

House Engrossed
water quality fee fund

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

CHAPTER 204
HOUSE BILL 2406

AN ACT

AMENDING SECTIONS 49-203, 49-210, 49-241.02, 49-242 AND 49-255.01, ARIZONA
REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-203, Arizona Revised Statutes, is amended to
3 read:

4 49-203. Powers and duties of the director and department

5 A. The director shall:

6 1. Adopt, by rule, water quality standards in the form and subject
7 to the considerations prescribed by article 2 of this chapter.

8 2. Adopt, by rule, a permit program for WOTUS that is consistent
9 with but not more stringent than the requirements of the clean water act
10 for the point source discharge of any pollutant or combination of
11 pollutants into WOTUS. The program and the rules shall be sufficient to
12 enable this state to administer the permit program identified in section
13 402(b) of the clean water act, including the sewage sludge requirements of
14 section 405 of the clean water act and as prescribed by article 3.1 of
15 this chapter.

16 3. Apply the program and rules authorized under paragraph 2 of this
17 subsection to point source discharges to non-WOTUS protected surface
18 waters, consistent with section 49-255.04, which establishes the program
19 components and rules that do not apply to non-WOTUS protected surface
20 waters. The following are exempt from the non-WOTUS protected surface
21 waters point source discharge program:

22 (a) Discharges to a non-WOTUS protected surface water incidental to
23 a recharge project.

24 (b) Established or ongoing farming, ranching and silviculture
25 activities such as plowing, seeding, cultivating, minor drainage or
26 harvesting for the production of food, fiber or forest products or upland
27 soil and water conservation practices.

28 (c) Maintenance but not construction of drainage ditches.

29 (d) Construction and maintenance of irrigation ditches.

30 (e) Maintenance of structures such as dams, dikes and levees.

31 4. Adopt, by rule, a program to control nonpoint source discharges
32 of any pollutant or combination of pollutants into WOTUS.

33 5. Adopt, by rule, an aquifer protection permit program to control
34 discharges of any pollutant or combination of pollutants that are reaching
35 or may with a reasonable probability reach an aquifer. The permit program
36 shall be as prescribed by article 3 of this chapter.

37 6. Adopt, by rule, the permit program for underground injection
38 control described in the safe drinking water act.

39 7. Adopt, by rule, technical standards for conveyances of reclaimed
40 water and a permit program for the direct reuse of reclaimed water.

41 8. Adopt, by rule or as permit conditions, discharge limitations,
42 best management practice standards, new source performance standards,
43 toxic and pretreatment standards and other standards and conditions as
44 reasonable and necessary to carry out the permit programs and regulatory
45 duties described in paragraphs 2 through 6 of this subsection.

1 9. Assess and collect fees to revoke, issue, deny, modify or
2 suspend permits issued pursuant to this chapter and to process permit
3 applications. The director may also assess and collect costs reasonably
4 necessary if the director must conduct sampling or monitoring relating to
5 a facility because the owner or operator of the facility has refused or
6 failed to do so on order by the director. The director shall set fees
7 that are reasonably related to the department's costs of providing the
8 service for which the fee is charged. Monies collected from aquifer
9 protection permit fees and from Arizona pollutant discharge elimination
10 system permit fees shall be deposited, pursuant to sections 35-146 and
11 35-147, in the water quality fee fund established by section 49-210.
12 Monies from other permit fees shall be deposited, pursuant to sections
13 35-146 and 35-147, in the water quality fee fund unless otherwise provided
14 by law. Monies paid by an applicant for review by consultants for the
15 department pursuant to section 49-241.02, subsection ~~A~~ B shall be
16 deposited, pursuant to sections 35-146 and 35-147, in the water quality
17 fee fund established by section 49-210. State agencies are exempt from
18 all fees imposed pursuant to this chapter except for those fees associated
19 with the dredge and fill permit program established pursuant to article
20 3.2 of this chapter. For services provided under the dredge and fill
21 permit program, a state agency shall pay either:

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

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

26 10. Adopt, modify, repeal and enforce other rules that are
27 reasonably necessary to carry out the director's functions under this
28 chapter.

