDIES AND SCIENTIFIC EVIDENCE THAT WERE REVIEWED BY
20 OTHER STATES, INFORMATION FROM THE UNITED STATES DEPARTMENT OF HEALTH AND
21 HUMAN SERVICES AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, RECENT
22 PEER-REVIEWED SCIENCE AND INDEPENDENT OR OTHER GOVERNMENT AGENCY STUDIES.

23 3. ADOPT STANDARDS THAT ARE PROTECTIVE OF PUBLIC HEALTH, INCLUDING
24 VULNERABLE SUBPOPULATIONS SUCH AS PREGNANT WOMEN, NURSING MOTHERS, INFANTS
25 AND CHILDREN.

26 4. ANNUALLY REVIEW THE LATEST PEER-REVIEWED SCIENCE AND INDEPENDENT
27 OR GOVERNMENT AGENCY STUDIES AND UNDERTAKE ADDITIONAL RULEMAKING IF
28 NECESSARY TO COMPLY WITH THIS SECTION.

29 ~~E.~~ E. Any person may petition the director to adopt a numeric
30 drinking water aquifer quality standard for any pollutant for which no
31 drinking water aquifer quality standard exists. The director shall grant
32 the petition and institute ~~rule making~~ RULEMAKING proceedings adopting a
33 numeric standard as provided under subsection B of this section within one
34 hundred eighty days if the petition shows that the pollutant is a toxic
35 pollutant, that the pollutant has been, or may in the future be, detected
36 in any of the state's drinking water aquifers, and that there exists
37 technical information on which a numeric standard might reasonably be
38 based. Within one year of ~~the commencement of~~ COMMENCING the ~~rule making~~
39 RULEMAKING proceeding, the director shall either adopt a numeric standard
40 or make and publish a finding that, pursuant to subsection B of this
41 section, ~~the development of~~ DEVELOPING a numeric standard is not
42 possible. The decision to not adopt a numeric standard shall, for
43 purposes of judicial review, be treated in the same manner as a rule
44 adopted pursuant to title 41, chapter 6.

1 ~~D.~~ F. For purposes of assessing compliance with each aquifer water
2 quality standard adopted pursuant to this section, the director shall for
3 purposes of articles 3 and 4 of this chapter, and may for purposes of
4 other provisions of this title, identify sampling and analytical protocols
5 appropriate for detecting and measuring the pollutant in the aquifers in
6 the state.

7 ~~E.~~ G. Within one year ~~from the reclassification of~~ AFTER
8 RECLASSIFYING an aquifer to a non-drinking water status, pursuant to
9 section 49-224, the director shall adopt water quality standards for that
10 aquifer. For any pollutants ~~which~~ THAT were not the basis for the
11 reclassification, the applicable standard shall be identical with the
12 standard for those pollutants adopted pursuant to subsections A and B of
13 this section. For any pollutants ~~which~~ THAT were the basis for
14 reclassification, the standard shall be sufficient to achieve the purpose
15 for which the aquifer was reclassified but shall minimize unnecessary
16 degradation of the aquifer by taking into consideration the potential
17 long-term uses of the aquifer and the short-term and long-term benefits of
18 the activities resulting in discharges into the aquifer.

19 ~~F.~~ H. The director shall adopt water quality standards for an
20 aquifer for which a petition has been submitted pursuant to section
21 49-224, subsection D sufficient to achieve the non-drinking water use for
22 which that aquifer was classified, taking into consideration the potential
23 long-term uses of that aquifer and the short-term and long-term benefits
24 of the discharging activities creating that aquifer.

25 ~~G.~~ I. In any action pursuant to this title, aquifer water quality
26 protection provisions, including monitoring requirements, may be imposed
27 only for pollutants for which aquifer water quality standards have been
28 established AND that are likely to be present in a discharge. Indicator
29 parameters and quality assurance parameters appropriate for such
30 pollutants also may be specified.