Senate Engrossed

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

# SENATE BILL 1493

AN ACT

AMENDING SECTIONS 17-265, 35-142, 49-104, 49-203 AND 49-210, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.2; AMENDING SECTIONS 49-261, 49-262 AND 49-263.01; RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



ED_005978A_00062814-00001 FL CWA 404 Assumption FOIA_Interim Release 15

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

Section 1. Section 17-265, Arizona Revised Statutes, is amended to read:

17-265. Game and fish in-lieu fee program restoration endowment trust fund; exemption; definition

A. The game and fish in-lieu fee program restoration endowment trust fund is established to be used to fulfill the department's obligations as an in-lieu fee sponsor pursuant to sections 401 and 404 of the clean water act OR PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2. The commission shall administer the trust fund as trustee.

B. The trust fund is a permanent endowment fund that consists of monies deposited from proceeds received by the department as an in-lieu fee sponsor pursuant to sections 401 and 404 of the clean water act OR PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2, and interest and investment income earned on those monies, including:

1. Compensatory mitigation monies received from ~~federal~~ in-lieu fee permittees through the purchase of in-lieu fee mitigation credits.

2. Monies received from the United States army corps of engineers for other approved in-lieu fee programs.

3. Monies received from the United States army corps of engineers as a resolution of unauthorized activities under a completed federal enforcement action that does not involve department personnel pursuant to sections 401 and 404 of the clean water act.

C. Monies in the trust fund are continuously appropriated. Monies in the trust fund do not revert to the state general fund and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. The state treasurer shall accept, separately account for and hold in trust any trust fund monies deposited pursuant to this section in the state treasury, which are considered to be trust monies as defined in section 35-310 and which may not be commingled with any other monies in the state treasury except for investment purposes. On notice from the commission, the state treasurer shall invest and divest, as provided by section 35-313, 35-314 or 35-314.03, any trust fund monies deposited in the state treasury, and monies earned from interest and investment income shall be credited to the trust fund.

E. The beneficiaries of the trust are the in-lieu fee projects sponsored by the department pursuant to sections 401 and 404 of the clean water act OR PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2.

F. Monies in the trust fund shall be spent by the commission solely for the following:

1. The purposes authorized under any enabling instrument between the commission, the United States army corps of engineers and the United States environmental protection agency OR PURSUANT TO AN ENABLING INSTRUMENT EXECUTED UNDER TITLE 49, CHAPTER 2, ARTICLE 3.2.

2. Site selection, design, implementation, monitoring, management and administrative costs related to the department's responsibilities as an in-lieu fee sponsor pursuant to sections 401 and 404 of the clean water act OR PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2.

G. For the purposes of this section, "clean water act" has the same meaning prescribed in section 49-201.

Sec. 2. Section 35-142, Arizona Revised Statutes, is amended to read:

35-142. Monies kept in funds separate from state general fund; receipt and withdrawal

A. All monies received for and belonging to the state shall be deposited in the state treasury and credited to the state general fund except the following, which shall be placed and retained in separate funds:

1. The unexpendable principal of monies received from federal land grants shall be placed in separate funds and the account of each such separate fund shall bear a title indicating the source and the institution or purpose to which the fund belongs.

2. The interest, rentals and other expendable money received as income from federal land grants shall be placed in separate accounts, each account bearing a title indicating the source and the institution or purpose to which the fund belongs. Such expendable monies shall be expended only as authorized, regulated and controlled by the general appropriations act or other act of the legislature.

3. All private or quasi-private monies authorized by law to be paid to or held by the state treasurer shall be placed in separate accounts, each account bearing a title indicating the source and purpose of the fund.

4. All monies legally pledged to retirement of building indebtedness or bonds issued by those institutions authorized to incur such indebtedness or to issue such bonds shall be placed in separate accounts.

5. Monies of a multi-county water conservation district authorized by law to be paid to or held by the state treasurer shall be placed in separate accounts, each account bearing a title indicating the source and purpose of the fund.

6. All monies collected by the Arizona game and fish department shall be deposited in a special fund known as the state game and fish protection fund for the use of the Arizona game and fish commission in carrying out the provisions of title 17.

7. All federal monies that are received by the department of economic security for family assistance benefits and medical eligibility as a result of efficiencies developed by the department of economic security and that would otherwise revert to the state general fund pursuant to section 35-190 shall be retained for use by the department of

economic security in accordance with the terms and conditions imposed by the federal funding source in an account or accounts established or authorized by the state treasurer.

