ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

July 26, 2019

Mr. Mike Stoker
Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, CA 94105

(Submitted via Mail and Email)

Re: Arizona's Safe Drinking Water Act Primacy Revision Applications

Dear Mr. Stoker,

The State of Arizona is pleased to submit to you primacy revision applications for the Public Water System Supervision (PWSS) program administered by the Arizona Department of Environmental Quality (ADEQ) in accordance with 40 CFR §142.12. The State of Arizona received initial primary enforcement approval from EPA in 1978 (43 FR 38083).

Enclosed are the following for EPA's review and approval pursuant to 40 CFR §142.12 and §142.13:

- An Attorney General's Statement dated July 19, 2019 that certifies that the laws and regulations adopted by Arizona were duly adopted and are enforceable. The Statement also certifies Arizona's administrative penalty and environmental audit privilege laws, and provides a clear statement of delegated authority.
- Primacy revision crosswalks for Public Water System Definition, Public Notice, and Consumer Confidence Report Rules, which include copies of relevant laws in the Arizona Revised Statutes and rules in the Arizona Administrative Code (Attachment 1).
- An Attorney General's Statement dated April 2, 2019 certifying Arizona's administrative penalty authority. A clear statement of delegated authority is provided in the Attorney General's Statement dated July 19, 2019. Also included is an ADEQ letter dated July 26, 2019 providing additional rationale for the chosen level of administrative penalty under A.R.S. §49-354 to fulfill primacy requirements in EPA's rulemaking (63 FR 23362) as well as Legislature minutes per EPA request (Attachment 2).
- An Attorney General letter dated January 28, 2019 providing additional analysis per EPA request that demonstrates the State of Arizona is able to satisfy federal environmental audit privilege requirements (Attachment 3)

ADEQ looks forward to EPA's approval of these primacy revision applications. If you have any questions, please contact Natalie Muilenberg, muilenberg.natalie@azdeq.gov or 602-771-6403.

Sincerely,

Trevor Baggiore
Director, Water Quality Division
Arizona Department of Environmental Quality

Enclosures (4)

cc (via email): Tomas Torres, EPA Region 9
Corine Li, EPA Region 9
Daria Evans-Walker, EPA Region 9
Margaret Alkon, EPA Region 9
Jennifer Peterson, ADEQ
Natalie Muilenberg, ADEQ

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July 19, 2019

Mike Stoker
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Arizona Attorney General Certification – Safe Drinking Water Act Revisions

Dear Mr. Stoker:

The Arizona Attorney General's Office has reviewed the Arizona Department of Environmental Quality's (ADEQ) latest rule revisions to its Safe Drinking Water Act program, which are set forth at Attachment 1. The Office has also reviewed the State legislature's latest revision to the Administrative Penalty statute at A.R.S. § 49-354(C), and the State's environmental audit privilege law, set forth at A.R.S. §§ 49-1401 through 1408.

Certification

I hereby certify, pursuant to the authority and with the approval of the Attorney General of the State of Arizona, and in accordance with the Safe Drinking Water Act as amended, and 40 C.F.R. § 142.12(c)(1)(iii), that in my opinion the laws of the State of Arizona provide adequate authority to carry out the drinking water program of the State of Arizona, including those amendments to the program described in Attachment 1, which have been duly adopted and are enforceable. The specific authorities provided are contained in statutes or rules that have been lawfully adopted at the time this statement was approved and signed, and are now fully in effect. This certification includes this office's April 2, 2019 certification of Arizona's administrative penalty authority, attached hereto at Attachment 2.

Furthermore, for the reasons set forth in the letter dated January 28, 2019, from this office, which letter is attached hereto at Attachment 3, I certify that the environmental audit privilege of the State of Arizona does not affect ADEQ meeting its Safe Drinking Water Act enforcement and information gathering requirements as those requirements pertain to rules in Attachment 1, because the State's environmental audit privilege neither negates a public water system's obligations under the Safe Drinking Water Act nor does it negate the State of Arizona's

authority to conduct compliance inspections, determine compliance, or impose penalties under A.R.S. § 49-354. The environmental audit privilege also does not prevent the public from obtaining information about noncompliance nor does it prevent the public from bringing citizen suits under the Safe Drinking Water Act. Arizona's environmental audit privilege law has not changed since the date of the letter referenced above.

The undersigned Assistant Attorney General has been delegated authority from the Arizona Attorney General to sign and issue the statements and analysis set forth herein.

Sincerely,

James T. Skardon
Assistant Attorney General
Environmental Enforcement Section

cc: Curtis Cox, Section Chief, Environmental Enforcement, Arizona AGO

JTS/am
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Attachment 1 –

Primacy Crosswalks for Public Notice, Consumer Confidence Report, Public Water System Definition

Appendix A – Relevant Arizona Statutes

Appendix B – Relevant Arizona Rules

Primacy Application Revision
Arizona Department of Environmental Quality
July 26, 2019

ADEQ
Arizona Department of Environmental Quality

State Application Revision for Safe Drinking Water Act Primacy Authority: Definition of Public Water System

Water Quality Division
July 24, 2019 FINAL

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Table of Contents

Table of Contents 1
List of Tables 1
1 Primacy Update Checklist per 40 CFR 142.12(c)(1): Definition of Public Water System ... 1
2 Introduction 7
2.1 Statement of Introduction and Purpose 7
2.2 Application Revision Components and Process 8
3 Primacy Revision Crosswalk: Definition of Public Water System 10

List of Tables

Table 1: Primacy Update Checklist per 40 CFR 142.12 (c)(1) 2
Table 2: Pimacy Revision Crosswalk: Definition of Public Water System 10

List of Appendices

Appendix A: Relevant Arizona Statutes
Appendix B: Relevant Arizona Rules

State Application Revision for Safe Drinking Water Act Primacy Authority:

Required Program Elements		Revision to State Program (YES/NO)	EPA Findings/Comments
40 CFR 142.10	Primary Enforcement Definition of Public Water System[1]	Yes. ARS 49-352 – Signed into law on April 22, 1997 (see HB2304). Amended in 2000 (see SB1435). Amended in 2003 (See HB2381). A.A.C. R18-4-103 – Amended in final rulemaking, effective 4/2/16 (see 22 A.A.R. 379).	
40 CFR 142.10(a)	Regulations No Less Stringent	Yes A.R.S. 49-352(B) – ADEQ amended in 2003 and 2016. R18-4-103(A) – ADEQ amended in August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended R18-4-103 again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(1)	Maintain Inventory	Yes R18-4-106 R18-5-101 R18-5-102 R18-5-104 R18-5-113 R18-5-507 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	

[1] New requirement from the 1996 Amendments. Regulations published in the April 28, 1998 Federal Register.

40 CFR 142.10(b)(2)	Sanitary Survey Program	Yes R18-4-208 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(3)	Laboratory Certification Program	Yes R18-4-105 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(4)	Laboratory Capability	Yes R18-4-105 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(5)	Plan Review Program	Yes R18-4-603 Title 18, Chapter 5, Article 5 ADEQ recodified Chapter 5 on January 30, 2004 (see 10 A.A.R. 585).	
40 CFR 142.10(b)(6)(i)	Authority to apply regulations	Yes R18-4-103 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	

40 CFR 142.10(b)(6)(ii)	Authority to sue in courts of competent jurisdiction	No A.R.S. 49-262 Yes. A.R.S. 49-354 – ADEQ is submitting additional AG certification and rationale for Arizona's administrative penalty authority.	
40 CFR 142.10(b)(6)(iii)	Right of Entry	No A.R.S. 49-203(B) A.R.S. 49-353 Yes – A.A.C. R18-4-207 (ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978)).	
40 CFR 142.10(b)(6)(iv)	Authority to require records	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(6)(v)	Authority to require public notification	Yes R18-4-119 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ is submitting a separate primacy revision package for PN.	

40 CFR 142.10(b)(6)(vi)	Authority to assess civil and criminal penalties	No A.R.S. 49-262, 263 Yes. A.R.S. 49-354 – ADEQ is submitting additional AG certification and rationale for Arizona's administrative penalty authority.	
40 CFR 142.10(b)(6)(vii)	Authority to require CWSs to provide CCRs[2]	Yes. R18-4-117. ADEQ is submitting a separate primacy package revision to EPA for CCR.	
40 CFR 142.10(c)	Maintenance of Records	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(d)	Variance/Exemption Conditions (if applicable)[3]	Yes R18-4-113 R18-4-103(C-D) ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(e)	Emergency Plans	Yes R18-4-204 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	

[2] New regulation published in the August 19, 1998 Federal Register.
[3] New regulations published in the August 14, 1998 Federal Register.

40 CFR 142.10(f)	Administrative Penalty Authority	Yes. A.R.S. 49-354. ADEQ is submitting a separate primacy package revision to EPA.	
40 CFR 142.10(g)	Electronic Reporting Regulations	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). EPA has approved Arizona's electronic reporting (see 79 FR 52318; 81 FR 36538).	

1 Introduction

The U.S. Congress passed the Safe Drinking Water Act in 1974, with later amendments in 1986 and 1996. The Act (SDWA) requires the U.S. Environmental Protection Agency (EPA) to establish and enforce standards. These standards are further set forth in the Code of Federal Regulations for water contaminants EPA identifies as threats to public health and the environment (see 40 CFR 141, 142, 143). Public water systems must comply with EPA's standards, including maximum contaminant levels or treatment techniques, and monitoring and reporting requirements.

EPA delegates primary enforcement authority of the SDWA to states and Indian Tribes if they meet certain the requirements. This delegation is commonly referred to as "primacy." The 1996 SDWA Amendments updated the process for states to obtain and/or retain primacy. On April 28, 1998, EPA promulgated the Primacy Rule to reflect those statutory changes.[4]

In order to obtain primacy, a state or Indian Tribe must submit an application to EPA under 40 CFR 142, Subpart B. These applications are due no later than two years after EPA promulgates or revises a drinking water regulation.

1.1 Statement of Introduction and Purpose

The State of Arizona (Arizona Department of Environmental Quality or ADEQ) received initial primary enforcement approval from EPA in 1978.[5] EPA then approved a subsequent primacy program revision for eight VOC and public notice rule requirements in 1991.[6] Later in 1993, EPA approved a primacy program revision for filtration and disinfection of surface water systems, ground water systems influenced by surface water, and total coliform bacteria.[7] The 1996 SDWA Amendments triggered new primacy package requirements, as they amended the federal definition of a "public water system" and added provisions for administrative penalty authority.

Since then, EPA and ADEQ have identified additional Arizona state primacy program revisions for several contaminant-specific federal rules, as well as updating the State's primacy program to reflect the SDWA Amendments for public water system definition and Arizona's audit privilege laws.[8] Therefore, ADEQ is submitting revisions to its approved State primacy program

[4] See 63 FR 23362
[5] See letter from Frank Covington, Water Division Director, EPA to Ted Williams, AZ Department of Health Services Deputy Director, dated August 25, 1978. See also final Federal Register notice, 43 FR 38083, August 25, 1978.
[6] See 56 FR 9698 (March 7, 1991) and letter from Daniel McGovern, Regional Administrator of EPA Region 9 to Randolph Wood, Director of AZ Department of Environmental Quality dated April 26, 1991.
[7] See 58 FR 36960 (July 9, 1993 and letter from John C Wise, Acting Regional Administrator of EPA Region 9 to Edward Z Fox, Director of AZ Department of Environmental Quality dated August 12, 1993.
[8] See Arizona Revised Statutes §§ 49-1401 through 49-1408.

under 40 CFR 142.12. This submittal constitutes the revision for the Definition of Public Water System, which was promulgated by EPA on April 28, 1998[9] ADEQ is submitting this revision to become the primary enforcement authority for the State's public water systems for the Definition of Public Water System

1.2 Application Revision Components and Process

The required contents of a state's request for approval of a program revision are set forth in 40 CFR 142 Subpart B. Within that regulatory framework, EPA has issued guidance for various revisions to the program. EPA guidance[10] states that a final primacy revision application is complete when it contains the following items

- State Primacy Revision Checklist per 40 CFR 142.12(c)(1) - (see Chapter 1 of this document)
- Text of State's Statutes – (See Appendix A)
- Text of State's Regulations - (See Appendix B)
- Primacy Revision Crosswalk - (See Chapter 3 of this document)
- State Reporting and Recordkeeping Checklist - (See Chapter 3 of this document)
    - EPA guidance further stipulates a state can use the primacy revision crosswalk to meet this requirement
- Special Primacy Requirements - (See Chapter 3 of this document)
    - EPA guidance further stipulates a state can use the primacy revision crosswalk to meet this requirement
- Attorney's General Statement of Enforceability - (See AZ Attorney General's Office Certification/Statement dated July 19, 2019)

Federal regulations also allow states to submit draft applications to EPA for preliminary review and EPA can make tentative determinations on the draft applications.[11] ADEQ submitted a draft version of this application revision to EPA on February 13, 2019. ADEQ received EPA's comments on May 6, 2019.[12] EPA's feedback consisted of editorial changes in the introduction;

[9] 63 FR 23362
[10] *The Revised Total Coliform (RTCR) State Implementation Guidance – Interim Final,* U.S. Environmental Protection Agency, Office of Water, December 2014. See also *Revised State Implementation Guidance for the Public Notice (PN) Rule*, U.S. Environmental Protection Agency, Office of Water, March 2010. See also *Revised State Implementation Guidance for the Consumer Confidence Report (CCR) Rule*, U.S. Environmental Protection Agency, Office of Water, April 2010.
[11] See 40 CFR 142.12(d)(1)
[12] See letter, Corine Li, U.S. Environmental Protection Agency, to Jennifer Peterson, Arizona Department of Environmental Quality, dated May 6, 2019.

making note of the past legislative amendments to ARS 49-352; and correcting the state citation in the Primacy Update Checklist for 40 CFR 142.10(a) requirements. EPA additionally provided their agreement and analysis that Arizona's definition for "public water system" is no less stringent than the federal regulation.

ADEQ is submitting this final application revision for EPA's approval.[13] EPA reviews the application for adequate state authority to implement the Safe Drinking Water Act. EPA's review also identifies any differences in the state's regulatory language and to ensure those differences do not make the state's rules less stringent than federal rules. If a state's requirements and authorities differ than the federal version, the state's application must include information and documentation that demonstrates the state's program is at least as stringent as the federal requirements.

EPA must take action on this revision no later than 90 days after EPA determines that the submittal is complete and final. EPA must notify ADEQ of its action.[14] A state receives full primacy enforcement authority 30 days after EPA's action is published in the Federal Register, pending no timely request for a hearing is received by EPA[15].

The next chapter includes a side-by-side comparison of EPA's federal drinking water regulation and Arizona's state statutes and rules. ADEQ analyzed both versions of regulations to determine that the State's program is no less stringent than the federal program. The State of Arizona can effectively enforce the federal Public Water System Definition.

[13] Under 40 CFR 142.12(d)(2)
[14] See 40 CFR 142.12(d)(3)
[15] See 40 CFR 142.13(g)

2 Primacy Revision Crosswalk: Definition of Public Water System

ADEQ side-by-side analysis of relevant statutes and rules for the definition of public water system is below. Parallel language is denoted in colored font.

Federal Statute 42 USC 300f	State Statute (2018) (49-352. Classifying systems and certifying personnel; limitation)	Federal [40 CFR §§ 141.2 & 142.2] and State Rule [A.A.C. R18-4-103(A) & (D)]	ADEQ Notes	EPA Notes
Public water system. **(A)** In general. The term "public water system" means a **system** for the **provision to the public of water for human consumption through pipes or other constructed conveyances**, if such system has **at least fifteen service connections or regularly serves at least twenty-five individuals**. Such **term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.** **(B)** Connections. **(i)** In general. For purposes of subparagraph (A), a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if-- **(I)** the **water is used exclusively**	**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**	**40 CFR 141.2 Definitions** ***Public water system*** means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections **or** regularly serves an average of at least twenty-five **individuals** daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "non-community water system."	Arizona statute says "average" at least 25 persons in statute. Although this language is not in the federal statute, the federal *rule* also states "average" in 40 CFR 141.2 Arizona statute says "persons" instead of "individuals"...this is not a substantive difference. If anything, "persons" may actually be more expansive. Per A.R.S. 49-201(27), "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership,	

for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses); **(II)** the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or **(III)** the Administrator or the State (in the case of a State	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	***Community water system*** means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. ***Non-community water system*** means a public water system that is not a community water system. A non-community water system is either a "transient non-community water system (TWS)" or a "non-transient non-community water system (NTNCWS)." **<u>40 CFR 142.2 Definitions</u>** ***Public water system or PWS*** means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes: Any collection, treatment, storage, and distribution facilities under control of the operator of such system and	association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity. Arizona statute says "daily for at least 60 days out of the year." Although this language is not in the federal statute, the federal *rule* also states "daily at least 60 days out of the year."	

exercising primary enforcement responsibility for public water systems) determines that **the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations**. **(ii)** Irrigation districts. **An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if**	**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**	used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "non-community water system" as defined in §141.2.		

the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i). **(C)** Transition period. A water supplier that would be a public water system only as a result of modifications made to this paragraph by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public water system for purposes of the Act until the date that is two years after the date of enactment of this subparagraph [enacted Aug. 6, 1996]. If a water supplier does not serve 15 service connections (as defined in subparagraphs (A) and (B)) or 25 people at any time after the conclusion of the 2-year period, the water supplier shall not be considered a public water system.	**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.			
(A) In general. The term "public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly	**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.	Federal rule is above and is incorporated in state law.	Arizona statute says "average" at least 25 persons in statute. Although this language is not in the federal statute, the federal *rule* also states "average" in 40 CFR 141.2. This substantively matches.	

serves at least twenty-five **individuals**.			Also, Arizona statute says “persons” instead of “individuals”...this is not a substantive difference. If anything, “persons” may actually be more expansive. Per A.R.S. 49-201(27), "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity. Finally, Arizona statute says “daily for at least 60 days out of the year.”	

			Although this language is not in the federal statute, the federal *rule* does state "daily at least 60 days out of the year" in 40 CFR 141.2. This substantively matches. No substantive difference between the federal and state law.	
(A) Contd… Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.	**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.	Federal rule is above and is incorporated in state law.	No substantive difference between the federal and state law.	
(B) Connections. **(i)** In general. For purposes of subparagraph (A), a connection to a system that delivers water by a constructed conveyance other	**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:	Federal rule is above and is incorporated in state law.	No substantive difference between state and federal law, just a different parallel construction	

than a pipe shall not be considered a connection, if--			which means the same thing.	
(I) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);	(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.	Federal rule is above and is incorporated in state law.	No substantive difference between state and federal law.	
(II) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or	(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.	Federal rule is above and is incorporated in state law.	No substantive difference between state and federal law.	
(III) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by 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.	Federal rule is above and is incorporated in state law.	No substantive difference between state and federal law.	

(ii) Irrigation districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i).	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.	Federal rule is above and is incorporated in state law.	No substantive difference between state and federal law.	
(C) Transition period. A water supplier that would be a public water system only as a result of modifications made to this paragraph by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public water system for purposes of the Act until the date that is two years after the date of enactment of this subparagraph [enacted Aug. 6, 1996]. If a water supplier does not serve 15 service connections (as defined in subparagraphs (A) and (B)) or 25 people at any time after the conclusion of the 2-year period, the water supplier shall not be considered a public water system.	[No transition language in state statute.]	[no parallel language]	Transition language is no longer needed.	
[no parallel language]	**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	[no parallel language]	This Arizona language is simply redundant. If the connections aren't part of a PWS, they	

	the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.		don't fall under the jurisdiction of the Safe Drinking Water Act. This language just reiterates that fact.	

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ADEQ
Arizona Department of Environmental Quality

State Application Revision for Safe Drinking Water Act Primacy Authority: Consumer Confidence Reports Rule

Water Quality Division
July 25, 2019 FINAL

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Table of Contents

Table of Contents iii
List of Tables iii
1 Primacy Update Checklist per 40 CFR 142.12(c)(1): Consumer Confidence Reports Rule. 1
2 Introduction 6
2.1 Statement of Introduction and Purpose 6
2.2 Application Revision Components and Process 7
3 Primacy Revision Crosswalk: Consumer Confidence Reports Rule 9
3.1 Difference between State and Federal 35

List of Tables

Table 1: Primacy Update Checklist per 40 CFR 142.12 (c)(1) 1
Table 2: Pimacy Revision Crosswalk: Consumer Confidence Reports Rule 9

List of Appendices

Appendix A: Relevant Arizona Statutes
Appendix B: Relevant Arizona Rules

1 Primacy Update Checklist per 40 CFR 142.12(c)(1): Consumer Confidence Reports Rule

Required Program Elements		Revision to State Program	EPA Findings/Comments
40 CFR 142.10	Primary Enforcement Definition of Public Water System[1]	Yes. ARS 49-352 – Signed into law on April 22, 1997 (see HB2304). Amended in 2000 (see SB1435). Amended in 2003 (See HB2381). A.A.C. R18-4-103 – Amended in final rulemaking, effective 4/2/16 (see 22 A.A.R. 379). ADEQ submitting separate primacy package to EPA for PWS definition.	
40 CFR 142.10(a)	Regulations No Less Stringent	Yes. R18-4-117 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	

[1] New requirement from the 1996 Amendments. Regulations published in the April 28, 1998 Federal Register.

40 CFR 142.10(b)(1)	Maintain Inventory	Yes R18-4-106 R18-5-101 R18-5-102 R18-5-104 R18-5-113 R18-5-507 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(2)	Sanitary Survey Program	Yes R18-4-208 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(3)	Laboratory Certification Program	Yes R18-4-105 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(4)	Laboratory Capability	Yes R18-4-105 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	

40 CFR 142.10(b)(5)	Plan Review Program	Yes R18-4-603 Title 18, Chapter 5, Article 5 ADEQ recodified Chapter 5 on January 30, 2004 (see 10 A.A.R. 585).	
40 CFR 142.10(b)(6)(i)	Authority to apply regulations	Yes R18-4-103 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(6)(ii)	Authority to sue in courts of competent jurisdiction	No A.R.S. 49-262 Yes. A.R.S. 49-354 – ADEQ is submitting additional AG certification and rationale for Arizona's administrative penalty authority.	
40 CFR 142.10(b)(6)(iii)	Right of Entry	No A.R.S. 49-203(B) A.R.S. 49-353 Yes – A.A.C. R18-4-207 (ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978)).	

40 CFR 142.10(b)(6)(iv)	Authority to require records	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(6)(v)	Authority to require public notification	Yes R18-4-119 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ is submitting a separate primacy revision package for PN.	
40 CFR 142.10(b)(6)(vi)	Authority to assess civil and criminal penalties	No A.R.S. 49-262, 263 Yes. A.R.S. 49-354 – ADEQ is submitting additional AG certification and rationale for Arizona's administrative penalty authority.	
40 CFR 142.10(b)(6)(vii)	Authority to require CWSs to provide CCRs[2]	Yes. R18-4-117. ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ is submitting this primacy package revision to EPA for CCR.	

[2] New regulation published in the August 19, 1998 Federal Register.

40 CFR 142.10(c)	Maintenance of Records	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(d)	Variance/Exemption Conditions (if applicable)[3]	Yes R18-4-113 R18-4-103(C-D) ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(e)	Emergency Plans	Yes R18-4-204 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(f)	Administrative Penalty Authority	Yes. A.R.S. 49-354. ADEQ is submitting a separate primacy package revision to EPA.	
40 CFR 142.10(g)	Electronic Reporting Regulations	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). EPA has approved Arizona's electronic reporting (see 79 FR 52318; 81 FR 36538).	

[3] New regulations published in the August 14, 1998 Federal Register.

2 Introduction

The U.S. Congress passed the Safe Drinking Water Act in 1974, with later amendments in 1986 and 1996. The Act (SDWA) requires the U.S. Environmental Protection Agency (EPA) to establish and enforce standards. These standards are further set forth in the Code of Federal Regulations for water contaminants EPA identifies as threats to public health and the environment (see 40 CFR 141, 142, 143). Public water systems must comply with EPA's standards, including maximum contaminant levels or treatment techniques, and monitoring and reporting requirements.

EPA delegates primary enforcement authority of the SDWA to states and Indian Tribes if they meet certain the requirements. This delegation is commonly referred to as "primacy." The 1996 SDWA Amendments updated the process for states to obtain and/or retain primacy. On April 28, 1998, EPA promulgated the Primacy Rule to reflect those statutory changes.[4]

In order to obtain primacy, a state or Indian Tribe must submit an application to EPA under 40 CFR 142, Subpart B. These applications are due no later than two years after EPA promulgates or revises a drinking water regulation.

2.1 Statement of Introduction and Purpose

The State of Arizona (Arizona Department of Environmental Quality or ADEQ) received initial primary enforcement approval from EPA in 1978.[5] EPA then approved a subsequent primacy program revision for eight VOC and public notice rule requirements in 1991.[6] Later in 1993, EPA approved a primacy program revision for filtration and disinfection of surface water systems, ground water systems influenced by surface water, and total coliform bacteria.[7] The 1996 SDWA Amendments triggered new primacy package requirements, as they amended the federal definition of a "public water system" and added provisions for administrative penalty authority.

Since then, EPA and ADEQ have identified additional Arizona state primacy program revisions for several contaminant-specific federal rules, as well as updating the State's primacy program to reflect the SDWA Amendments for public water system definition and Arizona's audit

[4] See 63 FR 23362

[5] See letter from Frank Covington, Water Division Director, EPA to Ted Williams, AZ Department of Health Services Deputy Director, dated August 25, 1978. See also final Federal Register notice, 43 FR 38083, August 25, 1978.

[6] See 56 FR 9698 (March 7, 1991) and letter from Daniel McGovern, Regional Administrator of EPA Region 9 to Randolph Wood, Director of AZ Department of Environmental Quality dated April 26, 1991.

[7] See 58 FR 36960 (July 9, 1993 and letter from John C Wise, Acting Regional Administrator of EPA Region 9 to Edward Z Fox, Director of AZ Department of Environmental Quality dated August 12, 1993.

privilege laws.[8] Therefore, ADEQ is submitting revisions to its approved State primacy program under 40 CFR 142.12. This submittal constitutes the revision for the Consumer Confidence Reports Rule, which was promulgated by EPA on August 19, 1998.[9] ADEQ is submitting this revision to become the primary enforcement authority for the State's public water systems for the Consumer Confidence Reports Rule.

2.2 Application Revision Components and Process

The required contents of a state's request for approval of a program revision are set forth in 40 CFR 142 Subpart B. Within that regulatory framework, EPA has issued guidance for various revisions to the program. EPA guidance[10] states that a final primacy revision application is complete when it contains the following items:

- State Primacy Revision Checklist per 40 CFR 142.12(c)(1) - (see page 1 of this document)
- Text of State's Statutes – (See Appendix A)
- Text of State's Regulations - (See Appendix B)
- Primacy Revision Crosswalk - (See Chapter 3 of this document)
- State Reporting and Recordkeeping Checklist - (See Chapter 3 of this document)
    - EPA guidance further stipulates a state can use the primacy revision crosswalk to meet this requirement
- Special Primacy Requirements - (See Chapter 3 of this document)
    - EPA guidance further stipulates a state can use the primacy revision crosswalk to meet this requirement
- Attorney's General Statement of Enforceability - (See AZ Attorney General's Office Certification/Statement dated July 19, 2019)

Federal regulations also allow states to submit draft applications to EPA for preliminary review and EPA can make tentative determinations on the draft applications.[11] ADEQ submitted a draft version of this application revision to EPA on February 13, 2019. ADEQ received comments from

[8] See Arizona Revised Statutes §§ 49-1401 through 49-1408.
[9] 65 Federal Register 44512
[10] *The Revised Total Coliform (RTCR) State Implementation Guidance – Interim Final,* U.S. Environmental Protection Agency, Office of Water, December 2014. See also *Revised State Implementation Guidance for the Public Notice (PN) Rule*, U.S. Environmental Protection Agency, Office of Water, March 2010. See also *Revised State Implementation Guidance for the Consumer Confidence Report (CCR) Rule*, U.S. Environmental Protection Agency, Office of Water, April 2010.
[11] See 40 CFR 142.12(d)(1)

EPA on May 6, 2019.[12] EPA's feedback consisted of editorial changes in the introduction and Primacy Update Checklist, as well as correcting citations for special primacy requirements in the crosswalk from 40 CFR 142.16(f)(2) and (f)(3) to 40 CFR 141.155(c). EPA's comments have been incorporated in this final version.

ADEQ is submitting this final application revision for EPA's approval.[13] EPA reviews the application for adequate state authority to implement the Safe Drinking Water Act. EPA's review also identifies any differences in the state's regulatory language and to ensure those differences do not make the state's rules less stringent than federal rules. If a state's requirements and authorities differ than the federal version, the state's application must include information and documentation that demonstrates the state's program is at least as stringent as the federal requirements.

EPA must take action on this revision no later than 90 days after EPA determines that the submittal is complete and final. EPA must notify ADEQ of its action.[14] A state receives full primacy enforcement authority 30 days after EPA's action is published in the Federal Register, pending no timely request for a hearing is received by EPA[15].

The next chapter includes a side-by-side comparison of EPA's federal drinking water regulation and Arizona's state statutes and rules. ADEQ analyzed both versions of regulations to determine that the State's program is no less stringent than the federal program. The State of Arizona can effectively enforce the federal Consumer Confidence Reports Rule.

[12] See letter, Corine Li, U.S. Environmental Protection Agency, to Jennifer Peterson, Arizona Department of Environmental Quality, dated May 6, 2019.
[13] Under 40 CFR 142.12(d)(2)
[14] See 40 CFR 142.12(d)(3)
[15] See 40 CFR 142.13(g)

3 Primacy Revision Crosswalk: Consumer Confidence Reports Rule

Summary of Federal Requirement	Federal Citation	State Citation (Document Title, Page Number, Section/Paragraph)	Different from Fed. Requirement?
40 CFR Part 141 – National Primary Drinking Water Regulations			
Subpart O- Consumer Confidence Reports			
This subpart establishes the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner.	40 CFR 141.151(a)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Notwithstanding the provisions of § 141.3, this subpart applies only to community water systems.	40 CFR 141.151(b)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For the purpose of this subpart, customers are defined as billing units or service connections to which water is delivered by a community water system.	40 CFR 141.151(c)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For the purpose of this subpart, detected means: at or above the levels prescribed by § 141.23(a)(4) for inorganic contaminants, at or above the levels prescribed by § 141.24(f)(7) for the contaminants listed in § 141.61(a), at or above the levels prescribed by § 141.24(h)(18) for the contaminants listed in § 141.61(c), at or above the levels prescribed by § 141.131(b)(2)(iv) for the contaminants or contaminant groups listed in § 141.64, and at or above the levels prescribed by § 141.25(c) for radioactive contaminants.	40 CFR 141.151(d)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A State that has primary enforcement responsibility may adopt by rule, after notice and comment, alternative requirements for the form and	40 CFR 141.151(e)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona

content of the reports. The alternative requirements must provide the same type and amount of information as required by §§ 141.153 and 141.154, and must be designed to achieve an equivalent level of public information and education as would be achieved under this subpart.			Administrative Code (A.A.C.) R18-4-117
For purpose of §§ 141.154 and 141.155 of this subpart, the term ''primacy agency'' refers to the State or tribal government entity that has jurisdiction over, and primary enforcement responsibility for, public water systems, even if that government does not have interim or final primary enforcement responsibility for this rule. Where the State or tribe does not have primary enforcement responsibility for public water systems, the term ''primacy agency'' refers to the appropriate EPA regional office.	40 CFR 141.151(f)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
40 CFR 141.152 EFFECTIVE DATES.			
The regulations in this subpart shall take effect on September 18, 1998.	40 CFR 141.152(a)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Each existing community water system must deliver its first report by October 19, 1999, its second report by July 1, 2000, and subsequent reports by July 1 annually thereafter. The first report must contain data collected during, or prior to, calendar year 1998 as prescribed in § 141.153(d)(3). Each report thereafter must contain data collected during, or prior to, the previous calendar year.	40 CFR 141.152(b)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A new community water system must deliver its first report by July 1 of the year after its first full calendar year in operation and annually thereafter.	40 CFR 141.152(c)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A community water system that sells water to another community water system must deliver the applicable information required in § 141.153 to the buyer system:	40 CFR 141.152(d)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

No later than April 19, 1999, by April 1, 2000, and by April 1 annually thereafter or	40 CFR 141.152(d)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
On a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.	40 CFR 141.152(d)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
40 CFR 141.153 CONTENT OF THE REPORTS.			
Each community water system must provide to its customers an annual report that contains the information specified in this section and § 141.154.	40 CFR 141.153(a)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Information on the source of the water delivered:	40 CFR 141.153(b)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Each report must identify the source(s) of the water delivered by the community water system by providing information on:	40 CFR 141.153(b)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The type of the water: e.g., surface water, ground water; and	40 CFR 141.153(b)(1)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The commonly used name(if any) and location of the body(or bodies) of water.	40 CFR 141.153(b)(1)(iI)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the primacy agency, the report must include a brief summary of the system's susceptibility to potential sources of	40 CFR 141.153(b)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

contamination, using language provided by the primacy agency or written by the operator.			
Definitions.	40 CFR 141.153(c)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Each report must include the following definitions:	40 CFR 141.153(c)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Maximum Contaminant Level Goal or MCLG: The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.	40 CFR 141.153(c)(1)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Maximum Contaminant Level or MCL: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.	40 CFR 141.153(c)(1)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A report for a community water system operating under a variance or an exemption issued under §1415 or 1416 of SDWA must include the following definition: Variances and Exemptions: State or EPA permission not to meet an MCL or a treatment technique under certain conditions.	40 CFR 141.153(c)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A report that contains data on contaminants that EPA regulates using any of the following terms must include the applicable definitions:	40 CFR 141.153(c)(3)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Treatment Technique: A required process intended to reduce the level of a contaminant in drinking water.	40 CFR 141.153(c)(3)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Action Level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.	40 CFR 141.153(c)(3)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Maximum residual disinfectant level goal or MRDLG: The level of a drinking water disinfectant below which there	40 CFR 141.153(c)(3)(iii)	Arizona Administrative	Federal rule text incorporated by reference in Arizona

is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.		Code (A.A.C.) R18-4-117	Administrative Code (A.A.C.) R18-4-117
Maximum residual disinfectant level or MRDL: The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.	40 CFR 141.153(c)(3)(iv)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A report that contains information regarding a Level 1 or Level 2 Assessment required under Subpart Y of this part must include the applicable definitions:	40 CFR 141.153(c)(4)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Level 1 Assessment: A Level 1 assessment is a study of the water system to identify potential problems and determine (if possible) why total coliform bacteria have been found in our water system.	40 CFR 141.153(c)(4)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Level 2 Assessment: A Level 2 assessment is a very detailed study of the water system to identify potential problems and determine (if possible) why an E. coli MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.	40 CFR 141.153(c)(4)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Information on detected contaminants.	40 CFR 141.153(d)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
This sub-section specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring(except Cryptosporidium). It applies to:	40 CFR 141.153(d)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Contaminants subject to a MCL, action level, maximum residual disinfectant level, or treatment technique (regulated contaminants).	40 CFR 141.153(d)(1)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Contaminants for which monitoring is required by § 141.40(unregulated contaminants); and	40 CFR 141.153(d)(1)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

Disinfection by-products or microbial contaminants for which monitoring is required by §§ 141.142 and 141.143, except as provided under paragraph (e)(1) of this section, and which are detected in the finished water.	40 CFR 141.153(d)(1)(iii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.	40 CFR 141.153(d)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The data must be derived from data collected to comply with EPA and State monitoring and analytical requirements during calendar year 1998 for the first report and subsequent calendar years thereafter except that:	40 CFR 141.153(d)(3)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Where a system is allowed to monitor for regulated contaminants less often than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than 5 years need be included.	40 CFR 141.153(d)(3)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Results of monitoring in compliance with §§ 141.142 and 141.143 need only be included for 5 years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.	40 CFR 141.153(d)(3)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For detected regulated contaminants (listed in appendix A to this subpart), the table(s) must contain:	40 CFR 141.153(d)(4)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The MCL for that contaminant expressed as a number equal to or greater than 1.0(as provided in appendix A to this subpart);	40 CFR 141.153(d)(4)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

The MCLG for that contaminant expressed in the same units as the MCL;	40 CFR 141.153(d)(4)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in paragraph(c)(3) of this section;	40 CFR 141.153(d)(4)(iii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For contaminants subject to an MCL, except turbidity, total coliform, fecal coliform and E. coli, the highest contaminant level used to determine compliance with an NPDWR and the range of detected levels, as follows: NOTE TO PARAGRAPH(d)(4)(iv): When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in appendix A of this subpart.	40 CFR 141.153(d)(4)(iv)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
When compliance with the MCL is determined annually or less frequently: The highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.	40 CFR 141.153(d)(4)(iv)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
When compliance with the MCL is determined by calculating a running annual average of all samples taken at a monitoring location: the highest average of any of the monitoring locations and the range of all monitoring locations expressed in the same units as the MCL. For the MCLs for TTHM and HAA5 in § 141.64(b)(2), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include	40 CFR 141.153(d)(4)(iv)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

the locational running annual averages for all locations that exceed the MCL.			
When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all monitoring locations: the average and range of detection expressed in the same units as the MCL. The system is required to include individual sample results for the IDSE conducted under subpart U of this part when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.	40 CFR 141.153(d)(4)(iv)(C)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For turbidity.	40 CFR 141.153(d)(4)(v)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
When it is reported pursuant to § 141.13: The highest average monthly value.	40 CFR 141.153(d)(4)(v)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
When it is reported pursuant to the requirements of § 141.71: the highest monthly value. The report should include an explanation of the reasons for measuring turbidity.	40 CFR 141.153(d)(4)(v)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
When it is reported pursuant to § 141.73 or § 141.173 or § 141.551: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in § 141.73 or § 141.173, or § 141.551 for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;	40 CFR 141.153(d)(4)(v)(C)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;	40 CFR 141.153(d)(4)(vi)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

For total coliform analytical results until March 31, 2016:	40 CFR 141.153(d)(4)(vii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or	40 CFR 141.153(d)(4)(vii)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The highest monthly percentage of positive samples for systems collecting at least 40 samples per month;	40 CFR 141.153(d)(4)(vii)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For fecal coliform and E. coli until March 31, 2016: The total number of positive samples;	40 CFR 141.153(d)(4)(viii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in appendix A to this subpart that is most applicable to the system.	40 CFR 141.153(d)(4)(ix)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For E. coli analytical results under subpart Y: The total number of positive samples.	40 CFR 141.153(d)(4)(x)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce	40 CFR 141.153(d)(5)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

separate reports tailored to include data for each service area.			
The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques, and the report must contain a clear and readily understandable explanation of the violation including: the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language of appendix A to this subpart.	40 CFR 141.153(d)(6)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For detected unregulated contaminants for which monitoring is required (except Cryptosporidium), the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.	40 CFR 141.153(d)(7)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Information on Cryptosporidium, radon, and other contaminants:	40 CFR 141.153(e)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If the system has performed any monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of § 141.143, which indicates that Cryptosporidium may be present in the source water or the finished water, the report must include:	40 CFR 141.153(e)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A summary of the results of the monitoring; and	40 CFR 141.153(e)(1)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
An explanation of the significance of the results.	40 CFR 141.153(e)(1)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If the system has performed any monitoring for radon which indicates that radon may be present in the	40 CFR 141.153(e)(2)	Arizona Administrative	Federal rule text incorporated by reference in Arizona

finished water, the report must include:		Code (A.A.C.) R18-4-117	Administrative Code (A.A.C.) R18-4-117
The results of the monitoring; and	40 CFR 141.153(e)(2)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
An explanation of the significance of the results.	40 CFR 141.153(e)(2)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, EPA strongly encourages systems to report any results which may indicate a health concern. To determine if results may indicate a health concern, EPA recommends that systems find out if EPA has proposed an NPDWR or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800–426–4791). EPA considers detects above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, EPA recommends that the report include:	40 CFR 141.153(e)(3)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The results of the monitoring; and	40 CFR 141.153(e)(3)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.	40 CFR 141.153(e)(3)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Compliance with NPDWR. In addition to the requirements of § 141.153(d)(6), the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and	40 CFR 141.153(f)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

the steps the system has taken to correct the violation.			
Monitoring and reporting of compliance data;	40 CFR 141.153(f)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Filtration and disinfection prescribed by subpart H of this part. For systems which have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes which constitutes a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.	40 CFR 141.153(f)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Lead and copper control requirements prescribed by subpart I of this part. For systems that fail to take one or more actions prescribed by §§ 141.80(d), 141.81, 141.82, 141.83 or 141.84, the report must include the applicable language of appendix A to this subpart for lead, copper, or both.	40 CFR 141.153(f)(3)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Treatment techniques for Acrylamide and Epichlorohydrin prescribed by subpart K of this part. For systems that violate the requirements of subpart K of this part, the report must include the relevant language from appendix A to this subpart.	40 CFR 141.153(f)(4)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Recordkeeping of compliance data.	40 CFR 141.153(f)(5)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Special monitoring requirements prescribed by §§ 141.40 and 141.41; and	40 CFR 141.153(f)(6)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

Violation of the terms of a variance, an exemption, or an administrative or judicial order.	40 CFR 141.153(f)(7)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Variances and Exemptions. If a system is operating under the terms of a variance or an exemption issued under § 1415 or 1416 of SDWA, the report must contain:	40 CFR 141.153(g)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
An explanation of the reasons for the variance or exemption;	40 CFR 141.153(g)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The date on which the variance or exemption was issued;	40 CFR 141.153(g)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and	40 CFR 141.153(g)(3)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A notice of any opportunity for public input in the review, or renewal, of the variance or exemption.	40 CFR 141.153(g)(4)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Additional information:	40 CFR 141.153(h)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The report must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water. This explanation may include the language of paragraphs (h)(1)(i) through(iii) or systems may use their own comparable language. The report also must include the language of paragraph(h)(1)(iv) of this section.	40 CFR 141.153(h)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds,	40 CFR 141.153(h)(1)(i)	Arizona Administrative	Federal rule text incorporated by reference in Arizona

reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally- occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.		Code (A.A.C.) R18-4-117	Administrative Code (A.A.C.) R18-4-117
Contaminants that may be present in source water include:	40 CFR 141.153(h)(1)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.	40 CFR 141.153(h)(1)(ii)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.	40 CFR 141.153(h)(1)(ii)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses.	40 CFR 141.153(h)(1)(ii)(C)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems.	40 CFR 141.153(h)(1)(ii)(D)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Radioactive contaminants, which can be naturally- occurring or be the result of oil and gas production and mining activities.	40 CFR 141.153(h)(1)(ii)(E)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
In order to ensure that tap water is safe to drink, EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which	40 CFR 141.153(h)(1)(iii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

must provide the same protection for public health.			
Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800–426–4791).	40 CFR 141.153(h)(1)(iv)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The report must include the telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report.	40 CFR 141.153(h)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
In communities with a large proportion of non-English speaking residents, as determined by the Primacy Agency, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.	40 CFR 141.153(h)(3)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The report must include information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water.	40 CFR 141.153(h)(4)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.	40 CFR 141.153(h)(5)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Systems required to comply with subpart S.	40 CFR 141.153(h)(6)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Any ground water system that receives notice from the State of a	40 CFR 141.153(h)(6)(i)	Arizona Administrative	Federal rule text incorporated by

significant deficiency or notice from a laboratory of a fecal indicator-positive ground water source sample that is not invalidated by the State under § 141.402(d) must inform its customers of any significant deficiency that is uncorrected at the time of the next report or of any fecal indicator-positive ground water source sample in the next report. The system must continue to inform the public annually until the State determines that particular significant deficiency is corrected or the fecal contamination in the ground water source is addressed under § 141.403(a). Each report must include the following elements.		Code (A.A.C.) R18-4-117	reference in Arizona Administrative Code (A.A.C.) R18-4-117
The nature of the particular significant deficiency or the source of the fecal contamination (if the source is known) and the date the significant deficiency was identified by the State or the dates of the fecal indicator- positive ground water source samples;	40 CFR 141.153(h)(6)(i)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If the fecal contamination in the ground water source has been addressed under § 141.403(a) and the date of such action;	40 CFR 141.153(h)(6)(i)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
For each significant deficiency or fecal contamination in the ground water source that has not been addressed under § 141.403(a), the State-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed; and	40 CFR 141.153(h)(6)(i)(C)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If the system receives notice of a fecal indicator-positive ground water source sample that is not invalidated by the State under § 141.402(d), the potential health effects using the health effects language of Appendix A of subpart O.	40 CFR 141.153(h)(6)(i)(D)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If directed by the State, a system with significant deficiencies that have been corrected before the next report is issued must inform its customers of the significant deficiency, how the	40 CFR 141.153(h)(6)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

deficiency was corrected, and the date of correction under paragraph (h)(6)(i) of this section.			
Systems required to comply with subpart Y.	40 CFR 141.153(h)(7)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Any system required to comply with the Level 1 assessment requirement or a Level 2 assessment requirement that is not due to an E. coli MCL violation must include in the report the text found in paragraph (h)(7)(i)(A) and paragraphs (h)(7)(i)(B) and (C) of this section as appropriate, filling in the blanks accordingly and the text found in paragraphs (h)(7)(i)(D)(1) and (2) of this section if appropriate.	40 CFR 141.153(h)(7)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.	40 CFR 141.153(h)(7)(i)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
During the past year we were required to conduct [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s). [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s) were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.	40 CFR 141.153(h)(7)(i)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
During the past year [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2	40 CFR 141.153(h)(7)(i)(C)	Arizona Administrative	Federal rule text incorporated by

assessments were required to be completed for our water system. [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.		Code (A.A.C.) R18-4-117	reference in Arizona Administrative Code (A.A.C.) R18-4-117
Any system that has failed to complete all the required assessments or correct all identified sanitary defects, is in violation of the treatment technique requirement and must also include one or both of the following statements, as appropriate:	40 CFR 141.153(h)(7)(i)(D)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
During the past year we failed to conduct all of the required assessment(s).	40 CFR 141.153(h)(7)(i)(D)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
During the past year we failed to correct all identified defects that were found during the assessment.	40 CFR 141.153(h)(7)(i)(D)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Any system required to conduct a Level 2 assessment due to an E. coli MCL violation must include in the report the text found in paragraphs (h)(7)(ii)(A) and (B) of this section, filling in the blanks accordingly and the text found in paragraphs (h)(7)(ii)(C)(1) and (2) of this section, if appropriate.	40 CFR 141.153(h)(7)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found E. coli bacteria, indicating the need to look for potential problems in water treatment or distribution.	40 CFR 141.153(h)(7)(ii)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.			
We were required to complete a Level 2 assessment because we found E. coli in our water system. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.	40 CFR 141.153(h)(7)(ii)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Any system that has failed to complete the required assessment or correct all identified sanitary defects, is in violation of the treatment technique requirement and must also include one or both of the following statements, as appropriate:	40 CFR 141.153(h)(7)(ii)(C)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
We failed to conduct the required assessment.	40 CFR 141.153(h)(7)(ii)(C)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
We failed to correct all sanitary defects that were identified during the assessment that we conducted.	40 CFR 141.153(h)(7)(ii)(C)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If a system detects E. coli and has violated the E. coli MCL, in addition to completing the table as required in paragraph (d)(4) of this section, the system must include one or more of the following statements to describe any noncompliance, as applicable:	40 CFR 141.153(h)(7)(iii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
We had an E. coli-positive repeat sample following a total coliform-positive routine sample.	40 CFR 141.153(h)(7)(iii)(A)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
We had a total coliform-positive repeat sample following an E. coli-positive routine sample.	40 CFR 141.153(h)(7)(iii)(B)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
We failed to take all required repeat samples following an E. coli-positive routine sample.	40 CFR 141.153(h)(7)(iii)(C)	Arizona Administrative	Federal rule text incorporated by reference in Arizona

		Code (A.A.C.) R18-4-117	Administrative Code (A.A.C.) R18-4-117
We failed to test for E. coli when any repeat sample tests positive for total coliform.	40 CFR 141.153(h)(7)(iii)(D)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
If a system detects E. coli and has not violated the E. coli MCL, in addition to completing the table as required in paragraph (d)(4) of this section, the system may include a statement that explains that although they have detected E. coli, they are not in violation of the E. coli MCL.	40 CFR 141.153(h)(7)(iv)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
40 CFR 141.154 REQUIRED ADDITIONAL HEALTH INFORMATION.			
All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800–426– 4791).	40 CFR 141.154(a)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Ending in the report due by July 1, 2001, a system which detects arsenic at levels above 0.025 mg/L, but below the 0.05 mg/L, and beginning in the report due by July 1, 2002, a system that detects arsenic above 0.005 mg/L and up to and including 0.010 mg/L:	40 CFR 141.154(b)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain	40 CFR 141.154(b)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.			
May write its own educational statement, but only in consultation with the Primacy Agency.	40 CFR 141.154(b)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A system which detects nitrate at levels above 5 mg/l, but below the MCL:	40 CFR 141.154(c)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider	40 CFR 141.154(c)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
May write its own educational statement, but only in consultation with the Primacy Agency.	40 CFR 141.154(c)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Every report must include the following lead-specific information:	40 CFR 141.154(d)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
A short informational statement about lead in drinking water and its effects on children. The statement must include the following information: If present, elevated levels of lead can cause serious	40 CFR 141.154(d)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. [NAME OF UTILITY] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at http://www.epa.gov/safewater/lead.			
A system may write its own educational statement, but only in consultation with the State.	40 CFR 141.154(d)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Community water systems that detect TTHM above 0.080 mg/l, but below the MCL in § 141.12, as an annual average, monitored and calculated under the provisions of § 141.30, must include health effects language for TTHMs prescribed by appendix A.	40 CFR 141.154(e)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Beginning in the report due by July 1, 2002, and ending January 22, 2006, a community water system that detects arsenic above 0.010 mg/L and up to and including 0.05 mg/L must include the arsenic health effects language prescribed by Appendix A to Subpart O of this part.	40 CFR 141.154(f)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
40 CFR 141.155 REPORT DELIVERY AND RECORDKEEPING			
Except as provided in paragraph (g) of this section, each community water system must mail or otherwise directly deliver one copy of the report to each customer.	40 CFR 141.155(a)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

The system must make a good faith effort to reach consumers who do not get water bills, using means recommended by the primacy agency. EPA expects that an adequate good faith effort will be tailored to the consumers who are served by the system but are not bill- paying customers, such as renters or workers. A good faith effort to reach consumers would include a mix of methods appropriate to the particular system such as: Posting the reports on the Internet; mailing to postal patrons in metropolitan areas; advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunch rooms of public buildings; delivery of multiple copies for distribution by single- biller customers such as apartment buildings or large private employers; delivery to community organizations.	40 CFR 141.155(b)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
No later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the primacy agency, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the primacy agency.	40 CFR 141.155(c)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
No later than the date the system is required to distribute the report to its customers, each community water system must deliver the report to any other agency or clearinghouse identified by the primacy agency.	40 CFR 141.155(d)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Each community water system must make its reports available to the public upon request.	40 CFR 141.155(e)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Each community water system serving 100,000 or more persons must post	40 CFR 141.155(f)	Arizona Administrative	Federal rule text incorporated by reference in Arizona

its current year's report to a publicly-accessible site on the Internet.		Code (A.A.C.) R18-4-117	Administrative Code (A.A.C.) R18-4-117
The Governor of a State or his designee, or the Tribal Leader where the tribe has met the eligibility requirements contained in § 142.72 for the purposes of waiving the mailing requirement, can waive the requirement of paragraph (a) of this section for community water systems serving fewer than 10,000 persons. In consultation with the tribal government, the Regional Administrator may waive the requirement of § 141.155(a) in areas in Indian country where no tribe has been deemed eligible.	40 CFR 141.155(g)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Such systems must:	40 CFR 141.155(g)(1)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Publish the reports in one or more local newspapers serving the area in which the system is located;	40 CFR 141.155(g)(1)(i)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the State; and	40 CFR 141.155(g)(1)(ii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Make the reports available to the public upon request.	40 CFR 141.155(g)(1)(iii)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Systems serving 500 or fewer persons may forego the requirements of paragraphs (g)(1)(i) and (ii) of this section if they provide notice at least once per year to their customers by mail, door-to-door delivery or by posting in an appropriate location that the report is available upon request.	40 CFR 141.155(g)(2)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
Any system subject to this subpart must retain copies of its Consumer Confidence Report for no less than 3 years.	40 CFR 141.155(h)	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117

Appendix A To Subpart O Of Part 141—Regulated Contaminants	Appendix A	Arizona Administrative Code (A.A.C.) R18-4-117	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-117
40 CFR Part 142 – National Primacy Drinking Water Regulations Implementation			
Subpart B – Primacy Enforcement Responsibility			
40 CFR 142.10 REQUIREMENTS FOR A DETERMINATION OF PRIMARY ENFORCEMENT RESPONSIBILITY.			
Summary of Federal Requirement	Federal Citation	State Citation	Explanation of State Policies and Procedures
Authority to require community water systems to provide consumer confidence reports as required under 40 CFR part 141, subpart O.	40 CFR 142.10(b)(6)(vii)	Arizona Administrative Code (A.A.C.) R18-4-101 (B) and Arizona Administrative Code (A.A.C.) R18-4-117	ADEQ has incorporated Arizona Administrative Code (A.A.C.) R18-4-117
40 CFR 142.16 Special primacy requirements.			
Consumer Confidence Report requirements.	40 CFR 142.16(f)	Arizona Revised Statute (A.R.S.) §§49-202	40 CFR Part 141, Subpart O, is incorporated by reference by R18-4-117, *Ariz. Admin. Code*; Arizona's rule is as stringent as the federal rule.
Each State that has primary enforcement responsibility must adopt the requirements of 40 CFR part 141, subpart O no later than August 21, 2000. States must submit revised programs to EPA for approval using the procedures in § 142.12(b) through (d).	40 CFR 142.16(f)(1)	Arizona Revised Statute (A.R.S.) §§49-202	40 CFR Part 141, Subpart O, is incorporated by reference by R18-4-117, *Ariz. Admin. Code*; Arizona's rule is as stringent as the federal rule.
Each State that has primary enforcement responsibility must make reports submitted to the States in compliance with 40 CFR 141.155(b) available to the public upon request.	40 CFR 141.155(c)	Arizona Revised Statute (A.R.S.) §§39-121, 39-121.01 and A.R.S. §§41-151.18	40 CFR Part 141, Subpart O, is incorporated by reference by R18-4-117, *Ariz. Admin. Code*; Arizona's rule is as stringent as the federal rule. The reports under 40 CFR 141.155(c) are public records. Under Arizona's public records laws, any document generated in connection with the

			transaction of public business is a public record, and must be maintained and open to inspection by any person at all times during office hours. Also, ADEQ has an explanation on the consumer confidence reports on its website, with the contact information for ADEQ staff
Each State that has primary enforcement responsibility must maintain a copy of the reports for a period of one year and the certifications obtained pursuant to 40 CFR 141.155(b) for a period of 5 years.	40 CFR 141.155(c)	Arizona Revised Statute (A.R.S.) §§39-121, 39-121.01 and A.R.S. §§41-151.18	40 CFR Part 141, Subpart O, is incorporated by reference by R18-4-117, *Ariz. Admin. Code*; Arizona's rule is as stringent as the federal rule. ADEQ maintains a copy of the report and the certification in the facility file of the public water system. An appropriate notation is entered into SDWIS. The physical copies are retained for at least one year and five years respectively.
Each State that has primary enforcement responsibility must report violations of this subpart in accordance with the requirements of § 142.15(a)(1).	40 CFR 142.16(f)(4)	Arizona Revised Statute (A.R.S.) §§49-202	40 CFR Part 141, Subpart O, is incorporated by reference by R18-4-117, *Ariz. Admin. Code*; Arizona's rule is as stringent as the federal rule. The ADEQ Water Quality Division compiles information on violations and reports to EPA Region IX on a quarterly basis during routine SDWIS uploads.
40 CFR 142.72 REQUIREMENTS FOR TRIBAL ELIGIBILITY.			
The Administrator is authorized to treat an Indian tribe as eligible to	40 CFR 142.72		ADEQ does not have regulatory authority

apply for primary enforcement for the Public Water System Program and the authority to waive the mailing requirements of § 141.155(a) if it meets the following criteria:			of water systems on tribal land. Therefore, ADEQ does not have authority to enforce this portion of the rule. EPA Region 9 regulates public water systems on tribal land.
40 CFR 142.78 PROCEDURE FOR PROCESSING AN INDIAN TRIBE'S APPLICATION.			
A tribe that meets the requirements of § 141.72 is eligible to apply for development grants and primacy enforcement responsibility for a Public Water System Program and associated funding under section 1443(a) of the Act and for primary enforcement responsibility for public water systems under section 1413 of the Act and for the authority to waive the mailing requirement of § 144.155(a).	40 CFR 142.78(b)		ADEQ does not have regulatory authority of water systems on tribal land. Therefore, ADEQ does not have authority to enforce this portion of the rule. EPA Region 9 regulates public water systems on tribal land.

3.1 Difference between State and Federal

Arizona State Statutes incorporates Federal requirements of 40 CFR 141 Subpart O by reference. ADEQ's rules are as stringent as Federal regulations. However, ADEQ does not have authority to regulate Public Water Systems located on Tribal land. Requirements under 40 CFR 142.72 and 40 CFR 142.78 are enforced by the Environmental Protection Agency Region 9.

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ADEQ
Arizona Department of Environmental Quality

State Application Revision for Safe Drinking Water Act Primacy Authority: Public Notification of Drinking Water Violations

Water Quality Division
July 24, 2019 FINAL

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Table of Contents

Table of Contents 3
List of Tables 3
1 Primacy Update Checklist per 40 CFR 142.12(c)(1): Public Notification of Drinking Water Violations 4
2 Introduction 9
2.1 Statement of Introduction and Purpose 9
2.2 Application Revision Components and Process 10
3 Primacy Revision Crosswalk: Public Notification of Drinking Water Violations 12
3.1 Difference between State and Federal 49

List of Tables

Table 1: Primacy Update Checklist per 40 CFR 142.12 (c)(1).....4
Table 2: Primacy Revision Crosswalk: Public Notificiation of Drinking Water Violations.....12

List of Appendices

Appendix A: Relevant Arizona Statutes
Appendix B: Relevant Arizona Rules

1 Primacy Update Checklist per 40 CFR 142.12(c)(1): Public Notification of Drinking Water Violations

Required Program Elements		Revision to State Program (YES/NO)	EPA Findings/Comments
40 CFR 142.10	Primary Enforcement Definition of Public Water System[1]	Yes. ARS 49-352 – Signed into law on April 22, 1997 (see HB2304). Amended in 2000 (see SB1435). Amended in 2003 (See HB2381). A.A.C. R18-4-103 – Amended in final rulemaking, effective 4/2/16 (see 22 A.A.R. 379). ADEQ submitting separate primacy package to EPA for PWS definition.	
40 CFR 142.10(a)	Regulations No Less Stringent	Yes R18-4-119 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(1)	Maintain Inventory	Yes R18-4-106 R18-5-101 R18-5-102 R18-5-104 R18-5-113 R18-5-507 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	

[1] New requirement from the 1996 Amendments. Regulations published in the April 28, 1998 Federal Register.

40 CFR 142.10(b)(2)	Sanitary Survey Program	Yes R18-4-208 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(3)	Laboratory Certification Program	Yes R18-4-105 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(4)	Laboratory Capability	Yes R18-4-105 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(5)	Plan Review Program	Yes R18-4-603 Title 18, Chapter 5, Article 5 ADEQ recodified Chapter 5 on January 30, 2004 (see 10 A.A.R. 585).	

40 CFR 142.10(b)(6)(i)	Authority to apply regulations	Yes R18-4-103 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ amended again effective April 2, 2016 (see 22 A.A.R. 379).	
40 CFR 142.10(b)(6)(ii)	Authority to sue in courts of competent jurisdiction	No A.R.S. 49-262 Yes. A.R.S. 49-354 – ADEQ is submitting additional AG certification and rationale for Arizona's administrative penalty authority.	
40 CFR 142.10(b)(6)(iii)	Right of Entry	No A.R.S. 49-203(B) A.R.S. 49-353 Yes - A.A.C. R18-4-207 (ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978)).	
40 CFR 142.10(b)(6)(iv)	Authority to require records	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(b)(6)(v)	Authority to require public notification	Yes R18-4-119 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	

40 CFR 142.10(b)(6)(vi)	Authority to assess civil and criminal penalties	No A.R.S. 49-262, 263 Yes. A.R.S. 49-354 – ADEQ is submitting additional AG certification and rationale for Arizona's administrative penalty authority.	
40 CFR 142.10(b)(6)(vii)	Authority to require CWSs to provide CCRs[2]	Yes R18-4-117. ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). ADEQ is submitting a separate primacy package revision to EPA for CCR.	
40 CFR 142.10(c)	Maintenance of Records	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(d)	Variance/Exemption Conditions (if applicable)[3]	Yes R18-4-113 R18-4-103(C-D) ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	
40 CFR 142.10(e)	Emergency Plans	Yes R18-4-204 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978).	

[2] New regulation published in the August 19, 1998 Federal Register.
[3] New regulations published in the August 14, 1998 Federal Register.

40 CFR 142.10(f)	Administrative Penalty Authority	Yes. A.R.S. 49-354. ADEQ is submitting a separate primacy package revision to EPA.	
40 CFR 142.10(g)	Electronic Reporting Regulations	Yes R18-4-106 ADEQ amended rules effective August 30, 2008 (see 14 A.A.R. 2978). EPA has approved Arizona's electronic reporting (see 79 FR 52318; 81 FR 36538).	

2 Introduction

The U.S. Congress passed the Safe Drinking Water Act in 1974, with later amendments in 1986 and 1996. The Act (SDWA) requires the U.S. Environmental Protection Agency (EPA) to establish and enforce standards. These standards are further set forth in the Code of Federal Regulations for water contaminants EPA identifies as threats to public health and the environment (see 40 CFR 141, 142, 143). Public water systems must comply with EPA's standards, including maximum contaminant levels or treatment techniques, and monitoring and reporting requirements.

EPA delegates primary enforcement authority of the SDWA to states and Indian Tribes if they meet certain requirements. This delegation is commonly referred to as "primacy." The 1996 SDWA Amendments updated the process for states to obtain and/or retain primacy. On April 28, 1998, EPA promulgated the Primacy Rule to reflect those statutory changes.[4]

In order to obtain primacy, a state or Indian Tribe must submit an application to EPA under 40 CFR 142, Subpart B. These applications are due no later than two years after EPA promulgates or revises a drinking water regulation.

2.1 Statement of Introduction and Purpose

The State of Arizona (Arizona Department of Environmental Quality or ADEQ) received initial primary enforcement approval from EPA in 1978.[5] EPA then approved a subsequent primacy program revision for eight VOC and public notice rule requirements in 1991.[6] Later in 1993, EPA approved a primacy program revision for filtration and disinfection of surface water systems, ground water systems influenced by surface water, and total coliform bacteria.[7] The 1996 SDWA Amendments triggered new primacy package requirements, as they amended the federal definition of a "public water system" and added provisions for administrative penalty authority.

Since then, EPA and ADEQ have identified additional Arizona state primacy program revisions for several contaminant-specific federal rules, as well as updating the State's primacy program to reflect the SDWA Amendments for public water system definition and Arizona's audit privilege laws.[8] Therefore, ADEQ is submitting revisions to its approved State primacy program under 40 CFR 142.12. This submittal constitutes the application revision for the Public

[4] See 63 FR 23362
[5] See letter from Frank Covington, Water Division Director, EPA to Ted Williams, AZ Department of Health Services Deputy Director, dated August 25, 1978. See also final Federal Register notice, 43 FR 38083, August 25, 1978.
[6] See 56 FR 9698 (March 7, 1991) and letter from Daniel McGovern, Regional Administrator of EPA Region 9 to Randolph Wood, Director of AZ Department of Environmental Quality dated April 26, 1991.
[7] See 58 FR 36960 (July 9, 1993 and letter from John C Wise, Acting Regional Administrator of EPA Region 9 to Edward Z Fox, Director of AZ Department of Environmental Quality dated August 12, 1993.
[8] See Arizona Revised Statutes §§ 49-1401 through 49-1408.

Notification of Drinking Water Violations rule, which was promulgated by EPA on May 4, 2000[9]. ADEQ is submitting this application revision to become the primary enforcement authority for the State's public water systems for the Public Notification of Drinking Water Violations rule.

2.2 Application Revision Components and Process

The required contents of a state's request for approval of a program revision are set forth in 40 CFR 142 Subpart B. Within that regulatory framework, EPA has issued guidance for various revisions to the program. EPA guidance[10] states that a final primacy revision application is complete when it contains the following items:

- State Primacy Revision Checklist per 40 CFR 142.12(c)(1) - (see Chapter 1 of this document)
- Text of State's Statutes – (See Appendix A)
- Text of State's Regulations - (See Appendix B)
- Primacy Revision Crosswalk - (See Chapter 3 of this document)
- State Reporting and Recordkeeping Checklist - (See Chapter 3 of this document)
    - EPA guidance further stipulates a state can use the primacy revision crosswalk to meet this requirement
- Special Primacy Requirements - (See Chapter 3 of this document)
    - EPA guidance further stipulates a state can use the primacy revision crosswalk to meet this requirement
- Attorney's General Statement of Enforceability - (See AZ Attorney General's Office Certification/Statement)

Federal regulations also allow states to submit draft applications to EPA for preliminary review and EPA can make tentative determinations on the draft applications.[11] ADEQ submitted a draft version of this application revision to EPA on February 13, 2019. ADEQ received EPA's comments on May 6, 2019.[12] EPA's feedback consisted of editorial comments in the introduction and including additional sections in the primacy crosswalk to address 40 CFR

[9] See 65 FR 25982

[10] *The Revised Total Coliform (RTCR) State Implementation Guidance – Interim Final,* U.S. Environmental Protection Agency, Office of Water, December 2014. See also *Revised State Implementation Guidance for the Public Notice (PN) Rule*, U.S. Environmental Protection Agency, Office of Water, March 2010. See also *Revised State Implementation Guidance for the Consumer Confidence Report (CCR) Rule*, U.S. Environmental Protection Agency, Office of Water, April 2010.

[11] See 40 CFR 142.12(d)(1)

[12] See letter, Corine Li, U.S. Environmental Protection Agency, to Jennifer Peterson, Arizona Department of Environmental Quality, dated May 6, 2019.

141.11(d)(2), 141.23(f)(2), 141.31(d), 141.33(e), and 141.75(a)(5)(ii) per EPA guidance. Additionally, EPA's comments requested a description of the process of how to respond to a request for consultation with ADEQ within 24 hours to meet 40 CFR 141.203(b)(3). These comments have been incorporated in this final version.

ADEQ is submitting this final application revision for EPA's approval.[13] EPA reviews the application to find any differences in the state's regulatory language and to ensure those differences do not make the state's rules less stringent than federal rules. If a state's requirements and authorities differ than the federal version, the state's application must include information and documentation that demonstrates the state's program is at least as stringent as the federal requirements.

EPA must take action on this revision no later than 90 days after determining the submittal is complete and final. EPA must notify ADEQ of its action.[14] A state receives full primacy enforcement authority 30 days after EPA's action is published in the Federal Register, pending no timely request for a hearing is received by EPA[15].

The next chapter includes a side-by-side comparison of EPA's federal drinking water regulation and Arizona's state statutes and rules. ADEQ analyzed both versions of regulations to determine that the State's program is no less stringent than the federal program. The State of Arizona can effectively enforce the federal Public Notification of Drinking Water Violations rule.

[13] Under 40 CFR 142.12(d)(2)
[14] See 40 CFR 142.12(d)(3)
[15] See 40 CFR 142.13(g)

3 Primacy Revision Crosswalk: Public Notification of Drinking Water Violations

Summary of Federal Requirement	Federal Citation	State Citation (Document Title, Page Number, Section/Paragraph)	Different from Fed. Requirement?
40 CFR Part 141 – National Primary Drinking Water Regulations			
Subpart B- Maximum Contaminant Levels			
§141.11 Inorganic chemical sampling and analytical requirements			
The non-community water system is meeting the public notification requirements under §141.209, including continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure;	§141.11(d)(2)	Arizona Administrative Code (A.A.C.) R18-4-104 and R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-104 and R18-4-119
Subpart C – Monitoring and Analytical Requirements			
§141.23 Inorganic chemical sampling and analytical requirements			
Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within 24 hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the 24-hour sampling requirement must immediately notify persons served by the public water system in accordance with §141.202 and meet other Tier 1 public notification requirements under subpart Q of this part. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the	§141.23(f)(2)	Arizona Administrative Code (A.A.C.) R18-4-105 and R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-105 and R18-4-119

analytical results of the first sample.			
Subpart D– Reporting and Recordkeeping			
§141.31 Reporting Requirements			
The public water system, within 10 days of completing the public notification requirements under subpart Q of this part for the initial public notice and any repeat notices, must submit to the Department a certification that it has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.	§141.31(d)	Arizona Administrative Code (A.A.C.) R18-4-106 and R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-106 and R18-4-119
§141.33 Record Maintenance			
Copies of public notices issued pursuant to subpart Q of this part and certifications made to the primacy agency pursuant to §141.31 must be kept for three years after issuance.	§141.33(e)	Arizona Administrative Code (A.A.C.) R18-4-106 and R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-106 and R18-4-119
Subpart H- Filtration and Disinfection			
§141.75 Reporting and Recordkeeping Requirements			
If at any time the turbidity exceeds 5 NTU, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under §141.203(b)(3).	§141.75(a)(5)(ii)	Arizona Administrative Code (A.A.C.) R18-4-110 and R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-110 and R18-4-119
Subpart Q – Public Notification of Drinking Water Regulations			

§141.201 General public notification requirements			
Public water systems in States with primacy for the public water system supervision (PWSS) program must comply with the requirements in this subpart no later than May 6, 2002 or on the date the State-adopted rule becomes effective, whichever comes first. Public water systems in jurisdictions where EPA directly implements the PWSS program must comply with the requirements in this subpart on October 31, 2000. Prior to these dates, public water systems must continue to comply with the public notice requirements in §141.32 of this part. The term "primacy agency" is used in this subpart to refer to either EPA or the State or the Tribe in cases where EPA, the State, or the Tribe exercises primary enforcement responsibility for this subpart	§141.201	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Who must give public notice? Each owner or operator of a public water system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of national primary drinking water	§ 141.201(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

regulations (NPDWR) and for other situations, as listed in Table 1. The term "NPDWR violations" is used in this subpart to include violations of the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures in this part 141. Appendix A to this subpart identifies the tier assignment for each specific violation or situation requiring a public notice.			
Table 1 to §141.201—Violation Categories and Other Situations Requiring a Public Notice			
(1) NPDWR violations:			
(i) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL).			
(ii) Failure to comply with a prescribed treatment technique (TT).			
(iii) Failure to perform water quality monitoring, as required by the drinking water regulations.			
(iv) Failure to comply with testing procedures as prescribed by a drinking water regulation.			
(2) Variance and exemptions under sections 1415 and 1416 of SDWA:			
(i) Operation under a variance or an exemption.			
(ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.			
(3) Special public notices:			
(i) Occurrence of a waterborne disease outbreak or other waterborne emergency.			
(ii) Exceedance of the nitrate MCL by non-community water systems (NCWS), where granted permission by the primacy agency under 141.11(d) of this part.			
(iii) Exceedance of the secondary maximum contaminant level (SMCL) for fluoride.			
(iv) Availability of unregulated contaminant monitoring data.			
(v) Other violations and situations determined by the primacy agency to require a public notice under this subpart, not already listed in Appendix A.			
What type of public notice is required for each violation or situation? Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation	§ 141.201(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in Table 1 of this section are determined by the tier to which it is assigned. Table 2 of this section provides the definition of each tier. Appendix A of this part identifies the tier assignment for each specific violation or situation.			
TABLE 2 TO §141.201—DEFINITION OF PUBLIC NOTICE TIERS			
(1) Tier 1 public notice —required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.			
(2) Tier 2 public notice —required for all other NPDWR violations and situations with potential to have serious adverse effects on human health.			
(3) Tier 3 public notice —required for all other NPDWR violations and situations not included in Tier 1 and Tier 2.			
Who must be notified?	§ 141.201(c)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Each public water system must provide public notice to persons served by the water system, in accordance with this subpart. Public water systems that sell or otherwise provide drinking water to other public water systems (i.e. , to consecutive systems) are required to give public notice to the owner or operator of the consecutive system; the consecutive system is responsible for providing public	§ 141.201(c)(1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

notice to the persons it serves.			
If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the primacy agency may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the primacy agency for limiting distribution of the notice must be granted in writing.	§ 141.201(c)(2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
A copy of the notice must also be sent to the primacy agency, in accordance with the requirements under §141.31(d).	§ 141.201(c)(3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
§141.202 TIER 1 PUBLIC NOTICE – FORM, MANNER, AND FREQUENCY OF NOTICE.			
Which violations or situations require a Tier 1 public notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 1 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.	§ 141.202(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
TABLE 1 TO §141.202—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE			
(1) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution system (as specified in §141.63(b)), or when the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform (as specified in §141.21(e));			
(2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in §141.62, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in §141.23(f)(2);			

(3) Exceedance of the nitrate MCL by non-community water systems, where permitted to exceed the MCL by the primacy agency under §141.11(d), as required under §141.209;			
(4) Violation of the MRDL for chlorine dioxide, as defined in §141.65(a), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system, as specified in §141.133(c)(2)(i);			
(5) Violation of the turbidity MCL under §141.13(b), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;			
(6) Violation of the Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR) or Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;			
(7) Occurrence of a waterborne disease outbreak, as defined in §141.2, or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);			
(8) Detection of *E. coli* , enterococci, or coliphage in source water samples as specified in §141.402(a) and §141.402(b);			
(9) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the primacy agency either in its regulations or on a case-by-case basis.			
When is the Tier 1 public notice to be provided? What additional steps are required? Public water systems must:	§ 141.202(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Provide a public notice as soon as practical but no later than 24 hours after the system learns of the violation;	§ 141.202(b) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Initiate consultation with the primacy agency as soon as practical, but no later than 24 hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and	§ 141.202(b) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Comply with any additional public notification requirements (including any repeat notices or direction on	§ 141.202(b) (3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

the duration of the posted notices) that are established as a result of the consultation with the primacy agency. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.			
What is the form and manner of the public notice? Public water systems must provide the notice within 24 hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one or more of the following forms of delivery:	§ 141.202(c)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Appropriate broadcast media (such as radio and television);	§ 141.202(c) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Posting of the notice in conspicuous locations throughout the area served by the water system;	§ 141.202(c) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Hand delivery of the notice to persons served by the water system; or	§ 141.202(c) (3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

Another delivery method approved in writing by the primacy agency.	§ 141.202(c) (4)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

§ 141.203 TIER 2 PUBLIC NOTICE —FORM, MANNER, AND FREQUENCY OF NOTICE.			
Which violations or situations require a Tier 2 public notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 2 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.	§ 141.203(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
TABLE 1 TO §141.203—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 2 PUBLIC NOTICE			
(1) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under §141.202(a) or where the primacy agency determines that a Tier 1 notice is required;			
(2) Violations of the monitoring and testing procedure requirements, where the primacy agency determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and			
(3) Failure to comply with the terms and conditions of any variance or exemption in place.			
(4) Failure to take corrective action or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer under §141.403(a).			
When is the Tier 2 public notice to be provided?	§ 141.203(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Public water systems must provide the public notice as soon as practical, but no later than 30 days after the system learns of	§ 141.203(b)(1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The primacy agency may, in appropriate circumstances, allow additional time for the initial notice of up to three months from the date the system learns of the violation. It is not appropriate for the primacy agency to grant an extension to the 30-day deadline for any unresolved violation or to allow across- the-board extensions by rule or policy for other violations or situations requiring a Tier 2 public notice. Extensions granted by the primacy agency must be in writing.			
The public water system must repeat the notice every three months as long as the violation or situation persists, unless the primacy agency determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the primacy agency to	§ 141.203(b)(2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

allow less frequent repeat notice for an MCL violation under the Total Coliform Rule or a treatment technique violation under the Surface Water Treatment Rule or Interim Enhanced Surface Water Treatment Rule. It is also not appropriate for the primacy agency to allow through its rules or policies across-the-board reductions in the repeat notice frequency for other ongoing violations requiring a Tier 2 repeat notice. Primacy agency determinations allowing repeat notices to be given less frequently than once every three months must be in writing.			
For the turbidity violations specified in this paragraph, public water systems must consult with the primacy agency as soon as practical but no later than 24 hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under §141.202(a) is required to protect public health. When consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notice of the violation within the next 24 hours (i.e., no later	§ 141.203(b) (3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119. ADEQ's Compliance Assistance Coordinators (CAC) oversee specific counties within Arizona. Water systems in the specific counties are in regular contact with the designated Compliance Assistance Coordinators. If water systems are unaware of who the designated Compliance Assistance Coordinator is, the contact information is located on ADEQ's website (http://www.azdeq.gov/node/3369). When the CACs are contacted regarding turbidity exceedances, ADEQ staff will consult with rule and management to determine where a Tier 1 public notice will be required. Decisions will be made within 24 hours of original consultation. Communication of the determination will be via phone call and follow up email to the water system. Templates of Tier 1 public notices are available 24 hours a day

than 48 hours after the system learns of the violation), following the requirements under §141.202(b) and (c). Consultation with the primacy agency is required for:			via ADEQ's website (http://www.azdeq.gov/node/3912)
Violation of the turbidity MCL under §141.13(b); or	§ 141.203(b) (3) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Violation of the SWTR, IESWTR or LT1ESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.	§ 141.203(b) (3) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What is the form and manner of the Tier 2 public notice? Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:	§ 141.203(c)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Unless directed otherwise by the primacy agency in writing, community water systems must provide notice by:	§ 141.203(c) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Mail or other direct delivery to each customer receiving a bill and to other service connections to	§ 141.203(c) (1) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

which water is delivered by the public water system; and			
Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: Publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places served by the system or on the Internet; or delivery to community organizations.	§ 141.203(c) (1) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Unless directed otherwise by the primacy agency in writing, non-community water systems must provide notice by:	§ 141.203(c) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system,	§ 141.203(c) (2) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

or by mail or direct delivery to each customer and service connection (where known); and			
Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: Publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).	§ 141.203(c) (2) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
§ 141.204 TIER 3 PUBLIC NOTICE —FORM, MANNER, AND FREQUENCY OF NOTICE.			
Which violations or situations require a Tier 3 public notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 3 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.	§ 141.204(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
TABLE 1 TO §141.204—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 3 PUBLIC NOTICE			
(1) Monitoring violations under 40 CFR part 141, except where a Tier 1 notice is required under §141.202(a) or where the primacy agency determines that a Tier 2 notice is required;			
(2) Failure to comply with a testing procedure established in 40 CFR part 141, except where a Tier 1 notice is required under §141.202(a)) or where the primacy agency determines that a Tier 2 notice is required;			

(3) Operation under a variance granted under Section 1415 or an exemption granted under Section 1416 of the Safe Drinking Water Act;			
(4) Availability of unregulated contaminant monitoring results, as required under §141.207; and			
(5) Exceedance of the fluoride secondary maximum contaminant level (SMCL), as required under §141.208.			
When is the Tier 3 public notice to be provided?	§ 141.204(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Public water systems must provide the public notice not later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the public water system must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days (even if the violation or situation is resolved).	§ 141.204(b) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve months, as long as the timing requirements of paragraph (b)(1) of this section are met.	§ 141.204(b) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What is the form and manner of the Tier 3 public notice? Public	§ 141.204(c)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

water systems must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:			
Unless directed otherwise by the primacy agency in writing, community water systems must provide notice by:	§ 141.204(c) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and	§ 141.204(c) (1) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may	§ 141.204(c) (1) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

include: Publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations.			
Unless directed otherwise by the primacy agency in writing, non-community water systems must provide notice by:	§ 141.204(c) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and	§ 141.204(c) (2) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include: Publication in a local newspaper or newsletter distributed	§ 141.204(c) (2) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).			
In what situations may the Consumer Confidence Report be used to meet the Tier 3 public notice requirements? For community water systems, the Consumer Confidence Report (CCR) required under Subpart O of this part may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as:	§ 141.204(d)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under §141.204(b);	§ 141.204(d) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
The Tier 3 notice contained in the CCR follows the content requirements under §141.205; and	§ 141.204(d) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
The CCR is distributed following the delivery requirements under §141.204(c).	§ 141.204(d) (3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
§ 141.205 CONTENT OF THE PUBLIC NOTICE.			
What elements must be included in the public notice for violations of National Primary Drinking Water Regulations (NPDWR) or other situations requiring a public notice? When a public water system violates a NPDWR or	§ 141.205(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

has a situation requiring public notification, each public notice must include the following elements:			
A description of the violation or situation, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);	§ 141.205(a) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
When the violation or situation occurred;	§ 141.205(a) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Any potential adverse health effects from the violation or situation, including the standard language under paragraph (d)(1) or (d)(2) of this section, whichever is applicable;	§ 141.205(a) (3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;	§ 141.205(a) (4)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Whether alternative water supplies should be used;	§ 141.205(a) (5)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What actions consumers should take, including when they should seek medical help, if known;	§ 141.205(a) (6)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What the system is doing to correct the violation or situation;	§ 141.205(a) (7)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
When the water system expects to return to compliance or resolve the situation;	§ 141.205(a) (8)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
The name, business address, and phone number of the water	§ 141.205(a) (9)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and			
A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (d)(3) of this section, where applicable.	§ 141.205(a) (10)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What elements must be included in the public notice for public water systems operating under a variance or exemption?	§ 141.205(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
If a public water system has been granted a variance or an exemption, the public notice must contain:	§ 141.205(b) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
An explanation of the reasons for the variance or exemption;	§ 141.205(b) (1) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
The date on which the variance or exemption was issued;	§ 141.205(b) (1) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and	§ 141.205(b) (1) (iii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
A notice of any opportunity for public input in the review of the variance or exemption.	§ 141.205(b) (1) (iv)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (a) of this section.	§ 141.205(b) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
How is the public notice to be presented?	§ 141.205(c)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Each public notice required by this section:	§ 141.205(c) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Must be displayed in a conspicuous way when printed or posted;	§ 141.205(c) (1) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Must not contain overly technical language or very small print;	§ 141.205(c) (1) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Must not be formatted in a way that defeats the purpose of the notice;	§ 141.205(c) (1) (iii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Must not contain language which nullifies the purpose of the notice.	§ 141.205(c) (1) (iv)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Each public notice required by this section must comply with multilingual requirements, as follows:	§ 141.205(c) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
For public water systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons	§ 141.205(c) (2) (i)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.			
In cases where the primacy agency has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information as in paragraph (c)(2)(i) of this section, where appropriate to reach a large proportion of non-English speaking persons served by the water system.	§ 141.205(c) (2) (ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What standard language must public water systems include in their public notice? Public water systems are required to include the following standard language in their public notice:	§ 141.205(d)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption. Public water systems must include in each public notice the health effects language specified in Appendix B to this subpart corresponding to each MCL, MRDL, and treatment technique	§ 141.205(d) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

violation listed in Appendix A to this subpart, and for each violation of a condition of a variance or exemption.			
Standard language for monitoring and testing procedure violations. Public water systems must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations listed in Appendix A to this subpart: We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we "did not monitor or test" or "did not complete all monitoring or testing" for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time.	§ 141.205(d) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Standard language to encourage the distribution of the public notice to all persons served. Public water systems must include in their notice the following language (where applicable):	§ 141.205(d) (3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.			
§ 141.206 NOTICE TO NEW BILLING UNITS OR NEW CUSTOMERS.			
What is the requirement for community water systems? Community water systems must give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.	§ 141.206(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What is the requirement for non-community water systems? Non-community water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as	§ 141.206(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

the violation, variance, exemption, or other situation persists.			
§ 141.207 SPECIAL NOTICE OF THE AVAILABILITY OF UNREGULATED CONTAMINANT MONITORING RESULTS.			
When is the special notice to be given? The owner or operator of a community water system or non-transient, non-community water system required to monitor under §141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.	§ 141.207(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What is the form and manner of the special notice? The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in §§141.204(c), (d)(1), and (d)(3). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.	§ 141.207(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
§ 141.208 SPECIAL NOTICE FOR EXCEEDANCE OF THE SMCL FOR FLUORIDE.			
When is the special notice to be given? Community water systems that exceed the fluoride secondary maximum contaminant level (SMCL) of 2 mg/l as specified in §143.3 (determined by the last single sample taken in accordance with §141.23), but do	§ 141.208(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

not exceed the maximum contaminant level (MCL) of 4 mg/l for fluoride (as specified in §141.62), must provide the public notice in paragraph (c) of this section to persons served. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the State public health officer. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven days (even if the exceedance is eliminated). On a case-by-case basis, the primacy agency may require an initial notice sooner than 12 months and repeat notices more frequently than annually.			
What is the form and manner of the special notice? The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier	§ 141.208(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

3 public notice in §141.204(c) and (d)(1) and (d)(3).			
What mandatory language must be contained in the special notice? The notice must contain the following language, including the language necessary to fill in the blanks: This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/l) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system [name] has a fluoride concentration of [insert value] mg/l. Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the	§ 141.208(c)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride- containing products. Older children and adults may safely drink the water. Drinking water containing more than 4 mg/L of fluoride (the U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem			
For more information, please call [name of water system contact] of [name of community water system] at [phone number]. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1–877–8–NSF–HELP.”			

§ 141.209 SPECIAL NOTICE FOR NITRATE EXCEEDANCES ABOVE MCL BY NON-COMMUNITY WATER SYSTEMS (NCWS), WHERE GRANTED PERMISSION BY THE PRIMACY AGENCY UNDER §141.11(D)			
When is the special notice to be given? The owner or operator of a non-community water system granted permission by the primacy agency under §141.11(d) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under §141.202(a) and (b).	§ 141.209(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What is the form and manner of the special notice? Non-community water systems granted permission by the primacy agency to exceed the nitrate MCL under §141.11(d) must provide continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under §141.202(c) and the content requirements under §141.205.	§ 141.209(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
§ 141.210 NOTICE BY PRIMACY AGENCY ON BEHALF OF THE PUBLIC WATER SYSTEM.			
May the primacy agency give the notice on behalf of the public water system? The primacy agency may give the notice required by this subpart on behalf of the owner and	§ 141.210(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

operator of the public water system if the primacy agency complies with the requirements of this subpart.			
What is the responsibility of the public water system when notice is given by the primacy agency? The owner or operator of the public water system remains responsible for ensuring that the requirements of this subpart are met.	§ 141.210(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
§ 141.211 Special notice for repeated failure to conduct monitoring of the source water for Cryptosporidium and for failure to determine bin classification or mean Cryptosporidium level.			
When is the special notice for repeated failure to monitor to be given? The owner or operator of a community or non-community water system that is required to monitor source water under §141.701 must notify persons served by the water system that monitoring has not been completed as specified no later than 30 days after the system has failed to collect any 3 months of monitoring as specified in §141.701(c). The notice must be repeated as specified in §141.203(b).	§ 141.211(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
When is the special notice for failure to determine bin classification or mean Cryptosporidium level to be given? The owner or operator of a	§ 141.211(b)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

community or non-community water system that is required to determine a bin classification under §141.710, or to determine mean Cryptosporidium level under §141.712, must notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed report the determination as specified in §141.710(e) or §141.712(a), respectively. The notice must be repeated as specified in §141.203(b). The notice is not required if the system is complying with a State-approved schedule to address the violation.			
What is the form and manner of the special notice? The form and manner of the public notice must follow the requirements for a Tier 2 public notice prescribed in §141.203(c). The public notice must be presented as required in §141.205(c).	§ 141.211(c)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
What mandatory language must be contained in the special notice? The notice must contain the following language, including the	§ 141.211(d)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

language necessary to fill in the blanks.			
The special notice for repeated failure to conduct monitoring must contain the following language: We are required to monitor the source of your drinking water for Cryptosporidium. Results of the monitoring are to be used to determine whether water treatment at the (treatment plant name) is sufficient to adequately remove Cryptosporidium from your drinking water. We are required to complete this monitoring and make this determination by (required bin determination date). We "did not monitor or test" or "did not complete all monitoring or testing" on schedule and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate Cryptosporidium removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, (date). For more information, please	§ 141.211(d) (1)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

call (name of water system contact) of (name of water system) at (phone number).			
The special notice for failure to determine bin classification or mean Cryptosporidium level must contain the following language: We are required to monitor the source of your drinking water for Cryptosporidium in order to determine by (date) whether water treatment at the (treatment plant name) is sufficient to adequately remove Cryptosporidium from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).	§ 141.211(d) (2)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.	§ 141.211(d) (3)	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119

Appendix A to Subpart Q	Appendix A to Subpart Q	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Appendix B to Subpart Q	Appendix B to Subpart Q	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
Appendix C to Subpart Q	Appendix C to Subpart Q	Arizona Administrative Code (A.A.C.) R18-4-119	Federal rule text incorporated by reference in Arizona Administrative Code (A.A.C.) R18-4-119
40 CFR Part 142 – National Primacy Drinking Water Regulations Implementation			
Subpart B – Primacy Enforcement Responsibility			
Summary of Federal Requirement	Federal Citation	State Citation	Explanation of State Policies and Procedures
§ 142.10 REQUIREMENTS FOR A DETERMINATION OF PRIMARY ENFORCEMENT RESPONSIBILITY.			
Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in Subpart Q of Part 141 of this chapter and §142.16(a).	§ 142.10(b)(6)(v)	Arizona Administrative Code (A.A.C.) R18-4-101 (B) and Arizona Administrative Code (A.A.C.) R18-4-119	All related federal rules are incorporated by reference; Arizona's rules are as stringent as the federal rules.
Authority to assess civil or criminal penalties for violation of the State's primary drinking water regulations and public notification requirements, including the authority to assess daily penalties or multiple penalties when a violation continues;	§ 142.10(b)(6)(vi)	Arizona Revised Statue (A.R.S.) § 49-354(C) and (G)	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
40 CFR Part 142.14 – Records Kept by States			
Public notification records under Subpart Q of Part 141 of this chapter received from public water systems (including certifications of compliance and copies of public notices) and any state determinations establishing alternative public notification requirements for the water systems must be	§ 142.14(f)	Arizona Revised Statue (A.R.S.) § 41-151.14	ADEQ maintains records of decision made pursuant to 40 CFR Part 141, subpart Q in the facility file of the public water system. An appropriate summary of the record of decision is entered into SDWIS. The record retention times as set out in 40 CFR 142.14 are formalized in a schedule, as required under Arizona's public records laws, specifically A.R.S. § 41-151.14.

retained for three years.			
40 CFR Part 142.15 – Reports by States			
Each State which has primary enforcement responsibility shall submit quarterly reports to the Administrator on a schedule and in a format prescribed by the Administrator, consisting of the following information:	§ 142.15(a)	Arizona Revised Statute (A.R.S.) §§49-202	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
(1) New violations by public water systems in the State during the previous quarter of State regulations adopted to incorporate the requirements of national primary drinking water regulations, including violations of the public notification requirements under Subpart Q of Part 141 of this chapter;	§ 142.15(a)(1)	Arizona Revised Statute (A.R.S.) §§49-202	The ADEQ Water Quality Division Drinking Water Value Stream compiles all required information and reports to EPA Region IX on a quarterly basis, generally through the Safe Drinking Water Information System-SDWIS/State uploads.
40 CFR Part 142.16 – Special Primacy Requirements			
State public notification requirements	§ 142.16(a)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
Each State that has primary enforcement authority under this part must submit complete and final requests for approval of program revisions to adopt the requirements of Subpart Q of Part 141 of this chapter, using the procedures in §142.12(b) through (d). At its option, a State may, by rule, and after notice and comment, establish	§ 142.16(a)(1)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule. ADEQ did not establish alternative PN requirements in its rulemaking, and has no plans at the current time to do so.

alternative public notification requirements with respect to the form and content ofthe public notice required under Subpart Q of Part 141 of this chapter. The alternative requirements must provide the same type and amount of information required under Subpart Q and must meet the primacy requirements under §142.10.			
As part of the revised primacy program, a State must also establish enforceable requirements and procedures when the State adds to or changes the requirements under:	§ 142.16(a)(2)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
Table 1 to 40 CFR 141.201(a)(Item (3)(v)) —To require public water systems to give a public notice for violations or situations other than those listed in Appendix A of Subpart Q of Part 141 of this chapter;	§ 142.16(a)(2)(i)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
40 CFR 141.201(c)(2) —To allow public water systems, under the specific circumstances listed in §141.201(c)(2), to limit the distribution of the public notice to persons served by the portion of the distribution system that is out of compliance;	§ 142.16(a)(2)(ii)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.

Table 1 of 40 CFR 141.202(a) (Items (5), (6), and (9)) —To require public water systems to give a Tier 1 public notice (rather than a Tier 2 or Tier 3 notice) for violations or situations listed in Appendix A of Subpart Q of Part 141 of this chapter;	§ 142.16(a)(2)(iii)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
40 CFR 141.202(b)(3) —To require public water systems to comply with additional Tier 1 public notification requirements set by the State subsequent to the initial 24-hour Tier 1 notice, as a result of their consultation with the State required under §§141.202(b)(2);	§ 142.16(a)(2)(iv)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
40 CFR 141.202(c), 141.203(c) and 141.204(c) —To require a different form and manner of delivery for Tier 1, 2 and 3 public notices.	§ 142.16(a)(2)(v)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
Table 1 to 40 CFR 141.203(a) (Item (2)) —To require the public water systems to provide a Tier 2 public notice (rather than Tier (3)) for monitoring or testing procedure violations specified by the State;	§ 142.16(a)(2)(vi)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
40 CFR 141.203(b)(1) —To grant public water systems an extension up to three months for distributing the Tier 2 public notice in appropriate circumstances (other	§142.16(a)(2)(vii)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.

than those specifically excluded in the rule);			
40 CFR 141.203(b)(2) —To grant a different repeat notice frequency for the Tier 2 public notice in appropriate circumstances (other than those specifically excluded in the rule), but no less frequently than once per year;	§142.16(a)(2)(vii)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
40 CFR 141.203(b)(3) —To respond within 24 hours to a request for consultation by the public water system to determine whether a Tier 1 (rather than a Tier 2) notice is required for a turbidity MCL violation under §141.13(b) or a SWTR/IESWTR TT violation due to a single exceedance of the maximum allowable turbidity limit;	§ 142.16(a)(2)(ix)	Arizona Administrative Code (A.A.C.) R18-4-119	Subpart Q is incorporated by reference by R18-4-119, Ariz. Admin. Code; Arizona's rule is as stringent as the federal rule.
40 CFR 141.205(c) —To determine the specific multilingual requirement for a public water system, including defining "large proportion of non-English- speaking consumers."	§ 142.16(a)(2)(x)		ADEQ follows EPA's Public Notice Handbook suggestion of 10% of population served.

3.1 Difference between State and Federal

Arizona State Statue incorporates Federal requirements of 40 CFR 141 Subpart O by reference. ADEQ's rules are as stringent as Federal regulations. ADEQ follows EPA guidance in instances where the State has discretion over rule requirements (ex. Multilingual requirements).

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ADEQ
Arizona Department of Environmental Quality

State Application Revision for Safe Drinking Water Act Primacy Authority:

APPENDIX A – Relevant Arizona Statutes

Water Quality Division

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Arizona Revised Statutes
Title 39 – Public Records, Printing and Notices
Chapter 1 PUBLIC RECORDS
Article 2 Searches and Copies

39-121. Inspection of public records

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.

39-121.01. Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index

A. In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

2. "Public body" means this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.

B. All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state.

C. Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to sections 41-151.15 and 41-151.19.

D. Subject to section 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of such records shall promptly furnish such copies, printouts or photographs and may charge a fee if the facilities are available, except that public records for purposes listed in section 39-122 or 39-127 shall be furnished without charge.

2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person. The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order. This paragraph shall not be construed by an administrative tribunal or a court of competent jurisdiction to prevent or require an order compelling a public body other than an agency to furnish an index. For the purposes of this paragraph, "agency" has the same meaning prescribed in section 41-1001, but does not include the department of public safety, the department of transportation motor vehicle division, the department of juvenile corrections and the state department of corrections.

3. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian of the public record and shall be subject to the supervision of such custodian.

E. Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production pursuant to subsection D, paragraph 2 of this section.

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Arizona Revised Statutes
Title 41 – State Government
Chapter 1 EXECUTIVE OFFICERS
Article 2.1 Arizona State Library, Archives and Public Records Established in the Office of the Secretary of State

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 efficient management 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 the length 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 custody of 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 an efficient 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 the principles 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 and implementation 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.

41-151.18. Definition of records

In this article, unless the context otherwise requires, "records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to section 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute. Library or museum material made or acquired solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications or documents intended for sale or distribution to interested persons are not included within the definition of records as used in this article.

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Title 49 - The Environment
Chapter 1 GENERAL PROVISIONS
Article 1 Department of Environmental Quality

49-101. Definitions

In this title, unless the context otherwise requires:

1. "Approximately equal" means, for purposes of fees adopted pursuant to section 49-480, excluding per ton emissions fees, an amount that is not greater than ten per cent more than the fees or costs charged by the state for similar state permits or approvals.

2. "Department" means the department of environmental quality.

3. "Director" means the director of environmental quality who is also the director of the department.

49-102. Department of environmental quality; director; deputy director; division directors; divisions

A. The department of environmental quality is established.

B. The governor shall appoint a director of environmental quality pursuant to section 38-211. The director shall administer the department and serve at the pleasure of the governor. The director is entitled to receive compensation as determined under section 38-611. The director shall appoint a deputy director and, subject to legislative appropriation, may appoint division directors if necessary. The positions of director and deputy director are exempt from title 41, chapter 4, articles 5 and 6 relating to state service.

C. To be eligible for appointment as director a person must have a background or experience in one or more of the following areas:

1. Public administration.
2. Planning.
3. Personnel management.
4. Law.
5. Environmental science.

D. The director may organize the department into divisions as he deems appropriate.

49-103. Department employees; legal counsel

A. The director, subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as he deems necessary.

B. The attorney general shall be the legal advisor of the department and shall give legal services as the department requires. Compensation for personnel assigned by the attorney general to perform such services shall be a charge against appropriations to the department. The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out the provisions of this title.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have

similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with

the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. 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.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-106. Statewide application of rules

The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law.

49-107. Local delegation of state authority

A. The director may delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers or duties which the director believes can be competently, efficiently and properly performed by the local agency if the local agency accepts the delegation and agrees to perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director.

B. Monies appropriated or otherwise made available to the department for distribution to local agencies may be allocated or reallocated in a manner designed to assure that the recognized local activities and the delegated functions, powers and duties are accomplished according to the applicable standards of performance.

C. The director may terminate, for cause, all or part of the delegation and reallocate all or part of any monies that may have been conditioned on the further performance of the delegated functions, powers and duties.

49-108. Hazardous materials emergency response operations

The director of environmental quality shall establish a hazardous materials emergency response and recovery organizational unit in the department to function as the scientific support, health, safety and environmental element of the hazardous materials emergency management program pursuant to section 49-123. On request from the department of health services and at the direction of the director of environmental quality, the unit shall perform appropriate soil and water sampling for toxic and other harmful effects on the public health and the environment in areas that have been affected by a chemical or other toxic fire.

49-109. Certificate of disclosure of violations; remedies

A. The following persons shall file a certificate of disclosure with the department as prescribed by this section:

1. A person who is engaged in an activity subject to regulation under this title and who has been convicted of a felony involving laws related to solid waste, special waste, hazardous waste, water quality or air quality in any state or federal jurisdiction or for a violation of 42 United States Code section 9603 within the five year period immediately preceding execution of the certificate.

2. Except in proceedings in which the department, or this state on behalf of the department, is or was a party, a person who is engaged in an activity subject to regulation under this title and who is or has been subject in any civil proceeding to an injunction, decree, judgment or permanent order of any state or federal court within the five year period immediately preceding the execution of the certificate that involved a violation of laws of that jurisdiction relating to solid waste, special waste, hazardous waste, used oil or used oil fuel, petroleum, water quality or air quality, except for a misdemeanor violation of section 49-550, or a violation of 42 United States Code section 9603.

B. The certificate of disclosure prescribed by subsection A of this section shall contain the following:

1. Identification of that person, including without limitation present full name, all prior names or aliases, including full birth name, present house address and all prior addresses for the immediately preceding five year period, date and location of birth and social security number.

2. The nature and description of each conviction or judicial action, the date and location, the court and public agency involved and the file or cause number of the case.

3. A written declaration that each signer swears to its contents under penalty of perjury.

C. The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of that corporation.

D. For purposes of subsection A of this section, "person" means a natural person, any public or private corporation, its officers, directors, trustees, incorporators and persons controlling or holding over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, a partnership, including all general partners and limited partners controlling a ten per cent or more beneficial interest in the partnership, association or society of persons, the federal government and any of its departments or agencies, this state and any of its agencies, departments, political subdivisions, counties, towns or municipal corporations.

E. Initial certificates shall be delivered to the department within ninety days after the person first becomes subject to the disclosure requirements of this section. Certificates shall be filed annually thereafter within ninety days after the close of that person's fiscal year as reported on the initial certificate.

F. By December 1 of each year, the department shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

G. In lieu of the certificate of disclosure prescribed by this section, a corporation may submit to the director copies of annual reports filed with the securities and exchange commission pursuant to section 13 or 15(d) of the securities exchange act of 1934 (15 United States Code section 78), commonly known as a "10-K form", within ninety days of filing the annual report. The initial submission to the director shall include 10-K forms for the preceding five years.

H. A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file a certificate of disclosure and who fails to file the certificate is subject to the remedies prescribed in section 49-110.

49-110. Compliance order; hearing; judicial review; enforcement

A. If the director has reasonable cause to believe that a person is in violation of section 49-109, article 2 of this chapter or a rule adopted pursuant to article 2 of this chapter, the director may issue an order requiring compliance immediately or within a specified time period.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, and the right to a hearing.

C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by hand delivery.

D. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge. If a hearing is requested, the order does not become final until the administrative law

judge has issued a final decision on the appeal. Except as provided in section 41-1092.08, subsection H, any final agency order issued pursuant to this section is subject to judicial review pursuant to title 12, chapter 7, article 6.

E. If a violator fails to comply with a compliance order issued pursuant to subsection A of this section, the director may issue an order assessing a civil penalty of not more than one thousand dollars for each day of continued noncompliance with the order, not to exceed twenty-five thousand dollars.

49-111. Permit application; plan approval; notice to counties, cities or towns

For any application for a permit or plan approval, substantial change to a plan or significant revision or modification to a permit requested pursuant to this title, the director shall notify the appropriate county, city or town by sending a copy or notice of the application or change describing the purpose and scope of the proposed activity. The director shall not release any confidential information or trade secrets in the copy or notice.

49-112. County regulation; standards

A. When authorized by law, a county may adopt a rule, ordinance or regulation that is more stringent than or in addition to a provision of this title or rule adopted by the director or any board or commission authorized to adopt rules pursuant to this title if all of the following requirements are met:

1. The rule, ordinance or regulation is necessary to address a peculiar local condition.

2. There is credible evidence that the rule, ordinance or regulation is either:

(a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible.

(b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule, ordinance or regulation is equivalent to federal statutes or regulations.

3. Any fee or tax adopted under the rule, ordinance or regulation does not exceed the reasonable costs of the county to issue and administer the permit or plan approval program.

B. When authorized by law, a county may adopt rules, ordinances or regulations in lieu of a state program that are as stringent as a provision of this title or rule adopted by the director or any board or commission authorized to adopt rules pursuant to this title if the county demonstrates that the cost of obtaining permits or other approvals from the county will approximately equal or be less than the fee or cost of obtaining similar permits or approvals under this title or any rule adopted pursuant to this title. If the state has not adopted a fee or tax for similar permits or approvals, the county may adopt a fee when authorized by law in the rule, ordinance or regulation that does not exceed the reasonable costs of the county to issue and administer that permit or plan approval program.

C. A county that adopts rules, ordinances or regulations pursuant to subsection B of this section and that at any time cannot comply with subsection B of this section shall prepare and file a notice of noncompliance

with the director. The county shall post a copy of the notice of noncompliance on the county's website with a date stamp of the date of posting. If the county does not comply with subsection B of this section within one year after posting of the notice on the county's website, the director shall provide written notice to and assert regulatory jurisdiction over those persons and entities subject to the affected county rules, ordinances or regulations.

D. Except as provided in chapter 3, article 3 of this title, before adopting or enforcing any rule, ordinance or regulation pursuant to subsection A or B of this section, the county shall comply with the following requirements:

1. Prepare a notice of proposed rulemaking to include the proposed rule, ordinance or regulation. This notice shall demonstrate evidence of compliance with subsection A or B of this section. The notice shall include the name, address and phone number of a person who can answer questions about the proposed rule, ordinance or regulation and accept any written requests for the county to conduct an oral Proceeding. The county shall post the notice on the county's website with a date stamp of the date of posting. The county shall publish the availability of the notice of the proposed rule, ordinance or regulation in a newspaper of general circulation in the county. If there is no newspaper of general circulation in the county, the county shall publish the notice in a newspaper of general circulation in an adjoining county. If requested by the public, the county shall make available a paper copy of the notice at a reasonable cost.

2. For at least thirty days after the posting of the notice of the proposed rule, ordinance or regulation, afford persons the opportunity to submit in writing comments, statements, arguments, data and views on the proposed rule, ordinance or regulation.

3. Respond in writing to the comments submitted pursuant to paragraph 2 of this subsection and post the county's response on the county's website. If requested by the public, the county shall make paper copies of its comments available at a reasonable cost.

4. Schedule a public hearing on the proposed rule, ordinance or regulation if a written request for an oral proceeding is submitted to the county during the thirty-day comment period. The county shall post the notice of oral proceeding on a proposed rule, ordinance or regulation on the county's website. The county shall post the notice of oral proceeding at least twenty days before the date of the oral proceeding. The county shall publish notice of any public hearing required pursuant to this paragraph in any newspaper as prescribed by this title or county ordinance. The county shall select a time and location for the public hearing that affords a reasonable opportunity for the public to participate.

E. A county is not required to comply with subsection D, paragraphs 2, 3 and 4 of this section before it adopts or enforces a rule, ordinance or regulation if the rule, ordinance or regulation only incorporates by reference an existing state or federal rule or law that provides greater regulatory flexibility for regulated parties and otherwise satisfies the requirements prescribed in subsection B of this section.

F. Until June 30, 1995, a person may file with the clerk of the board of supervisors for that county a petition challenging a county rule, ordinance or regulation adopted before July 15, 1994 for compliance with the criteria set forth in subsection A or B of this section. The petition shall contain the grounds for challenging the specific county rule, ordinance or regulation. Within one year after the petition is filed, the board of supervisors shall review the challenged rule, ordinance or regulation and make a written demonstration of compliance with the criteria set forth in subsection A or B of this section and challenged in the petition. Any rules,

ordinances or regulations that have been challenged and for which the board of supervisors has not made the written demonstration within one year after the filing of the petition required by this section become unenforceable as of that date. If a county has already made a written demonstration under section 49-479, subsection C, for a rule, ordinance or regulation, the person filing the petition shall state the specific grounds in the petition why that demonstration does not meet the requirements of this section.

G. A rule, ordinance or regulation adopted pursuant to subsection A of this section may not be invalidated subsequent to its adoption on the grounds that the economic feasibility analysis is insufficient or inaccurate if a county makes a good faith effort to comply with the economic feasibility requirement of subsection A, paragraph 2, subdivision (a), of this section and has explained in the written statement, made public pursuant to subsection D of this section, the methodology used to satisfy the economic feasibility requirement.

H. This section shall not apply to any rule, ordinance or regulation adopted by a county pursuant to:

1. Title 36 for which the state has similar statutory or rule making authority in this title.
2. Section 49-391.
3. Chapter 3, article 8 of this title.
4. Chapter 4, article 3 of this title and section 49-765.
5. Nonsubstantive rules relating to the application process that have a de minimis economic effect on regulated parties.

49-113. Fees; unpaid amounts; penalties; audits

A. For self-reported fees in this title, the director shall require the payer to sign a certification that the amount reported is accurate.

B. The director shall collect interest on the unpaid amount of every payment, fee, self-reported fee, tax, assessment, cost and penalty authorized by this title at the rate determined pursuant to section 42-1123 from the date required for payment until the full amount is paid. If nonpayment is due to wilful neglect, the director shall also collect an additional five per cent penalty of up to twenty-five per cent of the amount due for each month or fraction of a month the amount is past due. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. The director may require a person who is required to make a payment pursuant to this title to appear at reasonable times and on reasonable notice at the director's office and produce records and information that are specified in the notice to determine compliance with this title.

D. The director shall audit the records of a sufficient number of persons under this section to ensure general compliance with its requirements.

49-114. Appeals of agency decisions

Notwithstanding any other administrative proceeding established in this title or by rule, all appealable agency actions as defined in section 41-1092 and contested cases as defined in section 41-1001 shall be governed by title 41, chapter 6, article 10.

49-115. Indirect cost fund; use; exemption

A. A department of environmental quality indirect cost fund is established. Federal monies and other monies obtained for the purposes of reimbursing the department for costs shall be deposited, pursuant to sections 35-146 and 35-147, in the fund.

B. Subject to legislative appropriation, monies in the fund shall be used for administrative personnel and overhead costs associated with administering federal programs and other programs paying assessments into the fund.

C. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-116. Informal appeals of agency decisions; technical appeals program fund; definitions

A. Except as provided in chapter 6 of this title and sections 49-287.05, 49-287.06 and 49-287.07, the informal appeals process established by this section applies to any written interim decision as defined by subsection K of this section.

B. The department shall make a written interim decision within the time frame provided by statute or rule or within ninety business days if no time frame is provided. The time frame may be extended by agreement of the parties. The department's failure to issue a written interim decision within the time frame provided by chapter 2, article 5 of this title is a basis for an informal appeal under this section.

C. A person who makes a request for a written interim decision may informally appeal, under this section, a written interim decision related to technical issues.

D. A person who has an informal appeal right pursuant to subsection C of this section and who disagrees with a written interim decision of the department or who objects to the lack of a written interim decision of the department may file a written notice of disagreement with the department within thirty days after receiving the department's interim decision or within thirty days after the expiration of the period prescribed by subsection B of this section. The notice of disagreement shall include a description of the specific portions of the interim decision with which the person disagrees and may include a request to meet with the department to resolve the disagreement. Unless the parties agree otherwise, the department shall schedule a meeting within thirty days after receipt of a request for a meeting.

E. The person who is authorized under subsection C of this section to request the meeting or an authorized representative of that person may attend the meeting with the department and may attend with any other person who may assist in resolving the disagreement with the department.

F. The department shall issue a final written decision within forty-five days after receipt of the notice of disagreement or within fifteen days after the conclusion of any meeting held pursuant to subsection D of this section, whichever is later. If the department does not issue a final written decision within the time prescribed by this subsection, the department's written interim decision becomes the final written decision. The final written decision shall address the notice of disagreement that was received from the person and shall contain the factual, technical and legal grounds for the department's decision.

G. Within ten days after receipt of the final written decision or the expiration of the time for issuing the final written decision, the person who filed the notice of disagreement may submit a written request to the department that the matter be submitted to dispute resolution before a

qualified professional as defined in subsection K of this section. The person who requests dispute resolution before a qualified professional under this subsection shall pay the full cost of the services provided by the qualified professional for the dispute resolution. The payment for the services shall be deposited into the technical appeals program fund established in subsection J of this section. The qualified professional shall be paid from the technical appeals program fund. Payment of the cost of the services provided by the qualified professional shall not be eligible for credit against the person's liability under chapter 2, article 5 of this title. The department shall maintain a list of, and contact with, at least eight qualified professionals to conduct dispute resolutions. The parties shall mutually select a qualified professional. For purposes of this section, the inclusion of the qualified professional on the department's list maintained under this subsection shall not be deemed employment by the department. If the parties cannot agree on a qualified professional who is on the department's list, the parties shall mutually select a qualified professional who is not on the list who otherwise meets the requirements of this subsection.

H. Within twenty days after the selection of a qualified professional, the person who requested the dispute resolution shall submit to the qualified professional and to the department a written statement including, at a minimum, a brief summary that describes the technical dispute, the person's proposed resolution of the technical dispute and any relevant supporting documentation. Within forty-five days after the submittal by the person, the department shall provide to the person and to the qualified professional the department's written response to the submittal. The qualified professional shall review the submittals and recommend a resolution of the technical dispute to the director within thirty days after receipt of the department's response. The qualified professional's recommendation shall be limited to the written interim decision as defined in subsection K of this section and the qualified professional shall not make recommendations relating to an interpretation of law or policy except the qualified professional may interpret policy to the extent necessary to review technical issues. The qualified professional, the department or the person who requested the dispute resolution may request a meeting with all of the parties before the qualified professional issues the recommended resolution. Within forty-five days after receiving the qualified professional's recommendation, the director shall select the resolution of the dispute that is proposed by the qualified professional, the person who requested the dispute resolution, the department or some combination of these resolutions, and shall issue a written resolution to the person and the qualified professional that contains the factual, technical and legal grounds for the decision. By agreement the parties may modify any time limits prescribed by this subsection.

I. For a person who files a written notice of disagreement pursuant to subsection D of this section, the time is tolled for compliance with any investigation, corrective action remediation, closure or other requirement that is associated with the subject of the notice of disagreement until the date of the department's final decision, dispute resolution under this section and any related appeals are concluded. The time for compliance shall not be tolled under this subsection if the person who files a written notice of disagreement is subject to an administrative order or judicial order, judgment or decree for the site that is the subject of the notice of disagreement. The time is tolled for filing any other appeal pursuant to chapter 2, article 5 of this title for any written interim decision defined in subsection K of this section.

J. A technical appeals program fund is established for the purpose of implementing and administering this section and shall consist of any

legislative appropriations and any fees collected under subsection G of this section. The department shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190, relating to lapsing of appropriations.

K. For purposes of this section:

1. "Qualified professional" means an individual with a bachelors degree in geology, hydrogeology, hydrology or engineering and at least five years of professional experience in environmental investigation and remediation. Professional registration is highly preferred. The qualified professional shall not be an employee of the party to a dispute resolution or the department within one year prior to the date of the notice of disagreement at issue and shall not have been an employee during the preceding year of a firm assisting the person authorized to informally appeal under subsection C of this section. The qualified professional shall not participate in an informal appeal if the qualified professional has a pecuniary or proprietary interest, either direct or indirect, in the matter being informally appealed.

2. "Written interim decision" means a technical decision involved in a decision under chapter 2, article 5 of this title relating to the department's:

(a) Decision to grant or deny a request for the rescoring of a registry site or for a determination of no further action under section 49-287.01, subsection F, but only the decision made after the close of the public comment period described in that subsection.

(b) Decision to grant or deny a request to adjust a registry site boundary under section 49-289.01.

(c) Review of a work plan submitted to the department under section 49-285, subsection B, 49-287.01, subsection A or 49-287.03. The informal appeals process is limited to the information before the department when the department conducted its review.

49-117. Supplemental environmental project; requirements; nexus

A supplemental environmental project that is initiated or accepted by the department shall comply with this section, shall advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and shall have an adequate nexus. A nexus exists only if any of the following apply. The proposed project:

1. Is designed to reduce the likelihood that similar violations will occur in the future.

2. Reduces the adverse impact to public health or the environment to which the violation contributes.

3. Reduces the overall risk to public health or the environment potentially affected by the violation.

49-118. Notice of violation; hazardous condition; federal agency

A. The department may issue a notice of violation to a federal agency as a potentially responsible party for the discharge of pollutants if both of the following occur:

1. The federal agency designates an area of this state as under threat of catastrophic wildfire and a wildfire occurs that releases pollutants to the air and water.

2. The department reasonably determines that the discharge of the pollutants was the result of the wildfire in the designated area.

B. This section does not apply on Indian lands owned or held by a federally recognized Indian tribe, nation, band or community as reservation

lands, allotment lands or sovereign or proprietary lands or in any other capacity.

Article 2 Community Right-to-Know Act and Hazardous Materials Emergency Response

49-121. Definitions

In this article, unless the context otherwise requires:

1. "Commission" means the Arizona emergency response commission.
2. "Committee" means a local emergency planning committee.
3. "Extremely hazardous substances", "facility", "hazardous chemical", "person", "release" and "toxic chemical" have the meaning set forth in section 329 of title III.
4. "Hazardous substance" has the meaning set forth in the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767), as amended by SARA.
5. "SARA" means the superfund amendments and reauthorization act of 1986 (P.L. 99-499).
6. "Title III" means title III of SARA.

49-122. Relationship to other law; declaration of application

This article does not:

1. Preempt any local charter, ordinance or code.
2. Require any state agency or local government to adopt or enforce any statute or rule.
3. Affect or modify the obligations or liabilities of any person under federal law.

49-123. Hazardous materials emergency management program; Arizona emergency response commission; emergency planning and community right-to-know

A. The department is designated the lead agency for developing and implementing a state hazardous materials emergency management program.

B. The director shall appoint a coordinator to work in consultation with the Arizona emergency response commission in the development and implementation of the hazardous materials emergency management program.

C. The Arizona emergency response commission is established consisting of representatives from the following agencies and departments:

1. The division of emergency management.
2. The department of health services.
3. The department of public safety.
4. The department of transportation.
5. The Arizona department of agriculture.
6. The corporation commission.
7. The industrial commission of Arizona.
8. The office of the state fire marshal in the Arizona department of forestry and fire management.
9. The office of state mine inspector.
10. Two representatives nominated by the Arizona fire chiefs association or its successor organization, one of whom represents a fire department or a fire district serving a population of less than two hundred fifty thousand persons.
11. Other agencies or offices deemed necessary by the director.

D. This article does not change or alter the existing regulatory authority or provisions of law relating to the agencies and departments listed in subsection C of this section.

E. The department is designated as the lead agency for implementing title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499). The director shall administer any monies received under subsection G of this section.

F. The department shall administer this article and the rules adopted under this article. The department shall administer title III in this state and may conduct whatever activities are necessary to implement this article and title III in this state. The department is granted all the authority and responsibilities of a state emergency response commission for purposes of title III.

G. The department may procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties. The department may also enter into agreements with the federal government, Indian tribes, other states and political subdivisions of this state for the purposes of this article. The department may also accept on behalf of this state any reimbursement, grant or gift that may become available for purposes of this article. The department shall deposit, pursuant to sections 35-146 and 35-147, any such monies in the emergency response fund.

H. The department shall establish a program of financial grants to local governments funded through the department by appropriations to the emergency response fund. The grants shall be dedicated to and used for local compliance with this article. The department shall include procedures for applying for the grants and qualifying criteria for awarding the grants.

I. The department shall adopt and may modify, suspend or repeal rules pursuant to title 41, chapter 6. The rules may not be more stringent than title III and the federal regulations adopted under title III, except as specifically authorized in this article. These rules shall implement this article and title III in this state. The authority to adopt rules includes establishing:

1. Procedures for handling public information requests.

2. Procedures and implementing programs for chemical emergency planning and preparedness.

3. Community right-to-know program reporting requirements.

4. Fees to implement the community right-to-know program. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the emergency response fund established by section 49-132. The governor's regulatory review council must approve rules adopted pursuant to this paragraph.

5. Release reporting requirements.

J. The department shall ensure that mandatory hazardous materials training programs for on-scene command personnel that are developed, delivered or managed by their respective agencies, departments or divisions address notification procedures, coordination of services and comprehensive management for protection of the public health during and after a chemical or other toxic fire event. The training shall include notification and coordination with the department of public safety, the department of transportation, the commission, local emergency planning committees, the department of health services, the division of emergency management, the national response center and the Arizona poison control system. Training shall also include orientation on the state emergency response and recovery plan concerning hazardous materials. The department shall encourage private companies that deliver similar training in this state to include the same curriculum in their programs.

49-124. Emergency planning districts; local emergency planning committees

A. The commission shall designate emergency planning districts to facilitate preparing and implementing district emergency plans. If appropriate, the commission may designate cities, towns, counties or multi-jurisdictional planning organizations as such districts. The commission may also enter into intergovernmental agreements with other states or political subdivisions of other states to establish multi-jurisdictional planning districts. The commission may revise its designation of emergency planning districts as necessary.

B. The commission, after designating emergency planning districts, shall appoint members of a local emergency planning committee for each emergency planning district. The governmental entity for the city, town, county or multi-jurisdictional planning organization encompassing the district shall provide administrative support for the local emergency planning committee and shall nominate persons for initial appointment to the committee. On establishment of the committee, the committee chairman on a majority vote of the committee may nominate subsequent committee members. Each committee shall include, at a minimum, representatives from each of the following groups or organizations:

1. Elected state and local officials.

2. Law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital and transportation personnel.

3. Broadcast and print media.

4. Community groups.

5. Owners and operators of facilities subject to the requirements of this article.

C. The committee shall appoint a chairman and shall adopt procedural rules by which the committee shall function including the requirements set forth in section 301 of title III.

D. The commission, as it deems appropriate, may modify its designations of emergency planning districts or its appointments to the emergency planning committees. Members of the public may petition the commission to modify the membership of a local emergency planning committee.

49-125. Comprehensive emergency response plans

A. The local emergency planning committees shall comply with section 303 of title III.

B. Based on information from the commission and state and local emergency and disaster agencies and departments, as well as information obtained from facilities subject to this article and title III, each local committee shall prepare and annually review an emergency response plan for its emergency planning district in order to address emergencies due to releases from facilities and transportation vehicles in its emergency planning district. After completing an emergency plan for an emergency planning district, the local emergency planning committee shall provide a copy of the plan to the district's governmental entity for incorporation into the entity's emergency operations plan and submit a copy of the plan to the commission. The commission shall review the plan and make recommendations to the committee on revisions that may be necessary to ensure that it meets the requirements of this article or any rules adopted under this article. The commission shall further ensure that the plan is coordinated with the emergency response plans of adjoining emergency planning districts as applicable. To prevent a delay in implementing any emergency plan, the commission shall endeavor to review each plan within a sixty day period and provide comments or recommendations for modifications within that

period. The commission shall establish a period of time, not normally to exceed sixty days, for the committee to resubmit the emergency plan. The commission, at its own initiative, may assign the highest priority to those plans which include the geographic areas which have the greatest number of facilities that pose the greatest risk of harm to the public health, safety or welfare or the environment.

C. Each local emergency planning committee shall conduct at least a biennial exercise of its emergency plan and shall provide at least thirty days' notice of these exercises to the commission. The region IX United States environmental protection agency office of primary responsibility for title III, or its successor, or the commission may participate in exercise development and observe the exercise and may provide comments to the committee regarding the exercise.

D. Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement and exercise the emergency plan in its district and shall make recommendations with respect to the need for additional resources that may be required and the means for providing such additional resources.

E. Each emergency plan shall include provisions listed in section 303C of title III and, in addition, shall include:

1. Identifying the heads of the emergency response organizations for designated areas or local governments in the district who shall make determinations necessary to implement the plan.

2. A description of specialized equipment, facilities, personnel and emergency response organizations available in the district to respond to releases subject to this section.

3. Mutual aid agreements with other districts, and the allocation of emergency response resources for responding to releases subject to this section, if applicable.

49-126. Extremely hazardous substances

Unless otherwise provided in this article, a substance is subject to the requirements of this article if it is an extremely hazardous substance as listed and published by the administrator of the United States environmental protection agency, or its successor, and it is held in quantities at or above the threshold planning quantity as established pursuant to section 302 of title III.

49-127. Facilities subject to emergency planning; facility emergency response plans

A. A facility is subject to emergency planning requirements if a substance identified under section 49-126 is present at the facility in an amount at or in excess of the threshold planning quantity for that substance.

B. For purposes of emergency planning, the department may designate additional facilities that are subject to this section. The designation shall be accomplished after providing at least thirty days' prior public notice in a newspaper of general circulation in the county where the facility is located, after allowing public comment to the department for thirty days and after notification to the facility of the proposed designation.

C. The owner or operator of a facility subject to this section shall provide to the department the identity of a facility representative who will provide a facility emergency response plan and who will participate in the emergency planning process as the facility emergency coordinator.

D. Each facility that is subject to this section shall prepare a facility emergency response plan and submit copies of that plan to the

department, the local emergency planning committee for the district in which the facility is located and the fire department with jurisdiction over the facility. A facility that is required to prepare a contingency plan under chapter 5, article 2 of this title or the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795) may submit that contingency plan in lieu of the emergency response plan required by this section if the information in paragraphs 1 through 7 of this subsection is included in the plan. In preparing the plan required by this section, the facility emergency coordinator shall consult with the local emergency planning committee and other emergency and health professionals to assure maximum coordination with those whose cooperation or services may be required in the event of a reportable release. The facility emergency response plan shall include specific actions to be taken in the event of an imminent or accidental reportable release to safeguard the public health, safety and welfare and the environment to the maximum extent practicable. The facility emergency response plan shall include:

1. Names, addresses and emergency telephone numbers of a facility emergency coordinator and alternate.

2. A description of emergency warning systems and a list of emergency units, emergency personnel and health professionals in close proximity to the facility.

3. A description of employee emergency response training and emergency preparedness programs.

4. A description of appropriate emergency equipment necessary to respond to a release.

5. A description of emergency response procedures, including notification procedures and evacuation plans in the event of a release.

6. Identification of transport routes and transportation methods used to transport extremely hazardous substances to and from the facility, if known.

7. Provisions for at least an annual review of the plan and provisions to demonstrate the capability to execute the plan on the request of the department.

49-128. Emergency notification of reportable releases

A. If a reportable release of an extremely hazardous substance listed under section 49-126 occurs from a facility at which a hazardous chemical is produced, used or stored, the owner or operator of the facility, except as excluded under 40 Code of Federal Regulations sections 355.31 and 355.32, in addition to any other notification required by law or rule, shall immediately orally notify the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the reportable release, the department and appropriate emergency responders designated by rule of the department, in the manner prescribed by rule of the department. Unless impracticable under the circumstances, this oral notification shall occur immediately after the facility emergency coordinator or the coordinator's designee has knowledge of the reportable release. The notice of the reportable release shall include the following to the extent known at the time of the notice and as long as no delay in responding to the emergency results:

1. The specific location of the release.

2. The chemical name or identity of substances released and a description of the container or vessel from which the release occurred.

3. An estimate of the quantity of substances that were released into the environment.

4. The time and duration of the release.

5. The medium or media into which the release occurred.

6. Any known or anticipated acute or chronic health risks associated with the release and, if within the informant's knowledge, advice regarding medical attention necessary for exposed individuals.

7. Proper precautions to take as a result of the release, including evacuation and other proposed response actions.

8. The name and telephone number of the person or persons to be contacted for further information.

B. Within thirty days after the reportable release, the owner or operator of a facility where a release occurred requiring notification pursuant to this section shall submit to the local emergency planning committee and to the department a written follow-up emergency notice stating and updating the information originally provided pursuant to subsection A of this section and including the following additional information:

1. Actions taken to respond to and contain the release.

2. Any known or anticipated acute or chronic health risks associated with the release.

3. If appropriate, advice regarding medical attention necessary for exposed individuals.

4. Measures that have been or will be taken at the facility to avoid a reoccurrence of similar releases.

C. After additional information becomes known, the owner or operator shall update the notice in writing within seven calendar days.

49-129. Material safety data sheets

A. A person who owns or operates a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the occupational safety and health act of 1970 (P.L. 91-593; 84 Stat. 1590), and federal regulations adopted under that act, or under title 23, chapter 2, article 10, and rules adopted under that article, shall submit to the local emergency planning committee for the district in which the facility is located, the department, and the fire department with jurisdiction over the facility material safety data sheets or lists of hazardous chemicals and any extremely hazardous substances stored, handled or processed at the facility pursuant to minimum threshold levels prescribed in 40 Code of Federal Regulations part 370 as well as comply with section 311 of title III and regulations adopted under that act.

B. If a list of hazardous chemicals or extremely hazardous substances is submitted under this section, it shall include:

1. Information prescribed by section 311 of title III.

2. The chemical abstract service registry number applicable to each such chemical and substance, if available.

3. An indication of whether the owner elects to withhold information about the hazardous chemical or extremely hazardous substance from disclosure as a trade secret.

C. On request of a local emergency planning committee, the department or the local fire department with jurisdiction over the facility, an owner or operator of a facility who has submitted a list pursuant to this section shall also submit the material safety data sheet for any chemical on the list to the requesting agency. On request by any person, the local emergency planning committee may make available a material safety data sheet to the person or transmit the request to the department, which shall make the material safety data sheet available, subject to the trade secret provisions and regulations adopted under title III. If the committee or department does not have the requested material safety data sheet, the committee or department shall request the sheet from the facility owner or operator. The

facility owner or operator shall make the sheet available within thirty days after receiving the request to the committee or department and the committee or department shall make the sheet available to the requesting person subject to the trade secret provisions and regulations adopted under title III.

D. Within three months after discovery by an owner or operator of a facility of significant new information concerning an aspect of a hazardous chemical for which a list or material safety data sheet was submitted, or within three months after a facility obtains a new hazardous chemical subject to the reporting requirements of this section, the owner or operator shall update and submit a revised list or material safety data sheet to the local emergency planning committee, the department and the fire department with jurisdiction over the facility.

49-130. Emergency and hazardous chemical inventory forms

A. A person who owns or operates a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the occupational safety and health act of 1970 (P.L. 91-593; 84 Stat. 1590) and federal regulations adopted under that act or that has to provide a material safety data sheet or listing under this article shall either file electronically as prescribed by subsection D of this section or submit to the local emergency planning committee for the district in which the facility is located, the department and the fire department with jurisdiction over the facility an emergency and hazardous chemical inventory form pursuant to section 312 of title III as well as comply with section 312 of title III and regulations adopted under that act, except that the tier II emergency and hazardous chemical inventory form shall be the required form to comply with section 312 of title III effective with inventory forms due on or after March 1, 1991.

B. The tier II inventory form shall contain the following information:

1. The chemical name or the common name of the chemical as provided on the material safety data sheet and the CAS number.

2. An estimate, in ranges, of the maximum amount of the hazardous chemical present at the facility at any time during the preceding year.

3. An estimate, in ranges, of the average daily amount of the hazardous chemical present at the facility during the preceding year.

4. A brief description of the manner of storage of the hazardous chemical.

5. The location of the hazardous chemical at the facility.

6. An indication of whether the owner elects to withhold location information or other information about a specific hazardous chemical from disclosure to the public as a trade secret.

7. The fire department or district with jurisdiction for the facility, including a notation of whether the facility is located on Indian lands.

C. An owner or operator of a facility subject to this section shall submit the information required by this section on the inventory form provided by the department. The tier II inventory form provided by the department shall be available in electronic and paper formats and shall be based on and contain at least the information required by the federal forms as prescribed by 40 Code of Federal Regulations section 370.41. The department shall identify on its tier II inventory form each item that is required to be reported by 40 Code of Federal Regulations section 370.41. The department shall provide notice on the form that the provision of the information items not required by 40 Code of Federal Regulations section 370.41 is optional.

D. Facilities that are subject to reporting under this article may file reports electronically at an internet website that is designated by the

department. A facility that files electronically pursuant to this subsection is deemed to have complied with the reporting requirements of the department and with the requirements of title III. Local emergency planning committees, fire departments and fire districts also may accept electronic reporting if they have agreed to do so in a written agreement with the department that provides for the electronic filing and sharing of reports. The department shall publish on the department's website a listing of local emergency planning committees, fire departments and fire districts that have agreed to accept electronic reporting to assist facilities in determining submission requirements.

E. On certifying an electronic submittal pursuant to subsection D of this section, the facility is deemed to have complied with the original signature requirements of section 312 of title III. The department and the facility shall each maintain tracking information for the submittal for purposes of confirmation.

F. Information that is collected pursuant to this section shall be made available to the public pursuant to 40 Code of Federal Regulations part 370, subpart C, except for confidential information.

G. For purposes of this section, tier II forms are the forms established under 40 Code of Federal Regulations part 370.

49-131. Toxic chemical release forms; definitions

A. In order to implement section 313 of title III, the owner or operator of a facility subject to the requirements of this section and section 313 of title III and regulations adopted under that act shall complete a toxic chemical release form as supplied by the administrator, pursuant to section 313(g) of title III, or as supplied by the department, for each toxic chemical listed in the Code of Federal Regulations by the administrator pursuant to section 313(c) of title III that was manufactured, processed or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection E of this section during the preceding calendar year at that facility. The form shall be submitted to the administrator and to the department on or before July 1 of each year and shall contain data reflecting releases in excess of the quantity of that toxic chemical established under subsection E of this section during the preceding calendar year.

B. The requirements of this section apply to owners and operators of facilities that have ten or more full-time employees and that are in standard industrial classification codes 20 through 39 in effect on July 1, 1987 as prepared by the statistical policy division of the United States office of management and budget, office of the president and that manufactured, processed or otherwise used a toxic chemical listed in 40 Code of Federal Regulations part 372 pursuant to section 313(c) and (d) of title III in excess of the quantity of that toxic chemical established under subsection E of this section during the calendar year for which the release form is required under this section.

C. The department may request the administrator to apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes or otherwise uses a toxic chemical listed pursuant to section 313(c) of title III if the administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, the proximity to other facilities that release the toxic chemical or to population centers, the history of releases of the chemical at the facility or such other factors as the administrator deems appropriate.

D. The toxic chemicals subject to the requirements of this section are those chemicals listed in 40 Code of Federal Regulations by the administrator

pursuant to section 313(c) of title III, including any revised version of the list as may be made pursuant to section 313(d) or (e) of title III. The department, pursuant to section 313(e)(2) of title III, may petition the administrator to add a chemical to or delete a chemical from the list identified in this section.

E. The threshold amounts for purposes of reporting toxic chemicals under this section are:

1. With respect to a toxic chemical used at a facility, ten thousand pounds of the toxic chemical for the applicable calendar year.

2. With respect to a toxic chemical manufactured or processed at a facility:

(a) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, seventy-five thousand pounds of the toxic chemical per year.

(b) For the toxic chemical release form required to be submitted under this section on or before July 1, 1989, fifty thousand pounds of the toxic chemical per year.

(c) For the toxic chemical release form required to be submitted under this section on or before July 1, 1990 and for each year thereafter, twenty-five thousand pounds of the toxic chemical per year.

F. The threshold amounts for purposes of reporting toxic chemicals under this section shall be adjusted pursuant to revisions by the administrator.

G. Owners and operators of facilities subject to the requirements of this section shall provide the information required under this section on a uniform toxic chemical release form published by the administrator or on a uniform toxic chemical release form published by the department. The form shall:

1. Provide for the name and location of and principal business activities at the facility.

2. Include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the form, regarding the accuracy or completeness of the report.

3. Provide for the following information for each listed toxic chemical known to be present at the facility:

(a) Whether the toxic chemical at the facility is manufactured, processed or otherwise used, and the general category or categories of use of the chemical.

(b) An estimate of the maximum amount in ranges of the toxic chemical present at the facility at any time during the preceding calendar year.

(c) For each wastestream, the waste treatment or disposal methods employed and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(d) The annual quantity of the toxic chemical entering each environmental medium.

H. The release forms required under this section are intended to provide information to the federal, state and local governments and to the public, including citizens of communities surrounding facilities covered by this section. The release form shall be available consistent with the trade secret provisions of title III to inform persons about releases of toxic chemicals to the environment, to assist governmental agencies, researchers and other persons in conducting research and data gathering, to aid in developing appropriate rules and regulations, guidelines and standards and for similar purposes.

I. For purposes of this section:

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

2. "Manufacture" means to produce, prepare, import or compound a toxic chemical.

3. "Process" means the preparation of a toxic chemical after its manufacture for distribution in commerce either:

(a) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing the chemical.

(b) As part of an article containing the toxic chemical.

49-132. Emergency response fund

The emergency response fund is established consisting of monies appropriated by the legislature for purposes of this article and federal, private and other monies available for that purpose. The department shall manage the fund and expend monies in the fund in performing the functions required or authorized by this article. All interest earned from investing monies in the fund shall be credited to the fund. Monies in the fund are subject to legislative appropriation and are exempt from section 35-190 relating to lapsing of appropriations.

49-133. Emergency response; immunity

A licensed, certified or authorized emergency responder and its employees at the scene of an emergency, when the emergency response is provided in good faith, have the immunities provided in section 26-314 in carrying out the provisions of this article. The immunities provided by section 26-314 also apply to governmental entities, multi-jurisdictional planning organizations that encompass each district, members of each local emergency planning committee and their support personnel in carrying out the provisions of this article.

Article 3 Environmental Nuisances

49-141. Environmental nuisances

A. The director may take action under this section to abate environmental nuisances. As used in this section, an environmental nuisance is the creation or maintenance of a condition in the soil, air or water that causes or threatens to cause harm to the public health or the environment and that is not otherwise subject to regulation under this title. Subject to this limitation, the following conditions may constitute environmental nuisances:

1. A condition or place in populous areas which constitutes a breeding place for flies, rodents, mosquitoes and other insects which are capable of carrying and transmitting disease-causing organisms to any person or persons.

2. A place, condition or building which is controlled or operated by any governmental agency, state or local, and which is not maintained in a sanitary condition.

3. Sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

4. A vehicle or container which is used in the transportation of garbage or human excreta and which is defective and allows leakage or spillage of contents.

5. The maintenance of an overflowing septic tank or cesspool, the contents of which may be accessible to flies.

6. The pollution or contamination of any domestic waters.

7. The use of the contents of privies, cesspools, or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

8. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law and rule.

9. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, which is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and which is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease-causing substances or organisms.

B. The director may adopt rules that prescribe minimum standards for the prevention and abatement of environmental nuisances. In adopting rules pursuant to this subsection, the director shall incorporate the criteria set forth in section 49-282.06, subsection A and shall ensure that the nuisance is abated so that it will not recur.

49-142. Abatement order; hearing; injunction

A. If the director has reasonable cause to believe from information furnished to the director or from the director's own investigation that a person is maintaining an environmental nuisance, the director may serve, by certified mail, an abatement order on the person requiring the person to abate the nuisance. If the person fails or refuses to comply with the order within the time specified in the order or if after reasonable attempts the director is unable to serve the order, the director may abate the nuisance at the department's expense. The director shall be entitled to recover the reasonable costs of abatement incurred in accordance with any terms of the order that have been upheld after all rights to appeal or judicial review have been exhausted or waived.

B. An abatement order issued pursuant to this section becomes final unless within thirty days after receipt of the order an appeal is made pursuant to title 41, chapter 6, article 10.

C. If a person fails or refuses to comply with an abatement order issued under this section or if the director has reason to believe that a person is creating an actual or potential endangerment to the public health or environment because of acts performed in violation of this article or a rule applicable to any environmental nuisance described in section 49-141, the director may file an action in superior court in the county in which the violation occurred or in any county in which the department maintains an office to restrain and enjoin the person from further violations, to compel compliance with an order or to abate an environmental nuisance. The court shall proceed as in other actions for injunctions.

49-143. Abatement of environmental nuisances

If an environmental nuisance exists on private property, the county board of health, the local health or environmental department or the department of environmental quality may order the owner or occupant to remove the nuisance within twenty-four hours at the expense of the owner or occupant. The order may be given to the owner or occupant personally or left at the residence of the owner or occupant. If the owner or occupant fails or refuses to comply with the order, the board or department shall cause the

nuisance to be removed, and the owner, occupant or other person who caused the nuisance shall pay the expenses of removal.

49-144. Right to enter premises for inspection or abatement

If a county board of health or a local health or environmental department deems it necessary to enter any building, structure or other property within its jurisdiction for the purpose of examining, destroying, removing or preventing an environmental nuisance and is refused entrance, any member of the board or officer of the department may make a complaint of the refusal under oath to a justice of the peace. The justice of the peace shall issue a warrant directing the sheriff or other peace officer accompanied by and under the direction of at least one member of the board or department to examine, destroy, remove or prevent, between the hours of sunrise and sunset, the environmental nuisance.

Article 4 Remediation Standards

49-151. Definitions

In this article, unless the context otherwise requires:

1. "Engineering control" means a remediation method such as a barrier or cap that is used to prevent or minimize exposure to contaminants and that includes technologies that reduce the mobility or migration of contaminants.

2. "Institutional control" means a legal or administrative tool or action taken to reduce the potential for exposure to contaminants.

3. "Nonresidential use" means those uses of property other than residential uses.

4. "Owner" means all persons or entities that currently hold fee title to property other than as security for an obligation. On transfer of fee title of an affected property and after notice is provided pursuant to section 49-152.01, subsection C, the successor owner is the owner for purposes of this article and assumes all of the obligations of an owner pursuant to this article and the person who transferred title is no longer responsible for those obligations except as prescribed in section 49-152.01, subsection C.

5. "Remediation" means either:

(a) The treatment or removal of contaminated environmental media to meet predetermined risk levels or site specific risk levels.

(b) Environmental media that meet predetermined risk levels or site specific risk levels as determined by a risk assessment.

6. "Residential use" means those uses of remediated property where natural persons are reasonably expected to be in frequent, repeated contact with soil.

49-152. Soil remediation standards; restrictions on property use

A. Notwithstanding any other remediation levels established under this title, the director shall approve remediation levels calculated in accordance with this subsection and shall accomplish the following for remediation of contaminated soil to protect public health and the environment in accordance with the applicable provisions of this title and section 33-434.01:

1. Establish predetermined risk based standards by rule. At a minimum, separate standards shall be established for residential and nonresidential exposure assumptions. Until risk based remediation standards

are formally established by rule, the director shall establish interim standards adopting:

(a) The Arizona health based guidance levels developed by the department of health services to include a health based standard for total petroleum hydrocarbons as the standards for residential uses.

(b) The guidance levels in subdivision (a) of this paragraph modified to reflect the United States environmental protection agency published assumptions for exposures that are not residential as the standards for nonresidential uses. The initial adoption of these interim standards shall be effective by December 15, 1995 and shall be deemed emergency rules pursuant to section 41-1026.

2. Issue guidance on methods for calculating case-by-case, site specific risk based remediation levels in accordance with risk assessment methodologies that are accepted in the scientific community and shall not preclude the use of newly developed risk assessment methodologies that are accepted in the scientific community.

B. The owner of a property may elect to remediate the property to meet a site specific residential or nonresidential risk based remediation standard or a predetermined residential or nonresidential risk based remediation standard. The property is suitable for unrestricted use if it has been remediated without the use of engineering or institutional controls to meet either of the following:

1. The predetermined residential risk based remediation standard.

2. A site specific risk based hazard index equal to or less than one or a risk of carcinogenic health effects that is less than or equal to the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2), based on residential exposure.

C. If the owner has elected to use an engineering or institutional control to meet the standards prescribed in subsection B of this section, or if the owner has elected to leave contamination on the property that exceeds the applicable residential standard for the property, the owner shall record in each county where the property is located an institutional control that consists of a restrictive covenant that is labeled "declaration of environmental use restriction" pertaining to the area of the property necessary to protect the public health and the environment. A person who is conducting a remedial action, remediation, corrective action or response action that requires an institutional or engineering control and who is not the owner of the property shall obtain written consent from the owner before implementing the institutional control or constructing the engineering control. On implementation of the institutional or engineering control, the owner shall record a declaration of environmental use restriction in each county where the property is located. If the institutional control or engineering control will affect right-of-way that is owned, maintained or controlled by a public entity for public benefit, the person shall also obtain the public entity's written consent before implementing the institutional control or constructing the engineering control. The declaration of environmental use restriction shall limit by legal description:

1. The area of the property where the institutional control or engineering control shall be maintained.

2. The area of the property to be restricted to nonresidential use, because contamination remains on the property above the standards prescribed in subsection B, paragraph 1 or 2 of this section.

D. At the written request of the owner of property that is subject to a declaration of environmental use restriction, the director shall determine whether release or modification of the declaration of environmental use restriction is appropriate. If a release has been requested, the director

shall make this determination within sixty days after the date of the property owner's request. If the director determines that release of the declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. The declaration of environmental use restriction is perpetual unless released pursuant to this section. The director shall determine that release of a declaration of environmental use restriction is appropriate if the property has been remediated, without the use of institutional controls or engineering controls, to either:

1. Meet predetermined risk based remedial standards for residential exposure assumptions.

2. Present a risk based hazard index equal to or less than one from noncancer health effects and a risk estimate of carcinogenic health effects equal to or less than the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2).

E. The department shall establish a repository in the department listing sites remediated under programs administered by the department under this title. The repository shall include the name and address of the owner of the property, when the remediation was conducted, the legal description and street address of the property, the applicability of section 33-434.01, the type of financial assurance mechanism that is being used, if applicable, and a description of the purpose of the declaration of environmental use restriction.

F. When recorded, an owner's declaration of environmental use restriction under subsection B of this section is a covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns and inures to the benefit of the department and the state. If notice of the declaration of environmental use restriction that includes a specific description of the area of the property that is subject to the declaration of environmental use restriction is contained in the repository maintained by the department pursuant to subsection E of this section, a declaration of environmental use restriction may not be extinguished, limited or impaired through any of the following:

1. Issuance of a tax deed.

2. Foreclosure of a tax lien.

3. Foreclosure of any mortgage, deed of trust or other encumbrance or lien on the property.

4. Adverse possession.

5. Exercise of eminent domain.

6. Application of the doctrine of abandonment, the doctrine of waiver or any other common law doctrine.

G. Each party to a declaration of environmental use restriction shall incorporate the terms of the declaration of environmental use restriction into any lease, license or other agreement that is signed by the party and that grants a right with respect to the property that is subject to the declaration of environmental use restriction. The incorporation may be in full or by reference.

H. A declaration of environmental use restriction is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.

2. The date that remediation was completed and a map of the area of the property that is subject to the declaration.

3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.

4. A statement that more detailed information is available at the department, including the address at which that information will be maintained.

5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.

6. The notarized signature of the owner.

I. If institutional controls are used in addition to a declaration of environmental use restriction to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect public health and the environment.

2. A statement indicating that if any person desires to cancel or modify the institutional control in the future, the person must obtain prior written approval from the department pursuant to this section.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that institutional controls are being maintained.

J. If engineering controls are used to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement of all requirements for maintenance of the engineering control including a description of the control, the date it was constructed and the reason it must remain in place to protect public health and the environment.

2. A statement that if any person desires to change the engineering controls in the future that person shall obtain prior written approval from the department.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that engineering controls are being maintained.

4. A brief description of the engineering control plan and financial assurance mechanism prescribed by section 49-152.01, if applicable.

K. When the declaration of environmental use restriction is recorded or modified, an owner electing to use institutional or engineering controls to satisfy the requirements of this section shall pay the department a fee established by rule. If the control is an institutional control, the owner shall submit to the department a written report once each calendar year regarding the status of the institutional control. If the control is an engineering control, the owner shall maintain the engineering control on the property to ensure that it continues to protect public health and the environment and shall inspect each engineering control at least once each calendar year. Within thirty days after each inspection, the owner shall submit to the department a written report that:

1. Describes the condition of the engineering control.

2. States the nature and cost of all restoration made to the engineering control during the calendar year.

3. Includes current photographs of the engineering control.

4. Describes the status of the financial assurance mechanism prescribed by section 49-152.01, if applicable, and a certification that the financial assurance mechanism is being maintained.

L. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and

development plan approval for the property. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction. A declaration of environmental use restriction does not authorize a use of property that is otherwise prohibited by zoning ordinances or other ordinances or laws. A declaration of environmental use restriction may include activity limitations and use restrictions that would otherwise be permitted by zoning ordinances or other ordinances or laws.

M. The department shall adopt rules as necessary to implement this section. These rules may be combined with any rules necessary to implement section 49-158.

N. The department may enter on the property at all reasonable times to assess the condition of each engineering control. When the department enters on property to assess the condition of an engineering control, the department shall:

1. Provide twenty-four hours' advance notice of the entry to the property owner, if practicable.

2. Allow the owner or an authorized representative of the owner to accompany the department representative.

3. Present photographic identification on entry of the property.

4. Provide the owner or an authorized representative of the owner with notice of the right to have a duplicate sample or split of any sample taken during the inspection if the duplicate or split of any sample would not prohibit an analysis from being conducted or render an analysis inconclusive.

O. Nothing in this section shall preclude the department from initiating an action under other provisions of state or federal law.

49-152.01. Engineering controls; financial assurance

A. If an engineering control is used to satisfy the requirements of section 49-152, the owner shall submit to the department an engineering control plan that contains all of the following:

1. A detailed description of the engineering control that is prepared by a professional engineer who is licensed in this state. The description shall include a maintenance plan for the control and shall describe how the engineering control will prevent or minimize exposure to contaminants, the control's specifications and its expected operational life.

2. A contingency plan for the engineering control in the event that the engineering control fails and must be restored or does not achieve the intended level of protection or mitigation.

3. A detailed cost analysis of the engineering control in current dollars. The cost analysis shall include the cost of construction and maintenance and the cost of implementing the contingency plan.

4. A statement from the chief financial officer or a person in a similar position of legal responsibility on behalf of the owner that indicates that the owner is financially capable of meeting the requirements of this section.

B. The owner shall submit a proposed form of financial assurance document that is based on the cost analysis prescribed by subsection A, paragraph 3 of this section and that describes how the owner will ensure that the engineering control will be maintained and that there will be sufficient funds available to restore the engineering control if it fails or if it fails to meet its performance expectations. The owner shall pay the department a fee established by rule with each request for approval, amendment or substitution of a financial assurance mechanism. The financial assurance shall include all of the following:

1. Any one or more of the following in a form and amount that is satisfactory to the director:

(a) Payment into the institutional and engineering control fund established by section 49-159, in addition to payment of the fee prescribed by section 49-152, subsection K.

(b) A maintenance and restoration trust fund.

(c) Letter of credit.

(d) Surety bond guaranteeing performance of maintenance and restoration.

(e) Insurance policy.

(f) Financial test and corporate guarantee.

(g) A government financial test for state and federal agencies, cities, towns, counties and other government entities and political subdivisions.

(h) A government guarantee test for state and federal agencies, cities, towns, counties and other government entities and political subdivisions.

(i) Any other financial assurance mechanisms or combination of mechanisms as approved by the director.

2. If a government entity uses a government financial test or a government guarantee test to meet the requirements of this section, a subsequent owner shall demonstrate financial assurance pursuant to this section within thirty days of the sale or transfer of the property for which a financial assurance mechanism is required.

3. The amount of the financial assurance shall be sufficient to cover both of the following:

(a) The cost of maintenance of the engineering control for a period of thirty years or until the owner demonstrates that continued maintenance of the engineering control is no longer necessary, whichever occurs first.

(b) The cost of restoring the engineering control if it fails.

4. The financial assurance mechanism shall be structured so that the department has prompt access to the funds necessary to maintain or restore the engineering control as prescribed by section 49-152.02, if the owner fails to do so.

5. The amount of the financial assurance shall be adjusted to account for inflation.

6. On approval by the department, an owner may amend a financial assurance mechanism or may substitute a financial assurance mechanism with another.

C. At least five days before the sale or transfer of a property that is subject to a declaration of environmental use restriction because of an engineering control:

1. The owner of the property shall provide written notice of the sale or transfer to the department. The notice shall identify the buyer or transferee.

2. The buyer or transferee shall provide to the department a written commitment to comply with the requirements of the engineering control plan and to maintain or replace the financial assurance mechanism. The financial assurance obligations of the seller are not relieved until the buyer or transferee demonstrates financial assurance to the satisfaction of the department.

49-152.02. Enforcement of engineering controls; civil penalty

A. If the director determines that an engineering control has not been maintained in accordance with the maintenance plan required by section 49-152.01, or that an engineering control has failed and the owner has failed to adequately implement the contingency plan required by section 49-152.01, the director shall give notice of the failure to maintain or failure to

implement the contingency plan to the owner by certified mail. If the owner fails to adequately implement the contingency plan, initiate satisfactory maintenance or complete the required maintenance within a reasonable time as specified in the notice, the director may issue an order that requires the implementation of the contingency plan or the maintenance or restoration of the control within a reasonable time period.

B. If the department determines that a person has failed to obtain or maintain a financial assurance mechanism approved by the department under section 49-152.01, the department may issue an order requiring that the financial assurance mechanism be obtained or restored within a reasonable amount of time.

C. An order that is issued under this section shall state with reasonable specificity the nature of the deficiency, a general description of the actions to be taken to remedy the deficiency, a time for remedying the deficiency and the right to a hearing.

D. An order that is issued pursuant to this section becomes final and enforceable in superior court unless within thirty days after the receipt of the order the recipient requests a hearing pursuant to title 41, chapter 6, article 10. If a hearing is requested, the order does not become final until the department has issued a final decision on the appeal.

E. If the director determines that an owner has failed to comply with a final order issued pursuant to this section and as a result has created a condition that represents an actual or potential endangerment to public health or the environment, the director may enter the property and maintain or restore the engineering control. The department shall be entitled to recover all reasonable and necessary costs of such maintenance or restoration to the extent that the maintenance or restoration is within the scope of the remedial actions specified in the order. In seeking cost recovery, the department shall access the financial assurance mechanism pursuant to section 49-152.01, subsection B. To the extent that funds in the financial assurance mechanism are insufficient to cover the recoverable costs of maintenance or restoration, the department may seek to recover the unpaid amount from the owner, the institutional and engineering control fund established by section 49-159, or any other source of funds authorized by law for that purpose.

F. If the director determines that an owner's failure to maintain or restore an engineering control has created an imminent and substantial endangerment to the public health or the environment, the director may request that the attorney general commence a civil action. An action that is filed pursuant to this subsection shall have precedence over all other matters pending before the court. The action may seek to do any or all of the following:

1. Request a temporary restraining order, a preliminary injunction or a permanent injunction to mitigate or prevent the endangerment.

2. Access the financial assurance mechanism pursuant to section 49-152.01, subsection B to mitigate or prevent the endangerment. An action that is filed pursuant to this subsection shall have precedence over all other matters pending before the court.

G. An owner who fails to comply with a final order issued pursuant to subsection A of this section is subject to a civil penalty up to one thousand dollars per day for each day of noncompliance. The total civil penalties that may be imposed on an owner pursuant to this subsection shall not exceed two hundred fifty thousand dollars for each final order that is violated. At the request of the director the attorney general shall file an action in superior court to recover penalties provided in this section. In determining the amount of a civil penalty, the court shall consider the following factors:

1. The level of actual or potential threat to public health or the environment posed by the owner's failure to comply with the order.

2. Whether the reason for the owner's failure to comply with the order, if known, was beyond the reasonable control of the owner.

3. Whether the owner made any good faith attempt to comply with the order.

4. The financial status of the owner.

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

6. Other matters as justice may require.

49-158. Restrictions on property use; enforcement of engineering and institutional controls

A. Notwithstanding any other provisions of this title, if a remedial action, remediation or corrective action performed pursuant to this title or a response action performed pursuant to CERCLA as defined in section 49-201 includes an institutional control or an engineering control and the remedial action, remediation, corrective action or response action is not subject to section 49-152, the owner of the property on which the institutional control or engineering control is located, on implementation of the institutional control or on construction of the engineering control, shall record in each county where the property is located a restrictive covenant that is labeled "declaration of environmental use restriction". A person who is conducting a remedial action, remediation, corrective action or response action that requires an institutional or engineering control and who is not the owner of the property shall obtain written consent from the owner before implementing the institutional control or constructing the engineering control. On implementation of the institutional control or construction of the engineering control, the owner shall record a declaration of environmental use restriction in each county where the property is located. If the institutional control or engineering control will affect right-of-way that is owned, maintained or controlled by a public entity for public benefit, the person shall also obtain the public entity's written consent before implementing the institutional control or constructing the engineering control. The declaration of environmental use restriction shall limit by legal description the area of the property where the institutional control or engineering control shall be maintained.

B. When recorded, an owner's declaration of environmental use restriction under subsection A of this section is a covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns and inures to the benefit of the department and the state. If notice of the declaration of environmental use restriction that includes a specific description of the area of the property that is subject to the declaration of environmental use restriction is contained in the repository maintained by the department pursuant to section 49-152, subsection E, a declaration of environmental use restriction may not be extinguished, limited or impaired through any of the following:

1. Issuance of a tax deed.

2. Foreclosure of a tax lien.

3. Foreclosure of any mortgage, deed of trust or other encumbrance or lien on the property.

4. Adverse possession.

5. Exercise of eminent domain.

6. Application of the doctrine of abandonment, the doctrine of waiver or any other common law doctrine.

C. Each party to a declaration of environmental use restriction shall incorporate the terms of the declaration of environmental use restriction

into any lease, license or other agreement that is signed by the party and that grants a right with respect to the property that is subject to the declaration of environmental use restriction. The incorporation may be in full or by reference.

D. A declaration of environmental use restriction is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.

2. The date that remediation, remedial action, corrective action or response action was completed and a map of the area of the property that is subject to the declaration.

3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.

4. A statement that more detailed information is available at the department including the address at which that information will be maintained.

5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.

6. The notarized signature of the owner or owners of the property.

E. If institutional controls are used in addition to the declaration of environmental use restriction, the declaration of environmental use restriction, in addition to the information required by subsection D of this section, shall include the same elements required pursuant to section 49-152, subsection I.

F. If engineering controls are used, the declaration of environmental use restriction, in addition to the information required by subsection D of this section, shall include the same elements required pursuant to section 49-152, subsections F through J and section 49-152.01.

G. When a declaration of environmental use restriction is recorded or modified, an owner shall pay to the department a fee established by rule. The owner shall follow the same requirements for institutional controls and engineering controls pursuant to section 49-152, subsection K and section 49-152.01.

H. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and development plan approval for the property. A declaration of environmental use restriction does not authorize a use of property that is otherwise prohibited by zoning ordinances or other ordinances or laws. A declaration of environmental use restriction may include activity limitations and use restrictions that would otherwise be permitted by zoning ordinances or other ordinances or laws. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction.

I. The department may enter the property pursuant to section 49-152. The department may also enforce this section as prescribed by section 49-152.02.

J. The department shall adopt rules as necessary to implement this section.

K. When the department enters on property pursuant to this section to verify that engineering controls are being maintained, the department shall meet the same requirements pursuant to section 49-152, subsection N.

L. At the written request of the owner of property that is subject to a declaration of environmental use restriction recorded pursuant to subsection A of this section, the director shall determine whether release or modification of the declaration of environmental use restriction is appropriate. If a release has been requested, the director shall make this determination within sixty days after the date of the property owner's

request. If the director determines that release of a declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. Release by the director under this subsection is appropriate if maintenance of the institutional control or engineering control is no longer necessary to protect public health and the environment.

M. Nothing in this section shall preclude the department from initiating an action under other provisions of state or federal law.

49-159. Institutional and engineering control fund; purpose

A. The institutional and engineering control fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Fees collected pursuant to section 49-152, subsection K.
2. Fees collected pursuant to section 49-158, subsection G.
3. Costs of restoring engineering controls that are recovered pursuant to section 49-152.01.
4. Costs of restoring engineering controls that are recovered pursuant to section 49-158, subsection I.
5. Monies paid into the fund pursuant to section 49-152.01, subsection B.
6. Gifts, grants and donations.
7. Legislative appropriations.

B. Monies in the institutional and engineering control fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies in the institutional and engineering control fund shall be used for the following purposes:

1. For all reasonable and necessary costs to implement section 49-152, subsections B through O and sections 49-152.01, 49-152.02 and 49-158.
2. For the reasonable and necessary costs to administer the fund.

Article 5 Voluntary Remediation Program

49-171. Definitions

In this article, unless the context otherwise requires:

1. "Characterization" means a process to determine the nature, degree and extent of contaminants at a site or a portion of a site.
2. "Contaminant" means any substance that has been released to the environment and that qualifies as any of the following:
   (a) A hazardous substance as defined in section 49-201.
   (b) A pollutant as defined in section 49-201.
3. "Engineering control" has the same meaning prescribed in section 49-151.
4. "Environmental claim" means a claim for defense or indemnity submitted under a general liability insurance policy by an insured in response to a claim of potential liability for bodily injury or property damage arising from a release of pollutants onto or into land, air or water.
5. "Institutional control" has the same meaning prescribed in section 49-151.

6. "Insured" means any person who is included as a named insured on a general liability insurance policy and who has or had a property interest in a site in this state that involves an environmental claim.

7. "Person" has the same meaning prescribed in section 49-201.

8. "Remediation" means action taken to address a contaminant by reducing the level of the contaminant in the environment or preventing or reducing exposure to the contaminant.

9. "Site" means the areal extent of contamination.

10. "Source" means a site or portion of a site where a contaminant is or may be released to waters of the state.

11. "Waters of the state" has the same meaning prescribed in section 49-201.

49-172. Applicability

A. Except as provided in subsection B of this section, any person may request the department to review and approve work to be performed or already performed that addresses or has addressed a release of a contaminant to the environment by submitting an application to participate in the voluntary remediation program established by this article.

B. This article shall not apply to any of the following activities:

1. Corrective action at or closure of a facility that has qualified for interim status or to which a permit has been issued pursuant to section 49-922.

2. Corrective action pursuant to section 49-1005, unless the person waives any right to reimbursement of costs from the state assurance fund.

3. Remedial actions required by the terms of any of the following:

(a) A written agreement between the applicant and the director entered into before the date of an application under this article.

(b) A judicial judgment or decree.

(c) An administrative order issued before the date of an application under this article.

4. Remedial actions sought to be required in the complaint in a judicial action filed and served by the state before the date of the application under this article.

5. Remedial actions at a site or portion of a site listed on the registry maintained pursuant to section 49-287.01, subsection D that address a contaminant of concern at that site, except that the department may accept an application under this article for remediation of a site or a portion of a site for which a preliminary investigation has been commenced or completed pursuant to section 49-287.01 but that has not been listed on the registry maintained pursuant to section 49-287.01, subsection D.

49-173. Application requirements

A. Each application to participate in a voluntary remediation program shall contain the following information:

1. The name and address of the person filing the application and the nature of the relationship of the person to the site, if any.

2. A description of the location and boundaries of the site or portion of a site that is the subject of the remediation.

3. A description of characterization performed at the site or portion of the site, if known.

4. A general description of the work to be performed or already performed by the applicant. The application shall state whether the applicant is requesting one or more of the following:

(a) Approval of remedial actions to be performed.

(b) Approval of remedial actions already performed.

5. A list of the actions of the director to compel remediation that the applicant proposes to be suspended by the approval.

6. Information to confirm that the work to be performed or already performed is eligible pursuant to section 49-172.

7. The fee required pursuant to section 49-179, subsection A.

8. An agreement in which the applicant agrees:

(a) To grant access to the site or portion of a site to the department at reasonable times to verify that the work is being performed in accordance with the work plan approved pursuant to section 49-177 or has been performed in accordance with the report submitted pursuant to section 49-181.

(b) To reimburse the department for the department's costs, pursuant to section 49-179, for review of, action on and oversight of the work plan pursuant to section 49-175 and 49-177 or the report pursuant to section 49-181.

(c) To carry out the tasks described in the work plan pursuant to section 49-175 in accordance with the schedule provided in the work plan, or to submit a report pursuant to section 49-181.

(d) To meet and confer with the department regarding the progress of the tasks performed in accordance with the work plan approved pursuant to section 49-177, if applicable.

(e) To submit an advance deposit to be applied against the department's reimbursable costs pursuant to section 49-179 for review of, action on, and oversight of the work plan submitted pursuant to section 49-175 or the report submitted pursuant to section 49-181.