29 11. Require monitoring at an appropriate point of compliance for
30 any organic or inorganic pollutant listed under section 49-243, subsection
31 I if the director has reason to suspect the presence of the pollutant in a
32 discharge.

33 12. Adopt rules establishing what constitutes a significant
34 increase or adverse alteration in the characteristics or volume of
35 pollutants discharged for purposes of determining what constitutes a major
36 modification to an existing facility under the definition of new facility
37 pursuant to section 49-201. Before the adoption of these rules, the
38 director shall determine whether a change at a particular facility results
39 in a significant increase or adverse alteration in the characteristics or
40 volume of pollutants discharged on a case-by-case basis, taking into
41 account site conditions and operational factors.

42 13. Consider evidence gathered by the Arizona navigable stream
43 adjudication commission established by section 37-1121 when deciding
44 whether a permit is required to discharge pursuant to article 3.1 of this
45 chapter.

- 1 B. The director may:
- 2 1. On presentation of credentials, enter into, on or through any
- 3 public or private property from which a discharge has occurred, is
- 4 occurring or may occur or on which any disposal, land application of
- 5 sludge or treatment regulated by this chapter has occurred, is occurring
- 6 or may be occurring and any public or private property where records
- 7 relating to a discharge or records that are otherwise required to be
- 8 maintained as prescribed by this chapter are kept, as reasonably necessary
- 9 to ensure compliance with this chapter. The director or a department
- 10 employee may take samples, inspect and copy records required to be
- 11 maintained pursuant to this chapter, inspect equipment, activities,
- 12 facilities and monitoring equipment or methods of monitoring, take
- 13 photographs and take other action reasonably necessary to determine the
- 14 application of, or compliance with, this chapter. The owner or managing
- 15 agent of the property shall be afforded the opportunity to accompany the
- 16 director or department employee during inspections and investigations, but
- 17 prior notice of entry to the owner or managing agent is not required if
- 18 reasonable grounds exist to believe that notice would frustrate the
- 19 enforcement of this chapter. If the director or department employee
- 20 obtains any samples before leaving the premises, the director or
- 21 department employee shall give the owner or managing agent a receipt
- 22 describing the samples obtained and a portion of each sample equal in
- 23 volume or weight to the portion retained. If an analysis is made of
- 24 samples, or monitoring and testing are performed, a copy of the results
- 25 shall be furnished promptly to the owner or managing agent.
- 26 2. Require any person who has discharged, is discharging or may
- 27 discharge into the waters of the state under article 3, 3.1, 3.2 or 3.3 of
- 28 this chapter and any person who is subject to pretreatment standards and
- 29 requirements or sewage sludge use or disposal requirements under article
- 30 3.1 of this chapter to collect samples, to establish and maintain records,
- 31 including photographs, and to install, use and maintain sampling and
- 32 monitoring equipment to determine the absence or presence and nature of
- 33 the discharge or indirect discharge or sewage sludge use or disposal.
- 34 3. Administer state or federal grants, including grants to
- 35 political subdivisions of this state, for the construction and
- 36 installation of publicly and privately owned pollutant treatment works and
- 37 pollutant control devices and establish grant application priorities.
- 38 4. Develop, implement and administer a water quality planning
- 39 process, including a ranking system for applicant eligibility, wherein
- 40 appropriated state monies and available federal monies are awarded to
- 41 political subdivisions of this state to support or assist regional water
- 42 quality planning programs and activities.
- 43 5. Enter into contracts and agreements with the federal government
- 44 to implement federal environmental statutes and programs.

1 6. Enter into intergovernmental agreements pursuant to title 11,
2 chapter 7, article 3 if the agreement is necessary to more effectively
3 administer the powers and duties described in this chapter.

4 7. Participate in, conduct and contract for studies,
5 investigations, research and demonstrations relating to the causes,
6 minimization, prevention, correction, abatement, mitigation, elimination,
7 control and remedy of discharges and collect and disseminate information
8 relating to discharges.

9 8. File bonds or other security as required by a court in any
10 enforcement actions under article 4 of this chapter.

11 9. Adopt by rule a permit program for the discharge of dredged or
12 fill material into WOTUS for purposes of implementing the permit program
13 established by 33 United States Code section 1344.

