House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 175

SENATE BILL 1246

AN ACT

AMENDING SECTIONS 3-363.01, 49-301, 49-302, 49-303, 49-304, 49-305, 49-306, 49-307, 49-308, 49-309 AND 49-310, ARIZONA REVISED STATUTES; RELATING TO PESTICIDE CONTAMINATION PREVENTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 3-363.01, Arizona Revised Statutes, is amended to read:

3-363.01. Reporting requirements; interagency agreement

A. The director OF THE ARIZONA DEPARTMENT OF AGRICULTURE may enter into an interagency agreement with the department of environmental quality to allow the director to collect the pesticide reports required pursuant to section 49-305, subsection ~~A, paragraph 1~~ B.

B. Rules adopted by the director pursuant to section 3-363, paragraph 6~~.~~ shall not prevent the director from collecting the pesticide reports required pursuant to section 49-305, subsection ~~A, paragraph 1~~ B as a part of any interagency agreement entered into with the department of environmental quality.

Sec. 2. Section 49-301, Arizona Revised Statutes, is amended to read:

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.

~~2.~~ 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.

~~3.~~ 4. "Degradation product" means a substance resulting from the transformation of a pesticide by physicochemical or biochemical means.

~~4.~~ 5. "Groundwater protection data gap" means that~~, for a particular pesticide, the director, after study, has been unable to determine that each study required pursuant to section 49-302, subsection A has been submitted or that each study submitted pursuant to section 49-302, subsection A is valid, complete and adequate~~ 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.

~~5.~~ 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.

~~6.~~ 8. "Pesticide" means any substance or mixture of substances intended ~~to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director~~

~~may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or be present in any environment~~ FOR EITHER:

(a) PREVENTING, DESTROYING, REPELLING OR MITIGATING ANY PEST.

(b) USE AS A PLANT REGULATOR, DEFOLIANT OR DESICCANT.

~~7. "Pesticide registrant" means a person that has registered a pesticide pursuant to title 3, chapter 2, article 5.~~

~~8.~~ 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.

~~9.~~ 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.

~~10. "Soil microbial zone" means the zone of the soil below which the activity of microbial species is so reduced that it has no significant effect on pesticide breakdown.~~

Sec. 3. Section 49-302, Arizona Revised Statutes, is amended to read:

49-302. Information submittal

A. ~~Not later than December 1, 1987, except as provided in subsection G of this section, a person that has registered a pesticide in this state for agricultural use~~ 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 ~~each~~ THE pesticide ~~registered~~ 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. ~~If that information does not exist, the product shall be placed on the groundwater protection list pursuant to section 49-305 and is subject to monitoring and testing under section 49-307.~~

7. The director may by rule require ~~such~~ additional information ~~as~~ 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 ~~of this section~~ 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. ~~All~~ Information submitted pursuant to subsection A ~~of this section~~ shall COMPLY WITH ALL OF THE FOLLOWING:

1. INFORMATION SHALL be presented in English and summarized in tabular form ~~on no more than three sheets of paper~~ with the actual studies, including methods and protocols, attached.

2. All information AND STUDIES~~, at a minimum,~~ CONCERNING PRODUCT CHEMISTRY AND ENVIRONMENTAL FATE shall AT A MINIMUM meet the testing methods and reporting guidelines ~~provided by the United States environmental protection agency pesticide assessment guidelines, subdivision D, series 60 through 64 for product chemistry and subdivision N, series 161 through 164 for environmental fate, including information required for degradation products in specific studies~~ ESTABLISHED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

3. With ~~prior~~ approval from the director, ~~registrants~~ 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 ~~objectives~~ 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 ~~he~~ THE DIRECTOR finds them to be derived from standard protocol procedures consistent with the ~~criteria and objectives~~ OBJECTIVE of this article AS STATED IN SUBSECTION A.

~~D. Studies conducted on active ingredients in the formulation of pesticides shall meet the same testing methods as required for studies conducted on active ingredients. In addition, the director may require specified testing protocols that are specific or adaptable to soil and climatic conditions in this state. The director may give a pesticide registrant an extension of up to two years if he determines that this additional time is necessary and warranted to complete the studies required in subsection A, paragraph 6 of this section. The deadline for these studies shall not be extended beyond December 1, 1990. When seeking the extension, the registrant shall submit to the director a written report on the current status of the dissipation studies for which the extension is being sought. For registrants granted an extension pursuant to this section, section 49-305 is effective on the completion date established by the director.~~

~~E. The director may grant the registrant an extension beyond the one authorized in subsection D of this section if all of the following conditions are met:~~

~~1. The registrant submits a written request to the director for an extension beyond the one granted pursuant to subsection D of this section. The request shall include the reasons why the extension is necessary and the findings produced by the study up to the time the request is made.~~

