

House Engrossed

remedial groundwater incentive; brackish groundwater

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2186

AN ACT

AMENDING SECTIONS 45-561 AND 45-576.01, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 45-581, 45-581.01 AND 45-581.02; AMENDING SECTIONS 49-201, 49-281 AND 49-287.04, ARIZONA REVISED STATUTES; RELATING TO BRACKISH GROUNDWATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-561, Arizona Revised Statutes, is amended to
3 read:

4 45-561. Definitions

5 In this article, unless the context otherwise requires:

6 1. "ANNUAL AUTHORIZED VOLUME" MEANS, FOR AN APPROVED REMEDIAL
7 ACTION PROJECT, THE ANNUAL AUTHORIZED VOLUME SPECIFIED IN A CONSENT DECREE
8 OR OTHER DOCUMENT APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR
9 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, EXCEPT THAT:

10 (a) IF NO ANNUAL AUTHORIZED AMOUNT IS SPECIFIED IN A CONSENT DECREE
11 OR OTHER DOCUMENT APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR
12 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE ANNUAL AUTHORIZED
13 VOLUME IS THE LARGEST VOLUME OF GROUNDWATER WITHDRAWN PURSUANT TO THE
14 APPROVED REMEDIAL ACTION PROJECT IN ANY YEAR BEFORE THE EFFECTIVE DATE OF
15 THIS AMENDMENT TO THIS SECTION.

16 (b) IF THE DIRECTOR INCREASES THE ANNUAL AUTHORIZED VOLUME PURSUANT
17 TO SECTION 45-581, THE ANNUAL AUTHORIZED VOLUME IS THE AMOUNT APPROVED BY
18 THE DIRECTOR.

19 2. "APPROVED REMEDIAL ACTION PROJECT" MEANS A REMEDIAL ACTION
20 PROJECT APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO
21 TITLE 49 OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO
22 CERCLA AS DEFINED IN SECTION 45-802.01.

23 ~~1.~~ 3. "Aquifer" means a geologic formation that contains
24 sufficient saturated materials to be capable of storing water and
25 transmitting water in usable quantities to a well.

26 ~~2.~~ 4. "Augmentation" means to supplement the water supply of an
27 active management area and may include the importation of water into the
28 active management area, storage of water or storage of water pursuant to
29 chapter 3.1 of this title.

30 5. "AUTHORIZED REMEDIAL GROUNDWATER USE" MEANS, FOR ANY YEAR, THE
31 AMOUNT OF REMEDIAL GROUNDWATER WITHDRAWN PURSUANT TO AN APPROVED REMEDIAL
32 ACTION PROJECT AND USED BY A PERSON WITH OR APPLYING FOR A CERTIFICATE OR
33 DESIGNATION OF ASSURED WATER SUPPLY DURING THE YEAR, NOT TO EXCEED THE
34 ANNUAL AUTHORIZED VOLUME OF THE PROJECT.

35 ~~3.~~ 6. "Incidental recharge" means the percolation of water to an
36 aquifer after the water has been withdrawn, diverted or received for
37 delivery by a municipal provider for use within its service area, except
38 water that is added to an aquifer pursuant to chapter 3.1 of this title.

39 ~~4.~~ 7. "Incidental recharge factor" means the ratio of the amount
40 of incidental recharge attributable to a municipal provider during a
41 calendar year to the amount of water withdrawn, diverted or received for
42 delivery by the municipal provider for use within its service area during
43 the year. The amount of incidental recharge attributable to a municipal
44 provider during a calendar year is the amount of water that is
45 incidentally recharged during the year after it is withdrawn, diverted or

1 received for delivery by the municipal provider for use within its service
2 area.

3 ~~5.~~ 8. "Industrial use" means a non-irrigation use of water not
4 supplied by a city, town or private water company, including animal
5 industry use and expanded animal industry use.

6 ~~6.~~ 9. "Intermediate water duty" means an irrigation water duty, as
7 defined in section 45-402, ~~which~~ THAT is established by the director
8 during a management period to apply for a specific number of years during
9 the management period.

10 ~~7.~~ 10. "Large untreated water provider" means a municipal provider
11 that as of January 1, 1990 was serving untreated water to at least five
12 hundred persons or supplying at least one hundred acre-feet of untreated
13 water during a calendar year.

14 ~~8.~~ 11. "Management period" means a period of years prescribed by
15 sections 45-564 through 45-568 during which a prescribed management plan
16 applies.

17 ~~9.~~ 12. "Mined groundwater" means the amount of groundwater
18 withdrawn or received by a municipal provider from within an active
19 management area during a calendar year for use in its service area, minus
20 both of the following, as applicable:

21 (a) An amount of water computed by multiplying the amount of water
22 supplied by the municipal provider for use within its service area during
23 the calendar year by the incidental recharge factor established for the
24 municipal provider pursuant to this article.

25 (b) If the municipal provider is a city or town in the Tucson
26 active management area, the amount of groundwater withdrawn by the
27 municipal provider during the calendar year from land owned or leased by
28 the municipal provider to which a type 1 non-irrigation grandfathered
29 right under section 45-463, subsection A is appurtenant, up to the
30 following amount:

31 (i) If the municipal provider has made a request to the director as
32 described in section 45-463, subsection F, the amount of groundwater
33 computed by the director under section 45-463, subsection F, in
34 determining whether to designate or redesignate the municipal provider as
35 having an assured water supply, minus the amount of any groundwater
36 withdrawn by the municipal provider from the land during the period
37 beginning with January 1 of the year in which the request was made and
38 ending on December 31 of the year immediately preceding the calendar year
39 for which the calculation of mined groundwater is being made.

40 (ii) If the municipal provider has not made a request to the
41 director as described in section 45-463, subsection F, the amount of
42 groundwater that the director would have been required to include in
43 determining whether to designate or redesignate the municipal provider as
44 having an assured water supply, as computed under section 45-463,
45 subsection F, if the municipal provider had made a request to the director

1 as described in that subsection on January 1 of the calendar year for
2 which the calculation of mined groundwater is being made.