14 C. Subject to section 38-503 and other applicable statutes and
15 rules, the department may contract with a private consultant to assist the
16 department in reviewing aquifer protection permit applications and on-site
17 wastewater treatment facilities to determine whether a facility meets the
18 criteria and requirements of this chapter and the rules adopted by the
19 director. Except as provided in section 49-241.02, subsection ~~B~~ B, the
20 department shall not use a private consultant if the fee charged for that
21 service would be greater than the fee the department would charge to
22 provide that service. The department shall pay the consultant for the
23 services rendered by the consultant from fees paid by the applicant or
24 facility to the department pursuant to subsection A, paragraph 9 of this
25 section.

26 D. The director shall integrate all of the programs authorized in
27 this section and other programs affording water quality protection that
28 are administered by the department for purposes of administration and
29 enforcement and shall avoid duplication and dual permitting to the maximum
30 extent practicable.

31 Sec. 2. Section 49-210, Arizona Revised Statutes, is amended to
32 read:

33 49-210. Water quality fee fund; appropriation; exemption;
34 monies held in trust

35 A. The water quality fee fund is established consisting of monies
36 appropriated by the legislature and fees received pursuant to sections
37 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352,
38 49-353 and 49-361. The director shall administer the fund.

39 B. Monies in the fund are subject to annual legislative
40 appropriation to the department for water quality programs. Monies in the
41 fund are exempt from the provisions of section 35-190 relating to lapsing
42 of appropriations.

43 C. On notice from the director, the state treasurer shall invest
44 and divest monies in the fund as provided by section 35-313, and monies
45 earned from investment shall be credited to the fund.

1 D. Monies in the water quality fee fund shall be used for ~~the~~
2 ~~following purposes~~ ACTIVITIES REQUIRED TO IMPLEMENT THIS CHAPTER, EXCEPT
3 FOR ARTICLES 1.1 AND 5 OF THIS CHAPTER, AND TO IMPLEMENT SECTION 49-104,
4 SUBSECTION B, PARAGRAPHS 9 THROUGH 13 AND SUBSECTION C. ~~;~~

- 5 ~~1. To issue aquifer protection permits pursuant to section 49-241.~~
- 6 ~~2. The aquifer protection permit registration fee procedures~~
7 ~~pursuant to section 49-242.~~
- 8 ~~3. Dry well registration fee procedures pursuant to section 49-332.~~
- 9 ~~4. Technical review fee procedures pursuant to section 49-353.~~
- 10 ~~5. Inspection fee procedures pursuant to section 49-104,~~
11 ~~subsection C.~~
- 12 ~~6. To issue permits under the Arizona pollutant discharge~~
13 ~~elimination system program pursuant to section 49-255.01.~~
- 14 ~~7. Operator certification pursuant to sections 49-352 and 49-361.~~
- 15 ~~8. Paying the cost of implementing section 49-203, subsection A,~~
16 ~~paragraph 7 and section 49-221, subsection E.~~
- 17 ~~9. Water quality monitoring pursuant to section 49-225 and~~
18 ~~reporting of aquifer pollution information pursuant to section 49-249.~~
- 19 ~~10. To implement and administer the underground injection control~~
20 ~~permit program established pursuant to article 3.3 of this chapter.~~
- 21 ~~11. To implement and administer the dredge and fill permit program~~
22 ~~established pursuant to article 3.2 of this chapter, including review and~~
23 ~~analysis for issuing jurisdictional determinations.~~

24 E. Any fee, assessment or other levy that is authorized by law or
25 administrative rule and that is collected and deposited in the water
26 quality fee fund shall be held in trust. The monies in the fund may be
27 used only for the purposes prescribed by statute and shall not be
28 appropriated or transferred by the legislature to fund the general
29 operations of this state or to otherwise meet the obligations of the
30 general fund of this state. This subsection does not apply to any taxes
31 or other levies that are imposed pursuant to title 42 or 43.

