

House Engrossed Senate Bill

~~unlawful feeding; wildlife; exception~~  
(now: treated process water; storage credits)

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

# SENATE BILL 1171

AN ACT

AMENDING SECTION 45-101, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-563.03; AMENDING SECTIONS 45-831.01, 45-832.01, 45-834.01, 45-851.01, 49-243 AND 49-250, ARIZONA REVISED STATUTES; RELATING TO TREATED PROCESS WATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-101, Arizona Revised Statutes, is amended to  
3 read:

4 45-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Appropriator" means the person or persons initiating or  
7 perfecting the right to use appropriable water based on state law, or the  
8 person's successor or successors in interest.

9 2. "Department" means the department of water resources.

10 3. "Director" means the director of water resources, who is also  
11 the director of the department.

12 4. "Effluent" means water that has been collected in a sanitary  
13 sewer for subsequent treatment in a facility that is regulated pursuant to  
14 title 49, chapter 2. Such water remains effluent until it acquires the  
15 characteristics of groundwater, ~~or~~ surface water **OR TREATED PROCESS WATER**.

16 5. "Groundwater" means water under the surface of the earth  
17 regardless of the geologic structure in which it is standing or  
18 moving. Groundwater does not include water flowing in underground streams  
19 with ascertainable beds and banks.

20 6. "Interstate stream" means any stream constituting or flowing  
21 along the exterior boundaries of this state, and any tributary originating  
22 in another state or foreign country and flowing into or through this  
23 state.

24 7. "Riparian area" means a geographically delineated area with  
25 distinct resource values, ~~that~~ that is characterized by deep-rooted plant  
26 species that depend on having roots in the water table or its capillary  
27 zone and that occurs within or adjacent to a natural perennial or  
28 intermittent stream channel or within or adjacent to a lake, pond or marsh  
29 bed maintained primarily by natural water sources. Riparian area does not  
30 include areas in or adjacent to ephemeral stream channels, artificially  
31 created stockponds, man-made storage reservoirs constructed primarily for  
32 conservation or regulatory storage, municipal and industrial ponds or  
33 man-made water transportation, distribution, off-stream storage and  
34 collection systems.

35 8. "Sanitary sewer" means any pipe or other enclosed conduit that  
36 carries, among other substances, any water-carried wastes from the human  
37 body from residences, commercial buildings, industrial plants or  
38 institutions.

39 9. "Surface water" means the waters of all sources, flowing in  
40 streams, canyons, ravines or other natural channels, or in definite  
41 underground channels, whether perennial or intermittent, floodwater,  
42 wastewater or surplus water, and of lakes, ponds and springs on the  
43 surface. For the purposes of administering this title, surface water is  
44 deemed to include central Arizona project water.

1           10. "TREATED PROCESS WATER" MEANS WATER, OTHER THAN WATER SUPPLIED  
2 BY A CITY, TOWN OR PRIVATE WATER COMPANY PURSUANT TO ITS WATER RIGHTS,  
3 THAT IS USED FOR A NONIRRIGATION USE BY A FOOD OR BEVERAGE MANUFACTURER IN  
4 AN INDUSTRIAL FACILITY, THAT DOES NOT CONTAIN ANY WATER-CARRIED WASTES  
5 FROM THE HUMAN BODY AFTER USE AND THAT IS SUBSEQUENTLY TREATED AT THE SITE  
6 OF USE AND STORED AT THE SITE OF USE PURSUANT TO CHAPTER 3.1 OF THIS  
7 TITLE. SUCH WATER REMAINS TREATED PROCESS WATER UNTIL IT ACQUIRES THE  
8 CHARACTERISTICS OF GROUNDWATER, SURFACE WATER OR EFFLUENT.

9           Sec. 2. Title 45, chapter 2, article 9, Arizona Revised Statutes,  
10 is amended by adding section 45-563.03, to read:

11           45-563.03. Treated process water; conservation requirements

12           IN DETERMINING COMPLIANCE WITH APPLICABLE CONSERVATION REQUIREMENTS  
13 ADOPTED PURSUANT TO THIS ARTICLE, THE DEPARTMENT SHALL ACCOUNT FOR TREATED  
14 PROCESS WATER THAT IS RECOVERED PURSUANT TO CHAPTER 3.1 OF THIS TITLE  
15 CONSISTENT WITH THE ACCOUNTING FOR EFFLUENT.

16           Sec. 3. Section 45-831.01, Arizona Revised Statutes, is amended to  
17 read:

18           45-831.01. Water storage permits

19           A. A person may apply to the director for a water storage permit  
20 and may store water at a storage facility only pursuant to a water storage  
21 permit.

22           B. The director may issue a water storage permit to store water at  
23 a storage facility if the director determines that all of the following  
24 apply:

25           1. The applicant has a right to use the proposed source of  
26 water. Any determination made by the director for purposes of this  
27 subsection regarding the validity, nature, extent or relative priority of  
28 a water right claimed by the applicant or another person is not binding in  
29 any other administration proceeding or in any judicial proceeding.

30           2. The applicant has applied for any water quality permit required  
31 by the department of environmental quality under title 49, chapter 2,  
32 article 3 and by federal law.

33           3. The water storage will occur at a permitted storage facility.