3 ~~10.~~ 13. "Municipal provider" means a city, town, private water
4 company or irrigation district that supplies water for non-irrigation use.

5 ~~11.~~ 14. "Municipal use" means all non-irrigation uses of water
6 supplied by a city, town, private water company or irrigation district,
7 except for uses of water, other than Colorado river water, released for
8 beneficial use from storage, diversion or distribution facilities to avoid
9 spilling that would otherwise occur due to uncontrolled surface water
10 inflows that exceed facility capacity.

11 15. "REMEDIAL GROUNDWATER":

12 (a) MEANS GROUNDWATER WITHDRAWN PURSUANT TO AN APPROVED REMEDIAL
13 ACTION PROJECT.

14 (b) DOES NOT INCLUDE GROUNDWATER WITHDRAWN TO PROVIDE AN
15 ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03.

16 ~~12.~~ 16. "Safe-yield" means a groundwater management goal which
17 attempts to achieve and thereafter maintain a long-term balance between
18 the annual amount of groundwater withdrawn in an active management area
19 and the annual amount of natural and artificial recharge in the active
20 management area.

21 ~~13.~~ 17. "Small municipal provider" means a municipal provider that
22 supplies two hundred fifty acre-feet or less of water for non-irrigation
23 use during a calendar year. For THE purposes of this paragraph, the
24 amount of untreated water that is supplied by a large untreated water
25 provider during a year shall not be counted in determining whether the
26 municipal provider supplied two hundred fifty acre-feet or less of water
27 for non-irrigation use.

28 ~~14.~~ 18. "Untreated water" means water that is not treated to
29 improve its quality and that is supplied by a municipal provider through a
30 distribution system other than a potable water distribution system.

31 Sec. 2. Section 45-576.01, Arizona Revised Statutes, is amended to
32 read:

33 45-576.01. Determining consistency with management goal in a
34 replenishment district, conservation district
35 and water district

36 A. For the purpose of determining whether an assured water supply
37 exists, the director shall find that a groundwater replenishment district
38 member's projected use is consistent with achieving the management goal
39 for the active management area under section 45-576 if:

40 1. The land for which a certificate or the city, town or private
41 water company for which a designation is sought is in a groundwater
42 replenishment district established pursuant to title 48, chapter 27.

43 2. The director has made either a preliminary determination that
44 has not expired or a final determination that the district's plan for

1 operation is consistent with achieving the management goal according to
2 section 45-576.03, subsection E.

3 3. The master replenishment account established pursuant to section
4 45-858.01 does not have a debit balance that exceeds the cumulative amount
5 of the district's debits accrued during the four preceding calendar years.

6 B. For the purpose of determining whether an assured water supply
7 exists, the director shall find that a projected use is consistent with
8 achieving the management goal for the active management area under section
9 45-576 if all of the following apply:

10 1. The land for which a certificate is sought is a member land, or
11 the service area of a city, town or private water company for which a
12 designation is sought is a member service area, in a conservation district
13 as provided by title 48, chapter 22, article 4, or the land for which a
14 certificate is sought is a water district member land, or the service area
15 for which a designation is sought is a water district member service area
16 in a water district as provided by title 48, chapter 28, article 7.

17 2. The director's most recent determination pursuant to section
18 45-576.03, subsection M, O or R that the plan for operation submitted by
19 the conservation district or water district is consistent with achieving
20 the management goal for the active management area in which the use is
21 located has not expired.

22 3. The conservation district or the water district, whichever is
23 obligated to replenish groundwater on behalf of the land for which a
24 certificate is sought or the service area of a city, town or private water
25 company for which a designation is sought, is currently in compliance with
26 its groundwater replenishment obligation for the active management area in
27 which the use is located, as determined by the director pursuant to
28 section 45-859.01 or 45-860.01.

29 C. THE USE OF REMEDIAL GROUNDWATER BY A PERSON WITH OR APPLYING FOR
30 A CERTIFICATE OR DESIGNATION OF ASSURED WATER SUPPLY DURING A YEAR IS
31 DEEMED CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA
32 IN WHICH THE REMEDIAL GROUNDWATER IS WITHDRAWN AND IS EXCLUDED WHEN
33 DETERMINING COMPLIANCE WITH MANAGEMENT GOAL REQUIREMENTS IN THIS ARTICLE
34 IF THE DIRECTOR DETERMINES THAT THE REMEDIAL GROUNDWATER USE IS CONSISTENT
35 WITH THE MANAGEMENT GOAL PURSUANT TO SECTION 45-581.01 AND THE PERSON
36 COMPLIES WITH THE METERING AND REPORTING REQUIREMENTS ESTABLISHED IN
37 SECTIONS 45-581.01 AND 45-581.02.

38 D. THE USE OF REMEDIAL GROUNDWATER BY A PERSON WITH OR APPLYING FOR
39 A CERTIFICATE OR DESIGNATION OF ASSURED WATER SUPPLY DURING A YEAR IS
40 DEEMED CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA
41 IN WHICH THE REMEDIAL GROUNDWATER IS WITHDRAWN AND IS EXCLUDED WHEN
42 DETERMINING COMPLIANCE WITH MANAGEMENT GOAL REQUIREMENTS IN THIS ARTICLE
43 WITHOUT APPROVAL OF THE DIRECTOR IF ALL THE FOLLOWING APPLY:

1 1. THE REMEDIAL GROUNDWATER ASSOCIATED WITH THE WITHDRAWAL OR USE
2 MEETS THE DEFINITION OF A HAZARDOUS SUBSTANCE PRESCRIBED IN SECTION
3 49-201, PARAGRAPH 21, SUBDIVISION (g).