32 Sec. 3. Section 49-241.02, Arizona Revised Statutes, is amended to
33 read:

34 49-241.02. Aquifer protection permit program fees

35 A. ~~Only for a one-time rule making after July 29, 2010, the~~
36 ~~director shall establish by rule fees for aquifer protection permits,~~
37 ~~including maximum fees and fees for individual or area-wide permits,~~
38 ~~complex and standard modifications to permits and clean closure of a~~
39 ~~nonpermitted facility. After the one-time rule making, the director shall~~
40 ~~not increase those fees by rule without specific statutory authority for~~
41 ~~the increase.~~ THE DEPARTMENT SHALL ADOPT BY RULE FEES TO PAY THE EXPENSES
42 INCURRED IN IMPLEMENTING THE AQUIFER PROTECTION PERMIT PROGRAM. Monies
43 collected pursuant to this section shall be deposited, pursuant to
44 sections 35-146 and 35-147, in the water quality fee fund established by
45 section 49-210.

1 ~~B. Each permit action application submitted by the applicant is~~
2 ~~subject to a maximum fee.~~

3 ~~C. Notwithstanding any other provision in this section, an~~
4 ~~applicant may request that the department waive the applicable maximum fee~~
5 ~~for processing an application for a permit action. On requesting the~~
6 ~~waiver, the applicant agrees to pay the total direct costs incurred by the~~
7 ~~department in processing the application and the department may process~~
8 ~~the application for a permit action.~~

9 ~~D.~~ B. If the department contracts with a consultant under section
10 49-203, an applicant may request that the department expedite the
11 application review by requesting that the department use the services of
12 the consultant and agreeing to pay to the department the costs of the
13 consultant's services regardless of the other provisions of this section.

14 ~~E. The department shall review the revenues derived from and~~
15 ~~expenses incurred for processing permit action applications through June~~
16 ~~30, 2014 to determine the adequacy of the maximum fees, and by August 31,~~
17 ~~2014, the department shall issue a report to the legislature on its~~
18 ~~findings.~~

19 ~~F. For the purposes of this section:~~

20 ~~1. "Complex modification" means, for purposes of the mining sector,~~
21 ~~any of the following:~~

22 ~~(a) Any new tailing impoundment, leach pad or stockpile, or process~~
23 ~~solution impoundment or conveyance required to have an individual permit~~
24 ~~under this article, unless this new facility is within an approved passive~~
25 ~~containment capture zone under section 49-243, subsection G, paragraph 1.~~

26 ~~(b) The expansion of the footprint of any tailing impoundment,~~
27 ~~leach pad or stockpile, or process solution impoundment or conveyance~~
28 ~~permitted under this article if the expanded facility is not located~~
29 ~~within a passive containment capture zone under section 49-243, subsection~~
30 ~~G, paragraph 1, and the expansion either:~~

31 ~~(i) Requires expansion of the pollutant management area and a new~~
32 ~~or relocated point of compliance.~~

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

36 ~~(c) A new or expanded waste rock pile is not considered to be a~~
37 ~~discharging facility under section 49-241, subsection B and may be~~
38 ~~categorized as a complex modification for purposes of this section only if~~
39 ~~the department determines all of the following:~~

40 ~~(i) The new or expanded waste rock pile otherwise qualifies as a~~
41 ~~discharging facility and is not exempted under section 49-250.~~

42 ~~(ii) The new or expanded waste rock pile is located outside of a~~
43 ~~passive containment capture zone under section 49-243, subsection G,~~
44 ~~paragraph 1.~~

1 ~~(iii) The new or expanded waste rock pile either requires expansion~~
2 ~~of the pollutant management area and a new or relocated point of~~
3 ~~compliance or it extends over a geologic unit of higher hydraulic~~
4 ~~conductivity than the original facility.~~

5 ~~2. "Maximum fee" means the maximum amount the director establishes~~
6 ~~by rule for services for a permit action.~~

7 ~~3. "Permit action" means:~~

8 ~~(a) Issuance of an individual or area-wide aquifer protection~~
9 ~~permit to operate or to close.~~

10 ~~(b) Issuance of a complex modification of an individual or~~
11 ~~area-wide aquifer protection permit.~~

12 ~~(c) Issuance of a clean closure approval.~~

13 ~~(d) Issuance of a standard modification of an individual or~~
14 ~~area-wide aquifer protection permit.~~

15 ~~(e) Denial of any application.~~

16 ~~(f) Processing any permit action application request that the~~
17 ~~applicant withdraws.~~

18 ~~6. The department shall adopt a rule to define "complex~~
19 ~~modification" for other nonmining aquifer protection permit sectors.~~

20 Sec. 4. Section 49-242, Arizona Revised Statutes, is amended to
21 read:

22 49-242. Procedural requirements for individual permits;
23 annual registration of permittees; fee

24 A. The director shall prescribe by rule requirements for issuing,
25 denying, suspending or modifying individual permits, including
26 requirements for submitting notices, permit applications and any
27 additional information necessary to determine whether an individual permit
28 should be issued, and shall prescribe conditions and requirements for
29 individual permits.