8. Monies designated by law as special state funds shall not be considered a part of the general fund. Unless otherwise prescribed by law, the state treasurer shall be the custodian of all such funds.

9. All monies received and any accounts established and maintained by the director of the Arizona state retirement system or the administrator of the public safety personnel retirement system, the corrections officer retirement plan and the elected officials' retirement plan.

10. Monies received by a state agency or institution as a gift, devise or donation shall not be considered a part of the state general fund or transferred to the state general fund unless the gift, devise or donation specifically authorizes a general state use for the monies. A state agency or institution that receives a monetary gift, devise or donation shall account for those monies separately.

11. All monies received by the Arizona game and fish commission in connection with clean water act in-lieu fee projects shall be deposited in a special trust fund, known as the game and fish in-lieu fee program restoration endowment trust fund, established by section 17-265 for the use of the Arizona game and fish commission solely for the following:

(a) The purposes authorized under any enabling instrument between the commission AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR BETWEEN THE COMMISSION, the United States army corps of engineers and the United States environmental protection agency.

(b) Site selection, design, implementation, monitoring, management and administrative costs related to the ARIZONA GAME AND FISH department's responsibilities as an in-lieu fee sponsor pursuant to sections 401 and 404 of the clean water act.

B. No money shall be received or held by the state treasurer except as authorized by law, and in every instance the treasurer shall issue a receipt for money received and shall record the transaction in the statewide accounting system. No money shall be withdrawn from the treasury except on the warrant or electronic funds transfer voucher of the department of administration.

C. Monies received for and belonging to this state and resulting from compromises or settlements by or against this state, excluding restitution and reimbursement to state agencies for costs or attorney fees, shall be credited to the state general fund unless specifically credited to another fund by law. A fund consisting of monies other than monies received for restitution, costs or attorney fees shall not be established on the basis of a court order without prior legislative authorization. For the purposes of this subsection, "restitution" means

monies intended to compensate a specific, identifiable person, including this state, for economic loss.

D. All federal monies granted and paid to this state by the federal government shall be accounted for in the accounts or funds of this state in the necessary detail to meet federal and state accounting, budgetary and auditing requirements, and all appropriations for matching such federal monies shall be transferred from the state general fund to such separate funds as needed, except as otherwise required by the federal government.

E. Nothing in this section requires the establishment of separate accounts or funds for such federal monies unless otherwise required by federal or state law. The department of administration has the authority to use the most efficient system of accounts and records, consistent with legal requirements and standard and necessary fiscal safeguards.

F. Nothing in this section precludes the creation by the department of administration of a clearing account or other acceptable accounting method to effect prompt payment of claims from an approved budget or appropriation. The department of administration shall report each account or fund established or cancelled to the directors of the joint legislative budget committee and the governor's office of strategic planning and budgeting.

G. Nothing in this section or any other section precludes the use of monies kept in funds separate from the state general fund, the interest from which accrues to the state general fund, for payment of claims against the state general fund, provided sufficient monies remain available for payment of claims against such funds.

H. The department of administration may issue warrants for qualified expenditures of federal program monies before they are deposited in the state treasury. The receipt of federal monies shall be timed to coincide, as closely as administratively feasible, with the redemption of warrants by the state treasurer. The department of administration shall limit expenditures to the amount that has been made available for the use under the grant award by the federal government. The state agency initiating the expenditures is responsible for ensuring that expenditures qualify for coverage under the guidelines of the federal grant award.

I. The department of administration shall establish the policies and procedures for all state agencies for drawing federal monies. When the established method results in federal monies being held by this state, the department of administration may use the interest earned on the monies to pay the federal government for any related interest liability. If an interest liability is incurred due to a state agency varying from the established policies and procedures, the department of administration shall charge the appropriate agency account or fund. Any federal interest liability owed to this state as a result of the delayed federal disbursements shall be used to offset this state's interest liability to



ED_005978A_00062814-00005 FL CWA 404 Assumption FOIA_Interim Release 15

the federal government. Any remaining interest earnings shall be deposited in the state general fund.

J. Any state agency or authorized agent of a state agency may accept credit cards pursuant to an agreement entered into by the state treasurer pursuant to section 35-315 for the payment of any amount due to that agency or agent or this state.

