41-151.14. State and local public records management; violation; classification; definition A. The

head of each state and local agency shall:

1. Establish and maintain an active, continuing program for the economical and efficientmanagement of the public records of the agency.

2. Make and maintain records containing adequate and proper documentation of the organization,functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

3. Submit to the director, in accordance with established standards, schedules proposing thelength of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.

4. Once every five years submit to the director lists of all essential public records in the custodyof

the agency. 5. Cooperate with the director in the conduct of surveys.

6. Designate an individual within the agency to manage the records management program of the agency. The agency shall reconfirm the identity of this individual to the state library every other year. The designated individual:

(a) Must be at a level of management sufficient to direct the records management program in anefficient and effective manner.

(b) Shall act as coordinator and liaison for the agency with the state library.

7. Comply with rules, standards and procedures adopted by the director.

B. The governing body of each county, city, town or other political subdivision shall promote theprinciples of efficient record management for local public records. The governing body, as far as practicable, shall follow the program established for the management of state records. The director, on request of the governing body, shall provide advice and assistance in the establishment of a local public records management program.

C. A head of a state or local agency who violates this section is guilty of a class 2 misdemeanor.

D. For the purposes of this section, "records management" means the creation andimplementation of systematic controls for records and information activities from the point where they are created or received through final disposition or archival retention, including distribution, use, storage, retrieval, protection and preservation.

E. 41-1009. Inspections and audits; applicability; exceptions
F. A. An agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection or audit shall, unless otherwise provided by law:
G. 1. Present photo identification on entry of the premises.

H. 2. On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.
I. 3. Disclose any applicable inspection or audit fees.
J. 4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.
K. 5. Provide notice of the right to have on request:
L. (a) Copies of any original documents taken by the agency during the inspection or audit if the agency is permitted by law to take original documents.
M. (b) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
N. (c) Copies of any analysis performed on samples taken during the inspection.
O. (d) Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise permitted by law to do so.
P. 6. Inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.
Q. 7. Inform each person who is interviewed during the inspection or audit that:
R. (a) Statements made by the person may be included in the inspection or audit report.
S. (b) Participation in an interview is voluntary, unless the person is legally compelled to participate in the interview.
T. (c) The person is allowed at least twenty-four hours to review and revise any written witness statement that is drafted by the agency inspector, auditor or regulator and on which the agency inspector, auditor or regulator requests the person's signature.
U. (d) The agency inspector, auditor or regulator may not prohibit the regulated person from having an attorney or any other experts in their field present during the interview to represent or advise the regulated person.
V. B. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing:
W. 1. The rights described in subsection A of this section and section 41-1001.01, subsection C.
X. 2. The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit.
Y. 3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.
Z. 4. A statement that the agency inspector, auditor or regulator may not take any adverse action, treat the regulated person less favorably or draw any inference as a result of the regulated person's decision to be represented by an attorney or advised by any other experts in their field.
AA. 5. A notice that if the information and documents provided to the agency inspector, auditor or regulator become a public record, the regulated person may redact trade secrets and proprietary and confidential information unless the information and documents are confidential pursuant to statute.
BB. 6. The time limit or statute of limitations applicable to the right of the agency inspector, auditor or regulator to file a compliance action against the regulated person arising from the inspection or audit, which applies to both new and amended compliance actions.
CC. C. An agency inspector, auditor or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, and is notified of the regulated person's or on-site representative of the regulated person's inspection or audit and due process rights. The agency inspector, auditor or regulator may provide an electronic document of the writing prescribed in subsection B of this section and section 41-1001.01, subsection C and, at the request of the regulated person or on-site representative, obtain a receipt in the form of an electronic signature. The agency shall maintain a copy of this signature with the inspection or audit report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing

prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, the agency inspector, auditor or regulator shall note that fact on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable.

DD. D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:

EE. 1. At the time of the inspection.

FF. 2. Notwithstanding any other state law, within thirty working days after the inspection.

GG. 3. As otherwise required by federal law.