4 2. THE TOTAL AMOUNT OF REMEDIAL GROUNDWATER TO BE WITHDRAWN FROM
5 ALL WELLS PURSUANT TO THE APPROVED REMEDIAL ACTION PROJECT DOES NOT EXCEED
6 THE TOTAL AMOUNT OF REMEDIAL GROUNDWATER IN THE RELEVANT AREA THAT MEETS
7 THE DEFINITION OF A HAZARDOUS SUBSTANCE PRESCRIBED IN SECTION 49-201,
8 PARAGRAPH 21, SUBDIVISION (g).

9 3. THE PERSON PROVIDES THE INFORMATION REQUIRED IN SECTION
10 45-581.02.

11 4. THE PERSON COMPLIES WITH THE METERING AND REPORTING REQUIREMENTS
12 ESTABLISHED IN SECTIONS 45-581.01 AND 45-581.02.

13 Sec. 3. Title 45, chapter 2, article 9, Arizona Revised Statutes,
14 is amended by adding sections 45-581, 45-581.01 and 45-581.02, to read:

15 45-581. Remedial groundwater; applications; authorization;
16 rules

17 A. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
18 ASSURED WATER SUPPLY THAT IS USING OR PROPOSING TO USE REMEDIAL
19 GROUNDWATER OR THAT HAS AGREED IN A CONSENT DECREE OR OTHER DOCUMENT
20 APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE UNITED STATES
21 ENVIRONMENTAL PROTECTION AGENCY TO USE REMEDIAL GROUNDWATER MAY APPLY TO
22 THE DIRECTOR FOR A DETERMINATION THAT THE PERSON'S USE OF THE REMEDIAL
23 GROUNDWATER IS CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE
24 MANAGEMENT AREA BY SUBMITTING AN APPLICATION ON A FORM PROVIDED BY THE
25 DIRECTOR.

26 B. IF THE DIRECTOR APPROVES AN APPLICATION FOR A DETERMINATION THAT
27 THE PERSON'S USE OF THE REMEDIAL GROUNDWATER IS CONSISTENT WITH THE
28 MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA, THE DIRECTOR SHALL
29 CALCULATE THE ANNUAL AMOUNT OF REMEDIAL GROUNDWATER USE THAT IS DEEMED
30 CONSISTENT WITH THE MANAGEMENT GOAL.

31 C. THE DIRECTOR SHALL ADOPT RULES:

32 1. ESTABLISHING A SIMPLIFIED APPLICATION PROCESS TO DETERMINE THAT
33 REMEDIAL GROUNDWATER USE IS CONSISTENT WITH THE MANAGEMENT GOALS OF AN
34 ACTIVE MANAGEMENT AREA.

35 2. OUTLINING THE TIMELINE FOR REVIEW FOR AN APPLICATION SUBMITTED
36 PURSUANT TO THIS SECTION.

37 3. OUTLINING THE FORMULATION TO CALCULATE, INCREASE OR DECREASE THE
38 ANNUAL AUTHORIZED VOLUME THAT CAN BE WITHDRAWN.

39 45-581.01. Remedial groundwater; metering; reporting

40 A. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
41 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW REMEDIAL
42 GROUNDWATER THAT IS OR HAS BEEN DETERMINED TO BE CONSISTENT WITH THE
43 MANAGEMENT GOAL UNDER SECTION 45-576.01 SHALL METER THE REMEDIAL
44 GROUNDWATER WITHDRAWALS SEPARATELY FROM GROUNDWATER WITHDRAWN PURSUANT TO
45 ANOTHER GROUNDWATER WITHDRAWAL AUTHORITY.

1 B. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
2 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW REMEDIAL
3 GROUNDWATER THAT IS OR HAS BEEN DETERMINED TO BE CONSISTENT WITH THE
4 MANAGEMENT GOAL UNDER SECTION 45-576.01 SHALL INCLUDE IN ITS ANNUAL
5 REPORTS, FILED UNDER SECTION 45-632, THE AMOUNT OF REMEDIAL GROUNDWATER
6 WITHDRAWN DURING THE REPORTING YEAR THAT IS CONSISTENT WITH THE MANAGEMENT
7 GOAL UNDER THIS ARTICLE AND THE PURPOSES FOR WHICH THE REMEDIAL
8 GROUNDWATER WAS USED.

9 45-581.02. Remedial groundwater; brackish groundwater
10 desalination; notice

11 A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
12 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW OR USE
13 REMEDIAL GROUNDWATER THAT MEETS THE DEFINITION OF A HAZARDOUS SUBSTANCE
14 PRESCRIBED IN SECTION 49-201, PARAGRAPH 21, SUBDIVISION (g) AND IS DEEMED
15 CONSISTENT WITH THE MANAGEMENT GOALS OF AN ACTIVE MANAGEMENT AREA UNDER
16 SECTION 45-576.01 SUBSECTION C OR D SHALL PROVIDE NOT LESS THAN ONE
17 HUNDRED TWENTY DAYS BEFORE COMMENCEMENT OF THE WITHDRAWALS OR USE OR ONE
18 HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, WHICHEVER IS
19 LATER, WRITTEN NOTICE TO THE DIRECTOR OF THE FOLLOWING:

20 1. THE ANNUAL VOLUME OF REMEDIAL GROUNDWATER TO BE WITHDRAWN FROM
21 EACH WELL PURSUANT TO THE APPROVED REMEDIAL ACTION PROJECT.

22 2. THE TOTAL AMOUNT OF REMEDIAL GROUNDWATER IN THE RELEVANT AREA
23 THAT MEETS THE DEFINITION OF A HAZARDOUS SUBSTANCE PRESCRIBED IN SECTION
24 49-201, PARAGRAPH 21, SUBDIVISION (g).

25 3. THE TIME PERIOD IN WHICH REMEDIAL GROUNDWATER WILL BE WITHDRAWN
26 AND USED.

27 4. THE ANTICIPATED OR ACTUAL COMMENCEMENT DATE OF WITHDRAWALS OR
28 USE.

29 5. THE PURPOSE FOR WHICH THE REMEDIAL GROUNDWATER WILL BE USED.