~~2. The director finds that the registrant has made every effort to complete the studies required in subsection A, paragraph 6 of this section within the required time limits of the extension granted pursuant to subsection D of this section and that those studies could not be completed within the required time limits due to circumstances beyond the control of the registrant.~~

~~3. The director establishes a final deadline, not to exceed one year beyond the time limit of the extension granted pursuant to subsection D of this section, and a schedule of progress by which the registrant shall complete the studies required in subsection A, paragraph 6 of this section.~~

~~F. After December 1, 1987, no registration of any new pesticide may be granted unless the applicant submits all of the information required by the director pursuant to this article and the director finds that the information meets the requirements of this article.~~

~~G.~~ D. The director may~~, upon registration, indicate~~ WAIVE any information ~~prescribed~~ REQUIRED by subsection A ~~of this section that need not be provided~~ if the director determines ~~after at least sixty days' public notice, and an opportunity for public comment, that either of the following applies:~~

~~1.~~ THAT the ~~registrant~~ APPLICANT has demonstrated ~~all~~ EITHER of the following:

~~(a) They have made diligent and good faith efforts to timely obtain the particular information for which a waiver is sought.~~

~~(b)~~ 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.

~~(c) They have submitted alternative information that accurately describes the relevant characteristic of the active ingredient.~~

~~2. The registrant has demonstrated all of the following:~~

~~(a) They have made diligent and good faith efforts to timely obtain the particular information for which a waiver is sought.~~

~~(b) They cannot timely obtain the relevant information without extreme difficulty and hardship.~~

~~(c) There is sufficient data already submitted to determine whether the active ingredient will be on or off the groundwater protection list established by section 49-305 regardless of what the waived information might show.~~

~~(d) They have committed to submittal of the relevant information within three years after the requirement has been waived. A waiver shall not be available under this subdivision for a new pesticide registration.~~

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.

~~H.~~ F. Information requirements that the director ~~determines need not be provided~~ WAIVES PURSUANT TO SUBSECTION D shall not ~~be considered~~ CONSTITUTE a groundwater protection data gap.

Sec. 4. Section 49-303, Arizona Revised Statutes, is amended to read:

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 ~~director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources shall establish~~ 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 ~~established or as revised~~ shall ~~always~~ be at least as stringent as the values ~~being~~ 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.

~~B.~~ 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.

~~3.~~ 4. For each pesticide listed pursuant to paragraph 2 OR 3 OF THIS SUBSECTION for which information is available, a list of the amount ~~sold~~ OF THE PESTICIDE THAT WAS APPLIED TO SOIL in this state during the most recent year, ~~for which sales information is available and~~ where IT WAS APPLIED and for what purpose the pesticide was used.

~~C.~~ 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 ~~shall~~ MAY determine to the extent possible the toxicological significance of the degradation products and other specified ingredients identified pursuant to subsection ~~B~~ C, ~~paragraph~~ PARAGRAPHS 2 AND 3 OF THIS SECTION.

~~D. The director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources may, after a public hearing, adopt by rule a procedure for establishing specific numeric values other than the procedure prescribed by subsection A. Any numeric values adopted by the director as prescribed by this subsection shall be at least as stringent as the numeric values being used by the United States environmental protection agency at the time the director adopts or revises those numeric values.~~

Sec. 5. Section 49-304, Arizona Revised Statutes, is amended to read:

49-304. Penalty for groundwater protection data gap

A. A registrant of a pesticide ~~identified in section 49-303, subsection B, paragraph 1~~ is subject to a penalty of up to ten thousand dollars for each day ~~the~~ 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 ~~within the required time limits~~.

2. Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete and adequate information ~~within the required time limits~~.

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. Subsections A and B of this section do not apply to a pesticide product whose registration has lapsed, has been voluntarily withdrawn or has been cancelled, or to a product that has been granted a current extension pursuant to section 49-302.~~

~~D.~~ C. The attorney general may enforce this section.

~~E.~~ D. Any monetary penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

Sec. 6. Section 49-305, Arizona Revised Statutes, is amended to read:

49-305. Groundwater protection list; regulation of pesticides on list

A. The director shall establish ~~by rule~~ 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 ~~B~~ C, ~~paragraph~~ PARAGRAPHS 2 AND 3 on the groundwater protection list and shall regulate the use of these pesticides if the pesticide is intended ~~to be applied to or injected~~ 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. ~~The rules shall include the following:~~

~~1.~~ B. ON NOTICE FROM THE DIRECTOR, a person who uses a pesticide ~~which has been placed~~ on the groundwater protection list is required to report ~~to the director~~ 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 ~~the use of restricted use pesticides as designated by the United States environmental protection agency~~ CUSTOM APPLICATIONS.