34           4. FOR TREATED PROCESS WATER, ALL OF THE FOLLOWING APPLY:

35           (a) THE WATER WILL BE STORED BY A FOOD OR BEVERAGE MANUFACTURER AT  
36 A CONSTRUCTED UNDERGROUND STORAGE FACILITY AT THE SITE WHERE THE WATER WAS  
37 USED BEFORE TREATMENT.

38           (b) THE STORER HAS RECEIVED AN INDIVIDUAL AQUIFER PROTECTION PERMIT  
39 FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO TITLE 49, CHAPTER  
40 2, ARTICLE 3 FOR THE DISCHARGE OF THE WATER.

41           (c) THE WATER IS NOT SUBJECT TO A CONTRACT FOR WASTEWATER SERVICE  
42 WITH A CITY, TOWN OR PRIVATE WATER COMPANY.

43           C. In addition to the requirements of subsection B of this section,  
44 if the applicant has applied for a water storage permit to store water at  
45 a groundwater savings facility, the director shall not issue the water

1 storage permit unless the applicant has agreed in writing to comply with  
2 the plan by which the quantity of groundwater saved at the facility will  
3 be proved each year.

4 D. If the director issues a water storage permit, the director may  
5 make, if possible, the following determinations:

6 1. Whether the water to be stored is water that cannot reasonably  
7 be used directly by the applicant and otherwise meets the requirements of  
8 section 45-852.01 for long-term storage credits.

9 2. If use of the water to be stored is appurtenant to a particular  
10 location, and if so, where the water may be legally used after  
11 recovery. Any determination made by the director for purposes of this  
12 subsection regarding the validity, nature, extent or relative priority of  
13 a water right claimed by the applicant or another person is not binding in  
14 any other administrative proceeding or in any judicial proceeding.

15 E. The director may issue a water storage permit for a period of  
16 not more than fifty years, except that:

17 1. On request of the holder of the permit, the director may renew  
18 the permit if the director determines that the requirements of subsection  
19 B of this section apply and, if the requirement of subsection C of this  
20 section applied at the time of issuance, that the requirement of  
21 subsection C of this section applies at the time of renewal.

22 2. Subject to the provisions of this chapter, the holder of  
23 long-term storage credits earned pursuant to the permit may recover the  
24 water over a period longer than the duration of the permit.

25 F. The holder of a water storage permit may apply to the director  
26 for approval to convey the permit to another person. The director may  
27 approve the conveyance if the director determines that the person to whom  
28 the permit is to be conveyed and the water storage will continue to meet  
29 the applicable requirements of this section. If long-term storage credits  
30 accrued pursuant to the water storage permit are being assigned pursuant  
31 to section 45-854.01 with the water storage permit, the director shall be  
32 given notice of the impending assignment of long-term storage credits at  
33 the time the holder of the water storage permit applies to convey the  
34 permit.

35 G. A person who holds a water storage permit may apply to the  
36 director on a form approved by the director for a modification of that  
37 water storage permit. The director may modify the permit within twenty  
38 days ~~of~~ AFTER receiving the application without complying with section  
39 45-871.01 if all of the following apply:

40 1. The holder of the storage facility permit with which the water  
41 storage permit is affiliated has consented to the modification.

42 2. The modification to the water storage permit does not require a  
43 modification of the affiliated water storage facility permit.

1           3. The only modification requested is to add an amount of Colorado  
2 river water as a type of water to be stored under the water storage  
3 permit.

4           4. Water storage of Colorado river water has previously been  
5 permitted at the affiliated storage facility.

6           5. The person requesting the modification has the right to use the  
7 Colorado river water.

8           H. A water storage permit shall include the following information:

9           1. The name and mailing address of the person to whom the permit is  
10 issued.

11           2. The storage facility where the water storage will occur and the  
12 name of the active management area, irrigation non-expansion area,  
13 groundwater basin or groundwater ~~sub-basin~~ SUBBASIN, as applicable, in  
14 which that facility is located.

15           3. The maximum annual amount of water that may be stored.

16           4. If the applicable finding of subsection D of this section has  
17 been made, whether the water to be stored is water that cannot reasonably  
18 be used directly by the applicant.

19           5. If the applicable finding of subsection D of this section has  
20 been made, any restrictions on where the water to be stored may legally be  
21 used.

22           6. Other conditions consistent with this chapter.

23           7. The duration of the permit.

24           I. If the water storage will occur at a groundwater savings  
25 facility, the water storage permit shall include, in addition to the  
26 information required by subsection H of this section, the requirements of  
27 the plan by which the quantity of groundwater saved at the storage  
28 facility will be proved each year.

29           J. If the director of the department of water resources decides to  
30 issue a water storage permit and the applicant has not received a water  
31 quality permit required by the department of environmental quality under  
32 title 49, chapter 2, article 3 and by federal law, the director of the  
33 department of water resources shall make receipt of the water quality  
34 permit a condition of the water storage permit and the holder of the water  
35 storage permit shall not store water until receiving the water quality  
36 permit.

37           Sec. 4. Section 45-832.01, Arizona Revised Statutes, is amended to  
38 read:

39           45-832.01. Use of stored water

40           A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, water that  
41 has been stored pursuant to a water storage permit may be used or  
42 exchanged only in the manner in which it was permissible to use or  
43 exchange the water before it was stored.

