Senate Engrossed House Bill

FILED

KEN BENNETT
SECRETARY OF STATE

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CHAPTER 265

HOUSE BILL 2767

AN ACT

AMENDING SECTIONS 49-104, 49-203, 49-210, 49-241.02, 49-242, 49-255.01 AND 49-332, ARIZONA REVISED STATUTES; REPEALING LAWS 1991, CHAPTER 280, SECTION 5, AS AMENDED BY LAWS 1992, CHAPTER 126, SECTION 3; RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 49-104, Arizona Revised Statutes, is amended to read:

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

A. The department shall:

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

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

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

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

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

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

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

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

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

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

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies.

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

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

14. Assist the department of health services in recruiting and training state, local and district health department personnel.

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

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

B. The department, through the director, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.

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

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

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

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

may require that the design documents anticipate and provide for future sewage treatment needs.

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

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

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

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and title 26, chapter 2, article 3.

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

C. The department may charge fees to cover the costs of all permits and inspections it performs to ~~insure~~ ENSURE compliance with rules adopted under section 49-203~~, subsection A, paragraph 6~~, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the water quality fee fund established by section 49-210.

D. The director may:

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

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

Sec. 2. Section 49-203, Arizona Revised Statutes, is amended to read:

49-203. <u>Powers and duties of the director and department</u>

A. The director shall:

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

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

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

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

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

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

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

8. ~~Except as prescribed by section 49-255.01, subsection J,~~ Assess and collect fees ~~to cover, as necessary, reasonable costs~~ to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees ~~which~~ THAT are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees AND FROM ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FEES shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. ~~Except for~~ Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, ~~monies collected from all other fees~~ shall be ~~transmitted to the state treasurer for deposit~~ DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, in the water quality fee fund established by section 49-210.

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

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

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

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, ~~he~~ THE DIRECTOR OR DEPARTMENT EMPLOYEE shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

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

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

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

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

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

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

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

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

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

Sec. 3. Section 49-210, Arizona Revised Statutes, is amended to read:

49-210. Water quality fee fund; appropriation; exemption; monies held in trust

A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-241, 49-242, 49-255.01, 49-332 and 49-353. The director shall administer the fund.

B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

D. Monies in the water quality fee fund shall be used for the following purposes:

1. The issuance of aquifer protection permits pursuant to section 49-241.

2. The aquifer protection permit registration fee procedures pursuant to section 49-242.

3. Dry well registration fee procedures pursuant to section 49-332.

4. Technical review fee procedures pursuant to section 49-353.

5. Inspection fee procedures pursuant to section 49-104, subsection C.

6. THE ISSUANCE OF PERMITS UNDER THE ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM PURSUANT TO SECTION 49-255.01.

E. ANY FEE, ASSESSMENT OR OTHER LEVY THAT IS AUTHORIZED BY LAW OR ADMINISTRATIVE RULE AND THAT IS COLLECTED AND DEPOSITED IN THE WATER QUALITY FEE FUND SHALL BE HELD IN TRUST. THE MONIES IN THE FUND MAY BE USED ONLY FOR THE PURPOSES PRESCRIBED BY STATUTE AND SHALL NOT BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE GENERAL FUND OF THIS STATE. THIS SUBSECTION DOES NOT APPLY TO ANY TAXES OR OTHER LEVIES THAT ARE IMPOSED PURSUANT TO TITLE 42 OR 43.

Sec. 4. Section 49-241.02, Arizona Revised Statutes, is amended to read:

49-241.02. <u>Payment for aquifer protection permit fees; definitions</u>

~~A. The maximum fees for processing, issuing or denying permit action applications shall be:~~

~~1. For an individual or area-wide aquifer protection permit, one hundred thousand dollars.~~

~~2. For an application for a complex modification to an individual or area-wide aquifer protection permit, one hundred thousand dollars.~~

~~3. For the clean closure of a facility without an aquifer protection permit, thirty-five thousand dollars.~~

~~4. For a standard application to modify an individual or area-wide aquifer protection permit, fifteen thousand dollars.~~

A. ONLY FOR A ONE-TIME RULE MAKING AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, 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. ~~The maximum fees prescribed in subsection A of this section apply for any pending permit action application submitted to the department before the effective date of this amendment to this section and the maximum fees prescribed in subsection A of this section supersede any maximum fee specified by the department in any letter dated before the effective date of this amendment to this section. The department shall notify the applicant by letter of any change in the maximum fee for an application. The notice shall be sent within sixty days after the effective date of this amendment to this section.~~

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 ~~shall~~ 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, ~~2009~~ 2014 to determine the adequacy of the maximum fees, and by August 31, ~~2009~~ 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, waste rock pile, 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, waste rock pile, 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.