30 6. A COPY OF A DOCUMENT EVIDENCING DEPARTMENT OF ENVIRONMENTAL
31 QUALITY OR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY APPROVAL OF THE
32 PERSON'S WITHDRAWAL AND USE OF REMEDIAL GROUNDWATER, SUCH AS A REMEDIAL
33 ACTION PLAN, RECORD OF DECISION OR CONSENT DECREE.

34 7. THE PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
35 ASSURED WATER SUPPLY TO WHICH THE REMEDIAL GROUNDWATER WILL BE PLEDGED.

36 8. THE NAME AND TELEPHONE NUMBER THE DEPARTMENT OF WATER RESOURCES
37 MAY CONTACT REGARDING THE WITHDRAWAL OR USE.

38 Sec. 4. Section 49-201, Arizona Revised Statutes, is amended to
39 read:

40 49-201. Definitions

41 In this chapter, unless the context otherwise requires:

42 1. "Administrator" means the administrator of the United States
43 environmental protection agency.

1 2. "Aquifer" means a geologic unit that contains sufficient
2 saturated permeable material to yield usable quantities of water to a well
3 or spring.

4 3. "Best management practices" means those methods, measures or
5 practices to prevent or reduce discharges and includes structural and
6 nonstructural controls and operation and maintenance procedures. Best
7 management practices may be applied before, during and after discharges to
8 reduce or eliminate the introduction of pollutants into receiving waters.
9 Economic, institutional and technical factors shall be considered in
10 developing best management practices.

11 4. "CERCLA" means the comprehensive environmental response,
12 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
13 2767; 42 United States Code sections 9601 through 9657), commonly known as
14 "superfund".

15 5. "Clean closure" means implementation of all actions specified in
16 an aquifer protection permit, if any, as closure requirements, as well as
17 elimination, to the greatest degree practicable, of any reasonable
18 probability of further discharge from the facility and of either exceeding
19 aquifer water quality standards at the applicable point of compliance or,
20 if an aquifer water quality standard is exceeded at the time the permit is
21 issued, causing further degradation of the aquifer at the applicable point
22 of compliance as provided in section 49-243, subsection B, paragraph 3.
23 Clean closure also means postclosure monitoring and maintenance are
24 unnecessary to meet the requirements in an aquifer protection permit.

25 6. "Clean water act" means the federal water pollution control act
26 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code
27 sections 1251 through 1376), as amended.

28 7. "Closed facility" means:

29 (a) A facility that ceased operation before January 1, 1986, that
30 is not, on August 13, 1986, engaged in the activity for which the facility
31 was designed and that was previously operated and for which there is no
32 intent to resume operation.

33 (b) A facility that has been approved as a clean closure by the
34 director.

35 (c) A facility at which any postclosure monitoring and maintenance
36 plan, notifications and approvals required in a permit have been
37 completed.

38 8. "Concentrated animal feeding operation" means an animal feeding
39 operation that meets the criteria prescribed in 40 Code of Federal
40 Regulations part 122, appendix B for determining a concentrated animal
41 feeding operation for purposes of 40 Code of Federal Regulations sections
42 122.23 and 122.24, appendix C.

43 9. "Department" means the department of environmental quality.

1 10. "Direct reuse" means the beneficial use of reclaimed water for
2 specific purposes authorized pursuant to section 49-203, subsection A,
3 paragraph 7.

4 11. "Director" means the director of environmental quality or the
5 director's designee.

6 12. "Discharge" means the direct or indirect addition of any
7 pollutant to the waters of the state from a facility. For purposes of the
8 aquifer protection permit program prescribed by article 3 of this chapter,
9 discharge means the addition of a pollutant from a facility either
10 directly to an aquifer or to the land surface or the vadose zone in such a
11 manner that there is a reasonable probability that the pollutant will
12 reach an aquifer.

13 13. "Discharge impact area" means the potential areal extent of
14 pollutant migration, as projected on the land surface, as the result of a
15 discharge from a facility.

16 14. "Discharge limitation" means any restriction, prohibition,
17 limitation or criteria established by the director, through a rule, permit
18 or order, on quantities, rates, concentrations, combinations, toxicity and
19 characteristics of pollutants.

20 15. "Effluent-dependent water" means a surface water or portion of
21 a surface water that consists of a point source discharge without which
22 the surface water would be ephemeral. An effluent-dependent water may be
23 perennial or intermittent depending on the volume and frequency of the
24 point source discharge of treated wastewater.

25 16. "Environment" means WOTUS, any other surface waters,
26 groundwater, drinking water supply, land surface or subsurface strata or
27 ambient air, within or bordering on this state.

28 17. "Ephemeral water" means a surface water or portion of surface
29 water that flows or pools only in direct response to precipitation.

30 18. "Existing facility" means a facility on which construction
31 began before August 13, 1986 and that is neither a new facility nor a
32 closed facility. For the purposes of this definition, construction on a
33 facility has begun if the facility owner or operator has either:

34 (a) Begun, or caused to begin, as part of a continuous on-site
35 construction program any placement, assembly or installation of a
36 building, structure or equipment.

37 (b) Entered a binding contractual obligation to purchase a
38 building, structure or equipment that is intended to be used in its
39 operation within a reasonable time. Options to purchase or contracts that
40 can be terminated or modified without substantial loss, and contracts for
41 feasibility engineering and design studies, do not constitute a
42 contractual obligation for purposes of this definition.

43 19. "Facility" means any land, building, installation, structure,
44 equipment, device, conveyance, area, source, activity or practice from
45 which there is, or with reasonable probability may be, a discharge.

1 20. "Gray water" means wastewater that has been collected
2 separately from a sewage flow and that originates from a clothes washer or
3 a bathroom tub, shower or sink but that does not include wastewater from a
4 kitchen sink, dishwasher or toilet.

5 21. "Hazardous substance" means:

6 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
7 307(a) of the clean water act.

8 (b) Any element, compound, mixture, solution or substance
9 designated pursuant to section 102 of CERCLA.