K. Except for the department of revenue, agencies or authorized agents on behalf of state agencies that accept credit cards shall deduct any applicable discount fee and processing fee associated with the transaction amount before depositing the net amount in the appropriate state fund. No other reduction is permitted against the transaction amount. The net amount deposited in the appropriate state fund shall be considered as the full deposit required by law of monies received by the agency or the authorized agent. Payment of any applicable discount fee and processing fee shall be accounted for in the annual report submitted to the governor's office of strategic planning and budgeting in accordance with section 41-1273. The transaction amount of any credit card transaction shall not be reduced by any discount fee or processing fee in an amount in excess of the merchant card settlement fees reflected in the state banking contract with the state treasurer's office.

L. Any state agency that contracts with an authorized agent for the electronic processing of transactions pursuant to title 41, chapter 23 may include a provision in the contract to allow the authorized agent to impose a convenience fee or a service fee or surcharge. If allowed, the convenience fee or the service fee or surcharge shall be charged to the cardholder in addition to the transaction amount, except for the following:

1. Except as provided in subsection R of this section, any permits, licenses or other authorizations needed to pursue a trade or occupation in this state.

2. Except as provided in subsection R of this section, any permits, licenses or other authorizations needed to establish, expand or operate a business in this state.

3. Except as provided in subsection R of this section, any permits, licenses or other authorizations needed to register a vehicle or license a driver in this state.

M. Each state agency or its authorized agent shall:

1. Deduct the amount of the convenience fee or the service fee or surcharge before depositing the transaction amount or the transaction amount reduced by the discount fee or the processing fee, or both, into the appropriate state fund.

2. Not deduct any part of the convenience fee or the service fee or surcharge from the transaction amount before depositing the net amount into the appropriate state fund.



ED_005978A_00062814-00006 FL CWA 404 Assumption FOIA_Interim Release 15

3. Deduct the amount of the discount fee or the processing fee, or both, from the transaction amount before depositing the net amount into the appropriate state fund.

N. The net amount deposited in the appropriate state fund pursuant to subsection L or M of this section shall be considered as the full deposit of monies that is required by law and that is received by the agency.

O. Before charging a convenience fee or a service fee or surcharge, a state agency shall submit the proposed convenience fee or the proposed service fee or surcharge to the state treasurer for approval. If the state treasurer determines that the proposed convenience fee or the proposed service fee or surcharge is necessary to ensure the efficient processing of payments to the state agency and is in compliance with the standards of the credit card industry, the state treasurer shall approve the convenience fee or the service fee or surcharge. Notwithstanding section 35-142.01, convenience fees received by a state agency or its authorized agent may be used to offset the costs imposed by the authorized agent in processing the transactions.

P. When the percentage of electronic transactions first exceeds at least thirty percent of a state agency's total transactions, the state agency shall perform a cost benefit report, including costs of convenience fees or the service fee or surcharge, the amount of revenue generated and any realized cost savings.

Q. Nothing in this section or any other provision of law authorizes any state agency, authorized agent of any state agency or budget unit to establish a bank account for any government monies. All monies received by or on behalf of this state shall be deposited with and in the custody of the state treasurer or in an account that is authorized by the state treasurer pursuant to this section. This subsection does not apply to monies received and any accounts established and maintained by the director of the Arizona state retirement system or the administrator of the public safety personnel retirement system, the corrections officer retirement plan and the elected officials' retirement plan.

R. If a state agency provides an alternative method of payment, the convenience fee or the service fee or surcharge may be charged to the cardholder in addition to the transaction amount.

Sec. 3. 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 ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

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

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

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

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

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. ~~Beginning in 2014,~~ The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

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

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

14. 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.

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

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

B. The department, through the director, shall:

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

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

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

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

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

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

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

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



ED_005978A_00062814-00009 FL CWA 404 Assumption FOIA_Interim Release 15

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 I, paragraph 10.

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

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

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

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment

facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

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

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

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

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. ~~After September 30, 2013,~~ The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

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

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

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

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



ED_005978A_00062814-00011 FL CWA 404 Assumption FOIA_Interim Release 15

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

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

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

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

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying ~~the~~ THOSE fees THAT ARE NOT ASSOCIATED WITH THE DREDGE AND FILL PERMIT PROGRAM ESTABLISHED PURSUANT TO CHAPTER 2, ARTICLE 3.2 OF THIS TITLE. FOR SERVICES PROVIDED UNDER THE DREDGE AND FILL PERMIT PROGRAM, A STATE AGENCY SHALL PAY EITHER:

(a) THE FEES ESTABLISHED BY THE DEPARTMENT UNDER THE DREDGE AND FILL PERMIT PROGRAM.