1 B. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, water that  
2 has been stored pursuant to a water storage permit may be used only in the  
3 location in which it was permissible to use the water before it was  
4 stored.

5 C. TREATED PROCESS WATER THAT HAS BEEN STORED PURSUANT TO A WATER  
6 STORAGE PERMIT MAY BE USED ONLY BY THE STORER FOR A NONIRRIGATION USE AT  
7 THE SAME SITE WHERE THE WATER WAS STORED.

8 ~~C.~~ D. Water that has been stored pursuant to a water storage  
9 permit may be used for replenishment purposes only in the active  
10 management area in which the water is stored, unless the water is  
11 recovered and transported to another active management area.

12 ~~D.~~ E. Stored water may be used only as follows:

13 1. The water may be recovered by the storer and used on an annual  
14 basis in accordance with section 45-851.01.

15 2. The water may be credited to the storer's long-term storage  
16 account, if the water meets the requirements of section 45-852.01, and the  
17 long-term storage credits may be used in accordance with ~~the provisions of~~  
18 this chapter.

19 3. A district that is storing water may have the stored water  
20 credited to its master replenishment account, if the water would meet the  
21 requirements of long-term storage credits as prescribed by section  
22 45-852.01.

23 4. A conservation district that is storing water may have the  
24 stored water credited to its conservation district account, if the water  
25 would meet the requirements of long-term storage credits as prescribed by  
26 section 45-852.01.

27 5. A water district that is storing water may have the stored water  
28 credited to its water district account, if the water would meet the  
29 requirements of long-term storage credits as prescribed by section  
30 45-852.01.

31 Sec. 5. Section 45-834.01, Arizona Revised Statutes, is amended to  
32 read:

33 45-834.01. Recovery of stored water; recovery well permit;  
34 emergency temporary recovery well permit; well  
35 construction

36 A. A person who holds long-term storage credits or who may recover  
37 water on an annual basis may recover the water stored pursuant to a water  
38 storage permit only:

39 1. If the person seeking to recover stored water has applied for  
40 and received a recovery well permit under this article.

41 2. For water stored within an active management area, if one of the  
42 following applies:

43 (a) The proposed recovery well is located within the area of impact  
44 of the stored water, as determined by the director, and either the person  
45 recovering the water is the storer or the stored water to be recovered is

1 Colorado river water. If the stored water to be recovered is effluent  
2 that is stored in a managed underground storage facility and if the  
3 proposed recovery well is not an already constructed well owned by the  
4 person recovering the water and is located within the exterior boundaries  
5 of the service area of a city, town, private water company or irrigation  
6 district, that city, town, private water company or irrigation district  
7 must be notified by the person recovering the stored water and must have  
8 the right to offer to recover the water stored on behalf of that person.  
9 If the city, town, private water company or irrigation district offers to  
10 recover the water on behalf of the person seeking recovery and the water  
11 that is offered for recovery is of comparable quality to the water that  
12 the person could recover, the person seeking to recover the water shall  
13 consider accepting the best offer from the city, town, private water  
14 company or irrigation district overlying the area of impact that has  
15 offered to recover the stored water.

16 (b) The proposed recovery well is located outside the area of  
17 impact of the stored water, as determined by the director, and all of the  
18 following apply:

19 (i) The proposed recovery well is located within the same active  
20 management area as storage.

21 (ii) The director determines that recovery at the proposed location  
22 is consistent with the management plan and achievement of the management  
23 goal for the active management area.

24 (iii) If the proposed recovery well is located within the exterior  
25 boundaries of the service area of a city, town, private water company or  
26 irrigation district, that city, town, private water company or irrigation  
27 district is the person seeking to recover the water or has consented to  
28 the location of the recovery well.

29 (iv) If the proposed recovery well is located outside, but within  
30 three miles of, the exterior boundaries of the service area of a city,  
31 town, private water company or irrigation district, the closest city,  
32 town, private water company or irrigation district has consented to the  
33 location of the recovery well.

34 (v) **THE STORED WATER IS NOT TREATED PROCESS WATER.**

35 (c) The proposed recovery well is located within the area of impact  
36 of the stored water, as determined by the director, the person recovering  
37 the water is not the storer, the stored water to be recovered is not  
38 Colorado river water and all of the conditions prescribed by subdivision  
39 (b), items (i) through (iv) of this paragraph are met.

40 3. For water stored outside of an active management area, if  
41 recovery will occur within the same irrigation non-expansion area,  
42 groundwater basin or groundwater sub-basin, as applicable, in which the  
43 water was stored.

1 B. Before recovering from any well water stored pursuant to a water  
2 storage permit, a person shall apply for and receive a recovery well  
3 permit from the director. The director shall issue the recovery well  
4 permit if the director determines that:

5 1. If the application is for a new well, as defined in section  
6 45-591, or except as provided in paragraphs 2 and 3 of this subsection for  
7 an existing well, as defined in section 45-591, the proposed recovery of  
8 stored water will not unreasonably increase damage to surrounding land or  
9 other water users from the concentration of wells. The director shall  
10 make this determination pursuant to rules adopted by the director.