~~2. Dealers of pesticides shall make quarterly reports to the director of all sales of pesticides that are on the groundwater protection list. These reports shall include lists of all sales by purchases.~~

~~B.~~ C. If ~~the~~ A pesticide has not been detected in groundwater anywhere in ~~the United States~~ THIS STATE in tests conducted by a governmental agency or other reliable source, the director may~~, by rule,~~ remove ~~pesticides~~ THAT PESTICIDE from the groundwater protection list ~~if either of the following applies~~ AS PROVIDED IN RULE. ~~:~~

~~1. The numeric values have been amended so that the pesticide fails to meet the criteria established in section 49-303, subsection B, paragraph 2.~~

~~2. The pesticide does not qualify for inclusion on the groundwater protection list based on numeric values adopted by the director pursuant to section 49-303, subsection D.~~

Sec. 7. Section 49-306, Arizona Revised Statutes, is amended to read:

49-306. Groundwater protection data gap; cancellation of registration

A. The director shall notify ~~the chemicals division of~~ the Arizona department of agriculture ~~to not register or~~ to cancel the registration of a pesticide ~~intended~~ FOR AGRICULTURAL USE~~:~~

~~1. To be applied to or injected into the ground by ground based application equipment or by chemigation after December 1, 1989~~ if there is a groundwater protection data gap for that pesticide~~, unless the registrant has been granted a current extension pursuant to section 49-302~~.

~~2. For use with other than ground based application equipment after December 1, 1990 if there is a groundwater protection data gap for that pesticide, unless the registrant has been granted a current extension pursuant to section 49-302.~~

~~B. If a registrant does not comply with the information requirements of section 49-302, the director shall file the information requirements of section 49-302 according to procedures provided in 7 United States Code section 136A, subsection C, paragraph 2, subparagraph B. In order to carry out this section, the director has the same authority to require information from registrants of active pesticide ingredients that the administrator of the United States environmental protection agency has pursuant to 7 United States Code section 136A, subsection C, paragraph 2, subparagraph B. The director shall prescribe by rule procedures for resolving disputes or funding the filing of the information requirements of section 49-302. The procedures may include mediation and arbitration. The arbitration procedures, insofar as practicable, shall be consistent with applicable federal law or otherwise comply with the commercial arbitration rules established by the American arbitration association. The procedures shall be established so as to resolve any dispute with the timetable established in section 49-302.~~

~~C. For an active ingredient or pesticide for which a registrant or registrants do not provide the information required pursuant to section 49-302, the director may determine the active ingredient or pesticide to be critical to agricultural production and the director may utilize assessments charged to those registrants of the active ingredient for which the~~

~~information is required pursuant to section 49-302 in amounts necessary to cover the director's expenses in obtaining the information. The director may also request an appropriation to be used in combination with assessments to obtain the required information.~~

~~D.~~ 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 ~~and subsections B and C of this section do not apply with respect to that product~~.

Sec. 8. Section 49-307, Arizona Revised Statutes, is amended to read:

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 ~~B~~ C, ~~paragraph~~ 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 ~~his~~ 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.

Sec. 9. Section 49-308, Arizona Revised Statutes, is amended to read:

49-308. Enforcement

A. Within ninety days after a pesticide that is listed pursuant to section 49-305~~, subsection A~~ 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.

~~(c) Below the soil microbial zone.~~

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.

Sec. 10. Section 49-309, Arizona Revised Statutes, is amended to read:

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 chemicals division of~~ 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 ~~chemicals division of 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.

Sec. 11. Section 49-310, Arizona Revised Statutes, is amended to read:

49-310. <u>Pesticides; conditional registration; reports</u>

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. ~~A person~~ 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 ~~on conditionally registered pesticides~~.

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 ~~active ingredient~~.

E. Conditional registrants shall not voluntarily cancel the conditional registration.

Sec. 12. Rule making for alternate pesticide evaluation process

On or before July 1, 2005, the department of environmental quality shall adopt in rule an alternate procedure pursuant to section 49-303, subsection A, paragraph 3, Arizona Revised Statutes, as amended by this act, to evaluate without the use of specific numeric values, the potential of a pesticide to pollute groundwater.

Sec. 13. Review of pesticide pollution prevention evaluation process; report

A. On or before July 1, 2008, the department of environmental quality shall prepare a report that evaluates the effectiveness of methods used by the department to determine the potential of a pesticide to pollute groundwater. The report shall be submitted to the speaker of the house of representatives and the president of the senate and shall at a minimum include the following:

1. An assessment of the validity and accuracy of the results generated by the methods used by the department to determine the potential for a pesticide to pollute groundwater.

2. Groundwater monitoring data to support the conclusions.

3. A description of changes needed to make the program more effective, including changes in statutes, rules and programs.

B. Based on the evaluation and report, if the department determines that an alternate procedure is more predictive than specific numeric values at determining the risk to groundwater caused by pesticides, the department shall recommend statutory and rule changes regarding the use of the most predictive method to evaluate the potential of pesticides to pollute the groundwater of this state.

APPROVED BY THE GOVERNOR APRIL 27, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2004.