(b) THE REASONABLE COST OF SERVICES PROVIDED BY THE DEPARTMENT PURSUANT TO AN INTERAGENCY SERVICE AGREEMENT.

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

~~2.~~ 3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

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

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

Sec. 4. Section 49-203, Arizona Revised Statutes, is amended to read:

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

A. The director shall:

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

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

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

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

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

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

7. Adopt, by rule or as permit conditions, ~~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. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. ~~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. Monies paid by an applicant for review by consultants for the

department pursuant to section 49-241.02, subsection D~~,~~ shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. STATE AGENCIES ARE EXEMPT FROM ALL FEES IMPOSED PURSUANT TO THIS CHAPTER EXCEPT FOR THOSE FEES ASSOCIATED WITH THE DREDGE AND FILL PERMIT PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.2 OF THIS CHAPTER. FOR SERVICES PROVIDED UNDER THE DREDGE AND FILL PERMIT PROGRAM, A STATE AGENCY SHALL PAY EITHER:

(a) THE FEES ESTABLISHED BY THE DEPARTMENT UNDER THE DREDGE AND FILL PERMIT PROGRAM.

(b) THE REASONABLE COST OF SERVICES PROVIDED BY THE DEPARTMENT PURSUANT TO AN INTERAGENCY SERVICE AGREEMENT.

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

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

11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a ~~case by case~~ 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, 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 OR 3.2 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

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

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

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

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

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

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

9. ADOPT BY RULE A PERMIT PROGRAM FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO NAVIGABLE WATERS FOR PURPOSES OF IMPLEMENTING THE PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in

section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

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

Sec. 5. 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, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.

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

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

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

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

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

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

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

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

6. The issuance of permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.

7. Operator certification pursuant to sections 49-352 and 49-361.

8. IMPLEMENTATION AND ADMINISTRATION OF THE DREDGE AND FILL PERMIT PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.2 OF THIS CHAPTER, INCLUDING REVIEW AND ANALYSIS FOR ISSUING JURISDICTIONAL DETERMINATIONS.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be

used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

Sec. 6. Title 49, chapter 2, Arizona Revised Statutes, is amended by adding article 3.2, to read:

ARTICLE 3.2. DREDGE AND FILL PERMIT PROGRAM

49-256. Adoption and enactment of federal definitions

FOR THE PURPOSES OF THIS ARTICLE AND FOR ESTABLISHING PRIMACY FOR THIS STATE'S DREDGE AND FILL PERMIT PROGRAM UNDER 33 UNITED STATES CODE SECTION 1344, THE FOLLOWING DEFINITIONS ARE ADOPTED AND ENACTED AS FOLLOWS:

1. "COMPENSATORY MITIGATION" MEANS THE RESTORATION (RE-ESTABLISHMENT OR REHABILITATION), ESTABLISHMENT (CREATION), ENHANCEMENT, AND/OR IN CERTAIN CIRCUMSTANCES PRESERVATION OF AQUATIC RESOURCES FOR THE PURPOSES OF OFFSETTING UNAVOIDABLE ADVERSE IMPACTS WHICH REMAIN AFTER ALL APPROPRIATE AND PRACTICABLE AVOIDANCE AND MINIMIZATION HAS BEEN ACHIEVED.

2. "DREDGED MATERIAL" MEANS MATERIAL THAT IS EXCAVATED OR DREDGED FROM NAVIGABLE WATERS.

3. "FILL MATERIAL" MEANS:

(a) EXCEPT AS SPECIFIED IN SUBDIVISION (c) OF THIS DEFINITION, THE TERM FILL MATERIAL MEANS MATERIAL PLACED IN NAVIGABLE WATERS WHERE THE MATERIAL HAS THE EFFECT OF:

(i) REPLACING ANY PORTION OF A NAVIGABLE WATER WITH DRY LAND; OR

(ii) CHANGING THE BOTTOM ELEVATION OF ANY PORTION OF A NAVIGABLE WATER.