11 2. If the applicant is a city, town, private water company or  
12 irrigation district in an active management area and the application is  
13 for an existing well within the service area of the city, town, private  
14 water company or irrigation district, the applicant has a right to use the  
15 existing well.

16 3. If the applicant is a conservation district and the application  
17 is for an existing well within the conservation district and within the  
18 groundwater basin or sub-basin in which the stored water is located, the  
19 applicant has a right to use the existing well.

20 C. A city, town, private water company or irrigation district in an  
21 active management area may apply with a single application to the director  
22 to have all existing wells, as defined in section 45-591, that the  
23 applicant has the right to use within its service area listed as recovery  
24 wells on the recovery well permit, if those wells otherwise meet the  
25 requirements of this section.

26 D. If the applicant is a conservation district, the director may  
27 issue an emergency temporary recovery well permit without complying with  
28 section 45-871.01, subsection F if the director determines that all of the  
29 following apply:

30 1. The conservation district cannot reasonably continue to supply  
31 central Arizona project water directly to a city, town, private water  
32 company or irrigation district due to an unplanned failure of a portion of  
33 the central Arizona project delivery system.

34 2. The emergency temporary recovery well permit is necessary to  
35 allow the conservation district to provide immediate delivery of  
36 replacement water to the city, town, private water company or irrigation  
37 district.

38 3. The application is for an existing well as defined in section  
39 45-591 that is within the groundwater basin or groundwater sub-basin in  
40 which the stored water is located, is within the conservation district and  
41 is within the service area of the city, town, private water company or  
42 irrigation district.

43 E. An emergency temporary recovery well permit issued pursuant to  
44 subsection D of this section may be issued for a period of up to ninety  
45 days and may be extended for additional ninety day periods if the director



1 determines that the conditions prescribed in subsection D of this section  
2 continue to apply.

3 F. If the application for a recovery well permit is approved, the  
4 director shall issue a permit and the applicant may proceed to construct  
5 or use the well. If the application is rejected, the applicant shall not  
6 proceed to construct or use the well. A new well shall be completed  
7 within one year of receipt of the permit, unless the director in granting  
8 the permit approves a longer period to complete the well. If the well is  
9 not completed within one year or the longer period approved by the  
10 director, the applicant shall file a new application before proceeding  
11 with construction.

12 G. A recovery well permit shall include the following information:

13 1. The name and mailing address of the person to whom the permit is  
14 issued.

15 2. The legal description of the location of the existing well or  
16 proposed new well from which stored water may be recovered pursuant to the  
17 permit.

18 3. The purpose for which the stored water will be recovered.

19 4. The depth and diameter of the existing well or proposed new well  
20 from which stored water may be recovered pursuant to the permit.

21 5. The legal description of the land on which the stored water will  
22 be used.

23 6. The maximum pumping capacity of the existing well or proposed  
24 new well.

25 7. If the permit is for a proposed new well, the latest date for  
26 completing the proposed new well.

27 8. Any other information as the director may determine.

28 Sec. 6. Section 45-851.01, Arizona Revised Statutes, is amended to  
29 read:

30 45-851.01. Recovery of stored water on an annual basis

31 A. Except as provided in subsections B, E, ~~and~~ F AND G of this  
32 section, a storer may recover the recoverable amount of water stored after  
33 January 1 of a calendar year on or before December 31 of the same calendar  
34 year.

35 B. If water is stored pursuant to a water storage permit and its  
36 use is based on a decreed or appropriative water right, the approximate  
37 recoverable amount of water stored in a month shall be recovered on or  
38 before the last day of the following month or within the same calendar  
39 year, whichever is earlier, unless the water is credited to a long-term  
40 storage account as prescribed by section 45-852.01.

41 C. Water stored after January 1 of a calendar year and not  
42 recovered on or before December 31 of the same calendar year may be  
43 credited to the storer's long-term storage account to the extent that the  
44 stored water is eligible for long-term storage credits as prescribed by  
45 section 45-852.01.

1 D. Water that is stored after January 1 of a calendar year, that is  
2 not recovered on or before December 31 of the same calendar year and that  
3 is not eligible to be credited to the storer's long-term storage account  
4 may not be recovered at any other time.

5 E. If the water stored was effluent stored at a managed underground  
6 storage facility that has not been designated as a facility that could add  
7 value to a national park, national monument or state park and subsection F  
8 of this section does not apply, the storer may recover during a year only  
9 fifty percent of the recoverable amount of water stored between January 1  
10 and December 31 of that year. If the storer recovers during the year less  
11 than fifty percent of the recoverable amount of the water stored during  
12 that year, the difference between fifty percent of the recoverable amount  
13 and the amount of stored water recovered during the year may be credited  
14 to the storer's long-term storage account to the extent that the stored  
15 water is eligible for long-term storage credits as prescribed by section  
16 45-852.01.

17 F. If the water stored was effluent stored at a managed underground  
18 storage facility that qualifies as an existing effluent managed  
19 underground storage facility and that has not been designated as a  
20 facility that could add value to a national park, national monument or  
21 state park, the storer may recover during a year only ninety-five percent  
22 of the recoverable amount of the water stored between January 1 and  
23 December 31 of that year. If the storer recovers during the year less  
24 than ninety-five percent of the recoverable amount of the water stored  
25 during that year, the difference between ninety-five percent of the  
26 recoverable amount and the amount of stored water recovered during the  
27 year may be credited to the storer's long-term storage account to the  
28 extent that the stored water is eligible for long-term storage credits as  
29 prescribed by section 45-852.01.