49-174. Application review and approval

A. After receipt of an application submitted pursuant to section 49-173, the department shall promptly review the application and approve, deny or request modifications to determine the applicant's eligibility to participate in the voluntary remediation program established by this article. An applicant is eligible to participate if the application contains all of the information listed in section 49-173 and the work performed or to be performed does not include activities listed in section 49-172, subsection B.

B. An application shall be deemed complete unless the department, within sixty days of receipt, notifies the applicant that the application is incomplete or has been denied. If the department determines that additional information is necessary to evaluate or to take final action on the application, the department may request such information in writing and set a reasonable deadline for a response.

C. After an application is approved, the applicant, within a reasonable time period, shall submit a work plan pursuant to section 49-175 or a report pursuant to section 49-181, whichever is applicable.

49-175. Work plans

A. A work plan to address a release of a contaminant to the environment shall include the following:

1. A summary of existing information on site characterization, including references to known site characterization and assessment information and information regarding any remediation previously conducted at the site or portion of the site. The applicant shall provide copies of the referenced reports to the department.

2. If the site or portion of the site addressed in the application has not been characterized, a plan to conduct site characterization and a

schedule for completion. The applicant shall provide a schedule for the submission of a work plan for remediation following approval of site characterization.

3. If site characterization is completed for the site or portion of the site addressed in the application, a plan for remediation which will comply with subsection B of this section and a schedule for completion as follows:

(a) The work plan shall describe how the remediation will comply with subsection B of this section and how the completion of remediation will be verified. The applicant and the department may agree on interim performance goals. The interim performance goals shall be guidelines used to determine the ongoing effectiveness of the remediation toward reaching the final remediation levels.

(b) The work plan may provide for the remediation to be conducted in phases or tasks that, if agreed to by the applicant, provide for the department to review and approve a completed phase or task before initiation of the next phase or task of the work plan.

4. A schedule for submission of progress reports to the department. The progress reports shall be sufficient to allow the department to determine the effectiveness of the characterization if it has not been completed, followed by the remediation.

5. A proposal for community involvement as prescribed by section 49-176.

6. If known, a list of institutional or engineering controls necessary during remediation and after completion of the proposed remediation to control exposure to contaminants.

7. A proposal for monitoring of a site or portion of a site during the remediation and after the remediation if necessary to verify whether the approved remediation levels or controls have been attained and will be maintained.

8. A list of any permits or legal requirements known by the applicant to apply to the work to be performed or already performed by the applicant.

9. If requested by the department, information regarding the financial capability of the applicant to conduct the work identified in the application.

B. Remediation levels or controls for remediation conducted pursuant to this article shall be established in accordance with rules adopted pursuant to section 49-282.06 unless one or more of the following applies:

1. The applicant demonstrates that remediation levels, institutional controls or engineering controls for remediation of contaminated soil comply with section 49-152 and the rules adopted pursuant to that section.

2. The applicant demonstrates that remediation levels, institutional controls or engineering controls for remediation of landfills or other facilities that contain materials that are not subject to section 49-152 and the rules adopted pursuant to that section will result in a condition that does not exceed a cumulative excess lifetime cancer risk between 1 x 10-4 and 1 x 10-6, and a hazard index no greater than 1. The excess lifetime cancer risk shall be selected based on site-specific factors including the presence of multiple contaminants, the existence of multiple pathways of exposure, the uncertainty of exposure and the sensitivity of the exposed population. Approval of the use of institutional or engineering controls shall require a demonstration that the controls will be maintained and that the requirements of section 49-158 have been met.

3. The applicant demonstrates that on achieving remediation levels or controls for a source or potential source of contamination to a navigable water, the source of contamination will not cause or contribute to an exceedance of surface water quality standards, or if a permit is required

pursuant to 33 United States Code section 1342 for any discharge from the source, that any discharges from the source will comply with the permit. Approval of the use of institutional or engineering controls shall require a demonstration that the controls will be maintained and that the requirements of section 49-158 have been met.

4. The applicant demonstrates that, on achieving remediation levels or controls for a source of contamination to an aquifer, the source will not cause or contribute to an exceedance of aquifer water quality standards beyond the boundary of the facility where the source is located. In determining whether remediation levels or controls satisfy this requirement, the department shall consider a demonstration by the applicant that aquifer water quality standards are exceeded beyond the boundary of the facility due to naturally occurring contamination or from sources outside of the boundary. The applicant is not required to identify or evaluate other sources. Approval of the use of institutional or engineering controls shall require a demonstration that the controls will be maintained and that the requirements of section 49-158 have been met.

C. The department, at its sole discretion, may waive any work plan requirement under this section that it determines to be unnecessary to make any of the determinations required under section 49-177. Decisions under this subsection are not subject to appeal or dispute resolution under section 49-185.

49-176. Community involvement requirements

A. A work plan submitted pursuant to section 49-175 shall include a plan to provide to the public reasonable notice and information regarding the remediation. A report submitted pursuant to section 49-181 shall describe the activities previously undertaken to notify the public of the remediation. Plans and activities undertaken after the effective date of this article to notify the public shall be consistent with the following guidelines:

1. For remediation where the remediation levels and controls are established in accordance with the rules adopted pursuant to section 49-282.06, community involvement shall be consistent with the requirements of those rules.

2. For remediation where the remediation levels and controls are established in accordance with section 49-175, subsection B, paragraph 1, 2, 3, or 4, community involvement activities shall be conducted appropriate to the scope and schedule of the remediation, including, as applicable, all of the following:

(a) For fieldwork conducted to remove contaminants of concern or that may result in noise, light, odor, dust and other adverse impacts off of the site, provide general public notice. The general public notice shall be in the form of visible signage and direct mailing, door hangings, or a similar form of notice that is distributed in a manner sufficient to reach those who may be impacted. The general public notice shall identify the name and telephone number of a person who may be contacted for information regarding the fieldwork.

(b) For remediation that will take more than one hundred eighty days to complete, provide general notice regarding the nature and progress of the action and establish a document repository accessible to the public where information regarding the site and the remediation is available for review. The general notice may be in the form of fact sheets, newsletters, or news articles distributed by direct mailings, door hangings or any other method of distribution sufficient to reach or be accessible to local government agencies, persons within the community surrounding the site and

other persons who have requested information regarding the site and direct mail to affected water providers. The general notice shall identify the name and telephone number of a person who may be contacted for information regarding the remediation. The document repository shall be accessible during normal business hours or by appointment and shall contain all documents and information required to be prepared or maintained by this program and any other documents and information deemed appropriate by the person conducting the work.

3. For remediation levels or controls selected pursuant to section 49-175, subsection B, paragraphs 3 and 4 or remediation that includes an institutional or engineering control to satisfy the requirements of section 49-152 or section 49-158 and the rules adopted pursuant to those sections, notice of a work plan pursuant to section 49-175 or a report pursuant to section 49-181 and an opportunity for public comments to be submitted for a period of forty-five days after the notice shall be published in a newspaper of general circulation and shall be provided individually to affected water providers, affected well owners, local government agencies, adjacent residents, and the department of water resources.

B. If the applicant requests a no further action determination pursuant to section 49-181, the applicant shall provide general notice of the request, the report submitted to the department, and the opportunity for comment.

C. Community involvement activities undertaken pursuant to this article may be coordinated or combined with similar procedures required under other laws applicable to the work to avoid duplication.

D. The director shall consider written comments in response to a public notice providing an opportunity to comment or any public meeting held prior to approving a work plan pursuant to section 49-177 or issuing a no further action determination pursuant to section 49-181. The director may require the applicant to conduct a public meeting prior to approving a work plan for which notice is required pursuant to subsection A, paragraph 3 of this section or issuing a no further action determination.

E. The director may require additional community involvement activities appropriate to the schedule and scope of the work after consideration of the following factors:

1. Actual or potential impact to water supply.
2. Extent and toxicity of the contamination.
3. Duration of the work.
4. Level of public interest.
5. Noise, light, odor and other adverse impacts.
6. Likelihood of contaminant exposure to human or ecological receptors.

49-177. Work plan review and approval

A. After receipt of a work plan submitted pursuant to section 49-175, the department shall expeditiously review, approve, deny or request modifications to the work plan. The department shall notify the applicant in writing of any deficiencies in the work plan or modifications necessary for approval.

B. The department shall approve a work plan if, after considering the information in the work plan and any public comments the director finds that:

1. If characterization has not been completed, that characterization will be completed in a timely manner.

2. If characterization has been completed, that the proposed remediation is reasonably likely to achieve the remediation levels or

controls established pursuant to section 49-175, subsection B in a timely manner.

3. The proposed community involvement meets the requirements of section 49-176.

4. The work to be performed complies with any applicable corrective or remedial action requirements of any applicable permit required under this title. If proposed remediation under this article requires a permit, a solid waste facility plan approval pursuant to section 49-762.03, or a modification, the permit, plan approval, or modification shall be obtained through the applicable program.

5. The proposed remediation is consistent with title 45, chapter 2.

6. The work to be performed complies with any otherwise applicable laws and rules.

C. The department may deny a work plan if the applicant fails or refuses to correct deficiencies or make modifications required for approval, if the proposed remediation would interfere with or substantially increase the cost of a remedial action that the department may conduct to address waters of the state pursuant to chapter 2, article 5 of this title, or if the director determines that the applicant is not financially capable of conducting the work proposed in the work plan.

D. If approved, the work proposed in the work plan, including the community involvement requirements, shall be performed according to the requirements and schedule set forth in the work plan. Any permits or permit modifications needed to implement an approved plan shall be obtained as required through the applicable program. The approval suspends any remedial action by the director at the site or portion of the site described in the approved work plan, including the issuance of any order or the filing of any action to compel the work approved in the work plan, to the extent determined by the director to be appropriate. The actions to be suspended shall be specifically stated in the director's approval.

E. The department may inspect sites approved under this section at reasonable times and require reporting. The department may also request modifications pursuant to section 49-180.

F. After approval of the work plan, the department shall not take any action against the applicant that has been suspended unless the applicant notifies the department that it is withdrawing from the voluntary remediation program or the department terminates an applicant’s participation in the program pursuant to section 49-178.

G. Approval of a work plan under this section that includes the withdrawal of groundwater qualifies the applicant for remediated groundwater incentives set forth in Laws 1997, chapter 287, sections 51 and 52 only if the remedial action is designed primarily to address a release of a contaminant that is a hazardous substance.

H. If the department denies the work plan, the applicant may initiate dispute resolution under section 49-185, subsection B or C.

49-178. Termination and withdrawal

A. An applicant may withdraw from the voluntary remediation program at any time.

B. After complying with subsection C of this section, the department may terminate an applicant’s participation in the voluntary remediation program if the applicant does any of the following:

1. Fails to submit a work plan pursuant to section 49-175 or a report pursuant to section 49-181 within a reasonable time period, whichever is applicable.

2. Fails to comply with the work plan requirements approved under section 49-177.

3. Fails to substantially comply with the schedule for completion submitted pursuant to section 49-175, subsection A, paragraphs 2 or 3 and approved pursuant to section 49-177.

4. Fails to reimburse the department for its costs as required by section 49-179.

5. Fails to modify the work plan pursuant to the department's request under section 49-180.

6. Fails to submit and obtain approval for phases of work or other tasks described in the work plan if such approval is a condition of the work plan.

7. Submits false information, misrepresents information or fails to disclose material information.

C. Before terminating an applicant's participation in the voluntary remediation program for any reason pursuant to this section, the department shall send to the applicant a written notice of deficiency and shall provide the applicant a reasonable opportunity to correct the deficiency. If the deficiency is not corrected within a reasonable time set by the department, the department may terminate an applicant's participation in the program as provided in subsection B of this section.

D. If an approved application is terminated or withdrawn, the suspension of actions pursuant to section 49-177, subsection F is withdrawn.

49-179. Application fees; reimbursement of costs of review

A. Each application submitted under section 49-173 shall be accompanied by a nonrefundable fee to be established by rule.

B. An applicant shall reimburse the department for the reasonable and necessary costs of actions taken by the department pursuant to this section and sections 49-173 through 49-178, 49-180, 49-181, 49-182 and 49-185.

C. Reimbursable costs include time spent by the department's employees and the costs of goods and services contracted by the department to carry out the activities described in subsection B of this section. Time spent by the department's employees shall be reimbursed at a rate to be established by rule based upon the estimated direct and indirect costs to the department of conducting these activities. The department shall provide documentation to the applicant to support its claims for reimbursement consistent with generally accepted accounting principles. The department may require an applicant to pay an advance deposit to be applied against the department's reimbursable costs following the department's approval of an application under section 49-174. If an approved application is terminated or withdrawn pursuant to section 49-178, the applicant shall reimburse the department for its costs incurred prior to the termination or withdrawal.

D. The department may contract with an outside consultant to perform any technical review required to review a work plan submitted pursuant to section 49-175 or a report submitted pursuant to section 49-181 or to oversee work performed pursuant to a work plan approved pursuant to section 49-177 as follows:

1. The department may contract any work for which costs are reimbursable pursuant to subsection B of this section if the contract rate is less than or equal to the rate charged for time spent by the department's employees.

2. The department may contract any work upon the request of an applicant to establish deadlines for a review of a work plan or a task under an approved work plan if the applicant agrees to reimburse the department for the charges of the outside consultant.

49-180. Modification of work plan

A. An applicant may propose a modification to a work plan at any time by submitting an amended work plan or portions of the work plan. Sections 49-175 and 49-177, as applicable, govern the amended work plan.

B. Based upon the progress reports submitted by the applicant, the department may request an applicant to submit a proposed modification to the work plan pursuant to this section if the department determines that a modification is necessary in order to meet the remediation levels or objectives within the approved work plan and schedule, including any interim goals. If the applicant objects to the requested modifications, the applicant may seek dispute resolution regarding the requested modifications pursuant to section 49-185, subsection B or C, or may withdraw from the program. If the applicant does not make the modifications requested by the department, and if dispute resolution is not successful or if the applicant does not seek dispute resolution within the time period provided by section 49-185, subsection B or C, the department may terminate an applicant's participation in the program pursuant to section 49-178.

C. Minor changes to the approved work plan that do not substantially change the scope, nature or duration of the work to be performed may be approved in writing by the department and are not subject to section 49-177. Minor changes include changes in the schedule for specific actions for good cause shown by the applicant as long as the overall duration of the tasks in the work plan are not substantially affected.

49-181. Requests for no further action determination

A. Upon achieving the remediation levels and controls determined pursuant to section 49-175, subsection B, an applicant approved pursuant to section 49-174 may request the department to provide a determination that no further action is needed for a site or portion of a site by submitting a report to the department. The report shall include:

1. A description of the specific contaminants for which a no further action determination is being sought.

2. A description of the actions taken to achieve remediation levels or controls determined in accordance with section 49-175, subsection B.

3. A description of any soil, water, or soil and water treatment systems used as part of the remediation.

4. Whenever institutional or engineering controls are placed on the site:

(a) A demonstration that any engineering control or combination of engineering controls has been constructed, is functioning, and will be maintained.

(b) A description of the proposed land use for the site and a demonstration that the use will not compromise the integrity of the engineering controls and will be in accordance with any institutional controls.

5. If postremediation monitoring is proposed, a description of the type of monitoring, monitoring locations, contaminants to be monitored, monitoring frequency and sampling procedures.

6. A description of community involvement activities undertaken to meet the requirements of section 49-176.

7. A list of permits under this title obtained for the remedial action or held by the applicant pertaining to the site.

B. After receipt of a request for a no further action determination, the department shall review, approve, deny or request modifications to the request. The director may request additional information before acting on the request for a determination of no further action, may conduct an

investigation of the site or portion of the site, and shall be given access to the site at reasonable times for the purpose of verifying the completion of the remedial action.

C. The director shall grant a request for a no further action determination if, after considering any public comments, the director determines that all of the following conditions exist:

1. The remediation has achieved remediation levels or controls determined in accordance with section 49-175, subsection B.

2. The community involvement requirements of section 49-176 have been satisfied.

3. If institutional or engineering controls are proposed, proof that the declaration of environmental use restriction has been filed that complies with the requirements of section 49-152 or 49-158.

4. The work performed complies with any applicable corrective or remedial action requirements of any applicable permit required under this title. If remediation under this article requires a permit, a solid waste facility plan approval pursuant to section 49-762.03, or a modification, the permit, plan approval, or modification shall be obtained through the applicable program.

5. The remediation is consistent with title 45, chapter 2.

6. The work performed complies with any otherwise applicable laws and rules.

7. The remediation will not interfere with or substantially increase the cost of a remedial action that the department may conduct to address waters of the state pursuant to chapter 2, article 5 of this title.

D. The department may issue a conditional no further action determination at a site where remediation levels have been met through the use of institutional controls or engineering controls but postremediation care obligations such as monitoring or maintenance of engineering controls must be performed.

E. The department may rescind or amend the determination of no further action under this section and require remedial action pursuant to applicable law for any of the following reasons:

1. On discovery of new information that, based on the criteria in subsection C of this section, would result in the potential denial of a no further action request.

2. That information submitted pursuant to subsection A or B of this section was inaccurate, misleading, or incomplete.

3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threat of a release of a contaminant that may present an imminent and substantial danger to the public health or welfare or the environment.

F. A determination of no further action under this section means that no further action shall be taken by the department under this title to remediate or require remediation of the site or portion of the site covered by the no further action determination, unless the no further action determination is rescinded or amended pursuant to subsection E of this section. A no further action determination under this section does not release or discharge any person from liability under this title or any other law for a release of contaminants not covered by the work plan approved pursuant to section 49-177 or outside the boundary of the site or portion of the site covered by the determination. A determination of no further action shall not preclude the director from obtaining access to the area covered by the determination under this section or any other law.

49-182. Approval of remediations for cost recovery

Any work necessary to conduct remediation pursuant to this article may qualify as a remedial action for purposes of section 49-285. Any person may submit a request to the department for approval of a remedial action for purposes of section 49-285 by filing an application in accordance with the rules adopted pursuant to section 49-282.06. A request may be combined with any application pursuant to this article, and the department shall be reimbursed for the cost of reviewing the application as provided in this article. The director's approval under this section is not required to preserve any right to recover remedial costs under section 49-285.

49-183. Insurance

Insurance coverage shall not be denied an insured solely on the basis of the insured's participation in the voluntary remediation program pursuant to this article or chapter 2, article 5 of this title.

49-184. Reservation of rights

A. Nothing in this article may be construed to abridge or alter any right a person may have to engage in remedial action pursuant to other provisions of this title or any other provisions of statutory or common law.

B. Nothing in this article may be construed to abridge or alter the department's authority to recover penalties or to take any action authorized by law for any violation of this title, except that the department shall not take an action to compel remedial action or corrective action that is the subject of an application approved pursuant to this article unless the approval is withdrawn or terminated pursuant to section 49-178.

C. Unless a remedy is selected in accordance with the rules adopted pursuant to section 49-282.06, the affirmative defense under section 49-262, subsection F applies only to the site or portion of the site where remediation is or will be conducted pursuant to a work plan approved pursuant to this article.

49-185. Appeals and dispute resolution

A. Under this article, only the denial or rescission of a no further action determination is an appealable agency action as defined in section 41-1092, a contested case as defined in section 41-1001, or an action against a party as defined in section 41-1092.12.

B. In a dispute concerning an issue of geologic, hydrologic, chemical, biological or other scientific interpretation under this article, the applicant may request dispute resolution under this subsection. The applicant and the department shall seek in good faith to resolve the dispute informally. If the dispute cannot be resolved informally within thirty days, the applicant may submit a written statement describing the dispute, the applicant's proposed resolution and any supporting information to the department within twenty days after the end of informal dispute resolution. Within thirty days after receipt of the applicant's written statement, the department shall deliver or mail a written response to the applicant. The applicant's statement and the department's response may then be submitted to a qualified professional other than a professional retained by the applicant or an employee of the department. The department shall maintain a list of qualified professionals who may be selected to perform a review under this subsection. The professional shall review the matter and provide a recommended resolution to the director within thirty days after receipt of the information regarding the dispute. The applicant shall pay the cost of

the review. Within forty-five days after receipt of the professional's recommendations, the director shall select the applicant's, the department's or the professional's proposed resolution of the dispute and shall issue a written explanation of the decision. Deadlines under this subsection may be extended by agreement of the parties.

C. Any dispute between an applicant and the department that arises under this article may be resolved as provided in this subsection. Before making any request under this subsection, the applicant and the department shall seek in good faith to resolve the dispute informally. If the dispute cannot be resolved in thirty days, the applicant may submit a written statement describing the dispute and the applicant's proposed resolution of the dispute to the department within thirty days after conclusion of the informal dispute resolution. Within forty-five days after receipt of the applicant's statement, the department shall deliver or mail a written response to the applicant proposing a resolution of the dispute. The applicant may submit a written request for a decision on the dispute by the director. Within twenty days after receipt of the applicant's proposal, the director shall select the applicant's or the department's proposed resolution of the dispute and shall issue a written explanation of the decision. Deadlines under this subsection may be extended by agreement of the parties.

D. A dispute regarding billings by the department for reimbursement of costs pursuant to section 49-179 shall be resolved pursuant to subsection C of this section. Any dispute regarding a billing shall be raised in writing within thirty days after a bill is received. The department shall not require payment of the disputed portion of the bill to invoke dispute resolution. The department shall not terminate an application pursuant to section 49-178 for nonpayment of a disputed portion of a bill while dispute resolution is being conducted until after the director issues a decision.

49-186. Rules; program termination; no licensing

A. The department shall adopt rules as necessary to implement section 49-179. The adoption of rules under this section is not a prerequisite for implementation of this article.

B. The program established by this article ends on July 1, 2020 pursuant to section 41-3102.

C. Title 41, chapter 6, article 7.1 and section 41-1009 do not apply to this article.

49-187. Voluntary remediation fund

A. The voluntary remediation fund is established. The director shall administer the fund. The fund consists of monies from the following sources:

1. Fees collected pursuant to section 49-179.
2. Costs reimbursed to the department pursuant to section 49-179.
3. Gifts, grants and donations.
4. Legislative appropriations.
5. Until July 1, 2004, the water quality assurance revolving fund pursuant to section 49-282, subsection E, paragraph 10, provided that no more than three hundred fifty thousand dollars shall be transferred from the water quality assurance revolving fund to the voluntary remediation fund in any fiscal year.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. On notice from the director, the state treasurer shall

invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies in the voluntary remediation fund shall be used for the following purposes:

1. For all reasonable and necessary costs to implement this article.

2. For the reasonable and necessary costs of administering the fund.

49-188. Department access to private property

A representative of the department who enters private property pursuant to this article or pursuant to an agreement entered into pursuant to this article shall:

1. On entry of the premises, present photographic identification and state the purpose for the inspection.

2. Allow an authorized representative of the owner to accompany the department representative, except during confidential interviews. If the department has reason to believe that no on-site representative of the owner will be present at a site at the time of an inspection, the department shall make reasonable efforts to provide notice sufficient to allow a representative of the owner to be present during the inspection.

3. Provide notice of the right to have:

(a) Copies of any original documents taken by the department representative during the inspection if the representative is permitted by law to take original documents.

(b) A split of any samples taken during the site visit if the split would not prohibit an analysis from being conducted or render an analysis inconclusive.

(c) Copies of any analyses performed on samples taken during the inspection.

4. Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.

5. Inform each person whose conversation with the representative during the inspection is tape recorded that the conversation is being recorded.

6. Promptly notify the applicant in writing of any inconsistencies or deficiencies noted during the inspection.

Article 6 Regulation of Greenhouse Gas Emissions

49-191. Greenhouse gas programs; definition

A. Notwithstanding any other law, a state agency established under this title or title 41 shall not adopt or enforce a state or regional program to regulate the emission of greenhouse gas for the purposes of addressing changes in atmospheric temperature without express legislative authorization.

B. For the purposes of this section, "greenhouse gas" means carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbon or perfluorocarbon.

Article 7 Voluntary Environmental Stewardship Program

49-192. Definitions

In this article, unless the context otherwise requires:

1. "Environmental laws" means this title and any rules, permits and orders that are adopted or issued pursuant to this title.

2. "Environmental management system" means a set of documented processes and practices that enable an organization to reduce its environmental impacts and increase its operating efficiency by continuously improving its environmental performance.

3. "Environmental performance" means the effect of a facility or activity on air, water, land, natural resources or human health and the generation of waste by a facility or activity.

4. "Organization" means a company, corporation, political subdivision, firm, enterprise or institution, or any part or combination, whether incorporated or not, public or private, that has its own functions and administration. For organizations with more than one operating unit, a single operating unit may be defined as an organization.

49-192.01. Voluntary environmental stewardship program; minimum qualifications

A. The director shall develop, implement and administer a voluntary environmental stewardship program. The voluntary environmental stewardship program shall provide recognition for those organizations with a history of preventing environmental law violations and incentives for organizations going above and beyond environmental law requirements. The program shall include tiers commensurate and appropriate to the environmental impacts of an organization's facilities, activities, products or services, and be based on an organization’s level of commitment to the program.

B. The director may adopt rules to implement this article.

C. Participation in the voluntary environmental stewardship program by any organization is voluntary. The department shall approve an organization's membership in the program and shall review the organization's membership at least once every three years. Membership shall be based on the organization's commitment to:

1. Sustained compliance with environmental laws and history of compliance with environmental laws.

2. Develop, implement and maintain an environmental management system.

3. Going above and beyond the requirements of environmental laws.

4. Pollution prevention and improving its environmental performance.

5. Reporting to the department on its environmental performance annually.

D. Notwithstanding any other law, membership in the voluntary environmental stewardship program does not constitute a license under title 41, chapter 6, and the denial or approval of membership does not constitute an appealable action or an action against the party under title 41, chapter 6, article 10.

Chapter 2 WATER QUALITY CONTROL
Article 1 General Provisions

49-201. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

7. "Closed facility" means:

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

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

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

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

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

10. "Direct reuse" means the beneficial use of reclaimed water for specific purposes authorized pursuant to section 49-203, subsection A, paragraph 6.

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

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

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

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

15. "Environment" means navigable waters, any other surface waters, groundwater, drinking water supply, land surface or subsurface strata or ambient air, within or bordering on this state.

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

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

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

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

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

19. "Hazardous substance" means:

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

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

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

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

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

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

20. "Inert material" means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

21. "Major modification" means a physical change in an existing facility or a change in its method of operation that results in a significant increase or adverse alteration in the characteristics or volume of the pollutants discharged, or the addition of a process or major piece of production equipment, building or structure that is physically separated from the existing operation and that causes a discharge, provided that:

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

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

22. "Navigable waters" means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)).

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

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

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

24. "Nonpoint source" means any conveyance which is not a point source from which pollutants are or may be discharged to navigable waters.

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

26. "Permit" means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility.

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

28. "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel,

conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged to navigable waters. Point source does not include return flows from irrigated agriculture.

29. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

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

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

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

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

(d) Meet property use restrictions.

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

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

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

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

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

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

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

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

39. "Trade secret" means information to which all of the following apply:

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

(b) The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental

bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.

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

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

40. "Vadose zone" means the zone between the ground surface and any aquifer.

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

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

49-202. Designation of state agency

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, the adoption, modification or repeal of rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through H of this section. Subsections C and D, subsection E, paragraph 3, subsection F, paragraph 3 and subsection H of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through H of this section apply to the certification of applications for or notices of coverage under those permits.

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for navigable waters established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of navigable waters. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. Until January 1, 1999:

1. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing within thirty calendar

days after receipt of the application for section 401 certification. The request shall specifically describe the information requested. Within fifteen calendar days after receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for purposes of subsection H of this section. If the department fails to act within the time limits prescribed by this subsection, the application is deemed complete.

2. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant within thirty calendar days after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

3. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to grant or deny an application within the time limits prescribed by this section is deemed a waiver of certification pursuant to this subsection and section 401(a)(2) of the clean water act.

F. Beginning January 1, 1999:

1. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for purposes of subsection H of this section. In all other instances, the application is complete on submission of the information requested by the department.

2. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

3. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

G. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:

1. The name, address and telephone number of the applicant.

2. A description of the project to be certified, including an identification of the navigable waters in which the certified activities will occur.

3. The project location, including latitude, longitude and a legal description.

4. A United States geological service topographic map or other contour map of the project area, if available.

5. A map delineating the ordinary high watermark of navigable waters affected by the activity to be certified.

6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to navigable waters from those activities.

7. A description of the materials being discharged to or placed in navigable waters.

8. A copy of the application for a federal permit or license that is the subject of the requested certification.

H. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification. Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.

I. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:

1. There is no disposal of construction and demolition wastes and contaminated wastewater.

2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.

3. Pollution from the operation of equipment in the mining area is removed and properly disposed.

4. Stockpiles of processed materials containing ten per cent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. As used in this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.

5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.

6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

J. For purposes of subsection I of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.

K. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:

1. Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.

2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.

3. Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.

L. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality

may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as his duties are prescribed in this chapter.

M. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection L of this section.

49-202.01. Surface water quality general grazing permit; best management practices for grazing activities; definition

A. As part of the duties established pursuant to section 49-203, subsection A, paragraph 3, the director shall implement a surface water quality general grazing permit consisting of voluntary best management practices for grazing activities.

B. The terms and conditions of the surface water quality general grazing permit shall be voluntary best management practices that have been determined by the committee to be the most practical and effective means of reducing or preventing the nonpoint source discharge of pollutants into navigable waters by grazing activities.

C. In adopting voluntary grazing best management practices, the committee shall consider:

1. The availability and effectiveness of alternative technologies.

2. The economic and social impacts of alternative technologies on grazing and associated industries.

3. The institutional considerations of alternative technologies.

4. The potential nature and severity of discharges from grazing activities and their effect on navigable waters.

D. For the purposes of this section, "grazing activities" means the feeding of all classes of domestic ruminant and nonruminant animals on grasses, forbs and shrubs in Arizona watersheds.

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.

49-204. Gray water reuse

A city, town or county may not further limit the use of gray water by rule or ordinance if the gray water use is allowed by a permit that is issued by the department for the direct reuse of reclaimed water, unless, in an initial active management area that has a groundwater management goal of safe yield and that does not contain a part of the central Arizona project aqueduct, effluent has been included in an assured water supply determination pursuant to section 45-576 and the use of gray water would reduce the volume of effluent available to satisfy assured water supply requirements applicable to that determination.

49-205. Availability of information to the public

A. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the director or a department employee, shall be available to the public, except that:

1. Income tax returns are confidential.

2. Drinking water system security vulnerability assessments that are submitted to the United States environmental protection agency, pursuant to Public Law 107-188, are exempt from disclosure under this chapter and title 39, chapter 1.

3. Other information, or a particular part of the information, shall be considered confidential on either:

(a) A showing, satisfactory to the director, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person.

(b) A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

B. Notwithstanding subsection A of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any pollutant discharge.

3. The existence or level of a concentration of a pollutant in drinking water or in the environment.

C. Notwithstanding subsection A of this section, and in addition to the information prescribed by subsection B of this section, the following information that is obtained by the department and that relates to discharges authorized by a permit issued under the program adopted pursuant to section 49-203, subsection A, paragraph 2 shall be made available to the public by the department:

1. Information required to be submitted in a permit application.

2. The frequency of the discharge.

3. The temperature and pH level of the discharge.

4. Other water quality characteristics that are required to be reported under the permit.

D. Notwithstanding subsection A of this section, the director may disclose any records, reports or information obtained from any person under this chapter, including records, reports or information obtained by the director or department employees, to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with the clean water act, the safe drinking water act, CERCLA or provisions and regulations relating to those acts.

49-206. Preservation of rights

This chapter shall not be construed to abridge or alter causes of action or remedies under the common law or statutory law, criminal or civil, nor shall any provision of this chapter, or any act done by virtue of this chapter, be construed so as to estop any person, this state or any political subdivision of this state, or owners of land having groundwater or surface water rights or otherwise, from exercising their rights or, under the common law or statutory law, from suppressing nuisances or preventing injury due to discharges.

49-207. Discrimination prohibited

A. No person may intimidate, threaten, restrain, coerce, blacklist, terminate or in any manner discriminate against any person because that person has filed a complaint or instituted, or caused to be instituted, a proceeding under this chapter or has testified or is about to testify in such a proceeding or has exercised, on behalf of himself or others, any right or protection afforded by this chapter.

B. A person who believes he has been discriminated against in violation of this section may, within one hundred eighty days after the violation, file a complaint with the attorney general. On receipt of the complaint, the attorney general may investigate as he deems appropriate. If, after investigation, the attorney general determines that this section has been violated, he may bring an action in superior court against any alleged violator.

C. In an action brought under this section, the court has jurisdiction to restrain a violation and order any appropriate relief, including rehiring or reinstatement of a person, with back pay and double damages.

49-208. Public participation

A. The director, by rule, shall prescribe procedures to assure adequate public participation in proceedings of the department under this chapter. The public participation procedures shall meet the requirements of the clean water act and safe drinking water act for permits issued under those acts. At a minimum, public participation procedures shall prescribe public notice requirements including the content and publication of the notice, provide an opportunity for public hearings and specify the procedures governing the hearings and require the public availability of relevant documents. Public hearings shall be held at places and times which afford a reasonable opportunity to persons to participate.

B. The director shall provide for and encourage public participation in developing such rules, plans and informational materials, including handbooks and guidance documents, as are required or necessary to implement the provisions of this chapter.

49-209. Industrial discharges to community sewer systems; registration; fee

A. Each person that is required to obtain a permit for discharges into a community sewer system under federal categorical industrial pretreatment regulations and standards shall register each year with the director and pay an annual registration fee of two hundred fifty dollars.

B. On or before January 31 each year each public or private entity that issues a permit for discharges into a community sewer system shall transmit to the director a list of current permittees and their addresses. The director shall prescribe a procedure for notifying permittees of the registration requirements of this section and collecting the prescribed fee.

C. The director shall deposit all monies collected under this section in the water quality assurance revolving fund established by section 49-282 and may authorize expenditures from the fund, pursuant to section 49-282, to pay the reasonable and necessary costs of administering the registration program.

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

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

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

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

D. Monies in the water quality fee fund shall be used for the following purposes:

1. The issuance of aquifer protection permits pursuant to section 49-241.

2. The aquifer protection permit registration fee procedures pursuant to section 49-242.

3. Dry well registration fee procedures pursuant to section 49-332.

4. Technical review fee procedures pursuant to section 49-353.

5. Inspection fee procedures pursuant to section 49-104, subsection C.

6. The issuance of permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.

7. Operator certification pursuant to sections 49-352 and 49-361.

8. Paying the cost of implementing section 49-203, subsection A, paragraph 6 and section 49-221, subsection E.

9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.

10. Implementation and administration of the underground injection control permit program established pursuant to article 3.3 of this chapter.

11. Implementation and administration of the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This

subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

Article 1.1 Brownfields Cleanup Revolving Loan Fund Program

49-218. Definitions

In this article, unless the context otherwise requires:

1. "CERCLA brownfields cleanup revolving loan fund program" means the program established by the United States environmental protection agency to provide financial assistance in the form of loans or grants to eligible persons to remediate contamination at eligible sites as provided in section 104(k) of CERCLA and applicable guidance documents prepared by the United States environmental protection agency to implement this program.

2. "Eligible activities" means removal as defined by section 101(23) of CERCLA and includes required engineering evaluations, cost analysis of cleanup alternatives, public participation requirements and reasonable and necessary site monitoring activities during the remediation.

3. "Eligible person" means a person who is eligible to receive a loan or grant under the CERCLA brownfields cleanup revolving loan fund program.

4. "Eligible site" means a site that is a brownfields site as defined by section 101(39) of CERCLA, that is within an area designated in a cooperative agreement between the department and the United States environmental protection agency and that is one of the following:

(a) Accepted into the department's voluntary remediation program.

(b) Subject to a remediation agreement with the department's water quality assurance revolving fund program.

(c) Being addressed through another program or oversight mechanism that is approved by the department.

49-218.01. Brownfields cleanup revolving loan fund program; eligibility

A. The director may implement the Brownfields cleanup revolving loan fund program pursuant to the requirements of the CERCLA Brownfields cleanup revolving loan fund program.

B. The director may:

1. Enter into financial assistance agreements, as deemed appropriate, with eligible persons for the performance of eligible activities at eligible sites.

2. Apply for, accept and administer grants and other financial assistance from the federal government and from other public and private sources for the Brownfields cleanup revolving loan fund program.

3. Enter into agreements to administer the program.

4. Enter into agreements with the water infrastructure finance authority pursuant to section 49-1203 to perform any of the functions of the fund manager pursuant to the CERCLA Brownfields cleanup revolving loan fund program.

5. Assess fees to administer the Brownfields cleanup revolving loan fund program consistent with any cooperative agreement with the environmental protection agency.

C. Financial assistance monies shall be used to perform removal actions that meet the requirements of the applicable program or oversight mechanism, the CERCLA Brownfields cleanup revolving loan fund program and this article. To the extent possible, the department shall eliminate duplicative requirements among the programs.

D. The following are not eligible for the Brownfields cleanup revolving loan fund program:

1. A site listed or proposed for listing on the national priorities list.

2. A site that is subject to state or federal unilateral administrative orders, a court order, administrative orders on consent or a judicial consent decree issued to or entered into by parties under CERCLA or this title.

3. A site that is subject to the jurisdiction, custody or control of the United States government.

E. The director, through the attorney general, may take actions necessary to enforce the loan contract and achieve repayment of loans provided under this article.

49-218.02. Brownfields cleanup revolving loan fund

A. The Brownfields cleanup revolving loan fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.

2. Monies received from the federal government.

3. Monies received from loan recipients and loan repayments, interest and penalties.

4. Interest and other income received from investing monies in the fund.

5. Gifts, grants and donations received from any public or private source.

B. Monies in the fund may be used for the purposes provided in section 49-218.01.

C. The department may use monies in the fund for the department's costs in administering the Brownfields cleanup revolving loan fund program.

D. Disbursement of monies from the fund pursuant to a financial assistance agreement under this article is not subject to title 41, chapter 23.

E. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190, relating to lapsing of appropriations.

Article 2 Water Quality Standards

49-221. Water quality standards in general

A. The director shall adopt, by rule, water quality standards for all navigable waters and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider, but not be limited to, the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

49-222. Water quality standards for navigable waters

A. Standards for the quality of navigable waters shall assure water quality, if attainable, which provides for protecting the public health and welfare, and shall enhance the quality of water taking into consideration its use and value for public water supplies, the propagation of fish and wildlife and recreational, agricultural, industrial and other purposes including navigation.

B. Not later than January 1, 1990, the director shall adopt standards for the quality of all navigable waters which establish numeric limitations on the concentrations of each of the toxic pollutants listed by the administrator pursuant to section 307 of the clean water act (33 United States Code section 1317).

C. In setting numeric standards for the quality of navigable waters, the director may consider the effect of local water quality characteristics on the toxicity of specific pollutants and the varying sensitivities of local affected aquatic populations to such pollutants, and the extent to which the natural flow of the stream is intermittent or ephemeral, as a result of which the instream flow consists mostly of treated wastewater effluent, except that such standards shall not, in any event, be inconsistent with the clean water act. In applying such standards the director may establish appropriate mixing zones.

49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water

aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.

49-224. Aquifer identification, classification and reclassification

A. Not later than June 30, 1987 the director shall, by rule, identify and define the boundaries of all aquifers in this state utilizing, to the maximum extent possible, data available from the department of water resources.

B. All aquifers in this state identified and defined under subsection A of this section and any other aquifers subsequently discovered, identified and defined shall be classified for drinking water protected use unless the classification is changed in the manner provided in subsection C of this section.

C. The director, after consulting with the appropriate groundwater users advisory council established pursuant to title 45, chapter 2, article 2

if the aquifer is in an active management area, and a public hearing held pursuant to section 49-208, may change the classification of an aquifer or part of an aquifer for a protected use other than drinking water on making all of the following findings:

1. The identified aquifer or part of an aquifer is or will be so hydrologically isolated from other aquifers or other parts of the same aquifer that there is no reasonable probability that poorer quality water from the identified aquifer or part of an aquifer will cause or contribute to a violation of aquifer water quality standards in other aquifers or parts of the same aquifer.

2. Water from the identified aquifer or part of an aquifer is not being used as drinking water.

3. The short-term and long-term benefits to the public that would result from the degradation of the quality of the water in the identified aquifer or part of an aquifer below standards established pursuant to section 49-223, subsections A and B would significantly outweigh the short-term and long-term costs to the public of such degradation. Benefits and costs to be considered include economic, social and environmental.

D. Owners or operators of facilities whose discharges are solely responsible for creating an aquifer may petition the director for a classification of the aquifer for a non-drinking water use. The director may, by rule, classify that aquifer for a non-drinking water use upon making the findings prescribed in subsection C, paragraphs 1 and 2 of this section.

E. The director shall provide for public participation in proceedings under this section pursuant to section 49-208 and shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification.

49-225. Water quality monitoring

A. The director of environmental quality, with the advice and cooperation of the Arizona department of agriculture and the director of water resources when appropriate, shall conduct ongoing monitoring of the waters of the state including the state's navigable waters and aquifers to detect the presence of new and existing pollutants, determine compliance with applicable water quality standards, determine the effectiveness of best management practices, agricultural best management practices and best available demonstrated control technologies, evaluate the effects of pollutants on public health or the environment and determine water quality trends.

B. The director shall maintain a statewide database of groundwater and soils sampled for pollutants. All agencies shall submit to the director, in a timely manner, the results of any groundwater or soils sampling for pollutants and the results of any groundwater or soils sampling that detect any pollutants.

C. The director shall establish minimum requirements and schedules for groundwater and soils sampling that will ensure precise and accurate results. The requirements shall be distributed to all agencies that conduct sampling. All sampling conducted shall meet the minimum requirements established pursuant to this subsection.

Article 2.1 Total Maximum Daily Loads

49-231. Definitions

In this article, unless the context otherwise requires:

1. "Impaired water" means a navigable water for which credible scientific data exists that satisfies the requirements of section 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute.

2. "Surface water quality standard" means a standard adopted for a navigable water pursuant to sections 49-221 and 49-222 and section 303(c) of the clean water act (33 United States Code section 1313(c)).

3. "TMDL implementation plan" means a written strategy to implement a total maximum daily load that is developed for an impaired water. TMDL implementation plans may rely on any combination of the following components that the department determines will result in achieving and maintaining compliance with applicable surface water quality standards in the most cost-effective and equitable manner:

(a) Permit limitations.

(b) Best management practices.

(c) Education and outreach efforts.

(d) Technical assistance.

(e) Cooperative agreements, voluntary measures and incentive-based programs.

(f) Load reductions resulting from other legally required programs or activities.

(g) Land management programs.

(h) Pollution prevention planning, waste minimization or pollutant trading agreements.

(i) Other measures deemed appropriate by the department.

4. "Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards.

49-232. Lists of impaired waters; data requirements; rules

A. At least once every five years, the department shall prepare a list of impaired waters for the purpose of complying with section 303(d) of the clean water act (33 United States Code section 1313(d)). The department shall provide public notice and allow for comment on a draft list of impaired waters prior to its submission to the United States environmental protection agency. The department shall prepare written responses to comments received on the draft list. The department shall publish the list of impaired waters that it plans to submit initially to the regional administrator and a summary of the responses to comments on the draft list in the Arizona administrative register at least forty-five days before submission of the list to the regional administrator. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the draft list. If the department receives a notice of appeal of a listing pursuant to section 41-1092, subsection B within forty-five days of the publication of the list in the Arizona administrative register, the department shall not include the challenged listing in its initial submission to the regional administrator. The department may subsequently submit the challenged listing to the regional administrator if the listing is upheld in the director's final administrative decision

pursuant to section 41-1092.08, or if the challenge to the listing is withdrawn prior to a final administrative decision.

B. In determining whether a water is impaired, the department shall consider only reasonably current credible and scientifically defensible data that the department has collected or has received from another source. Results of water sampling or other assessments of water quality, including physical or biological health, shall be considered credible and scientifically defensible data only if the department has determined all of the following:

1. Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing the data.

2. The samples or analyses are representative of water quality conditions at the time the data was collected.

3. The data consists of an adequate number of samples based on the nature of the water in question and the parameters being analyzed.

4. The method of sampling and analysis, including analytical, statistical and modeling methods, is generally accepted and validated in the scientific community as appropriate for use in assessing the condition of the water.

C. The department shall adopt by rule the methodology to be used in identifying waters as impaired. The rules shall specify all of the following:

1. Minimum data requirements and quality assurance and quality control requirements that are consistent with subsection B of this section and that must be satisfied in order for the data to serve as the basis for listing and delisting decisions.

2. Appropriate sampling, analytical and scientific techniques that may be used in assessing whether a water is impaired.

3. Any statistical or modeling techniques that the department uses to assess or interpret data.

4. Criteria for including and removing waters from the list of impaired waters, including any implementation procedures developed pursuant to subsection F of this section. The criteria for removing a water from the list of impaired waters shall not be any more stringent than the criteria for adding a water to that list.

D. In assessing whether a water is impaired, the department shall consider the data available in light of the nature of the water in question, including whether the water is an ephemeral water. A water in which pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable surface water quality standards shall not be listed as impaired.

E. If the department has adopted a numeric surface water quality standard for a pollutant and that standard is not being exceeded in a water, the department shall not list the water as impaired based on a conclusion that the pollutant causes a violation of a narrative or biological standard unless:

1. The department has determined that the numeric standard is insufficient to protect water quality.

2. The department has identified specific reasons that are appropriate for the water in question, that are based on generally accepted scientific principles and that support the department's determination.

F. Before listing a navigable water as impaired based on a violation of a narrative or biological surface water quality standard and after providing an opportunity for public notice and comment, the department shall adopt implementation procedures that specifically identify the objective basis for determining that a violation of the narrative or biological criterion exists. A total maximum daily load designed to achieve compliance

with a narrative or biological surface water quality standard shall not be adopted until the implementation procedure for the narrative or biological surface water quality standard has been adopted.

G. On request, the department shall make available to the public data used to support the listing of a water as impaired and may charge a reasonable fee to persons requesting the data.

H. By January 1, 2002, the department shall review the list of waters identified as impaired as of January 1, 2000 to determine whether the data that supports the listing of those waters complies with this section. If the data that supports a listing does not comply with this section, the listed water shall not be included on future lists submitted to the United States environmental protection agency pursuant to 33 United States Code section 1313(d) unless in the interim data that satisfies the requirements of this section has been collected or received by the department.

I. The department shall add a water to or remove a water from the list using the process described in section 49-232, subsection A outside of the normal listing cycle if it collects or receives credible and scientifically defensible data that satisfies the requirements of this section and that demonstrates that the current quality of the water is such that it should be removed from or added to the list. A listed water may no longer warrant classification as impaired or an unlisted water may be identified as impaired if the applicable surface water quality standards, implementation procedures or designated uses have changed or if there is a change in water quality.

49-233. Priority ranking and schedule

A. Each list developed by the department pursuant to section 49-232 shall contain a priority ranking of navigable waters identified as impaired and for which total maximum daily loads are required pursuant to section 49-234 and a schedule for the development of all required total maximum daily loads.

B. In the first list submitted to the United States environmental protection agency after the effective date of this article, the schedule shall be sufficient to ensure that all required total maximum daily loads will be developed within fifteen years of the date the list is approved by the environmental protection agency. Total maximum daily loads that are required to be developed for navigable waters that are included for the first time on subsequent lists shall be developed within fifteen years of the initial inclusion of the water on the list.

C. As part of the rule making prescribed by section 49-232, subsection C, the department shall identify the factors that it will use to prioritize navigable waters that require development of total maximum daily loads. At a minimum and to the extent relevant data is available, the department shall consider the following factors in prioritizing navigable waters for development of total maximum daily loads:

1. The designated uses of the navigable water.

2. The type and extent of risk from the impairment to human health or aquatic life.

3. The degree of public interest and support, or its lack.

4. The nature of the navigable water, including whether it is an ephemeral, intermittent or effluent-dependent water.

5. The pollutants causing the impairment.

6. The severity, magnitude and duration of the violation of the applicable surface water quality standard.

7. The seasonal variation caused by natural events such as storms or weather patterns.

8. Existing treatment levels and management practices.

9. The availability of effective and economically feasible treatment techniques, management practices or other pollutant loading reduction measures.

10. The recreational and economic importance of the water.

11. The extent to which the impairment is caused by discharges or activities that have ceased.

12. The extent to which natural sources contribute to the impairment.

13. Whether the water is accorded special protection under federal or state water quality law.

14. Whether action that is taken or that is likely to be taken under other programs, including voluntary programs, is likely to make significant progress toward achieving applicable standards even if a total maximum daily load is not developed.

15. The time expected to be required to achieve compliance with applicable surface water quality standards.

16. The availability of documented, effective analytical tools for developing a total maximum daily load for the water with reasonable accuracy.

17. Department resources and programmatic needs.

49-234. Total maximum daily loads; implementation plans

A. The department shall develop total maximum daily loads for those navigable waters listed as impaired pursuant to this article and for which total maximum daily loads are required to be adopted pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute. The department may estimate total maximum daily loads for navigable waters not listed as impaired pursuant to this article, for the purposes of developing information to satisfy the requirements of 33 United States Code section 1313(d)(3), only after it has developed total maximum daily loads for all navigable waters identified as impaired pursuant to this article or if necessary to support permitting of new point source discharges.

B. In developing total maximum daily loads, the department shall use only statistical and modeling techniques that are properly validated and broadly accepted by the scientific community. The modeling technique may vary based on the type of water and the quantity and quality of available data that meets the quality assurance and quality control requirements of section 49-232. The department may establish the statistical and modeling techniques in rules adopted pursuant to section 49-232, subsection C.

C. Each total maximum daily load shall:

1. Be based on data and methodologies that comply with section 49-232.

2. Be established at a level that will achieve and maintain compliance with applicable surface water quality standards.

3. Include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The margin of safety shall not be used as a substitute for adequate data when developing the total maximum daily load.

4. Account for seasonal variations that may include setting total maximum daily loads that apply on a seasonal basis.

D. For each impaired water, the department shall prepare a draft estimate of the total amount of each pollutant that causes the impairment from all sources and that may be added to the navigable water while still allowing the navigable water to achieve and maintain applicable surface water quality standards. In addition, the department shall determine draft allocations among the contributing sources that are sufficient to achieve the total loadings. The department shall provide public notice and allow for comment on each draft estimate and draft allocation and shall prepare written responses to comments received on the draft estimates and draft allocations.

The department shall publish the determinations of total pollutant loadings that will not result in impairment and the draft allocations among the contributing sources that are sufficient to achieve the total loading that it intends to submit initially to the regional administrator, along with a summary of the responses to comments on the estimated loadings and allocations, in the Arizona administrative register at least forty-five days before submission of the loadings and allocations to the regional administrator. Notwithstanding this subsection, draft allocations shall be submitted to the regional administrator only if that submission is required by the rules that implement 33 United States Code section 1313(d).

E. Publication of the loadings and allocations in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the estimated loadings and allocations. If the department receives a notice of appeal of a loading and allocation pursuant to section 41-1092.03 within forty-five days of the publication of the loading and allocations in the Arizona administrative register, the department shall not submit the challenged loading and allocations to the regional administrator until either the challenge to the loading and allocation is withdrawn or the director has made a final administrative decision pursuant to section 41-1092.08.

F. The department shall make reasonable and equitable allocations among sources when developing total maximum daily loads. At a minimum, the department shall consider the following factors in making allocations:

1. The environmental, economic and technological feasibility of achieving the allocation.

2. The cost and benefit associated with achieving the allocation.

3. Any pollutant loading reductions that are reasonably expected to be achieved as a result of other legally required actions or voluntary measures.

G. For each total maximum daily load, the department shall establish a TMDL implementation plan that explains how the allocations and any reductions in existing pollutant loadings will be achieved. Any reductions in loadings from nonpoint sources shall be achieved voluntarily. The department shall provide for public notice and comment on each TMDL implementation plan. Any sampling or monitoring components of a TMDL implementation plan shall comply with section 49-232.

H. Each TMDL implementation plan shall provide the time frame in which compliance with applicable surface water quality standards is expected to be achieved. The plan may include a phased process with interim targets for load reductions. Longer time frames are appropriate in situations involving multiple dischargers, technical, legal or economic barriers to achieving necessary load reductions, scientific uncertainty regarding data quality or modeling, significant loading from natural sources or significant loading resulting from discharges or activities that have already ceased.

I. For navigable waters that are impaired due in part to historical factors that are difficult to address, including contaminated sediments, the department shall consider those historical factors in determining allocations for existing point source discharges of the pollutant or pollutants that cause the impairment. In developing total maximum daily loads for those navigable waters, the department shall use a phased approach in which expected long-term loading reductions from the historical sources are considered in establishing short-term allocations for the point sources. While total maximum daily loads and TMDL implementation plans are being completed, any permits issued for the point sources are deemed consistent with this article if the permits require reasonable reductions in the discharges of the pollutants causing the impairment and are not required to

include additional reductions if those reductions would not significantly contribute to attainment of surface water quality standards.

J. After a total maximum daily load and a TMDL implementation plan have been adopted for a navigable water, the department shall review the status of the navigable water at least once every five years to determine if compliance with applicable surface water quality standards has been achieved. If compliance with applicable surface water quality standards has not been achieved, the department shall evaluate whether modification of the total maximum daily load or TMDL implementation plan is required.

49-235. Rules

The department shall adopt any rules necessary to implement this article.

49-236. Report

By September 1, 2005, the department shall submit a report to the governor, the speaker of the house of representatives and the president of the senate detailing progress made under this program and shall provide a copy to the secretary of state and the department of library, archives and public records. At a minimum, the report shall:

1. Evaluate the effectiveness of the total maximum daily load program and identify any recommended statutory changes to make the program more efficient, effective and equitable.

2. Assess the extent to which water quality problems that cannot be effectively addressed under the total maximum daily load program may be addressed under other federal or state laws.

3. Identify the number of appeals of department decisions under this article sought pursuant to title 41, chapter 6, article 10 and the disposition of those appeals, and assess the impact of those appeals on the department's ability to administer the program effectively.

49-237. Impact of successful judicial appeal of Arizona department of environmental quality decision

If a person appeals to court and succeeds in overturning or modifying a final administrative decision of the director pursuant to this article in an appeal initiated pursuant to title 41, chapter 6, article 10, within thirty days of the court's decision the department shall take the steps necessary to implement the court's decision, unless the director's decision that is overturned or modified was submitted to and approved by the regional administrator, in which case within thirty days of the court's decision the department shall request that the regional administrator modify the approval to reflect the court's decision.

49-238. Program termination

The program established by this article ends on July 1, 2020 pursuant to section 41-3102.

Article 3 Aquifer Protection Permits

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.

2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.

3. Injection wells.

4. Land treatment facilities.

5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.

6. Mine tailings piles and ponds.

7. Mine leaching operations.

8. Underground water storage facilities.

9. Sewage treatment facilities, including on-site wastewater treatment facilities.

10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, is available to the public on request.

E. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

49-241.01. Groundwater protection permit facilities; schedule; definition

A. The director shall complete the issuance or denial of aquifer protection permits or clean closure approval for all groundwater protection permit facilities on the following schedule:

1. By January 1, 2004, for all groundwater protection permits for nonmining facilities.

2. By January 1, 2006, for all groundwater protection permits for mining facilities.

B. The failure by the director to issue or deny an aquifer protection permit for a groundwater protection permit facility within the time prescribed by this section does not excuse a person from continuing to comply with all statutory and regulatory requirements applicable to that person's facility.

C. For purposes of this section, "groundwater protection permit facility" means either of the following:

1. A facility for which a groundwater quality protection permit was issued pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

2. A facility for which a notice of disposal was filed pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

49-241.02. Payment for aquifer protection permit fees; definitions

A. Only for a one-time rule making after July 29, 2010, the director shall establish by rule fees for aquifer protection permits, including maximum fees and fees for individual or area-wide permits, complex and standard modifications to permits and clean closure of a nonpermitted facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

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

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

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

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

F. For the purposes of this section:

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

(a) Any new tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance required to have an individual permit

under this article, unless this new facility is within an approved passive containment capture zone under section 49-243, subsection G, paragraph 1.

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

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

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

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

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

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

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

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

3. "Permit action" means:

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

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

(c) Issuance of a clean closure approval.

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

(e) Denial of any application.

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

G. The department shall adopt a rule to define "complex modification" for other nonmining aquifer protection permit sectors.

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

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

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

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

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

E. Only for a one-time rule making after the effective date of this amendment to this section, the director shall establish by rule an annual registration fee for facilities prescribed by subsections B, C and D of this section. The fee shall be measured in part by the amount of discharge or influent per day from the facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase.

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

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

49-243. Information and criteria for issuing individual permit; definition

A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.

2. A description of how the facility will be operated.

3. Existing and proposed pollutant control measures.

4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.

5. The use of water from aquifers in the discharge impact area.

6. The existing quality of the water in the aquifers in the discharge impact area.

7. The characteristics of the pollutants discharged by the facility.

8. Closure strategy.

9. Any other relevant federal or state permits issued to the applicant.

10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.

(b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.

(c) The age of equipment and facilities involved.

(d) The industrial and control process employed.

(e) The engineering aspects of the application of various types of control techniques.

(f) Process changes.

(g) Non-water quality environmental impacts.

(h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.

3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for the purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account

differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For the purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.

2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241(b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.

2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).

3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director, by rule, may prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:

1. Monitoring requirements.
2. Record keeping and reporting requirements.
3. Contingency plan requirements.
4. Discharge limitations.
5. Compliance schedule requirements.
6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.
7. Alert levels that, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.

8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. With the consent of the applicant or permittee, the director may include in an aquifer protection permit for an existing facility the requirement that the applicant or permittee undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:

1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06 and the rules adopted pursuant to that section.

2. The pollutant that was discharged constituted a hazardous substance.

M. With the consent of the applicant or permittee, the director may include in an aquifer protection permit as a condition the mitigation measures authorized under section 49-286 instead of issuing a mitigation order under section 49-286.

N. The director may deny a permit for a facility if the director determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The following apply to an application for a permit or to an issued permit:

1. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions.

2. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. Except for a state or federal agency or a county, city, town or other local governmental entity, the cost estimate shall be based on the cost for the applicant or permittee to hire a third party to conduct the closure strategy or plan unless the financial responsibility mechanism provided pursuant to this subsection is a self-assurance or a guarantee and the director determines that the applicant or permittee is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting postclosure monitoring and maintenance. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall update its cost estimate:

(a) For the duration of the permit on a periodic basis as scheduled in the permit but not more frequently than once every five years. The cost estimate shall be updated to adjust for inflation or as necessary to reflect increased or decreased costs resulting from changes to the facility or to the facility closure strategy or plan, or to any other relevant conditions related to the facility.

(b) For a significant amendment as defined by rule adopted by the director, if required to address incremental changes in the cost estimate that result from the significant amendment.

3. Except for a state or federal agency or a county, city, town or other local governmental entity, the applicant or permittee shall demonstrate financial responsibility to cover the estimated costs to close the facility and, if necessary, to conduct postclosure monitoring and maintenance by providing to the director for approval a financial assurance mechanism or combination of mechanisms as prescribed in rules adopted by the director or in 40 Code of Federal Regulations section 264.143 (f)(1) and (10) as of January 1, 2014. An applicant or permittee that demonstrates financial

responsibility by means of a self-assurance or guarantee shall aggregate the estimated closure and postclosure costs for all aquifer protection permits in this state for which the applicant, permittee or guarantor has provided a self-assurance or a guarantee in order to determine whether the applicant, permittee or guarantor meets the applicable financial test.

4. The permittee shall maintain its demonstration of financial responsibility prescribed in this subsection for the duration of the individual permit. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall periodically demonstrate financial responsibility and report to the director that the financial assurance mechanism is being maintained as scheduled in the permit and as prescribed in paragraph 3 of this subsection but not more frequently than once every two years. The permit's applicable reporting schedule shall be based on the type of financial assurance mechanism that is selected pursuant to this subsection.

5. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section.

6. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required before completion of construction but shall be required before the department issues approval to operate. Financial assurance for a facility is not required pursuant to this section if substantially similar financial assurance for that facility is required and has been provided pursuant to other federal, state or local laws, and evidence of that financial assurance is filed with the director.

7. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1 of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:

1. A description of the pollutant management area and point or points of compliance.

2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and that are included in the area-wide permit.

3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives

consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.

4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

49-243.01. Presumptive best available demonstrated control technology

A. The director may establish, by rule, presumptive best available demonstrated control technology, processes, operating methods or other alternatives, consistent with section 49-243, subsection B, paragraph 1, for a class of facilities, if the director determines that the facilities in that class are substantially similar in nature. Once presumptive controls are established by rule for a particular class of facilities the director shall review those rules every five years and, if appropriate, revise the rules for that class of facilities.

B. An owner or operator of a facility who applies for an individual permit under section 49-243 shall be deemed to have demonstrated that the design meets the requirements of section 49-243, subsection B, paragraph 1, if the application incorporates the presumptive controls for that class of facilities established pursuant to subsection A of this section.

C. A person or group of persons who own or operate facilities that are required to obtain a permit pursuant to this article may petition the director to establish by rule presumptive best available demonstrated control technology, processes, operating methods or other alternatives for that class of facilities. The director may grant the petition if he determines that the following conditions have been met:

1. The petition identifies the class of facilities for which rule adoption is requested.

2. The petition includes a description of the presumptive controls for the requested class of facilities.

3. The petition complies with section 41-1033.

4. The class of facilities described in the petition satisfies subsection A of this section.

D. The owner or operator of a facility with a permit shall not be required to obtain a new or modified permit because of rules adopted or

revised pursuant to subsection A of this section. Any complete application that is filed before the effective date of any rules adopted or revised pursuant to this section shall be processed by the department without requiring compliance with the rules adopted or revised pursuant to subsection A of this section.

49-244. Point of compliance

The director shall designate a point or points of compliance for each facility receiving a permit under this article. For the purposes of this chapter, the point of compliance is the point at which compliance must be determined for either the aquifer water quality standards or, if an aquifer water quality standard is exceeded at the time the aquifer protection permit is issued, the requirement that there be no further degradation of the aquifer as provided in section 49-243, subsection B, paragraph 3. The point of compliance shall be a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility. For an aquifer that has no existing or reasonably foreseeable drinking water beneficial use, the director may establish monitoring for compliance in another aquifer in lieu of monitoring in the uppermost aquifer. The point of compliance shall be determined as follows:

1. Except as provided in paragraph 2 of this section, for a pollutant that is a hazardous substance the point of compliance is the limit of the pollutant management area. The pollutant management area is the limit projected in the horizontal plane of the area on which pollutants are or will be placed. The pollutant management area includes horizontal space taken up by any liner, dike or other barrier designed to contain pollutants in the facility. If the facility contains more than one discharging activity, the pollutant management area is described by an imaginary line circumscribing the several discharging activities.

2. A point of compliance for hazardous substances other than that identified in paragraph 1 of this section may be approved by the director if the facility owner or operator can demonstrate either:

(a) That it is technically impracticable or inappropriate considering the likely fate or transport of a pollutant in an aquifer to monitor at the boundary specified in paragraph 1 of this section.

(b) The alternative point of compliance will allow installation and operation of the monitoring facilities that are substantially less costly. Such a request by a facility owner or operator under this paragraph must be supported by an analysis of the volume and characteristics of the pollutants that may be discharged and the ability of the vadose zone to attenuate the particular pollutants that may be discharged, including such factors as climate, hydrology, geology and soil chemistry. In no event shall an alternative point of compliance be further from the boundary specified in paragraph 1 of this section than is necessary for purposes of this paragraph, subdivisions (a) and (b) of this paragraph, and in no event shall it be so located as to result in an increased threat to an existing or reasonably foreseeable drinking water source. In addition an alternate compliance point for a hazardous substance pursuant to this subdivision shall never be further downgradient than any of the following:

(i) The property boundary.

(ii) Any point of an existing or reasonably foreseeable future drinking water source.

(iii) Seven hundred fifty feet from the edge of the pollutant management area.

3. For pollutants that are not hazardous substances the director, in identifying a point of compliance, shall take into account the volume and

characteristics of the pollutants, the practical difficulties associated with implementation of applicable water pollution control requirements, whether the facility is a new facility or an existing facility, water conservation and augmentation and the site-specific characteristics of the facility, including, but not limited to, climate, hydrology, geology, soil chemistry and pollutant levels in the aquifer. The point of compliance must be so located as to ensure protection of all current and reasonably foreseeable future uses of the aquifer.

49-245. Criteria for issuing general permit

A. The director may issue by rule a general permit for a defined class of facilities if all of the following apply:

1. The cost of issuing individual permits cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

2. The facilities, activities or practices in the class are substantially similar in nature.

3. The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity will meet the applicable requirements in section 49-243 or, as to facilities for which the director has established best management practices, section 49-246.

B. In addition to other applicable enforcement actions, if a person violates the conditions of a general permit, the director may revoke the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended at any time by the director if necessary to comply with this chapter.

C. Rules establishing a general permit shall include terms and conditions to ensure that all discharges and facilities will meet the requirements of this chapter and shall provide for the collective or individual revocation of the general permit if necessary to ensure compliance with this chapter.

D. Rules adopted pursuant to subsection A of this section may require a person who owns or operates a facility seeking coverage under a general permit to notify the director of the person's intent to operate the facility pursuant to the general permit and pay the applicable fee required pursuant to section 49-203.

49-245.01. Storm water general permit

A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.

2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.

3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may

require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water

A. A general permit is issued for the following discharges:

1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.

(b) The discharge occurs only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.

(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.

(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.

(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.

(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.

(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.

(b) The discharges occur only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

49-246. Criteria for developing best management practices

A. Pursuant to section 49-245, the director may issue a general permit for facilities requiring implementation of best management practices appropriate to the class of discharges to be regulated. The director shall:

1. Identify the aquifer water quality problem which must be addressed and determine that protection of aquifer water quality standards can be accomplished through development and implementation of a best management practice for the class of discharge.

2. Assign a specific advisory committee to create the specific class best management practice to regulate the problem and report its recommendations to the director on a specified schedule.

3. On issuing a general permit containing best management practices, make a reasonable effort to notify persons conducting or managing the activity subject to the best management practices of the requirements of the best management practices contained in the general permit.

B. The director may establish best management practices for the following facilities or activities:

1. On-site facilities for urban runoff.
2. Storm sewers.
3. Urban runoff.
4. Silvicultural activities.
5. Septic tank systems.

C. The director may by rule establish best management practices for additional facilities or activities pursuant to this section, if all of the following apply:

1. The facilities or activities meet the criteria in section 49-245, subsection A, paragraphs 1 and 2.

2. The individual facilities or activities within the class are conducted over a large geographic area.

49-247. Agricultural general permits; best management practices for regulated agricultural activities

A. The director shall adopt by rule, pursuant to the requirements of this section, agricultural general permits consisting of best management practices for regulated agricultural activities. Agricultural general permits are not subject to section 49-245 or 49-246. Except as provided in subsection G of this section, a person is not required to obtain an individual permit for a regulated agricultural activity.

B. The terms and conditions of agricultural general permits adopted pursuant to this section shall be agricultural best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities. Agricultural best management practices may vary within the state, according to regional and hydrogeologic conditions. The director may waive the use of best management practices in a

designated region if the director determines that existing regulated agricultural activities will not cause or contribute to a violation of the adopted water quality standards.

C. The director shall adopt, by rule, agricultural best management practices.

D. In adopting agricultural best management practices, the director shall consider:

1. The availability, the effectiveness and the economic and institutional considerations of alternative technologies.

2. The potential nature and severity of discharges from regulated agricultural activities and their effect on public health and the environment.

E. In adopting best management practices for regulated agricultural activities, the director shall require the application of all economically feasible best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities but shall not require application of more stringent practices if such a requirement would result in cessation of the regulated activity.

F. Compliance with best management practices adopted pursuant to this section constitutes compliance with this article.

G. If the director, after providing a person with notice and an opportunity for a hearing, determines that the person has violated the applicable best management practices, the director may revoke the agricultural general permit for that person and require that the person obtain a permit pursuant to section 49-241.

H. The director may periodically reexamine, evaluate and propose any modification to or waiver of agricultural best management practices necessary to meet the requirements of this article.

49-249. Aquifer pollution information

The director shall make available to the public upon request and on the agency's web site every five years the levels of pollutants in aquifers in this state and the effects of regulation under this chapter in general and best management practices in particular on controlling or reducing pollution in aquifers.

49-250. Exemptions

A. The director may, by rule, exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from the facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.

B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.

2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.

3. The noncommercial use of consumer products generally available to and used by the public.

4. Ponds used for watering livestock and wildlife.

5. Mining overburden returned to the excavation site including any common material that has been excavated and removed from the excavation site

and has not been subjected to any chemical or leaching agent or process of any kind.

6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.

7. Discharge to a community sewer system.

8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.

9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.

10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.

11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.

12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.

13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.

14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.

15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.

16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.

17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.

18. Facilities used in:

(a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.

(b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.

(c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions that have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.

20. Storage, treatment or disposal of inert material.

21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.

22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.

23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:

(a) Firefighting system testing and maintenance.

(b) Potable water sources, including waterline flushings.

(c) Irrigation drainage and lawn watering.

(d) Routine external building wash down without detergents.

(e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.

(f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.

(g) Foundation or footing drains in which flows are not contaminated with process materials.

(h) Occupational safety and health administration or mining safety and health administration safety equipment.

24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.

25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

26. Except for class V wells, any underground injection well covered by a permit issued under article 3.3 of this chapter or under 42 United State Code section 300h-1(c). This exemption does not apply until the date that the United States environmental protection agency approves the department's underground injection control permit program established pursuant to article 3.3 of this chapter.

49-251. Temporary emergency waiver

A. A facility owner or operator may apply for, and the director may issue, a temporary emergency waiver of compliance with the requirement to obtain a permit or with any applicable permit requirement, surface or aquifer water quality standard or discharge limitation if the waiver will not endanger human health or welfare, and if the director finds any of the following:

1. That an emergency of such severity exists that water supplies for domestic uses will be inadequate to meet demand unless the facility is able to temporarily exceed one or more water quality standards or discharge limitations by its discharge into waters of the state.

2. That there has been a breakdown of equipment or upset of operations resulting in a discharge to waters of the state in excess of one or more water quality standards or discharge limitations, and both of the following apply:

(a) The breakdown or upset was beyond the control of the facility owner or operator and the facility was being operated in compliance with this chapter before the discharge.

(b) The breakdown or upset will be corrected in a reasonable period of time.

3. That the activity that is the subject of the waiver is necessary to protect human health or welfare or minimize potential adverse impacts to the environment.

B. A temporary emergency waiver of compliance issued by the director may be subject to such reasonable terms and conditions as the director deems necessary. The director may grant a waiver after the occurrence of the activity that is subject to the waiver if the applicant demonstrates that exigent circumstances made it impractical to secure the waiver in advance.

C. As a condition to the issuance of a temporary emergency waiver of compliance, the director may require the facility owner or operator to provide notice of the waiver to all downstream or downgradient users directly affected by both:

1. Publication on not less than three consecutive days, or on three consecutive weeks in the case of weekly publications, in a newspaper or newspapers of general circulation in the area in which the emergency or breakdown has occurred or is occurring.

2. Furnishing a copy of the publication to the radio and television stations serving the area in which the emergency or breakdown has occurred or is occurring.

D. The facility owner or operator shall furnish a copy of the publication to the director.

E. A temporary emergency waiver of compliance issued pursuant to this section shall remain in effect as long as necessary to accommodate the emergency but in no event longer than ninety days.

F. A person operating under a temporary emergency waiver is not subject to section 49-262 or 49-263 for discharges allowed under the temporary emergency waiver but is subject to article 5 of this chapter.

49-252. Closure notification and approval

A. A person who owns or operates a dry well subject to this article or a groundwater protection permit facility as defined in section 49-241.01, subsection C or a person who has been issued a permit pursuant to this article shall notify the director of the intent to permanently cease an activity for which the facility or a portion of the facility was designed or operated.

B. Within ninety days of the notification in subsection A of this section, the owner or operator shall submit a closure plan to the director.

C. Within sixty days of submittal of a complete closure plan, the director shall determine whether or not the closure plan is for a clean closure.

D. If the director determines that the closure plan is for a clean closure, the director shall send a letter of approval to the owner or operator and no aquifer protection permit shall be required.

E. If the director determines that the proposed closure plan achieves a closure condition other than clean closure, the owner or operator shall submit either an application for an aquifer protection permit or a request to modify a current aquifer protection permit in order to address closure activities and postclosure monitoring and maintenance at the facility. The director shall require submittal of a permit application or a request to modify a permit within ninety days or a reasonable time not to exceed one year, if the applicant can supply a scope of work justifying a schedule for collecting the technical information necessary to apply.

Article 3.1 Arizona Pollutant Discharge Elimination System Program

49-255. Definitions

In this article, unless the context otherwise requires:

1. "AZPDES" means the Arizona pollutant discharge elimination system program as adopted under section 402(b) of the clean water act.

2. "Discharge" means any addition of any pollutant to navigable waters from any point source.

3. "Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source that is regulated under section 307(b), (c) or (d) of the clean water act.

4. "Industrial user" means a source of indirect discharge.

5. "Publicly owned treatment works" means a treatment works owned by this state or a municipality of this state as defined in section 502(4) of the clean water act.

6. "Sewage sludge":

(a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.

(b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.

(c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works.

7. "Treatment works" means any devices and systems that are used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, the elements essential to providing a reliable recycled supply such as standby treatment units and clear well facilities, and any works that will be an integral part of the treatment process or that are used for residues resulting from that treatment. For the purposes of the programs required by sections 49-255.02 and 49-255.03, treatment works include intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment and any appurtenances, extensions, improvements, remodeling, additions and alterations.

8. "Upset":

(a) Means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit discharge limitations because of factors that are beyond the reasonable control of the permittee.

(b) Does not include noncompliance to the extent that it is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

49-255.01. Arizona pollutant discharge elimination system program; rules and standards; affirmative defense; fees; general permit; exemption from termination

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

1. In conformance with a permit that is issued or authorized under this article.

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

B. The director shall adopt rules to establish an AZPDES permit program consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and no more stringent than the clean water act and this article.

C. The rules adopted by the director shall provide for:

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

2. Establishment of permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 7, including case by case effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. In addition to other reservations of rights provided by this chapter, nothing in this article shall impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

J. Only for a one-time rule making after July 29, 2010, the director shall establish by rule fees, including maximum fees, for processing, issuing and denying an application for a permit pursuant to this section. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

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

L. When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:

1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.

2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, "extreme event" means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.

3. The owner or operator complies with good housekeeping measures included in the general permit.

4. The owner or operator maintains the capacity of the retention basins.

5. Construction conforms to the standards prescribed by this section.

M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

N. This program is exempt from section 41-3102.

49-255.02. Pretreatment program; rules and standards

A. The director shall adopt rules to establish a pretreatment program that is consistent with the requirements of sections 307, 308 and 402 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act.

B. The rules adopted by the director shall provide for all of the following:

1. Development or modification of local pretreatment programs by the owners of publicly owned treatment works that discharge or as otherwise required under the clean water act or this article to prevent the use or disposal of sewage sludge produced by a publicly owned treatment works in violation of section 405 of the clean water act or requirements established pursuant to section 49-255.03, subsection A.

2. Approval by the director of new or modified local pretreatment programs or site specific modifications to pretreatment standards.

3. Oversight by the director of local program implementation.

C. The rules adopted by the director shall provide for the department to ensure that any industrial user of any publicly owned treatment works will comply with the requirements of sections 307 and 308 of the clean water act.

49-255.03. Sewage sludge program; rules and requirements

A. The director shall adopt rules to establish a sewage sludge program that is consistent with the requirements of sections 402 and 405 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act.

B. The rules adopted by the director shall provide for the regulation of all sewage sludge use or disposal practices used in this state.

Article 3.2 Dredge and Fill Permit Program

49-256. Adoption and enactment of federal definitions

(Conditionally Rpld.)

For the purposes of this article and for establishing primacy for this state's dredge and fill permit program under 33 United States Code section 1344, the following definitions are adopted and enacted as follows:

1. "Compensatory mitigation" means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

2. "Dredged material" means material that is excavated or dredged from navigable waters.

3. "Fill material" means:

(a) Except as specified in subdivision (c) of this definition, the term fill material means material placed in navigable waters where the material has the effect of:

(i) Replacing any portion of a navigable water with dry land; or

(ii) Changing the bottom elevation of any portion of a navigable water.

(b) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden

from mining or other excavation activities, and materials used to create any structure or infrastructure in the navigable waters.

(c) The term fill material does not include trash or garbage.

4. "General permit" means a permit authorizing a category of discharges of dredged or fill material under this article. General permits are permits for categories of discharge which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

5. "In-lieu fee program" means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for dredge and fill permits issued pursuant to this article. Similar to but distinct from a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

6. "Mitigation bank" means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by dredge and fill permits issued pursuant to this article. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

7. "Party affected by a jurisdictional determination" means a permit applicant, landowner, a lease, easement or option holder, or other individual who has an identifiable and substantial legal interest in the property (or a person acting with the approval of any of the foregoing) who has received an approved jurisdictional determination.

8. "Permittee-responsible mitigation" means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

9. "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

10. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

49-256.01. Dredge and fill permit program; permits; rules; prohibitions; exemptions; exceptions; notice

(Conditionally Rpld.)

A. For purposes of implementing the permit program established by 33 United States Code section 1344, the director may establish by rule a dredge and fill permit program that is consistent with and no more stringent than the clean water act dredge and fill program, including a permitting process.

B. During any period in which the state has been granted authority to administer the permit program established by 33 United States Code section 1344, a person may not discharge dredged or fill material unless the discharge is exempt under 33 United States Code section 1344(f) or rules

adopted pursuant to this article, except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article.

2. Pursuant to a permit that is issued or authorized by the United States army corps of engineers until a permit that is issued or authorized under this article takes effect.

C. Rules adopted by the director for the purposes of a permit program for dredge and fill shall:

1. Provide for issuing, authorizing, denying, modifying, suspending or revoking individual permits, general permits and emergency permits for the discharge of dredged or fill material into navigable waters regulated by this state under the clean water act for purposes of implementing the permit program established by 33 United States Code section 1344.

2. Establish permit conditions that ensure compliance with the applicable requirements of section 404 of the clean water act, including the guidelines issued under 33 United States Code section 1344(b)(1).

3. Establish maintenance, monitoring, sampling, reporting, recordkeeping and any other permitting requirements as necessary to maintain primary enforcement responsibility or to determine compliance with this article.

4. Establish the following in accordance with 33 United States Code section 1344:

(a) Circumstances and activities that do not require a dredge or fill permit.

(b) Activities that are exempt from the requirements of this article for any discharge or fill material that may result from those activities, and the conditions under which those activities are exempt.

(c) Circumstances under which a discharge of dredged or fill material shall not be permitted.

5. Establish procedures for the director to make jurisdictional determinations that determine whether a wetland or waterbody is a navigable water subject to regulatory jurisdiction under this article. Jurisdictional determinations:

(a) Shall be in writing and be identified as either preliminary or approved.

(b) Do not include determinations that a particular activity requires a permit under this article.

6. Establish public notice and comment procedures as necessary to maintain primacy for the dredge and fill program and as the director deems appropriate to inform the public.

7. Provide for any other provisions necessary to maintain state primary enforcement responsibility under 33 United States Code section 1344 and to implement the provisions of this article.

D. Approved jurisdictional determinations are appealable agency actions as defined by section 41-1092 and may be appealed by a party affected by a jurisdictional determination. Preliminary jurisdictional determinations are not appealable agency actions and notwithstanding section 41-1092.03, the right to appeal an approved jurisdictional determination does not extend to adjacent landowners or to third parties that are not parties affected by a jurisdictional determination.

E. On assuming authority to administer the permit program established by 33 United States Code section 1344, the department shall:

1. On request by a party affected by a jurisdictional determination, recognize and adopt any existing approved jurisdictional determinations that were originally issued by the united States army corps of engineers if the

federal definition of navigable waters that is applicable in this state has not changed since the issuance of the approved jurisdictional determinations.

2. On request by a party affected by a jurisdictional determination, renew approved jurisdictional determinations that were originally issued by the United States army corps of engineers on the same terms as the original unless:

(a) Physical changes have occurred affecting the determination that are likely to alter the jurisdictional status.

(b) The federal definition of navigable waters that is applicable in this state has changed since the issuance of the approved jurisdictional determinations.

(c) Additional field data show that the original determination was based on inaccurate data and the new data warrant a revision to the original determination.

F. The program established pursuant to this article is exempt from section 41-3102.

49-256.02. Compensatory mitigation

(Conditionally Rpld.)

A. As a part of the program established pursuant to section 49-256.01, and consistent with the guidelines established pursuant to 33 United States Code section 1344(b)(1), the director shall establish by rule standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks and in-lieu fee mitigation to offset unavoidable impacts to navigable waters authorized by permits issued under this article.

B. Mitigation banks and in-lieu fee programs may be used to compensate for unavoidable impacts to navigable waters that are authorized by general permits and individual permits, including after-the-fact permits, in accordance with rules established pursuant to this section. In addition to other potential injunctive relief or other relief requested under section 49-262, mitigation banks and in-lieu fee programs may be used to satisfy requirements arising from an enforcement action under this article.

C. Rules established by the director pursuant to this section shall identify alternative compensatory mitigation options for a permit applicant if an approved mitigation bank or in-lieu fee program that is located in the same watershed as the permit applicant's proposed discharge rejects that permit applicant's participation in that mitigation bank or in-lieu fee program.

Article 3.3 Underground Injection Control Permit Program

49-257. Applicability of federal definitions

The definitions prescribed in the underground injection control program in part C of the safe drinking water act in effect on January 1, 2018 and in the implementing regulations contained in the Code of Federal Regulations in effect on January 1, 2018 apply to this article.

49-257.01. Underground injection control permit program; permits; prohibitions; exemptions; rules

A. The department shall establish an underground injection control permit program, including a permitting process.

B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.

C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.

D. Notwithstanding subsection A of this section, a class V well is exempt from this article if the well has an aquifer protection permit obtained pursuant to article 3 of this chapter and that permit satisfies federal underground injection control requirements for a class V well.

E. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).

F. The program established pursuant to this article is exempt from section 41-3102.

Article 4 Enforcement

49-261. Compliance orders; appeal; enforcement

A. If the director determines that a person is in violation of a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6, any provision of article 2, 3, 3.1 or 3.2 or 3.3 of this chapter, a rule adopted pursuant to article 2, 3, 3.1 or 3.2 or 3.3 of this chapter, 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 or is creating an imminent and substantial endangerment to the public health or environment, the director may issue an order requiring compliance within a reasonable time period.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing.

C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.

D. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Appeals shall be conducted pursuant to section 49-321.

E. At the request of the director the attorney general may commence an action in superior court to enforce orders issued under this section once an order becomes final.

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. Criminal violations; classification; definition

A. It is unlawful to:

1. Discharge without a permit or appropriate authority under this chapter.

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

3. Violate a discharge limitation specified in a permit issued under this chapter.

4. Violate a water quality standard.

5. Commence underground injection or construction of an underground injection well without a permit or other appropriate authority under this chapter.

6. Violate any underground injection standard or requirement that is required by a permit issued or authorized under this chapter.

B. A person who with criminal negligence performs an act prohibited under subsection A of this section is guilty of a class 6 felony.

C. A person who knowingly performs an act prohibited under subsection A of this section is guilty of a class 5 felony.

D. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act prohibited under subsection A of this section is guilty of a class 2 felony.

E. For a class II well, a person who knowingly violates any underground injection control permit program requirements prescribed by this chapter may be subject to pipeline (production) severance.

F. A violation of any provision of this chapter for which a penalty is not otherwise prescribed is a class 2 misdemeanor.

G. The attorney general may enforce this section.

H. Monetary criminal penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

I. For purposes of this section "person" has the meaning assigned to that term by section 13-105.

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, 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.

49-264. Private right of action; citizen suits; right to intervene

A. Except as provided in subsection B of this section, a person that has an interest that is or may be adversely affected by a violation of this chapter or a rule adopted or an order issued by the department pursuant to this chapter may commence a civil action in superior court on the person's own behalf against the director alleging a failure of the director to perform an act or duty under this chapter that is not discretionary with the director. The court shall have jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in any of the following cases:

1. Before one hundred twenty days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.

2. If after conducting an investigation the director determines within one hundred twenty days after receiving notice of the alleged violation from the plaintiff that no violation has occurred, or the director had determined before receiving the notice of the alleged violation that the violation had not occurred.

3. If the department has issued and is diligently processing a notice of violation or an order or has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.

4. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.

5. if the director is diligently pursuing the violation under another state or federal environmental law.

C. In an action commenced under this section the plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party that substantially prevails.

E. A person that is or may be adversely affected by a violation of any requirement of the underground injection control permit program established pursuant to article 3.3 of this chapter may intervene as a matter of right in any pending state civil or administrative enforcement action. A person's right to intervene is limited as follows:

1. A person may intervene only if the person is adversely affected by the violation that is named in the state's action.

2. A person may intervene only for purposes of obtaining the following remedies for the state:

(a) A temporary restraining order.

(b) Injunctive relief.

(c) Civil penalties.

(d) Any combination of the penalties prescribed in this paragraph.

49-265. Venue

All actions commenced under sections 49-261 and 49-262 shall be brought in the superior court in the county in which the alleged violation occurred or in which the department maintains an office.

Article 5 Remedial Actions

49-281. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means any individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership or association, this state, a political subdivision of this state, or a commission of the United States government or a federal facility, an interstate body or any other entity that applies for a settlement under either section 49-292.01 or 49-292.02.

2. "Community" means the broad spectrum of persons determined by the director to be within an existing or proposed site placed on the registry pursuant to section 49-287.01.

3. "Community involvement area" means the geographical area that is within a site placed on the registry pursuant to section 49-287.01 and additional geographic areas as found appropriate in the director's discretion.

4. "Dispose" means the deposit, injection, dumping, spilling, leaking or placing of any pollutant into or on any land or water so that the pollutant or any constituent of the pollutant may enter the environment or be discharged into any waters, including aquifers.

5. "Eligible party" means a person who enters into a written agreement with the director to implement and complete a remedial investigation and feasibility study with respect to a site or portion of a site that was on the annual priority list on May 1, 1997 or any other person who incurs costs for a remedial action that is in substantial compliance with section 49-282.06 as determined by the director.

6. "Facility" means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice.

7. "Fund" means the water quality assurance revolving fund established by section 49-282.

8. "Hazardous substance" has the same meaning prescribed in section 49-201 but does not include petroleum as defined in section 49-1001, except to the extent that a constituent of petroleum is subject to section 49-283.02.

9. "Nonrecoverable costs" means any costs incurred by the director after June 30, 1997:

(a) That consist of salaries and benefits paid to state employees, including direct and indirect costs, except as specifically provided in section 49-282.05, section 49-285, subsection B, section 49-285.01, section 49-287.01, section 49-287.06, subsection H and section 49-287.07 and for epidemiological studies conducted by the department of health services.

(b) For activities conducted pursuant to section 49-287.02.

(c) For water monitoring activities conducted pursuant to section 49-225.

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

(e) For rulemaking.

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

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

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

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

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

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

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

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

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

(d) The normal application of fertilizer.

12. "Remedial actions" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment, such actions as may be necessary to investigate, monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the environment that may otherwise result from a release or threat of release of a hazardous substance. Remedial actions include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, that are nonopportunistic and that are naturally occurring. Remedial actions may include community information and participation costs and providing an alternative drinking water supply.

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

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

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

49-282. Water quality assurance revolving fund

A. A water quality assurance revolving fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.

2. Fertilizer license fees allocated under section 3-272, subsection B, paragraph 2.

3. Pesticide registration fees allocated under section 3-351, subsection D, paragraph 2.

4. The tax on water use pursuant to section 42-5302.

5. Water quality assurance fees collected under section 45-616.

6. Industrial discharge registration fees collected under section 49-209.

7. Manifest resubmittal fees collected under section 49-922.01.

8. Hazardous waste facility registration fees collected under section 49-929.

9. Hazardous waste resource recovery facility registration fees collected under section 49-930.

10. Monies recovered from responsible parties as remedial action costs.

11. Monies received as costs for a review of remedial actions at the request of a person other than the state.

12. Monies received from the collection of corporate income taxes under title 43, chapter 11, article 2 as prescribed by subsection B of this section.

13. Prospective purchaser agreement fees collected under section 49-285.01.

B. The water quality assurance revolving fund shall be assured of an annual funding amount of eighteen million dollars. At the beginning of each fiscal year, the state treasurer shall transfer the sum of fifteen million dollars to the water quality assurance revolving fund from the corporate income tax as collected pursuant to title 43, chapter 11, article 2. As custodian of the fund, the director shall certify to the governor, the state treasurer, the president of the senate and the speaker of the house of representatives at the end of that fiscal year the amount of monies deposited in the water quality assurance revolving fund pursuant to subsection A, paragraphs 1 through 9 of this section. At the end of the fiscal year the state treasurer shall adjust the fifteen million dollar transfer of corporate income tax so that, when combined with monies deposited in the fund during that fiscal year pursuant to subsection A, paragraphs 1 through 9 of this section, the fund receives eighteen million dollars each fiscal year. This adjustment shall occur as part of the year-end book closing process for that fiscal year. If sufficient monies from the corporate income tax are not available to make any necessary upward adjustments as part of the year-end book closing, the state treasurer shall transfer the monies necessary to achieve the eighteen million dollar funding level from the transaction privilege and severance tax clearing account pursuant to section 42-5029, subsection D, paragraph 4, to the water quality assurance revolving fund. Any transfers prescribed by this subsection shall not be deducted from the net proceeds distributed pursuant to section 43-206.

C. At the beginning of each fiscal year, the director of environmental quality shall contract with the department of water resources for the transfer of up to eight hundred thousand dollars from the water quality assurance revolving fund to the Arizona water quality fund established by section 45-618 for support services for the water quality assurance revolving fund program. The support services provided for the water quality assurance revolving fund program shall be determined by the director of water resources in consultation with the director of environmental quality.

D. Monies in the fund are exempt from lapsing under section 35-190. Interest earned on monies in the fund shall be credited to the fund.

E. Monies from the water quality assurance revolving fund shall be used for the following purposes:

1. To provide state matching monies or to meet such other obligations as are prescribed by section 104 of CERCLA.

2. For all reasonable and necessary costs to implement this article, including:

(a) Taking remedial actions.

(b) Conducting investigations of an area to determine if a release or a threatened release of a hazardous substance exists.

(c) Conducting remedial investigations, feasibility studies, health effect studies and risk assessments.

(d) Identifying and investigating potentially responsible parties and allocating liability among the responsible parties.

(e) Funding orphan shares.

(f) Participating in the allocation process, administrative appeals and court actions.

(g) Funding the community advisory boards and other community involvement activities.

(h) Remediating pollutants if necessary to remediate a hazardous substance.

3. For the reasonable and necessary costs of monitoring, assessing, identifying, locating and evaluating the degradation, destruction, loss of or threat to the waters of the state resulting from a release of a hazardous substance to the environment.

4. For the reasonable and necessary costs of administering the fund.

5. For the reasonable and necessary costs of administering the industrial discharge registration program under section 49-209.

6. For the costs of the water quality monitoring program described in section 49-225.

7. For compliance monitoring, investigation and enforcement activities pertaining to generating, transporting, treating, storing and disposing of hazardous waste. The amount to be used pursuant to chapter 5 of this title is limited to the amount received in the prior fiscal year from the hazardous waste facility registration fee.

8. For emergency response use as prescribed in section 49-282.02.

9. For all reasonable and necessary costs of the preparation and execution of prospective purchaser agreements.

10. For all reasonable and necessary costs of the voluntary remediation program.

11. To reimburse a political subdivision of this state for its reasonable, necessary and cost-effective remedial action costs incurred in response to a release or threat of a release of a hazardous substance or pollutants that presents an immediate and substantial endangerment to the public health or the environment. The political subdivision is not eligible for reimbursement until it has taken all reasonable efforts to obtain reimbursement from the responsible party and the federal government. No more than two hundred fifty thousand dollars may be spent from the fund for this purpose in any fiscal year.

12. For all reasonable and necessary costs incurred by the department pursuant to section 49-282.04 and the department of water resources pursuant to section 45-605 for well inspections, remedial actions and review and approval of well construction necessary to prevent vertical cross-contamination. The director of environmental quality and the director of water resources shall enter into an agreement for the transfer of these costs.

13. For actions that are taken pursuant to section 49-282.03 before the selection of a remedy.

14. For the reasonable and necessary costs of the conveyance, use or discharge of water remediated as part of a remedy under this article.

15. For the reasonable and necessary costs incurred by the department of health services at the request of the director of environmental quality to assess and evaluate the effect of a release or threatened release of hazardous substances to the public health or welfare and the environment. The director of environmental quality and the director of the department of health services shall enter into an agreement for the transfer

of these costs. The assessment and evaluation by the department of health services may include:

(a) Performing health effect studies and risk assessments.

(b) Evaluating and calculating cleanup standards.

(c) Assisting in communicating health and risk issues to the public.

16. For the reasonable and necessary costs incurred by the department of law to provide legal services at the request of the director of environmental quality.

17. For the reasonable and necessary costs of contracting for the goods and services to enable the director to implement this article.

18. For remediation demonstration projects that use bioremediation or other alternative technologies. The department may not use more than five hundred thousand dollars in a fiscal year pursuant to this paragraph.

F. Any political subdivision of this state that uses, used or may use waters of the state for drinking water purposes or any state agency, regardless of whether the political subdivision or state agency is a responsible party, may apply to the director for monies from the fund to be used for remedial action. An application to the fund for remedial action costs shall not be treated as an admission that a political subdivision or an agency of the state is a responsible party, but a political subdivision or a state agency that is a responsible party is liable for remedial action costs in the same manner, including reimbursement of the fund, as any other responsible party. The political subdivision shall commit a local matching amount at least equal to the amount sought from the fund.

G. The director of environmental quality shall prepare and submit a budget for the water quality assurance revolving fund program and the director of water resources shall prepare and submit a budget for the Arizona water quality fund with the departments' budgets that are required pursuant to section 35-111. The committees on appropriations of the house of representatives and the senate shall review the water quality assurance revolving fund budget and the Arizona water quality fund budget to ensure that the departments' expenditures are made in accordance with the legislature's intent and that the departments are making adequate progress toward accomplishing that intent.

49-282.01. Maximum annual payments of fees and taxes by mines to water quality assurance revolving fund; definitions

A. Notwithstanding any other law, a person engaging in mining is not required to pay fees and taxes listed in section 49-282, subsection A, paragraphs 2 through 9 in excess of the lesser of:

1. Ten thousand dollars in a calendar year per individual mining site.

2. Twenty-five thousand dollars in a calendar year per mining entity.

B. A person who pays such fees and taxes for mining facilities or activities in the amount specified in subsection A of this section may submit evidence of such payment to the appropriate entity in lieu of paying additional fees and taxes for that calendar year for mining facilities or activities.

C. If a mining facility or activity is owned or operated by more than one person, the payment of fees or the compliance with this section for the facility or activity by one person constitutes compliance by all other owners and operators.

D. For purposes of this section:

1. "Individual mining site" means a mining facility or activity or group of mining activities or facilities located in a contiguous geographical area and owned or operated by the same person.

2. "Mining" means the exploration, extraction, beneficiation and processing, including smelting and refining, of ores and minerals and all incidental activities.

3. "Mining entity" means a person who owns or operates more than one individual mining site in this state.

49-282.02. Water quality assurance revolving fund; emergency response use; definitions

A. Notwithstanding any other statute, monies from the water quality assurance revolving fund may be used for all reasonable costs incurred in remedial actions taken in response to a release or threat of a release of a hazardous substance or pollutant that presents an emergency to the public health or the environment. Within ten days of the date that the first remedial action costs are incurred, the director shall make a written determination that an emergency exists or that an emergency existed at the time the remedial action costs were incurred. A remedial action funded as an emergency response shall be completed within one year of the director's written determination that an emergency exists.

B. Any reasonable, necessary and cost-effective remedial action costs incurred by the director pursuant to this section in response to a release or a threat of a release of a hazardous substance that presents an imminent and substantial endangerment to the public health or the environment may be recovered in a civil action brought by the attorney general against any responsible party as prescribed by section 49-285, subsection A. This subsection does not preclude the department from initiating actions under other provisions of state or federal law. With respect to any reasonable, necessary and cost-effective remedial action costs incurred by the director pursuant to this section in responding to a release or a threat of a release of a pollutant, the attorney general may recover those costs in a civil action against a person only to the extent otherwise permitted by statute or the common law and not pursuant to this article.

C. For purposes of this section:

1. "Imminent and substantial endangerment to the public health or the environment" means, for purposes of cost recovery, an immediate and significant risk of harm to the public health or the environment as a result of a release of a hazardous substance.

2. "Remedial actions" means those actions necessary to prevent, minimize or mitigate significant damage to public health or the environment that may result from a release or a threat of release, based on an evaluation of the factors prescribed in 40 Code of Federal Regulations section 300.415(b)(2) as amended as of January 1, 1992. Remedial actions include those actions consistent with appropriate removal action prescribed by 40 Code of Federal Regulations section 300.415(d) as amended as of January 1, 1992.

49-282.03. Interim remedial actions; reimbursement of the fund; rules

A. On the request of any person, the director may take interim remedial actions to address the loss or reduction of available water from a well before the selection of a remedy, including making grants from the water quality assurance revolving fund to provide alternative water supplies, well replacement or water treatment if the director determines that both of the following apply:

1. The well currently supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is currently part of a public water system.

2. The well produces water or, in the reasonably foreseeable future, will produce water that is not fit for its current or reasonably foreseeable end use without treatment due to the release of hazardous substances at or from a site on the registry established pursuant to section 49-287.01, subsection D.

B. The interim remedial action taken by the director pursuant to subsection A of this section shall be the minimum necessary to address the loss or reduction of available water until a remedy is selected. The director, to the extent possible, shall consider potential remedies when selecting the interim remedial action pursuant to subsection A of this section. The interim remedial action shall not include the costs of reimbursement for costs already incurred. The director may choose not to take interim remedial action pursuant to subsection A of this section if the director has sufficient information to reasonably establish that the person requesting the remedial action may be responsible under this article for the release of hazardous substances contaminating the well. Notwithstanding this section, the director shall select remedies pursuant to section 49-287.04.

C. Notwithstanding subsection A of this section, if the director, in the record of decision, determines that the remedial action taken pursuant to subsection A of this section was not necessary, based on the criteria in section 49-282.06 and the rules adopted pursuant to that section, or if the person requesting the remedial action pursuant to subsection A of this section is later determined to be responsible under this article for the release of hazardous substances which contaminated or threatened to contaminate the well, that person shall reimburse the water quality assurance revolving fund for the costs incurred in taking the remedial action. The person requesting the interim remedial action shall make arrangements for financial assurance for the obligation to the satisfaction of the director. The attorney general shall file an action for reimbursement of costs pursuant to this section if requested by the director and may file an action on his own initiative.

D. The director shall adopt rules governing when interim remedial action may be taken pursuant to subsection A of this section.

49-282.04. Cross-contamination inspection; remedial measures

A. The director of environmental quality, in consultation with the director of water resources, may inspect wells for vertical cross-contamination of groundwater by hazardous substances and may take appropriate remedial actions to prevent or mitigate this cross-contamination at no cost to the well owner, subject to subsection D of this section. The director shall consult with and seek the voluntary compliance of affected well owners regarding well access, investigations and remedial actions. On receiving permission from the well owner or operator, the director or the director's designee may enter property owned or operated by the well owner at reasonable times under any of the following circumstances:

1. To inspect and collect samples from a well and to inspect and copy all documents or records relating to the well. If a sample is obtained pursuant to this section, the director, before leaving the property, shall give to the well owner or operator a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of these samples shall be furnished promptly to the well owner.

2. To conduct appropriate remedial actions regarding vertical cross-contamination or to investigate liability regarding contamination of groundwater caused by vertical cross-contamination.

B. The director of environmental quality shall notify the director of water resources of the results of the inspection and shall provide copies of its records and documents and the analysis of any samples taken. If it is determined that a well results in vertical cross-contamination, the director of environmental quality, upon receiving permission from the well owner or operator, may take appropriate remedial action, including well modification, abandonment or replacement, or provision of a replacement water supply.

C. A well owner who is not a responsible party pursuant to this article and who cooperates with the investigation and remedial activities of the director and the department of water resources to the extent possible consistent with its water delivery responsibilities and system operational requirements shall receive a covenant not to sue for secondary contamination resulting from the well unless the well owner had actual knowledge of groundwater contamination and constructed a well in violation of well construction requirements administered by the director of water resources, resulting in vertical cross-contamination of an aquifer.

D. Notwithstanding subsection C of this section, if the director takes remedial action pursuant to subsection A of this section and the well owner or operator is later determined to be responsible under this article for a release of hazardous substances which contaminated the well, the well owner or operator responsible for the release shall reimburse the fund for the owner or operator's proportionate share of the costs incurred in taking the action.

E. This section shall not be construed to limit the director's authority to take actions as authorized by other provisions in this article or any other law.

49-282.05. Agreements for work; suspension of remedial action

A. The department may enter into an agreement with any person to perform work at a site on the site registry if the work will be conducted in accordance with the rules adopted pursuant to section 49-282.06. The terms and conditions of the agreement may include a suspension of any remedial action by the director at the site to the extent determined by the director to be appropriate. The suspension shall be specifically stated in the agreement or the approval of work under the agreement and shall continue as long as the person is in compliance with the agreement.

B. As a condition of an agreement under this section, the department may require the person conducting the work to reimburse the director for the reasonable and necessary costs incurred in reviewing and overseeing the work, including costs consisting of salaries and benefits paid to state employees and other direct and indirect costs. A person who reimburses the department for costs pursuant to this subsection may recover those costs in any action brought pursuant to section 49-285, subsection H.

49-282.06. Remedial action criteria; rules

A. Remedial actions shall:

1. Assure the protection of public health and welfare and the environment.

2. To the extent practicable, provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state.

3. Be reasonable, necessary, cost-effective and technically feasible.

B. The director shall adopt rules necessary to implement this article. The director may adopt CERCLA rules, guidelines or procedures by reference to the extent consistent with this article. Rules adopted pursuant to this subsection shall include rules for:

1. The use of monies from the fund, including establishing priorities for the use of the monies from the fund.

2. The scoring and rescoring of sites or portions of sites.

3. The criteria for a finding of no further action for sites pursuant to section 49-287.01.

4. The selection of remedial actions including the establishment of the level and extent of cleanup at a site or a portion of a site. The rules shall provide for the selection of a remedial action by comparison of alternative remedial actions, which may include no action, monitoring, source control, controlled migration, physical containment, plume remediation and the consideration of the criteria in subsection C of this section. The rules also shall provide that the selected remedial action meet the requirements of subsection A of this section and the following:

(a) For remediation of soil, the selected remedial action shall be consistent with the soil remediation standards adopted pursuant to section 49-152.

(b) For remediation of waters of the state, the selected remedial action shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances. The specific measures to address any such well shall not reduce the supply of water available to the owner of the well.

5. Incentives for initiating early remedial actions and implementing innovative remedial technologies.

C. In adopting the rules required by this section and in selecting remedial actions, the director shall consider the following factors:

1. Population, environmental and welfare concerns at risk.

2. Routes of exposure.

3. Amount, concentration, hazardous properties, environmental fate, such as the ability to bioaccumulate, persistence and probability of reaching the waters of the state, and the form of the substance present.

4. Physical factors affecting human and environmental exposure such as hydrogeology, climate and the extent of previous and expected migration.

5. The extent to which the amount of water available for beneficial use will be preserved by a particular type of remedial action.

6. The technical practicality and cost-effectiveness of alternative remedial actions applicable to a site.

7. The availability of other appropriate federal or state remedial action and enforcement mechanisms, including, to the extent consistent with this article, funding sources established under CERCLA, to respond to the release.

D. Notwithstanding this article, the director may approve a remedial action that may result in water quality exceeding water quality standards after the completion of the remedy if the director finds that the remedial action meets the requirements of this section.

E. The director's approval pursuant to this section does not affect the classification of an aquifer pursuant to section 49-224.

F. Remedial actions required by this article shall be consistent with the requirements of title 45, chapter 2, except as provided in section 49-290.01.

49-283. Responsible party liability exemptions; definitions

A. For purposes of imposing liability under this article, and except as provided in this section, a person is deemed the party responsible for the release or threatened release of a hazardous substance if the person:

1. Owned or operated the facility:

(a) When the hazardous substance was placed or came to be located in or on the facility.

(b) When the hazardous substance was located in or on the facility but before the release.

(c) During the time of the release or threatened release.

2. Owned or possessed the hazardous substance and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance.

3. Accepted for transport to a disposal or treatment facility waste that contained a hazardous substance and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

B. Notwithstanding the provisions of subsection A, a person that owns real property is not a responsible party if there is a release or threatened release of a hazardous substance from a facility in or on the property unless one or more of the following applies to that person:

1. Was engaged in the business of generating, transporting, storing, treating or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility.

2. Permitted any person to use the facility for disposal of a hazardous substance.

3. Knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title or interest in the property was first acquired by the person and engaged in conduct by which he associated himself with the release. For the purpose of this paragraph, a written warranty, representation or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility. For purposes of this paragraph, "associated himself with the release" means having actual knowledge of the release and taking action or failing to take action that the person is authorized to take and that increases the volume or toxicity of the hazardous substance that has been released.

4. Took action which significantly contributed to the release after he knew or reasonably should have known that a hazardous substance was located in or on the facility.

C. Any liability which accrues to an owner of real property under this section does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title or interest in the real property. An owner of real property on which a public utility easement is located is not a responsible party with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

D. A person otherwise deemed a responsible party is not liable under this article if he can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the resulting damages were caused solely by:

1. An act of God.

2. An act of war.

3. An act or omission of a third party, whether lawful or unlawful including acts of vandalism or unlawful disposal of hazardous waste or hazardous substances, other than an employee or agent of that person or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with that person, unless the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, if that person establishes by a preponderance of the evidence that:

(a) He exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances.

(b) He took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

4. A release or threatened release which was subject to limits or conditions in a federal permit or a state permit relating to the protection of public health or the environment and the operation of the releasing facility has been and is in compliance with applicable limits or conditions.

5. The application of a pesticide product registered under the federal insecticide, fungicide, and rodenticide act (61 Stat. 163) and applied according to label requirements.

6. Liability has been assumed by the federal postclosure liability fund established under 42 United States Code section 9607(k).

7. Any combination of paragraphs 1 through 6 of this subsection.

E. A person is not a responsible party with respect to a hazardous substance that is located on or beneath property that is owned or occupied by that person if the hazardous substance is present solely because it migrated from property that is not owned or occupied by that person and that person is not otherwise a responsible party as prescribed by subsection A, paragraph 2 or 3.

F. A person is not liable for costs or damages incurred solely as a result of an action taken or omitted while rendering care, assistance or advice that is consistent with rules adopted by the director, is consistent with the national contingency plan or is under the direction of an on-scene coordinator appointed pursuant to the national contingency plan and that is rendered with respect to a release or a threat of a release of a hazardous substance that creates a danger to public health or the environment. This subsection does not preclude liability for costs or damages that result from that person's negligence.

G. A state or local government and its employees or authorized representatives are not liable for costs or damages incurred as a result of an action taken in response to an emergency created by the release or threatened release of a hazardous substance that is generated by or from a facility owned by another person. This subsection does not preclude liability for costs or damages that result from gross negligence or intentional misconduct by this state or local government. For purposes of this subsection, reckless, willful or wanton misconduct constitutes gross negligence.

H. A person who maintains indicia of ownership in a property primarily to protect a security interest in a facility and who does not participate in the management of the facility is not liable as an owner or operator of that facility pursuant to this section. This subsection does not apply to a person who does any of the following:

1. Through intentional misconduct or gross negligence causes, contributes to or aggravates the release of a hazardous substance.

2. Fails to disclose to the facility's purchaser the known presence of a release or a threatened release of a hazardous substance at the time of sale or divestiture of the facility or the security interest in the facility.

3. Fails to obtain a phase I environmental assessment of the facility that complies with standards adopted by rule pursuant to subsection K of this section at the time of or at a reasonable time before foreclosure. This paragraph does not apply to residential properties with fewer than five residential units.

4. Fails to do any of the following after acquiring ownership of the facility:

(a) Provide the department reasonable access so that the necessary remedial actions may be conducted.

(b) Undertake reasonable steps to control access to the area of known presence of a release of a hazardous substance to protect the public health and welfare and the environment.

(c) Act diligently to sell or otherwise divest the property within two years of the lender's possession or ownership, whichever is earlier.

I. A fiduciary is not personally liable as an owner or operator pursuant to this section. This section does not preclude claims against assets held in an estate, a trust or other fiduciary capacity for the release or a threatened release of a hazardous substance from one of the assets. This section does not apply if either of the following apply:

1. A fiduciary through intentional misconduct or gross negligence causes, aggravates or contributes to the release or threatened release of hazardous substances or permits others to do so, except that a fiduciary shall not be liable for the intentional misconduct or gross negligence of any nonemployee agent or independent contractor if the fiduciary has not specifically directed the nonemployee agent or independent contractor to perform the grossly negligent act or engage in the intentional misconduct.

2. The appointment of the fiduciary is for the purpose of avoiding liability under this article. It is prima facie evidence that the fiduciary was appointed to avoid liability under this article if the facility is the only substantial asset in the fiduciary estate.

J. Subsections F, G, H and I shall not be construed to affect the liability of any person who is otherwise liable with respect to the release or threat of release pursuant to this section.

K. The director may adopt rules to implement subsections H and I.

L. A fiduciary may not be a fiduciary and grantor of the same fiduciary estate.

M. A unit of state or local government is not liable for purposes of this section if that unit is not liable under section 101(35)(A)(ii) or section 101(20)(D) of CERCLA.

N. Nonmanagerial employees acting within the course and scope of their employment are not liable under this article.

O. For purposes of this section:

1. "Fiduciary" means:

(a) A trust company or bank certified or authorized to engage in the trust business pursuant to title 6, chapter 8, article 1.

(b) Any person appointed by a court or testamentary act to act as personal representative, executor, trustee, administrator, guardian, conservator, receiver or trustee in bankruptcy.

(c) Any person acting as a trustee of a deed of trust pursuant to section 33-803.

(d) Any person acting as a trustee pursuant to title 14, chapter 7.

(e) Any person acting pursuant to and subject to fiduciary obligations under the employee retirement income security act of 1974 (29 United States Code sections 1101 through 1114).

2. "Indicia of ownership" means legal or equitable title that has been acquired through or is incident to the default of a borrower.

49-283.01. Remediated water; liability; definitions

A. A provider or user of remediated water is not liable for damages caused or contributed to by the use or distribution of the remediated water except on a showing of wilful, malicious or grossly negligent conduct that was the direct cause of the damages.

B. For purposes of this section:

1. "Damages" means compensation for death or injury to a person or claims for medical monitoring or injury that a person may suffer or property damage.

2. "Provider" means an owner or operator of a constructed water conveyance system for industrial, municipal or irrigation purposes.

3. "Remediated water" means water that is distributed, transported or used in connection with a CERCLA remediation or a remediation performed pursuant to this title including water that meets applicable state or federal standards.

4. "User" means an entity that accepts remediated water and uses that water for industrial, municipal, irrigation or agricultural purposes.

49-283.02. Petroleum liability

A release of petroleum or a constituent of petroleum, as defined in section 49-1001, that is a hazardous substance, as defined in section 49-201, shall be subject to the remedial and liability provisions of this article if the release is not otherwise subject to the corrective or remedial action provisions of section 49-1005, chapter 5 of this title or subchapter III of the federal act defined in section 49-921 (42 United States Code sections 6921 through 6939e), and the release has migrated in groundwater beyond the boundary of the property on which the release occurred.

49-284. Notice; reportable quantities; penalties

A. Notwithstanding any other requirement of state or federal law, any person who is the owner or operator of a facility shall, as soon as the person has knowledge of any release, other than a release in compliance with the limits or conditions in a federal or state permit, of a hazardous substance from such facility, immediately notify the director of the release if either:

1. The release is in a quantity equal to or greater than that which is required to be reported to the national response center under section 103 of CERCLA (42 United States Code section 9603).

2. The release is in a quantity equal to or greater than that determined pursuant to subsection B of this section and the release was not reported to the national response center before August 13, 1986.

B. The director shall, by rule, establish reportable quantities for those hazardous substances for which such quantities have not been established under section 102 of CERCLA (42 United States Code section 9602). The director may determine that one single quantity shall be the reportable quantity for that hazardous substance, regardless of the medium into which the hazardous substance is released.

C. Any person who fails to immediately notify the director as provided in subsection A of this section is subject to a civil penalty of not to exceed ten thousand dollars. 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 subsection. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement.

49-285. Liability for remedial actions costs; limitation of actions

A. Except as otherwise provided in section 49-283, a person who is a responsible party shall be strictly and severally liable for such reasonable, necessary and cost-effective expenditures for remedial actions as are incurred by this state, a political subdivision of this state or any other person in a manner consistent with the rules and procedures adopted under section 49-282.06, but not including nonrecoverable costs. A responsible party may be held liable for remedial action costs for a release of a hazardous substance even though the conduct that resulted in the release or the release itself occurred before August 13, 1986.

B. In order to preserve any right to recover remedial action costs from responsible parties, remedial actions conducted by this state, a political subdivision of this state or any other person shall when evaluated as a whole be in substantial compliance with the rules and procedures adopted pursuant to section 49-282.06. The director's approval of a remedial action that is conducted by a person other than the state is not required to preserve any right to recover remedial action costs from potentially responsible parties. Any person other than the state who undertakes a remedial action may request that the director approve the remedial action as prescribed by rules adopted pursuant to section 49-282.06 at any time before, during or after the remedial action. The director's decision shall be in writing and shall specify the basis of the decision. Any remedial action so approved by the director shall be deemed to be in substantial compliance with the rules and procedures adopted pursuant to section 49-282.06. Any person who requests the director's approval of a remedial action shall reimburse the department for the total reasonable cost to the department for the review of the remedial action unless the director waives all or a part of the reimbursement. These monies shall be deposited in the water quality assurance revolving fund established by section 49-282. Costs that are reimbursed to the department by a party that obtains the director's approval of remedial actions pursuant to this subsection constitute remedial action costs that may be recovered from responsible parties.

C. Any person who is a defendant in an enforcement proceeding brought under section 49-287 may join in the action any other person who is or may be a responsible party.

D. Except as prescribed by section 49-283.01, this article does not affect or modify in any way the obligations or liability of any person, by reason of subrogation or otherwise, under any other provision of state or federal law, including common law, for damages, injury or loss resulting from a release of any hazardous substance or for remedial action costs, except that any person who receives compensation for remedial action costs pursuant to this article is precluded from recovering compensation for the same remedial action costs pursuant to any other federal or state law. Any person who receives compensation for remedial action costs pursuant to any other federal or state law is precluded from receiving compensation for the same remedial action costs as provided in this article.

E. In allocating several liability between two or more potentially responsible parties, the department, an allocator pursuant to section 49-287.06 or a court shall consider the following to determine each responsible party's allocated shares and the orphan shares:

1. The amount and concentration of each hazardous substance involved.

2. The degree of toxicity of each hazardous substance involved.

3. The degree of involvement by the responsible parties in the generation, transportation, treatment, storage or disposal of the hazardous substance.

F. After the allocated shares and the orphan shares are determined pursuant to subsection E of this section and reduced to writing, the department, an allocator or the court may consider the following factors to adjust the allocated shares of the responsible parties, except that any adjustment under this subsection shall not adjust the amount allocated to orphan shares:

1. The magnitude of the risk to human health or the environment caused by each hazardous substance involved.

2. The degree of cooperation by the responsible party with federal, state or local officials to prevent any harm to the public health or the environment.

3. Any other factors deemed relevant by the department, an allocator or the court in determining the liability of the parties under this section.

G. An action brought by a person other than the state to recover remedial action costs from a responsible party shall be brought within three years of the completion of the remedial action or within six years of the initiation of on-site physical construction activities for the remediation, removal or disposal of hazardous substances, whichever is earlier.

H. In an action brought for recovery of remedial action costs incurred at a site not on the registry maintained pursuant to section 49-287.01 or that is brought pursuant to section 49-287.07, subsection A, paragraph 3, subdivision (a), (b) or (d), the court shall initially allocate costs among the responsible parties based on the factors listed in subsection E of this section. To the extent that the allocation results in costs being allocated to orphan shares, those costs shall be reallocated to the responsible parties based on such equitable factors as the court deems appropriate, including:

1. The factors listed in subsection F of this section.

2. Each responsible party's ability to pay.

3. The degree of care exercised by each responsible party with respect to the hazardous substance of concern and taking into account the characteristics of that substance.

49-285.01. Prospective purchaser agreements; assignment; notice; fees; rules

A. The department may provide, pursuant to section 49-292, to a prospective purchaser of a facility a written release and a covenant not to sue and may also agree to seek an order of the court granting approval of a settlement that includes immunity from contribution claims for any potential liability for existing contamination under this article or CERCLA if all of the following conditions are met:

1. The facility is within a site identified on the registry maintained by the department pursuant to section 49-287.01 or the department has been provided sufficient information to reasonably identify the extent of the contamination at the facility.

2. The person is not currently liable for an existing or threatened release of a hazardous substance at the facility.

3. The proposed redevelopment or reuse of the facility will not contribute to or exacerbate existing known contamination or unreasonably interfere with remedial measures necessary at the facility or cause the contamination to present a substantial health risk to the public.

4. The agreement will provide a substantial public benefit that may include any of the following:

(a) An agreement by the prospective purchaser to provide substantial funding or other resources to perform or facilitate remedial measures at the facility pursuant to this chapter.

(b) An agreement by the prospective purchaser to perform substantial remedial measures at the facility pursuant to this chapter.

(c) Productive reuse of a vacant or abandoned industrial or commercial facility.

(d) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose.

(e) Creation of conservation or recreation areas.

5. The department consults with local planning and zoning authorities with jurisdiction over the facility and considers reasonably anticipated future land uses at the facility and surrounding properties.

B. If the prospective purchaser of a facility is affiliated with any other person who is a party responsible for the release or threatened release of a hazardous substance under this chapter, through any familial relationship or any corporate or contractual relationship other than a contract to protect a security interest, the director may refuse to provide a written release or covenant not to sue or may refuse to seek an order of the court granting immunity from contribution claims under this section.

C. An agreement between the department and a prospective purchaser shall include provisions deemed necessary by the department and may include:

1. A representation by the prospective purchaser that the purchaser did not cause or contribute to the contamination or otherwise cause or contribute to a release or threatened release of a hazardous substance at the property before the purchaser acquired title.

2. If the prospective purchaser does not undertake remedial action, a representation that the purchaser will not exacerbate or contribute to the existing contamination.

3. An agreement that any activity that the prospective purchaser may conduct or direct on the contaminated property will not unreasonably interfere with any ongoing remedial actions that are being performed by a responsible party or the department and that the purchaser will cooperate with those activities.

4. An agreement to undertake those measures that constitute a public benefit as prescribed by subsection A, paragraph 4 of this section.

5. If remedial measures are to be performed under the agreement, an agreement to perform those measures in compliance with the applicable statutes and rules, including sections 49-151 and 49-152, and if pursuant to a consent judgment, under the department's supervision.

6. Unless the contamination was caused by this state, a waiver by the person of any claim or cause of action against this state that arises from contamination at the facility that exists as of the date of acquisition of ownership or operation of the facility.

7. A grant of an easement to the department and its authorized representatives for purposes of ensuring compliance with the agreement or for remedial measures authorized pursuant to this article in connection with contamination at the facility as of the date of acquisition of ownership or operation of the facility.

8. A reservation of rights as to any person who is not a party to the agreement.

9. The legal description of the property.

10. In any case in which the state conducts remedial actions and there are unrecovered response costs at a property for which the prospective purchaser is not liable, the state as a condition of the agreement may impose a lien upon that property for the unrecovered costs. The priority of the lien is as of the date the lien is recorded in the county where the property is located. The lien becomes due on the sale, assignment or transfer of the property by the prospective purchaser unless the new purchaser, assignee or transferor accepts and assumes the lien as a personal obligation with the department's prior written agreement.

D. Subject to satisfactory performance of the obligations under the agreement, the prospective purchaser is not liable to this state under this article for any release of a hazardous substance at the facility that exists on the date of acquisition of ownership or operation of the facility. The person shall bear the burden of proving that any hazardous substance existed on the facility as a result of releases of the hazardous substance before the date of acquisition of ownership or operation of the facility. This release from liability may be voided by the director if the person fails to perform any of the provisions of the prospective purchaser agreement.

E. The purchaser shall provide written notice to the department of any sale, assignment or other transfer of the property at least fifteen business days before the date of the transfer.

F. An agreement pursuant to this section is assignable if the assignee qualifies pursuant to subsections A and B of this section for a prospective purchaser agreement under this section and notice is given to the department as prescribed by subsection E of this section. On assignment, the assignee assumes the obligations and the benefits of the agreement. Unless the assignor has breached the agreement, the assignor retains the benefits of the agreement.

G. The department shall provide notice of a prospective purchaser agreement by publication in a newspaper of general circulation in the county in which the property is located at least fifteen business days before the execution of a prospective purchaser agreement. The notice shall include a general description of the contents of the agreement. Any interested person may comment on the proposed agreement in writing to the director.

H. The department may charge a reasonable fee for the preparation and execution of a prospective purchaser agreement. The director may adopt rules to implement this section.

49-286. Mitigation of non-hazardous releases

A. If the director determines that a drinking water source is being or is about to be rendered unusable without treatment as a drinking water source by a non-hazardous substance that was disposed by a person that would be a responsible party under section 49-283 if the substance were a hazardous substance, the director may order that person to perform one or more of the following mitigation measures:

1. Providing an alternative water supply.

2. Mixing or blending if economically practicable.

3. Economically and technically practicable treatment before ingesting the water.

4. Such other mutually agreeable mitigation measures as are necessary to achieve the purposes of this section.

B. The director's selection of mitigation measures shall balance the short-term and long-term public benefits of mitigation with the cost of each alternative measure. The director may only require the least costly

alternative if more than one alternative may render water usable as a drinking water source.

C. A mitigation order issued under this section is enforceable under sections 49-261 and 49-264.

49-287. Enforcement; use of fund; inspections and information gathering; civil penalties

A. Except as provided in section 49-286, the provisions of this article are independent of and are not subject to the enforcement remedies of article 4 of this chapter and section 49-264.

B. This section does not preclude the director from initiating actions pursuant to section 505 of the clean water act and section 1449 of the safe drinking water act. The director shall not initiate any action under section 107(a) or 107(f) of CERCLA or section 7002 of the resource conservation and recovery act to the extent that the action is inconsistent with this article, except under any of the following circumstances:

1. In an action initiated by the director filing a complaint contemporaneously with a consent decree or any other agreement to provide contribution protection or a covenant not to sue under CERCLA.

2. In an action involving a facility at a site listed on the national priorities list on April 29, 1997. In an action involving a facility at a site on the national priorities list that is listed after April 29, 1997 the director may initiate an action if the facility is not being remediated pursuant to this article or any other provision of this title.

3. In a counterclaim action when the state is sued under section 107 (a) of CERCLA, but only against the party asserting the claim. For purposes of this paragraph, "state" does not include political subdivisions of the state.

C. The director may initiate an action to recover natural resource damages under section 107(f) of CERCLA but may recover only the proportionate share of these damages from a defendant who is also a responsible party under this article.

D. Judicial actions initiated pursuant to this section have precedence over all other civil proceedings.

E. If there is a release or the threat of a release of a hazardous substance which may present an imminent and substantial danger to the public health or welfare or the environment:

1. The director may take such remedial action as he deems necessary to protect the public health or welfare or the environment.

2. 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 or welfare or the environment from the release.

3. The director may issue an order requiring abatement of such release or threat of a release and appropriate remedial action if the action is consistent with the criteria listed in and rules adopted pursuant to section 49-282.06 and before taking such action the director provides written notice to the responsible party, if known, and the owner of the real property where the facility is located if the owner is not a responsible party. The notice shall include:

(a) The reasons for the remedial action.

(b) A reasonable time for beginning and completing the actions, taking into account the urgency of the actions for protecting public health or welfare or the environment.

(c) The steps taken to comply with the criteria listed in and rules adopted pursuant to section 49-282.06.

(d) The intention of this state or a political subdivision to take remedial action and the possible liability of the responsible party for the costs of such actions if that action is not taken by the responsible party.

4. The director may take action pursuant to sections 49-287.01 through 49-287.07, or enter into a settlement under section 49-292 or any other applicable provision of this article. Actions taken by the director pursuant to sections 49-287.01 through 49-287.07 may substantially affect the rights and obligations of persons who may be liable under this article for the release or threatened release of a hazardous substance at a site or portion of a site for purposes of determining insurance coverage. Any action taken by the director pursuant to sections 49-287.01 through 49-287.07 is not appealable unless otherwise provided in this article.

F. A remedial action order issued under subsection E of this section becomes final and enforceable in the superior court for purposes of subsections I and J of this section unless, within thirty days after the receipt of the order, the recipient moves to quash or modify the order in the superior court. If the motion to quash or modify the order raises issues of fact, the recipient of the order and the state are entitled to conduct expedited discovery on application to the court and are entitled to a priority for trial. A party who undertakes the actions prescribed in a remedial action order issued pursuant to this section may obtain a court order to recover from the fund the reasonable and necessary costs of the actions if the party demonstrates to the court that the actions required by the order were arbitrary and capricious or otherwise were not in accordance with law, that the party is not a responsible party as prescribed by section 49-283 or for the amount of costs incurred that exceeded the party's share of liability pursuant to section 49-285.

G. If there is a release or the threat of a release of any pollutant which may present an imminent and substantial danger to the public health or welfare, the director may take such remedial action as he deems necessary to protect the public health or welfare or the environment.

H. Any remedial action costs, other than nonrecoverable costs, incurred by the director pursuant to the procedures in subsection E of this section may be recovered in a civil action brought by the attorney general against any responsible party pursuant to section 49-287.07.

I. A responsible party who wilfully violates or fails or refuses to comply with any order of the director under subsection E, paragraph 3 of this section may, in an action brought in the superior court in the appropriate county to enforce such order, be assessed a civil penalty of not more than five thousand dollars for each day in which the violation occurs or the failure to comply continues. All civil penalties assessed pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

J. A responsible party who fails, without sufficient cause, to properly provide remedial action on order of the director pursuant to subsection E, paragraph 3 of this section may be liable to this state for punitive damages in an amount up to three times the amount of any costs incurred by the director as a result of the failure to take proper action. The attorney general may commence a civil action against the responsible party to recover the remedial action costs and the punitive damages. Any punitive damages received by this state pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The director's failure to comply with the requirements of section 49-282.06 or the director's order to take a remedial action that causes the responsible party to incur costs that exceed the responsible party's

proportionate share of liability pursuant to section 49-285 is a defense to an action for punitive damages and the amount of the punitive damages requested may be reduced, in full or in part.

K. If the director may act pursuant to this section, he may undertake such investigations, monitoring, surveys, testing and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat of a release, the source and nature of the hazardous substances and the extent of danger to the public health or welfare or to the environment. In addition, the director may undertake such planning, legal, fiscal, economic, engineering, architectural and other studies or investigations as he may deem necessary or appropriate to plan and direct remedial actions, to recover the costs of remedial actions, other than nonrecoverable costs, and to enforce this article.

49-287.01. Investigation scoring and site registry; no further action

A. When information of a possible release or threatened release of a hazardous substance is received, the director may conduct a preliminary investigation to obtain additional information necessary to determine the potential risk to the public health or welfare or the environment in order to score the site or portion of the site and include it on the site registry. By written agreement, the director may allow any person to conduct any portion of the preliminary investigation.

B. After completing the preliminary investigation or at any time during the preliminary investigation, the director may suspend or terminate an investigation or determine that no further investigation or action is necessary. The director may reopen the preliminary investigation on a determination that the release or threatened release continues to present an imminent and substantial threat to the public health or welfare or the environment. If a preliminary investigation is completed, the director shall prepare a draft of the site registry report required under subsection D of this section. If the director drafts a site registry report pursuant to this section, the report shall contain a description of the site or portion of the site, including its geographical boundaries, and a score in accordance with the site scoring method established in rules adopted by the director.

C. Before finalizing the report and the score, the director shall furnish a copy to the current owners and operators of the site or portion of the site, if known, and shall provide fifteen days for review and comment. The director shall then place a copy in the public file and shall publish the score in a newspaper of general circulation within the county in which the site is located. The director shall provide thirty days for comment and shall consider any comments before issuing the final report and score.

D. The director shall maintain a registry of scored sites or portions of sites that includes a brief description of the site or portion of the site, its score and a brief description of the status of investigative and remedial actions. The scoring of a site or portion of the site, its relative score or its placement on the registry does not necessarily represent a determination that the release of a hazardous substance from the site poses a threat to human health or welfare or the environment. Prior to approving any remedy that may result in water quality exceeding water quality standards after completion of the remedy, the director shall place a notice in the registry established pursuant to this subsection that the remedy may result in water quality exceeding water quality standards.

E. New scores shall be added to the registry as soon as practicable. The registry shall be published annually by the secretary of

state in the Arizona administrative register. The department shall also publish notice of the availability of the registry in a newspaper of general statewide circulation.

F. Any person may request that the director make a determination that a site or portion of a site requires no further action or should be rescored. The request shall include information, including the specific hazardous substances released at or from the site or portion of the site, and a geographical description of the site or portion of the site sufficient for a determination by the director regarding the requested action. The director may request additional information from the requesting party within ninety days after receiving the party's request, and the director shall provide the reasons for requesting the additional information. The person making the request shall submit the additional information within sixty days after receiving the director's request for additional information. Within thirty days of receipt of the additional information, the director shall notify the requesting party if the additional information is complete. The submission of incomplete information may result in a denial of the no further action request. The parties may agree in writing to additional time for responses. In addition to requesting information, the director or the director's authorized representative may conduct an investigation of the site or portion of the site and shall be given access to the portion of the site under the control of the requestor. The director or the director's authorized representative shall be allowed access to the site as a requirement for making a no further action request. The director shall deny a request for a no further action determination if access to the site is not provided. A request pursuant to this subsection may only be made once per calendar year. After determining that the information submitted is sufficient for action on the request, the director shall publish notice of the request for rescoring or determination of no further action on a site or portion of the site and shall provide thirty days for public comment. Based on the information and comments received, and within sixty days after the close of the public comment period, unless extended by the director for good cause, the director shall determine whether the score should be changed or a determination of no further action should be made and shall give notice of that decision to the person who made the request and any persons who provided comment. The director shall make a final decision on a no further action or rescoring request within three hundred days after receiving the request unless the time is extended in writing by the parties. The director's decision shall contain the factual, technical and legal grounds for the decision. Any changes to a score or determinations of no further action shall be published in the registry.

G. A determination of no further action shall be made if the director finds that the site or portion of the site does not present a significant risk to the public health or welfare or the environment. The director's determination on a no further action request shall be based on the rules adopted by the department pursuant to section 49-282.06. A determination of no further action shall state whether it is for soils or the groundwater, or both. A determination of no further action regarding a site or a portion of the site means that the department shall not proceed with or require further remedial action under this article for the specific hazardous substances within the geographical area covered by the determination, provided that the determination of no further action does not preclude the director from obtaining access to the area covered by the determination under this article or any other law. The department may reopen an investigation and take or require remedial action for any of the following reasons:

1. On discovery of new information that, based on the rules adopted by the department pursuant to section 49-282.06, would result in the potential denial of a no further action request.

2. That information submitted to the director pursuant to subsection F of this section was inaccurate, misleading or incomplete.

3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threat of a release of a hazardous substance that may present an imminent and substantial danger to the public health or welfare or the environment.

H. The director's decision under subsection F of this section may be appealed pursuant to section 49-298, subsection B by the person who made the request or any party who will be adversely affected by the action and who submitted comments. A person who has previously filed an administrative appeal under this subsection or any provision of law in effect on or after April 29, 1997 concerning previous investigations by the director that resulted in the director's decision being upheld bears the burden of proving by clear and convincing evidence that the director's action that is being appealed was unsupported by the evidence in any further administrative appeals involving the same site or portion of the site and shall pay the director's cost of reviewing the request and the director's attorney fees and costs incurred in the appeal if the director's decision is upheld.

I. If the director determines that remediation of a site or a portion of a site will be addressed pursuant to a provision of this title other than this article, the director may suspend any further investigation or action under this article. If the site or portion of a site is listed on the registry, the suspension shall be reflected on the registry.

J. If a site has been placed on the registry and the director determines that remediation of a site or a portion of a site will be addressed pursuant to a provision of this title other than this article, the director may remove the site from the registry.

K. If the director determines that a site on the registry does not require further remedial action under this article, the director may remove the site from the registry.

L. The director shall maintain a list of sites removed from the registry. This list shall be available to the public.

M. A site that has been removed from the registry may be reopened and remedial action taken or required for any of the following reasons:

1. On discovery of new information that, based on the rules adopted by the department pursuant to section 49-282.06, would result in the potential denial of a no further action request.

2. Information submitted to the director pursuant to this section is inaccurate, misleading or incomplete.

3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threatened release of a hazardous substance that may present an imminent and substantial danger to the public health or welfare or the environment.

49-287.02. Responsible party search

A. If the director determines that a remedial investigation at a site or portion of the site may be necessary and the director determines that cost recovery may be appropriate, the department shall conduct an investigation to identify any person who may be liable under this article. The department shall use its best efforts to identify all persons who may be liable under this article for the release or threatened release at the site or portion of the site.

B. During the investigation, any person may provide the director with information regarding the identification and potential liability of any person or regarding any facility within the site from which a release of a hazardous substance may have occurred. If the director receives sufficient information, the director shall investigate the facts relating to the person's potential liability, including its share of liability under this article, without regard to the financial ability of the person. If the director receives sufficient information regarding a release of a hazardous substance from a facility within the site to indicate that it has contributed to contaminants of concern at the site or portion of the site being investigated pursuant to this section, the director shall investigate the release of the hazardous substance and the potential liability of persons under this article. If the director declines to investigate a person or facility, the director shall notify the person who provided the information of the director's decision not to investigate.

C. If the director declines to investigate a person or facility, any person who conducts an investigation and provides the results of the investigation to the director shall receive a credit for the reasonable and necessary cost of the investigation as an offset against any liability to the fund or to the state under this article if the investigation results in a settlement or a finding by the director, the allocator or the court that this additional identified person is liable under this article with respect to the site or portion of the site being investigated pursuant to this section.

49-287.03. Remedial investigation and feasibility study

A. The department may conduct a remedial investigation and feasibility study of a scored site or portion of the site to assess conditions on the site or portion of the site and to evaluate alternative potential remedies to the extent necessary to select a final remedy in a manner consistent with the rules and procedures adopted pursuant to section 49-282.06.

B. Unless the director determines that the necessary remedial action can be completed within one hundred eighty days, before the department begins a remedial investigation and feasibility study for a site or a portion of a site, the department shall prepare a scope of work, a fact sheet and an outline of a community involvement plan. The scope of work shall generally describe the proposed scope of the remedial investigation and feasibility study. The outline of the community involvement plan shall address all of the elements of the community involvement plan requirements of section 49-289.03.

C. The department shall provide written notice to each person who, according to information available to the department, may be liable under this article that the scope of work is available for inspection and that any person by agreement with the department may develop and implement a work plan for the remedial investigation and the feasibility study. The department shall publish in a newspaper of general circulation in the county where the site is located a notice of the availability of the scope of work, fact sheet and outline of a community involvement plan for public comment. The notice shall provide an opportunity for a public meeting.

D. The department shall prepare a responsiveness summary before implementing the scope of work. Before the director implements a remedial investigation, unless the director determines that the necessary remedial action can be completed within one hundred eighty days, the department shall prepare and implement the community involvement plan based upon the outline and after considering the public comments, consistent with the requirements of section 49-289.03. The department shall update the community involvement plan at least every two years.

E. The remedial investigation shall collect the data necessary to adequately characterize the site or the portion of the site for the purpose of developing and evaluating effective remediation alternatives pursuant to the feasibility study requirements prescribed by subsection F of this section.

F. The feasibility study shall be fully integrated with the results of the remedial investigation and shall include an alternative screening step to select a reasonable number of alternatives in a manner consistent with the rules and procedures adopted pursuant to section 49-282.06.

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

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

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

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

3. The proposed remedy and its estimated costs.

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

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

1. Describe the proposed remedy and its estimated cost.

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

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

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

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

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

3. Advise the recipient that all information known to the recipient regarding a person who may be liable under this article and any facility within the site from which a release of a hazardous substance may have occurred must be provided to the department within a reasonable period of time set by the department, but not less than sixty days. Failure to comply with this subsection precludes a person from introducing the evidence in an allocation hearing pursuant to section 49-287.06, and in an action brought pursuant to section 49-287.07, except as otherwise prescribed by those sections.

D. Within ninety days after the end of the public comment period, if the department has received sufficient information pursuant to section 49-287.02, subsection B identifying additional persons who may be responsible under this article or facilities where a release of a hazardous substance may have occurred, the director shall investigate that person or facility within the site as provided in section 49-287.02, subsection A or shall decline to investigate and shall notify the person providing the information in writing of the director's decision.

E. If, on the basis of new information or its investigation, the department believes there is sufficient evidence that an identified person is a responsible party under this article, the department shall provide the notice and proposed remedial action plan required by subsection C of this section to that party and a revised list of potentially responsible parties to the parties originally identified in the proposed remedial action plan. A newly identified potentially responsible party shall have the same opportunity for comment and the submission of information including information concerning additional responsible parties or releasing facilities as provided to the originally identified responsible parties under this section. If as a result of the submission of information by subsequently identified responsible parties or its own investigation the department believes that there are additional responsible parties, it shall provide the notice required by this subsection to those parties and the previously identified responsible parties and shall comply with the other procedures prescribed by this section.

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

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

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

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

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

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

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

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

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

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

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

49-287.05. Notice of liability allocation; eligibility

A. After signing the record of decision, if the director determines that cost recovery may be appropriate, the director shall notify each person that has been determined to be liable under this article of the following:

1. The boundaries of the site or portion of the site that is the subject of the notice.

2. The basis on which the director has determined the person to be a responsible party.

3. The names and addresses of all other persons who the director has determined to be responsible parties.

4. The method of allocation chosen by the director, the reason it was chosen and the percentage share of remedial action costs for which the department has determined each person to be liable, which shall total one hundred per cent. For each person's share, the department shall state the reasons for the consideration given to the factors of section 49-285, subsections E and F.

5. The record of decision selecting the remedial action and the estimated cost of the remedy. A copy of the record of decision and comprehensive responsiveness summary shall be included. The record of decision shall demonstrate that the requirements of section 49-282.06 were considered.

6. A list of all remedial action costs, other than nonrecoverable costs, incurred by the director at the site that is the subject of the notice.

7. A list of costs of approved remedial actions, other than nonrecoverable costs, incurred by the state or an eligible party at the site that is the subject of the notice.

8. A statement of the person's right to an allocation hearing pursuant to section 49-287.06 and the availability of a settlement pursuant to section 49-292, 49-292.01 or 49-292.02.

9. An offer to settle the person's liability pursuant to this article and CERCLA with respect to the site or portion of the site if the person agrees to pay seventy-five per cent of the share of remedial action costs allocated to the person by the department. If the settlement allows payment over time or satisfaction by performance of future work, the settlement shall be conditioned on the person making a substantial down payment and providing financial assurance that it can meet its obligations to satisfy the remainder of its share under the agreement. Each settlement shall be conditioned on cooperating with the department with respect to further proceedings under this article including providing access to its property for the remedial action and complying with section 49-288 except that the person may reserve the right to challenge the remedy selection. The department's offer to settle expires unless the written acceptance is received by the director within one hundred twenty days after service of notice on the person pursuant

to this subsection. Any person who has been penalized under section 49-288, subsection G is not eligible to obtain a settlement under this paragraph. Settlements under this paragraph are voidable at the director's discretion if the settling party institutes an action to recover remedial action costs or response costs incurred at the subject site or facility before the time specified under section 49-287.07, subsection B.

B. If a person cannot be notified of the department's determination pursuant to this section because it no longer exists or cannot be found after reasonable efforts by the department, the department is relieved of its obligation to notify that person.

C. If a person accepts the department's offer to settle pursuant to this section within the time allowed, the department shall enter into a settlement with the person pursuant to section 49-292. The settlement shall include a covenant by the state not to sue under this article or CERCLA and, at the option of the person and subject to court approval, protection from contribution actions under this article and CERCLA. The department may revoke the settlement if the person and the department are unable to agree to reasonable terms and conditions of settlement within ninety days after the offer is accepted.

49-287.06. Allocation hearing

A. Ninety days after the issuance of notice pursuant to section 49-287.05, subsection A, the director shall issue a notice to each person who has not settled its liability with the department of the start of an allocation proceeding. The director shall propose the names of at least three allocators taken from a list maintained by the director. The director shall be entitled to be represented in the allocation proceeding but may waive this right. If all parties have settled, the director's notice shall advise all persons notified pursuant to section 49-287.05 that no allocation hearing will be held pursuant to this section.

B. Within fifteen days of receipt, each person receiving the notice of allocation proceeding shall respond to the director regarding the acceptability of any of the allocators on the director's list. If all of the parties cannot agree on one of the allocators proposed by the director, each party may provide the names of up to three other proposed allocators. If the director and all of the parties cannot agree on a proposed allocator within thirty days after the issuance of the director's notice pursuant to this section, the director shall request the presiding civil judge of the superior court in the county where the site is located to select an allocator. Within thirty days after the request, the presiding civil judge shall select an allocator and advise the director of the selection.

C. The director shall give all parties written notice of the selection of the allocator. The allocator shall set the date for hearing at least sixty and not more than one hundred twenty days after the date of the notice of selection of the allocator pursuant to this section. The allocator may continue the date of the hearing for good cause. Ex parte contact with the allocator regarding any of the evidence or issues in the allocation is prohibited.

D. The allocator shall conduct an allocation hearing and, on request of one or more of the parties, may conduct a mediation or settlement conference before the allocation hearing. The allocator has the power to administer oaths or affirmations to witnesses. In conducting the allocation hearing, the allocator has discretion to determine the procedures to be followed, except that:

1. Each party shall provide the allocator, the director and all parties with a disclosure statement at least thirty days before the date of

the first scheduled hearing. The disclosure statement shall comply with rule 26.1, Arizona rules of civil procedure, and shall include a statement of the method of allocation proposed, a description of evidence supporting the factors listed in section 49-285, subsections E and F intended to be presented at the hearing and a description of any other relevant evidence known to the party, including information regarding the responsibility of any other person. Copies of any documentary evidence shall be included with the disclosure statement unless already in the department's public file on the site or a disclosure statement previously filed pursuant to this paragraph. Evidence that is not disclosed in a party's disclosure statement is inadmissible by that party at the hearing. Evidence that a party failed to provide the director pursuant to a request under section 49-288 is inadmissible by that party at the hearing. The liability allocation notice issued by the director pursuant to section 49-287.05, subsection A and the public record on file at the department may serve as the disclosure statement of the director and any persons who have settled their liability with the director. The director may supplement the liability allocation notice up to thirty days prior to the first scheduled hearing date. The allocator shall resolve disputes regarding the adequacy of disclosure statements.

2. The director has the burden of proving that all other parties are responsible parties under this article. The allocator shall allow each party to present evidence relevant to the liability and proportionate share of liability of any person, except as provided in paragraphs 8 and 9 of this subsection. There is no burden of proof as to the proportionate share of any person. The allocator shall hear all of the evidence and assign the proportionate shares in accordance with the considerations as specified in section 49-285, subsections E and F.

3. The allocator shall allow each party to cross-examine any other party's witnesses, except that the allocator may limit cross-examination to avoid needless delay or a needless presentation of cumulative evidence or to expedite the hearing.

4. The allocator may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil actions. Service of the subpoena is the responsibility of the person requesting the subpoena. Discovery shall not be permitted except on a showing of good cause and due diligence as determined by the allocator.

5. The allocator may request any additional information from any party if the allocator believes that this information is necessary to assist in making a determination regarding liability or the share of any person.

6. If, during the hearing or at its conclusion, the allocator believes that additional information is necessary to issue a report, the allocator may order the parties to exchange additional information and submit posthearing evidence for a period of not more than sixty days.

7. The allocator shall use the Arizona rules of civil procedure as guidance for hearing procedures, but may depart from these rules as prompt and fair resolution of the issues demand, and shall honor all privileges recognized under Arizona law. The allocator may allow any relevant evidence, including hearsay evidence, to be admitted and shall give appropriate weight to all of the evidence. The allocator may impose time limits on individual presentations and may require the consolidation of presentations or cross-examination if this consolidation can be justified by commonality of interests. The disclosure statements and the liability allocation notice sent by the director pursuant to section 49-287.05 shall be admitted as evidence. The proceeding shall be recorded by a court reporter upon request by any party who agrees to pay the costs.

8. Except on a showing of good cause and due diligence as determined by the allocator, a party may not allege that a person is responsible for a share of liability unless that person was named in the director's list of liable persons issued pursuant to section 49-287.05 or was identified as a potentially liable person pursuant to section 49-287.04.

9. A party may not introduce evidence at the hearing regarding the liability or share of liability of any person under this article unless the director was notified of the existence of the information pursuant to section 49-287.04. The allocator may allow the introduction of that evidence if the party acquired the information after that time and if the party shows good cause and due diligence as determined by the allocator, if the party provided the evidence to the director promptly after it was acquired.

E. Within sixty days after the hearing or, if applicable, the end of the period for submitting posthearing evidence, the allocator shall issue a written allocation report identifying the persons who are liable and the proportionate share of liability of each person in accordance with section 49-285, subsections E and F in percentages adding up to one hundred per cent. The allocator shall send a copy of the report to each party.

F. All parties to the allocation shall bear an equal share of the allocator's fees and costs, which shall be specified in the allocator's report.

G. The director shall serve notice of the issuance of the allocator's report on all persons notified pursuant to subsection A of this section and on the persons who filed an appeal of the record of decision pursuant to section 49-287.04. The notice shall state that there shall be a period of ninety days after service of the notice for settlement discussions, that the allocator's findings are final unless a challenge is filed pursuant to section 49-287.07 and the period for challenging the allocator's findings as provided in section 49-287.07, subsection B.

H. The findings regarding liability and the proportionate share of liability for each person as set forth in the allocator's report are final unless a timely challenge regarding a person's liability or proportionate share is filed as provided in section 49-287.07, subsection B. The director or any other person with a claim for recovery of remedial action costs against a responsible party whose proportionate share as found by the allocator has become final pursuant to this subsection may obtain a judgment based on the proportionate share determined in the allocator's report. In any action to obtain such a judgment, the responsible party whose allocated share has become final may not dispute its proportionate share of liability as determined by the allocator, and the plaintiff may recover its costs and attorney fees incurred in obtaining and enforcing the judgment. The liability of any person that has become final pursuant to this subsection is not affected by any subsequent determination by a court in any action.

I. If all parties settle during a proceeding pursuant to this section, the director shall terminate the proceedings. If all parties, not including the director, fail or refuse to participate, the director may proceed with the allocation hearing or may terminate the proceedings. If the director terminates the proceedings, the director shall provide written notice within thirty days of termination of proceedings pursuant to this section to all persons who received notice pursuant to section 49-287.05.

49-287.07. Actions for allocation and recovery of remedial action costs; limitation of actions

A. The following actions shall be brought pursuant to this section:

1. An action by the director or any person with a claim for recovery of remedial action costs to challenge a determination of liability or proportionate share in an allocator's report pursuant to section 49-287.06.

2. An action by a person to challenge a determination of its liability or its proportionate share in an allocator's report issued pursuant to section 49-287.06.

3. An action by the director or any person for allocation and recovery of remedial action costs at any site or a portion of a site listed on the registry maintained pursuant to section 49-287.01, subsection D, except as follows:

(a) An action by a person or group of persons who have obtained a no further action determination for a site pursuant to section 49-287.01, subsections F and G, for both soil and groundwater. Such an action may be brought pursuant to section 49-285.

(b) An action by one or more responsible parties who have conducted or will conduct a voluntary remedial action pursuant to section 49-282.05 or who have entered into a settlement or agreement with the director under which the person or group of persons agree to undertake a remedy or any other remedial action and to reimburse the fund for the department's costs, if any. Such an action may be brought pursuant to section 49-285.

(c) An action by the director to enforce a settlement agreement.

(d) An action by the director to recover costs incurred in undertaking an emergency remedial action pursuant to section 49-282.02. Such an action may be brought pursuant to section 49-285.

B. If the action includes a challenge regarding a determination of liability or proportionate share of a party in an allocator's report pursuant to section 49-287.06, the action shall be commenced by filing a complaint not fewer than ninety days nor more than one hundred twenty days after notice of the allocator's report is served pursuant to section 49-287.06, subsection G. If the director issues a notice of termination of allocation proceedings pursuant to section 49-287.06, subsection I, the action may be brought any time after that notice is served. In all other cases, actions brought pursuant to this section shall be filed no fewer than ninety days after notice of the allocator's report is served pursuant to section 49-287.06, subsection G. All actions commenced under this section shall be brought in the superior court in the county where the site is located or in which the department maintains an office. Title 12, chapter 7, article 2 and title 41, chapter 6, articles 6 and 10 do not apply to the action. Within five calendar days after filing the complaint, the plaintiff shall serve written notice of the filing of the complaint by certified mail on the director and each person whose liability or proportionate share were determined in the allocator's report. In any action brought pursuant to this section, unless otherwise provided in this section, the parties shall bear their own costs, expert witness fees and attorney fees.

C. A plaintiff who is challenging its own proportionate share or a finding of its liability shall name the director as the defendant. The director or a plaintiff who is seeking recovery of remedial action costs shall name as a defendant each party whose liability or proportionate share as determined by the allocator is being challenged and any other person who the plaintiff alleges is a responsible party and who was not allocated a share of liability by the allocator. The plaintiff shall not name as a defendant any person who has entered into a settlement agreement with the director that includes contribution protection or whose proportionate share or liability as set forth in the allocator's report is not being challenged. On the entry of any judicially approved consent decree providing contribution protection to any defendant regarding the site or portion of the site that is the subject of a challenge under this section, the court shall dismiss that

defendant from the action pursuant to this section. The complaint and answer shall be filed and served as provided in the applicable rules of civil procedure. The action shall be tried by the court without a jury.

D. The plaintiff has the burden of proving that each defendant is a responsible party under this article, except that in an action in which a person challenges a determination of its own liability in an allocator's report, the director has the burden of proving that the person is a responsible party under this article. There is no burden of proof as to the proportionate share of any person. The court shall receive evidence offered by any party regarding the allocation of liability among the parties and any other persons, except as provided in subsection I of this section. The liability allocation notice issued pursuant to section 49-287.05, subsection A and the allocator's report issued pursuant to section 49-287.06, subsection E shall be admitted as evidence. The court shall issue an order establishing the proportionate share of liability of each party it determines to be a responsible party in accordance with section 49-285, subsections E and F. Notwithstanding a finding regarding the proportionate share of liability that differs from the allocator's report or any settlement, the court's order does not affect the liability of any person who has settled with the department pursuant to this article or whose proportionate share of liability has become final pursuant to section 49-287.06, subsection H.

E. In an action challenging a party's proportionate share of liability as determined in the allocator's report, if the party filing the challenge is not the prevailing party as determined by the court, the liability of the parties shall be adjusted pursuant to this subsection. If the parties have filed complaints against each other challenging the allocator's report, no adjustments may be made pursuant to this subsection. The court shall determine whether the plaintiff is the prevailing party based on whether the proportionate share determined by the court is closer to an offer of judgment pursuant to rule 68 of the Arizona rules of civil procedure made by one or both of the parties or to the proportionate share as determined in the allocator's report. If the plaintiff is not the prevailing party, the share of liability of the responsible party whose proportionate share is being challenged shall be adjusted as follows:

1. If the plaintiff is challenging its own proportionate share as stated in the allocator's report, the plaintiff is liable for the proportionate share contained in the court's order plus a premium of two per cent of the total remedial action costs at the site or, if applicable, a portion of the site, unless the court's order is for less than four per cent, then the premium is fifty per cent of the plaintiff's proportionate share as determined by the court.

2. If the plaintiff is the director who is challenging the proportionate share of a defendant, the defendant is liable for the proportionate share contained in the court's order minus a discount of two per cent of the total remedial action costs at the site or, if applicable, a portion of the site, unless the court's order is for less than four per cent, then the discount is fifty per cent of the defendant's proportionate share as determined by the court.

3. If the plaintiff, other than the director, is seeking recovery of remedial action costs and is challenging the proportionate share of a defendant, the defendant is liable for the proportionate share contained in the court's order, and the plaintiff is liable to the defendant for an amount equal to two per cent of the total remedial action costs at the site or, if applicable, a portion of the site.

F. In any action pursuant to this section, including an action to obtain a judgment based on a final allocator's determination pursuant to section 49-287.06, subsection H, or in any settlement after the conclusion of

the allocation proceeding under section 49-287.06, a party who received notice pursuant to section 49-287.06, subsection A, who did not participate in the allocation proceeding under section 49-287.06 and who is found to be a responsible party under this article is liable for all of the following:

1. Its proportionate share of liability.

2. A premium of fifty per cent of that party's proportionate share.

3. The plaintiff's costs, attorney fees and expert fees incurred in both the allocation proceeding and the court action.

G. In any action brought pursuant to this section, if the superior court finds that a defendant is not a responsible party under this article, the plaintiff is liable for all of that defendant's reasonable costs, attorney fees and expert fees incurred in the court action.

H. If more than one action is filed under this section, the court shall join all actions into a single proceeding.

I. No party may allege that any other person is responsible for any portion of liability unless that person was identified to the director pursuant to section 49-287.04 except on a showing of good cause and due diligence.

J. No determination by the director or an allocator pursuant to this article as to the fact or extent of a person's liability under this article may be admitted into evidence or used in any judicial proceeding initiated against that person other than a proceeding pursuant to this section.

K. In any action brought pursuant to this section, on the request of any party with a claim for recovery of remedial action costs, the court shall award a judgment against the responsible party for its proportionate share of remedial action costs as prescribed by section 49-285. The judgment shall reflect any adjustments of amounts due pursuant to subsections E and F of this section.

49-288. Information gathering and access; enforcement; retaliatory action; civil penalties

A. The director may take an action authorized under subsection B or C of this section to determine the need for, to select or to undertake any remedial action pursuant to this article, to investigate and allocate the liability of any person under this article or to otherwise enforce the provisions of this article or a rule adopted pursuant to this article. Any such action taken regarding the release or threatened release of a pollutant shall not require a person to create information or documents not then in existence but may require sorting, organization, compilation or formatting of information in existence.

B. The director may require a person who has or may have information relevant to a release or threatened release of a hazardous substance, or pollutant as identified by the director in the request, or the liability of any person under this article including information relating to the ability of a person to pay for or to undertake remedial actions pursuant to this article, to furnish, after reasonable notice, information or documents relating to such release or threatened release or the liability of any person under this article or to grant access at all reasonable times, after reasonable notice, to a facility or other place owned or operated by the person to inspect and copy all documents or records relating to such release or threatened release or the liability of any person under this article. At the option of the person, the person may copy and furnish, at the person's expense, all such documents or records to the director. If any information under this section is claimed confidential pursuant to section 49-205, subsection A, the information shall be provided to the director but not made available to the public pending the determination of confidentiality pursuant

to section 49-205. Written notice of the determination regarding confidentiality shall be provided to the person claiming confidentiality. If the person claiming confidentiality does not file an action for declaratory relief in superior court within thirty days of receiving this notice, the information shall be made available to the public.

C. The director or an agent designated by the director with appropriate documentation that identifies the person who has been given authority from the director, after reasonable notice, may enter a facility or other place at reasonable times under any of the following circumstances:

1. Where a hazardous substance or a regulated substance as defined in section 49-1001 may be or has been generated, stored, treated, disposed of or transported from and which may be related to a release or threatened release of a hazardous substance or regulated substance.

2. From which or to which a hazardous substance or a regulated substance as defined in section 49-1001 has been or may have been released or where such release is or may be threatened.

3. Where entry is needed to determine the need for remedial actions or the appropriate remedial actions or to effectuate remedial actions pursuant to this article.

4. To inspect and obtain samples of any suspected hazardous substance or a regulated substance as defined in section 49-1001 which has been or may have been released or where such release is or may be threatened, including samples of containers or labeling.

D. If a sample is obtained pursuant to subsection C, paragraph 4 of this section, the director shall, before leaving the premises, give to the owner, operator or other person in control of the facility or other place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator or other person in control, if such person can be located. Inspections pursuant to subsection C, paragraph 4 of this section shall be completed with reasonable promptness.

E. If consent is not granted regarding any request made by the director under subsections A through C of this section, then the director may issue an order requiring compliance with the request within a specified time period that the director determines is appropriate under the circumstances. The order shall provide that the time period for compliance shall be extended for good cause shown as determined by the director. The order may not be issued until an opportunity for consultation as is reasonably appropriate under the circumstances has been afforded to the person to whom the request is made.

F. The director may ask the attorney general to commence a civil action to compel compliance with a request made pursuant to subsections A through C of this section or an order issued pursuant to subsection E of this section.

G. The court may enjoin acts of noncompliance or may assess a civil penalty of not to exceed five thousand dollars for each day of noncompliance against any person who unreasonably fails to comply with an order issued pursuant to subsection E of this section. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The attorney general, at the request of the director, may commence an action in superior court to recover civil penalties provided for in this subsection. In determining the amount of a civil penalty under this subsection, the court shall consider:

1. The seriousness of the act of noncompliance under this section.

2. As an aggravating factor only, the economic benefit, if any, resulting from the act of noncompliance under this section.

3. Any history of such violation.
4. Any good faith efforts to comply with the order.
5. The economic impact of the penalty on the person.
6. Such other factors as the court deems relevant.

H. No person shall fire or otherwise discriminate against any employee with respect to wages, hours, duties, responsibilities or employment position by reason of the fact that the employee provided information to the state, has testified or may testify, in any administrative, allocation or judicial proceeding commenced pursuant to this article. Any employee alleging a violation of this section may bring an action in superior court to obtain reinstatement, back pay, compensatory damages, and reasonable attorney fees. An action must be commenced within one year of the alleged violation and shall constitute the exclusive recourse for the violation.

I. Nothing in this section shall preclude the director from securing access or obtaining information in any other lawful manner.

49-289. Fund financed remedial action; definition

A. The director shall assure that remedial actions taken pursuant to this article are pursued and completed as expeditiously as possible, consistent with the criteria in section 49-282.06 and the rules adopted pursuant to that section. A remedial action shall not be financed in whole or in part from monies in the water quality assurance revolving fund unless the remedial action plan proposed pursuant to section 49-287.04, subsection A and each record of decision prepared pursuant to section 49-287.04, subsection F specify:

1. A time for commencing the implementation of the remedy after conclusion of settlements and allocation of liability.
2. A specific time period for completing the remedy.

B. The director may amend any record of decision to change the remedial action selected or the time periods for commencing implementation and completing the remedial actions after considering the criteria in section 49-282.06 and the rules adopted under that section and subsection A of this section. Before amending a record of decision, the director shall give notice as required in section 49-287.04, subsection B and written notice to all persons who have entered into a settlement with the director regarding the site or who have otherwise been determined to be responsible parties pursuant to this article and who have not fully satisfied their obligations and to any persons who have served a notice pursuant to section 49-264 regarding the site.

C. After the conclusion of the public comment period, the director shall prepare a comprehensive responsiveness summary and an amended record of decision regarding the remedial action plan. The amended record of decision is a final agency action as of the date the director signs the final record of decision.

D. The director shall serve written notice of the amended record of decision pursuant to section 49-287.04, subsection G.

E. Any notice of appeal of the amended record of decision shall be made pursuant to section 49-287.04, subsection I.

F. A person who is or may be adversely affected by a remedial action selected in a record of decision may file an action in the superior court against the director and any political subdivision that has been awarded fund monies pursuant to section 49-282,subsection F in order to enforce the time periods for commencing implementation and completing a remedial action that are contained in a record of decision. This action shall be filed in the same manner as provided in section 49-264.

49-289.01. Site boundary adjustment petitions; rules

A. A person who owns property within a site may petition the director to adjust the boundaries to exclude the person's property from the site boundaries. The geographic area covered by the boundary adjustment petition shall be described by legal description.

B. The director shall review the petition based on the results of the remedial investigation. If the director determines that the property is either entirely or partially within the area of contamination or is predicted to be either entirely or partially within the area of contamination within two years, the director shall deny the petition to adjust the boundaries of the site. If the director determines based upon the results of the remedial investigation that the property is not within the area of contamination and is not predicted to be within the area of contamination within two years, the director shall grant the petition to adjust the boundaries of the site.

C. The director shall adopt rules to implement this section.

49-289.02. Community information; public notice and comment

A. The director shall establish a preliminary community involvement area for each site on the registry established pursuant to section 49-287.01, subsection D, within ninety days after the site is entered into the registry.

B. The director shall provide written notice by mail or other delivery to residents, commercial occupants and owners of wells operated pursuant to groundwater withdrawal rights or permits within a preliminary community involvement area. If two or more community involvement areas are adjacent or overlapping, the director may make a single notice to avoid duplicate notice. This notice shall contain an opportunity for the recipient to elect to be added to the site's mailing list and to identify other persons who should receive similar notice. This notice also shall contain:

1. Available information regarding the hazardous substance contamination in the area.

2. The site's score and a brief statement regarding the actual and potential risk and routes of exposure to the contaminants at the site and the possible health impacts of that exposure, if any.

3. Identification of department personnel to be contacted for further information regarding the site.

49-289.03. Community involvement plan; community advisory boards; rules

A. The public shall receive notice and be provided an opportunity to comment to the director regarding the following actions taken by the director:

1. The placement of a site on the registry as provided in section 49-287.01.

2. The selection of a remedy as provided in section 49-287.04.

3. Entering into a prospective purchaser agreement with a person pursuant to section 49-285.01.

4. Entering into a settlement with a responsible party pursuant to section 49-292, 49-292.01 or 49-292.02.

B. The director shall adopt rules to implement this section and to govern the provision of information to communities and community involvement areas that include how to disseminate information, the location of public information repositories and notice requirements.

C. Before it implements a remedial investigation as provided in section 49-287.03, subsection D the department shall develop a community involvement plan for each site that does all of the following:

1. Establishes a community advisory board.

2. Designates a spokesperson to inform the public and to act as a liaison between the department, the local government and the responsible party.

3. Provides for newsletters with current information about the status of remedial action at the site and other pertinent information to be distributed to residents within the site.

4. Schedules community advisory board meetings and participates in the scheduling of public meetings pursuant to section 49-287.01, subsection E.

D. A selection committee shall be established for each site that is required to have a community involvement plan pursuant to section 49-287.03, subsection D. The selection committee shall consist of the following members:

1. One representative of the department.

2. One representative of a potentially responsible party, an owner or operator of a facility within the site or an affected business or industry.

3. One local elected official.

4. Two community members who are not employees of any responsible party, the department or the local government.

E. Each community advisory board shall advise the department, the public and the responsible parties of issues, concerns and opportunities related to the expeditious cleanup of the site. Each community advisory board shall be composed of at least five but not more than twenty members. The members of the community advisory board shall be chosen to represent a diversified cross section of the community with an appropriate balance of interested parties and affected groups. Applications for membership on the community advisory board and the names of the applicants shall be publicly available. Community advisory board members may serve on more than one community advisory board and multiple sites may share a community advisory board to avoid unnecessary multiple boards.