(b) EXAMPLES OF SUCH FILL MATERIAL INCLUDE, BUT ARE NOT LIMITED TO: ROCK, SAND, SOIL, CLAY, PLASTICS, CONSTRUCTION DEBRIS, WOOD CHIPS, OVERBURDEN FROM MINING OR OTHER EXCAVATION ACTIVITIES, AND MATERIALS USED TO CREATE ANY STRUCTURE OR INFRASTRUCTURE IN THE NAVIGABLE WATERS.

(c) THE TERM FILL MATERIAL DOES NOT INCLUDE TRASH OR GARBAGE.

4. "GENERAL PERMIT" MEANS A PERMIT AUTHORIZING A CATEGORY OF DISCHARGES OF DREDGED OR FILL MATERIAL UNDER THIS ARTICLE. GENERAL PERMITS ARE PERMITS FOR CATEGORIES OF DISCHARGE WHICH ARE SIMILAR IN NATURE, WILL CAUSE ONLY MINIMAL ADVERSE ENVIRONMENTAL EFFECTS WHEN PERFORMED SEPARATELY, AND WILL HAVE ONLY MINIMAL CUMULATIVE ADVERSE EFFECT ON THE ENVIRONMENT.

5. "IN-LIEU FEE PROGRAM" MEANS A PROGRAM INVOLVING THE RESTORATION, ESTABLISHMENT, ENHANCEMENT, AND/OR PRESERVATION OF AQUATIC RESOURCES THROUGH FUNDS PAID TO A GOVERNMENTAL OR NON-PROFIT NATURAL RESOURCES MANAGEMENT ENTITY TO SATISFY COMPENSATORY MITIGATION REQUIREMENTS FOR DREDGE AND FILL PERMITS ISSUED PURSUANT TO THIS ARTICLE. SIMILAR TO BUT DISTINCT FROM A MITIGATION BANK, AN IN-LIEU FEE PROGRAM SELLS COMPENSATORY

MITIGATION CREDITS TO PERMITTEES WHOSE OBLIGATION TO PROVIDE COMPENSATORY MITIGATION IS THEN TRANSFERRED TO THE IN-LIEU PROGRAM SPONSOR. THE OPERATION AND USE OF AN IN-LIEU FEE PROGRAM ARE GOVERNED BY AN IN-LIEU FEE PROGRAM INSTRUMENT.

6. "MITIGATION BANK" MEANS A SITE, OR SUITE OF SITES, WHERE RESOURCES (E.G., WETLANDS, STREAMS, RIPARIAN AREAS) ARE RESTORED, ESTABLISHED, ENHANCED, AND/OR PRESERVED FOR THE PURPOSE OF PROVIDING COMPENSATORY MITIGATION FOR IMPACTS AUTHORIZED BY DREDGE AND FILL PERMITS ISSUED PURSUANT TO THIS ARTICLE. IN GENERAL, A MITIGATION BANK SELLS COMPENSATORY MITIGATION CREDITS TO PERMITTEES WHOSE OBLIGATION TO PROVIDE COMPENSATORY MITIGATION IS THEN TRANSFERRED TO THE MITIGATION BANK SPONSOR. THE OPERATION AND USE OF A MITIGATION BANK ARE GOVERNED BY A MITIGATION BANKING INSTRUMENT.

7. "PARTY AFFECTED BY A JURISDICTIONAL DETERMINATION" MEANS A PERMIT APPLICANT, LANDOWNER, A LEASE, EASEMENT OR OPTION HOLDER, OR OTHER INDIVIDUAL WHO HAS AN IDENTIFIABLE AND SUBSTANTIAL LEGAL INTEREST IN THE PROPERTY (OR A PERSON ACTING WITH THE APPROVAL OF ANY OF THE FOREGOING) WHO HAS RECEIVED AN APPROVED JURISDICTIONAL DETERMINATION.

8. "PERMITTEE-RESPONSIBLE MITIGATION" MEANS AN AQUATIC RESOURCE RESTORATION, ESTABLISHMENT, ENHANCEMENT, AND/OR PRESERVATION ACTIVITY UNDERTAKEN BY THE PERMITTEE (OR AN AUTHORIZED AGENT OR CONTRACTOR) TO PROVIDE COMPENSATORY MITIGATION FOR WHICH THE PERMITTEE RETAINS FULL RESPONSIBILITY.

9. "PRACTICABLE" MEANS AVAILABLE AND CAPABLE OF BEING DONE AFTER TAKING INTO CONSIDERATION COST, EXISTING TECHNOLOGY, AND LOGISTICS IN LIGHT OF OVERALL PROJECT PURPOSES.