HH. E. The inspection report shall contain deficiencies identified during an inspection. Unless otherwise provided by state or federal law, the agency shall provide the regulated person an opportunity to correct the deficiencies unless the agency documents in writing as part of the inspection report that the deficiencies are:

II. 1. Committed intentionally.

JJ. 2. Not correctable within a reasonable period of time as determined by the agency.

KK. 3. Evidence of a pattern of noncompliance.

LL. 4. A risk to any person, the public health, safety or welfare or the environment.

MM. F. If the agency is unsure whether a regulated person meets the exemptions in subsection E of this section, the agency shall provide the regulated person with an opportunity to correct.

NN. G. If the agency allows the regulated person an opportunity to correct the deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the deficiencies have been corrected. Within thirty days after receipt of notification from the regulated person that the deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the deficiencies or the agency determines the deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the deficiencies.

OO. H. If the agency does not allow the regulated person an opportunity to correct deficiencies pursuant to subsection E of this section, on the request of the regulated person, the agency shall provide a detailed written explanation of the reason that an opportunity to correct was not allowed.

PP. I. An agency decision pursuant to subsection E or G of this section is not an appealable agency action.

QQ. J. At least once every month after the commencement of the inspection, an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.

RR. K. For agencies with authority under title 49, if, as a result of an inspection or any other investigation, an agency alleges that a regulated person is not in compliance with licensure or other applicable regulatory requirements, the agency shall provide written notice of that allegation to the regulated person. The notice shall contain the following information:

SS. 1. A citation to the statute, regulation, license or permit condition on which the allegation of noncompliance is based, including the specific provisions in the statute, regulation, license or permit condition that are alleged to be violated.

TT. 2. Identification of any documents relied on as a basis for the allegation of noncompliance.

UU. 3. An explanation stated with reasonable specificity of the regulatory and factual basis for the allegation of noncompliance.

VV. 4. Instructions for obtaining a timely opportunity to discuss the alleged violation with the agency.

WW. L. Subsection K of this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements. Subsection K of this section does not apply to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection K of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action.

XX. M. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

YY. N. Except as otherwise provided in subsection L of this section, this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements applicable to a licensee and audits pursuant to enforcement of title 23, chapters 2 and 4. This section does not apply:

ZZ. 1. To criminal investigations, investigations under tribal state gaming compacts and undercover investigations that are generally or specifically authorized by law.

AAA. 2. If the agency inspector, auditor or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.

BBB. 3. To the Arizona peace officer standards and training board established by section 41-1821.

CCC. 4. To certificates of convenience and necessity that are issued by the corporation commission pursuant to title 40, chapter 2.

DDD. O. If an agency inspector, auditor or regulator gathers evidence in violation of this section, the violation may be a basis to exclude the evidence in a civil or administrative proceeding.

EEE. P. Failure of an agency, board or commission employee to comply with this section:

FFF. 1. May subject the employee to disciplinary action or dismissal.

GGG. 2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.

HHH. Q. An agency may make rules to implement subsection A, paragraph 5 of this section.

III. R. Nothing in this section shall be used to exclude evidence in a criminal proceeding.

JJJ. S. Subsection A, paragraph 7, subdivision (c) and subsection E of this section do not apply to the department of health services for the purposes of title 36, chapters 4 and 7.1.

KKK. T. Subsection B, paragraph 5 and subsection E of this section do not apply to the corporation commission for the purposes of title 44, chapters 12 and 13.

LLL.

49-203. Powers and duties of the director and department A. The

director shall:

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

2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.

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

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

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

7. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.

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

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

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

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

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

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

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if

reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1 or 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

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

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

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

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

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

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

49-262. Injunctive relief; civil penalties; recovery of litigation costs

A. Whether or not a person has requested a hearing, the director, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health if the director has reason to believe either of the following:

1. That a person is in violation of:

(a) Any provision of article 2, 3, 3.1 or 3.2 or 3.3 of this chapter.