30 G. IF THE STORED WATER IS TREATED PROCESS WATER, THE STORER MAY  
31 RECOVER DURING A YEAR ONLY NINETY-FIVE PERCENT OF THE RECOVERABLE AMOUNT  
32 OF THE WATER STORED BETWEEN JANUARY 1 AND DECEMBER 31 OF THAT YEAR.  
33 TREATED PROCESS WATER IS NOT ELIGIBLE FOR LONG-TERM STORAGE CREDITS AS  
34 PRESCRIBED BY SECTION 45-852.01.

35 Sec. 7. Section 49-243, Arizona Revised Statutes, is amended to  
36 read:

37 49-243. Information and criteria for issuing individual  
38 permit; definition

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

42 1. The design of the discharge facility. When formal as-built  
43 submittals are unavailable, the applicant shall provide sufficient  
44 documentation to allow evaluation of those elements of the facility

1 affecting discharge pursuant to the demonstration required in subsection  
2 B, paragraph 1 of this section.

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

4 3. Existing and proposed pollutant control measures.

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

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

8 6. The existing quality of the water in the aquifers in the  
9 discharge impact area.

10 7. The characteristics of the pollutants discharged by the  
11 facility.

12 8. Closure strategy.

13 9. Any other relevant federal or state permits issued to the  
14 applicant.

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

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

20 1. That the facility will be so designed, constructed and operated  
21 as to ensure the greatest degree of discharge reduction achievable through  
22 application of the best available demonstrated control technology,  
23 processes, operating methods or other alternatives, including, where  
24 practicable, a technology permitting no discharge of pollutants. In  
25 determining best available demonstrated control technology, processes,  
26 operating methods or other alternatives, the director shall take into  
27 account any treatment process contributing to the discharge, site specific  
28 hydrologic and geologic characteristics and other environmental factors,  
29 the opportunity for water conservation or augmentation and economic  
30 impacts of the use of alternative technologies, processes or operating  
31 methods on an industry-wide basis. A discharge reduction to an aquifer  
32 achievable solely by means of site specific characteristics does not, in  
33 itself, constitute compliance with this paragraph. The requirements of  
34 this paragraph for wetlands designed and constructed to treat municipal  
35 and domestic wastewater for underground storage pursuant to section  
36 49-241, subsection B may be met by including seepage through the bottom of  
37 the facility if it is demonstrated that site characteristics can act to  
38 achieve performance levels established as the best available demonstrated  
39 control technology by the director. In addition, the director shall  
40 consider the following factors for existing facilities:

41 (a) Toxicity, concentrations and quantities of discharge likely to  
42 reach an aquifer from various types of control technologies.

43 (b) The total costs of the application of the technology in  
44 relation to the discharge reduction to be achieved from such application.

45 (c) The age of equipment and facilities involved.

1 (d) The industrial and control process employed.

2 (e) The engineering aspects of the application of various types of  
3 control techniques.

4 (f) Process changes.

5 (g) Non-water quality environmental impacts.

6 (h) The extent to which water available for beneficial uses will be  
7 conserved by a particular type of control technology.

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

11 3. That no pollutants discharged will further degrade at the  
12 applicable point of compliance the quality of any aquifer that at the time  
13 of the issuance of the permit violates the aquifer quality standard for  
14 that pollutant.

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

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

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

30 F. Control measures designed to further reduce discharge may not be  
31 required if the director determines that site specific conditions, in  
32 conjunction with technology, processes, operating methods or other  
33 alternatives are sufficient to meet the requirements of subsection B,  
34 paragraph 1 of this section.

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

39 1. The mine pit creates a passive containment that is sufficient to  
40 capture the pollutants discharged and that is hydrologically isolated to  
41 the extent that it does not allow pollutant migration from the capture  
42 zone. For the purposes of this paragraph, "passive containment" means  
43 natural or engineered topographical, geological or hydrological control  
44 measures that can operate without continuous maintenance. Monitoring and

1 inspections to confirm performance of the passive containment do not  
2 constitute maintenance.

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

5 H. The director shall issue a permit to a person for water storage  
6 at a storage facility proposed under title 45, chapter 3.1 if the person  
7 demonstrates that the facility will be so designed, constructed and  
8 operated as to ensure that the project will not cause or contribute to the  
9 violation of any standard adopted pursuant to section 49-223 OR TOXIC  
10 LEVELS OF ANY INDUSTRIAL POLLUTANT at the applicable point of compliance  
11 for the facility.

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

16 1. Any organic substance listed by the secretary of the department  
17 of health and human services pursuant to 42 United States Code section  
18 241(b)(4), as known to be carcinogens or reasonably anticipated to be  
19 carcinogens.

20 2. Any organic substance listed in 40 Code of Federal Regulations  
21 section 261.33(e), regardless of whether the substance is a waste subject  
22 to regulation under the resource conservation recovery act (P.L. 94-580;  
23 90 Stat. 2795).