10. "WETLANDS" MEANS THOSE AREAS THAT ARE INUNDATED OR SATURATED BY SURFACE OR GROUNDWATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND THAT UNDER NORMAL CIRCUMSTANCES DO SUPPORT, A PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR LIFE IN SATURATED SOIL CONDITIONS. WETLANDS GENERALLY INCLUDE SWAMPS, MARSHES, BOGS, AND SIMILAR AREAS.

49-256.01. Dredge and fill permit program; permits; rules; prohibitions; exemptions; exceptions; notice

A. FOR PURPOSES OF IMPLEMENTING THE PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344, THE DIRECTOR MAY ESTABLISH BY RULE A DREDGE AND FILL PERMIT PROGRAM THAT IS CONSISTENT WITH AND NO MORE STRINGENT THAN THE CLEAN WATER ACT DREDGE AND FILL PROGRAM, INCLUDING A PERMITTING PROCESS.

B. DURING ANY PERIOD IN WHICH THE STATE HAS BEEN GRANTED AUTHORITY TO ADMINISTER THE PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344, A PERSON MAY NOT DISCHARGE DREDGED OR FILL MATERIAL UNLESS THE DISCHARGE IS EXEMPT UNDER 33 UNITED STATES CODE SECTION 1344(f) OR RULES ADOPTED PURSUANT TO THIS ARTICLE, EXCEPT UNDER EITHER OF THE FOLLOWING CONDITIONS:

1 1. IN CONFORMANCE WITH A PERMIT THAT IS ISSUED OR AUTHORIZED UNDER
2 THIS ARTICLE.
3 2. PURSUANT TO A PERMIT THAT IS ISSUED OR AUTHORIZED BY THE UNITED
4 STATES ARMY CORPS OF ENGINEERS UNTIL A PERMIT THAT IS ISSUED OR AUTHORIZED
5 UNDER THIS ARTICLE TAKES EFFECT.
6 C. RULES ADOPTED BY THE DIRECTOR FOR THE PURPOSES OF A PERMIT
7 PROGRAM FOR DREDGE AND FILL SHALL:
8 1. PROVIDE FOR ISSUING, AUTHORIZING, DENYING, MODIFYING, SUSPENDING
9 OR REVOKING INDIVIDUAL PERMITS, GENERAL PERMITS AND EMERGENCY PERMITS FOR
10 THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO NAVIGABLE WATERS REGULATED
11 BY THIS STATE UNDER THE CLEAN WATER ACT FOR PURPOSES OF IMPLEMENTING THE
12 PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344.
13 2. ESTABLISH PERMIT CONDITIONS THAT ENSURE COMPLIANCE WITH THE
14 APPLICABLE REQUIREMENTS OF SECTION 404 OF THE CLEAN WATER ACT, INCLUDING
15 THE GUIDELINES ISSUED UNDER 33 UNITED STATES CODE SECTION 1344(b)(1).
16 3. ESTABLISH MAINTENANCE, MONITORING, SAMPLING, REPORTING,
17 RECORDKEEPING AND ANY OTHER PERMITTING REQUIREMENTS AS NECESSARY TO
18 MAINTAIN PRIMARY ENFORCEMENT RESPONSIBILITY OR TO DETERMINE COMPLIANCE
19 WITH THIS ARTICLE.
20 4. ESTABLISH THE FOLLOWING IN ACCORDANCE WITH 33 UNITED STATES CODE
21 SECTION 1344:
22 (a) CIRCUMSTANCES AND ACTIVITIES THAT DO NOT REQUIRE A DREDGE OR
23 FILL PERMIT.
24 (b) ACTIVITIES THAT ARE EXEMPT FROM THE REQUIREMENTS OF THIS
25 ARTICLE FOR ANY DISCHARGE OR FILL MATERIAL THAT MAY RESULT FROM THOSE
26 ACTIVITIES, AND THE CONDITIONS UNDER WHICH THOSE ACTIVITIES ARE EXEMPT.
27 (c) CIRCUMSTANCES UNDER WHICH A DISCHARGE OF DREDGED OR FILL
28 MATERIAL SHALL NOT BE PERMITTED.
29 5. ESTABLISH PROCEDURES FOR THE DIRECTOR TO MAKE JURISDICTIONAL
30 DETERMINATIONS THAT DETERMINE WHETHER A WETLAND OR WATERBODY IS A
31 NAVIGABLE WATER SUBJECT TO REGULATORY JURISDICTION UNDER THIS ARTICLE.
32 JURISDICTIONAL DETERMINATIONS SHALL BE:
33 (a) IN WRITING AND BE IDENTIFIED AS EITHER PRELIMINARY OR APPROVED.
34 (b) DO NOT INCLUDE DETERMINATIONS THAT A PARTICULAR ACTIVITY
35 REQUIRES A PERMIT UNDER THIS ARTICLE.
36 6. ESTABLISH PUBLIC NOTICE AND COMMENT PROCEDURES AS NECESSARY TO
37 MAINTAIN PRIMACY FOR THE DREDGE AND FILL PROGRAM AND AS THE DIRECTOR DEEMS
38 APPROPRIATE TO INFORM THE PUBLIC.
39 7. PROVIDE FOR ANY OTHER PROVISIONS NECESSARY TO MAINTAIN STATE
40 PRIMARY ENFORCEMENT RESPONSIBILITY UNDER 33 UNITED STATES CODE SECTION
41 1344 AND TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.
42 D. APPROVED JURISDICTIONAL DETERMINATIONS ARE APPEALABLE AGENCY
43 ACTIONS AS DEFINED BY SECTION 41-1092 AND MAY BE APPEALED BY A PARTY
44 AFFECTED BY A JURISDICTIONAL DETERMINATION. PRELIMINARY JURISDICTIONAL
45 DETERMINATIONS ARE NOT APPEALABLE AGENCY ACTIONS AND NOTWITHSTANDING