30 B. Each owner of an injection well, a land treatment facility, a
31 dry well, an on-site wastewater treatment facility with a capacity of more
32 than three thousand gallons per day, a recharge facility or a facility
33 that discharges to protected surface waters to whom an individual or
34 area-wide permit is issued shall register the permit with the director
35 each year and pay an annual registration fee for each permit based on the
36 total daily discharge of pollutants pursuant to subsection E of this
37 section.

38 C. Each owner of a surface impoundment, a facility that adds a
39 pollutant to a salt dome formation, salt bed formation, underground cave
40 or mine, a mine tailings pile or pond, a mine leaching operation, a sewage
41 or sludge pond or a wastewater treatment facility to whom an individual or
42 area-wide permit is issued shall register the permit with the director
43 each year and pay an annual registration fee for each permit based on the
44 total daily influent of pollutants pursuant to subsection E of this
45 section.

1 D. Pending the issuance of individual or area-wide aquifer
2 protection permits, each owner of a facility that is prescribed in
3 subsection B or C of this section that is operating on September 27, 1990
4 pursuant to the filing of a notice of disposal or a groundwater quality
5 protection permit issued under title 36 shall register the notice of
6 disposal or the permit with the director each year and shall pay an annual
7 registration fee for each notice of disposal or permit based on the total
8 daily influent or discharge of pollutants pursuant to subsection E of this
9 section.

10 E. ~~Only for a onetime rulemaking after July 29, 2010,~~ The director
11 shall establish by rule an annual registration fee for facilities
12 prescribed by subsections B, C and D of this section. The fee shall be
13 measured in part by the amount of discharge or influent per day from the
14 facility. ~~After the onetime rulemaking, the director shall not increase~~
15 ~~those fees by rule without specific statutory authority for the increase.~~

16 F. For a site with more than one permit subject to the requirements
17 of this section, the owner or operator of the facility at that site shall
18 pay the annual registration fee prescribed pursuant to subsection E of
19 this section based on the permit that covers the greatest gallons of
20 discharge or influent per day plus one-half of the annual registration fee
21 for gallons of discharge or influent for each additional permit.

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

28 Sec. 5. Section 49-255.01, Arizona Revised Statutes, is amended to
29 read:

30 49-255.01. Arizona pollutant discharge elimination system
31 program; rules and standards; affirmative
32 defense; fees; general permit

33 A. A person shall not discharge except under either of the
34 following conditions:

35 1. In conformance with a permit that is issued or authorized under
36 this article or rules authorized under section 49-203, subsection A,
37 paragraph 2.

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

41 B. The director shall adopt rules to establish an AZPDES permit
42 program for discharges to WOTUS consistent with the requirements of
43 sections 402(b) and 402(p) of the clean water act. This program shall
44 include requirements to ensure compliance with section 307 and
45 requirements for the control of discharges consistent with sections 318

1 and 405(a) of the clean water act. The director shall not adopt any
2 requirement for WOTUS that is more stringent than any requirement of the
3 clean water act. The director shall not adopt any requirement that
4 conflicts with any requirement of the clean water act. The director may
5 adopt federal rules pursuant to section 41-1028 or may adopt rules to
6 reflect local environmental conditions to the extent that the rules are
7 consistent with and not more stringent than the clean water act and this
8 article.

9 C. The rules adopted by the director under subsection B of this
10 section shall provide for:

11 1. Issuing, authorizing, denying, modifying, suspending or revoking
12 individual or general permits.

13 2. ~~Establishment of~~ ESTABLISHING permit conditions, discharge
14 limitations and standards of performance as prescribed by section 49-203,
15 subsection A, paragraph 8 including case-by-case effluent limitations that
16 are developed in a manner consistent with 40 Code of Federal Regulations
17 section 125.3(c).