10 (c) Any hazardous waste having the characteristics identified under
11 or listed pursuant to section 49-922.

12 (d) Any hazardous air pollutant listed under section 112 of the
13 federal clean air act (42 United States Code section 7412).

14 (e) Any imminently hazardous chemical substance or mixture with
15 respect to which the administrator has taken action pursuant to section 7
16 of the federal toxic substances control act (15 United States Code section
17 2606).

18 (f) Any substance that the director, by rule, either designates as
19 a hazardous substance following the designation of the substance by the
20 administrator under the authority described in subdivisions (a) through
21 (e) of this paragraph or designates as a hazardous substance on the basis
22 of a determination that such substance represents an imminent and
23 substantial endangerment to public health.

24 (g) GROUNDWATER CONTAINING TOTAL DISSOLVED SOLIDS BETWEEN ONE
25 THOUSAND AND TEN THOUSAND MILLIGRAMS PER LITER.

26 22. "Inert material":

27 (a) Means broken concrete, asphaltic pavement, manufactured
28 asbestos-containing products, brick, rock, gravel, sand and soil. ~~inert~~
29 ~~material also includes~~

30 (b) DOES NOT INCLUDE material that when subjected to a water leach
31 test that is designed to approximate natural infiltrating waters will not
32 leach substances in concentrations that exceed numeric aquifer water
33 quality standards established pursuant to section 49-223, including
34 overburden and wall rock that is not acid generating, taking into
35 consideration acid neutralization potential, and that has not and will not
36 be subject to mine leaching operations.

37 23. "Intermittent water" means a surface water or portion of
38 surface water that flows continuously during certain times of the year and
39 more than in direct response to precipitation, such as when it receives
40 water from a spring, AN elevated groundwater table or another surface
41 source, such as melting snowpack.

42 24. "Major modification" means a physical change in an existing
43 facility or a change in its method of operation that results in a
44 significant increase or adverse alteration in the characteristics or
45 volume of the pollutants discharged, or the addition of a process or major

1 piece of production equipment, building or structure that is physically
2 separated from the existing operation and that causes a discharge,
3 provided that:

4 (a) A modification to a groundwater protection permit facility as
5 defined in section 49-241.01, subsection C that would qualify for an
6 area-wide permit pursuant to section 49-243 consisting of an activity or
7 structure listed in section 49-241, subsection B shall not constitute a
8 major modification solely because of that listing.

9 (b) For a groundwater protection permit facility as defined in
10 section 49-241.01, subsection C, a physical expansion that is accomplished
11 by lateral accretion or upward expansion within the pollutant management
12 area of the existing facility or group of facilities shall not constitute
13 a major modification if the accretion or expansion is accomplished through
14 sound engineering practice in a manner compatible with existing facility
15 design, taking into account safety, stability and risk of environmental
16 release. For a facility described in section 49-241.01, subsection C,
17 paragraph 1, expansion of a facility shall conform with the terms and
18 conditions of the applicable permit. For a facility described in section
19 49-241.01, subsection C, paragraph 2, if the area of the contemplated
20 expansion is not identified in the notice of disposal, the owner or
21 operator of the facility shall submit to the director the information
22 required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

23 25. "New facility" means a previously closed facility that resumes
24 operation or a facility on which construction was begun after August 13,
25 1986 on a site at which no other facility is located or to totally replace
26 the process or production equipment that causes the discharge from an
27 existing facility. A major modification to an existing facility is deemed
28 a new facility to the extent that the criteria in section 49-243,
29 subsection B, paragraph 1 can be practicably applied to such modification.
30 For the purposes of this definition, construction on a facility has begun
31 if the facility owner or operator has either:

32 (a) Begun, or caused to begin as part of a continuous on-site
33 construction program, any placement, assembly or installation of a
34 building, structure or equipment.

35 (b) Entered a binding contractual obligation to purchase a
36 building, structure or equipment that is intended to be used in its
37 operation within a reasonable time. Options to purchase or contracts that
38 can be terminated or modified without substantial loss, and contracts for
39 feasibility engineering and design studies, do not constitute a
40 contractual obligation for purposes of this definition.

41 26. "Nonpoint source" means any conveyance that is not a point
42 source from which pollutants are or may be discharged to WOTUS.

43 27. "Non-WOTUS protected surface water" means a protected surface
44 water that is not a WOTUS.

1 28. "Non-WOTUS waters of the state" means waters of the state that
2 are not WOTUS.

3 29. "On-site wastewater treatment facility" means a conventional
4 septic tank system or alternative system that is installed at a site to
5 treat and dispose of wastewater of predominantly human origin that is
6 generated at that site.

7 30. "Ordinary high watermark" means the line on the shore of an
8 intermittent or perennial protected surface water established by the
9 fluctuations of water and indicated by physical characteristics such as a
10 clear, natural line impressed on the bank, shelving, changes in the
11 character of soil, destruction of terrestrial vegetation, the presence of
12 litter and debris or other appropriate means that consider the
13 characteristics of the channel, floodplain and riparian area.

14 31. "Perennial water" means a surface water or portion of surface
15 water that flows continuously throughout the year.

16 32. "Permit" means a written authorization issued by the director
17 or prescribed by this chapter or in a rule adopted under this chapter
18 stating the conditions and restrictions governing a discharge or governing
19 the construction, operation or modification of a facility. For the
20 purposes of regulating non-WOTUS protected surface waters, a permit shall
21 not include provisions governing the construction, operation or
22 modification of a facility except as necessary for the purpose of ensuring
23 that a discharge meets water quality-related effluent limitations or to
24 require best management practices for the purpose of ensuring that a
25 discharge does not cause an exceedance of an applicable surface water
26 quality standard.

27 33. "Person" means an individual, employee, officer, managing body,
28 trust, firm, joint stock company, consortium, public or private
29 corporation, including a government corporation, partnership, association
30 or state, a political subdivision of this state, a commission, the United
31 States government or any federal facility, interstate body or other
32 entity.