SECTION 41-1092.03, THE RIGHT TO APPEAL AN APPROVED JURISDICTIONAL DETERMINATION DOES NOT EXTEND TO ADJACENT LANDOWNERS OR TO THIRD PARTIES THAT ARE NOT PARTIES AFFECTED BY A JURISDICTIONAL DETERMINATION.

E. ON ASSUMING AUTHORITY TO ADMINISTER THE PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344, THE DEPARTMENT SHALL:

1. ON REQUEST BY A PARTY AFFECTED BY A JURISDICTIONAL DETERMINATION, RECOGNIZE AND ADOPT ANY EXISTING APPROVED JURISDICTIONAL DETERMINATIONS THAT WERE ORIGINALLY ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS IF THE FEDERAL DEFINITION OF NAVIGABLE WATERS THAT IS APPLICABLE IN THIS STATE HAS NOT CHANGED SINCE THE ISSUANCE OF THE APPROVED JURISDICTIONAL DETERMINATIONS.

2. ON REQUEST BY A PARTY AFFECTED BY A JURISDICTIONAL DETERMINATION, RENEW APPROVED JURISDICTIONAL DETERMINATIONS THAT WERE ORIGINALLY ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS ON THE SAME TERMS AS THE ORIGINAL UNLESS:

(a) PHYSICAL CHANGES HAVE OCCURRED AFFECTING THE DETERMINATION THAT ARE LIKELY TO ALTER THE JURISDICTIONAL STATUS.

(b) THE FEDERAL DEFINITION OF NAVIGABLE WATERS THAT IS APPLICABLE IN THIS STATE HAS CHANGED SINCE THE ISSUANCE OF THE APPROVED JURISDICTIONAL DETERMINATIONS.

(c) ADDITIONAL FIELD DATA SHOW THAT THE ORIGINAL DETERMINATION WAS BASED ON INACCURATE DATA AND THE NEW DATA WARRANT A REVISION TO THE ORIGINAL DETERMINATION.

F. THE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE IS EXEMPT FROM SECTION 41-3102.

49-256.02. Compensatory mitigation

A. AS A PART OF THE PROGRAM ESTABLISHED PURSUANT TO SECTION 49-256.01, AND CONSISTENT WITH THE GUIDELINES ESTABLISHED PURSUANT TO 33 UNITED STATES CODE SECTION 1344(b)(1), THE DIRECTOR SHALL ESTABLISH BY RULE STANDARDS AND CRITERIA FOR THE USE OF ALL TYPES OF COMPENSATORY MITIGATION, INCLUDING ON-SITE AND OFF-SITE PERMITTEE-RESPONSIBLE MITIGATION, MITIGATION BANKS AND IN-LIEU FEE MITIGATION TO OFFSET UNAVOIDABLE IMPACTS TO NAVIGABLE WATERS AUTHORIZED BY PERMITS ISSUED UNDER THIS ARTICLE.

