

**§ 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.

(Amended by L. 2018, ch. 192, s. 4, eff. 8/3/2018.)

**§ 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

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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 post-closure 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 post-closure 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 post-closure 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.

(Amended by L. 2014, ch. 115,s. 2, eff. 7/24/2014.)



**§ 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.

(Amended by L. 2014, ch. 115,s. 3, eff. 7/24/2014.)

**§ 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.

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(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

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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 .

(Amended by L. 2017, ch. 315,s. 21, eff. 8/9/2017.)

**§ 49-248. [Repealed]**

(Repealed by L. 2017, ch. 315, s. 22, eff. 8/9/2017.)

**§ 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. [Effective Until ninety days after adjournment]  
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 3.2 of this chapter or under 42 United State code section 300 h -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 3.2 of this chapter.

(Amended by L. 2018, ch. 170,s. 3, eff. 8/3/2018.)

This section is set out more than once. See also A.R.S. § 49-2502, effective ninety days after adjournment.



**§ 49-250. [Effective ninety days after adjournment] Exemptions**

A. The director , by rule, may 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.

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1. Household and domestic activities.
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3. The noncommercial use of consumer products generally available to and used by the public.
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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 of this subsection 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.

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(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 that are operating as prescribed by rules adopted pursuant to article 3.3 of this chapter or 42 United States Code section 300 h-1(c), any underground injection well covered by a permit issued under article 3.3 of this chapter or under 42 United States Code section 300h-1(c).

(Amended by L. 2021, ch. 32,s. 1, eff. ninety days after adjournment.  
Amended by L. 2018, ch. 170,s. 3, eff. 8/3/2018.)

This section is set out more than once. See also A.R.S. § 49-2501, effective until ninety days after adjournment.

**§ 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.