

## Federal Program Primacy

As a result of recent changes to federal regulations and operational practices, the U.S. Environmental Protection Agency (EPA) is now encouraging states to seek primacy or program authorization for additional federal programs. This is a unique and potentially limited-time opportunity for ADEQ to enhance environmentally responsible economic growth by obtaining primacy and then redesigning permitting processes to eliminate redundancy, improve quality and reduce long permit cycle times currently experienced by EPA and other federal agency permit applicants. ADEQ seeks to obtain primacy for two federal programs:

### **Clean Water Act (CWA) Section 404 – SB 1493**

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into waters of the United States (WOTUS), including wetlands.

Dredge is material that is excavated from WOTUS. "Fill" means any material used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a water body.

CWA Section 404 is often one of the most lengthy and confusing permitting processes that industry and governments interact with for projects near waterways. Many activities at mines are subject to 404 permitting requirements. The Army Corps of Engineers (COE) currently administers the 404 program and takes more than 600 permit actions in Arizona each year.

Michigan and New Jersey have already obtained program authorization from EPA. ADEQ seeks to enact legislation, including fee authority, necessary to enable Arizona to become the next state to obtain program authorization in order to provide faster permitting, local technical expertise, higher quality permits, and consistency across CWA programs.

ADOT and some other agencies and municipalities already pay for expedited permitting from the COE.

*Impacted Statutes: ARS §49-141(A), §49-203(A), §49-210, §49-261 – §49-265, §17-265, §35-142, §49-104 and §49-203, addition of removal-fill mitigation fund statute in Chap. 2, and add Article 3.2 to Chap. 2.5*

### **Underground Injection Control Program (UIC) – SB 1494**

The UIC Program regulates the underground injection or discharge of six categories of hazardous and non-hazardous liquid and gas.

ADEQ has existing partial authority to administer the program under Title 49, but it is insufficient to obtain primacy and does not include a funding mechanism for some well categories.

EPA has issued only four individual UIC permits in Arizona. New wells subject to UIC regulation will be necessary as new mining and desalination technologies are developed in the state. Obtaining primacy now will allow ADEQ time to

improve program administration in anticipation of these emerging industry sectors or technologies and will pave the way to accelerate economic growth in these sectors.

In addition to improving program efficiency, obtaining primacy will allow ADEQ to eliminate some duplicative regulatory requirements that currently exist between Arizona's Aquifer Protection Permit (APP) Program and UIC regulations.

*Impacted Statutes: ARS §49-210, §49-261 – §49-265, §49-203(B), and addition of a new article in Title 49, Chap. 2, likely in 3.3.*

## Simplifying Regulation - Omnibus Bill – SB 1421

In response to Executive Order (EO) 2015-01 and EO 2017-02 issued by Governor Ducey, ADEQ conducted a comprehensive review of existing statute and rule to identify regulations that can be simplified or eliminated to reduce regulatory burden while continuing to promote environmentally responsible economic growth. The following proposed changes will ameliorate duplicative, contradictory, or unnecessary statutes:

### Brownfields Cleanup Revolving Loan Fund Program (BCRLF)

In 2004, HB2088 updated ARS §49-218.01 in response to federal brownfields legislation and removed the Director's discretion to administer the program. The program is entirely EPA funded and EPA's funding levels are highly variable and demand for funding from the BCRLF varies as other funding sources are identified for lost. ADEQ proposes to modify the statute to provide for the Director's discretion to administer the program.

*Impacted Statute: ARS §49-218.01*

### Arizona Department of Health Services (ADHS) Recruiting and Training Assistance

ARS §49-109(A)(14) requires that ADEQ "[a]ssist the department of health services in recruiting and training state, local, and district health department personnel." The statute has been in place since the break of the Department of Environmental Quality from the Department of Health Services. ADHS no longer requires this assistance and ADEQ no longer retains the expertise to fully support this requirement. ADEQ proposes to repeal this requirement.

*Impacted Statute: ARS §49-109(A)(14)*

### Arizona Department of Water Resources (ADWR) and Arizona Department of Agriculture (AZDA) Coordination

ARS § 49-225(A) requires that ADEQ "shall" monitor water quality with the advice and cooperation of ADWR and AZDA. ADEQ, ADWR, and AZDA have historically and currently operate in cooperation on an "as needed" basis. ADEQ proposes to modify the statute to expand discretion to require coordination with ADWR and AZDA only "as necessary" when monitoring water quality.

*Impacted Statute: ARS §49-225(A)*

### Facilities required to obtain an APP Publication

ARS §49-241(D) requires ADEQ to publish a list of the names and locations of existing facilities that are required to obtain an APP. This provision was enacted in 1991, with a due date of 1992, and amended in 1999, with due dates of 2004 and 2006. The dates have passed and the provision no longer adds value to ADEQ's mission or clarity to the regulatory construct. ADEQ proposes to repeal this provision.

*Impacted Statute: ARS §49-241(D)*

### COI Transfers between Dealerships

ADEQ's fleet emissions testing program issues permits to conduct decentralized emissions testing and ADEQ issues a Certificates of Inspection (COI), the emissions compliance document required to register the vehicle, for specific locations. When a vehicle is re-located, the COI is no longer valid, regardless of ownership. If the vehicle is moved to be sold at another address, dealerships must retest the vehicle before delivering to a customer. This creates an unnecessary burden for dealerships and can result in the same vehicle being tested multiple times within the same week without any environmental benefit. ADEQ proposes to expand authority to allow COIs to be transferred between all types of dealerships.

*Impacted Statute: ARS §49-546*

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