(b) A rule adopted pursuant to section 49-203, subsection A, paragraph 6. (c) A rule adopted

pursuant to article 2, 3, 3.1 or 3.2 or 3.3 of this chapter.

(d) A discharge limitation or any other condition of a permit issued under article 2, 3, 3.1 or 3.2 or 3.3 of this chapter.

2. That a person is creating an actual or potential endangerment to the public health or environment because of acts performed in violation of this chapter.

B. Notwithstanding any other provision of this chapter, if the director, the county attorney or the attorney general has reason to believe that a person is creating an imminent and substantial endangerment to the public health or environment because of acts performed in violation of article 2, 3, 3.1 or 3.2 or 3.3 of this chapter or a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 2, 6 or 7, the county attorney or attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.

C. A person who violates any provision of article 2, 3, 3.1 or 3.2 of this chapter or a rule, permit, discharge limitation or order issued or adopted pursuant to article 2, 3, 3.1 or 3.2 of this chapter is subject to a civil penalty of not more than twenty-five thousand dollars per day per violation. A person who violates any rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6 is subject to a civil penalty of not more than five thousand dollars per day per violation. A person who violates any rule adopted, permit condition or any other provision of article 3.3 of this chapter is subject to a civil penalty of not more than five thousand dollars per day per violation. The attorney general may, and at the request of the director shall, commence an action in superior court to recover civil penalties provided by this section.

D. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.

E. All civil penalties except litigation costs obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. Except as applied to permits issued or authorized pursuant to article 3.1 or 3.2 or 3.3 of this chapter, it shall be an affirmative defense to civil liability under this section and section 49-261 for causing or contributing to a violation of a water quality standard established pursuant to this chapter, or a violation of a permit condition prohibiting a violation of an aquifer water quality standard or limitation at

the point of compliance or a surface water quality standard if the release that caused or contributed to the violation came from a facility owned or operated by a party that has either:

1. Undertaken a remedial or response action approved by the director or the administrator under this title or CERCLA in response to the release of a hazardous substance, pollutant or contaminant that caused or contributed to the violation of article 2 of this chapter and is in compliance with that remedial or response action.

2. Otherwise resolved its liability for the release of a hazardous substance that caused or contributed to the violation of article 2 of this chapter in whole or in part by the execution of a settlement agreement or consent decree with the director or administrator under this article, CERCLA or any other environmental law and is in compliance with that settlement agreement or consent decree.

G. Subsection F of this section does not prevent the director from taking an appropriate enforcement action to address the release of a hazardous substance, pollutant or contaminant or the violation of a permit condition before or as an element of an approved remedial or response action, settlement agreement or consent decree.

H. In determining the amount of a civil penalty for a violation under article 3, 3.1 or 3.2 or 3.3 of this chapter, the court shall consider the following factors:

1. The seriousness of the violation or violations.

2. The economic benefit, if any, that results from the violation.

3. Any history of similar violations.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty on the violator.

6. The extent to which the violation was caused by a third party.

7. Other matters as justice may require.

I. A single operational upset that leads to simultaneous violations of more than one pollutant limitation in a permit issued or authorized pursuant to section 49-255.01 constitutes a single violation for purposes of any penalty calculation.

J. If a permittee holds both a permit issued or authorized pursuant to article 3 of this chapter and a permit issued or authorized pursuant to article 3.1 or 3.2 or 3.3 of this chapter and the permittee violates a similar provision in both permits simultaneously, the department shall not recover penalties for violations of both permits based on the same act or omission.

49-263.01. Arizona pollutant discharge elimination system program; violation; classification

A. It is unlawful for any person who is subject to section 49-255.01, 49-255.02 or 49-256.01 to knowingly or recklessly:

1. Discharge without a permit or appropriate authority under article 3.1 or 3.2 of this chapter.

2. Fail to monitor, sample or report discharges as required by a permit issued under article 3.1 or 3.2 of this chapter.

3. Violate a discharge limitation or standard specified in a permit issued under article 3.1 or 3.2 of this chapter.

4. Alter, modify or destroy any monitoring device, sampling method, analytical method or test result required in a permit issued under article 3.1 or 3.2 of this chapter in order to render the device or method inaccurate.