F. Each community advisory board shall:

1. Within ninety days after appointment of members by the selection committee, elect cochairpersons and other officers if needed and shall develop a charter defining at a minimum operating procedures, membership terms and obligations, goals for developing issues, concerns and opportunities related to expeditious cleanup of the site, and any other anticipated activities of the board for identifying and improving the public's access and understanding of information regarding the remediation processes at the site.

2. Meet at least four times each year with the department and any identified responsible parties to receive site briefings, progress reports and other pertinent information.

3. Coordinate with the department to establish local repositories for the dissemination of information about the site.

G. Each community advisory board may:

1. Make site visits and participate in public meetings related to cleanup opportunities and remedy selection decisions.

2. Participate in an annual meeting held by the department in each county that has a site undergoing a remedial investigation and feasibility study under section 49-287.03 or in the process of selecting or implementing a remedy for the purpose of facilitating public involvement and identifying funding priorities for site cleanups.

49-290. Exemption from permit requirements; definition

A. Notwithstanding any other statute, a person who performs a remedial action or a portion of a remedial action that has been approved by the

department if that action or portion is conducted in compliance with this article is not subject to any requirement to obtain any permit or approval that may otherwise be required by the department.

B. Except as prescribed in subsection D of this section, a person who conducts a portion of a remedial action, where that portion is entirely on site and is conducted in compliance with this article, may be exempted from a requirement to obtain any other state or local permit or approval, other than any requirement of title 45, at the written request of the person conducting the remedial action. The written request shall identify the specific permit to be exempted and the reasons the exemption is requested. The permit may be exempted if the director finds both of the following:

1. The requirement does not arise out of any permit or regulatory program that is required pursuant to the laws of the United States.

2. The requirement presents a substantial impediment to effective performance of the remedial action selected by the department.

C. The director may waive any regulatory requirement adopted pursuant to this title with respect to a site or portion of a site as part of a record of decision adopted pursuant to section 49-287.04 for that site or portion of a site if the regulatory requirement conflicts with the implementation of the selected remedy, provided that the waiver does not result in adverse impacts to public health or the environment. No waiver may be granted under this subsection if it is prohibited by federal law or if the waiver would jeopardize the continued delegation to the state of authority to implement a federal environmental program.

D. Discharge of wastewater to off-site publicly owned treatment works and sewer systems does not constitute an activity conducted entirely on site for purposes of subsection B of this section.

E. The director shall give written notice of any request for exemption made pursuant to subsection B of this section to the remedial action coordinator designated pursuant to subsection G of this section by the governmental entity whose permit requirements are the subject of the request. Before making any finding pursuant to subsection B of this section, the director or the director's designee shall meet and confer with the remedial action coordinator and the person conducting the remedial action to identify alternatives to exemption.

F. Any finding made by the director pursuant to subsection B of this section shall be in writing. The governmental entity whose permit requirement is preempted as a result of such finding is not liable for property damage, personal injury damage or violations of state or local law resulting from the exemption. The director shall notify the affected governmental entity of any finding made pursuant to subsection B of this section. A finding of the director made pursuant to subsection B of this section is a final administrative decision as defined in section 41-1092 and is subject to judicial review pursuant to title 12, chapter 7, article 6.

G. Each city, town and county shall designate a remedial action coordinator who shall have responsibility for monitoring and facilitating any remedial actions conducted within its jurisdiction. The designated remedial action coordinator shall:

1. Regularly consult, as needed, with the department and the person conducting a remedial action throughout the duration of the remedial action.

2. Expedite the processing and issuance of permits, approvals or other authorizations required by the governmental entity represented by the remedial action coordinator, to facilitate the prompt conduct of a remedial action.

3. Provide information to the department and the person conducting the remedial action regarding applicable requirements of the governmental entity

represented by the remedial action coordinator and the potential for waiver of such requirements.

H. In order to encourage remediation activities under this article and to conserve the fund, neither this state nor any county that imposes an excise or similar tax that is levied at a rate applied as a percentage of the rates on each business class subject to the tax imposed by title 42, chapter 5, article 1 may impose a tax on the sale or purchase of tangible personal property incorporated or fabricated into any real property, structure, project, development or improvement under a contract specified in section 42-5075, subsection B, paragraph 6.

I. For purposes of this section, "on site" means the areal extent of contamination and all suitable areas in close proximity to the contamination that are reasonably necessary for implementation of the remedial action.

49-290.01. Applicability of requirements; Arizona department of water resources

A. Notwithstanding section 49-290, any person conducting a remedial action shall obtain and comply with applicable permits, approvals or other authorizations required by the department of water resources. On consultation with the director of environmental quality, the director of water resources may waive its applicable permits, approvals or authorizations if the director of water resources determines that the permit, approval or other authorization unreasonably limits the completion of a remedial action and if the waiver does not conflict with the statutory intent of the permit, approval or other authorization. The department of water resources shall expedite the processing and issuance of permits, approvals or authorizations to facilitate the prompt conduct of approved remedial actions. If the department of water resources fails to issue or deny a permit within one hundred twenty days of the date of receipt of a complete application for a permit, approval or authorization required for the remedial action or subsequent implementing work plan approved by the department, the department may authorize the party conducting the approved remedial action to proceed with that action and that person shall not be subject to any penalties for failure to obtain the permit, approval or authorization from the department of water resources, but shall be required to comply with the substantive requirements of such permit, approval or authorization. The determination of whether an application for a permit is complete shall be made by the department of water resources. The person conducting the approved remedial action who uses groundwater withdrawn in an active management area as part of an approved remedial action shall continue to pay the groundwater withdrawal fee for the groundwater the person withdrew and used or received and used.

B. The director of environmental quality and the director of water resources shall enter into a memorandum of understanding which establishes a procedure for expediting the review and issuance of permits issued under title 45 when the director of environmental quality has made a determination that a delay in the issuance of a permit required by title 45 will result in the continuance of an imminent and substantial endangerment to the public health or welfare or the environment.

C. The director of environmental quality and the director of water resources shall coordinate their efforts to expedite remedial actions, including obtaining information pertinent to site investigations, remedial investigations, site management and beneficial use of remediated water.

D. The director of water resources may waive any regulatory requirement adopted pursuant to title 45 with respect to a site or portion of a site as part of a record of decision adopted pursuant to section 49-287.04 for that site or portion of a site if the regulatory requirement conflicts

with the implementation of the selected remedy, provided that the waiver does not result in adverse impacts to other land and water users. No waiver may be granted under this subsection if it is prohibited by federal law or if the waiver would jeopardize the continued delegation to the state of authority to implement a federal environmental program.

49-290.02. Applicability of Arizona department of water resources requirements; metal mining facilities

A. A metal mining facility conducting mitigation activities pursuant to an order issued by the director of environmental quality pursuant to section 49-286 shall obtain and comply with applicable permits, approvals or other authorizations required by the department of water resources. On consultation with the director of environmental quality, the director of water resources may waive its applicable permits, approvals or authorizations if the director of water resources determines that the permit, approval or other authorization unreasonably limits the completion of mitigation activities undertaken by a metal mining facility pursuant to an order issued pursuant to section 49-286 and if the waiver does not conflict with the statutory intent of the permit, approval or other authorization. The department of water resources shall expedite the processing and issuance of permits, approvals or authorizations to facilitate the prompt conduct of approved mitigation activities undertaken by a metal mining facility pursuant to an order issued pursuant to section 49-286. If the department of water resources fails to issue or deny a permit within one hundred twenty days of the date of receipt of a complete application for a permit, approval or authorization required for completion of the mitigation activities approved by the department of environmental quality pursuant to an order issued pursuant to section 49-286, the department of environmental quality may authorize the metal mining facility conducting the approved mitigation activities to proceed with those activities and that metal mining facility shall not be subject to any penalties for failure to obtain the permit, approval or authorization from the department of water resources, but shall be required to comply with the substantive requirements of such permit, approval or authorization. The determination of whether an application for a permit is complete shall be made by the department of water resources. A metal mining facility conducting mitigation activities pursuant to an order issued by the department of environmental quality pursuant to section 49-286 that uses groundwater withdrawn in an active management area shall continue to pay any applicable groundwater withdrawal fee for the groundwater the metal mining facility withdrew and used or received and used.

B. The director of environmental quality and the director of water resources shall coordinate their efforts to expedite mitigation activities undertaken by a metal mining facility pursuant to an order issued pursuant to section 49-286, including obtaining information pertinent to site investigations, site management and beneficial use of water withdrawn for mitigation purposes.

C. With respect to mitigation activities undertaken by a metal mining facility pursuant to an order issued by the department of environmental quality pursuant to section 49-286, the director of water resources may waive any regulatory requirement adopted pursuant to title 45 with respect to a site or portion of a site as part of a mitigation order issued by the department of environmental quality pursuant to section 49-286 for that site or portion of a site if the regulatory requirement conflicts with the implementation of the ordered mitigation activities, provided that the waiver does not result in adverse impacts to other land and water users. No waiver may be granted under this subsection if it is prohibited by federal law or if

the waiver would jeopardize the continued delegation to the state of authority to implement a federal environmental program.

49-292. Settlement; authority and effect

A. The director shall consider any offer of settlement by a person who is potentially liable for remedial action costs under this article and CERCLA. The director shall consider the factors in section 49-282.06 and section 49-285, subsections E and F in determining whether to settle any person's liability. In determining the settlement amount, the director shall take into account any past costs incurred for remedial actions at the site by the person. Costs of remedial actions that are incurred by an eligible party as defined in section 49-281, that are or have been approved by the director pursuant to section 49-285, subsection B and that are conducted under the oversight of the director shall be used as a credit against that eligible party's liability. Nothing in this section requires the director to reimburse from the fund the orphan share of costs of approved remedial actions incurred by an eligible party before June 30, 1997. The director may enter into a settlement agreement or consent decree with a potentially responsible party or with a prospective purchaser pursuant to section 49-285.01 without making an express finding in the settlement agreement or consent decree regarding an imminent and substantial endangerment to the public health or welfare, the waters of this state or the environment.

B. In any settlement agreement or consent decree entered into pursuant to subsection A of this section, the director may provide any potentially responsible party with a covenant not to sue concerning any liability to the state under this article or under CERCLA including future liability that may result from a release or threat of a release of a hazardous substance addressed by a remedial action whether that action is on site or off site. A covenant not to sue takes effect when the settlement agreement or consent decree becomes final. A covenant not to sue with respect to future liability shall include an exception that allows the director to sue the responsible party concerning future liability from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown to the director at the time the director enters into the covenant. A covenant not to sue does not preclude the director from suing the potentially responsible party for failure to comply with the terms of the settlement agreement or consent decree in which the covenant was included.

C. A potentially responsible party who has resolved its liability to the state that arises from this article or from CERCLA in a judicially approved consent decree is not liable for claims for contribution or cost recovery regarding matters addressed in the consent decree. Any such judicially approved consent decree does not discharge other potentially responsible parties unless its terms so provide, but such a settlement does reduce the potential liability of other potentially responsible parties by the amount of the settlement. If a potentially responsible party receives an allocation pursuant to section 49-287.06 or 49-287.07 that is less than the amount the potentially responsible party agreed to pay the state pursuant to a settlement agreement or consent decree, the excess amount paid by the potentially responsible party shall be credited to the fund. Any payment by a potentially responsible party in excess of the allocation shall not reduce the proportionate liability of any other potentially responsible party.

D. If the state has obtained less than complete relief from a potentially responsible party who has resolved its liability to the state, the state may bring an action against any other potentially responsible party pursuant to section 49-287.07 who has not so resolved its liability.

E. A potentially responsible party who has resolved its liability to the state may seek contribution for matters addressed in the settlement from any person who is not a party to a settlement entered into under this section.

F. In any action under this section, the rights of any potentially responsible party who has resolved its liability to the state in a judicially approved consent decree or a settlement agreement are subordinate to the rights of the state for matters addressed in the settlement agreement or consent decree, unless otherwise provided in the settlement agreement or consent decree. If a potentially responsible party who has resolved its liability to the state in a settlement agreement or a consent decree provides written notice to the department that it has initiated a lawsuit to recover some or all of its remedial action costs from other potentially responsible parties, the department within thirty days shall provide written notice to the party filing the lawsuit of the department's intent to assert any superior claims the department may have against the other potentially responsible parties. If practicable, the written notice shall include the anticipated dollar amount of the department's claims against each party.

G. The court shall not approve a consent decree entered into pursuant to this section for a period of thirty days after the date that notice of the terms of the consent decree is provided to the public to allow for public comment. Any comment shall be filed with the court and a copy shall be sent by mail to the director and to the settling party. After the expiration of the thirty day public comment period, the director through the attorney general may petition the court for entry of the consent order.

H. A person's decision to enter into a settlement agreement pursuant to this article shall not be construed as an admission in any other judicial proceeding as to the fact or extent of that person's liability with respect to the releases or threatened releases that are covered by the settlement.

49-292.01. Qualified business settlements; definition

A. The director shall enter into a settlement under this article and section 107 of CERCLA with a person that qualifies pursuant to this section without regard to the extent of its liability except for a person whose liability under this article arose from criminal acts.

B. An applicant seeking settlement under this section shall have identifiable gross income as defined in section 61 of the internal revenue code greater than one dollar in each of the two years prior to the application and in each of the two years preceding the year that an investigation of the applicant's share was initiated by either the department or the United States environmental protection agency. The applicant shall submit a letter to the director requesting a qualified business settlement on a form provided by the director. The request letter shall include the applicant's tax returns for the time periods provided in subsection J of this section. The director may require additional information to verify the applicant's eligibility for a settlement under this section. Financial information submitted by the applicant pursuant to this section and marked "confidential" shall be kept confidential by the director.

C. If the director verifies that the applicant meets the definition of a qualified business, the director shall enter into a settlement within ninety days after receipt of the request letter and other information required under this section. The settlement shall meet the requirements of

section 49-292, but without regard to the extent of its liability, and shall require that:

1. The qualified business pay ten per cent of its average annual gross income for the two years preceding the year that a request was submitted by the applicant including the income from money or assets transferred by the applicant within the two years preceding the application. The director shall allow the settlement amount to be paid over time, up to a maximum of ten years, subject to payment of interest at the rate of six per cent per year. If the settlement amount is paid in full within the first five years, the payments shall not be subject to the payment of interest. An applicant may file a petition with the director to modify the payment schedule.

2. The qualified business cooperate with the director in providing reasonable access and information necessary for the director to carry out the requirements of this article.

D. Notice of the settlement shall be published as provided in section 49-292. The notice shall provide a general description of the contents of the agreement. Any interested person may comment on whether the applicant is a qualified business in writing to the director. The director may withdraw from a settlement after considering the comments.

E. If the director determines that the business does not qualify for the qualified business settlement pursuant to this section, the director shall notify the applicant in writing within ninety days of the receipt of all information required under subsection B of this section stating the reasons for denial. If the director does not notify the applicant within ninety days, the application is deemed denied. A denial of a settlement under this section may be appealed to the office of administrative hearings pursuant to section 49-298. In any appeal made pursuant to section 49-298, the documents submitted by the applicant under subsection B of this section are not confidential.

F. In reviewing a proposed settlement, the United States district court or superior court shall give deference to the department's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person who challenges a proposed settlement bears the burden of proving that the proposed settlement does not meet applicable legal standards for court approval. If a settlement is reached with an applicant, the confidential information supplied to the director under this section may be submitted under seal to the court for in camera review.

G. In determining the applicant's gross income for purposes of determining eligibility pursuant to subsection J of this section, the income of all concerns in which the applicant maintains ownership, control or management may be considered by the director. Any transfer of money or assets by the applicant within the two years preceding the application shall be presumed void for purposes of determining eligibility under this section. This presumption may be rebutted by the applicant if the applicant submits a written presumption rebuttal statement that includes the reasons why the transfer of money or assets within this time period should not be presumed void for purposes of determining eligibility. The department shall consider this statement and provide a written record of decision to the applicant that either affirms or denies the applicant's reasons provided in the presumption rebuttal statement.

H. The director may adopt rules to implement this section. A settlement under this section applies only to the applicant and does not release or affect in any way the liability of any other person.

I. If a settlement is made pursuant to this section, the director shall not file a lien pursuant to section 49-295 for an amount greater than the settlement.

J. For the purposes of this section, "qualified business" means an applicant who meets both of the following conditions:

1. The applicant's gross income as defined by section 61 of the internal revenue service code is less than two million dollars per year and greater than one dollar per year.

2. The applicant complies with the definition for the average of the two years preceding the year that an investigation of the applicant's share was initiated by either the department or the United States environmental protection agency, and for each of the two years preceding the year that a request was submitted by the applicant pursuant to subsection B of this section.

If a person does not qualify as a qualified business under this section, the person is eligible to settle its liability under this article and section 107 of CERCLA for less than its proportionate share under section 49-285 on a demonstration of financial hardship under section 49-292.02.

49-292.02. Financial hardship settlement

A. The director shall consider any offer by a person who may be potentially liable for remedial action costs under this article or section 107(a) of CERCLA without regard to the extent of that person's liability. In order to obtain a settlement under this section, a person must demonstrate a financial hardship with respect to payment of a potential liability under this article or under CERCLA. A person whose liability under this article arose or could arise from criminal acts is not eligible to request a settlement under this section. In considering a person's ability to pay, the director shall consider all of the following:

1. The financial resources of the person, including available insurance.

2. The person's ability to continue in business after payment of a settlement amount.

3. Whether liability for the settlement amount would require the person to seek protection under federal bankruptcy law.

B. An applicant seeking settlement under this section shall submit a letter to the director requesting a financial hardship settlement on a form provided by the director. The request letter shall include the applicant's tax returns and all schedules, financial statements, balance statements and other information concerning the person's gross income and net worth for the five years preceding the date of the application on a form provided by the director. Within ninety days of the application, the director may require additional information to verify the applicant's eligibility for settlement under this section. The applicant may provide any additional information the applicant believes to be relevant. Financial information submitted by the applicant pursuant to this section and marked "confidential" shall be kept confidential by the director. If the director or the attorney general disputes a claim of confidentiality, written notice shall be provided to the person claiming the confidentiality that the claim is disputed. If the person claiming the confidentiality does not file an action for declaratory relief in superior court within thirty days after receiving this notice, the information shall be made available to the public. An applicant who submits false or intentionally misleading information is not eligible for a settlement pursuant to this section.

C. If the director verifies that the applicant has demonstrated a financial hardship with respect to payment of a potential liability under this article or CERCLA, the director shall enter into a settlement within ninety days after receipt of the request letter and other information required under this section. The settlement shall meet the requirements of

section 49-292, but without regard to the extent of the person's liability, and shall be made pursuant to subsection A of this section. The director shall allow the settlement amount to be paid over time, up to a maximum of ten years, subject to payment of interest at the rate of six per cent per year. If the settlement amount is paid in full within the first five years, the payments shall not be subject to the payment of interest. An applicant may file a petition with the director to modify the payment schedule.

D. The applicant shall cooperate with the director in providing reasonable access and information necessary for the director to carry out the requirements of this article.

E. Notice of the settlement shall be published as provided in section 49-292. The notice shall provide a general description of the contents of the agreement. Any interested person may comment on whether the applicant qualifies for a settlement pursuant to this section in writing to the director. The director may withdraw from a settlement after considering the comments.

F. If the director determines that the applicant does not qualify for a settlement pursuant to this section, the director shall notify the applicant in writing within ninety days of the receipt of all information required under subsection B of this section stating the reasons. If the director does not notify the applicant within ninety days, the application is deemed denied. A denial of settlement under this section may be appealed to the office of administrative hearings pursuant to section 49-298. In any appeal made pursuant to section 49-298, the documents submitted by the applicant under subsection B of this section are not confidential. The appeal shall determine only the amount the applicant is able to pay.

G. In reviewing a proposed settlement, the federal district court or superior court shall give deference to the director's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person challenging a proposed settlement shall bear the burden of proving that the proposed settlement does not meet the applicable legal standards for court approval. If a settlement is reached with an applicant, the confidential information supplied to the director under this section may be submitted under seal to the court for in camera review.

H. In determining the applicant's financial resources, the financial resources of all concerns in which the applicant maintains ownership, control or management may be considered by the director. A settlement under this section applies only to the applicant and does not release, affect or increase the liability of any other person. The director may adopt rules to implement this section.

I. If a settlement is made pursuant to this section, the director shall not file a lien pursuant to section 49-295 for an amount greater than the settlement.

J. Within thirty days after the director has proposed an allocation share under section 49-287.05 or a share has been allocated under section 49-287.06 to a person who has previously settled with the department pursuant to this section, the director may request that the previous settlement be reopened to determine whether the person who has settled can pay an amount that is greater than the previous settlement amount but not more than the allocated share. A decision by the director to initiate a review of the previous settlement shall be published in a newspaper of general circulation twice within a one week period. The notice shall provide a general description of the director's reasons for initiating a review of the previous settlement. Any interested person may comment in writing to the director on whether the settlement should be reopened and whether the person who previously settled with the department pursuant to this section should be required to pay a different amount from the previous settlement

amount. Public comments must be received by the director within thirty days of the last date of publication. The person who settled shall submit updated versions of the documents prescribed by subsection B of this section to provide financial information since the previous settlement. Within ninety days after receipt of the information prescribed by this subsection, the director shall notify the person whether the original settlement amount will be revised. If the director determines that the original settlement amount will be revised, the director shall provide the person with the revised settlement amount and the basis for that revision. Any monies paid pursuant to the original settlement shall be credited toward any revised settlement amount. If the director does not notify the person who settled within ninety days, the original settlement amount is not subject to revision. Within thirty days after the director's decision to revise the original settlement amount, the director must petition the court having jurisdiction over the settlement. The court shall determine whether the settlement amount shall be reopened and what the settlement amount shall be, but it shall not be more than the allocated share.

49-294. Use of monies obtained through consent decrees or litigation

A. All monies obtained by the director as the result of a settlement entered into pursuant to this article or through filing an action in state or federal court under this article or under CERCLA shall be deposited, pursuant to sections 35-146 and 35-147. Monies recovered pursuant to this section for the department's remedial action costs that are incurred before the date of a settlement or a court judgment shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality assurance revolving fund. Monies recovered pursuant to this section for the department's remedial action costs that are to be incurred after the date of a settlement or court judgment may be deposited in separate accounts, and any interest earned on monies in these accounts shall be credited to those accounts for use for remedial action at the specific site or facility from which the monies were generated, including reasonable and necessary costs, and legal costs for administration of the account for that site or facility. If a specific site's or facility's account contains monies at the completion of the remedial action, the director may use these excess monies in the manner and for the purposes prescribed in section 49-282.

B. This section and sections 49-292, 49-295 and 49-296 shall not be construed to limit the authority of the director to take any action under federal law or under other provisions of this title.

49-295. Environmental liens

A. In addition to other rights or remedies available to this state, and in order to protect the state's interest in recovering monies expended by the state for remedial action, all remedial action costs for which a person is liable to the state for the remedial actions conducted at that facility by the state under this article constitute a lien in favor of the state against only the property that is a facility subject to or affected by that remedial action and in which the person who is liable has an ownership interest.

B. The director may request the attorney general to file an action in the superior court in the county in which the property is located for an order establishing an environmental lien. The application for an environmental lien may be filed and recorded pursuant to subsection H of this section. The application for an environmental lien shall include the following information:

1. The name of the record owner of the real property on which the environmental lien is requested, the name of the person purportedly liable, if different, and the person's ownership interest.

2. The legal description of the real property where the environmental lien attaches.

3. The amount and an itemization of remedial action costs that have been incurred by this state as of the time the application is filed.

4. A statement of the evidence demonstrating that the person is liable for remedial action costs incurred by the state under this article.

C. On the filing of an application for an environmental lien, the court shall set a hearing date at least thirty but not more than forty-five days from the date the application is filed with the court. The hearing may be rescheduled if all parties agree to a different date. Service of the application and notice of the hearing date on the purportedly liable person and the record owner of the subject real property, if different, shall be in the manner prescribed in the Arizona rules of civil procedure.

D. On a showing by the state of probable cause that the person is liable for remedial action costs incurred by the state under this article and the amount of the remedial action costs and that the person has an ownership interest in the real property that is the subject of the application for an environmental lien, the court may issue an order establishing an environmental lien in favor of the state.

E. The order establishing an environmental lien shall be filed and recorded as provided in subsection H of this section. If the state records the application for an environmental lien as provided in subsection H of this section, the environmental lien shall be deemed to attach as of the date of recording of the application for the environmental lien, once the order establishing the environmental lien is filed and recorded. If the state does not record the application for the environmental lien, the environmental lien attaches only on the recording of the order establishing the lien as provided in subsection H of this section.

F. If after establishment of an environmental lien the state incurs additional remedial action costs for which the person is liable under this article, the state may seek to amend the existing lien to include in the amount of the lien the additional remedial action costs incurred. The state shall file a statement itemizing the costs incurred with the court, with service as prescribed in subsection C of this section. On a showing by the state of probable cause with respect to the amount of those additional remedial action costs, the court may increase the amount of the environmental lien by the amount of those additional remedial action costs.

G. Any person that has been determined liable for remedial action costs in a probable cause hearing for purposes of establishing a lien and that owns an interest in real property that is the subject of an environmental lien established under this section shall notify the state in writing at least sixty days before alienating the interest. If the state believes that it will incur future remedial action costs at the facility, the state may within thirty days of receipt of the notification request a probable cause hearing pursuant to subsection C of this section. The court shall schedule the requested hearing before expiration of the sixty day period beginning on the date the state received notice that the person intends to alienate its interest, unless the parties agree to a continuance. Unless the person giving notice to the state withdraws that notice before the scheduled date of the hearing, the court shall conduct a hearing to estimate the state's future remedial action costs and may issue an order amending the lien to include total future remedial action costs that the state appears reasonably likely to incur. Any order increasing the amount of an existing lien pursuant to this subsection may be filed and

recorded as provided in subsection H of this section. Any person having an ownership interest in the property that may be adversely affected by the order increasing the environmental lien may challenge the increased lien amount by filing a motion to quash pursuant to subsection I of this section. If the state fails to request a probable cause hearing with respect to estimated future remedial action costs within thirty days of receipt of the notification, any person subsequently purchasing an interest in real property that is subject to an environmental lien takes that interest subject only to existing, unsatisfied liens, and that person is liable to the state for future remedial action costs only to the extent it is liable for those costs because it is a responsible party under section 49-283 or because it is otherwise liable under other federal, state or common law.

H. Any application, order, lien, release or other document required to be recorded under this section shall be recorded in the office of the county recorder of the county where the real property is located. A filing fee or other charge is not required for filing any document pursuant to this section. The filing or mailing of any document pursuant to this section is the responsibility of the director or the director's designee. A copy of an environmental lien shall also be sent by certified mail to any other person including an owner, purchaser, holder of a mortgage or security interest or judgment lien creditor whose interest was perfected and recorded before an application for an environmental lien was recorded.

I. If a court issues an order establishing an environmental lien, any person having an interest in the real property that may be adversely affected by establishment of the lien may file a motion to quash the lien. The court retains jurisdiction to resolve any issue of fact or law raised by the motion to quash. If the motion to quash raises issues of fact, the person challenging the lien and the state are entitled to conduct expedited discovery on application to the court and are entitled to a priority for trial.

J. At any time after the lien is recorded any person having an ownership interest in real property subject to an environmental lien may move the court to substitute other security for the lien. The court shall retain jurisdiction to determine the sufficiency of the substituted security. On approval of the substituted security, the environmental lien shall be released.

K. Notwithstanding any other provision of this section, an environmental lien does not apply to real property that is used primarily for or that is under construction for use in single or multi-family housing at the time the environmental lien is recorded.

L. The director shall release an environmental lien if the lien or a claim or judgement for the remedial action costs is satisfied. If the lien or a claim or judgement for the remedial action costs has been partially but not wholly satisfied, the director on request of any person having an ownership interest in the property shall reduce the amount of the lien by the amount satisfied. The director may release an environmental lien if the director determines that the lien is not in the best interest of the state.

M. If the court refuses to issue an order establishing an environmental lien, any person having an interest in the property against which an environmental lien was sought is not entitled to attorney fees or damages against the state if the court determines that there was reasonable cause for the application.

N. Any determination of any issue by the court in a hearing held pursuant to this section shall not be considered binding in any future judicial or administrative proceeding except that any issue litigated in a motion to quash filed pursuant to this section shall not be litigated again

in any subsequent motion to quash filed pursuant to this section that is filed by the same party.

O. An environmental lien is subject to any other lien that is perfected and recorded before the attachment date of the environmental lien as determined pursuant to subsection E of this section.

P. On entry of a final judgment in favor of the state for remedial action costs, an environmental lien may be foreclosed in the manner provided for foreclosure of mortgages pursuant to title 33, chapter 6, article 2. The state may combine an action to recover remedial action costs with an action to foreclose an environmental lien established under this section.

Q. This section does not preclude the state from initiating other actions under this title or under federal law.

49-296. Settlement agreements

A settlement agreement made pursuant to this article may provide that the director shall reimburse a party to the agreement from the fund for the costs of specific remedial actions that the party has agreed to perform. In appropriate cases, the director may make reasonable efforts pursuant to this article to recover any fund expenditures from responsible parties who are not involved in the settlement agreement. A decision by the director not to reimburse a party from the fund for the costs of conducting a remedial action that is contained in a settlement agreement is not subject to judicial review.

49-298. Appealable agency actions; licenses

A. Nothing in this article is an appealable agency action as defined in section 41-1092 or a contested case as defined in section 41-1001 except for the following:

1. A determination by the director that a person does not qualify for a settlement pursuant to section 49-292.01 or 49-292.02.

2. A no further action determination pursuant to section 49-287.01, subsection H.

B. An appeal shall be initiated by filing a notice of appeal with the director pursuant to section 41-1092.03, subsection B.

C. Nothing in this article constitutes a license as defined in section 41-1001.

Article 6 Pesticide Contamination Prevention

49-301. Definitions

In this article, unless the context otherwise requires:

1. "Active ingredient" has the meaning assigned to the term by title 7 United States Code section 136.

2. "Applicant" means any person who applies for a registration or amended registration pursuant to title 3, chapter 2, article 5 or a conditional registration pursuant to section 49-310.

3. "Chemigation" means a method of irrigation by which a pesticide is mixed with irrigation water before the water is applied to the crop or the soil.

4. "Degradation product" means a substance resulting from the transformation of a pesticide by physicochemical or biochemical means.

5. "Groundwater protection data gap" means that a pesticide for agricultural use has been registered with the Arizona department of

agriculture without the director of environmental quality finding that the information submitted pursuant to section 49-302 meets the requirements of this article.

6. "Henry's law constant" means an indicator of the escaping tendency of dilute solutes from water which is approximated by the ratio of the vapor pressure to the water solubility at the same temperature.

7. "New pesticide" means a pesticide that contains an active ingredient for which the information required under section 49-302, subsection A has not been submitted by the applicant for registration and that has not been approved by the director of environmental quality.

8. "Pesticide" means any substance or mixture of substances intended for either:

(a) Preventing, destroying, repelling or mitigating any pest.

(b) Use as a plant regulator, defoliant or desiccant.

9. "Pollution" means the introduction into the groundwaters of this state of an active ingredient, other specified product or degradation product of an active ingredient at above a level, with an adequate margin of safety, that does not cause adverse effects on human health or safety.

10. "Registrant" means a person that has registered a pesticide pursuant to title 3, chapter 2, article 5.

11. "Soil adsorption coefficient" means a measure of the tendency of a pesticide, or its biologically active transformation products, to bond to the surfaces of soil particles.

49-302. Information submittal

A. An applicant shall submit to the director information that enables the department of environmental quality to determine whether a pesticide has the potential to pollute the groundwater in this state. This information shall include all of the following information for each active ingredient in the pesticide intended for registration with the Arizona department of agriculture:

1. Water solubility.
2. Vapor pressure.
3. Octanol-water partition coefficient.
4. Soil adsorption coefficient.
5. Henry's law constant.
6. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, under conditions in this state or similar environmental use conditions, if that information exists in studies and conclusions from other states or the United States government.
7. The director may by rule require additional information that is required by the United States environmental protection agency for environmental fate parameters necessary to gain full registration under federal law.

B. The director may also require the information prescribed in subsection A for other specified ingredients and degradation products of an active ingredient in any pesticide, and all information submitted shall comply with subsection C. Any studies submitted pursuant to this subsection shall meet the same testing methods required for studies conducted on active ingredients. The director may also require testing protocols that are specific or adaptable to soil and climatic conditions in this state.

C. Information submitted pursuant to subsection A shall comply with all of the following:

1. Information shall be presented in English and summarized in tabular form with the actual studies, including methods and protocols, attached.

2. All information and studies concerning product chemistry and environmental fate shall at a minimum meet the testing methods and reporting guidelines established by the United States environmental protection agency.

3. With approval from the director, applicants may use specified alternative protocols as permitted by the United States environmental protection agency guidelines if the director finds use of the protocol is consistent with and accomplishes the objective of this article as stated in subsection A.

4. The director may accept information, studies and conclusions from other states and the federal government if the director finds them to be derived from standard protocol procedures consistent with the objective of this article as stated in subsection A.

D. The director may waive any information required by subsection A if the director determines that the applicant has demonstrated either of the following:

1. That due to the nature of the active ingredient, it is not scientifically possible to obtain meaningful results in the test or tests required to obtain the particular information for which a waiver is sought.

2. That due to the application or cultural practices for the active ingredient, it is not necessary to obtain the particular information for which a waiver is sought.

E. On approval of the director, an applicant may submit alternative information to satisfy a data requirement of subsection A. This alternative information shall accurately describe the relevant data requirement for each active ingredient of the pesticide under conditions in this state or under similar environmental use conditions.

F. Information requirements that the director waives pursuant to subsection D shall not constitute a groundwater protection data gap.

49-303. Pesticide evaluation process; reporting requirements

A. After satisfying the requirements of section 49-302, a registrant may use any of the following processes to demonstrate to the director whether the pesticide has the potential to pollute groundwater:

1. The use of specific numeric values established by the director for pesticides regarding water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism and field dissipation. The director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources may revise the numeric values if the director of environmental quality finds that the revision is necessary to protect the groundwater of this state. The numeric values shall be at least as stringent as the values used by the United States environmental protection agency at the time the values are established or revised.

2. If adopted in rule, use of a procedure for establishing specific numeric values other than those established pursuant to paragraph 1 of this subsection. Any numeric values adopted by the director of environmental quality pursuant to this paragraph shall be at least as stringent as the numeric values used by the United States environmental protection agency.

3. If adopted in rule, use of an alternate procedure other than the use of specific numeric values to evaluate the potential of a pesticide to pollute groundwater. This procedure shall be consistent with the objective of this article.

B. In consultation with the Arizona department of agriculture and the department of water resources, the director of environmental quality shall adopt rules necessary to implement this section.

C. The director shall report on December 1 of each year the following information to the legislature for each pesticide registered for agricultural use:

1. A list of each active ingredient, other specified ingredient or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

2. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient which is greater than one or more of the numeric values established pursuant to subsection A of this section, or is less than the numeric value in the case of soil adsorption coefficient, in both of the following categories:

(a) Water solubility or soil adsorption coefficient.

(b) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism or field dissipation.

3. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient that has been determined by an alternate procedure that is adopted pursuant to subsection B of this section to have the potential to pollute groundwater.

4. For each pesticide listed pursuant to paragraph 2 or 3 of this subsection for which information is available, a list of the amount of the pesticide that was applied to soil in this state during the most recent year, where it was applied and for what purpose the pesticide was used.

D. The director of environmental quality in consultation with the Arizona department of agriculture, the department of water resources and the department of health services may determine to the extent possible the toxicological significance of the degradation products and other specified ingredients identified pursuant to subsection C, paragraphs 2 and 3 of this section.

49-304. Penalty for groundwater protection data gap

A. A registrant of a pesticide is subject to a penalty of up to ten thousand dollars for each day that a groundwater protection data gap exists unless the information was waived pursuant to section 49-302, subsection D or a conditional registration was granted pursuant to section 49-310. In determining the amount of the penalty, the following shall be considered:

1. The extent to which the registrant has made every effort to submit the valid, complete and adequate information.

2. Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete and adequate information.

B. If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap, the director or registrant shall submit the issues of the dispute to the water quality appeals board pursuant to section 49-323. The water quality appeals board shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater protection data gap exists.

C. The attorney general may enforce this section.

D. Any monetary penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

49-305. Groundwater protection list; regulation of pesticides on list

A. The director shall establish a groundwater protection list of pesticides that have the potential to pollute groundwater. The director

shall immediately place all pesticides identified in section 49-303, subsection C, paragraphs 2 and 3 on the groundwater protection list and shall regulate the use of these pesticides if the pesticide is intended for application to or injection into the soil by ground based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be followed within seventy-two hours by flood or furrow irrigation. The director shall adopt rules to carry out this section.

B. On notice from the director, a person who uses a pesticide on the groundwater protection list is required to report the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established by the Arizona department of agriculture for reporting custom applications.

C. If a pesticide has not been detected in groundwater anywhere in this state in tests conducted by a governmental agency or other reliable source, the director may remove that pesticide from the groundwater protection list as provided in rule.

49-306. Groundwater protection data gap; cancellation of registration

A. The director shall notify the Arizona department of agriculture to cancel the registration of a pesticide for agricultural use if there is a groundwater protection data gap for that pesticide.

B. If a registrant no longer manufactures the active ingredient or pesticide in question or if it has been voluntarily withdrawn from the Arizona market, the registration of that product shall be cancelled.

49-307. Monitoring and testing

A. In order to more accurately determine the mobility and persistence of the pesticides identified pursuant to section 49-303, subsection C, paragraphs 2 and 3 and those pesticides whose continued use is allowed pursuant to section 49-309 and to determine if these pesticides have migrated into groundwaters of this state, the director shall conduct soil and groundwater monitoring statewide in areas of this state where the pesticide is primarily used or where other factors identified pursuant to section 49-302, including physicochemical characteristics and use practices of pesticides, indicate a probability that the pesticide may migrate into the groundwaters of this state. The monitoring shall begin within one year after the pesticide is placed on the groundwater protection list and shall be conducted according to standard protocol and testing procedures established pursuant to subsection B of this section. Monitoring programs shall replicate conditions under which the pesticide is normally used in the area of monitoring. In developing a monitoring program, the director shall coordinate activities with other agencies that conduct soil and groundwater monitoring.

B. Within ninety days after a pesticide is placed on the groundwater protection list pursuant to section 49-305, the director, in consultation with the department of health services, shall expeditiously develop a standard protocol and testing procedure for each pesticide identified pursuant to section 49-305.

C. The director shall determine the probable source of the pesticides, specified ingredients or degradation products. The analysis of the pesticides, specified ingredients or degradation products shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and method of applying the pesticide, irrigation practices

related to use of the pesticide and types of soil in areas where the pesticide is applied.

D. The director shall report all monitoring results to the Arizona department of agriculture.

49-308. Enforcement

A. Within ninety days after a pesticide that is listed pursuant to section 49-305 is found pursuant to section 49-307 under any of the conditions listed in paragraph 1, 2 or 3 of this subsection, the director shall determine whether the pesticide resulted from agricultural use according to state and federal laws and regulations and shall state in writing the reasons for the determination that:

1. An active ingredient of a pesticide has been found at or below the deepest of the following depths:

(a) Eight feet below the soil surface.

(b) Below the root zone of the crop where the active ingredient was found.

2. An active ingredient of a pesticide has been found in the groundwaters of this state.

3. The pesticide has degradation products or other specified ingredients which pose a threat to public health and which have been found under the conditions specified for active ingredients in either paragraph 1 or 2 of this subsection.

B. On a determination by the director that a pesticide meets any of the conditions specified in subsection A of this section as a result of agricultural use according to state and federal laws and regulations, the director shall immediately notify the registrant of the determination. A pesticide that meets any of the conditions in subsection A of this section is subject to section 49-309.

C. For the purposes of this section, any finding of a pesticide shall result from an analytical method approved by the United States environmental protection agency and shall be verified, within thirty days, by a second analytical laboratory approved by the director.

D. The point of compliance prescribed by section 49-244 does not apply to this section.

49-309. Cancellation of pesticide registration; hearing for reconsideration and continued use

A. If the director determines the pesticide which meets any of the conditions specified in section 49-308 is carcinogenic, mutagenic, teratogenic or toxic to humans in concentrations found at depths prescribed in section 49-308, subsection A and the pesticide label cannot be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwaters of this state, the director shall notify the Arizona department of agriculture to cancel the registration of the pesticide.

B. For any other pesticide which meets any of the conditions specified in section 49-308 the registrant may request a hearing within forty-five days of notification that the director has made a determination pursuant to section 49-308, subsection B. At the same time the registrant shall submit a report and documented evidence which demonstrates either of the following:

1. The presence in the soil of any active ingredient, other specified ingredient or degradation product does not threaten to pollute the groundwaters of this state in any region in this state or that the pesticide label can be modified to change the approved use and application of the

active ingredient to ensure that it does not threaten to pollute the groundwaters of this state.

2. Any active ingredient, other specified ingredient or degradation product that has been found in groundwater has not polluted, and does not threaten to pollute, the groundwater of this state in any region in this state in which the pesticide may be used according to the terms under which it is registered or that the pesticide label can be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwater of this state.

C. The director of environmental quality, after a public hearing and in consultation with the director of water resources, the director of the department of health services and the director of the Arizona department of agriculture, may allow the continued registration, sale and use of a pesticide, other than those identified in subsection A of this section, which meets any of the conditions specified in section 49-308 if the director determines any of the following:

1. Either of the conditions prescribed in subsection B of this section exist and apply to the pesticide.

2. There are no alternative products or practices that can be effectively used in substitution for the pesticide and the cancellation or modification will cause severe economic hardship on one or more segments of the agricultural industry in this state.

D. Notwithstanding subsection C of this section, the director shall not allow the continued registration, sale or use of a pesticide if it would cause a violation of water quality standards at the applicable point of compliance.

E. The Arizona department of agriculture shall cancel the registration of any pesticide identified pursuant to section 49-308 unless continued under subsection C of this section.

49-310. New pesticides; conditional registration; reports

A. The director may provide for the conditional registration of a new pesticide for one year with an option to renew annually for a period not to exceed three years under the following conditions:

1. The new pesticide is registered pursuant to the federal insecticide, fungicide and rodenticide act as amended (7 United States Code section 136; P.L. 100-532; 102 Stat. 2654) and is registered for use in one or more other states.

2. The director determines that a conditional registration will result in use of the new pesticide in this state that is sufficient to generate acceptable data to complete the permanent registration of the new pesticide pursuant to section 49-302. An applicant who submits data shall commit to develop and generate new data for the department's review and approval. The new data shall address the deficiency previously identified by the department in its initial review and approval process. The commitment shall be in the form of a contract with the department.

3. The new pesticide in question shall be important to agriculture as determined by the director of environmental quality after consultation with the Arizona department of agriculture.

B. Each registrant who holds a conditional registration shall submit a report to the director annually as specified by the director that describes the progress made in developing each item of required data. The director may require that additional data be included in the reports.

C. On receipt of the prescribed reports, the director may determine that the conditional registration status be continued for an additional year or be canceled if the reports indicate a lack of progress. If the

conditional registration is canceled, all product in the state, including product at the user level, shall be removed from sale or distribution.

D. Conditional registration shall not be granted more than one time per pesticide.

E. Conditional registrants shall not voluntarily cancel the conditional registration.

Article 7 Water Quality Appeals

49-321. Appeals

A. An order of the director under this chapter is subject to appeal pursuant to title 41, chapter 6, article 10.

B. Except as provided in section 41-1092.08, subsection H, final administrative decisions are subject to appeal to superior court pursuant to title 12, chapter 7, article 6. For the benefit of the people of this state, appeals under this section have precedence, in every court, over all other civil proceedings. The presiding judge for the county in which the appeal has been made shall assign the appeal to the appropriate judge designated by the chief justice of the supreme court pursuant to section 45-406 to hear appeals relating to groundwater.

C. Except as provided in section 49-324, subsection E, the decision shall not be stayed pending appeal, except that the judge to whom the appeal is assigned may stay the decision, with or without bond, on a showing of good cause. In determining whether good cause exists under the circumstances, the court may consider whether:

1. The public interest will be adversely affected by a stay.
2. The stay will harm others.
3. There is a high probability that the appellant will succeed on the merits.
4. The appellant will suffer irreparable harm before a decision on the merits can be rendered.

D. The final decision of the superior court is appealable in the same manner as in civil actions generally and shall be governed by the rules of appellate procedure.

49-322. Water quality appeals board

A. A water quality appeals board is established in the department of administration consisting of three members appointed by the governor pursuant to section 38-211 to terms of three years. One member of the board shall be an attorney licensed to practice law in this state, and all members shall possess technical competence to perform the duties of the board. Board members are entitled to compensation determined under section 38-611.

B. Members of the board are subject to title 38, chapter 3, article 8 and shall not receive a significant portion of their income directly or indirectly from persons subject to individual permits or enforcement orders under this chapter. In addition, the members shall not have been employed by such persons, other than state agencies, within two years before appointment and may not be employed by such persons, other than state agencies, within two years after their appointment expires. For purposes of this subsection "significant portion of income" means ten per cent or more of gross personal income for a calendar year or fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension or similar benefits.

C. The board may employ a staff. The real party in interest shall represent the board in any appeals from decisions of the board.

D. The board shall adopt rules of procedure to govern the conduct of hearings before the board.

49-323. Appeals to the board; judicial review

A. An appeal to the appeals board may be taken from any grant, denial, modification or revocation of any individual permit issued under this chapter, from any issuance, denial or revocation of a determination pursuant to section 49-241, subsections B and C or from the establishment of numeric values and data gap issues for pesticides pursuant to sections 49-303 and 49-304, by any person who is adversely affected by the action or by any person who may with reasonable probability be adversely affected by the action and who has exercised any right to comment on the action as provided in section 41-1092.03. Any interested person may intervene in the appeal as a matter of right. The board shall hold a hearing if questions of material fact are at issue in the appeal. Notice and hearing procedures are subject to title 41, chapter 6, article 10.

B. Final decisions of the board are subject to appeal to superior court pursuant to title 12, chapter 7, article 6. For the benefit of the people of this state, appeals under this section have precedence, in every court, over all other civil proceedings. The presiding judge for the county in which the appeal has been made shall assign the appeal to the appropriate judge designated by the chief justice of the supreme court pursuant to section 45-406 to hear appeals relating to groundwater.

49-324. Stay pending appeal; standard of review

A. If an appeal is taken from the director's decision to issue a permit for a new facility, the facility may not discharge any pollutants inconsistent with the director's decision until the appeal process is completed.

B. Except as provided in subsections D and E of this section:

1. If an appeal is taken from the director's decision to grant or deny a permit for an existing facility under circumstances in which that facility was previously subject to a permit, the facility may continue to operate pending final disposition of the appeal if there is no increase in the amount of pollutants discharged or change in the characteristics of the discharge.

2. If an appeal is taken from the director's decision to grant, deny, modify or revoke a permit for a facility already subject to a permit, the facility may continue to operate as long as the operation complies with the conditions of the existing permit until final disposition of the appeal.

C. Decisions by the director shall be affirmed by the appeals board unless, considering the entire record before the board, it concludes that the director's decision is arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid.

D. The director or any interested person who has appealed or intervened before the board may apply to the superior court for an order requiring cessation of discharge or conditions for continued discharge pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health and the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

E. Notwithstanding section 41-1092.11, if a notice of appeal of a permit that is issued under article 3.1 of this chapter is filed, those permit provisions that are specifically identified in the notice of appeal as

being contested and those other permit provisions that cannot be severed from the contested provisions are automatically stayed while the appeal is pending, including during any court proceedings. Uncontested permit provisions that are severable from the contested provisions are effective and enforceable thirty days after the director serves notice on the applicant, the water quality appeals board and any party who commented on the proposed action of the conditions that are uncontested and severable.

Article 8 Dry Wells

49-331. Definitions

In this article, unless the context otherwise requires:

1. "Department" means the department of environmental quality.
2. "Director" means the director of the department of environmental quality.
3. "Dry well" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Dry wells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the federal underground injection control program (P.L. 93-523, part C), as amended.
4. "Owner" means a person who owns a dry well or a person who owned a dry well immediately before the discontinuation of its use.

49-332. Registration

A. A person who owns an existing dry well that is or has been used for disposal shall register the well on a registration form provided by the director. This form shall be accompanied by a registration fee established by the director by rule in a one-time rule making after the effective date of this amendment to this section. After the one-time rule making, the director shall not increase that fee by rule without specific statutory authority for the increase. Monies collected by the department shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The registration form shall include information that the director determines is necessary to meet the purpose of this article.

B. The director shall assign a registration number to each dry well registered pursuant to this section and shall maintain a permanent record of the information contained on the registration form and the registration number.

C. An owner who brings a dry well into operation after August 13, 1986 shall register the well on a registration form provided by the director and shall pay the registration fee established by the director by rule within thirty days of beginning operations.

D. A person who installs a dry well shall notify the owner of the registration requirements of subsection C of this section.

E. This article shall not be construed to legalize any dry well that exists on August 13, 1986 and that is not in compliance with this chapter and chapter 5 of this title.

49-333. Regulation of dry wells; license to drill

A. The director may adopt rules establishing standards for new and existing dry wells pertaining to their performance, operation, construction, design, closure, location and inspection.

B. Dry wells shall not be used for the disposal of hazardous substances as defined in the comprehensive environmental response, compensation, and liability act (P.L. 96-510), as amended, or oil as defined in the federal water pollution control act (P.L. 92-500), as amended.

C. New dry well construction and modifications of existing dry wells shall be performed under the direct and personal supervision of a well driller who holds an appropriate contractor's license issued pursuant to title 32, chapter 10.

49-334. Enforcement and penalties; appeals

A. If the director determines that a person is violating this article or any rule adopted pursuant to this article the director may issue an order requiring compliance within a reasonable time. A compliance order becomes final thirty days after the order is served unless within thirty days of service the person named on the order requests a hearing. A hearing shall be conducted pursuant to title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, the director's final decision may be appealed by any party to the superior court pursuant to title 12, chapter 7, article 6.

B. The director may file an action in the superior court to enforce this article. The director may seek all appropriate relief including temporary and permanent injunctions.

49-335. Rules

The director shall adopt rules necessary to provide procedures for the administration of this article and to implement the program for the regulation of dry wells established by this article.

49-336. Exemption; golf courses

Provisions of this article shall not apply to dry wells used in conjunction with golf course maintenance.

Article 9 Potable Water Systems

49-351. Designation of responsible state agency

A. The department of environmental quality is designated as the responsible agency for this state to take all actions necessary or appropriate to ensure that all potable water distributed or sold to the public through public water systems is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease causing substances or organisms. All such actions shall be taken at the direction of the director of the department.

B. All state agencies and any local health agencies involved with water quality, at the request of the director, shall provide to the department any assistance requested to ensure that this article is effectuated.

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.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.

2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.

2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.

3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.

4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.

5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

49-354. Enforcement; violation; classification; compliance orders; judicial review; injunctive relief; civil administrative penalties; civil penalties

A. A person who violates this article or a rule adopted pursuant to this article is guilty of a class 2 misdemeanor for each violation. In the instance of a continuing violation, each day a violation continues constitutes a separate offense.

B. If the director determines that a person is in violation of this article or a rule adopted pursuant to this article, the director may issue an order requiring compliance immediately or within a specified time period. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing. The director shall transmit the compliance order to the alleged violator by certified mail, return receipt requested, or by hand delivery. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge pursuant to title 41, chapter 6, article 10. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Except as provided in section 41-1092.08, subsection H, a final administrative decision is subject to judicial review pursuant to title 12, chapter 7, article 6. At the request of the director the attorney general may begin an action in superior court to enforce orders issued under this subsection after an order becomes final.

C. If the director determines that a person is in violation of this article or a rule adopted pursuant to this article to implement the requirements contained in 40 Code of Federal Regulations parts 141 and 142, including the national primary drinking water regulations, the director may issue a compliance order pursuant to subsection B of this section imposing a civil administrative penalty. All penalty amounts shall be calculated as follows:

1. If the violator is a public water system that serves more than ten thousand persons, the director may impose a civil administrative penalty of up to one thousand dollars per day per violation up to ten thousand dollars per violation.

2. If the violator is a public water system that serves five hundred to ten thousand persons, the director may impose a civil administrative penalty that does not exceed five hundred dollars per day per violation up to five thousand dollars per violation.

3. If the violator is a public water system that serves fewer than five hundred persons, the director may impose a civil administrative penalty that does not exceed one hundred dollars per day per violation up to one thousand dollars per violation.

D. When determining the amount of a civil administrative penalty pursuant to subsection C of this section, the director shall consider all of the following:

1. The size of the public water system.

2. Any good faith effort by the public water system to maintain compliance with national primary drinking water regulations.

3. The seriousness of the violation.

4. Any history of violation of the national primary drinking water regulations.

5. Any history of recalcitrance by the violator.

6. Any economic benefit resulting from the violation, as an aggravating factor only.

7. Any other factor deemed relevant.

E. Civil administrative penalties may not be recovered pursuant to subsection C of this section if civil penalties are sought pursuant to subsection G of this section for the same violation.

F. All civil administrative penalties obtained pursuant to subsection C of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

G. In addition to the authority provided in subsection C of this section, the attorney general may, and at the request of the director shall, begin an action in superior court to recover civil penalties in an amount of not more than five hundred dollars per violation per day from any person who violates this article or a rule adopted pursuant to this article. All civil penalties obtained under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. Civil penalties may not be recovered pursuant to this subsection if civil administrative penalties are sought pursuant to subsection C of this section for the same violation.

H. If the director has reason to believe that a person is in violation of this article or a rule adopted or an order issued pursuant to this article or believes that a person is creating an actual or potential endangerment to the public health because of acts performed in violation of this article or a rule adopted pursuant to this article, 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.

49-355. Small drinking water systems fund; grants; definition

A. The small drinking water systems fund is established in the water infrastructure finance authority of Arizona. The fund consists of monies appropriated by the legislature. Monies in the fund are exempt from lapsing under section 35-190. Interest earned on monies in the fund shall be credited to the fund.

B. Monies from the small drinking water systems fund shall be used to provide grants, including emergency grants, to interim operators, interim managers or owners of small drinking water systems to repair, replace or upgrade water infrastructure as required for compliance with title 40, chapter 2, this chapter or any rule adopted under title 40, chapter 2 or this chapter.

C. On recommendation of the department in consultation with the corporation commission, the water infrastructure finance authority of Arizona may approve a grant from the fund to an interim operator, an interim manager or an owner of a small drinking water system pursuant to this section only if the interim operator, the interim manager or the owner demonstrates that it requires financial assistance to replace, make repairs to, rehabilitate or upgrade the drinking water system infrastructure in order to correct or avoid an interruption in water service or to comply with title 40, chapter 2, this

chapter or any rule adopted under title 40, chapter 2 or this chapter. The department shall include in its recommendation to the water infrastructure finance authority of Arizona a written statement that is signed by the director and that includes a detailed assessment of the direct public benefit of the grant, a certification that disbursement of monies is in the best interests of this state and, if applicable, a determination that the grant is in response to an emergency.

D. Before disbursing monies to an authorized recipient pursuant to this section, the water infrastructure finance authority of Arizona shall enter into a written grant agreement with the recipient. The terms of the agreement shall include at least the following:

1. Performance targets and target dates for matters associated with the grant as determined by the department.

2. Terms for payment of monies to the recipient and repayment to this state as prescribed by subsection F of this section.

E. The written grant agreement may require that a reasonable percentage of the total amount of the grant be withheld until the recipient meets specified performance targets.

F. The water infrastructure finance authority of Arizona may require repayment to this state of a portion or all of the grant monies with interest at an agreed rate and on agreed terms. The repayment may be required if either of the following applies:

1. The water infrastructure finance authority of Arizona in coordination with the department finds that the grant recipient has not met performance targets specified in the written grant agreement on or before the dates specified in the agreement.

2. The written grant agreement prescribes the repayment.

G. Emergency grants made pursuant to this section are exempt from title 41, chapter 23.

H. For the purposes of this section, "small drinking water system" means a public water system as prescribed in section 49-352 that serves ten thousand or fewer persons.

49-356. Water systems; designating lead agency; coordinating council

A. The department of environmental quality is designated as the lead agency to review the operations of water systems and the practices of governmental agencies that oversee and regulate them.

B. A water systems coordinating council is established in the department of environmental quality consisting of representatives of at least the following governmental entities and agencies or private water systems:

1. The department of environmental quality.

2. The corporation commission.

3. The state real estate department.

4. The department of water resources.

5. The department of health services.

6. The office of the state fire marshal in the Arizona department of forestry and fire management.

7. One representative of the health department of a county having a population exceeding one million five hundred thousand persons.

8. One representative of the health department of a county having a population exceeding five hundred thousand but not exceeding one million five hundred thousand persons.

9. One member who is appointed by the director and who represents county planning and zoning departments.

10. One member who is appointed by the director and who represents a city or town with a population of less than ten thousand.

11. One member who is appointed by the director and who represents investor owned water systems.

C. The determination of the number and appointment of representatives for the departments designated in subsection B, paragraphs 1, 4 and 5 of this section shall be made by the director of the respective departments. The determination of the number and appointment of representatives of the state real estate department shall be made by the commissioner of the state real estate department. The determination of the number and appointment of representatives of the office of the state fire marshal shall be made by the state forester. The appointment of representatives under subsection B, paragraphs 7 and 8 of this section shall be made by the director of the department of health services.

D. Additional members may be appointed at the discretion of the council. A representative from the department of environmental quality, selected by the director, shall serve as chairman of the council. The council shall meet at least quarterly and may meet more often to conduct its business.

E. The council shall:

1. Develop public education and information programs for owners, operators and customers of water systems.

2. Identify programs to advise and assist owners and operators of water systems in management, accounting, engineering and other technical areas.

3. Integrate and coordinate information databases among member agencies.

4. Evaluate the statutory and regulatory authority of governmental entities regarding water systems and recommend appropriate changes.

5. Develop any other programs and recommendations that would benefit the owners, operators and customers of water systems and the statutory and regulatory practices of government agencies.

6. Identify sources of funding to accomplish the purposes of this section.

7. Investigate mechanisms to ensure the financial viability of new water systems before they begin operation.

49-357. Joint monitoring and testing

The department may allow water systems that are subject to this article to cooperate in testing for and monitoring water contaminants for compliance with this article if the director determines that the water systems are located in the same general area and that the area is hydrologically connected.

49-358. Water system compliance assistance program

A. The department shall establish a water system compliance assistance program to assist water systems in complying with standards imposed by federal and state law, rules and regulations. The program shall provide information and technical assistance to water systems.

B. The department may contract with a nonprofit organization which provides on-site technical assistance to small water systems and which is dedicated to preserving and enhancing water quality in Arizona.

49-360. Monitoring assistance program for public water systems; fees; monitoring assistance fund; safe drinking water program fund; rules

(Rpld. 1/1/21)

A. The department shall establish a monitoring assistance program to assist public water systems in complying with monitoring requirements under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613; 42 United States Code sections 300f through 300j-26), as amended. The program shall provide for the collection, transportation and analysis of baseline samples from public water systems in a frequency sufficient to keep the systems in compliance with the federal safe drinking water act requirements. At a minimum, the program shall include monitoring for the following categories of contaminants:

1. Volatile organic chemicals.
2. Synthetic organic chemicals.
3. Inorganic chemicals except for copper and lead.
4. Radiochemicals.

B. The department shall contract with one or more private parties or statewide nonprofit organizations representing water systems to implement the monitoring assistance program subject to available funding. Contracts shall be awarded for up to three years, beginning January 1, 1999. Entities with which the department contracts shall:

1. Provide updated monitoring schedules, developed in conjunction with the department, to participating water systems.
2. Take samples for participating water systems, allow for certified operators to take samples and train system personnel to take samples.
3. Assist participating water systems when resampling is required by the federal safe drinking water act.
4. Assist participating water systems to apply for and qualify for available interim monitoring relief and waivers.
5. Provide any other on-site technical assistance necessary to help the participating water systems comply with the monitoring requirements of the federal safe drinking water act.

C. Any public water systems serving more than ten thousand persons may elect to participate in the monitoring assistance program subject to the payment of the fees pursuant to subsection F of this section.

D. The department shall use licensed environmental laboratories as defined in section 36-495 or laboratories certified or designated by the United States environmental protection agency to analyze samples collected under the monitoring assistance program. The department shall establish specific criteria for measuring contractor qualifications and performance.

E. Each environmental laboratory that the department uses pursuant to subsection D of this section shall deliver copies of the analysis results to the water system owner, the monitoring assistance program contractor and the department.

F. The director shall establish fees for the monitoring assistance program to be collected from all public water systems serving up to ten thousand persons. The participating water systems shall remit these fees to the department for deposit in the monitoring assistance fund.

G. The monitoring assistance fund is established consisting of fees collected from participating public water systems pursuant to subsection F of this section. The director shall administer the fund. If the fund has a surplus after execution of the previous year's contract, any surplus in excess of two hundred thousand dollars in any year shall be used to reduce the fee for the subsequent year in a manner consistent with the program

invoicing system. Monies in the fund shall be used to pay the monitoring assistance program contractors, the environmental laboratories used for the purposes of this section and administrative costs incurred by the department. Monies in the fund are exempt from lapsing pursuant to section 35-190. Interest earned on monies in the fund shall be credited to the fund. The allowable administrative costs of the department are limited to no more than fifteen percent of monies deposited in the fund annually or one hundred eighty-four thousand dollars, whichever is less. As used in this subsection, administrative costs include only those costs necessary to do the following:

1. Ensure contractor performance and quality control.
2. Administer the contracts.
3. Collect fees as provided in subsection F of this section.
4. Provide direct technical assistance related to the implementation of the monitoring assistance program only to the extent the department's assistance is required by this section.

H. The safe drinking water program fund is established consisting of monies deposited in the fund pursuant to section 42-5304. The director shall administer the fund. Subject to legislative appropriation, monies in the fund shall be used to pay for the costs of programs required by this article incurred by the department. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. Interest earned on monies in the fund shall be credited to the fund.

I. The department shall adopt rules for the monitoring assistance program.

J. Any site visit made pursuant to this section by a monitoring assistance program contractor shall not be regarded as an inspection or investigation. Enforcement actions shall not be taken as a result of these site visits, except that this section does not affect the authority of the department to enforce this article pursuant to section 49-354.

Article 10 Sewage Treatment Plants

49-361. Sewage treatment plants; operator certification

The department shall adopt and enforce rules to classify sewage collection systems and treatment plants and to certify operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall 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, and the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The rules apply to all sewage treatment plants that receive and treat wastes from common collection sewers and industrial plants but do not apply to septic tanks, to devices that serve a single home or to industrial treatment devices that are used to perform or allow recycling or impounding wastes within the boundaries of the industry's property.

49-362. Calculation of wastewater treatment capacity; gray water; definition

A. The department may adopt rules for calculating a reduction in capacity or design flow for sewage treatment facilities if gray water reuse infrastructure for a subdivision is approved by the department.

B. For the purposes of this section, "subdivision" has the same meaning prescribed in section 32-2101.

Article 11 Local Stormwater Quality Programs

49-371. Local stormwater quality programs; authority; limitations; fee; civil penalty; definition

A. A county that is required by the clean water act to obtain coverage under a national or state pollutant discharge elimination system stormwater program may do all of the following:

1. Develop and implement stormwater pollution prevention plans and stormwater management programs as prescribed by the clean water act.

2. Adopt, amend, repeal and implement any ordinances, rules or regulations necessary to comply with the minimum requirements of the clean water act, including the imposition and collection of fees for issuing and administering permits, reviewing plans and conducting inspections. Any fees imposed pursuant to this section shall not exceed the reasonable costs of the county to issue and administer permits, review plans and conduct inspections. Fees collected pursuant to this section may not be used to fund stormwater infrastructure costs.

3. Adopt rules, regulations or ordinances regulating the use of lands or rights-of-way owned or leased by the county as may be necessary to implement and enforce its national or state pollutant discharge elimination system stormwater management program. Rules, regulations or ordinances adopted pursuant to this paragraph may include provisions for both of the following:

(a) Establishment and enforcement of a county permit program, including conditions for the review, issuance, revision, renewal, revocation, administration and enforcement of a permit.

(b) Establishment of fees for the use of lands or rights-of-way and the discharge of stormwater or other waters onto or across those lands or rights-of-way pursuant to a permit.

4. Enforce the ordinances, rules or regulations adopted pursuant to this section consistent with section 49-372.

5. Seek a civil penalty of not more than two thousand five hundred dollars for each violation. Each day of a violation constitutes a separate offense.

B. An ordinance, rule or regulation adopted pursuant to this section, or a stormwater management program developed and implemented by a county pursuant to this section, shall not be more stringent than or conflict with any requirement of the clean water act.

C. A county that operates a regulated small municipal separate storm sewer system shall conduct its pollutant discharge elimination system stormwater management program and shall limit the application of any ordinance, rule or regulation as follows:

1. In urbanized areas as described in 40 Code of Federal Regulations section 122.32 as necessary to meet the requirements of 40 Code of Federal Regulations section 122.34(b)(3).

2. As necessary to meet the requirements of public education and outreach, public involvement and participation as provided by the clean water act.

D. For the purposes of this section and except as required by the clean water act, a county may not require a permit from any person with a federal or state pollutant discharge elimination system permit regulating the same activity at the same location.

E. For the purposes of this section and except as required by 40 Code of Federal Regulations section 122.34, a county may not regulate any person or activity exempt under 33 United States Code section 1342(l), 40 Code of Federal Regulations section 122.3 or Arizona administrative code 18-9-A902(G).

F. For the purposes of adopting an ordinance, rule or regulation pursuant to this section, a county shall use the definitions prescribed in section 49-255.

G. Fees received by a county pursuant to an ordinance or rule adopted pursuant to this article shall be deposited with the county for use in administering the programs or plans developed and implemented pursuant to this section.

H. Before adopting any ordinance, rule or regulation pursuant to this section, a county shall file with the secretary of state a written statement including a summary of the proposed rule, ordinance or other regulation. The summary shall provide the name of the person with the county to contact with questions or comments. The secretary of state shall publish the written statement in the next issue of the Arizona administrative register at no cost to the county. The county shall make the text of the rule, ordinance or other regulation available to the public at the same time it files the written summary of the rule, ordinance or other regulation with the secretary of state as provided in this subsection. The county shall also comply with the requirements of section 49-112, subsection D, paragraphs 2, 3 and 4.

I. For the purposes of this article, "county" means a county that operates a regulated small municipal separate stormwater system pursuant to 40 Code of Federal Regulations section 122.32.

49-372. Administrative director; enforcement

A. A county may designate and authorize an administrative director for the program or plan prescribed by section 49-371 to perform enforcement duties. If the administrative director determines that a person is in violation of an ordinance, rule or regulation adopted pursuant to section 49-371 or a permit authorized pursuant to that section, the administrative director may take actions consistent with this article and section 49-261.

B. A county that adopts ordinances, rules or regulations pursuant to section 49-371 may enforce those ordinances, rules or regulations as prescribed by sections 49-261, 49-262 and 49-263 for violations of this article as if this article were referenced in sections 49-261, 49-262 and 49-263 except for the following:

1. Appeals under section 49-261, subsection D shall be filed in the superior court.

2. Section 49-262, subsections F, G, H, I and J do not apply.

3. Any other section of statute prescribed in section 49-261, 49-262 or 49-263 does not apply.

C. The county's attorney and the county's designated administrative director have the authority prescribed for the attorney general and the director of environmental quality, respectively, pursuant to sections 49-261, 49-262 and 49-263.

D. Notwithstanding sections 49-262 and 49-263, penalties obtained pursuant to this article by a county shall be deposited into the county general fund.

E. A county shall not receive civil penalties under this section if an interested person, the United States, this state or another political subdivision or agency of this state has received civil penalties or is diligently prosecuting a civil penalty action in a court of the United States or this state, or in an administrative enforcement proceeding, with respect

to the same allegations, standard, requirement or order. This state, and any political subdivision or agency of this state that is or may be affected by a civil, judicial or administrative action, may intervene as a matter of right in any pending civil, judicial or administrative action for purposes of obtaining injunctive or declaratory relief.

Article 12 Local Water Pretreatment

49-391. Local enforcement of water pretreatment requirements; civil penalties

A. A city, town, county or sanitary district of this state may adopt, amend or repeal any ordinances necessary for implementing and enforcing the pretreatment requirements under the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended, and enforce the ordinances by imposing and recovering a civil penalty of not more than twenty-five thousand dollars for each violation as prescribed by this section. For continuing violations, each day may constitute a separate offense.

B. A city, town, county or sanitary district shall not receive civil penalties under this section if an interested person, the United States, this state, or another city, town, county or sanitary district has received civil penalties or is diligently prosecuting a civil penalty action in a court of the United States or this state, or in an administrative enforcement proceeding, with respect to the same allegations, standard, requirement, or order. This state, and any city, town, county or sanitary district of this state that is or may be affected by a civil, judicial or administrative action, may intervene as a matter of right in any pending civil, judicial or administrative action for purposes of obtaining injunctive or declaratory relief.

C. The city, town, county or sanitary district may seek compliance with pretreatment ordinances and recovery of the civil penalties provided by this section either by an action in superior court or by a negotiated settlement agreement. Before a consent decree filed with superior court or a negotiated settlement becomes final, the city, town, county or sanitary district seeking compliance shall provide a period of thirty days for public comment. In determining the amount of a civil penalty the court and the city, town, county or sanitary district shall consider:

1. The seriousness of the violation.
2. The economic benefit, if any, resulting from the violation.
3. Any history of such violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. Such other factors as justice may require.

D. In addition to the remedies provided in this section, enforcement of such ordinances may include injunctive or other equitable relief.

E. All monies collected pursuant to an ordinance adopted under this section shall be deposited with the respective city, town, county or sanitary district.

Chapter 3 AIR QUALITY
Article 1 General Provisions

49-401. Declaration of policy

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standard set by the director of environmental quality shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the director of environmental quality.

49-401.01. Definitions

In this chapter, unless the context otherwise requires:

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

2. "Adverse effects to human health" means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means any significant and widespread adverse effect that may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Arizona Grand Canyon visibility transport commission class I areas" means the following four mandatory federal class I areas in this state that were the subject of recommendations made by the Grand Canyon visibility transport commission pursuant to the clean air act:

(a) Grand Canyon national park.
(b) Petrified Forest national park.
(c) Sycamore Canyon Wilderness.
(d) Mount Baldy Wilderness.

5. "Arizona mandatory federal class I areas" means the following eight national parks and wilderness areas that are designated as mandatory federal class I areas in this state pursuant to the clean air act and does not

include the Arizona Grand Canyon visibility transport commission class I areas:

(a) Pine Mountain Wilderness.

(b) Mazatzal Wilderness.

(c) Sierra Ancha Wilderness.

(d) Superstition Wilderness.

(e) Saguaro Wilderness.

(f) Galiuro Wilderness.

(g) Chiricahua Wilderness.

(h) Chiricahua National Monument Wilderness.

6. "Attainment area" means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.

7. "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activity, which mark the initiation of the change:

(a) For purposes of title I, parts C and D and section 112 of the clean air act and for purposes of applicants that require permits containing limits designed to avoid the application of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures but do not include any of the following, subject to section 49-427, subsection D:

(i) Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil.

(ii) Installation of access roads, driveways and parking lots.

(iii) Installation of ancillary structures, including fences, office buildings and temporary storage structures, that are not a necessary component of an emissions unit or associated air pollution control equipment for which the permit is required.

(iv) Ordering and on-site storage of materials and equipment.

(b) For purposes other than for those applicants prescribed in subdivision (a) of this paragraph, these activities do not include the following, subject to section 49-427, subsection D:

(i) Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil and earthwork cut and fill for foundations.

(ii) Installation of access roads, parking lots, driveways and storage areas.

(iii) Ordering and on-site storage of materials and equipment.

(iv) Installation of underground pipework, including water, sewer, electric and telecommunications utilities.

(v) Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, provided none of these structures impact the design of any emissions unit or associated air pollution control equipment.

(vi) Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, provided none of these supports impact the design of any emissions unit or associated air pollution control equipment.

8. "Building", "structure", "facility" or "installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties and are under the control of the same person or persons under common control except the activities of any vessel. Pollutant-emitting activities shall be

considered as part of the same industrial grouping if they belong to the same major group that has the same two digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement.

9. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401 through 7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

10. "Commence" means, as applied to construction of a source:

(a) For purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction approval or permits required by federal law and this chapter and has done either of the following:

(i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

(b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

11. "Construction" means any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions.

12. "Conventional air pollutant" means any pollutant for which the administrator has promulgated a primary or secondary national ambient air quality standard.

13. "Federally listed hazardous air pollutant" means any air pollutant adopted pursuant to section 49-426.03, subsection A and not deleted pursuant to that subsection.

14. "Grand Canyon visibility transport commission" means the visibility transport commission established pursuant to section 169B of the clean air act for the region affecting the visibility of the Grand Canyon national park.

15. "Grand Canyon visibility transport commission class I areas" means the following sixteen mandatory federal class I areas in the region of Grand Canyon national park that were the subject of recommendations by the Grand Canyon visibility transport commission pursuant to the clean air act:

(a) Grand Canyon national park in Arizona.
(b) Sycamore Canyon Wilderness in Arizona.
(c) Petrified Forest national park in Arizona.
(d) Mount Baldy Wilderness in Arizona.
(e) San Pedro Parks Wilderness in New Mexico.
(f) Mesa Verde national park in Colorado.
(g) Weminuche Wilderness in Colorado.
(h) Black Canyon of the Gunnison Wilderness in Colorado.
(i) West Elk Wilderness in Colorado.
(j) Maroon Bells-Snowmass Wilderness in Colorado.
(k) Flat Tops Wilderness in Colorado.
(l) Arches national park in Utah.
(m) Canyonlands national park in Utah.
(n) Capitol Reef national park in Utah.
(o) Bryce Canyon national park in Utah.
(p) Zion national park in Utah.

16. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a

hazardous air pollutant pursuant to section 49-426.04, subsection A and has not deleted pursuant to section 49-426.04, subsection B.

17. "Hazardous air pollutant reasonably available control technology" means an emissions standard for hazardous air pollutants that the director, acting pursuant to section 49-426.06, subsection C, or the control officer, acting pursuant to section 49-480.04, subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard and any non-air quality health and environmental impacts and energy requirements. For the purposes of this definition, an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.

18. "Maintenance area" means any nonattainment area that has been redesignated by the administrator to attainment status.

19. "Major source" means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title I, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.

20. "Mandatory federal class I areas" means those national parks, monuments and wilderness areas that are included in 40 Code of Federal Regulations sections 81.400 through 81.436 pursuant to the clean air act.

21. "Maximum achievable control technology" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, and that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures that:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.

(b) Enclose systems or processes to eliminate emissions.

(c) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.

(d) Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.

(e) Are a combination of the above.

22. "Minor source" means any stationary or portable source that is not a major source.

23. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest.

24. "Modification" or "modify" means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:

(a) A physical or operational change does not include routine maintenance, repair or replacement.

(b) An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any federally enforceable permit condition or other permit condition that is enforceable as a practical matter.

(c) A change in ownership at a source is not considered a modification.

25. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the administrator pursuant to 42 United States Code section 7409.

26. "Nonattainment area" means any area in this state that is designated as prescribed by section 49-405 and where violations of national ambient air quality standards have been measured.

27. "Nonattainment area plan" means an air pollution control plan developed in accordance with 42 United States Code sections 7501 through 7515.

28. "Permitting authority" means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to section 49-480, subsection A.

29. "Planning agency" means an organization designated by the governor pursuant to 42 United States Code section 7504.

30. "Portable source" means any stationary source that is capable of being transported and operated in more than one county of this state.

31. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter.

32. "Primary standard attainment date" means the date defined within a nonattainment area plan in accordance with 42 United States Code sections 7401 through 7515 or applicable regulations adopted by the United States environmental protection agency by January 1, 1999 and after which date primary national ambient air quality standards may not be violated.

33. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.

34. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution.

35. "State implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the director and submitted to the administrator pursuant to 42 United States Code section 7410.

36. "Stationary source" means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.

37. "Unclassifiable area" means all areas of this state for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

49-402. State and county control

A. The department shall have original jurisdiction over such sources, permits and violations that pertain to:

1. Major sources in any county that has not received approval from the administrator for new source review under the clean air act and prevention of significant deterioration under the clean air act.

2. Smelting of metal ore.

3. Petroleum refineries.

4. Coal fired electrical generating stations.

5. Portland cement plants.

6. Air pollution by portable sources.

7. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by article 5 of this chapter and consistent with the clean air act.

8. Sources that are subject to title V of the clean air act and that are located in a county for which the administrator has disapproved that county's title V permit program if the department has a title V program that has been approved by the administrator. On approval of that county's title V permit program by the administrator, the county shall resume jurisdiction over those sources.

B. Except as specified in subsection A of this section, the review, issuance, administration and enforcement of permits issued pursuant to this chapter shall be by the county or multi-county air quality control region pursuant to the provisions of article 3 of this chapter. After the director has provided prior written notice to the control officer describing the reason for asserting jurisdiction and has provided an opportunity to confer, the county or multi-county air quality control region shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as the director asserts jurisdiction at the state level. The order of the director which asserts state jurisdiction shall specify the matters, geographical area, or sources over which the department shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted, and the provisions of this chapter shall govern, except as provided in this chapter, until jurisdiction is surrendered by the department to such county or region.

C. Portable sources under jurisdiction of the department under subsection A, paragraph 6 of this section may be required to file notice with the director and the control officer who has jurisdiction over the geographic area that includes the new location before beginning operations at that new location.

D. Notwithstanding any other law, a permit issued to a state regulated source shall include the emission standard or standard of performance adopted pursuant to section 49-479, if such standards are more stringent than those adopted by the director and if such standards are specifically identified as applicable to the permitted source or a component of the permitted source. Such standards shall be applied to sources identified in subsection A, paragraph 2, 3, 4 or 5 of this section only if the standard is formally proposed for adoption as part of the state implementation plan.

E. The regional planning agency for each county which contains a vehicle emissions control area shall develop plan revisions containing transportation related air quality control measures designed to attain and maintain primary and secondary ambient air quality standards as prescribed by and within the time frames specified in the clean air act. In developing the plan revisions, the regional planning agency shall consider all of the following:

1. Mandatory employee parking fees.

2. Park and ride programs.
3. Removal of on-street parking.
4. Ride share programs.
5. Mass transit alternatives.
6. Expansion of public transportation systems.
7. Optimizing freeway ramp metering.
8. Coordinating traffic signal systems.
9. Reduction of traffic congestion at major intersections.
10. Site specific transportation control measures.
11. Reversible lanes.
12. Fixed lanes for buses and carpools.
13. Encouragement of pedestrian travel.
14. Encouragement of bicycle travel.
15. Development of bicycle travel facilities.
16. Employer incentives regarding ride share programs.
17. Modification of work schedules.
18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment or maintenance areas.
19. Use of alternative fuels.
20. Use of emission control devices on public diesel powered vehicles.
21. Paving of roads.
22. Restricting off-road vehicle travel.
23. Construction site air pollution control.
24. Other air quality control measures.

F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

49-403. General permits and individual permits; issuance; definition

A. A person may petition the director or control officer for a determination that a particular class or category of sources should be subject to a general permit instead of an individual permit that is issued under this chapter. The petition shall state the grounds for the determination that is the subject of the petition, including how the class or category meets the criteria prescribed in the applicable statute or rule for a general permit. The director or control officer shall either grant or deny the petition within sixty days after its receipt. If the petition is granted, the director or control officer shall initiate the formal process for issuing the general permit within six months. If the petition is denied, the denial is an appealable agency action pursuant to title 41, chapter 6, article 10.

B. For the purposes of this section, "general permit" has the same meaning prescribed in section 41-1001.

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the

extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-405. Attainment area designations

A. The governor may designate the status and classification of areas of this state with respect to attainment of national ambient air quality standards.

B. The director shall adopt rules that both:

1. Describe the geographic extent of attainment, nonattainment or unclassifiable areas of this state for all pollutants for which a national ambient air quality standard exists.

2. Establish procedures and criteria for changing the designations of areas that include all of the following:

(a) Technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries.

(b) Provisions for review of and public comment on proposed changes to area designations.

(c) All area designations adopted by the administrator as of May 30, 1992.

C. On promulgation by the administrator of new or revised national ambient air quality standards for pollutants, the department shall develop proposed recommendations regarding designations for geographic areas of this state as being in attainment or nonattainment or unclassifiable with respect to that standard. The proposed recommendations shall be provided to the governor to assist the governor in submitting recommendations to the administrator pursuant to 42 United States Code section 7407(d)(1)(A). The department shall develop the proposed recommendations as follows:

1. No earlier than five months before the date by which the governor must make the recommendations and no later than four months before that date, the department shall complete a draft of the proposed recommendations and a technical support document that explains the scientific and other bases for the draft proposal.

2. No earlier than five months before the date by which the governor must make the recommendations and no later than four months before that date, the department shall post the draft proposed recommendations and technical support document on the department's website. The department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the proposed recommendations and to any person who had previously requested actual notice of the draft documents. Actual notice of the posting may be provided by electronic or other means.

3. The website posting and actual notices prescribed in paragraph 2 of this subsection shall include notice that until the close of the comment period, any person may submit written comments to the department regarding the draft proposed recommendations and technical support document. The notice shall also include the date, time and location of a public hearing for

the department to receive verbal comments and answer questions concerning the draft proposal. The written comment period shall close and the hearing shall be held no later than forty-six days before the date by which the governor must make the recommendations.

4. After the close of the comment period and after the public hearing and not later than one month before the date by which the governor must make the recommendations, the department shall finalize the proposed recommendations and technical support document and submit them to the governor. The department's final proposed recommendations and technical support document shall:

(a) Consider the comments received by the department pursuant to paragraph 3 of this subsection. For any area that is proposed to be designated a nonattainment area in the final proposed recommendations, the department shall with the submittal to the governor include a responsiveness summary that explains with reasonable particularity the department's consideration of and responses to comments received pursuant to paragraph 3 of this subsection.

(b) Be posted on the department's website within five days after the department's submittal to the governor. The posting shall include any responsiveness summary, and the department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the final proposed recommendations and to any person who had previously requested actual notice of the documents. Actual notice of the posting may be provided by electronic or other means.

D. The department shall post on its website a copy of the governor's recommendations within five days after the recommendations are submitted to the administrator.

E. If the administrator requires the governor's recommendations to be submitted six months after promulgation of the new or revised national ambient air quality standards or earlier, the time frames prescribed in subsections C and D shall be reduced by one-half.

49-406. Nonattainment area plan

A. For any ozone, carbon monoxide or particulate nonattainment or maintenance area the governor shall certify the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for that area under 23 United States Code section 134 as the agency responsible for the development of a nonattainment or maintenance area plan for that area.

B. For any ozone, carbon monoxide or particulate nonattainment or maintenance area for which no metropolitan planning organization exists, the department shall be certified as the agency responsible for development of a nonattainment or maintenance area plan for that area.

C. For any ozone, carbon monoxide or particulate nonattainment or maintenance area, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall, by November 15, 1992, and from time to time as necessary, jointly review and update planning procedures or develop new procedures.

D. In preparing the procedures described in subsection C of this section, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall determine which elements of each revised implementation plan will be developed, adopted, and implemented, through

means including enforcement, by the state and which by local governments or regional agencies, or any combination of local governments, regional agencies or the state.

E. The department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall enter into a memorandum of agreement for the purpose of coordinating the implementation of the procedures described in subsection C and D of this section.

F. At a minimum, the memorandum of agreement shall contain:

1. The relevant responsibilities and authorities of each of the coordinating agencies.

2. As appropriate, procedures, schedules and responsibilities for development of nonattainment or maintenance area plans or plan revisions and for determining reasonable further progress.

3. Assurances for adequate plan implementation.

4. Procedures and responsibilities for tracking plan implementation.

5. Responsibilities for preparing demographic projections including land use, housing, and employment.

6. Coordination with transportation programs.

7. Procedures and responsibilities for adoption of control measures and emissions limitations.

8. Responsibilities for collecting air quality, transportation and emissions data.

9. Responsibility for conducting air quality modeling.

10. Responsibility for administering and enforcing stationary source controls.

11. Provisions for the timely and periodic sharing of all data and information among the signatories relating to:

(a) Demographics.

(b) Transportation.

(c) Emissions inventories.

(d) Assumptions used in developing the model.

(e) Results of modeling done in support of the plan.

(f) Monitoring data.

G. Each agency that commits to implement any emission limitation or other control measure, means or technique contained in the implementation plan shall describe that commitment in a resolution adopted by the appropriate governing body of the agency. The resolution shall specify the following:

1. Its authority for implementing the limitation or measure as provided in statute, ordinance or rule.

2. A program for the enforcement of the limitation or measure.

3. The level of personnel and funding allocated to the implementation of the measure.

H. The state, in accordance with the rules adopted pursuant to section 49-404, and the governing body of the metropolitan planning organization shall adopt each nonattainment or maintenance area plan developed by a certified metropolitan planning organization. The adopted nonattainment or maintenance area plan shall be transmitted to the department for inclusion in the state implementation plan provided for under section 49-404.

I. After adoption of a nonattainment or maintenance area plan, if on the basis of the reasonable further progress determination described in subsection F of this section or other information, the control officer determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, the control officer shall

issue a written finding to the person, and shall provide an opportunity to confer. If the control officer subsequently determines that the failure has not been corrected, the county attorney, at the request of the control officer, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

J. After adoption of a nonattainment or maintenance area plan, if, on the basis of the reasonable further progress determination described in subsection F of this section or other information, the director determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, and that the control officer has failed to act pursuant to subsection I of this section, the director shall issue a written finding to the person and shall provide an opportunity to confer. If the director subsequently determines that the failure has not been corrected, the attorney general, at the request of the director, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

K. Notwithstanding subsections A and B of this section, in any metropolitan area with a metropolitan statistical area population of less than two hundred fifty thousand persons, the governor shall designate an agency that meets the criteria of section 174 of the clean air act and that is recommended by the city that causes the metropolitan area to exist and the affected county. That agency shall prepare and adopt the nonattainment or maintenance area plan. If the governor does not designate an agency, the department shall be certified as the agency responsible for the development of a nonattainment or maintenance area plan for that area.

49-407. Private right of action; citizen suits

A. Except as provided in subsection B, a person having an interest which is or may be adversely affected may commence a civil action in superior court on his own behalf against the director alleging a failure of the director to perform an act or duty under this article or article 2 of this chapter that is not discretionary with the director. The court has jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in any of the following cases:

1. Before sixty days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.

2. If the director determines no violation has occurred, or if the director has initiated an administrative enforcement action by issuing a warning letter, notice of violation or issuing an order.

3. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or emission limitation.

C. In an action commenced under this section the plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party that substantially prevails.

49-408. Air quality conformity; definition

A. Any revision to the state implementation plan adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T shall be no more stringent than required under those regulations. No state agency, metropolitan planning organization or local transportation agency shall take action that

is more stringent than required under federal law in performing any of the following functions:

1. Determining which projects require conformity determinations pursuant to 40 Code of Federal Regulations, part 93, any state implementation plan revisions adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T, or the conformity requirements set forth in the federal implementation plan at 40 Code of Federal Regulations, part 52, subpart D.

2. Determining which projects constitute regionally significant projects within the meaning of any of the regulations identified in paragraph 1.

3. Making conformity determinations pursuant to any of the regulations identified in paragraph 1.

B. Notwithstanding any other provisions of this section, the director may adopt consultation procedures for the public or affected agencies which supplement the requirements of 40 Code of Federal Regulations, part 51, subpart T.

C. For purposes of this section "local transportation agency" means any city, town, county or other local or regional government or agency that receives federal funds designated under Title 23 United States Code or the federal transit act.

49-409. Chlorofluorocarbons; permitted use; retaliation prohibited

A. Notwithstanding any other law, a person may possess, use, manufacture, purchase, install, transport or sell chlorofluorocarbons.

B. The possession, use, manufacture, purchase, installation, transportation or sale of chlorofluorocarbons does not subject any person, this state or any political subdivision of this state to any penalty, fine, retaliatory action or other punitive measure.

49-410. Voluntary Arizona emissions bank; definitions

A. The department shall establish and administer a voluntary Arizona emissions bank for registering the deposit, transfer and use of emission reduction credits. The department shall make information on emission reduction credits deposited in the voluntary Arizona emissions bank easily accessible to the public.

B. This state, any political subdivision of this state and any person that reduces qualifying emissions may apply to the department to certify emission reduction credits to be deposited into the voluntary Arizona emissions bank. To be eligible for certification and deposit in the voluntary Arizona emissions bank, the reduction in qualifying emissions shall be permanent, quantifiable, surplus, real and otherwise enforceable and shall occur after August 6, 1999. This section does not prohibit an activity from receiving credit by means other than the voluntary Arizona emissions bank for emissions reductions.

C. The department shall act on an application submitted under subsection B of this section and certify the amount of the emission reduction credits under rules adopted pursuant to subsection D of this section before the credits may be deposited and used to offset future increases in emissions of air pollutants. Pursuant to title 41, chapter 6, article 8, the department may delegate certification of emission reduction credits to a county or multi-county air quality control region, but shall retain authority to register the deposit, transfer and use of emission reduction credits and administer the voluntary Arizona emissions bank.

D. The department shall adopt rules for the implementation and administration of the voluntary Arizona emissions bank, and establish the criteria the department will use to determine the eligibility of reductions in qualifying emissions for emission reduction credits and the amount of the credits. Except to the extent otherwise required by the clean air act, the rules shall provide for the award of emission reduction credits equal to the full amount of reductions in qualifying emissions that are permanent, quantifiable, surplus, real and otherwise enforceable. The department shall establish by rule a fee system to cover the reasonable costs of administering the voluntary Arizona emissions bank. A county that has been delegated authority to certify emission reduction credits pursuant to subsection C of this section may establish a fee system to cover the reasonable costs of certification in accordance with section 49-112, subsection B. In adopting rules pursuant to this subsection, the department and a county shall consider and make reasonable attempts to mitigate any adverse impact on the commercial trucking industry, including any adverse economic impact and any impact on driver safety.

E. Except to the extent otherwise required by the clean air act, until used or voluntarily retired by the owner, emission reduction credits deposited in the bank:

1. Do not expire.

2. Shall be identified and accounted for in the state implementation plan control strategy for the area in which the reduction in emissions occurred.

3. May not be reduced or withdrawn without permission of the owner.

F. Notwithstanding any other law, this section does not directly or indirectly authorize this state or any political subdivision of this state to establish new or more stringent emissions regulations than provided in existing law for stationary or mobile sources.

G. A fleet owner that applies for emission reduction credits pursuant to this subsection shall specify the composition of its proposed participating fleet.

H. For the purposes of this section, unless the context otherwise requires:

1. "Emission reduction credit" means a reduction in qualifying emissions that has been certified for potential use as an offsetting emission reduction in a permit issued under this chapter, including a permit required by section 173 of the clean air act.

2. "Qualifying emissions" means emissions of any conventional air pollutant, other than elemental lead, or any precursor of a conventional air pollutant from any activity. Qualifying emissions does not include emissions from a fleet of motor vehicles if the fleet operates outside of a nonattainment area.

49-411. Particulate measures; cities, towns, counties, departments; implementation; report

A. On or before March 30 of each calendar year, cities and towns in area A as defined in section 49-541 shall submit a report regarding the following activities to the department on a form developed by the director as prescribed in subsection F of this section:

1. Paving of unpaved roads and shoulders as prescribed in section 9-500.04, subsection A, paragraph 3.

2. Restrictions on the use of leaf blowers as prescribed in section 9-500.04, subsection A, paragraph 5, except those activities exempted under section 9-500.04, subsection H.

3. Restrictions on parking, maneuvering, ingress and egress areas and vacant lots as prescribed in section 9-500.04, subsection A, paragraphs 6, 7 and 8, except those activities exempted under section 9-500.04, subsection H.

4. Certification and use of street sweepers as prescribed in section 9-500.04, subsection A, paragraph 9.

5. Off-road vehicle ordinances and compliance as prescribed in section 9-500.27.

B. On or before March 30 of each calendar year, each county in area A as defined in section 49-541 that has adopted rules pursuant to section 49-479 regarding the following activities shall submit a report to the department on a form developed by the director as prescribed in subsection F of this section:

1. No burn restrictions for any high pollution advisory day as prescribed in section 11-871, subsections B and D.

2. Restrictions on the use of leaf blowers by county employees and contractors and use by private persons in that county as prescribed in section 11-877.

3. Paving of unpaved roads and shoulders as prescribed in section 49-474.01, subsection A, paragraph 4.

4. Restrictions on parking, maneuvering, ingress and egress areas and vacant lots as prescribed in section 49-474.01, subsection A, paragraphs 5, 6 and 7.

5. Certification and use of street sweepers as prescribed in section 49-474.01, subsection A, paragraph 8.

6. Requirements for dust control training and site coordinators for dust control at locations at which dust control permits are required as prescribed in section 49-474.05.

7. Requirements for dust control permit subcontractor registration as prescribed in section 49-474.06.

C. On or before March 30 of each calendar year, the department of transportation shall submit a report to the department of environmental quality on a form developed by the director pursuant to subsection F of this section. The report shall cover restrictions or requirements in contracts or requests for proposals, bids or other construction and service activities overseen by the department in area A as defined in section 49-541 including any requirements incorporated by reference to state law, county ordinance or rule or to a city or town ordinance or rule and required to be contained in bids, requests or contracts or in the administration of other department matters.

D. On or before March 30 of each calendar year, the appropriate departments or agencies responsible for enforcing restrictions on off-highway vehicles, all-terrain vehicles and off-road recreational motor vehicles during high pollution advisory days as prescribed in section 49-457.03 shall submit a report regarding those activities to the department on a form developed by the director pursuant to subsection F of this section.

E. On or before March 30 of each calendar year the department of environmental quality shall prepare a report of its activities related to the following:

1. Development and dissemination of air quality dust forecasts as prescribed in section 49-424, paragraph 11.

2. Production and distribution of printed materials to persons who sell or rent leaf blowers as prescribed in section 49-457.01, subsection F.

3. Production and distribution of printed materials to persons who sell or rent off-highway vehicles, all-terrain vehicles and off-road recreational motor vehicles as prescribed in section 49-457.04, subsections B and C.

4. Dust action general permits including best management practices for regulated activities before and during a day that is forecast to be at high risk of dust generation and at moderate risk of dust generation as prescribed in section 49-457.05, subsections B, C and D.

F. The director shall develop a form to be used for reports required pursuant to this section. The reports prescribed by this section shall contain a narrative description that identifies the type of employee or contractor who performs any inspection, enforcement, training or other actions related to the listed activity and a narrative description of the scope and frequency of the activity.

49-412. Alternative fuel delivery systems; standardized waivers

The department shall develop a standardized waiver application form that shall be used by state agencies, counties, cities, towns, school districts and federal fleets with vehicles that operate primarily in area A as defined in section 49-541 to document and justify the exemption of that entity's vehicles from compliance with the statutory goals for alternative fuel vehicles. The application form shall include, at a minimum, a life cycle cost formula for traditional fuel vehicles and alternative fuel vehicles that incorporates the vehicle's capital costs or conversion costs, annual fuel cost, annual maintenance and repair costs and salvage value, all as adjusted to present value. The department shall deliver to the secretary of state and the secretary of state shall publish in the Arizona administrative register copies of completed waiver applications that are received by the department.

49-413. Clean burning alternative fuels; public refueling

The department shall pursue the establishment of a network of public refueling stations so that members of the public have access throughout the state to alternative fuels as a major goal.

Article 2 State Air Pollution Control

49-421. Definitions

In this article, unless the context otherwise requires:

1. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director.

3. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

4. "Special inspection warrant" means an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the director or his deputies, authorizing him to enter into or upon any public or private property for the purpose of making an inspection authorized by law.

49-422. Powers and duties

A. In addition to any other powers vested in it by law, the department may:

1. Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited, pursuant to sections 35-146 and 35-147, in the account of the department.

2. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.

3. Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:

(a) Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.

(b) Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.

(c) Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the following conditions are met:

1. The actual or potential emissions or air pollution may adversely affect public health or the environment.

2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.

3. An adequate scientific basis for the monitoring, sampling or quantification method exists.

4. The monitoring, sampling or quantification method is reasonably accurate.

5. The cost of the method is reasonable in light of the use to be made of the data.

D. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsections B and C of this section, the director shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. Orders issued and permit conditions imposed pursuant to this section may be appealed as appealable agency actions pursuant to title 41, chapter 6, article 10.

F. On request of the on-scene commander or the department of health services, the department of environmental quality shall assist at a significant chemical or other toxic fire event, excluding chemical or nuclear warfare or biological agents, and shall provide the following services if funding is available and if the director, in the director's professional capacity, determines the department's provision of services is necessary to protect human health and the environment:

1. Collect air samples for likely contaminants resulting from the fire. The department of environmental quality shall coordinate sampling locations, times and pollutants to be sampled with the department of health services and other appropriate health and emergency response officials.

2. Maintain an hourly plume report that includes meteorological conditions that affect dispersal of smoke.

3. In consultation with the department of health services and the on-scene coordinator, prepare a report that includes test results of any sampling, including the sampling rationale and protocol and chain of custody report using applicable environmental protection agency standards. The report shall also include, to the extent practicable, a smoke dispersion map with detail adequate to determine possible areas of impact at the level of detail practicable and a listing of likely releases of any chemical that is categorized by the United States environmental protection agency as a hazardous air pollutant and the corresponding environmental protection agency description of possible health effects of the chemical based on a reliable inventory of hazardous materials at the site or facility.

49-424. Duties of department

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.

2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons, the department shall locate a monitoring system in at least two remote geographic sites.

3. Establish substantive policy statements for identifying air quality exceptional events that take into consideration this state's unique geological, geographical and climatological conditions and any other unusual circumstances. These substantive policy statements shall be developed with the planning agency certified pursuant to section 49-406, subsection A and the county air pollution control department or district.

4. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.

5. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.

6. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 49-432.

7. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.

8. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.

9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.

10. Compile and publish from time to time reports, data and statistics with respect to those matters studied and investigated by the department.

11. Develop and disseminate air quality dust forecasts for the Maricopa county PM-10 nonattainment or maintenance area and any other PM-10 nonattainment or maintenance areas that are designated in this state from and after December 31, 2011. Each forecast shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. At a minimum, the forecasts shall be posted on the department's website and distributed electronically. When developing these forecasts, the department shall consider all of the following:

(a) Projected meteorological conditions for the PM-10 nonattainment or maintenance area, including all of the following:

(i) Wind speed and direction.

(ii) Stagnation.

(iii) Recent precipitation.

(iv) Potential for precipitation.

(b) Existing concentrations of air pollution at the time of the forecast.

(c) Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof

and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

49-426. Permits; duties of director; exceptions; applications; objections; fees

A. A permit shall:

1. Be issued by the director in compliance with the terms of this section.

2. Be required for any person seeking a compliance extension pursuant to section 49-426.03, subsection B, paragraph 3 and section 112(a)(5) of the clean air act and for any person beginning actual construction of or operating any source, except as prescribed in subsection B of this section or section 49-426.01.

B. The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, at a location or property other than a one or two family residence, is rated at less than one million British thermal units per hour. The director may establish by rule additional sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not required to be included in the permit. The director shall not adopt such rules unless the director makes a written finding with supporting facts that the exempted source, class of sources, pollutant-emitting activities or emissions units will have an insignificant adverse impact on air quality. In adopting these rules, the director may consider any rule that is adopted by the administrator pursuant to section 502 of the clean air act and that exempts one or more source categories from the requirement to obtain a permit under title V of the clean air act.

C. Every application for a permit shall be filed in the manner and form prescribed by the director, and shall contain all the information necessary to enable the director to make the determination to grant or deny such application. The director shall establish by rule requirements for permit applications, including the standard application form for title V sources. The director shall establish by rule requirements for applications for general permits. An application for a permit issued pursuant to title V of the clean air act shall include a compliance plan that describes how the applicant will comply with all of the applicable requirements of this chapter and the clean air act, including a schedule of compliance and a schedule under which progress reports will be submitted to the director at least every six months. The director may require that such application include all sources that are used or to be used by the applicant in a certain process or a single facility or location. Before acting on an application for a permit,

the director may require the applicant to furnish further information or further plans or specifications. The director shall act, within a reasonable time, on such application and shall notify the applicant in writing of the proposed approval or denial of such application, except that the director may have a reasonable period of time in which to gather information, inspect premises, and issue such permits. The director shall adopt rules that establish procedures for determining when applications are complete, for processing applications and for reviewing permit actions. The director shall also establish by rule criteria for determining reasonable times for processing permit applications. Rules adopted pursuant to this subsection for permits issued pursuant to title V of the clean air act shall conform to the requirements of section 505(a) of the clean air act.

D. The director shall give notice of a proposed permit for a source required to obtain a permit pursuant to title V of the clean air act once each week for two consecutive weeks in two newspapers of general circulation in the county in which the source is or will be located. The notice shall describe the proposed permit and air contaminants to be emitted and shall state that any person may submit comments on the proposed permit and may request a public hearing. The director shall require the applicant at the time of the first notice to post the site where the source is or may be located. If permitted by federal, state and local law, the posting shall be prominently placed at a site that is under the applicant's legal control and that is adjacent to the nearest public roadway. The posting shall be visible to the public using the public roadway and shall contain the information in the notice that is published by the director. If a public hearing is requested, the director shall require the applicant to place an additional posting that provides notice of the public hearing. A posting shall be maintained until the public comment period on the proposed permit is closed. The director shall make available to the public notices of proposed permits. Each public notice that is issued under this chapter shall be mailed to the permit applicant, to the affected federal, state and local agencies and to those persons who have requested in writing copies of proposed permit action notices. During the public comment period, any person may submit a request to the department to conduct a public hearing for the purpose of receiving oral or written comments on the proposed permit. A written comment shall state the name and mailing address of the person, shall be signed by the person, his agent or his attorney and shall clearly set forth reasons why the permit should or should not be issued. Grounds for comment are limited to whether the proposed permit meets the criteria for issuance prescribed in this section or in section 49-427. The department shall consider and prepare written responses to all comments received during the public comment period including comments made at a public hearing conducted by the department. At the time a final permit decision is made, copies of the department's responses shall be made available to the applicant and any person who commented on the proposed permit.

E. Permits or revisions issued pursuant to this section or section 49-426.01 may be issued subject to such terms and conditions as are consistent with the requirements of this article, article 1 of this chapter and the clean air act and are found by the director to be necessary, following public notice and an opportunity for a public hearing as provided in subsection D or H of this section or in section 49-426.01, and subject to payment of a reasonable fee to be determined as follows:

1. For a source that is required to obtain a permit pursuant to title V of the clean air act, the director shall establish by rule a system of fees that is consistent with and equivalent to that prescribed by section 502 of the clean air act. These rules shall prescribe procedures for increasing the fee each year by the percentage if any by which the consumer price index for

the immediately preceding calendar year exceeds the consumer price index for calendar year 1989.

2. For a facility that is required to obtain a permit pursuant to this chapter but that is not required to obtain a permit pursuant to title V of the clean air act, the director shall determine a fee based on the total actual cost of processing the permit application, but not exceeding twenty-five thousand dollars.

The director shall establish an annual inspection fee, not to exceed the average cost of inspection. The director shall adopt, by rule, criteria for determining fees and for public hearings.

F. Permits issued pursuant to this section shall be issued for a period of five years.

G. Except as provided in subsection H of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in any machine, incinerator or device shall first obtain a permit from the director. Any permit issued by the director under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning off-specification used oil fuel, hazardous waste or hazardous waste fuel.

H. The director may issue a general permit for a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions and if the following conditions are met:

1. A general permit shall comply with all of the requirements for permits prescribed by this section except for the requirements of subsection D of this section and shall be consistent with the clean air act.

2. The director shall give notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county. The notice shall describe the proposed general permit, the general class of sources that would be subject to the proposed permit and the air contaminants to be emitted. The notice shall also state that any person may submit comments on the proposed general permit and may request a public hearing. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued. Grounds for comment are limited to whether the proposed general permit meets the criteria for issuance prescribed in this section or section 49-427.

3. On issuance of a general permit any person seeking to permit a source under this subsection shall submit an application pursuant to subsection C of this section.

4. If the director approves an application to be permitted under a general permit, the director shall provide notice of the approval in a newspaper of general circulation in the county in which the source is or will be located.

5. If a person violates a general permit, the director may require the source to obtain a permit pursuant to subsection A of this section.

6. A general permit may be revoked or revised at any time by the director if necessary to comply with this chapter. If the director revokes or revises a general permit, the director shall notify all persons whose

sources are affected by the revocation or revision and shall include notice of procedures to obtain a permit pursuant to subsection A of this section or notice of procedures for compliance with the revisions.

7. The director by rule shall adopt procedures for the issuance of general permits.

8. The director may adopt conditions in a general permit applicable to sources located in a specified geographic area either independently of or upon petition by a county air pollution control officer.

I. Permits issued pursuant to this section for a source required to obtain a permit under title V of the clean air act shall contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.

2. Enforceable emission limitations and standards.

3. A schedule for compliance, if applicable.

4. The requirement to submit at least every six months the results of any required monitoring.

5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

J. The director may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

K. If an applicant has submitted a timely and complete application for a permit required under this section, but final action has not been taken on that application, failure to obtain a permit shall not be a violation of this chapter unless the delay in final action is due to the failure of the applicant to submit information required or requested to process the application. This subsection does not apply to any person required to obtain a permit before commencing construction of a source as required under this section or any person seeking a permit revision as provided under section 49-426.01.

L. The director may issue a single permit authorizing emissions from similar operations at multiple temporary locations, if the permit includes conditions that will assure compliance with all applicable requirements of this chapter and the clean air act at all locations. Any permit issued pursuant to this subsection shall require the applicant to notify the director in advance of each change in location. In issuing a single permit, the director may require a separate permit fee for operations at each location.

M. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the director shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The director shall require any revisions as expeditiously as practicable, but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

N. Any permit issued pursuant to the requirements of this article and title V of the clean air act to a unit subject to the provisions of title IV of the clean air act shall include conditions prohibiting all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or by the designated representative of the owners or operators.

2. Amounts in excess of applicable emission rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit.

O. The director shall adopt a rule specifying the notice, public participation requirements and other permit issuance procedures for permits that are not issued pursuant to title V of the clean air act.

P. In determining whether a permitting threshold established pursuant to this section applies to an existing source, the director shall exclude particulate matter that is not subject to a national ambient air quality standard under the clean air act.

49-426.01. Permits; changes within a source; revisions

A. The director shall establish by rule provisions to allow changes within a source required to obtain a permit under title V of the clean air act without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the director with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section for title V sources. Rules adopted pursuant to this section at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act and may prescribe a different time limit for notifications associated with emergency conditions.

B. A permit issued pursuant to section 49-426 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or termination or a notification filed pursuant to subsection A of this section does not stay an effective permit condition. The director may require that the applicant provide in writing within a reasonable time any information that the director identifies as necessary for the director to determine if cause exists for revising, revoking and reissuing, or terminating the permit or for determining compliance with permit conditions.

C. The director shall establish by rule procedures related to public and departmental review of changes to a permitted source. For title V sources, these rules at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act. For changes to sources that are not required to obtain a permit under title V of the clean air act, the necessity for and level of public and departmental review of a change shall be determined as prescribed by this chapter and the environmental significance of the change.

49-426.02. Permit shield

The director shall establish by rule conditions under which compliance with a permit or permit revision issued pursuant to this chapter constitutes

compliance with the applicable requirements of this chapter and the clean air act.

49-426.03. Enforcement of federal hazardous air pollutant program; definitions

A. The list of hazardous air pollutants in section 112(b)(1) of the clean air act is adopted as the list of federally listed hazardous air pollutants that will be subject to the program adopted pursuant to subsection B of this section. Within one year after the administrator adds or deletes a pollutant pursuant to section 112(b)(2) or (3) of the clean air act the director shall adopt those revisions for the list adopted pursuant to this subsection unless the director finds that there is no scientific evidence to support the revision.

B. The director shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. After the date specified by the administrator in rules adopted pursuant to section 112 (g)(1)(B) of the clean air act, no person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the director determines that the person will install the maximum achievable control technology for the modification or new major source. For purposes of this paragraph, the terms "major source" and "modification" have the meanings set forth in section 112(a) of the clean air act and implementing regulations adopted by the administrator. A new or modified major source of federally listed hazardous air pollutants means a major source that commences construction or a modification after rules adopted by the director pursuant to this subsection become effective pursuant to section 41-1032. A physical change to a source or change in the method of operation of a source is not a modification subject to this paragraph or paragraph 2 of this subsection if the change complies with section 112(g)(1) of the clean air act.

2. After the date specified by the administrator in rules adopted pursuant to section 112 (g)(1)(B) of the clean air act and until the administrator adopts emissions standards establishing the maximum achievable control technology for a source category or subcategory that includes a source subject to paragraph 1 of this subsection, the director shall determine the maximum achievable control technology for the modification of new major source on a case-by-case basis. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

3. If an existing source submits an application pursuant to section 49-426 which demonstrates that the source has achieved a reduction of ninety per cent or more of federally listed hazardous air pollutants or ninety-five per cent in the case of federally listed hazardous air pollutants that are particulates, the director shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated by the administrator under section 112(d) of the clean air act. The application shall comply with section 112(i)(5) of the clean air act and implementing regulations adopted by the administrator. The alternative emission limitation shall apply for a

period of six years from the compliance date otherwise applicable to the source under section 112(d) of the clean air act.

4. If the administrator fails to adopt a standard for a source category or subcategory within eighteen months after the deadline established for that category or subcategory pursuant to section 112(e)(1) and (3) of the clean air act, the owner or operator of an existing major source in the category or subcategory shall be required to submit a permit application for such source pursuant to section 49-426, and the director, acting in accordance with the procedures adopted pursuant to section 49-426, shall be required to issue a permit establishing maximum achievable control technology for the affected source on a case-by-case basis or, in the alternative, an alternative emission limitation pursuant to paragraph 3 of this subsection. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

5. When the administrator adopts and makes effective standards pursuant to section 112(d) or 112(f) of the clean air act the director shall adopt those standards in the same manner as prescribed by the administrator.

6. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the director shall not require compliance with a numeric emission limit for that pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination of those standards. The provision adopted pursuant to this paragraph shall not apply to sources or modifications that commence construction after the permit program established pursuant to section 49-426 becomes effective under section 502(h) of the clean air act.

C. Where the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall be adopted by the director and shall apply to the regulation of those source categories under subsection B of this section.

D. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the director shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

E. When the administrator makes one of the following findings pursuant to section 112(n)(1)(A) of the clean air act the finding is effective for purposes of the state's administration and enforcement of the federal hazardous air pollutant program in the same manner as prescribed by the administrator:

1. A finding that regulation is not appropriate or necessary.

2. A finding that alternative control strategies should be applied.

49-426.04. State list of hazardous air pollutants

A. The state list of hazardous air pollutants that are subject to regulation consists of all of the following:

1. Hazardous air pollutants that are designated by the director by rule if the director finds all of the following:

(a) There is scientifically reliable evidence on the health or environmental effects of the pollutant adequate to support the designation. The director shall rely on technical protocols appropriate for the development of the list of hazardous air pollutants and shall base the designation on credible medical and toxicological evidence that has been

subjected to peer review. Evidence shall be considered scientifically reliable only if it demonstrates adverse effects to human health or adverse environmental effects from an air pollutant at concentrations that are likely to occur in the environment as a result of emissions of the pollutant into the ambient air.

(b) Emissions, ambient concentrations, bioaccumulation or deposition of the pollutant result in adverse effects to human health or adverse environmental effects.

(c) An adequate and reliable methodology exists for quantifying emissions and ambient concentrations of the pollutant.

2. Federally listed hazardous air pollutants.

B. Except in the case of federally listed hazardous air pollutants, the director may by rule rescind the designation of an air pollutant as a hazardous air pollutant if the director finds that any of the criteria specified in subsection A is not satisfied.

C. Any person may petition the director to designate any air pollutant as a hazardous air pollutant pursuant to subsection A. The director shall within six months of the receipt of such a petition begin the rule making process to designate the pollutant as a hazardous air pollutant pursuant to subsection A, if the petitioner demonstrates or the director finds that all of the criteria specified in subsection A are satisfied.

D. Any person may petition the director to rescind the designation of an air pollutant as a hazardous air pollutant pursuant to subsection B. The director shall within six months of the receipt of such a petition begin the rule making process to rescind the designation of the air pollutant as a hazardous air pollutant pursuant to subsection B, if the petitioner demonstrates or the director finds that any of the criteria specified in subsection A is not satisfied.

E. The director shall not designate a conventional air pollutant as a hazardous air pollutant. This subsection shall not apply to any of the following pollutants:

1. Any pollutant that independently meets the criteria of subsection A and is a precursor to a conventional air pollutant.

2. Any pollutant that is in a class of conventional air pollutants.

49-426.05. Designation of sources of hazardous air pollutants

A. The director may by rule designate a category of sources that are subject to the state program for control of hazardous air pollutants established pursuant to section 49-426.06. In order to designate a category of sources pursuant to this section, the director shall find that emissions of hazardous air pollutants from sources in the category individually or in the aggregate result in adverse effects to human health or adverse environmental effects. In determining whether emissions from a category of sources result in adverse effects to human health or adverse environmental effects, the director shall consider the following:

1. The number of persons likely to be exposed to emissions from sources in the category.

2. Whether the category should be limited to sources with the potential to emit hazardous air pollutants in amounts exceeding the thresholds set forth in section 49-426.06, subsection A, paragraph 2.

3. Whether based on the criteria set forth in this subsection, the category should be limited to sources located in a particular geographic area. The director shall to the maximum extent practicable define source categories so that they cover only those sources for which the finding required by this subsection has been made.

B. In addition to the other authority provided by this chapter, the director may require persons who own or operate sources in a category that the director reasonably believes may qualify for designation pursuant to subsection A of this section to provide the director with notification of the types and amounts of hazardous air pollutants emitted by those sources. The owner or operator of the source shall provide readily available data regarding emissions from the source but shall not be required to conduct performance tests, sampling or monitoring in order to respond to a request under this subsection. Inaccuracies in any notification provided pursuant to this subsection shall not be violations of this chapter, if the inaccuracies result from good faith efforts to identify hazardous air pollutants emitted by the source or to estimate the amount of hazardous air pollutants emitted by the source.

C. When a new source that is within a category that has not been designated pursuant to subsection A of this section submits an application for a permit pursuant to section 49-426, the director may suspend action on the application pending the designation of the category pursuant to subsection A of this section if all of the following conditions are satisfied:

1. The director makes the finding required by subsection A of this section for the category to which the source belongs.

2. The director provides notice of the director's intent to suspend action on the application to the applicant on or before the date that a completeness determination is due under section 49-426.

3. The applicant does not elect to comply with section 49-426.06, subsection C or D.

D. A decision by the director to suspend action on a permit application pursuant to subsection C of this section is appealable pursuant to section 49-428.

49-426.06. State program for control of hazardous air pollutants

A. After publication of the report prescribed by section 49-426.08, subsection B, the director shall by rule establish a state program for the control of hazardous air pollutants that meets the requirements of this section. The program established pursuant to this section shall apply to the following sources:

1. Sources that emit or have the potential to emit with controls ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.

2. Sources that are within a category designated pursuant to section 49-426.05 and that emit or have the potential to emit with controls one ton per year or more of any hazardous air pollutant or two and one-half tons per year of any combination of hazardous air pollutants.

B. After rules adopted pursuant to subsection A of this section become effective pursuant to section 41-1032, a person shall not commence the construction or modification of a source that is subject to this section without first obtaining a permit or permit revision that complies with section 49-426 and subsection C or D of this section. For purposes of determining whether a change constitutes a modification, the director shall by rule establish appropriate de minimis amounts for hazardous air pollutants that are not federally listed hazardous air pollutants. In establishing de minimis amounts, the director shall consider any relevant guidelines or criteria promulgated by the administrator. A physical change to a source or change in the method of operation of a source is not a modification subject to this section if the change satisfies any of the following conditions:

1. The change complies with section 112(g)(1) of the clean air act.

2. The change, together with any other changes implemented or planned by the source, qualifies the source for an alternative emission limitation pursuant to section 112(i)(5) of the clean air act.

3. The change is required under a standard imposed pursuant to section 112(d) or 112(f) of the clean air act and the change is implemented after the administrator promulgates the standard.

C. A permit or permit revision issued to a new or modified source that is subject to the state hazardous air pollutant program under subsection A, paragraph 1 of this section shall impose the maximum achievable control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of maximum achievable control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. A permit or permit revision issued to a new or modified source that is subject to the state hazardous air pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the director shall not require compliance with a numeric emission limit for the pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination thereof. Standards imposed pursuant to this subsection shall apply only to hazardous air pollutants emitted in amounts exceeding the de minimis amounts established by the administrator or by the director pursuant to subsection B of this section. The director shall not impose a standard under this subsection that would require the application of measures that are incompatible with measures required under a standard imposed pursuant to section 49-426.03, subsection B.

D. If the owner or operator of a new source or modification subject to this section establishes that the imposition of maximum achievable control technology or hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects by conducting a scientifically sound risk management analysis and submitting the results to the director with the permit application for the new source or modification, the director shall exempt the source from the imposition of such technology. The risk management analysis may take into account the following factors:

1. The estimated actual exposure of persons living in the airshed of the source.

2. Available epidemiological or other health studies.

3. Risks presented by background concentrations of hazardous air pollutants.

4. Uncertainties in risk assessment methodology or other health assessment techniques.

5. Health or environmental consequences from efforts to reduce the risk.

6. The technological and commercial availability of control methods beyond those otherwise required for the source and the cost of such methods.

E. Where maximum achievable control technology or hazardous air pollutant reasonably available control technology has been established in a general permit for a defined class of sources pursuant to subsection C of this section and section 49-426, subsection H, the owner or operator of a source within that class may obtain a variance from the standard by complying with subsection D of this section at the time the source applies to be

permitted under the general permit. If the owner or operator makes the demonstration required by subsection D of this section and otherwise qualifies for the general permit, the director shall, in accordance with the procedures established pursuant to section 49-426, approve the application and issue a permit granting a variance from the specific provisions of the general permit relating to the standard. Except as otherwise modified by the variance, the general permit shall govern the source.

F. If the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall apply to the regulation of those source categories under subsection B of this section.

G. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the director shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

H. For purposes of subsection A of this section, in determining potential to emit, the director shall consider controls that are enforceable under any federal law or regulation, state or local law or rule or that are inherent in the design of the source.

I. In determining whether emissions from a source or modification exceed the thresholds prescribed by subsection A or B of this section, the director shall exclude particulate matter emissions that consist of natural crustal material and are produced either by natural forces, such as wind or erosion, or by anthropogenic activities, such as agricultural operations, excavation, blasting, drilling, handling, storage, earth moving, crushing, grinding or traffic over paved or unpaved roads, or other similar activities. Nothing in this subsection shall preclude the regulation of emissions of crustal materials as particulate matter pursuant to other sections of this chapter.

49-426.07. Imminent and substantial endangerment

Notwithstanding any permit granted pursuant to section 49-426.03 or 49-426.06, the director may seek injunctive relief as provided in section 49-462 on receipt of evidence that a source or combination of sources is presenting an imminent and substantial endangerment to public health or the environment.

49-426.08. Research program on hazardous air pollutants

A. In cooperation with the department of health services, the United States environmental protection agency and the national academy of sciences, the department of environmental quality shall undertake a comprehensive research program to evaluate the existing risk to public health related to hazardous air pollution and to provide options and recommendations for programs to control the release of hazardous substances into the ambient air. In developing the research program, the department shall prepare a research plan and subject that plan to national peer review. The research program shall be funded by monies from the air quality fund established pursuant to section 49-551 and shall include all of the following:

1. Identification of hazardous substances that are or may be emitted into the ambient air in this state and that present, through inhalation or other routes of exposure, a threat of adverse health effects or adverse environmental effects whether through ambient concentration, bioaccumulation, deposition or otherwise.

2. Identification and evaluation of methods for conducting ambient air monitoring, measuring emissions and performing related analyses.

3. A statewide survey to determine, through direct measurement and appropriate estimation techniques, concentrations of those hazardous substances in the ambient air and to estimate source contributions to ambient concentrations from permitted, nonpermitted and natural sources as well as background concentrations.

4. A statewide survey to identify permitted and nonpermitted sources of these substances and to gather information necessary to quantify emissions.

5. Identification and evaluation of alternative risk assessment methodologies.

6. Evaluation of alternative methods to perform atmospheric modeling and determine receptor-source relationships.

7. An assessment of residual risk after the implementation of controls during the terms of the research program.

8. An evaluation of estimated actual risk from exposure to those substances in this state.

9. An evaluation of the feasibility of, need for and potential methods for establishing ambient air quality standards or health based guidelines for those substances.

10. A public education program to provide information and increase public awareness of hazardous air pollutants and the research program.

11. Other data that the director deems useful or necessary for the purpose of developing the research program.

B. Not later than September 1, 1995, the department shall publish a report of its findings and recommendations resulting from the research program conducted pursuant to this section. The report shall include recommendations as to what changes, if any, are needed to current law to protect public health and the environment from the effects of exposure to hazardous air pollution and shall consider the cost of achieving such changes and any non-air quality health and environmental impacts and energy requirements that may result from the changes. The director shall submit the report to the governor, the president of the senate and the speaker of the house of representatives and shall submit the report for national peer review. The director shall conduct meetings throughout this state in order to present the report to members of the general public and to receive comments.

49-427. Grant or denial of applications; revisions

A. The director shall deny a permit or revision if the applicant does not show that every such source is so designed, controlled or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of this article and the rules adopted by the director.

B. Before acting on an application for a permit, the director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the source described in the application. In the event of such a requirement, the director shall notify the applicant in writing of the type and characteristics of such facilities.

C. In acting on an application for a permit renewal, if the director finds that such a source has been constructed not in accordance with any prior permit or revision issued pursuant to section 49-426.01, the director shall require the person to obtain a permit revision or shall deny the

application for such permit. The director shall not accept any further application for a source so constructed until the director finds that such source has been reconstructed in accordance with the prior permit or a revision, or until a revision to the permit has been obtained.

D. An applicant's performance of any activities that are excluded from the definition of "begin actual construction" under section 49-401.01, paragraph 7, subdivision (a) or (b) shall be at the applicant's risk and shall not reduce the applicant's obligations under this chapter or rules adopted pursuant to this chapter. The director shall evaluate an application for a permit or permit revision and make a decision on the same basis as if the activities allowed under section 49-401.01, paragraph 7, subdivision (a) or (b) had not occurred.

E. After a decision on a permit or revision, the director shall notify the applicant and any person who filed a comment to the permit pursuant to section 49-426 or the revision pursuant to section 49-426.01 in writing of the decision, and if the permit is denied, the reasons for such denial. Service of this notification may be made in person or by first class mail. The director shall not accept a further application unless the applicant has corrected the reasons for the objections specified by the director as reasons for such denial.

49-428. Appeals of permit actions

A. Within thirty days after notice is given by the director of approval, denial or revocation of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision pursuant to section 49-426, subsection D, or on the conditional order pursuant to section 49-438, subsection C, may appeal the decision as an appealable agency action pursuant to title 41, chapter 6, article 10.

B. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against the director alleging that the director has failed to act in a timely manner as provided in section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the director. The court has jurisdiction to require the director to act without additional delay.

49-429. Permit transfers; notice; appeal

A. A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one source to another.

B. Subsection A shall not apply to mobile or portable source which is transferred from one location to another after notification to the department of the transfer.

C. A permit may be transferred from one person to another whether by operation of law or otherwise if the person who holds the permit notifies the director in writing before the transfer. The notice shall be in writing and shall include the name, address, telephone number and statutory agent of the person to whom the permit will be transferred, the effective date of the proposed transfer and other information the director may determine to be necessary by rule. The director shall prescribe procedures for this notice.

D. If the director determines that the transferee is not capable of operating the source in compliance with the requirements of this article, rules adopted under this article and the conditions established in the permit, the transfer shall be denied. In order for the denial to be effective, notice of the director's denial, including the reasons for the

denial, shall be issued within ten working days of the director's receipt of the notice of proposed transfer.

E. Denial of a permit transfer may be appealed as an appealable agency action pursuant to title 41, chapter 6, article 10.

49-430. Posting of permit

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

49-431. Notice by building permit agencies

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 49-426. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the department and shall furnish a copy of such notice to the county air pollution control officer and the department.

49-432. Classification and reporting; confidentiality of records

A. The director, by rule, shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the director.

B. The owner, lessee or operator of a source under the jurisdiction of the department shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable, necessary, and required to determine compliance in a manner acceptable to the director, and shall supply monitoring information as directed in writing by the director. Such devices shall be available for inspection by the director, or his deputies, during all reasonable times.

C. The department shall make available to the public any records, reports or information obtained from any person pursuant to this chapter, including records, reports or information obtained or prepared by the director or a department employee, except that the information or any particular part of the information shall be considered confidential on either of the following:

1. Notice from the person accompanying the information or a particular part of the information that the information, if made public, would divulge the person's trade secrets as defined in section 49-201 or other information that is likely to cause substantial harm to the person's competitive position.

2. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to

an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action filed under this title in superior court.

D. If the director on his own or following a request for disclosure disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and has twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.

E. Notwithstanding subsection C, the department shall make available to the public the following information obtained from any person pursuant to this chapter:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.

3. The existence or level of a concentration of an air pollutant in the environment.

F. Notwithstanding subsection C, the director may disclose, with an accompanying confidentiality notice, any records, reports or information obtained by the director or department employees to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if the information is necessary or required to administer and implement or comply with federal statutes or regulations.

49-433. Special inspection warrant

A. The director and his deputies charged under this chapter or the rules and regulations adopted pursuant to this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior or structures used as private residences.

B. Upon showing by the affidavit of the director or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.

C. The warrant shall be in substantially the following form: "County of _____, state of Arizona to the director or any deputy director in the state of Arizona, proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of _____ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if such premises comply with (section _____ of the Arizona Revised Statutes) and/or (section _____ of regulation or

ordinance). You are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable. Date, signature and title of office." The endorsement on the warrant shall be in substantially the following form: "Received by me _____, 19____, at _____ o'clock _____. (Name of director or deputy director)." The return of officer shall be in substantially the following form: "I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings). Dated this _____ day of _____, 19___ (Name of director or deputy director)."

D. The warrant may be served by the director or his deputies mentioned in its directions, but by no other person except in aid of the director or his deputies, on his requiring it, the director or his deputies being present and acting in its execution.

E. A warrant shall be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of that time, the warrant shall unless executed be void.

F. Any person who wilfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a petty offense.

49-435. Hearings on orders of abatement

An order of abatement issued by the director shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 49-461 unless the person or persons named in the order have appealed the order of abatement as an appealable agency action pursuant to title 41, chapter 6, article 10.

49-437. Conditional orders; standards; rules

A. The director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of this article, any rule adopted pursuant to this article, or any requirement of a permit issued pursuant to this article if the director makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, or impede attainment of the national ambient air quality standards.

2. Either of the following is true:

(a) There has been a breakdown of equipment or upset of operations beyond the control of the petitioner; the source was in compliance before the breakdown or upset; and the breakdown or upset may be corrected within a reasonable time.

(b) There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

B. The director shall adopt rules necessary for the issuance of conditional orders. Such rules shall specify the minimum requirements for petitions, and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of the state implementation plan, the rules adopted by the director shall provide for a public hearing to receive comments on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this article, the rules adopted by the director shall conform to the procedures established for permit revisions pursuant to section 49-426.01.

49-438. Petition for conditional order; publication; public hearing

A. A person who seeks a conditional order shall file a petition with the director.

B. If the issuance of the conditional order requires a public hearing, the director shall set a hearing date within thirty days after the filing of the petition. The hearing date shall be within sixty days after the filing of the petition.

C. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in section 49-444. The notice shall state that any person may submit comments on the petition. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the petition should or should not be granted. Grounds for comment shall be limited to whether the petition meets the criteria for issuance of a conditional order prescribed in section 49-437.

49-439. Decisions on petitions for conditional order; terms and conditions

A. Within thirty days after the conclusion of the hearing held pursuant to section 49-438, subsection B, or, if no hearing is held, within sixty days after the filing of the petition, the director shall deny the petition or grant the petition on such terms and conditions as the director deems appropriate.

B. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include, but not be limited to:

1. A detailed plan for completion of corrective steps needed to conform to the provisions of this article, the rules adopted pursuant to this article, and the requirements of the permit issued pursuant to this article.

2. A requirement that necessary construction shall begin as expeditiously as practicable.

3. Such written reports as may be required.

4. The right to make periodic inspection of the facilities for which the conditional order is granted.

C. A reasonable fee as may be prescribed by the director shall be deposited in the air pollution control permit fund established in section 49-555.

49-440. Term of conditional order; effective date

A. A conditional order issued by the director shall be valid for such period as the director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this article and title V of the clean air act, and three years in the case of any other source that is required to obtain a permit pursuant to this article.

B. A holder of a conditional order may petition the director for renewals of such order. The total term of such renewals and the initial period of such order shall not exceed three years from the date of initial issuance of such order. Such petition may be filed at any time not more than sixty days nor less than thirty days prior to the expiration of such order. The director, within thirty days of receipt of such petition, shall renew the conditional order for one year if the petitioner is in compliance with and conforming to the terms and conditions imposed pursuant to section 49-439. The director may refuse to renew the conditional order, if after a public hearing held within thirty days of receipt of such petition the

director finds that the petitioner is not in compliance with and conforming to the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance with and conforming to such terms and conditions, the director may renew such conditional order for a total term of two additional years if the director finds that such failure to comply and conform is due to conditions beyond the control of such petitioner.

C. If the director amends or adopts any rule imposing conditions on the operation of an air pollution source which have become effective as to the source by reason of the action of the director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the director may renew a conditional order for an additional term. The term of the renewal shall be governed by the preceding subsections of this section, except that the total term of the renewal shall not exceed two years.

D. Except as provided in paragraphs 1 and 2 of this subsection, a conditional order issued by the director shall be effective when issued if:

1. The conditional order varies from the requirements of the state implementation plan, the conditional order shall be submitted to the administrator as a revision to the state implementation plan pursuant to section 110(l) of the clean air act, and shall become effective upon approval by the administrator.

2. The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to title V of the clean air act, the conditional order shall be submitted to the administrator if required by section 505 of the clean air act, and in such case shall be effective at the end of the review period specified in such section, unless objected to within such period by the administrator.

49-441. Suspension and revocation of conditional order

If the terms and conditions of the conditional order are being violated, the director may seek to revoke or suspend the conditional order granted. In such event, the director shall serve notice of such violation on the holder of the conditional order in the manner provided in section 49-444. The notice shall specify the nature of such violation and the date on which a hearing will be held to determine if such a violation has occurred and whether the conditional order should be suspended or revoked. The date of the hearing shall be within thirty days from the date the notice is served upon the holder of the conditional order.

49-442. Appeal of county decisions

When the department has asserted control pursuant to section 49-402, a party may appeal a revocation or modification of an order of abatement or a permit or permit revision previously issued at the county level by appealing pursuant to title 41, chapter 6, article 10.

49-443. Court appeals; procedures

A. Except as provided in section 41-1092.08, subsection H, all final administrative decisions relating to permit actions, permit transfers or orders of abatement are subject to judicial review pursuant to title 12, chapter 7, article 6.

B. When an appeal is taken from a final administrative decision pursuant to title 41, chapter 6, article 10, the order or decision shall remain in effect pending final determination of the matter, unless stayed by

the court, on a hearing after notice to the director and upon a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting the stay.

C. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-444. Notice of hearing; publication; service

A. Any notice of hearing required by this chapter shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county.

B. If the hearing involves any violation of rules adopted pursuant to this chapter, or a conditional order therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional order shall be served pursuant to title 41, chapter 6, article 10.

49-447. Motor vehicle and combustion engine emission; standards

The director shall adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules adopted pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of sections 28-955 and 49-542.

49-448. Limitations

Nothing in this chapter shall be construed so as to:

1. Grant any jurisdiction or authority with respect to air contamination or pollution existing solely within commercial and industrial plants, works or shops owned by or under control of the person causing the air contamination or pollution.

2. Alter or in any other way affect the relations between employers and employees with respect to or concerning any condition of air contamination or pollution, except that a person using a supplemental control system or intermittent control system for purposes of meeting the requirements of an order under section 113 (d) or section 119 of the federal clean air act, as amended or for purposes of receiving an operating permit in the form of a primary nonferrous smelter order authorized under section 119 of the federal clean air act, as amended, may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

49-453. Air quality impact reports; filing

A. Every state agency, board and commission shall prepare an air quality impact report on a state funded project relating to transportation which it proposes to carry out or approve and which it determines may have a significant impact on air quality as it relates to carbon monoxide and ozone. The report shall contain the following information:

1. A description of the proposed project.

2. Any significant impact on air quality of the proposed project.

3. Significant environmental effects which cannot be avoided if the project is implemented.

4. Mitigation measures proposed to minimize any significant air quality effects.

5. Alternatives to the proposed project including car pooling or van pooling lanes and bicycle routes.

6. Any significant irreversible air quality changes which would be involved in the proposed project if it is implemented.

7. The known views of any local groups concerning the proposed project.

B. The report shall also contain a statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the impact report.

C. If authority over a project is shared jointly by an agency and a board or by an agency and a commission, the agency shall prepare the report.

D. This section does not apply to:

1. Emergency repairs to public service facilities which are necessary to maintain service.

2. Projects which are undertaken, carried out or approved by a state agency, board or commission to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been declared by the governor.

3. Projects related to the interstate highway system.

4. State projects involving existing facilities.

E. The report shall be filed with the director.

49-454. Adjusted work hours

A. A business which has five hundred or more employees at one site in area A or area B as defined in section 49-541 shall submit a schedule prior to October 1 of each year to the director which shows an adjusted work hour proposal that will reduce the level of carbon monoxide concentrations caused by vehicular travel.

B. A business which has one hundred or more employees at one site working in area A or area B as defined in section 49-541 may implement an adjusted work hour schedule in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

C. The director shall transmit the reports received pursuant to subsection A of this section to the advisory committee on air quality compliance on or before December 1 of each year.

49-455. Permit administration fund

A. A permit administration fund is established consisting of fees and interest collected pursuant to this article and section 27-515. The director shall administer the fund subject to annual legislative appropriation. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. Monies in the fund collected pursuant to sections 49-426 and 49-426.01 shall be used for the following:

1. In the case of fees collected pursuant to section 49-426, subsection E, paragraph 1, all reasonable direct and indirect costs required

to develop and administer the permit program requirements of title V of the clean air act.

2. In the case of other fees, administering permits or revisions issued pursuant to section 49-426 or 49-426.01 or conducting inspections.

C. Monies in the fund collected pursuant to section 27-515, subsection B, paragraph 5 shall be used to prepare, reproduce and distribute publications pursuant to that paragraph.

D. No more than five percent of the monies in the fund may be used for the collection of monies, unless otherwise provided under title V of the clean air act.

E. No more than five percent of the monies in the fund may be used for general administration of the fund unless otherwise provided under title V of the clean air act.

49-456. Technical assistance for small business; compliance advisory panel

A. After reasonable notice and a public hearing, the director shall submit to the administrator a plan establishing a small business stationary source technical and compliance assistance program consistent with and equivalent to the plan required under section 507 of the clean air act.

B. A compliance advisory panel is established consisting of seven members who are appointed for staggered five-year terms as follows:

1. Two members who are appointed by the governor to represent the general public and who are not owners or representatives of owners of small business stationary sources.

2. Two members who are appointed by the speaker of the house of representatives and who are owners or who represent owners of small business stationary sources.

3. Two members who are appointed by the president of the senate and who are owners or who represent owners of small business stationary sources.

4. One member who is appointed by the director of the department of environmental quality to represent the department.

C. The panel shall:

1. Advise the director on the effectiveness of the small business stationary source technical and environmental compliance assistance program operated pursuant to this section and any such program operated by a county, including the identification of difficulties encountered and the degree and severity of enforcement.

2. Make periodic reports to the director and administrator concerning the compliance of the small business stationary source technical and environmental compliance assistance program operated pursuant to this section and any such program operated by a county with the requirements of the paperwork reduction act (P.L. 96-511; 20 United States Code section 1221), the regulatory flexibility act (P.L. 96-354; 5 United States Code section 601) and the equal access to justice act (P.L. 96-481; 5 United States Code section 504).

3. Review information developed by the department and any county for small business stationary sources to assure that the information is understandable by the general public and advise the director of its findings.

4. Have staff from the small business stationary source technical and environmental compliance assistance program to develop and disseminate reports and advisory opinions.

49-457. Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions

A. A best management practices committee for regulated agricultural activities is established.

B. The committee shall consist of:

1. The director of environmental quality or the director's designee.

2. The director of the Arizona department of agriculture or the director's designee.

3. The dean of the college of agriculture of the university of Arizona or the dean's designee.

4. The state director of the United States natural resources conservation service or the director's designee.

5. One person actively engaged in the production of citrus.

6. One person actively engaged in the production of vegetables.

7. One person actively engaged in the production of cotton.

8. One person actively engaged in the production of alfalfa.

9. One person actively engaged in the production of grain.

10. One soil taxonomist from the university of Arizona college of agriculture.

11. One person actively engaged in the operation of a beef cattle feed lot.

12. One person actively engaged in the operation of a dairy.

13. One person actively engaged in the operation of a poultry facility.

14. One person actively engaged in the operation of a swine facility.

15. One person who is employed by a county air quality department or agency.

C. The governor shall appoint the members designated pursuant to subsection B, paragraphs 5 through 15 of this section for a term of six years. Members may be reappointed. Members are not entitled to compensation for their services but are entitled to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The committee shall elect a chairman from the appointed members to serve a two year term.

E. The committee shall meet at the call of the chairman or at the request of a majority of the appointed members.

F. The department of environmental quality, the Arizona department of agriculture and the college of agriculture of the university of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The department of environmental quality shall provide the necessary staff support and meeting facilities for the committee.

G. A person who commences a regulated agricultural activity shall immediately comply with the agricultural general permit prescribed by this section.

H. The committee shall adopt, by rule, an agricultural general permit specifying best management practices, including record keeping and reporting requirements, for regulated agricultural activities to reduce PM-10 particulate emissions. A person who is subject to an agricultural general permit pursuant to this section is not subject to a permit issued pursuant to section 49-426 except as provided in subsection K of this section. The committee shall adopt by rule a list of best management practices, at least one of which shall be used in areas designated as moderate nonattainment for PM-10 particulate matter and at least two of which shall be used in areas designated as serious nonattainment for PM-10 particulate matter, to demonstrate compliance with applicable provisions of the general permit. Best management practices may vary within the regulated area, according to regional or geographical conditions or cropping patterns.

I. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has not previously been subject to a compliance order issued pursuant to this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the supervisors of the natural resource conservation district in which the person engages in the regulated activity that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

J. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has previously submitted a plan pursuant to subsection I of this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the department that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

K. If a person fails to comply with the plan submitted pursuant to subsection J of this section, the director may revoke the agricultural general permit for that person and require that the person obtain an individual permit pursuant to section 49-426. A revocation becomes effective after the director has provided the person with notice and an opportunity for a hearing pursuant to title 41, chapter 6, article 10.

L. The committee may periodically reexamine, evaluate and modify best management practices. Any approved modifications shall be submitted to the United States environmental protection agency as a revision to the applicable implementation plan.

M. The committee shall develop and commence an education program. The education program shall be conducted by the director or the director's designee or designees.

N. A best management practice adopted pursuant to this section does not affect any applicable requirements in an applicable implementation plan or any other applicable requirements of the clean air act, including section 110(l) of the act (42 United States Code section 7410(l)).

O. The regulation of PM-10 particulate emissions produced by regulated agricultural activities is a matter of statewide concern. Accordingly, this section preempts further regulation of regulated agricultural activities by a county, city, town or other political subdivision of this state.

P. For the purposes of this section, unless the context otherwise requires:

1. "Agricultural general permit" means best management practices that:

(a) Reduce PM-10 particulate emissions from tillage practices and from harvesting on a commercial farm.

(b) Reduce PM-10 particulate emissions from those areas of a commercial farm that are not normally in crop production.

(c) Reduce PM-10 particulate emissions from those areas of a commercial farm that are normally in crop production including prior to plant emergence and when the land is not in crop production.

(d) Reduce PM-10 particulate emissions from those areas of a commercial farm undergoing significant agricultural earthmoving activities.

(e) Reduce PM-10 particulate emissions from the activities of a dairy, a beef cattle feed lot, a poultry facility or a swine facility, including practices relating to the following:

(i) Unpaved access connections.

(ii) Unpaved roads or feed lanes.

(iii) Animal waste handling and transporting.

(iv) Arenas, corrals and pens.

(f) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, reduce PM-10 particulate emissions from the activities of an irrigation district governed by title 48, chapter 19 and affecting those lands and facilities that are under the jurisdiction and control of the district, including practices relating to the following:

(i) Unpaved operation and maintenance roads.

(ii) Canals.

(iii) Unpaved utility access roads.

2. "Applicable implementation plan" means that term as defined in 42 United States Code section 7601(q).

3. "Best management practices" means techniques that are verified by scientific research and that on a case by case basis are practical, economically feasible and effective in reducing PM-10 particulate emissions from a regulated agricultural activity.

4. "Maricopa PM-10 particulate nonattainment area" means the Phoenix planning area as set forth in 40 Code of Federal Regulations section 81.303.

5. "Regulated agricultural activities" means:

(a) Commercial farming practices that may produce PM-10 particulate emissions within the regulated area, including activities of a dairy, a beef cattle feed lot, a poultry facility and a swine facility.

(b) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, activities of an irrigation district that is governed by title 48, chapter 19.

6. "Regulated area" means any of the following:

(a) The Maricopa PM-10 particulate nonattainment area.

(b) Any portion of area A that is located in a county with a population of two million or more persons.

(c) Any other PM-10 particulate nonattainment area established in this state on or after June 1, 2009.

49-457.01. Leaf blower use restrictions and training; leaf blower equipment sellers; informational material; outreach; applicability

A. This section applies in a county with a population of two million or more persons or any portion of a county within an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area.

B. After March 31, 2008, no person may use a leaf blower to blow landscape debris into public roadways.

C. After March 31, 2008, no person may operate a leaf blower except on surfaces that have been stabilized with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, or grass or other continuous vegetative cover, or any combination of those stabilizers.

D. At least once every three years, any person operating a leaf blower for remuneration shall successfully complete training approved by the department on how to operate a leaf blower in a manner designed to minimize the generation of fugitive dust emissions. Any person who is required to be trained under this subsection shall complete initial training no later than December 31, 2008.

E. Any person who rents or sells in the normal course of business equipment that is used for blowing landscape debris shall provide to the buyer or renter of the equipment printed materials that are approved by the department pursuant to this section.

F. The department shall produce printed materials and distribute those materials to persons who sell or rent equipment used for blowing landscape debris. The printed materials shall be designed to educate and inform the user of the equipment on the safe and efficient use of the equipment, including methods for reducing the generation of dust, and shall include information regarding dust control ordinances and restrictions that may be applicable.

G. This section does not apply to any site that has a permit issued by a control officer as defined in section 49-471 for the control of fugitive dust from dust generating operations.

49-457.02. Dust-free developments program; certification; seal

A. The department shall establish the dust-free developments program to encourage and recognize persons and entities that demonstrate exceptional commitment to the reduction of airborne dust in a county with a population of more than two million persons and in the PM-10 nonattainment area that contains the city of Apache Junction. The program shall include a voluntary certification process based on criteria developed by the department.

B. Any person or entity may apply for certification under the program, and if approved, may lawfully use a certification, seal, logo or other similar indicator established by the department. A person or entity that is certified under the program may use the certification for promotional, civic, public relations or public involvement purposes.

C. Notwithstanding section 41-3102, this program does not include a specific expiration date.

49-457.03. Off-road vehicles; pollution advisory days; applicability; penalties

A. In area A, as defined in section 49-541, a person shall not operate an off-highway vehicle, an all-terrain vehicle or an off-road recreational motor vehicle on an unpaved surface that is not a public or private road, street or lawful easement during any high pollution advisory day forecast for particulate matter by the department.

B. This section does not apply to:

1. An event that is intended for off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles and that is endorsed, authorized, permitted or sponsored by a public agency, that occurs on a designated route or area and that includes dust abatement measures at all staging areas, parking areas and entrances.

2. An event that occurs at a facility for which an admission or user fee is charged and that includes dust abatement measures.

3. A closed course that is maintained with dust abatement measures.

4. An off-highway vehicle, all-terrain vehicle or off-road recreational motor vehicle used in the normal course of business or the normal course of government operations.

5. Golf carts that are used as part of a private or public golf course operation.

C. A person who violates this section is subject to:

1. A warning for the first violation.

2. The imposition of a civil penalty of fifty dollars for the second violation.

3. The imposition of a civil penalty of one hundred dollars for the third violation.

4. The imposition of a civil penalty of two hundred fifty dollars for the fourth or any subsequent violation.

D. For violations of this section, the control officer or other enforcement officer shall use a uniform civil ticket and complaint substantially similar to a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the supreme court. The control officer or other enforcement officer may issue citations to persons in violation of this section.

49-457.04. Off-highway vehicle and all-terrain vehicle dealers; informational material; outreach; applicability

A. Any person who rents or sells in the normal course of business off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles, other than golf carts sold to public or private golf courses, shall provide to the buyer or renter of the vehicle printed materials that are approved by the department pursuant to this section.

B. The department shall produce printed materials and distribute those materials to persons who sell or rent off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles. The printed materials shall be designed to educate and inform the user of the vehicle on methods for reducing the generation of dust and shall include information regarding dust control ordinances and restrictions that may be applicable. The department shall make available on the department's website the printed materials in a format that is accessible to the public.

C. This section applies in a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area.

49-457.05. Dust action general permit; best management practices; applicability; definitions

A. This section applies in a county with a population of two million or more persons or any portion of a county within an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area.

B. The director shall issue a dust action general permit for regulated activities, which shall specify the best management practices necessary to reduce or to prevent PM-10 particulate emissions as soon as practicable before and during a day that is forecast to be at high risk of dust generation under a forecast issued by the department pursuant to section 49-424.

C. A person that has a permit issued by the director or a control officer for the control of fugitive dust from dust-generating operations is not required to obtain a dust action general permit under subsection D of this section, except that the person shall implement the control measures required in the permit issued by the director or control officer, including those measures related to wind, to reduce or to prevent PM-10 particulate

emissions as soon as practicable before and during a day that is forecast to be at high risk of dust generation under a forecast issued by the department pursuant to section 49-424. Failure to implement a control measure under this subsection shall only be enforced by the director or control officer that issued the permit. The director or control officer shall not recover penalties for violations of both this subsection and the permit based on the same act or omission.

D. A dust action general permit may be required for any person that owns or conducts a dust-generating operation that is found by the director to have failed to choose and implement an applicable best management practice listed in the dust action general permit as soon as practicable before and during a day that is forecast to be at high risk of dust generation.

E. The dust action general permit shall:

1. Conform to the requirements of section 49-426, subsection H, paragraphs 2 through 6.

2. Specify categories and lists of best management practices that may vary according to regional, site-specific or activity-specific conditions.

3. Include the appropriate monitoring, record keeping and reporting requirements to ensure the enforceability of the provisions.

4. Specify the process by which the director will determine that a person has failed to choose and implement an applicable best management practice and is therefore subject to a permit prescribed by subsection D of this section. The process shall include a means of providing notice to the person of the person's failure and a means by which the person may challenge the determination.

5. Expire after a period of five years, and may be renewed as prescribed by this section.

F. The director may periodically reexamine, evaluate and modify the dust action general permit as prescribed in section 49-426, subsection H, paragraphs 2 through 6. After approval by the director, any modifications to the dust action general permit shall be provided to the control officer and shall be submitted to the United States environmental protection agency as a revision to the applicable implementation plan.

G. A best management practice adopted pursuant to this section does not affect any applicable requirement in an applicable implementation plan or any other applicable requirements of the clean air act, including section 110(l) of the act (42 United States Code section 7410(l)).

H. Voluntary best management practices that are implemented during a day that is forecast by the department pursuant to section 49-424 to be at moderate risk for dust generation shall be considered by the director or control officer as a mitigating factor in any action taken against that person for failing to implement a dust control measure for that day as required by this chapter, a rule or ordinance adopted pursuant to this chapter or a permit issued pursuant to this chapter.

I. For the purposes of this section:

1. "Applicable implementation plan" means that term as defined in 42 United States Code section 7602(q).

2. "Best management practices" means techniques that are verified by scientific research and that on a case-by-case basis are practical, economically feasible and effective in reducing PM-10 particulate emissions from a regulated activity.

3. "Control officer" has the same meaning prescribed in section 49-471.

4. "Disturbed surface area" means a portion of the earth's surface or material that is placed on the earth's surface that has been physically moved, uncovered, destabilized or otherwise modified from its undisturbed

native condition if the potential for the emission of fugitive dust is increased by the movement, destabilization or modification.

5. "Dust-generating operation" means disturbed surface areas, including those of open areas or vacant lots that are not defined as agricultural land and are not used for agricultural purposes according to sections 42-12151 and 42-12152, or any other area or activity capable of generating fugitive dust, including the following:

(a) Land clearing, maintenance and land clean up using mechanized equipment.

(b) Earthmoving.

(c) Weed abatement by discing or blading.

(d) Excavating.

(e) Construction.

(f) Demolition.

(g) Bulk material handling, including hauling, transporting, stacking, loading and unloading operations.

(h) Storage or transporting operations, including storage piles.

(i) Operation of outdoor equipment.

(j) Operation of motorized machinery.

(k) Establishing or using staging areas, parking areas, material storage areas or access routes.

(l) Establishing or using unpaved haul or access roads.

(m) Installing initial landscapes using mechanized equipment.

6. "Fugitive dust" means particulate matter that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening, that can be entrained in the ambient air and that is caused by human or natural activities, including the movement of soil, vehicles, equipment, blasting and wind. Fugitive dust does not include particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering or welding equipment or from pile drivers.

7. "Regulated activity" means all dust-generating operations except for the following:

(a) Normal farm cultural practices as prescribed in section 49-504, paragraph 4 or section 49-457.

(b) Emergency activities that may disturb the soil and that are conducted by any utility or government agency in order to prevent public injury or to restore critical utilities to a functional status.

(c) Establishment of initial landscapes without the use of mechanized equipment, conducting landscape maintenance without the use of mechanized equipment and playing on or maintaining a field used for nonmotorized sports, except that these activities shall not include grading or trenching performed to establish initial landscapes or to redesign existing landscapes.

(d) Rooftop operations for cutting, drilling, grinding or coring roofing tile if that activity is occurring on a pitched roof.

49-458. Regional haze program; authority

The department may participate in interstate regional haze programs that are established by the regional planning organization that is authorized for this region pursuant to 40 Code of Federal Regulations part 51, subpart P and the clean air act.

49-458.01. State implementation plan revision; regional haze; rules

A. The director shall submit to the administrator state implementation plan revisions to address regional haze visibility impairment in mandatory federal class I areas. The state implementation plan revisions submitted to the administrator shall address any of the following as necessary to submit an approvable plan:

1. The applicable time period.
2. A monitoring strategy for regional haze visibility impairment.
3. Calculations of baseline visibility conditions and natural visibility conditions.
4. Comprehensive emissions tracking strategies for clean air corridors.
5. Implementation of stationary source emissions reduction strategies.
6. Provisions addressing mobile source emissions.
7. Programs related to emissions from fire sources defined as wildland fire, including wildfire, prescribed natural fire, wildland fire use, prescribed fire and agricultural burning conducted and occurring on federal, state and private lands.
8. Provisions addressing the impact of dust emissions on visibility impairment.
9. Provisions relating to pollution prevention.
10. Best available retrofit technology requirements.
11. A report that assesses emissions control strategies for stationary source emissions of oxides of nitrogen and particulate matter and the degree of visibility improvement that would result from implemented strategies.
12. A long-term strategy that addresses regional haze visibility impairment.
13. Additional measures necessary to make reasonable progress toward remedying existing and preventing future regional haze in mandatory federal class I areas.
14. For the Arizona Grand Canyon visibility transport commission class I areas, a projection of the improvement in visibility conditions that are expected from the implementation of all measures set forth in the implementation plan.
15. For the eight other Arizona mandatory federal class I areas, provisions for the establishment of reasonable progress goals.
16. Periodic progress reports.

B. The department may establish intrastate market trading programs and participate in interstate market trading programs as necessary to submit an approvable plan under subsection A.

C. The director may adopt rules necessary for the revisions to the state implementation plan that address regional haze.

D. Except as provided in subsection E, the department may meet the requirements of subsection A by submitting plan revisions under 40 Code of Federal Regulations section 51.308 or section 51.309.

E. The department may submit a plan revision under 40 Code of Federal Regulations section 51.309 only if the revision contains a determination pursuant to 40 Code of Federal Regulations section 51.309 (d)(5)(ii) that mobile source emissions from areas within the state do not contribute significantly to visibility impairment in any of the Grand Canyon visibility transport commission class I areas.

49-459. State plan; carbon emissions from power plants

A. The director, in consultation with the corporation commission, the governing bodies of affected public power entities as defined in section

30-801, electric utilities regulated by the corporation commission and independently owned electric generating units shall develop, adopt and enforce a state plan to regulate the emissions of carbon dioxide from existing electric generation units in compliance with rules adopted by the administrator under section 111(d) of the clean air act.

B. On or before the last day of each calendar quarter after July 3, 2015 and until submission of a complete state plan pursuant to subsection F of this section, the director shall transmit a report on actions as prescribed in subsection A of this section to the joint legislative review committee on state plans relating to carbon dioxide emissions from existing power plants.

C. The director may participate in one or more full or partial multijurisdictional plans or agreements, including plans or agreements with Indian tribes, for the purposes of complying with this section.

D. Not less than ninety days before submitting a complete state plan adopted pursuant to subsection A of this section to the administrator, the director shall transmit the proposed state plan to the joint legislative review committee on state plans relating to carbon dioxide emissions from existing power plants for review pursuant to section 41-1291.01. The committee may review the proposed state plan concurrently with any public review required for the plan.

E. The director may not transmit a state plan to the joint legislative review committee on state plans relating to carbon dioxide emissions from existing power plants until the administrator adopts rules under section 111(d) of the clean air act.

F. After review and comment by the joint legislative review committee or if the committee fails to act in a timely manner pursuant to section 41-1291.01, the director may submit a state plan to the administrator for approval.

G. The director may adopt rules to implement subsection A of this section. Any rulemaking conducted pursuant to this section is exempt from the requirement under sections 41-1024 and 41-1052 to submit the rule to the governor's regulatory review council for approval. Before filing a final rule with the secretary of state, the director shall provide the joint legislative review committee on state plans relating to carbon dioxide emissions from existing power plants notice of any rules proposed pursuant to this section at the same time that a notice of proposed rulemaking is submitted to the secretary of state for publication in the administrative register.

H. Submission of a state plan does not impair the ability of any affected state entity to challenge the lawfulness of the federal regulation of carbon dioxide emissions from existing electric generating units and does not constitute a waiver of any claims.

49-460. Violations; production of records

When the director has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules adopted pursuant to this article.

49-461. Violations; order of abatement

When the director has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may serve upon such person by certified mail or in person an order of abatement or may file a complaint in superior court alleging a violation pursuant to section 49-463. The order shall state with particularity the act constituting the violation, shall state in its entirety the specific requirement, provision or rule violated, shall state the duration of the order and shall state that the alleged violator is entitled to a hearing, if such hearing is requested in writing within thirty days after the date of issuance of the order. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. An order issued under this section shall require the persons to whom it is issued to comply with the requirement, provision or rule as expeditiously as practicable. In the case of a source required to obtain a permit pursuant to this article and title V of the clean air act, the order shall require compliance no later than one year after the date the order was issued and may be renewable for no more than one additional year on a showing of good cause to the director.

49-462. Violations; injunctive relief

The attorney general, at the request of the director, shall file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, if the director has reasonable cause to believe that any of the following is occurring:

1. A person has violated or is in violation of any provision of this article, a rule adopted pursuant to this article or a permit issued pursuant to this article.

2. A person has violated or is in violation of an effective order of abatement.

3. A person is creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant, unless that release is subject to enforcement under title 3, chapter 2, article 6.

49-463. Violations; civil penalties

A. A person who violates any provision of this article, any permit or permit condition issued pursuant to this article, any fee or filing requirement, any rule adopted pursuant to this article, an effective order of abatement issued pursuant to this article or any duty to allow or carry out inspection, entry or monitoring activities, is subject to a civil penalty of not more than ten thousand dollars per day per violation. The attorney general at the request of the director shall file an action in superior court to recover penalties provided for in this section.

B. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the director has notified the source of the violation and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the

violation was not continuing in nature. Notice under this section is accomplished by the issuance of a notice of violation or order of abatement or by filing a complaint in superior court that alleges any violation described in subsection A.

C. In determining the amount of a civil penalty under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

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

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

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other factors the court deems relevant.

D. All penalties collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

49-464. Violation; classification; penalties; definition

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 United States Code section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator or director has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.

2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the director pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the director to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material after considering the following criteria:

1. The effect of the permit condition on public health and the environment.

2. The effect of the permit condition on the department's ability to enforce the permit program.

3. The effect of noncompliance with the permit condition on emissions.

4. The effect of the permit condition on the director's ability to determine a source's compliance status.

The director shall adopt the rules required by this subsection and section 49-514, subsection G by November 1, 1993.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the director is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the director pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

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

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. The attorney general may enforce the provisions of this section.

O. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

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

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

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factors as the court deems relevant.

P. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

Q. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the director within twenty-four hours after the source first learned of the violation.

2. The owner or operator of the source provided written notification to the director containing all of the following information within seventy-two hours following the verbal or facsimile notification:

(a) Confirmation of the violation for which verbal or facsimile notification was provided.

(b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

R. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described in this subsection shall be deemed to be advice that no permit was necessary for purposes of this subsection.

S. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

T. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such

knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

U. All civil or criminal penalties or fines assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

V. For purposes of this section, "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. Emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director.

49-465. Air pollution emergency

A. If the director determines that air pollution in any area constitutes or may constitute an emergency risk to the health of those in the area or that national ambient air quality standards are likely to be exceeded, such determination shall be communicated to the governor. The governor may, by proclamation, declare that an emergency exists and may prohibit, restrict or condition the following:

1. Motor vehicle traffic.
2. The operation of retail, commercial, manufacturing, governmental, industrial, or similar activity.
3. Operation of incinerators.
4. The burning or other consumption of fuels.
5. The burning of any materials whatsoever.
6. Any and all other activity which contributes or may contribute to the emergency.

B. If the governor declares that an emergency exists pursuant to subsection A, the governor shall prohibit, restrict or condition the employment schedules for employees of this state and its political subdivisions, and on a voluntary basis only, may encourage private employers to develop similar work rules to restrict vehicle emissions during air quality emergencies. Any unscheduled leave that an employee of this state or its political subdivisions is required to take because of the prohibition, restriction or condition shall be leave with pay.

C. Orders of the governor shall be enforced by the department and the state and local police and air pollution enforcement personnel forces. Those authorized to enforce the orders may use reasonable force required in the enforcement of the orders, and may take reasonable steps required to assure compliance, including but not limited to the following:

1. Enter upon any property or establishment believed to be violating the order and, if a request does not produce compliance, cause compliance with such order.
2. Stopping, detouring, rerouting, and prohibiting vehicle traffic.
3. Disconnecting incinerator or other types of combustion facilities.

49-466. Precedence of actions

For the benefit of the people of the state, court actions and proceedings brought under this article shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-467. Preservation of rights

It is the purpose of this article to provide additional and cumulative remedies to prevent, abate and control air pollution in the state. Nothing contained in this article shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this article, or any act done by virtue thereof, be construed as estopping the state or any municipality, or owners of land from the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Article 3 County Air Pollution Control

49-471. Definitions

In this article, unless the context otherwise requires:

1. "Advisory council" means any county air pollution control advisory council established pursuant to this article.

2. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials or noxious chemicals, or any other material in the outdoor atmosphere.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the board of supervisors.

4. "Appealable agency action":

(a) Means an action that determines the legal rights, duties or privileges of a party.

(b) Does not include any rule, ordinance, order, standard or statement of policy of general application issued by a control officer or board of supervisors to implement, interpret or make specific the legislation enforced or administered by the control officer or board of supervisors.

(c) Does not mean or include any rule that relates to the internal management of a county and that does not affect private rights or interests.

(d) Does not include a decision or action that must be appealed to the hearing board pursuant to section 49-476.01, 49-480.02, 49-482, 49-490 or 49-511 or to a final administrative decision obtained by an administrative appeal under section 49-471.15.

5. "Board of supervisors" means any county board of supervisors.

6. "Control officer" means the executive head of the department authorized or designated to enforce air pollution regulations, or the executive head of an air pollution control district established pursuant to section 49-473.

7. "Final rule" or "final ordinance" means any rule or ordinance approved by the board of supervisors.

8. "Hearing board" means any county air pollution hearing board established pursuant to this article.

9. "Permit" includes all or any part of a county permit, license, certificate, approval, registration, charter or similar form of permission required by law.

10. "Permitting" includes the county process for granting, denying, renewing, revoking, suspending, annulling, withdrawing or amending a permit.

11. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

12. "Provision of law" means all or any part of the federal or state constitution or of any federal or state statute, court rule, executive order or rule or ordinance adopted by a board of supervisors.

13. "Register" means the Arizona administrative register.

14. "Rule" or "ordinance":

(a) Means a county statement of general applicability that is adopted by a board of supervisors and that implements, interprets or prescribes law or policy or that describes the procedure of a county.

(b) Includes prescribing fees or the amendment or repeal of a prior rule or ordinance.

(c) Does not include intra-agency memoranda.

15. "Rule or ordinance making" means the process for formulation and adoption of a rule or ordinance.

16. "Special inspection warrant" means an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the control officer or the control officer's deputies and authorizing the control officer or the control officer's deputies to enter into or upon public or private property for the purpose of making an inspection authorized by law.

17. "Substantive policy statement":

(a) Means a written expression that informs the general public of a current approach to, or opinion of, the requirements of the federal or state constitution, a federal or state statute, a federal, state or county administrative rule, ordinance or regulation or a final judgment of a court of competent jurisdiction, including, if appropriate, the control officer's current practice, procedure or method of action based on that approach or opinion.

(b) Is advisory only.

(c) Does not include internal procedural documents that only affect internal procedures of the county and that do not impose additional requirements or penalties on regulated parties, confidential information or rules or ordinances adopted pursuant to this chapter.

49-471.01. Regulatory bill of rights

A. To ensure fair and open regulation under this article by counties, a person:

1. Is eligible for reimbursement of fees and other expenses if the person substantially prevails by adjudication on the merits against a county in a court proceeding or an administrative appeal brought pursuant to this article.

2. Is entitled to have a county not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 49-471.02.

3. Is entitled to receive the information and notice regarding inspections prescribed in section 49-471.03.

4. May review the full text or summary of notices of rule or ordinance making and the summary of substantive policy statements posted on the county's website as provided in sections 49-471.04, 49-471.08, 49-471.09 and 49-471.11.

