

REFERENCE TITLE: remedial groundwater incentive; brackish groundwater

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

## **HB 2186**

Introduced by  
Representatives Kolodin: Gillette, Jones, McGarr, Parker B, Smith

### **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13 VOLUME IS THE LARGEST VOLUME OF GROUNDWATER WITHDRAWN PURSUANT TO THE  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.