33 34. "Point source":

34 (a) Means any discernible, confined and discrete conveyance,
35 including any pipe, ditch, channel, tunnel, conduit, well, discrete
36 fissure, container, rolling stock, concentrated animal feeding operation
37 or vessel or other floating craft from which pollutants are or may be
38 discharged to WOTUS or protected surface water. ~~Point source~~

39 (b) Does not include return flows from irrigated agriculture.

40 35. "Pollutant" means fluids, contaminants, toxic wastes, toxic
41 pollutants, dredged spoil, solid waste, substances and chemicals,
42 pesticides, herbicides, fertilizers and other agricultural chemicals,
43 incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum
44 products, chemical wastes, biological materials, radioactive materials,
45 heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining,

1 industrial, municipal and agricultural wastes or any other liquid, solid,
2 gaseous or hazardous substances.

3 36. "Postclosure monitoring and maintenance" means those activities
4 that are conducted after closure notification and that are necessary to:

5 (a) Keep the facility in compliance with either the aquifer water
6 quality standards at the applicable point of compliance or, for any
7 aquifer water quality standard that is exceeded at the time the aquifer
8 protection permit is issued, the requirement to prevent the facility from
9 further degrading the aquifer at the applicable point of compliance as
10 provided under section 49-243, subsection B, paragraph 3.

11 (b) Verify that the actions or controls specified as closure
12 requirements in an approved closure plan or strategy are routinely
13 inspected and maintained.

14 (c) Perform any remedial, mitigative or corrective actions or
15 controls as specified in the aquifer protection permit or perform
16 corrective action as necessary to comply with this paragraph and article 3
17 of this chapter.

18 (d) Meet property use restrictions.

19 37. "Practicably" means able to be reasonably done from the
20 standpoint of technical practicability and, except for pollutants
21 addressed in section 49-243, subsection I, economically achievable on an
22 industry-wide basis.

23 38. "Protected surface waters" means waters of the state listed on
24 the protected surface waters list under section 49-221, subsection G and
25 all WOTUS.

26 39. "Public waters" means waters of the state open to or managed
27 for use by members of the general public.

28 40. "Recharge project" means a facility necessary or convenient to
29 obtain, divert, withdraw, transport, exchange, deliver, treat or store
30 water to infiltrate or reintroduce that water into the ground.

31 41. "Reclaimed water" means water that has been treated or
32 processed by a wastewater treatment plant or an on-site wastewater
33 treatment facility.

34 42. "Regulated agricultural activity" means the application of
35 nitrogen fertilizer or a concentrated animal feeding operation.

36 43. "Safe drinking water act" means the federal safe drinking water
37 act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

38 44. "Standards" means water quality standards, pretreatment
39 standards and toxicity standards established pursuant to this chapter.

40 45. "Standards of performance" means performance standards, design
41 standards, best management practices, technologically based standards and
42 other standards, limitations or restrictions established by the director
43 by rule or by permit condition.

1 46. "Tank" means a stationary device, including a sump, that is
2 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
3 material that provides substantial structural support, and that is
4 designed to contain an accumulation of solid, liquid or gaseous materials.

5 47. "Toxic pollutant" means a substance that will cause significant
6 adverse reactions if ingested in drinking water. Significant adverse
7 reactions are reactions that may indicate a tendency of a substance or
8 mixture to cause long lasting or irreversible damage to human health.

9 48. "Trade secret" means information to which all of the following
10 apply:

11 (a) A person has taken reasonable measures to protect from
12 disclosure and the person intends to continue to take such measures.

13 (b) The information is not, and has not been, reasonably obtainable
14 without the person's consent by other persons, other than governmental
15 bodies, by use of legitimate means, other than discovery based on a
16 showing of special need in a judicial or quasi-judicial proceeding.

17 (c) No statute specifically requires disclosure of the information
18 to the public.

19 (d) The person has satisfactorily shown that disclosure of the
20 information is likely to cause substantial harm to the business's
21 competitive position.

22 49. "Vadose zone" means the zone between the ground surface and any
23 aquifer.

24 50. "Waters of the state" means all waters within the jurisdiction
25 of this state including all perennial or intermittent streams, lakes,
26 ponds, impounding reservoirs, marshes, watercourses, waterways, wells,
27 aquifers, springs, irrigation systems, drainage systems and other bodies
28 or accumulations of surface, underground, natural, artificial, public or
29 private water situated wholly or partly in or bordering on the state.

30 51. "Well" means a bored, drilled or driven shaft, pit or hole
31 whose depth is greater than its largest surface dimension.

32 52. "Wetland" means, for the purposes of non-WOTUS protected
33 surface waters, an area that is inundated or saturated by surface or
34 groundwater at a frequency and duration sufficient to support, and under
35 normal conditions does support, a prevalence of vegetation typically
36 adapted for life in saturated soil conditions.

37 53. "WOTUS" means waters of the state that are also navigable
38 waters as defined by section 502(7) of the clean water act.

39 54. "WOTUS protected surface water" means a protected surface water
40 that is a WOTUS.