18 3. Modifications and variances as allowed by the clean water act.

19 4. Other provisions necessary for maintaining state program
20 authority under section 402(b) of the clean water act.

21 D. This article does not affect the validity of any existing rules
22 that are adopted by the director and that are equivalent to and consistent
23 with the national pollutant discharge elimination system program
24 authorized under section 402 of the clean water act until new rules for
25 AZPDES discharges are adopted pursuant to this article.

26 E. An upset constitutes an affirmative defense to any
27 administrative, civil or criminal enforcement action brought for
28 noncompliance with technology-based permit discharge limitations if the
29 permittee complies with all of the following:

30 1. The permittee demonstrates through properly signed
31 contemporaneous operating logs or other relevant evidence that:

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

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

36 (c) If the upset causes the discharge to exceed any discharge
37 limitation in the permit, the permittee submitted notice to the department
38 within twenty-four hours after the upset.

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

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

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

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

11 2. Limitations for pollutants in WOTUS adopted pursuant to sections
12 49-221 and 49-222, if the discharge of the pollutant is specifically
13 limited in a permit issued pursuant to this article or the pollutant was
14 specifically identified as present or potentially present in facility
15 discharges during the application process for the permit.

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

19 H. The decision of the director to issue or modify a permit takes
20 effect on issuance if there were no changes requested in comments that
21 were submitted on the draft permit unless a later effective date is
22 specified in the decision. In all other cases, the decision of the
23 director to issue, deny, modify, suspend or revoke a permit takes effect
24 thirty days after the decision is served on the permit applicant, unless
25 either of the following applies:

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

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

29 I. In addition to other reservations of rights provided by this
30 chapter, this article does not impair or affect rights or the exercise of
31 rights to water claimed, recognized, permitted, certificated, adjudicated
32 or decreed pursuant to state or other law.

33 J. ~~Only for a onetime rulemaking after July 29, 2010,~~ The director
34 shall establish by rule fees, including maximum fees, ~~for processing,~~
35 ~~issuing and denying an application for a permit pursuant to this section~~
36 **TO PAY EXPENSES INCURRED IN IMPLEMENTING THE AZPDES PROGRAM.** ~~After the~~
37 ~~onetime rulemaking, the director shall not increase those fees by rule~~
38 ~~without specific statutory authority for the increase.~~ Monies collected
39 pursuant to this section shall be deposited, pursuant to sections 35-146
40 and 35-147, in the water quality fee fund established by section 49-210.

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

43 L. When developing a general permit for discharges of storm water
44 from construction activity, the director shall provide for reduced control
45 measures at sites that retain storm water in a manner that eliminates

1 discharges from the site, except for the occurrence of an extreme event.
2 Reduced control measures shall be available if all of the following
3 conditions are met:

- 4 1. The nearest downstream receiving water is ephemeral and the
5 construction site is a sufficient distance from a water warranting
6 additional protection as described in the general permit.
- 7 2. The construction activity occurs on a site designed so that all
8 storm water generated by disturbed areas of the site exclusive of public
9 rights-of-way is directed to one or more retention basins that are
10 designed to retain the runoff from an extreme event. For the purposes of
11 this subsection, "extreme event" means a rainfall event that meets or
12 exceeds the local one hundred-year, two-hour storm event as calculated by
13 an Arizona registered professional engineer using industry practices.
- 14 3. The owner or operator complies with good housekeeping measures
15 included in the general permit.
- 16 4. The owner or operator maintains the capacity of the retention
17 basins.
- 18 5. Construction conforms to the standards prescribed by this
19 section.
- 20 M. If the director commences proceedings for the renewal of a
21 general permit issued pursuant to this article, the existing general
22 permit shall not expire and coverage may continue to be obtained by new
23 dischargers until the proceedings have resulted in a final determination
24 by the director. If the proceedings result in a decision not to renew the
25 general permit, the existing general permit shall continue in effect until
26 the last day for filing for review of the decision of the director not to
27 renew the permit or until any later date that is fixed by court order.

APPROVED BY THE GOVERNOR APRIL 29, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2022.