B. MITIGATION BANKS AND IN-LIEU FEE PROGRAMS MAY BE USED TO COMPENSATE FOR UNAVOIDABLE IMPACTS TO NAVIGABLE WATERS THAT ARE AUTHORIZED BY GENERAL PERMITS AND INDIVIDUAL PERMITS, INCLUDING AFTER-THE-FACT PERMITS, IN ACCORDANCE WITH RULES ESTABLISHED PURSUANT TO THIS SECTION. IN ADDITION TO OTHER POTENTIAL INJUNCTIVE RELIEF OR OTHER RELIEF REQUESTED UNDER SECTION 49-262, MITIGATION BANKS AND IN-LIEU FEE PROGRAMS MAY BE USED TO SATISFY REQUIREMENTS ARISING FROM AN ENFORCEMENT ACTION UNDER THIS ARTICLE.

Sec. 7. Section 49-261, Arizona Revised Statutes, is amended to read:

49-261. Compliance orders; appeal; enforcement

A. If the director determines that a person is in violation of a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6, any provision of article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter, a rule adopted pursuant to article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter, a discharge limitation or any other condition of a permit issued under article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter or is creating an imminent and substantial endangerment to the public health or environment, the director may issue an order requiring compliance within a reasonable time period.

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

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

D. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Appeals shall be conducted ~~according~~ PURSUANT to section 49-321.

E. At the request of the director the attorney general may commence an action in superior court to enforce orders issued under this section once an order becomes final.

Sec. 8. Section 49-262, Arizona Revised Statutes, is amended to read:

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

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

1. That a person is in violation of:

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

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

(c) A rule adopted pursuant to article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter.

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

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

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

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

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

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

F. Except as applied to permits issued or authorized pursuant to article 3.1 OR 3.2 of this chapter, it shall be an affirmative defense to civil liability under this section and section 49-261 for causing or contributing to a violation of a water quality standard established pursuant to this chapter, or a violation of a permit condition prohibiting a violation of an aquifer water quality standard or limitation at the point of compliance or a surface water quality standard if the release that caused or contributed to the violation came from a facility owned or operated by a party that has either:

1. Undertaken a remedial or response action approved by the director or the administrator under this title or CERCLA in response to the release of a hazardous substance, pollutant or contaminant that caused

or contributed to the violation of article 2 of this chapter and is in compliance with that remedial or response action.

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

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

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

1. The seriousness of the violation or violations.

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

3. Any history of similar violations.

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

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

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

7. Other matters as justice may require.

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

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

Sec. 9. Section 49-263.01, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. The attorney general may enforce this section.

Sec. 10. Transfer of dredge and fill permit program; pending applications

During the process of establishing and assuming state jurisdiction over the dredge and fill permit program established by 33 United States code section 1344, the department of environmental quality shall negotiate with the United States army corps of engineers to ensure that the United States army corps of engineers will continue to process as many pending applications for permits and requests for jurisdictional determinations as possible before the date on which this state officially assumes and the United States army corps of engineers transfers jurisdiction over the dredge and fill permit program pursuant to clean water act section 404(h), 33 United States Code sections 1251 through 1376.

Sec. 11. Conditional repeal; notice

A. Sections 17-265, 35-142, 49-104, 49-203, 49-210, 49-261, 49-262 and 49-263.01, Arizona Revised Statutes, as amended by this act, are repealed on August 1, 2023 unless the United States environmental protection agency approves the department of environmental quality's clean water act section 404 dredge and fill permit program established pursuant to title 49, chapter 2, article 3.2, Arizona Revised Statutes, as added by this act, under the terms of the clean water act, 33 United States code sections 1251 through 1376.

B. Title 49, chapter 2, article 3.2, Arizona Revised Statutes, as added by this act, is repealed on August 1, 2023 unless the United States

environmental protection agency approves the department of environmental quality's clean water act section 404 dredge and fill permit program established pursuant to title 49, chapter 2, article 3.2, Arizona Revised Statutes, as added by this act, under the terms of the clean water act, 33 United States code sections 1251 through 1376.

C. The director of environmental quality shall notify in writing the director of the Arizona legislative council on or before September 1, 2023 either:

1. Of the date on which the condition was met.

2. That the condition was not met. If the United States environmental protection agency has not approved the department of environmental quality's dredge and fill permit program as prescribed by this section.