41 Sec. 5. Section 49-281, Arizona Revised Statutes, is amended to
42 read:

43 49-281. Definitions

44 In this article, unless the context otherwise requires:

- 1 1. "Applicant" means any individual, employee, officer, managing
2 body, trust, firm, joint stock company, consortium, public or private
3 corporation, including a government corporation, partnership or
4 association, this state, a political subdivision of this state, or a
5 commission of the United States government or a federal facility, an
6 interstate body or any other entity that applies for a settlement under
7 ~~either~~ section 49-292.01 or 49-292.02.
- 8 2. "Community" means the broad spectrum of persons determined by
9 the director to be within an existing or proposed site placed on the
10 registry pursuant to section 49-287.01.
- 11 3. "Community involvement area" means the geographical area that is
12 within a site placed on the registry pursuant to section 49-287.01 and
13 additional geographic areas as found appropriate in the director's
14 discretion.
- 15 4. "Dispose" means the deposit, injection, dumping, spilling,
16 leaking or placing of any pollutant into or on any land or water so that
17 the pollutant or any constituent of the pollutant may enter the
18 environment or be discharged into any waters, including aquifers.
- 19 5. "Eligible party" means a person who enters into a written
20 agreement with the director to implement and complete a remedial
21 investigation and feasibility study with respect to a site or portion of a
22 site that was on the annual priority list on May 1, 1997 or any other
23 person who incurs costs for a remedial action that is in substantial
24 compliance with section 49-282.06 as determined by the director.
- 25 6. "Facility" means any land, building, installation, structure,
26 equipment, device, conveyance, area, source, activity or practice.
- 27 7. "Fund" means the water quality assurance revolving fund
28 established by section 49-282.
- 29 8. "Hazardous substance":
- 30 (a) Has the same meaning prescribed in section 49-201. ~~but~~
- 31 (b) Does not include petroleum as defined in section 49-1001,
32 except to the extent that a constituent of petroleum is subject to section
33 49-283.02.
- 34 9. "Nonrecoverable costs" means any costs incurred by the director
35 after June 30, 1997:
- 36 (a) That consist of salaries and benefits paid to state employees,
37 including direct and indirect costs, except as specifically provided in
38 section 49-282.05, section 49-285, subsection B, section 49-285.01,
39 section 49-287.01, section 49-287.06, subsection H and section 49-287.07
40 and for epidemiological studies conducted by the department of health
41 services.
- 42 (b) For activities conducted pursuant to section 49-287.02.
- 43 (c) For water monitoring activities conducted pursuant to section
44 49-225.

1 (d) For well inspections, but not other remedial actions, to
2 determine whether vertical cross-contamination is resulting from a well
3 pursuant to section 45-605 or 49-282.04.

4 (e) For rulemaking.

5 10. "Orphan shares" means the shares of the cost of a remedial
6 action that are allocated to an identified person who is determined to be
7 a responsible party and that are not paid or otherwise satisfied by that
8 responsible party due to any of the following:

9 (a) The party cannot be located or no longer exists.

10 (b) The party has entered into a qualified business settlement
11 pursuant to this article.

12 (c) The party has entered into a settlement pursuant to this
13 article for an amount that is less than its allocated share.

14 (d) The director has determined that the share allocated to the
15 party is uncollectible.

16 11. "Release" means any spilling, leaking, pumping, pouring,
17 emitting, emptying, discharging, injecting, escaping, leaching, dumping or
18 disposing into the environment but excludes:

19 (a) Any release that results in exposure to persons solely within a
20 workplace, with respect to a claim that such persons may assert against
21 the employer of such persons.

22 (b) Emissions from the engine exhaust of any motor vehicle, rolling
23 stock, aircraft, vessel or pipeline pumping station engine.

24 (c) Release of source MATERIAL, by-product MATERIAL or special
25 nuclear material, as those terms are defined in section 30-651, resulting
26 from the operation of a production or utilization facility as defined in
27 the atomic energy act of 1954 (68 Stat. 919; 42 United States Code
28 sections 2011 through 2297), which is subject to the regulatory authority
29 of the United States nuclear regulatory commission as specified in that
30 act, and the agreement, dated March 30, 1967, entered into between the
31 governor of this state and the United States atomic energy commission
32 pursuant to section 30-656 and section 274 of the atomic energy act of
33 1954, as amended.

34 (d) The normal application of fertilizer.

35 12. "Remedial actions":

36 (a) Means those actions that are reasonable, necessary, cost-
37 effective and technically feasible in the event of the release or threat
38 of release of hazardous substances into the environment, such actions as
39 may be necessary to investigate, monitor, assess and evaluate such release
40 or threat of release, actions of remediation, removal or disposal of
41 hazardous substances or taking such other actions as may be necessary to
42 prevent, minimize or mitigate damage to the public health or welfare or to
43 the environment that may otherwise result from a release or threat of
44 release of a hazardous substance. ~~Remedial actions~~

1 (b) Include:

2 (i) The use of biostimulation with indigenous microbes and
3 bioaugmentation using microbes that are nonpathogenic, that are
4 nonopportunistic and that are naturally occurring.

5 (ii) FOR GROUNDWATER THAT MEETS THE DEFINITION OF A HAZARDOUS
6 SUBSTANCE PRESCRIBED IN SECTION 49-201, PARAGRAPH 21, SUBDIVISION (g),
7 DESALINATION OF THE GROUNDWATER TO A LEVEL SUCH THAT THE GROUNDWATER NO
8 LONGER MEETS THE DEFINITION OF A HAZARDOUS SUBSTANCE PRESCRIBED IN SECTION
9 49-201, PARAGRAPH 21, SUBDIVISION (g) AND COMPLIES WITH ALL APPLICABLE
10 ADEQ POTABLE DRINKING WATER STANDARDS.

11 (iii) Remedial actions may include community information and
12 participation costs and providing an alternative drinking water supply.

13 13. "Remedy" means a remedial action selected in a record of
14 decision issued pursuant to section 49-287.04.

15 14. "Site" means the geographical areal extent of contamination.

16 15. "Vertical cross-contamination" means the vertical migration of
17 released hazardous substances in groundwater through a well from an
18 aquifer or aquifer layer to another aquifer or aquifer layer.

19 Sec. 6. Section 49-287.04, Arizona Revised Statutes, is amended to
20 read:

21 49-287.04. Proposed remedial action plan; preliminary list of
22 responsible parties; opportunity to comment;
23 record of decision; appeal

24 A. After evaluating the site or portion of a site under section
25 49-287.03, the director shall prepare a proposed remedial action plan that
26 describes all of the following:

27 1. The boundaries of the site or portion of the site that is the
28 subject of the remedial action.

29 2. The results of the remedial investigation and feasibility study.

30 3. The proposed remedy and its estimated costs.

31 4. How the remediation goals and selection factors in section
32 49-282.06 and rules adopted by the director have been considered.