5. May participate in the rule or ordinance making process as provided in this article, including an opportunity to provide written or oral comments on notices of proposed rule or ordinance making as provided in sections

49-471.06 and 49-471.08, and having a control officer adequately respond to comments as provided in sections 49-471.07 and 49-471.08.

6. May petition the county in writing that an existing county agency practice or substantive policy statement constitutes a rule or ordinance and have that county agency practice or substantive policy statement be declared void because the practice or substantive policy statement constitutes a rule or ordinance as an appealable agency action under section 49-471.15 or as provided in sections 49-471.12 and 49-497.

7. Is entitled to have a control officer not base a permitting decision under this article in whole or in part on conditions or requirements that are not specifically authorized by a provision of this state's law as provided in section 49-471.10, subsection C.

8. Is entitled to have a control officer identify the legal authority for each condition in a permit issued under this article as provided in section 49-471.10, subsection C.

9. Is entitled to have a county not make a rule or ordinance under a general grant of rule or ordinance making authority to supplement a more specific grant of rule or ordinance making authority as provided in section 49-471.10, subsection D.

10. May inspect all rules or ordinances and substantive policy statements of a county, including a directory of documents, in the office of the county control officer as provided in section 49-471.11.

11. May have a control officer approve or deny the person's permit application within a predetermined period of time as provided in section 49-471.13.

12. May have appealable agency actions heard by a hearing board or administrative law judge as provided in section 49-471.15.

13. May have administrative appeal hearings governed by uniform administrative procedures as set forth in section 49-496 for appeals to the hearing board and title 41, chapter 6, article 10 for appeals to an administrative law judge as provided in section 49-471.15.

14. Is entitled to request a control officer to waive overly burdensome permit procedures and requirements for sources that are not required to obtain a title V permit as provided in section 49-480, subsection M.

15. Is entitled to obtain judicial review of decisions by a hearing board, an administrative law judge or a control officer in appropriate cases as provided in sections 49-497, 49-497.01 and 49-497.02.

16. Is entitled, with the county’s concurrence, to enter settlement agreements with the county to resolve compliance matters without the need for an order, action in court or allegation or finding of violation as provided in section 49-511.

B. The reference to rights in subsection A of this section does not grant any additional rights that are not prescribed in the other sections of this article.

49-471.02. Fees; express authority

The control officer shall not charge or receive a fee unless the fee is expressly authorized by action of the board of supervisors pursuant to statutory authority.

49-471.03. Inspections

The control officer shall comply with section 41-1009, except that section 41-1009, subsection P, paragraph 1 does not apply.

49-471.04. Notice of proposed rule or ordinance making

A. Before a board of supervisors acts on a rule or ordinance that is subject to section 49-112, subsection A or a rule or ordinance that does not otherwise qualify under section 49-471.08, subsection A, a control officer shall:

1. Prepare a notice of a proposed rule or ordinance making. The notice shall include both:

(a) A preamble as prescribed in section 49-471.05.

(b) The full text of the rule or ordinance, including the intended actions to make new sections or amend, repeal or renumber the sections of the rule or ordinance.

2. Post the notice of the proposed rule or ordinance making on the county's website. On posting, the control officer shall notify by first class mail, fax or e-mail each person who has made a timely request to the county for notification of the proposed rule or ordinance making and to each person who has requested notification of all proposed rule or ordinance makings. A county may provide the notification prescribed in this paragraph in a periodic newsletter. A control officer may purge the list of persons who requested notification of proposed rule or ordinance makings once each year by providing notice of the purge in the manner prescribed in this paragraph.

B. Before making, amending, repealing or renumbering a rule or ordinance pursuant to section 49-112, subsection B, a control officer and board of supervisors shall follow the procedure established in this section or in section 49-471.08.

C. The county may terminate a notice of proposed rule or ordinance making at any time during the rule or ordinance making process and shall publish the notice of termination on the county's website.

D. If the county determines that there is a substantial change between the proposed rule or ordinance making and a final rule or ordinance making, the county shall prepare a notice of supplemental proposed rule or ordinance making for public review pursuant to the requirements under subsection A, paragraphs 1 and 2 of this section.

49-471.05. Contents of preamble

The preamble shall include:

1. Reference to the specific statutory authority for the rule or ordinance.

2. The name and address of county personnel with whom persons may communicate regarding the rule or ordinance.

3. For the proposed rule or ordinance, a description of the rule or ordinance making process, including the procedure for requesting an oral proceeding.

4. An explanation of the rule or ordinance, including the control officer's reasons for initiating the rule or ordinance.

5. A reference to any study that the control officer proposes to rely on in the control officer's evaluation of or justification for the rule or ordinance and where the public may obtain or review the study, all data underlying the study, any analysis of the study and other supporting material.

6. An economic, small business and consumer impact statement that includes those elements prescribed in section 41-1055, subsections A, B and C.

7. The proposed effective date of the rule or ordinance.

8. Such other matters as are prescribed by statute and that are applicable to the county or to any specific rule or ordinance or class of rules or ordinances.

9. For a final rule or ordinance, a list of all previous notices appearing in the register addressing the proposed rule or ordinance and a concise explanatory statement prescribed in section 49-471.07, subsection B.

49-471.06. Public participation; written statements; oral proceedings

A. A control officer may informally meet with any interested party to discuss a proposed rule or ordinance making action. A control officer may solicit comments, suggested language or other input on the proposed rule or ordinance. A control officer may post notice of these meetings on the county's website.

B. For at least thirty days after posting of the notice of the proposed rule or ordinance making on the county's website, a control officer shall accept written statements, arguments, data and views on the preamble and proposed rule or ordinance.

C. A person may request in writing to a control officer, within thirty days after the posted notice, an oral proceeding to provide verbal comments on the notice of proposed rule or ordinance making.

D. If a control officer receives a request pursuant to subsection C of this section, the control officer shall schedule an oral proceeding on the proposed rule or ordinance. A control officer shall prepare a notice of oral proceeding and shall allow for at least thirty days between the date of posting the notice on the county's website and the date of the proceeding. A notice for an oral proceeding may be posted concurrently with a notice inviting comment generally. A control officer shall determine a location and time for the oral proceeding that affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule or ordinance, and persons may ask questions regarding the proposed rule or ordinance and present oral argument, data and views on the proposed rule or ordinance.

E. A control officer, or a control officer's designee, shall preside over an oral proceeding on a proposed rule or ordinance. Oral proceedings shall be open to the public and minutes shall be recorded.

F. The board of supervisors may adopt rules or ordinances for the conduct of oral proceedings.

49-471.07. Time and manner of rule or ordinance making

A. A board of supervisors may not act on a rule or ordinance until the rule or ordinance making record is closed pursuant to subsection E of this section.

B. A control officer shall prepare a preamble and a concise explanatory statement before submitting a notice of final rule or ordinance or notice of final supplemental rule or ordinance to the board. The concise explanatory statement shall contain:

1. A description of any change between the proposed rule or ordinance, the final rule or ordinance or notice of final supplemental rule or ordinance.

2. A summary of the comments and arguments for and against the notice and the county's response to the comments and arguments.

C. A final rule or ordinance that is substantially different from the proposed rule or ordinance shall be either resubmitted as a supplemental

notice of proposed rule or ordinance making or terminated pursuant to section 49-471.04, subsections C and D.

D. The following shall be considered to determine whether a final rule or ordinance is substantially different from the proposed rule or ordinance posted on the county's website:

1. The extent to which all persons affected by the rule or ordinance should have understood that the proposed rule or ordinance posted on the county's website would affect their interests.

2. The extent to which the subject matter of the rule or ordinance or the issues determined by that rule or ordinance are different from the subject matter or issues involved in the proposed rule or ordinance posted on the county's website.

3. The extent to which the effects of the rule or ordinance differ from the effects of the proposed rule or ordinance posted on the county's website if it had been made instead.

E. Within one hundred twenty days after the close of the record on the proposed rule or ordinance making, a control officer shall take one of the following actions:

1. Submit the final rule or ordinance to the board of supervisors for consideration of adoption and a vote.

2. Terminate the proceeding by posting a notice of termination on the county's website.

3. Extend the rule or ordinance making process by making additional changes to the proposal and submitting the changes as a supplemental notice of proposed rule or ordinance making.

F. Before the board of supervisors considers the vote on a final notice pursuant to subsection E, paragraph 1 of this section, the board shall place the notice on its meeting agenda. On the board's approval, a final rule or ordinance is effective on the date the board of supervisors adopts the final rule or ordinance. The board of supervisors may specify a later effective date if the board determines that good cause exists for and the public interest will not be harmed by a later effective date.

G. Within thirty days after adoption by the board of supervisors of the notice of final rule or ordinance, a control officer shall post the notice on the county's website. The notice shall contain the preamble and text of the final rule or ordinance.

49-471.08. Expedited rule or ordinance making

A. The county may conduct expedited rule or ordinance making if a rule or ordinance is made pursuant to section 49-112, subsection B and the proposed rule or ordinance is a conforming change to directly reflect federal or state rule or law and is not subject to section 49-471.07, except as otherwise provided in this section and if all of the following requirements are met:

1. The rule or ordinance making is substantially identical to the sense, meaning and effect of the federal or state rule or law from which it is derived.

2. A control officer makes a written finding setting forth the reasons why the rule or ordinance making is necessary and does not alter the sense, meaning or effect of the federal or state rule or law from which it is derived.

3. Fees established in the rule or ordinance do not exceed limits specified in section 49-112.

B. If the requirements of subsection A of this section are met, a control officer shall prepare a notice of expedited rule or ordinance making. The notice shall contain a preamble, the full text of the proposed rule or

ordinance and the written finding required pursuant to subsection A, paragraph 2 of this section. The control officer shall post the notice on the county's website.

C. For at least thirty days after posting the notice of expedited rule or ordinance making on the county's website, a control officer shall accept public comment on the expedited rule or ordinance making.

D. Subject to section 49-471.07, subsections C and D after consideration of any comments, a control officer shall prepare a preamble to include a summary of the arguments for and against the expedited rule or ordinance making and the county's response to the comments and arguments. A control officer shall submit the expedited rule or ordinance making to the board of supervisors for consideration of adoption and a vote. Before the board of supervisors considers the vote on an expedited rule or ordinance making, the board shall place the notice on its meeting agenda. On the board's approval the expedited rule or ordinance is effective on the date the board adopts the expedited rule or ordinance.

E. After adoption by the board of supervisors, a control officer shall post the notice on the county's website. The notice shall contain the full text of the final expedited rule or ordinance and the finding required pursuant to subsection A, paragraph 2 of this section.

49-471.09. County rule or ordinance making record

A. A control officer shall maintain for public inspection an archive of a rule or ordinance making record for each proposed rule or ordinance for which a notice is posted on the county's website and each final rule or ordinance posted on the county's website.

B. The county archive of a rule or ordinance making record shall contain all of the following:

1. Copies of all postings on the county's website with respect to the rule or ordinance.

2. All written petitions, requests, submissions and comments received by the county and all other written materials considered or prepared by a control officer in connection with the rule or ordinance.

3. Any official transcript of oral presentations made in the proceeding on which the rule or ordinance is based, and any tape recording or stenographic record of those presentations, and any memorandum summarizing the contents of those presentations.

4. A copy of any materials, documents or meeting minutes submitted to the board of supervisors.

5. A copy of the final rule or ordinance adopted by the board of supervisors and the preamble, concise explanatory statement and response to comments.

49-471.10. Invalidity of rules or ordinances; prohibited agency action

A. Unless otherwise provided by law, a rule or ordinance is invalid unless it is adopted in substantial compliance with this article.

B. Only the reasons contained in the concise explanatory statement or the preamble may be used by the county as justification for the making of a rule or ordinance in any proceeding in which its validity is at issue.

C. A control officer shall not base an air quality permitting decision in whole or in part on a requirement or condition that is not specifically authorized by a provision of this state's law. No later than September 1, 2000, each permit shall clearly identify the underlying legal authority for each enforceable provision included in the permit. A general grant of

authority in this article does not constitute a basis for imposing a permitting requirement or condition unless a rule or ordinance is adopted pursuant to that general grant of authority that specifically authorizes the requirement or condition.

D. A board of supervisors may adopt a rule or ordinance under a general grant of authority if it does not conflict with a more specific grant of authority.

49-471.11. Substantive policy statements; directory of rules and policy statements

A. A control officer shall post substantive policy statements pertaining to this article on the county's website.

B. A control officer shall post on the county's website at least annually a directory summarizing the subject matter of all currently applicable rules or ordinances and substantive policy statements pertaining to this article. A control officer shall keep copies of this directory and all of its substantive policy statements at one location. The directory, rules or ordinances, substantive policy statements and any materials incorporated by reference in the directory, rules or ordinances or substantive policy statements shall be open to public inspection at the office of the control officer.

C. On or before June 30 of each year, a control officer shall certify to the board of supervisors that the county is in compliance with this section.

49-471.12. Petition for rule or ordinance making or review of practice or policy

Any person, in a manner and form prescribed by the control officer, may petition the control officer requesting initiation of rule or ordinance making or review of an existing practice or substantive policy statement. Within sixty days after submission of a written petition, the control officer shall issue a comprehensive written decision denying or granting the action requested in the petition.

49-471.13. Permitting time frames

For permits issued pursuant to section 49-480, a control officer shall comply with permitting time frames that are no longer than permitting time frames established by the director pursuant to title 41, chapter 6, article 7.1.

49-471.14. Reporting; compliance with time frames

Beginning on September 1, 2001, and on or before September 1 of each year thereafter, each control officer shall report to the control officer's board of supervisors the county's compliance level with overall time frames for the prior fiscal year. The control officer's reports shall include the number of permits issued or denied by the control officer within the applicable time frames.

49-471.15. Administrative appeals

A. A person whose legal rights, duties or privileges were determined by an appealable agency action or who will be adversely affected by an appealable agency action and who exercised any right to comment on the action

provided by law, rule or ordinance may appeal the action to the air pollution hearing board established pursuant to section 49-478 if the grounds for the appeal are limited to issues raised in that party's comments, except that administrative appeals of decisions to approve, deny or revoke a permit, permit revision or conditional order are governed by sections 49-480.02 and 49-482 and hearings on orders of abatement are governed by section 49-490.

B. A notice of appeal under this section shall be filed with the hearing board within thirty days after the county serves notice of the appealable agency action. The notice of appeal shall identify the party, the party's address, the action being appealed and shall contain a concise statement of the reasons for the appeal. The hearing board shall conduct a public hearing on the appeal within the time prescribed by section 49-482.

C. On the concurrence of the control officer and the appealing party, or if a hearing board is unavailable for any reason, any appeals under this section may be heard before an administrative law judge pursuant to section 41-1092.01, subsection J, and the appeal shall be governed by the procedures prescribed in title 41, chapter 6, article 10 and all associated rules adopted by the office of administrative hearings.

D. Under this section, service of notice of an appealable agency action shall be effected by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice to the party to the action to the party's last address of record with the control officer.

49-471.16. Waiver

Except to the extent expressly precluded by another law, a person may waive in writing any right conferred on that person by this chapter.

49-472. Department studies

Upon the request of any county by its board of supervisors, the department shall conduct such studies as are requested, and at the expense of such county, but limited to the county making the request. Such studies shall be made to determine the nature, extent, distribution and sources of air pollution within such county and the possible methods of control and abatement of such pollution within the county making the request. In the conduct of such requested studies the department may seek cooperative arrangements with state universities and other educational institutions of the state, or with other state departments, the county, municipalities or private agencies of any kind which have available facilities or personnel, or both, suitable for the conduct of one or more areas of such research, under the supervision of the department.

49-473. Board of supervisors

A. The board of supervisors of a county, in order to conserve and promote the public health, safety, and general welfare, shall within its territorial limits, or any portion thereof, investigate the degree to which the atmosphere of the county is contaminated by air pollution and the causes, sources, and extent of such air pollution or, if the state is developing a study in the county pursuant to section 49-424, cooperate with and assist the state in such a study.

B. The board of supervisors of a county shall authorize or designate an existing department of the county government or establish an air pollution control district to carry out the necessary investigations, inspections, and enforcement of any rules and regulations adopted pursuant to this article.

C. The board of supervisors of a county may in lieu of the provisions of subsection B, in addition to the joint exercise of powers provided for in title 11, chapter 7, article 3, establish a multi-county air quality control region with one or more other counties by agreement with the board of supervisors of such other county or counties, and contract for the joint administration of this article within such region, including, but not limited to, the joint adoption of regulations and standards and the enforcement thereof by a joint region hearing board. Any region created under this subsection shall be governed by all of the provisions applicable to a county.

49-474. County control boards

The board of supervisors of each county may authorize the board of health or health department of their respective counties in cooperation with the department of environmental quality to:

1. Study the problem of air pollution in the county.
2. Study possible effects on adjoining counties.
3. Cooperate with chambers of commerce, industry, agriculture, public officials and all other interested persons or organizations.
4. Hold public hearings if in their discretion such action is necessary.
5. The board of supervisors by resolution may establish an air pollution control district.

49-474.01. Additional board duties in vehicle emissions control areas; definitions

A. The board of supervisors of a county which contains any portion of area A or area B as defined in section 49-541 shall:

1. In area A, in consultation with the designated metropolitan planning organization, synchronize traffic control signals on all existing and new roadways, within the unincorporated area and at jurisdictional boundaries, which have a traffic flow exceeding fifteen thousand motor vehicles per day.
2. In area A, beginning January 1, 2000, develop and implement plans to stabilize targeted unpaved roads, alleys and unpaved shoulders on targeted arterials. The plans shall address the performance goals, the criteria for targeting roads, alleys and arterials, a schedule for implementation, funding options and reporting requirements.
3. In area A, acquire or utilize vacuum systems or other dust removal technology to reduce the particulates attributable to conventional crack sealing operations as existing equipment is retired.
4. In area A, beginning January 1, 2008, develop and implement plans to stabilize targeted unpaved roads, alleys and unpaved shoulders on targeted arterials. The plans shall address the performance goals, the criteria for targeting the roads, alleys and shoulders, a schedule for implementation, funding options and reporting requirements. Priority shall be given to the following:
   (a) Unpaved roads with more than one hundred average daily trips.
   (b) Unpaved shoulders on arterial roads and other road segments where vehicle use on unpaved shoulders is evident or anticipated due to projected traffic volume.
5. In a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, no later than March 31, 2008, adopt or amend codes or ordinances and, no later than October 1, 2008,

commence enforcement of those codes or ordinances as necessary to require that parking, maneuvering, ingress and egress areas at developments other than residential buildings with four or fewer units are maintained with one or more of the following dustproof paving methods:

(a) Asphaltic concrete.

(b) Cement concrete.

(c) Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate.

(d) A stabilization method approved by the county.

6. In a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, no later than March 31, 2008, adopt or amend codes or ordinances and, no later than October 1, 2009, commence enforcement of those codes or ordinances as necessary to require that parking, maneuvering, ingress and egress areas three thousand square feet or more in size at residential buildings with four or fewer units are maintained with a paving or stabilization method authorized by the county by code, ordinance or permit.

7. In area A, no later than March 31, 2008, adopt or amend codes or ordinances as necessary to restrict vehicle parking and use on unpaved or unstabilized vacant lots.

8. In area A, require that new or renewed contracts for street sweeping on city streets must be conducted with street sweepers that meet the south coast air quality management district rule 1186 street sweeper certification specifications for pick up efficiency and PM-10 emissions in effect on January 1, 2007.

9. In area B, synchronize traffic control signals on roadways with a traffic flow exceeding fifteen thousand motor vehicles per day.

10. Implement adjusted work hours for at least eighty-five per cent of county employees in area A each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

11. In a county with a population of two million or more persons or any portion of a county within an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, no later than March 31, 2008, adopt rule provisions, and, no later than October 1, 2008, commence enforcement of those rule provisions regarding the stabilization of disturbed surfaces of vacant lots that include the following:

(a) Reasonable written notice to the owner or the owner's authorized agent or the owner's statutory agent that the unpaved disturbed surface of a vacant lot is required to be stabilized. The notice shall be given not less than thirty days before the day set for compliance and shall include a legal description of the property and the estimated cost to the county for the stabilization if the owner does not comply. The notice shall be either personally served or mailed by certified mail to the owner's statutory agent, to the owner at the owner's last known address or to the address to which the tax bill for the property was last mailed.

(b) Authority for the county to enter the lot to stabilize the disturbed surface at the expense of the owner if the vacant lot has not been stabilized by the day set for compliance.

(c) Methods for stabilization of the disturbed surface of the vacant lot, the actual cost of stabilization and the fine that may be imposed for a violation of this section.

B. For the purposes of subsection A, paragraph 11 of this section:

1. "Disturbed surface" means a portion of the earth's surface or material placed on the earth's surface that has been physically moved, uncovered, destabilized or otherwise modified from its undisturbed native condition if the potential for the emission of fugitive dust is increased by the movement, destabilization or modification.

2. Vacant lots do not include any site of disturbed surface area that is subject to a permit issued by a control officer that requires control of PM-10 emissions from dust generating operations.

C. The board of supervisors of a county that contains any portion of area A as defined in section 49-541 shall make and enforce ordinances consistent with section 49-588 to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the county and employees whose place of employment is within area A.

D. The board of supervisors in a county that contains any portion of area A shall develop and implement a vehicle fleet plan for the purpose of encouraging and progressively increasing the use of alternative fuels and clean burning fuels in county owned vehicles operating in area A.

E. The plan shall include a timetable for increasing the use of alternative fuels and clean burning fuels in fleet vehicles either through purchase or conversion. The timetable shall reflect the following schedule and percentage of vehicles that operate on alternative fuels or clean burning fuels:

1. At least eighteen per cent of the total fleet by December 31, 1995.

2. At least twenty-five per cent of the total fleet by December 31, 1996.

3. At least fifty per cent of the total fleet by December 31, 1998.

4. At least seventy-five per cent of the total fleet by December 31, 2000 and each year thereafter.

F. The requirements of subsections D and E of this section may be waived on receipt of certification supported by evidence acceptable to the department that the county is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels or clean burning fuels at a projected cost that is reasonably expected to result in net costs of no greater than ten per cent more than the net costs associated with the continued use of conventional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. Applications for waivers shall be filed with the department pursuant to section 49-412. An entity that receives a waiver pursuant to this section shall retrofit fleet heavy-duty diesel vehicles with a gross vehicle weight of eight thousand five hundred pounds or more, that were manufactured in or before model year 1993 and that are the subject of the waiver with a technology that is effective at reducing particulate emissions at least twenty-five per cent or more and that has been approved by the United States environmental protection agency pursuant to the urban bus engine retrofit/rebuild program. The entity shall comply with the implementation schedule pursuant to section 49-555.

G. If the requirements of subsections D and E of this section are met by the use of clean burning fuel, vehicle equivalents under those requirements shall be calculated as follows:

1. One vehicle equivalent for every four hundred fifty gallons of neat biodiesel or two thousand two hundred fifty gallons of a diesel fuel substitute prescribed in section 1-215, paragraph 7, subdivision (b).

2. One vehicle equivalent for every five hundred thirty gallons of the fuel prescribed in section 1-215, paragraph 7, subdivision (d).

H. Subsection A, paragraphs 5, 6 and 7 of this section do not apply to any site that has a permit issued by a control officer as defined in section 49-471 for the control of fugitive dust from dust generating operations.

I. For the purposes of this section, "alternative fuel" and "clean burning fuel" have the same meanings prescribed in section 1-215.

49-474.02. Voluntary lawn and garden equipment emissions reduction program; voluntary lawn and garden equipment emissions reduction fund; criteria

A. A county with a population of more than five hundred thousand persons according to the most recent United States decennial census shall establish and coordinate a voluntary lawn and garden equipment emissions reduction program to begin no later than July 1, 1998. The equipment owner's participation in the program is voluntary. The county may contract with an independent contractor to develop and implement all or any portion of the program. The program shall provide for real and quantifiable emissions reductions. The county shall coordinate the program with any similar programs offered by any person, organization or business.

B. A person may participate in the program if the lawn or garden equipment starts and is used for residential or commercial purposes.

C. A voucher shall be issued in the amount of two hundred dollars to an owner of a commercial lawn mower that is retired and that meets the requirements of this section. The voucher shall be used for the purchase of a lawn mower that generates lower emissions.

D. A voucher shall be issued in the amount of at least one hundred dollars to an owner of a residential lawn mower that is retired and that meets the requirements of this section. The voucher shall be used for the purchase of an electric lawn mower.

E. A voucher shall be issued in the amount of at least fifty dollars to the owner of a gasoline-powered lawn or garden device that is retired and that meets the requirements of this section. The voucher shall be used for the purchase of a lawn or garden device that generates lower emissions.

F. Equipment that is retired pursuant to this section shall not be used in this state.

G. The voluntary lawn and garden equipment emissions reduction fund is established. The director shall administer the fund. The fund shall consist of monies from the following sources:

1. Monies appropriated by the legislature.
2. Monies appropriated by political subdivisions.
3. Gifts, grants and donations.

H. The county shall prepare and submit on December 1 of each year a progress report on the voluntary lawn mower emissions reduction program containing at least the following information:

1. The number of lawn mowers and other lawn and garden devices retired by brand and year of manufacture.
2. The cost-effectiveness of the program in terms of dollars spent per ton of emissions reductions.
3. Any recommendations for improving the effectiveness of the program.
4. The administrative costs of the program.

49-474.03. Voluntary vehicle repair and retrofit program; criteria; fund; report

A. A county with a population of more than four hundred thousand persons according to the most recent United States decennial census shall operate and administer a voluntary vehicle repair and retrofit program in the county. The county shall coordinate the program with the department of environmental quality and the department of transportation. A vehicle owner's participation is voluntary. The county may contract with an

independent contractor to develop and implement all or any portion of the program. The program shall provide for real and quantifiable emissions reduction based on actual emissions testing performed on the vehicle before repair or retrofit.

B. A vehicle owner may participate in the program if all of the following criteria are met:

1. The owner is willing to participate in the program.

2. The vehicle being repaired or retrofitted is functionally operational.

3. The vehicle being repaired or retrofitted is titled in this state, has taken the emissions inspection test pursuant to section 49-542, subsection A, has been registered during the immediately preceding twelve months and has not been unregistered for more than sixty days.

4. The vehicle being repaired or retrofitted is at least twelve years older than the current calendar year.

5. The vehicle is required to take the emissions inspection test and the vehicle fails the emissions test in the emissions inspection results portion of the test. The vehicle owner shall apply to the program not more than sixty days after failing the test.

6. The emissions control system has not been tampered with.

7. The emissions control system has not been removed or disabled, in whole or in part.

8. The vehicle is taken to a participating repair facility. Any repairs performed at an unauthorized repair facility are not eligible for payment.

9. Participation in the program is limited to one vehicle per owner.

10. Motor homes, motorcycles, salvage vehicles and fleet vehicles are not eligible to participate in the program.

C. Notwithstanding subsection B or D of this section, diesel powered motor vehicles with a gross vehicle rating of more than eight thousand five hundred pounds, that are registered in area A or B, as defined pursuant to section 49-541, and that fail any random roadside vehicle test conducted by the state or that fail the emissions test conducted pursuant to section 49-542 are eligible for up to one thousand dollars in repair or retrofit costs from the program. Qualified vehicle owners pursuant to this subsection shall be responsible for one-half of the costs of the qualified repairs and the other half of the costs shall be funded from the program up to one thousand dollars. An owner of vehicles that are registered as a fleet shall not receive more than ten thousand dollars in total monies. No more than twenty-five per cent of the program funds in any year may be used for the purposes of this subsection.

D. The county shall operate and administer an emissions control repair and retrofit program in cooperation with the department that provides that:

1. Vehicle owners who qualify for the repair and retrofit program shall pay the first one hundred fifty dollars as a copayment.

2. Vehicles that require more than seven hundred dollars in repair costs are not eligible unless the vehicle owner chooses to pay additional costs.

3. A vehicle that is able to accept a retrofit kit shall have a retrofit kit installed. A vehicle that requires more than eight hundred dollars in aggregated retrofit parts and labor costs is not eligible for the program unless the vehicle owner pays the additional costs.

E. A county with a population of more than one million two hundred thousand persons shall operate and administer a program to replace catalytic converters on motor vehicles that fail to meet emissions standards due to failure of the catalytic converter system if that failure is not the result of tampering.

F. The voluntary vehicle repair and retrofit program fund is established. The director shall administer the fund. Not more than five per cent of the monies in the fund may be used for the purpose of educating the general public about the program and eligibility for the program. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.
2. Monies appropriated by political subdivisions.
3. Monies deposited pursuant to section 49-551, subsection B.
4. Gifts, grants and donations.

G. By December 1 of each year the county shall prepare and submit a progress report to the department of environmental quality, the department of transportation, the speaker of the house of representatives, the president of the senate, the governor, the secretary of state and the director of the Arizona state library, archives and public records on the voluntary vehicle repair and retrofit program that contains at least the following information:

1. The number of vehicles repaired or retrofitted by model year.
2. The cost-effectiveness of the program in terms of dollars spent per ton of vehicle emissions reductions.
3. Any recommendations for improving the effectiveness of the program.
4. The administrative costs of the program.

49-474.04. Voluntary vehicle repair and retrofit program advisory committee

The board of supervisors shall appoint an advisory committee representing the department of transportation, the department of environmental quality and the parties affected by the voluntary vehicle repair and retrofit program, including automobile hobbyists and the automotive aftermarket products industry, to advise and make recommendations on the development and implementation of the program. Members shall be appointed for staggered terms of two years. Initial terms shall be determined by lot.

49-474.05. Dust control; training; site coordinators

A. This section applies in a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area.

B. No later than January 1, 2008, the control officer shall develop and implement basic and comprehensive training programs for the suppression of PM-10 emissions from sources of PM-10 that are subject to a permit issued by a control officer that requires control of PM-10 emissions from dust generating operations. The control officer may approve training developed and provided by a third party and the board of supervisors may adopt rules prescribing standards for dust control training.

C. At least once every three years, the following persons are required to successfully complete basic dust control training:

1. The site superintendent or other designated on-site representative of the permit holder if present at a site that has more than one acre of disturbed surface area that is subject to a permit issued by a control officer requiring control of PM-10 emissions from dust generating operations.
2. Water truck and water pull drivers.

D. Persons who are required to be trained under this section shall complete the training no later than December 31, 2008. All persons who have successfully completed training during the 2006 and 2007 calendar years are deemed to have satisfied this requirement if the training program completed

was conducted or approved by a county air pollution control officer. Completion of the training required under subsection G satisfies the requirements of this subsection.

E. No later than June 30, 2008, the permittee for any site of five acres or more of disturbed surface area subject to a permit issued by a control officer requiring control of PM-10 emissions from dust generating operations shall have on site at least one dust control coordinator trained in accordance with this section at all times during primary dust generating operations related to the purposes for which the dust control permit was obtained.

F. A dust control coordinator has full authority to ensure that dust control measures are implemented on site, including conducting inspections, deployment of dust suppression resources and modification or shutdown of activities as needed to control dust. The dust control coordinator shall be responsible for managing dust prevention and dust control on the site.

G. At least once every three years, the dust control coordinator shall successfully complete a comprehensive dust control class conducted or approved under subsection A by the county air pollution control officer with jurisdiction over the site. The dust control coordinator shall have a valid dust training certification identification card readily accessible on site while acting as a dust control coordinator. All persons having successfully completed training during the 2006 and 2007 calendar years are deemed to have satisfied this requirement if the training program completed was conducted or approved by a county air pollution control officer.

H. Subsections C and D do not apply when on-site dust generating operations are conducted by a permittee who is required to obtain a single permit for multiple noncontiguous sites that is issued by a control officer and that requires control of PM-10 emissions.

I. The requirements of subsections E and F lapse if all of the following apply:

1. The area of the disturbed surface area is less than five acres.

2. The previously disturbed areas are stabilized in accordance with the requirements of applicable rules.

3. The permittee provides notice of the acreage stabilized to the control officer.

J. Permittees who are required to obtain a single permit for multiple noncontiguous sites that is issued by a control officer and that requires control of PM-10 emissions from dust generating operations shall have on sites with greater than one acre of disturbed surface area at least one individual who is designated by the permittee as a dust control coordinator trained in accordance with subsection C. The dust control coordinator shall be present on site at all times during primary dust generating activities that are related to the purposes for which the permit was obtained. This subsection does not apply to permittees subject to subsections B and C.

49-474.06. Dust control; subcontractor registration; fee

A. In an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, a subcontractor who is engaged in dust generating operations at a site that is subject to a permit that is issued by a control officer and that requires control of PM-10 emissions from dust generating operations shall register with the control officer by submitting information in the manner prescribed by the control officer. The control officer shall issue a registration number after payment of the fee authorized under subsection C.

B. The subcontractor shall have its registration number readily accessible on site while conducting any dust generating operations.

C. The control officer may establish and assess a fee for the registration required under subsection A based on the total cost of processing the registration and issuance of a registration number.

49-474.07. Voluntary diesel equipment retrofit program; criteria; inventory; permits

A. A county with a population of more than four hundred thousand persons shall operate and administer a voluntary diesel emissions retrofit program in the county for the purpose of reducing particulate emissions from diesel equipment. The program shall provide for real and quantifiable emissions reductions based on actual emissions reductions by an amount greater than that already required by applicable law, rule, permit or order and computed based on the percentage emissions reductions from the testing of the diesel retrofit equipment prescribed in subsection C as applied to the rated emissions of the engine and using the standard operating hours of the equipment.

B. A person may participate in the program if both of the following apply:

1. The person is the owner of diesel powered equipment that requires a permit issued pursuant to this article for lawful operation.

2. The person reports to the control officer on the type of equipment that is retrofitted, provides a method for calculating the emissions reductions achieved that is approved by the control officer and provides evidence that the retrofitted equipment is actually used in a manner that results in lower particulate emissions with no increase in emissions of other pollutants.

C. The voluntary diesel retrofit program shall provide for the following:

1. Each person who participates shall allocate to the air quality emissions reduction inventory for that county one-half of the total particulate emissions reduction achieved through that person's retrofit of diesel equipment operating at the permitted site whether or not that equipment is required to have a permit.

2. Each person who participates shall retain one-half of the total particulate emissions reduction achieved through that person's retrofit of equipment at the site for purposes of receiving a modification to an existing permit or a provision in a new permit that allows for extended hours of operation for the permitted equipment, as compared to the existing permit, or for new permits, as compared to permits for similar equipment.

3. The diesel emissions reduction equipment that is retrofitted shall be registered with the department of environmental quality with notice to the applicable county, shall be tested with an ISO 8178 test by a properly equipped laboratory and shall demonstrate at least a thirty-five per cent reduction in particulate pollution with no increase in the generation or emission of other regulated pollutants. This paragraph applies without regard to whether the participant is required to obtain an air quality permit for the equipment.

4. The control officer shall provide a method for determining the participant's eligibility for the program and for the modification of existing permits or for incorporating this program's provisions into the terms of any applicable new permits as well as any reporting requirements to ensure continued use of the emissions reduction measures.

D. This section does not authorize a permit condition or a modification to a permit condition that would violate a requirement of the

clean air act, this chapter or a rule adopted under this chapter, including the national ambient air quality standards. This section does not authorize the use of reductions in mobile source emissions for purposes of determining the applicability of new source review requirements.

49-475. Powers and duties

The air pollution control district established by the board of supervisors shall have the power to:

1. Have perpetual succession.
2. Sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. Adopt a seal and alter it at its pleasure.
4. Take by grant, purchase, gift, or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
5. Lease, sell or dispose of any property or any interest therein whenever in the judgment of the air pollution control board such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

49-476. Authorization to accept funds or grants

The department of environmental quality, county health departments, or boards of supervisors may accept and expend in accordance with the terms of the grant any funds granted to it for research of air pollution by the federal government, any political subdivision of the state, any agency or branch of the federal or state governments, or any private agency.

49-476.01. Monitoring

A. The control officer may require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the control officer either:

1. Determines that monitoring, sampling or other studies are necessary to determine the effects of the facility on levels of air pollution.
2. Has reasonable cause to believe a violation of this article, rules adopted pursuant to this article or a permit issued pursuant to this article has been committed.
3. Determines that those studies or data are necessary to accomplish the purposes of this article, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The board of supervisors shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions or air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the board shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the control

officer may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the control officer shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The control officer may require such monitoring, sampling or other quantification by permit or order if the control officer determines in writing that all of the following conditions are met:

1. The actual or potential emissions of air pollution may adversely affect public health or the environment.

2. An adequate scientific basis for the monitoring, sampling or quantification method exists.

3. The monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.

4. The monitoring, sampling or quantification method is reasonably accurate.

5. The cost of the method is reasonable in light of the use to be made of the data.

D. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsection B and C of this section, the control officer shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. Orders issued or permit conditions imposed pursuant to this section shall be appealable to the hearing board in the same manner as that prescribed for orders of abatement in section 49-490 and for permit conditions in section 49-482.

49-477. Advisory council

The board of supervisors may appoint an advisory council of such membership as it deems necessary to advise and consult with the board of supervisors, the control agency, and the control officer in effecting the purposes of this article.

49-478. Hearing board

A. The board of supervisors shall appoint an air pollution hearing board.

B. The hearing board shall consist of five members. The five members shall be knowledgeable in the field of air pollution. At least one member of the board shall be an attorney licensed to practice law in this state. At least three members shall not have a substantial interest, as defined in section 38-502, in any person required to obtain a permit pursuant to this article. Each board member shall serve for a term of three years.

C. The hearing board shall select a chairman and vice-chairman and such other officers as it deems necessary.

D. The board of supervisors may authorize compensation for hearing board members, and may authorize reimbursement for subsistence and travel, including travel from and to their respective places of residence when on official business.

49-479. Rules; hearing

A. The board of supervisors shall adopt such rules as it determines are necessary and feasible to control the release into the atmosphere of air

contaminants originating within the territorial limits of the county or multi-county air quality control region in order to control air pollution, which rules, except as provided in subsection C shall contain standards at least equal to or more restrictive than those adopted by the director. In fixing such standards, the board or region shall give consideration but shall not be limited to:

1. The latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

2. Atmosphere conditions and the types of air pollution agent or agents which, when present in the atmosphere, may interact with another agent or agents to produce an adverse effect on public health and welfare.

3. Securing, to the greatest degree practicable, the enjoyment of the natural attractions of the state and the comfort and convenience of the inhabitants.

B. No rule may be enacted or amended except after the board of supervisors first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. A county may adopt or amend a rule, emission standard, or standard of performance that is as stringent or more stringent than a rule, emission standard or standard of performance for similar sources adopted by the director only if the county complies with the applicable provisions of section 49-112.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

49-480. Permits; fees

A. The board of supervisors may adopt a program for the review, issuance, revision, administration and enforcement of permits and for public review of proposed permits for sources that are subject to section 49-426, subsection A, that are not under the jurisdiction of the state pursuant to section 49-402 and that are not otherwise exempt pursuant to section 49-426, subsection B and subsection K of this section. This program shall include provisions for administration, inspection and enforcement of general permits issued pursuant to section 49-426, subsection H and subsection J of this section.

B. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and required to be obtained pursuant to title V of the clean air act including sources that emit hazardous air pollutants shall be substantially identical to procedures for the review, issuance, revision and administration of permits issued by the department under this chapter. Such procedures shall comply with the requirements of sections 165, 173 and 408 and titles III and V of the clean air act and implementing regulations for sources subject to titles III and V of the clean air act. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to title V of the clean air act shall impose no greater procedural burden on the permit applicant than procedures for the review, issuance, revision and administration of permits issued by the department under sections 49-426 and 49-426.01 and other applicable provisions of this chapter.

C. Upon adoption of a permit program by the board of supervisors pursuant to this section, no person may begin actual construction, operate or

make a modification to any source subject to the permit program without complying with the requirements of that program.

D. Permits issued pursuant to a program adopted under this section are subject to payment of a reasonable fee to be determined as follows:

1. For any source required to obtain a permit under title V of the clean air act, the board of supervisors shall establish by rule a system of fees consistent with and equivalent to that prescribed under section 502 of the clean air act. Such system shall prescribe procedures for increasing the fee each year by the percentage, if any by which the consumer price index for the most recent calendar year ending before the beginning of such year exceeds the consumer price index for the calendar year 1989.

2. For any facility subject to the permitting requirements of this chapter but not required to obtain a permit under title V of the clean air act, the board of supervisors shall determine a permit fee based on all reasonable direct and indirect costs required to administer the permit, but not exceeding twenty-five thousand dollars.

The board of supervisors shall establish an annual inspection fee, not to exceed the average cost of services.

E. Funds received for permits issued pursuant to this section shall be deposited in a special public health fund and shall be used by the control officer to defray the costs of implementing this article.

F. Permits issued pursuant to this section for a source required to obtain a permit under title V of the clean air act shall, and for a source that is not required to obtain a title V permit may, contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.

2. Enforceable emission limitations and standards.

3. A schedule for compliance, if applicable.

4. The requirement to submit at least every six months the results of any required monitoring.

5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

G. The control officer may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

H. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the control officer shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The control officer shall require any revisions as expeditiously as practicable but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of the standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

I. Except as provided in section 49-426, subsection B and subsection A of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in any machine, incinerator or device shall first obtain a permit from the control officer. Any permit issued by the control officer under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

J. The board of supervisors may authorize by rule the control officer to issue a general permit for a defined class of facilities if that class of facilities has not been issued a general permit by the director for sources in that county pursuant to section 49-426, subsection H. The criteria for issuance of a general permit are those applicable to the director pursuant to section 49-426, subsection G.

K. The board of supervisors may identify by rule sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not subject to inclusion in the permit. The criteria for exemptions granted pursuant to this subsection are those applicable to exemptions granted by the director pursuant to section 49-426, subsection B.

L. In determining whether a permitting threshold established pursuant to this section applies to an existing source, the control officer shall exclude particulate matter that is not subject to a national ambient air quality standard under the clean air act.

M. The board of supervisors may adopt a rule or ordinance that establishes less burdensome permit procedures and requirements for permits that are not required to be obtained pursuant to title V of the clean air act. Until the effective date of a rule or ordinance adopted by a board of supervisors pursuant to this section, the control officer, either on the control officer's own initiative or on the request of a permit applicant, may waive requirements that are not appropriate for non-title V sources.

49-480.01. Permits; changes within a source; revisions

A. The board of supervisors shall establish by rule provisions to allow changes within a source required to obtain a permit under title V of the clean air act without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the control officer with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section. Rules adopted pursuant to this section for title V sources may prescribe a different time limit for notifications associated with emergency conditions.

B. Any permit issued pursuant to section 49-480 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or a termination, or a notification filed pursuant to subsection A does not stay any effective permit condition. The control officer may require in writing that the applicant provide within a reasonable time any information that the control officer identifies as necessary for the control officer to determine if cause

exists for revising, revoking and reissuing, or terminating, the permit, or to determine compliance with permit conditions.

C. The board of supervisors shall establish by rule procedures related to public and departmental reviews of changes to a permitted source. The procedures shall impose no greater procedural burden on the permittee than the procedures adopted by the director pursuant to section 49-426.01, subsection C.

49-480.02. Appeals of permit actions

A. Within thirty days after the control officer gives notice of approval, denial or revocation of a permit, the applicant or any person who submitted comments pursuant to section 49-480, may request an appeal as provided under section 49-482. The decision after that hearing constitutes the final permit action from which judicial review may be taken pursuant to title 12, chapter 7, article 6.

B. Any person who has an interest that is or may be adversely affected may commence a civil action in superior court against the control officer alleging that the control officer has failed to act in a timely manner consistent with the requirements of section 49-480. No action may be commenced before sixty days after the plaintiff has given notice to the control officer of the plaintiff's intent to file. The court has jurisdiction to require the control officer to act without additional delay.

49-480.03. Federal hazardous air pollutant program; date specified by administrator; prohibition

A. The board of supervisors shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. After the date specified by the administrator in rules adopted pursuant to section 112 (g)(1)(B) of the clean air act, no person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the control officer determines that the person will install the maximum achievable control technology for the modification or new major source. For purposes of this paragraph, the terms "major source" and "modification" have the meanings set forth in section 112(a) of the clean air act and implementing regulations adopted by the administrator. A new or modified major source of federally listed hazardous air pollutants means a major source that commences construction or a modification after rules adopted by the board of supervisors pursuant to this subsection become effective. A physical change to a source or change in the method of operation of a source is not a modification subject to this paragraph or paragraph 2 of this subsection if the change complies with section 112(g)(1) of the clean air act.

2. After the date specified by the administrator in rules adopted pursuant to section 112 (g)(1)(B) of the clean air act and until the administrator adopts emissions standards establishing the maximum achievable control technology for a source category or subcategory that includes a source subject to paragraph 1 of this subsection, the control officer shall determine the maximum achievable control technology for the modification or the new major source on a case-by-case basis. If on the basis of this case-by-case determination of the maximum achievable control technology the control officer determines that it is not feasible to prescribe or enforce an

emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

3. If an existing source submits an application pursuant to section 49-480 which demonstrates that the source has achieved a reduction of ninety per cent or more of federally listed hazardous air pollutants or ninety-five per cent in the case of federally listed hazardous air pollutants that are particulates, the control officer shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated by the administrator under section 112(d) of the clean air act. The application shall comply with section 112(i)(5) of the clean air act and implementing regulations adopted by the administrator. The alternative emission limitation shall apply for a period of six years from the compliance date otherwise applicable to the source under section 112(d) of the clean air act.

4. If the administrator fails to adopt a standard for a source category or subcategory within eighteen months after the deadline established for that category or subcategory pursuant to section 112(e)(1) and (3) of the clean air act, the owner or operator of an existing major source in the category or subcategory shall be required to submit a permit application for such source pursuant to section 49-480, and the control officer, acting in accordance with the procedures adopted pursuant to section 49-480, shall be required to issue a permit establishing maximum achievable control technology for the affected source on a case-by-case basis or, in the alternative, an alternative emission limitation pursuant to paragraph 3 of this subsection. If the control officer determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

5. When the administrator adopts and makes effective standards pursuant to section 112(d) or 112(f) of the clean air act the board of supervisors shall adopt those standards in the same manner as prescribed by the administrator.

6. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the control officer shall not require compliance with a numeric emission limit for that pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination of those standards. The provision adopted pursuant to this paragraph shall not apply to sources or modifications that commence construction after the permit program established pursuant to section 49-426 becomes effective under section 502(h) of the clean air act.

B. Where the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall apply to the regulation of those source categories under subsection A of this section.

C. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the control officer shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

D. When the administrator makes one of the following findings pursuant to section 112(n)(1)(A) of the clean air act the finding is effective for purposes of the county's administration and enforcement of the federal

hazardous air pollutant program in the same manner as prescribed by the administrator:

1. A finding that regulation is not appropriate or necessary.

2. A finding that alternative control strategies should be applied.

E. Notwithstanding any other law, a county board of supervisors shall not adopt and the control officer shall not enforce a rule or ordinance that requires compliance with subsection A, paragraph 1 or 2 of this section until after the date specified by the administrator as provided in subsection A, paragraphs 1 and 2 of this section.

49-480.04. County program for control of hazardous air pollutants

A. Within six months after the adoption of rules pursuant to section 49-426.06, subsection A, the board of supervisors shall by rule establish a county program for the control of hazardous air pollutants meeting the requirements of this section. The program established pursuant to this section shall apply to the following sources:

1. Sources that emit or have the potential to emit with controls, ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.

2. Sources that are within a category designated pursuant to section 49-426.05 and that emit or have the potential to emit, with controls, one ton per year or more of any hazardous air pollutant or two and one-half tons per year of any combination of hazardous air pollutants.

B. After the effective date of the rules adopted pursuant to subsection A of this section, a person shall not commence the construction or modification of a source that is subject to this section without first obtaining a permit or permit revision meeting the requirements of section 49-480 and subsection C or D of this section. A physical change to a source or change in the method of operation of a source is not a modification subject to this section if the change satisfies any of the following conditions:

1. The change complies with section 112(g)(1) of the clean air act.

2. The change, together with any other changes implemented or planned by the source, qualifies the source for an alternative emission limitation pursuant to section 112(i)(5) of the clean air act.

3. The change is required under a standard imposed pursuant to section 112(d) or 112(f) of the clean air act and the change is implemented after the administrator promulgates the standard.

C. A permit issued to a new or modified source that is subject to the county hazardous air pollutant program under subsection A, paragraph 1 of this section shall impose the maximum achievable control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of maximum achievable control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. A permit or permit revision issued to a new or modified source that is subject to the county hazardous air pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the control officer shall not require compliance with a numeric emission limit for the pollutant but shall instead require

compliance with a design, equipment, work practice or operational standard, or a combination thereof. Standards imposed pursuant to this subsection shall apply only to hazardous air pollutants emitted in amounts exceeding the de minimis amounts established by the administrator or by the director pursuant to section 49-426.06, subsection B. The control officer shall not impose a standard under this subsection that would require the application of measures that are incompatible with measures required under a standard imposed pursuant to section 49-480.03, subsection A.

D. If the owner or operator of a new source or modification subject to this section establishes that the imposition of maximum achievable control technology or hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects by conducting a scientifically sound risk management analysis and submitting the results to the control officer with the permit application for the new source or modification, the control officer shall exempt the source from the imposition of such technology. The risk management analysis may take into account the following factors:

1. The estimated actual exposure of persons living in the vicinity of the source.

2. Available epidemiological or other health studies.

3. Risks presented by background concentrations of hazardous air pollutants.

4. Uncertainties in risk assessment methodology or other health assessment techniques.

5. Negative health or environmental consequences that would result from efforts to reduce the risk.

6. The technological and commercial availability of control methods beyond those otherwise required for the source and the cost of such methods.

E. If maximum achievable control technology or hazardous air pollutant reasonably available control technology standard has been established in a general permit for a defined class of sources pursuant to subsection C of this section and sections 49-480 and 49-426, subsection H, the owner or operator of a source within that class may obtain a variance from the standard by complying with subsection D of this section at the time the source applies to be permitted under the general permit. If the owner or operator makes the demonstration required by subsection D of this section and otherwise qualifies for the general permit, the control officer shall, in accordance with the procedures established pursuant to sections 49-480 and 49-426, approve the application and issue a permit granting a variance from the specific provisions of the general permit relating to the standard. Except as otherwise modified by the variance, the general permit shall govern the source.

F. If the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall apply to the regulation of those source categories under subsection B of this section.

G. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the control officer shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

H. Except as otherwise provided in subsection I of this section, the program established pursuant to this section shall apply only to source categories designated by the director pursuant to section 49-426.05, subsection A and to hazardous air pollutants designated by the director pursuant to section 49-426.03, subsection A and section 49-426.04.

I. When a new source that is within a category that has not been designated pursuant to section 49-426.05, subsection A submits an application for a permit pursuant to section 49-480, the control officer may suspend action on the application pending the designation of the category by the director pursuant to section 49-426.05, subsection A, if all of the following conditions are satisfied:

1. The director makes the finding required by section 49-426.05, subsection A for the category to which the source belongs.

2. The control officer provides notice of the director's finding and the control officer's intent to suspend action on the application to the applicant on or before the date that a completeness determination is due under sections 49-480 and 49-426.

3. The applicant does not elect to comply with subsection C or D of this section.

J. For purposes of subsection A of this section, in determining potential to emit, the control officer shall consider controls that are enforceable under any federal law or regulation, state or local law or rule or that are inherent in the design of the source.

K. In determining whether emissions from a source or modification exceed the thresholds prescribed by subsection A or B of this section, the control officer shall exclude particulate matter emissions that consist of natural crustal material and are produced either by natural forces, such as wind or erosion, or by anthropogenic activities, such as agricultural operations, excavation, blasting, drilling, handling, storage, earth moving, crushing or grinding of crustal materials and traffic over paved or unpaved roads, or other similar activities. Nothing in this subsection shall preclude the regulation of emissions of crustal materials as particulate matter pursuant to other sections of this chapter.

49-481. Grant or denial of applications

A. The control officer shall deny a permit or revision if the applicant does not show that every such source is so designed, controlled, or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of this article and the rules adopted by the board of supervisors.

B. Prior to acting on an application for a permit, the control officer may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the source described in the application. In the event of such a requirement, the control officer shall notify the applicant in writing of the type and characteristics of such facilities.

C. In acting upon an application for a permit renewal, if the control officer finds that such source has been constructed not in accordance with any prior permit or revision issued pursuant to section 49-480.01, he shall require the person to obtain a permit revision or deny the application for such permit. The control officer shall not accept any further application for a permit for such source so constructed until he finds that such source has been reconstructed in accordance with the prior permit or a revision, or a revision to the permit has been obtained.

D. After a decision on a permit or revision, the control officer shall notify the applicant and any person who filed a comment on the permit pursuant to section 49-480 or the revision pursuant to section 49-480.01 in writing of the decision, and if the permit is denied, the reasons for such

denial. Service of this notification may be made in person or by first class mail. The control officer shall not accept a further application unless the applicant has corrected the reasons for the objections specified by the control officer as reasons for such denial.

49-482. Appeals to hearing board

A. Within thirty days after notice is given by the control officer of approval or denial of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision pursuant to section 49-480, subsection B and section 49-426, subsection D, or on the conditional order pursuant to section 49-492, subsection C, may petition the hearing board, in writing, for a public hearing, which shall be held within thirty days after receipt of the petition. The hearing board, after notice and a public hearing, may sustain, modify or reverse the action of the control officer.

B. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against the control officer alleging that the control officer has failed to act in a timely manner as provided in section 49-480, subsection B and section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the control officer. The court has jurisdiction to require the control officer to act without additional delay.

49-483. Permit transfers; notice; appeal

A. A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another, or from one piece of equipment to another.

B. The provisions of subsection A shall not apply to mobile or portable machinery or equipment which is transferred from one location to another after notification to the control officer of the transfer.

C. A permit may be transferred, whether by operation of law or otherwise, from one person to another, provided that prior to the transfer, the person holding the permit notifies the control officer in writing of the name, address, telephone number and statutory agent of the person to whom the permit will be transferred, the effective date of the proposed transfer and other information the board of supervisors may determine to be necessary by rule. The control officer shall prescribe procedures for such notification.

D. If the control officer determines that the transferee is not capable of operating the source in compliance with the requirements of this article, rules adopted under this article and the conditions established in the permit, the transfer shall be denied. In order for the denial to be effective, notice of the control officer's denial, including the reasons for the denial, shall be issued within ten working days of the control officer's receipt of the notice of the proposed transfer.

E. Denial of a permit transfer is appealable by the transferor and the transferee to the air pollution hearing board in the same manner as prescribed for denial of a permit in section 49-482.

49-484. Expiration of permit

An installation permit shall expire two years from the date of its issuance.

49-485. Posting of permit

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine, equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

49-486. Notice by building permit agencies

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 49-480. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the control officer or the department of environmental quality and shall furnish a copy of such notice to the control officer and the department.

49-487. Classification and reporting; confidentiality of records

A. The board of supervisors by rules which are equal to or more restrictive than those adopted by the director of environmental quality shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the board.

B. The owner, lessee, or operator of a potential air contaminant source shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable and required to determine compliance in a manner acceptable to the control officer, and shall supply monitoring information as directed in writing by the control officer. Such devices shall be available for inspection by the control officer during all reasonable times.

C. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the control officer or a county employee, shall be available to the public, except that the information or any part of the information shall be considered confidential on either of the following:

1. A showing, satisfactory to the control officer, by any person that the information or a part of the information if made public would divulge the trade secrets of the person.

2. A determination by the county attorney that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

D. Notwithstanding subsection C of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.

3. The existence or level of a concentration of an air pollutant in the environment.

49-488. Special inspection warrant

A. The control officer and his deputies charged under this chapter or the rules and regulations adopted pursuant to this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior of structures used as private residences.

B. Upon showing by the affidavit of the control officer or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.

C. The warrant shall be in substantially the following form: "County of ++++++++++++++, state of Arizona to any control officer or deputy control officer in the county of ++++++++++++++ proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of ++++++++++++++ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if said premises comply with (section ++++++++++++++ of the Arizona Revised Statutes) and/or (section ++++++++++++++ of regulation or ordinance), you are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable. Date, signature and title of office." The endorsement on the warrant shall be in substantially the following form: "Received by me ++++++++++++++ 19++, at +++++ o'clock ++++ (name of control officer or deputy control officer)." The return of officer shall be in substantially the following form: "I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings). Dated this ++++++++++++++ day of ++++++++++++++ 19++++ (name of control officer or deputy control officer)."

D. The warrant may be served by the control officer or his deputies mentioned in its directions, but by no other person except in aid of the control officer or his deputies, on his requiring it, the control officer or his deputies being present and acting in its execution.

E. A warrant shall be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of that time, the warrant shall unless executed be void.

F. Any person who knowingly refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a petty offense.

49-490. Hearings on orders of abatement

A. An order of abatement issued by the control officer shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 49-511 unless the person or persons named in such order shall have made a timely request for a hearing before the hearing board. If a hearing is requested, the hearing board shall

hold the hearing within thirty days from receipt of the request unless such time is extended by the hearing board. Written notice of the time and place of the hearing shall be sent by the hearing board to the person or persons requesting the hearing and to the control officer at least fifteen days before the hearing.

B. If the board, after the hearing, determines that the act or acts set forth in the order constitute a violation of any provision of this article or of the rules adopted pursuant to this article or any requirement of a permit or conditional order issued pursuant to this article and that no conditional order is justified, the board shall affirm or modify the order for abatement. The order may be conditional and require a person to refrain from the particular act or acts unless certain conditions are met.

49-491. Conditional orders; standards; rules

A. The director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of this article, any rule adopted pursuant to this article, or any requirement of a permit issued pursuant to this article if the control officer makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, or impede attainment of the national ambient air quality standards.

2. Either of the following is true:

(a) There has been a breakdown of equipment or upset of operations beyond the control of the petitioner; the source was in compliance before the breakdown or upset; and the breakdown or upset may be corrected within a reasonable time.

(b) There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

B. The board of supervisors shall adopt rules necessary for the issuance of conditional orders. Such rules shall specify the minimum requirements for petitions, and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of the state implementation plan, the rules adopted by the board of supervisors shall provide for a public hearing to receive comments on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this article, the rules adopted by the board of supervisors shall conform to the procedures established for permit revisions pursuant to section 49-480.01.

49-492. Petition for conditional order; publication; public hearing

A. A person who seeks a conditional order shall file a petition with the control officer.

B. If the issuance of the conditional order requires a public hearing, the control officer shall set a hearing date within thirty days after the filing of the petition. The hearing date shall be within sixty days after the filing of the petition.

C. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in section 49-498. The notice shall state that any person may submit comments on the petition. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the petition should or should not be granted. Grounds for comment shall

be limited to whether the petition meets the criteria for issuance of a conditional order prescribed in section 49-491.

49-493. Decisions on petitions for conditional order; terms and conditions

A. Within thirty days after the conclusion of the hearing held pursuant to section 49-492, subsection B, or, if no hearing is held, within sixty days after the filing of the petition, the control officer shall deny the petition or grant the petition on such terms and conditions as the director deems appropriate.

B. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include but not be limited to:

1. A detailed plan for completion of corrective steps needed to conform to the provisions of this article, the rules adopted pursuant to this article, and the requirements of the permit issued pursuant to this article.

2. A requirement that necessary construction shall begin as expeditiously as practicable.

3. Such written reports as may be required.

4. The right to make periodic inspection of the facilities for which the conditional order is granted.

C. A reasonable fee as may be prescribed by the control officer shall be deposited in the special public health fund.

49-494. Term of conditional order; effective date

A. A conditional order issued by the control officer shall be valid for such period as the control officer prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this article and title V of the clean air act, and three years in the case of any other source that is required to obtain a permit pursuant to this article.

B. Except as otherwise provided in paragraphs 1 and 2 of this subsection, a conditional order issued by the control officer shall be effective when issued.

1. If the conditional order varies from the requirements of the state implementation plan, the conditional order shall be submitted to the administrator as a revision to the state implementation plan pursuant to section 110(L) of the clean air act, and shall become effective upon approval by the administrator.

2. If the conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to title V of the clean air act, the conditional order shall be submitted to the administrator if required by section 505 of the clean air act, and in such case shall be effective at the end of the review period specified in such section, unless objected to within such period by the administrator.

49-495. Suspension and revocation of conditional order

If the terms and conditions of the conditional order are being violated, the control officer may seek to revoke or suspend the conditional order granted. In such event, the control officer shall serve notice of such violation on the holder of the conditional order in the manner provided in section 49-498. The notice shall specify the nature of such violation and the date on which a hearing will be held by the hearing board to determine if such a violation has occurred and whether the conditional order should be

suspended or revoked. The date of said hearing shall be within thirty days from the date said notice is served upon the holder of the conditional order.

49-496. Decisions of hearing board; subpoenas; effective date

A. All decisions of the hearing board, including the majority of opinion and all concurring and dissenting opinions, shall be in writing and shall be of public record.

B. A majority of the total membership of the hearing board shall concur in a decision for it to have effect.

C. The chairman or, in his absence, the vice chairman may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing. Obedience to subpoenas may be enforced pursuant to section 12-2212.

D. Subject to the approval of the board of supervisors, the hearing board may adopt a manual of procedures governing its operation.

E. Decisions of the hearing board shall become effective not less than thirty days after they are issued unless:

1. A rehearing is granted which shall have the effect of staying the decision.

2. It is determined that an emergency exists which justifies an earlier effective date.

F. The hearing board may revoke or modify an order of abatement or a permit or permit revision only after first holding a hearing within thirty days from the giving of notice of such hearing as provided in section 49-498.

49-497. Declaratory judgment

Any person who is or may be affected by a county rule or ordinance pursuant to this article may obtain a judicial declaration of the validity or construction of the rule or ordinance by filing an action for declaratory relief in superior court in accordance with title 12, chapter 10, article 2.

49-497.01. Judicial review of hearing board or administrative law judge decisions

A. Except as provided in this section, a hearing board decision or a decision of an administrative law judge in lieu of a hearing board is subject to judicial review pursuant to title 12, chapter 7, article 6.

B. Within thirty days after service of notice of a final decision or order of the board or administrative law judge, or an order denying a rehearing timely applied for, any person who was a party of record in the proceedings before the board or administrative law judge, including the control officer or department authorized or designated to enforce air pollution regulations, may appeal the decision or order to the superior court in the county in which the hearing was conducted and the scope of the review shall be determined pursuant to section 12-910.

C. A notice of appeal, designating the grounds for appeal, and a demand in writing for a certified transcript of the testimony and exhibits shall be filed with the court and served on the board or administrative law judge. After receipt of the demand, accompanied by payment of a fee of the current prevailing rate for transcripts and one dollar for certification of the transcript, the board or administrative law judge shall make and certify the transcript and file it with the clerk of the court to which the appeal has been taken within thirty days, unless extended by agreement of the parties or order of the court.

D. If an appeal is taken from an order or decision of the board or administrative law judge, the order or decision remains in effect pending final determination of the matter, unless stayed by the court on a hearing, after notice to the board or administrative law judge, and on a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting the stay.

E. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-497.02. Judicial review of appealable agency action not subject to review by hearing board or administrative law judge

A. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against a control officer alleging that the control officer has failed to act in a timely manner as provided in section 49-480, subsection B and section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the control officer. The court has jurisdiction to require the control officer to act without additional delay.

B. Except as provided in subsections C and D of this section, a person whose legal rights, duties or privileges were determined by an appealable agency action, or any person who will be adversely affected by an appealable agency action, may commence a civil action in superior court against the control officer alleging that the action was not supported by substantial evidence, is contrary to law, is arbitrary and capricious, or is an abuse of discretion. Review of the appealable agency action may be obtained without first obtaining a review by a hearing board or administrative law judge. The appeal in superior court shall be governed by the Arizona rules of procedure for special actions.

C. This section does not apply to a decision or action that must be appealed to the hearing board under section 49-476.01, 49-480.02, 49-482, 49-490 or 49-511 or to a final administrative decision obtained by an administrative appeal under section 49-471.15. Judicial review of those decisions or actions shall be as provided under section 49-497.01 rather than under subsection B of this section.

D. An action pursuant to subsection B of this section shall not be commenced before sixty days after the plaintiff has given notice to the control officer.

E. A sixty day notice under this section shall be filed with the control officer within thirty days of service of notice of the appealable agency action. The notice of appeal shall identify the party, the party's address, the action being appealed and shall contain a concise statement of the reasons for the appeal.

F. Under this section, service of notice of an appealable agency action shall be effected by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice to the party to the action to the party's last address of record with the control officer.

G. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-498. Notice of hearing; publication; service

A. Any notice of hearing required by this article shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county, and by posting copies of the petition and notice in at least three conspicuous places in the county.

B. If the hearing involves any violation of rules or regulations adopted pursuant to this article or a conditional order therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional order, shall be served personally or by registered or certified mail at least fifteen days prior to the hearing with a written notice of hearing.

49-501. Unlawful open burning; exceptions; civil penalty; definition

A. Notwithstanding the provisions of any other section of this article: 1. It is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

2. From May 1 through September 30 each year, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open outdoor fire in area A as defined in section 49-541.

B. The following fires are excepted from this section:

1. Fires used only for cooking of food or for providing warmth for human beings or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.

4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, departments or political subdivisions for the purpose of watershed rehabilitation or control through vegetative manipulation.

5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to section 49-402 has assumed jurisdiction of the county in which the fire is located.

6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

C. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection B, paragraph 2, 3 or 4 of this section shall be given in writing and a copy of the written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.

D. Notwithstanding section 49-107, the director may delegate authority for the issuance of open burning permits to a county, city, town or fire

district. A county, city, town or fire district that has been delegated authority for the issuance of open burning permits may assign the issuance of these permits to a private fire protection service provider that performs fire protection services within that county, city, town or fire district. Any private fire protection service provider that is authorized to issue open burning permits pursuant to this subsection shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set the fire in the event that an order to extinguish the open burning is issued. Permits issued pursuant to this subsection shall contain both of the following:

1. Conditions that limit the manner and time of setting the fire and that are consistent with this section and rules adopted pursuant to this section.

2. A provision that all burning be extinguished at the discretion of the director or the director's authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment that could adversely affect public safety or periods when smoke is blown into populated areas so as to create a public nuisance.

E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in section 49-701, that is generated on site, if no household waste collection and disposal service is available. The general permit shall include the following:

1. Conditions governing the method, manner and times for burning.

2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.

3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. Upon receipt of a registration form, the director shall notify the county in which the farm or ranch is located of such registration.

4. A statement that the director, a local air pollution control officer, or any other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion or excessive visibility impairment or at other times when public health or safety could be adversely affected.

F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation in a county with a population in excess of one million two hundred thousand persons. Notwithstanding any other law, such a county shall prohibit by ordinance the use of wood burning chimineas, outdoor fire pits and similar outdoor fires on those days for which the county has issued a no burn day restriction.

G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article, except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.

H. For the purposes of this section, "open outdoor fire" means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. For the purposes of this subsection, "flue" means any duct or passage for air, gases or the like, such as a stack or chimney.

49-502. Violation; classification

A. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit

or permit condition issued pursuant to this article is guilty of a class 1 misdemeanor for each day the violation continues unless another classification is specifically prescribed in this article. Each day of violation shall constitute a separate offense. Peace officers and the control officer and his deputies shall have the authority to issue a notice to appear under the same conditions and procedures set forth in section 13-3903 for a violation of any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article.

B. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day per violation. The county attorney, at the request of the control officer, may commence an action in superior court to recover civil penalties provided by this section. Penalties recovered pursuant to this section shall be deposited in the special public health fund prescribed in section 49-480.

C. In determining the amount of a fine or civil penalty under this section, the court shall consider:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of such violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. Such other factors as the court deems relevant.

49-503. Defenses

Violations under section 49-502 shall be malum prohibitum. Lack of criminal intent shall not constitute a defense to such violations.

49-504. Limitations

Nothing in this article shall be construed so as to:

1. Grant any jurisdiction or authority with respect to air contamination or pollution existing solely within commercial and industrial plants, works, or shops owned by or under control of the person causing the air contamination or pollution.
2. Alter or in any other way affect the relations between employers and employees with respect to or concerning any condition of air contamination or pollution.
3. Require the readoption of any rule or regulation previously adopted prior to the effective date of this article, provided such rule or regulation is in conformity with the provisions of this article.
4. Prevent the normal farm cultural practices which cause dust.

49-506. Voluntary no-drive days

A county with a population of four hundred thousand or more persons according to the most recent United States decennial census shall implement a voluntary program to encourage all drivers within such a county to not drive their motor vehicles during certain prescribed days.

49-507. Technical assistance to small businesses

Not later than August 15, 1993, after reasonable notice and a public hearing, the control officer shall submit to the director a plan that establishes a small business stationary source technical and compliance assistance program consistent with and equivalent to that required under section 507 of the clean air act.

49-510. Violations; production of records

When the control officer has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may request, in writing, that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules adopted pursuant to this article.

49-511. Violations; order of abatement

A. When the control officer has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, the control officer may serve upon such person by certified mail or in person an order of abatement or may file a complaint in superior court alleging a violation pursuant to section 49-513.

B. Except as provided in subsection E of this section, an order issued pursuant to this section shall state the following:

1. With particularity, the act constituting the violation.

2. In its entirety, the certain requirement, provision or rule violated.

3. The duration of the order.

4. That the alleged violator is entitled to a hearing, if the hearing is requested in writing within thirty days after the date of issuance of the order.

C. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met.

D. An order issued under this section shall require the persons to whom it is issued to comply with the requirement, provision or rule as expeditiously as practicable. In the case of a source required to obtain a permit pursuant to this article and title V of the clean air act, the order shall require compliance no later than one year after the date the order was issued and may be renewable for no more than one additional year on a showing of good cause to the control officer. The control officer shall report annually, by December 1, to the governor, the president of the senate, the speaker of the house of representatives and the director of the Arizona state library, archives and public records on the sources that are issued an order of abatement or a renewal pursuant to this section. The report shall include summary information about the source and the order. If the order was renewed, the report shall also include a summary of the justification for the renewal. The control officer shall publish the following information on the county's internet web site:

1. A notice that an abatement order has been issued pursuant to this section and summary information about the order.

2. A notice that an order of abatement has been renewed pursuant to this section and summary information about the renewal.

E. The control officer may enter into an order of abatement by consent. The control officer may agree to accept monetary payments as part

of the negotiated terms of an order of abatement by consent. The terms of an order of abatement by consent shall be determined by the agreement of the parties.

49-512. Violations; injunctive relief

The county attorney, at the request of the control officer, shall file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, if the control officer has reasonable cause to believe that any of the following is occurring:

1. A person has violated or is in violation of any provision of this article, a rule adopted pursuant to this article or a permit issued pursuant to this article.
2. A person has violated or is in violation of an effective order of abatement.
3. A person is creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant, unless that release is subject to enforcement under title 3, chapter 2, article 6.

49-513. Violations; civil penalties

A. A person who violates any provision of this article, any permit or permit condition issued pursuant to this article, any fee or filing requirement, any rule adopted pursuant to this article, an effective order of abatement issued pursuant to this article or any duty to allow or carry out inspection, entry or monitoring activities, is subject to a civil penalty of not more than ten thousand dollars per day per violation. The county attorney at the request of the control officer shall file an action in superior court to recover penalties provided for in this section.

B. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the control officer has notified the source of the violation and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violations shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section is accomplished by the issuance of a notice of violation or order of abatement or by filing a complaint in superior court that alleges any violation described in subsection A of this section.

C. In determining the amount of a civil penalty under this section, the court shall consider all of the following:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
7. Payment by the violator of penalties previously assessed for the same violation.
8. Other factors as the court deems relevant.

D. All penalties collected pursuant to this section shall be deposited in the special public health fund authorized in section 49-480.

49-514. Violation; classification; definition

From and after October 31, 1994:

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 U.S.C. section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator, director or control officer has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.

2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the control officer pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the control officer to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material pursuant to section 49-464, subsection G.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the control officer is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the control officer pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

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

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

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

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

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factor as the court deems relevant.

O. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

P. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the control officer within twenty-four hours after the source first learned of the violation.

2. The owner or operator of the source provided written notification to the control officer containing all of the following information within seventy-two hours following the verbal or facsimile notification:

(a) Confirmation of the violation for which verbal or facsimile notification was provided.

(b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

Q. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described above shall be deemed to be advice that no permit was necessary for purposes of this subsection.

R. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

S. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

T. For purposes of this section, the term "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. The term emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director or control officer.

49-515. Precedence of actions

For the benefit of the people of the state, court actions and proceedings brought under this article shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-516. Preservation of rights

It is the purpose of this article to provide additional and cumulative remedies to prevent, abate and control air pollution in the state. Except as prescribed by section 49-402, subsection C, nothing contained in this article shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any

provisions of this article, or any act done by virtue thereof, be construed as estopping the state or any municipality or owners of land from the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Article 5 Annual Emissions Inspection of Motor Vehicles

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east
Township 7 north, range 2 west through range 5 east
Township 6 north, range 5 west through range 6 east
Township 5 north, range 5 west through range 7 east
Township 4 north, range 5 west through range 8 east
Township 3 north, range 5 west through range 8 east
Township 2 north, range 5 west through range 8 east
Township 1 north, range 5 west through range 7 east
Township 1 south, range 5 west through range 7 east
Township 2 south, range 5 west through range 7 east
Township 3 south, range 5 west through range 1 east
Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east
Township 1 south, range 8 east and range 9 east
Township 2 south, range 8 east and range 9 east
Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west
Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test or a loaded test.

6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

49-542. Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition

(L14, Ch. 89, sec. 2)

A. The director shall administer a comprehensive annual or biennial emissions inspection program that shall require the inspection of vehicles in this state pursuant to this article and applicable administrative rules. Such inspection is required for vehicles that are registered in area A and area B, for those vehicles owned by a person who is subject to section 15-1444 or 15-1627 and for those vehicles registered outside of area A or area B but used to commute to the driver's principal place of employment located within area A or area B. Inspection in other counties of the state shall commence on the director's approval of an application by a county board of supervisors for participation in such inspection program. In all counties with a population of three hundred fifty thousand or fewer persons, except for the portion of counties that contain any portion of area A, the director shall as conditions dictate provide for testing to determine the effect of vehicle related pollution on ambient air quality in all communities with a metropolitan area population of twenty thousand persons or more. If such testing detects the violation of state ambient air quality standards by vehicle related pollution, the director shall forward a full report of such violation to the president of the senate, the speaker of the house of representatives and the governor.

B. The state's annual or biennial emissions inspection program shall provide for vehicle inspections at official emissions inspection stations or at fleet emissions inspection stations. Each inspection station in area A shall employ at least one technical assistant who is available during the station's hours of operation to provide assistance for persons who fail the emissions test. An official or fleet emissions inspection station permit shall not be sold, assigned, transferred, conveyed or removed to another location except on such terms and conditions as the director may prescribe.

C. Vehicles required to be inspected and registered in this state, except those provided for in section 49-546, shall be inspected, for the purpose of complying with the registration requirement pursuant to subsection D of this section, in accordance with the provisions of this article no more than ninety days prior to each registration expiration date. A vehicle may be submitted voluntarily for inspection more than ninety days before the registration expiration date on payment of the prescribed inspection fee. Such voluntary inspection shall not be considered as compliance with the registration requirement pursuant to subsection D of this section.

D. A vehicle shall not be registered until such vehicle has passed the emissions inspection and the tampering inspection prescribed in subsection G of this section or has been issued a certificate of waiver. A certificate of waiver shall only be issued one time to a vehicle after January 1, 1997. If any vehicle to be registered is being sold by a dealer licensed to sell motor vehicles pursuant to title 28, the cost of any inspection and any repairs necessary to pass the inspection shall be borne by the dealer. A dealer who is licensed to sell motor vehicles pursuant to title 28 and whose place of business is located in area A or area B shall not deliver any vehicle to the retail purchaser until the vehicle passes any inspection required by this article or the vehicle is exempt under subsection J of this section.

E. On the registration of a vehicle that has complied with the minimum emissions standards pursuant to this section or is otherwise exempt under this section, the registering officer shall issue an air quality compliance sticker to the registered owner that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation or issue a modified year validating tab as prescribed by rule adopted by the department of transportation. Those persons who reside outside of area A or area B but who elect to test their vehicle or are required to test their vehicle pursuant to this section and who comply with the minimum emissions standards pursuant to this section or are otherwise exempt under this section shall remit a compliance form, as prescribed by the department of transportation, and proof of compliance issued at an official emissions inspection station to the department of transportation along with the appropriate fees. The department of transportation shall then issue the person an air quality compliance sticker which shall be placed on the vehicle as prescribed by rule adopted by the department of transportation. The registering officer or the department of transportation shall collect an air quality compliance fee of twenty-five cents. The registering officer or the department of transportation shall deposit, pursuant to sections 35-146 and 35-147, the air quality compliance fee in the state highway fund established by section 28-6991. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, any emissions inspection fee in the emissions inspection fund. The provisions of this subsection do not apply to those vehicles registered pursuant to title 28, chapter 7, article 7 or 8, the sale of vehicles between motor vehicle dealers or vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

F. The director shall adopt minimum emissions standards pursuant to section 49-447 with which the various classes of vehicles shall be required to comply as follows:

1. For the purpose of determining compliance with minimum emissions standards in area B:

(a) A motor vehicle manufactured in or before the 1980 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test. A diesel powered vehicle is subject to only a loaded test. The conditioning mode, at the option of the vehicle owner or owner's agent, shall be administered only after the vehicle has failed the curb idle test. On completion of such conditioning mode, a vehicle that has failed the curb idle test may be retested in the curb idle test. If the vehicle passes such retest, it shall be deemed in compliance with minimum emissions standards unless the vehicle fails the tampering inspection pursuant to subsection G of this section.

(b) A motor vehicle manufactured in or after the 1981 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test and the loaded test or an onboard diagnostic check as may be required pursuant to title II of the clean air act.

2. For the purposes of determining compliance with minimum emissions standards and functional tests in area A:

(a) Motor vehicles manufactured in or after model year 1981 with a gross vehicle weight rating of eighty-five hundred pounds or less, other than diesel powered vehicles, shall be required to take and pass a transient loaded emissions test or an onboard diagnostic check as may be required pursuant to title II of the clean air act.

(b) Motor vehicles other than those prescribed by subdivision (a) of this paragraph and other than diesel powered vehicles shall be required to take and pass a steady state loaded test and a curb idle emissions test.

(c) A diesel powered motor vehicle applying for registration in area A shall be required to take and pass an annual emissions test conducted at an official emissions inspection station or a fleet emissions inspection station as follows:

(i) A loaded, transient or any other form of test as provided for in rules adopted by the director for vehicles with a gross vehicle weight rating of eight thousand five hundred pounds or less.

(ii) A test that conforms with the society for automotive engineers standard J1667 for vehicles with a gross vehicle weight rating of more than eight thousand five hundred pounds.

(d) Motor vehicles by specific class or model year shall be required to take and pass any of the following tests:

(i) An evaporative system purge test.

(ii) An evaporative system integrity test.

(e) An onboard diagnostic check may be required pursuant to title II of the clean air act.

3. Any constant four-wheel drive vehicle shall be required to take and pass a curb idle emissions test or an onboard diagnostic check as required pursuant to title II of the clean air act.

4. Fleet operators in area B must comply with this section, except that used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit under section 49-546 shall be tested as follows:

(a) A motor vehicle manufactured in or before the 1980 model year shall take and pass only the curb idle test, except that a diesel powered vehicle is subject to only a loaded test.

(b) A motor vehicle manufactured in or after the 1981 model year shall take and pass the curb idle test and a twenty-five hundred revolutions per minute unloaded test.

5. Vehicles owned or operated by the United States, this state or a political subdivision of this state shall comply with this subsection without regard to whether those vehicles are required to be registered in this state, except that alternative fuel vehicles of a school district that is located in area A shall be required to take and pass the curb idle test and the loaded test.

6. Fleet operators in area A shall comply with this section, except that used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to section 49-546 for the purposes of determining compliance with minimum emission standards in area A shall be tested as follows:

(a) A motor vehicle manufactured in or before the 1980 model year shall take and pass the curb idle test, except that a diesel powered vehicle is subject to only a loaded test.

(b) A motor vehicle manufactured in or after the 1981 model year shall take and pass the curb idle test and a two thousand five hundred revolutions per minute unloaded test.

7. Except for any registered owner or lessee of a fleet of less than twenty-five vehicles, a diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

8. For any registered owner or lessee of a fleet of less than twenty-five vehicles, a diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

G. In addition to an emissions inspection, a vehicle is subject to a tampering inspection as prescribed by rules adopted by the director if the vehicle was manufactured after the 1974 model year.

H. Vehicles required to be inspected shall undergo a functional test of the gas cap to determine if the cap holds pressure within limits prescribed by the director, except for any vehicle that is subject to an evaporative system integrity test.

I. Motor vehicles failing the initial or subsequent test are not subject to a penalty fee for late registration renewal if the original testing was accomplished before the expiration date and if the registration renewal is received by the motor vehicle division or the county assessor within thirty days of the original test.

J. The director may adopt rules for purposes of implementation, administration, regulation and enforcement of the provisions of this article including:

1. The submission of records relating to the emissions inspection of vehicles inspected by another jurisdiction in accordance with another inspection law and the acceptance of such inspection for compliance with the provisions of this article.

2. The exemption from inspection of:

(a) Except as otherwise provided in this subdivision, a motor vehicle manufactured in or before the 1966 model year. If the United States environmental protection agency issues a vehicle emissions testing exemption for motor vehicles manufactured in or before the 1974 model year for purposes of the state implementation or maintenance plan for air quality, a motor vehicle manufactured in or before the 1974 model year is exempt from inspection.

(b) New vehicles originally registered at the time of initial retail sale and titling in this state pursuant to section 28-2153 or 28-2154.

(c) Vehicles registered pursuant to title 28, chapter 7, article 7 or 8.

(d) New vehicles before the sixth registration year after initial purchase or lease.

(e) Vehicles that are outside of this state at the time of registration, except the director by rule may require testing of those vehicles within a reasonable period of time after those vehicles return to this state.

(f) Golf carts.

(g) Electrically-powered vehicles.

(h) Vehicles with an engine displacement of less than ninety cubic centimeters.

(i) The sale of vehicles between motor vehicle dealers.

(j) Vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

(k) Collectible vehicles.

(l) Motorcycles.

3. Compiling and maintaining records of emissions test results after servicing.

4. A procedure that shall allow the vehicle service and repair industry to compare the calibration accuracy of its emissions testing equipment with the department's calibration standards.

5. Training requirements for automotive repair personnel using emissions measuring equipment whose calibration accuracy has been compared with the department's calibration standards.

6. Any other rule that may be required to accomplish the provisions of this article.

K. The director, after consultation with automobile manufacturers and the vehicle service and repair industry, shall establish by rule a definition of "vehicle maintenance and repairs" for motor vehicles subject to inspection under this article. The definition shall specify repair procedures that, when implemented, will reduce vehicle emissions.

L. The director shall adopt rules that specify that the estimated retail cost of all recommended maintenance and repairs shall not exceed the amounts prescribed in this subsection, except that if a vehicle fails a tampering inspection there is no limit on the cost of recommended maintenance and repairs. The director shall issue a certificate of waiver for a vehicle if the director has determined that all recommended maintenance and repairs have been performed and that the vehicle has failed any reinspection that may be required by rule. If the director has determined that the vehicle is in compliance with minimum emissions standards or that all recommended maintenance and repairs for compliance with minimum emissions standards have been performed, but that tampering discovered at a tampering inspection has not been repaired, the director may issue a certificate of waiver if the owner of the vehicle provides to the director a written statement from an automobile parts or repair business that an emissions control device that is necessary to repair the tampering is not available and cannot be obtained from any usual source of supply before the vehicle's current registration

expires. Rules adopted by the director for the purpose of establishing the estimated retail cost of all recommended maintenance and repairs pursuant to this subsection shall specify that:

1. In area A the cost shall not exceed:

(a) Five hundred dollars for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) Five hundred dollars for a diesel powered vehicle with tandem axles.

(c) For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(i) Two hundred dollars for such a vehicle manufactured in or before the 1974 model year.

(ii) Three hundred dollars for such a vehicle manufactured in the 1975 through 1979 model years.

(iii) Four hundred fifty dollars for such a vehicle manufactured in or after the 1980 model year.

2. In area B the cost shall not exceed:

(a) Three hundred dollars for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) Three hundred dollars for a diesel powered vehicle with tandem axles.

3. For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(a) Fifty dollars for such a vehicle manufactured in or before the 1974 model year.

(b) Two hundred dollars for such a vehicle manufactured in the 1975 through 1979 model years.

(c) Three hundred dollars for such a vehicle manufactured in or after the 1980 model year.

M. Each person whose vehicle has failed an emissions inspection shall be provided a list of those general recommended repair and maintenance procedures for vehicles that are designed to reduce vehicle emissions levels.

N. Notwithstanding any other provisions of this article, the director may adopt rules allowing exemptions from the requirement that all vehicles must meet the minimum standards for registration.

O. The director of environmental quality shall establish, in cooperation with the assistant director for the motor vehicle division of the department of transportation:

1. An adequate method for identifying bona fide residents residing outside of area A or area B to ensure that such residents are exempt from compliance with the inspection program established by this article and rules adopted under this article.

2. A written notice that shall accompany the vehicle registration application forms that are sent to vehicle owners pursuant to section 28-2151 and that shall accompany or be included as part of the vehicle emissions test results that are provided to vehicle owners at the time of the vehicle emissions test. This written notice shall describe at least the following:

(a) The restriction of the waiver program to one time per vehicle and a brief description of the implications of this limit.

(b) The availability and a brief description of the vehicle repair and retrofit program established pursuant to section 49-474.03.

(c) Notice that many vehicles carry extended warranties for vehicle emissions systems, and those warranties are described in the vehicle's owner's manual or other literature.

(d) A description of the catalytic converter replacement program established pursuant to section 49-474.03.

P. Notwithstanding any other law, if area A or area B is reclassified as an attainment area, emissions testing conducted pursuant to this article shall continue for vehicles registered inside that reclassified area, vehicles owned by a person who is subject to section 15-1444 or 15-1627 and vehicles registered outside of that reclassified area but used to commute to the driver's principal place of employment located within that reclassified area.

Q. A fleet operator who is issued a permit pursuant to section 49-546 may electronically transmit emissions inspection data to the department of transportation pursuant to rules adopted by the director of the department of transportation in consultation with the director of environmental quality.

R. The director shall prohibit a certificate of waiver pursuant to subsection L of this section for any vehicle which has failed inspection in area A or area B due to the catalytic converter system.

S. The director shall establish provisions for rapid testing of certain vehicles and to allow fleet operators, singly or in combination, to contract directly for vehicle emissions testing.

T. Each vehicle emissions inspection station in area A shall have a sign posted to be visible to persons who are having their vehicles tested. This sign shall state that enhanced testing procedures are a direct result of federal law.

U. The initial adoption of rules pursuant to this section shall be deemed emergency rules pursuant to section 41-1026.

V. The director of environmental quality and the director of the department of transportation shall implement a system to exchange information relating to the waiver program, including information relating to vehicle emissions test results and vehicle registration information.

W. Any person who sells a vehicle that has been issued a certificate of waiver pursuant to this section after January 1, 1997 and who knows that a certificate of waiver has been issued after January 1, 1997 for that vehicle shall disclose to the buyer before completion of the sale that a certificate of waiver has been issued for that vehicle.

X. Vehicles that fail the emissions test at emission levels higher than twice the standard established for that vehicle class by the department pursuant to section 49-447 are not eligible for a certificate of waiver pursuant to this section unless the vehicle is repaired sufficiently to achieve an emissions level below twice the standard for that class of vehicle.

Y. If an insurer notifies the department of transportation of the cancellation or nonrenewal of collectible vehicle or classic automobile insurance coverage for a collectible vehicle, the department of transportation shall cancel the registration of the vehicle and the vehicle's exemption from emissions testing pursuant to this section unless evidence of coverage is presented to the department of transportation within sixty days.

Z. For the purposes of this section, "collectible vehicle" means a vehicle that complies with both of the following:

1. Either:

(a) Bears a model year date of original manufacture that is at least fifteen years old.

(b) Is of unique or rare design, of limited production and an object of curiosity.

2. Meets both of the following criteria:

(a) Is maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes.

(b) Has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

49-542. Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition

(L17, Ch. 29, sec. 2. Conditionally Eff.)

A. The director shall administer a comprehensive annual or biennial emissions inspection program that shall require the inspection of vehicles in this state pursuant to this article and applicable administrative rules. Such inspection is required for vehicles that are registered in area A and area B, for those vehicles owned by a person who is subject to section 15-1444 or 15-1627 and for those vehicles registered outside of area A or area B but used to commute to the driver's principal place of employment located within area A or area B. Inspection in other counties of the state shall commence on the director's approval of an application by a county board of supervisors for participation in such inspection program. In all counties with a population of three hundred fifty thousand or fewer persons, except for the portion of counties that contain any portion of area A, the director shall as conditions dictate provide for testing to determine the effect of vehicle related pollution on ambient air quality in all communities with a metropolitan area population of twenty thousand persons or more. If such testing detects the violation of state ambient air quality standards by vehicle related pollution, the director shall forward a full report of such violation to the president of the senate, the speaker of the house of representatives and the governor.

B. The state's annual or biennial emissions inspection program shall provide for vehicle inspections at official emissions inspection stations or at fleet emissions inspection stations. Each inspection station in area A shall employ at least one technical assistant who is available during the station's hours of operation to provide assistance for persons who fail the emissions test. An official or fleet emissions inspection station permit shall not be sold, assigned, transferred, conveyed or removed to another location except on such terms and conditions as the director may prescribe.

C. Vehicles required to be inspected and registered in this state, except those provided for in section 49-546, shall be inspected, for the purpose of complying with the registration requirement pursuant to subsection D of this section, in accordance with the provisions of this article no more than ninety days prior to each registration expiration date. A vehicle may be submitted voluntarily for inspection more than ninety days before the registration expiration date on payment of the prescribed inspection fee. Such voluntary inspection shall not be considered as compliance with the registration requirement pursuant to subsection D of this section.

D. A vehicle shall not be registered until such vehicle has passed the emissions inspection and the tampering inspection prescribed in subsection G of this section or has been issued a certificate of waiver. A certificate of waiver shall only be issued one time to a vehicle after January 1, 1997. If any vehicle to be registered is being sold by a dealer licensed to sell motor vehicles pursuant to title 28, the cost of any inspection and any repairs necessary to pass the inspection shall be borne by the dealer. A dealer who is licensed to sell motor vehicles pursuant to title 28 and whose place of business is located in area A or area B shall not deliver any vehicle to the

retail purchaser until the vehicle passes any inspection required by this article or the vehicle is exempt under subsection J of this section.

E. On the registration of a vehicle that has complied with the minimum emissions standards pursuant to this section or is otherwise exempt under this section, the registering officer shall issue an air quality compliance sticker to the registered owner that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation or issue a modified year validating tab as prescribed by rule adopted by the department of transportation. Those persons who reside outside of area A or area B but who elect to test their vehicle or are required to test their vehicle pursuant to this section and who comply with the minimum emissions standards pursuant to this section or are otherwise exempt under this section shall remit a compliance form, as prescribed by the department of transportation, and proof of compliance issued at an official emissions inspection station to the department of transportation along with the appropriate fees. The department of transportation shall then issue the person an air quality compliance sticker that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation. The registering officer or the department of transportation shall collect an air quality compliance fee of twenty-five cents. The registering officer or the department of transportation shall deposit, pursuant to sections 35-146 and 35-147, the air quality compliance fee in the state highway fund established by section 28-6991. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, any emissions inspection fee in the emissions inspection fund. The provisions of this subsection do not apply to those vehicles registered pursuant to title 28, chapter 7, article 7 or 8, the sale of vehicles between motor vehicle dealers or vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

F. The director shall adopt minimum emissions standards pursuant to section 49-447 with which the various classes of vehicles shall be required to comply as follows:

1. For the purpose of determining compliance with minimum emissions standards in area B for motor vehicles other than diesel powered vehicles or constant four-wheel drive vehicles:

(a) A motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or a steady state loaded test and curb idle test as approved by the director.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass a steady state loaded test and curb idle test.

(c) A motor vehicle, other than a vehicle covered by subdivision (a) or (b) of this paragraph, shall be required to take and pass a curb idle test.

2. For the purposes of determining compliance with minimum emissions standards and functional tests in area A for motor vehicles other than diesel powered vehicles or constant four-wheel drive vehicles:

(a) A motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or a transient loaded test as approved by the director.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass a transient loaded test.

(c) A motor vehicle, other than a vehicle covered by subdivision (a) or (b) of this paragraph, shall be required to take and pass a steady state loaded test and curb idle test.

(d) Motor vehicles by specific class or model year shall be required to take and pass any of the following tests:

(i) An evaporative system purge test.

(ii) An evaporative system integrity test.

3. For the purpose of determining compliance with minimum emissions standards in area A or area B for diesel powered motor vehicles:

(a) A diesel powered motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or an opacity test as approved by the director.

(b) A diesel powered motor vehicle, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass an emissions test as follows:

(i) A loaded, a transient or any other form of test as provided for in rules adopted by the director for vehicles with a gross vehicle weight rating of eight thousand five hundred pounds or less.

(ii) A test that conforms with the society for automotive engineers standard J1667 for vehicles with a gross vehicle weight rating of more than eight thousand five hundred pounds.

4. A constant four-wheel drive vehicle shall be required to take and pass a curb idle test or an onboard diagnostic test.

5. Fleet operators must comply with this section, except that used vehicles, other than diesel powered vehicles, sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit under section 49-546 shall be tested as follows:

(a) A motor vehicle with a model year of 1980 or earlier shall take and pass a curb idle test.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle that is equipped with an onboard diagnostic system that is required by section 202(m) of the clean air act, shall take and pass a curb idle test and a twenty-five hundred revolutions per minute unloaded test.

6. Vehicles owned or operated by the United States, this state or a political subdivision of this state shall comply with this subsection without regard to whether those vehicles are required to be registered in this state, except that alternative fuel vehicles of a school district that is located in area A, other than vehicles equipped with an onboard diagnostic system required by section 202(m) of the clean air act, shall be required to take and pass the curb idle test and the loaded test.

7. A diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

G. In addition to an emissions inspection, a vehicle is subject to a tampering inspection as prescribed by rules adopted by the director if the vehicle was manufactured after the 1974 model year.

H. Vehicles required to be inspected shall undergo a functional test of the gas cap to determine if the cap holds pressure within limits prescribed by the director. This subsection does not apply to any diesel powered vehicle.

I. Motor vehicles failing the initial or subsequent test are not subject to a penalty fee for late registration renewal if the original testing was accomplished before the expiration date and if the registration renewal is received by the motor vehicle division or the county assessor within thirty days after the original test.

J. The director may adopt rules for purposes of implementation, administration, regulation and enforcement of the provisions of this article including:

1. The submission of records relating to the emissions inspection of vehicles inspected by another jurisdiction in accordance with another inspection law and the acceptance of such inspection for compliance with the provisions of this article.

2. The exemption from inspection of:

(a) Except as otherwise provided in this subdivision, a motor vehicle manufactured in or before the 1966 model year. If the United States environmental protection agency issues a vehicle emissions testing exemption for motor vehicles manufactured in or before the 1974 model year for purposes of the state implementation or maintenance plan for air quality, a motor vehicle manufactured in or before the 1974 model year is exempt from inspection.

(b) New vehicles originally registered at the time of initial retail sale and titling in this state pursuant to section 28-2153 or 28-2154.

(c) Vehicles registered pursuant to title 28, chapter 7, article 7 or 8.

(d) New vehicles before the sixth registration year after initial purchase or lease.

(e) Vehicles that are outside of this state at the time of registration, except the director by rule may require testing of those vehicles within a reasonable period of time after those vehicles return to this state.

(f) Golf carts.

(g) Electrically-powered vehicles.

(h) Vehicles with an engine displacement of less than ninety cubic centimeters.

(i) The sale of vehicles between motor vehicle dealers.

(j) Vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

(k) Collectible vehicles.

(l) Motorcycles.

(m) Cranes and oversize vehicles that require permits pursuant to section 28-1100, 28-1103 or 28-1144.

(n) Vehicles that are not in use and that are owned by residents of this state while on active military duty outside of this state.

3. Compiling and maintaining records of emissions test results after servicing.

4. A procedure that shall allow the vehicle service and repair industry to compare the calibration accuracy of its emissions testing equipment with the department's calibration standards.

5. Training requirements for automotive repair personnel using emissions measuring equipment whose calibration accuracy has been compared with the department's calibration standards.

6. Any other rule that may be required to accomplish the provisions of this article.

K. The director, after consultation with automobile manufacturers and the vehicle service and repair industry, shall establish by rule a definition of "vehicle maintenance and repairs" for motor vehicles subject to inspection

under this article. The definition shall specify repair procedures that, when implemented, will reduce vehicle emissions.

L. The director shall adopt rules that specify that the estimated retail cost of all recommended maintenance and repairs shall not exceed the amounts prescribed in this subsection, except that if a vehicle fails a tampering inspection there is no limit on the cost of recommended maintenance and repairs. The director shall issue a certificate of waiver for a vehicle if the director has determined that all recommended maintenance and repairs have been performed and that the vehicle has failed any reinspection that may be required by rule. If the director has determined that the vehicle is in compliance with minimum emissions standards or that all recommended maintenance and repairs for compliance with minimum emissions standards have been performed, but that tampering discovered at a tampering inspection has not been repaired, the director may issue a certificate of waiver if the owner of the vehicle provides to the director a written statement from an automobile parts or repair business that an emissions control device that is necessary to repair the tampering is not available and cannot be obtained from any usual source of supply before the vehicle's current registration expires. Rules adopted by the director for the purpose of establishing the estimated retail cost of all recommended maintenance and repairs pursuant to this subsection shall specify that:

1. In area A the cost shall not exceed:

(a) Five hundred dollars for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) Five hundred dollars for a diesel powered vehicle with tandem axles.

(c) For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(i) Two hundred dollars for such a vehicle manufactured in or before the 1974 model year.

(ii) Three hundred dollars for such a vehicle manufactured in the 1975 through 1979 model years.

(iii) Four hundred fifty dollars for such a vehicle manufactured in or after the 1980 model year.

2. In area B the cost shall not exceed:

(a) Three hundred dollars for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) Three hundred dollars for a diesel powered vehicle with tandem axles.

3. For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(a) Fifty dollars for such a vehicle manufactured in or before the 1974 model year.

(b) Two hundred dollars for such a vehicle manufactured in the 1975 through 1979 model years.

(c) Three hundred dollars for such a vehicle manufactured in or after the 1980 model year.

M. Each person whose vehicle has failed an emissions inspection shall be provided a list of those general recommended repair and maintenance procedures for vehicles that are designed to reduce vehicle emissions levels.

N. Notwithstanding any other provisions of this article, the director may adopt rules allowing exemptions from the requirement that all vehicles must meet the minimum standards for registration.

O. The director of environmental quality shall establish, in cooperation with the assistant director for the motor vehicle division of the department of transportation:

1. An adequate method for identifying bona fide residents residing outside of area A or area B to ensure that such residents are exempt from compliance with the inspection program established by this article and rules adopted under this article.

2. A written notice that shall accompany the vehicle registration application forms that are sent to vehicle owners pursuant to section 28-2151 and that shall accompany or be included as part of the vehicle emissions test results that are provided to vehicle owners at the time of the vehicle emissions test. This written notice shall describe at least the following:

(a) The restriction of the waiver program to one time per vehicle and a brief description of the implications of this limit.

(b) The availability and a brief description of the vehicle repair and retrofit program established pursuant to section 49-474.03.

(c) Notice that many vehicles carry extended warranties for vehicle emissions systems, and those warranties are described in the vehicle's owner's manual or other literature.

(d) A description of the catalytic converter replacement program established pursuant to section 49-474.03.

P. Notwithstanding any other law, if area A or area B is reclassified as an attainment area, emissions testing conducted pursuant to this article shall continue for vehicles registered inside that reclassified area, vehicles owned by a person who is subject to section 15-1444 or 15-1627 and vehicles registered outside of that reclassified area but used to commute to the driver's principal place of employment located within that reclassified area.

Q. A fleet operator who is issued a permit pursuant to section 49-546 may electronically transmit emissions inspection data to the department of transportation pursuant to rules adopted by the director of the department of transportation in consultation with the director of environmental quality.

R. The director shall prohibit a certificate of waiver pursuant to subsection L of this section for any vehicle that has failed inspection in area A or area B due to the catalytic converter system.

S. The director shall establish provisions for rapid testing of certain vehicles and to allow fleet operators, singly or in combination, to contract directly for vehicle emissions testing.

T. Each vehicle emissions inspection station in area A shall have a sign posted to be visible to persons who are having their vehicles tested. This sign shall state that enhanced testing procedures are a direct result of federal law.

U. The initial adoption of rules pursuant to this section shall be deemed emergency rules pursuant to section 41-1026.

V. The director of environmental quality and the director of the department of transportation shall implement a system to exchange information relating to the waiver program, including information relating to vehicle emissions test results and vehicle registration information.

W. Any person who sells a vehicle that has been issued a certificate of waiver pursuant to this section after January 1, 1997 and who knows that a certificate of waiver has been issued after January 1, 1997 for that vehicle shall disclose to the buyer before completion of the sale that a certificate of waiver has been issued for that vehicle.

X. Vehicles that fail the emissions test at emission levels higher than twice the standard established for that vehicle class by the department pursuant to section 49-447 are not eligible for a certificate of waiver pursuant to this section unless the vehicle is repaired sufficiently to

achieve an emissions level below twice the standard for that class of vehicle.

Y. If an insurer notifies the department of transportation of the cancellation or nonrenewal of collectible vehicle or classic automobile insurance coverage for a collectible vehicle, the department of transportation shall cancel the registration of the vehicle and the vehicle's exemption from emissions testing pursuant to this section unless evidence of coverage is presented to the department of transportation within sixty days.

Z. For the purposes of this section, "collectible vehicle" means a vehicle that complies with both of the following:

1. Either:

(a) Bears a model year date of original manufacture that is at least fifteen years old.

(b) Is of unique or rare design, of limited production and an object of curiosity.

2. Meets both of the following criteria:

(a) Is maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes.

(b) Has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

49-542.02. Mechanic education program

The director shall establish an education program for motor vehicle mechanics for the inspection and maintenance provisions used in vehicle emissions control in area A.

49-542.03. Motor vehicle dealer; emissions testing; remedies; definition

(L14, Ch. 89, sec. 4)

A. In area A or area B, if a motor vehicle dealer sells a motor vehicle that has less than one year remaining before it must undergo an emissions test or has not taken an emissions test pursuant to section 49-542 and that is not covered under a current federal emissions warranty and if the purchaser of the vehicle has the vehicle emissions tested within three days, excluding holidays, of the purchase and if the vehicle fails the test, the dealer shall do one of the following:

1. Rescind the purchase agreement and reimburse the purchaser for the cost of the test.

2. Make repairs at the dealer's expense which bring the vehicle into compliance with the emissions test.

3. Enter into a mutually acceptable alternative agreement with the purchaser.

B. A motor vehicle dealer who sells a vehicle subject to the provisions of subsection A of this section shall provide the purchaser with a written notice of the purchaser's rights pursuant to this section prior to completing the sale transaction. A motor vehicle dealer subject to the provisions of section 49-546, subsection G shall also provide a written summary of the requirements of section 49-542 to the purchaser. The notice shall be available in English and in Spanish.

C. A motor vehicle dealer who meets the requirements of section 49-546, subsection G shall conduct the dealer's business pursuant to this

section for those vehicles which are required by law to be registered in area A.

D. A motor vehicle dealer in area B who sells a vehicle to a resident of area A may comply with emissions testing requirements pursuant to section 49-542, subsection F, paragraph 6 by complying with this section and the tampering inspection pursuant to section 49-542, subsection G.

E. In this section, unless the context otherwise requires, "motor vehicle dealer" means a dealer who is a fleet operator and who has been issued a permit under section 49-546.

49-542.03. Motor vehicle dealer; emissions testing; remedies; definition

(L14, Ch. 89, sec. 5. Conditionally Eff.)

A. In area A or area B, if a motor vehicle dealer sells a motor vehicle that has less than one year remaining before it must undergo an emissions test or has not taken an emissions test pursuant to section 49-542 and that is not covered under a current federal emissions warranty and if the purchaser of the vehicle has the vehicle emissions tested within three days, excluding holidays, of the purchase and if the vehicle fails the test, the dealer shall do one of the following:

1. Rescind the purchase agreement and reimburse the purchaser for the cost of the test.

2. Make repairs at the dealer's expense which bring the vehicle into compliance with the emissions test.

3. Enter into a mutually acceptable alternative agreement with the purchaser.

B. A motor vehicle dealer who sells a vehicle subject to the provisions of subsection A of this section shall provide the purchaser with a written notice of the purchaser's rights pursuant to this section prior to completing the sale transaction. A motor vehicle dealer subject to the provisions of section 49-546, subsection G shall also provide a written summary of the requirements of section 49-542 to the purchaser. The notice shall be available in English and in Spanish.

C. A motor vehicle dealer who meets the requirements of section 49-546, subsection G shall conduct the dealer's business pursuant to this section for those vehicles which are required by law to be registered in area A.

D. A motor vehicle dealer in area B who sells a vehicle to a resident of area A may comply with emissions testing requirements pursuant to section 49-542, subsection F, paragraph 5 by complying with this section and the tampering inspection pursuant to section 49-542, subsection G.

E. In this section, unless the context otherwise requires, "motor vehicle dealer" means a dealer who is a fleet operator and who has been issued a permit under section 49-546.

49-542.04. Off-road vehicle and engine standards

A. The department shall adopt rules for air pollution emission standards for off-road vehicles and engines marketed in the state beginning with the 1999 model year.

B. The standards may include the following categories:

1. Heavy-duty diesel vehicles rated at 175-750 horsepower.

2. Small utility and lawn and garden equipment engines rated at less than twenty-five horsepower.

3. Recreational vehicles rated at less than twenty-five horsepower.

4. Specialty engines and go-carts rated at greater than twenty-five horsepower.

5. Off-road motorcycles and all terrain vehicles.

C. In a county with a population of more than one million two hundred thousand persons according to the most recent United States decennial census, the department shall adopt rules for air pollution emission standards for golf cart engines.

49-542.05. Alternative fuel vehicles

A. Except for a vehicle fueled by hydrogen, the following apply:

1. Each original equipment manufactured alternative fuel vehicle that is registered in or used to commute into area A or area B pursuant to section 49-542, subsection A is subject to the emissions inspection requirements prescribed in this article.

2. Each alternative fuel vehicle that is not an original equipment manufactured alternative fuel vehicle and that is registered in or used to commute into area A or area B pursuant to section 49-542, subsection A is subject to the emissions inspection requirements prescribed in this article.

B. Except for a vehicle fueled by hydrogen, for each vehicle that is registered in or used to commute into area A or area B as prescribed by section 49-542, subsection A and that is either an original equipment manufactured alternative fuel vehicle or an alternative fuel vehicle that is not an original equipment manufactured alternative fuel vehicle, the vehicle shall be tested before the vehicle is registered in this state as an alternative fuel vehicle both while operating on gasoline and while operating on alternative fuel, if applicable. In the sixth registration year and in subsequent years, the vehicle shall be tested both while operating on gasoline and while operating on alternative fuel, if applicable, pursuant to the requirements of section 49-542.

C. The registration renewal notice required for the fourth and fifth registration year of a new original equipment manufactured alternative fuel vehicle shall include a notice to the vehicle owner that even though an emissions inspection test is not required pursuant to subsection B of this section the owner may choose to have an emissions inspection because of vehicle emissions performance warranty limitations on emissions components of the vehicle.

D. The department of environmental quality shall compile and maintain data regarding the results of emissions inspections of all alternative fuel vehicles pursuant to this article.

49-542.06. Roadside testing of diesel vehicles; contract; test standards; cut points

A. The department shall establish and administer a roadside testing program for diesel powered motor vehicles with a gross vehicle weight rating of more than ten thousand pounds that are operated in area A or B, including diesel vehicles registered pursuant to title 28, chapter 7, article 7 or 8. The department may contract with an independent contractor to implement the program. If an independent contractor is used, the department of administration, in consultation with the department of environmental quality, shall administer the request for proposal and award processes.

B. The smoke testing procedures and measuring equipment used in determining violations of the test standards shall be conducted in accordance with the society of automotive engineers recommended practice J1667, snap acceleration smoke test procedure for heavy-duty diesel powered

vehicles. The department shall develop criteria and procedures to validate that meters produce consistent and repeatable results.

C. The department shall develop maximum allowable opacity cut points based on model year of vehicles.

D. The inspection program shall include appropriate visual screening and shall provide for the issuance of citations for failure to comply.

E. The program shall provide for appropriate alternative standards for vehicles that meet engine manufacturers' specifications.

49-542.07. Civil penalties

A. The driver of a diesel vehicle that fails the test administered pursuant to section 49-542.06, including failure due to refusal to submit to the test, is subject to the following penalty schedule:

1. The driver of a vehicle that is cited for the first time and for which demonstration of correction is provided and payment is made within forty-five days from the date of receipt of the citation by certified mail shall pay a penalty of one hundred fifty dollars.

2. The driver of a vehicle that is cited for the first time for the refusal of the driver to submit to the test procedure or that is cited for the first time and for which demonstration of correction is not provided within forty-five days from the date of receipt of the citation by certified mail shall provide demonstration of correction and pay a penalty of eight hundred dollars.

3. The driver of a vehicle that is cited within twelve months from the issuance of the most recent citation for that vehicle shall provide demonstration of correction, within forty-five days from the date of receipt of the current citation by certified mail, and pay a penalty of one thousand eight hundred dollars.

B. A citation shall not be issued to the driver of a heavy-duty vehicle powered by a pre-1991 model year diesel engine on the basis of a measured smoke opacity exceeding fifty-five per cent but not exceeding sixty-nine per cent, unless either of the following occurs:

1. The driver fails to provide a demonstration of correction within forty-five days from the date of receipt by certified mail of the notice of violation.

2. A notice of violation or citation has been issued for the vehicle in the preceding twelve months.

C. The driver of a vehicle that is the subject of a notice of violation and for which demonstration of correction is provided within forty-five days from the date of receipt by certified mail of the notice of violation is not subject to a penalty for the violation.

D. The driver of a vehicle that is initially subject to a notice of violation but that is cited after a demonstration of correction is subject to a penalty of eight hundred dollars.

E. If a heavy-duty vehicle with a pre-1991 engine has a measured opacity exceeding fifty-five per cent but not exceeding sixty-nine per cent within twelve months of issuance of a notice of violation for which a demonstration of correction was timely provided within the applicable forty-five day period, a citation shall be issued and the driver is subject to a penalty of eight hundred dollars.

F. If a heavy-duty vehicle with a pre-1991 engine has a measured opacity exceeding fifty-five per cent but not exceeding sixty-nine per cent within twelve months of issuance of a notice of violation for which a demonstration of correction was not timely provided within the applicable forty-five day period, a citation shall be issued and the driver is subject to the penalty of one thousand eight hundred dollars.

G. If a vehicle fails the test procedure or an emissions control system inspection one year or more after the date of its most recent failure, the driver of that vehicle is subject to the penalty schedule in subsection A of this section.

H. If a driver is cited after a bona fide change of owner between nonrelated persons or entities, the new owner is subject to the penalty schedule in subsection A of this section if the only citations issued for the vehicle within the previous twelve months were issued before the change of ownership to the new owner.

I. A driver who has been cited twice or more for tampered emissions controls on the same vehicle is subject to a penalty of one thousand eight hundred dollars.

J. For a vehicle that is registered in this state and for which a civil penalty assessed pursuant to this section has not been paid, the director of environmental quality shall notify the department of transportation by electronic means. The director of the department of transportation shall send a letter by first class mail to the person to whom the vehicle is registered informing the person that the vehicle's registration is suspended. After the civil penalty is paid in full and the proof of repair is submitted, the person to whom the vehicle is registered may apply for reinstatement of the vehicle registration on the payment of applicable fees pursuant to sections 28-2003, 28-2352, 28-2402 and 28-2481.

K. For a vehicle that is not registered in this state and for which a civil penalty assessed pursuant to this section has not been paid, the department of transportation shall notify the appropriate cooperating state agency as if the driver had failed and refused to pay a fuel tax assessed or apportioned pursuant to an interstate agreement established pursuant to section 28-404.

L. Notices of violation and citations issued and penalties assessed pursuant to this section are appealable agency actions pursuant to title 41, chapter 6, article 10.

M. All civil penalties collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

N. Notwithstanding any other statute, the penalties prescribed by this section are not subject to any additional fee or surcharge.

49-543. Emissions inspection costs; disposition; fleet inspection; certificates

A. The director shall fix, regulate and alter in accordance with this section the fees required to be paid for the full costs of the vehicle emissions inspection program pursuant to this article including administration, implementation and enforcement.

B. Except as provided in section 49-542.05, the registration renewal notice required for the second through fifth registration year of a new vehicle shall include a notice to the vehicle owner that even though an emissions inspection test is not required pursuant to section 49-542, subsection J, paragraph 2, subdivision (d) the owner may choose to have an emissions inspection because of vehicle emissions performance warranty limitations on emissions components of the vehicle.

C. The fees charged for official emissions inspection shall be uniform as applied to each class of vehicle, which shall be defined by the director. Except for fees collected by the director pursuant to section 49-546, the inspection fees required to be paid pursuant to this article may be collected with the registration fee by the registering officer at the time and place of motor vehicle registration pursuant to title 28, chapter 7, article 5 and deposited, pursuant to sections 35-146 and 35-147, in the emissions

inspection fund in accordance with the rules adopted by the director or may be collected by the independent contractor at the time of inspection.

D. Any person, except a person who has been issued a certificate of waiver pursuant to section 49-542, subsection L, whose vehicle has been inspected at an official emissions inspection station, if the vehicle was not found to comply with the minimum standards, shall have the vehicle repaired, including recommended repair or replacement of emissions control devices as a result of tampering, and have the right within sixty consecutive calendar days but not thereafter to return the vehicle for one reinspection without charge. The department may provide for additional reinspections without charge. A vehicle shall not be deemed to pass a reinspection unless the tampering discovered during the tampering inspection is repaired with new or reconditioned emissions control devices.

E. The department shall issue certificates of inspection to owners of fleet emissions inspection stations. Each certificate shall be validated by the fleet emissions inspection stations in a manner required by the director at the time that each owner's fleet vehicle has been inspected or has passed inspection. The validated certificate of inspection shall indicate at the time of registration that the owner's fleet vehicle has been inspected and that the vehicle has passed inspection.

F. The director shall fix an emissions inspection fee before inspection certificates may be issued to the owner of any fleet emissions inspection station. Such fee shall be uniform for each inspection certificate issued and shall be based on the director's estimated costs to the state of administering and enforcing this article as it applies to fleet emissions inspection stations and the vehicles inspected in fleet emissions inspection stations. The director shall deposit, pursuant to sections 35-146 and 35-147, all such monies collected by the director pursuant to this article in the emissions inspection fund.

49-544. Emissions inspection fund; composition; authorized expenditures; exemptions; investment

A. An emissions inspection fund is established and is subject to legislative appropriation. The emissions inspection fund shall consist of:

1. Monies appropriated to the fund by the legislature.
2. All monies collected pursuant to section 49-543, subsection A.
3. All monies collected by the director for the issuance of inspection certificates to owners of fleet emissions inspection stations.
4. Monies received from private grants or donations when so designated by the grantor or donor.
5. Monies received from the United States by grant or otherwise to assist the state in any emissions inspection program.

B. Monies in the emissions inspection fund may be used for the following:

1. Enforcement of the provisions of this article related to fleet emissions inspections, exemptions, and certificates of waiver.
2. Payment of contractual charges to independent contractors pursuant to section 49-545.
3. Costs to the state of administering the emissions inspection services performed by the independent contractor, including inspection station auditing, contractor training and certification, and motorist assistance.
4. Funding the state's portion of the catalytic converter program costs prescribed by section 49-542.

5. Through June 30, 2005, conducting research studies to evaluate the feasibility and effectiveness of emission system control technologies, including the repair of vehicles participating in the studies.

6. Other costs of administering and enforcing the provisions of this article.

C. The department of environmental quality shall approve and provide for the payment of contractual charges to independent contractors and for enforcement of the provisions of this article related to fleet emissions inspections, exemptions and certificates of waiver.

D. Monies in the emissions inspection fund are exempt from the provisions of section 35-190, relating to lapsing of appropriations.

E. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

49-545. Agreement with independent contractor; qualifications of contractor; agreement provisions

A. The director is authorized to enter into an emissions inspection agreement with one or more independent contractors, subject to public bidding, to provide for the construction, equipment, establishment, maintenance and operation of any official emissions inspection stations in such numbers and locations as may be required to provide vehicle owners reasonably convenient access to inspection facilities for the purpose of obtaining compliance with this article and the rules adopted pursuant to this article. The agreement may provide that official inspection stations shall be placed in permanent or movable buildings at particular locations as well as in mobile units for conveyance from one preannounced particular location to another.

B. The director is prohibited from entering into an emissions inspection agreement with any independent contractor who:

1. Is engaged in the business of manufacturing, selling, maintaining or repairing vehicles, except that the independent contractor shall not be precluded from maintaining or repairing any vehicle owned or operated by the independent contractor.

2. Does not have the capability, resources or technical and management skill to adequately construct, equip, operate and maintain a sufficient number of official emissions inspection stations to meet the demand for inspection of every vehicle which is required to be submitted for inspection pursuant to this article.

C. All persons employed by the independent contractor in the performance of an emissions inspection agreement are deemed to be employees of the independent contractor and not of this state. No employee of the independent contractor shall wear any badge, insignia, patch, emblem, device, word or series of words which would tend to indicate that such person is employed by this state. Employees of the independent contractor are specifically prohibited under this subsection from wearing the flag of this state, the words "state of Arizona", the words "official emissions inspection program" or any similar emblem or phrase.

D. The emissions inspection agreement authorized by this section shall contain, in addition to any other provisions, provisions relating to the following:

1. A contract term or duration of between five and seven years with reasonable compensation to the contractor if the provisions of this article are repealed.

2. That nothing in the agreement or contract shall require the state to purchase any asset or assume any liability if such agreement or contract is not renewed.

3. The minimum requirements for adequate staff, equipment, management and hours and place of operation of official emissions inspection stations.

4. The submission of such reports and documentation concerning the operation of official emissions inspection stations as the director and the auditor general may require.

5. Surveillance by the department of environmental quality and the auditor general to ensure compliance with vehicular emissions standards, procedures, rules and laws.

6. The right of this state, upon providing reasonable notice to the independent contractor, to terminate the contract with the independent contractor and the right of this state on termination of the contract to assume operation of the vehicle emissions inspection program through another contract provider or otherwise.

7. The right of this state upon termination of the term of the agreement or upon assumption of the operation of the program to have transferred and assigned to it for reasonable compensation any interest in land, buildings, improvements, equipment, parts, tools and services used by the independent contractors in their operation of the program.

8. The right of this state upon termination of the term of the agreement or assumption of the operation of the program to have transferred and assigned to it any contract rights, and related obligations, for land, buildings, improvements, equipment, parts, tools and services used by the independent contractors in their operation of the program.

9. The obligation of the independent contractors to provide in any agreement to be executed by them, and to maintain in any agreements previously executed by them, for land, buildings, improvements, equipment, parts, tools and services used in their operation of the program for the right of the independent contractors to assign to this state any of their rights and obligations under such contract.

10. The right of the independent contractor, in the event the contract is terminated and the state elects to assume operation of the vehicle emissions inspection program through another contractor or otherwise, to retain and not transfer to the state any interest in or any contract rights and related obligations for improvements, equipment, parts, tools and services that are used by the independent contractor in the operation of the program and that are proprietary in nature, as may be more specifically set forth in the contract.

11. The amounts of liquidated damages payable by this state to the independent contractor if the state exercises its right to terminate the contract at the conclusion of each year of the contract pursuant to paragraph 6 of this subsection. The damages recoverable by the independent contractor if the state exercises its right to terminate the contract shall be limited to the liquidated damages specified in the contract.

12. Any other provision deemed necessary by the director for the administration or enforcement of the emissions inspection agreement.

E. The department of environmental quality shall establish bid specifications or contract terms for a contract with an independent contractor as provided in this section, review bids for award of a contract with the independent contractors and negotiate any terms of a contract with the independent contractors.

F. In evaluating bids for an emissions inspection agreement, no additional consideration shall be given to a bid solely on the basis of the type of conditioning mode proposed in the bid.

G. After a contract is awarded to an independent contractor, the director may modify the contract with the independent contractor to allow the contractor and the state to comply with amendments to applicable statutes or rules. These modifications are exempt from public bidding and may include the addition, deletion or alteration of any contract provision in order to make compliance feasible, including inspection fees and services rendered. Provisions relating to contract term or duration may be amended, except that the term or duration of the contract in existence on August 6, 1999 shall not be extended beyond December 31, 2001. Any proposed modification or amendment to the contract is subject to prior review by the joint legislative budget committee. If the director cannot negotiate an acceptable modification of the contract, the state may terminate the contract.

49-546. Fleet emissions inspection stations; certificates of inspection; dealer's inventory; investigations; revocation or suspension of permit

A. Any registered owner or lessee of a fleet of at least twenty-five vehicles may apply to the director for a permit to establish a fleet emissions inspection station. The director shall not issue any fleet emissions inspection station permit until the director has found that the applicant:

1. Maintains an established place of business for the repair and maintenance of the applicant's fleet of vehicles.

2. Has obtained approved machinery, tools and equipment to adequately conduct the required emissions inspections.

3. Employs properly trained and licensed personnel with which to perform the necessary labor.

4. Agrees to provide data as may be prescribed by the director.

B. Any operator of a fleet emissions inspection station under a valid permit, upon filing an application in the manner and form prescribed by the director and paying the prescribed fee, shall receive a sufficient number of certificates of inspection for each vehicle in the applicant's fleet. A certificate of inspection shall not be issued to any fleet vehicle until it has been inspected and found to comply with applicable regulations. A certificate of inspection issued to a fleet vehicle is transferable as prescribed by the director. The certificate of inspection is valid for a period of not more than one hundred eighty days after the transfer unless the vehicle is reregistered with a new owner, in which case the vehicle shall be inspected in accordance with this article before the reregistration.

C. A holder of a fleet emissions inspection station permit shall not inspect or certificate any vehicle for which the permittee is not the registered owner or lessee, unless authorized by the director.

D. Vehicles that are owned by a licensed vehicle dealer and that are held for resale as a part of the dealer's business inventory are deemed a part of the dealer's vehicle fleet for the purposes of this section.

E. Every vehicle subject to this section and registered in this state shall be inspected in accordance with this article or the rules adopted pursuant to this article. A vehicle that is subject to this section may not be registered or reregistered until the vehicle has passed inspection or been issued a waiver pursuant to section 49-542.

F. The director shall investigate the operation of each fleet emissions inspection station as the conditions and circumstances of the operation may indicate. The director may require the holder of any fleet permit to submit documentation required concerning the operation of the inspection station. The director may suspend or revoke and require the surrender and forfeiture of any fleet emissions inspection station permit and

certificates of inspection of the permittee if the director finds that the station is not operated in accordance with this article and the lawful rules adopted by the director or the holder of the permit has failed or refused to submit records or documentation required.

G. For the purposes of section 49-542.03, this section applies to a fleet motor vehicle dealer who meets both of the following conditions:

1. The principal place of business is within fifty miles of the outer boundary of area A.

2. The dealer certifies to the department that customers who reside in area A are the primary source of the dealer's business.

49-547. Authority of director to acquire enforcement equipment

The director may acquire in the name of the state by purchase, donation, dedication or other lawful means any special equipment, tools, materials or facilities needed to adequately administer or enforce the provisions of this article.

49-548. Improper representation

A. A person shall not in any manner represent any place to be an official or fleet emissions inspection station unless such station has been established and is operated under a valid permit issued by the director.

B. A certificate of inspection shall not be issued to any vehicle except by a fleet emissions inspection station established and operating under a valid permit issued by the director. All certificates of inspection shall be serially numbered and shall be strictly accounted for.

49-549. False certificates

A. A person shall not make, issue or knowingly use any imitation or counterfeit of an official certificate of inspection or a certificate of waiver.

B. A person shall not issue or cause or permit to be issued for any vehicle any certificate of inspection or a certificate of waiver knowing it to be fictitious or issued for another vehicle or issued without an inspection having been made.

49-550. Violation; classification; civil penalty

A. Except as provided in subsection B of this section, any person who violates any provision of this article or any rule of the director adopted under this article is guilty of a class 2 misdemeanor.

B. Any person who makes or issues any imitation or counterfeit of an official certificate or certificates of inspection or waiver is guilty of a class 5 felony.

C. Any person who knowingly demands or collects a fee for the inspection of a vehicle other than the fee fixed by the director for the inspection of vehicles of the same class is guilty of a class 2 misdemeanor.

D. Any person who makes or provides to the director the written statement required to obtain a certificate of waiver pursuant to section 49-542, subsection L, knowing the statement to be false, is guilty of a class 2 misdemeanor.

E. In addition to any other criminal penalty provided by law, a person who owns a vehicle and whose residence is located outside of area A or area B but who commutes in that vehicle to the driver's principal place of employment located within area A or area B without complying with this

article or who violates section 15-1444, subsection D or section 15-1627 is subject to a civil penalty of one hundred dollars for a first violation of this subsection. For a second violation of this subsection within a one year period, a court shall impose a civil penalty of three hundred dollars. A court shall impose a civil penalty of twenty-five dollars for a first time violation of this subsection if the owner presents evidence that the vehicle is in compliance with this article.

F. In addition to any other criminal penalty provided by law, any dealer who is licensed to sell motor vehicles pursuant to title 28, chapter 10, whose place of business is located in area A or area B and who delivers a vehicle that does not conform with this section is subject to a civil penalty of one thousand dollars for a first violation of this subsection. For the second violation of this subsection within a one year period, a court shall impose a civil penalty of two thousand dollars and a suspension of the dealer's license for a period of ninety days.

49-551. Air quality fee; air quality fund; purpose

A. Every person who is required to register a motor vehicle in this state pursuant to section 28-2153 shall pay, in addition to the registration fee, an annual air quality fee at the time of vehicle registration of one dollar fifty cents. Unless and until the United States environmental protection agency grants a waiver for diesel fuel pursuant to section 211(c)(4) of the clean air act, every person who is required to register a diesel powered motor vehicle in this state with a declared gross weight as defined in section 28-5431 of more than eight thousand five hundred pounds and every person who is subject to an apportioned fee for diesel powered motor vehicles collected pursuant to title 28, chapter 7, articles 7 and 8 shall pay an additional apportioned diesel fee of ten dollars.

B. The registering officer shall collect the fees and immediately deposit, pursuant to sections 35-146 and 35-147, the air quality fees in the air quality fund established pursuant to subsection C of this section and shall deposit the diesel fees in the voluntary vehicle repair and retrofit program fund established pursuant to section 49-474.03.

C. An air quality fund is established consisting of monies received pursuant to this section, gifts, grants and donations, and monies appropriated by the legislature. The department of environmental quality shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Interest earned on monies in the fund shall be credited to the fund. Monies in the air quality fund shall be used, subject to legislative appropriation, for:

1. Air quality research, experiments and programs conducted by or for the department for the purpose of bringing area A or area B into or maintaining area A or area B in attainment status, improving air quality in areas of this state outside area A or area B and reducing emissions of particulate matter, carbon monoxide, oxides of nitrogen, volatile organic compounds and hazardous air pollutants throughout the state.

2. Monitoring visible air pollution and developing and implementing programs to reduce emissions of pollutants that contribute to visible air pollution in counties with a population of four hundred thousand persons or more.

3. Developing and adopting rules in compliance with sections 49-426.03, 49-426.04, 49-426.05 and 49-426.06.

D. The department shall transfer four hundred thousand dollars from the air quality fund to the department of administration for the purposes prescribed by section 49-588 in eight installments in each of the first eight months of a fiscal year.

E. This section does not apply to an electrically powered golf cart or an electrically powered vehicle.

49-551.01. Diesel vehicle low emissions incentive grants; criteria

(Conditionally Rpld.)

A. The department may award incentive grants from the air quality fund established by section 49-551 for diesel vehicles:

1. To operate on alternative fuel or clean burning fuel as defined in section 1-215.

2. To operate on ultra low sulfur diesel fuel as defined in section 49-558.01 that is used in an engine with an emission control device.

3. Powered by an engine that meets or exceeds an emissions standard for diesel particulate matter of 0.05 grams per brake horsepower hour.

B. A vehicle that is awarded an incentive grant pursuant to this section shall meet the following criteria:

1. The vehicle has a gross vehicle weight rating of at least seventeen thousand five hundred pounds.

2. The vehicle is not a recreational vehicle as defined in section 28-3102.

3. The vehicle is registered in this state and the incentive grant recipient signs a statement, under penalty of perjury, that it is the recipient's intent that the vehicle will be registered in this state for at least three years from the date the vehicle is awarded an incentive grant pursuant to this section and that the recipient intends to operate the vehicle more than fifty per cent of the time in area A or area B.

4. The vehicle is subject to the financial responsibility requirements prescribed in section 28-4032, subsection A.

C. An incentive grant awarded pursuant to this section shall provide for real and quantifiable emissions reductions. Engine retrofit or conversions may meet the requirements of subsection A of this section if they have been approved for use by any one of the following:

1. The United States environmental protection agency voluntary retrofit program.

2. The United States environmental protection agency verification protocol for retrofit catalyst particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

3. The California air resources board diesel emission control strategy verification procedure.

4. Sections 43100 and 43102 of the health and safety code of the state of California.

5. Actual emission testing performed on the vehicle.

D. Notwithstanding subsection B, paragraph 4 of this section, the director may award incentive grants for school buses and municipal vehicles that otherwise meet the requirements of subsection B of this section.

49-552. Enforcement on city, town, county, school district or special district property

A city, town or county school district or special district shall prohibit the parking of vehicles which fail to comply with section 49-542 in an employee parking lot under its jurisdiction within area A or area B as defined in section 49-541.

49-553. Vehicle emissions; research; equipment; cost analysis

A. The department of environmental quality shall conduct research to quantify the effect of alternative fuels on toxic components of vehicular emissions. This shall include aldehydes, particularly formaldehyde, benzene and other aromatics.

B. The department shall acquire, with monies from the air quality fund, equipment capable of measuring the emissions effects of the use of oxygenated gasoline blends by means of the federal test procedures. The department shall use the equipment for the purpose of emissions testing of the vehicles required to be tested pursuant to statute.

C. The department may hire consultants for the purpose of analyzing the costs and benefits of the carbon monoxide reduction measures adopted by this chapter and to design and execute and to evaluate the results of any testing program required by this chapter.

49-554. Technical assistance review

A. The department of environmental quality, with the assistance of the governor's energy office and state universities, shall develop a program to:

1. Expedite testing and certification of technological developments related to improving air quality through a reduction in vehicle emissions.

2. Develop incentives to encourage development and innovation of technologies that improve air quality through a reduction in vehicle emissions.

3. Establish a board with technical expertise to assist developers of promising technologies with the emission certification processes of the California air resources board and the United States environmental protection agency. The board shall:

(a) Perform an initial evaluation of the technology including a review of existing test data.

(b) Develop procedures to apply those technologies in this state that have been certified by the California air resources board, the United States environmental protection agency or this state.

(c) Recommend a program of incentives to encourage private entities to use technologies that have been reviewed and approved by the board.

(d) Recommend legislation requiring the use of approved technologies by the state and political subdivisions.

(e) Recommend a credit trading and banking program to encourage innovative solutions to the reduction of emissions from all sources.

B. The department may enter into intergovernmental agreements and memorandums of understanding to accomplish the purposes of this section.

49-555. Retrofit of diesel vehicles

Entities subject to the provisions of sections 9-500.04, 41-803, 49-474.01 and 49-573 shall comply with the following time schedule for retrofitting their existing diesel vehicles:

1. Twenty-five per cent of the diesel fleet vehicles by December 31, 1998.

2. Forty per cent of the diesel fleet vehicles by December 31, 1999.

3. Sixty per cent of the diesel fleet vehicles by December 31, 2000.

4. Eighty per cent of the diesel fleet vehicles by December 31, 2001.

5. One hundred per cent of the diesel fleet vehicles by December 31, 2002.

49-556. Low emission vehicle program

A. This state shall participate in the national low emission vehicle program adopted in 40 Code of Federal Regulations part 9, part 85 and part 86 effective March 9, 1998, as part of the long-term air quality strategy. The state shall not bear any of the administrative costs of the program. The state retains the authority to adopt any alternative emissions reduction program which demonstrates improved air quality benefits for the state.

B. If this state does not participate in the program prescribed in subsection A, the state shall adopt the clean fuel fleets program prescribed in 40 Code of Federal Regulations part 88 for state, federal and political subdivision fleets in nonattainment areas.

49-557. Government vehicles; emissions inspections; noncompliance; vehicle operation privilege suspension

A. Each vehicle that is owned by the United States government and that is domiciled in this state for more than ninety consecutive days and each vehicle that is owned by a state or political subdivision of this state shall comply with section 49-542. On compliance, the department shall issue a government entity compliance sticker for the vehicle. The government entity compliance sticker shall be placed on the vehicle as prescribed by rule adopted by the department.

B. If a vehicle described in subsection A of this section does not have a current government entity compliance sticker, a law enforcement officer shall issue a citation to the operator of the vehicle for a violation of this section. On receipt of the abstract of conviction for a violation of this section, the department of transportation shall immediately suspend the privilege to operate the vehicle on the highways of this state until that vehicle complies with section 49-542.

49-558. Voluntary accelerated purchase of tier 2 and 3 equipment; definitions

A. Any person or entity may purchase nonroad equipment that meets tier 2 or tier 3 standards or may retrofit existing equipment to meet tier 2 or tier 3 standards in area A or area B and may send documentation regarding the purchase or retrofit of the equipment to the department. The department shall identify on its internet web site those persons or entities that submit documentation pursuant to this section. If possible, the information on the web site shall include estimates on the reductions in emissions of conventional pollutants and improvements to visibility in area A and area B that result from the voluntary purchase or retrofit of equipment that meets tier 2 or tier 3 standards.

B. The department shall cooperate with manufacturers, distributors and sellers of equipment that meets tier 2 or tier 3 standards to determine the extent of availability and use of tier 2 or tier 3 equipment in area A and area B and shall provide information on availability to potential purchasers of that equipment.

C. For purposes of this section:

1. "Tier 2 or tier 3 equipment" means equipment that meets tier 2 or tier 3 standards.

2. "Tier 2 or tier 3 standards" means the tier 2 or tier 3 emissions standards for nonroad engines that are established in 40 Code of Federal Regulations section 89.112, as amended on October 23, 1998.

49-558.01. Voluntary implementation of ultra low sulfur diesel fuel; definition

A. Any person or entity may use ultra low sulfur diesel fuel in vehicles that are retrofitted with oxidation catalysts and particulate filters in their fleets in area A or area B and may send documentation on the use of the fuel to the department. The department shall identify on its internet web site those persons or entities that submit documentation pursuant to this section. If possible, the information on the web site shall include estimates on the reductions in emissions of conventional pollutants and improvements to visibility in area A and area B that result from the voluntary use of ultra low sulfur diesel fuel.

B. The department shall cooperate with manufacturers, distributors and sellers of ultra low sulfur diesel fuel and equipment for retrofitting diesel vehicles with oxidation catalysts and particulate filters to determine the extent of availability and use of the fuel and equipment in area A and area B and shall provide information on availability to potential purchasers of the equipment.

C. For purposes of this section, "ultra low sulfur diesel fuel" means fuel that meets the highway diesel fuel sulfur control requirements pursuant to rules adopted by the administrator in federal register volume 66, number 12 on January 18, 2001.

Article 7 Emissions Control

49-571. Clean burning or alternative fuel requirements for new buses; definitions

A. A city, town or county which purchases buses for use in a county with a population of more than five hundred thousand persons shall only purchase buses which operate on clean burning fuel or alternative fuel, except that a city or town in area A, as defined in section 49-541, in a county with a population of more than one million two hundred thousand persons, shall also comply with section 9-500.04, subsection F.

B. If a city, town or county is unable to purchase a sufficient number of buses which operate on clean burning fuel or alternative fuel to meet the requirements of subsection A due to the unavailability of those types of buses, the city, town or county shall convert a sufficient number of buses in their present fleet which operate on any fuel listed in subsection C so that the number of the converted buses along with the buses operating on clean burning fuel or alternative fuel equals or exceeds the amount required pursuant to subsection A.

C. For the purposes of this article, "alternative fuel" and "clean burning fuel" have the same meaning prescribed in section 1-215.

49-572. Joint use of clean burning or alternative fuel refueling stations

To the extent practicable, a state agency or political subdivision that operates a clean burning fuel or alternative fuel refueling station shall permit the refueling of vehicles owned or operated by any state agency or political subdivision at the refueling station.

49-573. Emissions controls; federal vehicles

A. The operator of a United States government owned vehicle fleet based primarily in this state shall develop and implement a vehicle fleet

plan for the purpose of encouraging and progressively increasing the use of alternative fuels and clean burning fuels in United States government owned vehicles. The plan shall include a timetable for increasing the use of alternative fuels and clean burning fuels in fleet vehicles either through purchase or conversion.

B. The timetable shall reflect the following schedule and percentage of vehicles that operate on alternative fuels and clean burning fuels:

1. At least ten per cent of the total fleet by December 31, 1994.

2. At least forty per cent of the total fleet by December 31, 1995.

3. For fleets operating primarily in counties with a population of more than one million two hundred thousand persons according to the most recent United States decennial census, at least ninety per cent of the total fleet by December 31, 1997 and each year thereafter.

C. The requirements of subsections A and B of this section may be waived on receipt of certification supported by evidence acceptable to the department of environmental quality that the United States government fleet operator is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels or clean burning fuels at a projected cost that is reasonably expected to result in net costs of no greater than thirty per cent more than the net costs associated with the continued use of conventional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. An entity that receives a waiver pursuant to this section shall retrofit fleet heavy-duty diesel vehicles with a gross vehicle weight of eight thousand five hundred pounds or more, that were manufactured in or before model year 1993 and that are the subject of the waiver with a technology that is effective at reducing particulate emissions at least twenty-five per cent or more and that has been approved by the United States environmental protection agency pursuant to the urban bus engine retrofit/rebuild program. The entity shall comply with the implementation schedule pursuant to section 49-555.

D. If the requirements of subsections A and B of this section are met by the use of clean burning fuel, vehicle equivalents under those requirements shall be calculated as follows:

1. One vehicle equivalent for every four hundred fifty gallons of neat biodiesel or two thousand two hundred fifty gallons of a diesel fuel substitute prescribed in section 1-215, paragraph 7, subdivision (b).

2. One vehicle equivalent for every five hundred thirty gallons of the fuel prescribed in section 1-215, paragraph 7, subdivision (d).

Article 8 Travel Reduction Programs

49-581. Definitions

In this article, unless the context otherwise requires:

1. "Alternate mode" means any mode of commute transportation other than the single occupancy motor vehicle.

2. "Approvable travel reduction plan" means a plan that is submitted by a major employer and that meets the requirements set forth in section 49-588.

3. "Area A" has the same meaning prescribed in section 49-541.

4. "Board" means the board of supervisors of a county with a population of more than one million two hundred thousand persons according to the most recent United States decennial census.

5. "Carpool" or "vanpool" means two or more persons traveling in an automobile, truck or van to or from work.

6. "Commute trip" means a trip taken by an employee to or from a work site located within the county.

7. "Commuter matching service" means a system, whether it uses computer or manual methods, which assists in matching employees for the purpose of sharing rides to reduce the drive alone travel.

8. "Employer" means any sole proprietor, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, either public or private, that employs workers.

9. "Full-time employee" means an employee who works at or reports to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year.

10. "Full-time student" means a driving-aged high school, community college or university student commuting to school three or more days of the week during any regular school term.

11. "Major employer" means an employer with one hundred or more employees working at or reporting to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year, except that in area A the threshold is fifty employees.

12. "Mode" means the type of conveyance used in transportation, including single occupancy motor vehicle, rideshare vehicles, transit, bicycle and walking.

13. "Motor vehicle" means any self-propelled vehicle including a car, van, bus or motorcycle and all other motorized vehicles.

14. "Political subdivision" means a city, town or county of this state.

15. "Public interest group" means any nonprofit group whose purpose is to further the welfare of the community.

16. "Reduced emission vehicle" means a motor vehicle that is certified by the task force as being substantially lower emitting in actual use than vehicles generally purchased in the area and that shall be counted as less than a single motor vehicle for travel reduction plan purposes.

17. "Reduced emission vehicle factor" means a factor that is applied to the single occupancy vehicle count and the motor vehicle miles traveled count pursuant to section 49-588 to allow a reduced emission vehicle to receive less than the full count of a regular motor vehicle or a mile traveled by a regular motor vehicle.

18. "Regional" means an area which encompasses or overlaps territory within the jurisdiction of two or more political subdivisions of this state.

19. "Regional program" means the combination of all implemented plans within area A which program shall begin in January, 1989.

20. "Ridesharing" means transportation of more than one person for commute purposes in a motor vehicle, with or without the assistance of a commuter matching service.

21. "Staff" means the county staff assigned to the task force.

22. "Task force" means the travel reduction program regional task force in area A which is designated by the board as the responsible agency to implement and enforce this article.

23. "Transit" means a bus or other public conveyance system.

24. "Transportation coordinator" means a person designated by an employer, property manager or transportation management association as the lead person in developing and implementing a travel reduction plan.

25. "Transportation management association" means a group of employers or associations formally organized to seek solutions for transportation problems experienced by the group.

26. "Travel reduction plan" means a written report outlining travel reduction measures.

27. "Travel reduction program" means a program that implements a travel reduction plan by an employer and is designed to achieve a predetermined level of travel reduction through various incentives and disincentives.

28. "Vehicle miles traveled" means the number of miles traveled by a motor vehicle for commute trips. A mile traveled by a reduced emission vehicle shall be counted as less than a full vehicle mile traveled for travel reduction plan purposes.

29. "Vehicle occupancy" means the number of occupants in a motor vehicle including the driver.

30. "Voluntary participant" means an employer that is not included in the definition of major employer and chooses to participate in a travel reduction program.

31. "Work site" means a building and any grouping of buildings which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way and which are owned or operated by the same employer.

49-582. Travel reduction program regional task force; composition

A. A travel reduction program regional task force is established in area A for the purposes prescribed in this article. The regional public transportation authority established under title 48, chapter 29 and the regional planning agency for a county with a population of one million two hundred thousand or more persons according to the most recent United States decennial census shall provide assistance to the task force. The task force shall nominate a chairman for the task force who is then officially appointed by the board. The board shall appoint the travel reduction program director to supervise the staff and to be assistant chairman of the task force. The director is not a voting member.

B. The board shall appoint members of the task force in an equitable manner, including government and private sector representatives from each county in area A. Task force members shall be appointed to serve two year terms, and membership shall be staggered so that no more than two-thirds of the appointed members' terms expire on January 31 of any year. The board shall determine the method of selection and appointment of task force members, as provided by law, ordinance or the guidelines established in this section.

C. The task force members shall be appointed to represent interests affected by the travel reduction program. Candidates for membership must be residents of area A and shall be selected from major employers, a member or manager of a transportation management association, an owner or manager of any business park, industrial park, office building, shopping center or other concentration of commercial interests, a public interest group established to address transportation or air quality issues or political subdivisions within area A.

D. Counties in area A with a population of one million two hundred thousand persons or less according to the most recent United States decennial census may enter into an intergovernmental agreement with a county in area A with a population of more than one million two hundred thousand persons according to the most recent United States decennial census to implement and comply with the requirements of this article.

49-583. Duties and powers of the task force

A. The task force shall review and approve the baseline survey distributed to major employers for the purpose of collecting data on employee

commuting patterns. The task force shall provide uniform formats for data to be provided by each employer on the commuting patterns of its employees and the effectiveness of its travel reduction plan. Collected data shall include the mode used and distance traveled for commute trips. The task force shall establish uniform requirements for record keeping and reporting as necessary to comply with this article and reasonable deadlines for submittal of additional data as required.

B. The task force shall:

1. Evaluate major employers' travel reduction plans and approve or object to any such plan received.

2. Review all responses by major employers to the annual survey and determine if they meet the requirements of this article.

3. Review the travel reduction plan submitted by each major employer to conclude if the plan achieves the targeted increase in travel reduction measures along with the staff report on the plan.

4. Monitor the implementation of each travel reduction plan as submitted by each major employer.

5. Develop and implement policies, standards and criteria for certifying eligible motor vehicles as being reduced emission vehicles if they are substantially lower emitting in actual use than vehicles generally purchased in the area. The task force shall not certify any reduced emission vehicle or group of vehicles unless the task force has evidence of all of the following:

(a) Results of a federal test procedure conducted pursuant to 40 Code of Federal Regulations part 86, subpart B, effective July 1, 1992, or an equivalent method approved by the administrator of the United States environmental protection agency, demonstrating substantially lower emissions from the vehicle or group of vehicles.

(b) In the case of any device added to the vehicle to reduce emissions, that the device has printed on it, or on the packaging, a clear statement by the manufacturer as to whether use of the device will void any existing vehicle warranty, and what the manufacturer's responsibility will be under such circumstances. The state shall have no responsibility as to the validity of such statement.

(c) United States environmental protection agency approval of the use of a reduced emission factor for that vehicle or group of vehicles as a revision to the state implementation plan.

6. Develop and implement policies, standards and criteria for reduced emission vehicle factors to be applied to the single occupancy vehicle count and the motor vehicle miles traveled count pursuant to section 49-588. The reduced emission vehicle factor applied to a reduced emission vehicle shall be proportional to its average emission reduction in actual use as compared to vehicles generally purchased in the area.

C. A plan submitted to the task force under subsection B, paragraph 1 of this section shall be approved or objections shall be filed within ninety days of its submission. The plan is automatically approved unless objected to by the task force within ninety days. Objections shall be based on criteria set forth in section 49-588. If the task force objects to the plan, it shall be reviewed and revised in consultation with the employer. The task force shall determine if enforcement action is appropriate and shall recommend action as it deems necessary.

D. If any response submitted to the task force pursuant to subsection B, paragraph 2 of this section is not approved, the task force may direct the employer to submit additional data within thirty days. If subsequent submissions of data are not approved, the task force shall evaluate the major employer and supporting data and decide if enforcement action is appropriate.

E. If a travel reduction plan submitted to the task force pursuant to subsection B, paragraph 3 of this section is not approved, the task force shall describe the inadequacies and direct the major employer to modify the plan within thirty days. If the plan as modified is not approved, the task force shall evaluate the supporting data and decide if enforcement action is necessary.

F. If a major employer has not implemented the travel reduction plan as submitted to the task force pursuant to subsection B, paragraph 4 of this section, the task force shall describe the inadequacies and shall direct modifications in the plan implementation. If the major employer's efforts remain inadequate, the task force shall evaluate the supporting data and decide if enforcement action is necessary.

G. If a major employer's travel reduction plan fails to achieve the target goals, the task force shall direct the staff to work with the employer to increase alternative modes of usage and reduce vehicle miles traveled in keeping with regional goals and to submit a plan addendum outlining activities aimed at correcting the plan deficiencies, unless the major employer's current efforts are judged to be sufficient based on:

1. The cost of the employer's travel reduction program compared to the average cost of such programs for all major employers.

2. Unusual circumstances faced by the major employer. If unusual circumstances do exist, the task force shall determine if major employers that fail to submit an addendum within ninety days after the date of written notice should be subject to enforcement action.

H. The task force shall direct the staff to identify and contact potential voluntary participants to encourage and assist them in participating in cooperative efforts to collect data on commuting patterns, needs and desires of their employees and their tenants' employees. These potential voluntary participants shall include property managers and other nonmajor employers that may wish to participate in a travel reduction program. The task force shall encourage these owners, managers and employers to form transportation management associations. Among other activities the transportation management associations may disseminate information on alternate modes of transportation. The task force shall encourage the transportation management associations to assist member employers in developing and implementing travel reduction plans.

I. The task force shall review the performance of the regional program annually and prepare a report for the board. The report shall include successes and problem areas and shall recommend revisions to this article, as necessary.

49-584. Staff duties

The staff shall provide support to the task force and the major employers. The staff shall:

1. Provide assistance to each employer in coordinating data collection, dissemination of information on air quality, alternative modes programs, developing a travel reduction plan and increasing the effectiveness of selected travel reduction measures.

2. Coordinate training programs for major employers to assist them in training their transportation coordinator, preparing and implementing their travel reduction plans and preparing annual reports.

3. Coordinate survey and data collection activities and overall program monitoring with the task force and the board.

4. Under direction of the task force, develop an implementation schedule for annual surveys of the major employer community.

5. Assist the task force in developing and implementing policies, standards and criteria for certifying eligible motor vehicles as being reduced emission vehicles.

6. Assist the task force in developing and implementing policies, standards and criteria for reduced emission vehicle factors to be applied to the single occupancy vehicle count and the motor vehicle miles traveled count pursuant to section 49-588.

49-587. Voluntary participation

Nonmajor employers or groups of nonmajor employers are encouraged to participate in data collection and information dissemination efforts and in the preparation of their own travel reduction plans on a voluntary basis. The task force shall assist these groups, and these groups are eligible for participation in all programs and services. Groups of nonmajor employers are encouraged to form transportation management associations.

49-588. Requirements for major employers

A. In each year of the regional program each major employer shall:

1. Provide each regular employee with information on alternate mode options and travel reduction measures. This information shall also be provided to new employees at the time of hiring.

2. Participate in a survey and reporting effort as directed by the task force and as scheduled by the staff. The results of this survey shall form a baseline against which attainment of the targets in subsection D of this section shall be measured as follows:

(a) The baseline for participation in alternative modes of transportation shall be based on the proportion of employees commuting by single occupancy vehicles.

(b) The baseline for vehicle miles traveled shall be the average vehicle miles traveled from place of residence to work per employee for employees not residing on the work site.

3. Prepare and submit a travel reduction plan for submittal to the staff and presentation to the task force. The staff shall assist in preparing the plan. Major employers shall submit plans within nine weeks after they receive survey data results. The plan shall contain the following elements:

(a) The name of the designated transportation coordinator.

(b) A description of employee information programs and other travel reduction measures which have been completed in the previous year.

(c) A description of additional travel reduction measures to be undertaken by the major employer in the coming year. The following measures may be included:

(i) A commuter matching service to facilitate employee ridesharing for work trips.

(ii) Provision of vans for vanpooling.

(iii) Subsidized carpooling or vanpooling which may include payment for fuel, insurance or parking.

(iv) Use of company vehicles for carpooling.

(v) Provision for preferential parking for carpool or vanpool users which may include close-in parking or covered parking facilities.

(vi) Cooperation with other transportation providers to provide additional regular or express service buses to the work site.

(vii) Subsidized bus fares.

(viii) Construction of special loading and unloading facilities for transit and carpool and vanpool users.

(ix) Cooperation with political subdivisions to construct walkways or bicycle routes to the work site.

(x) Provision of bicycle racks, lockers and showers for employees who walk or bicycle to and from work.

(xi) Provision of a special information center where information on alternate modes and other travel reduction measures is available.

(xii) Establishment of a full-time or part-time work at home program for employees.

(xiii) Establishment of a program of adjusted work hours which may include telecommuting, compressed workweeks or staggered work hours. Work hour adjustments should not interfere with or discourage the use of ridesharing and transit.

(xiv) Establishment of a program of parking incentives such as a rebate for employees who do not use the parking facility.

(xv) Incentives to encourage employees to live closer to work.

(xvi) Implementation of other measures designed to reduce commute trips such as the provision of day care facilities or emergency taxi services.

(xvii) Incentives for use of reduced emission vehicles and alternative fuel vehicle refueling facilities.

B. All employers in area A with one hundred or more employees at a single work site shall notify their employees of the employees' duty to comply with the requirements of section 49-542. The travel reduction program regional task force shall prepare and make available a standard information form for use by all employees of those employers.

C. Except as provided in subsection F of this section, an approvable travel reduction plan shall meet all of the following criteria:

1. The plan shall designate a transportation coordinator.

2. The plan shall describe a mechanism for regular distribution of alternate mode transportation information to employees.

3. For employers that in any year meet or exceed annual regional targets for travel reduction, the plan shall accurately and completely describe current and planned travel reduction measures.

4. For employers that, in any year, fall below the regional targets for travel reduction, the plan shall include commitments to implement:

(a) At least two specific travel reduction measures in the first year of the regional program.

(b) At least three specific travel reduction measures in the second year of the regional program.

D. After the second year, the task force shall review the travel reduction programs for employers not meeting regional targets and may recommend additional measures.

E. Employers shall implement all travel reduction measures they consider necessary to attain the following reduction in the proportion of employees commuting by single occupancy vehicles or commuter trip vehicle miles travel reductions per regulated work site:

1. Five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey in the first year, except that in area A the reduction shall be ten per cent.

2. In the second, third, fourth and fifth years, an additional five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey, except that in area A the reduction shall be ten per cent. If the percentage of employees commuting in single occupancy vehicles is sixty per cent or less, additional reductions are not required.

F. Notwithstanding any other requirements, a major employer may be in compliance with the requirements of subsections A, C and E of this section by

submitting a plan that demonstrates achievement of emissions reductions equivalent to those that would have been obtained through compliance with the requirements of subsection E of this section. Emissions reductions achieved for the purpose of compliance with this subsection shall be in addition to any other emissions reductions that are otherwise required by law, rule, ordinance or permit. The plan may contain any of the following measures to achieve emissions reductions:

1. Voluntary polluting vehicle trade-outs only if both of the following conditions are met:

(a) Vehicles are not crushed.

(b) The program applies only to vehicles owned by the major employer or its employees.

2. Use of clean on-road vehicles.
3. Use of clean off-road mobile equipment.
4. Remote sensing.
5. Other mobile source emissions reductions.
6. Emissions reductions from stationary sources.
7. Peak commute trip reductions.
8. Other work-related trip reductions.
9. Vehicle miles traveled reduction programs.
10. Fuel additives which have been shown to reduce hydrocarbon, carbon monoxide or particulate matter emissions of significant polluting on-road vehicles, off-road mobile sources or area sources by twenty per cent or more.

49-589. Variances

A. The task force shall appoint from its members a committee to serve as a hearing board for major employers requesting variances from all or part of the travel reduction plan schedule.

B. Any major employer wishing a variance from any of the requirements of this article shall make written application to the task force which shall make a determination on the variance. A request for variances shall be finally approved or disapproved within ninety days after the filing of a request by an employer.

49-590. Requirements for high schools, community colleges and universities

A major employer that is a high school, community college or university, in developing its survey, travel reduction plan or travel reduction program, shall include full-time students in determining the requirements of this article.

49-591. Exemptions

A. Employers opening for business, or hiring, relocating or otherwise adding employees so as to become subject to the requirements of this section within sixty days before the annual due date for the annual survey, are not required to submit the survey or plan until the next annual due dates.

B. The task force may grant an exemption to employers from the requirement to attain trip reduction goals specified in section 49-588. Exemptions shall be granted if the employer demonstrates that effective trip reduction strategies were implemented on or after July 1, 1988. Those exemptions may be granted only for the first year in which an employer is subject to this section. Employers shall demonstrate that effective strategies are in place by providing:

1. A detailed description of the trip reduction strategies and how they are implemented.

2. The period of time that the strategies have been in place.

3. Evidence indicating that the strategies have been effective in reducing the proportion of employees commuting by single occupancy vehicles.

C. The task force shall grant an exemption only on finding:

1. The evidence submitted by the employer is valid.

2. The trip reduction strategies have reduced trips at least as much as specified in the trip reduction goals pursuant to section 49-588.

49-592. Appeals

A. Any major employer or resident of the political subdivision may appeal a decision of the task force to authorize or withhold variances or a decision of the task force regarding enforcement or other provisions of this article.

B. The board shall hear and decide the appeal. If the decision is to disapprove the plan, the plan shall be returned to the task force for review and revision.

49-593. Violations; civil penalties

A. On determining a violation of this article the board shall request the county attorney to take appropriate legal action.

B. Violations of any of the following requirements may subject a major employer to increased civil penalties:

1. Failure to collect or supply information requested by the task force.

2. Failure to disseminate information on alternate modes and other travel reduction measures as specified in this article.

3. Failure to designate a transportation coordinator.

4. Failure to submit an approvable travel reduction plan.

5. Failure to implement an approved plan within the time schedule provided or failure to perform a revision of a plan as required by the task force.

C. Failure by a major employer to meet travel reduction goals as prescribed in section 49-588 does not constitute a violation if the major employer is attempting in good faith to meet the goals.

D. Except as provided in subsection C of this section, any employer that violates the requirements of this article is subject to a civil penalty of not to exceed one hundred dollars for a first violation, two hundred dollars for a second violation within one year and three hundred dollars for each additional violation within one year. Violations of this article which continue for more than one day constitute separate violations on each day. All civil penalties collected shall be deposited in the county general fund.

Chapter 4 SOLID WASTE MANAGEMENT
Article 1 General Provisions

49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each

of the components required by statute or rule but that has not undergone technical review or public notice by the department.

2. "Administrator" means the administrator of the United States environmental protection agency.

3. "Closed solid waste facility" means any of the following:

(a) A solid waste facility that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.

(b) A public solid waste landfill that meets any of the following criteria:

(i) Ceased receiving solid waste prior to July 1, 1983.

(ii) Ceased receiving solid waste and received at least two feet of cover material prior to January 1, 1986.

(iii) Received approval for closure from the department.

(c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.

4. "Conditionally exempt small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.

5. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.

6. "County" means:

(a) The board of supervisors in the context of the exercise of powers or duties.

(b) The unincorporated areas in the context of area of jurisdiction.

7. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.

8. "Discharge" has the same meaning prescribed in section 49-201.

9. "Existing solid waste facility" means a solid waste facility that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.

10. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities.

11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257 in effect on May 1, 2004.

12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.

13. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.

14. "Household waste" means any solid waste including garbage, rubbish and sanitary waste from septic tanks that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, not including construction debris, landscaping rubble or demolition debris.

15. "Inert material":

(a) Means material that satisfies all of the following conditions:

(i) Is not flammable.

(ii) Will not decompose.

(iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 20 when subjected to a water leach test that is designed to approximate natural infiltrating waters.

(b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete, but does not include special waste, hazardous waste, glass or other metal.

16. "Land disposal" means placement of solid waste in or on land.

17. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and no more than ten per cent by volume of vegetative waste.

18. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.

19. "Medical waste" means any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in section 49-921 other than conditionally exempt small quantity generator waste.

20. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or conditionally exempt small quantity generator waste.

21. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 for that type of solid waste facility.

22. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.

23. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

24. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

25. "Public solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.

26. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste and that handles wastes that have a significant adverse effect on the environment.

27. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.

28. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.

29. "Solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste, conditionally exempt small quantity generator waste or household hazardous waste but does not include the following:

(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, conditionally exempt small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

(b) A site at which solid waste that was generated on site is stored for ninety days or less.

(c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.

(d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.

(e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

(f) A closed solid waste facility.

(g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.

(h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.

(i) A site where solid waste generated in street sweeping activities is stored, processed or treated prior to disposal at a solid waste facility authorized under this chapter.

(j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site prior to disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.

(k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair provided the following conditions are met:

(i) When the project is completed there will not be an increase in leachate that would result in a discharge.

(ii) When the project is completed the concentration of methane gas will not exceed twenty-five per cent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.

(iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.

(iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.

(l) Agricultural on-site disposal as provided in section 49-766.

(m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.

(n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.

(o) Wastewater treatment facilities as defined in section 49-1201.

(p) An on-site single family household waste composting facility.

(q) A site at which five hundred or fewer waste tires are stored.

(r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.

(s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.

30. "Solid waste landfill" means a facility, area of land or excavation in which solid wastes are placed for permanent disposal. Solid waste landfill does not include a land application unit, surface impoundment, injection well, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or conditionally exempt small quantity generator waste.

31. "Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

32. "Solid waste management plan" means the plan which is adopted pursuant to section 49-721 and which provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

33. "Storage" means the holding of solid waste.

34. "Transfer facility" means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste. Transfer facility includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

35. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.

36. "Vegetative waste" means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material. Vegetative waste does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

37. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

38. "Waste tire" does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:

(a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(b) A tire that is removed from a motor vehicle and is retained for further use.

(c) A tire that has been chopped or shredded.

39. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

49-701.01. Definition of solid waste; exemptions

A. "Solid waste" means any garbage, trash, rubbish, waste tire, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material.

B. The following are exempt from the definition of solid waste:

1. Hazardous waste regulated pursuant to chapter 5 of this title.

2. Waste that contains radioactive materials subject to the atomic energy act of 1954 (42 United States Code sections 2011 through 2297, 68 Stat. 919) or title 30, chapter 4.

3. Any discharge from a facility regulated pursuant to chapter 2, article 3 of this title.

4. Any discharge regulated pursuant to section 402 or 404 of the clean water act (33 United States Code sections 1342 and 1344).

5. Domestic sewage.

6. Discharges into a publicly or privately owned treatment works including the treatment works and the sewer collection system.

7. Irrigation waters.

8. Irrigation return flows.

9. Reclaimed wastewater from wastewater reuse facilities.

10. Leachate resulting from the direct natural infiltration of precipitation through undisturbed regolith or bedrock, if pollutants are not added by man.

11. Storm water.

12. Substances and materials that remain on site as specifically approved in a work plan or other approval by the department in the course of remedial or corrective actions undertaken pursuant to any of the following:

(a) Chapter 2, articles 3 and 5 of this title.

(b) Chapters 5 and 6 of this title.

(c) The comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9675).

(d) The federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1387).

(e) The resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

(f) Chapter 1, article 5 of this title.

13. Water used in gardening, lawn care, landscape maintenance and related activities.

14. Discharges from ponds used for watering livestock and wildlife.

15. Landscaping rubble used to reclaim land.

16. Mining industry off-road waste tires that are larger than three feet in outside diameter and that are buried at the site and rock, copper concentrate, leachate material, tailing and slag that are either of the following:

(a) Produced and maintained at the site of the mining or metallurgical operation.

(b) Not maintained at the site of a mining or metallurgical operation and that are consolidated at the site of a mining or metallurgical operation that is both of the following:

(i) Located within fifty miles of the materials' current off-site location, or, on written approval of the director, located at a site that is farther than fifty miles of the materials' current off-site location.

(ii) Regulated by a permit issued pursuant to chapter 2, article 3 of this title or by an approved work plan pursuant to chapter 1, article 5 of this title.

17. Inert material.

18. Effluent as defined in section 45-101.

19. Return flows from irrigated agriculture.

20. Materials that are generated on site and that are processed or reused on site if the following conditions are met:

(a) On-site processing or reuse of the materials is technically feasible.

(b) At least seventy-five per cent by weight or volume of the materials that are accumulated on site for processing or reuse each year are processed or reused in that same year.

(c) Materials that are accumulated on site for processing or reuse are managed in a manner that:

(i) Controls wind dispersion and other surface dispersion of the materials so that the materials do not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment. Visible materials that are dispersed beyond the boundaries of the site shall be collected on a regular basis by the operator of the site.

(ii) Does not discharge hazardous substances as defined in section 49-281 to surface water, groundwater or subsurface soils in a manner that creates a public nuisance or poses an imminent and substantial endangerment to public health or the environment.