(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.

(iii) Extends into another drainage.

2. "Maximum fee" means the maximum amount the ~~department is authorized to charge~~ 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.

Sec. 5. Section 49-242, Arizona Revised Statutes, is amended to read:

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 ~~which~~ 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 ~~which~~ 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 ~~as prescribed by~~ PURSUANT TO subsection E of this section.

~~E. The annual registration fee shall be determined as follows:~~

~~Discharge or Influent Per Day Under the Permit or Notice of Disposal (In gallons)~~	~~Annual Fee~~
~~3,000 to 9,999~~	~~$ 25~~
~~10,000 to 99,999~~	~~100~~
~~100,000 to 999,999~~	~~1,000~~
~~1,000,000 to 9,999,999~~	~~5,000~~
~~10,000,000 or more~~	~~8,500~~

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 ~~by~~ PURSUANT TO subsection E of this section based on the permit that covers the greatest gallons of discharge or influent per day plus ~~an annual registration fee equal to the lesser of the amount prescribed by subsection E of this section or one thousand dollars for each additional permit~~ 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.

Sec. 6. Section 49-255.01, Arizona Revised Statutes, is amended to read:

49-255.01. <u>Arizona pollutant discharge elimination system program; rules and standards; affirmative defense; fees; exemption from termination</u>

A. A person shall not discharge except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article.

2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.

B. The director shall adopt rules to establish an AZPDES permit program consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and no more stringent than the clean water act and this article.

C. The rules adopted by the director shall provide for:

1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.

2. Establishment of permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 7, including case by case effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).

3. Modifications and variances as allowed by the clean water act.

4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

D. Nothing in this article affects the validity of any existing rules that are adopted by the director and that are equivalent to and consistent with the national pollutant discharge elimination system program authorized under section 402 of the clean water act until new rules for AZPDES discharges are adopted pursuant to this article.

E. An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:

1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:

(a) An upset occurred and that the permittee can identify the specific cause of the upset.

(b) The permitted facility was being properly operated at the time of the upset.

(c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours of the upset.

(d) The permittee has taken appropriate remedial measures including all reasonable steps to minimize or prevent any discharge or sewage sludge use or disposal that is in violation of the permit and that has a reasonable likelihood of adversely affecting human health or the environment.

2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.

F. Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:

1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.

2. Limitations for pollutants in navigable waters adopted pursuant to sections 49-221 and 49-222, if the discharge of the pollutant is specifically limited in a permit issued pursuant to this article or the pollutant was specifically identified as present or potentially present in facility discharges during the application process for the permit.

G. Notwithstanding section 49-203, subsection D, permits that are issued under this article shall not be combined with permits issued under article 3 of this chapter.

H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

1. Within the thirty day period, an appeal is filed with the water quality appeals board pursuant to section 49-323.

2. A later effective date is specified in the decision.

I. In addition to other reservations of rights provided by this chapter, nothing in this article shall impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

~~J. Notwithstanding section 49-203, subsection A, paragraph 8, the department shall not charge a fee to issue, deny, modify, suspend or revoke a permit under this article or to process permit applications.~~

J. ONLY FOR A ONE-TIME RULE MAKING AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE DIRECTOR SHALL ESTABLISH BY RULE FEES, INCLUDING MAXIMUM FEES, FOR PROCESSING, ISSUING AND DENYING AN APPLICATION FOR A PERMIT PURSUANT TO THIS SECTION. AFTER THE ONE-TIME RULE MAKING, THE DIRECTOR SHALL NOT INCREASE THOSE FEES BY RULE WITHOUT SPECIFIC STATUTORY AUTHORITY FOR THE INCREASE. MONIES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER QUALIFY FEE FUND ESTABLISHED BY SECTION 49-210.

K. Any permit conditions concerning threatened or endangered species shall be limited to those required by the endangered species act.