33 B. The director shall issue notice of the proposed remedial action
34 plan pursuant to the community involvement plan. The notice shall:

35 1. Describe the proposed remedy and its estimated cost.

36 2. Identify where the proposed remedial action plan and remedial
37 investigation and feasibility study report may be inspected.

38 3. Advise the public of the opportunity to provide comments on the
39 proposed remedial action plan and the closing date for those comments.

40 C. A copy of the proposed remedial action plan shall also be sent
41 to each person on the preliminary list of potentially responsible parties
42 with a notice that includes the information required in subsection B of
43 this section and that also shall:

44 1. Notify the recipients of the opportunity to propose alternative
45 methods of allocation of liability among responsible parties.

1 2. Provide a preliminary list of potentially responsible parties
2 and summarize the basis for each party's liability if the director
3 determines that cost recovery may be appropriate.

4 3. Advise the recipient that all information known to the recipient
5 regarding a person who may be liable under this article and any facility
6 within the site from which a release of a hazardous substance, **EXCEPT**
7 **REMEDIAL GROUNDWATER THAT MEETS THE DEFINITION OF A HAZARDOUS SUBSTANCE**
8 **PRESCRIBED IN SECTION 49-201, PARAGRAPH 21, SUBDIVISION (g)**, may have
9 occurred must be provided to the department within a reasonable period of
10 time set by the department, but not less than sixty days. Failure to
11 comply with this subsection precludes a person from introducing the
12 evidence in an allocation hearing pursuant to section 49-287.06, and in an
13 action brought pursuant to section 49-287.07, except as otherwise
14 prescribed by those sections.

15 D. Within ninety days after the end of the public comment period,
16 if the department has received sufficient information pursuant to section
17 49-287.02, subsection B identifying additional persons who may be
18 responsible under this article or facilities where a release of a
19 hazardous substance, **EXCEPT A HAZARDOUS SUBSTANCE THAT MEETS THE**
20 **DEFINITION OF A HAZARDOUS SUBSTANCE PRESCRIBED IN SECTION 49-201,**
21 **PARAGRAPH 21, SUBDIVISION (g)**, may have occurred, the director shall
22 investigate that person or facility within the site as provided in section
23 49-287.02, subsection A or shall decline to investigate and shall notify
24 the person providing the information in writing of the director's
25 decision.

26 E. If, on the basis of new information or its investigation, the
27 department believes there is sufficient evidence that an identified person
28 is a responsible party under this article, the department shall provide
29 the notice and proposed remedial action plan required by subsection C of
30 this section to that party and a revised list of potentially responsible
31 parties to the parties originally identified in the proposed remedial
32 action plan. A newly identified potentially responsible party shall have
33 the same opportunity for comment and the submission of information
34 including information concerning additional responsible parties or
35 releasing facilities as provided to the originally identified responsible
36 parties under this section. If, as a result of the submission of
37 information by subsequently identified responsible parties or its own
38 investigation, the department believes that there are additional
39 responsible parties, ~~††~~ **THE DEPARTMENT** shall provide the notice required
40 by this subsection to those parties and the previously identified
41 responsible parties and shall comply with the other procedures prescribed
42 by this section.

1 F. After the conclusion of all public comment periods prescribed by
2 this section, the director shall prepare a comprehensive responsiveness
3 summary. The director shall prepare the record of decision regarding the
4 remedial action plan.

5 G. The director shall serve written notice that a record of
6 decision has been signed ~~अपण~~ ON each person who submitted written
7 comments on the proposed remedy selection and all persons identified as
8 potentially responsible parties. A notice shall be published pursuant to
9 the community involvement plan informing the public that the record of
10 decision and comprehensive responsiveness summary have been prepared and
11 are available for review.

12 H. A record of decision signed by the director is deemed to be a
13 final administrative decision as defined in section 41-1092 as of the date
14 it is served pursuant to subsection G of this section. There is no right
15 to an administrative appeal, review or rehearing by the director on the
16 record of decision. Any person who will be adversely affected by the
17 record of decision and who commented on the proposed remedial action plan
18 pursuant to this section may seek judicial review of the record of
19 decision by filing a complaint in superior court pursuant to section
20 12-904, subsection A. The plaintiff shall serve the notice required by
21 section 12-904, subsection B on the director.

22 I. If a complaint is filed pursuant to subsection H of this
23 section, the court action is stayed and no answer is required until twenty
24 days after one of the following events occurs:

25 1. Ninety days after notice of the allocator's report is served
26 pursuant to section 49-287.06, subsection G.

27 2. Notice that no allocation hearing will be held is served
28 pursuant to section 49-287.06, subsection A.

29 3. Notice of termination of an allocation hearing is served
30 pursuant to section 49-287.06, subsection I.

31 4. The director moves that the stay should be lifted and the court
32 grants the motion.

33 J. If a complaint is filed pursuant to subsection H of this
34 section, the director shall serve any notice required by section
35 49-287.06, subsection A, E or G on each person who commented on the
36 proposed remedial action plan.

37 K. The director shall notify all parties to an appeal if the
38 director intends to implement the remedy before the stay under subsection
39 I of this section is lifted. If the director gives this notice, the stay
40 of the action pursuant to subsection I of this section does not preclude
41 any party from seeking a preliminary injunction against the director from
42 implementing the remedy.

43 L. On termination of the stay of an action pursuant to subsection I
44 of this section, the director shall transmit the record to the superior
45 court. The record shall consist of the proposed remedial action plan,

1 copies of all written comments on the proposed remedial action plan, the
2 comprehensive responsiveness summary and the record of decision. Judicial
3 review shall be pursuant to title 12, chapter 7, article 6. If an
4 evidentiary hearing is held pursuant to section 12-910, subsection A, then
5 notwithstanding section 12-910, subsection B, no evidence may be admitted
6 by the court unless it supports a specific comment made before the
7 conclusion of the public comment period pursuant to this section by the
8 party seeking to introduce the evidence. Section 12-910, subsection C
9 does not apply to the appeal.