

ARIZONA ENVIRONMENTAL WATER QUALITY ACT OF 1986

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The Environmental Quality Act (HB 2518) was the product of many thousands of hours of time by parties from affected industries and businesses, environmental groups, public interest groups, local governments and state agencies. The bill establishes an aquifer protection permit program, with permits required for any discharge of a pollutant to the land or vadose zone in such a manner that there is reasonable probability it will reach an aquifer. There are specific categories of activities for which a permit is expressly required and there are also specific exemptions. In addition, general permits can be issued for certain classes of activities, including agriculture, urban runoff and small septic systems.

The permit conditions include monitoring requirements, action levels and post-closure plans. Also, there is specific point of compliance defined in the statute.

All aquifers are initially classified for drinking water purposes. The director of the Department of Environmental Quality (DEQ) can reclassify an aquifer for non-drinking water use only if it is not being used for drinking water; it is hydrologically isolated from other aquifers; and, substantial benefits significantly outweigh the costs of allowing degradation. The Environmental Protection Agency (EPA) maximum contaminant levels are adopted by reference as aquifer standards, but the director may adopt numeric limits for additional pollutants. Citizens may petition for additional pollutant limits. The numeric standards must be health based.

A state superfund is established, with a cap of \$25 million for remedial action, abatement, and liability provisions similar to CERCLA (Comprehensive Environmental Response, Compensation and Liability Act). The fund may be used for a variety of purposes: to provide state matching money for CERCLA; for costs incurred in remedial actions if a responsible party cannot be identified or refuses to undertake a cleanup; for the costs of monitoring and evaluating threats to the ground water from hazardous substances; and for the costs of conducting site investigations, feasibility studies, health-effects studies and risk assessments.

Six million dollars will be put into the fund every year until the cap is reached. The initial \$5 million in the fund was borrowed from the tax protest resolution fund. This loan will be paid off at the rate of \$1 million per year during the next five years.

Enforcement of the act is through a variety of measures: administrative orders, injunctions, civil penalties of up to \$25,000 per day, and felony penalties for certain knowing or negligent violations. In addition, there is a citizen suit provision to allow for enforcement of statutes, rules, permits and orders. Any person may file a lawsuit against any other person, including the state, for violations of standards, permits, discharge limits, orders or rules. A person may file a lawsuit against the director for failure to perform a nondiscretionary duty. Action may not begin: (1) before the expiration of a 60-day notice period; or, (2) if the attorney general is currently prosecuting an action to require compliance.

Article 6 of the act deals with the regulation of the ground water impacts of pesticides. Generally, the law requires pesticide manufacturers to supply specific data so that the state can determine what the most mobile pesticides are and narrow the regulatory focus to those pesticides.

The approach is patterned after California in order to simplify the Arizona program. In addition to requiring the submission of certain data, the act requires the establishment of numeric value for specified pesticide characteristics and a cancellation procedure in the event a pesticide is found in the ground water or at a designated depth in the soil.

DEQ, in consultation with the Department of Water Resources and the Commission of Agriculture and Horticulture, is required to set specific numeric values. These values have been incorporated into a set of proposed rules (Pesticide Numeric Values) which also contains administration of the ground water protection list and enforcement provisions. The ground water protection list includes those pesticides which have the potential to pollute ground water. Each pesticide on that list which is intended to be applied to or injected into the soil by ground-based application equipment or by chemigation must be regulated. Regulation is also required of pesticides with labels requiring or recommending that the application be followed within 72 hours by flood or furrow irrigation.

Users of pesticides on the list must report usage to DEQ. Pesticide dealers must make quarterly reports to DEQ on the sale of all pesticides.

The cancellation procedure is triggered when any of the following occurs:

1. an active ingredient of the pesticide is found in the ground water, or
2. an active ingredient of the pesticide is found at or below the deepest of the following:

- a) 8 feet below the soil surface;
- b) below the root zone of the crop; or,
- c) below the soil microbial zone.

Registration may be cancelled by the state chemist if the label cannot be modified to prevent ground water pollution. Regardless, no pesticide can be used in the state if it would cause a violation of water quality standards at an applicable point of compliance.

There is an independent process for persons to appeal various portions of the act. Permits and two pesticide issues (numeric values and data-gap information) are directed to a three-member water quality appeals board in the Department of Administration. Also, any person who is or may be adversely affected by an order of the director may request a hearing conducted by an administrative law judge in the Department of Administration. In both instances, decisions are subject to further appeal to a special water judge in the superior court and have precedence over all other civil proceedings.