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

27 J. The director, by rule, may prescribe requirements for issuing a  
28 single permit applicable to all similar facilities under common ownership  
29 and located in a contiguous geographic area in lieu of an individual  
30 permit for each facility.

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

34 1. Monitoring requirements.

35 2. Record keeping and reporting requirements.

36 3. Contingency plan requirements.

37 4. Discharge limitations.

38 5. Compliance schedule requirements.

39 6. Closure requirements and, for a facility that cannot achieve  
40 clean closure, postclosure monitoring and maintenance requirements.

41 7. Alert levels that, when exceeded, may require adjustments of  
42 permit conditions or appropriate actions as are required by the  
43 contingency plans.

44 8. Such other terms and conditions as the director deems necessary  
45 to ensure compliance with this article.

1 L. With the consent of the applicant or permittee, the director may  
2 include in an aquifer protection permit for an existing facility the  
3 requirement that the applicant or permittee undertake a remedial action,  
4 as defined in section 49-281, to prevent, minimize or mitigate damage to  
5 the public health or welfare or to the waters of the state resulting from  
6 a discharge that occurred before August 13, 1986, if the following  
7 conditions are met:

8 1. The selection of remedial action, including the level and extent  
9 of cleanup, was determined according to the criteria in section 49-282.06  
10 and the rules adopted pursuant to that section.

11 2. The pollutant that was discharged constituted a hazardous  
12 substance.

13 M. With the consent of the applicant or permittee, the director may  
14 include in an aquifer protection permit as a condition the mitigation  
15 measures authorized under section 49-286 instead of issuing a mitigation  
16 order under section 49-286.

17 N. The director may deny a permit for a facility if the director  
18 determines that the applicant is incapable of fully carrying out the terms  
19 and conditions of the permit, including any conditions that require  
20 monitoring or installing and maintaining discharge control measures. The  
21 following apply to an application for a permit or to an issued permit:

22 1. The director may require the applicant to furnish information,  
23 such as past performance, including compliance with or violations of  
24 similar laws or rules, and technical and financial competence, relevant to  
25 its capability to comply with the permit terms and conditions.

26 2. For the purposes of evaluating an applicant's financial  
27 competence for closure, the director may consider a closure strategy and  
28 cost estimate rather than a detailed closure plan. Except for a state or  
29 federal agency or a county, city, town or other local governmental entity,  
30 the cost estimate shall be based on the cost for the applicant or  
31 permittee to hire a third party to conduct the closure strategy or plan  
32 unless the financial responsibility mechanism provided pursuant to this  
33 subsection is a self-assurance or a guarantee and the director determines  
34 that the applicant or permittee is technically and financially capable of  
35 closing the facility at its own cost and, if necessary, of conducting  
36 postclosure monitoring and maintenance. Except for a state or federal  
37 agency or a county, city, town or other local governmental entity, the  
38 permittee shall update its cost estimate:

39 (a) For the duration of the permit on a periodic basis as scheduled  
40 in the permit but not more frequently than once every five years. The  
41 cost estimate shall be updated to adjust for inflation or as necessary to  
42 reflect increased or decreased costs resulting from changes to the  
43 facility or to the facility closure strategy or plan, or to any other  
44 relevant conditions related to the facility.

1 (b) For a significant amendment as defined by rule adopted by the  
2 director, if required to address incremental changes in the cost estimate  
3 that result from the significant amendment.

4 3. Except for a state or federal agency or a county, city, town or  
5 other local governmental entity, the applicant or permittee shall  
6 demonstrate financial responsibility to cover the estimated costs to close  
7 the facility and, if necessary, to conduct postclosure monitoring and  
8 maintenance by providing to the director for approval a financial  
9 assurance mechanism or combination of mechanisms as prescribed in rules  
10 adopted by the director or in 40 Code of Federal Regulations section  
11 264.143 (f)(1) and (10) as of January 1, 2014. An applicant or permittee  
12 that demonstrates financial responsibility by means of a self-assurance or  
13 guarantee shall aggregate the estimated closure and postclosure costs for  
14 all aquifer protection permits in this state for which the applicant,  
15 permittee or guarantor has provided a self-assurance or a guarantee in  
16 order to determine whether the applicant, permittee or guarantor meets the  
17 applicable financial test.

18 4. The permittee shall maintain its demonstration of financial  
19 responsibility prescribed in this subsection for the duration of the  
20 individual permit. Except for a state or federal agency or a county,  
21 city, town or other local governmental entity, the permittee shall  
22 periodically demonstrate financial responsibility and report to the  
23 director that the financial assurance mechanism is being maintained as  
24 scheduled in the permit and as prescribed in paragraph 3 of this  
25 subsection but not more frequently than once every two years. The  
26 permit's applicable reporting schedule shall be based on the type of  
27 financial assurance mechanism that is selected pursuant to this  
28 subsection.

29 5. A demonstration of financial responsibility made for a facility  
30 as prescribed by section 49-770 shall suffice, in whole or in part, for  
31 any demonstration of financial responsibility prescribed by this section.

32 6. A demonstration of financial assurance or competence required  
33 under this section or section 49-770 for a facility shall not be required  
34 before completion of construction but shall be required before the  
35 department issues approval to operate. Financial assurance for a facility  
36 is not required pursuant to this section if substantially similar  
37 financial assurance for that facility is required and has been provided  
38 pursuant to other federal, state or local laws, and evidence of that  
39 financial assurance is filed with the director.