(iii) Controls vector breeding and fire hazards.

(iv) Controls public access to the materials by the use of reasonable measures.

C. Any person may petition the director to exempt a substance as solid waste by submitting a written request to the director. The request may be for a statewide or site-specific exemption. Within ninety days after receipt of a written request, the director shall determine whether to exempt the substance. The director's determination shall be based on a demonstration that the substance is unlikely to cause or substantially contribute to a threat to the public health or the environment. The procedure is as follows:

1. Within thirty days after the director's determination to add a substance on a site-specific basis, a notice of that determination shall be published in the Arizona administrative register. A site-specific determination is effective on the date of the director's determination.

2. Within thirty days after the director's determination to add a substance on a statewide basis, the director shall initiate rule making to add the substance to the list of exemptions. This rule making is exempt from the requirements of title 41, chapter 6, except for the requirements regarding public notice. The effective date for the final rule is the effective date for the exemption.

D. Nothing in this section shall affect the department's authority to require abatement of any environmental nuisance pursuant to chapter 1, article 3 of this title.

49-701.02. Exemptions from definition of solid waste; soils; seller's duty to disclose

A. The following are exempt from the definition of solid waste:

1. On-site excavated soils that meet, at the on-site location where the soils are to be deposited, applicable predetermined remediation levels adopted by the department pursuant to chapter 1, article 4 of this title and applicable groundwater protection levels allowed pursuant to the leachability guidance policy filed with the secretary of state on March 5, 1998, pursuant to section 41-1091. If the soils exceed the predetermined residential remediation levels, the following conditions shall be met:

(a) The owner of the property upon which the soils are to be deposited shall file a written notice with the director, for placement in the

repository established pursuant to section 49-152 which includes the name of the property owner, the street address and legal description of the property and the legal description of the area on which the excavated soils which exceed predetermined residential remediation levels are placed.

(b) If the excavated soils are removed to noncontiguous property owned or operated by the same person, the owner shall notify the department at least seventy-two hours prior to the intended removal.

2. On-site excavated soils that meet, at the on-site location where the soils are to be deposited, applicable site specific remediation levels allowed pursuant to chapter 1, article 4 of this title and applicable groundwater protection levels allowed pursuant to the leachability guidance policy filed with the secretary of state on March 5, 1998, pursuant to section 41-1091, provided the following conditions are met:

(a) The department first approves the use of such levels for the location where the soils are to be deposited. Any person who requests approval of an action pursuant to this paragraph shall reimburse the department for reasonable costs to review the proposed action.

(b) The owner of the property upon which the soils are to be deposited shall file a written notice with the director, for placement in the repository established pursuant to section 49-152 which includes the name of the property owner, the street address and legal description of the property and the legal description of the area on which the excavated soils which exceed remediation standards for residential exposure assumptions are placed.

3. Excavated soils that are reused at the site of excavation and that meet applicable background remediation levels allowed pursuant to chapter 1, article 4 of this title.

4. Nonexcavated soils.

5. Soils that are removed off site and that meet all predetermined residential remediation standards adopted by the department pursuant to chapter 1, article 4 of this title if the placement of soils at the off-site location meets all the requirements of the soil remediation standards adopted by the department pursuant to chapter 1, article 4 of this title.

B. An owner of property who has actual knowledge that the property has been used for the disposal of excavated soils which do not meet predetermined residential soil remediation levels or remediation standards for residential exposure assumptions adopted by the department pursuant to chapter 1, article 4 of this title shall, prior to transferring ownership of the property, give written notice of the disposal of the excavated soils that do not meet predetermined residential soil remediation levels or remediation standards for residential exposure assumptions to the purchaser. Actions brought pursuant to this subsection for failure of the seller to provide such written notice to the purchaser shall proceed as other civil actions.

49-702. Authorization to accept funds or grants

The department, counties and incorporated cities and towns may accept and expend any funds granted to them or otherwise made available by the federal government, any political subdivision of this state, any agency or branch of the federal or state government, or any private agency in order to carry out the purposes of this chapter.

49-703. Joint operation

A. The department may cooperate with, coordinate or enter into agreements and memoranda of understanding with appropriate federal, state, political subdivision and tribal governments, and with other appropriate

persons, both public and private, in carrying out its duties and promoting its objectives under this chapter.

B. Each county, city or town may exercise authority to jointly own or operate, with any other person, any public facility within this state and also may enter into cooperative agreements as necessary and appropriate for the operation of any public facility.

C. Each county, city or town may, either alone or in combination with any other county, city or town, contract with any person to provide any service required or authorized by this chapter.

49-704. Applicability of chapter to local regulations and services

This chapter does not prevent any county, city or town from adopting and enforcing any ordinance, resolution or other policy relating to solid waste regulation or solid waste services if such policy is otherwise authorized by statute or charter and is not in conflict with this chapter or any rule or regulation adopted pursuant to this chapter.

49-705. Integration of solid waste programs

The director shall consider and integrate federal and state laws and rules and all of the programs authorized in this chapter and those other programs regulating solid waste management that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual regulation to the maximum extent practicable.

49-706. Waste programs general permits; rules

A. The department may establish a general permit for any permit or license issued pursuant to this chapter. The general permit consists of the following:

1. The director may issue by rule a general permit for a defined class of facilities, activities or practices if all of the following apply:

(a) The cost of issuing individual permits or licenses cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

(b) The facilities, activities or practices in the class are substantially similar in nature.

(c) The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity or practice will meet the applicable requirements prescribed in this chapter for the facility, activity or practice.

2. In addition to other applicable enforcement actions, if a person is in substantial noncompliance with the conditions of a general permit, the director may revoke coverage under the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended by rule if the director determines that any of the conditions prescribed in paragraph 1 no longer apply.

3. Rules adopted pursuant to paragraph 1 may require a person seeking coverage under a general permit to notify the director of the person's intent to operate pursuant to the general permit and to pay the applicable fee established by the director by rule.

B. After the effective date of this amendment to this section, the director shall establish by rule fees for general permits pursuant to this section, including maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint

legislative budget committee. After September 30, 2013, the director shall not increase those fees by rule without specific statutory authority for the increase. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

Article 2 Planning and Assistance

49-721. Statewide solid waste management plan

The department shall prepare and keep current a statewide solid waste management plan which establishes standards for solid waste facilities in cooperation with facility owners or operators, local governments and management agencies. The department shall notify solid waste management agencies and facility owners or operators of proposed changes to the plan at least three months prior to submission of the plan to the director for adoption. The department shall update and readopt the plan as determined necessary by the director.

49-722. Planning and technical assistance

A. The department may provide technical and planning assistance as appropriate to solid waste facility owners or operators and management agencies, including the training of personnel.

B. Each county, city or town may render technical assistance as appropriate to the state, counties, municipalities, local agencies, local health officers, private industries and others in the planning and operation of solid waste facilities.

49-723. Research and development

A. The department may initiate, conduct and support research, development and demonstration projects and programs directed toward improving solid waste management, resource conservation and resource recovery methods, techniques, systems and facilities, or for preventing or mitigating the adverse effects of environmental pollution.

B. Each county, city or town may conduct studies and investigations regarding new or improved methods of solid waste management and may coordinate the studies with other agencies.

C. If the research, development or demonstration project is subject to solid waste facility plan requirements pursuant to section 49-762, the department may exempt the project from some or all of the plan review requirements for no more than one year.

49-724. Distribution of appropriated funds to local governments

The department shall develop criteria in consultation with local governments for the distribution of funds appropriated to county, city or town management agencies or their designated representatives, if funds have been appropriated for this purpose.

Article 3 Solid Waste Services

49-741. Local public facilities for solid waste management

Each county, city or town shall:

1. Provide or otherwise ensure proper arrangements are made for public facilities at such intervals and as conveniently as the governing body deems necessary for the safe and sanitary disposal of solid waste generated within its jurisdiction but need not duplicate a service provided by a private enterprise or another political subdivision.

2. Comply with regulations adopted by the director in the administration of solid waste management programs.

49-742. User fees

User fees may be established or waived by a county, city or town to cover all or part of the cost of development, construction, operation, administration and financing of solid waste management activities.

49-743. Commercial permits

Each county, city or town may require that persons using public facilities provided by it obtain permits if determined necessary for the purpose of regulating, identifying and determining specific categories of waste and waste haulers.

49-744. Salvaging

A management agency may permit salvaging, but such salvaging shall be supervised and strictly controlled. Each county, city or town may regulate salvaging of solid waste at any public facility it provides.

49-745. Ownership of solid waste

Solid waste offered or set out for collection, transportation, storage, disposal or recovery becomes, on acceptance by a management agency or solid waste facility, the sole property of the accepting management agency or solid waste facility.

49-746. Private enterprise recycling and solid waste management; definitions

A. A municipality of this state shall not prohibit or unreasonably restrain a private enterprise from delivering recycling or solid waste management services to commercial, industrial or multifamily residential properties within or to the municipality.

B. The municipality shall prescribe rules for the delivery of recycling and solid waste management services for commercial, industrial and multifamily residential properties that promote availability of these services and competition in the delivery of these services.

C. A municipality of this state shall not be mandated to provide recycling and solid waste management services to commercial, industrial and multifamily residential properties.

D. Multifamily residential properties shall provide the applicable municipality with at least a sixty calendar day notice to terminate recycling or solid waste management services.

E. For the purposes of this section:

1. "Dwelling unit" has the same meaning prescribed in section 33-1310.

2. "Multifamily residential properties" means any real property that has one or more structures and that contains five or more dwelling units for rent or lease that are subject to title 33, chapter 10.

49-747. Annual registration of solid waste landfills; fee; disposition of revenue

A. All solid waste landfills shall be registered annually with the department.

B. The director shall establish a procedure for mailing registration forms each year to the owners of all solid waste landfills. The registration is valid for one year from the date of registration.

C. At the time of registration the owner of a solid waste landfill shall pay to the department an annual fee. After the effective date of this amendment to this section, the department shall establish by rule an annual fee, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase.

D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. The director may authorize the expenditure of monies from the solid waste fee fund to pay the reasonable and necessary costs of administering the registration program pursuant to section 49-881.

Article 4 Regulation of Solid Waste

49-761. Rule making authority for solid waste facilities; exemption; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with section 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257 if these standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department may require payment of a fee for the licensure of a transporter of biohazardous medical waste. After July 20, 2011, the department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted by section 49-701, paragraph 29 or section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Deposit with the state treasurer.
8. Evidence of ability to meet any of the following:

(a) Corporate financial test.
(b) Local government financial test.
(c) Corporate guarantee test.
(d) Local government guarantee test.
(e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.

9. Multiple financial assurance mechanisms.

10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to section 49-762.

49-762. Facilities requiring solid waste facility plans; exemption

A. The owner or operator of the following solid waste facilities shall obtain approval of a solid waste facility plan in accordance with sections 49-762.03 and 49-762.04:

1. Solid waste land disposal facilities.
2. Biosolids processing facilities.
3. Medical waste facilities.
4. Special waste facilities.
5. Municipal solid waste landfills.
6. Commercial or government-owned household waste composting facilities.
7. A site at which at least five hundred waste tires are stored on any day and any tire is stored for more than twelve months unless the site is a waste tire collection site owned by a municipality or a county.

B. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from submitting a solid waste facility plan pursuant to this section.

49-762.01. Facilities requiring self-certification

The owner or operator of all solid waste facilities that are not listed in either section 49-762 or 49-762.02 shall comply with self-certification procedures prescribed by section 49-762.05. A waste tire facility that is not required to obtain solid waste facility plan approval pursuant to section 49-762, paragraph 7 must comply with self-certification procedures as prescribed in section 49-762.05.

49-762.02. Facilities subject to best management practices; rules

The following solid waste facilities are subject to best management practices adopted in accordance with section 49-761, subsection H:

1. Transfer facilities that have a daily solid waste throughput of one hundred eighty cubic yards or less.
2. Recycling facilities that are located off site, that are used for the collection of recyclable material, that have a storage capacity of one hundred eighty cubic yards or less and that store the recyclable material for less than ninety days.
3. Recycling facilities that are located on site and that are used solely for the collection and storage of recyclable material for less than one hundred eighty days.

4. Closed loop recycling facilities that are located at the site of waste generation.

5. A site at which more than five hundred and fewer than five thousand waste tires are stored on any day and that is not required to obtain solid waste facility plan approval pursuant to section 49-762, subsection A, paragraph 7.

6. A solid waste facility where only asbestos-containing waste materials from manufactured products are stored, processed, treated or disposed. The best management practices for these facilities that shall apply are as follows:

(a) For solid waste facilities handling asbestos-containing waste materials that are regulated under the national emission standards for hazardous air pollutants in 40 Code of Federal Regulations part 61, subpart M:

(i) The national emission standards for hazardous air pollutants that are incorporated by reference in the rules adopted pursuant to chapter 3 of this title.

(ii) For solid waste land disposal facilities that are not municipal solid waste landfills, 40 Code of Federal Regulations part 257.

(iii) For solid waste land disposal facilities, financial assurance pursuant to the requirements and time frames of section 49-770.

(iv) Solid waste facility notification pursuant to section 49-762.05, subsection B, paragraph 5.

(v) Compliance with local zoning laws or section 49-767, if applicable.

(b) For solid waste facilities handling asbestos-containing waste materials that are not regulated under the national emission standards for hazardous air pollutants in 40 Code of Federal Regulations part 61, subpart M:

(i) Compliance with section 49-762.07.

(ii) Compliance with local zoning laws or section 49-767, if applicable.

7. Any other solid waste facility that the director determines by rule should be subject to best management practices.

49-762.03. Solid waste facility plan approval

A. Except as provided in subsections C and E of this section, the owner or operator of a solid waste facility identified in section 49-762 shall obtain the department's approval of a solid waste facility plan as follows:

1. For a new solid waste facility and before commencing construction of the solid waste facility, the owner or operator shall obtain approval of a solid waste facility plan that satisfies rules adopted by the director.

2. For an existing solid waste facility, the owner or operator shall file with the department a solid waste facility plan within one hundred eighty days after the effective date of rules adopted pursuant to section 49-761 that contain design and operation standards for that type of solid waste facility. An existing solid waste facility may continue to operate while the department reviews the plan. For an existing public solid waste facility that is currently subject to rules that contain design and operation standards, the owner or operator shall file with the department a solid waste facility plan by October 1, 1996, if the facility has not received plan approval before that date.

B. For a solid waste facility subject to site approval pursuant to section 49-767, a solid waste facility plan shall not be submitted to the department until the site for the solid waste facility has been approved

pursuant to section 49-767. For all new solid waste landfills, a solid waste facility plan shall provide evidence of compliance with or the inapplicability of city, town or county zoning ordinances.

C. The director shall grant temporary authorization to operate a new solid waste facility if in the director's opinion the solid waste facility is needed immediately and could not be properly planned in advance.

D. An owner or operator of more than one solid waste facility that conducts similar activities with similar waste streams may prepare and implement a single plan that covers all of its facilities if it has received prior approval from the director and has complied with rules regarding single plans that are adopted by the director.

E. The director by rule may exempt from some or all of the facility plan approval requirements those solid waste facilities that are located in unincorporated areas and that are used for disposal by any single family residence located on the same property or those solid waste facilities that do not present a threat to public health and safety and the environment.

F. The department shall collect from the applicant reasonable fees established by the director by rule for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan. After the effective date of this amendment to this section, the director shall establish by rule fees for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan and maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase those fees by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

G. The department may contract with private consultants for the purposes of assisting the department in reviewing solid waste facility plan approvals to determine whether a facility meets the criteria of section 49-762.04. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant. If the department contracts with a consultant under this section, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding section 49-881, fees collected by the department for expedited plan review shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881 and used for payment of the costs of the consultant services. Fees received for the purpose of expedited plan review are not subject to appropriation.

49-762.04. Solid waste facility plan review procedures

A. The department shall review and approve or disapprove a solid waste facility plan as follows:

1. Within thirty days after receipt of a solid waste facility plan, the department shall issue a written determination of whether the plan is an administratively complete plan unless the department requests additional information in writing within the thirty day period. If the department requests additional information in writing within the thirty day period, the department shall issue a written administrative completeness determination within fifteen days after the receipt of the additional information. Failure of the department to make an administrative completeness determination within the time periods set forth in this paragraph is deemed to be a determination that the plan is administratively complete.

2. Within thirty days after an administrative completeness determination for a new solid waste facility, the department shall issue public notice of the proposed solid waste facility plan once each week for two consecutive weeks in a newspaper of general circulation in the area in which the new solid waste facility will be located. The notice shall describe the type of solid waste facility and request comments on the proposed plan. The comment period shall not exceed thirty days. Comments shall be limited to whether the proposed plan meets the criteria for approval prescribed in paragraph 5 of this subsection. Comments on the proposed plan shall include the name of the person making the comments and, if in writing, the signature of that person.

3. Within sixty days after an administrative completeness determination for a new solid waste facility or within one hundred twenty days for an existing solid waste facility, the department shall provide the applicant with a comprehensive list of any technical deficiencies in the plan, including a detailed rationale for each deficiency and a recommendation for correcting the deficiency. If the department provides the applicant with a comprehensive list of all technical deficiencies as prescribed in this paragraph, the time limits prescribed by paragraph 4 of this subsection shall be suspended from the date of the applicant's receipt of the list of technical deficiencies until the date when the department receives the applicant's response to the list of technical deficiencies.

4. For a new solid waste facility, the department shall issue a written decision to approve or disapprove the solid waste facility plan within ninety days of an administrative completeness determination. For an existing solid waste facility, the department shall issue a written decision to approve or disapprove the solid waste facility plan within one hundred eighty days of an administrative completeness determination. The department's decision to approve or disapprove a plan for an existing solid waste facility is effective immediately. A person who has submitted a solid waste facility plan for department approval may extend the time limits in this subsection for an additional period of up to sixty days.

5. The department shall use the following criteria in reviewing a solid waste facility plan:

(a) The solid waste facility shall not pose a substantial endangerment to public health or safety or the environment.

(b) The solid waste facility shall not cause an environmental nuisance.

(c) The solid waste facility shall comply with this chapter and rules that are adopted pursuant to section 49-761 and that are applicable to that type of facility.

6. If there is sufficient public interest as evidenced by written comments submitted pursuant to paragraph 2 of this subsection in opposition to the proposed solid waste facility plan for a new solid waste facility, the department shall hold a public hearing on its decision to approve the solid waste facility plan within forty-five days after the date of approval. Notice of the public hearing shall be published in a newspaper of general circulation in the area where the new solid waste facility will be located during two consecutive weeks after the department's decision to approve the plan.

7. Testimony on the department's decision to approve a solid waste facility plan shall include the name of the person presenting the testimony and, if in writing, the signature of that person.

8. The department shall issue a responsiveness summary by first class mail to those persons who submitted written comments or presented testimony in response to the notices issued pursuant to this section or those persons who requested a copy of the summary. The summary shall be made public within

thirty days after the department's decision to approve or disapprove a plan, or, if a public hearing is required, within thirty days after the public hearing. If as a result of testimony at a public hearing, the department becomes aware of a technical deficiency in the facility plan, the department, before the time the responsiveness summary is originally due, shall notify the applicant of that technical deficiency and shall provide a detailed rationale for each deficiency and a recommendation for correcting the deficiency. The department shall provide this notice to the applicant before the date that the responsiveness summary originally was due. The time limits prescribed by this paragraph shall be suspended from the date of the applicant's receipt of the deficiency notice until the date the department receives the applicant's response to the deficiency notice. On receipt of the applicant's response, the department has either fifteen days or the remaining time in the original period, whichever is longer, within which to issue the responsiveness summary. The responsiveness summary shall include all of the following:

(a) The public notices for the solid waste facility.

(b) A summary of the significant public comments on whether the plan meets the criteria for approval prescribed by paragraph 5 of this subsection.

(c) Specific responses of the department to the significant public comments on whether the plan meets the criteria for approval prescribed by paragraph 5 of this subsection.

(d) The department's final decision on whether the plan is approved or disapproved. This decision is effective on the issuance of the responsiveness summary.

B. If the department disapproves a solid waste facility plan, it shall send to the owner or operator a complete written, detailed rationale for disapproval.

49-762.05. Self-certification procedures; rules

A. The owner or operator of a solid waste facility identified in section 49-762.01 shall comply with the self-certification requirements prescribed by this section and rules adopted by the director.

B. The owner or operator of a new solid waste facility may be required by rule to submit some or all of the following information to the department before the start of construction:

1. Design and operational plans or other documents necessary to describe the design of the facility and the practices and methods that are or will be used to comply with the design and operation rules adopted by the director for that type of facility.

2. A demonstration of financial assurance in accordance with section 49-770.

3. A demonstration of compliance with either local zoning laws or section 49-767.

4. A demonstration of the issuance of other environmental permits that are required by statute.

5. A copy of the public notice in a newspaper of general circulation in the area in which a new solid waste facility will be located. The public notice shall state the intent to construct and operate a new solid waste facility pursuant to this subsection.

C. The owner or operator of an existing solid waste facility may be required by rule to submit some or all of the information described in subsection B, paragraphs 1 through 4 of this section within one hundred eighty days after the adoption of design and operation rules for that type of facility.

D. The owner or operator shall maintain all documents required by statute or rule at the solid waste facility or any other location as determined by rule, and those documents shall be made available for inspection pursuant to section 49-763.

E. An owner or operator making a substantial change to a solid waste facility shall submit documentation to the department before the start of construction stating that the facility will remain in compliance with the design and operation rules for that type of facility. The owner or operator of a solid waste facility that makes any changes in its compliance with subsection B, paragraph 2 or 3 of this section shall submit copies of those changes to the department.

F. A person making a submittal under this section shall certify in writing that the information submitted is true, accurate and complete to the best of the person's knowledge and belief.

G. Self-certified facilities identified in section 49-762.01 are not subject to the location restrictions of section 49-772.

H. The department shall collect from the applicant registration fees. After the effective date of this amendment to this section, the department shall establish by rule registration fees, including maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase those fees by rule without specific statutory authority for the increase. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

I. An owner or operator of more than one solid waste facility identified in section 49-762.01 that conducts similar activities with similar waste streams may submit one self-certification filing for all such facilities if the owner or operator has received prior approval from the director and has complied with rules for self-certification that are adopted by the director.

49-762.06. Changes to solid waste facilities and amended plans

A. The department shall adopt rules that establish the criteria to be used in determining the category type of a proposed change to a solid waste facility. The categories are as follows:

1. A type I change is an insignificant modification that does not require notification to the department. This includes changes to a facility that are not directly related to the physical management of solid waste or the replacement of equipment or structures with similar items.

2. A type II change is a minor modification that requires notification to the department. This includes changes to a facility that are directly related to the physical management of solid waste and that do not require detailed review by the department.

3. A type III change is a substantial change that does not require public notice. This includes changes that are significant, that require detailed review by the department and that are equally or more protective of the public health and environment, changes that are required by statute or regulation or other substantial changes that are not type IV changes.

4. A type IV change is a substantial change that requires public notice. This includes significant changes in the total storage, process, treatment or disposal capacity of the solid waste facility. A type IV change also includes a lateral expansion of an existing solid waste landfill or the addition of a process or a major piece of equipment for which the net effect of the change will be an increase in discharges.

B. Before implementation, the director shall approve a type III or type IV change to the design or operation of an approved solid waste facility identified in section 49-762.

C. The owner or operator of an approved solid waste facility identified in section 49-762 shall submit a notice of any type II, type III or type IV change to the director. The notice shall describe the purpose and scope of the proposed change and shall state what category of change is requested. The director shall make the final determination of the category of change that is requested and whether an amended facility plan shall be submitted for a type III or type IV change. The director may request that additional information be submitted to assist in making the determination.

D. The determination required by subsection C of this section shall be made within the time limits prescribed by this subsection. If the director fails to make a determination within those time limits, the proposed change shall be deemed to be a type II change and in accordance with the facility's approved plan and may be implemented by the owner or operator without further review by the department. The time limits prescribed by this subsection do not apply if the proposed change conflicts with or is inconsistent with the requirements of 40 C.F.R. part 257 or 40 C.F.R. part 258. The time limits are as follows:

1. Fifteen days for solid waste facilities that are not landfills.

2. Thirty days for landfills that are not municipal solid waste landfills.

3. Sixty days for municipal solid waste landfills.

E. If the director determines that the change is a type IV change that requires a public notice, within thirty days after receipt of the amended plan the director shall give public notice of the substantial change as prescribed by section 49-762.04, subsection A, paragraph 2. If there is sufficient public interest as evidenced by written comments submitted pursuant to section 49-762.04, subsection A, paragraph 2 in opposition to the substantial change to the solid waste facility, the department shall hold a public hearing in accordance with the procedures in section 49-762.04, subsection A, paragraph 6. Testimony at a public hearing shall be limited to whether the substantial change to the plan meets the criteria prescribed in section 49-762.04, subsection A, paragraph 5. Testimony on the substantial change shall include the name and address of the person presenting the testimony and, if in writing, the signature of that person. The director shall issue a notice of any technical deficiencies and a responsiveness summary in accordance with section 49-762.04, subsection A, paragraph 8.

F. The director shall approve or deny the amended plan within ninety days after receipt of the amended plan. During the ninety day review period, the department shall comply with the procedures prescribed by section 49-762.04, subsection A, paragraph 3 for new solid waste facilities. If a public hearing is to be held, the director has an additional thirty days to hold the public hearing, issue a responsiveness summary and approve or disapprove the amended plan. A person who has submitted a type II, III or IV change to a solid waste facility plan for department approval may extend these time limits for an additional thirty days on a written request from the department that changes to the solid waste facility plan or additional information is needed before the department can make a decision to approve or deny the plan.

49-762.07. Notices; exemptions; extensions; enforcement; operating standards

A. Except as provided in subsection B of this section, owners or operators of solid waste facilities in operation on September 1, 1996 shall

submit to the director by September 1, 1996 a notice that contains the following information:

1. Facility name and mailing address.

2. Legal description by township, range and section and county assessor's book, map and parcel number.

3. Description of waste storage and treatment equipment and methods of waste management, including types and volumes of waste handled and time the waste remains on site.

4. Description of waste management practices used at the facility including measures taken to protect the environment and to protect the public health.

5. A diagram of the property showing the location of the solid waste facility or facilities.

B. Notices filed with the department before September 1, 1996 are deemed to satisfy the notice requirement of subsection A of this section unless there has been a substantial change to the solid waste facility before the notice deadline. A solid waste facility that has obtained a plan approval or that has filed an application for plan approval before September 1, 1996 is exempt from the notice requirement of subsection A of this section. Owners or operators of solid waste facilities that begin operations after September 1, 1996 shall submit a notice to the director containing the information specified in subsection A of this section no later than thirty days before beginning operation of a solid waste facility. Owners and operators of recycling facilities shall not be required to submit a notice pursuant to subsection A of this section or this subsection until rules for recycling facilities are adopted pursuant to section 49-761, subsection K.

C. The department may grant an extension of up to sixty days beyond the September 1, 1996 deadline on receipt of a written request from the owner or operator of a solid waste facility.

D. A solid waste facility that does not submit a notice as prescribed by subsection A or B of this section is subject to the enforcement provisions of article 5 of this chapter.

E. In the absence of design and operating rules adopted by the director pursuant to section 49-761 for solid waste landfills that are not municipal solid waste landfills, owners and operators of solid waste landfills that are not municipal solid waste landfills and that do not have coverage under an applicable general permit established by the department pursuant to section 49-706 shall comply with the provisions of 40 C.F.R. part 257.

F. In the absence of design and operating rules adopted by the director pursuant to section 49-761 for solid waste facilities other than solid waste landfills, owners and operators shall operate those facilities in a manner that:

1. Controls wind dispersion and other surface dispersion of solid waste from the facility so that the solid waste does not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment. Visible solid waste that is dispersed beyond the boundaries of the solid waste facility shall be collected on a regular basis by the operator of the solid waste facility.

2. Does not discharge hazardous substances as defined in section 49-281 to surface water, groundwater, or subsurface soil in a manner that creates a public nuisance or poses an imminent and substantial endangerment to public health or the environment.

3. Controls vector breeding and fire hazards.

4. Utilizes reasonable measures to control public access to:

(a) Medical waste generated by health care facilities.

(b) Special waste as defined in section 49-851, subsection A.

49-762.08. Corrective actions; application

A. Beginning July 1, 1998, the director, in the absence of applicable corrective action rules adopted pursuant to section 49-761 for solid waste facilities other than solid waste landfills, may require the owner or operator of a solid waste facility to conduct corrective action in response to a release, as defined in section 49-281, from a facility, if the release violates or results from a violation of section 49-762.07, subsection F or causes or threatens to cause a significant adverse effect on human health or the environment.

B. Corrective action taken pursuant to this section shall be conducted in accordance with standards described in section 49-282.06, subsection A, subsection B, paragraph 4, subdivisions (a) and (b) and subsections C, D and F.

C. This section shall not apply to the following:

1. Corrective or remedial action of groundwater that has been impacted by an off-site source.

2. A release subject to a corrective action pursuant to chapter 6 of this title relating to underground storage tanks.

3. A release from a facility subject to the provisions of 40 Code of Federal Regulations part 257 or part 258.

D. The department shall avoid practices or requirements that duplicate or are inconsistent with other applicable laws and rules, to the maximum extent practicable, for releases subject to corrective actions pursuant to any of the following:

1. Chapter 2, article 3 of this title relating to aquifer protection permits.

2. Chapter 5 of this title relating to hazardous waste.

3. The federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 2795; 42 United States Code sections 6901 through 6992).

E. For a release from a solid waste facility that was caused or contributed to by more than one responsible party, as defined in section 49-283, the director's authority to require corrective action under this section is limited to releases that occur after July 1, 1998, and when the owner or operator of the solid waste facility was subject to regulation pursuant to this chapter. Nothing in this subsection extends or limits the application of chapter 2, article 5 of this title.

F. For a release from a solid waste facility subject to the provisions of 40 Code of Federal Regulations part 257 or part 258, the corrective action shall be conducted in accordance with the provisions of those regulations.

49-763. Inspections

A. The department may conduct such inspections of solid waste facilities and sites that store, treat or process recyclable solid waste as are necessary. The department shall give the management agency or the owner or the operator of the facility the opportunity to have its representative accompany the inspector. Within forty-five days after the date of the inspection, the department shall provide to the facility owner or operator a copy of any inspection report produced as a result of an inspection of that facility that occurs as prescribed by this section.

B. Until the department adopts rules pursuant to section 49-761 for a particular type of solid waste facility, solid waste facilities and sites that store, treat or process recyclable solid waste shall be designed and operated as prescribed by section 49-762.07, subsection F. The department's

right to inspect facilities operating pursuant to this subsection is limited to ensuring that the facility is in compliance with section 49-762.07, subsection F.

49-763.01. Variances

Within ninety days after receipt of a written request for a variance from a solid waste facility owner, operator or management agency, the department may grant a variance from solid waste management rules and standards if the department concludes that no violation of health standards will occur. The department may consider whether an environmental nuisance will result. If the request is denied, the department shall prepare and make available to the management agency or facility owner or operator a written decision including relevant data and a technical analysis supporting the denial. The department shall not grant any variance or temporary authorization to operate under the provisions of this chapter if the proposed variance conflicts or is inconsistent with the requirements of 40 C.F.R. part 257 or 40 C.F.R. part 258.

49-764. Orders; monitoring; pollution control devices

A. Except as otherwise provided in section 49-422 and chapter 3, article 3 of this title, the director may require by order the installation of necessary monitoring and pollution control devices at a solid waste facility if the requirements of subsection B of this section have been met.

B. Before issuing an order pursuant to subsection A of this section, the director shall determine in writing that all of the following conditions are met:

1. The solid waste facility may adversely affect public health or the environment.
2. A monitoring, sampling or quantification method or a pollution control device is technically feasible for the subject contaminant and the solid waste disposal facility.
3. An adequate scientific basis for the monitoring, sampling or quantification method or the pollution control device exists.
4. The monitoring, sampling or quantification method is reasonably accurate or the pollution control device is reasonably effective.
5. The cost of the method or device is reasonable in light of the use to be made of the data or the device.
6. The director has considered the relative cost and the relative accuracy or effectiveness of any alternative method or device that may be reasonable under the circumstances.

49-765. Local regulation of solid waste collection

Each county, city or town may establish regulations for private collection of solid waste within its area of jurisdiction, including standards for equipment, hours of operation, license fees and insurance requirements as necessary and appropriate to operate a solid waste collection program. Ordinances or regulations authorized by this section and section 49-704 shall be equal to or more stringent than the provisions of this chapter and rules and regulations adopted by the department under this chapter. If authorized by statute, each county, city or town may provide for criminal and civil penalties for violation of such ordinances or regulations provided that such penalties do not exceed the penalties authorized by this chapter.

49-766. Agricultural landfills; notice

A. A single family residence located on a farm or ranch of more than forty acres in an unincorporated area may operate on site a landfill for the disposal of solid waste resulting from the residents' household activities. The owner or operator of the farm or ranch shall comply with all of the following:

1. The landfill does not violate the floodplain provisions of section 49-772, subsection C or the wetland provisions of section 49-772, subsection D.

2. The owner or operator submits to the local board of supervisors a location map and a written, general description of the landfill by October 21, 1994, or if solid waste disposal begins after April 24, 1994, within thirty days after disposing of solid waste.

3. The landfill does not create an environmental nuisance.

B. A person engaged in farming or ranching on at least forty acres in an unincorporated area may operate an agricultural landfill on the property for disposal of solid waste, but not hazardous waste, generated on the property. The person shall comply with all of the following:

1. The landfill does not accept household waste, household hazardous waste or conditionally exempt small generator waste.

2. The owner or operator submits to the board of supervisors or its designee a location map and a written, general description of the landfill by October 21, 1994, or if solid waste disposal begins after April 24, 1994, within thirty days after disposing of solid waste.

3. The landfill does not violate the floodplain provisions of section 49-772, subsection C or the wetland provisions of section 49-772, subsection D.

4. The landfill does not create an environmental nuisance.

49-767. Government owned solid waste facilities; permission; notice of site to property owners; hearing; exemption

A. Any agency or political subdivision of this state which is required to select or is selecting a possible permanent site for a solid waste facility required to obtain approval pursuant to section 49-762 shall not select a site without obtaining approval of the city or town if the proposed permanent site is located within such city or town or the approval of the county in which the proposed permanent site is located if the proposed permanent site is located in the unincorporated area of the county.

B. An agency or political subdivision of this state which is required to select or which is selecting a possible permanent site for any solid waste facility required to obtain approval pursuant to section 49-762 shall post a notice in accordance with requirements specified by the department at the affected property so that the notices are visible from the public rights-of-way and shall send written notice of the selection of the possible permanent site by first class mail to property owners in the following areas:

1. If the proposed permanent site is in an unincorporated area, within a three mile radius of the outer boundaries of the proposed permanent site unless the three mile radius intersects a municipal corporate boundary. In such a case, property owners inside the municipal corporate boundary within one thousand feet of the outer boundary of the proposed permanent site shall be notified as well as those property owners outside the municipal corporate boundary within the three mile radius of the outer boundary of the proposed permanent site.

2. If the proposed permanent site is in an incorporated area, within a one thousand foot radius of the outer boundaries of the proposed permanent site.

C. The notice required by subsection B of this section shall be mailed to each owner of real property as shown on the list of property owners furnished by the county assessor and the department of revenue. Within fifteen days after a request for such a list, the county assessor and the department of revenue shall furnish to the agency or political subdivision a written list stating the name and address of each owner in the areas specified in subsection B of this section.

D. Before a political subdivision makes a final decision on a possible permanent site for a facility specified in subsection A of this section, the political subdivision shall hold a public hearing in the general vicinity of the proposed permanent site, at which interested persons may appear and present their views. The political subdivision shall give notice of the hearing, to include all of the following:

1. Publication of notice in a daily or weekly newspaper of general circulation in the area of the proposed permanent site published once each week, beginning at least two weeks before the hearing.

2. Mailed notice as provided in subsection B of this section sent at least two weeks before the hearing.

3. Posted notice as provided in subsection B of this section that shall include information on the time and location of the public hearing and a list of those permits that are required in order to operate that proposed solid waste facility.

4. Mailed notice at least two weeks before the hearing to the governing body of any city, town or unincorporated portion of a county that is located within a one-mile radius of the outer boundaries of the proposed solid waste landfill.

E. Any agency or political subdivision that is holding a hearing that may result in the approval of or a permit for the siting of a solid waste landfill shall mail notice at least two weeks before the hearing to the governing body of any city, town or unincorporated portion of a county that is located within a one-mile radius of the outer boundaries of the proposed solid waste landfill.

F. A site for a solid waste facility that has obtained zoning approval pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6, article 2, is exempt from this section. This subsection shall not apply to agencies and political subdivisions of the state.

49-768. Civil penalties

A person who violates a provision of a rule, material permit condition or requirement for approval relating to medical waste is subject to a civil penalty of not more than ten thousand dollars for each day for each violation. The attorney general, at the request of the director, shall file an action in the superior court in the county in which the violation occurred or in a county in which the department maintains an office to recover civil penalties provided for in this section.

49-769. Agency orders; appeal

Except as provided in section 41-1092.08, subsection H, any final agency order issued pursuant to this article is subject to judicial review pursuant to title 12, chapter 7, article 6.

49-770. Financial assurance requirements for solid waste facilities

A. Beginning one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761, a solid waste facility may not be operated unless financial responsibility has been demonstrated for the costs of closure, postclosure care, if necessary, and any corrective action as a result of known releases from the facility. Financial assurance for municipal solid waste landfills shall be required pursuant to section 49-761, subsection B. This subsection applies to small municipal solid waste landfills on October 9, 1997. For all other municipal solid waste landfills, this subsection shall apply on September 1, 1997 unless the director establishes an alternative date pursuant to section 49-761, subsection B on a facility specific basis.

B. Within one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761, existing solid waste facilities shall modify and submit existing facility plans to the department to demonstrate the financial responsibility required by this section. A solid waste facility in operation before the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761 may continue to operate while the department reviews the modified plan.

C. A demonstration of financial responsibility made for a solid waste facility under chapter 2, article 3 of this title shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section. A demonstration of financial assurance or competence required under this section or under chapter 2, article 3 of this title for a solid waste facility shall not be required prior to completion of construction but shall be required before the department issues approval to operate.

D. The terms and conditions adopted by the director for each financial assurance mechanism shall provide:

1. The amount in current dollars equal to the cost of hiring a third party to complete site closure and, if necessary, continued postclosure monitoring and maintenance consistent with the plan and any factor to be applied for inflation. Amounts shall be updated annually for landfills and every three years for all other solid waste facilities to adjust for inflation or as necessary to reflect increased costs resulting from changes to the facility plan or facility conditions.

2. The period after closure for which financial assurance is required.

E. The approved financial assurance mechanism shall not be released unless the plan specified closure and postclosure requirements have been completed or unless new financial assurance has been submitted by a new owner or operator of the solid waste facility and approved by the director. The owner or operator of the solid waste facility:

1. Shall receive any accrued interest on financial assurance instruments retained by the department.

2. May request a reduction in financial assurance requirements on completion of closure or portions of postclosure monitoring and maintenance that are approved by the director.

3. Shall justify any reduction in closure or postclosure cost estimates in the facility plan.

4. Shall assure that the period of coverage of the financial assurance instrument exceeds by a minimum of ninety days the applicable one or three year time period required in subsection D of this section.

5. Shall be released from closure or postclosure financial responsibility on certification by a registered professional engineer or

other environmental professional deemed acceptable by the director that the specific activities of closure or postclosure have been completed in accordance with the approved facility plan and placed in the operating record of the facility plan.

49-771. Restrictive covenants for solid waste landfills

A. The director may grant plan approval for operation of a solid waste landfill only if a restrictive covenant has been placed on the disposal area of the facility. An existing solid waste landfill for which a restrictive covenant is executed before July 1, 1998 is deemed to have satisfied this requirement. The director and all of the owners of the tract of land on which the solid waste landfill is located shall execute the restrictive covenant. A certified copy of the recorded covenant shall be submitted to the director within sixty days after execution. If the director does not receive the copy within sixty days, the director shall send written notice indicating the deficiency to the owners of the real property. If a certified copy of the recorded covenant is not received within thirty days of that written notice, the plan is deemed void.

B. The owner of the tract of land on which the solid waste landfill is or will be located shall record the instrument imposing the restrictive covenant in the county recorder's office in the county in which the solid waste landfill is located. If the director does not grant plan approval for operation of a solid waste landfill or the application for plan approval is withdrawn, and the tract of land was not used as a solid waste landfill, the owner and the director shall revoke the restrictive covenant.

C. The restrictive covenant shall state that the land described in the covenant has been or will be used as a solid waste landfill and that the property owners, their agents or employees or any of their heirs, successors, lessees or assignees shall not engage in development on or in filling, grading, excavating, drilling or mining of the solid waste landfill after closure without the approval of the director unless provided for in the approved facility closure or postclosure plan. In making this determination the director shall consider factors such as the original design, type of operation, material deposited, energy recovery from methane gas and stage of decomposition of the disposal area. The director shall not make any such determination if it will increase the potential for threat to public health and the environment.

D. The director may waive the restrictive covenant prescribed by this section if the land is federal land or if a contract that exists between the landowner and the lessee on October 9, 1993 does not allow the lessee to place an encumbrance on the disposal area.

49-772. Location restrictions for solid waste landfills; definitions

A. A solid waste facility that is required to obtain approval pursuant to section 49-762 shall not be issued a permit pursuant to section 49-241, subsection A, receive a plan approval pursuant to section 49-762 or be placed on any site if any of the following applies:

1. An irrigation grandfathered right created pursuant to title 45, chapter 2, article 5 is appurtenant to all or any part of the site.

2. Any part of that facility is within one-half mile of a one hundred-year floodplain that has one hundred year flows in excess of twenty-five thousand cubic feet per second, as determined by the federal emergency management agency, except for a site used for any of the following activities:

(a) Reclamation of land through the introduction of landscaping rubble or inert material.

(b) Material produced in connection with a mining or mineral processing operation.

(c) Agricultural on-site disposal as provided in section 49-766.

(d) Solid waste transfer or recycling or any other use that does not involve treatment or disposal of solid waste.

(e) Receipt of solid waste for application to agricultural land as fertilizer or other beneficial soil amendment.

(f) The storage, treatment or processing of solid waste at a site that is not open to the general public and that is in existence on October 9, 1993.

B. Owners and operators of new and existing solid waste landfills that are not municipal solid waste landfills and that are located within ten thousand feet of any airport runway end used by turbojet aircraft or within five thousand feet of any airport runway end used by only piston-type aircraft shall demonstrate in the facility plan that the facility is designed and operated so that it does not pose a bird hazard to aircraft. Owners and operators of solid waste landfills that are located within a five mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the federal aviation administration.

C. In addition to siting requirements established pursuant to subsection A of this section, owners and operators of new and existing solid waste landfills that are not municipal solid waste landfills and that are located in a one hundred-year floodplain shall demonstrate in the facility plan that the facility will not restrict the flow of the one hundred-year flood, reduce the temporary water storage capacity of the floodplain or result in a washout of solid waste so as to pose a hazard to human health and the environment.

D. New solid waste landfills that are not municipal solid waste landfills shall not be located in wetlands, unless the owner or operator can demonstrate all of the following:

1. A practicable alternative site that does not involve wetlands is not available.

2. The construction and operation of the solid waste landfill does not cause, contribute to the violation of any applicable state water quality standard, toxic effluent standard or prohibition, or jeopardize endangered or threatened species or critical habitat.

3. The construction and operation of the facility do not cause or contribute to significant degradation of wetlands.

4. To the extent required under section 404 of the clean water act or applicable state wetland laws, steps have been taken to attempt to achieve no net loss of wetlands as defined in acreage and function by first avoiding impacts to wetlands to the maximum extent practicable pursuant to paragraph 1 of this subsection and offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions.

E. New solid waste landfills that are not municipal solid waste landfills shall not be located:

1. Within two hundred feet of a fault that has had displacement in holocene time unless the owner or operator can demonstrate in the facility plan that an alternative setback distance of less than two hundred feet will prevent damage to the structural integrity of the facility and will protect public health and the environment.

2. In seismic impact zones unless the owner or operator can demonstrate in the facility plan that all containment structures, including liners, leachate collection systems and surface water control systems, are

designed to resist the maximum horizontal acceleration in lithified earth material for the site.

F. Owners and operators of new and existing solid waste landfills that are not municipal solid waste landfills and that are located in an unstable area shall demonstrate in the facility plan that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted, including at a minimum an analysis of the following:

1. On-site or local soil conditions that may result in significant differential settling.

2. On-site or local geologic or geomorphologic features.

3. On-site or local man-made surface or subsurface features or events.

G. Subsections C through F and H of this section apply until the director adopts rules for solid waste landfills that are not municipal solid waste landfills.

H. For purposes of this section, unless the context otherwise requires:

1. "Airport" means a public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

2. "Areas susceptible to mass movement" means those areas of influence where the movement of earth material at, beneath or adjacent to the solid waste landfill because of natural or human-induced events results in the downslope transport of soil and rock material due to gravity. Areas of mass movement may include landslides, avalanches, debris slides and flows, soil fluxion, block sliding and rock fall.

3. "Bird hazard" means an increase in the likelihood of bird and aircraft collisions that may cause damage to the aircraft or injuries to its occupants.

4. "Displacement" means the relative movement of any two sides of a fault measured in any direction.

5. "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

6. "Floodplain" means the areas adjoining inland waters or including areas where drainage is or may be restricted by man-made structures that have been or may be covered partially or wholly by floodwaters from the one hundred-year flood.

7. "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

8. "Karst terranes" means areas where karst topography with its characteristic surface and subterranean features is developed as a result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features present in karst terranes include sinkholes, sinking streams, caves, large springs and blind valleys.

9. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. Lithified earth material does not include man-made materials such as fill, concrete and asphalt or unconsolidated earth materials, soil or regolith lying at or near the earth surface.

10. "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety per cent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site specific seismic risk assessment.

11. "One hundred-year flood" or "base flood" means a flood that has a one per cent chance of being equalled or exceeded in a one-year period, based on criteria established by the director of the department of water resources.

12. "Poor foundation conditions" means those areas where features exist that indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a solid waste disposal facility.

13. "Seismic impact zone" means an area with a ten per cent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

14. "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, flood control components and any other components used in the construction and operation of the solid waste disposal facility that are necessary for protection of public health and the environment.

15. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements and karst terranes.

16. "Washout" means the carrying away of solid waste by surface water runoff.

17. "Wetlands" means those areas that are defined in 40 Code of Federal Regulations section 232.2(r).

49-773. Disposal of waste; definition

A. No person other than a natural person shall dispose of solid waste at a solid waste landfill within the boundaries of this state unless the facility meets the applicable requirements of titles III and IV of the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code section 1151), and one of the following:

1. 40 Code of Federal Regulations part 257 as amended on October 9, 1991 and October 1, 1993 and, if applicable, beginning October 9, 1993, 40 Code of Federal Regulations part 258, as promulgated on October 9, 1991 and amended on October 1, 1993.

2. A solid waste facility plan approval pursuant to section 49-762 that was issued after October 1, 1993.

B. For the purposes of this section, unless the context otherwise requires, "solid waste" has the same meaning as provided in section 49-701.

49-774. Landfill washout; abatement costs; definitions

A. If a washout of solid waste from a solid waste landfill occurs, the director shall issue a cease and desist order pursuant to section 49-142 to the owner or the operator of the solid waste landfill and to any person who disposed of solid waste at that landfill.

B. The director may order the owner or the operator of the landfill and any person who disposed of solid waste at that landfill to abate the washout within a time specified in the order and at the expense of the owner, operator or other person named in the order. If such persons refuse to comply with the order to abate, the department may recover from the owner and the operator of the landfill and any person who disposed at the landfill the reasonable costs of abating the washout. No person who disposed of solid waste at the landfill shall be liable for a larger proportion of the

abatement cost than the person's proportionate share of solid waste at the landfill. Chapter 1, article 3 of this title, relating to environmental nuisances, shall apply to any action filed by the director and any person who is named in the order.

C. This section does not apply to any washout that occurred before October 9, 1993.

D. This section does not apply to an operation that is exempt from this article on October 9, 1993.

E. The authority provided to the director by this section is in addition to the remedies and authority otherwise provided by law.

F. For purposes of this section:

1. "Person who disposed" means any person who transported solid waste to the landfill or who made the decision to use the landfill but does not include a natural person.

2. "Washout" means the carrying away of solid waste off the property of the owner or operator of the landfill by storm water or surface water runoff.

Article 5 Enforcement

49-781. Compliance orders; appeal; enforcement

A. If the director determines that a person is in violation of any provision of article 3 or 4 of this chapter, a rule adopted pursuant to article 4 of this chapter or any condition of a solid waste facility plan approval issued pursuant to this chapter or is creating an imminent and substantial endangerment to the public health or the environment, the director may issue an order requiring compliance immediately or within a specified period of time.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing.

C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by hand delivery.

D. At the request of the director, the attorney general may file an action in superior court to enforce orders issued pursuant to this section after the order becomes final.

49-782. Actions on approval to operate

A. The director may suspend, amend, withdraw, condition or revoke an approval to operate a solid waste facility if the director determines that the facility is in violation of any rule adopted pursuant to this chapter.

B. The suspension, amendment, withdrawal, conditions or revocation of an approval to operate a solid waste facility shall comply with title 41, chapter 6, article 10.

C. The director may require any person who violates a best management practice that is adopted pursuant to section 49-761, subsection H to comply with the self-certification requirements prescribed by section 49-761, subsection G and the rules adopted pursuant to that section. The director may require compliance within a reasonable time.

D. The director may require any person who violates section 49-761, subsection G or any rule adopted pursuant to that section to comply within a reasonable time with the facility plan approval requirements prescribed by section 49-762.04.

49-783. Injunctive relief; civil penalties; costs

A. If the director has reason to believe that a person is in violation of any provision of articles 3 or 4 of this chapter, a rule adopted pursuant to article 4 of this chapter, any condition of an approved solid waste facility plan issued pursuant to article 4 of this chapter or that a person is creating an imminent and substantial endangerment to the public health or the environment, 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 or the environment, without regard to whether the person has requested a hearing.

B. A person who violates any provision of articles 3 or 4 of this chapter, a rule adopted pursuant to article 4 of this chapter, an order issued pursuant to this article or an approved solid waste facility plan issued pursuant to chapter 4 is subject to a civil penalty of not more than one thousand dollars for each day not to exceed fifteen thousand dollars for each violation. At the request of the director, the attorney general shall file an action in superior court to recover civil penalties as prescribed by this section.

49-784. Venue

An action filed pursuant to sections 49-781, 49-782 or 49-783 shall be brought in the superior court for the county in which the alleged violation occurred or in which the department maintains an office.

49-785. Agency orders; appeal

A. An order issued by the director pursuant to this chapter shall become final unless it is appealed within thirty days of issuance pursuant to title 41, chapter 6, article 10.

B. Except as provided in section 41-1092.08, subsection H, a final agency order issued pursuant to this article is subject to judicial review pursuant to title 12, chapter 7, article 6.

Article 6 Violations and Penalties

49-791. Violation; classification; penalties

A. A person shall not:

1. Practice open burning at a solid waste facility without a variance approval issued by the director.

2. Scavenge at a solid waste facility.

3. Damage or destroy signs posted at a solid waste facility.

4. Dump or dispose of solid waste in violation of any provision of this chapter or any applicable rule adopted pursuant to article 4 of this chapter.

5. Operate a solid waste facility in a manner inconsistent with the solid waste facility plan after it has been approved or any rule adopted pursuant to article 4 of this chapter.

B. A violation of subsection A of this section is a class 2 misdemeanor.

C. In addition to the penalties prescribed by subsection B of this section or section 13-1603, subsection B, a person who violates this section or section 13-1603 shall be subject to a civil penalty in an amount prescribed by section 49-783.

Article 7 Management of Used Oil

49-801. Definitions

In addition to the definitions in 40 Code of Federal Regulations, part 279, the following definitions apply to this article:

1. "Off-specification used oil" means used oil which exceeds any of the allowable levels in 40 Code of Federal Regulations section 279.11.

2. "On-specification used oil" means used oil that is not off-specification used oil.

3. "Used oil" includes oil that has been contaminated as a result of handling, transportation or storage.

49-802. Federal used oil program; incorporation by reference; rule making

A. The department shall administer 42 United States Code section 6935, as amended on January 1, 1997, as the used oil program for this state. For that purpose, 40 Code of Federal Regulations part 279, as amended on January 1, 1997, is adopted by reference. For purposes of this program, the United States, the environmental protection agency and the administrator shall be applied to mean this state, the department and the director, respectively.

B. The department may adopt rules for the administration of the federal program. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 Code of Federal Regulations part 279.

C. The following requirements apply in addition to 40 Code of Federal Regulations part 279:

1. A used oil collection center, as defined in 40 Code of Federal Regulations part 279, shall register with the department by obtaining an identification number from the department. A request for an identification number shall include:

(a) The company name.

(b) The name of the owner of the company.

(c) The mailing address and telephone number of the company.

(d) The location of the collection center.

(e) A description of the type of used oil activity at the company.

2. A person who sends used oil fuel to a person who burns the used oil fuel for energy recovery shall certify to the burner that the used oil fuel has been analyzed or otherwise tested for compliance with the used oil specifications in 40 Code of Federal Regulations part 279.

3. Beginning on September 1, 1997, each used oil fuel transporter, used oil fuel marketer and used oil processor and re-refiner, as defined in 40 Code of Federal Regulations part 279, shall submit to the department a written report each calendar quarter. The report shall be submitted within thirty days after the end of the calendar quarter to which the report applies, and it shall contain a copy of the tracking information required to be kept pursuant to 40 Code of Federal Regulations part 279 or a summary of such tracking information on a reporting form supplied by the department.

4. Beginning January 1, 1998, each person who burns used oil fuel in devices identified in 40 Code of Federal Regulations section 279.61(a)(1) through (3) shall submit to the department a written annual report. The report shall be submitted to the department by February 1 for the previous calendar year and shall contain the following information:

(a) The name, address and telephone number of the person reporting.

(b) The name, address and telephone number of the burner facility.

(c) The United States environmental protection agency identification number of the burner facility.

(d) The total volume of on-specification used oil burned.

(e) The period being reported.

(f) The total volume of self-generated used oil burned on site.

(g) The total volume of used oil fuel burned.

(h) A summary of the tracking information required to be kept pursuant to 40 Code of Federal Regulations part 279.

5. Used oil fuel marketers and used oil fuel burners shall label all tanks that store on-specification used oil with the words "on-specification used oil". The department may sample and test used oil or used oil fuel to determine its properties or characteristics as prescribed in this article and rules adopted pursuant to this article.

6. A household "do-it-yourselfer" used oil generator, as defined under 40 Code of Federal Regulations part 279, shall send its used oil to a "do-it-yourselfer" collection station, a household hazardous waste collection center, a used oil collection center, a used oil fuel marketer or a used oil processor or refiner.

D. In administering this section or in adopting or administering rules pursuant to this section, the department shall maintain the level of discretion that is permitted pursuant to applicable federal rules.

E. Any client names or related identifying data required to be submitted to the department pursuant to this section is confidential.

49-803. Prohibited practices

A. Used oil shall not be used or disposed of by any of the following methods:

1. Discharge into sewers or waters of the state as defined in section 49-201 except pursuant to a permit issued by appropriate regulatory authorities.

2. Incineration except at a facility authorized to incinerate hazardous waste under section 49-922 or the federal act. Burning for energy recovery is not considered incineration for purposes of this section, unless the director determines pursuant to rule that the purpose of the burning is for destruction of listed or characteristic hazardous waste rather than energy recovery.

3. Disposal on land unless the used oil is disposed of in a landfill that is subject to 40 Code of Federal Regulations part 257 or 258 and that has an approved solid waste facility plan. This prohibition does not apply to used oil that is used as an ingredient in an explosive material.

4. Dispersal as a dust suppressant or contact herbicide.

B. For the purposes of subsection A, paragraph 3 of this section, normal minimal leakage from properly maintained vehicles and equipment shall not be considered disposal on land.

49-810. Violation; classification

A. A person who knowingly violates a provision of the used oil program prescribed by section 49-802 is guilty of a class 2 misdemeanor.

B. An act or omission punishable under this section or any other section of criminal law may be punished under both, but any punishments, including fines, shall be concurrent.

C. A used oil fuel burner is not liable in any criminal proceeding for a violation of this article relating to the burning of off-specification used oil if the used oil fuel burner in good faith relied on the certification of a used oil fuel marketer that the used oil meets the definition of on-specification used oil as defined in this article.

49-811. Violation; civil penalty

A. Except as otherwise provided, a person who violates any provision of this article or a rule or order adopted or issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day for each violation.

B. The attorney general, at the request of the director, shall file an action in superior court to recover civil penalties provided by this section. This subsection shall not be construed to reduce the authority of the attorney general under any other provision of law.

49-812. Compliance orders; injunctive relief

A. If the director has reasonable cause to believe that a person is violating a provision of this article or a rule adopted pursuant to this article, the director may serve on the person an order requiring compliance with that provision or rule. The order shall state with reasonable particularity the nature of the violation and shall specify either immediate compliance or a time period for compliance which the director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable legal requirements. The alleged violator has thirty days from the date of issuance of the order within which to request a hearing pursuant to title 41, chapter 6, article 10.

B. If the director has reasonable cause to believe that an order issued pursuant to this section is being violated or that a person is engaging in an act or practice which constitutes a violation for which he is authorized to issue an order pursuant to this section, the attorney general at the request of the director may apply to the superior court in the county in which the violation is occurring or in which the department maintains an office for a temporary restraining order, preliminary injunction or permanent injunction. Such action has precedence over all other matters pending in the court.

C. If the director has reasonable cause to believe that a person is engaging in an act or practice which violates any provision of section 49-811, the attorney general at the request of the director may apply to the superior court for a temporary restraining order, preliminary injunction or permanent injunction. Such action has precedence over all other matters pending in the court.

D. No provision of this section shall be construed to reduce the authority of the attorney general under any other provision of law.

E. 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.

49-813. Program of education

A. The director shall conduct a program to educate transporters, marketers and burners on their responsibilities under this article. The program of education shall include producing and distributing written materials and conducting seminars in various parts of the state. The director shall provide for appropriate public notice of educational programs conducted pursuant to this subsection. The program of education shall commence no later than January 1, 1991, and continue on a regular basis thereafter.

B. It shall not be a defense or a mitigating factor in a civil or criminal action under this article that the director failed to carry out or inadequately carried out the requirements of subsection A of this section.

49-817. Enforcement powers of the director and inspectors

When necessary for the enforcement of this article and rules adopted pursuant to this article, the director or the director's authorized agent may enter any commercial, nonprofit or governmental premises during normal operating hours. The director or the director's authorized agent shall give the owner or operator of the premises the opportunity to have its representative accompany the inspector. If the premises are not open to the public, the director or the director's authorized agents shall first present agency credentials. Within forty-five days after the date of the inspection the department shall provide to the owner or operator a copy of any inspection report that is produced from that inspection.

49-818. Used oil fund

A. A used oil fund is established. The director shall administer the fund. The fund consists of monies appropriated by the legislature. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Monies deposited in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. Subject to legislative appropriation, monies in the fund shall be used for a quality control and quality assurance program which shall include:

1. Sample collection and analysis of used oil fuel to assure the fuel meets criteria established pursuant to section 49-802.

2. Program oversight including sample collection, analysis review, data entry, contractor coordination, inspections, equipment, enforcement and rule development for the used oil program.

Article 8 Arizona Recycling Program

49-831. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means this state or a state agency, county, municipality or political subdivision.

2. "Collection" means the act of picking up post-consumer secondary materials from homes, businesses, governmental agencies, institutions or industrial sites.

3. "Consumer" means a person who purchases a product for use, consumption or any purpose other than resale.

4. "Consumer of newsprint" means a person who uses newsprint in a commercial printing operation or in a commercial publishing operation.

5. "Disposition" means the transportation, placement, reuse, sale, donation, transfer or temporary storage for a period of not more than six months of designated recyclable materials for all possible uses, except for disposal as solid waste.

6. "Municipal or county solid waste" means any garbage, trash, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material but not including domestic sewage or hazardous waste.

7. "Municipality" means an incorporated city or town with a population of more than five thousand persons.

8. "Natural resources" means the supply of materials, not made by man, that are used for making goods.

9. "Newsprint" means uncoated paper, whether supercalendered or machine finished, including the type generally used for the publication of newspapers, commercial advertising inserts, directories or commercial advertising mailers, which is made primarily from mechanical wood pulps combined with some chemical wood pulp. Newsprint includes paper made from old newspapers which have been deinked, using the recycled pulp in lieu of virgin pulp. Newsprint includes all grades of paper sold as newsprint, supercalendered (SC) uncoated groundwood or machine finished (MF) uncoated groundwood.

10. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.

11. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.

12. "Plastic container" means a container which is hermetically sealed or made airtight with a metal or plastic cap with a minimum wall thickness of not less than 0.010 inches and which is composed of thermoplastic synthetic polymeric materials.

13. "Plastics" means a specific polymer or mix of polymers in combination with various amounts of plasticizers, stabilizers, colorants, fillers and other organic and inorganic compounds.

14. "Post-consumer material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does include discards from industrial or manufacturing processes.

15. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

16. "Recyclable material" means post-consumer materials which may be collected, separated, cleansed, treated or reconstituted and returned to the economic stream in the form of raw materials or products.

17. "Recycled" means a process by which post-consumer materials are collected, separated, cleansed, treated or reconstituted and returned to the economic stream in the form of raw materials or products.

18. "Recycled-content newsprint" means newsprint which contains post-consumer wastepaper.

19. "Recycled materials" means those materials which have been separated from the municipal or county solid waste stream, processed and returned to the economic stream in the form of raw materials or products.

20. "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream.

21. "Recycling" means the process of collecting, separating, cleansing, treating and reconstituting post-consumer materials that would otherwise become solid waste and returning them to the economic stream in the form of raw material for reconstituted products which meet the quality standards necessary to be used in the marketplace, but does not include incineration or other similar processes.

22. "Recycling equipment" means any machinery or apparatus used exclusively to recycle post-consumer waste material or manufacturing machinery used exclusively to produce finished products composed substantially of post-consumer waste materials.

23. "Recycling program" means the program prepared and adopted by this state and approved by the department to implement the recycling program goals of this state or a program prepared and adopted by a county or municipality of this state.

24. "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

25. "Source reduction" means any action which causes a net reduction in the generation of solid waste and includes reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard waste generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic and other materials in the manufacturing process. Source reduction does not include the following:

(a) Steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, such as incineration or pyrolysis or burning for energy recovery.

(b) Replacing disposable material or products with alternative disposable materials or products.

26. "Storage" means the containment or holding of materials, either on a temporary or long-term basis, in such a manner as not to constitute disposal of such materials.

27. "Used oil" means any oil which has been refined from crude or synthetic oil and, as a result of use, storage or handling, which has become unsuitable for its original purpose due to the presence of impurities or loss of original properties but which may be suitable for further use and may be economically recyclable.

28. "Waste generator" means a person, business, government agency or other organization that produces solid waste.

29. "Waste stream" means the solid waste material output of a community, region or facility.

30. "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

31. "Wastepaper" means recyclable paper and paperboard, including high grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

49-832. Administration and enforcement by department of environmental quality; powers and duties

A. The department of environmental quality shall administer and oversee the enforcement of this article.

B. In addition to its other powers and duties, the department shall:

1. Prepare, update and oversee implementation of the Arizona recycling program consistent with the goals of this article.

2. Designate an Arizona recycling coordinator to oversee the program.

3. Serve as the agency of this state for the receipt of monies from the federal government or other public or private institutions.

4. Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out its duties under this article.

5. Initiate, conduct and support research, demonstration projects and investigations and monitor all agency research programs in this state pertaining to recycling and source reduction.

6. Administer and distribute monies in the recycling fund for public education programs on recycling and source reduction that the department believes will provide technical assistance for recycling and source reduction, for research and for other purposes consistent with this article.

7. Administer and distribute monies in the recycling fund designated for the award of grants established under this article.

8. Adopt rules pursuant to title 41, chapter 6 to implement, administer and enforce the provisions of this article.

9. Encourage the use of private industry through contracts for some or all of the requirements of the Arizona recycling program and other activities as may be considered necessary.

10. Monitor municipalities and counties for compliance with sections 9-500.07 and 11-269 concerning an opportunity to engage in recycling and waste reduction.

C. The department of environmental quality, in consultation with the department of health services regarding matters of public health significance, shall do both of the following:

1. Initiate, conduct and support research, demonstration projects and investigations and coordinate all state agency research programs pertaining to municipal and county solid waste management systems.

2. Spend monies for studies and research with respect to the provisions and goals of this article and the rules adopted under it.

49-833. Public education

A. By May 1, 1992, the department, in consultation with the state board of education, shall implement and conduct a program of public education and provide information to increase awareness of individual responsibility for properly reducing and disposing of solid waste and to encourage participation in recycling, reuse and source reduction. The program shall communicate the importance of conserving natural resources, of avoiding harm to the environment or public health and of promoting resource conservation, recovery and reuse by industry, this state, municipalities and counties. The program shall also inform the public of the potential benefits of collecting and recycling potentially hazardous materials including used oil, batteries and waste tires.

B. The department is the lead agency and promoter for all state programs that provide technical assistance for public education programs. In addition to these coordinating functions, the department shall encourage recycling and source reduction by:

1. Providing advice and consultation to persons, businesses and manufacturers on recycling and source reduction techniques.

2. Sponsoring or cosponsoring with public or private organizations technical workshops and seminars on recycling and source reduction.

3. Administering a recycling and source reduction data base and hotline providing referral services to waste generators.

4. Promoting recycling and the use of recycled products.

5. Administering a recycling and source reduction research and development program.

6. Coordinating a recycling and source reduction public education and advertising program that includes the use of existing publications from public and private sources, as well as publishing necessary new materials on source reduction.

7. Recommending to educational institutions courses and curricula in areas related to recycling and source reduction or encouraging the development of courses in managing solid waste.

49-834. Use of recycled newsprint

A. Every consumer of newsprint in this state shall ensure that the newsprint purchased by that consumer in a fiscal year contains an average of at least forty per cent recycled-content newsprint if all of the following apply:

1. Recycled-content newsprint is available at a comparable price to that of newsprint made from virgin material.

2. The recycled-content newsprint meets the reasonable quality requirements of the consumer of newsprint.

3. The recycled-content newsprint is available within a reasonable period of time.

B. In subsection A, paragraph 1, "comparable price" means a price within five per cent of the price of newsprint made from virgin material.

C. Each consumer of newsprint within this state, on or before September 1 of each year, shall certify to the director the number of tons of newsprint purchased during the preceding July 1 through June 30 fiscal year and the number of tons of recycled-content newsprint purchased during the preceding July 1 through June 30 fiscal year. Every consumer of newsprint who submits recycled-content newsprint purchase certification pursuant to this subsection may be audited to ensure that the recycled-content newsprint was purchased.

D. Each supplier of newsprint shall certify the amounts of recycled-content newsprint contained in each shipment of newsprint to each consumer of newsprint. If a shipment contains no recycled-content newsprint, the supplier shall certify that fact.

E. If a consumer of newsprint is unable to obtain sufficient amounts of recycled-content newsprint within any reporting period because recycled-content newsprint was not available at a comparable price to that for virgin material, it failed to meet the reasonable quality requirements of the consumer of newsprint or it was not available within a reasonable period of time, the consumer of newsprint shall so certify to the director and provide the director with the specific reasons for failing to purchase recycled-content newsprint as prescribed by subsection A.

F. The director shall develop and maintain a list which identifies every consumer of newsprint and every person who supplies a consumer of newsprint with newsprint in this state. The director may use information from local business permits, trade publications or any other source to develop the list.

G. If a person provides a consumer of newsprint with a false or misleading certificate concerning the recycled content of the delivered newsprint pursuant to subsection D, the director within thirty days of making this determination shall refer the false or misleading certificate to the attorney general for prosecution for fraud. If a consumer of newsprint provides the director with a false or misleading certificate concerning the percentage of recycled-content newsprint purchased pursuant to subsection C, the director within thirty days of making this determination shall refer the false or misleading certificate to the attorney general for prosecution for fraud. If a consumer of newsprint provides the director with a false or misleading certificate concerning why the consumer of newsprint was unable to obtain the minimum amounts of recycled-content newsprint pursuant to subsection E, the director within thirty days of making this determination shall refer the false or misleading certificate to the attorney general for prosecution for fraud. Specific information on newsprint prices included as part of a certificate submitted to the director by newsprint consumers or suppliers of newsprint is proprietary information and shall not be made available to the general public. A person who violates this section is subject to a civil penalty of not more than one thousand dollars.

49-835. Recycling of plastics; labels

A. The department shall develop and administer a program to encourage the recycling and proper disposal of plastics.

B. By July 1, 1991, a person shall not distribute, sell or expose for sale in this state a plastic bottle of sixteen ounces or more up to five gallons and a rigid plastic container of eight ounces or more up to five gallons unless the product has a molded or imprinted label indicating the plastic resin used to produce the plastic container product. The label must appear on the bottom of the plastic container product and must be clearly visible. This label shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The number and letters shall be as follows:

1. For polyethylene terephthalate, the letters "PETE" and the number "1".
2. For high density polyethylene, the letters "HDPE" and the number "2".
3. For vinyl, the letter "V" and the number "3".
4. For low density polyethylene, the letters "LDPE" and the number "4".
5. For polypropylene, the letters "PP" and the number "5".
6. For polystyrene, the letters "PS" and the number "6".
7. For any other, the word "OTHER" and the number "7".

49-836. Solid waste landfill disposal fees

A. Each operator of a solid waste landfill or facility shall make the fee payments required by this section as determined by the department. Monies from fees shall be deposited in the recycling fund established pursuant to section 49-837 and the solid waste fee fund established pursuant to section 49-881. Fees shall be calculated and paid as follows:

1. A disposal fee of twenty-five cents for each six cubic yards of uncompacted solid waste, twenty-five cents for each three cubic yards of compacted solid waste or twenty-five cents per ton of solid waste received at landfills regulated by the department. From and after June 30, 2004, for each twenty-five cents collected in disposal fees, twelve and one-half cents shall be deposited in the recycling fund and twelve and one-half cents shall be deposited in the solid waste fee fund. From and after June 30, 2005, all twenty-five cents collected in disposal fees shall be deposited in the recycling fund.

2. A solid waste landfill that receives only waste generated on site shall compute the fee by using one of the following methods:

(a) By actual volume or weight.

(b) By estimate based on landfill capacity use, volume or number of waste loads or any other reasonable means for approximating the volume or weight of disposed waste.

3. Facilities that generate waste from recycling solid waste, effluent from a secondary wastewater treatment plant or wastewaters shall pay one-half of the fee calculated pursuant to paragraph 1 of this subsection. The maximum annual amount paid by a facility for on-site disposal of waste generated from recycling shall not exceed fifteen thousand dollars. The fee for these facilities may be computed based on the dry or dewatered weight or volume of the waste generated from recycling.

B. Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the operator. The form shall state the total volume or weight of solid waste disposed of at that landfill during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the operator.

C. A person who for a fee disposes of waste in a solid waste landfill that is not regulated by the department shall keep accurate records of the waste disposed of in those landfills and shall remit a fee to the department at the same rate and in the same manner as provided in subsection A of this section.

D. For solid waste landfills that are operated pursuant to section 49-741 and that do not have on-site operators or scales, the fee shall be based on a formula which multiplies the population of the political subdivisions served by the landfill by seven cents. From and after June 30, 2004, three and one-half cents of the seven cents shall be deposited in the recycling fund and three and one-half cents of the seven cents shall be deposited in the solid waste fee fund. From and after June 30, 2005, all seven cents shall be deposited in the recycling fund. The fee shall be paid in the same manner as provided in subsection A of this section.

E. The provisions of this section do not apply to:

1. Persons disposing of a load containing less than six cubic yards of uncompacted solid waste or three cubic yards of compacted solid waste.

2. A site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

3. Material produced in connection with a mining or metallurgical operation.

F. Solid waste management service companies and agencies affected by the landfill disposal fees established by this section may adjust the fees charged to customers by passing through to the customers the additional costs.

49-837. Recycling fund; use; advisory committee

A. A recycling fund is established to be administered by the director. The fund consists of monies appropriated by the legislature, gifts, grants, donations and monies derived from the landfill disposal fees in section 49-836. Monies derived from landfill disposal fees are subject to legislative appropriation. Monies in the fund are exempt from lapsing under section 35-190. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

B. Monies from the recycling fund shall be used for the following purposes:

1. Grants to or contracts with political subdivisions, nonprofit organizations or private enterprise for research, demonstration projects, market development and source reduction studies and implementation of the recommendations or reports prepared pursuant to this article.

2. Public information, public education and technical assistance programs concerning litter control, recycling and source reduction.

3. The collection and administration of monies in the fund.

4. The administration of this article.

5. The administration of the Arizona commerce authority's recycled market development program. At the end of each fiscal year, any funds not spent by the authority for this purpose shall be returned to the fund.

6. The department's solid waste control program activities prescribed in this chapter and in title 44.

C. In making expenditures pursuant to subsection B, paragraph 2 of this section, the director shall ensure that counties having a population of less than five hundred thousand persons according to the most recent United States decennial census receive benefits in proportion to their contributions to the fund.

D. The director shall appoint an advisory committee to advise the director on the use of monies in the recycling fund. The advisory committee shall consist of two representatives from private solid waste collection businesses, two representatives from private solid waste recycling businesses, four representatives from political subdivisions which have implemented recycling and source reduction programs, at least one of whom resides in a county having a population of fewer than five hundred thousand persons, and one representative of the general public. The members of the committee serve at the pleasure of the director and are not eligible to receive compensation, and the committee is an advisory committee for purposes of title 38, chapter 3, article 3.1.

Article 9 Management of Special Waste

49-851. Definitions; applicability

A. In this article, unless the context otherwise requires:

1. "Best management practices" means a method or combination of methods that is used in the treatment, storage and disposal of a special waste and that achieves the maximum practical cost effective protection of public health or the environment.

2. "On site" means at or on the same or geographically contiguous property that may be divided by public or private right-of-way, provided the entrance and exit between the properties are at a crossroads intersection and access is by crossing as opposed to travel along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that that person controls and to which the public does not have access are also on-site property.

3. "Petroleum contaminated soils" means soils excavated for storage, treatment or disposal containing benzene, toluene, ethylbenzene, total xylenes, acenaphthylene, anthracene, benz(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, cyrysene, dibenz(A, H)anthracene, fluoranthene, fluorene, indenopyrene, naphthalene or pyrene in concentrations in excess of levels determined by the director pursuant to section 49-152 to protect the public health and the environment.

4. "Shipper" means a person who transports a special waste in commerce.

5. "Special waste" means a solid waste as defined in section 49-701.01, other than a hazardous waste, that requires special handling and management to protect public health or the environment and that is listed in section 49-852 or in rules adopted pursuant to section 49-855. Special waste does not include return flows from irrigated agriculture, medical waste, used oil or by-products of a regulated agricultural activity, as defined in section 49-201, that are subject to best management practices under section 49-247, by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers regulated pursuant to title 3, chapter 2, article 6 or waste that contains radioactive materials that are subject to a permit or regulation under the atomic energy act of 1954 (42 United States Code section 2011; 68 Stat. 919), as amended, or title 30, chapter 4.

6. "Storage" means the holding of special waste for a period of not more than one year unless a lesser period of time is designated by the

director pursuant to best management practices rules. The director shall not designate a storage time of less than ninety days.

B. Defining or categorizing any material as a special waste under this article shall not affect the duty of care or breach of that duty for a cause of action for personal injury or for a workers' compensation claim arising from the handling of any materials.

49-852. Statutory list of special wastes; best management practices rules; applicability of hazardous waste designation

A. The following are designated as special wastes for purposes of this article:

1. Waste that contains petroleum contaminated soils.
2. Waste from shredding motor vehicles.

B. The director shall establish rules for best management practices for these special wastes pursuant to section 49-855.

C. Notwithstanding section 49-856, the wastes listed pursuant to subsection A of this section are required to comply with those manifest requirements within three months of the adoption of the best management practices.

49-854. Designation of special wastes; criteria; notice; rules

A. The director shall give public notice pursuant to title 41, chapter 6 of the decision to formally study a waste for possible designation as a special waste pursuant to the criteria established in subsection B of this section.

B. In determining whether a waste shall be designated as a special waste, the director shall consider the potential adverse effects on public health or the environment from the treatment, storage, transportation or disposal of each waste based upon:

1. The acute and chronic toxicity for those wastes including the human or animal data for the following exposures:
   (a) Aquatic.
   (b) Dermal.
   (c) Inhalation.
   (d) Oral.
2. The carcinogenic, mutagenic or teratogenic effects of those wastes on humans or other life forms.
3. The degree to which the wastes or degradation products of those wastes are persistent or bioaccumulative in the environment.
4. Information and studies from other states and the federal government if the committee or director finds them to be derived from standard protocols.
5. Other appropriate scientific data, environmental testing or analytical data.

C. The director shall give public notice pursuant to title 41, chapter 6 of the decision to designate or not to designate a waste as a special waste.

D. The director shall by rule, designate a waste as a special waste and adopt best management practices concerning the special waste pursuant to section 49-855 within eighteen months after giving public notice pursuant to subsection C of this section that a waste will be designated as a special waste.

E. The designation of a waste as a special waste and the adoption of best management practices pursuant to section 49-855 shall occur in the same rule making process.

49-855. Best management practices; fee; criteria

A. The director shall adopt, by rule, best management practices for the treatment, storage and disposal of each waste to be designated as a special waste pursuant to this article.

B. In adopting best management practices for a special waste, the director shall consider:

1. The availability, effectiveness, economic feasibility and technical feasibility of alternative handling or management technologies and practice.

2. The potential nature and severity of the effect on public health and the environment resulting from the special waste.

3. Circumstances under which the practices shall be applied including climatological, geological and hydrogeological conditions.

4. Consistency with other federal and state laws, rules and regulations in an effort to avoid practices or requirements that duplicate, are inconsistent with or result in dual regulation under other federal and state laws, rules and regulations.

C. The best management practices adopted by the director shall contain procedures necessary for the protection of public health and the environment for the transportation, treatment, storage and disposal of special wastes. Additional items to be contained in the best management practices shall include at least:

1. A designated time of not less than ninety days beyond which a waste may not be stored.

2. A fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal. After the effective date of this amendment to this section, the department shall establish by rule a fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

D. The director may adopt special waste best management practices that apply to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

E. The director may enact special waste best management practices that are more stringent than federal laws or regulations that govern polychlorinated biphenyls pursuant to the toxic substances control act (15 United States Code section 2605) if the director determines in writing that:

1. The additional regulation is necessary to protect public health or the environment.

2. There is a scientific basis for the additional regulation based upon appropriate environment testing and analytical data.

3. The additional regulation is technically feasible.

F. Nothing in this section shall preclude the director from adopting best management practices under this article which incorporate management practices applicable to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

49-856. Special waste handling requirements; manifest; exemption

A. The director shall adopt rules by September 1, 1993 that include an Arizona special waste manifest form designed to implement the provisions of this article.

B. Within three months of the adoption of best management practices for a special waste pursuant to section 49-855:

1. A person who generates, transports, offers for transportation or receives special waste for off-site treatment, recycling, storage or disposal shall comply with the rules adopted pursuant to subsection A of this section.

2. A person who transports a special waste that is defined as a hazardous material, hazardous substance or hazardous waste in 49 Code of Federal Regulations part 171 shall do so in accordance with the applicable motor carrier safety provisions of 49 United States Code appendix sections 1801 through 1819 and title 28, chapter 14.

3. A person who arranges for the treatment, storage or disposal of a special waste shall do so only at a facility approved by the director pursuant to section 49-857 or 49-858.

49-857. Special waste management plans; director; approval; fee

A. Except as provided in section 49-858, a facility that plans to manage special waste for treatment, storage or disposal shall apply for and obtain approval of the director.

B. The application shall include all of the following:

1. A complete solid waste facility plan pursuant to section 49-762 that includes a special waste management plan component that complies with best management practices adopted pursuant to section 49-855 for each special waste for that portion of the facility that is engaged in the treatment, storage or disposal of special waste.

2. Evidence of compliance with permit filing requirements pursuant to this title.

C. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. The rule making is exempt from title 41, chapter 6, except that the director shall provide for reasonable notice and a hearing. Monies from fees shall be deposited in the solid waste fee fund established by section 49-881.

D. A facility at which the treatment, storage or disposal of special waste occurs only as a result of an episodic release at that facility shall not be subject to the special waste management plan requirements of this section. The special waste shall be managed pursuant to applicable best management practices.

49-857.01. Plan; approval; deadline; judicial review

A. Within ninety days of receipt of the complete plan and other information prescribed by section 49-857, subsection B, the director shall approve in writing any plan or portion of a plan that complies with this article or shall deny in writing any plan or portion of a plan that does not comply with this article.

B. If the director denies a plan or a portion of a plan, the director shall notify the applicant in writing of the specific reasons for denial within ten days. The applicant has an additional ninety days from receipt of the written denial to file a modified plan addressing the specific deficiencies.

C. Within ninety days of receipt of a modified plan, the director shall approve or disapprove in writing the modified plan. The director may

issue a compliance order to any applicant who has failed to submit a modified plan when required as prescribed by subsection B of this section or whose modified plan has been disapproved.

D. Any major modification from an approved plan is subject to review and approval by the director before implementation.

E. If the director fails to approve or disapprove the plan as prescribed by this section, the plan is deemed approved. Except as provided in section 41-1092.08, subsection H, the director's disapproval of a modified plan is subject to judicial review pursuant to title 12, chapter 7, article 6.

49-858. Interim use facilities; special waste

A. A facility that is in operation on the effective date of best management practices rules that are applicable to that facility and that are adopted by the director pursuant to section 49-855 and that manages wastes designated as special waste pursuant to this article for treatment, storage or disposal may continue to manage special waste for treatment, storage or disposal if all of the following conditions are met:

1. Within sixty days after the effective date of adoption of the best management practices that are applicable to the facility, the facility submits a notice to the director that contains the following information:

(a) Facility name and mailing address.

(b) Legal description by township, range and section.

(c) Major design features.

(d) Type and volume of waste handled.

(e) Methods of waste management.

(f) Measures taken to protect the environment and measures taken to protect public health.

(g) A summary of permits from city, county, state and federal agencies.

2. The facility files an application containing the information required in section 49-857, subsection B within one hundred eighty days of the adoption of best management practices.

B. A generator may treat, store or dispose of special waste at a facility that is managed or operated by that generator and that is in operation on July 3, 1991 if the same conditions prescribed in subsection A of this section are met.

C. The process for plan approval and disapproval shall conform to section 49-857.01.

D. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the application. The director may amend an existing rule or adopt a new rule to establish criteria for those costs.

49-859. Application to water quality permits

A. Neither the classification of a particular type of waste as a special waste nor the adoption or revision of the best management practices criteria constitutes a major modification to a facility with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

B. The director's approval of a special waste management plan either before or after the adoption of best management practices criteria does not constitute a major modification of a facility with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

49-860. Annual reporting requirements; inspections

A. A shipper required to comply with the special waste manifesting procedures of this article shall report the following information to the department on or before March 1 of each year:

1. A shipping description of the special waste shipped during the preceding year.

2. The volume or weights of each type of special waste shipped during the preceding year.

3. The facility to which the special waste was shipped, identified by name, address, location and groundwater quality protection permit number or aquifer protection permit number, if applicable.

B. A facility or person that receives from off site a special waste for treatment, storage or disposal shall report the following information to the department on or before March 1 of each year:

1. The shipping descriptions of each special waste received during the preceding year.

2. The volume or weight of each type of special waste received during the preceding year.

3. For each special waste type, the identity by generator name, address, location, telephone number and amount of that special waste sent to the facility during the preceding year.

4. For each special waste type received, a description of the methods and practices used by the receiving facility or person to treat, store or dispose of the special waste.

C. Generators who treat, store or dispose of special waste shall keep records of the volume or weights of each type of special waste handled. Generators who treat, store or dispose of special waste shall report to the department on or before March 1 of each year for each facility:

1. The volume or weight of each type of special waste treated, stored or disposed of on site for the preceding year.

2. The volume or weight of each type of special waste treated, stored or disposed of off site for the preceding year.

3. For each type of special waste disposed, a description of the methods and practices used to minimize the amount or toxicity of the waste before disposal or reuse that constitutes disposal.

4. The volume or weight of waste received pursuant to section 49-863, subsection G.

D. The department may conduct inspections of facilities and records in order to enforce this section.

49-861. Violation; classification; civil penalty

A. Beginning January 1, 1993 a person who knowingly violates this article is guilty of a class 6 felony.

B. A person who violates any provision of this article or a rule or order adopted or issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day for each violation. In issuing any final order in any civil action brought under this section, the court may award costs of litigation including reasonable attorney and expert witness fees to any substantially prevailing party if the court determines that an award is appropriate.

C. The attorney general, at the request of the director, shall file an action in superior court to recover civil penalties provided by this section.

49-862. Compliance orders; injunctive relief

A. If the director has reasonable cause to believe that a person is violating this article or a rule adopted pursuant to this article, the director may serve on the person an order requiring compliance with that provision or rule. The order shall state with reasonable particularity the nature of the violation and shall specify either immediate compliance or a time period for compliance that the director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable legal requirements. The alleged violator may request a hearing pursuant to title 41, chapter 6, article 10.

B. If the director has reasonable cause to believe that an order issued pursuant to this section is being violated or that a person is engaging in an act or practice that constitutes a violation for which he is authorized to issue an order pursuant to this section, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

C. If the director has reasonable cause to believe that a person is engaging in an act or practice in violation of this article that causes an imminent and substantial endangerment to the public health or environment, whether or not the person has requested a hearing, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

49-863. Special waste management fee; exemption

A. The director shall collect the fee established by section 49-855, subsection C from the special waste treatment, storage or disposal facility that first receives the waste. Any government entity that is required to collect a fee pursuant to this section may establish fees to recover the costs of collection and administration.

B. A generator who ships special waste for purposes of treatment, storage or disposal to a facility in this state that is not regulated by the department shall retain for three years accurate records of the special waste transported to a facility and shall pay a fee to the department at the same rate and in the same manner as provided in subsection A of this section.

C. Each operator or person who is required to pay a special waste management fee shall make the fee payment as determined by the department.

D. Each fee payment shall be accompanied by a form furnished by the department and completed by the operator. The form shall state the total volume or weight of the special waste transported to or disposed at that facility during the payment period and shall provide any other information deemed necessary by the department. The operator shall sign the form.

E. If an operator or person fails to pay the fee as provided in subsection C of this section, that operator or person is additionally liable for interest on the unpaid amount at a rate prescribed by section 49-113.

F. Monies collected pursuant to this section shall be deposited in the solid waste fee fund established pursuant to section 49-881.

G. A generator who ships special waste for purposes of treatment, recycling, storage or disposal from a facility that is managed or operated by that generator to another facility that is managed or operated by that generator is exempt from the fee collected pursuant to this section.

H. A generator who treats, recycles, stores or disposes of special waste on site at a facility that is managed or operated by the generator is exempt from the fee collected pursuant to this section.

I. State agencies, including state universities, are not exempt from the fees prescribed in this section.

49-865. Inspections

The department may conduct such inspections of facilities that manage special waste, including premises and equipment, as are necessary. The department shall give the management agency or the owner or operator of the facility the opportunity to have its representative accompany the inspector. Within forty-five days after the date of the inspection, the department shall provide to the facility owner or operator a copy of any inspection report produced as a result of an inspection of that facility that occurs as prescribed by this section.

49-866. Orders; monitoring; pollution control devices

A. Except as otherwise provided in sections 49-422 and chapter 3, article 3 of this title, the director may require by order the installation of necessary monitoring and pollution control devices at a special waste facility if the requirements of subsection B of this section have been met.

B. Before issuing an order pursuant to subsection A of this section, the director shall determine in writing that all of the following conditions are met:

1. The special waste facility may adversely affect public health or the environment.

2. A monitoring, sampling or quantification method or a pollution control device is technically feasible for the subject contaminant and the special waste disposal facility.

3. An adequate scientific basis for the monitoring, sampling or quantification method or the pollution control device exists.

4. The monitoring, sampling or quantification method is reasonably accurate or the pollution control device is reasonably effective.

5. The cost of the method or device is reasonable in light of the use to be made of the data or the device.

6. The director has considered the relative cost and the relative accuracy or effectiveness of any alternative method or device that may be reasonable under the circumstances.

49-868. Agency orders; appeal

Any final agency order issued pursuant to this article is appealable pursuant to title 41, chapter 6, article 10.

Article 10 Solid Waste Fee Fund

49-881. Solid waste fee fund; uses; exemption

A. The solid waste fee fund is established. The director shall administer the fund. The fund consists of legislative appropriations, donations, gifts, grants, registration fees collected pursuant to sections 44-1303 and 44-1304.01, waste tire administrative monies distributed pursuant to section 44-1305, subsection B, paragraph 1, licensure fees collected pursuant to section 49-104, subsection B, paragraph 14, subdivision (b),

solid waste general permit fees collected pursuant to section 49-706, solid waste landfill registration fees from section 49-747, licensure fees collected pursuant to section 49-761, subsection D, paragraph 2, solid waste fees collected pursuant to section 49-762.03, subsection F, special waste management plan fees collected pursuant to section 49-857, special waste management fees collected pursuant to section 49-863, private consultants expedited plan review fees collected pursuant to section 49-762.03, subsection G, self-certification filing fees collected pursuant to section 49-762.05, subsection H, solid waste landfill disposal fees collected pursuant to section 49-836 and special waste fees collected pursuant to section 49-855, subsection C, paragraph 2.

B. Monies in the fund are subject to legislative appropriation for solid waste control programs established in the funding sources pursuant to subsection A of this section and as determined by the director.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund. Monies deposited in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

Chapter 5 HAZARDOUS WASTE DISPOSAL
Article 1 Hazardous Waste Disposal at State Sites

49-901. Definitions

In this chapter, unless the context otherwise requires:

1. "Hazardous waste" means hazardous waste as defined in section 49-921.

2. "Hazardous waste disposal facility" means a hazardous waste disposal facility contracted for or operated by this state.

49-902. Acquisition of site; powers and duties of director; criteria applicable to future sites

A. The director shall acquire clear title in the name of this state to a site consisting of one square mile located in Maricopa county which legal description is section 32, township 4 south, range 1 west, Gila and Salt river base and meridian for a hazardous waste disposal facility for the disposal, storage, recovery and treatment of hazardous wastes.

B. The director shall lease in the name of this state a buffer zone consisting of at least one-half mile surrounding the site acquired pursuant to subsection A of this section.

C. The director shall obtain such public easements as are necessary for ingress or egress to the site acquired pursuant to subsection A of this section.

D. The director may obtain lands for purposes of this article by purchase, lease, grant, condemnation or other lawful means.

E. When a hazardous waste disposal facility becomes operational, no new facility for the permanent disposal of hazardous waste operating away from the source of generation of the waste may be located within:

1. A one hundred year floodplain, as defined in section 48-3601.

2. An area so close to public roads, residences, public and private water wells and water supplies as to constitute a threat to human health or the environment.

3. An area where up to one mile from the perimeter of the site the depth to groundwater level is less than one hundred fifty feet.

4. An area where the surrounding land use for one square mile may impede proper long-term site maintenance.

5. An area where the hydrology and geology are incompatible with such use.

6. An area where subsidence has occurred or is likely to occur.

F. Notwithstanding any other statute, on the effective date of this section all duties relating to the administration of a lease and management of any contract with a person who has contracted for a hazardous waste disposal facility pursuant to section 49-903 shall be performed by the director of the department of administration.

49-903. Development of facility

A. The director of the department of administration may contract with one or more persons for the development of a hazardous waste disposal facility. The person developing the facility is solely responsible for compliance with all federal, state and local environmental laws, ordinances and rules. In no event shall the director of the department of administration be responsible for such compliance.

B. Hazardous wastes disposed of at any facility established pursuant to this article shall not include special nuclear or by-product materials, or any radioactive waste material whose storage, transportation, treatment and disposal are regulated by the federal nuclear regulatory commission, or its successor agency, or the department of health services, or its successor agency.

C. A facility established pursuant to this article shall not incinerate hazardous waste.

D. A facility established pursuant to this article shall not accept for purposes of storage, treatment or disposal any waste that is generated outside this state and that is classified as hazardous under the laws of its state or country of origin unless the legislature does either of the following:

1. Approves an interstate or regional agreement for the safe treatment, storage or disposal of hazardous waste as prescribed by the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510), as amended.

2. Finds that the prohibition on importation is no longer in the best interests of this state due to a finding that this state is in violation of its capacity assurance plan requirements prescribed by the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510), as amended.

E. The director of the department of environmental quality shall determine those wastes that have been classified as hazardous by another state or country as of July 3, 1991. The director shall publish a list of those wastes by December 31, 1992.

49-904. State facility trust fund; fees

A. The director of the department of administration may assess reasonable fees for use of any facility established pursuant to this article.

B. All monies collected or appropriated pursuant to this article shall be deposited, pursuant to sections 35-146 and 35-147, in a special fund denominated the state facility trust fund which shall be administered by the director of the department of administration for the following purposes:

1. Reimbursing a contractor for the costs of site acquisition, design, financing and construction of a hazardous waste disposal facility.

2. Paying a contractor for operating a hazardous waste disposal facility.

3. Funding this state's risk management program to cover the state's liability risks relating to hazardous waste disposal facilities.

4. Administrative expenses incurred by the department of administration to carry out this article.

C. Upon written request from the director of the department of environmental quality, the department of administration shall transfer funds to the department of environmental quality for the following purposes:

1. Monitoring the operation and environmental impact of hazardous waste sites and facilities established pursuant to this article.

2. Mitigating or abating any imminent and substantial threat to public health or environmental quality that may be caused or created by any hazardous waste site or facility established pursuant to this article.

3. Adopting rules pursuant to section 49-905.

49-905. Rules; duty of director

The director of the department of environmental quality shall adopt rules governing hazardous waste disposal facilities established pursuant to this article. Rules issued under this section shall include provisions relating to:

1. The types and amounts of hazardous wastes to be accepted for disposal by hazardous waste disposal facilities established pursuant to this article.

2. Perpetual care as necessary and post-closure maintenance of hazardous waste disposal facilities established pursuant to this article.

Article 2 Hazardous Waste Management

49-921. Definitions

In this article, unless the context otherwise requires:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking or placing hazardous waste into or on land or water so that hazardous waste or any constituent of hazardous waste may enter the environment, be emitted into the air or discharged into any waters, including groundwater.

2. "Facility" includes all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal units.

3. "Federal act" means the solid waste disposal act, as amended by the resource conservation and recovery act of 1976 and the hazardous and solid waste amendments of 1984 (P.L. 94-580; 90 Stat. 2795).

4. "Generation" means the act or process of producing hazardous waste.

5. "Hazardous waste" means garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, or other discarded materials, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations or from community activities which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed

or any waste identified as hazardous pursuant to section 49-922. Hazardous waste does not include solid or dissolved material in domestic sewage, solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal water pollution control act (P.L. 92-500; 86 Stat. 816), as amended, or source, special nuclear or by-product material as defined by the atomic energy act of 1954 (68 Stat. 919), as amended.

6. "Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of solid or hazardous waste.

7. "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

8. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of the state, interstate body or federal facility.

9. "Storage" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of or stored elsewhere.

10. "Transportation" means the movement of hazardous waste by air, rail, highway or water.

11. "Treatment" means a method, technique or process designed to change the physical, chemical or biological character or composition of hazardous waste so as to neutralize such waste or to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume.

49-922. Department rules and standards; prohibited permittees

A. The director shall adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of the federal act. Federal hazardous waste regulations may be adopted by reference. The director shall not adopt a nonprocedural standard that is more stringent than or conflicts with those found in 40 Code of Federal Regulations parts 260 through 268, 270 through 272, 279 and 124. The director shall not identify a waste as hazardous, if not so identified in the federal hazardous waste regulations, unless the director finds, based on all the factors in 40 Code of Federal Regulations section 261.11(a)(1), (2), or (3), that the waste may cause or significantly contribute to an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

B. These rules shall establish criteria and standards for the characteristics, identification, listing, generation, transportation, treatment, storage and disposal of hazardous waste within this state. In establishing the standards the director shall, where appropriate, distinguish between new and existing facilities. The criteria and standards shall include requirements respecting:

1. Maintaining records of hazardous waste identified under this article and the manner in which the waste is generated, transported, treated, stored or disposed.

2. Submission of reports, data, manifests and other information necessary to ensure compliance with such standards.

3. The transportation of hazardous waste, including appropriate packaging, labeling and marking requirements and requirements respecting the use of a manifest system, which are consistent with the regulations of the state and United States departments of transportation governing the transportation of hazardous materials.

4. The operation, maintenance, location, design and construction of hazardous waste treatment, storage or disposal facilities, including such additional qualifications as to ownership, continuity of operation, contingency plans, corrective actions and abatement of continuing releases, monitoring and inspection programs, personnel training, closure and postclosure requirements and financial responsibility as may be necessary and appropriate.

5. Requiring a permit for a hazardous waste treatment, storage or disposal facility including the modification and termination of permits, the authority to continue activities and permits existing on July 27, 1983 consistent with the federal hazardous waste regulations, and the payment of reasonable fees. The director shall establish and collect reasonable fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit. After the effective date of this amendment to this section, the director shall establish by rule an application fee to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the hazardous waste management fund established by section 49-927.

6. Providing the right of entry for inspection and sampling to ensure compliance with the standards.

7. Providing for appropriate public participation in developing, revising, implementing, amending and enforcing any rule, guideline, information or program under this article consistent with the federal hazardous waste program.

C. The director may refuse to issue a permit for a facility for storage, treatment or disposal of hazardous waste to a person if any of the following applies:

1. The person fails to demonstrate sufficient reliability, expertise, integrity and competence to operate a hazardous waste facility.

2. The person has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

3. In the case of a corporation or business entity, if any of its officers, directors, partners, key employees or persons or business entities holding ten per cent or more of its equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

D. Nothing in this article shall affect the validity of any existing rules adopted by the director that are equivalent to and consistent with the federal hazardous waste regulations until new rules for hazardous waste are adopted.

E. Nothing in this article shall authorize the regulation of small quantity generators as defined by 40 Code of Federal Regulations section

261.5 in a manner inconsistent with the federal hazardous waste regulations. However, the director may require reports of any small quantity generator or group of small quantity generators regarding the treatment, storage, transportation, disposal or management of hazardous waste if the hazardous waste of such generator or generators may pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

49-922.01. Hazardous waste manifest errors; penalty; disposition of monies

A. If a manifest for a shipment of hazardous waste required to be submitted to the director is improperly completed, the department may return it to the person who prepared the manifest and require the person to properly complete and resubmit the manifest. The fee for resubmittal of a manifest is twenty dollars.

B. All monies collected pursuant to this section shall be deposited in the water quality assurance revolving fund established by section 49-282.

49-923. Compliance orders; civil penalties; injunctive relief

A. If the director has reasonable cause to believe that a person is violating this article or article 1 of this chapter or a permit or rule issued or adopted pursuant to this article or article 1 of this chapter, the director may serve upon the person an order requiring compliance with such provision, permit or rule. The order shall state with reasonable particularity the nature of the violation and shall specify either immediate compliance or a time period for compliance which the director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable legal requirements. The alleged violator may request a hearing pursuant to title 41, chapter 6, article 10.

B. If a violator fails to take corrective action within the time specified in a compliance order issued pursuant to subsection A of this section, the director may issue an order assessing a civil penalty of not more than one thousand dollars for each day of continued noncompliance with the order. The alleged violator may request a hearing pursuant to title 41, chapter 6, article 10. An attorney or corporate officer or employee of a corporation may represent the corporation at that hearing.

C. Before issuing an order assessing a civil penalty pursuant to subsection B of this section, the director shall give reasonable notice of his intent to issue the order and the circumstances of the case to the attorney general.

D. If the director has reasonable cause to believe that an order issued pursuant to this section is being violated or that a person is engaging in an act or practice which constitutes a violation for which he is authorized to issue an order pursuant to this section, the director or the attorney general may apply to the superior court in the county in which the violation is occurring for a temporary restraining order, preliminary injunction or permanent injunction. Such action has precedence over all other matters pending in the court.

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

49-924. Violations; civil penalty

A. A person who violates this article or any permit, rule or order issued or adopted pursuant to this article is subject to a civil penalty not exceeding twenty-five thousand dollars for each day of violation.

B. The attorney general shall bring an action to recover penalties under this section in the name of this state in the superior court in the county in which the violation occurred or in a county in which the department maintains an office.

C. The director may suspend or revoke any permit issued to a person who violates this article or any permit, rule or order issued or adopted pursuant to this article, unless the director has previously assessed a civil penalty for the violation pursuant to section 49-923, subsection B.

D. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

49-925. Violation; classification; definition

A. A person who knowingly does any of the following is guilty of a class 5 felony, a person who recklessly does any of the following is guilty of a class 6 felony and a person who knowingly or recklessly manifests an extreme indifference for human life in doing any of the following is guilty of a class 3 felony:

1. Transports any hazardous waste to a facility not authorized to receive that hazardous waste under this article or under the federal act.

2. Causes or allows any hazardous waste to be transported to a facility not authorized to receive that hazardous waste under this article or under the federal act.

3. Treats, stores, transports or disposes of hazardous waste without appropriate authority under this article or under the federal act.

4. Violates a material permit condition issued pursuant to this article or a material interim status standard adopted pursuant to this article.

B. A person who knowingly does any of the following is guilty of a class 6 felony:

1. Fails to file a hazardous waste manifest required to be filed to comply with this article or the rules adopted pursuant to this article.

2. Transports, or causes to be transported, hazardous waste without a manifest as required under this article or the rules adopted pursuant to this article.

C. The attorney general may enforce the provisions of this section.

49-926. Enforcement

The attorney general may bring a civil or criminal action to enforce the provisions of this article or any statute relating to the production, distribution, storage, transportation or disposal of hazardous waste.

49-927. Hazardous waste management fund

A. A hazardous waste management fund is established to be administered by the department. The fund consists of monies appropriated by the legislature, monies collected pursuant to section 49-931 and monies collected as fees for issuing permits under section 49-922, subsection B, paragraph 5. Monies in the fund are subject to legislative appropriation and are exempt from section 35-190 relating to lapsing of appropriations. On notice from the director, the state treasurer shall invest and divest monies in the fund

as provided by section 35-313, and monies earned from investment shall be credited to the fund.

B. Monies in the hazardous waste management fund shall be used for the following purposes:

1. Informing, educating and training the general public, treatment, storage and disposal facility operators, hazardous waste handlers and others.

2. Supporting statewide hazardous waste planning and program development activities.

3. Processing, issuing and maintaining permits for treatment, storage or disposal facilities.

4. Compliance monitoring, investigation and enforcement activities pertaining to generating, transporting, treating, storing and disposing of hazardous waste under this article.

5. Funding the pollution prevention technical assistance program established pursuant to section 49-965 and providing matching funds under section 6605 of the pollution prevention act of 1990 (P.L. 101-508).

6. Administration of the pollution prevention program pursuant to article 4 of this chapter.

7. Reimbursement of appropriations received for fiscal year 1991-1992 to the state general fund as provided by law.

8. Remediating properties that have been reported to the state board of technical registration before August 6, 2016 if there is evidence that the property owner did not comply with state law for removal of the gross contamination on the property.

C. Ten percent of the monies in the fund shall be transmitted to the emergency response fund established by section 49-132 to be used for staffing local emergency planning committees and equipping local fire departments, fire districts and public safety agencies for the development of hazardous materials emergency response teams.

49-928. Availability of information to the public

A. Any record, reports or information obtained from any person pursuant to this chapter, including records, reports or information obtained or prepared by the director or a department employee, shall be available to the public, except that the information or a particular part of the information shall be considered confidential on either:

1. Notice from the person, accompanying the information, stating that the information or a particular part of the information, if made public, would divulge the trade secrets of the person as defined in section 49-201 or other information likely to cause substantial harm to the person's competitive position.

2. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this title in superior court.

B. If the director, on his own or following a request for disclosure, disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and shall have twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.

C. Notwithstanding subsection A of this section, the following information obtained from any person pursuant to this chapter shall be available to the public:

1. The name and address of any permit applicant, permittee, generator or transporter.

2. The types and amounts of any hazardous wastes generated, stored, treated or disposed.

3. The types and amounts of any toxic substances released to the environment.

D. Notwithstanding subsection A of this section, the director may disclose, with accompanying confidentiality notice, any records, reports or information obtained from any person under this article, including records, reports or information obtained by the director or department employees, to:

1. Other state employees concerned with administering this chapter or if the records, reports or information are relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with federal statutes or regulations.

49-929. Annual registration of hazardous waste treatment, storage and disposal facilities, transporters and generators; fee; disposition of revenue

A. All hazardous waste treatment, storage and disposal facilities, hazardous waste transporters and hazardous waste generators, except hazardous waste resource recovery facilities as defined in section 49-930, shall register annually with the department at the time and in the manner prescribed by the director. The registration is valid for one year from the date of registration.

B. The application for registration shall be accompanied by a registration fee based on the following:

1. Hazardous waste treatment, storage and disposal facilities, one thousand five hundred dollars plus two dollars per ton of hazardous waste received for treatment, storage for more than ten days or disposal during the preceding calendar year, except that a hazardous waste disposal facility established under article 1 of this chapter, shall be subject to any fees assessed pursuant to section 49-904, and shall not be subject to the two dollar per ton component of the fee imposed by this section.

2. Hazardous waste transporters, two hundred dollars.

3. Large quantity hazardous waste generators which generate one thousand kilograms per month or more, three hundred dollars.

4. Small quantity hazardous waste generators which generate between one hundred and one thousand kilograms per month, one hundred dollars.

C. All monies collected under this section shall be deposited in the water quality assurance revolving fund established by section 49-282. The director may authorize expenditures from the fund, pursuant to section 49-282, subsection E, to pay the reasonable and necessary costs of administering the registration program.

49-930. Annual registration of hazardous waste resource recovery facilities; fee; maximum annual payment of fees and taxes; disposition of revenue; definitions

A. All hazardous waste resource recovery facilities shall register annually with the department at the time and in the manner prescribed by the

director. The registration is valid for one year from the date of registration.

B. The application for registration shall be accompanied by a registration fee of one thousand five hundred dollars plus two dollars per ton of hazardous waste received for resource recovery during the preceding calendar year, except that a person engaging in hazardous waste resource recovery is not required to pay fees and taxes listed in section 49-282, subsection A, paragraphs 2 through 9 in excess of the lesser of:

1. Ten thousand dollars in a calendar year per individual hazardous waste resource recovery site.

2. Twenty-five thousand dollars in a calendar year per hazardous waste resource recovery entity.

C. A person who pays such fees and taxes for hazardous waste resource recovery facilities in the amount specified in subsection B of this section may submit evidence of such payment to the appropriate entity in lieu of paying additional fees and taxes for that calendar year for hazardous waste resource recovery facilities.

D. If a hazardous waste resource recovery facility is owned or operated by more than one person, the payment of fees or the compliance with this section for the facility by one person constitutes compliance by all other owners and operators.

E. All monies collected under this section shall be deposited in the water quality assurance revolving fund established by section 49-282. The director may authorize expenditures from the fund, pursuant to section 49-282, subsection E, to pay the reasonable and necessary costs of administering the registration program.

F. For purposes of this section:

1. "Hazardous waste resource recovery entity" means a person who owns or operates more than one individual hazardous waste resource recovery site in this state.

2. "Hazardous waste resource recovery facility" means a facility that receives for recovery of material resources fifty or more tons per year of hazardous waste generated by a facility owned by a person other than the owner of the facility receiving the hazardous waste for recovery of material resources.

3. "Individual hazardous waste resource recovery site" means a hazardous waste resource recovery facility or group of hazardous waste resource recovery facilities located in a contiguous geographical area and owned or operated by the same person.

49-931. Hazardous waste fees; definitions

A. The following fees apply:

1. A person who generates hazardous waste that is shipped off site shall pay a fee for each ton of waste generated. After the effective date of this amendment to this section, the department shall establish by rule a fee for the generation of hazardous waste that is shipped off site, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. Hazardous waste that is shipped off site to a facility that is in this state and that is owned or operated by the same person who generates the waste is exempt from the fees in this paragraph.

2. An owner or operator of a facility that disposes of hazardous waste shall pay a fee for each ton of waste disposed. After the effective date of this amendment to this section, the department shall establish by rule a fee

for an owner or operator of a facility that disposes of hazardous waste, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. Hazardous waste that is disposed at a facility that is owned or operated by the same person who generates the waste is exempt from the fee in this paragraph.

3. A person who generates hazardous waste that is retained on site for disposal or that is shipped off site for disposal to a facility that is owned or operated by that generator shall pay a fee for each ton of hazardous waste delivered to the disposal facility. After the effective date of this amendment to this section, the department shall establish by rule a fee for each ton of hazardous waste delivered to the disposal facility, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase.

4. Until July 1, 2012, in lieu of the fees prescribed in paragraphs 1 and 3 of this subsection, a person who generates hazardous waste and who complies with the pollution prevention planning requirements of article 4 of this chapter shall pay one-half of the prescribed fee for each ton of hazardous waste. In lieu of the fees prescribed in paragraph 2 of this subsection, an owner or operator of a facility that receives hazardous waste from a person who complies with the pollution prevention planning requirements of article 4 of this chapter shall collect and pay one-half of the prescribed fee for each ton of hazardous waste received. These reduced fees apply only if the person submits written certification of that compliance. This certificate of compliance shall be submitted with the manifest that accompanies the hazardous waste transported off site for disposal and shall accompany the copy of the manifest that is filed by the generator with the department.

B. Each operator or person who is required to pay a fee as prescribed by this section shall make the fee payment as determined by the department.

C. The department shall collect all fees due under this section and shall deposit, pursuant to sections 35-146 and 35-147, those fees in the hazardous waste management fund established in section 49-927. Each fee payment shall be accompanied by a form furnished by the department and completed by the operator or person. The form shall state the total volume or weight of hazardous waste generated or disposed at that facility during the payment period and shall provide any other information deemed necessary by the department. The operator or person shall sign the form.

D. If an operator or person fails to pay the fee prescribed by this section, the operator or person is additionally liable for interest on the unpaid amount at the rate prescribed by section 44-1201.

E. State agencies, including state universities, are not exempt from the fees prescribed by this section.

F. For the purposes of this section:

1. "Generates" means the act or process of producing hazardous waste and includes importing hazardous waste into this state for disposal.

2. "Off site" means any transportation that is not on site as defined in section 49-851.

3. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of this state, interstate body or federal facility.

49-932. Hazardous waste fuel penalty; disposition of revenue

A. A hazardous waste fuel penalty of forty cents per gallon is established for hazardous waste fuel and hazardous waste that are burned for energy recovery and that are not generated by the operation of the business of the burner.

B. The director shall collect the penalty established by subsection A of this section from the burner of the hazardous waste fuel or hazardous waste.

C. Monies collected pursuant to subsection B of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

Article 3 Sites for Waste Facilities; Notification

49-941. Hazardous waste facilities; notice of site to property owners; time and area requirements

A. Any agency or political subdivision of this state which is required to select or permit a possible permanent site for any facility designed to permanently store, treat or dispose of any hazardous waste shall send written notice of the selection of the possible permanent site by first class mail to property owners in the following areas:

1. If the proposed permanent site is in an unincorporated area, within a three mile radius of the outer boundaries of the proposed permanent site unless the three mile radius intersects a municipal corporate boundary. In such a case, property owners inside the municipal corporate boundary within three hundred feet of the outer boundary of the proposed permanent site shall be notified as well as those property owners outside the municipal corporate boundary within the three mile radius of the outer boundary of the proposed permanent site.

2. If the proposed permanent site is in an incorporated area, within a three hundred foot radius of the outer boundaries of the proposed permanent site.

B. The notice required by subsection A shall be mailed to each owner of real property as shown on the list of property owners furnished by the county assessor and the department of revenue. Within fifteen days after a request for such a list, the county assessor and the department of revenue shall furnish to the agency or political subdivision a written list stating the name and address of each owner in the areas specified in subsection A.

49-942. Site selection by political subdivision; hearing; notice

Before a political subdivision makes a final decision on a possible permanent site for a facility specified in section 49-941, the political subdivision shall hold a public hearing in the nearest public facility in the general vicinity of the proposed permanent sites, at which interested persons may appear and present their views. The political subdivision shall give notice of the hearing, to include both of the following:

1. Publication of notice in a daily or weekly newspaper of general circulation in the area of the proposed permanent site published once each week, beginning at least two weeks before the hearing.

2. Mailed notice as provided in section 49-941, sent at least two weeks before the hearing.

49-943. Agency grant of final permit; prerequisites

Before any agency grants a final permit for a facility specified in section 49-941, the agency shall:

1. If the applicant is a political subdivision, require the applicant to certify that a public hearing concerning a possible permanent site selection for the facility has been held in the nearest public facility in the general vicinity of the proposed permanent site, at which interested persons were allowed to appear and present their views.

2. Hold a public hearing at least thirty days before a final decision concerning the permanent site, if such a hearing is warranted by the public interest, to be held in the nearest public facility in the general vicinity of the proposed permanent site, at which interested persons may appear and present their views. If such a hearing is held the agency shall send written notice of the selection of the possible permanent site as provided in section 49-941.

49-944. Exemption

The provisions of this article shall not be construed to apply to any facility which receives funding under section 201 of the federal clean water act as amended (P.L. 97-117).

Article 4 Pollution Prevention

49-961. Definitions

In this article, unless the context otherwise requires:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking or placing a toxic substance or hazardous waste into or on land or water so that the toxic substance or hazardous waste or any constituent of hazardous waste may enter the environment, be emitted into the air or be released into or commingled with any waters, including groundwater.

2. "Facility" means all buildings, equipment, structures and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person who controls, is controlled by or is under common control with any person. Facility does not include a household hazardous waste collection facility or a facility that is primarily engaged in receiving waste from off site and that has a permit issued or plan approved under this title for the storage, treatment or disposal of solid, special or hazardous waste.

3. "Generator" means a person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of hazardous waste.

4. "Hazardous waste" means hazardous waste as defined in section 49-921.

5. "Person" means an individual, the United States, this state or a public or private corporation, local government unit, public agency, partnership, association, firm, trust or estate or any other legal entity.

6. "Pollution" means the disposal of a toxic substance or hazardous waste into the air, land, surface water or groundwater.

7. "Pollution prevention" means operational procedures and processes and improvements in housekeeping or management techniques that reduce potential or actual releases of pollutants to the overall environment including all air, water and land resources affected by those pollutants. Pollution prevention includes any of the following:

(a) Toxics use reduction, source reduction, recycling of wastes or secondary materials, waste minimization, reuse, reclamation, conservation and substitution.

(b) Proportionate changes in the total volume, quantity or toxicity of a particular pollutant as prescribed in this subsection as the release of that pollutant changes as a result of production changes or other business changes. For the purposes of this subdivision, "business changes" includes improvements in operating practices, spill and leak prevention measures, inventory control and other changes that proportionately reduce or eliminate the release of pollutants to the overall environment but does not include the transfer or relocation of an operation or process to another facility in this state with no subsequent proportionate reduction in toxics use or the release of pollutants to the overall environment.

(c) On-site or off-site treatment if that treatment can be shown to confer a higher degree of protection to the public health and safety and the environment than other technically and economically practicable waste reduction alternatives.

8. "Recycling" means a reuse, further use, reclamation or extraction through a process or activity that is separate from the process or activity that produced the waste stream but does not include combustion or incineration.

9. "Toxic substance" or "toxics" means a toxic chemical listed pursuant to the pollution prevention act of 1990 (42 United States Code section 13102 (3)).

10. "Treatment" has the same meaning as prescribed in 40 Code of Federal Regulations section 260.10 but does not include recycling.

49-962. Toxic data report; progress report; exemption

A. A person who owns or operates a facility shall file a toxic data report on July 1 for the preceding calendar year if either of the following applies:

1. During the preceding calendar year, the owner or operator was required to file an annual toxic chemical release form for the facility pursuant to section 313 of the superfund amendments and reauthorization act of 1986 (P.L. 99-499).

2. During the preceding calendar year, the facility generated an average of one kilogram per month of acutely hazardous waste as defined in 40 Code of Federal Regulations part 261 or an average of one thousand kilograms per month of hazardous waste in a calendar year, exclusive of an episodic, accidental or remediation related release or occurrence.

B. The owner or operator of a facility shall file the report prescribed in subsection A of this section on July 1 each year for the preceding calendar year until either of the following applies:

1. The facility ceases operation.

2. The facility does not meet the requirements of both:

(a) Subsection A, paragraph 1 of this section.

(b) Subsection A, paragraph 2 of this section, for two consecutive years.

C. The toxic data report required in subsection A of this section shall include both of the following:

1. The report form required by the United States environmental protection agency pursuant to 42 United States Code section 13106.

2. Any annual progress report required to be submitted pursuant to section 49-963.

49-963. Pollution prevention plan; progress report; exemption

A. A person who owns or operates a facility that meets the reporting requirements prescribed by section 49-962 shall prepare and implement a pollution prevention plan that addresses a reduction in the use of toxic substances and the generation of hazardous wastes. By January 1, 1994, the director shall establish a numeric goal for the state for waste minimization. By January 1, 1999 the director shall establish a numeric goal for the state for toxic use reduction. For purposes of this section, "toxic substance" does not include material used or produced in connection with a mining or metallurgical operation.

B. By December 31, 1992, the following shall file a plan as prescribed by this section:

1. A facility that shipped off site for purposes other than recycling the lesser of:

(a) Twelve thousand or more kilograms cumulative total of hazardous wastes in calendar year 1991.

(b) An average of one thousand kilograms or more per month cumulative total of hazardous waste in calendar year 1991.

2. A facility that shipped off site for purposes other than recycling an average of one kilogram or more per month cumulative total of acutely hazardous wastes, as defined in 40 Code of Federal Regulations part 261, in calendar year 1991.

C. By December 31, 1995, a facility that shipped off site for purposes other than recycling from ten thousand kilograms to twelve thousand kilograms cumulative total of hazardous wastes in calendar year 1994 shall file a plan as prescribed by this section.

D. From and after December 31, 1994, a facility that uses in excess of ten thousand pounds in a calendar year of a toxic substance as defined in section 49-961 shall file a pollution prevention plan by December 31 of the following year covering those toxic substances that exceed the threshold quantity. From and after December 31, 1998, the director may adopt by rule threshold quantities of toxic substances different from those established pursuant to this section if the director determines there is sufficient evidence to establish any one of the following:

1. The chemical is known to cause or can reasonably be anticipated to cause significant acute adverse human health effects at concentration levels that are reasonably likely to exist beyond the boundaries of a facility site as a result of continuous or frequently recurring releases, or to cause or can reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant inclusion in the pollution planning program because of any of the following:

(a) Its toxicity and persistence in the environment.

(b) Its toxicity and tendency to bioaccumulate in the environment.

2. The chemical is known to cause or can reasonably be anticipated to cause in humans either of the following:

(a) Cancer or teratogenic effects.

(b) Serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutation or other chronic health effects.

E. After December 31, 1992, a facility that meets the quantitative threshold filing requirements prescribed in subsection B of this section and that has not filed a plan with the department shall file a plan no later than December 31 of the following year.

F. Notwithstanding any other provision of law, a person required to file a toxic data report under section 49-962, subsection A, paragraph 1 shall prepare, submit and begin to implement a pollution prevention plan no later than December 31, 1992.

G. A facility required to prepare a pollution prevention plan under this section shall maintain and implement that plan until the facility ceases operation or the facility no longer meets the quantitative threshold filing requirements prescribed in this section.

H. A person who is not required to prepare a pollution prevention plan may voluntarily comply with this section and shall be deemed a generator who may certify compliance as prescribed by section 49-931, subsection A.

I. A person who owns or operates more than one facility that is required to prepare and implement a pollution prevention plan pursuant to subsection A of this section may prepare and implement a single pollution prevention plan that covers more than one facility.

J. The pollution prevention plan required by this section shall include all of the following:

1. The name and location of and principal business activities at the facility.

2. The name, address and telephone number of the owner or operator of the facility and of the senior official with management responsibility at the facility.

3. A certification by the senior official with management responsibility at the facility that he has read the plan and that it is to the best of his knowledge true, accurate and complete.

4. Specific performance goals for the prevention of pollution, including an explanation of the rationale for each performance goal. The plan must include a goal for the facility and may include goals for individual production processes.

5. A written policy setting forth management and corporate support for the pollution prevention plan and a commitment to implement the plan to achieve the plan goals.

6. A statement of the plan's scope and objectives.

7. An analysis identifying pollution prevention opportunities to reduce or eliminate toxic substance releases and hazardous waste generation.

8. An analysis of pollution prevention activities that are already in place and that are consistent with the requirements of this article.

9. Employee awareness and training programs to involve employees in pollution prevention planning and implementation to the maximum extent feasible.

10. Provisions to incorporate the plan into management practices and procedures in order to ensure its institutionalization.

11. A description of the options considered and an explanation of why the options considered were not implemented.

K. The pollution prevention plan, at a minimum, shall cover a two-year time period and may cover a longer time period at the discretion of the facility.

L. Each owner and operator required to prepare and maintain a pollution prevention plan under this section shall file an annual progress report. The annual progress report shall both:

1. Analyze the progress made, if any, in pollution prevention including toxics use reduction, source reduction and hazardous waste minimization relative to each performance goal established and relative to the plan contents prescribed in subsection J, paragraphs 4 through 11 of this section. Pollution prevention achieved under previously implemented activities may also be included.

2. Set forth amendments to the pollution prevention plan and explain the need for the amendments.

M. A facility that causes a one-time event that generates a hazardous waste or an acutely hazardous waste from an unused hazardous substance is

exempt from filing a pollution prevention plan and an annual progress report if all of the following conditions are met:

1. The unused hazardous substance cannot lawfully be used due to changes in statute or rule.

2. A toxic data report has been filed for the event as prescribed in section 49-962.

3. The toxic data report is required solely as a result of the one-time generation event.

N. This section does not apply to an episodic, accidental or remediation related release or occurrence.

O. A person who would be required to file a plan as prescribed by subsection A of this section solely due to the storage, supply, application or use of a pesticide as defined in section 3-361 for agricultural application and who is subject to reporting or record keeping requirements pursuant to section 49-305 or rules adopted pursuant to section 3-363 or a person who is issued an agricultural general permit pursuant to section 49-247 is exempt from the plan filing prescribed in subsection A of this section.

49-964. Review of reports and plans; enforcement; contempt

A. The department shall review the submissions required under this article, including the plan and any amendments and reports, to determine if the submission is complete and correct as prescribed in sections 49-962 and 49-963.

B. If a facility required to submit a plan or report under this article files an inadequate submission, the department shall notify the facility in writing of the inadequacy, identifying the specific deficiencies. In reviewing the adequacy of a plan or report, or any amendment to a plan or report, the department shall base its determination on whether the plan, report or amendment is complete and correct in accordance with the requirements of this article. If the submission is inadequate, the department shall specify a reasonable time of at least ninety days within which the facility shall file a modified submission addressing the specified deficiencies.

C. If, after the specified time, the facility has not filed a modified submission or the modified submission is otherwise inadequate, the department may enter a formal notice of inadequacy. The department shall place a copy or abstract of the notice of inadequacy in the department's annual report.

D. If a formal notice of inadequacy is entered, the department, pursuant to title 41, chapter 6, article 10, may hold a public hearing after providing written notice to the facility. The department may issue an administrative order requiring the facility to correct the deficiencies. If the facility fails to comply with an administrative order, the department may enforce that order in a judicial proceeding including an action for contempt.

E. In reviewing for adequacy an amendment or annual progress report, the department's review is restricted to the scope of the current submission. Previous amendments to the plan and annual progress reports that were found to be adequate are not subject to review.

F. If a facility required under this article to submit a plan or annual progress report fails to submit the plan or report, the department shall order that facility to submit an adequate plan or report within a reasonable time period of at least ninety days. If the facility fails to develop an adequate plan or progress report in response to that order within the time period specified in that order, the department may do any of the following:

1. Under procedures established by rule, provide for inspecting the facility, gathering necessary information and preparing a plan or progress report for the facility at the facility's expense.

2. Pursuant to title 41, chapter 6, article 10, enter an administrative order for compliance that is enforceable in a judicial proceeding including an action for contempt.

G. The attorney general, at the request of the director, may bring an action in superior court to recover the department's costs incurred under subsection F of this section. The facility owner or operator may appeal the department's determination to proceed under this subsection and subsection F of this section pursuant to title 41, chapter 6, article 10 before the department prepares the plan or progress report. Except as provided in section 41-1092.08, subsection H, any final agency order issued pursuant to this section is subject to judicial review pursuant to title 12, chapter 7, article 6.

H. Failure to implement the pollution prevention plan is a violation of this article and the attorney general, at the request of the director, may bring an action in superior court to compel implementation of the provisions of an approved plan, and the director pursuant to title 41, chapter 6, article 10 may enter an administrative order for compliance that is enforceable in a judicial proceeding including an action for contempt.

I. Reports and submissions made to the department pursuant to this article shall be deemed adequate for purposes of this article unless the department notifies the facility in writing of any deficiencies within ninety days of receipt of the submission.

49-965. Pollution prevention technical assistance program

A. The department shall establish a technical assistance program designed to assist all persons in reducing to the fullest extent possible the amount and toxicity of the hazardous waste that is generated or toxic substances that are used in this state. The assistance program may include:

1. The establishment of a hazardous waste reduction clearinghouse of all available information concerning hazardous waste reduction, toxic substances minimization, recycling programs, economic and energy savings, and production and environmental improvements.

2. The production of workshops, conferences and handbooks on the topics described in paragraph 1 of this subsection.

3. Cooperation with university programs to develop hazardous waste reduction and toxic substances minimization curricula and training.

4. Presentation of on-site technical assistance for hazardous waste generators and toxic substances users.

5. Researching and recommending incentive programs for innovative hazardous waste management and toxic substances reduction.

6. Conducting a public education program to reduce emissions of ozone forming substances and accelerate pollution prevention technical assistance efforts to avoid ozone violations.

B. Presentation of on-site technical assistance by the department in accordance with subsection A of this section shall not be considered engineering practice as defined in section 32-101 as long as the assistance does not involve engineering calculations or design in connection with any building, machine, equipment, process, work or project and is limited to assisting in the identification of pollution prevention opportunities and potential alternatives to existing processes or practices.

C. Persons receiving on-site technical assistance pursuant to this section are solely liable for any civil or other damages arising from on-site technical assistance. This state and the department, its officers, employees

and agents and any other persons assisting in providing on-site technical assistance are not liable for any civil or other damages arising from the on-site technical assistance, including damages claimed by third parties.

D. The technical assistance program shall be funded from monies allocated from the hazardous waste management fund as prescribed in section 49-927, except that the portion of the program prescribed by subsection A, paragraph 6 of this section shall be funded from monies allocated from the air quality fund as prescribed in section 49-551. Notwithstanding section 49-551, subsection C, paragraph 5, priority for funding shall be given to the portion of the program prescribed by subsection A, paragraph 6 of this section.

49-967. Availability of information to the public

A. Any records, reports or information obtained from any person under this article, including records, reports or information obtained or prepared by the director or a department employee, shall be available to the public, except that the information, or a particular part of the information, shall be considered confidential on either:

1. Notice from the person, accompanying the information, stating that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person or other information likely to cause substantial harm to the person's competitive position.

2. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

B. If the director, on his own or following a request for disclosure, disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and shall have twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.

C. Notwithstanding subsection A, the following information obtained from any person under this article shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. The types and amounts of any hazardous waste generated, stored, treated or disposed.

3. The types and amounts of any toxic substances released to the environment.

D. Notwithstanding subsection A, the director may disclose, with accompanying confidentiality notice, any records, reports or information obtained from any person under this article, including records, reports or information obtained by the director or department employees, to:

1. Other state employees concerned with administering this chapter or if the records, reports or information are relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with federal statutes or regulations.

49-969. Consumer product information

A. The department may not prepare or distribute public education information relating to any claims regarding household hazardous waste or substitutes for any household consumer product unless the information is competent and reliable and based on a test, analysis, research, study or other evidence that yields accurate and reliable results.

B. The department may publish or distribute the following without verification studies or analyses:

1. Information compiled pursuant to requirements set forth in state law.

2. Case studies of specific facilities or their processes.

3. Articles or views expressing the opinion of an author outside the department, provided that this material is prepared for discussion purposes only.

C. The department may not recommend any substance as a pesticide unless the substance is either of the following:

1. Registered for use as a pesticide by this state and by the United States environmental protection agency, or its successor, and is to be used in a manner consistent with the label directions.

2. Listed by the environmental protection agency in 40 Code of Federal Regulations section 152.25, exemptions for pesticides of a character not requiring regulation under the federal insecticide, fungicide and rodenticide act, as amended by the food quality and protection act of 1996.

Article 5 Pollution Prevention for State Agencies

49-972. Pollution prevention plan for state agencies; definition

A. A state agency that produces hazardous waste or uses toxic substances in excess of the threshold quantity and time limits prescribed in section 49-963 shall file a pollution prevention plan with the director. The pollution prevention plan shall have a goal of twenty percent reduction in hazardous waste within two years, fifty percent reduction in hazardous waste within five years and a seventy percent reduction in hazardous waste in ten years.

B. The pollution prevention plan shall address a reduction in the use of toxic substances and the generation of hazardous wastes. The plan shall be completed on a form published by the director and shall be filed with the director on or before January 1, 1993 and every five years thereafter.

C. A state agency required to file a pollution prevention plan may include in the report a certification that there is no reasonably available and technically feasible alternative to the current level of generation of hazardous waste at its facilities. If approved by the director, the certification shall serve as demonstration of compliance with the goals stated in subsection A of this section.

D. The state agency required to prepare a pollution prevention plan shall maintain a copy of the plan and annual summaries at the agency and at the facility, where they shall be available for inspection by the department and by the public.

E. The pollution prevention plan summary shall include a summary of all data and information in the plan, including the following:

1. A statement of the scope and objectives of the pollution prevention plan considering toxicity, volume, disposal costs and liability costs, and a numerical statement of the reductions in facility use of each hazardous waste at the facility over the next five or more years.

2. An analysis identifying pollution prevention opportunities to reduce or eliminate toxic substance releases and hazardous waste generation.

3. The name and location of all facilities associated with the state agency that are included in the plan and the name, address and telephone number of the operator and the senior official with management responsibility at the facility.

4. Identification and explanation of technology, procedures and options considered available and technically feasible for reducing the use of each hazardous waste and toxic substance at the facility, an explanation of options not implemented and a time schedule for implementing chosen options.

5. A written certification that the agency has prepared a pollution prevention plan and that a copy of the plan is available at the agency or facility for the department's inspection and for inspection by the public on request to the department.

6. Specific performance goals for the prevention of pollution, including an explanation of the rationale for each performance goal. The plan shall include a goal for the facility and may include goals for individual processes, operations, toxic substance usage and hazardous waste generation.

7. A written certification by the senior official with management responsibility that he has read the plan and that to the best of his knowledge it is true, accurate and complete.

8. A written policy setting forth management support for the pollution prevention plan and a commitment to implement the plan to achieve the plan goals.

9. An analysis of pollution prevention activities that are already in place and that are consistent with the requirements of this article.

10. Employee awareness and training programs to involve employees in pollution prevention planning and implementation to the maximum extent feasible.

11. Provisions to incorporate the plan into management practices and procedures to ensure the plan's institutionalization.

F. To the extent practicable, the information required for the preparation of a pollution prevention plan shall be based on information developed and forms completed by the state agency for the purposes of compliance with sections 49-127 and 49-131, the federal pollution prevention act, section 304(l) of the federal water pollution control act, pretreatment sludge permits pursuant to 40 Code of Federal Regulations part 503, or other required state and federal reports.

G. The department shall make all pollution plans and pollution prevention plan summaries available to the public.

H. If the department determines that a plan is not in compliance with the requirements of this section, the department may allow the person submitting the plan ninety days from the date of the notice of deficiency to correct the deficiency.

I. Each state agency required to prepare and maintain a pollution prevention plan shall file an annual progress report. The annual progress report shall both:

1. Analyze the progress made, if any, in pollution prevention including toxics use reduction, source reduction and hazardous waste minimization relative to each performance goal established and relative to the plan contents.

2. Set forth amendments to the pollution prevention plan and explain the need for the amendments.

J. If the threshold quantity prescribed in section 49-963 is exceeded due to an accidental or remediation related release or occurrence, the requirement to file a plan pursuant to this section does not apply.

K. For purposes of this section, "state agency" includes all facilities controlled by an agency.

49-973. Toxic data report; progress report

A. A state agency shall file a toxic data report on July 1 if the agency during the preceding calendar year generated ten thousand pounds or more of hazardous waste. For purposes of this section, the hazardous waste generated shall consist of the aggregate amount of hazardous waste generated from all facilities directly controlled by the state agency.

B. The toxic data report required in subsection A of this section shall include the following:

1. An annual progress report as prescribed in section 49-972, subsection H.

2. Toxic chemical information in the format of a toxic chemical release form required by section 313 of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) for each facility within the state agency that meets the threshold quantities as prescribed by the department and that is not subject to exemptions.

3. The address of each off-site treatment, storage or disposal facility to which each hazardous waste generated was transported and the type of treatment or disposal methods used for each hazardous waste at each off-site facility.

C. If the threshold quantity prescribed in subsection A of this section is exceeded due to an accidental or remediation related release or occurrence, the requirement to file a report pursuant to this section does not apply.

Chapter 6 UNDERGROUND STORAGE TANK REGULATION
Article 1 General Provisions

49-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Being used" means not having been taken out of operation.

2. "Closure" means the removal of an underground storage tank from operation.

3. "Corrective actions" means those actions that are prescribed pursuant to section 49-1005.

4. "Designated representative" means a person to whom an owner or an operator, or both, assign in writing any right, title or interest that the owner or operator, or both, may have in and to the proceeds of a reimbursement for a corrective action made under article 3 of this chapter.

5. "Energy policy act" means the underground storage tank compliance act, title XV, subtitle B of the energy policy act of 2005 (P.L. 109-58; 119 Stat. 1092), as amended.

6. "Fiduciary" means:

(a) A trust company or bank certified or authorized to engage in the trust business pursuant to title 6, chapter 8, article 1.

(b) Any person appointed by a court or testamentary act to act as personal representative, executor, trustee, administrator, guardian, conservator, receiver or trustee in bankruptcy.

(c) Any person acting as a trustee of a deed of trust pursuant to section 33-803.

(d) Any person acting as a trustee pursuant to title 14, chapter 7.

(e) Any person acting pursuant to and subject to fiduciary obligations under the employee retirement income security act of 1974 (29 United States Code sections 1101 through 1114).

7. "Guarantor" means a person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this chapter.

8. "Motor fuel" means petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine.

9. "New piping component" means any underground pipe or combination of pipes that contains and conveys a regulated substance between a tank and a motor fuel dispenser, including any valve, elbow, connector or joint that is added to an underground storage tank on or after January 1, 2009 and that was not originally included or installed as part of the underground storage tank.

10. "Occurrence" means an incident or accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

11. "Operator" means a person in control of, or having responsibility for, the day-to-day operation of an underground storage tank.

12. "Out of operation" means having been closed in accordance with all applicable fire codes and other statutory and regulatory requirements for closure in effect on the date that closure was accomplished.

13. "Person" means an individual, trust, firm, joint stock company, corporation, joint venture, partnership, association, consortium, state, municipality, interstate body, commission, political subdivision of a state and the United States government.

14. "Petroleum" means petroleum, including crude oil or any fraction of crude oil, which is liquid at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute, and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, residual fuel oils, lubricants, jet fuels, distillate fuel oils, petroleum solvents and used oils.

15. "Political subdivision" means a county, city, town or other taxing district other than the state that is authorized to take property by eminent domain.

16. "Regulated substance" means:

(a) Petroleum.

(b) A substance specified in the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9601(14)) but not including a substance regulated as a hazardous waste under the hazardous and solid waste amendments of 1984 (P.L. 98-616; 98 Stat. 3221).

17. "Release" means a spill, leak, emission, discharge, escape, leach or disposal of a regulated substance from an underground storage tank into groundwater, surface water or soils.

18. "Suspected release" means any of the following:

(a) The discovery by owners and operators or others of released regulated substances at the underground storage tank site or in the surrounding area.

(b) Erratic behavior of regulated substance dispensing equipment, the sudden loss of a regulated substance from an underground storage tank, an unexplained presence of water in the underground storage tank or other extraordinary operating conditions that could reasonably be associated with a release from an underground storage tank and that are observed by owners and

operators, unless system equipment is found to be defective but not leaking and is repaired or replaced immediately.

(c) That the monitoring results from a release detection method required under 40 Code of Federal Regulations sections 280.41 and 280.42, this chapter or rules adopted pursuant to this chapter indicate that a release may have occurred unless either of the following occurs:

(i) The monitoring device is found to be defective and is immediately repaired, recalibrated or replaced and additional monitoring data do not confirm the initial result.

(ii) In the case of inventory control, a second month of inventory reconciliation data does not confirm the initial result.

19. "Tank" means a stationary device constructed of wood, concrete, steel, plastic or other nonearthen materials and used to contain regulated substances.

20. "Under-dispenser containment" means a secondary containment device that is beneath a motor fuel dispenser, that is connected to the underground storage tank and that is designed to be liquid tight.

21. "Underground storage tank" means a tank or combination of tanks and underground pipes and impact valves connected to tanks being used or having been used to contain regulated substances and which has at least ten percent of the total volume of the tank and underground portions of pipes connected to the tank underground. Underground storage tank does not mean any of the following:

(a) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) A tank used for storing heating oil for consumptive use on the premises where stored.

(c) A septic tank.

(d) A pipeline facility, including gathering lines, regulated under either:

(i) The natural gas pipeline safety act of 1968 (49 United States Code sections 1671 through 1686).

(ii) The hazardous liquid pipeline safety act of 1979 (49 United States Code section 2001).

(e) An intrastate pipeline facility regulated under a state law comparable to the provisions of law referred to in subdivision (d), item (i) or (ii) of this paragraph.

(f) A surface impoundment, pit, pond or lagoon.

(g) A storm water or wastewater collection system.

(h) A flow-through process tank.

(i) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(j) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated on or above the surface of the floor.

(k) Pipes connected to any of the structures described in subdivisions (a) through (j) of this paragraph.

22. "Volunteer" means a property owner or a person other than an owner or operator that assumes responsibility for corrective actions for a release from an underground storage tank.

49-1001.01. Definition of owner; rules

A. In this chapter, "owner" of an underground storage tank means a person who either:

1. Holds a legal, equitable, or possessory interest of any kind in an underground storage tank.

2. Held at the time of a release, or immediately before an underground storage tank was last operated, a legal, equitable or possessory interest of any kind in the underground storage tank.

B. A person who acquires ownership or control of property where an underground storage tank is located is not the owner of the underground storage tank if either of the following applies:

1. The person, after conducting a due diligence investigation immediately prior to acquiring ownership of the property, did not know and had no reason to know that the underground storage tank was located on the property. Due diligence shall consist of performing a phase I environmental assessment of the property which meets the requirements of ASTM standard E-1527-93 or E-1528-93, or other generally accepted commercial practices or standards for due diligence performed prior to the adoption of this standard.

2. The person has not placed regulated substances in the underground storage tank and has not dispensed regulated substances from the underground storage tank. For the purposes of this paragraph, dispensing does not mean emptying the underground storage tank for purpose of closure.

C. A person who holds indicia of ownership primarily to protect a security interest in either the petroleum underground storage tank or in the property on which the petroleum underground storage tank is or was located but who does not participate in the management of the underground storage tank and who is not otherwise engaged in petroleum refining or marketing is not an owner for purposes of this chapter.

D. A person who holds indicia of ownership as prescribed by subsection C of this section and who acquires ownership or control of a petroleum underground storage tank through foreclosure of the property where a petroleum underground storage tank is located shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release if the person does all of the following:

1. Complies with the notification requirements prescribed by section 49-1002.

2. Complies with the reporting requirements prescribed by section 49-1004, subsections A and C to the extent that the information is known to the person at the time of the report.

3. Temporarily or permanently closes the petroleum underground storage tank as prescribed by section 49-1008.

4. Divests itself of the property in a reasonably prompt manner using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking into consideration all of the facts and circumstances.

E. A fiduciary is not an owner or operator for purposes of this chapter, except if the appointment of the fiduciary is for the purpose of avoiding liability under this chapter. This subsection does not preclude claims against assets held in an estate, a trust or any other fiduciary capacity that contains an underground storage tank in which regulated substances are placed or dispensed. Those claims may be asserted against a fiduciary in its representative capacity without regard to whether the fiduciary is personally liable, and the liability of the fiduciary is limited to the value of the estate, trust or other property that is held in a fiduciary capacity. A fiduciary may not be a fiduciary and grantor of the same fiduciary estate.

F. The director may adopt rules to implement subsection E of this section.

49-1002. Notification requirements; exemptions

A. Except as otherwise provided in this section, each owner of an underground storage tank shall notify the department in writing and shall specify the tank's age, size, type, location and use.

B. For an underground storage tank that was taken out of operation on or before January 1, 1974, regardless of whether the tank was removed from the ground, the owner is exempt from giving notice.

C. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was removed from the ground, the owner is exempt from giving notice.

D. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was not removed from the ground, the owner shall specify the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation. These requirements are in addition to the requirements for notice prescribed in subsection A of this section.

E. For an underground storage tank that was taken out of operation after November 8, 1984 but before December 22, 1988 the director may require the owner to make reasonable efforts to specify the age, size, location and use of the tank, the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation and the date of its removal from operation.

F. An owner or operator who brings an underground storage tank into operation shall meet the notification requirements of this section at least thirty days before bringing the tank into operation. An owner or operator who brings a new piping component or under-dispenser containment into operation on or after January 1, 2009 shall meet the notification requirements of this section within thirty days after the new piping component or under-dispenser containment is brought into operation.

G. A person who sells a tank for use as an underground storage tank shall notify the purchaser of the notice requirements of subsection F of this section and shall provide to the department documentation of the notice given.

H. The notices required by this section shall be made on forms prescribed by the department.

49-1003. Detection of releases; record keeping requirements

A. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain a release detection system that complies with the requirements of 40 Code of Federal Regulations sections 280.40 through 280.44.

B. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain systematic and complete records of release detection information that complies with the requirements of 40 Code of Federal Regulations section 280.45.

C. The director shall adopt rules establishing release detection requirements and release detection record keeping requirements. The rules adopted pursuant to this subsection shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.

49-1004. Reporting requirements

A. The operator and owner of an underground storage tank shall notify the department of each release or suspected release from the tank as soon as

practicable but no later than twenty-four hours after the release or suspected release is detected.

B. The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twenty-four hours after the release is detected.

C. Notice by the operator and owner required by this section may be made orally or in writing but shall be followed within fourteen days by a written report to the department that a release or suspected release has been detected. The written report shall specify to the extent known at the time of the report the nature of the release or suspected release, the regulated substance released, the quantity of the release, the period of time over which the release occurred, the initial response and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report. In addition, the written report shall include additional information required by rules that are consistent with federal regulations in effect on the date on which the rules are adopted.

D. The director shall prescribe by rule the reporting, investigation and confirmation actions to be taken in the event of a release or suspected release of a regulated substance from an underground storage tank. Any rules adopted pursuant to this section shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted. Until rules adopted pursuant to this subsection are in effect, reporting, investigation and confirmation actions shall be accomplished in a manner consistent with 40 Code of Federal Regulations sections 280.50 through 280.53.

49-1005. Corrective action

A. When a release is discovered the owner and operator of an underground storage tank shall take immediate action to stop the release and to identify and mitigate any fire, explosion or vapor hazard.

B. The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank, except to the extent that this responsibility is limited by section 49-1016, subsection F or section 49-1019, subsection D. A person may take corrective action pursuant to section 49-1016, subsection C.

C. Nothing in this section prevents the director from taking or requiring corrective action pursuant to any other provision of law.

D. Corrective actions shall:

1. Assure the protection of public health and welfare and the environment.

2. To the extent practicable, provide for the control, management or cleanup of regulated substances so as to allow the maximum beneficial use of the water and soil of this state.

3. Be reasonable, necessary, cost-effective and technically feasible.

E. Notwithstanding chapter 2, article 2 of this title, the director may approve a corrective action that may result in water quality exceeding water quality standards after completion of the corrective action, if the director finds that the corrective action meets the requirements of this section. The director's approval pursuant to this section does not affect the classification of an aquifer pursuant to section 49-224. The director shall adopt rules to implement this section. These rules shall include public notice provisions, criteria for the selection of corrective actions, including the level and extent of cleanup and the comparison of corrective action alternatives that may include plume remediation alternatives, monitoring, source control, controlled migration, physical containment and natural attenuation.

F. The director shall prescribe by rule the corrective actions to be taken in the event of a release of a regulated substance from an underground storage tank. Any rules adopted pursuant to this subsection shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted. The director shall adopt rules to permit a risk-based corrective action alternative. Corrective actions shall include requirements regarding:

1. Initial response measures.
2. Initial abatement measures.
3. A site check.
4. Initial site characterization.
5. Removal of free product.
6. Investigations for soil, surface water and groundwater cleanups.
7. Responses to contaminated soil, surface water and groundwater.

G. Corrective actions may include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, that are nonopportunistic and that are naturally occurring.

H. Until rules adopted pursuant to subsection F of this section are in effect, corrective actions shall be accomplished in a manner consistent with and no more stringent than 40 Code of Federal Regulations sections 280.60 through 280.67.

49-1006. Statement of financial responsibility

A. If required by regulations adopted pursuant to 42 United States Code section 6991b(d) to establish evidence of financial responsibility, an owner and operator shall file with the department a statement of financial responsibility containing evidence that the owner and operator are financially capable of taking the actions required by this chapter.

B. Evidence of financial responsibility required by this section shall be established in a manner prescribed by the director by rule. The rules adopted pursuant to this section shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.

49-1006.01. Insurance for releases; termination; notice; coverage; assistance

A. Beginning on January 1, 2016 and continuing for twenty-four months, if an owner or operator makes a claim against its insurance or an alternative financial responsibility mechanism for a release and its claim is denied or otherwise not paid, the owner or operator shall provide to the department a copy of the notice of denial or other evidence of nonpayment.

B. If the insurance used to meet the financial responsibility requirements of this chapter is terminated or not renewed, the insurer shall notify the department of the termination or nonrenewal within thirty days after the date of termination or nonrenewal. The notice to the department shall state the name and address of the insured, the date of termination or nonrenewal and the address of the facility that had been insured.

C. Before January 1, 2017 or on the insurance contract renewal date, whichever is earlier, an owner or operator that satisfies financial responsibility requirements through insurance shall have policy coverage that extends to one of the following:

1. The date of the most recent baseline assessment conducted pursuant to section 49-1052 or comparable site characterization as determined by the department.
2. The date of the underground storage tank system installation.

3. The earliest retroactive coverage date of the previous insurance policy or alternative financial responsibility mechanism.

D. The department shall assist an owner or operator in pursuing the owner's or operator's claim against the financial responsibility mechanism and obtaining coverage for a confirmed release from an underground storage tank system that is covered by the mechanism.

49-1006.02. Insurance primacy; requirements; fund access

A. For owners or operators that satisfy financial responsibility requirements through insurance, the following apply:

1. The policy that covers the underground storage tank system at the time the release is discovered shall be primary to eligibility under sections 49-1017 and 49-1054.

2. The owner or operator is not required to exhaust insurance coverage in order to be eligible under sections 49-1017 and 49-1054.

3. Except as provided in subsection C of this section, eligibility under sections 49-1017 and 49-1054 is contingent on filing a timely insurance claim under the policy and pursuing that claim until a denial is received or, after assistance from the department as prescribed in section 49-1006.01, subsection D, until the department determines that the claim has been constructively denied.

4. An owner or operator that fails to pursue an insurance claim is no longer eligible under sections 49-1017 and 49-1054.

B. An owner or operator that satisfies financial responsibility requirements through insurance and that will not receive payment from its insurance provider until after the expenditure of at least fifty thousand dollars per facility as provided in an insurance policy that is in effect on April 1, 2015 or that satisfies financial responsibility requirements through an alternative financial responsibility mechanism is eligible under sections 49-1017 and 49-1054 after meeting a cost sharing obligation by payment of the first fifty thousand dollars per facility for work that is conducted on or after January 1, 2016. This eligibility is subject to the limits prescribed in section 49-1054, subsection A and is subject to the preapproval process prescribed in section 49-1051. Except as provided in subsection C of this section, eligibility pursuant to this subsection for owners or operators that meet financial responsibility requirements through insurance is contingent on providing timely notice of the release to the insurance carrier under the policy and that eligibility ends on the date that the insurer is obligated to provide payment under the policy.

C. An owner or operator that satisfies financial responsibility requirements through insurance and that had a release reported between July 1, 2006 and December 31, 2015, that requires additional corrective action is eligible under sections 49-1017 and 49-1054 subject to the preapproval process prescribed in section 49-1051 without filing a timely claim against its insurance carrier if the owner or operator was in compliance with financial responsibility requirements at the time of the release. The maximum amount eligible for reimbursement under this subsection is five hundred thousand dollars per facility after meeting a cost sharing obligation by payment of the first fifty thousand dollars per facility for work conducted on or after January 1, 2016 and without any reductions for payments made pursuant to Laws 2015, chapter 247, section 25, as amended by Laws 2018, chapter 299, section 2.

49-1007. Liability of guarantors

A. If the owner or operator of an underground storage tank files for protection under the federal bankruptcy laws and with reasonable diligence jurisdiction in a state court or the federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided pursuant to section 49-1006 may be asserted directly against the guarantor. In the case of an action pursuant to this section, the guarantor may invoke all rights and defenses which would have been available to the owner or operator against the claimant if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

B. The total liability of any guarantor is limited to the aggregate amount which the guarantor provides to the owner or operator as evidence of financial responsibility and which the owner or operator provides to the department pursuant to section 49-1006.

C. Nothing in this section shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of a guarantor for bad faith either in negotiating or in failing to negotiate the settlement of a claim.

D. Nothing in this section shall be construed to diminish the liability of a person under the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2769; 42 United States Code sections 9607 or 9611) or other applicable law.

49-1008. Closure

The temporary closure, permanent closure and change in service of an underground storage tank shall be accomplished in a safe and secure manner which prevents releases of regulated substances. The director shall prescribe by rule standards for these activities. Any rules adopted pursuant to this section shall be consistent with the federal regulations in effect on the date on which the rules are adopted. Until the rules adopted pursuant to this section are in effect, a temporary closure, permanent closure or change in service shall be accomplished in a manner consistent with 40 Code of Federal Regulations parts 280.70 through 280.74.

49-1009. Tank performance standards

A. A person shall not install an underground storage tank unless the underground storage tank meets all of the following requirements:

1. It is designed to prevent releases due to corrosion or structural failure for the operational life of the tank.

2. It is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release of a regulated substance.

3. The material used in the construction or lining of the tank is compatible with the substance to be stored.

B. Beginning January 1, 2009, a person shall not install an underground storage tank unless the underground storage tank meets the secondary containment and release detection requirements for hazardous substance underground storage tank systems in 40 Code of Federal Regulations section 280.42 and the interstitial monitoring requirements in 40 Code of Federal Regulations section 280.43, subsection G.

C. Beginning January 1, 2009, a person shall not install a new piping component that is twenty-five per cent or more of the total linear footage of all connected piping of the underground storage tank unless all connected piping of the underground storage tank that conveys a regulated substance under pressure is brought into compliance with the secondary containment and release detection requirements for hazardous substance underground storage tank systems in 40 Code of Federal Regulations section 280.42 and the interstitial monitoring requirements in 40 Code of Federal Regulations section 280.43, subsection G.

D. Beginning January 1, 2009, an owner or operator who installs or replaces a motor fuel dispenser that connects to an underground storage tank shall install under-dispenser containment. The under-dispenser containment shall meet the release detection requirements of 40 Code of Federal Regulations section 280.42, subsection B, paragraph 1.

E. The owner and operator of an underground storage tank shall use an underground storage tank, a new piping component, under-dispenser containment and any secondary containment material that is made of or lined with materials that are compatible with the regulated substance stored in or dispensed from the underground storage tank.

F. The director may adopt rules specifying design, construction, installation, performance and compatibility standards for underground storage tanks. The rules adopted pursuant to this subsection shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted.

G. The director may require an owner and operator of an underground storage tank to perform or cause to be performed a tank test to determine compliance with the standards established pursuant to this section.

49-1010. Preemption of local regulation; delegation of administrative authority

A. The provisions of this chapter and the rules which implement this chapter, as they relate to the identification, prevention and remediation of releases of regulated substances from underground storage tanks are of statewide concern and shall not be subject to further local regulation.

B. The director, by intergovernmental agreement or otherwise, may delegate to other departments or agencies and to a city, town or county the authority to administer the provisions of and enforce all or any part of this chapter or the rules adopted pursuant to this chapter.

49-1011. Right to inspect records, tanks and equipment

A. For the purposes of developing rules, conducting studies or enforcing the provisions of this chapter, an owner or operator of an underground storage tank shall, on request of the director:

1. Furnish to the department information relating to the tank and its associated equipment and contents.

2. Permit the director to conduct monitoring and testing of tanks or surrounding soils, air, surface water or groundwater.

3. Permit the director to inspect and copy all records relating to tanks.

4. Permit the director to inspect and obtain samples of regulated substances contained in tanks.

B. The director shall conduct all inspections permitted pursuant to subsection A at a reasonable time and complete these inspections with reasonable promptness.

49-1012. Confidentiality of records

A. Records or other information furnished to or obtained by the director concerning regulated substances are available to the public, except that any records and information which relate to the trade secrets, processes, operations, style of work or apparatus or confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the department in the administration of this chapter unless the owner or operator expressly agrees to their publication or availability to the public. This section does not prohibit the appropriate governmental agency from publishing quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary in this section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this chapter shall be available to the public.

B. This section does not prohibit the department from providing confidential information to a duly authorized congressional committee or the United States environmental protection agency if the information is treated as prescribed by 40 Code of Federal Regulations part 2.

49-1013. Enforcement and penalties

A. If the director determines that a person is in violation of this chapter or the rules adopted pursuant to this chapter the director may issue an order requiring compliance within a reasonable time. A compliance order becomes final thirty days after the order is served unless within thirty days of service the person named on the order requests a hearing. A hearing shall be conducted pursuant to title 41, chapter 6, article 10. A compliance order that is the subject of a hearing as prescribed by this section becomes final and subject to appeal on the decision of the director to uphold the compliance order. Except as provided in section 41-1092.08, subsection H, the director's final decision may be appealed by any party to the superior court pursuant to title 12, chapter 7, article 6. A person becomes the subject of an enforcement proceeding pursuant to this chapter when a compliance order against that person becomes final.

B. If the director issues a stop use order pursuant to section 49-1023, the owner or operator may request a hearing within thirty days after the issuance of the stop use order. A hearing shall be conducted pursuant to title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, the director's final decision may be appealed by the owner or operator to the superior court pursuant to title 12, chapter 7, article 6.

C. If a person fails to comply with a final order under this section within the time specified in the order, the person is subject to a civil penalty of not to exceed twenty-five thousand dollars for each day of continued noncompliance.

D. An owner who fails to notify or submits false information pursuant to section 49-1002 is subject to a civil penalty of not to exceed ten thousand dollars for each underground storage tank for which notification is not given or false information is submitted.

E. An owner or operator of an underground storage tank who fails to comply with any of the requirements or standards of this chapter or who fails to comply with a stop use order is subject to a civil penalty of not to exceed ten thousand dollars for each underground storage tank for each day of violation.

F. A product deliverer as defined in section 49-1023 who fails to comply with the requirements of section 49-1023, subsection A is subject to a

civil penalty of not to exceed ten thousand dollars for each underground storage tank for each violation.

G. The penalties provided for in this section shall not be cumulated with any penalties sought and obtained by the department or the United States pursuant to title VI of the hazardous and solid waste amendments of 1984 (P.L. 98-616; 98 Stat. 3221).

H. The director may file an action in the superior court to enforce this chapter and to collect penalties for violations of this chapter. The director may seek all appropriate relief including temporary and permanent injunctions.

I. All monies collected under the penalty provisions of this section shall be deposited in the state general fund.

49-1014. Rules; policies; guidelines

A. The director shall adopt rules pursuant to title 41, chapter 6 necessary to provide procedures for the administration of this chapter and to cause the program for the regulation of underground storage tanks established by this chapter to be approved by the administrator of the environmental protection agency pursuant to 42 United States Code section 6991c.

B. The director may establish policies and guidelines for the administration of this chapter, subject to the following:

1. If a substantive policy statement as defined in section 41-1001 or a guideline is issued by the director, the director shall provide written notice to persons regulated by this chapter before the effective date of a policy or guideline that affects the substantive rights of owners and operators or other parties regulated under the underground storage tank program. The written notice shall set forth the effective date of the policy or guideline. The policy or guideline shall not be retroactive or applied retroactively except as specifically authorized by law or by the agreement of the department and the person who is regulated by this chapter.

2. The department shall not base a determination of compliance with the requirements of this chapter in whole or in part on a policy or guideline that is not specifically authorized by statute or rule.

49-1015. Underground storage tank revolving fund; use; purpose

A. The underground storage tank revolving fund is established and shall be administered by the director. Monies in the fund are exempt from lapsing under section 35-190.

B. The fund consists of monies appropriated by the legislature, underground storage tank tax revenues collected and distributed pursuant to section 49-1036, monies obtained from the fees imposed by this chapter and the rules adopted under this chapter and monies reimbursed to the fund by the department. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies from the fund may be used for the following:

1. To provide state matching monies and to meet other obligations as prescribed by section 9003(h)(7)(B) of the solid waste disposal act (42 United States Code section 6991b(h)(7)(B)).

2. For all the reasonable and necessary costs incurred in taking corrective actions pursuant to section 49-1017 and noncorrective actions pursuant to section 49-1017.02.

3. For the costs of recovering the expenses of corrective actions pursuant to section 49-1017 and noncorrective actions pursuant to section 49-1017.02.

4. To provide reimbursement for eligible costs.

5. For the costs incurred in administering the regulatory requirements of this chapter.

6. To reimburse the department for the reasonable and necessary costs incurred by the department in administering the corrective action requirements of this chapter.

7. To reimburse the department for the reasonable and necessary costs incurred by the department in administering underground storage tank grant programs.

8. To reimburse the department for the reasonable and necessary costs incurred by the department in administering the fund. The department may not pay from the fund any costs, payments or other expenses that result from a contract awarded pursuant to this section unless the contract includes performance standards and contractual penalties for nonperformance or inadequate performance under the contract.

D. The director shall reimburse the fund for any corrective action costs or noncorrective action costs that are paid out of the fund and that are subsequently recovered by the department.

E. Monies in the fund may not be used to implement the water quality assurance revolving fund program pursuant to chapter 2, article 5 of this title.

49-1016. Responsibilities of owners and operators

A. Unless specifically indicated otherwise, the responsibilities of this chapter are imposed on the owner and the operator of an underground storage tank. If the owner and operator of an underground storage tank are separate persons, only one person is required to discharge any specific responsibility. Both persons are liable in the event of noncompliance.

B. The liabilities and responsibilities for releases of regulated substances imposed pursuant to this chapter shall apply even if the conduct that resulted in the release or the release itself occurred before August 13, 1986.

C. If a person comes into the possession or control of property where an underground storage tank is located and the person is not the owner as defined in section 49-1001.01, the person shall:

1. Notify the department in writing specifying the tank's location, size and use, if known, if the owner has failed to do so.

2. Notify the department of each release or suspected release from the tank as soon as practicable if the owner or operator has failed to do so.

3. If the person voluntarily undertakes to remove or otherwise close the tank, do so in a safe and secure manner which prevents releases of regulated substances and in accordance with standards prescribed by the director pursuant to section 49-1008, except for the requirement to perform corrective action.

4. If the person voluntarily undertakes corrective action, take corrective action in a manner consistent with federal regulations and rules adopted by the director pursuant to section 49-1005.

D. A person acting under subsection C of this section shall not incur the liability of an owner.

E. No agreement or conveyance shall be effective to transfer the obligations imposed by this chapter from the owner or operator of any underground storage tank, or from any person who may be liable for a release or threat of release under this chapter, to any other person. Nothing in this section shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this chapter nor shall it bar

a cause of action that an owner or operator or any other person has or would have against any person.

F. In any action brought by the department under section 49-1013, the state bears the burden of establishing that an owner or operator has violated the requirements of this chapter. An owner or operator is responsible for only the owner's or operator's contribution to any contamination that creates liability under this chapter. No party bears the burden of proving any person's contribution to the contamination in any informal or formal appeal pursuant to section 49-1017, subsection D, section 49-1019, subsection D or section 49-1091.

G. If there is prima facie evidence that other identified or unidentified persons not at the owner's or operator's facility have contributed to the contamination, the owner or operator shall be responsible to take corrective action only to the extent, by area, of the owner's or operator's release. The owner or operator shall not be required to identify or to prove the contribution of any contributing persons in order to limit the owner's or operator's own liability, but the owner or operator shall provide to the department any information the owner or operator knows regarding the identity or contribution of any other contributing persons. If the owner or operator does not disclose the information prior to the owner's or operator's formal appeal of a decision by the department, upon the department's request, the administrative hearing shall be continued for no more than thirty days from the scheduled hearing date. If who contributed to the contamination cannot be determined by a preponderance of evidence, or if an allocation for some or all of the contamination cannot be established by a preponderance of evidence, the liability that is not established to be the owner's or operator's by a preponderance of the evidence shall not be allocated to the owner or operator.

H. The department may issue a written interim decision or determination compelling owners and operators to allocate liability in accordance with section 49-1019, subsection D if either of the following conditions are met:

1. The owners and operators agree that no other owners or operators are liable for the contamination.

2. The contamination is from a single underground storage tank facility.

49-1017. Powers of director; corrective actions

A. The director may take corrective action with respect to a release of a regulated substance that is petroleum into the environment from an underground storage tank if the director determines that action is necessary to protect human health, safety or the environment and any of the following conditions exist:

1. The department cannot locate, within ninety days or a shorter period necessary to protect human health or the environment, a person who is all of the following:

(a) An owner or operator of the tank concerned.

(b) Subject to the corrective action requirements of section 49-1005.

(c) Financially or technically capable of properly carrying out the corrective action required by section 49-1005. If the owner or operator and the department jointly determine that the owner or operator is not financially or technically able to carry out the corrective action, the department and the owner may enter into a contract under which the department acts as manager of the corrective action on behalf of the owner or operator. The existence of a management contract with the department does not relieve

the owner of any liability for costs that are not payable by the department under this chapter.

2. Corrective action costs at a facility exceed the amount of coverage required by section 49-1006 and expenditures from the underground storage tank revolving fund are necessary to ensure effective corrective action.

B. In determining whether to take a corrective action pursuant to subsection A of this section, the director shall consider and make written findings regarding all of the following factors:

1. The physical and chemical characteristics of the type of petroleum released, including its toxicity, persistence and potential for migration.