L. This program is exempt from section 41-3102.

Sec. 7. Section 49-332, Arizona Revised Statutes, is amended to read:

49-332. Registration

A. A person who owns an existing dry well ~~which~~ THAT is or has been used for disposal shall register the well on a registration form provided by the director. This form shall be accompanied by a registration fee ~~of ten dollars~~ ESTABLISHED BY THE DIRECTOR BY RULE IN A ONE-TIME RULE MAKING AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION. AFTER THE ONE-TIME RULE MAKING, THE DIRECTOR SHALL NOT INCREASE THAT FEE BY RULE WITHOUT SPECIFIC STATUTORY AUTHORITY FOR THE INCREASE. Monies collected by the department shall be deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the water quality fee fund established by section 49-210. The registration form shall include information ~~which~~ THAT the director determines is necessary to meet the purpose of this article.

B. The director shall assign a registration number to each dry well registered pursuant to this section and shall maintain a permanent record of the information contained on the registration form and the registration number.

C. An owner who brings a dry well into operation after August 13, 1986 shall register the well on a registration form provided by the director and shall pay the registration fee ~~of ten dollars~~ ESTABLISHED BY THE DIRECTOR BY RULE within thirty days of beginning operations.

D. A person who installs a dry well shall notify the owner of the registration requirements of subsection C of this section.

E. This article shall not be construed to legalize any dry well ~~existing~~ THAT EXISTS on August 13, 1986 and ~~which~~ THAT is not in compliance with this chapter and chapter 5 of this title.

Sec. 8. Repeal

Laws 1991, chapter 280, section 5, as amended by Laws 1992, chapter 126, section 3, is repealed.

Sec. 9. Department of environmental quality; continuing fee authority

A. Notwithstanding any other law, beginning on the effective date of this act through June 30, 2011, the department of environmental quality has continuing authority to collect the following maximum fees for processing, issuing or denying aquifer protection permits:

1. For an individual or area-wide aquifer protection permit, one hundred thousand dollars.

2. For an application for a complex modification to an individual or area-wide aquifer protection permit, one hundred thousand dollars.

3. For the clean closure of a facility without an aquifer protection permit, thirty-five thousand dollars.

4. For a standard application to modify an individual or area-wide aquifer protection permit, fifteen thousand dollars.

B. Notwithstanding any other law, beginning on the effective date of this act through June 30, 2011, the department of environmental quality has continuing authority to collect the following maximum fees for each owner of a facility that is prescribed in section 49-242, subsections B, C or D, Arizona Revised Statutes, as amended by this act, for annual registration and for a site with more than one permit:

1. Discharge or Influent Per Day Under the Permit or Notice of Disposal (In gallons)

	Annual Fee
3,000 to 9,999	$ 25
10,000 to 99,999	100
100,000 to 999,999	1,000
1,000,000 to 9,999,999	5,000
10,000,000 or more	8,500

2. For a site with more than one permit that is subject to the requirements of section 49-242, Arizona Revised Statutes, as amended by this act, the owner or operator of the facility at that site shall pay the annual registration fee prescribed by paragraph 1 of this subsection based on the permit that covers the greatest gallons of discharge or influent per day plus an annual registration fee equal to the lesser of the amount prescribed by paragraph 1 of this subsection or one thousand dollars for each additional permit.

C. Notwithstanding any other law, beginning on the effective date of this act through June 30, 2011, the department of environmental quality has continuing authority to collect the following fees relating to dry wells:

1. A person who owns an existing dry well that is or has been used for disposal shall register the well and pay a registration fee of ten dollars.

2. An owner who brings a dry well into operation after August 13, 1986 shall register the well and shall pay the registration fee of ten dollars within thirty days of beginning operations.

Sec. 10. <u>Department of environmental quality; water quality fees; authority</u>

In addition to any other appropriations made in fiscal year 2010-2011, all water quality permit administration revenues received by the department of environmental quality in fiscal year 2010-2011 are appropriated to the department. Before the expenditure of water quality permit administration receipts, the department of environmental quality shall report the intended use of the monies to the joint legislative budget committee.

Sec. 11. Legislative intent

If the legislature authorizes the department of environmental quality to collect or impose a fee, assessment or other levy to be used for a specific purpose and not to fund the state general fund, the monies so collected must be used only for the purposes authorized by law. This act is intended to restore the trust of the people of this state and the businesses that operate in this state and that have paid and will be required to pay those fees, assessments and other levies that those monies will be used for the stated purpose and not for some other purpose.

APPROVED BY THE GOVERNOR MAY 7, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.