40 7. Financial information required to be supplied under this  
41 subsection is confidential.

42 0. The director shall require an applicant for an individual permit  
43 to submit evidence that the discharging facility complies with applicable  
44 municipal or county zoning ordinances and regulations. The director shall  
45 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  
5 area in lieu of an individual permit for each facility. In issuing an  
6 area-wide permit, the demonstration required under subsection B,  
7 paragraphs 2 and 3 of this section may be considered collectively for all  
8 facilities included in the permit. The director may evaluate discharge  
9 reduction collectively for existing facilities in the pollutant management  
10 area by considering any one or all of the factors set forth in subsection  
11 B, paragraph 1 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  
16 points of compliance.

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

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

27 4. A compliance schedule for submittal and evaluation of  
28 information regarding design and discharge for existing facilities within  
29 the pollutant management area that, because of the small size, quantity or  
30 quality of discharge, or physical location with regard to the point or  
31 points of compliance, the director has determined that review for the  
32 purposes of subsection B, paragraph 1 of this section shall be conducted  
33 in the future. In determining the requirements and length of a compliance  
34 schedule for an area-wide permit, the director shall consider the  
35 character and impact of the discharge, the nature of the activities  
36 necessary to prepare appropriate technical submittals, the number of  
37 persons potentially affected by the discharge, the current state of  
38 treatment technology, and the age of the 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  
42 that exceeds a numeric aquifer water quality standard. The director shall  
43 not require the applicant to complete a hydrogeologic study in order to  
44 obtain the permit unless the permit applicant is relying on site specific  
45 characteristics to meet the requirements of subsection B, paragraph 1 of



1 this section or unless the study is necessary to demonstrate compliance  
2 with narrative aquifer water quality standards. Applications made  
3 pursuant to this subsection shall have precedence and be considered by the  
4 department before all other aquifer protection permit applications.

5 R. FOR THE PURPOSES OF THIS SECTION, "TOXIC" MEANS A POLLUTANT OR  
6 COMBINATION OF POLLUTANTS, THAT AFTER DISCHARGE AND UPON EXPOSURE,  
7 INGESTION, INHALATION, OR ASSIMILATION INTO AN ORGANISM, EITHER DIRECTLY  
8 FROM THE ENVIRONMENT OR INDIRECTLY BY INGESTION THROUGH FOOD CHAINS, MAY  
9 CAUSE DEATH, DISEASE, BEHAVIORAL ABNORMALITIES, CANCER, GENETIC MUTATIONS,  
10 PHYSIOLOGICAL MALFUNCTIONS INCLUDING MALFUNCTIONS IN REPRODUCTION, OR  
11 PHYSICAL DEFORMATIONS IN THE ORGANISM OR ITS OFFSPRING.

12 Sec. 8. Section 49-250, Arizona Revised Statutes, is amended to  
13 read:

14 49-250. Exemptions

15 A. The director, by rule, may exempt specifically described classes  
16 or categories of facilities from the aquifer protection permit  
17 requirements of this article on a finding either that there is no  
18 reasonable probability of degradation of the aquifer or that aquifer water  
19 quality will be maintained and protected because the discharges from the  
20 facilities are regulated under other federal or state programs that  
21 provide the same or greater aquifer water quality protection as provided  
22 by this article.

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

25 1. Household and domestic activities.

26 2. Household gardening, lawn watering, lawn care, landscape  
27 maintenance and related activities.

28 3. The noncommercial use of consumer products generally available  
29 to and used by the public.

30 4. Ponds used for watering livestock and wildlife.

31 5. Mining overburden returned to the excavation site including any  
32 common material that has been excavated and removed from the excavation  
33 site and has not been subjected to any chemical or leaching agent or  
34 process of any kind.

35 6. Facilities used solely for surface transportation or storage of  
36 groundwater, surface water for beneficial use or reclaimed water that is  
37 regulated pursuant to section 49-203, subsection A, paragraph 7 for  
38 beneficial use.

39 7. Discharge to a community sewer system.

40 8. Facilities that are required to obtain a permit for the direct  
41 reuse of reclaimed water.

42 9. Leachate resulting from the direct, natural infiltration of  
43 precipitation through undisturbed regolith or bedrock if pollutants are  
44 not added to the leachate as a result of any material or activity placed  
45 or conducted by man on the ground surface.

1           10. Surface impoundments used solely to contain storm runoff,  
2 except for surface impoundments regulated by the federal clean water act  
3 or article 3.1 of this chapter.

4           11. Closed facilities. However, if the facility ever resumes  
5 operation the facility shall obtain an aquifer protection permit and the  
6 facility shall be treated as a new facility for purposes of section  
7 49-243.

8           12. Facilities for the storage of water pursuant to title 45,  
9 chapter 3.1 unless reclaimed water OR TREATED PROCESS WATER is added.

10           13. Facilities using central Arizona project water for underground  
11 storage and recovery projects under title 45, chapter 3.1, article 6.

12           14. Water storage at a groundwater saving facility that has been  
13 permitted under title 45, chapter 3.1.

14           15. Application of water from any source, including groundwater,  
15 surface water or wastewater, to grow agricultural crops or for landscaping  
16 purposes, except as provided in section 49-247.