2. The hydrogeologic characteristics of the site where the underground storage tank is located and the surrounding area.

3. The proximity, quality and current and future uses of nearby surface water and groundwater.

4. The potential effects of residual contamination on nearby surface water and groundwater.

5. The degree of exposure.

6. The need for financial assistance.

C. If direct costs are incurred by the director for undertaking corrective action with respect to a release of a regulated substance that is petroleum, the owner and operator are liable to this state for these direct costs. Liability imposed pursuant to this subsection is strict. For the purposes of this subsection, "direct costs" means the cost of the corrective actions, investigations, enforcement and litigation except for those amounts that are not allocated to the owner or operator pursuant to subsection D of this section.

D. If there is more than one responsible person, liability under this section shall be equitably allocated on a case-by-case basis according to section 49-1016, subsection F, and using the following factors as those factors are appropriate under the circumstances:

1. The duration and percentage of ownership or operation of the underground storage tank during a release of regulated substances from the tank.

2. The amount and nature of the regulated substances released.

3. The degree of care exercised by each person with respect to the regulated substances released.

4. The ability to distinguish between the respective releases of more than one responsible person.

5. Other factors that are appropriate under the circumstances.

E. The allocation of liability under this section shall be promptly determined by one or more mediators who shall be selected by the responsible persons within sixty days after the responsible persons are identified by the director. The director may select a mediator and convene a mediation on the failure of the responsible persons to select one or more mediators. The mediator shall not have a conflict of interest with the responsible persons. A mediation convened by the director shall be held within sixty days after the mediator being selected. The director shall provide notice to the responsible persons of the time and place for the mediation and the name of the mediator or mediators. This notice shall be provided at least forty-five days prior to the date scheduled for mediation. Costs of mediation shall be eligible for payment and shall be allocated to participants in the mediation in the same proportion as the costs of corrective action. Nothing in this section shall excuse the obligations of an owner or operator to take timely and adequate action in response to a release of regulated substances as required in this chapter. Nothing in this section shall diminish the right of any person to bring an action against any other person as provided in

section 49-1019 for contribution or reimbursement for the reasonable costs of corrective action that person has been allocated pursuant to this section.

F. The director may take a corrective action with respect to a release of a regulated substance that is not petroleum only as a remedial action subject to chapter 2, article 5 of this title, and the rules adopted pursuant to that article. If the director takes a corrective action for the release of a regulated substance that is not petroleum, all of the rights, duties and responsibilities of a person associated with the release shall be determined pursuant to that article.

G. An owner, operator or other person that meets the requirements of section 49-1016, subsection C may request that the department conduct corrective action under this section. Subject to the availability of monies allocated and the priority assigned to the site pursuant to subsection B of this section, the department may conduct the corrective action.

H. A request for corrective action pursuant to subsection G of this section shall be on a form provided by the department and shall contain sufficient information related to the site and the factors prescribed in subsection B of this section to allow the director to make a determination of priority for that request.

49-1017.01. Settlement authority; participation; financial information; process; payment; notice

A. The director shall consider any offer by an owner or operator who is potentially liable for direct costs incurred by the director pursuant to section 49-1017, subsection C, without regard to the extent of that owner's or operator's liability, if the owner or operator is unable to pay for the direct costs. An owner or operator whose liability for direct costs arose from a criminal act is not eligible to enter into a settlement agreement pursuant to this section. An owner's or operator's decision to enter into a settlement agreement pursuant to this section is not an admission in a judicial proceeding as to the fact or extent of that owner's or operator's liability with respect to releases or threatened releases that are covered by the settlement. An owner or operator who is a party to a settlement pursuant to this section is not required to participate in allocation proceedings pursuant to section 49-1017, subsections D and E. Any settlement approved by the department does not release the owner or operator from any responsibility or duty imposed pursuant to this chapter other than liability for direct costs incurred pursuant to section 49-1017, subsection C.

B. Any settlement approved by the department does not increase the liability of any other owner or operator pursuant to this chapter and does not create any liability for the department or this state.

C. The director shall consider all of the following factors in considering an owner's or operator's ability to pay for the direct costs:

1. The financial resources of the owner or operator, including available financial assurance mechanisms other than the underground storage tank revolving fund.

2. The amount of coverage available to the owner or operator from the underground storage tank revolving fund for the direct costs. As a condition of settlement, the owner or operator shall apply to the underground storage tank revolving fund and any applicable grant program for coverage of the direct costs before requesting settlement pursuant to this section.

3. The owner's or operator's ability to continue in business after payment of the owner's or operator's liability for direct costs as defined in section 49-1017, subsection C.

4. Whether payment of the owner's or operator's liability for direct costs as defined in section 49-1017, subsection C would require the owner or

operator to seek protection under the federal bankruptcy law or render the owner or operator insolvent.

5. The financial resources of all concerns in which the owner or operator maintains ownership, control or management.

D. An owner or operator seeking settlement pursuant to subsection A of this section shall submit a letter requesting a financial hardship settlement and shall include the owner's or operator's tax returns and all schedules, financial statements, balance statements and other information concerning the owner's or operator's gross income and net worth for the five years immediately preceding the date of the application. Within ninety days after the receipt of the application, the director may require additional information to verify the owner's or operator's eligibility for settlement pursuant to subsection A of this section. The owner or operator may provide any additional information the owner or operator believes to be relevant to the application. The director shall keep confidential any financial information submitted by the owner or operator pursuant to this subsection. If the director or the attorney general disputes a claim of confidentiality, the director or the attorney general shall provide written notice that the claim is disputed to the owner or operator claiming the confidentiality. The information shall be made available to the public if the owner or operator claiming confidentiality does not file an action for declaratory relief in superior court within thirty days after receiving the notice.

E. The owner or operator shall cooperate with the director in providing reasonable access and information for the director to carry out the requirements of this section as a condition of the settlement.

F. If the director verifies that the owner or operator is unable to pay the direct costs incurred by the director pursuant to section 49-1017, subsection C, the director shall enter into a settlement within ninety days after receipt of the application and any other information required pursuant to this section. The director shall allow the settlement amount to be paid over a period of time that does not exceed ten years. Settlement payments over a period of time are subject to the payment of interest at the rate of six percent a year, except that payments are not subject to interest if the entire settlement amount is paid within five years. The owner or operator may file a petition with the director to modify the payment schedule on a showing of good cause that the payment schedule cannot be met.

G. The director may require that notice of the terms of the settlement agreement be provided to the public to allow for comment for a period of thirty days before the department enters into a settlement agreement. Any interested person may comment on the settlement agreement in writing to the director. The director may withdraw from a settlement agreement after considering the comments.

H. If the director determines that the owner or operator does not qualify for a settlement pursuant to this section, the director shall notify the owner or operator in writing within ninety days after the receipt of all information required pursuant to this section stating the reasons for ineligibility. The application for settlement is deemed denied if the director does not notify the owner or operator within ninety days after the director's receipt of all applicable information. A denial of a settlement application under this subsection constitutes an appealable agency action as defined in section 41-1092. In any administrative appeal hearing conducted pursuant to title 41, chapter 6, article 10, the documents submitted by the owner or operator pursuant to this section are not confidential. Any appeal is limited to the owner's or operator's eligibility for a financial hardship settlement pursuant to this section and the owner's or operator's ability to pay the direct costs incurred by the director pursuant to section 49-1017, subsection C.

49-1017.02. Powers of the director; noncorrective actions

A. Subject to the availability of monies in the underground storage tank revolving fund that are allocated by the director, an owner, an operator or another person that meets the requirements of section 49-1016, subsection C may request that the department conduct one or more of the following noncorrective actions at a site:

1. Obtaining a baseline assessment of a tank or site as prescribed in section 49-1052.

2. Confirmation of a suspected release at a tank or site.

3. Permanent closure of an underground storage tank as prescribed by section 49-1008.

B. In determining the priority for requests under subsection A of this section, the director may consider the following factors:

1. The age, construction and operational history of the underground storage tank at the site.

2. The hydrogeologic characteristics of the site where the underground storage tank is located and the surrounding area.

3. The proximity, quality and current and future uses of nearby surface water and groundwater.

4. The potential effects of residual contamination to nearby surface water and groundwater.

5. The degree of exposure, including the physical and chemical characteristics of the type of petroleum sold or suspected to have been released, including its toxicity, persistence and potential for migration.

6. The financial ability of the person to conduct the action with the person's own monies.

C. A request for a noncorrective action under this section shall be on a form provided by the department and shall contain sufficient information related to the site and the factors prescribed in subsection B of this section to allow the director to make a determination of priority for that request.

49-1018. Corrective action; enforcement; priority

The director shall give priority in undertaking state-led corrective actions pursuant to section 49-1017 to releases of regulated substances from underground storage tanks that pose the greatest threat to human health and the environment and shall consider the degree to which financial assistance from the department is necessary to ensure that corrective actions will be conducted.

49-1019. Release of regulated substance; causes of action; limitation; liability

A. Any one of the following persons may bring an action in superior court against a person who caused or contributed to the release of a regulated substance from an underground storage tank to require that person to reimburse one of the following persons for the reasonable costs of corrective actions taken in response to the release:

1. An owner or operator of an underground storage tank or any other person who takes a corrective action pursuant to section 49-1005.

2. An owner or operator of an underground storage tank or any other person from whom costs are recovered by this state pursuant to this chapter.

B. The person seeking reimbursement has the burden of demonstrating that the corrective action costs incurred were reasonable.

C. This article does not affect or modify the obligations or liability of a person, by reason of subrogation or otherwise, under any other provision

of common law, federal law or the laws of this state, for damages, injury or loss resulting from a release of a regulated substance or for the costs of a corrective action, except that a person who receives compensation for the costs of a corrective action pursuant to this article is precluded from recovering compensation for the same corrective action costs pursuant to any other federal law or the laws of this state. A person who receives compensation for corrective action costs pursuant to federal law or the laws of this state is precluded from receiving compensation for the same corrective action costs as provided in this article.

D. Liability under this section shall be equitably allocated on a case-by-case basis in accordance with section 49-1017, subsection D. Any party authorized to bring an action pursuant to subsection A of this section and any party against whom an action is brought may have liability allocated through mediation in accordance with section 49-1017, subsection D or through the informal appeal process in accordance with section 49-1091.

E. The department may take corrective action for a release and recover direct costs pursuant to section 49-1017 in proportion to the allocation made pursuant to subsection D of this section if an owner or an operator does not perform all necessary corrective actions and there is no other person to perform corrective actions pursuant to section 49-1016, subsection C.

49-1020. Fees

Each owner and operator of an underground storage tank that is subject to regulation under this chapter shall pay annually to the department a fee of one hundred dollars for each tank. An owner or operator who sold or relinquished legal, equitable or possessory interest in the property on or before January 1, 1990 shall not be responsible to pay the fee prescribed by this section. The director, with the approval of the attorney general, may abate fee balances if the administration costs exceed the amount of the fees due. The fees collected under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the underground storage tank revolving fund established by section 49-1015. The director shall adopt rules to provide for the orderly imposition and collection of the fees imposed by this section.

49-1021. Applicability

Until rules adopted pursuant to this chapter are in effect, this chapter shall apply only to the extent described by 40 Code of Federal Regulations section 280.10 and the energy policy act. Rules adopted pursuant to this chapter shall apply only to underground storage tanks not excluded or deferred by the federal regulations in effect on the date on which the rules are adopted.

49-1022. Regulated substance migration off site; responsibility; corrective action; notice; appeal; coverage

A. The director may undertake corrective action in response to a release from an underground storage tank that migrates on or under a person's property as the result of an occurrence at another property or that the department determines is likely to migrate on or under a person's property, if all of the following occur:

1. The person has authority to allow access to the property so that corrective action may be taken on the person's property.

2. The owner or operator of the underground storage tank that is the source of the release makes a written request that the department attempt to

obtain access to the property. As part of the written request, the owner or operator shall demonstrate to the department the following before the department attempts to obtain access to the property:

(a) The owner or operator has sent and the person has received at least two written requests to allow the owner or operator to have access to the property at reasonable times and under reasonable conditions.

(b) The owner or operator has made an offer of reasonable compensation to the person.

(c) Contamination is likely to spread or increase in severity if access to the property is not obtained.

3. The person has received a written request from the department to have access to the property, at reasonable times and under reasonable conditions in a manner that does not constitute a taking as provided by law, to take corrective action with respect to only the release that has migrated on that person's property.

4. The person has refused to allow the owner or operator or the department to have access to the property or does not respond to the department within sixty days after receiving the request for access.

B. The department shall issue a notice describing the proposed corrective action to the owner or operator and the person on whose property the department will undertake corrective action if it elects to undertake corrective action pursuant to subsection A of this section. The owner or operator or the person on whose property the department undertakes corrective action may appeal pursuant to title 41, chapter 6, article 10, within thirty days after the notice or within thirty days after the performance of the corrective action. If, after an appeal, it is determined that the department failed to return the property to substantially the same condition the property was in before being accessed, the person on whose property the department undertakes the corrective action may be eligible for payment from the underground storage tank revolving fund only to the extent the department failed to return the property to substantially the same condition the property was in before being accessed.

C. The owner or operator shall reimburse the department for any costs paid from the underground storage tank revolving fund pursuant to this section.

D. The department shall promptly provide to a person whose property is accessed under this section a copy of the results of any analysis of the soil or groundwater relating to the accessed property arising from the department's access or corrective action undertaken at the property. The department shall not sue the person for any secondary contamination created by the access or corrective action.

E. If a release of a regulated substance has migrated on or under a person's property, the department shall relieve the owner or operator of the underground storage tank from responsibility from performing corrective action at the property where the release has migrated or where the department has determined it is likely to have migrated, if the owner or operator is unable to gain access to the property after complying with subsection A, paragraph 2, subdivisions (a) and (b) of this section. Nothing in this section relieves the owner or operator from liability for completing the requirements of section 49-1005 relating to the owner's or operator's property or any other property to which the contamination may have migrated. The department may require that the owner or operator investigate any other properties potentially impacted by the release in order to complete the requirements of section 49-1005.

49-1023. Delivery prohibition; stop use tag; definitions

A. A product deliverer shall not deliver, deposit or place a regulated substance into an underground storage tank that has a stop use tag from the director affixed to a fill pipe of the underground storage tank pursuant to subsection B of this section.

B. The director may issue a stop use order to the owner and operator of the underground storage tank and affix a stop use tag that is easily visible to the product deliverer on all fill pipes of the underground storage tank to stop operation of the underground storage tank if either of the following exists:

1. The director has determined that the underground storage tank is in violation of section 49-1003 or 49-1009 or the rules adopted pursuant to those sections, as applicable, and the continued operation of the underground storage tank may result in a continued release or new release from the underground storage tank.

2. The director has determined that the underground storage tank is in violation of section 49-1006, 49-1020 or 49-1031 or the rules adopted pursuant to those sections, after providing the owner and operator with thirty days' notice and an opportunity to demonstrate compliance.

C. A stop use order becomes effective immediately on issuance and suspends use of the underground storage tank.

D. The owner and operator of an underground storage tank that has received a stop use tag pursuant to subsection B of this section shall ensure that no person removes or tampers with the stop use tag until the requirements for return of the underground storage tank to operation pursuant to subsection E of this section are met, and shall immediately empty the underground storage tank and comply with the remaining temporary closure requirements adopted under section 49-1008.

E. An owner or operator shall not bring an underground storage tank that has received a stop use tag pursuant to subsection B of this section back into operation until the owner or operator has demonstrated to the director that the underground storage tank meets the requirements of sections 49-1003, 49-1006 and 49-1009 and the rules adopted pursuant to those sections, as applicable, and the owner or operator has received written confirmation from the director that the requirements of sections 49-1003, 49-1006, 49-1009, 49-1020 and 49-1031 and the rules adopted pursuant to those sections, as applicable, have been met. The director shall provide written confirmation as soon as practicable, but not later than five business days, to the owner or operator that the requirements of sections 49-1003, 49-1006, 49-1009, 49-1020 and 49-1031 and the rules adopted pursuant to those sections have been met.

F. On issuance of a stop use order, the director shall notify product deliverers by posting on the department's website the name and location of a facility with an underground storage tank that has a stop use tag. The notice shall also specify which underground storage tank at the facility has a stop use tag.

G. The director shall remove the stop use notice from the department's website within five business days after determining that the requirements of subsection E of this section have been met.

H. The director may adopt rules to implement this section.

I. For the purposes of this section:

1. "Product deliverer" means a person, including an owner, operator or oil company, or a distributor as defined in section 28-5601, a supplier as defined in section 28-5601, a petroleum transportation company and any other entity that delivers, deposits or places a regulated substance into an underground storage tank.

2. "Stop use tag" means a tag, device or mechanism that is prescribed by the director, that is designed to be affixed to a fill pipe of an underground storage tank and that clearly states and conveys that it is unlawful to deliver, deposit or place a regulated substance into the underground storage tank to which it is affixed.

49-1024. Report; underground storage tank revolving fund program

The department shall compile a report on the underground storage tank revolving fund program on or before December 31, 2017, and on or before December 31 every three years thereafter. The department shall submit the report to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of each report to the secretary of state. The department shall post each report on an accessible, public web page on the department's website. The report shall contain the department's findings and shall include the following information:

1. Underground storage tank revolving fund financial information, including revenues, expenditures and current account balances.
2. The amount of any remaining unpaid time-barred claims.
3. A description of the work completed for each program grant component.
4. The amount of reimbursements made annually from the fund.
5. A listing of new releases reported and sites closed, a listing of liabilities owed to small owners and other owners and projected liabilities for the fund through the termination of the program.
6. A description of any state-led corrective actions, including the number of new sites, the number of new releases reported, the number of sites closed, the average cost of corrective action and projected liabilities for state-led corrective actions through the termination of the program.
7. The total number of open releases that are cleaned to closure, the remaining number of open releases, the number of application or reimbursement denials by the department and the number of preapproval appeals.

Article 2 Underground Storage Tank Tax

49-1031. Imposition of tax

(Rpld. 1/1/24)

A. From and after July 1, 1990, there is imposed and the director shall collect an excise tax on the operation of underground storage tanks regulated under this chapter measured by the quantity of regulated substances placed in a tank in any calendar year. The tax is levied at the rate of one cent per gallon of regulated substance.

B. For proper administration of this article, and to prevent the evasion of the tax imposed by this article, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the director that all regulated substances that are motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101 and diesel as defined in section 28-6001, subsection B and that are refined, manufactured, produced, compounded or blended in this state, or imported into this state, will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it. Under this presumption, the owner and operator of an underground storage tank from which motor vehicle fuel, aviation fuel or diesel is dispensed and

from which no further bulk distribution will be made, shall be considered to have paid the tax collected under title 28, chapter 16, article 6.

C. The tax imposed by this article does not apply to underground storage tanks operated by the United States or this state or agencies of the United States or this state or to any of the following substances placed in underground storage tanks:

1. Naphtha-type jet fuel or kerosene-type jet fuel.

2. Regulated substances as defined in section 49-1001, paragraph 16, subdivision (b), unless such regulated substances were placed in an underground storage tank prior to July 1, 1997, and the owner or operator of the underground storage tank has paid prior to July 1, 1997 all taxes imposed by this article applicable to such regulated substances. If the owner or operator has paid those taxes, the owner or operator may elect to continue to pay the tax imposed by this article regarding such regulated substances.

D. The owner and operator of an underground storage tank regulated under this chapter are jointly and severally liable for the tax, but the owner and operator may agree between themselves and file a notarized affidavit with the director designating either the owner or operator as primarily responsible for the tax under this article.

E. Any person who purchases motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101, or diesel as defined in section 28-6001, subsection B for which the tax imposed by this section has been paid and which fuel has been placed in a tank which is not subject to the underground storage tank tax imposed by this section and from which no further bulk distribution of the fuel will be made, may claim a refund of the tax levied. Refunds shall be submitted on forms prescribed by the director and shall be supported by substantiation for the amount of the tax paid.

F. Any person eligible to claim a refund of the tax imposed by this section, including an assignee of a refund claim, may assign such claim to the person from whom the fuel was purchased, and the assignee of the claim may claim the refund allowed under subsection E of this section provided that the assignor of the claim certifies in writing to the assignee, on forms prescribed by the director, that the assignor relinquishes all interest in the refund and shall not also claim a refund from the director.

G. If a refund claim is assigned to a person who is required to make payments under title 28, chapter 16, article 6, the refund shall be taken into account in the manner provided in section 28-6005.

H. The director shall adopt temporary and permanent rules for administering the tax imposed by this article and specifying the forms of the return and of the certification provided for in sections 28-6003 and 28-6004. The temporary and permanent rules shall prescribe the forms for and manner in which refunds may be claimed and refund claims assigned pursuant to subsection F of this section, shall specify the circumstances in which fuel may be excluded from the quantity of fuel used to measure the tax pursuant to title 28, chapter 16, article 6, and shall prescribe the forms for and manner which the certification provided in title 28, chapter 16, article 6 shall be made.

I. Title 41, chapter 6 shall not apply to the temporary rules adopted pursuant to this section. The temporary rules shall be filed with the secretary of state and shall be effective for a period of one hundred eighty days after the date of filing with the secretary of state. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of one hundred eighty days after the date the renewed temporary rules are filed with the secretary of state.

J. The permanent rules adopted pursuant to this section shall be adopted as provided in title 41, chapter 6.

49-1032. Return and payment of tax; due date

A. The tax levied under this article is due and payable annually on or before March 31 for the preceding calendar year and is delinquent if not postmarked on or before that date or if not received by the department on or before March 31 for taxpayers electing to file in person.

B. At the time the tax is paid the taxpayer shall prepare and file with the tax a return, on a form prescribed by the director, showing the amount of tax for which he is liable for the period covered by the return. The return shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the return is true, complete and correct according to the best belief and knowledge of the owner or operator filing the report.

49-1033. Extensions; abatement

A. The director, for good cause, may extend the time for making any return required by this article and may grant such reasonable additional time within which to make the return as he deems proper if at least ninety per cent of the tax liability is paid when the extension is requested.

B. The director, with the approval of the attorney general, may abate small tax balances if the administration costs exceed the amount of tax due.

49-1034. Audits

The director may require a person who is required to pay the tax under this article to appear, at reasonable times and on reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine compliance with this article. The director shall audit the records of a sufficient number of taxpayers under this section to ensure general compliance with this article.

49-1035. Interest; penalty; lien

A. If the tax, or any portion of the tax, is not paid on or before the date prescribed for its payment, the director shall collect, as part of the tax, interest on the unpaid amount at the rate determined pursuant to section 42-1123 from the date prescribed for payment until the full amount is paid.

B. If a taxpayer fails to make and file a return as required under this article on or before the due date as extended by the director, unless the failure is due to reasonable cause and not due to wilful neglect, a penalty of five per cent of the tax found to be remaining due shall be added to the tax for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five per cent of the tax remaining due. The penalty so added to the tax is due and payable on notice and demand by the director.

C. If any tax, interest or penalty imposed by this article is not paid when due, the unpaid amounts are a lien from the date the amounts became due on all real and personal property and rights to property belonging to the taxpayer. The lien may be perfected by recording a notice of lien in the county in which the property is located. The notice shall specify the nature of the tax, the amount of tax, interest and penalty due, the taxable period for which the amounts are due and the name and last known address of the taxpayer who is liable for the amounts.

49-1036. Remission and disposition of revenues

The director shall promptly deposit, pursuant to sections 35-146 and 35-147, all monies collected under this article and shall credit these payments to the underground storage tank revolving fund.

Article 3 Underground Storage Tank Revolving Fund Payment Process

49-1051. Preapproval process; requirements; corrective action priority

A. An owner, an operator or the designated representative of either or a person that meets the requirements of section 49-1016, subsection C must follow the preapproval process pursuant to this section to be eligible for reimbursement from the underground storage tank revolving fund for corrective actions taken pursuant to section 49-1053, subsection A. Preapproval applications must include a detailed scope of work that conforms to the requirements of sections 49-1005 and 49-1053, a schedule for conducting corrective actions and a cost sheet. Beginning January 1, 2016, corrective actions and costs for activities that were completed before departmental approval of the scope of work are not eligible for reimbursement under section 49-1054. If the preapproved scope of work cannot be implemented as approved, the person seeking reimbursement shall submit a change notice to the department. To be eligible for reimbursement, a change notice must be approved by the department before implementation of the change notice.

B. This section does not relieve an owner, an operator or the designated representative of either from any of the requirements of this chapter.

C. While the application for preapproval is pending, the department may not take enforcement action or impose penalties against the owner, operator or designated representative who submitted the application for preapproval. The department may not consider the passage of time while the preapproval application is pending to be a basis for taking an enforcement action. For any corrective action submitted for preapproval pursuant to rule, the period of time for compliance with corrective actions associated with that preapproval begins to run from the date of preapproval of the corrective action.

D. On determination by the department or its designated contractor that the application for preapproval is complete, the department or its designated contractor shall determine whether the owner or operator was a small owner at the time of the application. For the purposes of this subsection, "small owner" means an owner that owns fewer than twenty underground storage tank facilities in this state.

E. In processing the application for preapproval, the department shall determine the corrective action priority of the release within ninety days after the receipt of the materials required by this section. The corrective action priority shall be based on all of the following:

1. The need for financial assistance, including the availability of coverage under insurance or other financial assurance mechanisms.

2. The extent to which a delay in reimbursement will affect the ability to conduct corrective actions.

3. The risk to human health and the environment.

4. The presence of preexisting contamination of groundwater by a hazardous substance as defined in section 49-281.

F. An owner, operator or person who meets the requirements of section 49-1016, subsection C may request reimbursement under section 49-1053. Subject to the availability of monies allocated and the assigned priority of

the site pursuant to subsection E of this section, the department may make reimbursements from the underground storage tank revolving fund.

G. An application for preapproval and reimbursement pursuant to this section shall be on a form provided by the department and shall contain sufficient information to allow the director to make a determination of priority for that request.

H. Any determination made by the department pursuant to this section constitutes a written interim determination relating to preapproval pursuant to section 49-1091.

I. The department may alter the corrective action priority of the release at any time based on the results of sampling and monitoring conducted pursuant to this section or any other information obtained by the department.

49-1052. Noncorrective actions; baseline assessment

A. A baseline period of seven years from January 1, 2016 is established for underground storage tanks. Beginning January 1, 2016, during the baseline period, an owner, operator or person who meets the requirements of section 49-1016, subsection C may do the following:

1. Elect to conduct a baseline assessment pursuant to this section.

2. Request a grant to cover costs associated with the baseline assessment pursuant to section 49-1071.

3. Request the department to perform the baseline assessment under section 49-1017.02.

B. The department shall establish standards for conducting baseline assessments pursuant to this section. Until the department establishes standards by rule or by guidance documents, baseline assessment work plans shall be submitted to the department for approval and shall be considered for preapproval on a case-by-case basis, based on compliance with subsection D of this section.

C. Baseline assessments shall be conducted under the direction of a person who is a professional engineer or a registered geologist who is registered under title 32, chapter 1 or a remediation specialist who is certified under title 32, chapter 1 and the rules adopted under that chapter.

D. The scope of the baseline assessment shall address likely release areas and shall include a collection of sufficient information to allow for a determination of the current environmental condition of the property. Samples shall be collected in areas where contamination is most likely to have occurred and sample locations shall consider site-specific conditions, location of potential receptors and preexisting contamination. The baseline assessment must include the registered or certified professional's interpretation regarding confirmation of an unknown release and evaluation of potential risk for the purpose of prioritizing corrective actions.

E. If unknown contamination is identified in the baseline assessment, all of the following apply:

1. The owner, operator or person that meets the requirements of section 49-1016, subsection C shall comply with the reporting requirements pursuant to section 49-1004 and shall initiate corrective actions pursuant to section 49-1005.

2. Unless documentation is provided to the department that demonstrates that the operating underground storage tank is not the source of the release, the department shall require tightness testing.

3. If continued operation of the underground storage tank may result in a continued release, the department may initiate delivery prohibition as prescribed in section 49-1023.

49-1053. Reimbursement of corrective action costs; definition

A. The department may provide reimbursement from the underground storage tank revolving fund under the preapproval process prescribed in section 49-1051 in the amounts authorized by section 49-1054 of the costs incurred for the following:

1. Sampling, analysis and reporting that are initiated pursuant to section 49-1004 and that confirm the presence of a release that requires corrective action pursuant to section 49-1005.

2. Sampling, analysis and reporting that are initiated pursuant to section 49-1008 and that confirm the presence of a release that requires corrective action pursuant to section 49-1005.

3. Corrective actions initiated pursuant to section 49-1005.

B. The department may provide the reimbursement required by this section either by paying the owner, the operator or a designated representative of the owner or operator or any combination of these persons, a political subdivision pursuant to subsection F of this section or a person who meets the requirements of section 49-1016, subsection C. If the department determines that an application for reimbursement is incomplete, the department within forty-five days after the application shall notify the applicant of the missing information as specifically as possible and shall permit the applicant to provide the additional information within thirty days. On the request of an applicant, the department shall grant an additional sixty days to submit the missing information. The grant of additional time tolls the period for making an interim determination on matters relating to reimbursement pursuant to section 49-1091.

C. The department may not pay for eligible costs unless the department determines that the eligible activities have met, or when completed will meet, the applicable requirements of section 49-1004 or 49-1005. The department may require by rule that persons that perform payable eligible activities meet specified standards of qualification and be approved by the department.

D. The department may not provide any reimbursement described in this article to an owner or operator of underground storage tanks described in section 49-1031, subsection C. The department may not provide any reimbursement described in this article with respect to the substances described in section 49-1031, subsection C, unless the tax imposed by article 2 of this chapter applies to such substances.

E. The department shall establish criteria for determining priorities among the applications from small owners for reimbursement under this article. For all other owners that are eligible for reimbursement from the fund through the cost sharing prescribed in section 49-1006.02, subsection B, priority shall be based on the date of completion of the work. The criteria for small owners shall include:

1. The need for financial assistance.

2. The extent to which a delay in providing reimbursement will affect an eligible activity in progress.

3. The date on which an application for reimbursement is submitted to the department.

4. Whether the payment has been previously deferred because of insufficient monies in the underground storage tank revolving fund and, if deferred, the length of the deferral.

F. The department may provide the reimbursement described in this article for eligible activity costs incurred by a political subdivision with respect to a release from an underground storage tank if the underground storage tank or the property where the underground storage tank is located comes into the possession or control of the political subdivision under title 12, chapter 8, article 2 or 3.

G. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purpose of assisting the department in reviewing preapproval and reimbursement applications, site characterization reports, corrective action plans, monitoring reports and other information to determine whether corrective actions meet the criteria and requirements of this chapter and the rules adopted by the director.

H. Requests by the department for additional information from applicants shall be reasonably related to the determination of the validity of the claim as prescribed by this article.

I. Except for appeals costs authorized pursuant to section 49-1091.01, applications for reimbursement under a preapproved scope of work shall be submitted to the department not more than one year after the applicant receives a closure letter sent by the department by certified mail with notice that the applicant has one year to submit a claim for that release. Failure to submit a timely reimbursement request under a preapproved scope of work shall result in denial of the claim. The time limit prescribed by this subsection does not apply to closed releases that are subsequently reopened for the performance of additional corrective actions or at which corrective actions are proceeding pursuant to a work plan for preapproval submitted before the release was closed.

J. The department may provide reimbursement under a preapproved scope of work for the reasonable, necessary, cost-effective and technically feasible costs of corrective actions relating to soil remediation that are consistent with remediation standards adopted pursuant to chapter 1, article 4 of this title or site-specific, risk-based levels as determined under rules adopted pursuant to this chapter. The department may provide reimbursement under a preapproved scope of work for the reasonable, necessary, cost-effective and technically feasible costs of corrective actions relating to groundwater remediation to predetermined standards or site-specific, risk-based levels as determined under rules adopted pursuant to this chapter. The department may provide reimbursement for corrective actions related to the control and removal of a source of contamination. A source of contamination includes any one or more of the following:

1. Free product.

2. A regulated substance present in soil that causes or threatens to cause an exceedance of the aquifer water quality standards.

3. A regulated substance present in groundwater at levels that would prevent timely reduction of contaminant concentrations in comparison with the performance of active remediation.

4. Any other presence of a regulated substance causing an ongoing source of contamination, as determined by the department.

K. On preapproval by the department or its designated contractor of corrective action costs for small owners, the department or its designated contractor shall encumber monies in the corrective action allocation for that year. If monies are available in the corrective action allocation for that year, reimbursement shall be made when the corrective action for which the monies were encumbered is completed as determined by the department or its designated contractor.

L. The department or its designated contractor shall preapprove reimbursement of corrective action costs for an owner that is not a small owner without encumbering monies. If monies are available in the corrective action allocation for that year at the end of the corrective action allocation year, reimbursement shall be based on the date the corrective action is completed as determined by the department or its designated contractor.

M. If there are insufficient monies to pay for approved corrective action in any annual corrective action allocation, the department shall reimburse the corrective action from the next annual corrective action allocation, with the priority that reimbursements first go to small owners.

N. The department may not accept an application to the underground storage tank revolving fund for reimbursement from an applicant for costs associated with a single facility more frequently than once each calendar month, and the department may not accept an application for costs associated with a single facility for an amount of less than five thousand dollars unless the reimbursement is the final application associated with the facility.

O. An application for reimbursement pursuant to this section shall be on a form provided by the department and shall contain sufficient information to allow the director to make a determination of priority for that request.

P. For the purposes of this section, "small owner" means an owner that owns fewer than twenty underground storage tank facilities in this state.

49-1054. Extent of reimbursement

A. The department may provide reimbursement from the underground storage tank revolving fund for the reasonable and necessary costs of eligible activities pursuant to section 49-1053, subsection A for releases that are reported before the end of the baseline period established pursuant to section 49-1052. Receipt of financial assistance from the underground storage tank revolving fund does not constitute a financial assurance mechanism and may not be used to demonstrate compliance with financial responsibility requirements or to provide compensation to third parties for bodily injury or property damage. Reimbursement from the underground storage tank revolving fund to owners, operators and persons that meet the requirements of section 49-1016, subsection C may not exceed one million dollars per facility.

B. The department may compel the production of documents to determine the existence, amount and type of insurance or alternative coverage available. An owner, operator or person that meets the requirements of section 49-1016, subsection C shall report to the department any payment of corrective actions costs through insurance and alternative mechanisms.

C. The department may not disburse more than the maximum amounts prescribed by subsection A of this section from the underground storage tank revolving fund for corrective action costs associated with a facility.

D. The department shall pay eligible costs that are reasonable and were actually incurred for corrective actions that were actually performed. The costs for the corrective actions shall be submitted as prescribed in sections 49-1051 and 49-1053. The department shall pay only for corrective actions that have been completed and that have been conducted pursuant to the preapproval approved by the department. Reasonableness of corrective actions shall be determined based on the law and the facts available to the owner, operator or person that meets the requirements of section 49-1016, subsection C at the time the technical decision was made. The department shall establish schedules of corrective action costs that the department considers reasonable.

E. The owner or operator is eligible for payment from the department to the extent that the corrective action costs have not been reimbursed to the owner or operator, or its consultant, representative or agent, by insurance or by an alternative financial assurance mechanism. A provider of insurance or an alternative financial assurance mechanism who is not an owner or operator with respect to the occurrence is not eligible for payment from the underground storage tank revolving fund.

F. An owner or operator shall report to the department whether it has insurance coverage available and shall comply with all applicable financial responsibility requirements. If the director has reason to believe that an owner or operator, or its consultant, representative or agent, has received or may receive any payment for corrective actions from insurance or alternative financial assurance mechanism, the department may compel the production of documents to determine the existence, amount and type of insurance or alternative financial assurance coverage available and to whom payment was made or may be made. An owner or operator shall report to the department any subsequent payment or reimbursement from insurance or an alternative financial assurance mechanism to the owner or operator or its consultant, representative or agent for corrective actions costs.

G. The owner or operator shall remit to the department within thirty days any amounts that were previously paid to the owner or operator or its consultant, representative or agent from the underground storage tank revolving fund and that have also been recovered from insurance or any alternative financial assurance mechanisms.

H. Appeals fees and costs payable pursuant to section 49-1091.01 shall be paid in the next regular round of payment without being subject to ranking and in the order received by the department.

49-1055. Extent of reimbursement; termination of eligibility

A. From and after December 31, 2022, only those releases of a regulated substance that are reported before January 1, 2023 as prescribed in section 49-1004 are eligible for corrective action cost reimbursements from the underground storage tank revolving fund.

B. An application for reimbursement of eligible costs from the underground storage tank revolving fund shall be filed with the department not later than 5:00 p.m. on December 31, 2030.

C. An application for preapproval made pursuant to section 49-1051 shall be filed with the department not later than 5:00 p.m. on December 31, 2029.

D. Any application made or expense incurred after December 31, 2030 is not eligible for reimbursement from the underground storage tank revolving fund and all such claims are extinguished.

49-1056. Lien rights; unrecovered corrective action costs

If the department or this state incurs unrecovered corrective action costs from a corrective action undertaken on behalf of a volunteer, a property owner, a person other than the underground storage tank owner or an owner or operator that did not have the required financial responsibility mechanism at the time the release is discovered or the claim is filed, the department has a lien on the property for the unrecovered corrective action costs, or, by agreement with the responsible party, may obtain a lien on any other property or other financial responsibility mechanism of the responsible party.

49-1057. Intergovernmental agreements

The department may enter into intergovernmental agreements with Indian tribes pursuant to title 11, chapter 7, article 3 to extend to the tribes the partial coverage provided by this article and the responsibilities imposed by articles 1 and 2 of this chapter.

Article 4 Grants

49-1071. Grants; purposes; priority

A. Subject to the availability of monies in the underground storage tank revolving fund that are annually allocated by the director for each of the following types of actions, an owner, operator or person that meets the requirements of section 49-1016, subsection C may request that the department provide monies for that person to conduct one or more of the following actions, up to a maximum of one hundred thousand dollars per site:

1. Actions necessary to ensure that the underground storage tank, its piping and its under-dispenser containment comply with standards for new installations prescribed by section 49-1009 or other applicable federal requirements, including replacement of system components, up to a maximum of one hundred thousand dollars.

2. Removal of underground storage tanks for purposes of permanent closure or replacement, up to a maximum of twenty thousand dollars per tank.

3. Confirmation of a suspected release at a tank or site, up to a maximum of ten thousand dollars.

4. Obtaining a baseline assessment of a site as prescribed in section 49-1052, up to a maximum of thirty thousand dollars.

B. In determining the priority for requests under subsection A of this section, the director may consider the following factors:

1. The age, construction and operational history of the underground storage tank.

2. The hydrogeologic characteristics of the site where the underground storage tank is located and the surrounding area.

3. The proximity, quality and current and future uses of nearby surface water and groundwater.

4. The potential effects of residual contamination on nearby surface water and groundwater.

5. The degree of exposure.

6. The financial resources of the grant applicant.

C. A request for a grant of monies under this section shall include:

1. Detailed information about the site, including the type, number and location of tanks.

2. Information about the owner and operator, including the type of financial responsibility.

3. A description of the evidence of any release or suspected release.

4. The proposed actions necessary to meet tank and system performance standards.

D. Monies may not be provided under this section for work that takes place more than one year after the date that monies are approved.

Article 5 Certification

49-1081. Definitions

In this article, unless the context otherwise requires:

1. "Attended facility" means an underground storage tank facility at which it is the usual and customary practice for the owner or operator, or any employee of the owner or operator, to be present on site during normal hours of operation.

2. "Class A individual" means a person designated by the owner or operator as having primary management responsibility or decision-making

authority for the operation, maintenance and record keeping of an underground storage tank facility. The person may or may not be the owner or operator.

3. "Class B individual" means a person designated by the owner or operator as having daily responsibility for the operation, maintenance and record keeping of an underground storage tank facility. The person may or may not be the owner or operator.

4. "Class C individual" means a person designated by the owner or operator as having daily responsibility for an initial response to an alarm or other indication of an emergency caused by a release or suspected release from an underground storage tank. The person may or may not be the owner or operator.

5. "Supervision" means the immediate, on-site control and direction by a person certified by the department in accordance with section 49-1082 and the rules adopted pursuant to section 49-1082 of a person who is performing tank service and who is not certified in accordance with section 49-1082 and the rules adopted pursuant to section 49-1082.

6. "Tank service" means installation, retrofitting, tank tightness testing, closure, cathodic protection or interior tank lining of an underground storage tank or a part of an underground storage tank.

49-1082. Certification of underground storage tank service providers; rules; suspension or revocation of certification

A. Beginning from and after December 31, 1996, a person shall not perform tank services on an underground storage tank system unless the person is certified in accordance with this section and the rules adopted pursuant to this section, or is supervised by a person certified in accordance with this section and the rules adopted pursuant to this section.

B. The department shall not certify a person as a tank service provider until that person completes the requirements of this section and the rules adopted pursuant to this section. In accordance with subsection D, the supervisor is responsible for all persons performing work under the direction of the supervisor and any violations of this section or rules adopted pursuant to this section are attributable to the supervisor.

C. By January 1, 1997, the department shall adopt rules for the establishment and maintenance of an underground storage tank service provider certification program. The certification program shall include the submittal and verification of information that the director determines is necessary to ensure that the tank service provider possesses and maintains the essential knowledge, skills and work history to perform the service effectively and in a manner that protects human health and the environment. The department may establish separate certification methods for each area of tank service as it is defined, and may define the duration of the certification period, which shall be at least one year.

D. The department, on reasonable evidence, may suspend or revoke the certification of any person who fails to maintain the standards established pursuant to this section or who exhibits incompetence, negligence or fraud in performing the certified activity or in other work relating to the certified activity. A person whose certification is revoked or suspended pursuant to this subsection may appeal the decision pursuant to title 41, chapter 6, article 10.

49-1083. Designation; training; record keeping requirements; rules

A. Beginning August 9, 2012, an owner or operator shall designate a class A individual who must be trained pursuant to subsections E and F of this section within thirty days or another period specified by the director after being designated by the owner or operator.

B. Beginning August 9, 2012, an owner or operator must designate a class B individual who must be trained pursuant to subsections E and F of this section within thirty days or another period specified by the director after being designated by the owner or operator.

C. Beginning August 9, 2012, an owner or operator must designate one or more class C individuals who must be trained pursuant to subsections E and F of this section before assuming the role of a class C individual. For an attended facility, a class C individual must be on site during the usual and customary hours of operation.

D. The class A individual and class B individual shall be retrained if the director determines that an underground storage tank at the facility is not equipped and operated in accordance with release detection, corrosion protection, spill prevention and overfill protection in compliance with sections 49-1003, 49-1009 and 49-1023 and the rules adopted under those sections, as applicable. Documentation of the retraining must be maintained in accordance with subsection G of this section.

E. The director shall establish the duration for which training is valid and the duration shall not be less than one year or more than three years.

F. The training shall be in a format approved by the director and shall include the following:

1. For a class A individual, the requirements associated with notification under section 49-1002, release detection under section 49-1003, reporting requirements under section 49-1004, financial responsibility under section 49-1006, closure under section 49-1008, underground storage tank performance under section 49-1009, delivery prohibition under section 49-1023 and this section and the rules adopted under those sections, as applicable.

2. For a class B individual, the requirements associated with release detection under section 49-1003, reporting requirements under section 49-1004, underground storage tank performance under section 49-1009, delivery prohibition under section 49-1023, the training requirements for a class C individual under paragraph 3 and the rules adopted under those sections, as applicable.

3. For a class C individual, initial response procedures to an alarm or other indication of an emergency caused by a release or suspected release from an underground storage tank, including procedures for contacting a class A or class B individual and any emergency responder.

G. An owner and operator shall document that the training requirements of this section have been met for each class A, class B or class C individual. Training shall be documented on a form prescribed by the director. Training records shall be maintained for a period of not less than three years after the training is completed and shall be available for inspection by the director on request.

H. The director may adopt rules to implement this section.

Article 6 Underground Storage Tank Informal Appeals and Underground Storage Tank Policy Commission

49-1091. Underground storage tank informal appeals

A. A person that undertakes corrective action pursuant to section 49-1016, subsection C or an owner or operator may informally appeal the following decisions or determinations pursuant to this section:

1. A written interim decision from the underground storage tank program of the department.

2. A written interim determination from the department on matters relating to owner or operator status.

3. A written interim determination from the department on matters relating to preapproval or reimbursement from the underground storage tank revolving fund.

4. A written interim determination or decision relating to the allocation of liability pursuant to this chapter.

B. The department's failure to respond with a written interim decision to the owner's or operator's submission to the department of any documents identified in subsection G of this section within one hundred twenty days after receipt is a basis for an informal appeal.

C. A person that undertakes corrective action pursuant to section 49-1016, subsection C or an owner or operator who is subject to an interim decision or determination described in subsections A and B of this section, and who disagrees with the interim decision or determination, may file a written notice of disagreement with the department within thirty days after receiving the department's interim decision or determination. The notice shall include a description of the specific portions of the interim decision or determination with which the person, owner or operator disagrees and may include a request to meet with the department to resolve the disagreement. The department shall schedule a meeting within thirty days after receiving the request.

D. A person that requests a meeting pursuant to subsection C of this section or an authorized representative of the person designated in writing may attend the meeting with any individuals who may be helpful in discussing the matter with the department.

E. The department shall issue a final written decision or determination within forty-five days after receiving the notice of disagreement or within fifteen days after a meeting pursuant to subsection C of this section, whichever is later. If no notice of disagreement is filed, the department shall issue a final written decision or determination within forty-five days after the issuance of the interim decision or determination. Before the expiration of time for the department to issue a final written decision or determination, the department may request additional information from the person who has submitted a notice of disagreement that is necessary to make a final decision or determination. A person that receives this request shall have fifteen days to submit the requested information to the department. The time frames for the department to issue a final decision or determination shall be extended for up to fifteen days during the time the requested information is outstanding, and for up to fifteen additional days, if applicable, after any information is submitted to the department. The time to submit the requested information may be extended for up to sixty days on the request of a person that submits a notice of disagreement. The time frames for the department to issue a final decision or determination shall be extended accordingly. The time frames for the department to issue a final decision or determination shall also be extended if information relating to the subject of the notice of

disagreement is not requested by the department but is provided to the department for the first time less than fifteen days after the date the department is required to issue a final decision or determination. In this situation, the time frames shall be extended to allow the department fifteen days after the date the information is submitted to issue a final decision or determination. If the department fails to issue a final written decision or determination within the time specified in this subsection, the department's written interim decision or determination becomes the final written decision or determination. The final written decision or determination shall address the notice of disagreement received pursuant to subsection C of this section. The final written decision or determination is the only decision or determination that is appealable as an appealable agency action as defined in section 41-1092 or a contested case as defined in section 41-1001.

F. The period of time for compliance with corrective actions associated with the subject matter of a notice of disagreement is tolled from the date that a person who undertakes corrective action pursuant to section 49-1016, subsection C or an owner or operator files a written notice of disagreement with the department until the date the final decision or determination is rendered by the department and any appeals are completed.

G. A written interim decision shall address one of the following technical issues:

1. The department's approval, disapproval or notice of deficiency of site characterization reports.

2. The department's approval, disapproval or notice of deficiency of corrective action plans for soil or groundwater, or both.

3. The department's approval, disapproval or notice of deficiency of a work plan.

4. The department's determination or confirmation of a release.

5. The department's approval, disapproval or notice of deficiency of requests for closing a case file corresponding to a release from a leaking underground storage tank.

H. The department shall not alter the time limits prescribed by this chapter by adoption of a time limit by rule.

I. The department's failure to respond with a written interim determination to the owner's or operator's submission, or to the submission from a person that undertakes corrective action pursuant to section 49-1016, subsection C, of an application for preapproval or reimbursement from the underground storage tank revolving fund within ninety days after receipt is a basis for an informal appeal.

49-1091.01. Fee and cost reimbursement; application; limitations

A. This section applies to an owner, an operator or a person that undertakes corrective action pursuant to section 49-1016, subsection C for any of the following:

1. A written interim determination or interim decision from the department on matters relating to:

(a) Owner or operator status.

(b) Preapproval or reimbursement from the underground storage tank revolving fund established by section 49-1015.

2. The department's approval, disapproval or notice of deficiency of:

(a) Site characterization reports.

(b) Corrective action plans for soil or groundwater, or both.

B. An owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C shall receive reimbursement for reasonable attorney fees, consultant fees and costs that are actually incurred and not excessive in all proceedings that follow the interim

decision or interim determination pursuant to section 49-1091, if that party satisfies both of the following requirements:

1. Submitted a written notice of the disagreement to the department within thirty days pursuant to section 49-1091.

2. Requested and participated in a meeting with the department regarding decisions or determinations pursuant to section 49-1091, subsection A, paragraph 2 or subsection G, paragraph 1 or 2.

C. The attorney fees, consultant fees and costs shall be paid only for those amounts that are reasonable, actually incurred and not excessive in the portion of the proceedings that are the subject of the notice of disagreement in which the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C prevailed, including proceedings resulting in a favorable decision or determination from the department or in a judicial proceeding.

D. The reimbursement provided by subsection B of this section is subject to the following limitations:

1. Fees and costs shall not be paid if the department makes a favorable determination or decision on the issue appealed before or in the final decision or determination.

2. Fees and costs shall not be paid if all of the following conditions are met:

(a) Information requested pursuant to section 49-1053, subsection B or section 49-1091, subsection E is not provided to the department before the time the department issues a final decision or determination that is adverse to the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C.

(b) The final decision or determination is subsequently reversed or otherwise decided in favor of the person based on information previously requested by the department.

3. In an appeal of a determination regarding an application for preapproval or reimbursement from the underground storage tank revolving fund, attorney fees, consultant fees and costs paid pursuant to this subsection may not exceed the amount that is in dispute.

4. If information requested by the department pursuant to section 49-1053, subsection B or section 49-1091, subsection E is provided to the department before the department issues a final decision or determination that is adverse to the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C, and the final decision or determination is subsequently reversed or otherwise decided in favor of the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C based on that information, attorney fees, consultant fees and costs shall only be paid for those amounts actually incurred after the information was provided.

Chapter 7 LIGHT POLLUTION
Article 1 General Provisions

49-1101. Definitions

In this article, unless the context otherwise requires:

1. "Fully shielded" means that fixtures are shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

2. "Outdoor light fixture" means outdoor artificial illuminating devices, lamps and other devices, permanent or portable, used for

illumination or advertisement. Such devices shall include, but are not limited to, search, spot or flood lights for buildings and structures, recreational areas, parking lot lighting, landscape lighting, billboards and other signage and street lighting.

3. "Partially shielded" means that fixtures are shielded in such a manner that the bottom edge of the shield is below the plane of the center line of the lamp reducing light above the horizontal.

49-1102. Shielding of outdoor light fixtures; exemptions

A. All outdoor light fixtures shall be fully or partially shielded except incandescent fixtures of one hundred fifty watts or less and other sources of seventy watts or less. Streetlight fixtures are exempt from this requirement if the shielding is not available from the manufacturer.

B. This section does not apply to emergency lighting that is used by police, firefighters, correctional personnel or medical personnel and that is in operation as long as the emergency exists.

C. All outdoor lighting used for programs, projects or improvements of a city or town relating to the construction, reconstruction, improvement or maintenance of a street or highway are exempt.

D. All outdoor lighting used for construction or major renovation of municipal buildings, structures and facilities of a city or town are exempt.

49-1103. Nonconforming light fixtures

In addition to other exemptions provided in this article, outdoor light fixtures not meeting the provisions of this article shall be allowed provided such fixtures are extinguished between the hours of midnight and sunrise by an automatic shutoff device.

49-1104. Use of mercury vapor light fixtures

A. No new mercury vapor outdoor light fixtures shall be installed after the effective date of this section. No replacement equipment other than bulbs for mercury vapor lighting fixtures shall be sold in the state after January 1, 1991 and the use of mercury vapor light fixtures is prohibited after January 1, 2011.

B. The provisions of this section shall not apply to outdoor light systems erected prior to 1950.

49-1105. Airport lighting

Nothing in this article shall apply to navigational lighting systems at airports.

49-1106. Exemption of cities, towns and counties

The provisions of this article are cumulative and supplemental and shall not apply within any county, city or town which by ordinance or resolution has adopted provisions restricting light pollution which are equal to or more stringent than the provisions of this chapter.

Chapter 8 WATER INFRASTRUCTURE FINANCE PROGRAM
Article 1 General Provisions

49-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Authority" means the water infrastructure finance authority of Arizona.

2. "Board" means the board of directors of the Arizona finance authority established by title 41, chapter 53, article 2.

3. "Bonds of a political subdivision" means bonds issued by a political subdivision as authorized by law.

4. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the water quality act of 1987 (P.L. 100-4; 101 Stat. 7).

5. "Drinking water facility" means a community water system or a nonprofit noncommunity water system as defined in the safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in this state. For purposes of this chapter, drinking water facility does not include water systems owned by federal agencies.

6. "Financial assistance loan repayment agreement" means an agreement to repay a loan provided to design, construct, acquire, rehabilitate or improve water or wastewater infrastructure, related property and appurtenances or a loan provided to finance a water supply development project.

7. "Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

8. "Nonpoint source project" means a project designed to implement a certified water quality management plan.

9. "Political subdivision" means a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects.

10. "Safe drinking water act" means the federal safe drinking water act of 1974 (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.

11. "Technical assistance loan repayment agreement" means either of the following:

(a) An agreement to repay a loan provided to develop, plan and design water or wastewater infrastructure, related property and appurtenances. The agreement shall be for a term of not more than three years and the maximum amount that may be borrowed is limited to not more than five hundred thousand dollars.

(b) An agreement to repay a loan provided to develop, plan or design a water supply development project.

12. "Wastewater treatment facility" means a treatment works, as defined in section 212 of the clean water act, that is located in this state and that is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the clean water act.

13. "Water provider" means any of the following:

(a) A municipal water delivery system as defined in section 42-5301, paragraphs 1 and 3.

(b) A municipal water delivery system as defined in section 42-5301, paragraph 2, which has entered into a partnership with a city, town or county for a water supply augmentation plan.

(c) A county water augmentation authority established under title 45, chapter 11.

(d) A county water authority established under title 45, chapter 13.

(e) An Indian tribe.

(f) A community facilities district as established by title 48, chapter 4.

(g) For purposes of funding from the water supply development revolving fund pursuant to article 3 of this chapter only, a county that enters into an intergovernmental agreement or other formal written agreement with a city, town or other water provider regarding a water supply development project.

14. "Water supply development" means either of the following:

(a) The acquisition of water or rights to or contracts for water to augment the water supply of a water provider, including any environmental or other reviews, permits or plans reasonably necessary for that acquisition.

(b) The development of facilities, including any environmental or other reviews, permits or plans reasonably necessary for those facilities, for any of the following purposes:

(i) Conveyance, storage or recovery of water.

(ii) Reclamation and reuse of water.

(iii) Replenishment of groundwater.

49-1202. Water infrastructure finance authority of Arizona

The water infrastructure finance authority of Arizona is established in the Arizona finance authority. The Arizona finance authority board of directors shall govern the water infrastructure finance authority of Arizona.

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to water providers for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance to water providers from monies in the water supply development revolving fund to finance water supply development.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

(c) Water providers that are issued to finance water supply development projects.

7. Provide linked deposit guarantees through third party lenders to political subdivisions, drinking water facilities and water providers.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.

10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of wastewater treatment facility, drinking water facility and nonpoint source project financial assistance under this chapter, the administration of the clean water revolving fund and the drinking water revolving fund and the issuance of water quality bonds.

11. Subject to title 41, chapter 4, article 4, hire a director and staff for the authority.

12. Contract for the services of outside advisors, attorneys, consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with the development or financing of wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to water providers in connection with the planning or design of water supply development projects. A single grant shall not exceed one hundred thousand dollars. Assistance provided under a technical assistance loan repayment

agreement shall be repaid not more than three years after the date that the monies are advanced to the applicant. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any water supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of water supply development fund project financial assistance under this chapter and the administration of the water supply development revolving fund.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 8 of this section in the appropriate fund as prescribed by the grant or other financial assistance agreement.

E. Disbursements of monies by the water infrastructure finance authority pursuant to a financial assistance agreement are not subject to title 41, chapter 23.

F. For the purposes of the safe drinking water act and the clean water act, the department of environmental quality is the state agency with primary responsibility for administration of this state's public water system supervision program and water pollution control program and, in consultation with other appropriate state agencies as appropriate, is the lead agency in establishing assistance priorities as prescribed by section 49-1224, subsection B, paragraph 3, section 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B, paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201.

49-1204. Annual audit and report

A. The board shall cause an audit to be made of the funds administered by the authority. The audit shall be conducted by a certified public accountant within one hundred twenty days after the end of the fiscal year. The board shall immediately file a certified copy of the audit with the auditor general.

B. The auditor general may make any further audits and examinations as deemed necessary and may take appropriate action relating to the audit or examination pursuant to title 41, chapter 7, article 10.1. If the auditor general takes no official action within twenty days after the audit is filed, the audit is deemed sufficient.

C. The board shall pay any fees and costs of the certified public accountant and auditor general under this section from the funds administered by the board.

D. Not later than January 1 of each year the board shall make an annual report of its activities, including a copy of the annual audit, to the governor, the president of the senate and the speaker of the house of representatives.

Article 2 Clean Water Revolving Fund, Drinking Water Revolving Fund and Hardship Grant Fund Financial Provisions

49-1221. Clean water revolving fund

A. The clean water revolving fund is established to be maintained in perpetuity consisting of:

1. Monies appropriated by the legislature for the clean water revolving fund.

2. Monies received for that purpose from the United States government, including capitalization grants.

3. Monies received from the issuance and sale of bonds under section 49-1261.

4. Monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties.

5. Interest and other income received from investing monies in the fund.

6. Gifts, grants and donations received for that purpose from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-1222. Clean water revolving fund; administration

A. The clean water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with the requirements of this article and the clean water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the clean water revolving fund and any other fund that is administered by the board.

49-1223. Clean water revolving fund; purposes; capitalization grants

A. Monies in the clean water revolving fund may be used for the following purposes:

1. Making wastewater treatment facility and nonpoint source project loans to political subdivisions and Indian tribes under section 49-1225.

2. Purchasing or refinancing debt obligations of political subdivisions or refinancing debt obligations of Indian tribes at or below market rates, provided that the debt obligation was issued after March 7, 1985 for the purpose of constructing, acquiring or improving wastewater treatment facilities or nonpoint source projects.

3. Providing financial assistance to political subdivisions to purchase insurance for local wastewater treatment facility or nonpoint source project bond obligations.

4. Paying the costs to administer the fund, but no more than four per cent of the aggregate of federal capitalization grants may be used to pay these costs. Monies from other sources may be used without limit to pay these costs.

5. Funding other programs that are authorized for federal monies deposited in the fund including programs relating to nonpoint source discharges.

6. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.

B. If the monies pledged to secure water quality bonds become insufficient to pay the principal and interest on the water quality bonds

that are guaranteed by the clean water revolving fund, the board shall direct the state treasurer to liquidate securities in the fund as may be necessary and apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

C. All proceeds of capitalization grants received from the United States pursuant to the clean water act shall be deposited in the capitalization grant transfer account and shall be used solely to provide financial assistance to political subdivisions and Indian tribes to construct, acquire, restore or rebuild wastewater treatment facilities, to purchase bond insurance or for any other purpose permitted by the clean water act including nonpoint source projects. All principal received on loan repayments made by borrowers pursuant to this section shall be deposited in the clean water revolving fund and shall be invested and used to provide additional financial assistance or shall be used to support the administration of the fund subject to the limits prescribed by the clean water act.

49-1224. Clean water revolving fund financial assistance; procedures; rules

A. In compliance with any applicable requirements, a political subdivision may apply to the authority for, accept and incur indebtedness as a result of a loan, or other financial assistance under section 49-1223, subsection A, paragraphs 1, 2 and 3, from the clean water revolving fund to support a wastewater treatment facility or nonpoint source project owned by the political subdivision. An Indian tribe may apply to the authority for, accept and incur indebtedness as a result of a loan or refinancing under section 49-1223, subsection A, paragraphs 1 and 2 from the clean water revolving fund to support a wastewater treatment facility or nonpoint source project owned by the Indian tribe. To qualify for financial assistance under this section the wastewater treatment facility or nonpoint source project must appear on this state's priority list pursuant to section 212 of the clean water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the

approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1225. Clean water revolving fund financial assistance; terms

A. Financial assistance from the clean water revolving fund shall be evidenced by a financial assistance agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for wastewater treatment facility and nonpoint source loans.

2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates and interest free loans under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend a financial assistance agreement, loan or bond after its execution or implement any policy that modifies terms and conditions or affects a previously executed financial agreement, loan or bond. The authority shall not impose a redemption premium or interest payment beyond the date the principal is paid as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not originally contain a redemption premium or interest payment beyond the date the principal is paid.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the clean water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to

the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1226. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1224 and 49-1225.

49-1241. Drinking water revolving fund

A. The drinking water revolving fund is established to be maintained in perpetuity consisting of:

1. Monies appropriated by the legislature for the drinking water revolving fund.

2. Monies received for that purpose from the United States government, including capitalization grants.

3. Monies received from the issuance and sale of bonds under section 49-1261.

4. Monies received from drinking water facilities as loan repayment, interest and penalties.

5. Interest and other income received from investing monies in the fund.

6. Gifts, grants and donations received for that purpose from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-1242. Drinking water revolving fund; administration; capitalization grant transfer account

A. The drinking water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with this article and the safe drinking water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the drinking water revolving fund and any other fund administered by the board.

49-1243. Drinking water revolving fund; purposes; capitalization grants

A. Monies in the drinking water revolving fund may be used for the following purposes:

1. Making drinking water facility loans including forgivable principal to political subdivisions of this state, Indian tribes under section 49-1245 and other eligible entities as determined by the board pursuant to the safe drinking water act.

2. Making drinking water facility loans under section 49-1244.

3. Purchasing or refinancing debt obligations of drinking water facilities at or below market rate if the debt obligation was issued after July 1, 1993 for the purpose of constructing, acquiring or improving drinking water facilities.

4. Providing financial assistance to drinking water facilities to purchase insurance for local drinking water facility bond obligations.

5. Paying the costs to administer the fund but not more than four per cent of the aggregate of federal capitalization grants may be used to pay these costs. Monies from other sources may be used without limit to pay these costs.

6. Funding other programs that are authorized pursuant to the safe drinking water act.

7. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.

B. If the monies pledged to secure water quality bonds become insufficient to pay the principal and interest on the water quality bonds guaranteed by the drinking water revolving fund, the board shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

C. All proceeds of capitalization grants received from the United States pursuant to the safe drinking water act shall be deposited in the capitalization grant transfer account and shall be used solely to make loans to drinking water facilities to construct, acquire, restore or rebuild these facilities, to purchase bond insurance or for any other purpose permitted by the safe drinking water act. All principal received on loan repayments made by borrowers under this section shall be deposited in the drinking water revolving fund and shall be invested, used to provide financial assistance or used to support the administration of the fund subject to the limits defined in the safe drinking water act.

49-1244. Drinking water revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, a drinking water facility may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance pursuant to section 49-1243, subsection A, paragraphs 2, 3 and 4 from the drinking water revolving fund to construct, acquire or improve a drinking water facility. To qualify for financial assistance pursuant to this section, the drinking water facility must appear on this state's priority list pursuant to the safe drinking water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1245. Drinking water revolving fund financial assistance; terms

A. A loan from the drinking water revolving fund shall be evidenced by a loan repayment agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for drinking water facility loans.

2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate

for similar types of loans. The authority may also provide for flexible interest rates, interest free loans and forgivable principal under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend the financial assistance agreement, loan or bond after its execution. The authority shall not impose a redemption premium as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not contain a redemption premium.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the drinking water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1246. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1244 and 49-1245.

49-1261. Water quality bonds

A. The authority, through the board of directors, may issue negotiable water quality bonds in a principal amount that in its opinion is necessary to provide sufficient monies for financial assistance under this article, maintaining sufficient reserves to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article.

B. The board must authorize the bonds by resolution. The resolution shall prescribe:

1. The rate or rates of interest and the denominations of the bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds shall be deposited in the appropriate accounts of the funds administered by the board.

D. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before issuing the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance. A copy of the notice shall be hand delivered or sent, by certified mail, return receipt requested, to the director of the department of administration on or before the last day of publication.

E. To secure any bonds authorized by this section, the board by resolution may:

1. Provide that bonds issued under this section may be secured by a first lien on all or part of the monies paid into the appropriate account or subaccount of the funds administered by the authority.
2. Pledge or assign to or in trust for the benefit of the holder or holders of the bonds any part or appropriate account or subaccount of the monies in the funds as is necessary to pay the principal and interest of the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Do any other matters that in any way may affect the security and protection of the bonds.

F. The members of the board or any person executing the bonds are not personally liable for the payment of the bonds. The bonds are valid and

binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board.

G. The board, out of any available monies, may purchase bonds, which may be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.

2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

49-1262. Water quality bonds; purpose

A. Water quality bonds may be issued to provide financial assistance, to provide matching state monies for the clean water revolving fund and the drinking water revolving fund, to increase the capitalization of the clean water revolving fund and to increase the capitalization of the drinking water revolving fund to accomplish the purposes stated in sections 49-1223 and 49-1243. These bonds may be secured by any monies received or to be received in the clean water revolving fund and the drinking water revolving fund. Amounts in the clean water revolving fund may be used to cure defaults on loans made from the drinking water revolving fund and amounts in the drinking water revolving fund may be used to cure defaults on loans made from the clean water revolving fund to the extent permitted by applicable federal law.

B. Any pledge made under this article is valid and binding from the time when the pledge is made. The monies pledged and received to be placed in the appropriate fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any such lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

C. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

49-1263. Bond obligations of the authority

Bonds issued under this article are obligations of the water infrastructure finance authority of Arizona, are payable only according to their terms and are not obligations general, special or otherwise of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

49-1264. Certification of bonds by attorney general

The board may submit any water quality bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. On submission the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. If the proceedings comply with this article, and if the attorney general determines

that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

49-1265. Water quality bonds as legal investments

Water quality bonds issued under this article are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest. The bonds are also securities that may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

49-1266. Agreement of state

This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the water infrastructure finance authority of Arizona or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

49-1267. Hardship grant fund

A. The hardship grant fund is established to be administered by the authority consisting of:

1. Monies received for that purpose from the United States government, including monies that are awarded to this state pursuant to title II of the clean water act and that are no longer obligated to the construction grants program.

2. Gifts, grants and other donations received for that purpose from public or private sources.

3. Monies appropriated by the legislature for the hardship grant program.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. The board shall administer the fund pursuant to rule and in compliance with this section and guidance from the United States government.

D. Monies in the fund may be used for the following purposes:

1. Providing hardship grants to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities.

2. Providing training and technical assistance related to the operation and maintenance of wastewater systems.

E. The board shall use the monies and other assets in the fund only for the purposes authorized by this article.

F. The board shall establish a hardship grant program account and as many other accounts and subaccounts as required to administer the hardship grant fund.

G. All proceeds of hardship grant program monies that are received from the United States shall be deposited in the hardship grant fund and shall be used only to provide grants and technical assistance to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities.

49-1268. Hardship grant financial assistance

A. In compliance with any applicable requirements:

1. A political subdivision or Indian tribe may apply to the authority for and accept financial and technical assistance pursuant to section 49-1267, subsection C. To qualify for financial assistance pursuant to this section, the political subdivision's or Indian tribe's project must appear on this state's clean water revolving fund priority list.

2. The applicant must be a community in a rural area that complies with both of the following:

(a) The community has a population of three thousand persons or less as determined by the most recent United States decennial census.

(b) The community lacks centralized wastewater treatment or collection systems or needs improvements to its treatment systems.

B. In compliance with any applicable requirement, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded including requirements for local participation in project cost, if deemed advisable.

3. Determine the order and priority of projects assisted pursuant to this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within sixty days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on those assurances that the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

D. The approval of financial assistance shall be conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

49-1269. Short-term emergency loan agreements; conditions

A. The authority, through its board, may enter into short-term emergency loan agreements with political subdivisions or Indian tribes under the following conditions:

1. The term of the loan does not exceed one year.

2. The dollar amount of the loan does not exceed two hundred fifty thousand dollars for each borrower for each emergency event.

3. The purpose of the loan is to provide assistance for designing, redesigning, engineering, reengineering, constructing or reconstructing water or wastewater systems that have failed as the result of a disaster, a natural disaster or a catastrophic event.

4. The disaster, natural disaster or catastrophic event is memorialized in a declaration of emergency by the governor or the federal emergency management agency.

B. Subject to board approval, for any loan made pursuant to this section, the authority shall execute appropriate and binding legal agreements with the borrower that require repayment of monies from eligible sources of repayment. Notwithstanding any other statute, a loan may be made and an obligation to repay may be incurred pursuant to this section without a vote of the electors of the political subdivision or Indian tribe.

Article 3 Water Supply Development Revolving Fund Financial Provisions

49-1271. Water supply development revolving fund; legislative intent

A. The water supply development revolving fund is established to be maintained in perpetuity consisting of:

1. Monies received from the issuance and sale of water supply development bonds under section 49-1278.

2. Monies appropriated by the legislature to the water supply development revolving fund.

3. Monies received for water supply development purposes from the United States government.

4. Monies received from water providers as loan repayments, interest and penalties.

5. Interest and other income received from investing monies in the fund.

6. Gifts, grants and donations received for water supply development purposes from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. The legislature finds that many water providers in this state, particularly in rural areas, lack access to sufficient water supplies to meet their long-term water demands and need financial assistance to construct water supply projects and obtain additional water supplies. It is the intent of the legislature that the water supply development revolving fund established by this section be used to provide financial assistance to these water providers under the terms set forth in this article.

49-1272. Water supply development revolving fund; administration

A. The board shall administer the water supply development revolving fund.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies and other assets in the fund shall be used solely for the purposes authorized by this article.

49-1273. Water supply development revolving fund; purposes; limitation

A. Monies in the water supply development revolving fund may be used for the following purposes:

1. Making water supply development loans to water providers in this state under section 49-1274 for water supply development purposes.

2. Making loans or grants to water providers for the planning or design of water supply development projects. A single grant shall not exceed one hundred thousand dollars.

3. Purchasing or refinancing debt obligations of water providers at or below market rate if the debt obligation was issued for a water supply development purpose.

4. Providing financial assistance to water providers with bonding authority to purchase insurance for local bond obligations incurred by them for water supply development purposes.

5. Paying the costs to administer the fund.

6. Providing linked deposit guarantees through third party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the committee, at a rate of return on the deposit approved by the committee and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.

B. If the monies pledged to secure water supply development bonds issued pursuant to section 49-1278 become insufficient to pay the principal and interest on the water supply development bonds guaranteed by the water supply development revolving fund, the authority shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

C. Monies in the water supply development revolving fund shall not be used to provide financial assistance to a water provider, other than an Indian tribe, unless one of the following applies:

1. The board of supervisors of the county in which the water provider is located has adopted the provision authorized by section 11-823, subsection A.

2. The water provider is located in a city or town and the legislative body of the city or town has enacted the ordinance authorized by section 9-463.01, subsection O.

3. The water provider is located in an active management area established pursuant to title 45, chapter 2, article 2.

4. The water provider is located outside of an active management area and either of the following applies:

(a) The director of water resources has designated the water provider as having an adequate water supply pursuant to section 45-108.

(b) The water provider will use the financial assistance for a water supply development project and the director of water resources has determined pursuant to section 45-108 that there is an adequate water supply for all subdivided land that will be served by the project and for which a public report was issued after the effective date of this amendment to this section.

49-1274. Water supply development revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, a water provider may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance pursuant to section 49-1273 from the water supply development revolving fund for water supply development purposes. In compliance with any applicable requirements, a water provider may also apply to the authority for and accept grants, staff assistance or technical assistance for the planning or design of a water supply development

project. A water provider that applies for and accepts a loan or other financial assistance under this article is not precluded from applying for and accepting a loan or other financial assistance under article 2 of this chapter or under any other law.

B. The authority, in consultation with the committee, shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include:

(a) A determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the committee, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

(b) A determination of the applicant's legal capability to enter into a loan repayment agreement.

(c) A determination of the applicant's financial ability to construct, operate and maintain the project if it receives the financial assistance.

(d) A determination of the applicant's ability to manage the project.

(e) A determination of the applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.

(f) A determination of the applicant’s ability to acquire any necessary regulatory permits.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water supply development issues, including the following:

(a) Existing, near-term and long-term water demands of the water provider compared to the existing water supplies of the water provider.

(b) Existing and planned conservation and water management programs of the water provider, including watershed management or protection.

(c) Benefits of the project.

(d) The sustainability of the water supply to be developed through the project.

(e) The water provider's need for financial assistance.

(f) The cost-effectiveness of the project.

C. The committee shall review on its merits each application received and shall inform the applicant of the committee's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the committee shall notify the applicant, stating the reasons. If the application is approved, the committee may condition the approval on assurances the committee deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

D. On approval of an application under this section by the committee, the authority shall use monies in the water supply development revolving fund to finance the project.

49-1275. Water supply development revolving fund financial assistance; terms

A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the water provider has bonding authority, or by a financial assistance agreement, delivered to and held by the authority.

B. A loan under this section shall:

1. Be repaid not more than forty years after the date incurred.

2. Require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. If the loan is for construction of water supply development facilities, the authority may provide that loan interest accruing during construction and one year after completion of the construction be capitalized in the loan.

3. Be conditioned on the establishment of a dedicated revenue source for repaying the loan.

C. The authority, in consultation with the committee, shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority, on recommendations from the committee, may adopt rules that provide for flexible interest rates and interest free loans. All financial assistance agreements or bonds of a water provider shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date.

D. The approval of a loan is conditioned on a written commitment by the water provider to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. A loan made to a water provider under this section may be secured additionally by an irrevocable pledge of any shared state revenues due to the water provider for the duration of the loan as prescribed by a resolution of the committee. If the committee requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements, the authority shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a water provider fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting water provider that the water provider has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection F of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the water provider.

F. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting water provider from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the water supply development revolving fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the water provider if so certified by the defaulting water provider to the state treasurer and the authority. The water provider shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1276. Enforcement; attorney general

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to sections 49-1274 and 49-1275.

49-1277. Water supply development bonds

A. The authority may issue negotiable water supply development bonds in a principal amount necessary to provide sufficient monies for those projects approved under this article and including such items as maintaining sufficient reserves to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article. The board shall issue the bonds pursuant to subsections C and D.

B. The board shall authorize the bonds by resolution. The resolution shall prescribe:

1. The rate or rates of interest and the denominations of the bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds shall be deposited in the appropriate accounts of the funds administered by the authority.

D. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before issuing the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance. A copy of the notice shall be hand delivered or sent, by certified mail, return receipt requested, to the director of the department of administration on or before the last day of publication.

E. To secure any bonds authorized by this section, the board by resolution may:

1. Provide that bonds issued under this section may be secured by a first lien on all or part of the monies paid into the appropriate account or subaccount of the funds administered by the authority.
2. Pledge or assign to or in trust for the benefit of the holder or holders of the bonds any part or appropriate account or subaccount of the monies in the funds as is necessary to pay the principal and interest of the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Do any other matters that in any way may affect the security and protection of the bonds.

F. Any member of the board, any member of the committee or any person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board and the committee.

G. The board, out of any available monies, may purchase bonds, which may be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.

2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

49-1278. Water supply development bonds; purpose

A. Water supply development bonds may be issued to provide financial assistance under this article and to increase the capitalization of the water supply development revolving fund to accomplish the purposes stated in section 49-1273. These bonds may be secured by any monies received or to be received in the water supply development revolving fund. Amounts in the water supply development revolving fund may be used to cure defaults on loans made from the water supply development revolving fund to the extent otherwise permitted by law.

B. Any pledge made under this article is valid and binding from the time when the pledge is made. The monies pledged and received to be placed in the appropriate fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any such lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

C. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

49-1279. Bond obligations of the authority

Bonds issued under this article are obligations of the water infrastructure finance authority of Arizona, are payable only according to their terms and are not general obligations, special obligations or otherwise of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

49-1280. Certification of bonds by attorney general

The board may submit any water supply development bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. On submission, the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will

constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

49-1281. Water supply development bonds as legal investments

Water supply development bonds issued under this article are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest. The bonds are also securities that may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

49-1282. Agreement of state

This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the water infrastructure finance authority of Arizona or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

Chapter 9 NATURAL GAS STORAGE FACILITIES
Article 1 General Provisions

49-1301. Definition of natural gas storage facility

In this chapter, unless the context otherwise requires, "natural gas storage facility" means a facility that is either underground or above ground with a capacity of at least five hundred thousand cubic feet and that is used primarily for the storage of natural gas, excluding liquefied natural gas.

49-1302. Natural gas storage facilities; limitation

A natural gas storage facility shall not be located within a county with a population of more than one million five hundred thousand persons, if the facility is located within nine miles of an active duty military air force base that has pilot training as its primary mission.

49-1303. Exemption of political subdivisions

The provisions of this chapter are cumulative and supplemental and do not apply to a political subdivision that by ordinance or resolution has adopted provisions restricting natural gas storage facilities that are at least as stringent as the restrictions in this chapter.

Chapter 10 ENVIRONMENTAL AUDIT PRIVILEGE
Article 1 General Provisions

49-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Actual harm" means damage, loss or injury.

2. "Audit report" means an audit report prescribed by section 49-1402.

3. "Environmental law" means a federal, state or local law, rule, regulation or ordinance, or a permit issued under a federal, state or local law, rule, regulation or ordinance, relating to protection of the environment.

4. "Organization" means a company, corporation, political subdivision, firm, enterprise or institution, or any part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration. For organizations with more than one operating unit, a single operating unit may be defined as an organization.

5. "Person" has the same meaning prescribed in section 49-201.

6. "Regulated facility or operation" means a facility or operation that is regulated under an environmental law.

49-1402. Audit report; contents

A. An audit report shall include each document and communication, other than those set forth in section 49-1406, that is created for an environmental audit to evaluate compliance with environmental laws.

B. An audit report may include the following:

1. A report prepared by an auditor, consultant, monitor or other similar person, which may include:

(a) A description of the scope of the audit.

(b) The information gained in the audit and findings, conclusions and recommendations.

(c) Exhibits and appendices.

2. Memoranda and documents analyzing all or a portion of the materials described by subsection C, paragraph 1 of this section or discussing implementation issues.

3. An implementation plan or tracking system to correct past noncompliance, improve current compliance or prevent future noncompliance.

C. The types of exhibits and appendices that may be contained in an audit report include supporting information that is collected or developed for the primary purpose of and gathered in the course of an environmental audit, including:

1. Interviews with current or former employees.

2. Field notes and records of observations.

3. Findings, opinions, suggestions, conclusions, guidance, notes, drafts and memoranda.

4. Legal analyses.

5. Drawings.

6. Photographs.

7. Laboratory analyses and other analytical data.

8. Computer generated or electronically recorded information.

9. Maps, charts, graphs and surveys.

10. Other communications associated with an environmental audit.

D. To facilitate identification, each document in an audit report should be labeled "compliance report: privileged document" or labeled with words of similar import. The failure to label a document does not constitute

a waiver of the audit privilege or create a presumption that the privilege does or does not apply.

E. Once initiated, an audit shall be completed within a reasonable time not to exceed six months unless an extension is based on reasonable grounds.

49-1403. Privilege

A. Except as provided in sections 49-1404, 49-1405 and 49-1406, any part of an audit report is privileged and is not admissible as evidence or subject to discovery in any of the following:

1. A civil action, whether legal or equitable.

2. An administrative proceeding.

B. When called or subpoenaed as a witness, a person cannot be compelled to testify or produce a document related to an audit if both of the following apply:

1. The testimony or document discloses any privileged part of an audit report or any item listed in section 49-1402.

2. For the purposes of this subsection only, the person is:

(a) A person who conducted any portion of the audit but who did not personally observe the physical events.

(b) A person to whom the audit results are disclosed under section 49-1404, subsection B.

(c) A custodian of the audit results.

C. A person who conducts or participates in the preparation of an environmental audit and who has actually observed physical events of violation may testify regarding those events but may not be compelled to testify about or produce documents related to any privileged part of an audit or any item listed in section 49-1402.

D. A state agency employee may not request, review or otherwise use an audit report during an agency inspection of a regulated facility or operation or an activity of a regulated facility or operation.

E. A party asserting the privilege prescribed in this section has the burden of establishing the applicability of the privilege.

49-1404. Exception; waiver; violation; classification

A. The privilege prescribed in section 49-1403 does not apply to the extent the privilege is expressly waived by the owner or operator who prepared the audit report or caused the report to be prepared.

B. Disclosure of an audit report or any information generated by an environmental audit does not waive the privilege established by section 49-1403, if the disclosure complies with any of the following:

1. Is made to address or correct a matter raised by the environmental audit and is made only to:

(a) A person employed by the owner or operator, including temporary and contract employees.

(b) A legal representative of the owner or operator.

(c) An officer or director of the regulated facility or operation or a partner of the owner or operator.

(d) An independent contractor retained by the owner or operator, including its independent external auditors.

2. Is made under the terms of a confidentiality agreement between the person for whom the audit report was prepared or the owner or operator of the audited facility or operation and any of the following:

(a) A partner or potential partner of the owner or operator of the regulated facility or operation.

(b) A transferee or potential transferee of the regulated facility or operation.

(c) A lender or potential lender for the regulated facility or operation.

(d) A governmental official of a state.

(e) A person or entity engaged in the business of insuring, underwriting or indemnifying the facility or operation.

3. Is made under a claim of confidentiality to a governmental official or agency by the person for whom the audit report was prepared or by the owner or operator.

C. A party to a confidentiality agreement described in subsection B, paragraph 2 of this section who violates that agreement is liable for damages caused by the disclosure and for any other penalties prescribed in the confidentiality agreement.

D. Information that is disclosed under subsection B, paragraph 3 of this section is confidential and is not subject to disclosure. An entity, employee or official of this state who discloses information in violation of this subsection is guilty of a class 1 misdemeanor. It is an affirmative defense to the clerical dissemination of a privileged audit report that the report was not clearly labeled "compliance report: privileged document" or labeled with words of similar import as prescribed by section 49-1402. The lack of labeling may not be raised as a defense if the entity, employee or official knew or had reason to know that the document was a privileged audit report.

E. This section shall not be construed to circumvent the protections provided by federal or state law for individuals who disclose information to law enforcement authorities.

49-1405. Exception; disclosure required by court or administrative hearing official

A. A court or administrative hearing official with competent jurisdiction may require disclosure of a portion of an audit report in a civil or administrative proceeding if the court or administrative hearing official determines after an in camera review consistent with the appropriate rules of procedure that any of the following applies:

1. The privilege is asserted for a fraudulent purpose.

2. The portion of the audit report is not subject to the privilege under section 49-1406.

3. The portion of the audit report shows evidence of noncompliance with an environmental law and appropriate efforts to achieve compliance with the law were not promptly initiated and pursued with reasonable diligence after the discovery of the noncompliance.

B. A party seeking disclosure under this section has the burden of proving that subsection A of this section applies.

C. Notwithstanding any other law, a disclosure decision of an administrative hearing official under subsection A of this section is directly appealable to a court of competent jurisdiction without disclosure of the audit report to any person unless so ordered by the court.

D. A person claiming the privilege to avoid the requested disclosure of materials is subject to sanctions as prescribed by the Arizona rules of civil procedure or to a fine not to exceed ten thousand dollars if the court finds, consistent with fundamental due process, that the person intentionally or knowingly claimed the privilege for nonprivileged materials as prescribed by section 49-1406.

E. A court determination under this section is subject to interlocutory appeal to an appropriate appellate court.

49-1406. Nonprivileged materials

A. The privilege described in this chapter does not apply to:

1. A document, communication, datum or report or other information required by a regulatory agency to be collected, developed, maintained or reported under an environmental law.

2. Information obtained by observation, sampling or monitoring by a regulatory agency.

3. Information obtained from a source not involved in the preparation of the environmental audit report.

B. This section does not limit the right of a person to agree to conduct and disclose an audit report.

49-1407. Review of privileged document by governmental authority

A. If an audit report is obtained, reviewed or used in a criminal proceeding, the administrative or civil evidentiary privilege established by this chapter is not waived or eliminated for any other purpose.

B. Notwithstanding the privilege established by this chapter, a regulatory agency may review information in an audit report that is required to be available under a specific state or federal law, but that review does not waive or eliminate the administrative or civil evidentiary privilege except for materials prescribed in section 49-1406.

C. If information is required to be available to the public by operation of a specific state or federal law, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure before obtaining that information pursuant to subsection A or B of this section.

D. If privileged information is disclosed under subsection B or C of this section, on the motion of a party, a court or the appropriate administrative official shall suppress evidence offered in any civil or administrative proceeding that arises or is derived from review, disclosure or use of information obtained under this section if the review, disclosure, or use is not authorized under section 49-1406. A party that has received information under subsection B or C of this section has the burden of proving that the evidence offered did not arise and was not derived from the review of privileged information.

49-1408. Construction; no immunity

Nothing in this article shall be construed to provide civil or criminal immunity to a person or organization.

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ADEQ
Arizona Department of Environmental Quality

State Application Revision for Safe Drinking Water Act Primacy Authority:

APPENDIX B – Relevant Arizona Rules

Water Quality Division

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Replacement Check List
For rules filed within the
3rd Quarter
July 1- September 30, 2016

THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

Title 9. Health Services

Chapter 14. Department of Health Services - Laboratories

Supplement Release Quarter: 16-3

Sections, Parts, Exhibits, Tables or Appendices modified

R9-14-601 through R9-14-603, R9-14-605 through R9-14-617, R9-14-620, R9-14-621, Tables 1 and 6.1, Exhibits I and I, Tables 6.2A through 6.2E, and Tables 6.3 and 6.4

REMOVE Supp. 15-4	REPLACE with Supp. 16-3
Pages: 1 - 55	Pages: 1 – 66

The Department's contact person who can answer questions about rules in Supp. 16-3:

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Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may have changed and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Public Services Division

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
PUBLIC SERVICES DIVISION
September 30, 2016

RULES

A.R.S. § 41-1001(17) states: "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules are often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State's website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor's notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1., R1-1-113.

Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES - LABORATORIES

ARTICLE 1. LABORATORY STANDING ORDERS

Article 1 contains rules which were exempt from the regular rulemaking process under Laws 2015, Ch. 222, Sec. 3. Although exempt the Department posted proposed amendments on its website and solicited public comments at 21 A.A.R. 2422 in a Notice of Public Information. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

Article 1, consisting of Sections R9-14-101 through R9-14-103, made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3).

Article 1, consisting of Sections R9-14-101 through R9-14-115, expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

Section
R9-14-101. Definitions 3
R9-14-102. Laboratory Standing Orders 3
R9-14-103. Renumbered 3
R9-14-104. Expired 3
R9-14-105. Expired 3
R9-14-106. Expired 3
R9-14-107. Expired 3
R9-14-108. Expired 3
R9-14-109. Expired 3
R9-14-110. Expired 3
R9-14-111. Expired 3
R9-14-112. Expired 3
R9-14-113. Expired 3
R9-14-114. Expired 3
R9-14-115. Expired 4
R9-14-116. Repealed 4

ARTICLE 2. EXPIRED

Article 2, consisting of Sections R9-14-211 through R9-14-215, expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

Section
R9-14-201. Reserved 4
R9-14-202. Reserved 4
R9-14-203. Reserved 4
R9-14-204. Reserved 4
R9-14-205. Reserved 4
R9-14-206. Reserved 4
R9-14-207. Reserved 4
R9-14-208. Reserved 4
R9-14-209. Reserved 4
R9-14-210. Reserved 4
R9-14-211. Expired 4
R9-14-212. Expired 4
R9-14-213. Expired 4
R9-14-214. Expired 4
R9-14-215. Expired 4

ARTICLE 3. EXPIRED

Article 3, consisting of Sections R9-14-301 through R9-14-302, expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Section
R9-14-301. Expired 4
R9-14-302. Expired 4

ARTICLE 4. EXPIRED

Section
R9-14-401. Expired 4
R9-14-402. Expired 4
R9-14-403. Expired 4
R9-14-404. Expired 5
R9-14-405. Expired 5
R9-14-406. Expired 5
R9-14-407. Expired 5
R9-14-408. Expired 5
R9-14-409. Expired 5
R9-14-410. Repealed 6
R9-14-411. Renumbered 6
R9-14-412. Repealed 6
Exhibit 1. Expired 6
Exhibit 2. Expired 6
Exhibit 2A. Expired 6
Exhibit 3. Expired 6
Exhibit 3A. Expired 6
Exhibit 4. Expired 6
Exhibit 5. Expired 6
Exhibit 6. Expired 6
Exhibit 6A. Expired 6
Exhibit A. Expired 6
Exhibit B. Expired 7
Exhibit C. Expired 7
Exhibit D. Expired 7
Exhibit E. Expired 7
Exhibit EE. Expired 7
Exhibit F. Expired 7
Exhibit G. Expired 7
Exhibit H. Expired 7
Exhibit I. Expired 7
Exhibit II. Expired 7
Exhibit J. Expired 7
Exhibit K. Expired 7
Exhibit KK. Expired 7
Exhibit L. Expired 7
Exhibit M. Expired 7
Exhibit N. Expired 7
Exhibit NN. Expired 7
Exhibit O. Expired 7
Exhibit OO. Expired 8
Exhibit OOO. Expired 8
Exhibit P. Expired 8
Exhibit P-EN. Expired 8
Exhibit PP. Expired 8
Exhibit PP-EN Expired 8
Exhibit Q. Expired 8
Exhibit Q-EN Expired 8
Exhibit QQ. Expired 8
Exhibit QQ-EN Expired 8
Exhibit R. Expired 8
Exhibit RR. Expired 8
Exhibit S. Expired 8
Exhibit T. Expired 8
Exhibit U. Expired 8
Exhibit UU. Expired 8
Exhibit V. Expired 8
Exhibit W. Expired 9
Exhibit WW. Expired 9
Exhibit WWW Expired 9

Exhibit WWW-EN Expired 9
Exhibit X. Expired..... 9
Exhibit Z. Expired..... 9

ARTICLE 5. RECODIFIED

Article 5, consisting of Sections R9-14-501 through R9-14-505, recodified to R9-13-201 through R9-13-205, effective August 31, 2005 (Supp. 05-3).

Section
R9-14-501. Recodified 9
R9-14-502. Recodified 9
R9-14-503. Recodified 9
R9-14-504. Recodified 9
R9-14-505. Recodified 9
R9-14-506. Reserved 9
R9-14-507. Reserved 9
R9-14-508. Reserved 9
R9-14-509. Reserved 9
R9-14-510. Reserved 9
R9-14-511. Repealed 9
R9-14-512. Renumbered 10
R9-14-513. Renumbered 10
R9-14-514. Renumbered 10
R9-14-515. Renumbered 10

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

Article 6, consisting of Sections R9-14-601 through R9-14-617 adopted effective December 20, 1991 (Supp. 91-4).

Article 6, consisting of Sections R9-14-601 through R9-14-607 repealed effective December 20, 1991 (Supp. 91-4).

Article 6 consisting of Sections R9-14-601 through R9-14-607 adopted effective August 16, 1985.

Section
R9-14-601. Definitions 10
R9-14-602. Exemptions from Applicability 12
R9-14-603. License Application and Process; Transferability 12
R9-14-604. Third Party Accreditation 14
R9-14-605. Compliance Monitoring 14
R9-14-606. Provisional Licensing 15
R9-14-607. Fees 15
R9-14-608. Installment Payment of Fees by Small Businesses 15
R9-14-609. Proficiency Testing 16
R9-14-610. Approved Methods and References 16
Table 1. Key Reference 16
R9-14-611. Compliance Testing for Drinking Water Parameters 22
R9-14-612. Compliance Testing for Wastewater Parameters .22
R9-14-613. Compliance Testing for Waste Parameters 22
R9-14-614. Compliance Testing for Air and Stack Parameters 23
R9-14-615. Quality Assurance 23
R9-14-616. Operation 24
R9-14-617. Laboratory Records and Reports 25
R9-14-618. Mobile Laboratories 26
R9-14-619. Out-of-State Environmental Laboratory Licensing 26
R9-14-620. Changes to a License 26
R9-14-621. Time-frames 26
Table 6.1. Time-frames (in days) 27
Exhibit I. Repealed 28
Table 1. Repealed 28
Table 2. Repealed 28
Exhibit II. Repealed 28
Table 1. Repealed 28
Table 6.2.A. Approved Methods and Method Fees for Drinking Water Parameters 29
Table 6.2.B. Approved Methods and Method Fees for Wastewater Parameters 42
Table 6.2.C. Approved Methods and Method Fees for Waste Parameters 52
Table 6.2.D. Approved Methods and Method Fees for Air and Stack Parameters 59
Table 6.2.E. Methods Director-Approved under R9-14-610(E) and Method Fees 63
Table 6.3. Instrumentation Fees 64
Table 6.4. Alternate Default Limits 64

ARTICLE 7. HEALTH SCREENING SERVICES

Article 7, consisting of Sections R9-14-701 through R9-14-709, adopted effective December 2, 1993 (Supp. 93-4).

Section
R9-14-701. Health Screening Laboratory Services 65
R9-14-702. Expired 65
R9-14-703. Expired 65
R9-14-704. Expired 65
R9-14-705. Expired 65
R9-14-706. Expired 66
R9-14-707. Expired 66
R9-14-708. Expired 66
R9-14-709. Expired 66

ARTICLE 1. LABORATORY STANDING ORDERS

R9-14-101. Definitions

In this Article, unless otherwise specified:

1. "Clinical laboratory" means the same as in A.R.S. § 36-451.
2. "Laboratory standing order" means a written directive by a licensed practitioner to a clinical laboratory to perform a test.
3. "Licensed practitioner" means:
   a. A podiatrist licensed under A.R.S. Title 32, Chapter 7;
   b. A doctor of chiropractic licensed under A.RS. Title 32, Chapter 8;
   c. A doctor of medicine licensed under A.R.S. Title 32, Chapter 13 or licensed in another state;
   d. A doctor of naturopathic medicine licensed under A.R.S. Title 32, Chapter 14;
   e. A doctor of osteopathic medicine licensed under A.R.S. Title 32, Chapter 17 or licensed in another state;
   f. A homeopathic physician licensed under A.R.S. Title 32, Chapter 29;
   g. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2;
   h. A physician assistant who is licensed under Title 32, Chapter 25 and who has the supervising physician's delegation required in A.RS. § 32-2531; or
   i. A registered nurse practitioner licensed under A.R.S. Title 32, Chapter 15 and certified under A.A.C. R4-19-504.
4. "Patient" means an individual receiving services from a licensed practitioner.
5. "State" means the same as in A.R.S. § 36-841.
6. "Supervising physician" means the same as in A.RS. § 32-2501.
7. "Test" means a clinical laboratory's examination or analysis of material from an individual's body.

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3). Section amended by final exempt rulemaking at 21 A.A.R. 3237, effective November 24, 2015 (Supp. 15-4).

R9-14-102. Laboratory Standing Orders

A laboratory shall only perform a test based on a laboratory standing order if the laboratory standing order:

1. Specifies:
   a. The licensed practitioner's name, type of license, and licensing state;
   b. The patient's name;
   c. The date of the laboratory standing order;
   d. One or more tests; and
   e. The frequency of testing; and
2. Is dated no more than one year before the date of the test.

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3). Section repealed; new Section renumbered from R9-14-103 and amended by final exempt rulemaking at 21 A.A.R. 3237, effective November 24, 2015 (Supp. 15-4).

R9-14-103. Renumbered

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 11 A.A.R. 2734, effective July 1, 2005 (Supp. 05-3). Section R9-14-103 renumbered to R9-14-102 by final exempt rulemaking at 21 A.A.R. 3237, effective November 24, 2015 (Supp. 15-4).

R9-14-104. Expired

Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-105. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-106. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-107. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-108. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-109. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-110. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-111. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-112. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-113. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-114. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-115. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-116. Repealed

Historical Note

Adopted effective May 24, 1976 (Supp. 76-3). Repealed effective August 15, 1989 (Supp. 89-3).

ARTICLE 2. EXPIRED

R9-14-201. Reserved
R9-14-202. Reserved
R9-14-203. Reserved
R9-14-204. Reserved
R9-14-205. Reserved
R9-14-206. Reserved
R9-14-207. Reserved
R9-14-208. Reserved
R9-14-209. Reserved
R9-14-210. Reserved

R9-14-211. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-212. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-213. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-214. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-215. Expired

Historical Note

Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

ARTICLE 3. EXPIRED

R9-14-301. Expired

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-302. Expired

Historical Note

Adopted effective September 29, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

ARTICLE 4. EXPIRED

R9-14-401. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule identical to the emergency (Supp. 82-5). Former Section R9-14-411 renumbered without change as Section R9-14-401 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-401 repealed, new Section R9-14-401 renumbered from R9-14-402 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-402. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Amended Paragraph (11) as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended Paragraph (11) as a permanent rule effective August 27, 1984 (Supp. 84-4). Former Section R9-14-412 renumbered without change as Section R9-14-402 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-402 renumbered to R9-14-401, new Section R9-14-402 renumbered from R9-14-403 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-403. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-413 renumbered without change as Section R9-14-403 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-403 renumbered to R9-14-402, new Section R9-14-403 renumbered from R9-14-404 and amended effective August 27, 1992 (Supp. 92-3). Amended by emergency action effective June 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Amended again by emergency action effective September 16, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Amended again by emergency action effective December 13, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Emergency amendments permanently adopted effective February 28, 1994 (Supp. 94-1). Amended effective February 12, 1996 (Supp. 96-1). Amended by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Amended by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 for 180 days

(Supp. 05-2). Amended by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 for 180 days (Supp. 05-3). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 for 180 days (Supp. 05-4). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 for 180 days (Supp. 06-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-404. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as a permanent rule effective August 27, 1984 (Supp. 84-4). Former Section R9-14-414 renumbered and amended as Section R9-14-404 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-404 renumbered to R9-14-403, new Section R9-14-404 renumbered from R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Amended effective February 12, 1996 (Supp. 96-1). Amended by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Amended by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 for 180 days (Supp. 05-2). Amended by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 for 180 days (Supp. 05-3). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 for 180 days (Supp. 05-4). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 for 180 days (Supp. 06-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-405. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as a permanent rule effective August 27, 1984 (Supp. 84-4). Former Section R9-14-415 renumbered and amended as Section R9-14-405, Exhibits E through U amended, and Exhibits V through X adopted effective March 3, 1987 (Supp. 87-1). Former Section R9-14-405 renumbered to R9-14-404 and Exhibits E through X moved to end of Article, new Section R9-14-405 renumbered from R9-14-406 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-406. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-416 renumbered and amended as R9-14-406 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-406 renumbered to R9-14-405, new Section R9-14-406 renumbered from R9-14-407 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-407. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Correction to emergency adoption, subsection (C) should include Paragraph (4) as follows: "Receive a score of 70% or better on an examination administered by the Department." Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-417 renumbered and amended as Section R9-14-407 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-407 renumbered to R9-14-406, new Section R9-14-407 renumbered from R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-408. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency. Exhibits A and B initially adopted as part of the emergency amendment now adopted as part of the permanent rule (Supp. 82-5). Amended as an emergency effective 12:00 midnight, May 20, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as a permanent rule effective August 27, 1984. Exhibits C and D initially adopted as part of the emergency (Supp. 84-4). Editorial correction, Supp. 84-3, should read Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Former Section R9-14-418 renumbered without change as R9-14-408, Exhibits A through D amended effective March 3, 1987 (Supp. 87-1). Former Section R9-14-408 renumbered to R9-14-407 and Exhibits A through D moved to end of Article, new Section R9-14-408 renumbered from R9-14-409 and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-409. Expired

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4).

Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Section R9-14-419 renumbered without change as Section R9-14-409 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-409 renumbered to R9-14-408, new Section R9-14-409 renumbered from R9-14-411 and amended effective August 27, 1992 (Supp. 92-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-410. Repealed

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule identical to the emergency (Supp. 82-5). Former Section R9-14-420 renumbered without change as Section R9-14-410 effective March 3, 1987 (Supp. 87-1). Section R9-14-410 repealed effective August 27, 1992 (Supp. 92-3).

R9-14-411. Renumbered

Historical Note

Adopted prior to codification November 1974. Amended as an emergency effective July 19, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Amended as a permanent rule effective October 25, 1982; text of the amended rule similar to the emergency (Supp. 82-5). Former Section R9-14-421 renumbered and amended as Section R9-14-411 effective March 3, 1987 (Supp. 87-1). Former Section R9-14-411 renumbered to R9-14-409 effective August 27, 1992 (Supp. 92-3).

R9-14-412. Repealed

Historical Note

Adopted as an emergency effective 12:00 midnight, May 20, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as a permanent rule effective August 27, 1984 (Supp. 84-4). Editorial correction, Supp. 84-3, should read Amended as an emergency effective 12:00 midnight, May 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Former Section R9-14-422 renumbered and amended as Section R9-14-412 effective March 3, 1987 (Supp. 87-1). Section R9-14-412 repealed effective August 27, 1992 (Supp. 92-3).

Exhibit 1. Expired

Historical Note

Exhibit 1 made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 1 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 2. Expired

Historical Note

Exhibit 2 made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 2 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 2A. Expired

Historical Note

Exhibit 2A made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 2A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 3. Expired

Historical Note

Exhibit 3 made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 3 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 3A. Expired

Historical Note

Exhibit 3A made by emergency rulemaking at 11 A.A.R. 2224, effective May 31, 2005 (Supp. 05-2). Emergency renewed at 11 A.A.R. 5323, effective November 22, 2005 (Supp. 05-4). Exhibit 3A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 4. Expired

Historical Note

Exhibit 4 made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 (Supp. 06-1). Exhibit 4 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 5. Expired

Historical Note

Exhibit 5 made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 (Supp. 06-1). Exhibit 5 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 6. Expired

Historical Note

Exhibit 6 made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 (Supp. 06-1). Exhibit 6 expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit 6A. Expired

Historical Note

Exhibit 6A made by emergency rulemaking at 11 A.A.R. 3568, effective September 1, 2005 (Supp. 05-3). Emergency renewed at 12 A.A.R. 827, effective February 23, 2006 (Supp. 06-1). Exhibit 6A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit A. Expired

Historical Note

Exhibit A moved from Section R9-14-408 and amended

effective August 27, 1992 (Supp. 92-3). Exhibit A expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit B. Expired

Historical Note

Exhibit B moved from Section R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Exhibit B expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit C. Expired

Historical Note

Exhibit C moved from Section R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Exhibit C expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit D. Expired

Historical Note

Exhibit D moved from Section R9-14-408 and amended effective August 27, 1992 (Supp. 92-3). Exhibit D expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit E. Expired

Historical Note

Exhibit E moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit E expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit EE. Expired

Historical Note

Exhibit EE adopted effective August 27, 1992 (Supp. 92-3). Exhibit EE expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit F. Expired

Historical Note

Exhibit F moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit F expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit G. Expired

Historical Note

Exhibit G moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit G expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit H. Expired

Historical Note

Exhibit H moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit H expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit I. Expired

Historical Note

Exhibit I moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit I expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit II. Expired

Historical Note

Exhibit II adopted effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit II expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit J. Expired

Historical Note

Exhibit J moved from Section R9-14-405 and amended effective August 27, 1992 (Supp. 92-3). Exhibit J expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit K. Expired

Historical Note

Exhibit K moved from Section R9-14-405 and repealed, new Exhibit K renumbered from Exhibit M and amended effective August 27, 1992 (Supp. 92-3). Exhibit K expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit KK. Expired

Historical Note

Exhibit KK adopted effective August 27, 1992 (Supp. 92-3). Exhibit KK expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit L. Expired

Historical Note

Exhibit L moved from Section R9-14-405 and repealed, new Exhibit L renumbered from Exhibit N and amended effective August 27, 1992 (Supp. 92-3). Exhibit L expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit M. Expired

Historical Note

Exhibit M moved from Section R9-14-405 and renumbered to Exhibit K; new Exhibit M renumbered from Exhibit O and amended effective August 27, 1992 (Supp. 92-3). Exhibit M expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit N. Expired

Historical Note

Exhibit N moved from Section R9-14-405 and renumbered to Exhibit L, new Exhibit N renumbered from Exhibit R and amended effective August 27, 1992 (Supp. 92-3). Exhibit N expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit NN. Expired

Historical Note

Exhibit NN adopted effective August 27, 1992 (Supp. 92-3). Exhibit NN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit O. Expired

Historical Note

Exhibit O moved from Section R9-14-405 and renumbered to Exhibit M, new Exhibit O renumbered from

Exhibit S and amended effective August 27, 1992 (Supp. 92-3). Exhibit O expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit OO. Expired

Historical Note

Exhibit OO adopted effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit OO expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit OOO.Expired

Historical Note

Exhibit OOO adopted effective February 28, 1994 (Supp. 94-1). Exhibit OOO expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit P. Expired

Historical Note

Exhibit P moved from Section R9-14-405 and repealed, new Exhibit P renumbered from Exhibit T and amended effective August 27, 1992 (Supp. 92-3). Exhibit P expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit P-EN. Expired

Historical Note

New Exhibit P-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit P-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit PP. Expired

Historical Note

Exhibit PP adopted effective February 28, 1994 (Supp. 94-1). Exhibit PP expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit PP-EN. Expired

Historical Note

New Exhibit PP-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit PP-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit Q. Expired

Historical Note

Exhibit Q moved from Section R9-14-405 and repealed, new Exhibit Q renumbered from Exhibit U and amended effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit Q expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit Q-EN. Expired

Historical Note

New Exhibit Q-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit Q-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit QQ. Expired

Historical Note

Exhibit QQ adopted effective February 28, 1994 (Supp. 94-1). Exhibit QQ expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit QQ-EN. Expired

Historical Note

New Exhibit QQ-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit QQ-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit R. Expired

Historical Note

Exhibit R moved from Section R9-14-405 and renumbered to Exhibit N, New Exhibit R renumbered from Exhibit V and amended effective August 27, 1992 (Supp. 92-3). Exhibit R expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit RR. Expired

Historical Note

Exhibit RR adopted effective August 27, 1992 (Supp. 92-3). Exhibit RR expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit S. Expired

Historical Note

Exhibit S moved from Section R9-14-405 and renumbered to Exhibit O, new Exhibit S renumbered from Exhibit W and amended effective August 27, 1992 (Supp. 92-3). Exhibit S expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit T. Expired

Historical Note

Exhibit T moved from Section R9-14-405 and renumbered to Exhibit P, new Exhibit T renumbered from Exhibit X and amended effective August 27, 1992 (Supp. 92-3). Exhibit T expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit U. Expired

Historical Note

Exhibit U moved from Section R9-14-405 and renumbered to Exhibit Q, new Exhibit U adopted effective August 27, 1992 (Supp. 92-3). Exhibit U expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit UU. Expired

Historical Note

Exhibit UU adopted effective August 27, 1992 (Supp. 92-3). Exhibit UU expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit V. Expired

Historical Note

Exhibit V moved from Section R9-14-405 and renum-

bered to Exhibit R, new Exhibit V adopted effective August 27, 1992 (Supp. 92-3). Exhibit V expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit W. Expired

Historical Note

Exhibit W moved from Section R9-14-405 and renumbered to Exhibit S, new Exhibit W adopted effective August 27, 1992 (Supp. 92-3). Exhibit W expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit WW. Expired

Historical Note

Exhibit WW adopted effective August 27, 1992 (Supp. 92-3). Amended effective February 28, 1994 (Supp. 94-1). Exhibit WW expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit WWW. Expired

Historical Note

Exhibit WWW adopted effective February 28, 1994 (Supp. 94-1). Exhibit WWW expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit WWW-EN. Expired

Historical Note

New Exhibit WWW-EN made by emergency rulemaking at 7 A.A.R. 2509, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5364, effective November 9, 2001 (Supp. 01-4). Exhibit WWW-EN expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit X. Expired

Historical Note

Exhibit X moved from Section R9-14-405 and renumbered to Exhibit T effective August 27, 1992 (Supp. 92-3). New Exhibit X adopted effective February 12, 1996 (Supp. 96-1). Exhibit X expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit Y. Expired

Historical Note

Exhibit Y adopted effective February 12, 1996 (Supp. 96-1). Exhibit Y expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

Exhibit Z. Expired

Historical Note

Exhibit Y adopted effective February 12, 1996 (Supp. 96-1). Exhibit Z expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

ARTICLE 5. RECODIFIED

R9-14-501. Recodified

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-501 renumbered from R9-14-512 and amended effective June 14, 1990 (Supp. 90-2). Amended by emergency action effective October 27, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-4). Amended again by emergency action effective January 25, 1995, valid for 180 days (Supp. 95-1). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-201 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-502. Recodified

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-502 renumbered from R9-14-513 and amended effective June 14, 1990 (Supp. 90-2). Amended by emergency action effective October 27, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-4). Amended again by emergency action effective January 25, 1995, valid for 180 days (Supp. 95-1). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-202 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-503. Recodified

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-503 renumbered from R9-14-514 and amended effective June 14, 1990 (Supp. 90-2). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-203 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-504. Recodified

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-504 renumbered from R9-14-515 and amended effective June 14, 1990 (Supp. 90-2). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-204 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-505. Recodified

Historical Note

Adopted by emergency action effective October 27, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-4). Adopted again by emergency action effective January 25, 1995, valid for 180 days (Supp. 95-1). Adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 4965, effective January 1, 2002 (Supp. 01-4). Section recodified to R9-13-205 at 11 A.A.R. 3577, effective August 31, 2005 (Supp. 05-3).

R9-14-506. Reserved

R9-14-507. Reserved

R9-14-508. Reserved

R9-14-509. Reserved

R9-14-510. Reserved

R9-14-511. Repealed

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6).

Repealed effective June 14, 1990 (Supp. 90-2)

R9-14-512. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-512 renumbered to R9-14-501 effective June 14, 1990 (Supp. 90-2).

R9-14-513. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-512 renumbered to R9-14-502 effective June 14, 1990 (Supp. 90-2)

R9-14-514. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-514 renumbered to R9-14-503 effective June 14, 1990 (Supp. 90-2).

R9-14-515. Renumbered

Historical Note

Adopted effective November 2, 1979 (Supp. 79-6). Section R9-14-515 renumbered to R9-14-504 effective June 14, 1990 (Supp. 90-2).

ARTICLE 6. LICENSING OF ENVIRONMENTAL LABORATORIES

R9-14-601. Definitions

In addition to the definitions in A.R.S. § 36-495, the following definitions apply in this Article, unless otherwise specified:

1. "Acceptance criteria" means the range of satisfactory test results for a parameter.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Affiliate" means a business organization that:
   a. Controls or has the power to control the business organization that owns the laboratory,
   b. Is controlled by or could be controlled by the business organization that owns the laboratory, or
   c. Could be controlled by a third business organization that could also control the business organization that owns the laboratory.
4. "Alternate method" means an analytical test procedure or technique that is not an approved method and for which approval is requested under R9-14-610(C).
5. "Analyst" means an individual who performs compliance testing at a laboratory.
6. "Analyte" means the substance or chemical constituent being sought or measured in an analytical procedure.
7. "Applicant" means a person or persons requesting an initial or renewal license under R9-14-603, approval of an alternate method or method alteration under R9-14-610(C), or approval of an exemption under R9-14-615(D), and includes, as required under A.R.S. § 36-495.03(D), the owner and, if the owner is not the laboratory director, the laboratory director.
8. "Approved method" means an analytical test procedure or technique authorized by the Department to test for the presence of a particular contaminant or characteristic and includes:
   a. An alternate method approved by the Department under R9-14-610(E), and
   b. An analytical test procedure or technique currently authorized by the Department that is used with a method alteration approved by the Department under R9-14-610(E).
9. "ASTM" means American Society for Testing and Materials.
10. "Blind proficiency testing" means the Department's determination of a laboratory analyst's ability to analyze samples correctly, accomplished by submitting samples for testing in such a manner that the laboratory analyst is not aware that the proficiency testing is occurring.
11. "Business organization" means an entity such as a sole proprietorship, an unincorporated association, a corporation, a limited liability company, a partnership, or a governmental entity.
12. "Calibration curve" means a graphical display of the functional relationship between the instrument or analytical device response and the analyte amount.
13. "Calibration model" means a mathematical form for a calibration curve.
14. "CCC" means calibration check compounds.
15. "CCV" means continuing calibration verification standard.
16. "Client" means a person that submits a sample to a laboratory for compliance testing.
17. "Contaminant" means a matter, pollutant, hazardous substance, or other substance for which a sample is being tested.
18. "Contiguous grounds" means real property that can be enclosed by a single unbroken boundary line that does not enclose property owned or leased by another.
19. "Critical step" means a task in the testing procedure that is required to be performed within a specified time period by regulation, method, standard operating procedure, or quality assurance plan.
20. "Current" means up-to-date and extending to the present time.
21. "Data outlier" means a test result that falls outside of acceptance criteria.
22. "Days" means calendar days, excluding the day of the act, event, or default from which a designated period of time begins to run and excluding the last day of the period if it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.
23. "DBCP" means 1,2-Dibromo-3-chloropropane.
24. "DDT" means dichloro-diphenyl-trichloroethane.
25. "DOC" means dissolved organic carbon.
26. "ECD" means electron capture detector.
27. "EDB" means 1,2-Dibromoethane.
28. "Effluent" means an outflow, as of a stream that flows out of a facility.
29. "EOX" means extractable organic halides.
30. "EP" means extraction procedure.
31. "EPA" means the United States Environmental Protection Agency.
32. "FID" means flame ionization detector.
33. "FL" means fluorescence.
34. "FT-IR" means Fourier transform infrared.
35. "GC" means gas chromatography.
36. "HEM" means n-Hexane extractable material.
37. "HPLC" means high performance liquid chromatography.
38. "HRGC" means high resolution gas chromatography.
39. "HRMS" means high resolution mass spectrometry.
40. "ICV" means initial calibration verification.
41. "Initial Demonstration of Capability" or "IDOC" means a test performed by an analyst, as prescribed by a method, to document the analyst's ability to perform the method.

42. "Investigation" means an evaluation of a licensee's or applicant's compliance with A.R.S. Title 36, Chapter 4.3 and this Article conducted by the Department upon its own initiative or upon receipt of a written complaint and may include a laboratory inspection.
43. "IPC" means instrument performance check.
44. "Key reference" means a document incorporated by reference in R9-14-610(B).
45. "Laboratory inspection" means the Department's assessment of operations at a laboratory to determine an applicant's or a licensee's compliance with A.R.S. Title 36, Chapter 4.3 and this Article.
46. "LCS" means laboratory control sample.
47. "LDO" means Luminescence Measurement of Dissolved Oxygen.
48. "Level I license" means an approval issued by the Department authorizing compliance testing of one to nine total parameters at a laboratory.
49. "Level II license" means an approval issued by the Department authorizing compliance testing of 10 to 17 total parameters at a laboratory.
50. "Level III license" means an approval issued by the Department authorizing compliance testing of more than 17 total parameters at a laboratory.
51. "LFB" means laboratory fortified blank.
52. "LFM" means laboratory fortified sample matrix.
53. "Licensee" means a person or persons to whom the Department issues a license to operate a laboratory and includes, as required under A.R.S. § 36-495.03(D), the owner and, if the owner is not the laboratory director, the laboratory director.
54. "Limit of detection" means an analyte- and matrix-specific estimate of the minimum amount of a substance that an analytical process can reliably detect.
55. "Limit of quantitation" or "LOQ" means the minimum levels, concentrations, or quantities of a target variable such as an analyte that can be reported with a specific degree of confidence.
56. "LRMS" means low resolution mass spectrometry.
57. "Maximum holding time" means the greatest number of minutes, hours, or days that a sample may be kept between sampling and the beginning of analysis and still be considered a valid sample for compliance testing.
58. "Method" means an analytical test procedure or technique.
59. "Method alteration" means a change to an established method.
60. "Method reporting limit" means the minimum concentration of a contaminant reported after analyzing a sample in a given parameter, determined after corrections have been made for sample dilution and sample weight.
61. "Mobile laboratory" means a non-stationary facility where compliance testing is performed.
62. "MPN" means most probable number.
63. "MRL" means minimum reporting level.
64. "MS" means mass spectrometry.
65. "MSE" means microscale solvent extraction.
66. "MSRV" means Modified Semisolid Rappaport-Vassiliadis.
67. "NPD" means nitrogen phosphorous detector.
68. "NPDES" means national pollutant discharge elimination system.
69. "NTIS" means the National Technical Information Service, which is part of the U.S. Department of Commerce.
70. "NTU" means nephelometric turbidity units.
71. "ONPG-MUG" means ortho-nitrophenyl-ß-D-galactopyranoside-4-methylumbelliferyl-ß-D-glucuronide.
72. "Owner" means a person that has controlling legal or equitable interest in and authority over a laboratory's operations.
73. "PAH" means polynuclear aromatic hydrocarbon.
74. "Parameter" means the combination of a particular type of sample with a particular approved method by which the sample will be analyzed for a particular analyte or characteristic.
75. "PB" means particle beam.
76. "PCB" means polychlorinated biphenyls.
77. "PCDD" means polychlorinated dibenzodioxins.
78. "PCDF" means polychlorinated dibenzofurans.
79. "PDA" means photodiode array.
80. "PID" means photoionization detection.
81. "POX" means purgeable organic halides.
82. "Precision" means repeatability of measurement data, specifically the similarity of successive independent measurements of a single magnitude generated by repeated applications of a process under specified conditions.
83. "Proficiency testing" means a mechanism in which samples with known characteristics are submitted to a laboratory for analysis to determine a laboratory analyst's ability to analyze samples correctly.
84. "Proficiency testing service" means an independent company or other person acceptable to the EPA or, if the EPA has not indicated acceptance of an independent company or other person for a parameter, acceptable to the Department based on recognition from a national organization such as the National Environmental Laboratory Accreditation Program that:
    a. Is the source for samples with known characteristics for proficiency testing, and
    b. Assesses the acceptability of a laboratory analyst's results from the samples with known characteristics during proficiency testing.
85. "Qualified" means explained in documentation.
86. "Quality assurance plan" means documentation that meets the requirements of R9-14-615(B).
87. "Quality control checks" means the steps taken by laboratory analysts to monitor the accuracy and precision of sample analysis.
88. "QCS" means quality control sample.
89. "RDX" means Hexahydro-1,3,5-trinitro-1,3,5-triazine.
90. "Records" means all written, recorded, and electronic documentation necessary to reconstruct all laboratory activities that produce data and includes all information relating to the laboratory's equipment, analytical test methods, and related activities.
91. "RPD" means relative percent difference.
92. "Ruggedness" means the ability of a method to withstand changes in environmental factors and produce repeatable results.
93. "Sample" means a specimen that is a representative part of a whole or a single item from a group.
94. "Single laboratory" means an individual laboratory facility or multiple laboratory facilities located on contiguous grounds and having the same owner.
95. "Small business" means a business organization, including its affiliates, that is independently owned and operated, that is not dominant in its field, and that employs fewer than 100 full-time employees or had gross annual receipts of less than $4 million in its last fiscal year.
96. "SOUR" means specific oxygen uptake rate.
97. "SPE" means solid-phase extraction.

98. "SPLP" means synthetic precipitation leaching procedure.
99. "Standard operating procedure" means a documented process for carrying on business, analysis, or action, with instructions for performing routine or repetitive tasks.
100. "Statistical outlier" means an individual data point that has a value far from those of the other data points in a set and that has been determined through statistical analysis to have been derived from a different population than the other data points.
101. "TCLP" means toxicity characteristics leaching procedure.
102. "TDS" means total dissolved solids.
103. "TE" means thermal extraction.
104. "TNT" means trinitrotoluene.
105. "TOC" means total organic carbon.
106. "TOX" means total organic halides.
107. "Traceability" means the establishment of an unbroken chain of comparisons to the reference of origin.
108. "TS" means thermospray.
109. "TSS" means total suspended solids.
110. "UV" means ultraviolet.
111. "Valid" means that a license, certificate, or other form of authorization is in full force and effect and not suspended.
112. "VOC" means volatile organic compound.
113. "VOST" means volatile organic sampling train.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-601 repealed, new Section R9-14-601 adopted effective December 20, 1991 (Supp. 91-4). Amended effective June 20, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-602. Exemptions from Applicability

This Article does not apply to:

1. The laboratories exempted by A.R.S. § 36-495.02(A);
2. Compliance testing performed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y;
3. An out-of-state laboratory at which only microbiology testing of bottled water is performed and for which the owner holds a current and valid environmental laboratory license or certificate, issued by another state of the United States, that specifically authorizes drinking water testing;
4. A person that:
   a. Employs methods approved by either ADEQ or the Department; and
   b. Tests compliance samples either:
      i. For turbidity or conductivity at the time of sampling, or
      ii. With a maximum holding time of 15 minutes after sampling; or
5. A laboratory that only performs compliance testing on daily chlorine dioxide or chlorite drinking water samples or ultra-low-range total residual chlorine wastewater samples as long as that laboratory is:
   a. Employing methods approved by either ADEQ or the Department; and
   b. Testing compliance samples immediately at the time of sampling, from which results may be obtained more than 15 minutes after sampling.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-602 repealed, new Section R9-14-602 adopted effective December 20, 1991 (Supp. 91-4). Amended effective June 20, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-603. License Application and Process; Transferability

A. To obtain an initial or renewal license to operate a laboratory, an applicant shall submit to the Department, within the time prescribed in subsection (B), an application that contains:

1. The following information in a Department-provided format:
   a. The name of the laboratory;
   b. The current Arizona license number for the laboratory, if any;
   c. The current EPA certification number for the laboratory, if any;
   d. Whether the applicant is applying to license:
      i. A single laboratory,
      ii. Multiple laboratories located on contiguous grounds according to subsection (C)(2), or
      iii. One of multiple laboratories under a single license according to subsection (C)(3);
   e. The physical and mailing addresses for each laboratory for which the application is being submitted;
   f. The telephone number, fax number, and e-mail address for the laboratory;
   g. The type of laboratory:
      i. Governmental;
      ii. Company, performing internal work only;
      iii. Commercial, for profit; or
      iv. Other, with a description of the type of laboratory operation;
   h. For a type of laboratory specified in subsection (A)(1)(g)(ii) through (iv):
      i. The name and address of the owner and of each additional person that has an ownership interest in the laboratory; and
      ii. For each person specified in subsection (A)(1)(h)(i), the name of each officer, principal, and statutory agent;
   i. The name of the laboratory director;
   j. Whether the applicant is applying for a:
      i. Level I license,
      ii. Level II license, or
      iii. Level III license;
   k. If the applicant is applying to license a mobile laboratory:
      i. The vehicle make, vehicle identification number, and Arizona vehicle license number of the mobile laboratory; and
      ii. If the mobile laboratory is affiliated with a non-mobile laboratory, the name of the non-mobile laboratory;
   l. If the application is for an initial license:
      i. A list of the parameters for which the applicant is requesting to be licensed,
      ii. A list of the instruments and equipment to be used at the laboratory for compliance testing,
      iii. A list of the software to be used at the laboratory for instrument control and data reduction interpretation, and

iv. A list of the states in which the laboratory is licensed or certified and the corresponding license or certificate number for each state;

m. If the application is for a renewal license, whether the applicant:
   i. Is requesting to be licensed for the same parameters as on the current license;
   ii. Is using the same instruments and equipment as used under the current license;
   iii. Is using the same software as used under the current license; and
   iv. Is requesting to make payments in installments, as permitted under R9-14-608, and, if so, an indication of the monthly, bimonthly, or quarterly schedule for the payments;

n. If the information provided according to subsection (A)(1)(m) indicates a change in parameters, instruments or equipment, or software for a renewal license, the changes to the:
   i. Parameters on the current license,
   ii. Instruments or equipment used under the current license, or
   iii. Software used under the current license;

o. If the applicant is applying for an out-of-state laboratory, whether the applicant wants to receive technical updates at the laboratory by fax or by e-mail;

p. Whether the applicant agrees to allow the Department to submit supplemental requests for information; and

q. The dated signature of the laboratory director and:
   i. If the owner is an individual, the individual;
   ii. If the owner is a corporation, an officer of the corporation;
   iii. If the owner is a partnership, one of the partners;
   iv. If the owner is a limited liability company, a manager or, if the limited liability company does not have a manager, a member of the limited liability company;
   v. If the owner is an association or cooperative, a member of the governing board of the association or cooperative;
   vi. If the owner is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing by that individual; or
   vii. If the owner is a business organization type other than those described in subsections (A)(1)(q)(ii) through (v), an individual who is a member of the business organization;

2. A notarized attestation in a Department-provided format, made under oath, and signed by the individuals in subsection (A)(1)(q) stating that:
   a. The owner and the laboratory director will comply with all applicable requirements in A.R.S. Title 36, Chapter 4.3 and this Article; and
   b. The information and documents provided as part of the application are true and accurate;

3. If the application is for an initial license:
   a. A copy of a proficiency testing report, for the current or most recently completed year, for the state in which the laboratory is located or, if that state does not require proficiency testing, for another state in which the laboratory is licensed or certified, for each of the parameters for which licensure is requested; and
   b. A copy of a current quality assurance plan for the laboratory;

4. If the application is for a renewal license, a copy of a current standard operating procedure, limit of detection, and, if available, proficiency testing report for each new parameter specified according to subsection (A)(1)(n)(i); and

5. Except as provided in subsection (I), the fees required under R9-14-607 and R9-14-608, payable to the Arizona Department of Health Services by credit card; certified check; business check; money order; or, if the owner is an Arizona state agency, purchase order.

B. An applicant shall submit an application:
1. For an initial license for an in-state laboratory, at least 30 days before the applicant intends to begin operating the in-state laboratory;
2. For an initial license for an out-of-state laboratory, at least 60 days before the applicant intends to begin performing Arizona compliance testing;
3. For a renewal license for an in-state laboratory, at least 30 days before the expiration date of the current license; and
4. For a renewal license for an out-of-state laboratory, at least 60 days before the expiration date of the current license.

C. The Department may issue a single laboratory license for:
1. A single laboratory;
2. Multiple laboratories that are located on contiguous grounds and have the same owner, if the applicant submits one application and combined fees for the laboratories; or
3. Multiple laboratories, including mobile laboratories, that have the same owner but are not located on contiguous grounds, if:
   a. The applicant submits a separate application and fees for each laboratory,
   b. Each non-mobile laboratory is located in Arizona, and
   c. Each mobile laboratory has a current and valid Arizona vehicle registration.

D. The Department shall not issue a single laboratory license for multiple laboratories that do not meet the requirements of subsection (C)(2) or (3).

E. The Department shall not consider an applicant to be in compliance with the requirements for licensure, as provided under A.R.S. § 36-495.09(A)(5), if the applicant does not pay the appropriate fees required under R9-14-607 and R9-14-608.

F. The Department shall process an application as provided in R9-14-621.

G. A laboratory license is valid only for the facility or facilities for which the license is issued and cannot be transferred to another facility.

H. A laboratory license is valid only in the name of the persons to whom it is issued and expires upon a change in laboratory name, laboratory director, or ownership, unless within 20 business days after the change, the Department receives written notice of the change and an application for a new license.

I. The Department shall not charge a fee for a license application submitted under subsection (H) and shall issue a new license reflecting the change upon determining continued compliance with A.R.S. Title 36, Chapter 4.3 and this Article.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-603 repealed, new Section R9-14-603 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; Section amended effective June 20, 1997 (Supp. 97-2).

Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-604. Third Party Accreditation

A. A laboratory that holds current and valid accreditation issued by the National Voluntary Laboratory Accreditation Program administered by the National Institute of Standards and Technology is exempt from licensure under this Article, as authorized under A.R.S. § 36-495.02, for the term of the accreditation.

B. If a laboratory's accreditation issued by the National Voluntary Laboratory Accreditation Program expires or is suspended, revoked, or voluntarily terminated, the laboratory is required to be licensed as provided under A.R.S. Title 36, Chapter 4.3 and this Article.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-604 repealed, new Section R9-14-604 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-604 renumbered to R9-14-605; new Section adopted effective June 20, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-605. Compliance Monitoring

A. The Department may conduct a laboratory inspection, investigation, or proficiency testing, or any combination of the three, at any time before or during a laboratory's license period.

B. The Department shall conduct at least an initial laboratory inspection and a follow-up annual laboratory inspection before determining how often to conduct subsequent laboratory inspections, as provided under subsection (C).

C. In determining how often to conduct a laboratory inspection, the Department shall consider:
1. The Department's findings at the last two laboratory inspections;
2. The licensee's adherence to any corrective action plans created as a result of the last two laboratory inspections;
3. Whether there has been a change in ownership or laboratory director since the last laboratory inspection;
4. The extent to which the compliance testing performed at the laboratory has changed since the last laboratory inspection or would change as a result of a renewal application; and
5. Performance on the most recent proficiency testing completed at the laboratory.

D. For a laboratory at which drinking water compliance testing is performed, the Department shall conduct a laboratory inspection at least once every three years or as otherwise required by the EPA.

E. The Department shall comply with A.R.S. § 41-1009 in conducting laboratory inspections and investigations that occur at a laboratory.

F. If the Department determines, based on a laboratory inspection, investigation, or proficiency testing, or any combination of the three, that a laboratory owner, officer, agent, or employee has engaged in conduct described under A.R.S. § 36-495.09(A), the Department shall request that the licensee or applicant submit to the Department a written corrective action plan, unless the Department determines one of the following, in which case the Department may take action under A.R.S. § 36-495.09:
1. That the deficiencies were committed intentionally;
2. That the deficiencies cannot be corrected within a reasonable period of time;
3. That the deficiencies are evidence of a pattern of noncompliance;
4. That the deficiencies are a risk to any person; the public health, safety, or welfare; or the environment; or
5. That there is a reasonable belief, as stated in A.R.S. § 36-495.09(B), that a violation of A.R.S. § 36-495.09(A)(5) has occurred and that the life or safety of the public is immediately affected.

G. Within 30 days after receiving a request for a written corrective action plan, a licensee or applicant shall submit to the Department a written corrective action plan that includes the following for each identified deficiency:
1. A description of how the deficiency will be corrected, and
2. A date of correction for the deficiency.

H. The Department shall accept a written corrective action plan if the plan:
1. Describes how each identified deficiency will be corrected, and
2. Includes a date for correcting each deficiency as soon as practicable based upon the actions necessary to correct the deficiency.

I. If the Department disapproves a corrective action plan, the Department shall send to the licensee or applicant a written notice of disapproval requesting that the licensee or applicant submit to the Department a revised corrective action plan for the items that the Department disapproves.
1. A licensee or applicant shall submit a revised corrective action plan to the Department within 21 days after the date of a written notice of disapproval.
2. If a licensee or applicant does not submit a revised corrective action plan within 21 days after the date of a written notice of disapproval, the Department may take action under A.R.S. § 36-495.09.

J. A licensee or applicant shall notify the Department when corrective action has been completed.

K. Within 30 days after receiving notice that corrective action has been completed, the Department shall determine whether each deficiency has been corrected and whether the corrective action brings the laboratory operations into substantial compliance with A.R.S. Title 36, Chapter 4.3 and this Article.

L. If the Department determines that a licensee or applicant has not corrected a deficiency or that the licensee or applicant has not corrected a deficiency within a reasonable period of time, the Department may take any enforcement action authorized by law as a result of the deficiency.

M. Under A.R.S. § 41-1009(G), the Department's decision regarding whether a licensee or applicant may submit a corrective action plan or whether a deficiency has been corrected or has been corrected within a reasonable period of time is not an appealable agency action as defined by A.R.S. § 41-1092.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-605 repealed, new Section R9-14-605 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-605 renumbered to R9-14-606; new Section R9-14-605 renumbered from R9-14-604 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-605 renumbered to R9-14-606; new Section R9-14-605 adopted by final rulemaking at 7 A.A.R.

184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-606. Provisional Licensing

A. The Department may issue a provisional license to a licensee when the Department suspends the licensee's regular license because of deficiencies identified in an investigation, laboratory inspection, or proficiency testing, or any combination of the three, if the licensee agrees to carry out a corrective action plan acceptable to the Department to eliminate the deficiencies.

B. In determining whether to issue a provisional license, the Department shall consider:
1. The nature of the deficiencies upon which the suspension is based;
2. The licensee's history of compliance with A.R.S. Title 36, Chapter 4.3 and this Article;
3. The extent to which the public health and safety may be impacted by the continued operation of the laboratory with a provisional license; and
4. The extent to which the public's interests are served by allowing the licensee the opportunity to correct the deficiencies and continue operating with a provisional license.

C. The Department shall issue an amended list of parameters for a provisional license.

D. A licensee shall return its regular license to the Department within 14 days after receiving written notification of license suspension.

E. A provisional license is valid for a period established by the Department, not to exceed 12 months.

F. A licensee with a provisional license may submit an application to obtain a regular initial license according to R9-14-603 at least 30 days before the provisional license expires.

G. The Department shall issue a regular initial license as described in subsection (F) only upon determining that a licensee is in full compliance with the corrective action plan developed according to subsection (A); A.R.S. Title 36, Chapter 4.3; and this Article.

H. The Department shall not issue a provisional license to an applicant submitting an application for an initial license according to R9-14-603.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-606 repealed, new Section R9-14-606 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-606 renumbered to R9-14-607; new Section R9-14-606 renumbered from R9-14-605 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-606 renumbered to R9-14-607; new Section R9-14-606 renumbered from R9-14-605 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-607. Fees

A. Except as provided in R9-14-608, an applicant shall submit the following fees to the Department with each application for an initial or renewal license:
1. The cumulative method and instrumentation fees for each laboratory, as determined according to Tables 6.2.A, 6.2.B, 6.2.C, 6.2.D, 6.2.E, and 6.3;
2. The following application fees:
   a. If applying for a single license for a single laboratory, which may include multiple laboratories located on contiguous grounds and having the same owner, the following fee:
      i. For a Level I license, $1,677;
      ii. For a Level II license, $2,130; or
      iii. For a Level III license, $2,348; or
   b. If applying for a single license for multiple laboratories not located on contiguous grounds, the following fee for each laboratory:
      i. For a Level I license, $1,442;
      ii. For a Level II license, $1,895; and
      iii. For a Level III license, $2,130;
3. An administrative fee of $130 for the proficiency testing to occur during the license period; and
4. If applying for an out-of-state laboratory, an annual information update fee of $126.

B. The fees paid to the Department under this Article are nonrefundable, unless A.R.S. § 41-1077 applies.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-607 repealed, new Section R9-14-607 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; former Section R9-14-607 renumbered to R9-14-608; new Section R9-14-607 renumbered from R9-14-606 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-607 renumbered to R9-14-609; new Section R9-14-607 renumbered from R9-14-606 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-608. Installment Payment of Fees by Small Businesses

A. A licensee may, for license renewal, pay the fees calculated under R9-14-607(A)(1), (3), and (4) to the Department in 12 or fewer installments if the owner is a small business.

B. A licensee who desires to make payments in installments as described in subsection (A) shall indicate this on the application for license renewal and shall indicate a monthly, bimonthly, or quarterly schedule for the payments, which shall result in full payment within 12 or fewer months.

C. A licensee making installment payments shall submit the first installment payment to the Department along with the application for license renewal and the application fee calculated under R9-14-607(A)(2), and each subsequent installment payment on a monthly, bimonthly, or quarterly basis, as indicated on the application, or until the fees are paid in full, whichever comes first.

D. A licensee shall ensure that each installment payment is:
1. Paid by the first day of the month in which it is due; and
2. At least equal to the amount calculated by dividing the total fees due under R9-14-607(A)(1), (3), and (4) by the number of payments indicated on the application for license renewal.

E. If a licensee fails to submit an installment payment within seven days after its due date, the Department shall charge a $50 fee for processing the late payment.

F. If a licensee fails more than twice during the license period to submit an installment payment within seven days after the due

date of the installment payment, the Department may suspend the licensee's authorization to make installment payments and require the licensee to pay all pending fees.

G. If a licensee fails to submit an installment payment within 30 days after its due date, the Department may initiate action under A.R.S. § 36-495.09.

Historical Note

Adopted effective August 16, 1985 (Supp. 85-4). Former Section R9-14-608 repealed, new Section R9-14-608 adopted effective December 20, 1991 (Supp. 91-4). Section citation corrected in preceding historical note; Section R9-14-608 renumbered to R9-14-609; new Section R9-14-608 renumbered from R9-14-607 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-608 renumbered to R9-14-610; new Section R9-14-608 adopted by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-609. Proficiency Testing

A. At least once in each 12-month period, and more often if requested by the Department, each licensee or applicant shall have at least one laboratory analyst participate in proficiency testing provided by the Department, the EPA, or a proficiency testing service that:

1. Includes at least one proficiency testing sample for each parameter for which an initial license or renewal license has been issued or requested and for which proficiency testing samples are available;
2. Demonstrates the laboratory analyst's proficiency in compliance testing of:
   a. Applicable drinking water parameters in Table 6.2.A, if:
      i. The applicant plans to perform compliance testing of drinking water parameters, or
      ii. The licensee is approved to perform compliance testing of drinking water parameters; and
   b. Applicable parameters other than drinking water parameters, if:
      i. The applicant plans to perform compliance testing of the parameters, or
      ii. The licensee is approved to perform compliance testing of the parameters; and
   3. If the licensee or applicant has been issued or has requested a license that includes approval for testing an analyte by different methods, may use the same proficiency testing sample for each method.

B. To demonstrate proficiency for a parameter, test results reported for the parameter shall be within acceptance limits established for:

1. Drinking water inorganic chemistry parameters by the EPA, as provided in 40 CFR 141.23;
2. Drinking water organic chemistry parameters by the EPA, as provided in 40 CFR 141.24;
3. Lead or copper in drinking water by the EPA, as provided in 40 CFR 141.89;
4. Disinfection byproducts in drinking water by the EPA, as provided in 40 CFR 141.131; and
5. Other parameters by the EPA or the proficiency testing service.

C. A licensee or applicant shall ensure that:

1. Each proficiency testing sample accepted at the licensee's or applicant's laboratory is analyzed at the licensee's or applicant's laboratory;
2. Each proficiency testing sample is tested within the maximum holding times allowed for its parameter, using the same procedures and techniques employed for routine sample testing, and calculating the holding time from the time the sample seal is broken or as indicated in the instructions accompanying the sample;
3. A proficiency testing service provides proficiency testing results directly to the Department;
4. If proficiency testing is provided by the Department, the licensee or applicant submits to the Department payment for the actual costs of the proficiency testing materials; and
5. If proficiency testing is not provided by the Department or the EPA, the licensee or applicant selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing.

D. The Department may submit blind proficiency testing samples to a licensed laboratory at any time during the license period.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-609 renumbered to R9-14-610; new Section R9-14-609 renumbered from R9-14-608 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-609 renumbered to R9-14-611; new Section R9-14-609 renumbered from R9-14-607 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-610. Approved Methods and References

A. A licensee or applicant shall ensure that compliance testing is performed according to an approved method and may use method alterations approved by the Department under subsection (C).

B. The approved methods listed by parameter in Tables 6.2.A through 6.2.D are found in the following references, which are incorporated by reference with the modifications described below; are on file with the Department; include no future editions or amendments; and are available as provided below.

Table 1. Key Reference

A Environmental Monitoring and Support Laboratory–Cincinnati, EPA, Pub. No. EPA/600/4-79-020 (600479020), Methods for Chemical Analysis of Water and Wastes (rev. March 1983), available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

A1 Environmental Monitoring and Support Laboratory–Cincinnati, EPA, Pub. No. EPA/600/R-94/111 (600R94111), Methods for the Determination of Metals in Environmental Samples: Supplement I (May 1994), available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

A2 Environmental Monitoring Systems Laboratory, EPA, Pub. No. EPA/600/R-93/100 (600R93100), Methods for the Determination of Inorganic Substances in Environmental Samples (August 1993), available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.

A3 Technicon Industrial Systems, Industrial Method No. 380-75WE, Fluoride in Water and Wastewater (February 1976), available from Mequon Technology Center, 10520-C North Baehr Road, Mequon, WI 53092 or by calling (262) 241-7900.

A4 National Service Center for Environmental Publications (NSCEP), Online EPA Publication Title List available at http://nepis.epa.gov/EPA/html/Pubs/pubtitle.html or by calling

(800) 490-9198. Publication numbers for the methods that are listed under this reference are:

1. Method 317.0, Rev 2.0, July 2001, EPA 815-B-01-001
2. Method 314.1, Rev 1.0, May 2005, EPA 815-R-05-009
3. Method 326.0, Rev 1.0, June 2000, EPA 815-R-03-007
4. Method 327.0, Rev 1.1, May 2005, EPA 815-R-05-008
5. Method 331.0, Rev 1.0, January 2005, EPA 815-R-05-007
6. Method 515.4, Rev 1.0, April 2000, EPA 800-R-00-016
7. Method 527, Rev 1.0, April 2005, EPA 815-R-05-005
8. Method 531.2, Rev 1.0, September 2001, EPA 815-B-01-002
9. Method 552.3, Rev 1.0, July 2003, EPA 815-B-03-002
10. Method 200.5, Rev 4.2, October 2003, EPA 600-R-06-115
11. Method 332, Rev 1.0, March 2005, EPA 600-R-05-049
12. Method 415.3, Rev 1.1, February2005, EPA 600-R-05-055
13. Method 415.3, Rev 1.2, September 2009, EPA 600-R-09-122
14. Method 521, Version 1.0, September 2004, EPA 600-R-05-054
15. Method 529, Rev 1.0, September 2002, EPA 600-R-05-052
16. Method 535, Rev 1.1, April 2005, EPA 600-R-05-053
17. Method 1631, Rev E, August 2002, EPA 821-R-02-019
18. Method 557, Version 1.0, September 2009, EPA 815-B-09-012
19. Method 524.4, May 2013, EPA 815-R-13-002
20. Method 524.3, Version 1.0, June 2009, EPA 815-B-09-009
21. Method 522, Version 1.0, September 2008, EPA 600-R-08-101
22. Method 1613, Rev B, October 1994, EPA 821-B-94-005
23. Method 245.7, Rev 2.0, February 2005, EPA 821-R-05-001
24. Method 1664, Rev B, February 2010, EPA 821-R-10-001
25. Method 1638, April 1995, EPA 821-R-95-031
26. Method OIA-1677 DW, January 2004, EPA 821-R-04-001
27. Method 1627, December 2011, Acid Mine Drainage, EPA 821-R-09-002
28. PCBs in Transformer Fluid and Oils, September 1982, EPA 600/4-81-045
29. Asbestos in Bulk Samples, December 1982, EPA 600/M4-82-020
30. Method 100.1, Asbestos Fibers, September 1993, EPA 600/4-83-043
31. Method 100.2, Asbestos Structures over 10m in Length, EPA/600/R-94/134
32. Method 1622, Cryptosporidium in Water, December 2005, EPA 815-R-05-001
33. Method 1623.1, Cryptosporidium and Giardia in Water, January 2012, EPA 816-R-12-001
34. Method 1682, Salmonella in Sewage Sludge, July 2006, EPA 821-R-06-014
35. Method 1605, Aeromonas in Finished Water by MF, October 2001, EPA 821-/R/01/034
36. Method 1604, Total coliforms and E.coli by MF, September 2002, EPA-821-02-024
37. Method 1601, Coliphage, April 2001, EPA 821-R-01-030
38. Method 1602, Coliphage, April 2001, EPA 821-R-01-029
39. Method 1623, Cryptosporidium and Giardia, December 2005, EPA 815-R-05-002
40. Method 537, September 2009, EPA/600/R-08/092
41. Method 302.0, September 2009, EPA-815-B-09-014
42. Method 539, November 2010, EPA 815-B-10-001
43. Method 218.7, November 2011, EPA 815-R-11-005
44. Method 334.0. September 2009, EPA 815-B-09-013

A5 EPA Pub. No. EPA 815-R-00-014 (815R00014), Volume 1, Methods for the Determination of Organic and Inorganic Compounds in Drinking Water (August 2000), available at http://nepis.epa.gov/EPA/html/Pubs/pubtitle.html or by calling (800) 490-9198, modified to require the following when testing for bromate using method 321.8: Samples must be preserved at the time of sampling with 50 mg ethylenediamine (EDA)/L of sample and must be analyzed within 28 days. Ion chromatography and post-column reaction or IC/ICP-MS must be used for monitoring of bromate for purposes of demonstrating eligibility of reduced monitoring, as prescribed in 40 CFR 141.132(b)(3)(ii).

A6 Lachat Instruments, QuikChem Method 10-204-00-1-X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters Using MICRO DIST and Determination of Cyanide by Flow Injection Analysis (rev. 2.1 November 30, 2000), available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218-0204.

A7 Standard Test Methods for Trace Uranium in Water by Pulsed-Laser Phosphorimetry, ASTM D5174-97, 02, available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959 or through www.astm.org.

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C. If an approved method is not available for a particular parameter, or a method or method alteration that is not an approved method is required or authorized to be used for a particular parameter by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, a licensee or a person exempt under R9-14-602(4) or (5) may request approval of an alternate method or method alteration by submitting to the Department:

1. For an alternate method or method alteration required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the following information:
   a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) submitting the request;
   b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   c. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
   d. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement or authorization for the use of the alternate method or method alteration for which approval is requested;
2. For an alternate method or method alteration to be used because an approved method is not available for a particular parameter, the following information:
   a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) submitting the request;
   b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   c. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
   d. Written justification for using the alternate method or method alteration for which approval is requested, including the following:
      i. A detailed description of the alternate method or method alteration;
      ii. References to published or other studies confirming the general applicability of the alternate method or method alteration to the parameter for which its use is intended;
      iii. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement to test the parameter; and
      iv. Data that demonstrate the performance of the alternate method or method alteration in terms of accuracy, precision, reliability, ruggedness, ease of use, and ability to achieve a detection limit appropriate for the proposed use of the alternate method or method alteration; and
3. An alternate method or method alteration approval fee of $50, payable to the Arizona Department of Health Services, in the form of a certified check, business check, money order, or credit card payment.

D. Before approving an alternate method or method alteration that is not required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may require that the alternate method or method alteration be performed by a laboratory designated by the Department to verify that, using the parameter for which its use is intended, the alternate method or method alteration produces data that comply with subsection (C)(2)(d)(iv).

E. The Department may approve an alternate method or method alteration if the Department determines:

1. One of the following:
   a. Use of the alternate method or method alteration is required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8; or
   b. Use of the alternate method or method alteration is justified as described in subsection (C)(2)(d); and
2. If the alternate method or method alteration pertains to drinking water compliance testing, the EPA concurs that the alternate method or method alteration may be used.

F. The Department may rescind the approval of an alternate method or method alteration approved by the Department according to subsection (E), if, as applicable:

1. For an alternate method or method alteration requested under subsection (C)(1), the alternate method or method alteration is no longer required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8; or
2. For an alternate method or method alteration requested under subsection (C)(2), an approved method becomes available for the particular parameter.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-610 renumbered to R9-14-611; new Section R9-14-610 renumbered from R9-14-609 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-610 renumbered to R9-14-612; new Section R9-14-610 renumbered from R9-14-608 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 1687, effective April 6, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R.

4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-611. Compliance Testing for Drinking Water Parameters

A. A licensee for a laboratory at which compliance testing for drinking water parameters is performed, including compliance testing performed according to 9 A.A.C. 8, Article 2, shall ensure that:
1. Except as provided in subsection (B), the laboratory is operated in compliance with the guidelines in Key References D4, D5, and D6, excluding the requirements for laboratory personnel education and experience;
2. Each sample for Arizona drinking water parameter compliance testing is analyzed:
   a. Using an approved method:
      i. Listed in Table 6.2.A; or
      ii. Approved by the Department for compliance testing for drinking water parameters under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method; and
3. If the licensee requests approval to perform testing for vinyl chloride, the licensee also obtains approval to perform testing for each of the analytes listed in 40 CFR 141.61(a)(2)-(21).

B. If an approved method does not include a specific quality control guideline, a licensee for a laboratory at which compliance testing for drinking water parameters is performed shall ensure that the laboratory is operated in compliance with the guidelines in Key References C4, D7, D9, D10, D11, D12, D13, or D14, as applicable.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-611 renumbered to R9-14-612; new Section R9-14-611 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-611 renumbered to R9-14-613; new Section R9-14-611 renumbered from R9-14-609 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-612. Compliance Testing for Wastewater Parameters

A licensee for a laboratory at which compliance testing for wastewater parameters is performed shall ensure that:
1. The laboratory is operated in compliance with the guidelines in Key References C5 and C6; and
2. Each sample for Arizona wastewater parameter compliance testing is analyzed:
   a. Using an approved method:
      i. Listed in Table 6.2.B; or
      ii. Approved by the Department for wastewater parameter compliance testing under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-612 renumbered to R9-14-613; new Section R9-14-612 renumbered from R9-14-611 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-612 renumbered to R9-14-614; new Section R9-14-612 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-613. Compliance Testing for Waste Parameters

A. A licensee for a laboratory at which compliance testing for waste parameters is performed shall ensure that each waste sample for Arizona compliance testing is analyzed using an approved method:
1. Listed in Table 6.2.C; or
2. Approved by the Department for waste compliance testing under R9-14-610(E).

B. A licensee for a laboratory at which compliance testing for waste parameters is performed using an 8000 series method from Key Reference F shall:
1. If the method includes specific quality control requirements, follow the specific quality control requirements in the method;
2. If the method does not include specific quality control requirements, follow all requirements in Key Reference F14; and
3. If the method does not include specific sample extraction procedures, follow the procedures in the following from Key Reference F, as applicable:
   a. Method 3500B,
   b. Method 3600C, or
   c. Method 5000.

C. A licensee for a laboratory at which compliance testing for waste parameters is performed using a non-8000 series method from Key Reference F shall comply with the following from Key Reference F, as applicable, according to the requirements of the specific method:
1. Method 4000, or
2. Methods 7000B and 7010.

D. A licensee for a laboratory at which compliance testing for waste parameters is performed using a method from Key Reference F shall comply with Chapters 1 through 8 of Update IV, February 2007, of Key Reference F, as applicable, according to the requirements of the specific method.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-613 renumbered to R9-14-614; new Section R9-14-613 renumbered from R9-14-612 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-613 renumbered to R9-14-615; new Section R9-14-613 renumbered from R9-14-611 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-614. Compliance Testing for Air and Stack Parameters

A licensee for a laboratory at which compliance testing for air or stack parameters is performed shall ensure that each air or stack sample for Arizona compliance testing is analyzed using an approved method:
1. Listed in Table 6.2.D; or
2. Approved by the Department for compliance testing for air or stack parameters under R9-14-610(E).

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-614 renumbered to R9-14-615; new Section R9-14-614 renumbered from R9-14-613 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-614 renumbered to R9-14-616; new Section R9-14-614 renumbered from R9-14-612 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-615. Quality Assurance

A. A licensee or applicant shall ensure that the analytical data produced at the licensee's or applicant's laboratory are of known and acceptable precision and accuracy, as prescribed by the approved method for each analysis or as prescribed by the limits described under subsection (C)(8), and are scientifically valid and defensible.

B. A licensee or applicant shall establish, implement, and comply with a written quality assurance plan that contains the following and is available at the laboratory for Department review:

1. A title page identifying the laboratory and date of review and including the laboratory director's signature of approval;
2. A table of contents;
3. An organization chart or list of the laboratory personnel, including names, lines of authority, and identification of principal quality assurance personnel;
4. A copy of the current laboratory license and a list of licensed parameters;
5. A statement of quality assurance objectives, including data quality objectives with precision and accuracy goals and the criteria for determining the acceptability of each testing;
6. Specifications for:
   a. Sample containers,
   b. Preparation of sample containers,
   c. Preservation of samples, and
   d. Maximum holding times allowed;
7. A procedure for documenting laboratory receipt of samples and tracking of samples during laboratory testing;
8. A procedure for analytical instrument calibration, including frequency of calibration and complying with the requirements for calibration in subsection (C);
9. A procedure for compliance testing data reduction and validation and reporting of final results, including the identification and treatment of data outliers, the determination of the accuracy of data transcription, and all calculations;
10. A statement of the frequency of all quality control checks;
11. A statement of the acceptance criteria for all quality control checks;
12. Preventive maintenance procedures and schedules;
13. Assessment procedures for data acceptability, including appropriate procedures for manual integration of chromatograms and when manual integration is inappropriate;
14. Corrective action procedures to be taken when results from analytical quality control checks are unacceptable, including steps to demonstrate the presence of any interference if the precision, accuracy, or limit of quantitation of the reported compliance testing result is affected by the interference; and
15. Procedures for chain-of-custody documentation, including procedures for the documentation and reporting of any deviation from the sample handling or preservation requirements listed in this Section.

C. A licensee or applicant shall:

1. Have available at the laboratory all methods, equipment, reagents, and glassware necessary for the compliance testing for which the licensee or applicant is licensed or is requesting a license;
2. Use only reagents of a grade equal to or greater than that required by the approved methods and document the use of the reagents;
3. Maintain and require each analyst to comply with a complete and current standard operating procedure that meets the requirements for each licensed method, which shall include at least:
   a. A description of all procedures to be followed when the method is performed;
   b. A list of the concentrations for calibration standards, check standards, and spikes;
   c. Requirements for instrumental conditions and set up;
   d. A requirement for frequency of calibration;
   e. The quantitative methods to be used to calculate the final concentration of an analyte in samples, including any factors used in the calculations and the calibration algorithm used; and
   f. Requirements for preventative maintenance;
4. Calibrate each instrument as required by each approved method for which the equipment is used, as follows:
   a. If a calibration model is specified in the method, using the specified calibration model or, if another calibration model has been approved by the Department as a method alteration, using the calibration model approved as a method alteration;
   b. If multiple calibration models are included as options in the method, using one of the included calibration models or, if another calibration model has been approved by the Department as a method alteration, using the calibration model approved as a method alteration; or
   c. If the method does not include a calibration model, using the manufacturer's specifications for calibration;
5. Maintain calibration documentation, including documentation that demonstrates the calculations performed using each calibration model;
6. Develop, document, and maintain a current limit of detection and limit of quantitation for each compliance parameter for each instrument;
7. Develop each limit of detection using:
   a. The protocol in the applicable test method;
   b. The protocol in the applicable federal regulation; or
   c. A process that complies with the guidelines in Section D.1.2 of Chapter 5, Appendix D—Essential Quality Control Requirements, in Key Reference H;
8. For each parameter tested at the laboratory for which quality control acceptance criteria are not specified in the approved method or by EPA or ADEQ:
   a. Use default limits provided in Table 6.4; or
   b. Statistically develop limits from historical data by:
      i. Determining the mean and standard deviation for a minimum of 20 data points not invalidated for cause, excluding statistical outliers;
      ii. Setting the limits no more than three standard deviations from the mean and in the detectable range, using as the lower end of the detectable range the limit of quantitation or the lowest

standard value represented in the initial calibration; and
iii. Explaining the origin of the lower end of the detectable range in the laboratory's standard operating procedure;
9. Discard or segregate all expired standards or reagents;
10. Maintain a record showing the traceability of reagents; and
11. Ensure that a calibration model is not used or changed to avoid necessary instrument maintenance.

D. A licensee or applicant may submit a written request to the Department for an exemption from subsection (C)(1) for a specific parameter if the licensee or applicant documents:
1. That the approved method has been performed at the laboratory and that the analytical data generated were scientifically valid and defensible and of known and acceptable precision and accuracy; and
2. The licensee's or applicant's ability to obtain the equipment, reagent, or glassware necessary to perform the approved method.

E. The written request for an exemption under subsection (D) shall include:
1. The name, address, and main telephone number of the laboratory;
2. The name, address, and telephone number of the licensee or applicant submitting the request;
3. Identification of the parameter and the equipment, reagent, or glassware for which the licensee or applicant is requesting an exemption; and
4. The documentation described in subsections (D)(1) and (2).

F. The Department may approve a request for an exemption under subsection (D) if the Department determines that the:
1. Approved method has been performed at the laboratory;
2. Analytical data generated were scientifically valid and defensible and of known and acceptable precision and accuracy; and
3. Licensee or applicant is able to obtain the equipment, reagent, or glassware necessary to perform the approved method.

G. A licensee or applicant shall ensure that a laboratory's written quality assurance plan is a separate document available at the laboratory and includes all of the components required in subsection (B), but a licensee or applicant may satisfy the components required in subsections (B)(3) through (15) through incorporating by reference provisions in separate documents, such as standard operating procedures.

H. Except as provided in subsection (I), a licensee or applicant shall ensure that each laboratory standard operating procedure is a separate document available at the laboratory and includes all of the components required in subsection (C)(3).

I. A licensee or applicant may satisfy the components required in subsections (C)(3)(e) and (f) through incorporating by reference provisions in separate documents, such as other standard operating procedures.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-615 renumbered to R9-14-616; new Section R9-14-615 renumbered from R9-14-614 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-615 renumbered to R9-14-617; new Section R9-14-615 renumbered from R9-14-613 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-616. Operation

A licensee shall ensure that:
1. A compliance testing sample accepted at the licensee's laboratory is analyzed at:
   a. The licensee's laboratory,
   b. Another laboratory licensed under this Article, or
   c. A laboratory exempt under R9-14-602;
2. The facility and utilities required to operate equipment and perform compliance testing are maintained;
3. Environmental controls are maintained within the laboratory to ensure that laboratory environmental conditions do not affect analytical results beyond quality control limits established for the methods performed at the laboratory;
4. Storage, handling, and disposal of hazardous materials at the laboratory are in accordance with all state and federal regulations;
5. The following information is maintained for all supervisory, quality assurance, and analytical personnel:
   a. A summary of each individual's education and professional experience;
   b. Documentation of each individual's review of the quality assurance plan required under R9-14-615(B) and the approved methods and laboratory standard operating procedures for each area of testing performed by the individual or for which the individual has supervisory or quality assurance responsibility;
   c. Documentation of each analyst's completion of training on the use of equipment and of proper laboratory technique, including the name of the analyst, the name of the instructor, the duration of the training, and the date of completion of the training;
   d. Documentation of each analyst's completion of training classes, continuing education courses, seminars, and conferences that relate to the testing procedures used by the analyst for compliance testing;
   e. Documentation of each analyst's completion of Initial Demonstration of Capability as required for each approved method performed by the analyst, as applicable;
   f. Documentation of each analyst's performance of proficiency testing, as applicable;
   g. Documentation of each analyst's completion of training related to instrument calibration that includes:
      i. Instruction on each calibration model that the analyst will use or for which the analyst will review data;
      ii. For each calibration model described in subsection (5)(g)(i), the specific aspects of the calibration model that might compromise the data quality, such as detector saturation, lack of detector sensitivity, the calibration model's not accurately reflecting the calibration points, inappropriate extension of the calibration range, weighting factors, and dropping of mid-level calibration points without justification; and
      iii. Instruction that a calibration model shall not be used or changed to avoid necessary instrument maintenance; and
   h. Documentation of each individual's applicable certifications and specialized training; and
6. The licensee complies with all applicable federal, state, and local occupational safety and health regulations.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-616 renumbered to R9-14-617; new Section R9-14-616 renumbered from R9-14-615 effective June 20, 1997 (Supp. 97-2). Former Section R9-14-616 repealed; new Section R9-14-616 renumbered from R9-14-614 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-617. Laboratory Records and Reports

A licensee or applicant shall ensure that:

1. Each record and report required to be maintained by this Article is available for inspection and copying by the Department during a laboratory's normal business hours;
2. The Department is permitted to remove copied records and reports from a laboratory;
3. The licensee or applicant maintains records and reports of compliance testing for at least five years after the date of compliance testing, with:
   a. All records and reports for at least the most current two years maintained onsite at the laboratory and the remaining records and reports stored in a secure storage facility;
   b. Each hard copy document containing data either maintained as a hard copy document or scanned into a PDF file or another electronic file format that preserves an exact copy of the hard copy data; and
   c. All instrument-generated electronic data maintained in a reproducible format from which reports can be produced and printed;
4. No portion of a record or report of compliance testing is altered or deleted to hide or misrepresent any part of the data;
5. The licensee or applicant produces all records and reports requested by the Department within 24 hours after the request or, if the licensee or applicant requests a period longer than 24 hours, the longer period of time agreed upon by the Department;
6. Upon Department request, the licensee or applicant makes available for inspection and copying the requested data from non-Arizona compliance samples;
7. A compliance testing record contains:
   a. Sample information, including the following:
      i. A unique sample identification assigned at the laboratory,
      ii. The location or location code of sample collection,
      iii. The sample collection date and time,
      iv. The type of testing to be performed, and
      v. The name of the individual who collected the sample;
   b. The name and address of the client submitting the sample to the laboratory;
   c. The name of the individual who submitted the sample to the laboratory;
   d. The date and time of receipt of the sample at the laboratory;
   e. The name of the individual who received the sample at the laboratory;
   f. The dates and times of testing, including the date and time of each critical step;
   g. The actual results of compliance testing, including all raw data, work sheets, and calculations performed;
   h. The actual results of quality control data validating the test results, including the calibration and calculations performed;
   i. The name of each analyst or who performed the testing; and
   j. A copy of the final report; and
8. A final report of compliance testing contains:
   a. The name, address, and telephone number of the laboratory;
   b. The license number assigned to the laboratory by the Department;
   c. Actual scientifically valid and defensible results of compliance testing in appropriate units of measure, obtained in accordance with an approved method and quality assurance plan;
   d. Qualified results of compliance testing not obtained in accordance with an approved method and quality assurance plan;
   e. A list of each approved method used to obtain the reported results;
   f. Sample information, including the following:
      i. The unique sample identification assigned at the laboratory,
      ii. The location or location code of sample collection,
      iii. The sample collection date and time,
      iv. The name of the individual who collected the sample,
      v. The name of the client that submitted the sample to the laboratory, and
      vi. The name of the individual who submitted the sample to the laboratory;
   g. The date of analysis for each parameter reported;
   h. The date of the final report; and
   i. The laboratory director's or designee's signature.

Historical Note

Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-617 renumbered to R9-14-618; new Section R9-14-617 renumbered from R9-14-616 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-617 renumbered to R9-14-618; new Section R9-14-617 renumbered from R9-14-615 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-618. Mobile Laboratories

A. An applicant shall obtain a license for each mobile laboratory, unless the applicant chooses the single license option for multiple laboratories as described in R9-14-603(D).

B. A licensee or applicant for a mobile laboratory shall ensure that the mobile laboratory is operated in compliance with all of the requirements of this Article.

C. Upon Department request, a licensee or applicant for a mobile laboratory shall provide to the Department the mobile laboratory's location and a list of the parameters for which testing is performed at the mobile laboratory.

Historical Note

R9-14-618 renumbered from R9-14-617 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-

14-618 renumbered to R9-14-619; new Section R9-14-618 renumbered from R9-14-617 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-619. Out-of-State Environmental Laboratory Licensing

A. A licensee or applicant for an out-of-state laboratory at which Arizona compliance testing is performed shall comply with the requirements of A.R.S. Title 36, Chapter 4.3 and this Article.

B. A licensee or applicant for an out-of-state laboratory shall pay all actual expenses incurred by the Department as a result of the laboratory's location, including:
1. The estimated costs of each laboratory inspection or investigation at the laboratory;
2. The amount by which the actual costs of each laboratory inspection or investigation at a laboratory exceed the estimated costs;
3. Additional expenses incurred by the Department for each investigation at the laboratory; and
4. A zone fee for each Department representative required to appear at the laboratory to perform the laboratory inspection or investigation, as follows:
   a. For zone 1, including California, Nevada, Utah, Colorado, and New Mexico: $114;
   b. For zone 2, including all states west of the Mississippi River not listed in subsection (B)(4)(a): $179;
   c. For zone 3, including all states east of the Mississippi River and Alaska and Hawaii: $290; and
   d. For zone 4, including all countries outside of the United States: $516.