5. Fail to maintain, operate or repair any monitoring device required in a permit issued under article 3.1 or 3.2 of this chapter in order to render the device inaccurate$_A$, or fail to install any monitoring device required in a permit issued pursuant to article 3.1 or 3.2 of this chapter.

6. Bypass or divert waste streams from the treatment works or any portion of the treatment works resulting in a discharge, except as authorized by a permit issued under article 3.1 or 3.2 of this chapter.

7. Violate an effective compliance order issued for violations of article 3.1 or 3.2 of this chapter. B. A

reckless violation of subsection A of this section is a class 6 felony.

C. A knowing violation of subsection A of this section is a class 5 felony.

D. A person who, acting with criminal negligence, does any of the following is guilty of a class 1 misdemeanor:

1. Violates any condition of a permit issued under article 3.1 or 3.2 of this chapter.

2. Violates any applicable standard, limitation, filing or reporting requirement imposed under article 3.1 or 3.2 of this chapter.

E. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act that is prohibited under subsection A of this section is guilty of a class 2 felony and the following apply:

1. In determining whether a defendant who is an individual knowingly or recklessly manifests an extreme indifference for human life under this subsection:

(a) The person is responsible only for actual awareness or actual belief that the person possessed.

(b) Knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant, except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that affirmative steps were taken by the defendant to shield the defendant from relevant information.

2. It is an affirmative defense to prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either:

(a) An occupation, a business or a profession.

(b) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person had been made aware of the risks involved before giving consent.

A defense may be established pursuant to this paragraph by a preponderance of the evidence.

F. A person who knowingly introduces into a sewer system or into a treatment works any pollutant or hazardous substance that the person knew could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, that causes the treatment works to violate any discharge limitation or condition in a permit issued to the treatment works pursuant to article 3.1 of this chapter or section 402 of the clean water act is guilty of a class 5 felony.

G. A person who knowingly violates a pretreatment standard or pretreatment requirement imposed under article 3.1 of this chapter, or any other federal pretreatment standard or pretreatment requirement, or any state or municipal pretreatment standard or pretreatment requirement enacted to meet the state's or municipality's obligations pursuant to article 3.1 of this chapter is guilty of a class 5 felony.

H. Each day of violation of any provision of this section constitutes a separate offense.

I. The attorney general may enforce this section.

49-263.02. Sewage sludge program; violation; classification

A. It is unlawful for any person, knowingly or with criminal negligence to do any of the following with respect to generation, treatment, transportation, disposal, application and management of sewage sludge:

1. Apply sewage sludge in violation of rules adopted under article 3.1 of this chapter.

2. Violate any applicable standard or limitation set under article 3.1 of this chapter.

3. Violate any condition of a permit or other authorization granted under the sewage sludge provisions of article 3.1 of this chapter.

4. Fail to comply with any applicable filing or reporting requirement set under article 3.1 of this chapter.

5. Alter, modify or destroy any monitoring device or method required by the director under article 3.1 of this chapter in order to render the device or method inaccurate.

6. Fail to maintain, operate or repair any monitoring device required by the director under article 3.1 of this chapter in order to render the device inaccurate, or fail to install any monitoring device required in a permit issued pursuant to article 3.1 of this chapter.

7. Discharge without a permit or appropriate authority pursuant to article 3.1 of this chapter.

B. A criminally negligent violation of subsection A, paragraphs 1 through 6 of this section is a class 1 misdemeanor.

C. A knowing violation of subsection A, paragraph 5, 6 or 7 of this section is a class 5 felony.

D. Each day of violation of any provision of this section constitutes a separate offense.

E. The attorney general may enforce this section.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes. B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.

B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:

1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.

2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.

3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.

4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.

2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.

3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.

B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:

1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.

2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.

3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.

4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.

2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.

3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.