17           16. Discharges to a facility that is exempt pursuant to paragraph 6  
18 of this subsection if those discharges are regulated pursuant to 33 United  
19 States Code section 1342 or article 3.1 of this chapter.

20           17. Solid waste and special waste facilities if rules addressing  
21 aquifer protection are adopted by the director pursuant to section 49-761  
22 or 49-855 and those facilities obtain plan approval pursuant to those  
23 rules. This exemption shall apply only if the director determines that  
24 aquifer water quality standards will be maintained and protected because  
25 the discharges from those facilities are regulated under rules adopted  
26 pursuant to section 49-761 or 49-855 that provide aquifer water quality  
27 protection that is equal to or greater than aquifer water quality  
28 protection provided pursuant to this article.

29           18. Facilities used in:

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

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

37           (c) Corrective actions taken pursuant to the resource conservation  
38 and recovery act of 1976, as amended (42 United States Code sections 6901  
39 through 6992).

40           (d) Other remedial actions that have been reviewed and approved by  
41 the appropriate governmental authority and taken pursuant to applicable  
42 federal or state laws.

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

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

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

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

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

9           (a) Firefighting system testing and maintenance.

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

11           (c) Irrigation drainage and lawn watering.

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

13           (e) Pavement wash water if no spills or leaks of toxic or hazardous  
14 material have occurred unless all spilled material has first been removed  
15 and no detergents have been used.

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

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

20           (h) Occupational safety and health administration or mining safety  
21 and health administration safety equipment.

22           24. Industrial wastewater treatment facilities **THAT ARE NOT FOOD OR**  
23 **BEVERAGE MANUFACTURERS AND ARE** designed, constructed and operated as  
24 required by section 49-243, subsection B, paragraph 1 and **using THAT USE** a  
25 treatment system approved by the director to treat wastewater to meet  
26 aquifer water quality standards prior to discharge, if that water is  
27 stored at a groundwater storage facility pursuant to title 45,  
28 chapter 3.1.

29           25. Any point source discharge caused by a storm event and  
30 authorized in a permit issued pursuant to section 402 of the clean water  
31 act or an Arizona pollutant discharge elimination system permit under  
32 article 3.1 of this chapter.

33           26. Except for class V wells that are operating as prescribed by  
34 rules adopted pursuant to article 3.3 of this chapter or 42 United States  
35 Code section 300h-1(c), any underground injection well covered by a permit  
36 issued under article 3.3 of this chapter or under 42 United States Code  
37 section 300h-1(c).

38           Sec. 9. Process water reuse study committee; membership;  
39 duties; reports; delayed repeal

40           A. The process water reuse study committee is established  
41 consisting of:

42           1. Three members of the senate who are appointed by the president  
43 of the senate, not more than two of whom are members of the same political  
44 party.

1           2. Three members of the house of representatives who are appointed  
2 by the speaker of the house of representatives, not more than two of whom  
3 are members of the same political party.

4           3. The director of the department of water resources or the  
5 director's designee.

6           4. The director of the department of environmental quality or the  
7 director's designee.

8           5. The following members, appointed jointly by the president of the  
9 senate and the speaker of the house of representatives:

10           (a) One representative of food or beverage manufacturers.

11           (b) One representative of the mining industry.

12           (c) One representative of industries that use and discharge treated  
13 process water that are not described in subdivisions (a) and (b) of this  
14 paragraph.

15           (d) One representative of public service corporations that are  
16 regulated by the corporation commission and that hold a certificate of  
17 convenience and necessity for water service in an initial active  
18 management area.

19           (e) One representative of cities or towns that serve water in an  
20 initial active management area.

21           (f) One representative of an association of municipal water users  
22 in an initial active management area.

23           (g) One representative of an association of homebuilders in this  
24 state.

25           (h) One representative of an association of developers in this  
26 state.

27           B. Members of the committee are not eligible for compensation or  
28 reimbursement of expenses. The legislature shall provide staff support  
29 and meeting facilities for the committee.

30           C. The committee shall:

31           1. Study, analyze and evaluate issues relating to the treatment and  
32 underground storage of treated process water, including:

33           (a) Whether additional entities should be eligible to store treated  
34 process water.

35           (b) Whether any other statutory changes relating to the treatment  
36 and storage of treated process water should be made.

37           (c) Whether additional regulation of the chemicals contained in  
38 "treated process water" is warranted to protect groundwater quality.

39           2. Study, analyze and evaluate issues relating to the use of  
40 effluent to aid in obtaining an assured water supply, including:

41           (a) The method the department of water resources uses to account  
42 for effluent in certificates and designations of assured water supply and  
43 water modelling for the management of active management areas.

44           (b) Whether an applicant for a certificate of assured water supply  
45 in a service area without a designation of assured water supply should

1 receive a credit against proposed water use for the development based on  
2 effluent created by the developed land covered by the certificate of  
3 assured water supply application.

4         3. Submit a report of findings and recommendations, including any  
5 proposed legislation on or before December 31, 2022, to the governor, the  
6 president of the senate and the speaker of the house of representatives  
7 and provide a copy of this report to the secretary of state.

8         D. This section is repealed from and after December 31, 2023.