C. The Department shall:
1. Determine the estimated costs and zone fees for a laboratory inspection or investigation after making travel arrangements to visit an out-of-state laboratory;
2. Send the licensee or applicant for an out-of-state laboratory a bill for the estimated costs and zone fees, with instructions to submit the amount billed to the Department within 20 days after the date that the Department sends the bill; and
3. After a laboratory inspection or investigation is completed, determine the actual costs for the inspection or investigation and any additional expenses incurred for an investigation and:
   a. If the actual costs and additional expenses exceed the estimated costs and zone fees already paid, send a bill to the licensee or applicant for the out-of-state laboratory for the amount by which the actual costs and expenses exceed the estimated costs and zone fees paid, with instructions to submit the amount billed to the Department within 20 days after the date that the Department sends the bill; or
   b. If the actual costs and expenses are less than the estimated costs and zone fees already paid, notify the licensee or applicant, determine whether the licensee or applicant desires a refund or a credit, and send a refund or issue a credit within 45 days after the date that the licensee or applicant specifies the desired form of payment.

Historical Note

New Section R9-14-619 renumbered from R9-14-618 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4).

R9-14-620. Changes to a License

A. During the term of a license, a licensee may request to have one or more parameters added to the license.

B. To request to have one or more parameters added to a license, a licensee shall submit to the Department:
1. A written request that includes:
   a. The name, address, and telephone number of the licensee submitting the request;
   b. The name, address, and telephone number of the laboratory for which the addition is requested; and
   c. Identification of each parameter requested to be added;
2. The applicable method and instrumentation fees, as determined according to Tables 6.2.A, 6.2.B, 6.2.C, 6.2.D, 6.2.E, and 6.3, payable to the Arizona Department of Health Services by credit card; certified check; business check; or money order; or, if the owner is an Arizona state agency, purchase order;
3. If the addition results in a different Level of license, the difference between the application fee paid with the most recent application and the application fee for the new Level of license required under R9-14-607(A)(2), payable to the Arizona Department of Health Services as provided in subsection (B)(2); and
4. The following for each parameter requested to be added:
   a. The limit of detection, if applicable;
   b. A copy of a proficiency testing report; and
   c. A copy of the standard operating procedure.

C. The Department may conduct a laboratory inspection during the substantive review period for a request to have one or more parameters added to a license.

D. The Department shall process a request to have one or more parameters added to a license as provided in R9-14-621.

E. A licensee may submit up to three requests for deletion of parameters during a license period at no charge, but shall pay $17 per request for each subsequent request for deletion of parameters submitted during the license period.

Historical Note

Former R9-14-620 renumbered to R9-14-621; new R9-14-620 made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-621. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is set forth in Table 6.1.
1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is set forth in Table 6.1 and begins on the date that the Department receives an application or request for approval.
1. The Department shall send a notice of administrative completeness or deficiencies to an applicant within the administrative completeness review time-frame.

a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application or request for approval.
b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that a notice of deficiencies is sent until the date that the Department receives all of the missing information or items from an applicant.

2. If an applicant fails to submit to the Department all of the information and items listed in a notice of deficiencies within 60 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn.
3. If the Department issues a license or other approval to an applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 6.1 and begins on the date of a notice of administrative completeness.

1. As part of the substantive review for an initial license application, the Department may conduct a laboratory inspection, investigation, or proficiency testing, or a combination of the three, as described in R9-14-605.
   a. The Department shall commence a laboratory inspection, investigation, or proficiency testing, or combination of the three, no more than 30 days after notice of administrative completeness has been mailed for an in-state laboratory or no more than 60 days after notice of administrative completeness has been mailed for an out-of-state laboratory.
   b. The Department and an applicant may mutually agree in writing to schedule a laboratory inspection, proficiency testing, or investigation later than the date required under subsection (C)(1)(a).
2. The Department shall send written notification of approval or denial of a license or other approval to an applicant within the substantive review time-frame.
3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and applicant have agreed in writing to allow the Department to submit supplemental requests for information.
4. If the Department issues a comprehensive written request or a supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date that the Department issues the request until the date that the Department receives all of the information requested.
5. If an applicant fails to submit to the Department all of the information and items listed in a comprehensive written request or a supplemental request for information within 60 days after the date that the Department sent the comprehensive written request or supplemental request for information, the Department shall deny the license or other approval requested.
6. The Department shall grant a license or other approval unless:
   a. An applicant fails to submit requested information or a requested item as described in subsection (B)(2) or (C)(5);
   b. For an initial license application or a regular license renewal application where the regular license is not suspended, the Department determines that grounds to deny the license exist under A.R.S. § 36-495.09;
   c. For a regular license renewal application where the regular license is suspended, the Department determines that the licensee is not in full compliance with the corrective action plan; A.R.S. Title 36, Chapter 4.3; or this Article;
   d. For a request for approval of an alternate method or method alteration, the Department determines that the alternate method or method alteration does not meet the standard for approval under R9-14-610(E); or
   e. For a request for approval of an exemption under R9-14-615(D), the Department determines that the request does not meet the standard for approval under R9-14-615(F).
7. If the Department denies a license or other approval, the Department shall send to the applicant a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Section R9-14-621 renumbered from R9-14-620 and amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
Initial License–In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	201	21	180
Initial License–Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	231	21	210
Regular License Renewal–In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	37	14	23

Regular License Renewal–Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07, 36-495.14	67	14	53
Regular License Renewal–In-State Laboratory with Provisional License	A.R.S. §§ 36-495.01, 36-495.03, 36-495.05, 36-495.06, 36-495.07	70	21	49
Regular License Renewal–Out-of-State Laboratory with Provisional License	A.R.S. §§ 36-495.01, 36-495.03, 36-495.05, 36-495.06, 36-495.07, 36-495.14	100	21	79
Request for Approval of an Alternate Method or Method Alteration–Required or Authorized by EPA/ADEQ	A.R.S. §§ 36-495.01, 36-495.06	105	15	90
Request for Approval of an Alternate Method or Method Alteration–Due to an Approved Method Not Being Available	A.R.S. §§ 36-495.01, 36-495.06	210	30	180
Request for Approval of an Exemption under R9-14-615(D)	A.R.S. § 36-495.01	60	15	45
Request to Have One or More Parameters Added to a License under R9-14-620 – In-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	91	21	70
Request to Have One or More Parameters Added to a License under R9-14-620 – Out-of-State Laboratory	A.R.S. §§ 36-495.01, 36-495.03, 36-495.06, 36-495.07	121	21	100

Historical Note

New Table adopted by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Table 1 renumbered to Table 6.1 and amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Exhibit I. Repealed
Table 1. Repealed
Table 2. Repealed

Historical Note

Exhibit I made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Exhibit I, consisting of Tables 1 and 2, repealed by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Exhibit II. Repealed
Table 1. Repealed

Historical Note

Exhibit II made by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Exhibit II, consisting of Table 1, repealed by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.2.A. Approved Methods and Method Fees for Drinking Water Parameters

1. Microbiology of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aeromonas	A4.35	1605	$228
Coliforms, Fecal	C	9221E (2006)	$228
		9222D (2006)	$228
Coliforms, Total and *E. coli*, by Colilert (ONPG-MUG)	C and Z	9223B (2004) and IDEXX	$152
Coliforms, Total, and *E. coli*, by Colisure	C2 and Z7	9223B (2004) and IDEXX	$152
Coliforms, Total, by Membrane Filtration	C	9222B (2006)	$228
		9222C (2006)	$228
Coliforms, Total and *E. coli*, by Membrane Filtration	A4.36	1604	$228
Coliforms, Total, and *E. coli* by Colitag	C and Z5	9223B (2004) and CPI	$152
Coliforms, Total, and *E. coli* by Modified Colitag	C and D8	9223B (2004) and Modified Colitag	$152
Coliforms, Total, and *E. coli* by E.colite	C and Z8	9223B (2004) and Charm Sciences, Inc.	$152
Coliforms, Total, and *E. coli* by m-ColiBlue24 Test	C and Z6	9222H (2006) and Hach 10029	$228
Coliforms, Total, and *E. coli* by Readycult Coliforms 100 Presence/Absence	C and Z14	9223B (2004) and EM Science	$152
Coliforms, Total, and *E. coli* by MF using Chromocult Coliform Agar	C and Z15	9223B (2004) and EM Science	$152
Coliforms, Total, by Multiple Tube Fermentation	C	9221B and C (2006)	$228
Coliforms, Total, by Presence/Absence	C	9221D (2006)	$228
Escherichia coli	C	9222G (2006)	$228
	X	Tube Procedure	$228
		Membrane Filter Procedure	$228
Cryptosporidium	A4.32	1622	$381
Giardia and *Cryptosporidium*	A4.39	1623	$381
	A4.33	1623.1	$381
Heterotrophic Plate Count	C	9215B (2004)	$152
	Z3	SimPlate	$152
Heterotrophic Plate Count (For Bottled Water Only)	C	9215D (2004)	$152
Microscopic Particulate Analysis	P1	910/9-92-029	$228
Viruses	P2	600/R-95/178	$381
Coliphage	A4.37	1601	$228
	A4.38	1602	$228
2. Inorganic Chemistry and Physical Properties of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Alkalinity	C	2320B (2011)	$19
Asbestos	A4.30	100.1 (9/83)	$503
	A4.31	100.2 (6/94)	$503
Bromate	A4.1	317.0 (2.0)	$76
	A4.3	326.0 (1.0)	$76
	A5	300.1 (1.0)	$26
		321.8 (1.0)	$152
	A4.41	302.0 (1.0)	$26
Bromide	A2	300.0 (2.1)	$26
	A4.1	317.0 (2.0)	$76
	A4.3	326.0 (1.0)	$76
	A5	300.1 (1.0)	$26

Calcium	A1	200.7 (4.4)	$10
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3500-Ca B (2011)	$76
Carbon, Dissolved Organic	A4.12	415.3 (1.1)	$76
	A4.13	415.3 (1.2)	$76
	C	5310B (2011)	$39
		5310C (2011)	$39
		5310D (2011)	$39
Carbon, Total Organic	A4.12	415.3 (1.1)	$76
	A4.13	415.3 (1.2)	$76
	C	5310B (2011)	$39
		5310C (2011)	$39
		5310D (2011)	$39
Chloride	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	4500-Cl B (2011)	$39
		4500-Cl D (2011)	$39
		4110B (2011)	$26
Chloramine	C	4500-Cl F (2011)	$39
		4500-Cl G (2011)	$76
Chlorate	A5	300.1 (1.0)	$26
Chlorine, Total Residual and Free	A4.44	334.0 (9/2000)	$39
	C	4500-Cl D (2011)	$39
		4500-Cl E (2011)	$39
		4500-Cl F (2011)	$39
		4500-Cl G (2011)	$39
		4500-Cl H (2011)	$39
		4500-Cl I (2011)	$39
Chlorine Dioxide	A4.4	327.0 (1.1)	$76
	C	4500-ClO_2 E (2011)	$39
	C7	ChlordioX Plus	$79
Chlorite	A2	300.0 (2.1)	$26
	A4.1	317.0 (2.0)	$76
	A4.3	326.0 (1.0)	$76
	A4.4	327.0 (1.1)	$76
	A5	300.1 (1.0)	$26
	C	4500-ClO_2 E (2011)	$39
	C7	ChlordioX Plus	$79
Color	C	2120B (2011)	$32
Corrosivity	C	2330B (2010)	$39
Cyanide	A2	335.4 (1.0)	$76
	A6	QuikChem 10-204-00-1-X (2.1)	$76
	C	4500-CN B (2011)	$7
		4500-CN C (2011)	$13
		4500-CN E (2011)	$76
		4500-CN F (2011)	$76
	E7	Kelada-01	$76
Cyanide, Available/Amenable	A4.26	OIA-1677 DW	$76
	C	4500-CN G (2011)	$76
	I	D6888-04	$76

Fluoride	A2	300.0 (2.1)	$26
	A3	380-75WE (2/76)	$39
	A5	300.1 (1.0)	$26
	C	4500-F B (2011)	$39
		4500-F C (2011)	$26
		4500-F D (2011)	$39
		4500-F E (2011)	$39
		4110B (2011)	$26
Hardness	A1	200.7 (4.4), Sum of Ca and Mg as their carbonates	$10
	C	2340 B (2011), Sum of Ca and Mg as their carbonates	$10
		2340 C (2011)	$39
Magnesium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3500-Mg B (1997)	$76
Methylene Blue Active Substances	C	5540 C (2011)	$39
Nitrate	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_3 D (2011)	$39
		4500-NO_3 E (2011)	$76
		4500-NO_3 F (2011)	$76
		4110B (2011)	$26
Nitrite	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_2 B (2011)	$76
		4500-NO_3 E (2011)	$76
		4500-NO_3 F (2011)	$76
		4110B (2011)	$26
Odor	C	2150B (2011)	$32
Orthophosphate	A2	300.0 (2.1)	$26
		365.1 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-P E (2011)	$76
		4500-P F (2011)	$76
		4110B (2011)	$26
Ozone	C	4500-O_3 B (2011)	$39
Perchlorate	A4.2	314.1 (1.0)	$76
	A4.5	331.0 (1.0)	$76
	A4.11	332.0 (1.0)	$76
	A5	314.0 (1.0)	$76
pH (Hydrogen Ion)	A	150.1	$39
		150.2	$39
	C	4500-H B (2011)	$39
Residue, Filterable (TDS)	C	2540C (2011)	$39
Sediment Concentration	I	D 3977-97	$13

Silica	A1	200.7 (4.4)	$10
	A4.10	200.5 (4.2)	$10
	C	4500-SiO_2 C (2011)	$76
		4500-SiO_2 D (2011)	$76
		4500-SiO_2 E (2011)	$76
Sodium	A1	200.7 (4.4)	$10
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
Specific Conductance	C	2510B (2011)	$39
Sulfate	A2	300.0 (2.1)	$26
		375.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-SO_4 C (2011)	$76
		4500-SO_4 D (2011)	$76
		4500-SO_4 E (2011)	$76
		4500-SO_4 F (2011)	$76
		4110B (2011)	$26
Temperature, Degrees Celsius	C	2550 (2010)	$13
Turbidity, Nephelometric (NTU)	A2	180.1 (2.0)	$39
	C	2130B (2011)	$39
UV-Absorption at 254 nm	A4.12	415.3 (1.1)	$76
	A4.13	415.3 (1.2)	$76
	C	5910B (2011)	$76
3. Metals in Drinking Water			
a. Sample Preparation for Metals in Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Extractable Metals	C	3030C (2004)	$7
Microwave Assisted Digestion	C	3030K (2004)	$7
Nitric Acid	C	3030E (2004)	$7
Nitric Acid/Hydrochloric Acid	C	3030F (2004)	$7
Nitric Acid/Perchloric Acid	C	3030H (2004)	$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I (2004)	$7
Nitric Acid/Sulfuric Acid	C	3030G (2004)	$7
Preliminary Filtration	C	3030B (2004)	$7
b. Methods to Analyze Metals in Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Antimony	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26

Arsenic	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3114B (2011)	$76
Barium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Beryllium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Cadmium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Chromium, Hexavalent by IC	A4.43	218.7 (1.0)	$116
Chromium, Total	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Cobalt	A1	200.8 (5.4)	$26
Copper	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Iron	A1	200.7 (4.4)	$10
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Lead	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
Manganese	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	C	3111B (2011)	$26
		3113B (2010)	$26
Mercury	A	245.2	$52
	A1	245.1 (3.0)	$52
		200.8 (5.4)	$26
	C	3112B (2011)	$52

Molybdenum	A1	200.8 (5.4)	$26
Nickel	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Selenium	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3114B (2011)	$76
Silver	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Strontium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	C	3500-Sr B (2011)	$26
		3500-Sr C (2011)	$20
		3500-Sr D (2011)	$26
Thallium	A1	200.8 (5.4)	$26
		200.9 (2.2)	$26
Uranium	A1	200.8 (5.4)	$26
	C	7500 U-C (2011)	$206
	I	D3972-97, 02	$206
		D5174-97, 02	$206
Vanadium	A1	200.8 (5.4)	$26
Zinc	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
4. Organic Chemistry of Drinking Water			
a. Methods to Comply with National Primary Drinking Water Regulations			
Description	**Reference**	**Method/s**	**Fee Per Method**

Disinfectant Byproducts, Solvents and Pesticides: Alachlor Atrazine Dibromochloropropane Endrin Ethylene dibromide Heptachlor Heptachlorepoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Simazine 1,1,2-Trichloroethane Trichloroethylene 1,1,1-Trichloroethane Tetrachloroethylene Carbontetrachloride Chloroform Bromodichloromethane Dibromochloromethane Bromoform Total Trihalomethanes	D3	551.1 (1.0)	$116
VOCs by GC: Benzene Carbon Tetrachloride (mono) Chlorobenzene o-Dichlorobenzene para-Dichlorobenzene 1,2-Dichloroethane cis-1,2-Dichloroethylene Trans-1,2-Dichloroethylene Dichloromethane 1,2-Dichloropropane Ethylbenzene Styrene Tetrachloroethylene 1,1,1-Trichlorothane Trichloroethylene Toluene 1,2,4-Trichlorobenzene 1,1-Dichloroethylene 1,1,2-Trichloroethane Vinyl chloride Xylenes, Total Chloroform Bromodichloromethane Dibromochloromethane Bromoform Total Trihalomethanes	D3	502.2 (2.1)	$152

VOCs by GC-MS: Benzene Carbon Tetrachloride (mono) Chlorobenzene o-Dichlorobenzene para-Dichlorobenzene 1,2-Dichloroethane cis-1,2-Dichloroethylene Trans-1,2-Dichloroethylene Dichloromethane 1,2-Dichloropropane Ethylbenzene Styrene Tetrachloroethylene 1,1,1-Trichlorothane Trichloroethylene Toluene 1,2,4-Trichlorobenzene 1,1 Dichloroethylene 1,1,2-Trichloroethane Vinyl Chloride Xylenes, Total Chloroform Bromodichloromethane Dibromochloromethane Bromoform Total Trihalomethanes	A4.19	524.4	$152
	D3	524.2 (4.1)	$152
VOCs by GC: Benzene Carbon Tetrachloride (mono) Chlorobenzene o-Dichlorobenzene para-Dichlorobenzene 1,2-Dichloroethane cis-1,2-Dichloroethylene Trans-1,2-Dichloroethylene Dichloromethane 1,2-Dichloropropane Ethylbenzene Styrene Tetrachloroethylene 1,1,1-Trichlorothane Trichloroethylene Toluene 1,2,4-Trichlorobenzene 1,1-Dichloroethylene 1,1,2-Trichloroethane Vinyl chloride Xylenes, Total Chloroform Bromodichloromethane Dibromochloromethane Bromoform Total Trihalomethanes Dibromochloropropane Ethylenedibromide	A4.20	524.3 (1.0)	$152
EDB/DBCP	D3	504.1 (1.1)	$116

Pesticides and PCBs by GC (Microextraction): Alachlor Atrazine Chlorodane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Simazine Toxaphene	D3	505 (2.1)	$152
Phthalate and Adipate Esters by GC-PID: Di (2-ethylhexyl)adipate Di (2-ethylhexyl)phthalate	D3	506 (1.1)	$116
Pesticides by GC-NPD Atrazine Alachlor Simazine	D3	507 (2.1)	$116
Chlorinated Pesticides by GC-ECD: Chlordane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Toxaphene	D3	508 (3.1)	$152

Chlorinated Pesticides, Herbicides, Organohalides by GC-ECD: Alachlor Atrazine Chlorodane Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Simazine Toxaphene	D3	508.1(2.0)	$152
Organics by GC-MS: Alachlor Atrazine Benzo(a)pyrene Chlorodane Di (2-ethylhexyl)adipate Di (2-ethylhexyl)phthalate Endrin Heptachlor Heptachlor Epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Methoxychlor Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260 Pentachlorophenol Simazine Toxaphene	D3	525.2 (2.0)	$152
1, 4-Dioxane by GC/MS	A4.21	522	$152
Carbamates by HPLC/Post Column: Carbofuran Oxamyl	A4.8	531.2 (1.0)	$116
	D3	531.1 (3.1)	$116
Chlorinated Acids and Dalapon by GC-ECD: 2,4-D Dalapon Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	A4.6	515.4 (1.0)	$116
	A5	515.3 (1.0)	$116
	D	515.1 (4.0)	$116
Chlorinated Acids By GC-ECD 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D3	515.2 (1.1)	$116
Haloacetic Acids, Bromate and Dalapon By IC-ESI-MS/MS	A4.18	557 (1.0)	$152

Perfluorinated Compounds by LC/MS/MS	A4.40	537 (1.1)	$152
Hormones by LC/MS/MS	A4.42	539	$152
PAHs By HPLC/UV/FL: Benzo(a)pyrene	D1	550 (7/90)	$116
		550.1 (7/90)	$116
Haloacetic Acids and Dalapon by GC-ECD: Dalapon Monochloracetic Acid Dichloracetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid HAA5	D2	552.1 (1.0)	$116
	D3	552.2 (1.0)	$116
Haloacetic Acids: Monochloroacetic Acid Dichloroacetic Acid Trichloroacetic Acid Monobromoacetic Acid Dibromoacetic Acid Dalapon HAA5	A4.9	552.3 (1.0)	$116
Disinfection Byproducts by Micro Liquid-Liquid Extraction/ GC-ECD	C8	6251B (1994)	$116
Chlorinated Acids By HPLC/PDA/UV: 2,4-D Dinoseb Pentachlorophenol Picloram Silvex (2,4,5-TP)	D2	555 (1.0)	$116
1,4 Dioxane by GC/MS	A4.21	522 (1.0)	$152
Dioxin	A4.22	1613 Rev B (10/94)	$258
Diquat	A5	549.2 (1.0)	$116
Endothall	D2	548.1 (1.0)	$116
Glyphosate	D1	547 (7/90)	$116
PCBs (as decachlorobiphenyl)	D	508A (1.0)	$152
b. Additional Methods and Compounds Required by Other Programs			
Description	**Reference**	**Method/s**	**Fee Per Method**
Disinfectant Byproducts, Solvents and Pesticides	D3	551.1 (1.0)	$26
VOCs by GC	D3	502.2 (2.1)	$26
VOCs by GC-MS	A4.20	524.3 (1.0)	$26
	D3	524.2 (4.1)	$26
EDB/DBCP	D3	504.1 (1.1)	$26
Pesticides and PCBs by GC (Microextraction)	D3	505 (2.1)	$26
Phthalate and Adipate Esters by GC-PID	D3	506 (1.1)	$26
Pesticides by GC-NPD	D3	507 (2.1)	$26
Chlorinated Pesticides by GC-ECD	D3	508 (3.1)	$26
Chlorinated Pesticides, Herbicides, Organohalides by GC-ECD	D3	508.1(2.0)	$26
Organics by GC-MS	D3	525.2 (2.0)	$26
Carbamates by HPLC/Post Column	A4.8	531.2 (1.0)	$26
	D3	531.1 (3.1)	$26
Chlorinated Acids and Dalapon by GC-ECD	A4.6	515.4 (1.0)	$26
	A5	515.3 (1.0)	$26
	D	515.1 (4.0)	$26
Chlorinated Acids By GC-ECD	D3	515.2 (1.1)	$26
PAHs By HPLC/UV/FL	D1	550 (7/90)	$26
		550.1 (7/90)	$26

Haloacetic Acids and Dalapon by GC-ECD	D2	552.1 (1.0)	$26
	D3	552.2 (1.0)	$26
Chlorinated Acids By HPLC/PDA/UV	D2	555 (1.0)	$26
Dioxins and Furans	A4.22	1613 Rev B (10/94)	$65
Paraquat	A5	549.2 (1.0)	$26
Benzidines and Nitrogen Compounds	D2	553 (1.1)	$116
Carbonyl Compounds	D2	554 (1.0)	$116
Phenols	A5	528 (1.0)	$152
Phenylurea Compounds	A5	532 (1.0)	$116
Selected Semivolatiles	A5	526 (1.0)	$152
Pesticides and Flame Retardants by GCMS	A4.7	527 (1.0)	$152
Explosives and Related Compounds	A4.15	529 (1.0)	$152
Acetanilide Degradation Products	A4.16	535 (1.1)	$194
Acetanilide Parent Compound	D3	525.2 (2.0)	$26
Nitrosamines by MS/MS	A4.14	521 (1.0)	$194
5. Radiochemistry of Drinking Water			
Description	**Reference**	**Method/s**	**Fee Per Method**
Cesium	B	p. 4	$206
	C	7500-Cs B (2011)	$206
		7120 (2011)	$206
	J	R-1110-76	$206
		R-1111-76	$206
	L	901	$206
		901.1	$206
	U	Ga-01-R	$206
	W	p. 92	$206
Gamma Emitters	C	7500-Cs B (2011)	$206
		7500-I B (2011)	$206
		7120 (2011)	$206
	L	901.1	$206
		901.0	$206
		902.0	$206
	U	Ga-01-R	$206
	W	p. 92	$206
Gross Alpha	B	EPA 00-02	$206
	C	7110C (2011)	$206
	L	900.0	$206
	V	00-01	$206
		00-02	$206
Gross Alpha and Beta	B	p. 1	$206
	C	7110B (2011)	$206
	J	R-1120-76	$206
	L	900.0	$206
	V	00-01	$206
	W	p. 1	$206

Iodine	B	p. 6, p. 9	$206
	C	7120 (2011)	$206
		7500-I B (2011)	$206
		7500-I C (2011)	$206
		7500-I D (2011)	$206
	L	901.1	$206
		902.0	$206
	U	Ga-01-R	$206
	W	p. 92	$206
Radium 226	B	p. 13, p. 16	$206
	C	7500-Ra B (2011)	$206
		7500-Ra C (2011)	$206
	L	903.0	$206
		903.1	$206
	U	Ra-04	$206
		Ra-05	$206
	V	EPA Ra-03	$206
		EPA Ra-04	$206
	W	p. 19	$206
Radium 228	B	p. 24	$206
	C	7500-Ra D (2011)	$206
	L	904.0	$206
	V	Ra-05	$206
	W	p. 19	$206
Strontium	B	p. 29	$206
	C	7500-Sr B (2011)	$206
	J	R-1160-76	$206
	L	905.0	$206
	U	Sr-01	$206
		Sr-02	$206
	V	Sr-04	$206
	W	p. 65	$206
Tritium	B	p. 34	$206
	C	7500-^{3}H B (2011)	$206
	J	R-1171-76	$206
	L	906.0	$206
	V	H-02	$206
	W	p.87	$206
Uranium	A1	200.8 (5.4)	$26
	A7	D5174-97, 02	$206
	C	7500-U B (2011)	$206
		7500-U C (2011)	$206
	J	R-1180-76	$206
		R-1181-76	$206
		R-1182-76	$206
	L	908.0	$206
		908.1	$206
	U	U-02	$206
		U-04	$206
	V	00-07	$206
	W	p. 33	$206

Historical Note
New Table 6.2.A. made by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.2.B. Approved Methods and Method Fees for Wastewater Parameters

1. Microbiology of Wastewater and Sewage Sludge			
Description	**Reference**	**Method/s**	**Fee Per Method**
Ascaris lumbricoides	C8	10550	$228
	P3	UofA2000	$228
Coliforms, Fecal, number per 100 ml or number per gram dry weight, by Membrane Filter	C	9222D (2006)	$228
Coliforms, Fecal, by Multiple Tube Fermentation (may be used for sewage sludge), number per 100 ml by MPN	C	9221C, E (2006)	$228
Coliforms, Total, by Membrane Filter	C	9222B (2006)	$228
Coliforms, Total, by Multiple Tube Fermentation	C	9221B (2006)	$228
Control of pathogens and vectors in sewage	E3	625/R-92/013	$76
Cryptosporidium	A4.32	1622	$381
Cryptosporidium and *Giardia*	A4.39	1623	$381
	C	9711B (2011)	$381
	P2	600/R-95/178	$381
E. coli, number per 100 ml, MPN multiple tube	C	9222B (2006)	$228
E. coli, number per 100 ml, MPN multiple tube/multiple well	C	9223B (2004)	$228
E. coli by m-ColiBlue	C1 and Z6	Hach 10029	$228
Enterococci, number per 100 ml MF	C	9230C (2007)	$228
Escherichia coli by Colilert MPN, in conjunction with SM 9221B and 9221C	C	9223B (2004)	$152
Escherichia coli in conjunction with SM 9221B and 9221C	C	9221F (2006)	$152
Entamoeba histolytica	C	9711C (2011)	$228
Enteric viruses	I	D4994-89	$381
Enteric viruses in sewage sludge	E3	EPA 625/R-92/103	$381
Fecal Coliforms by Colilert-18 (APP and Reuse only)	C	9020B (2005)/9223B (2004)	$152
Fecal Coliforms by Colilert-18 (NPDES-ATP Permits only)	C	9020B (2005)/9223B (2004)	$152
Fecal Coliforms in sewage sludge by MTF	Z1	EPA 1681	$228
Helminth Ova in sludge	Z4	600/1-87-014	$381
Salmonella in sludge MPN	E5	9260D (1988)	$228
Salmonella in Sewage Sludge (Biosolids) by Modified MSRV	A4.34	1682	$228
Streptococcus, Fecal, by Membrane Filter	C	9230C (2007)	$194
Streptococcus, Fecal, by Multiple Tube Fermentation	C	9230B (2007)	$194
Viruses	C	9510 (2011)	$381
	P	Methods for Virology	$381
	P2	600/R-95/178	$381
2. Wastewater Inorganic Chemistry, Nutrients and Demand			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Mine Drainage	A4.27	1627	$303
Acidity	C	2310B (2011)	$39
Alkalinity, Total	A	310.2 (1974)	$19
	C	2320B (2011)	$19

Ammonia	A2	350.1 (2.0)	$39
	C	4500-NH_3 B (2011)	$39
		4500-NH_3 C (2011)	$39
		4500-NH_3 D (2011)	$39
		4500-NH_3 E (2011)	$39
		4500-NH_3 G (2011)	$39
	C1	Hach 10205	$39
Ammonia in sludge only	E5	4500-NH3B&C (1990)	$39
Biochemical Oxygen Demand/Carbonaceous Biochemical Oxygen Demand	C	5210B (2011)	$152
	C3	Hach 10360	$152
Boron	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	4500-B B (2011)	$76
Bromide	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
Calcium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3500-Ca B (2011)	$39
Carbon, Total Organic (TOC)	C	5310 B (2011)	$39
		5310 C (2011)	$39
		5310D (2011)	$39
Chemical Oxygen Demand	A	410.3 (1978)	$39
	A2	410.4 (2.0)	$76
	C	5220 B (2011)	$39
		5220 C (2011)	$39
		5220 D (2011)	$76
	C1	Hach 8000	$39
Chloride	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	4500-Cl B (2011)	$39
		4500-Cl C (2011)	$39
		4500-Cl D (2011)	$39
		4500-Cl E (2011)	$39
Chlorine, Total Residual	C	4500-Cl B (2011)	$39
		4500-Cl C (2011)	$39
		4500-Cl D (2011)	$39
		4500-Cl E (2011)	$39
		4500-Cl F (2011)	$39
		4500-Cl G (2011)	$39
	C1	Hach 10014	$39
Color	C	2120 B (2011)	$32
Cyanide, Available	C	4500-CN G (2011)	$76
	E7	Kelada-01	$76
	Y	OIA-1677-09 (8/99)	$76
Cyanide, Free	Y	OIA-1677-09 (8/99)	$76

Cyanide, Total	A2	335.4 (1.0)	$76
	A6	QuickChem 10-204-00-1-X (2.1)	$76
	C	Combination of 4500-CN B (2011) and 4500-CN C (2011), followed by 4500-CN D (2011), 4500-CN E (2011), or 4500-CN F (2011)	$89
	E7	Kelada-01	$76
Fluoride	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	4500-F B (2011)	$39
		4500-F C (2011)	$39
		4500-F D (2011)	$39
		4500-F E (2011)	$39
Hardness	A	130.1 (1976)	$10
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	2340B (2011)	$39
		2340C (2011)	$39
Kjeldahl, Total Nitrogen	A	351.1 (1978)	$76
	A2	351.2 (2.0)	$76
	C	Combination of 4500-NH_3 B (2011) and either 4500-N_{org} B (2011) or 4500-N_{org} C (2011)	$115
		4500-NH_3 C (2011)	$39
		4500-NH_3 D (2011)	$39
		4500-NH_3 E (2011)	$39
		4500-NH_3 F (2011)	$39
		4500-NH_3 G (2011)	$39
		4500-NH_3 H (2011)	$39
	Z9	PAI-DK01 (12/94)	$76
	Z10	PAI-DK02 (12/94)	$76
	Z11	PAI-DK03 (12/94)	$76
Methylene Blue Active Substances	C	5540C (2011)	$39
Nitrate (as N)	A	352.1 (1971)	$76
	A2	300.0 (2.1)	$26
	A5	300.1 (1.0)	$26
	C	3500-NO_3 D (2011)	$39
Nitrate-Nitrite (as N)	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_3 E (2011)	$76
		4500-NO_3 F (2011)	$76
		4500-NO_3 H (2011)	$76
Nitrite (as N)	A2	300.0 (2.1)	$26
		353.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-NO_2 B (2011)	$76
		4500-NO_3 E (2011)	$76
		4500-NO_3 F (2011)	$76

Oil and Grease and Total Petroleum Hydrocarbons	A4.24	1664 Rev B	$76
	C	5520B (2011)	$76
Orthophosphate	A	365.3 (2.0)	$76
	A2	300.0 (2.1)	$26
		365.1 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-P E (2011)	$76
		4500-P F (2011)	$76
Oxygen-consumption Rate (SOUR)	C	2710B (2011)	$39
Oxygen, Dissolved	C	4500-O B (2011)	$26
		4500-O C (2011)	$26
		4500-O D (2011)	$26
		4500-O E (2011)	$26
		4500-O F (2011)	$26
		4500-O G (2011)	$26
	C1	1002-8-2009	$26
	C3	Hach 10360	$26
pH (Hydrogen Ion)	A	150.2	$39
	C	4500-H B (2011)	$39
Phenols	A	420.1 (1978)	$116
	A2	420.4 (1.0)	$116
	C	5530 B (2010)	$116
		5530 D (2010)	$116
Phosphorus, Total	A	365.3 (1978)	$76
		365.4 (1974)	$76
	A1	200.7 (4.4)	$10
	A2	365.1 (2.0)	$76
	C	4500-P B (2011)	$76
		4500-P E (2011)	$76
		4500-P F (2011)	$76
		4500-P G (2011)	$76
		4500-P H (2011)	$76
Potassium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	C	3111B (2011)	$26
		3500-K B (2011)	$26
Residue, Filterable (TDS)	C	2540C (2011)	$39
	E8	I-1750-85	$39
Residue, Nonfilterable (TSS)	C	2540D (2011)	$39
Residue, Settleable Solids	C	2540F (2011)	$39
Residue, Total	C	2540B (2011)	$39
Residue, Volatile	A	160.4 (1971)	$39
	C	2540E (2011)	$39
Silica, Dissolved	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	4500-SiO_2 B (2011)	$76
		4500-SiO_2 C (2011)	$76
		4500-SiO_2 E (2011)	$76
		4500-SiO_2 F (2011)	$76

Sodium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3500-Na B (2011)	$26
		3500-Na D (2011)	$26
		3111B (2011)	$26
Sodium Azide	C	4110C (2011)	$76
Specific Conductance	A	120.1 (1982)	$39
	C	2510B (2011)	$39
Sulfate	A2	300.0 (2.1)	$26
		375.2 (2.0)	$76
	A5	300.1 (1.0)	$26
	C	4500-SO_4 C (2011)	$76
		4500-SO_4 D (2011)	$76
		4500-SO_4 E (2011)	$76
		4500-SO_4 F (2011)	$76
		4500-SO_4 G (2011)	$76
Sulfide (includes total and soluble)	C	4500-S^{2-} B (2011)	$39
		4500-S^{2-} D (2011)	$76
		4500-S^{2-} F (2011)	$39
		4500-S^{2-} G (2011)	$39
	C1	Hach 8131	$39
Sulfite	C	4500-SO_3 B (2011)	$76
Temperature, Degrees Celsius	C	2550B (2010)	$13
Total, Fixed and Volatile Solids in Solid and Semisolid Samples in Sludge	C	2540G (2011)	$39
Turbidity, NTU	A2	180.1 (2.0)	$39
	C	2130B (2011)	$39
3. Metals in Wastewater			
a. Sample Preparation for Metals in Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Extractable Metals	C	3030C (2004)	$7
Digestion for Metals	C	3030D (2004)	$7
Microwave Digestion	E6	CEM Microwave Digestion	$7
Nitric Acid	C	3030E (2004)	$7
Nitric Acid/Hydrochloric Acid	C	3030F (2004)	$7
Nitric Acid/Perchloric Acid	C	3030H (2004)	$7
Nitric Acid/Perchloric Acid/Hydrofluoric Acid	C	3030I (2004)	$7
Nitric Acid/Sulfuric Acid	C	3030G (2004)	$7
Preliminary Filtration	C	3030B (2004)	$7
b. Methods to Analyze Metals in Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3111D (2011)	$26

Antimony	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3113B (2010)	$26
Arsenic	A	206.5 (1978)	$39
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3500-As B (2011)	$76
Barium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Beryllium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3111E (2011)	$26
		3113B (2010)	$26
Cadmium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Cd D (2011)	$76
Chromium (VI) Hexavalent	A1	218.6 (3.3)	$26
	C	3500-Cr B (2011)	$39
		3111C (2011)	$26
Chromium, Total	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Cr B (2011)	$76

Cobalt	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
Copper	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Cu B (2011)	$76
		3500-Cu C (2011)	$76
Gold	A	231.2 (1978)	$26
	A1	200.8 (5.4)	$26
	C	3111B (2011)	$26
Iridium	A	235.2 (1978)	$26
	C	3111B (2011)	$26
Iron	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Fe B (2011)	$76
Lead	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
		3500-Pb B (2011)	$76
Lithium	A1	200.7 (4.4)	$10
Magnesium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
Manganese	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
		3500-Mn B (2011)	$76

Mercury	A	245.2 (1974)	$52
	A1	200.7 (4.4)	$10
		245.1 (3.0)	$52
	A4.17	1631E	$152
	A4.23	245.7 (2.0)	$15
	C	3112B (2011)	$52
Molybdenum	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3113B (2010)	$26
Nickel	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
Osmium	A	252.2 (1978)	$26
	C	3111D (2011)	$26
Palladium	A	253.2 (1978)	$26
	C	3111B (2011)	$26
Platinum	A	255.2 (1978)	$26
	C	3111B (2011)	$26
Rhodium	A	265.2 (1978)	$26
	C	3111B (2011)	$26
Ruthenium	A	267.2 (1978)	$26
	C	3111B (2011)	$26
Selenium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3113B (2010)	$26
		3114B (2011)	$76
Silver	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3111C (2011)	$26
		3113B (2010)	$26
Strontium	A1	200.7 (4.4)	$10
	C	3111B (2011)	$26
		3500-Sr B (2011)	$26
		3500-Sr C (2011)	$20
		3500-Sr D (2011)	$26

Thallium	A	279.2 (1978)	$26
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
Tin	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
		200.9 (2.2)	$26
	A4.10	200.5 (4.2)	$10
	C	3111B (2011)	$26
		3113B (2010)	$26
Titanium	A	283.2 (1978)	$26
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	C	3111D (2011)	$26
Vanadium	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	C	3111D (2011)	$26
		3500-V B (2011)	$76
Zinc	A	289.2 (1978)	$26
	A1	200.7 (4.4)	$10
		200.8 (5.4)	$26
	A4.10	200.5 (4.2)	$10
	A4.25	1638	$26
	C	3111B (2011)	$26
		3111C (2011)	$26
		3500 Zn B (2011)	$76
4. Aquatic Toxicity Bioassay of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Toxicity, Acute	M1	EPA/600/4-90/027F	$194
	Z12	821-R-02-012	$194
Toxicity, Chronic	N1	EPA/600/4-91/002	$194
	Z2	821-R-02-013	$194
	Z13	Lozarchak, J. 2001	$194
5. Organic Chemicals of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Volatile Organics for Pharmaceuticals	D3	524.2 (4.1)	$152
Purgeable Hydrocarbons	E	601	$76
Purgeable Aromatics	E	602	$76
Acrolein and Acrylonitrile	E	603	$76
		624	$152
Phenols	E	604	$116
Benzidines	E	605	$116
Phthalate ester	E	606	$116
Nitrosamines	E	607	$116

Organochlorine Pesticides and PCBs	E	608	$152
	E2	608.1	$152
		608.2	$152
	E4	608 (3M)	$152
Nitroaromatics and Isophorone	E	609	$116
PAHs	E	610	$116
Haloethers	E	611	$116
Chlorinated Hydrocarbons	E	612	$116
2, 3, 7, 8-Tetrachlorodibenzo-p-Dioxin	E	613	$457
Chlorinated Herbicides	E2	615	$116
Organohalide Pesticides and PCB	E2	617	$116
Triazine Pesticides	E2	619	$116
Thiophosphate Pesticides	E2	622.1	$116
Purgeables	E	624	$152
Base/Neutrals and Acids (all analytes excluding pesticides)	E	625	$152
Base/Neutrals and Acids (pesticides only)	E	625	$152
Carbamate and Urea Compounds	E2	632	$116
Tetra- through Octa-Chlorinated Dioxins and Furans	A4.22	1613 Rev B (10/94)	$258
VOCs by Isotope Dilution GC/MS	E	1624B	$152
Semivolatile Organic Compounds by Isotope Dilution GC/MS	E	1625B	$152
Organophosphorus Pesticides	E1	1657	$116
	E2	614	$116
		614.1	$116
		622	$116
VOCs Specific to the Pharmaceutical Manufacturing Industry by Isotope Dilution GC/MS	K1	1666 (A)	$152
Herbicides	C	6640B (2006)	$116
Ethylene Glycol	K	BLS-188	$152
6. Radiochemistry of Wastewater			
Description	**Reference**	**Method/s**	**Fee Per Method**
Alpha-Total pCi per liter	C	7110B (2011)	$206
	L	900.0	$206
Alpha Counting Error, pCi per liter	C	7110B (2011)	$206
Beta-Total pCi per liter	C	7110B (2011)	$206
	L	900.0	$206
Beta Counting Error, pCi	C	7110B (2011)	$206
Radium, Total pCi per liter	C	7500-Ra B (2011)	$206
	L	903.0	$206
Radium	C	7500-Ra C (2011)	$206
	L	903.1	$206

Historical Note

New Table 6.2.B. made by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.2.C. Approved Methods and Method Fees for Waste Parameters

1. Microbiology of Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Coliforms, Total, by Membrane Filter	F	9132	$228
Coliforms, Total, by Multiple Tube Fermentation	F	9131	$228
2. Sample Preparation for Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Acid Digestion of Water	F	3005A	$7
Alkaline Digestion for Hex Chome	F	3060A	$7
Bomb Preparation Method for Solid Waste	F	5050	$7
EP for Oily Wastes	F	1330A	$76
EP Toxicity	F	1310B	$76
Microwave Assisted Digestions	F	3015A	$7
		3051A	$7
		3052	$7
		3546	$7
Multiple EP	F	1320	$152
Oils, Greases, and Waxes	F	3040A	$7
Oils	F	3031	$7
Sediments, Sludges, and Soils	F	3050B	$7
SPLP	F	1312	$303
TCLP	F	1311	$303
Total Metals	F	3010A	$7
		3020A	$7
Total Recoverable in Water	F	3005A	$7
3. Inorganic Chemistry and Metals of Solid Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Aluminum	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Ammonia	A	350.3	$39
Antimony	F	6010C	$10
		6020A	$26
		7062	$76
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Arsenic	F	6010C	$10
		6020A	$26
		7010	$26
		7061A	$76
		7062	$76
		7063	$76
	F and F13	6010D	$10
		6020B	$26

Barium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Beryllium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Boron	F	6010C	$10
	F and F13	6010D	$10
Bromide	F	9056A	$26
		9211	$39
Cadmium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Calcium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Cation-Exchange Capacity of Soils	F	9080	$34
		9081	$34
Chloride	F	9056A	$26
		9057	$76
		9212	$39
		9250	$76
		9251	$76
		9253	$39
Chlorine, Total, in New and Used Petroleum Products	F	9075	$76
		9076	$39
		9077	$39
Chromium, Hexavalent	F	7195	$26
		7196A	$76
		7197	$26
		7198	$40
		7199	$76
Chromium, Total	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26

Cobalt	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Compatibility Test for Wastes and Membrane Liners	F	9090A	$152
Copper	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Corrosive to Steel	F	1110A	$63
Corrosivity pH Determination	F	9040C	$63
Cyanide	F	9010C	$13
		9012B	$76
		9213	$76
		9014	$76
	F9	9015	$76
Cyanide Extraction for Solids and Oils	F10	9013A	$39
Dermal Corrosion	F	1120	$63
Ignitability of Solids	F	1030	$32
Flash Point by Pensky Martems Cup	F	1010A	$32
Flash Point by Set-a Flash	F	1020B	$32
Fluoride	F	9056A	$26
		9214	$39
Iron	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Kjeldahl Total, Nitrogen	A	351.4	$76
Lead	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Liquid Release Test Procedure	F	9096	$39
Lithium	F	6010C	$10
		7000B	$26
	F and F13	6010D	$10
Magnesium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26

Manganese	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Mercury	F	6010C	$10
		6020A	$26
		7470A	$52
		7471B	$52
		7472	$152
		7473	$152
		7474	$152
	F and F13	6010D	$10
		6020B	$26
Molybdenum	F	6010C	$10
		7000B	$26
		7010	$26
	F and F13	6010D	$10
Nickel	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Nitrate	F	9210A	$39
		9056A	$26
Nitrite	F	9056A	$26
		9216	$39
Oil and Grease and Petroleum Hydrocarbons	A4.24	1664B	$76
O-Phosphate-P	F	9056A	$26
Osmium	F	7000B	$26
Paint Filter Liquids Test	F	9095B	$19
Perchlorate	A5	314.0	$76
	F	6850	$152
pH (Hydrogen Ion)	F	9041A	$39
		9045D	$39
Phosphorus	F	6010C	$10
	F and F13	6010D	$10
Phosphorus, Total	A	365.3	$76
Potassium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Saturated Hydraulic and Leachate Conductivity and Intrinsic Permeability	F	9100	$152

Selenium	F	6010C	$10
		6020A	$26
		7010	$26
		7741A	$26
		7742	$76
	F and F13	6010D	$10
		6020B	$26
Silica	F	6010C	$10
	F and F13	6010D	$10
Silver	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Sodium	F	6010C	$10
		6020A	$26
		7000B	$26
	F and F13	6010D	$10
		6020B	$26
Sodium Azide	C	4110C (2011)	$76
Specific Conductance	F	9050A	$39
Strontium	F	6010C	$10
		7000B	$26
	F and F13	6010D	$10
Sulfate	F	9035	$76
		9036	$76
		9038	$76
		9056A	$26
Sulfides	F	9030B	$76
		9031	$76
		9034	$76
		9215	$76
Thallium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Tin	F	6010C	$10
		7000B	$26
	F and F13	6010D	$10
Titanium	F	6010C	$10
Vanadium	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
Water	F	9000	$32
		9001	$32

White Phosphorus by GC	F	7580	$116
Zinc	F	6010C	$10
		6020A	$26
		7000B	$26
		7010	$26
	F and F13	6010D	$10
		6020B	$26
4. Organics Procedures in Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Separatory Funnel Liquid-Liquid Extraction	F	3510C	$13
Organic Compounds in Water by Microextraction	F5	3511	$13
Continuous Liquid-Liquid Extraction	F	3520C	$13
SPE	F	3535A	$13
Soxhlet Extraction	F	3540C	$13
Automated Soxhlet Extraction	F	3541	$13
Pressurized Fluid Extraction	F	3545A	$13
Ultrasonic Extraction	F	3550C	$13
Supercritical Fluid Extraction of Total Recoverable Petroleum Hydrocarbons	F	3560	$13
Supercritical Fluid Extraction of PAHs	F	3561	$13
SFE of PCBs and Organochlorine Pesticides	F	3562	$13
MSE	F4	3570	$13
Waste Dilution	F	3580A	$13
Waste Dilution for Volatile Organics	F	3585	$13
Alumina Cleanup	F	3610B	$13
Alumina Column Cleanup and Separation of Petroleum Wastes	F	3611B	$13
Florisil Cleanup	F	3620C	$13
Silica Gel Cleanup	F	3630C	$13
Gel-Permeation Cleanup	F	3640A	$13
Acid-Base Partition Cleanup	F	3650B	$13
Sulfur Cleanup	F	3660B	$13
Sulfuric Acid/Permanganate Cleanup	F	3665A	$13
Screening Solids for VOCs	F	3815	$76
Hexadecane Extraction and Screening for Purgeable Organics	F	3820	$76
Screening for Pentachlorophenol by Immunoassay	F	4010A	$76
Screening for 2,4-Dichlorophenoxyacetic Acid by Immunoassay	F	4015	$76
Screening for PCBs by Immunoassay	F	4020	$76
Screening for PCDDs and PCDFs by Immunoassay	F3	4025	$76
Soil Screening for Petroleum Hydrocarbons by Immunoassay	F	4030	$76
Soil Screening for PAHs by Immunoassay	F	4035	$76
Soil Screening for Toxaphene by Immunoassay	F	4040	$76
Soil Screening for Chlordane by Immunoassay	F	4041	$76
Soil Screening for DDT by Immunoassay	F	4042	$76
TNT Explosives in Soil by Immunoassay	F	4050	$76
RDX in Soil by Immunoassay	F	4051	$76
Screening Environmental Samples for Planar Organic Compounds	F	4425	$76
Triazine Herbicides by Quantitative Immunoassay	F	4670	$76

VOCs in Various Sample Matrices Using Equilibrium Head-space Analysis	F8	5021A	$13
Purge-and-Trap for Aqueous Samples	F6	5030C	$13
Volatile, Nonpurgeable, Water-Soluble Compounds by Azeotropic Distillation	F	5031	$13
VOCs by Vacuum Distillation	F	5032	$13
Closed-System Purge-and-Trap and Extraction for Volatile Organics in Soil and Waste Samples	F2	5035A	$13
Analysis for Desorption of Sorbent Cartridges from VOST	F	5041A	$13
EDB and DBCP by Microextraction and GC	F	8011	$116
$C_{10} – C_{32}$ Hydrocarbons	K	8015AZ 1	$116
Nonhalogenated Organics Using GC/FID	F7	8015D	$116
Aromatic and Halogenated Volatiles by GC Using Photoionization and/or Electrolytic Conductivity Detectors	F	8021B	$152
Acrylonitrile by GC	F	8031	$76
Acrylamide by GC	F	8032A	$76
Acetonitrile by GC with Nitrogen-Phosphorus Detection	F	8033	$76
Phenols by GC	F	8041A	$116
Phthalate Esters by GC/ECD	F	8061A	$116
Nitrosamines by GC	F	8070A	$116
Organochlorine Pesticides by GC	F	8081B	$152
Elemental Quantitation by GC/AED	F	8085	$116
PCBs by GC	F	8082A	$152
Nitroaromatics and Cyclic Ketones by GC	F	8091	$116
Explosives by GC	F	8095	$116
PAHs	F	8100	$116
Haloethers by GC	F	8111	$116
Chlorinated Hydrocarbons by GC: Capillary Column Technique	F	8121	$116
Aniline and Selected Derivatives by GC	F	8131	$116
Organophosphorus Compounds by GC	F	8141B	$152
Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzylation Derivatization	F	8151A	$152
VOCs by GC/MS, including n-Hexane	F	8260B	$152
	F12 and F13	8260C/8000D	$152
VOCs by VD/GC/MS	F	8261	$152
Semivolatile Organic Compounds by GC/MS	F	8270C	$152
	F and F13	8270D/8000D	$152
Semivolatile Organic Compounds (PAHs and PCBs) in Soils/Sludges and Solid Wastes Using TE/GC/MS	F	8275A	$152
8280A: Polychlorinated Dibenzo-p-Dioxins and PCDFs by HRGC/LRMS	F	8280B	$258
PCDDs and PCDFs by HRGC/HRMS	F	8290A	$258
PAHs	F	8310	$116
Determination of Carbonyl Compounds by HPLC	F	8315A	$116
Acrylamide, Acrylonitrile, and Acrolein by HPLC	F	8316	$116
N-Methylcarbamates by HPLC	F	8318A	$116
Solvent-Extractable Nonvolatile Compounds by HPLC/TS/MS or UV Detection	F	8321B	$152
Solvent Extractable Nonvolatile Compounds by HPLC/PB/MS	F	8325	$152
Nitroaromatics and Nitramines by HPLC	F	8330A	$116
Nitroaromatics, Nitramines, and Nitrate Esters	F11	8330B	$116
Tetrazene by Reverse Phase HPLC	F	8331	$116
Nitroglycerin by HPLC	F	8332	$116

GC/FT-IR Spectrometry for Semivolatile Organics: Capillary Column	F	8410	$116
Analysis of Bis (2-chloroethyl) Ether and Hydrolysis Products by Direct Aqueous Injection GC/FT-IR	F	8430	$116
Total Recoverable Petroleum Hydrocarbons by Infrared Spectrophotometry	F	8440	$116
Screening for RDX/MDX in Soil	F	8510	$76
Colorimetric Screening Method for TNT in Soil	F	8515	$76
Screening for Total VOH in Water	F	8535	$76
PCP by UV Colorimetry	F	8540	$108
TOX	F	9020B	$76
POX	F	9021	$76
TOX by Neutron Activation Analysis	F	9022	$114
EOX in Solids	F	9023	$114
TOCs	F	9060A	$76
Phenolics	F	9065	$152
		9066	$152
		9067	$152
HEM for Aqueous Samples	F	9070A	$76
HEM for Sludge, Sediment, and Solid Samples	F	9071B	$76
Screening for TRPH in Soil	F	9074	$76
Screening for PCBs in Soil	F	9078	$76
Screening for PCBs in Oil	F	9079	$76
PCBs in Waste Oil	A4.28	600/4-81-045	$152
5. Bulk Asbestos Analysis of Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Bulk Asbestos Analysis	A4.29	Bulk Asbestos	$228
	G	9002	$228
	G1 and A4.29	Bulk Asbestos	$228
Fiber Counting	G	7400	$228
		7402	$228
6. Radiochemistry of Waste			
Description	**Reference**	**Method/s**	**Fee Per Method**
Alpha-Emitting Radium Isotopes	F	9315	$206
Gross Alpha and Beta	F	9310	$206
Radium-228	F	9320	$206

Historical Note

New Table 6.2.C. made by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.2.D. Approved Methods and Method Fees for Air and Stack Parameters

1. Ambient Air Primary and Secondary Pollutants			
Description	**Reference**	**Method/s**	**Fee Per Method**
Carbon Monoxide	O	Appendix C	$393
Formaldehyde	F	8520	$393
Lead	O	Appendix G	$393
Nitrogen Dioxide	O	Appendix F	$393
Ozone	O	Appendix D	$393

Particulate Matter	O	Appendix B	$393
		Appendix J	$393
		Appendix L	$393
		Appendix O	$393
Sulfur Oxides	O	Appendix A	$393
2. Stationary and Stack Sources			
Description	**Reference**	**Method/s**	**Fee Per Method**
Carbon Dioxide, Oxygen, and Excess Air	Q	Method 3C	$393
Carbon Monoxide	Q	Method 10	$393
		Method 10A	$393
		Method 10B	$393
Carbonyl Sulfide, Hydrogen Sulfide, and Carbon Disulfide	Q	Method 15	$393
Fluoride	Q	Method 13A	$393
		Method 13B	$393
		Method 14	$393
Fugitive Emissions	Q	Method 22	$393
Gaseous Organic Compounds	Q	Method 18	$393
		Method 25	$393
		Method 25A	$393
		Method 25B	$393
Hydrogen Sulfide	Q	Method 11	$393
Inorganic Lead	Q	Method 12	$393
Mercury, Total Vapor Phase	Q1	PS-12B	$393
Moisture Content	Q	Method 4	$393
Nitrogen Oxide	Q	Method 7	$393
		Method 7A	$393
		Method 7B	$393
		Method 7C	$393
		Method 7D	$393
		Method 7E	$393
		Method 20	$393
Non-methane Organic Compounds	Q	Method 25C	$393
Particulate Emissions by Asphalt Processing and Roofing	Q	Method 5A	$152
Particulate Emissions by Fiberglass Insulation Plants	Q	Method 5E	$152
Particulate Emissions of Nonsulfates	Q	Method 5F	$152
Particulate Emissions by Nonsulfuric Acid	Q	Method 5B	$152
Particulate Emissions by Pressure Filters	Q	Method 5D	$152
Particulate Emissions by Stationary Sources	Q	Method 5	$152
		Method 17	$152
Particulate Emissions by Wood Heaters	Q	Method 5G	$152
		Method 5H	$152
Petroleum Products, Heat of Combustion	I	D240-92	$76
		D240-87	$76
Petroleum Products, Hydrometer Method	I	D287-92	$76
Petroleum Products, Sulfur	I	D4294-90	$152
Sulfur and Total Reduced Sulfur	Q	Method 15A	$393
		Method 16	$393
		Method 16A	$393
		Method 16B	$393

Sulfur Dioxide	Q	Method 6	$393
		Method 6A	$393
		Method 6B	$393
		Method 6C	$393
		Method 8	$393
		Method 19	$393
		Method 20	$393
Sulfur Dioxide Removal and SO2/NO Emission Rates	Q	Method 19	$152
Sulfuric Acid Mist	Q	Method 8	$393
Vapor Tightness, Gasoline Delivery Tank	Q	Method 27	$393
Volatile Matter Density, Solids and Water from Surface Coatings	Q	Method 24	$393
		Method 24A	$393
Volatile Matter and Density of Printing Inks	Q	Method 24A	$393
VOCs	Q	Method 21	$393
	S1	TO-3	$152
		TO-14A	$152
		TO-15	$152
VOCs in Vapor	F1	8260B AZ (Vapor) (0.0)	$152
Wood Heaters, Certification and Burn Rates	Q	Method 28	$393
		Method 28A	$393
3. ADEQ Emission Test			
Description	**Reference**	**Method/s**	**Fee Per Method**
Particulate Emissions in the Presence of Sulfuric Acid Mist/ Sulfur Oxides	R	Method A1	$393
4. National Emission Standards for Hazardous Air Pollutants			
Description	**Reference**	**Method/s**	**Fee Per Method**
Arsenic	S	Method 108	$393
		Method 108A	$393
		Method 108B	$393
		Method 108C	$393
Beryllium	S	Method 103	$393
		Method 104	$393
Mercury	S	Method 101	$393
		Method 101A	$393
		Method 102	$393
		Method 105	$393
Polonium 210	S	Method 111	$393
Vinyl Chloride	S	Method 106	$393
		Method 107	$393
		Method 107A	$393
5. Determination of Metals in Ambient Particulate Matter			
Description	**Reference**	**Method/s**	**Fee Per Method**
Digestion of Ambient Matter	O3	IO-3.1	$7
Aluminum	O1	IO-3.4	$10
	O2	IO-3.5	$26
Antimony	O1	IO-3.4	$10
	O2	IO-3.5	$26

Arsenic	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Barium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Beryllium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Bismuth	O1	IO-3.4	$10
Cadmium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Calcium	O1	IO-3.4	$10
Cesium	O1	IO-3.4	$10
Chromium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Cobalt	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Copper	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Germanium	O1	IO-3.4	$10
Gold	O1	IO-3.4	$10
Indium	O1	IO-3.4	$10
Iron	O1	IO-3.4	$10
Lanthanum	O1	IO-3.4	$10
Lead	O1	IO-3.4	$10
	O2	IO-3.5	$26
	O4	EQL-0510-191	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Lithium	O1	IO-3.4	$10
Magnesium	O1	IO-3.4	$10
Manganese	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Mercury	O1	IO-3.4	$10
	Q	Method 29 – CVAA	$52
Molybdenum	O1	IO-3.4	$10
	O2	IO-3.5	$26

Nickel	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Niobium	O1	IO-3.4	$10
Palladium	O1	IO-3.4	$10
Phosphorus	O1	IO-3.4	$10
	Q	Method 29 – ICP	$10
Platinum	O1	IO-3.4	$10
Potassium	O1	IO-3.4	$10
Rhenium	O1	IO-3.4	$10
Rhodium	O1	IO-3.4	$10
Ruthenium	O1	IO-3.4	$10
Samarium	O1	IO-3.4	$10
Selenium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Silicon	O1	IO-3.4	$10
Silver	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Sodium	O1	IO-3.4	$10
Strontium	O1	IO-3.4	$10
Tantalum	O1	IO-3.4	$10
Tellurium	O1	IO-3.4	$10
Thallium	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Thorium	O2	IO-3.5	$26
Tin	O1	IO-3.4	$10
Titanium	O1	IO-3.4	$10
Tungsten	O1	IO-3.4	$10
Uranium	O2	IO-3.5	$26
Vanadium	O1	IO-3.4	$10
	O2	IO-3.5	$26
Ytrrium	O1	IO-3.4	$10
Zinc	O1	IO-3.4	$10
	O2	IO-3.5	$26
	Q	Method 29 – ICP	$10
		Method 29 – ICPMS	$26
Zirconium	O1	IO-3.4	$10

Historical Note

New Table 6.2.D. made by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.2.E. Methods Director-Approved under R9-14-610(E) and Method Fees

Description	Reference	Method/s	Fee Per Method
Chromatographic Method	-	Any	$116
Mass Spectrometric Method	-	Any	$152
Toxicity Method	-	Any	$194

Other Method	-	Any	$75

Historical Note
New Table 6.2.E. made by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.3. Instrumentation Fees

Description	Subtype, if any	Fee Per Instrument
Atomic Absorption	Cold Vapor	$76
	Flame Burner	$76
	Graphite Furnace	$76
	Hydride Generator	$76
	Other	$76
Counters for Radioactivity	-	$76
Gas Chromatograph	Electron Capture	$76
	Flame Ionization	$76
	Flame Photometric	$76
	Halide Specific	$76
	Nitrogen/Phosphorus	$76
	Photoionization	$76
	Other	$76
Gas Chromatograph/Mass Spectrometer	High Resolution	$194
	Other than High Resolution	$152
High Pressure Liquid Chromatograph	Ultraviolet	$76
	Fluorescence	$76
	Other	$76
High Pressure Liquid Chromatograph/Mass Spectrometer	-	$152
Inductively Coupled Plasma	-	$76
Inductively Coupled Plasma/Mass Spectrometer	-	$152
Ion Chromatograph	-	$76
Automated Autoanalyzer	-	$76
Mercury Analyzer	-	$76
Organic Halide, Total	-	$76
Transmission Electron Microscope	-	$396
X-Ray Diffraction Unit	-	$76

Historical Note
New Table 6.3. made by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

Table 6.4. Alternate Default Limits

QUALITY CONTROL PARAMETERS WITHOUT ACCEPTANCE CRITERIA SPECIFIED IN THE METHOD	DEFAULT LIMITS
Matrix Spike/LFM (processed or non-processed)	LCS/LFB
Matrix Spike/LCS for 8000 methods	±30%.
LCS/LFB (processed or non-processed)/Second source reference standard	CCV/continuing IPC
LOQ/MRL (non-processed)	CCV/continuing IPC or ± 50%
LOQ/MRL (processed)	LCS/LFB or ± 50%
Methods that do not specify the LOQ/MRL	± 50%
QCS (non-processed)	ICV/continuing IPC/manufacturer's limits
QCS (processed)	LCS/LFB/manufacturer's limits

IDOC limits	LFB/LCS
LFB/LCS/LFM/duplicate RPD	IDOC limits/20%
Non-CCC compounds	CCC limits
ICV/CCV	± 10%
500, 600, 1600, and 8000 series methods that do not specify surrogates or acceptance limits for surrogates	70-130%.
500, 600, 1600, and 8000 series methods that do not specify internal standards or acceptance limits for internal standards	70-130%.
Methods that do not list a precision measurement	20% RPD

Historical Note

New Table 6.4. made by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

ARTICLE 7. HEALTH SCREENING SERVICES

R9-14-701. Health Screening Laboratory Services

A. In this Section, unless otherwise specified, the following definitions apply:
1. "Activities of daily living" means the tasks that support everyday life, such as toileting, bathing, dressing, eating, moving about, and getting in or out of bed.
2. "Assist" means to give help, support, or aid to an individual in performing a task.
3. "Caregiver" means an individual, such as a home health aide, who receives monetary compensation for assisting another individual with activities of daily living.
4. "Certified laboratory" means the same as in A.R.S. § 36-451.
5. "Drug of abuse" means a chemical substance, such as a narcotic or hallucinogen, that is used by an individual for non-medicinal reasons.
6. "Family member" means an individual related to another individual by birth, marriage, or adoption.
7. "Forensic" means relating to the use of science or technology in the investigation and establishment of facts or evidence intended for use in a court of law.
8. "Guardian" means an individual appointed as a legal guardian by a court of competent jurisdiction.
9. "Health screening laboratory services" means health screening services that determine the need for medical services, as defined in A.R.S. § 36-401, through the performance of laboratory analyses.
10. "Health screening services" means the same as in A.R.S. § 36-401.
11. "Home health aide" means an individual who receives monetary compensation from a home health agency, as defined in A.R.S. § 36-151, or a hospice service agency, as defined in A.R.S. § 36-401, to provide assistance to another individual who is not physically or mentally able to perform one or more of the activities of daily living.
12. "In vitro diagnostic device" means a piece of equipment or tool:
    a. Approved by the U.S. Food and Drug Administration for home use,
    b. Used for the measurement of specific chemicals in materials derived from the human body,
    c. Sold without a prescription, and
    d. Specified in a list available at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfIVD/Search.cfm.
13. "Laboratory analysis" means a test performed by a laboratory on body fluid, tissue, or excretion for the purpose of determining the presence, absence, or concentration of various substances in the human body.
14. "Research" means a systematic investigation to establish facts that may contribute to knowledge from which an individual may draw inferences or a general conclusion.

B. Except as specified in subsection (C), only a certified laboratory shall perform health screening laboratory services.

C. This Section does not apply when:
1. A test is performed by an individual, a family member or guardian of the individual, or another individual under A.R.S. § 32-1471:
    a. Using an in vitro diagnostic device, and
    b. On materials derived from the individual's body;
2. An individual's caregiver assists the individual to perform a test:
    a. Using an in vitro diagnostic device, and
    b. On materials derived from the individual's body;
3. A laboratory analysis is performed solely for forensic or research purposes;
4. A laboratory analysis is performed on urine to test for drugs of abuse solely for employment purposes; or
5. A laboratory analysis is performed under the jurisdiction of the U.S. Department of Veteran's Affairs or a component of the U.S. Department of Defense.

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4694, effective February 3, 2007 (Supp. 06-4).

R9-14-702. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-703. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-704. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-705. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382,

effective February 28, 2001 (Supp. 01-1).

R9-14-706. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-707. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1382, effective February 28, 2001 (Supp. 01-1).

R9-14-708. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

R9-14-709. Expired

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 689, effective July 31, 2006 (Supp. 06-3).

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Replacement Check List
For rules filed within the
1st Quarter
January 1 - March 31, 2016

THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

Title 18. Environmental Quality

Chapter 4. Department of Environmental Quality - Safe Drinking Water

Supplement Release Quarter: 16-1

Sections, Parts, Exhibits, Tables or Appendices modified

R18-4-102, R18-4-103, R18-4-105, R18-4-121, R18-4-126, R18-4-210

REMOVE Supp. 08-3	REPLACE with Supp. 16-1
Pages: 1 - 37	Pages: 1 - 38

Agency:

The department's contact person who can answer questions about rules in Supp. 16-1:

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Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may have changed and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Public Services Division

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
PUBLIC SERVICES DIVISION
March 31, 2016

RULES

A.R.S. § 41-1001(17) states: "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions.Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules are often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State's website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor's notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

Article 1, consisting of Sections R18-4-101 through R18-4-123, adopted effective April 28, 1995 (Supp. 95-2).

Article 1, consisting of R18-4-101 through R18-4-115, recodified to 18 A.A.C. Title 5, Article 1, R18-5-101 through R18-5-115 (Supp. 95-2).

Section
R18-4-101. Authority and Purpose 4
R18-4-102. Incorporation by Reference of 40 CFR 141 and 142 4
R18-4-103. General – 40 CFR 141, Subpart A 4
R18-4-104. Maximum Contaminant Levels – 40 CFR 141, Subpart B 7
R18-4-105. Monitoring and Analytical Requirements – 40 CFR 141, Subpart C 7
R18-4-105.01. Renumbered 7
R18-4-106. Reporting and Recordkeeping – 40 CFR 141, Subpart D 7
R18-4-107. Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use – 40 CFR 141, Subpart E 8
R18-4-108. Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals – 40 CFR 141, Subpart F 8
R18-4-109. Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels – 40 CFR 141, Subpart G 8
R18-4-110. Filtration and Disinfection – 40 CFR 141, Subpart H 8
R18-4-111. Control of Lead and Copper – 40 CFR 141, Subpart I 8
R18-4-112. Use of Non-Centralized Treatment Devices – 40 CFR 141, Subpart J 9
R18-4-113. Treatment Techniques – 40 CFR 141, Subpart K 9
R18-4-114. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors – 40 CFR 141, Subpart L 9
R18-4-115. Renumbered 9
R18-4-116. Renumbered 9
R18-4-117. Consumer Confidence Reports – 40 CFR 141, Subpart O 9
R18-4-118. Enhanced Filtration and Disinfection - Systems Serving 10,000 or More People – 40 CFR 141, Subpart P 9
R18-4-119. Public Notification of Drinking Water Violations – 40 CFR 141, Subpart Q 9
R18-4-120. Renumbered 9
R18-4-121. Ground Water Rule – 40 CFR 141, Subpart S ... 10
R18-4-122. Enhanced Filtration and Disinfection – Systems Serving Fewer Than 10,000 People – 40 CFR 141, Subpart T 10
Appendix A. Renumbered 10
R18-4-123. Initial Distribution System Evaluations – 40 CFR 141, Subpart U 10
R18-4-124. Stage 2 Disinfection Byproducts Requirements – 40 CFR 141, Subpart V 10
R18-4-125. Enhanced Treatment For Cryptosporidium – 40 CFR 141, Subpart W 10
R18-4-126. Revised Total Coliform Rule 40 CFR Part 141, Subpart Y 10
Appendix A. Repealed 10

ARTICLE 2. STATE DRINKING WATER REGULATIONS

Article 2, consisting of Sections R18-4-201 through R18-4-223 adopted effective April 28, 1995 (Supp. 95-2).

Article 2, consisting of Sections R18-4-201 through R18-4-290, repealed effective April 28, 1995 (Supp. 95-2).

Article 2 consisting of Sections R18-4-201 through R18-4-290, adopted effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R18-4-201 through R18-4-290 and Appendices 1-7, repealed effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R9-8-210 through R9-8-213, R9-8-220 through R9-8-227, R9-8-230 through R9-8-236, R9-8-250 through R9-8-253, R9-8-260 through R9-8-273, R9-8-290, and Appendices 1 through 6 renumbered as Article 2, Sections R18-4-210 through R18-4-213, R18-4-220 through R18-4-227, R18-4-230 through R18-4-236, R18-4-250 through R18-4-253, R18-4-260 through R18-4-273, R18-4-290, and Appendices 1 through 6 (Supp. 87-3).

Section
R18-4-201. Enforcement 10
R18-4-202. Certified Operators 11
R18-4-203. Operation and Maintenance 11
R18-4-204. Emergency Operation Plans 11
R18-4-205. Sample Collection, Preservation, and Transportation 11
R18-4-206. Monitoring and Sampling by the Department and MAP Contractors 11
R18-4-207. Entry and Inspection of Public Water Systems ..12
R18-4-208. Sanitary Surveys 12
R18-4-209. Unsafe Supplies 12
R18-4-210. Total Coliform; Special Events 12
R18-4-211. Reporting Requirements 12
R18-4-212. Groundwater Under the Direct Influence of Surface Water 13
Table 1. Decision Matrix for Determining Groundwater Under the Direct Influence of Surface Water 15
R18-4-213. Standards for Additives, Materials, and Equipment 15
R18-4-214. Hauled Water 16
R18-4-214.01. Repealed 16
R18-4-214.02. Repealed 16
R18-4-215. Backflow Prevention 16
R18-4-216. Vending Machines 17
R18-4-217. Use of Blending to Achieve Compliance with Maximum Contaminant Levels 17
R18-4-218. Criteria and Procedures for Public Water Systems Using Point-of-Entry or Point-of-Use Treatment Devices 18
R18-4-219. Exclusions 18
R18-4-220. Repealed 19
R18-4-221. Renumbered 19
R18-4-222. Renumbered 19
R18-4-223. Use of Bottled Water 19
R18-4-224. Renumbered 20
R18-4-225. Renumbered 20
R18-4-226. Renumbered 20
R18-4-227. Repealed 20

R18-4-228. Repealed 20
R18-4-229. Repealed 20
R18-4-230. Repealed 20
R18-4-231. Repealed 20
R18-4-232. Repealed 20
R18-4-233. Repealed 20
R18-4-234. Repealed 20
R18-4-235. Repealed 20
R18-4-236. Repealed 21
R18-4-237. Repealed 21
R18-4-238. Repealed 21
R18-4-239. Repealed 21
R18-4-240. Repealed 21
R18-4-241. Repealed 21
R18-4-242. Repealed 21
R18-4-243. Repealed 21
R18-4-244. Repealed 21
R18-4-245. Repealed 21
R18-4-246. Repealed 21
R18-4-247. Repealed 21
R18-4-248. Repealed 21
R18-4-249. Repealed 21
R18-4-250. Repealed 21
R18-4-251. Repealed 21
R18-4-252. Repealed 21
R18-4-253. Repealed 21
R18-4-254. Reserved 21
R18-4-255. Reserved 21
R18-4-256. Reserved 21
R18-4-257. Reserved 21
R18-4-258. Reserved 21
R18-4-259. Reserved 21
R18-4-260. Repealed 21
R18-4-261. Repealed 22
R18-4-262. Repealed 22
R18-4-263. Repealed 22
R18-4-264. Repealed 22
R18-4-265. Repealed 22
R18-4-266. Repealed 22
R18-4-267. Repealed 22
R18-4-268. Repealed 22
R18-4-269. Repealed 22
R18-4-270. Repealed 22
R18-4-271. Repealed 22
R18-4-272. Repealed 22
R18-4-273. Repealed 22
R18-4-274. Reserved 22
R18-4-275. Reserved 22
R18-4-276. Reserved 22
R18-4-277. Reserved 23
R18-4-278. Reserved 23
R18-4-279. Reserved 23
R18-4-280. Repealed 23
R18-4-281. Repealed 23
R18-4-282. Repealed 23
R18-4-283. Reserved 23
R18-4-284. Reserved 23
R18-4-285. Reserved 23
R18-4-286. Reserved 23
R18-4-287. Reserved 23
R18-4-288. Reserved 23
R18-4-289. Reserved 23
R18-4-290. Repealed 23
Appendix 1. Repealed 23
Appendix 2. Repealed 23
Appendix 3. Repealed 23
Appendix 4. Repealed 23
Appendix 5. Repealed 23
Appendix 6. Repealed 23
Appendix 7. Repealed 23

ARTICLE 3. MONITORING ASSISTANCE PROGRAM

Article 3, consisting of Sections R18-4-301 thru R18-4-317, adopted effective April 28, 1995 (Supp. 95-2).

Section
R18-4-301. Applicability 23
R18-4-301.01. Renumbered 23
Table 1. Renumbered 23
R18-4-301.02. Repealed 24
R18-4-302. Contractor Responsibilities 24
R18-4-303. Public Water System Responsibilities 24
R18-4-304. Fees for the Monitoring Assistance Program 24
R18-4-305. Collection and Payment of Fees 24
R18-4-306. Repealed 25
R18-4-307. Repealed 25
R18-4-308. Repealed 25
R18-4-309. Repealed 25
R18-4-310. Repealed 25
R18-4-311. Repealed 25
R18-4-312. Repealed 25
R18-4-313. Repealed 25
R18-4-314. Repealed 25
R18-4-315. Repealed 25
R18-4-316. Repealed 25
R18-4-317. Repealed 25
Table 1. Repealed 25
Appendix A. Repealed 25
Appendix B. Repealed 25

ARTICLE 4. REPEALED

Article 4, consisting of Sections R18-4-401 thru R18-4-405, adopted effective April 28, 1995 (Supp. 95-2).

Section
R18-4-401. Repealed 25
R18-4-402. Repealed 25
R18-4-403. Repealed 26
R18-4-404. Repealed 26
R18-4-405. Repealed 26

ARTICLE 5. RECODIFIED

Article 5 recodified to 18 A.A.C. 5, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Article 5, consisting of Sections R18-4-501 through R18-4-509, adopted effective April 28, 1995 (Supp. 95-2).

Appendices A, B, and C adopted effective April 28, 1995 (Supp. 95-2).

Section
R18-4-501. Recodified 26
R18-4-502. Recodified 26
R18-4-503. Recodified 26
R18-4-504. Recodified 26
R18-4-505. Recodified 26
R18-4-506. Recodified 26
R18-4-507. Recodified 26
R18-4-508. Recodified 26
R18-4-509. Recodified 26
Appendix A. Repealed 26
Appendix B. Repealed 26
Appendix C. Renumbered 26

ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

Article 6, consisting of Sections R18-4-601 through R18-4-607, adopted by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Article 6, consisting of Sections R18-4-601 through R18-4-607, adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3).

Section
R18-4-601. Applicability 26
R18-4-602. Elementary Business Plan 27
R18-4-603. Technical Capacity Requirements 27
R18-4-604. Managerial Capacity Requirements 27
R18-4-605. Financial Capacity Requirements 27
R18-4-606. Review, Approval, Denial Process 27
R18-4-607. Appeals 28
Appendix A. Elementary Business Plan Checklist 29
Appendix B. Drinking Water Capacity Development Statement of Responsibility 30
Appendix C. Financial Capacity for New CWSs and NTNCWSs, Worksheet 1 32
Appendix C. (Continued) Financial Capacity for New CWSs and NTNCWSs, Definitions for Worksheet 1 ... 34
Appendix D. Water System Financial Viability Tests 36

ARTICLE 7. REPEALED

Article 7, consisting of Sections R18-4-701 through R18-4-710 and Appendices A and B, adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2).

Section
R18-4-701. Repealed 37
R18-4-702. Repealed 37
R18-4-703. Repealed 37
R18-4-704. Repealed 37
R18-4-705. Repealed 37
R18-4-706. Repealed 37
R18-4-707. Repealed 37
R18-4-708. Repealed 37
R18-4-709. Repealed 37
R18-4-710. Repealed 37
Appendix A. Repealed 37
Appendix B. Repealed 37
Appendix C. Repealed 37

ARTICLE 8. TECHNICAL ASSISTANCE

Article 8, consisting of Sections R18-4-801 through R18-4-804, made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

Section
R18-4-801. Repealed 37
R18-4-802. Technical Assistance Plan 37
R18-4-803. Master Priority List 38
R18-4-804. Technical Assistance Awards 38

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

R18-4-101. Authority and Purpose

A. This Chapter is created under the authority of A.R.S. Title 49, Chapter 2, Article 9, and the federal Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26.

B. The purposes of this Chapter include the following:

1. To protect the public health and welfare by ensuring that all potable water distributed or sold to the public by public water systems is free from unwholesome, poisonous, deleterious, or other foreign substances, and filth or disease-causing substances or organisms; and
2. To enable the state to maintain primary enforcement responsibility of the Safe Drinking Water Act, including the requirements of 40 CFR 141 and 142.

Historical Note

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-4-101 recodified to R18-5-101 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-102. Incorporation by Reference of 40 CFR 141 and 142

A. Unless otherwise specified in this Chapter, all references to regulations in 40 CFR 141 and 142 in this Chapter refer to the July 1, 2014, version of the regulations. Copies of the incorporated material are available for review at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, and are available from the U.S. General Printing office at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

B. A reference to a federal statute or regulation in a federal statute or regulation incorporated by reference in this Chapter shall refer to and incorporate by reference the referenced statute or regulation as of the date specified in subsection (A), unless the referenced statute or regulation is incorporated by reference elsewhere in this Chapter in a modified form, in which case the reference shall be to the statute or regulation as incorporated in this Chapter.

C. Documents incorporated by reference in a federal statute or regulation incorporated by reference in this Chapter are also incorporated by reference in this Chapter, as of the date specified in the federal statute or regulation.

D. A federal rule incorporated by reference in this Chapter shall include all "Effective Date Notes" associated with the federal rule.

E. The term "State" or "primacy agency" in the text of a federal statute or regulation incorporated by reference in this Chapter shall mean the Arizona Department of Environmental Quality unless otherwise noted.

Historical Note

Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-4-102 recodified to R18-5-102 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-103. General – 40 CFR 141, Subpart A

A. 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4-102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.

B. The definition of "State" in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49-201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

"Air-gap separation" means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

"ANSI/NSF Standard 60" means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"ANSI/NSF Standard 61" means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"Backflow" means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

"Backflow-prevention assembly" means a mechanical device used to prevent backflow.

"Capacity" means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

"Capacity development" means improving public water system finances, management, infrastructure, and opera-

tions, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

"Capacity development report" means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

"Cross connection" means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

"Distribution system" means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

"Department" means the Arizona Department of Environmental Quality.

"Double check valve assembly" means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

"Elementary business plan" means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

"Entry point to the distribution system" means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

"EPA" means the United States Environmental Protection Agency.

"Exclusion" means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

"Exemption" means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

"Financial capacity" means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

"Groundwater system" means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

"Lead-free" has the same meaning prescribed in A.R.S. § 49-353(B).

"Major stockholder" means a person who has 20% or more ownership interest in a public water system.

"Master priority list" means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

"Monitoring assistance program" means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

"Operational assistance" means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

"Protected water source" means a groundwater source that:

- Meets the requirements of A.A.C. R18-5-502(D);
- Is not located within 100 feet of a drywell as defined by A.R.S. § 49-331(3), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

"Reduced pressure principle backflow-prevention assembly" means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

"Service connection" means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

"Service line" means the water line that runs from the corporation stop at a water main to the building inlet, including any pigtail, gooseneck, or fitting.

"State" means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term "State" means the Regional Administrator of EPA Region 9.

"System evaluation assistance" means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

"Technical assistance" means operational assistance, system evaluation assistance, or both.

"Treatment" means a process that changes the quality of water by physical, chemical, or biological means.

"Treatment technique" means a treatment procedure promulgated by EPA in lieu of an MCL.

"Variance" means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology, treatment techniques, or other means available to the system.

"Water main" means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

"Water Infrastructure Finance Authority" means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

C. 40 CFR 141.4, entitled "variances and exemptions," is incorporated by reference subject to the following modifications:
1. The phrase "entity with primary enforcement responsibility" is changed to "Department."
2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
   a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
   b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.
   c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
   d. "Treatment technique requirement," for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
   e. If the Department grants a variance or exemption, the Department shall prescribe:
      i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
      ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.

D. 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4-102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.
1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
2. 40 CFR 142.20(a), (b). The phrase "States with primary enforcement responsibility" is changed to "the Department"; the second sentences in 142.20(a) and 142.20(b) are deleted.
3. 40 CFR 142.60(b), 142.61(b). The phrase "Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances" is changed to "Department."
4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase "a State that does not have primary enforcement responsibility" is changed to "Arizona".
5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase "Administrator or [`primacy' or `primary'] state that issues variances" is changed to "Department."
6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase "Administrator or [the] primacy state" is changed to "Department"; the phrase "Administrator's or primacy state's" is changed to "Department's."
7. In 40 CFR 142, Subpart K:
   a. The phrases "[`a' or `the'] State or [the] Administrator," "Administrator or State," "the public water system, State and the Administrator," and "a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)" are changed to "the Department."
   b. 40 CFR 142.301. The last sentence is deleted.
   c. 40 CFR 142.303(b). The phrase "a State exercising primary enforcement responsibility for public water systems" is changed to "the Department."
   d. 40 CFR 142.306(b)(2). The phrase "(or by the Administrator in States which do not have primary enforcement responsibility)" is deleted.
   e. 40 CFR 142.308(a), 142.309(c). The phrase "the State, Administrator, or [the] public water system as directed by the State or Administrator" is changed to "the Department or the public water system, as determined by the Department."
   f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: "At the time of proposal, the Department must publish a notice in the *Arizona Administrative Register* or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section."
   g. 40 CFR 142.308(c)(7). The phrase "the primacy agency" is changed to "the Department."
8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term "Administrator" is changed to "Department"; the pronoun "he" is changed to "the Department"; and the pronoun "his" is changed to "the Department's."
9. In all parts of 40 CFR 142 incorporated by reference, the term "a state" or "the state" is changed to "the Department"; the term "the State's" is changed to "the Department's."
10. 40 CFR 142.62(h)(3). The term "State-approved" is changed to "Department-approved."
11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401."
12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule,

and shall meet the notice requirements of A.A.C. R18-1-401."

13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: "A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402."

E. 40 CFR 141.5 is not incorporated by reference.

Historical Note

Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-4-103 recodified to R18-5-103 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-103 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-104. Maximum Contaminant Levels – 40 CFR 141, Subpart B

40 CFR 141, Subpart B (40 CFR 141.11 through 141.13), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-506 repealed, new Section R9-20-506 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-506 amended, renumbered as Section R9-20-504, then renumbered as Section R18-4-104 effective October 23, 1987 (Supp. 87-4). R18-4-104 recodified to R18-5-104 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Amended under R1-1-109(B) to correct a manifest clerical error; subsection R18-4-104(J)(3) moved to its proper place as subsection R18-4-104(K)(3); compare at 8 A.A.R. 3086, July 26, 2002 (Supp. 03-1). Section R18-4-104 renumbered to R18-4-211; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-105. Monitoring and Analytical Requirements – 40 CFR 141, Subpart C

A. 40 CFR 141, Subpart C (40 CFR 141.21 through 141.29 and Appendix A), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.21(c)(2), 141.21(d) and 141.21(f) are not incorporated by reference.

C. 40 CFR 141.22: the last sentence of 141.22(a) is replaced by the following: "Turbidity measurements shall be made using analytical methods approved by EPA and the Arizona Department of Health Services."

D. 40 CFR 141.23(k) is not incorporated by reference.

E. 40 CFR 141.24(f)(17), 141.24(f)(20), and 141.24(h)(19) are not incorporated by reference.

F. 40 CFR 141.25: the following text replaces the text of 40 CFR 141.25(a) and (b): "Analysis for the following contaminants shall be conducted to determine compliance with 40 CFR 141.66 (radioactivity) using analytical methods approved by EPA and the Arizona Department of Health Services:

1. Naturally occurring contaminants: gross alpha and beta, gross alpha, radium 226, radium 228, and uranium.
2. Man-made contaminants: radioactive cesium, radioactive iodine, radioactive strontium 89, 90, tritium, and gamma emitters."

G. 40 CFR 141.27, alternate analytical techniques, is not incorporated by reference; the following text is substituted in its place: "The use of an alternate analytical technique approved by EPA and the Arizona Department of Health Services shall not decrease the frequency of monitoring required by this Chapter."

H. 40 CFR 141.28:

1. In 40 CFR 141.28(a), the term "State" is changed to "Arizona Department of Health Services."
2. In 40 CFR 141.28(b), the term "State" is changed to "Arizona Department of Health Services or Arizona Department of Environmental Quality."
3. A new subsection (c) is added: "A laboratory that performs drinking water analysis in Arizona shall be certified by EPA or the Arizona Department of Health Services."

Historical Note

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105 effective October 23, 1987 (Supp. 87-4). R18-4-105 recodified to R18-5-105 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section repealed by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). New Section R18-4-105 renumbered from R18-4-105.01 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in part 4 of Table 2 corrected (Supp. 04-1). Section R18-4-105 and Tables 1 through 4 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-105.01. Renumbered

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). Section renumbered to R18-4-105 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-106. Reporting and Recordkeeping – 40 CFR 141, Subpart D

A. 40 CFR 141, Subpart D (40 CFR 141.31 through 141.35), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions. The requirements in the following subsections are in addition to the requirements of 40 CFR 141, Subpart D.

B. Department reporting forms. A public water system shall report to the Department the results of all analyses completed under this Chapter on Department-approved forms.

C. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

Historical Note

Adopted effective March 19, 1980 (Supp. 80-2). Former Section R9-20-508 amended, renumbered as Section R9-20-506, then renumbered as Section R18-4-106 effective October 23, 1987 (Supp. 87-4). Amended subsection (F) effective November 30, 1988 (Supp. 88-4). R18-4-106 recodified to R18-5-106 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-106 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-107. Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use – 40 CFR 141, Subpart E

40 CFR 141, Subpart E (40 CFR 141.40 through 141.43), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-509 repealed, new Section R9-20-509 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-509 amended, renumbered as Section R9-20-507, then renumbered as Section R18-4-107 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-107 recodified to R18-5-107 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-107 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-108. Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals – 40 CFR 141, Subpart F

40 CFR 141, Subpart F (40 CFR 141.50 through 141.55), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4). R18-4-108 recodified to R18-5-108 (Supp. 95-2). New Section R18-4-108 renumbered from R18-4-109 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-108 renumbered to R18-4-205; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-109. Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels – 40 CFR 141, Subpart G

40 CFR 141, Subpart G (40 CFR 141.60 through 141.66), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-4-109 recodified to R18-5-109 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Former Section R18-4-109 renumbered to R18-4-108; new Section R18-4-109 made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-109 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-110. Filtration and Disinfection – 40 CFR 141, Subpart H

A. 40 CFR 141, Subpart H (40 CFR 141.70 through 141.76), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. The text of 40 CFR 141.74(a) is replaced by the following: "*Analytical requirements*. In order to demonstrate compliance with the requirements of this Part, public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Part."

Historical Note

Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-110 recodified to R18-5-110 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-110 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-111. Control of Lead and Copper – 40 CFR 141, Subpart I

A. 40 CFR 141, Subpart I (40 CFR 141.80 through 141.91), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. The first sentence of 40 CFR 141.89(a) is replaced by the following: "Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using analytical methods approved by EPA and the Arizona Department of Health Services. Analyses under this section for lead and copper shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services."

C. The text of 40 CFR 141.89(a)(1) is not incorporated by reference.

Historical Note

Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-4-111 recodified to R18-5-111 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-111 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-112. Use of Non-Centralized Treatment Devices – 40 CFR 141, Subpart J

40 CFR 141.101 is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-4-112 recodified to R18-5-112 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-112 renumbered to R18-4-219; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-113. Treatment Techniques – 40 CFR 141, Subpart K

40 CFR 141, Subpart K (40 CFR 141.110 through 141.111), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-4-113 recodified to R18-5-113 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-113 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-114. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors – 40 CFR 141, Subpart L

A. 40 CFR 141, Subpart L (40 CFR 141.130 through 141.135), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.131 is not incorporated by reference.

C. In order to demonstrate compliance with the requirements of this Chapter:

1. Public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Chapter; and
2. Analyses of drinking water samples shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services.

D. A party approved by the Department shall measure daily chlorite samples at the entrance to the distribution system.

E. A public water system may measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using N,N-diethyl-p-phenylenediamine (DPD) colorimetric test kits. A party approved by the Department shall measure residual disinfectant concentration.

Historical Note

Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-4-114 recodified to R18-5-114 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-114 renumbered to R18-4-202; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-115. Renumbered

Historical Note

Former Section R9-20-520 repealed, new Section R9-20-520 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-520 amended, renumbered as Section R9-20-515, then renumbered as Section R18-4-115 effective October 23, 1987 (Supp. 87-4). R18-4-115 recodified to R18-5-115 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-115 renumbered to R18-4-215 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-116. Renumbered

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-116 renumbered to R18-4-204 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-117. Consumer Confidence Reports – 40 CFR 141, Subpart O

40 CFR 141, Subpart O (40 CFR 141.151 through 141.155 and Appendix A), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-117 renumbered to R18-4-209; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-118. Enhanced Filtration and Disinfection - Systems Serving 10,000 or More People – 40 CFR 141, Subpart P

40 CFR 141, Subpart P (40 CFR 141.170 through 141.175), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-118 renumbered to R18-4-208; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-119. Public Notification of Drinking Water Violations – 40 CFR 141, Subpart Q

40 CFR 141, Subpart Q (40 CFR 141.201 through 141.211 and Appendices A, B, and C), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R18-4-215 renumbered R18-4-119 pursuant to R1-1-404 effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-119 renumbered to R18-4-213; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-120. Renumbered

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-

120 renumbered to R18-4-206 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-121. Ground Water Rule – 40 CFR 141, Subpart S

A. 40 CFR Part 141, Subpart S (40 CFR 141.400 through 141.405), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.402(a)(4) is modified as follows:
Consecutive and wholesale systems.
(i) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample, collected under § 141.21(a) until March 31, 2016 or under §§ 141.854 through 141.857 beginning April 1, 2016, within 24 hours of being notified of the total coliform-positive sample must:
(A) Notify the wholesale system(s) and,
(B) Collect a sample from its consecutive connection with the wholesale ground water system and analyze it for a fecal indicator under paragraph (c) of this section.
(ii) If the sample collected under paragraph (a)(4)(i)(B) of this section is fecal indicator-positive, within 24 hours:
(A) The consecutive system must notify the wholesale ground water system, and
(B) Both systems must consult with the Department on additional sampling to meet the requirements of paragraph (a)(3) of this section.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-121 renumbered to R18-4-201; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-122. Enhanced Filtration and Disinfection – Systems Serving Fewer Than 10,000 People – 40 CFR 141, Subpart T

40 CFR 141, Subpart T (40 CFR 141.500 through 141.571), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-122 renumbered to R18-4-207; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix A. Renumbered

Historical Note

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed; new Appendix A made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Appendix A renumbered to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-123. Initial Distribution System Evaluations – 40 CFR 141, Subpart U

40 CFR 141, Subpart U (40 CFR 141.600 through 141.605), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-123 renumbered to R18-4-216; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-124. Stage 2 Disinfection Byproducts Requirements – 40 CFR 141, Subpart V

40 CFR 141, Subpart V (40 CFR 141.620 through 141.629), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-124 renumbered to R18-4-203; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-125. Enhanced Treatment For *Cryptosporidium* – 40 CFR 141, Subpart W

40 CFR 141, Subpart W (40 CFR 141.700 through 141.723), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-125 renumbered to R18-4-214; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-126. Revised Total Coliform Rule 40 CFR Part 141, Subpart Y

A. 40 CFR Part 141, Subpart Y (40 CFR 141.851 through 141.861), is incorporated by reference as of the date specified in R18-4-102, subject to modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.851(d), 141.852, 141.853(c)(2), and 141.854(h)(2)(i) – (ii) are not incorporated by reference.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

Appendix A. Repealed

Historical Note

Appendix A renumbered from a position after R18-4-122 to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in Appendix A corrected (Supp. 04-1). Appendix A repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

ARTICLE 2. STATE DRINKING WATER REGULATIONS

R18-4-201. Enforcement

A. A water supplier who constructs, operates, or maintains a public water system contrary to the provisions of this Chapter or fails to maintain the quality of water within the public water system as required by this Chapter is subject to the actions provided in A.R.S. §§ 49-142 and 49-354.

B. If the Department determines that a public water system is not in compliance with any of the provisions of this Chapter, the Department may issue an order to the water supplier that requires the public water system to make no further service connections or that limits the number of service connections until the Department determines that the public water system achieves compliance.

C. The Department may determine compliance or initiate enforcement action based upon analytical results and other

information compiled by the Department or other federal, state, or local agencies.

D. The Department shall round compliance data to the same number of significant figures as the MCL in question to determine compliance with the MCL.

Historical Note

Former Section R9-8-212 repealed, new Section R9-8-212 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective November 2, 1982 (Supp. 82-6). Amended by renumbering subsections (P) thru (W) as (Q) thru (X) and adding a new subsection (P) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-212 renumbered without change as Section R18-4-212 (Supp. 87-3). Former Section R18-4-212 amended and renumbered as Section R18-4-201 effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-201 repealed; new Section renumbered from R18-4-121 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-202. Certified Operators

A water supplier of a public water system shall ensure that:

1. The water system is operated in accordance with 18 A.A.C. 5, Article 1.
2. The water system is operated by an operator who is properly certified pursuant to 18 A.A.C. 5, Article 1, to operate each water treatment plant in the system and the distribution system.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-202 repealed; new Section renumbered from R18-4-114 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-203. Operation and Maintenance

A water supplier shall maintain and keep in proper operating condition all facilities used in production, treatment, and distribution of the water supply so as to comply with the requirements of this Chapter and 18 A.A.C. 5.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-203 renumbered to R18-4-210; new Section renumbered from R18-4-124 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-204. Emergency Operation Plans

A. The water supplier for a community water system shall develop and keep an emergency operations plan in an easily accessible location. At a minimum, the emergency operations plan shall detail the steps that the community water system will take to assure continuation of service in the following emergency situations:

1. Loss of a source;
2. Loss of water supply due to major component failure;
3. Damage to power supply equipment or loss of power;
4. Contamination of water in the distribution system from backflow;
5. Collapse of a reservoir, reservoir roof, or pumphouse structure;
6. A break in a transmission or distribution line; and
7. Chemical or microbiological contamination of the water supply.

B. The emergency operations plan required by subsection (A) shall address all of the following:

1. Provision of alternate sources of water during the emergency;
2. Notice procedures for regulatory agencies, news media, and users;
3. Disinfection and testing of the distribution system once service is restored;
4. Identification of critical system components that shall remain in service or be returned to service quickly;
5. Critical spare parts inventory; and
6. Staff training in emergency response procedures.

C. In the event that an emergency situation that is listed in subsection (A) occurs, the Emergency Operation Plan shall be implemented by the community water system.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-204 repealed; new Section renumbered from R18-4-116 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-205. Sample Collection, Preservation, and Transportation

A public water system shall collect each sample using the sample preservation, container, and maximum holding time procedure prescribed by the Arizona Department of Health Services in 9 A.A.C. 14, Article 6, and approved by EPA for the analytical method used.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-205 repealed; new Section renumbered from R18-4-108 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-206. Monitoring and Sampling by the Department and MAP Contractors

A. The Department may take samples from a public water system. If the Department takes a sample at a public water system, the Department shall forward a copy of the analytical results to the water supplier.

B. If a public water system fails to monitor, the Department may monitor to determine compliance with MCLs. A public water system shall not use Department monitoring to satisfy monitoring requirements prescribed by this Chapter. This subsection does not apply to monitoring under the monitoring assistance program.

C. A contractor shall take compliance samples for the categories of contaminants listed in A.R.S. § 49-360(A) for a public water system that participates in the monitoring assistance program.

D. The sampling location for chemical contaminants must be the entry point to the distribution system or the compliance monitoring point specified by the Department, unless otherwise specified in this Chapter. An entry point to a distribution system is the point at which water is discharged into the distribution system from a well, storage tank, pressure tank, or water treatment plant.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-206

repealed; new Section renumbered from R18-4-120 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-207. Entry and Inspection of Public Water Systems

A. A Department inspection shall comply with A.R.S. § 41-1009.

B. 40 CFR 142.34(a) is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions. The phrase "Administrator" is changed to "Department."

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-207 repealed; new Section renumbered from R18-4-122 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-208. Sanitary Surveys

A. Each public water system shall undergo sanitary surveys in accordance with a schedule established by the Department, or when the Department determines that a sanitary survey is necessary to assure compliance with this Chapter.

B. A sanitary survey shall be performed for a public water system at least once every five years; however, a non-community water system using only protected and disinfected ground water shall have a sanitary survey performed at least every 10 years.

C. When establishing a sanitary survey schedule or determining that a sanitary survey is required prior to the next scheduled sanitary survey, the Department shall consider:

1. The quality and quantity of the source water; and
2. Whether the system is properly designed, maintained and operated.

D. Proper operation and maintenance means operating and maintaining the public water system in compliance with this Chapter; 18 A.A.C. 5, Article 5; and in conformance with the applicable portions of Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems," incorporated by reference in A.A.C. R18-5-502.

E. The Department shall review the results of a sanitary survey to determine whether the existing monitoring frequency is adequate, and whether any additional measures are required in order to ensure that the system will remain in compliance with this Chapter.

F. In conducting a sanitary survey of a groundwater system, information on sources of contamination within a delineated wellhead protection area shall be considered by the Department instead of collecting new information, if the information was collected since the last time the system was subject to a sanitary survey.

G. A water supplier shall make the changes to the design, operation, and maintenance of the public water system specified by the Department in order to bring the system into compliance with the requirements of this Chapter, and shall make the changes within the time limits set by the Department.

H. A sanitary survey of a public water system shall be made by a representative of the Department, a professional engineer or sanitarian who is registered in Arizona, a certified water system operator, or other person approved by the Department.

I. A sanitary survey shall comply with A.R.S. § 41-1009 when conducted by the Department.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-208 repealed; new Section renumbered from R18-4-118 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-209. Unsafe Supplies

The Department may order a public water system to disconnect a source to protect the public health from an acute health risk that is attributable to the source. An acute health risk is posed when one of the following occurs:

1. A violation of a MCL for total coliform and fecal coliform or *E. coli* are present that is attributable to the source,
2. A violation of the MCL for nitrate or nitrite that is attributable to the source, or
3. An occurrence of a waterborne disease outbreak that is attributable to the source.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-209 repealed; new Section renumbered from R18-4-117 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-210. Total Coliform; Special Events

A. A water system that does not meet the definition of a public water system, but serves a large number of persons for a short duration of time, such as a special event, must take corrective action as required in R18-4-126 after receiving a positive coliform result, including taking additional samples until all samples test negative for total coliform and negative for E.coli if:

1. The total number of user-days exceeds 600.
2. A user-day is calculated by multiplying the number of days the event will run by the average number of persons expected to be served each day.

B. The water system shall submit a minimum of two sample results to the Department at least seven days before the beginning of the special event. The water system shall submit a minimum of one additional sample result to the Department for each day of the special event.

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (C) and added subsection (D) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-210 renumbered without change as Section R18-4-210 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section repealed by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). New Section R18-4-210 renumbered from R18-4-203 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-211. Reporting Requirements

A. Cross connection incidents. A public water system shall submit a written cross connection incident report to the Department and the local county health department within five days of the occurrence of a cross connection problem that results in contamination of water provided by the public water system. The report shall address all of the following:

1. Date and time of discovery of the cross connection incident,

2. Nature of the cross connection incident,
3. Affected area,
4. Cause of the cross connection incident,
5. Public health impact,
6. Date and text of any public health advisory issued,
7. Corrective action taken, and
8. Date of completion of corrective action.

B. Emergencies. A public water system shall notify the Department, by telephone or facsimile, as soon as possible but no later than 24 hours after the occurrence of any of the following emergencies:
1. Loss of water supply from a source;
2. Loss of water supply due to major component failure;
3. Damage to power supply equipment or loss of power;
4. Contamination of water in the distribution system from backflow;
5. Collapse of a reservoir, reservoir roof, or pumphouse structure;
6. Break in a transmission or distribution line that results in a loss of service to customers for more than four hours; and
7. Chemical or microbiological contamination of the water supply.

C. Waterborne disease outbreak. A public water system shall report to the Department the occurrence of a waterborne disease outbreak that may be attributable to water provided by the public water system as soon as possible but no later than 24 hours after the public water system receives actual notice of the waterborne disease outbreak.

D. Department requests for records. A public water system shall submit to the Department, within the time stated in the Department's request, copies of any records that the public water system is required to retain under this Chapter or copies of any documents that the Department is entitled to inspect under 42 U.S.C. 300j-4 (2001).

E. Department reporting forms. A public water system shall report to the Department the results of all analyses completed under this Chapter on Department-approved forms.

F. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

G. Forty eight-hour reporting requirement. A public water system shall report the failure to comply with any of the provisions of this Chapter to the Department within 48 hours, except where a different reporting period is specified in this Chapter.

Historical Note

Corrected A.R.S. reference (Supp. 77-3). Amended effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-211 renumbered without change as Section R18-4-211 (Supp. 87-3). Amended effective Dec. 1, 1988 (Supp. 88-4). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-211 repealed; new Section renumbered from R18-4-104 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-212. Groundwater Under the Direct Influence of Surface Water

A. The Department suspects the following sources to be groundwater under the direct influence of surface water:
1. A spring;
2. An infiltration gallery;
3. A radial well collector, Ranney well, or horizontal well;
4. A well that is less than 500 feet from a surface water, and:
   a. The Department conducts a vulnerability assessment and determines that the source is vulnerable to direct surface water influence, or
   b. The Department cannot assess the vulnerability of the groundwater source to direct surface water influence because of a lack of information or the uncertainty of available information on the local hydrogeology or well construction characteristics;
5. A shallow well with perforations or well screens that are less than 50 feet below the ground surface;
6. A hand-dug or auger-bored well without a casing;
7. A groundwater source for which turbidity data is available that shows that the groundwater violates an interim MCL for turbidity;
8. A groundwater source for which data is available that shows that total coliform, fecal coliform, or *E. Coli* are present in untreated groundwater from the source that are not related to new well development, source modification, repair, or maintenance; and
9. Any groundwater source if the temperature of the groundwater fluctuates 15% to 20% from the mean groundwater temperature over the course of a year or if changes in the temperature of the groundwater correlate to similar changes in the temperature of surface water.

B. The Department shall conduct a sanitary survey of each public water system that the Department suspects is using a groundwater source under the direct influence of surface water.

C. The Department shall provide written notice to a public water system that the Department suspects a groundwater source is under the direct influence of surface water. A public water system may submit information to the Department to show that a groundwater source is not under the direct influence of surface water. Information that is submitted to show that a suspect groundwater source is not under the direct influence of surface water shall be in writing and shall be prepared by a qualified professional, such as a professional engineer registered in Arizona, registered geologist, water system operator, or hydrogeologist. The Department shall review any information submitted by a qualified professional to show a suspect groundwater source is not under the direct influence of surface water within 90 days after receipt of the information and determine if the source remains suspect.

D. If a groundwater source continues to be suspect after the analyses required in subsections (A) through (C), the Department may require a public water system that is suspected of using a groundwater source that is under the direct influence of surface water to conduct Microscopic Particle Analysis (MPA) monitoring of the groundwater source. A public water system may request that the Department allow the system to use an alternative method to determine whether a groundwater source is under the direct influence of surface water. An alternative method to determine whether a groundwater source is under the direct influence of surface water shall be approved by the Arizona Department of Health Services under 9 A.A.C. 14, Article 6.

E. A public water system shall conduct MPA monitoring as follows:
1. Each sample shall be representative of the groundwater source. A public water system shall not take a sample of blended water or a sample of water from the distribution system.
2. Each sample shall be collected and analyzed according to the procedures prescribed in the "Consensus Method for Determining Groundwaters Under the Direct Influence of

Surface Water Using Microscopic Particulate Analysis (MPA)," EPA 910/9-92-029, United States Environmental Protection Agency, Environmental Services Division, Manchester Environmental Laboratory, 7411 Beach Dr. E., Port Orchard, WA 98366, October 1992 (and no future editions or amendments), which is incorporated by reference and on file with the Department.

3. The Department shall schedule MPA monitoring at a time when the groundwater source is most susceptible to direct surface water influence.
4. The Department shall use the MPA risk ratings in Table 1 to determine whether groundwater is under the direct influence of surface water.
   a. If the MPA risk rating of the initial sample indicates a high or moderate risk of direct surface water influence, the public water system shall collect a second sample for MPA at the same location on a date scheduled by the Department. If the MPA risk rating of the second sample indicates a high or moderate risk of direct surface water influence, the Department shall determine that the groundwater is under the direct influence of surface water. If the risk rating of the second sample indicates a low risk of direct surface water influence, the public water system shall collect a third sample for MPA at the same location on a date scheduled by the Department. If a third sample is taken, the Department shall determine whether the groundwater is under the direct influence of surface water under subsection (E)(4)(c).
   b. If the MPA risk rating of the initial sample indicates a low risk of direct surface water influence, the public water system shall collect a second sample for MPA at the same location on a date scheduled by the Department. If the MPA risk rating of the second sample indicates a low risk of direct surface water influence, the Department shall determine that the groundwater is not under the direct influence of surface water. If the MPA risk rating of the second sample indicates a high or moderate risk of direct surface water influence, the public water system shall collect a third sample for MPA at the same location on a date scheduled by the Department. If a third sample is taken, the Department shall determine whether the groundwater is under the direct influence of surface water under subsection (E)(4)(c).
   c. If a third sample is required and the MPA risk rating of the third sample indicates a high or moderate risk of direct surface water influence, the Department shall determine that the groundwater is under the direct influence of surface water. If the MPA risk rating of the third sample indicates a low risk of direct surface water influence, the Department shall determine that the groundwater is not under the direct influence of surface water.

F. If the Department determines a source to be groundwater under the direct influence of surface water under subsection (E) and a public water system demonstrates to the Department that it is feasible to take corrective action to prevent direct surface water influence, the Department shall establish a schedule of compliance for the public water system to take corrective action instead of requiring installation of filtration and disinfection treatment. A schedule of compliance to take corrective action shall require:
1. Completion of corrective action no later than 18 months after receipt of the initial MPA monitoring results, and
2. A second round of MPA monitoring to determine whether the source is under the direct influence of surface water after completion of the corrective action.

G. Except as provided in subsection (F), a public water system with a source that the Department determines to be groundwater under the direct influence of surface water shall provide filtration and disinfection required under 40 CFR 141 Subparts H, P, and T, as incorporated by reference in this Chapter, within 18 months after the date that the Department makes the final determination that the groundwater is under the direct influence of surface water.

H. The Department shall provide a written notice to a public water system of a final determination that a groundwater source is under the direct influence of surface water. The notice shall contain the information required by A.R.S. § 41-1092.03(A).

I. A public water system may appeal a final determination that a groundwater source is under the direct influence of surface water by serving notice of appeal with the Department under the Uniform Administrative Hearing Procedures in A.R.S. Title 41, Chapter 6, Article 10. A public water system shall file notice of appeal with the Department within 30 days after receiving notice of the Department's determination that a groundwater source is under the direct influence of surface water. The Department shall notify the Office of Administrative Hearings which shall schedule a hearing on the appeal within 60 days after the date that notice of appeal is filed with the Department. Hearings shall be conducted according to the Uniform Administrative Hearing Procedures in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-212 repealed; new Section renumbered from R18-4-301.01 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Table 1. Decision Matrix for Determining Groundwater Under the Direct Influence of Surface Water

Initial Sample MPA Risk Rating	Second Sample MPA Risk Rating	Third Sample MPA Risk Rating	Groundwater Under the Direct Influence of Surface Water
High	High or Moderate		Yes
High	Low	High or Moderate	Yes
High	Low	Low	No
Moderate	High or Moderate		Yes
Moderate	Low	High or Moderate	Yes
Moderate	Low	Low	No
Low	High or Moderate	High or Moderate	Yes
Low	High or Moderate	Low	No
Low	Low		No

Historical Note

New Table 1 renumbered from R18-4-301.01, Table 1 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-213. Standards for Additives, Materials, and Equipment

A. Each product added directly to water during production or treatment shall conform to ANSI/NSF Standard 60. Products covered by this subsection include but are not limited to:
1. Coagulation and flocculation chemicals;
2. Chemicals for corrosion and scale control;
3. Chemicals for softening, precipitation, sequestering, and pH adjustment;
4. Disinfection and oxidation chemicals;
5. Chemicals for fluoridation, defluoridation, algae control, and dechlorination;
6. Dyes and tracers;
7. Antifreezes, antifoamers, regenerants, and separation process scale inhibitors and cleaners; and
8. Water well drilling and rehabilitation aids.

B. Except as identified in subsections (D) and (E), a material or product installed after January 1, 1993, that comes into contact with water or a water treatment chemical shall conform to ANSI/NSF Standard 61. Products and materials covered by this subsection include but are not limited to:
1. Process media, such as carbon and sand;
2. Joining and sealing materials, such as solvents, cements, welding materials, and gaskets;
3. Lubricants;
4. Pipes and related products, such as tanks and fittings;
5. Mechanical devices used in treatment, transmission, or distribution systems such as valves, chlorinators, and separation membranes; and
6. Surface coatings and paints.

C. Evidence that a product conforms to the requirements of this Section shall be the appearance on the product or product package of a seal of a certifying entity that is accredited by the American National Standards Institute to provide the certification.

D. *Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section. ... In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:*
1. *Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.*
2. *Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.*
3. *Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.*
4. *Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.*
5. *Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.* A.R.S. §§ 49-353.01(B) and (C) (2006).

E. The Department exempts the following materials and products from the requirement to conform to ANSI/NSF Standard 61:
1. A concrete structure, tank, or treatment tank basin that is constructed onsite if the structure, tank, or basin is not normally coated or sealed and the construction materials used in the concrete are consistent with subsection (D). If a coating or sealant is specified by the design engineer, the coating or sealant shall comply with ANSI/NSF Standard 61;
2. An earthen reservoir or canal located upstream of water treatment;
3. A water treatment plant that is comprised of components that comply with subsections (B), (C), and (D);
4. A synthetic tank constructed of material that meets Food and Drug Administration standards for a material that comes into contact with drinking water or aqueous food, or a galvanized steel tank, either of which is:
   a. Less than 15,000 gallons in capacity, and
   b. Used in a public water system with 500 or fewer service connections; or
5. A pipe, treatment plant component, or water distribution system component made of lead-free stainless steel.

Historical Note

Former Section R9-8-213 repealed, new Section R9-8-213 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-213 renumbered without change as Section R18-4-213 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted

effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-213 repealed; new Section renumbered from R18-4-119 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214. Hauled Water

A. All hauled water for delivery to a public water system shall be obtained from a source that is approved pursuant to 18 A.A.C. 5, Article 5, or a regulated public water system.

B. Materials or products that come into contact with the water shall comply with R18-4-213(B).

C. Roof hatches shall be fitted with a watertight cover.

D. A bottom drain valve or other provisions to allow complete drainage and cleaning of a water transport container shall be provided.

E. Hoses that are used to deliver drinking water shall be equipped with a cap and shall remain capped when not in use.

F. A water hauler shall, at all times, maintain a residual free chlorine level of 0.2 mg/l to 1.0 mg/l in the water that is hauled in a water transport container. A chlorine disinfectant shall be added at the time water is loaded into the container. The residual free chlorine level shall be measured each time water is off-loaded from the container. The water hauler shall maintain a log of all on-loading, chlorine disinfectant additions and residual-free chlorine measurements. Such records shall be maintained for at least three years and made available to the Department for review upon request.

G. A water transport container shall be for hauling drinking water only. The container shall be plainly and conspicuously labeled "For Drinking Water Use Only."

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-214 repealed; new Section renumbered from R18-4-125 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214.01. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-214.01 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214.02. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective January 1, 2004 (Supp. 02-3). R18-4-214.02 including Table 1 and Table 2 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-215. Backflow Prevention

A. A public water system shall protect its system from contamination caused by backflow through unprotected cross-connections by requiring the installation and periodic testing of backflow-prevention assemblies. Required backflow-prevention assemblies shall be installed as close as practicable to the service connection.

B. A public water system shall ensure that a backflow-prevention assembly is installed whenever any of the following occur:

1. A substance harmful to human health is handled in a manner that could permit its entry into the public water system. These substances include chemicals, chemical or biological process waters, water from public water supplies that has deteriorated in sanitary quality, and water that has entered a fire sprinkler system. A Class 1 or Class 2 fire sprinkler system is exempt from the requirements of this Section;
2. A source of water supply exists on the user's premises that is not accepted as an additional source by the public water system or is not approved by the Department;
3. An unprotected cross-connection exists or a cross-connection problem has previously occurred within a user's premises; or
4. There is a significant possibility that a cross-connection problem will occur and entry to the premises is restricted to the extent that cross-connection inspections cannot be made with sufficient frequency or on sufficiently short notice to ensure that unprotected cross-connections do not exist.

C. Unless a cross-connection problem is specifically identified, or as otherwise provided in this Section, the requirements of this Section shall not apply to single-family residences used solely for residential purposes.

D. A backflow-prevention assembly required by this Section shall comply with the following:

1. If equipped with test cocks, it shall have been issued a certificate of approval by:
   a. The University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC-FCCCHR), or
   b. A third-party certifying entity that is unrelated to the product's manufacturer or vendor, and is approved by the Department.
2. If not equipped with test cocks, it shall be approved by a third-party certifying entity that is unrelated to the product's manufacturer or vendor and is approved by the Department.

E. The minimum level of backflow protection that is provided to protect a public water system shall be the level recommended in Section 7.2 of the Manual of Cross-Connection Control, Ninth Edition, USC-FCCCHR, KAP-200 University Park MC-2531, Los Angeles, CA, 90089-2531, December 1993, (and no future editions or amendments), incorporated by reference and on file with the Department. The types of backflow prevention that may be required, listed in decreasing order according to the level of protection they provide, include: an air-gap separation (AG), a reduced pressure principle backflow prevention (RP) assembly, a pressure vacuum breaker (PVB) assembly, and a double check valve (DC) assembly. Nothing contained in this Section shall prevent a public water system from requiring the use of a higher level of protection than the level required by this subsection.

1. A public water system may make installation of a required backflow-prevention assembly a condition of service. A user's failure to comply with this requirement shall be sufficient cause for the public water system to terminate water service.
2. Specific installation requirements for backflow prevention include the following:
   a. Any backflow prevention required by this Section shall be installed in accordance with the manufacturer's specifications.
   b. For an AG installation, all piping between the user's connection and the receiving tank shall be entirely visible unless otherwise approved in writing by the public water system.

c. An RP assembly shall not be installed in a meter box, pit, or vault unless adequate drainage is provided.
d. A PVB assembly may be installed for use on a landscape water irrigation system if the irrigation system conforms to all of the criteria listed below. An RP assembly is required whenever any of the criteria are not met.
i. The water use beyond the assembly is for irrigation purposes only;
ii. The PVB is installed in accordance with the manufacturer's specifications;
iii. The irrigation system is designed and constructed to be incapable of inducing backpressure; and
iv. The injection of chemical pesticides and fertilizers, chemigation, is not used or provided in the irrigation system.

F. Each backflow-prevention assembly required by this Section shall be tested at least annually, or more frequently if directed by the public water system or the Department. Each assembly shall also be tested after installation, relocation, or repair. An assembly shall not be placed in service unless it has been tested and is functioning as designed. The following provisions shall apply to the testing of backflow-prevention assemblies:
1. Testing shall be in accordance with procedures described in Section 9 of the Manual of Cross-Connection Control. The public water system shall notify the water user when testing of backflow-prevention assemblies is needed. The notice shall specify the date by which the testing must be completed and the results forwarded to the public water system.
2. Testing shall be performed by a person who is currently certified as a "general" tester by the California-Nevada Section of the American Water Works Association (CA-NV Section, AWWA), the Arizona State Environmental Technical Training (ASETT) Center, or other certifying authority approved by the Department.
3. When a backflow-prevention assembly is tested and found to be defective, it shall be repaired or replaced in accordance with the provisions of this Section.

G. A public water system shall maintain records of backflow-prevention assembly installations and tests performed on backflow-prevention assemblies in its service area. Records shall be retained by the public water system for at least three years and shall be made available for review by the Department upon request. These records shall include an inventory of backflow-prevention assemblies required by this Section and, for each assembly, all of the following information:
1. Assembly identification number and description,
2. Location,
3. Date of tests,
4. Description of repairs and recommendations for repairs made by the tester, and
5. The tester's name and certificate number.

H. A public water system shall submit a written cross-connection incident report to the Department and the local health authority within five business days after a cross-connection problem occurs that results in contamination of the public water system. The report shall address all of the following:
1. Date and time of discovery of the unprotected cross-connection,
2. Nature of the cross-connection problem,
3. Affected area,
4. Cause of the cross-connection problem,
5. Public health impact,
6. Date and text of any public health advisory issued,
7. Each corrective action taken, and
8. Date of completion of each corrective action.

I. An individual with direct responsibility for implementing a backflow prevention program for a water system serving more than 50,000 persons, or an individual with direct responsibility for implementing a backflow prevention program for a for a water system serving 50,000 or fewer persons if the Department has determined that such a need exists, shall be licensed as a "cross-connection control program specialist" by the CA-NV Section, AWWA, the ASETT Center, or another certifying authority approved by the Department.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-215 repealed; new Section renumbered from R18-4-115 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-216. Vending Machines

An owner of a water vending machine shall be responsible for the proper operation of each water vending machine. The owner shall do all of the following:
1. Clean and maintain each water vending machine according to the manufacturer's recommendations;
2. Retain maintenance and cleaning records for one year;
3. Have analyses performed at least once every six months for total coliform bacteria. Results of such analyses shall be retained for one year. If a sample is positive for total coliform, the water vending machine shall be removed from service, and all components shall be cleaned, replaced, or serviced. The water vending machine shall not be placed back into service until another total coliform bacteria analysis is performed and the result is negative; and
4. Maintain in operable condition all ultraviolet, ozone, or other disinfection components and automatic disabling capabilities built into the vending machine for use in the event of a disinfection system malfunction.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-216 repealed; new Section renumbered from R18-4-123 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-217. Use of Blending to Achieve Compliance with Maximum Contaminant Levels

A. A public water system may use blending to achieve compliance with a MCL if all of the following requirements are met:
1. The public water system has obtained the Department's written approval for a blending plan that includes the following elements:
a. Detailed drawings and schematics that show flow, concentrations, and controls;
b. Proposed automatic or electronic devices that will be incorporated to ensure that the blend remains in the desired range or shuts off the offending source or triggers an alarm when the blend falls out of the desired range;

c. Individual test results from all sources proposed to be blended;
d. Projected contaminant levels that will result from blending that show both best-case and worst-case scenarios;
e. Identified techniques, and any other information requested by the Department, that show how the blending plan will produce water that will comply with MCLs; and

2. The public water system has obtained the Department's written approval for a monitoring program designed to verify continued compliance with MCLs at all subsequent downstream service connections. This program shall include monitoring on at least a quarterly basis of both of the following:
   a. All sources contributing to the blend; and
   b. Blended water to ensure that the provisions of this Section are met.

B. A public water system shall submit an amended blending plan to the Department to confirm that the new blend achieves compliance with MCLs whenever sources are added to or removed from service or the relative flow rates from blended sources are changed in a way that changes the blend.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-217 repealed; new Section renumbered from R18-4-221 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-218. Criteria and Procedures for Public Water Systems Using Point-of-Entry or Point-of-Use Treatment Devices

A. A water supplier may use a point-of-entry (POE) or point-of-use (POU) treatment technology to achieve compliance with a MCL or treatment technique if the water supplier meets the requirements of this Section.

B. A public water system may use a POE or POU treatment device to achieve compliance with a MCL, if the treatment device:
1. Is not used to achieve compliance with an MCL or treatment technique for a microbial contaminant or an indicator for a microbial contaminant, in accordance with 42 U.S.C. 300g-1(b)(4)(E)(ii) (2007);
2. Is listed in 40 CFR 141 as an acceptable compliance technology for the applicable contaminant;
3. Is certified against the applicable NSF/ANSI Standards;
4. Is owned, controlled and maintained by a public water system or by a person under contract with the public water system to ensure proper operation, maintenance, and compliance with MCLs or treatment techniques; and
5. Is equipped with mechanical warnings to ensure that customers are automatically notified of recommended system maintenance and or operational problems. This performance indication device shall provide notice to the end user at a defined moment in time without shutting off the POE or POU device.

C. Prior to installing a POE or POU treatment device, a public water system shall obtain the Department's written approval of a POE or POU operation and maintenance (O & M) plan. A public water system shall submit an O & M plan to the Department that ensures proper long-term operation, maintenance, and monitoring of the POE or POU treatment devices. An O & M plan shall ensure that:
1. The POE or POU treatment device provides health protection equivalent to the health protection provided by centralized water treatment. "Equivalent" means that water treated by the POE or POU treatment device meets all national primary drinking water regulations.
2. A residential building, or a nonresidential building that uses water for human consumption, that is connected to the public water system has a POE or POU treatment device that is installed, operated, maintained, and monitored in a manner that assures continuous compliance with the MCLs, treatment techniques, and other requirements of this Chapter.
3. Multi-unit residential and nonresidential buildings utilizing POU treatment devices to achieve compliance with this Chapter have a sufficient number of POU devices installed to provide adequate potable water for all residents, employees, and customers.
4. The rights and responsibilities of persons served by the public water system are conveyed with the title upon the sale of property containing a POU treatment device, including but not limited to the following:
   a. The public water system owns and is responsible for maintaining a POU treatment device that is installed to meet the requirements of this Section; and
   b. Persons served by public water systems must grant public water system employees reasonable access to POU treatment devices, so that the devices can be properly maintained. Public water systems may discontinue water service to a customer who refuses to allow public water system employees to enter the customer's home or business to inspect and maintain POU treatment devices.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-218 repealed; new Section renumbered from R18-4-222 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-219. Exclusions

A. A water supplier may request an exclusion from any requirement contained in this Chapter if such requirement is not also a requirement contained in a federal drinking water law. The Department shall consider the application of a water supplier for an exclusion from compliance with portions of this Chapter if the water supplier satisfactorily demonstrates that:
1. The request is not for a requirement that could be the subject of a variance or exemption under R18-4-103;
2. The request is not for requirements relating to turbidity, nitrate, or microbiological contaminants; and
3. The exclusion will not result in unreasonable risk to public health.

B. An application for an exclusion shall contain the following information:
1. The nature and duration of the exclusion requested,
2. Analytical results of water quality sampling of the water system including tests conducted as required by this Chapter,
3. An explanation and submittal of evidence that the exclusion will not result in an unreasonable risk to public health, and
4. Other information that the applicant believes to be pertinent or that the Department requires.

C. The Department shall take the following action on the application:
1. If the Department grants the request for an exclusion, it shall notify the applicant of that decision in writing within 90 days of receipt of the application. Such notice shall identify the facility covered, the conditions and requirements of the exclusion, including control measures, and that the exclusion may be terminated upon a finding that the water system has failed to comply with any conditions or requirements of the exclusion.
2. If the Department determines that an exclusion is not justified, it shall notify the applicant of the intention of denial within 90 days of receipt of the application, indicating the reasons for the proposed denial, and shall offer the applicant an opportunity to submit additional information to the Department within 30 days of the notice of intention to deny application. The Department shall make a final determination and notify the applicant within 30 days after receiving such additional information. If no additional information is submitted, the application shall be denied.

D. In addition to reviewing a request submitted by a water supplier, the Department may, on its own initiative, grant exclusions to water systems, either individually or on a group basis, if the exclusions meet criteria prescribed in subsection (A).

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-219 repealed; new Section renumbered from R18-4-112 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-220. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-220 renumbered without change as Section R18-4-220 (Supp. 87-3). Section repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-220 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-221. Renumbered

Historical Note

Former Section R9-8-221 repealed, new Section R9-8-221 adopted effective May 26, 1978 (Supp. 78-3). Correction, subsection (D), paragraph (2), subparagraph (b), drinking water standard for silvex, should read 0.01 mg/l as amended effective May 26, 1978 (Supp. 82-3). Amended subsection (D) effective November 2, 1982 (Supp. 82-6). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-221 renumbered without change as Section R18-4-221 (Supp. 87-3). Amended and new subsections (F) and (G) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-221 renumbered to R18-4-217 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-222. Renumbered

Historical Note

Former Section R9-8-222 repealed, new Section R9-8-222 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-222 renumbered without change as Section R18-4-222 (Supp. 87-3). Amended and new subsections (C) and (D) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-222 renumbered to R18-4-218 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-223. Use of Bottled Water

A. A public water system may use bottled water on a temporary basis to avoid an unreasonable risk to health. A public water system shall not use bottled water to achieve compliance with a MCL.

B. If a public water system uses bottled water to avoid an unreasonable risk to health, the public water system is responsible for the provision of sufficient quantities of bottled water to every person served by the public water system via door-to-door bottled water delivery.

C. A public water system that uses bottled water as a condition for receiving a variance or an exemption shall comply with the following:
1. The public water system shall develop and put in place a monitoring program approved by the Department that provides reasonable assurances that the bottled water meets applicable MCLs. The public water system shall monitor a representative sample of the bottled water to determine compliance with applicable MCLs during the first three-month period that it supplies the bottled water to the public and annually thereafter. Results of the bottled water monitoring program shall be provided to the Department annually; or
2. The public water system shall receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 165.110, 21 CFR 110, and 21 CFR 129. The public water system shall provide the certification to the Department in the first quarter after it supplies bottled water and annually thereafter. The Department may waive the certification requirements prescribed in this subsection if an approved monitoring program is already in place in another state; and
3. The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person served by the public water system via door-to-door bottled water delivery.

Historical Note

Former Section R9-8-223 repealed, new Section R9-8-223 adopted effective May 26, 1978 (Supp. 78-3).

Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (D), paragraph (4) effective November 2, 1982 (Supp. 82-6). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-223 renumbered without change as Section R18-4-223 (Supp. 87-3). Amended and a new subsection (F) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

R18-4-224. Renumbered

Historical Note

Former Section R9-224 repealed, new Section R9-8-224 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-224 renumbered without change as Section R18-4-224 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-224 renumbered to R18-4-301 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-225. Renumbered

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-225 renumbered without change as Section R18-4-225 (Supp. 87-3). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-225 renumbered to R18-4-304 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-226. Renumbered

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-226 renumbered without change as Section R18-4-226 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-226 renumbered to R18-4-305 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-227. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-3-227 renumbered without change as Section R18-4-227 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-228. Repealed

Historical Note

Adopted effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-229. Repealed

Historical Note

Adopted effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-230. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-230 renumbered without change as Section R18-4-230 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-231. Repealed

Historical Note

Former Section R9-8-231 repealed, new Section R9-8-231 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-231 renumbered without change as Section R18-4-231 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-232. Repealed

Historical Note

Former Section R9-8-232 repealed, new Section R9-8-232 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-232 renumbered without change as Section R18-4-232 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-233. Repealed

Historical Note

Former Section R9-8-233 repealed, new Section R9-8-232 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-233 renumbered without change as Section R18-4-233 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-234. Repealed

Historical Note

Former Section R9-8-234 repealed, new Section R9-8-234 adopted effective May 26, 1978 (Supp. 78-3). Amended effective Feb. 20, 1980 (Supp. 80-1). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-234 renumbered without change as Section R18-4-234 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-235. Repealed

Historical Note

Adopted effective January 6, 1984 (Supp. 84-1). Former Section R9-8-235 renumbered without change as Section R18-4-235 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed

effective April 28, 1995 (Supp. 95-2).

R18-4-236. Repealed

Historical Note
Adopted effective January 6, 1984 (Supp. 84-1). Former Section R9-8-236 renumbered without change as Section R18-4-236 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-237. Repealed

Historical Note
Adopted effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-238. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-239. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-240. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-241. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-242. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-243. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-244. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-245. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-246. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-247. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-248. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-249. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-250. Repealed

Historical Note
Former Section R9-8-250 repealed, new Section R9-8-250 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-250 renumbered without change as Section R18-4-250 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-251. Repealed

Historical Note
Former Section R9-8-250 repealed, new Section R9-8-251 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended by adding subsection (B) effective November 2, 1982 (Supp. 82-6). Former Section R9-8-251 renumbered without change as Section R18-4-251 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-252. Repealed

Historical Note
Former Section R9-8-252 repealed, new Section R9-8-252 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (A) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-252 renumbered without change as Section R18-4-252 (Supp. 87-3). Amended by adding a new subsection (C) effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

R18-4-253. Repealed

Historical Note
Former Section R9-8-253 repealed, new Section R9-8-253 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (A) and deleted subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-253 renumbered without change as Section R18-4-253 (Supp. 87-3). Repealed effective August 8, 1991 (Supp. 91-3).

R18-4-254. Reserved

R18-4-255. Reserved

R18-4-256. Reserved

R18-4-257. Reserved

R18-4-258. Reserved

R18-4-259. Reserved

R18-4-260. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-260 renumbered without change as Section R18-4-260 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-261. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-261 renumbered without change as Section R18-4-261 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-262. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-262 renumbered without change as Section R18-4-262 (Supp. 87-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-263. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-263 renumbered without change as Section R18-4-263 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-264. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-264 renumbered without change as Section R18-4-264 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-265. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-265 renumbered without change as Section R18-4-265 (Supp. 87-3). Amended subsections (B) and (C) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-266. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-266 renumbered without change as Section R18-4-266 (Supp. 87-3). Amended subsection (A) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-267. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-267 renumbered without change as Section R18-4-267 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-268. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-268 renumbered without change as Section R18-4-268 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-269. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-269 renumbered without change as Section R18-4-269 (Supp. 87-3). Amended subsection (A) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-270. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-270 renumbered without change as Section R18-4-270 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-271. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-271 renumbered without change as Section R18-4-271 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-272. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended subsections (A) and (D) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-272 renumbered without change as Section R18-4-272 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-273. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-273 renumbered without change as Section R18-4-273 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-274. Reserved

R18-4-275. Reserved

R18-4-276. Reserved

R18-4-277. Reserved

R18-4-278. Reserved

R18-4-279. Reserved

R18-4-280. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-281. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-282. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-283. Reserved

R18-4-284. Reserved

R18-4-285. Reserved

R18-4-286. Reserved

R18-4-287. Reserved

R18-4-288. Reserved

R18-4-289. Reserved

R18-4-290. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-290 renumbered without change as Section R18-4-290 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

Appendix 1. Repealed

Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 2. Repealed

Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 3. Repealed

Historical Note
Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 4. Repealed

Historical Note
Former Appendix 4 repealed, new Appendix 4 adopted effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 5. Repealed

Historical Note
Former Appendix 5 renumbered as Appendix 6, new Appendix 5 adopted effective November 2, 1982 (Supp. 82-6). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 6. Repealed

Historical Note
Former Appendix 5 renumbered as Appendix 6 effective November 2, 1982 (Supp. 82-6). Former Appendix 6 repealed, new Appendix 6 adopted effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 7. Repealed

Historical Note
Adopted effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

ARTICLE 3. MONITORING ASSISTANCE PROGRAM

R18-4-301. Applicability

A. A public water system that serves 10,000 or fewer persons shall participate in the monitoring assistance program. Within 60 days after receiving notice of participation in the monitoring assistance program from the Department, a public water system that determines that it serves more than 10,000 persons shall substantiate its determination by submitting to the Department the portion of the most recent census provided by the Arizona Department of Economic Security, Research Administration, Population Statistics Unit that supports the public water system's determination.

B. A public water system that is not obligated to participate in the monitoring assistance program may elect to participate in the monitoring assistance program if the owner of the public water system:
1. Notifies the Department in writing of the public water system's intention to participate in the monitoring assistance program,
2. Agrees to participate in the monitoring assistance program for a minimum of three years, and
3. Pays the fees required by R18-4-304. Subject to payment of the required fees, the public water system's participation shall begin at the start of the next full calendar year of a compliance period.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-301 repealed; new Section renumbered from R18-4-224 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-301.01. Renumbered

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 1686, effective April 19, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-301.01 renumbered to R18-4-212 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3)

Table 1. Renumbered

Historical Note
New Table made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Table 1 following R18-4-301.01 renumbered to R18-4-212, Table 1 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-301.02. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-301.02 and Tables 1 and 2 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-302. Contractor Responsibilities

A. Under the monitoring assistance program, a contractor is authorized to collect, transport, analyze, and report water samples on behalf of a participating public water system. The contractor or a party designated by the contractor shall conduct baseline monitoring for all chemicals for which the system is required to monitor under this Chapter, except for copper, lead, disinfection byproducts, and microbiological contaminants, which remain the responsibility of the public water system. Baseline monitoring includes routine monitoring for contaminants included in the monitoring assistance program. Baseline monitoring does not include increased monitoring required by this Chapter when the results of baseline monitoring indicate the presence of a contaminant at a level that requires increased monitoring by a participating public water system.

B. A contractor shall deliver copies of monitoring analysis results to the public water system and to the Department.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-302 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-303. Public Water System Responsibilities

A. Although a contractor performs baseline monitoring when a public water system participates in the monitoring assistance program, the public water system remains legally responsible for compliance with all other requirements of this Chapter.

B. The legal owner of a public water system participating in the monitoring assistance program shall notify the Department by July 1 of each year of:
1. The legal owner's name, current mailing address, and phone number;
2. The population currently served by the public water system;
3. The public water system identification number; and
4. The number of meters and service connections currently in the public water system.

C. A public water system that participates in the monitoring assistance program shall not deny a contractor access to or restrict a contractor's access to the public water system or prevent a contractor from collecting a sample covered under the monitoring assistance program.

D. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-303 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-304. Fees for the Monitoring Assistance Program

A. The Department shall assess, and a public water system participating in the monitoring assistance program shall pay, the following annual fees, subject to adjustments referenced in subsection (B):
1. An annual fee of $250, and
2. A unit fee of $2.57 per meter or service connection.

B. If the monitoring assistance fund has a surplus after execution of the previous year's contract, any surplus in excess of $200,000 in any year shall be used to reduce future fees for public water systems that paid annual fees in the previous compliance period, in a manner consistent with the program invoicing system. In the first compliance period that a public water system participates in the monitoring assistance program, the public water system shall pay the full amount of annual fees due under this Section, and is not entitled to a fee reduction resulting from a surplus in the monitoring assistance fund from a prior compliance period.

C. If a public water system serving 10,000 or fewer persons at the beginning of a compliance period increases service during the compliance period so that the public water system serves more than 10,000 persons annually, the public water system may elect to cease participation in the monitoring assistance program under the following conditions:
1. If the monitoring assistance program has already conducted monitoring for the public water system during the compliance period, the public water system shall remain in the monitoring assistance program, and pay annual fees, for the remainder of the compliance period.
2. If the monitoring assistance program has not conducted monitoring for the public water system during the compliance period, the public water system may cease participating in the monitoring assistance program, and if so, the Department shall refund any monitoring fees paid by the public water system during the compliance period.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-304 repealed; new Section renumbered from R18-4-225 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-305. Collection and Payment of Fees

A. The Department shall annually mail an invoice for fees to the legal owner of a public water system participating in the monitoring assistance program. The owner of the public water system shall pay the invoiced amount to the Department, at the address listed on the invoice, by the due date indicated on the invoice.

B. The Department shall make refunds or billing corrections if a public water system demonstrates an error in the amount billed. The owner of a public water system shall send a written request for a refund or correction to the Department, at the address on the invoice, within 90 days of the invoice date.

C. The Department may verify the number of meters and service connections of a participating public water system.

D. The Department shall not waive fees prescribed by R18-4-304.

E. The owner of a public water system that fails to pay fees assessed by the Department in a timely manner shall be subject to the penalties listed in A.R.S. § 49-354. Failure to notify the Department of the owner's current mailing address does not relieve the owner of a public water system from liability for penalties.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-305 renumbered to R18-4-306 by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

New Section R18-4-305 renumbered from R18-4-226 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-306. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Former Section R18-4-306 repealed; new Section R18-4-306 renumbered from R18-4-305 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-307. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-308. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-309. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-310. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-311. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-312. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-313. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-314. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-315. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-316. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-317. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Table 1. Repealed

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 1686, effective April 19, 1999 (Supp. 99-2). Table repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix A. Repealed

Historical Note

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix B. Repealed

Historical Note

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix B repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

ARTICLE 4. REPEALED

R18-4-401. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Former Section R18-4-401 repealed; new Section R18-4-401 renumbered from R18-4-402 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-402. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended

effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Former Section R18-4-402 renumbered to R18-4-401; new Section R18-4-402 renumbered from R18-4-403 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-403. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section repealed; new Section adopted effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-403 renumbered to R18-4-402 by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-404. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

R18-4-405. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

ARTICLE 5. RECODIFIED

Article 5 recodified to 18 A.A.C. 5, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-501. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section recodified to R18-5-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-502. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). A.R.S. citation in subsection (D)(4) corrected (Supp. 04-1). Section recodified to R18-5-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-503. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-503 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-504. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-504 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-505. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Subsection citation in subsection (B) corrected (Supp. 04-1). Section recodified to R18-5-505 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-506. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-506 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-507. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-507 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-508. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-508 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-509. Recodified

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-509 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Appendix A. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Correction of word "sued" to "used" in subsection (71) (Supp. 96-1). Appendix A amended effective June 3, 1998 (Supp. 98-3). Appendix A repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix B. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Appendix B repealed; new Appendix B renumbered from Appendix C without change effective June 3, 1998 (Supp. 98-3). Appendix B repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix C. Renumbered

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Appendix C renumbered to Appendix B without change effective June 3, 1998 (Supp. 98-3).

ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

R18-4-601. Applicability

This Article applies to new CWSs and new NTNCWSs that begin operation on or after October 1, 1999. This Article does not apply to an existing public water system.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-602. Elementary Business Plan

A. To become a new public water system, an owner shall file an elementary business plan for review and approval by the Department, on a form provided by the Department. The elementary business plan shall meet the requirements of and contain all information required in R18-4-603, R18-4-604, and R18-4-605.

B. An owner shall not commence operation of a public water system without Department approval under R18-4-606.

C. If the owner of a new public water system fails to submit a complete application, the Department shall suspend the review process and send a notice of incomplete elementary business plan to the owner. The owner shall submit the missing information to the Department within 60 days of the date of the notice of incomplete elementary business plan. If missing information is not received at the Department within the 60 day time period, the Department shall deny the elementary business plan and return the elementary business plan to the owner.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

1. Documentation of a drinking water source adequacy minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, Articles 2, 3, and 5;
4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and
5. Documentation that contains at least the following:
   a. Day 1 to final build-out technical and engineering needs projections;
   b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
   c. Information describing the life of the plant;
   d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
   e. Manufacturers' specifications on components used in the construction of the water system; and
   f. Corrective action plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specification.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-604. Managerial Capacity Requirements

An owner of a new public water system shall submit the following information as part of the elementary business plan to the Department for a determination of managerial capacity:

1. A statement of how the public water system is owned, such as by major stockholders, board of directors, sole proprietor cooperative, governmental agency or district, corporation, limited partnership, or limited liability corporation;
2. Name, address, and phone number of owner;
3. Organizational chart of the new public water system;
4. Staff job descriptions and responsibilities;
5. Water system capital improvement plan up to the proposed full system build-out or for a five-year projection, whichever is greater;
6. Certified operator grade and type that will be required by the new public water system, based upon water system design specifications;
7. A statement of the intent to create a CWS or NTNCWS and any intent to transfer ownership of the public water system as part of the construction plan or project phase build-out;
8. Method to ensure provision of information listed in Appendix B, item 4 to subsequent owners; and
9. A disclosure statement signed by the owner setting forth the owner's responsibility to comply with the requirements of this Article and to disclose all information relevant to the operation of the public water system upon transfer of ownership as outlined in Appendix B.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-605. Financial Capacity Requirements

An owner of a new public water system shall submit information for a five-year financial capacity plan, or a financial capacity plan to the end of the build-out phase, whichever is longer, that demonstrates financial capacity and documents or contains all of the information listed in Appendices C and D.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-606. Review, Approval, Denial Process

A. The Department shall review and evaluate technical capacity, based upon the requirements in R18-4-603 and Appendix A.

B. The Department shall review and evaluate managerial capacity, based upon the requirements in R18-4-604 and Appendix A.

C. The Department shall accept a financial determination made by the Arizona Corporation Commission (ACC) as meeting

the financial capacity requirements contained in this Article for a new CWS or new NTNCWS under the jurisdiction of the ACC. The applicant shall submit documentation to the Department that verifies ACC approval of the public water system's financial capacity.

D. The Department shall accept a financial determination as set forth in the certificate of assured water supply from the Arizona Department of Water Resources, Active Management Area Program (ADWR) as meeting the financial capacity requirements contained in this Article for a new CWS or new NTNCWS. The owner shall submit documentation to the Department that verifies ADWR approval of its financial capacity.

E. If a new public water system does not fall under financial review jurisdiction of the ACC or ADWR, the new CWS or new NTNCWS shall submit to the Department for review a completed financial capacity portion of the elementary business plan. The Department shall review and evaluate financial capacity, based upon the requirements in R18-4-605 and Appendices A, C, and D.

F. The Department shall notify an owner of a new public water system in writing of a deficiency in the elementary business plan or approve or deny the elementary business plan within 90 days of a receipt of a complete elementary business plan. The owner shall have 60 days from the date of a notice of deficiency to submit to the Department the information necessary to correct the deficiency in the elementary business plan. If the owner of the new public water system fails to send the requested information so that it is received by the Department within 60 days of the date of the notice of deficiency, the Department shall deny the elementary business plan and return it to the owner with a written explanation for the denial and information on the appeal process.

G. If an owner modifies technical or managerial specifications at any time between the approval to construct and the approval of construction, the owner shall notify the Department of the need to modify the elementary business plan in the technical, managerial, and financial capacity documentation. The Department shall revoke approval of the elementary business plan if the owner fails to notify the Department within 30 days of a modification.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-607. Appeals

An owner may appeal denial of an elementary business plan under A.R.S. § 41-1092 et seq.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix A. Elementary Business Plan Checklist

Elementary Business Plan Checklist

Technical Capacity	Yes	No	N/A
1. Source Adequacy - Does the documentation demonstrate 50 gallons of water per person per day for 100 years or does the system have an Arizona Department of Water Resources Certificate of assured water supply?	_____	_____	_____
2. Source Adequacy - Does the source approval information demonstrate that the source meets drinking water quality standards or have applicable drinking water technologies been described?	_____	_____	_____
3. Infrastructure - Do the design criteria meet the requirements of R18-4-502 through R18-4-509?	_____	_____	_____
4. Treatment - Do the design criteria include treatment technologies approved by ADEQ in 18 A.A.C. 4, Articles 2, 3, and 5?	_____	_____	_____
5. Does the system have a certified operator of the appropriate grade and type?	_____	_____	_____
6. Does the documentation include an elementary business plan containing technical and engineering needs projections for a time period covering day 1 to final build-out or for a five-year time period, which ever is greater?	_____	_____	_____
7. Does the documentation include the proposed water system design specifications and proposed uses including commercial and domestic use phases?	_____	_____	_____
8. Does the documentation include an elementary business plan containing the information on the components used in the design and construction of the system along with the components life span based upon manufacturer's specifications?	_____	_____	_____
9. Does the documentation include an Operations and Maintenance Plan that contains standards that are nationally recognized on all site-specific components, such as American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory?	_____	_____	_____
10. Does the documentation include an operation and maintenance plan with the manufacturer's specifications on all components used in the construction of the water system?	_____	_____	_____
11. Does the documentation include an operations and maintenance plan and emergency operation plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specifications?	_____	_____	_____
Managerial Capacity	**Yes**	**No**	**N/A**
12. Does the documentation include ownership type?	_____	_____	_____
Select all that apply.			
Sole Proprietor	_____	_____	_____
Major Stockholders	_____	_____	_____
Board of Directors	_____	_____	_____
Cooperative	_____	_____	_____
Government Agency or District	_____	_____	_____
Corporation	_____	_____	_____
Limited Liability Corporation	_____	_____	_____
Partnership	_____	_____	_____
Other_____	_____	_____	_____
13. Does the documentation include name, address, and telephone number of owner?	_____	_____	_____
14. Does the documentation include an organizational chart of owners, management, and staff with their position or job titles?	_____	_____	_____
15. Does the documentation include staff job descriptions and responsibilities?	_____	_____	_____
16. Does the documentation include a capital improvement plan up to the proposed full system build-out or for a five-year projection, whichever is greater?	_____	_____	_____
17. Does the documentation identify the grade and type of certified operator that will be needed to operate the system according to site-specific components?	_____	_____	_____
18. Does the documentation identify the intent to create a CWS or NTNCWS?	_____	_____	_____
19. Does the documentation transfer the ownership of the water system as part of the build-out phase of the project?	_____	_____	_____
20. Does the documentation identify the policies or mechanisms to ensure that all system-specific technical, managerial, and financial information of the water system is transferred to a new owner?	_____	_____	_____
21. Does the documentation include the owner's signed disclosure statement agreeing to comply with the requirements of these Articles and a general disclosure statement agreeing to disclose all information relevant to the operation of the water system to any transferee of ownership? (See Appendix B).	_____	_____	_____

Financial Capacity	Yes	No	N/A
22. Is the system regulated by the Arizona Corporation Commission (ACC) or ADWR? If Yes go to Question 23. If No go to Question 25.	_____	_____	_____
23. Has the system received an approval from the ACC on its fee structure, or ADWR on its financial capacity?	_____	_____	_____
24. Systems regulated by the Arizona Corporation Commission or Department of Water Resources shall provide information required in 22 and 23 for the financial capacity determination review by ADEQ.	_____	_____	_____
25. For New CWSs and NTNCWS NOT regulated by ACC, is all information listed in Appendices C and D included?	_____	_____	_____

Historical Note

Appendix A adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix B. Drinking Water Capacity Development Statement of Responsibility

Drinking Water Capacity Development Statement of Responsibility

Applicant Information:

Name:

Mailing Address

Phone Number: **Fax Number:** **E-mail:**

Statement Information:

1) Name of Water System:_____**PWS ID#**_____

2) Ownership Type (Please check all that apply):

____Sole Proprietor ____Major Stockholders ____Board of Directors
____Cooperative ____Government Agency ____District
____Public Entity ____Corporation ____Limited Liability Corporation
____Other (please explain) _____

3) Name of Owner(s): (Check one) See below Attach a separate sheet if more space is needed

Owner 1:

Owner 2:

Owner 3:

4) Agencies with rules applicable to the Water System: (Please check all that apply)

____Arizona Department of Environmental Quality ____Arizona Corporation Commission
____Arizona Department of Water Resources ____Arizona Department of Real Estate
____Arizona Department of Commerce ____Arizona Department of Agriculture
____Arizona Department of Corrections ____Office of the Fire Marshal
____Arizona Land Department ____Arizona Department of Revenue
____Arizona Department of Transportation ____Maricopa County Environmental Services
____Pima County Department of Environmental Quality ____Environmental Protection Agency Region IX
____Other(s) please specify_____

page 1 of 2

5) Statement of Intent (Select one):

____It **IS** the intent of the owner or developer of this NEW CWS or NEW NTNCWS to transfer ownership of the water system. As part of the ownership transfer, it is understood that the owner or developer has a responsibility to disclose and transfer ALL information relevant to the construction and operation of the water system to the new owner.
____It is **NOT** the intent of the owner to transfer ownership of the NEW CWS or NTNCWS within one year of the completion of construction of the water system.

6) Date owner expects to begin operation:

Month_____ Day _____ Year_____

7) Drinking Water Sources used: (Select all that apply)

____Ground Water
____Purchased Ground Water
____Surface Water
____Purchased Surface Water

8) Table of Contents of Systems Elementary Business Plan (Please check one):

____The Table of Contents of the Elementary Business Plan is attached.
____The Table of Contents of the Elementary Business Plan is summarized below.
Summary_____
_____
_____

9) Signature of each current owner: Check if additional signature page is attached.____

I agree to comply with the requirements of 18 A.A.C. 4, Article 6.

Print Name:_____Signature:_____Date:_____

Print Name:_____Signature:_____Date:_____

Print Name:_____Signature:_____Date:_____

page 2 of 2

Historical Note

Appendix B adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix C. Financial Capacity for New CWSs and NTNCWSs, Worksheet 1

Financial Capacity for New CWSs and NTNCWSs

Worksheet 1

Owner:_____

Completed by:_____Date:_____

5-Year Financial Projection	**Year 1 Projection**	**Year 2 Projection**	**Year 3 Projection**	**Year 4 Projection**	**Year 5 Projection**
Enter Year:					
1. Beginning Cash on Hand					
a. Unmetered Water Revenue					
b. Metered Water Revenue					
c. Other Water Revenue					
d. Total Water Revenues (1a thru 1c)					
e. Connection Fees					
f. Interest and Dividend Income					
g. Other Income					
h. **Total Cash Revenues** (1d thru 1g)					
i. Additional Revenue Needed					
j. Loans, Grants or other Cash Injection (please specify)					
2. Total Cash Balance (1h to 1j)					
3. Total Cash Available (1+2)					
4. Operating Expenses					
a. Salaries and wages					
b. Employee Pensions and Benefits					
c. Utilities					
d. Chemicals					
e. Materials and Supplies					
f. Laboratory					
g. Contractual Services					

h. Insurance					
i. Miscellaneous					
j. **Total Operations and Maintenance Expenses (4a thru 4i)**					
k. Replacement Expenditures					
l. **Total Operations and Maintenance expenditures plus Replacement expenditures (4j+4k)**					
m. Loan Principal/Capital Lease Payments					
n. Loan Interest Payments					
o. Capital Purchases (specify):					
5. Total Cash Paid Out (4m thru 4o)					
6. Ending Cash Position (3 - 5)					
7. Number of Customer Accounts					
8. Average Annual User Charge per account (1d/7)					
9. Coverage Ratio (1h-4l)/(4m+4n)					
10. Operating Ratio (1d/4l)					
11. End of Year Operating Cash (6 - 12)					
12. End of Year Reserves					
a. Operating Reserves					
b. Debt Service Reserve					
c. Capital Improvement Reserve					
d. Replacement Reserve					
e. Other					
Total Reserves (12a thru 12e)					

Appendix C. (Continued) Financial Capacity for New CWSs and NTNCWSs, Definitions for Worksheet 1

Arizona Financial Capacity For New

CWSs and NTNCWSs

Definitions for Worksheet 1

5-Year Financial Projection	Year 1 Projection	Year 2 Projection	Year 3 Projection	Year 4 Projection	Year 5 Projection
1. Beginning Cash on Hand	For the current year budget, use the actual cash balance. For all other years, cash on hand should equal item #12 from the previous period.				
a) Unmetered Water Revenue	All cash received or estimated for water supplied to residential, commercial, industrial and public customers where the customer charge is not based on quantity, but is based on other criteria such as diameter of service pipe, room, or foot of frontage.				
b) Metered Water Revenue	All cash received or estimated for water supplied to residential, commercial, industrial, and public customers where the charge is based on quantity of water delivered.				
c) Other water revenues	Other cash received or estimated from sales of water, sales for irrigation, sales for resale, inter-municipal sales, or ad valorem taxes.				
d) Total Water Revenues	Total 1(a) thru 1(c)				
e) Connection Fee	All cash received or estimated for connection of customer service during the year.				
f) Interest and Dividend Income	All cash received or estimated on interest income from securities, loans, notes, and similar instruments, whether the securities are carried as investments or included in sinking or reserve accounts.				
g) Other income	Other revenues collected or estimated during the period (such as disconnection or change in service fees, profit on materials billed to customers, servicing of customer lines, late payment fees, rents, sales of assets, or ad valorem taxes (infrastructure portion).				
h) Total Cash Revenues	**Add 1(d) thru 1(g)**				
i) Additional Revenues Needed	Additional cash needed to cover cash needs.				
j) Loans, Grants or other Cash Injections	Includes loans or grants from financial institutions, inter-municipal loans, state or federal sources.				
2. Total Cash Balance	**Add items 1(h) thru 1(j)**				
3. Total Cash Available	**Add items 1 and 2**				
4. Operating Expenses	Use actual amounts paid when completing the prior year. Estimate the amounts for projected years based on prior year amounts, trends, and other known variables.				
a) Salaries and wages	Cash expenditures made or estimated for salaries, bonuses, and other considerations for work related to the operation and maintenance of the facility, including administration and compensation for officers and directors.				
b) Employee Pensions and Benefits	Paid vacations, paid sick leave, health insurance, unemployment insurance, pension plan, and other similar liabilities.				
c) Utilities	Amounts paid or estimated for all fuel or electrical power.				
d) Chemicals	Amounts paid or estimated for chemicals used in treatment and distribution.				
e) Materials and Supplies	Amounts paid or estimated for materials and supplies used for operation and maintenance of the new public water system other than those under contractual services.				
f) Laboratory	Amounts paid or estimated for laboratory and associated services.				

g) Contractual Services	Amounts paid or estimated for outside engineering, accounting, legal, managerial, and other services.
h) Insurance	Amounts paid or estimated for vehicle, liability, worker's compensation, and other insurance associated with the public water system.
i) Miscellaneous	Amounts paid or estimated for all expenses not included elsewhere (such as permit fees, training, and certification fees).
j) Total operation and maintenance expenditures	**Add amounts in lines 4(a) thru 4(i).**
k) Replacement expenditures	Amounts paid or estimated for replacement of equipment to maintain system integrity (capital improvement plan).
l) Total Operations and Maintenance expenditures plus Replacement expenditures	**Add amounts in 4(j) and 4(k)**
m) Loan Principal, Capital Lease or Loan payment	Include cash payments made or estimated for principal and interest on all loans, including vehicle loans and equipment on time payments, and capital lease payments.
n) Loan Interest payments	Include cash payments made or estimated for interest on all loans, including vehicle loans, and equipment on time payments, and capital lease payments.
o) Capital Purchases	Amount of cash outlays or estimates for items such as equipment, building, or vehicle purchases and leasehold improvements that were not a part of the initial design of the water system.
5) Total Cash Paid Out	**Add amounts in 4(m) thru 4(o)**
6) Total Cash Available Minus Expenditures Calculation	**Take Amount in 1 and subtract Amount in 5.** If this amount is positive, there is operating cash left over after all calculated expenditure obligations have been met. If the number is negative, there are more expenses than there are funds available to pay for the expenses to operate the water system.
7) Number of Customer Accounts	Use most recent system data or expected increases.
8) Average User Charge per Customer	**Take amount listed in 1(d) and divide it by amount listed in 7.**
9) Coverage Ratio	**Take amount in 1(h) and subtract the amount in 4(l). Then divide that amount with the sum of 4(m) + 4(n).** The equation looks like this: **[1(h) - 4(l)]) [4(m) + 4(n)]** and measures the sufficiency of net operating profit to cover the debt service requirements of the system. A bond covenant might require the debt service to meet or exceed certain limits.
10) Operating Ratio	**Take amount in 1(d) and divide it by the amount in 4(l). The equation looks like this: 1(d)) 4(l).** This figure measures whether operating revenues are sufficient to cover operation, maintenance, replacement expenses. An operating ratio of 1:0 is the minimum for a self-supporting facility. If there are debt service requirements, the operating ratio would have to be higher.
11) End of Year Operating Cash	All non-reserved cash. **Add amounts from 6 thru 12.**
12) End of Year Reserves	Do not include depreciation as a reserve unless there is actually a designated depreciation reserve containing cash set aside for future expansion.
a) Operating Cash Reserve	Funds set aside to meet cash flow, operating, and seasonal fluctuations.

b) Debt Service Reserve	Funds specifically set aside to retire debt as it is scheduled.
c) Capital Improvement Reserve	Funds specifically set aside to meet long-term objectives for a major facility expansion, improvement, or the construction of a new facility.
d) Replacement Reserves	Funds specifically set aside for the future replacement of equipment needed to maintain the integrity of the facility over the useful life of the equipment.
e) Total End of Year Reserves	**Add amounts 12 (a) thru 12 (d).**

Historical Note

Appendix C adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix D. Water System Financial Viability Tests

Water System Financial Viability Tests

Test 1: Will the proposed water system collect sufficient revenues to meet all of its projected expenses?

Measurements:

a. Total Revenues - Total Expenses = Net Income > 0

b. Total Revenues - One-Time Revenues - Interest Income - Other Income = Operating Revenues

c. Total Expenses - One-Time Expenditures - Debt Service - Capital Outlays = Operating Expenditures

d. Operating Revenues - Operating Expenses = Net Revenues > 0

e. Operating Ratio = Operating Expenses ≤ 1 Operating Revenues

Test 2: Will the proposed water system generate reserves?

The following measurements shall be > 0 at the time submitted:

a. Operating Cash Reserve = $_____

b. Replacement Reserve = $_____

c. Working Capital = Current Assets - Current Liabilities

Test 3: Are the proposed rates reasonable compared to the median household income of the area to be served?

The following measurement shall be:

Average Annual Rates < Median Household Income* x 2.5%.

*The sources of median household income data include the most recent United States Census Bureau (USCB) data collected by the Department or generated by an impartial third party experienced in collecting income data and supplied to the Department by the applicant seeking viability determinations. Acceptable sources of income data, other than USCB data include feasibility studies, engineering reports, market studies, income surveys, or another source or collection methodology approved by the Department.

Historical Note

Appendix D adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999; Test 1(e) amended to correct a manifest clerical error (Supp. 99-4).

ARTICLE 7. REPEALED

R18-4-701. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-701 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-702. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-702 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-703. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-703 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-704. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Clarifying words "of Article 1" added to subsection (A)(1) (Supp. 04-1). Section R18-4-703 and Table 1 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-705. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-705 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-706. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-706 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-707. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-707 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-708. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-708 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-709. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-709 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-710. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-710 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix A. Repealed

Historical Note
New Appendix adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

Appendix B. Repealed

Historical Note
New Appendix adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Former Appendix B renumbered to Appendix C; new Appendix B made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix B repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

Appendix C. Repealed

Historical Note
New Appendix C renumbered from Appendix B by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix C repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

ARTICLE 8. TECHNICAL ASSISTANCE

R18-4-801. Repealed

Historical Note
New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4). Section R18-4-801 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-802. Technical Assistance Plan
The Department shall include a technical assistance plan in the capacity development report it publishes annually. The technical assistance plan shall include a description of the types of technical assistance the Department expects to provide, the sources and uses of technical assistance, and a master priority list.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

R18-4-803. Master Priority List

A. Each year the Department shall develop a master priority list that ranks public water systems according to their need for technical assistance.

B. The Department shall rank public water systems on the master priority list based on consideration of the following criteria:
1. Size of population served,
2. Type of public water system,
3. Type of ownership,
4. Water source (surface water or ground water),
5. Participation in the monitoring assistance program,
6. History of major monitoring or reporting deficiencies,
7. History of acute or non-acute MCL violations,
8. History of operation or maintenance violations,
9. Lack of a certified operator,
10. Prior assistance from the Department or the Water Infrastructure Finance Authority within the last five years, and
11. Any or other measurable objective criteria related to the technical, managerial, or financial capacity of a public water system.

C. If all other criteria are equal, the Department shall assign priority to public water systems with the most operation or maintenance violations.

D. The Department shall publish the master priority list annually in the Arizona Administrative Register and hold an oral proceeding to obtain public comment on the master priority list.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

R18-4-804. Technical Assistance Awards

A. The Department shall award technical assistance to the public water systems with the highest ranking on the master priority list, as funding permits.

B. The Department may provide technical assistance directly, or the Department may employ a consultant to provide the assistance.

C. If a public water system refuses technical assistance offered by the Department, or the Department determines that a public water system is not able to proceed with technical assistance within the next fiscal year, the Department shall bypass the public water system on the master priority list. The Department shall replace a bypassed public water system with the public water system next in line to receive technical assistance in accordance with the priority criteria in R18-4-803(B).

Historical Note
New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

Article 1, consisting of Sections R18-5-101 through R18-5-115, recodified from R18-4-101 through R18-4-115 (Supp. 95-2).

Article 5 renumbered as Article 1 consisting of Sections R18-4-101 through R18-4-115, effective October 23, 1987.

Former Sections R9-20-504 through R9-20-512, R9-20-517, R9-20-519, and R9-20-520 amended and renumbered as Article 5 consisting of Sections R9-20-501, R9-20-503 through R9-20-510, R9-20-512, R9-20-514, and R9-20-515; and new Sections R9-20-502, R9-20-511, and R9-20-513 adopted effective October 23, 1987.

Former Sections R9-20-501 through R9-20-503, R9-20-513 through R9-20-516, and R9-20-518 repealed effective October 23, 1987.

Section
R18-5-101. Definitions
R18-5-102. Applicability
R18-5-103. Certification Committee
R18-5-104. General Requirements
R18-5-105. Certification
R18-5-106. Examinations
R18-5-107. Certificate Renewal
R18-5-108. Certificate Expiration
R18-5-109. Denial, Suspension, Probation, and Revocation
R18-5-110. Reciprocity
R18-5-111. Repealed
R18-5-112. Experience and Education
R18-5-113. Classes of Facilities
R18-5-114. Grades of Wastewater Treatment Plants and Collection Systems
R18-5-115. Grades of Water Treatment Plants and Distribution Systems
R18-5-116. Initial Grading and Regrading of Facilities

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

Article 2, consisting of Sections R18-5-201 through R18-5-251 and Illustrations A and B, adopted effective February 19, 1998 (Supp. 98-1).

Section
R18-5-201. Definitions
R18-5-202. Applicability
R18-5-203. Design Approval
R18-5-204. Approval of Construction
R18-5-205. Prohibitions
R18-5-206. Water Source
R18-5-207. Construction Materials
R18-5-208. Maximum Bathing Load
R18-5-209. Shape
R18-5-210. Walls
R18-5-211. Freeboard
R18-5-212. Floors
R18-5-213. Entries and Exits
R18-5-214. Steps
R18-5-215. Ladders
R18-5-216. Recessed Treads
R18-5-217. Decks and Deck Equipment
R18-5-218. Lighting
R18-5-219. Water Depths
R18-5-220. Depth Markers
R18-5-221. Diving Areas and Equipment
R18-5-222. Prohibition Against Diving; Warning Signs
R18-5-223. Water Circulation System
R18-5-224. Piping and Fittings
R18-5-225. Pumps and Motors
R18-5-226. Drains and Suction Outlets
R18-5-227. Filters
R18-5-228. Return Inlets
R18-5-229. Gauges
R18-5-230. Flow Meter
R18-5-231. Strainers
R18-5-232. Overflow Collection Systems
R18-5-233. Vacuum Cleaning Systems
R18-5-234. Disinfection
R18-5-235. Cross-Connection Control
R18-5-236. Wastewater Disposal
R18-5-237. Lifeguard Chairs
R18-5-238. Lifesaving and Safety Equipment
R18-5-239. Rope and Float Lines
R18-5-240. Barriers
R18-5-241. Public Swimming Pools; Bathhouses and Dressing Rooms
R18-5-242. Semipublic Swimming Pools; Toilets and Lavatories
R18-5-243. Drinking Water Fountains
R18-5-244. Wading Pools
R18-5-245. Timers for Public and Semipublic Spas
R18-5-246. Air Blower and Air Induction Systems for Public and Semipublic Spas
R18-5-247. Water Temperature in Public and Semipublic Spas
R18-5-248. Special Use Pools
R18-5-249. Variances
R18-5-250. Inspections
R18-5-251. Enforcement
Ill. A. Diving Well Dimensions for Swimming Pools
Ill. B. Minimum Distance Requirements for Decks

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

Article 3, consisting of Sections R18-5-301 through R18-5-303, adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

Section
R18-5-301. Definitions
R18-5-302. Certified Areawide Water Quality Management Plan Approval
R18-5-303. Determination of Conformance

ARTICLE 4. SUBDIVISIONS

Former Title 9, Chapter 8, Article 11, consisting of Sections R9-8-1011 through R9-8-1015, R9-8-1021, R9-8-1026, R9-8-1027, R9-8-1031, and R9-8-1032 through R9-8-1036 renumbered as Title 18, Chapter 5, Article 4, consisting of Sections R18-5-401 through R18-5-411 (Supp. 89-2).

Section
R18-5-401. Definitions

R18-5-402. Approval of plans required
R18-5-403. Application for approval
R18-5-404. Size of lots
R18-5-405. Responsibility of subdivider
R18-5-406. Public water systems
R18-5-407. Public sewerage systems
R18-5-408. Individual sewage disposal systems
R18-5-409. Refuse disposal
R18-5-410. Condominiums
R18-5-411. Violations

ARTICLE 5. MINIMUM DESIGN CRITERIA

Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Section
R18-5-501. Siting Requirements
R18-5-502. Minimum Design Criteria
R18-5-503. Storage Requirements
R18-5-504. Prohibition on the Use of Lead Pipe, Solder, and Flux
R18-5-505. Approval to Construct
R18-5-506. Compliance with Approved Plans
R18-5-507. Approval of Construction
R18-5-508. Record Drawings
R18-5-509. Modification to Existing Treatment Process

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-101. Definitions

The terms in this Article have the following meanings:

"Certified operator" or "operator" means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection.

"Collection system" means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

"Department" means the Department of Environmental Quality or its designated representative.

"Director" means the Director of the Department of Environmental Quality or the Director's designated representative.

"Direct responsible charge" means day-to-day decision making responsibility for a facility or a major portion of a facility.

"Distribution system" means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.

"Facility" means a water treatment plant, wastewater treatment plant, distribution system, or collection system.

"Industrial waste" means the liquid, gaseous, or solid waste produced at an industrial operation.

"Onsite operator" means an operator who visits a facility at least daily to ensure that the facility is operating properly.

"Onsite representative" means an individual located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.

"Operator" has the same meaning as certified operator, as defined in this Section.

"PDH" means professional development hour, as defined in this Section.

"Population equivalent" means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.

"Professional development hour" or "PDH" means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.

"Public water system" has the same meaning prescribed in A.R.S. § 49-352.

"Qualifying discipline" means engineering, biology, chemistry, or a closely related technical or scientific discipline.

"Qualifying experience" means experience, skill, or knowledge obtained through employment that is applicable to the technical or operational control of all or part of a facility.

"Remote operator" means an operator who is not an onsite operator.

"Validated examination" means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.

"Wastewater" means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.

"Wastewater treatment plant" means a process, device, or structure used to treat or stabilize wastewater or industrial waste and dispose of the effluent.

"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

Historical Note

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-5-101 recodified from R18-4-101 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-102. Applicability

A. The rules in this Article apply to owners and operators of facilities in Arizona.

B. The following facilities are exempt from the requirements of this Article:

1. A public water system that meets the nonapplicability criteria in R18-4-102.
2. A septic tank or collection system that discharges to a septic tank.
3. A collection system that serves 2,500 or fewer persons and discharges into a facility that is operated by a certified operator.

4. A collection system that serves a nonresident population and discharges into a collection system operated by a certified operator.
5. An irrigation system, an industrial water facility, or a similar facility in which water is not used for domestic or drinking purposes.
6. An irrigation or industrial wastewater facility used to treat, recycle, or impound industrial or agricultural wastes within the boundaries of the industrial or agricultural property.
7. An industrial waste pretreatment facility in which treated wastewater is released to a collection system or wastewater treatment plant that is regulated by this Article.
8. A facility for treating industrial wastes that are not treatable by biological means.
9. A facility used to impound surface water before the water is conducted to a water treatment plant.
10. A wastewater treatment device that serves a home.

Historical Note

Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-5-102 recodified from R18-4-102 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-103. Certification Committee

A. Upon the effective date of this rule, the Director shall establish a certification committee to make recommendations and to provide the Department with technical advice and assistance related to this Article when requested.

B. The certification committee shall consist of 11 members as follows:
1. One employee of the Department;
2. One currently employed wastewater treatment plant operator with Grade 4 certification;
3. One currently employed water treatment plant operator with Grade 4 certification;
4. One currently employed wastewater collection system operator with Grade 4 certification;
5. One currently employed water distribution system operator with Grade 4 certification;
6. One faculty member teaching sanitary sciences at an Arizona university or community college;
7. One professional engineer, registered and residing in Arizona, engaged in consulting in the field of sanitary engineering;
8. One elected or appointed municipal official;
9. One representative of an investor-owned water or wastewater facility;
10. One representative of a small public water system; and
11. One currently employed remote operator representative.

C. The Director shall appoint each certification committee member.

D. The certification committee shall meet at least twice a year. At the first meeting of each calendar year, the certification committee shall select, from its membership, a chairperson and other officers as necessary. The Department's certification committee member is the executive secretary, who is responsible for keeping records of all meetings.

E. The term of a certification committee member is three years.

F. A meeting quorum consists of the chairperson or the chairperson's designated representative, the executive secretary or the executive secretary's designated representative, and three other members of the committee.

G. In the event of a vacancy caused by death, resignation, or removal for cause, the Director shall appoint a successor for the unexpired term.

H. A certification committee member may be reappointed, but a member shall not serve more than three consecutive terms.

Historical Note

Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-5-103 recodified from R18-4-103 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-104. General Requirements

A. A facility owner shall ensure that at all times:
1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility;
2. An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator may make a planning decision regarding water quality or water quantity if the decision is not a direct operational process control or system integrity decision that affects public health;
3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;
4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and at or above the grade of the facility;
5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
6. The names of all current operators are on file with the Department.

B. If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within 10 days of the replacement.

C. An operator shall notify the Department in writing within 10 days of the date the operator either ceases operation of a facility or commences operation of another facility.

D. An operator shall operate each facility in compliance with applicable state and federal law.

E. A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.

F. An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:
1. The remote operator is certified for the class of each facility and at or above the grade of each facility operated by the remote operator.
2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of subsection (F)(8) are met. The onsite representative is not required to be an operator if the

facility has a remote operator who is certified at or above the grade of the facility.
3. The remote operator instructs, supervises, and provides written instructions to the onsite representative in the proper operation and maintenance of each facility and ensures that adequate records are kept.
4. The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
6. The remote operator operates each facility in compliance with applicable state and federal laws.
7. The remote operator inspects a facility as often as necessary to ensure proper operation and maintenance, but in no case less than:
   a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
   b. Monthly for a Grade 1 wastewater treatment plant;
   c. Twice a month for a collection system that serves fewer than 2,500 people; and
   d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.
8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
   a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available;
   b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
   c. The remote operator inspects the facility weekly.

Historical Note

Former Section R9-20-506 repealed, new Section R9-20-506 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-506 amended, renumbered as Section R9-20-504, then renumbered as Section R18-4-104 effective October 23, 1987 (Supp. 87-4). R18-5-104 recodified from R18-4-104 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-105. Certification

A. The Department shall issue an operator certificate to an applicant if the applicant:
1. Meets the experience and education requirements in R18-5-112 for the applicable class and grade,
2. Passes a written examination for the applicable class and grade, and
3. Has not had an operator's certificate revoked in Arizona or permanently revoked in another jurisdiction.

B. To apply for operator certification, an applicant shall submit or arrange to have submitted to the Department the following information, as applicable, in a format acceptable to the Department:
1. The applicant's full name, Social Security number, and operator number;
2. The applicant's current mailing address, home and work telephone numbers, fax number, and e-mail address;
3. The applicant's place of employment, including the facility identification number;
4. The class and grade of the facility where the applicant is employed;
5. Proof of successful completion of the examination for the applicable class and grade; and
6. Documentation of the applicant's experience and education required under R18-5-112.

Historical Note

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105 effective October 23, 1987 (Supp. 87-4). R18-5-105 recodified from R18-4-105 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).

R18-5-106. Examinations

A. The Department shall provide for examinations for certification of operators. The Department may contract with third party examiners for administration of examinations, based on its assessment of the quality of the examination services. The Department shall ensure that a list of approved examiners is available upon request.

B. The Department shall validate all examinations before administration. Each examination shall include topics such as treatment technologies, system maintenance, regulatory protocols, safety, mathematics, and general system management.

C. The examiner shall grade the examination and make the results available to the applicant and the Department within seven days of the date of the examination.

D. An applicant shall not be admitted to an examination without a valid picture I.D.

E. An individual shall make a score of 70 percent on the examination in order to attain a passing grade.

Historical Note

Adopted effective March 19, 1980 (Supp. 80-2). Former Section R9-20-508 amended, renumbered as Section R9-20-506, then renumbered as Section R18-4-106 effective October 23, 1987 (Supp. 87-4). Amended subsection (F) effective November 30, 1988 (Supp. 88-4). R18-5-106 recodified from R18-4-106 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-107. Certificate Renewal

A. If the Department renews a certificate, the certificate is renewed for three years, unless the operator requests a shorter renewal period in writing.

B. To renew a certificate, an operator shall complete and submit to the Department an operator certificate renewal form

approved by the Department. An operator shall maintain documentation and provide the documentation to the Department upon request to verify completion of at least 30 PDHs accumulated during a certification period. The operator shall provide documentation of PDHs in a format acceptable to the Department. At least 10 of the PDHs shall directly relate to the specific job functions of the operator. If an operator holds multiple certificates, the operator may apply required PDHs to all certificates if the PDHs are acquired within the applicable certification period. The operator's supervisor or the entity that provides the education or training shall verify completion of each PDH in writing. An operator shall maintain documentation of completion of PDHs for a minimum of five years.

C. As an alternative to the requirements of subsection (B), an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

Historical Note

Former Section R9-20-509 repealed, new Section R9-20-509 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-509 amended, renumbered as Section R9-20-507, then renumbered as Section R18-4-107 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-5-107 recodified from R18-4-107 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-108. Certificate Expiration

A. A certificate expires on the expiration date printed on the certificate. An operator may reinstate an expired certificate for the same class and grade without examination if the operator files the documentation required in R18-5-107(B) with the Department within 90 days of the certificate expiration date.

B. If an expired certificate is not renewed within 90 days of the certificate expiration date, the Department shall not reinstate the certificate. To be recertified, the operator shall reapply and be reexamined as a new applicant.

Historical Note

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4). R18-5-108 recodified from R18-4-108 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-109. Denial, Suspension, Probation, and Revocation

A. If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2.

B. The Department may revoke or suspend a certificate, or place an operator on probation, if the Department finds that the operator:

1. Operates a facility in a manner that violates federal or state law;
2. Negligently operates a facility or negligently supervises the operation of a facility;
3. Fails to comply with a Department order or order of a court;
4. Obtains, or attempts to obtain, a certificate by fraud, deceit, or misrepresentation;
5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
6. Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or supervision of a facility;
7. Endangers the public health, safety, or welfare;
8. Fails to comply with the terms or conditions of probation or suspension; or
9. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this Article.

C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.

D. The Department may place an operator on probation or suspend an operator's certificate to address deficiencies in operator performance. The terms of probation or suspension may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other terms to address deficiencies in operator performance.

E. During the period of suspension, an individual whose certificate is suspended shall not operate a facility of the class of the suspended certificate.

F. An operator whose certificate is suspended or revoked, or who has been placed on probation, shall immediately notify the owner of a facility where the operator is employed of the suspension, revocation, or probation.

Historical Note

Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-5-109 recodified from R18-4-109 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).

R18-5-110. Reciprocity

The Department shall issue a certificate to an applicant who holds a valid certificate from another jurisdiction, if the applicant:

1. Passes a written, validated examination in Arizona or in another jurisdiction that administers an examination that is substantially equivalent to the examination in Arizona and validated by the Department, and
2. Submits written evidence of the experience and education required under R18-5-112.

Historical Note

Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-5-110 recodified from R18-4-110 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-111. Repealed

Historical Note

Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-5-111 recodified from R18-4-111 (Supp. 95-2). Section repealed by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-112. Experience and Education

A. The Department shall consider the following criteria to determine whether an applicant has the experience and education required for certification in a specific class and grade:
1. Years of experience at a lower grade;
2. Qualifying experience in the same or a related field; and
3. Education in a qualifying discipline.

B. An applicant shall provide written evidence of education in a qualifying discipline. The applicant shall provide transcripts if the Department determines that the transcripts are necessary to verify completion of the education requirements.

C. An applicant shall provide written evidence of qualifying experience in the applicable facility class.

D. An applicant shall meet the following requirements for admission to a certification examination:
1. For Grade 1, high school graduation or the equivalent.
2. For Grade 2, at least:
   a. High school graduation or the equivalent and one year of qualifying experience as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction;
   b. Two years of postsecondary education in a qualifying discipline and one year of qualifying experience, including six months as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction; or
   c. A bachelor's degree in a qualifying discipline and six months of qualifying experience.
3. For Grade 3, at least:
   a. High school graduation or the equivalent and two years of qualifying experience, including one year as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction;
   b. Two years of postsecondary education in a qualifying discipline, and 18 months of qualifying experience as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction; or
   c. A bachelor's degree in a qualifying discipline and one year of qualifying experience.
4. For Grade 4, at least:
   a. High school graduation or the equivalent and three years of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction;
   b. Two years of postsecondary education in a qualifying discipline and 30 months of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction; or
   c. A bachelor's degree in a qualifying discipline, and two years of qualifying experience.

Historical Note

Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-5-112 recodified from R18-4-112 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-113. Classes of Facilities

A. The Department shall classify a facility in one of four classes:
1. Water treatment plant,
2. Water distribution system,
3. Wastewater treatment plant, or
4. Wastewater collection system.

B. The Department shall classify a facility as one of four grades, Grades 1–4. The grade corresponds with the level of system complexity, with Grade 1 being the most simple and Grade 4 being the most complex.

C. For a multi-facility system, the Department shall grade each facility according to complexity and the total population or population equivalent served.

Historical Note

Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-5-113 recodified from R18-4-113 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-114. Grades of Wastewater Treatment Plants and Collection Systems

The Department shall grade a wastewater treatment plant or collection system according to population equivalent served, degree of hazard to public health, class of facility, and degree of treatment, as follows:
1. Grade 1 includes:
   a. A stabilization pond that serves 2,000 or fewer persons;
   b. A wastewater treatment plant not designated as Grade 2, 3, or 4; or
   c. A collection system that serves 2,500 or fewer persons.
2. Grade 2 includes:
   a. A stabilization pond that is designed to serve more than 2,000 persons;
   b. An aerated lagoon;
   c. A facility that employs biological treatment based upon the activated sludge principle or trickling filters and is designed to serve 5,000 or fewer persons, except as provided in subsection (3)(c); or
   d. A collection system that serves between 2,501 to 10,000 persons.
3. Grade 3 includes:
   a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve 5,001 to 20,000 persons;
   b. A facility that employs trickling filtration and is designed to serve 5,001 to 25,000 persons;
   c. A variation of biological treatment based on the activated sludge principle that requires specialized knowledge, including contact stabilization, and is designed to serve 20,000 or fewer persons; or
   d. A collection system that serves 10,001 to 25,000 persons.
4. Grade 4 includes:

a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve more than 20,000 persons;
b. A facility that employs trickling filtration and is designed to serve a population equivalent more than 25,000 persons; or
c. A collection system that serves more than 25,000 persons.

Historical Note

Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-5-114 recodified from R18-4-114 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended to correct manifest typographical error in subsection (3)(d) (Supp. 01-3).

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

A. Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system. The Department shall grade a water treatment plant according to the sum of the points it the Department assigns for each plant characteristic.

1. The Department shall assign points for the purpose of grading a water treatment plant as follows:

Plant Characteristics	**Points**
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Groundwater Source	3
Surface or Groundwater Under the Direct Influence of Surface Water Source	5
Carbon Dioxide	2
pH Adjustment	3
Packed Tower Aeration	6
Air Stripping	6
Stability or Corrosion Control	3
Taste and Odor	8
Iron/Manganese Removal	8
Ion Exchange Softening	10
Chemical Precipitation Softening	15
Coagulant Addition	6
Flocculation	4
Sedimentation	4
Upflow Clarification	2
Fluoridation	5
Activated Alumina	6
Blending	5
Residual Waste Stream	5
Control Systems Technology	2
Biologically Active Filter	20
Granular Media Filter	15
Pressure Filter	15
Gravity Sand Filter	10
Membrane Filtration	15
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9
Chlorine Dioxide	9
Ozone	12
Ultraviolet	3

2. The Department shall assign a grade by the total number of points assigned to the facility, as follows:

Grade	**Point Range**
Grade 1	1 to 25
Grade 2	26 to 50
Grade 3	51 to 70
Grade 4	More than 70

B. Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points the Department assigns for each system characteristic.

1. The Department shall assign points for the purpose of grading a distribution system as follows:

System Characteristics	**Points**
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Pressure Zones	5
Booster Stations	5
Storage Tanks	3
Blending	5
Fire Protection Systems/Testable Backflow Prevention Assemblies*	5
Cathodic Protection	3
Control System Technologies	2
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9

Chlorine Dioxide	9

*The presence of one or both of these devices earns five points for the facility.

2. No points are added for Grade 1 small systems that:
   a. Only distribute groundwater;
   b. Serve fewer than 501 persons;
   c. Have no disinfection or disinfect by chlorine gas or hypochlorite only; and
   d. Do not store water or store water only in storage tanks.
3. The Department shall assign a grade by the total number of points assigned to the facility, as follows:

Grade	Point Range
Grade 1	0
Grade 2	1 to 20
Grade 3	21 to 35
Grade 4	More than 35

Historical Note

Former Section R9-20-520 repealed, new Section R9-20-520 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-520 amended, renumbered as Section R9-20-515, then renumbered as Section R18-4-115 effective October 23, 1987 (Supp. 87-4). R18-5-115 recodified from R18-4-115 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-116. Initial Grading and Regrading of Facilities

A. The Department shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 when initially grading or when regrading a facility.

B. If it is determining the initial grade of a facility or whether to regrade a facility, the Department shall consider the facility characteristics in R18-5-114 and R18-5-115, and whether:
1. The facility has special design features or characteristics that make it unusually difficult to operate;
2. The water or wastewater is unusually difficult to treat;
3. The facility uses effluent; or
4. The facility poses a potential risk to public health, safety or welfare.

C. The owner of a facility that is regraded under this Article shall ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

R18-5-201. Definitions

"Air induction system" means a system whereby a volume of air is induced into a hollow ducting in a spa floor, bench, or wall. An air induction system is activated by an air power blower and is separate from the water circulation system.

"Artificial lake" means a man-made lake, lagoon, or basin, lined or unlined, with a surface area equal to or greater than two acres (87,120 square feet), that is used or intended to be used for water contact recreation.

"Backwash" means the process of thoroughly cleaning a filter by the reverse flow of water through the filter.

"Barrier" means a fence, wall, building, or landscaping that obstructs access to a public or semipublic swimming pool or spa.

"Cartridge filter" means a depth, pleated, or surface-type filter component with fixed dimensions that is designed to remove suspended particles from water flowing through the filter.

"Construct" means to build or install a new public or semipublic swimming pool or spa or to enlarge, deepen, or make a major modification to an existing public or semipublic swimming pool or spa.

"Coping" means the cap on a swimming pool or spa wall that provides a finished edge around the swimming pool or spa.

"Cross-connection" means any physical connection or structural arrangement between a potable water system and the piping system for a public or semipublic swimming pool or spa through which it is possible to introduce used water, gas, or any other substance into the potable water system. A bypass arrangement, jumper connection, removable section, swivel or change-over device, or any other temporary or permanent device that may cause backflow is a cross-connection.

"Deck" means a hard surface area immediately adjacent or attached to a swimming pool or spa that is designed for sitting, standing, or walking.

"Deep area" means the portion of a public or semipublic swimming pool that is more than 5 feet in depth.

"Discharge piping" means the portion of the circulation system that carries water from the filter back to the swimming pool or spa.

"Diving area" means the area of a public or semipublic swimming pool that is designated for diving from a diving board, diving platform, or starting block.

"Fill-and-draw swimming pool or spa" means a swimming pool or spa where the principal means of cleaning is the complete removal of the used water and its replacement with potable water.

"Filtration rate" means the rate of water flowing through a filter during the filter cycle expressed in gallons per minute per square foot of effective filter area.

"Flow-through swimming pool or spa" means a swimming pool or spa where new water enters the swimming pool or spa to replace an equal quantity of water that constantly flows out.

"Freeboard" means the vertical wall section of a swimming pool or spa wall between the waterline and the deck.

"Hose bibb" means a faucet with a threaded nozzle to which a hose may be attached.

"Hydrotherapy jet" means a fitting that blends air and water and creates a high-velocity, turbulent stream of air-enriched water for injection into a spa.

"Make-up water" means fresh water used to fill or refill a swimming pool or spa.

"Maximum bathing load" means the design capacity or the maximum number of users that a public or semipublic swimming pool or spa is designed to hold.

"Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

"Operate" means to run, maintain, or otherwise control or direct the functioning of a public or semipublic swimming pool or spa.

"Overflow collection system" means equipment designed to remove water from a swimming pool or spa, including gutters, overflows, surface skimmers, and other surface water collection systems of various designs and manufacture.

"Potable water" means drinking water.

"Private residential spa" means a spa at a private residence used only by the owner, members of the owner's family, and invited guests, or a spa that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

"Private residential swimming pool" means a swimming pool at a private residence used only by the owner, members of the owner's family, and invited guests, or a swimming pool that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

"Public spa" means a spa that is open to the public with or without a fee, including a spa that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a spa.

"Public swimming pool" means a swimming pool that is open to the public with or without a fee, including a swimming pool that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a swimming pool.

"Recessed treads" means a series of vertically spaced, preformed stepholes in a swimming pool wall.

"Return inlet" means an aperture or fitting through which filtered water returns to a swimming pool or spa.

"Rope and float line" means a continuous line not less than 3/4 inch in diameter that is supported by buoys and attached to opposite sides of a swimming pool to separate areas of the swimming pool.

"Semi-artificial bathing place" means a natural bathing place that has been modified by man.

"Semipublic spa" means a spa operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic spa includes a spa that is operated by a neighborhood or community association for the residents of the community and their guests and any spa at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a spa and where the use of the spa is included in the fee for the primary use of the establishment.

"Semipublic swimming pool" means a swimming pool operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic swimming pool includes a swimming pool that is operated by a neighborhood or community association for the residents of the community and their guests and a swimming pool at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a swimming pool and where the use of the swimming pool is included in the fee for the primary use of the establishment.

"Shallow area" means the portion of a public or semipublic swimming pool that is 5 feet or less in depth.

"Slip-resistant" means a surface that has a static coefficient of friction [wet or dry] of at least 0.50.

"Spa" means an artificial basin, chamber, or tank of irregular or geometric shell design that is intended only for bathing or soaking and that is not drained, cleaned, or refilled for each user. A spa may include features such as hydrotherapy jet circulation, hot water, cold water mineral baths, or an air induction system. Industry terminology for a spa includes "hydrotherapy pool," "whirlpool," "hot tub," and "therapy pool."

"Special use pool" means a swimming pool intended for competitive aquatic events, aquatic exercise, or lap swimming. A special use pool includes a wave action pool, exit pool for a water slide, swimming pool that is part of an attraction at a water recreation park, water volleyball pool, or a swimming pool with special features used for training and instruction.

"Suction outlet" means the aperture or fitting through which water is withdrawn from a swimming pool or spa.

"Suction piping" means the water circulation system piping that carries water from a swimming pool or spa to the filter.

"Swimming pool" means an artificial basin, chamber, or tank that is designed for swimming or diving.

"Turnover rate" means the number of hours required to circulate a volume of water equal to the capacity of the swimming pool or spa.

"User" means a person who uses a swimming pool, spa, or adjoining deck area.

"Wading pool" means a shallow swimming pool used for bathing and wading by small children.

"Water circulation system" means an arrangement of mechanical equipment connected to a swimming pool or spa by piping in a closed loop that directs water from the swimming pool or spa to the filtration and disinfection equipment and returns the water to the swimming pool or spa.

"Water circulation system components" means the mechanical components that are part of a water circulation system of a swimming pool or spa, including pumps, filters, valves, surface skimmers, ion generators, electrolytic chlorine generators, ozone process equipment, and chemical feeding equipment.

"Water level" means either:

a. On swimming pools and spas with skimmer systems, the midpoint of the operating range of the skimmers, or
b. On swimming pools and spas with overflow gutters, the height of the overflow rim of the gutter.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-202. Applicability

A. This Article applies to public and semipublic swimming pools and spas.

B. This Article does not apply to the following:
1. A private residential swimming pool or spa,
2. A swimming pool or spa used for medical treatment or physical therapy and supervised by licensed medical personnel,
3. A semi-artificial bathing place,
4. A natural bathing place, or
5. An artificial lake.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-203. Design Approval

A. A person shall obtain design approval from the Department before starting construction of:
1. A new public or semipublic swimming pool or spa;
2. A major modification to an existing public or semipublic swimming pool or spa. For purposes of this subsection, a major modification means a change to the shape, depth, water circulation system, or disinfection system of a public or semipublic swimming pool or spa or the installation of diving equipment at a public or semipublic swimming pool;
3. A change in use from a semipublic swimming pool to a public swimming pool; and
4. A change in use from a private residential swimming pool to a public or semipublic swimming pool.

B. An applicant for a design approval shall submit an ADEQ application form to the Department in quadruplicate with four complete sets of plans and specifications for the swimming pool or spa and the information in subsection (C).

C. The application for design approval shall include four copies of the following:
1. A general plot plan;
2. Plans and specifications showing the size, shape, cross-section, slope, and dimensions of each swimming pool or spa, deck areas, and barriers;
3. Plans and specifications showing the water circulation and disinfection systems, including all piping, fittings, drains, suction outlets, filters, pumps, surface skimmers, return inlets, chemical feeders, disinfection equipment, gauges, flow meters, and strainers;
4. Plans and specifications showing the source of water supply and the method of disposal of filter backwash water; used swimming pool or spa water, and wastewater from toilets, urinals, sinks, and showers;
5. Detailed plans of bathhouses, dressing rooms, equipment rooms, and other appurtenances; and
6. Additional data required by the Department for a complete understanding of the project.

D. A professional engineer, architect, or a swimming pool or spa contractor with a current A-9, A-19, KA-5, KA-6 license shall prepare or supervise the preparation of all plans and specifications submitted to the Department for review.

E. An applicant shall submit an application for design approval to the Department at least 60 days prior to the date that the applicant wishes to begin construction of a swimming pool or spa.

F. The Department shall determine whether the application for design approval is complete within 30 days of the date of receipt of the application by the Department.

G. The Department shall issue or deny the application for design approval within 30 days of the date that the Department determines that the application for design approval is complete.

H. Unless an extension of time is granted in writing by the Department, a design approval is void if construction is not started within one year after the date of its issuance or there is a halt in construction of more than one year.

I. The Department may issue a design approval with conditions. The Department shall not issue an Approval of Construction if the design approval is conditioned and the construction of the swimming pool or spa does not comply with the stated conditions.

J. The Department may issue design approvals in phases to allow a political subdivision to start construction of a public swimming pool or spa without issuing a design approval for the entire construction project. A design approval may be issued in phases provided all of the following conditions are met:
1. A phased design approval is needed to accommodate a design/build contract, phased construction contract, multiple construction contracts, turnkey contract, or special contract that requires construction to begin prior to the completion of design plans and specifications for the entire public swimming pool or spa construction project.
2. The applicant submits a detailed project description for the entire public swimming pool or spa construction project to the Department.
3. There is a written agreement between the applicant and the Department which includes the following:
   a. A construction project schedule,
   b. A schedule to submit applications and supporting documentation for the phased design approval including any anticipated variance requests,
   c. Negotiated time-frames for administrative completeness and substantive review of each application for phased design approval, and
   d. A schedule of construction inspections by the Department or third-party certifications by the applicant.
4. The applicant certifies in writing that the applicant understands that the public swimming pool or spa cannot be operated without an Approval of Construction for each phase of the construction project pursuant to R18-5-204.
5. If the applicant and the Department cannot reach agreement regarding a phased design approval or Approval of Construction, then the requirements of R18-5-203(A) through (I) and R18-5-204 apply.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-204. Approval of Construction

A. A public or semipublic swimming pool or spa shall not operate without receiving an Approval of Construction issued by the Department.

B. The construction of a public or semipublic swimming pool or spa shall conform to plans and specifications that have been approved by the Department. If the applicant wishes to make a change to the approved plans and specifications, the applicant shall submit revised plans and specifications with a written statement of the reasons for the change to the Department. The applicant shall obtain Department approval of the revised plans and specifications before starting any work affected by the change.

C. Prior to any construction that will cover the piping arrangement of the swimming pool or spa and at least 30 days prior to the expected date of completion of construction of a public swimming pool or spa, the applicant shall notify the Department to permit a construction inspection. The Department shall inspect the construction of a swimming pool or spa to determine if the swimming pool or spa has been constructed in

accordance with Department-approved plans, specifications, and conditions unless a professional engineer, architect, or registered sanitarian certifies that the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions.

D. If the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions, the Department shall issue the Approval of Construction within 30 days of the date of the construction inspection by the Department or the date the Department receives third-party certification.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-205. Prohibitions

A. A fill-and-draw swimming pool or spa shall not be used as a public or semipublic swimming pool or spa.

B. A private residential spa shall not be used as a public or semipublic spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-206. Water Source

Only water from a source that is approved by the Department shall be used in a public or semipublic swimming pool or spa. Reclaimed wastewater shall not be used as make-up water for a public or semipublic swimming pool or spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-207. Construction Materials

A. A public or semipublic swimming pool or spa shall be constructed of concrete or other structurally rigid material that is equivalent in strength or durability to concrete, except that a public or semipublic spa may be constructed of fiberglass or acrylic.

B. A public or semipublic swimming pool or spa shall be constructed of materials that are nontoxic.

C. A public or semipublic swimming pool or spa shall be constructed of waterproof materials that provide a watertight structure.

D. A public or semipublic swimming pool or spa shall have a smooth and easily cleaned surface, without cracks or joints, excluding structural joints, or to which a smooth, easily cleaned surface finish is applied or attached.

E. All corners in a public or semipublic swimming pool or spa shall be rounded, including the corners formed by the intersection of a wall and floor.

F. A surface within a public or semipublic swimming pool or spa intended to provide footing for users shall have a slip-resistant surface. The roughness or irregularity of the surface shall not cause injury or discomfort to users' feet during normal use.

G. The color, pattern, or finish of the interior of a public or semipublic swimming pool or spa shall not obscure objects, surfaces within the swimming pool or spa, debris, sediment, or algae. Surface finishes shall be white, pastel, or other light color. The interior finish shall completely line the swimming pool or spa to the coping, tile, or gutter system.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-208. Maximum Bathing Load

A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.

B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:
1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.

C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in R18-5-242.

D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.

E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-209. Shape

A. A public or semipublic swimming pool or spa may be any shape except that the designer shall shape a public or semipublic swimming pool or spa to minimize hazards to users and provide adequate circulation of swimming pool or spa water.

B. There shall be no protrusions, extensions, means of entanglement, or other obstructions in a public or semipublic swimming pool or spa that may cause entrapment of or injury to the user. This subsection does not prohibit water features such as water fountains, slides, water play equipment, or water volleyball and basketball nets.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-210. Walls

A. Where a racing lane terminates in a swimming pool, the wall shall be plumb to a minimum depth of 5 feet below the waterline. Below the 5-foot depth, the wall shall be radiused to join the floor.

B. There shall be no projections from a swimming pool or spa wall except for coping, cantilevered deck, ladders, and steps.

C. An underwater seat shall comply with the following:
1. The edges of an underwater seat shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the underwater seat;
2. An underwater seat shall have a slip-resistant surface;
3. An underwater seat shall be located outside of the deep area of a swimming pool that is equipped for diving. An underwater seat may be located in the deep area of a swimming pool that is not equipped for diving provided the underwater seat is either completely recessed into the swimming pool wall, shaped to be compatible with the shape of the swimming pool wall, or in a corner of the swimming pool;
4. The maximum depth of an underwater seat is 24 inches below the waterline. The minimum depth of an underwater seat is 12 inches below the waterline; and
5. The maximum width of an underwater seat is 20 inches.

D. If a spa is located immediately adjacent to a swimming pool, the separating wall between the spa and the swimming pool shall be no more than 8 inches wide. The top of the separating wall shall be no lower than the level of the coping of the swimming pool. If a separating wall is more than 8 inches wide, then the deck width shall comply with R18-5-217(D). A spa

shall not be located immediately adjacent to the deep area of a swimming pool.

E. Coping or cantilevered deck may project from a swimming pool or spa wall to provide a handhold for users. The coping or deck shall be rounded, have a slip-resistant surface finish, and shall not exceed 3 1/2 inches in thickness. The overhang of the coping or deck shall not exceed 2 inches or be less than 1 inch. All corners created by coping or cantilevered deck shall be rounded in both the vertical and horizontal dimensions to eliminate sharp corners.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-211. Freeboard

A. The freeboard in a public or semipublic swimming pool or spa shall not exceed 8 inches, except as provided in subsection (B).

B. The freeboard in a semipublic swimming pool may exceed 8 inches to provide for walls, terraces, or other design features. The Department shall review each request to allow an increase in freeboard on a case-by-case basis. In reviewing the request, the Department shall consider safety, exit distances, alternative exits, and location. The length and height of the section where the freeboard area may be increased is limited. All of the following requirements shall be met:

1. Guard rails or similar devices are provided to prevent any raised area from being used as a diving platform.
2. The vertical surfaces of the freeboard area are constructed of inorganic materials. All vertical surfaces shall be rigid, smooth, and easily cleanable.
3. The horizontal surface areas comply with the provisions of this Article for decks.
4. The vertical surface area is included as surface area of the swimming pool to determine the type, size, location, and numbers of equipment and piping.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-212. Floors

A. The slope of the floor of a public or semipublic swimming pool, from the end wall in the shallow area towards the deep area to the point of the first slope change shall be uniform and shall not exceed 1 foot of fall in 10 feet. The floor slope in a public or semipublic spa shall not exceed 1 foot of fall in 10 feet.

B. The floor slope of a public or semipublic swimming pool, from the point of the first slope change to the deepest part of the swimming pool, shall not exceed 1 foot of fall in 3 feet.

C. For a public or semipublic swimming pool that is equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 5 feet. For a public or semipublic swimming pool that is not equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 4 feet.

D. All portions of a swimming pool or spa floor shall slope towards a main drain.

E. The transitional radius where the floor of a public or semipublic swimming pool joins a wall shall comply with the following:

1. The center of the radius shall be no less than 3 feet below the waterline in the deep area or 2 feet below the waterline in the shallow area.
2. The radius shall be tangent at the point where the radius meets the wall or floor.
3. The radius shall be equal to or greater than the depth of the swimming pool minus the vertical wall depth measured from the waterline minus 3 inches.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-213. Entries and Exits

A. Each public or semipublic swimming pool shall have at least two means of entry or exit consisting of ladders, steps, or recessed treads.

B. There shall be at least one ladder, set of steps, or set of recessed treads for each 75 feet of perimeter of a public or semipublic swimming pool or spa.

C. At least one means of entry and exit shall be provided in the deep area and at least one means of entry and exit shall be provided in the shallow area of a public or semipublic swimming pool. Where the water depth is 2 feet at the swimming pool wall in the shallow area or where there is a zero depth entry pool [for example, an artificial beach], the area shall be considered a means of entry or exit.

D. A set of steps shall be provided in a public or semipublic spa.

E. The location of stairs, ladders, and recessed treads shall not interfere with racing lanes.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-214. Steps

A. Each set of steps shall be provided with at least one handrail to serve all treads and risers. Handrails shall be provided at one side or in the center of all steps. Handrails shall be installed in such a way that they can be removed only with tools.

B. Steps shall be permanently marked to be clearly visible from above and below the water level in a swimming pool or spa. The edges of steps shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the steps.

C. Steps may be constructed only in the shallow area of a public or semipublic swimming pool.

D. Steps shall not project into a public or semipublic swimming pool or spa in a manner that creates a hazard to users.

E. All tread surfaces on steps shall have slip-resistant surfaces.

F. Step treads shall have a minimum unobstructed horizontal depth of 10 inches. Risers shall have a maximum uniform height of 12 inches, with the bottom riser height allowed to vary ± 2 inches from the uniform riser height.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-215. Ladders

A. At least one ladder shall be provided in the deep area of a public or semipublic swimming pool. If the width of the deep area of a swimming pool is greater than 20 feet, then one ladders shall be located on opposite sides of the deep area.

B. A swimming pool or spa ladder shall be equipped with two handrails.

C. All treads on ladders shall have slip-resistant surfaces.

D. Ladder treads shall have a minimum horizontal depth of 1 1/2 inches. The distance between ladder treads shall range from a minimum of 7 inches to a maximum of 12 inches.

E. Below the waterline, there shall be a clearance of not more than 6 inches and not less than 3 inches between any ladder tread edge and the wall as measured from the side of the tread closest to the wall.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-216. Recessed Treads

A. Recessed treads with handrails may be substituted for ladders.
B. Recessed treads shall be pre-formed, readily cleanable, and designed to drain into the swimming pool or spa to prevent the accumulation of dirt in the recessed treads.
C. Each set of recessed treads shall be equipped with two handrails.
D. All recessed treads shall have slip-resistant surfaces.
E. The vertical distance between the swimming pool or spa coping edge or deck and the uppermost recessed tread shall be a maximum of 12 inches. Recessed treads at the centerline shall have a uniform vertical spacing of 12 inches maximum and 7 inches minimum.
F. Recessed treads shall be at least 5 inches deep and 12 inches wide.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-217. Decks and Deck Equipment

A. Decks, ramps, coping, and similar step surfaces shall be constructed of concrete or other inorganic material, have a slip-resistant finish, and be easily cleanable.
B. The minimum continuous unobstructed deck width, including the coping, shall be 10 feet for a public swimming pool and 4 feet for a semipublic swimming pool. The dimensional design of decks at public and semipublic swimming pools shall comply with the dimensions shown in Illustration B.
C. A minimum 5 feet of deck width shall be provided on the sides and rear of any diving equipment at a public swimming pool. A minimum 4 feet of deck width shall be provided on the sides and rear of any diving equipment at a semipublic swimming pool. If diving equipment is installed at a public swimming pool, there shall be a minimum 15 feet of deck width from the swimming pool wall to the edge of the deck behind the diving equipment [See Illustration B].
D. A continuous unobstructed deck width of at least 4 feet, which may include the coping, shall be provided on at least two contiguous sides and around at least 50% of the perimeter of a public or semipublic spa.
E. Decks shall be sloped to effectively drain either to perimeter areas or to deck drains. Drainage shall remove splash water, deck cleaning water, and rain water without leaving standing water. The minimum slope of the deck shall be 1/4 inch per 1 foot. The maximum slope of the deck shall be 1 inch per 1 foot, except for ramps.
F. Decks shall be edged to eliminate sharp corners.
G. Site drainage shall be provided to direct all perimeter deck drainage and general site and roof drainage away from a public or semipublic swimming pool or spa. Yard drains may be required to prevent the accumulation or puddling of water in the general area of the deck and related improvements.
H. Hose bibbs shall be provided along the perimeter of the deck so that all parts of the deck may be washed down. At a minimum, each hose bibb shall be protected against back siphonage with an atmospheric vacuum breaker. The Department may approve quick disconnect style hose bibbs.
I. Any valve that is installed in or under any deck shall provide a minimum 10-inch diameter access cover and a valve pit to facilitate the repair and maintenance of the valve.
J. Joints in decks shall be provided to minimize the potential for cracks due to changes in elevations or movement of the slab. The maximum voids between adjoining concrete slabs or between concrete slabs and expansion joint material shall be 3/16 inch of horizontal clearance with a maximum difference in vertical elevation of 1/4 inch. Areas where the deck joins concrete shall be protected by expansion joints to protect the swimming pool or spa from the pressures of relative movements. Construction joints where pool or spa coping meets the deck shall be watertight and shall not allow water to pass through to the underlying ground.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-218. Lighting

A. A public or semipublic swimming pool or spa and adjacent deck areas shall be lighted by natural or artificial means when they are in use.
B. A public or semipublic swimming pool or spa that is intended to be used at night shall be equipped with artificial lighting that is designed and spaced so that all parts of the swimming pool or spa, including the bottom, may be seen without glare.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-219. Water Depths

A. Except as provided in subsection (B), the minimum water depth in the shallowest area of a public or semipublic swimming pool shall be 2 feet. The maximum water depth in the shallowest area of a public or semipublic swimming pool shall be 3 feet. In public swimming pools, where racing lanes terminate, the minimum depth shall be 5 feet from the water level to the point where the vertical wall is radiused to join the floor.
B. The Department may approve a depth of less than 2 feet in a wading pool or to allow a zero depth entry swimming pool.
C. The maximum water depth in a public or semipublic spa shall be 42 inches, measured from the water level.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-220. Depth Markers

A. Water depths shall be conspicuously and permanently marked at or above the water level on the vertical wall and on the top of the coping or the edge of the deck next to a swimming pool.
  1. Depth markers on a vertical wall shall be positioned to be read from the water side.
  2. Depth markers on a deck shall be located within 18 inches of the side of the swimming pool and positioned to be read while standing on the deck facing the water. Depth markers that are located on a deck shall be made of slip-resistant materials.
B. Depth markers for a public or semipublic swimming pool shall be installed at points of maximum and minimum water depth and at all points of slope change. Depth markers are required in the shallow area at 1-foot depth intervals to a depth of 5 feet. Thereafter, depth markers shall be installed at 2-foot depth intervals. Depth markers shall not be spaced at distances greater than 25 feet.
C. Depth markers shall be located on both sides and at both ends of a public or semipublic swimming pool.
D. Depth markers shall be in Arabic numerals with a 4-inch minimum height. Arabic numerals shall be of contrasting color to the background.
E. In public swimming pools with racing lanes, approach warning markers shall be placed below the water level on the opposite walls at the ends of each racing lane. Warning markers shall be of contrasting color to the background. Warning markers shall be clearly visible in or out of the water from a minimum distance of 10 feet.

F. The shallow area of a public swimming pool shall be visually set apart from the deep area of the pool by a rope and float line.

G. Depth markers for a public or semipublic spa shall comply with all of the following:
1. A public or semipublic spa shall have permanent depth markers with numbers that are a minimum of 4 inches high. Depth markers shall be plainly and conspicuously visible from all points of entry.
2. The maximum depth of a public or semipublic spa shall be clearly indicated by depth markers.
3. There shall be a minimum of 2 depth markers at each public or semipublic spa.
4. Depth markers shall be spaced at no more than 25-foot intervals and shall be uniformly located around the perimeter of the spa.
5. Depth markers shall be positioned on the deck within 18 inches of the side of the spa. A depth marker shall be positioned so that it can be read by a person standing on the deck facing the water.
6. Depth markers that are on deck surfaces shall be made of slip-resistant material.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-221. Diving Areas and Equipment

A. The dimensions of a diving area in a public or semipublic swimming pool shall comply with minimum requirements for length, width, depth, area, and other dimensions specified in Illustration A. The diving well profile in Illustration A does not apply to a special use pool that is intended for competitive diving and has been approved by Department pursuant to R18-5-248(A).

B. Diving equipment shall be permanently anchored to the swimming pool deck. Equipment shall be rigidly constructed with sufficient bracing to ensure stability. Supports, platforms, steps, and ladders for diving equipment shall be designed to carry anticipated loads.

C. All diving stands higher than 21 inches, measured from the deck to the top of the board, shall be provided with stairs or a ladder.

D. Diving equipment shall have a durable finish. The surface finish shall be free of tears, splinters, or cracks that may be a hazard to users.

E. Steps and ladders leading to diving boards and diving platforms shall be of corrosion-resisting materials and shall have slip-resistant tread surfaces. Step treads shall be self-draining.

F. Diving boards, diving platforms, and starting blocks shall have slip-resistant tread surfaces.

G. Handrails shall be provided at all steps and ladders leading to diving boards that are 1 meter or more above the water.

H. Diving boards and diving platforms that are 1 meter or higher shall be protected with guard rails. Guard rails shall be at least 30 inches above the diving board or diving platform and shall extend to the edge of the swimming pool wall.

I. A label shall be permanently affixed to a diving board and shall include the following:
1. Manufacturer's name and address,
2. Board length, and
3. Fulcrum setting instructions.

J. The maximum diving board height over the water is 3 meters. The maximum height of a diving platform over the water is 10 meters.

K. Starting blocks shall be located in the deep end of a public swimming pool or where the depth of the water is at least 5 feet.

L. There shall be a completely unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This clear, unobstructed vertical space shall extend horizontally at least 8 feet behind, 8 feet to each side, and 16 feet ahead of the front end of the board.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-222. Prohibition Against Diving; Warning Signs

A. Diving equipment is prohibited in a public or semipublic swimming pool that does not meet the minimum diving well dimensions specified in Illustration A. If a public or semipublic swimming pool does not meet the dimensional requirements prescribed in Illustration A for diving, then the owner shall prominently display at least one sign that cautions users that the swimming pool is not suitable for diving. The warning sign shall state "NO DIVING" in letters that are 4 inches or larger or display the international symbol for no diving.

B. Diving from the deck of a public or semipublic swimming pool into water that is less than 5 feet deep shall be prohibited. Warning markers indicating in words or symbols that diving is prohibited shall be placed on the deck within 18 inches of the side of the shallow area of the swimming pool. A warning marker shall be positioned so that it can be read by a person standing on the deck facing the water.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-223. Water Circulation System

A. A public or semipublic swimming pool or spa shall have a water circulation system that provides complete circulation of water through all parts of the swimming pool or spa and can maintain water chemistry and water clarity requirements.

B. The water circulation system for a public or semipublic swimming pool shall have a turnover rate of at least once every 8 hours. The water circulation system of a public or semipublic spa shall have a turnover rate of at least once every 30 minutes. The water circulation system for a wading pool shall have a turnover rate of at least once every hour. The water circulation system shall be designed to give the proper turnover rate without exceeding the maximum filtration rate for the filter in R18-5-227(E).

C. Water circulation system components shall comply with American National Standard/NSF International Standard Number 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

D. Water circulation system components shall be accessible for inspection, repair, or replacement.

E. Except as provided by this subsection, water withdrawn from a public or semipublic swimming pool or spa shall not be returned unless it has been filtered and adequately disinfected. Water may be withdrawn from a swimming pool for a water slide or a water fountain without being filtered or disinfected.

F. In a swimming pool complex with more than one swimming pool or where there is a combination of swimming pools and spas, each swimming pool and spa shall have a separate water circulation system.

G. Hydrotherapy jets or other devices which create roiling water or similar effects in a spa shall not be connected to the water

circulation system, but shall be operated through a separate system.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1). Manifest typographical error corrected in subsection (B) (Supp. 01-1).

R18-5-224. Piping and Fittings

A. The water velocity in discharge piping for public and semipublic swimming pools and spas shall not exceed 10 feet per second, except for copper discharge piping where the velocity shall not exceed 8 feet per second. The water velocity in suction piping shall not exceed 6 feet per second. Piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head of the pump.

B. Water circulation system piping and fittings shall be constructed of materials that are able to withstand 150% of normal operating pressures. Suction piping shall be of sufficient strength so that it does not collapse when there is a complete shutoff of flow on the suction side of the pump. A licensed Arizona contractor shall conduct an induced static hydraulic pressure test of the water circulation system piping at 25 pounds per square inch for at least 30 minutes. The pressure test shall be performed before the deck is poured. Pressure in the water circulation system piping shall be maintained during the deck pour.

C. Water circulation piping and fittings shall be made of nontoxic, corrosion-resistant materials.

D. Water circulation piping and fittings shall be installed so that piping or fittings do not project into a public or semipublic swimming pool or spa in a manner that is hazardous to users.

E. Piping that is subject to damage by freezing shall have a uniform slope in one direction and shall be equipped with valves that will permit the complete drainage of the water in the swimming pool or spa.

F. Piping shall be designed to drain the swimming pool or spa water by removing drain plugs, manipulating valves, or other means.

G. Piping systems shall be identified by color or by stencils or labels located at conspicuous points.

H. Plastic water circulation piping shall comply with American National Standard/NSF International Standard Number 14, "Plastics Piping System Components and Related Materials," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised September, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-225. Pumps and Motors

A. A pump and motor shall be provided for each water circulation system. The pump shall be sized to meet but not to exceed the flow rate required for filtering against the total head developed by the complete water circulation system. The pump shall be sized to comply with the turnover rate prescribed in R18-5-223(B).

B. Pumps and motors shall be readily and easily accessible for inspection, maintenance, and repair. When the pump is below the waterline, valves shall be installed on permanently connected suction and discharge lines. The valves shall be readily and easily accessible for maintenance and removal of the pump.

C. Each motor shall have an open, drip-proof enclosure. Each motor shall be constructed electrically and mechanically to perform satisfactorily and safely under the conditions of load in the environment normally encountered in swimming pool or spa installations. Each motor shall be capable of operating the pump under full load with a voltage variation of ± 10% from the nameplate rating. Each motor shall have thermal or current overload protection to provide locked rotor and running protection. Thermal or current overload protection may be built into the motor or in the line starter.

D. The pump shall be equipped with an emergency shut-off switch that is located within the swimming pool or spa enclosure to cut off power to the water circulation system if someone is entrapped on a main drain or suction outlet.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-226. Drains and Suction Outlets

A. A public and semipublic swimming pool shall be equipped with at least two main drains located in the deepest part of the swimming pool or a single gravity drain that discharges to a surge tank.

B. Each main drain shall be covered by a grate that is not be readily removable by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe.

C. The spacing of the main drains shall not be greater than 20 feet on centers and not more than 15 feet from each side wall.

D. A minimum of two suction outlets shall be provided for each pump in a suction outlet system for a public or semipublic spa. The suction outlets shall be separated by a minimum of 3 feet or located on two different planes [that is, one suction outlet on the bottom and one on a vertical wall or one suction outlet each on two separate vertical walls]. The suction outlets shall be plumbed to draw water through them simultaneously through a common line to the pump. Suction outlets shall be plumbed to eliminate the possibility of entrapping suction.

E. If the suction outlet system for a public or semipublic swimming pool or spa has multiple suction outlets that can be isolated by valves, then each suction outlet shall protect against user entrapment by either an antivortex cover, a grate, or other means approved by the Department.

F. A public or semipublic spa may be equipped with a single gravity drain which discharges to a surge tank instead of suction outlets. The total velocity of water through grate openings of the drain shall not exceed 2 feet per second.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-227. Filters

A. Filters shall be designed, located, and constructed to permit removal of filter manhole covers or heads for inspection, replacement, or repair of filter elements or filter media. No filtration system shall be installed beneath the surface of the ground or within an enclosure without providing adequate access for inspection and maintenance.

B. Pressure-type filters shall be equipped with a means to release internal pressure. Each pressure filter shall be equipped with an air relief piping system connected at an accessible point near the crown. Automatic air relief systems may be used instead of manual systems. The design of a filter with an automatic air relief system as its principal means of air release shall include lids that provide a slow and safe release of pressure. The design of a separation tank used in conjunction with any filter tank shall include a manual means of air release or a lid which provides a slow and safe release of pressure as it is opened.

C. Pressure filter systems shall be equipped with a sight glass installed on the waste discharge pipe.

D. Swimming pool and spa filters shall comply with American National Standard/NSF International Standard Number 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

E. The maximum filtration rate shall not exceed the design flow rate prescribed by the National Sanitation Foundation Standard 50 for commercial filters. In no case shall the maximum filtration rate exceed the following:

1. The rate of filtration in a high-rate sand filter shall not exceed 25 gallons/minute/square foot.
2. The rate of filtration of a diatomaceous earth filter shall not exceed 2 gallons/minute/square foot.
3. The rate of filtration of a cartridge filter shall not exceed 0.375 gallons/minute/square foot.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-228. Return Inlets

A. Adjustable return inlets shall be provided for each public and semipublic swimming pool or spa. Return inlets shall be designed, sized, and installed to produce a uniform circulation of water throughout the swimming pool or spa. Where surface skimmers are used, return inlets on vertical walls shall be located to help bring floating particles within range of the surface skimmers.

B. A public or semipublic swimming pool shall have a minimum of two return inlets, regardless of the size of the swimming pool. The number of return inlets shall be based on two return inlets per 600 square feet of surface area, or fraction thereof.

C. Return inlets in a public or semipublic swimming pool shall be on a closed loop piping system. Public or semipublic spas with three or more return inlets shall be on a closed loop piping system.

D. Where the width of a public or semipublic swimming pool exceeds 30 feet, bottom returns shall be required. Bottom returns shall be flush with the pool bottom or designed to prevent injury to users.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-229. Gauges

A. Pressure gauges shall be installed on the water circulation system for each public and semipublic swimming pool and spa. Pressure gauges shall be installed in accessible locations where they can be read easily.

B. Pressure gauges shall be installed on the inlet and outlet manifold of the filter. Pressure gauges shall read at intervals of 1 pound per square inch [psi].

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-230. Flow meter

A public swimming pool shall be equipped with, a flow meter which indicates the rate of backwash through the filter. The flow meter shall be installed between the pump and the filter on a straight section of pipe in accordance with the manufacturer's specifications in a location where it can be read easily. The flow meter shall measure the rate of flow through the filter in gallons per minute and shall be accurate to within 5% under all conditions of flow. The flow meter shall have an indicator with a range of at least 150% of the normal flow rate.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-231. Strainers

The water circulation system shall include a removable strainer located upstream of the pump to prevent solids, debris, hair, or lint from reaching the pump and filters. The strainer shall be made of corrosion-resistant material. A strainer shall have openings that have a total area which is equal to at least four times the area of the suction piping.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-232. Overflow Collection Systems

A. An overflow collection system shall be installed in each public or semipublic swimming pool or spa.

B. The overflow collection system shall be designed and constructed so that the water level of the swimming pool is maintained at the mid-point of the operating range of the system's rim or weir device.

C. Rim type overflow collection systems shall be installed on at least two opposite sides and have a total length of at least 50% of the perimeter of a public or semipublic swimming pool. The overflow collection system shall be capable of carrying 50% of the design capacity of the water circulation system.

D. If overflow gutters are used, they shall be installed continuously around the swimming pool with the lip of the gutter level throughout its perimeter. Overflow gutters shall be provided with sufficient opening at the top and width at the bottom to permit easy cleaning. The overflow gutter bottom shall be pitched 1/4 inch per foot to drainage outlets located not more than 10 feet apart. Outlet piping shall be sized to circulate at least 50% of the capacity of the water circulation system and be properly covered by a drain grate. The surge tank for the overflow gutters shall be equipped with float controls which regulate the main drain, fill line, and overflow. The system surge capacity shall not be less than one gallon for each square foot of swimming pool surface area. Stainless steel gutters and other specialty gutter systems may be used if they are hydraulically equivalent to overflow gutters.

E. Surface skimmers shall be recessed into the swimming pool or spa wall and shall be installed to achieve effective skimming action throughout the swimming pool or spa.

1. A surface skimmer shall be provided for each 400 square feet of surface area, or fraction thereof, of a public or semipublic swimming pool. A minimum of two surface skimmers are required in a public or semipublic swimming pool. A surface skimmer shall be provided for each 200 square feet of surface area, or fraction thereof, of a public or semipublic spa.
2. The overflow slot shall be set level and shall not be less than 8 inches in width at the narrowest section.
3. The rate of flow through the skimmers shall be a minimum of 75% of the water circulation system capacity. Surface skimmers shall be designed to carry at least 30 gallons per minute per lineal foot of weir throat.
4. Where three or more surface skimmers are used, they must be on a closed loop piping system.
5. At least one surface skimmer shall be located on the side or near the corner of the swimming pool that is downwind of the area's prevailing winds.
6. Main drain piping shall be designed to carry at least 50% of the design flow.

F. Mixed inlet types [for example, surface skimmers and gutters] are prohibited in a public or semipublic swimming pool.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-233. Vacuum Cleaning Systems
A vacuum cleaning system shall be provided for each public and semipublic swimming pool. A vacuum cleaning system shall not create a hazard or interfere with the operation or use of the swimming pool. In integral systems, a sufficient number of vacuum cleaner fittings shall be located in accessible positions at least 10 inches below the water line. Alternatively, vacuum cleaner fittings may be installed as an attachment to the surface skimmers. A pressure cleaning system may be installed in addition to the required vacuum cleaning system.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-234. Disinfection

A. An adjustable automatic chemical feeder shall be provided to ensure the continuous disinfection of the water in a public or semipublic swimming pool or spa. Timers on disinfection equipment are prohibited. Disinfection shall be accomplished by chlorination or by another method that is approved by the Department. The method of disinfection shall effectively maintain an adequate disinfectant residual in the water which is subject to field testing by methods that are easy to use and accurate.
1. Chlorine disinfection equipment for a public or semipublic swimming pool shall be designed to maintain a free chlorine residual of 1.0 to 3.0 ppm. Chlorine disinfection equipment for a public or semipublic spa shall be designed to maintain a free chlorine residual of 3.0 to 5.0 ppm.
2. Bromine disinfection equipment for a public or semipublic swimming pool shall be designed to maintain a bromine residual of 2.0 to 4.0 ppm. Bromine disinfection equipment for a public or semipublic spa shall be designed to maintain a bromine residual of 3.0 to 5.0 ppm.

B. The use of chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization is permitted. If used, chlorinated isocyanurates shall be fed so as to maintain required disinfectant residual levels. Cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, shall not exceed 150 ppm.

C. The use of chloramines as a primary disinfectant of swimming pool or spa water is prohibited.

D. The addition of gaseous disinfectant directly into a public or semipublic swimming pool is prohibited. The addition of dry or liquid disinfectant directly into a public or semipublic swimming pool or spa for routine disinfection is prohibited. This prohibition does not prohibit the use of liquid or dry disinfectants for shock treatment of a swimming pool or spa. A chlorine gas disinfection system shall not be used for the disinfection of water in a public or semipublic spa.

E. A common chlorine gas disinfection system may be utilized in separate swimming pools if separate metering and feeding devices are provided for each swimming pool.

F. If gaseous chlorine is used for disinfection, the following shall be provided:
1. The chlorinator, chlorine cylinders, and associated chlorination equipment shall be located in a separate well ventilated enclosure at or above ground level. The enclosure shall be reasonably gas-tight, noncombustible, and corrosion-resistant. The door of the enclosure shall open to the outside and shall not open directly toward the swimming pool.
2. If chlorination equipment is placed in a room, then an exhaust fan or gravity ventilation system shall be provided. Mechanical exhausters shall take suction 6 inches or less above the floor and discharge through corrosion-resistant louvers to a safe outside location. A gravity ventilation system shall be designed and constructed to discharge to the outside from floor level. Fresh air intakes shall be located no closer than 3 feet above the ventilation discharge. Chlorine room exhausts shall be directed away from the swimming pool to an area which is normally unoccupied. Chlorine room fans shall be capable of completely changing the air in the room at least once a minute.
3. Electrical switches to control lighting and ventilation in the chlorine room shall be located on the outside of the enclosure and adjacent to the door.
4. Chlorine cylinders shall be kept in an upright position and securely anchored to prevent them from falling. Chlorine cylinders may be stored indoors or out. If stored outside, chlorine cylinders shall not be stored in direct sunlight. Chlorine cylinders shall not be stored near an elevator, ventilation system, or heat source.
5. A warning sign shall be placed on the outside of the door to the chlorine room which cautions persons of the danger of chlorine gas within the enclosure. The warning shall be in letters 3 inches high or larger. The door to the chlorine room shall be provided with a shatter resistant inspection window.
6. Chlorinators shall be a solution-feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Chlorinators shall be designed to prevent the backflow of water into the chlorine solution container.

G. Granular, tablet, stick, and other forms of dry disinfectant shall be fed by an adjustable automatic feeding device.

H. Disinfection equipment and chemical feeders shall comply with the requirements set forth in American National Standard/NSF International Standard 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

I. If a chemical feeder is used, it shall be installed to inject solution downstream from the filter and the heater. An erosion-type feeder may be installed to feed solution to the suction side of the pump. A chemical feeder shall be wired so it cannot operate unless the filter pump is running.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-235. Cross-Connection Control

A. Cross-connections between the distribution system of a public water system and the water circulation system of a public or semipublic swimming pool or spa are prohibited.

B. Potable water for make-up water purposes may be introduced into a public or semipublic swimming pool or spa in any of the following ways:
1. Through an over-the-rim spout with an air-gap of at least twice the diameter of the pipe and not less than 6 inches above the overflow level. If an over-the-rim spout is used, it shall be located so that it does present a tripping hazard. The open end of an over-the-rim spout shall have no

sharp edges and shall not protrude more than 2 inches beyond the edge of the swimming pool or spa wall;
2. Through a float controlled make-up water feed tank with an air gap of at least 3 inches above the overflow level; or
3. Through a submerged inlet that is protected against back-siphonage by at least a pressure vacuum breaker that is installed so that the bottom of the backflow prevention assembly is a minimum of 12 inches above the level of the coping.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-236. Disposal of Filter Backwash, Wasted Swimming Pool or Spa Water, and Wastewater
All sewage from plumbing fixtures, including urinals, toilets, lavatories, showers, drinking fountains, floor drains, and other sanitary facilities shall be disposed of in a sanitary manner. Filter backwash and wasted swimming pool or spa water shall be discharged into a sanitary sewer through an approved air gap, an approved subsurface disposal system, or by other means that are approved by the Department. The method of disposal shall comply with applicable disposal requirements established by a county, municipal, or other local authority. There shall be no direct physical connection between the sewer system and the water circulation system of a public or semipublic swimming pool or spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-237. Lifeguard Chairs
Each public swimming pool shall have at least one elevated lifeguard chair for each 3,000 square feet of pool surface area or fraction thereof. At least one lifeguard chair shall be located close to the deep area of the swimming pool and shall provide a clear, unobstructed view of the swimming pool bottom. If a public swimming pool is provided with more than one lifeguard chair or the width of the public swimming pool is 45 feet or more, then lifeguard chairs shall be located on each side of the public swimming pool.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-238. Lifesaving and Safety Equipment
A. Public and semipublic swimming pools shall have lifesaving and safety equipment that is conspicuously and conveniently located and maintained ready for immediate use at all times.
B. Each public or semipublic swimming pool shall have one ring buoy or a similar flotation device. Each ring buoy or flotation device shall be attached to 50 feet of 1/4 inch rope.
C. Each semipublic and public swimming pool shall have at least one shepherd crook that is mounted on a rigid 16-foot pole.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-239. Rope and Float Lines
A rope and float line shall be installed across each public swimming pool on the shallow side of the break in grade between the shallow and deep portions of the pool [that is, within 1 to 2 feet of the point where the floor slope begins to exceed 1 foot in 10 feet]. The rope shall be a minimum of 3/4 inch in diameter and supported by floats spaced at intervals not greater than 7 feet. The rope and float line shall be securely fastened to wall anchors that are made of corrosion-resistant materials. The wall anchors shall be recessed or have no projection that constitutes a hazard when the float line is removed.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-240. Barriers
A. A public swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 6 feet high. A semipublic swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 5 feet high. The height of the fence, wall, or barrier shall be measured on the side of the barrier which faces away from the swimming pool or spa.
B. Fences or walls shall:
1. Be constructed to afford no external handholds or footholds;
2. Be of materials that are impenetrable to small children;
3. Have no openings or spacings of a size that a spherical object 4 inches in diameter can pass through; and
4. Be equipped with a gate that opens outward from the swimming pool or spa. The gate shall be equipped with a self-closing and self-latching closure mechanism or a locking closure located at or near the top of the gate, on the pool side of the gate, and at least 54 inches above the floor.

C. The distance between the horizontal components of a fence shall not be less than 45 inches apart. The horizontal members shall be located on the interior side of the fence. Spacing or openings between vertical members shall be of a size that a spherical object 4 inches in diameter cannot pass through.
D. The maximum mesh size for a wire mesh or chain link fence shall be a 1 3/4 inches square.
E. Masonry or stone walls shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.
F. If a wall of a building serves as part of the barrier around a public or semipublic swimming pool or spa, there shall be no direct access to the swimming pool or spa through the wall except as follows:
1. Windows leading to the swimming pool or spa area shall be equipped with a screwed-in place wire mesh screen or a keyed lock that prevents opening the window more than 4 inches.
2. A hinged door leading to the swimming pool or spa area shall be self-closing and shall have a self-latching device. The release mechanism of the self-latching device shall be located at least 54 inches above the floor.
3. If an additional set of doors is required by the fire code allowing access to the swimming pool or spa, they shall be self-closing and self-latching, equipped with panic bars no less than 54 inches from the floor to the bottom of the bar and designated "For Emergency Use Only."
4. Sliding doors leading to the swimming pool or spa area are prohibited except for sliding doors that are self-closing and self-latching.

G. If a barrier is composed of a combination concrete masonry unit and wrought-iron, the wrought iron portion shall be installed flush with the outside vertical surface of the concrete masonry unit. The space between the wrought iron and the concrete masonry unit shall be 1/2 inch or less. The vertical members of the wrought iron shall be spaced 4 inches on center.
H. Filtration, disinfection, and water circulation equipment shall be enclosed by a wall or fence.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-241. Public Swimming Pools; Bathhouses and Dressing Rooms

A. Separate dressing rooms shall be provided for each sex. Dressing rooms shall be equipped with baskets or other checking facilities.

B. All entrances to and exits from the dressing rooms shall be effectively screened to interrupt the line of sight of persons outside the dressing rooms.

C. Walls and partitions of dressing rooms, locker rooms, toilets, and showers shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide a smooth and easily cleanable surface. Partitions shall be designed so that a waterway is provided between partitions and the floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

D. Floors shall be of nonslip construction, free of cracks or openings, and sloped to adequate drains so the surface will be free of standing water and puddles. Floors shall be sloped not less than 1/4 inch per foot toward the drains to ensure positive drainage. Carpeting is prohibited.

E. All furniture shall be of simple character and easily cleanable. Locker compartments, partitions, booths, furniture, and other appurtenances in dressing rooms shall be so installed or raised above the floor to permit washing down the dressing rooms and bathhouse interiors.

F. An adequate number of hose bibs shall be provided for washing down the dressing room or bathhouse interior.

G. Dressing rooms, toilets, and showers shall be provided with adequate lighting and ventilation.

H. Toilet facilities shall be provided for each sex. For male users, there shall be one toilet and one urinal for each 100 bathers or fraction thereof. For female users, there shall be one toilet for each 50 bathers, or fraction thereof. In no case shall less than two toilets be provided for female users. Sanitary napkin dispensers shall be installed in toilet or shower areas designated for female users.

I. Shower and handwashing facilities with hot and cold water and soap shall be provided for each dressing room. Hot and cold water shall be provided at all shower heads. The water heater and thermostatic mixing valve shall be inaccessible to users and shall be capable of providing two gallons per minute of 90°F water to each shower head. A minimum of two shower heads shall be provided in each dressing room. Each dressing room shall have one shower head for each 50 bathers or fraction thereof.

J. One lavatory with an unbreakable mirror shall be provided in each dressing room for the first 100 users. An additional lavatory and unbreakable mirror shall be provided for each additional 100 users or fraction thereof. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-242. Semipublic Swimming Pools; Toilets and Lavatories

A. A bathroom with a minimum of one toilet shall be provided for each sex.

B. Each bathroom shall have at least one lavatory. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.

C. An establishment that operates a semipublic swimming pool or spa and provides a private room with a toilet and lavatory for bathers shall be deemed to have complied with the requirements of this Section.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-243. Drinking Water Fountains

Drinking water from an approved source and dispensed through one or more drinking fountains shall be located on the deck of each public swimming pool or spa.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-244. Wading Pools

A. A wading pool is a type of public or semipublic swimming pool. The design criteria prescribed in this Article for public or semipublic swimming pools apply, except as provided in this Section.

B. A wading pool shall be physically set apart from public and semipublic swimming pools.

1. A wading pool shall be separated from a public swimming pool by a minimum 4-foot high fence or partition with a self-closing, self-latching gate.
2. A wading pool shall be separated from a semipublic swimming pool by at least 4 feet of deck.
3. A wading pool shall not be located adjacent to the deep area of a public or semipublic swimming pool.

C. A wading pool shall have a maximum depth of 24 inches. Water depths may be reduced from the stated maximums and brought to zero at the most shallow point of the wading pool.

D. The floor of a wading pool shall be uniform with a maximum slope of 1 foot of fall in 10 feet. The floor of a wading pool shall have a slip-resistant surface.

E. All wading pools shall have separate equipment for water circulation and disinfection. There shall be no cross-connection between the water circulation system of a wading pool and a public or semipublic swimming pool. The water in a wading pool shall have a maximum turnover cycle of 1 hour.

F. At least two main drains shall be provided at the deepest point in a wading pool. Each main drain shall be covered by a grate which cannot be removed by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe. In the alternative, a wading pool may be equipped with a single gravity drain which discharges to a surge tank.

G. Surface skimmers shall be provided on the basis of at least one skimmer for each 200 square feet of wading pool surface area. Surface skimmer flow rates shall be the same as required for public and semipublic swimming pools. Where only one skimmer is provided, the main drain may be connected through the skimmer.

H. Return inlets shall be provided and arranged to produce a uniform circulation of water and maintain a uniform disinfectant residual throughout the wading pool. Where three or more return inlets are required, they shall be on a closed loop piping system.

I. Suction outlets in a wading pool shall have plumbing provisions so as to relieve any possibility of entrapping suction.

J. Gaseous chlorine shall not be used for the disinfection of wading pool water.

K. A drinking fountain at a height convenient to small children or a drinking fountain with a raised step shall be provided in the area of the wading pool.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-245. Timers for Public and Semipublic Spas
The timer for a public or semipublic spa which controls the hydrotherapy jets shall be located at least 5 feet from the spa and shall have a maximum time limit of 15 minutes.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-246. Air blower and Air Induction Systems for Public and Semipublic Spas
An air blower system or air induction system for a public or semipublic spa shall comply with the following requirements:
1. The system shall prevent water backflow which could cause an electrical shock hazard.
2. Air intake sources shall not introduce water, dirt, or contaminants into the spa.
3. The system shall be properly sized for a commercial spa application.
4. If the air blower is installed within an enclosure or indoors, then adequate ventilation shall be provided.
5. Integral air passages shall be pressure tested and shall provide structural integrity to a value of 1 1/2 times the intended working pressure.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-247. Water Temperature in Public and Semipublic Spas
The temperature of heated water coming into a public or semipublic spa shall not exceed 104°.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-248. Special Use Pools
A. A person who intends to construct a special use pool shall notify the Department and provide plans, specifications, and a description of the intended use of the special use pool. The Department shall use best professional judgment in approving a special use pool, taking into consideration the intended use of the pool, the conditions under which it will operate, and the safety of users. The Department may consider the design requirements prescribed by an official sanctioning athletic body such as the National Collegiate Athletic Association [NCAA], National Federation of State High School Associations [NFSHSA], U.S. Swimming, U.S. Diving, or the Internationale de Natation Amateur [FINA] in using best professional judgement to approve a special use pool that is intended for competitive swimming and diving.
B. A special use pool that is designed with exercise or training bars in the pool shall be restricted to the special use when the bars are located in the pool. The bars shall:
1. Be constructed of durable and corrosion-resistant material;
2. Be sealed, welded shut, or capped at both ends to prevent retention of water within the bars;
3. Bars may be removable. Removable bars shall be wedge anchored in place and the anchors shall be covered. Water-tight anchor plugs [95% efficiency] shall be provided when the bars are removed; and
4. Extend not more than 4 inches from the side of the pool into the water. The minimum clear opening from the inside of the bar to the side of the swimming pool shall not be less than 2 inches.

D. A special use pool that is designed with a ramp shall comply with the following:
1. The ramp shall be constructed of slip-resistant material;
2. The slope of the ramp shall not exceed 1 foot in 12 feet;
3. The width of the ramp shall be at least 3 feet;
4. The ramp shall have a level platform at the top and the bottom of the ramp;
5. The ramp shall be equipped with at least a 3 1/2 foot high guardrail installed on the deck and extending the length of the ramp;
6. The ramp shall be constructed with return inlets located on the pool and ramp walls along the length of the ramp.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-249. Variances
A. The Department may grant a variance from a requirement prescribed in this Article upon a demonstration by the applicant that an alternative design, material, appurtenance, or technology is equivalent to a requirement prescribed in this Article. If a variance is granted, it shall be conditioned upon the applicant's use of the approved alternative.
B. The Department shall not grant a variance that results in an unreasonable risk to the health of swimming pool or spa users.
C. The applicant shall request a variance in writing. A variance request shall contain the following information:
1. Identification of the requirement prescribed in this Article for which a variance is requested;
2. Explanation of the reasons why the applicant cannot comply with the requirement;
3. A complete description of the alternative design, material, or technology to be installed and used in the swimming pool or spa, including design plans, specifications, and a description of the cost;
4. A demonstration that the alternative design, material, or technology to be installed and used in the swimming pool or spa is equivalent to the requirement in this Article and will not result in an unreasonable risk to users; and
5. A statement that the applicant will perform reasonable requirements prescribed by the Department that are conditions of a variance.

D. The applicant shall submit a request for a variance with an application for design approval. The Department shall determine whether the application for design approval and the variance request are complete. Within 30 days after the date of the submittal of the application for design approval and the variance request, the Department shall issue a written notice to the applicant that states that the request for a variance and the application for design approval are complete or which states that the request for a variance or the application for design approval is incomplete and identifies specific information deficiencies in the application for design approval or the variance request.
E. The Department may convene an advisory committee consisting of representatives of public and semipublic swimming pool and spa owners, public and semipublic swimming pool and spa building contractors, professional engineers, and county environmental and health departments to make a recommendation on a variance request.
F. If the Department grants the request for a variance, the Department shall identify the requirement for which the variance is granted, specify any conditions to the grant of a variance, and issue a design approval. If the Department denies the request for a variance, the Department shall issue a notice of intent to deny the request for a variance to the applicant. The notice shall state the reasons for the denial of the request for a variance and shall include a description of the applicant's right to request a hearing on the denial of the variance request pursuant to A.R.S. § 41-1092.03 and to request an informal settlement

conference pursuant to A.R.S. § 41-1092.06. If the Department denies a request for a variance, the Department may either deny the application for design approval or issue a design approval that requires compliance with the requirement for which the variance is requested.

G. In considering a request for a variance from a requirement prescribed in this Article, the Director shall consider the following factors:
1. The intended use of the public or semipublic swimming pool or spa;
2. The safety of the alternative design, material, or technology for which a variance is requested; and
3. The cost and other economic considerations associated with requiring compliance with the requirement prescribed in this Article as compared to the alternative for which a variance is requested.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-250. Inspections

A. An inspector from the Department, upon presentation of credentials, may enter into any public or semipublic swimming pool or spa to determine compliance with this Article. The inspector may inspect records, equipment, and facilities; take photographs; and take other action reasonably necessary to determine compliance with this Article.

B. The owner or manager of a public or semipublic swimming pool or spa may accompany the inspector during an inspection.

C. An inspector from the Department may inspect a public or semipublic swimming pool or spa without giving prior notice of the inspection to the owner or operator of the swimming pool or spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

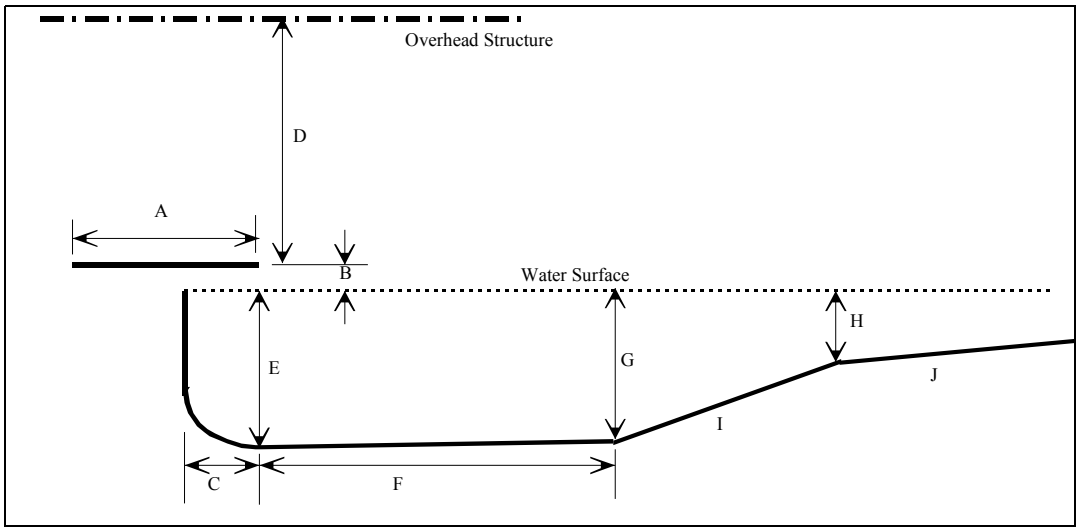
R18-5-251. Enforcement

A. If an inspector finds a violation of this Article, the Department may issue a notice of violation to the owner of a public or semipublic swimming pool or spa. A notice of violation shall state specifically the nature of the violation and shall allow a reasonable time for the owner to correct the violation.

B. If the Director has reasonable cause to believe that a person has constructed a public or semipublic swimming pool or spa in violation of this Article, the Director may order the closure of the swimming pool or spa by issuing a cease and desist order by following the procedures for abatement of environmental nuisances in A.R.S. § 49-142.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

Illustration A. Diving Well Dimensions for Swimming Pools



Note: This profile does not apply to a special use pool that is designed for competitive diving.

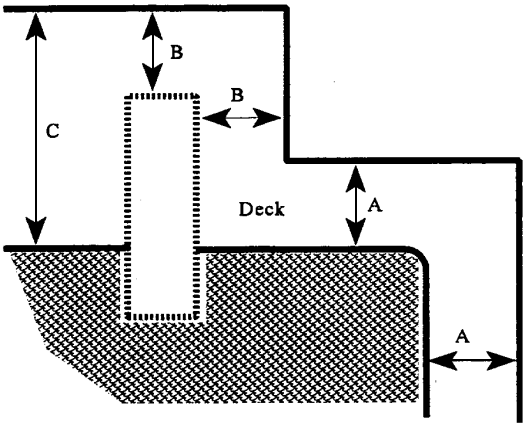
A. Maximum length of diving board	10 feet
B. Maximum height of board above the water	20 inches
C. Overhang of the board from wall	Minimum: 2 feet Maximum: 3 feet
D. Minimum distance to an overhead structure	15 feet
E. Minimum depth of water at the plummet	9 feet
F. Distance from plummet to start of upslope	18 feet
G. Minimum depth of water at start of the upslope	Depth of water at plummet minus 6 inches

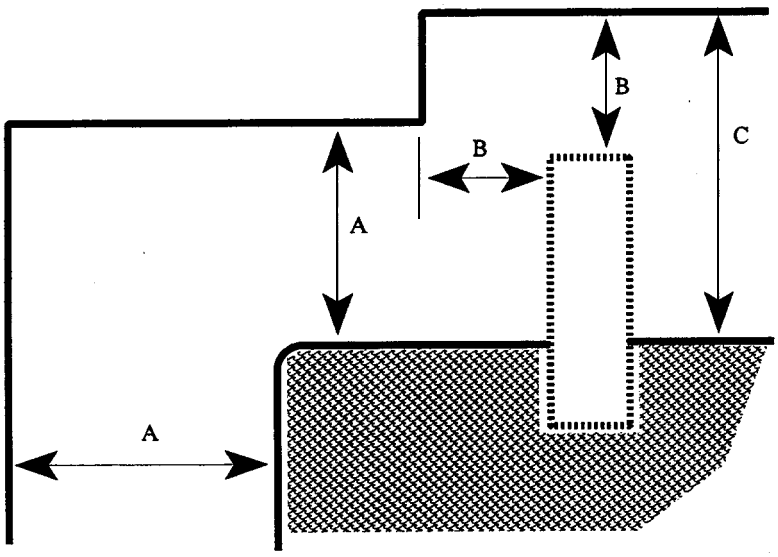
H. Depth of water at the breakpoint	Public swimming pool: 5 feet Semipublic swimming pool: 4 feet
I. Maximum slope: breakpoint towards deep end	1 foot of fall in 3 feet
J. Slope of bottom in shallow area	1 foot of fall in 10 feet
Minimum width of pool in diving area	20 feet
From plummet to pool wall at the side	10 feet

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

Illustration B. Minimum Distance Requirements for Decks

Dimension	Public (in Feet)	Semipublic (in feet)
A	10	4
B	5	4
C	15	11





Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

R18-5-301. Definitions

In addition to the definitions established in R18-9-101, the following terms apply to this Article:

1. "Certified Areawide Water Quality Management Plan" means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.
2. "Designated management agency" means those entities designated in a Certified Areawide Water Quality Management Plan to manage sewage treatment facilities and sewage collection systems in their respective area.
3. "Designated water quality planning agency" means the single representative organization designated by the Governor under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4) as capable of developing effective areawide sewage treatment management plans for the respective area. The state acts as the planning agency for those non-tribal portions of the state for which there is no designated water quality planning agency.
4. "Facility Plan" means the plans, specifications, and estimates for a proposed sewage treatment facility, prepared under Section 201 and 203 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), and submitted to the Department by and for a designated management agency.
5. "General Plan" means a municipal statement of land-development policies that may include maps, charts, graphs, and text that list objectives, principles, and standards for local growth and development enacted under state law.
6. "Service area" means the geographic region specified for a designated management agency by the applicable Certified Areawide Water Quality Management Plan, Facility Plan, or General Plan.
7. "State water quality management plan" means the following elements:
   a. Certified Areawide Water Quality Management Plans and amendments;
   b. Water quality rules and laws;
   c. Final total maximum daily loads approved by the United States Environmental Protection Agency for impaired waters;
   d. Water quality priorities established by the Department;
   e. Intergovernmental agreements between the Department and a designated water quality planning agency or a designated management agency; and
   f. Active management area plans adopted by the Department of Water Resources.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-302. Certified Areawide Water Quality Management Plan Approval

A designated water quality planning agency shall submit a proposed Certified Areawide Water Quality Management Plan or plan amendment to the Director for review and approval. Upon approval, the Governor or the Governor's designee shall:

1. Certify that the plan or plan amendment is incorporated into and is consistent with the state water quality management plan, and
2. Submit the plan or plan amendment to the United States Environmental Protection Agency for approval.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-303. Determination of Conformance

All sewage treatment facilities, including an expansion of a facility, shall, before construction, conform with the Certified Areawide Water Quality Management Plan, Facility Plan, and General Plans as specified in subsections (1) and (2).

1. The Department shall make the determination of conformance if the sewage treatment facility or expansion of the facility conforms with the Certified Areawide Water Quality Management Plan and Facility Plan that prescribe a configuration for sewage treatment and sewage collection system management by a designated management agency within the service area.
2. If the condition specified in subsection (1) is not met, the Department shall make the determination of conformance as follows:
   a. If no Facility Plan is applicable and a Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall rely on the Certified Areawide Water Quality Management Plan for the determination of conformance.
   b. If no Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall make the determination of conformance based on conformance with applicable General Plans and after conferring with the designated water quality planning agency for the area and any responsible and affected governmental unit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

ARTICLE 4. SUBDIVISIONS

R18-5-401. Definitions

In this Article unless the context otherwise requires:

1. "Approved" or "approval" means approved in writing by the Department.
2. "Condominium" means a subdivision established as a horizontal property regime pursuant to A.R.S. § 33-551 et seq.
3. "Department" means the Department of Environmental Quality or its designated representative.
4. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
5. "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
6. "Subdivision" has the meaning defined in A.R.S. § 32-2101.

Historical Note
Correction in subsection (E) citation to A.R.S. should have read § 32-2101. Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1011 renumbered without change as Section R18-5-401 (Supp. 89-2).

R18-5-402. Approval of plans required

A. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, or offered to the public in any manner, and no permanent building shall be erected thereon until plans and specifications for the water supply, sewage disposal and method of garbage disposal to be provided in or to serve such subdivision shall have been submitted to and approved by the Department.

B. The plans of any proposed water supply and sewage disposal system shall be submitted in quadruplicate on a plat of the subdivision as recorded, or as will be recorded, in the office of the county recorder.

Historical Note
Former Section R9-8-1012 renumbered without change as Section R18-5-402 (Supp. 89-2).

R18-5-403. Application for approval

A. An application for approval, prepared in duplicate on forms furnished by the Department, shall be filed at the time the plans are submitted for approval. The form shall be completely filled out unless indicated otherwise.

B. The distance to the nearest public water supply main and to a sewer main of a municipal or community system shall be given.

Historical Note
Former Section R9-8-1013 renumbered without change as Section R18-5-403 (Supp. 89-2).

R18-5-404. Size of lots

The minimum size lot approved by the Department will be governed largely by the area necessary for the safe accommodation of individual wells and/or sewage disposal systems. Where both the water supply and sewage disposal system must be developed on the same lot, the minimum size shall be at least one acre, excluding streets, alleys and other rights-of-way. Where water from a central system is provided for residential uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system based on a four-bedroom house within the bounds of the property allowing a minimum of five feet distance to the property lines. Where lots are zoned for commercial uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system within the bounds of the property allowing a minimum of five feet distance to the property lines.

Historical Note
Former Section R9-8-1014 renumbered without change as Section R18-5-404 (Supp. 89-2).

R18-5-405. Responsibility of subdivider

Where plans for a subdivision include a public water supply system, or public sewerage system, it shall be the responsibility of the subdivider to provide the facilities to each lot in the subdivision prior to human occupancy. The installation of such facilities shall be in accordance with plans, or any revisions thereof, approved by the Department.

Historical Note
Former Section R9-8-1015 renumbered without change as Section R18-5-405 (Supp. 89-2).

R18-5-406. Public water systems

A. Where water from an approved public water system is proposed for use in a subdivision, the inside diameter, length, and location of all proposed and existing water mains and valves necessary to serve each and every lot shall be shown on the subdivision plat. If the existing main to which a connection will be made is not immediately adjacent to the property, the direction and distance shall be indicated on the plat by an arrow or other suitable means.

B. A letter shall be obtained and submitted with the application for approval of the subdivision from responsible officials of the water system indicating that an agreement has been reached to supply water to each individual lot in the subdivision.

C. Where the owner of a subdivision, or other interested person, firm, company or corporation, proposes to develop a source or sources of supply and to construct a distribution system to furnish water to the subdivision, either free or for charge, complete details of the proposed water system including plans and specifications shall be furnished. Department approval of the supply and proposed system shall first be obtained before an approval for the sale of lots will be granted. The installation of such facilities shall be in accordance with the plans, and any revisions thereof, approved by the Department.

D. Proposed water supply and distribution systems shall comply with A.A.C. Title 18, Chapter 4, Article 2, except those distribution lines which are a common element of a condominium shall be exempt from A.A.C. R18-4-234.

E. Where water from an approved public water system is proposed for use in a subdivision, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public water system is either:
1. in compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

F. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public water system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
1. is compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; nor
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

Historical Note
Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1021 renumbered without change as Section R18-5-406 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-407. Public sewerage systems

A. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, it shall be necessary to show lines indicating the approximate location and size of the sewers on the subdivision plat.

B. Where the proposed sewers will connect to an existing public sewerage system, a letter from officials of the system shall be required stating that acceptable plans have been submitted and that the subdivider has been granted permission to connect to and become a part of the public sewerage system.

C. Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, Article 8, except those drain lines which

are a common element of a condominium shall be exempt from R18-5-811.

D. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public sewerage system is either:
1. in compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

E. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public sewerage system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
1. In compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; nor
2. Making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

Historical Note
Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1026 renumbered without change as Section R18-5-407 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-408. Individual sewage disposal systems

A. Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.

B. Where soil conditions and terrain features or other conditions are such that individual sewage disposal systems cannot be expected to function satisfactorily or where groundwater or soil conditions are such that individual sewage disposal systems may cause pollution of groundwater, they are prohibited.

C. Where such installations may create an unsanitary condition or public health nuisance, individual sewage disposal systems are prohibited.

D. The use of cesspools is prohibited.

E. Where an individual sewage disposal system is proposed, the following conditions shall be satisfied:
1. A geological report shall be made by an engineer, geologist or other qualified person. The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that individual disposal systems could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
2. Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of individual sewage disposal systems.
3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.

Historical Note
Former Section R9-8-1027 renumbered without change as Section R18-5-408 (Supp. 89-2).

R18-5-409. Refuse disposal

A. The storage, collection, transportation and disposal of refuse and other objectionable wastes shall be governed by A.A.C. Title 18, Chapter 8, Article 5.

B. Where an approved community or private refuse collection service is available, arrangements shall be made to have this service furnished to the subdivision. A letter, from the community or private collection company, stating that the collection service will be made available to the subdivision, is required.

C. Where refuse collection service is not available, it will be the responsibility of the subdivider to notify each purchaser or tenant that the hauling of all refuse is an individual responsibility and that all refuse must be properly stored pending removal and disposed of at disposal areas specified in the plan approved by the Department.

D. Where a collection service or an existing approved disposal area is not available to the subdivision, a plan approval will not be granted unless a separate disposal area is provided by the subdivider or arrangements are made to utilize a new, conveniently located disposal area. Such arrangements shall include, but not be limited to, the written permission of the person responsible for the operation of the new site.

Historical Note
Former Section R9-8-1031 renumbered without change as Section R18-5-409 (Supp. 89-2).

R18-5-410. Condominiums

A. New water distribution lines and new wastewater drain lines which are to be used as a common element of a condominium and are not under the ownership and control of a public utility shall be constructed in accordance with applicable provisions of the Uniform Plumbing Code adopted by reference in A.A.C. R9-1-412(D), including the minimum standards for construction contained therein.

B. Plans to be submitted shall include inside diameter, length and location of all proposed and existing common usage water distribution lines and inside diameter, length, slope and location of all proposed and existing common usage wastewater drain lines necessary to serve each and every unit. Plans and specifications should be submitted with sufficient detail to indicate compliance with subsection (A) above.

C. Appropriate sections of the covenants shall be submitted that indicate adequate provisions have been made for the maintenance of water distribution lines and wastewater drain lines in common usage.

D. Approval of existing housing to be converted to condominiums is conditioned upon the water distribution system and wastewater drainage system being:
1. Approved in writing at the time of original construction by the local building inspection authority, or
2. Currently operating under a permit issued by a local building inspection authority, or
3. Certified to be adequate by an Arizona registered professional engineer who has affixed his signature and seal to as-built plans submitted for approval.

Historical Note
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1032 renumbered without change as Section R18-5-410 (Supp. 89-2).

R18-5-411. Violations
Any person, firm, company or corporation who offers for sale, lease or rent any tract of land contrary to these regulations shall be prosecuted in accordance with A.R.S. § 49-142 or as otherwise may be provided by law.

Historical Note
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1036 renumbered without change as Section R18-5-411 (Supp. 89-2). Amended effective April 2, 1990 (Supp. 90-2).

ARTICLE 5. MINIMUM DESIGN CRITERIA

Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-501. Siting Requirements
To the extent practicable, a new public water system or an extension to an existing public water system shall be geographically located to avoid a site which is:
1. Subject to a significant risk from earthquakes, floods, fires, or other disasters which could cause a breakdown of the public water system or portion thereof; or
2. Within the flood plain of a 100-year flood, except for intake structures and properly protected wells.

Historical Note
Section recodified from R18-4-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-502. Minimum Design Criteria
A. A public water system shall be designed using good engineering practices. A public water system which is designed in a manner consistent with the criteria contained in Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems," issued by the Arizona Department of Health Services, May 1978 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State, shall be considered to have been designed using good engineering practices. Other system designs shall be approved if the applicant can demonstrate that the system will function properly and may be operated reliably in compliance with this Chapter. Minimum design criteria which are not subject to modification are listed in this Section.
B. A potable water distribution system shall be designed to maintain and shall maintain a pressure of at least 20 pounds per square inch at ground level at all points in the distribution system under all conditions of flow.
C. Water and sewer mains shall be separated in order to protect public water systems from possible contamination. All distances are measured perpendicularly from the outside of the sewer main to the outside of the water main. Separation requirements are as follows:
1. A water main shall not be placed:
   a. Within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided. Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided. Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area covered by this subsection (C)(1)(a).
   b. Within 2 feet horizontally and 2 feet below the sewer main.
2. No water pipe shall pass through or come into contact with any part of a sewer manhole. The minimum horizontal separation between water mains and manholes shall be 6 feet, measured from the center of the manhole.
3. The minimum separation between force mains or pressure sewers and water mains shall be 2 feet vertically and 6 feet horizontally under all conditions. Where a sewer force main crosses above or less than 6 feet below a water line, the sewer main shall be encased in at least 6 inches of concrete or constructed using mechanical joint ductile iron pipe for 10 feet on either side of the water main.
4. The separation requirements do not apply to building, plumbing, or individual house service connections.
5. Sewer mains (gravity, pressure, and force) shall be kept a minimum of 50 feet from wells unless the following conditions are met:
   a. Water main pipe, pressure tested in place to 50 psi without excessive leakage, is used for gravity sewers at distances greater than 20 feet from water wells; or
   b. Water main pipe, pressure tested in place to 150 psi without excessive leakage, is used for pressure sewers and force mains at distances greater than 20 feet from water wells. "Excessive leakage" means any amount of leakage which is greater than that permitted under the AWWA Standard applicable to the particular pipe material or valve type.
6. Requests for authorization to use alternate construction techniques, materials, and joints shall be reviewed by the Department, and such requests may be approved on a case-by-case basis.

D. A public water system shall not construct or add to its system a well which is located:
1. Within 50 feet from existing sewers unless the sewer main has been constructed in accordance with subsection (C)(5)(a) or (b) of this Section;
2. Within 100 feet of any existing septic tank or subsurface disposal system;
3. Within 100 feet of a discharge or activity which is required to obtain an Individual Aquifer Protection Permit, pursuant to A.R.S. §§ 49-241(A) through 49-251;
4. Within 100 feet of an underground storage tank as defined in A.R.S. § 49-1001; or
5. Within 100 feet of hazardous waste facilities operated by large quantity generators and treatment, storage, and disposal facilities regulated under the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 et seq.

Historical Note
Section recodified from R18-4-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-503. Storage Requirements
A. The minimum storage capacity for a CWS or a noncommunity water system that serves a residential population or a school shall be equal to the average daily demand during the peak month of the year. Storage capacity may be based on existing consumption and phased as the water system expands.
B. The minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that serves a residential population or a school may be reduced by the amount of the total daily production capacity minus the production from the largest producing well.

Historical Note
Section recodified from R18-4-503 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-504. Prohibition on the Use of Lead Pipe, Solder, and Flux

Construction materials used in a public water system, including residential and non-residential facilities connected to the public water system, shall be lead-free as defined at R18-4-101. This Section shall not apply to leaded joints necessary for the repair of cast iron pipes.

Historical Note
Section recodified from R18-4-504 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-505. Approval to Construct

A. The Department shall only approve an addition or a water main extension to a public water system that is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department. The Department shall approve a properly designed modification that can be expected to return a public water system to compliance.

B. A person shall not start to construct a new public water system, modify an existing facility, including an extension to an existing public water system, or make an alteration that will affect the treatment, capacity, water quality, flow, distribution, or operational performance of a public water system before receiving an Approval to Construct from the Department. Designing or consulting engineers may confer with the Department before proceeding with detailed designs of complex or innovative facilities. The following provisions shall apply:

1. An application for Approval to Construct, including the following documents and data, shall be submitted to the Department:
   a. Detailed construction plans of the site and work to be done, presented in legible form and of sufficient scale, to establish construction requirements to facilitate effective review;
   b. Complete specifications to supplement the plans;
   c. A design report that describes the proposed construction and basis of design, provides design data and other pertinent information that defines the work to be done, and establishes the adequacy of the design to meet the system demand;
   d. Analyses of a proposed new source of water that include:
      i. Microbiological; physical; radiochemical; inorganic, organic, and volatile organic chemicals; and
      ii. Microscopic particulates if the source meets the criteria of R18-4-301.01(A); and
   e. Other pertinent data required to evaluate the application for Approval to Construct.
2. All plans, specifications, and design reports submitted for a public water system shall be prepared by, or under the supervision of, a professional engineer registered in Arizona and have the seal and signature of the engineer affixed to them, except that an engineer not registered in Arizona may design a water treatment plant or additions, modifications, revisions, or extensions, which include extensions to potable water distribution systems, if the total cost of the construction does not exceed $12,500 for material, equipment, and labor, as verified by a cost estimate submitted with plan documents.
3. An existing public water system shall be exempt from the plan review requirements of this Article if the public water system is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department if the applicable structural revision, addition, extension, or modification:
   a. Has a project cost of $12,500 or less; or
   b. Is made to a water line that:
      i. Is not for a subdivision requiring plat approval by a city, town, or county;
      ii. Has a project cost of more than $12,500 but less than $50,000; and
      iii. Has a design that is sealed and signed by a professional engineer registered in Arizona and the construction of which is reviewed for conformance with the design by a professional engineer registered in Arizona.
4. Upon completion of a project exempt from the plan review requirements of this Article pursuant to subsection (B)(3), the public water system shall submit a notice of compliance which contains:
   a. A fair market value cost estimate for the project,
   b. The name of the design engineer and the review engineer, and
   c. The project completion date and the total construction time.

C. The Department shall act upon a complete Approval to Construct application submitted for approval within 30 days after its receipt.

D. The Department shall issue an Approval to Construct only when the following conditions have been met:

1. Plans and specifications submitted to the Department demonstrate that the proposed public water system reasonably can be expected to comply with this Chapter, including the MCLs in Article 2; and
2. The water system is in compliance with this Chapter or reasonably can be expected to return to compliance with this Chapter as a result of the proposed construction.

E. An Approval to Construct becomes void if an extension of time is not granted by the Department within 90 days after the passage of one of the following:

1. Construction does not begin within one year after the date the Approval to Construct is issued, or
2. There is a halt in construction of more than one year, or
3. Construction is not completed within three years after the date construction begins.

Historical Note
Section recodified from R18-4-505 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-506. Compliance with Approved Plans

All construction shall conform to approved plans and specifications. In order to make a change in an approved design that will affect water quality, capacity, flow, sanitary features, or performance, a public water system shall submit revised plans and specifications to the Department for review, together with a written statement regarding the reasons for the change. The public water system shall not proceed with the construction affected by the design change without written approval from the Department. Revisions not affecting water quality, capacity, flow, sanitary features, or performance may be permitted during construction without further approval if record drawings documenting these changes, prepared by a professional engineer registered in Arizona, are submitted to the Department under R18-5-508.

Historical Note
Section recodified from R18-4-506 at 10 A.A.R. 585,

effective January 30, 2004 (Supp. 04-1).

R18-5-507. Approval of Construction

A. A person shall not operate a newly constructed facility until an Approval of Construction is issued by the Department.

B. The Department shall not issue an Approval of Construction on a newly constructed public water system, an extension to an existing public water system, or any alteration of an existing public water system that affects its treatment, capacity, water quality, flow, distribution, or operational performance unless the following requirements have been met:

1. A professional engineer registered in Arizona or a person under the direct supervision of a professional engineer registered in Arizona, has completed a final inspection and submitted a Certificate of Completion on a form approved by the Department to which the seal and signature of the professional engineer registered in Arizona have been affixed;
2. The construction conforms to approved plans and specifications, as indicated in the Certificate of Completion, and all changes have been documented by the submission of record drawings under R18-5-508;
3. An operations and maintenance manual has been submitted and approved by the Department if construction includes a new water treatment facility; and
4. An operator, who is certified by the Department at a grade appropriate for each facility, is employed to operate each water treatment plant and the potable water distribution system.

C. The Department may conduct the final inspection required in subsection (B)(1), at a public water system's request, if both of the following notification requirements are met:

1. The public water system notifies the Department at least seven days before beginning construction on a public water system installation, change, or addition that is authorized by an Approval to Construct; and
2. The public water system notifies the Department of completion of construction at least 10 working days before the expected completion date.

Historical Note

Section recodified from R18-4-507 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-508. Record Drawings

A. A professional engineer registered in Arizona shall clearly and accurately record or mark, on a complete set of working project drawings, each deviation from the original plan and the dimensions of the deviation. The set of marked drawings becomes the record drawings, reflecting the project as actually built.

B. The professional engineer registered in Arizona shall sign, date, and place the engineer's seal on each sheet of the record drawings and submit them to the Department upon completion of the project. The record drawings shall be accompanied by an Engineer's Certificate of Completion, signed by the professional engineer registered in Arizona, and submitted on a form approved by the Department for any project inspected under R18-5-507(B).

C. Quality control testing results and calculations, including pressure and microbiological testing, and disinfectant residual records, shall be submitted with the Engineer's Certificate of Completion together with field notes and the name of the individual witnessing the tests.

Historical Note

Section recodified from R18-4-508 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-509. Modification to Existing Treatment Process

Before a public water system may make a modification to its existing treatment process, the public water system shall submit and obtain the Department's approval for a detailed plan that explains the proposed modifications and the safeguards that the public water system will implement to ensure that the quality of the water served by the system will not be adversely affected by the modification. The public water system shall comply with the provisions in the approved plans.

Historical Note

Section recodified from R18-4-509 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Attachment 2 –

Arizona A.G. Statement for Administrative Penalty Authority

ADEQ's Rationale and Legislative Minutes for Administrative Penalty Authority

Primacy Application Revision
Arizona Department of Environmental Quality
July 26, 2019

MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION
Environmental Enforcement Section

RYAN J. REGULA
ASSISTANT ATTORNEY GENERAL
DIRECT PHONE NO. (602) 542-8014
RYAN.REGULA@AZAG.GOV

CERTIFICATION STATEMENT

OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF ARIZONA

Regarding the Arizona Application to Revise Approved State Primacy Program, 40 C.F.R. Part 142: Arizona's Administrative Penalty Authority

By this letter, I certify pursuant to my authority as an Assistant Attorney General for the State of Arizona and in accordance with the Safe Drinking Water Act ("SDWA"), as amended, and 40 C.F.R. § 142.12 that in my opinion, the State of Arizona's administrative penalty enforcement statute, A.R.S. § 49-354, is duly adopted and is enforceable. The statute was lawfully adopted at the time this Statement was approved and signed and will be fully effective when the Program Description is approved.

Arizona Revised Statute § 49-354 was initially amended in 1997 in response to the 1996 amendments to the SDWA, 42 U.S.C. § 300g-2(A)(6). *See* Laws of Arizona 1997, Ch. 130. The statute authorizes Arizona to recover administrative penalties through an administrative enforcement action. Pursuant to A.R.S. § 49-354(C), if the Director of the Arizona Department of Environmental Quality ("ADEQ") determines that a person is in violation of an Arizona statute or rule adopted to implement the requirements of 40 C.F.R. parts 141 and 142, including the national primary drinking water regulations, the Director may issue a compliance order imposing a civil administrative penalty that is calculated as follows: (1) up to one thousand dollars per day per violation for a cumulative total of $10,000 per violation for public water systems serving more than ten thousand people, (2) up to five hundred dollars per day per violation for a cumulative total of $5,000 per violation for public water systems serving five hundred to ten thousand people, and (3) up to one hundred dollars per day per violation for a cumulative total of $1,000 per violation for public water systems serving fewer than five hundred people.

Arizona Revised Statute § 49-354(C) provides administrative enforcement authority for violations of Arizona Revised Statutes Title 49, Chapter 2, Article 9 and the rules adopted pursuant to Article 9. The enforcement authority under A.R.S. § 49-354(C) extends to changes to Article 9 that were adopted by the Legislature in 2003, 2005, 2006,

and 2012, and changes to the Arizona Administrative Code adopted in 2008 by ADEQ pursuant to Article 9. The 2008 final rulemaking by ADEQ incorporated by reference the July 1, 2007 edition of the National Primary Drinking Water Regulations, 40 C.F.R. part 141.

Furthermore, I certify that the environmental audit privilege of the State of Arizona does not affect the ability of the State to meet enforcement and information gathering requirements under the SDWA because the State has issued a clarifying Attorney General Statement to satisfy requirements for federally authorized, delegated, or approved environmental programs.

Dated April 2, 2019

Ryan J. Regula

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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

July 26, 2019

Mr. Mike Stoker
Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Arizona's Rationale for Administrative Penalty at A.R.S. §49-354(C)

Dear Mr. Stoker:

As part of the state primacy requirements, EPA requires Arizona "to submit a rationale for [its] determination that the chosen level of administrative penalty authority for PWSs serving a population of 10,000 individuals or less is appropriate" 63 FR 23362 (1998). Arizona's rationale is below:

Arizona Department of Environmental Quality (ADEQ) derives its administrative penalty authority from A.R.S. §49-354(C). If ADEQ determines that a person is in violation of an Arizona statute or rule adopted to implement the requirements of 40 C.F.R. Parts 141 and 142, including the national primary drinking water regulations, ADEQ may issue a compliance order imposing a civil administrative penalty that is calculated as follows: (1) up to $1,000 per day per violation for a cumulative total of $10,000 per violation for public water systems serving more than 10,000 people, (2) up to $500 per day per violation for a cumulative total of $5,000 per violation for public water systems serving 5,000 to 10,000 people, and (3) up to $100 per day per violation for a cumulative total of $1,000 per violation for public water systems serving fewer than 500 people.

The penalty amounts for PWSs serving populations of 10,000 or less "were collectively agreed to over the course of several stakeholder meetings" (Minutes, AZ Legislature House Committee on Environment, Jan. 30, 1997, attached). Additionally, the rationale for administrative penalties factored in the size of public water systems, the "advantage to an administrative penalty [in] that the Director does not have to go to court which is a drawn out process but can assess a monetary penalty on the system[,]" and the ability of ADEQ to seek civil penalties if in a particular case the administrative penalties are not sufficient.

ADEQ hereby submits this rationale to fulfill requirements for state primacy. If you have questions, please contact Natalie Muilenberg, 602-771-6403 or Muilenberg.Natalie@azdeq.gov.

Sincerely,

Jennifer Peterson
Manager, Safe Drinking Water

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COMMITTEE ON ENVIRONMENT JANUARY 30, 1997
ARIZONA HOUSE OF REPRESENTATIVES

Forty-third Legislature - First Regular Session
COMMITTEE ON ENVIRONMENT
Minutes of Meeting Thursday, January 30, 1997 House Hearing Room 1 - 8:30 a.m. and 5:18 p.m.

(Tape 1, Side A)

The meeting was called to order at 8:35 a.m. by Chairman Allen and attendance was noted by the secretary.

Members Present

Mr. Fagin Mrs. Jarrett Ms. Weason

Mr. Flake Mrs. McGrath Mr. Gardner, Vice Chairman

Ms. Griffin Mr. Nichols Mrs. Allen, Chairman

Ms. Horton Miss Voss

Speakers Present

Dan Shein, Majority Research Analyst

Nancy Wrona, Director, Air Quality Division, Arizona Department of Environmental Quality (ADEQ)

Barry Aarons, Special Assistant to Governor, Governor's Office

(Mr. Gardner read the names of persons present who did not need to testify, page 5)

Don Stapley, Chairman, Maricopa County Board of Supervisors

Russell Rhoades, Director, Arizona Department of Environmental Quality (ADEQ)

Greg Swartz, representing Wastewater Management Authority of Arizona

Jim Norton, Legislative Liaison, Arizona Department of Environmental Quality (ADEQ)

(Mr. Gardner read the names of persons present who did not need to testify, page 13)

Dave Furrey, Superintendent, Flowing Wells Irrigation District, Tucson

Luke Evans, Majority Intern

Jim Bush, Attorney, representing ARCO

(Chairman Allen read the name of a person who was not present to testify, page 16)

John Mangum, Attorney, representing Circle K/Tosco Corporation

Allan Stanton, Attorney, representing General Motors Corporation; Renewable Fuels Association

Meredith Miller, Director, State Fuels and Environment, Clean Fuels Development Coalition, Arlington, Virginia

(Chairman Allen read the names of persons present who did need to testify, page 17)

Guest List (Attachment 1)

CONSIDERATION OF BILLS

H.B. 2309, appropriations; air quality - DO PASS AMENDED

Dan Shein, Majority Research Analyst, explained the provisions of the bill (Summary, Attachment 2). He added that a 13-line amendment proposed by Mrs. Allen changes the appropriation for traffic synchronization to $4 million for ten years which is to be taken out of the general fund instead of the Highway User Revenue Fund (HURF), reduces the appropriation for rail transit to $6 million, and provides a different narrative for use of the funding (Attachment 3).

He indicated that an 11-line amendment proposed by Ms. Weason reduces the appropriation for rail transit from $10 million to $1 million; provides a $9 million one-time appropriation to the Arizona Department of Transportation (ADOT) for distribution as matching funds to cities for the implementation, design, and construction of a rail transit system; and requires that cities in close proximity to each other coordinate efforts (Attachment 4).

Mr. Shein stated that a two-line amendment proposed by Mr. Nichols addresses the appropriation for alternative fuel buses and allows funding to be distributed to both Areas A and B (Attachment 5).

Ms. Weason, in reference to her proposed amendment, speculated that millions of dollars have been expended for rail transit studies, and opined that it is a waste of taxpayers' money to spend more. Therefore, the proposed amendment appropriates $1 million for review of past studies and creation of a workable plan, with $9 million allocated for implementation of a rail system.

Mr. Flake asked if there is a guarantee of matching funds as proposed in Ms. Weason's amendment. Mr. Shein answered that the legislation should probably be more specific as to the percentage match.

Mr. Flake asked if Maricopa County is going to contribute to this endeavor. Mr. Shein replied that the language on page 2 of the bill refers to matching monies by the cities, not the counties. He added that he does not know if the cities plan to contribute or not. Chairman Allen surmised that the cities will contribute if they are serious about helping with air quality and mass transit. She indicated that she would prefer to address the percentage of matching funds with a Floor amendment.

Mr. Gardner moved, seconded by Miss. Voss, that H.B. 2309 do pass.

Mr. Gardner moved, seconded by Miss. Voss, that a 13-line proposed amendment to H.B. 2309 dated 1/29/97 (Attachment 3) be adopted. The motion carried.

Ms. Weason moved, seconded by Ms. Horton, that an 11-line proposed amendment to H.B. 2309 dated 1/29/97 (Attachment 4) be adopted.

Ms. Weason withdrew her amendment for consideration.

Ms. Weason indicated that she will address the issue in a Floor amendment.

Mr. Nichols moved, seconded by Ms. Horton, that a two-line proposed amendment to H.B. 2309 dated 1/29/97 (Attachment 5) be adopted.

Mr. Nichols explained that Area B should be eligible for the same funding as Area A. He related to Mrs. Jarrett that distribution would be based on the ability of matching entities to provide funding.

Question was called on Mr. Nichols' motion. The motion carried.

Mr. Nichols moved, seconded by Ms. Horton, that H.B. 2309 be amended as follows: Page 1, lines 7 and 8, strike "convert municipal diesel buses to alternative fuel buses or to".

Mr. Nichols indicated that during discussions with various people concerning the purpose of this particular appropriation, he has gathered that new buses are more fuel efficient than converted buses.

Question was called on Mr. Nichols' verbal amendment to H.B. 2309. The motion carried.

Mr. Gardner moved, seconded by Mr. Flake, that H.B. 2309 as amended do pass. The motion carried by a roll call vote of 9-0-2-0 (Attachment 6).

H.B. 2308, vehicle emissions testing program - DO PASS

Dan Shein, Majority Research Analyst, explained the provisions of the bill (Summary, Attachment 7). He explained that a 13-page amendment proposed by Ms. Horton removes the one-time waiver provision (Attachment 8).

Mr. Gardner moved, seconded by Miss Voss, that H.B. 2308 do pass.

Mr. Gardner moved, seconded by Mr. Nichols, that a 13-page proposed amendment to H.B. 2308 dated 1/29/97 (Attachment 8) be adopted.

Ms. Horton explained that she is not convinced that removing cars from the road by means of a one-time waiver has a significant effect on decreasing air pollution. She contended that a mass transportation system is needed before these vehicles are removed because, in many instances, they are the only means of transportation.

Nancy Wrona, Director, Air Quality Division, Arizona Department of Environmental Quality (ADEQ), expressed opposition to the proposed amendment. She recollected that less than 30,000 one-time waivers per year are provided out of about 1.6 million vehicles tested in Areas A and B. Two-thirds of that total are associated with Area A, and one third is associated with Area B. She reported that a vehicle with major mechanical problems easily contributes five to ten times the pollution it would if it were able to be repaired.

Ms. Wrona commented that testimony provided last year showed the significant effect of waivered vehicles. Clearly, a vehicle that pollutes ten times as much as its comparable neighbor makes an inordinate contribution to the air quality problem. She said testimony was given that at least 20 percent of owners who receive waivers received them for multiple years so those vehicles go on year after year emitting a significant amount of pollution. She said that is the reason the Department supported the elimination of multiple year waivers, and it will continue to do so.

Ms. Wrona answered several questions posed by Ms. Horton.

Ms. Horton brought up the fact that used cars are started every morning, which pollutes the air, and questioned if requiring dealerships to start cars every other day or every third day would cause a significant decrease in air pollution. Ms. Wrona said there is a huge difference between starting cars at used car dealerships, and not only starting but driving vehicles day after day for which waivers have been granted.

Chairman Allen pointed out that one of the Maricopa Association of Governments' (MAG) recommendations addresses dealerships starting cars, and the issue can be discussed further at that time.

Ms. Wrona answered questions posed by Mr. Fagin and Ms. Horton, contending that renewal of a one-time waiver would be a step backward in attempts to reduce the contribution that vehicles make to the air quality level.

(Tape 1, Side B)

Ms. Wrona related to the Members that a Waiver Statistical Report for 1996 shows that 38,787 requests for waivers were made in Maricopa County and 13,801 in Pima County. There were 12,227 waivers issued in Maricopa County and 4,438 issued in Pima County. She indicated that each of those vehicles pollutes an inordinate amount of pollution in comparison with its properly maintained counterpart.

Question was called on the proposed 13-page amendment to H.B. 2308 dated 1/29/97 (Attachment 8). Division was called, and the motion failed by a roll call vote of 5-6-0-0 (Attachment 9).

Barry Aarons, Special Assistant to Governor, Governor's Office, stated that significant studies have been conducted on mass transit by different communities in Maricopa County. The City of Tempe conducted a study, placed the issue on the ballot, and is in the process of implementation. The City of Phoenix has conducted studies, and he believes that it will promote a mass transit program to be placed on the ballot next fall. He said different communities are at different levels but mass transit needs to be considered globally for integration of the system. Referring to Ms. Weason's amendment, he indicated that there are several points which he finds quite appropriate, and he is willing to work on them for the Floor. Referring to Ms. Horton's proposed amendment, he commented that discussions have been held concerning the possibility of some revision so maybe a resolution can be reached by the time the bill goes to the Floor.

He noted that the MAG study will be supplementary to what is currently being done, and if those recommendations are completed in time for infusion with legislation, it will be done. If not, it can be done next year because this is an evolutionary process. He noted that the issue of lawn mowers and leaf blowers was under consideration at one point for inclusion in H.B. 2438, air quality; voluntary vehicle retirement, but a complete resolution was not reached; however, he is willing to include that type of program in other legislation.

Mr. Gardner read the names of persons present in favor of the bill who do not need to testify:

Marty Shultz, Director, Government Relations, Arizona Public Service Company

Bill Wiley, Manager, Environmental Affairs, Arizona Public Service Company

Raena Honan, Legislative Director, Sierra Club, Grand Canyon Chapter

Sandra Bahr, Legislative Liaison, Arizona Audubon Council

Question was called on the original motion that H.B. 2308 do pass. The motion carried by a roll call vote of 7-4-0-0 (Attachment 10).

H.B. 2438, air quality; voluntary vehicle retirement - DO PASS AMENDED

Mr. Gardner assumed the Chair.

Dan Shein, Majority Research Analyst, explained the provisions of the bill (Summary, Attachment 11).

Chairman Allen resumed the Chair.

Mr. Shein explained that a 23-line amendment proposed by Chairman Allen contains the following provisions (Attachment 12):

· Removes duplicative language with reference to a vehicle registered in Area A and modifies criteria for participation in the program.

· States that a vehicle is not eligible for the retrofit program if the cost of repairs required to make the retrofit kit effective exceeds $150.

· Removes language which states that a vehicle that has been issued a salvage certificate of title is eligible for the program.

· Removes the word maximum from the requirement that the program shall establish a maximum dollar amount recoverable from the sale of the vehicle or parts.

· States that a vehicle retired pursuant to the program shall not be crushed.

· Removes limiting provisions of trip reduction programs (TRP) in favor of a broader program.

· Requires that the Chairman of the Board of Supervisors appoint a Voluntary Vehicle Retirement Program Advisory Committee and stipulates an appropriation of $2.5 million from the general fund.

Mr. Shein noted that a four-line amendment proposed by Mr. Nichols adds another category for a vehicle to participate in the program; i.e., it must have received a waiver or is eligible to receive a waiver under the Vehicle Emissions Inspections (VEI) program (Attachment 13).

Mr. Shein explained that a five-line amendment proposed by Mr. Nichols states that the whole program cannot be part of an emissions reduction credit program, although an employer can use it as a measure for the TRP (Attachment 14).

Don Stapley, Chairman, Maricopa County Board of Supervisors, expressed his support of the bill. He said he attended a MAG Council meeting the previous evening where a vote was taken on numerous issues regarding air quality measures, and a voluntary vehicle retirement program was incorporated and approved. He spoke in favor of Chairman Allen's proposed amendment. He added that he did some research concerning Ms. Horton's question at a previous meeting concerning the value of a two-year bus pass. He discovered that Maricopa County supplements employees 100 percent, and the cost for each individual for a two-year period is $816 (local bus) and $1,224 (express bus).

He related that he cannot promise that the County will appropriate dollars from its general fund budgeting process but approval has been received from the Board of Supervisors to commit the Environmental Services Department and overhead costs to operate the program. He said he will go back to the Board for a supplement once this legislation is enacted. He added that at $2.5 million per year, the goal is to eliminate up to 4,000 vehicles that cannot pass the emissions test. This equates to about a one percent improvement in tailpipe emissions attributable to the air quality problem.

He informed Chairman Allen that he is in support of Mr. Nichols' proposed four-line amendment (Attachment 13) but he is unsure of the ramifications of the five-line amendment (Attachment 14).

Mr. Nichols referred to the five-line proposed amendment (Attachment 14) and explained that he understands that in California older cars have been purchased for retirement, and credits received and applied to other industries so that those industries do not to have to reduce emissions. He speculated that a voluntary vehicle retirement program could become a vehicle for transfer of credits, and this is an attempt to preempt that possibility. However, in order not to interfere with the trip reduction program, it has been specifically exempted.

Ms. Wrona explained that when new major sources or existing major sources make major modifications, the emissions must be offset; i.e., for every pound emitted into the air, 1.1 pounds must be removed. In some areas of the country, there are banking and trading programs in which a business beyond compliance and making emission reductions can generate credits and bank, trade, and sell them to industries who need them. Another concept in which the banking and trading system exists is under the Acid Rain Program under the Clean Air Act.

It principally affects utilities east of the Mississippi River. Under the Program, a baseline of sulphur dioxide emissions was established, and every utility received allowances equivalent to their baseline and could not emit more sulphur dioxide than the allowance. If a utility switches to a relatively low sulphur coal or installs scrubbers on a plant, it has excess allowances which are available to trade. She said that California relies on that program but Arizona does not have such a plan.

Mr. Nichols asked if the amendment would stop such a plan or program from being instituted in Arizona. Ms. Wrona replied that she is not sure if it would but added that she does not support the amendment.

Mr. Aarons indicated that he needs to obtain more information regarding Mr. Nichols' proposed amendments before possible adoption on the Floor.

(Tape 2, Side A)

Mr. Gardner surmised that the pollution credits in other states have been obtained from private companies with vehicle retirement programs but this bill concerns the State and the Arizona Department of Transportation (ADOT) offering a voluntary retirement program; therefore, in order to move forward with sale and transfer of credits, ADOT would have to be in a position to sell credits which would have to be presented to the Legislature. Mr. Nichols submitted that it is purely a preventative measure.

Referring to the four-line proposed amendment (Attachment 13), Mr. Nichols explained that the purpose is to add to the list of requirements before a vehicle enters the retirement program. He said he wants to insure that a vehicle is on "death row" before that is done.

Mr. Aarons related that taking into context the fact that a vehicle has to meet all of the requirements in the legislation, the program would not apply to a vehicle parked in someone's garage for a long time. He submitted that the proposed amendment adds another requirement, thereby reducing the pool of cars, and effectively telling the person who is going to retire the vehicle that he has to go through one more step and spend an additional $25 to obtain the $700 voucher, etc.

Chairman Allen apologized to Mr. Buck, representing Arizona Auto Hobbyists Association, and explained that he attempted to provide a proposed amendment to her secretary but she never received it. She said he has an amendment he would like the Committee to review and she would be happy to have it distributed to the Members for their review and possible adoption later in the process. She informed him that she is not taking public testimony at this meeting.

Mr. Gardner moved, seconded by Mr. Flake, that H.B. 2438 do pass.

Mr. Gardner moved, seconded by Mr. Flake that a 23-line proposed amendment to H.B. 2438 dated 1/29/97 (Attachment 12) be adopted. The motion carried.

Mr. Gardner moved, seconded by Mr. Nichols, that a four-line proposed amendment to H.B. 2438 dated 1/28/97 (Attachment 13) be adopted. Division was called and the motion carried by a roll call vote of 6-4-0-1 (Attachment 15).

Mr. Gardner moved, seconded by Mr. Nichols, that a five-line proposed amendment to H.B. 2438 dated 1/29/97 (Attachment 14) be adopted. Division was called and the motion carried by a roll call vote of 6-5-0-0 (Attachment 16).

Mr. Gardner moved, seconded by Mr. Flake, that H.B. 2438 as amended do pass. The motion carried by a roll call vote of 7-2-2-0 (Attachment 17).

H.B. 2304, drinking water revolving fund - NO TIME

Dan Shein, Majority Research Analyst, explained the provisions of the bill (Summary, Attachment 18, Final Report of Study Committee, Attachment 19).

Mr. Shein pointed out that the Safe Drinking Water Act (SDWA) requires that in order for the state to retain primacy, administrative penalties must be developed. He noted that a nine-line amendment proposed by Mr. Flake adds a third category for public water systems that serve fewer than 500 persons to the administrative penalty portion on page 9 of the bill (Attachment 20). A 13-page amendment proposed by Chairman Allen changes the name of the Wastewater Management Authority of Arizona to the Water Infrastructure Finance Authority of Arizona and contains conforming changes for special districts to borrow money (Attachment 21). It also contains clarification with reference to "forgivable principle."

Mr. Gardner moved, seconded by Mr. Flake, that H.B. 2304 do pass.

Mr. Gardner moved, seconded by Mr. Flake, that a 13-page proposed amendment to H.B. 2304 dated 1/29/97 (Attachment 21) be adopted. The motion carried.

Mr. Gardner moved, seconded by Mr. Flake, that a 9-line proposed amendment to H.B. 2304 dated 1/28/97(Attachment 20) be adopted.

Russell Rhoades, Director, Arizona Department of Environmental Quality (ADEQ), testified that there is a need for this bill, particularly the state revolving fund dollars. He related that during the Study Committee, various concerns were brought up with regard to system infrastructure, wells, structures used to pull water from drinking water sources, storage tanks, treatment facilities, distribution lines, etc. In Arizona there are over 1,600 water systems covered under the SDWA, of which the overwhelming majority serve 1,000 or fewer people. He noted that many of the systems are very old which means that more maintenance repairs and capital improvements are needed. Some are subjected to certain environmental conditions, such as heat or temperature changes. Some distribution lines, because they cannot be buried underground, lay on the surface causing further problems in deterioration of the system. He commented that the older the system, the greater the problem; however, even under the best circumstances, large or small, systems do require periodic improvements in order to maintain the appropriate conveyance of potable water, in addition to meeting regulations. He noted that there was a strong recommendation from the members of the Study Committee to seek establishment of a revolving fund to support water systems throughout the State.

Greg Swartz, representing Wastewater Management Authority of Arizona, highlighted the three provisions relative to the Wastewater Management Authority which are the creation of a revolving fund for drinking water facilities; retitling of the Wastewater Management Authority to reflect a drinking water emphasis; a host of miscellaneous amendments to existing wastewater statutes (including the Board membership which currently consists of seven members, three of whom are appointed by venue of office, and four who are appointed by the Governor); and miscellaneous definition and conforming changes. He distributed a document containing a list of the current Board members (Attachment 22).

THE MEETING RECESSED AT 11:25 A.M. UNTIL ADJOURNMENT OF CAUCUS AND THE TELEMEDICINE COMMITTEE.

(Tape 3, Side A)

THE MEETING RECONVENED AT 5:18 P.M. AND ALL MEMBERS WERE PRESENT.

Mr. Swartz referred to the Board membership, noting that there may be a final amendment proposed in the Natural Resources and Agriculture (NR&A) meeting to expand membership to as many as 11 members to include a representative from the Arizona Department of Water Resources (ADWR), a representative from the Arizona Corporation Commission (ACC), and two representatives appointed by the Governor's Office to represent drinking water systems (one serving over 10,000 people and one serving 10,000 and fewer people). He pointed out that there are a number of structural protections in this process which insure that small communities are given as much of an opportunity as the larger communities.

Ms. Griffin expressed a concern regarding the recommendation of the Study Committee to adopt rules for a capacity development program (including technical, managerial and financial requirements) (Attachment 19,

page 3, #4). Mr. Swartz commented that it is his intention to strike Section 20 from the bill. He said the capacity development language within the SDWA is poorly written, and indicated that it should probably be referred to as system viability or system capacity.

He explained that capacity development is intended to be a proactive tool which allows states to measure the technical, managerial, and financial capabilities of individual systems in order to assist those systems in weak areas to move them to a higher level. He said there is a pretty aggressive operator certification program in Arizona. Every drinking water and wastewater facility is operated by a certified operator, so technically, that concern is met. Financially, all of the systems are under municipalities, the ACC, or neighborhood associations; therefore, Arizona should meet the stipulations of the SDWA financially. Managerially, though, has been difficult to define in law, and it has been determined that the best option is to obtain a clarification from the federal government and report back to the Legislature with legislation in 1998. He said it is his intention to satisfy the minimum requirements of the SDWA and not expand any existing laws relating to water rates, rights, or uses.

Mr. Swartz clarified for Ms. Griffin that the capacity development authority is not required in order to obtain federal funding but must be in place by October 1, 1999 or Arizona will lose portions of the funding thereafter.

Mr. Flake questioned if ranchers and feedlot owners who provide housing and water for workers and are not meeting compliance could be taken out of business. He said this concern prompted his proposed amendment (Attachment 20). Mr. Swartz related that the SDWA stipulates that states must have the authority to insure that the operators have the managerial and technical capacity to operate a system. There are no associated penalties if they do not. It is simply a proactive tool to identify weaknesses within a drinking water system and eliminate them by providing managerial skills.

Ms. Horton asked how the loan repayment operates. Mr. Swartz explained that loans will be made to an eligible community, political subdivision, or drinking water system in the State. The funds would be allocated pursuant to a project priority list which is generated on an annual basis. Communities voluntarily submit applications to the Authority where they are ranked and scored based on data provided in the application and data that is available statewide. The highest priorities would be tackled first from the list that is compiled.

Mr. Swartz clarified for Ms. Horton that forgivable principle allows for a negative interest rate loan so that over 20 years, a community may pay back only $800 on a $1,000 loan. He said it is the Authority's desire and in the state's best interest to retain that capability as a last resort.

Mr. Fagin asked what violations are subject to administrative penalties. Mr. Swartz indicated that penalties are limited to violations of the national primary drinking water standards consistent with the minimum intent of the SDWA, e.g., a system should only have so many parts of radon in its water. He added that it is not uncommon in other states to have water quality standards for drinking water facilities that are in excess of federal requirements. Relating to administrative penalties, most states are resting on the minimum requirements within the SDWA, and there are at least 50 state Legislatures meeting on this issue. He related that there is a current list of 83 contaminants.

Jim Norton, Legislative Liaison, Arizona Department of Environmental Quality (ADEQ), agreed to provide the Members with a list of the contaminants.

Mr. Fagin asked if systems would seek to meet more than minimum drinking water standards. Mr. Swartz said some communities may install additional treatment facilities for drinking water to rid it of a foul taste or odor which is not, in all cases, subject to federal regulations. Relative to the administrative penalties, he said it is most likely in Arizona's best interest to rely on the SDWA as a guide for implementing administrative penalties. Relating to financing facilities, if a facility wishes to finance a treatment capacity that is beyond what it needs to comply, it will be considered as a financeable item.

Mr. Swartz informed Mr. Fagin that if this bill is not passed, the state would lose control over the drinking water program which would revert to EPA Region 9 in San Francisco. Also, Arizona would lose all funding that would otherwise be provided, and it would revert to the federal government for reallocation to other states.

He indicated that a caveat associated with the administrative penalties is a focus on health issues versus administrative issues (such as failure to submit a one-page report). Mr. Swartz related to Ms. Weason that the funding, once contributed to the state, is held in the state in perpetuity supporting loan activities.

Mr. Gardner moved, seconded by Miss Voss, that a proposed 13-page amendment to H.B. 2304 dated 1/29/97 (Attachment 21) be adopted.

Mr. Swartz explained that the amendment is the Authority's attempt to insure that as many borrowers as possible are considered. Title 48 districts have been extended to include domestic water improvement districts and irrigation and water conservation districts. Additional changes make technical amendments, including changing the name of the wastewater treatment revolving fund to the clean water revolving fund. Definitions of a drinking water facility and wastewater treatment facility are included. The final major element is to insure that when the Authority makes loans which are approved by the Board of Directors of the Authority, they are not subject to competitive bidding within the state's procurement code. He said this was suggested by the Arizona Department of Administration and the Attorney General's Office.

Mr. Gardner moved, seconded by Miss. Voss, that the proposed amendment be amended as follows: Page 11, between lines 19 and 20, insert " Page 11, line 10, after "facilities" insert "DRINKING WATER SYSTEM".

Mr. Swartz explained that this includes, as a political subdivision, a definition of a drinking water facility because the current definition of a political subdivision is limited to those that provide wastewater treatment service.

Question was called on the verbal amendment. The motion carried.

Mr. Gardner moved, seconded by Miss Voss, that the proposed amendment be amended as follows: Page 13, strike lines 3 through 5, and insert "Page 23, strike lines 5 through 17."

Mr. Swartz indicated that the proposed amendment strikes Section 20 (study on capacity development). He said he plans to submit a better-worded explanation for a study on system capability or viability to the NR&A Committee. He explained that as it is currently worded, the impression is that it deals with quantity issues rather than issues which need to be focused on.

Mrs. McGrath stated that perhaps Ms. Griffin could be included in drafting of the language, and requested that Mr. Swartz notify her of meetings.

Question was called on Mr. Gardner's verbal amendment. The motion carried.

Mr. Gardner moved, seconded by Miss Voss, that the proposed amendment to H.B. 2304 dated 1/29/97 (Attachment 21) as amended be adopted. The motion carried.

Mr. Gardner moved, seconded by Miss Voss, that a 9-line proposed amendment to H.B. 2304 dated 1/28/97 (Attachment 20) be adopted.

Mr. Flake moved, seconded by Mr. Gardner, that the proposed amendment be amended as follows: Page 1, after "insert" insert "BETWEEN".

Mr. Swartz explained that in addition to struggling through capacity development language, stakeholders met and concluded that the administrative penalties language needs to be tightened, and this is consistent with that.

He related to Mr. Fagin that stakeholders have been meeting since the end of October on drafting of this bill.

(Tape 3, Side B)

Question was called on Mr. Flake's verbal amendment. The motion carried.

Mr. Gardner moved, seconded by Miss Voss, that the 9-line proposed amendment to H.B. 2304 dated 1/28/97 (Attachment 20) as amended be adopted. The motion carried.

Mr. Gardner moved, seconded by Miss Voss, that H.B. 2304 be amended as follows:

Page 9, line 12, after the first "OF" insert "UP TO", strike "____" and insert "TEN THOUSAND"

Line 16, strike "ONE THOUSAND" and insert "FIVE HUNDRED"

Line 17, strike "_____" and insert "FIVE THOUSAND"

Mr. Swartz explained that he anticipated additional guidance on amounts from EPA but having received none, the amounts were collectively agreed to over the course of several stakeholder meetings. He said it is consistent with Mr. Flake's amendment regarding systems serving fewer than 500 people.

Mr. Fagin asked what could trigger the Director's imposition of a civil administrative penalty. Mr. Swartz said it would be triggered by a violation of national primary drinking water standards. He said administrative penalties are another tool to seek compliance following a sequence of events that include technical assistance, notice of violation, and other actions in practice and policy. He said the administrative penalty would be attached to a compliance order which is the last of a sequence of events that the state would employ to insure that the users of drinking water system have safe water so it is entirely possible that the deficiency was corrected before there is need to go to a compliance order. In addition, page 9, lines 18 through 29, contains additional factors to provide guidance to the Director.

Mr. Swartz agreed that it is conceivable that a violation could take longer than ten days to correct but an entity is restricted to paying a 10-day penalty. If compliance is not met, the civil judicial process currently in law can be employed to insure compliance. Miss Voss pointed out Subsection G of the bill allows the Attorney General to pursue severe penalties. Mrs. McGrath added that it is also addressed on page 10, Subsection H. Mr. Fagin opined that Subsection H conflicts with the maximum penalty. Discussion followed among the Members.

Jim Norton, Legislative Liaison, Arizona Department of Environmental Quality (ADEQ), indicated that the Director has a several tools available when seeking compliance from a water system. ADEQ already has the ability to go to court and seek civil penalties from a water system of any size but the federal government is providing a bit more leverage. The Director will review the compliance and make a determination as to what route to seek. He said the obvious advantage to an administrative penalty is that the Director does not have to go to court which is a drawn out process but can assess a monetary penalty on the system. In a case where a system has been out of compliance and does not respond to the request of the Department, the Director can go directly to court. He clarified for Mr. Fagin that if the Director seeks civil penalties, the daily penalty authority is $500 per day, and there is no limit on the amount of time it can be imposed.

Question was called on Mr. Gardner's verbal amendments to H.B. 2304. The motion carried.

Mr. Gardner read the names of persons present in favor of the bill who did not need to testify:

Steve Olson, Special Assistant to Director, Arizona Department of Water Resources (ADWR)

Bas Aja, Director, Public Affairs, Arizona Cattlemen's Association

Jim Klinker, Director, Public Affairs, Arizona Farm Bureau

Patrick Cunningham, Assistant Attorney General, Attorney General's Office

Bob McCain, Program Director, Arizona Municipal Water Users Association (AMWUA)

Paul Gardner, President, Queen Creek Water Company; Water Utility Association of Arizona

Barbara Wytaske, Legislative Liaison, Arizona Corporation Commission (ACC)

Sandy Price, Attorney, representing City of Tucson

Lynn Keeling, Rule Specialist, Arizona Department of Environmental Quality (ADEQ)

Steve Olea, Chief Engineer, Arizona Corporation Commission (ACC)

Douglas Nelson, Executive Vice President, Arizona Rural Water Association (ARWA)

Dave Furrey, Superintendent, Flowing Wells Irrigation District, Tucson, spoke in favor of the bill, adding that he has some concerns which need to be addressed in the NR&A Committee. He agreed to work with Ms. Griffin on proposed amendments.

Mr. Gardner moved, seconded by Mrs. McGrath, that H.B. 2304 as amended do pass. The motion carried by a roll call vote of 8-2-1-0 (Attachment 23).

H.B. 2307, air quality; fuels measures - DO PASS AMENDED

Luke Evans, Majority Intern, explained the provisions of the bill (Summary, Attachment 24). He explained that a 29-line amendment proposed by Chairman Allen moves the rule-making authority from the Department of Weights and Measures (W&M) to ADEQ. It also establishes an Advisory Committee on Reformulated Fuels (Attachment 25). He added that a four-line amendment proposed by Mr. Nichols includes Area B upon approval of the Pima County Board of Supervisors (Attachment 26).

Mr. Gardner moved, seconded by Miss Voss, that H.B. 2307 do pass.

Mr. Gardner moved, seconded by Miss Voss, that a proposed 29-line amendment to H.B. 2307 dated 1/29/97 (Attachment 25) be adopted.

Barry Aarons, Special Assistant to Governor, Governor's Office, commented that this is one of the bills included in the Governor's air quality package, and it provides a standard. He said he strongly supports the proposed amendment, and contended that this responsibility is more appropriate for ADEQ. He added that the Governor was given the authority in the 1993 Special Session to opt into the Reformulated Gasoline (RFG) Program, then opt out, which is what was done. About two weeks ago, the Governor opted in with the EPA in order to use RFG Phase I, which is the fuel that EPA is prepared to engage in rule-making on. He said if it is impractical or impossible, the issue will have to be revisited. He related to Mr. Nichols that he has no objection to his proposed amendment as long as it does not jeopardize Area A. He requested that Mr. Nichols discuss it with other members (Attachment 26).

Ms. Horton asked how much additional money will be paid at the pump as a result of this legislation. Mr. Aarons replied that no one has been able to provide an exact figure. He said it will probably take a month or two to flush out final costs.

Ms. Wrona stated that the bill is designed to accommodate three fuels under consideration by the Governor's Air Quality Strategies Task Force. Those fuels include RFG Phase II, California's RFG, and the performance standard option with a contemplated 10 percent reduction in Volatile Organic Compound (VOC) emissions. She

mentioned that the performance standard is the cheapest, followed by the federal RFG Phase II, and California's RFG is the most expensive. She answered questions posed by the Members.

(Tape 4, Side A)

Relative to the effectiveness of the three fuel options, Ms. Wrona indicated that the 10 percent VOC reduction option is the lower option for reducing VOCs, the federal RFG Phase II option is slightly better, and the California RFG option is superior.

Ms. Wrona related to Mr. Nichols that ADEQ would be responsible for selecting the reformulation with the help of the stakeholder group, and W&M would be responsible for actual regulation of gasoline quality by guaranteeing that it meets required standards and insuring that a gallon is obtained when a gallon is purchased.

She added that ADEQ met with W&M to discuss long and short-term measures upon learning that its budget request for sampling was not granted. She expressed a hope that ADEQ can pick up that cost as much as possible. She added that the amount requested by W&M was based on the Task Force's recommendation for the summer fuel of 1997, so the appropriation would be used in July of this year. The absence of receiving that funding does not mean there will be no enforcement of the federal RFG program because there is federal enforceability. She clarified that the Task Force believes it is important to have stepped up monitoring to insure that "what you see is what you get," which is why the recommendation was made. She said she is also meeting with W&M to develop scenarios for resources that might be necessary to address longer-term options. She answered questions posed by the Members.

Mr. Gardner assumed the Chair.

Discussion followed among the Members and Mr. Aarons concerning the composition of the Advisory Committee.

Mr. Nichols moved, seconded by Ms. Horton, that the proposed amendment (Attachment 25) be amended as follows: Page 1, line 24, after "GOVERNOR" insert ", AT LEAST ONE OF WHOM SHALL BE A REPRESENTATIVE OF THE ENVIRONMENTAL COMMUNITY".

Jim Bush, Attorney, representing ARCO, suggested that there be one representative from the environmental community, one representative from the American Medical Association (AMA), and one member from the petroleum industry.

Question was called on Mr. Nichols' verbal amendment to the 29-line proposed amendment. **The motion failed by a roll call vote of 5-6-0-0 (Attachment 27).**

Mr. Nichols moved, seconded by Ms. Horton, that the 29-line proposed amendment to H.B. 2307 dated 1/29/97 be amended as follows: Page 1, line 24, after "GOVERNOR" insert "AT LEAST ONE OF WHOM SHALL REPRESENT THE ENVIRONMENTAL COMMUNITY, ONE OF WHOM SHALL REPRESENT THE AMERICAN MEDICAL ASSOCIATION, AND ONE OF WHOM SHALL REPRESENT THE ARIZONA PETROLEUM INDUSTRY".

Mr. Aarons suggested that other people in the medical field may be eliminated if a doctor from the AMA is specified. He indicated that the petroleum industry landscape is very broad, and added that he does not know how to define the environmental community.

Question was called on the Nichols' verbal amendment to the proposed amendment. The motion carried by a roll call vote of 8-3-0-0 (Attachment 28).

Mr. Gardner moved, seconded by Mrs. McGrath, that the 29-line proposed amendment to H.B. 2307 dated 1/29/97 (Attachment 25) as amended be adopted. The motion carried by a roll call vote of 11-0-0-0 (Attachment 29).

(Tape 4, Side B)

Chairman Allen resumed the Chair.

Mr. Nichols stated that he is withdrawing the four-line proposed amendment from consideration (Attachment 26). He added that he would like to find out if Pima County wishes to engage in reformulated fuels.

Chairman Allen noted that Barbara Burkholder, Executive Director, Arizona Public Health Association, is in favor of the bill.

Mr. Bush distributed and briefly reviewed a handout entitled, "Executive Summary - Economic Impact of Gasoline Supply Disruption in Maricopa County" (Attachment 30). He said the ultimate fuel to be fixed for the people of the state ought to be chosen by the Legislature, which represents the public. He submitted that there should be a competitive playing field so that everyone in the state can obtain the cleanest gasoline at the best price.

Chairman Allen noted that Bill Wylie, Manager, Environmental Affairs, Arizona Public Service Company, is in favor of the bill.

John Mangum, Attorney, representing Circle K/Tosco Corporation, stated that Tosco is the largest retailer of gasoline and one of the largest companies in Arizona. He echoed Mr. Bush's testimony, adding that he will support the bill for now but it can be improved. He submitted that the three fuels should be available or market shortages may be created this summer with a single RFG Phase I program. In addition, he urged that a decision be made to choose the cleanest option, which is Carb Phase II. He noted that Circle K Corporation will have to invest between $50 and $60 million in order to meet what is chosen in terms of gasoline for 1999, and the company is prepared to do that; however, if the cleanest fuel is not chosen, the money will be spent anyway, and the people of Arizona will not receive the benefit of the cleanest fuel.

Allan Stanton, Attorney, representing General Motors Corporation; Renewable Fuels Association, expressed his support of the bill. He endorsed the Governor's program because RFG has a track record and has proven itself. He said he has been told that Carb is an outstanding gasoline but it is also expensive, and the market situation is unknown. He pointed out that the bill contains an exemption for a test track in Mesa where gasoline is tested. The exemption is needed so that fuels can be tested in that area because use of gasolines that are not approved would be a violation of the law.

Meredith Miller, Director, State Fuels and Environment, Clean Fuels Development Coalition, Arlington, Virginia, expressed her support for the intent of the bill. She noted that the Governor has opted into the RFG program for 1997 and 1998, and if no action is taken, the state automatically moves into RFG Phase II gasoline which is the fuel that will prove technologically the most feasible for Maricopa County to clean up the air, not only for the summer, but for the long term as well.

Chairman Allen read the names of persons present in favor of the bill who did not need to testify:

Marty Shultz, Director, Government Relations, Arizona Public Service Company

Anne Wendell, Western Regional Director, Government Relations, Motorola

Sandra Bahr, Legislative Liaison, Arizona Audubon Council

Raena Honan, Legislative Director, Sierra Club, Grand Canyon Chapter

Ms. Weason asked why an exemption for motor vehicle racing events is included in the bill. Mr. Aarons replied that it addresses an extremely small amount of fuel utilization. The Phoenix International Raceway and drag races use a very, very detailed alcohol fuel, and if they are not exempted, the industry will shut down. He added that he would provide Ms. Weason with the amount of pollutants emitted from racing events.

Mr. Gardner moved, seconded by Miss Voss, that H.B. 2307 as amended do pass. The motion carried by a roll call vote of 10-0-1-0 (Attachment 31).

Without objection, the meeting adjourned at 9:30 p.m.

_____

Linda Taylor, Committee Secretary
lt COMMITTEE ON ENVIRONMENT 2/7/97 JANUARY 30, 1997

(Original minutes, attachments, and tapes are on file in the Office of the Chief Clerk).

Attachment 3 –

Arizona A.G. Analysis for Environmental Audit Privilege Laws

Primacy Application Revision
Arizona Department of Environmental Quality
July 26, 2019

MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION
Environmental Enforcement Section

RYAN REGULA
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January 28, 2019

Tomás Torres, Director
Water Division
U.S. EPA, Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Arizona Attorney General Certification – Safe Drinking Water Act PWSS Program Revisions and Responses to EPA's Follow-up Questions

Dear Mr. Torres:

The Environmental Protection Agency (EPA) is requiring certification from the Arizona Attorney General's Office that Arizona's Environmental Audit Privilege does not affect the State's ability to meet enforcement and information gathering requirements under the Safe Drinking Water Act. Pursuant to the EPA's request, the Arizona Attorney General's Office offers the following analysis to demonstrate that the State of Arizona is able to satisfy the requirements for federally authorized, delegated, or approved environmental programs.

I. The Environment Audit Privilege

An environmental audit report is a formal opinion created by either an internal or external auditor at the request of a particular entity. The report's purpose is to inform that particular entity whether various environmental laws have been violated. Accompanying the report is an environmental privilege. This privilege protects the confidentiality of opinions and analyses related to the environmental audit report but not the underlying data itself.

Generally, a state agency employee cannot view an audit report. Rather, the environmental audit report process is a parallel and independent process to the state's enforcement and programmatic authorities and processes. While an item of non-privileged material may be attached to an audit report, that does not make the item privileged. Specifically, the agency maintains the authority to separately collect any necessary information to operate its environmental program. Moreover, the agency maintains the authority to request any information that a regulated entity is required to develop, maintain, or report under an environmental law. *See* A.R.S. § 49-1406(A)(1).

The motivation behind the environmental audit privilege is to encourage entities to perform environmental audits to identify, report, and correct potential violations, resulting in increased compliance with environmental requirements and to provide further protection of the state's natural resources. As mentioned, the environmental audit privilege is a tool to increase compliance with environmental requirements and further protect the State's outstanding natural resources. It is not a tool for potential bad actors to hide behind. In fact, bad actors cannot hide behind it even if they so desired because, while an audit report's opinions and analyses are protected, the underlying data, which in many instances they are required to report, is not.

II. Memorandum of Responses to EPA Specific Questions

During the review process, the EPA sought clarification on a number of issues. Part II addresses EPA's questions.

1. What does the "government authority" mean for the environmental audit privilege law?

"Governmental authority" as referenced in the audit privilege law refers only to State governmental authority. The audit privilege law does not restrict: (1) the EPA's authority or responsibility for overseeing delegated federal environmental programs or (2) its federal enforcement or information-gathering authority. Such an analysis is consistent with the term "governmental authority," which is found in A.R.S. § 49-1407(C). "Governmental authority," as referenced in the self-audit law, refers only to the governmental authority of the State of Arizona.

2. How are whistle blowers protected by the environmental audit privilege?

a. What does "privilege," as referenced in the audit privilege, mean?

Privileged information refers to a specific type of information. In particular, for purposes of the audit privilege law, privileged information is any conclusory or interpretative material in the audit report that was created for an environmental audit. *See* A.R.S. §§ 49-1402 to 49-1406. Pursuant to A.R.S. § 49-1403(C), a person who conducts or participates in the preparation of the environmental audit and who observed physical events of the violation may testify to the physical facts witnessed. The person may not be compelled to disclose conclusory or interpretative material relating to the audit. Again, "any part of an audit report is privileged and is not admissible as evidence or subject to discovery" except as provided for in A.R.S. §§ 49-1404 to 49-1406. *See* A.R.S. § 49-1403(A).

While the audit report is privileged that does not mean the state is precluded from obtaining the same data that the report is based on. Entities that seek an environmental report must still comply with requirements to collect, develop, maintain or report under an environmental law.

It is also important to note that an "agency employee may not request, review or otherwise use an audit report during an agency inspection of a regulated facility or operation or an activity of a regulated facility or operation." *See* A.R.S. § 49-1403(D). In other words, the agency cannot take an audit report and disclose privileged material.

b. Can the audit privilege be construed to circumvent protections for whistleblowers by the State and federal law?

No, the audit privilege shall not be construed to circumvent protections for "whistleblowers" by both State and federal law. A.R.S. § 49-1404(E) of the audit privilege addresses protection for whistleblowers who disclose information to law enforcement authorities, and provides that the audit privilege "shall not be construed to circumvent protections provided by federal or state law for individuals who disclose information to law enforcement authorities."

i. What are the whistleblower protections generally?

A.R.S. § 23-1501(A)(3)(c)(ii) outlines protections for employees who allege their employment was terminated in retaliation for the disclosure.

A.R.S. § 38-532 outlines protections for a public employee who has disclosed information that is a matter of public concern to a public body. A person who discloses such information is protected from any reprisal taken against them.

Both A.R.S. § 23-1501(A)(3)(C)(ii) and A.R.S. § 38-532 are consistent with the general intent and nature of the whistleblower protections afforded by the Safe Drinking Water Act (42 U.S.C. § 300j-9(i)).

ii. Are there any other environmental whistleblower protections?

A.R.S. § 49-207(A) outlines protections for any person who files a complaint, institutes a proceeding, or testifies about a violation of the Water Quality Control statutes, A.R.S. Title 49, Chapter 2. This section prohibits any form of intimidation, threats, or general discrimination against such persons.

3. May the requesting party review documents as part of an in camera review?

No, the requesting party may not review documents as part of an *in camera* review.

a. Definition of privilege in Arizona.

The State of Arizona has not adopted a probable cause standard when determining if privileged information can be disclosed to the requesting party. For information

to be privileged under state common law, a communication must meet four criteria: (1) it originates in a confidence that it will not be disclosed, (2) confidentiality is essential to the full maintenance of the relationship between the parties, (3) the relationship is one that the community believes should be fostered, and (4) the injury to the relationship that would occur from disclosure would be greater than the benefit gained by the aid given to the litigation. *City of Tucson v. Superior Court in and for County of Pima*, 809 P.2d 428, 432 (Ariz. 1991) (citing *Humana Hosp. Desert Valley v. Superior Court*, 742 P.2d 1382, 1387 (Ariz. Ct. App. 1987)).

i. (1) Originates in a confidence that it will not be disclosed.

The audit privilege is designed to protect privileged information at the onset of the audit. The protection of the audit privilege incentivizes private actors to conduct environmental audits because it provides fewer potential repercussions.

ii. (2) Confidentiality is essential to the full maintenance of the relationship between the parties.

For the audit privilege to successfully incentivize corporate environmental responsibility, the communication between the auditor and the auditee must be kept confidential. This will foster a thorough and accurate audit of the corporation that will lead to the highest level of environmental compliance.

iii. (3) The relationship is one that the community believes should be fostered.

The audit privilege law encourages corporations to be proactive when investigating and remedying environmental noncompliance. This serves as a benefit to not only the business community, as it aids in keeping compliance up and cleanup costs down, but also benefits the State of Arizona in general, as it increases the likelihood and effectiveness of discovery and cleanup of environmental violations.

The audit privilege does not shield corporations from violations. The audit privilege still requires that corporations report information that is required under other environmental law. A.R.S. § 49-1406(A)(1). The fact that a violation occurred is not privileged.

b. Definition of privileged materials under this statute.

The materials listed under Parts B and C of A.R.S. § 49-1402 are permissible, but the crux of the determination of privilege is not that a certain *type* of material is privileged, but rather whether the materials were created for the purpose of the audit. Old materials such as interviews, field notes, memoranda, photographs and the like that were created before the audit are not to be privileged, even if they are of the same type of document as is listed in Parts B or C.

c. In camera inspection in Arizona.

Arizona trial courts are vested with "wide discretion concerning discovery, and absent an abuse of discretion, its rulings will not be disturbed." *State ex rel. Babbit v. Arnold*, 548 P.2d 426, 427 (Ariz. Ct. App. 1976). *In camera* inspections have been utilized in an effort to insure that non-discoverable, privileged material is not disclosed. *Id.* at 428. Disclosing material to the requesting party before the trial judge has reviewed the material to determine its privilege status would frustrate the process of *in camera* review altogether. The trial judge conducts an *in camera* review of the material to determine what information is privileged and what is not. *Catrone v. Miles*, 160 P.3d 1204, 1210 (Ariz. Ct. App. 2007). The requesting party shall not be permitted to view the privileged material until a court or administrative law judge determines, *in camera*, that the information is not in fact privileged.

d. The in camera inspection process.

A judge can determine in a civil or administrative hearing, after doing an *in camera* review, whether 1) the privilege is asserted for a fraudulent purpose, 2) the privilege does not apply to every piece of information the party claims is privileged or to the portion requested, or 3) the portion of the report shows evidence of noncompliance with an environmental law and appropriate efforts to achieve compliance with the law were not promptly initiated and pursued with reasonable diligence after the discovery of the noncompliance. A.R.S. § 49-1405(A). Regarding prong (2), an item does not become privileged just because the item is attached to an audit report. Also, if an item is "privileged," it is still discoverable if prongs (1) or (3) are met, regardless of whether a privilege is asserted or not.

If the judge determines after the review that the materials meet one of the three prongs, then the material will become available for use in a criminal, administrative, or civil case.

e. Overboard assertions of privilege.

It would be very difficult for someone to make an overbroad assertion of privilege because of the *in camera* review process and because the only privileged information is that which is created for the audit. A.R.S. § 49-1403. Under the statute, the party could claim the information created for the audit is privileged, but would still have to disclose any information required to be disclosed to the government or the public under state or federal law. A.R.S. § 49-1407(C). Section 49-1407(C) also states that the regulatory agency may review the information within the audit report required to be available under a specific state or federal law, although the review does not waive or eliminate the administrative or civil evidentiary privilege for the material, except for materials prescribed in A.R.S. § 49-1406. A.R.S. § 49-1407(B).

4. ***Does the audit privilege affect the public's right to access non-privileged information?***

No, the audit privilege does not affect the public's right to access non-privileged information.

a. Arizona public records law.

A.R.S. § 39-121 states that "public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." Public records law creates a strong presumption in favor of disclosure. *Griffis v. Pinal County*, 156 P.3d 418, 422 (Ariz. 2007). If a document falls within the scope of the public records statute, then the presumption favoring disclosure applies, and when necessary, the court can perform a balancing test to determine whether privacy, confidentiality, or the best interests of the state outweigh the policy in favor of disclosure. *Carlson v. Pima County*, 687 P.2d 1242, 1245-46 (Ariz. 1984). A court can perform an *in camera* review to determine if documents should be subject to public disclosure. *Griffis v. Pinal County*, 156 P.3d 418, 420.

b. Public right to access environmental violation information.

A.R.S. § 49-205 outlines the types of environmental information that are required to be available to the public. The public has a right to access the name of any permittees, information about chemicals that have been discharged, and the amount of pollutant in the drinking water or the environment.

The audit privilege does not exempt entities from disclosing data and other reporting information required by statute or ADEQ regulation. A.R.S. § 49-1406(A)(1).

5. ***Does the state maintain the authority to issue emergency environmental orders?***

Yes, the State maintains the authority to issue emergency environmental orders.

A.R.S. § 49-282.02(B) outlines the steps the director of ADEQ may take in response to a release of a hazardous substance that presents an imminent and substantial endangerment to the public health or the environment. A.R.S. § 49-282.02 (WQARF) allows the director to take any reasonable, necessary, and cost-effective remedial action when such a situation arises.

A.R.S. § 49-354 also gives the director the power to immediately issue an order requiring compliance from a person who is in violation, giving the director the ability to address emergency situations immediately if necessary.

6. ***Does the audit privilege preempt other State law requiring disclosure of information to the State?***

No, the audit privilege law does not preempt other State law requiring disclosure of information to the State, nor does it preempt State officials' right to review information.

The privilege protecting information created for the audit report does not protect the underlying factual data and information that is otherwise required by law to be available to the State. Pursuant to A.R.S. § 49-1406, the privilege does not apply to any information required to be collected, developed, maintained or reported under an environmental law. Section 49-1406 also states in relevant part that information obtained by observation, sampling, or monitoring by a regulatory agency and information obtained from a source not involved in the audit report is not protected as part of the privilege. Additionally, the fact a violation has occurred is not protected as privilege as well.

The audit privilege does protect conclusory, interpretive, and analytical statements in the audit report. Also, if factual data is contained in the audit report that is not otherwise required to be collected, developed, maintained or reported under an environmental law, that data may be protected under the audit privilege.

An audit report can also be used in criminal investigations, grand jury proceedings, and prosecutions. However, if an audit report is used for criminal purposes, the party will not waive their audit privilege in a later civil proceeding.

State officials can freely review information in an audit report if it is required to be available under a specific state or federal law, but it does not waive or eliminate the administrative or civil evidentiary privilege except for materials prescribed in section 49-1406 (which are non-privileged materials). A.R.S. § 49-1407(B).

Once an *in camera* review is conducted, if the judge finds the information may be disclosed, then the state official may do so. *See* Section 3 for the process behind this hearing. Then, the party claiming the privilege may be subject to sanctions, but not the party seeking to have the information revealed. *See* A.R.S. § 49-1405(A) and (D).

Additionally, any materials listed under A.R.S. § 49-1406 and created by an agency are not privileged, even if the same kind of materials are found in the audit report (i.e. raw data may be collected by both an agency and a private auditor). State employees can freely disclose this information not covered under audit privilege law without fear of repercussion.

7. ***Does the audit privilege interfere with the State's ability to respond to citizen complaints?***

No, the audit privilege law does not interfere with the State's ability to respond to citizen complaints. The State is permitted to respond to citizen complaints concerning a regulated entity that has voluntarily participated in the audit privilege program. The State has access to all non-privileged parts of the audit, including underlying data and information.

A.R.S. § 49-1406 of the audit privilege permits the State to release non-privileged information that is required to be provided pursuant to public records law. The fact that a violation has occurred is not privileged information.

8. ***Does the State maintain the authority to enter sites to ensure compliance?***

Yes, the State maintains the authority to enter sites to ensure compliance. A.R.S. § 49-353(A)(2) outlines the rules the director of ADEQ shall prescribe regarding the production, treatment, distribution and testing of potable water. The director shall provide for inspection and certification of drinking water supplies, and provide for appropriate actions to be taken if a water supply does not meet the required standards. The audit privilege does not interfere with this authority.

A.A.C. R18-4-207 states that the director of ADEQ may, at any time, enter a site to ensure that the site is in compliance with SDWA. ADEQ may inspect records, files, papers, processes, controls and facilities, or test any feature of a public water system, including the raw water source. If the director determines that a person is in violation of the SDWA, then the director may issue an order requiring compliance immediately. A.R.S. § 49-354(B).

9. ***Does the State maintain the authority to verify reported information submitted by permittees?***

Yes, the State maintains the authority to verify reported information submitted by permittees. A.R.S. § 41-1075 outlines the substantive review process that ADEQ takes to determine whether an application for a license meets all substantive criteria required by statute or rule. The agency has the authority to verify reported information submitted to them to ensure that it is in compliance with environmental statutes and rules. The audit privilege law does not interfere with ADEQ's ability to verify information that is reported by permittees.

10. ***Will the requestor forfeit the privilege if they do not come into compliance within a reasonable period of time?***

Yes, the requester will forfeit the privilege if they do not come into compliance within a reasonable period of time. A.R.S. § 49-1402(B)(3) states that the audit report may include an implementation plan or tracking system to correct past

noncompliance, improve current compliance, or prevent future noncompliance.

A.R.S. § 49-1405(A)(3) states in relevant part that a court or administrative law judge may require disclosure of privileged material if appropriate efforts to achieve compliance with the law were not promptly taken and pursued with reasonable diligence after the noncompliance was discovered. Accordingly, parties would forfeit the audit privilege if they do not come into compliance within a reasonable period of time.

III. Conclusion

The environmental audit report privilege is a tool the State has made available to incentivize entities to identify, correct, and report potential violations. It does not affect the State's ability to meet enforcement and information gathering requirements under the Safe Drinking Water Act. The undersigned Assistant Attorney General has been delegated authority from the Arizona Attorney General to sign and issue the statements and analysis set forth herein.

Sincerely

Ryan Regula

Ryan Regula
Assistant Attorney General
Environmental Enforcement Section

cc: Curtis Cox, Section Chief, Environmental Enforcement
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