The functions of the Board of Pesticide Control were repealed and transferred to the Commission of Agriculture and Horticulture, the Industrial Commission and Department of Health Services. All rules and orders adopted by the board relating to pesticide regulation continued in effect, as did all valid licenses, permits and certificates issued by the board until superseded by the new regulations of the Commission and Industrial Commission. (The Commission of Agriculture and Horticulture rules became effective November 22, 1987.)

There are a variety of powers and duties assigned to the commission. It must conduct investigations based on complaints and on its own initiative to determine if violations have occurred. It must take action within certain statutory periods of time to enforce the law. It must publish a list of pesticides which it determines to be highly toxic, odoriferous, or otherwise appropriate for inclusion.

The scheme for establishing and penalizing violations is by a non-exclusive list of acts and omissions which would be either serious, non-serious or de minimus violations. In addition, the commission must establish and use a system to assess violators with points for each violation. Civil penalties are as follows:

- non-serious - not to exceed \$500 per violation; license, permit or certificate may be revoked
- serious - not to exceed \$10,000 per violation; license, permit or certificate may be revoked

There is also the right of private action or citizen suits. Any person having an interest which is or may be adversely affected may commence a civil action in superior court against any alleged violator or the director of the commission. There are two exceptions to this right: de minimus violations are excluded; and, if the director or attorney general is taking appropriate and diligent action on the matter. In the latter case the suit would be dismissed within 60 days if there were appropriate action.

The act provides for buffer zones around schools, day care centers, health care facilities and residences with distances ranging from 50 feet to one-quarter mile. The distance depends on the type of application (ground or air), the form in which the pesticide is applied (liquid or dust) and whether it is odoriferous.

Two other features of the act are the designation of pesticide management areas which are those close to the urban areas, or other areas where pesticide use may be or has been a source of public complaints. In these areas, the commission must receive advance notice of pesticide applications. The commission is also directed to establish an integrated pest management program. Certain sectors of agriculture have priority for development of the program: (1) cotton, grain forage; and (2) livestock, fruit, nut, vegetable, ornamentals.

There are several means of oversight. A ten-member legislative oversight committee is established to monitor the activities of the four agencies involved with pesticides; the auditor general will contract for an independent performance review to be conducted in FY 89-90 on the pesticide regulatory program established by the act; there is a five-year sunset date on the Commission of Agriculture and Horticulture and, there are various periodic reports which must be submitted to the legislature and governor by all the agencies.

DEQ IMPLEMENTATION

The department is currently developing rules authorized by the EQA and other state statutes. An open public process has been instituted to provide interested parties an opportunity to participate. DEQ utilizes advisory groups, concept papers, public meetings and workshops to facilitate this process. Mediation or "formalized" rule negotiations will be considered when appropriate.

Rule adoption

Three sets of rules have gone completely through the administrative rule-making process: the Water Quality Assurance Revolving Fund (ARS 49-282) administration rules,

the Pesticide Dispute Resolution rules (ARS 49-306) and the Aquifer Boundary and Protected Use Classification rules (ARS 49-224).

Interagency Coordination

After the EQA was enacted, management-transition meetings were held with participating state agencies. Memorandums of Understanding have been finalized with the ADHS Division of Laboratory Services and the ADHS Division of Disease Prevention. A Memorandum of Understanding is being negotiated with the Department of Water Resources. Interagency service agreements exist or are pending with the State Chemist's Office, the U.S. Geological Survey, and the Commission of Agriculture and Horticulture.

Water Quality Advisory Council

Since December, 1986, eight meetings of the Water Quality Advisory Council have been held to provide input and advice to the department on discharge limitations, procedures for the reclassification and classification of aquifers, water quality standards, and the establishment of Best Available Demonstrated Control Technology (BADCT) Advisory Group.

The department is currently working with four BADCT advisory groups to develop BADCT guidance documents for municipal and industrial wastewater treatment, mining operations, and landfills. These guidance documents will be available for use by the regulated community and the department to assist in developing and evaluating Aquifer Protection Permit applications.

The Best Management Practice (BMP) advisory committees have begun to meet on feedlot operations and nitrogen fertilizers. These agricultural BMP advisory committees are to make recommendations to the director by October 1, 1988. The director has until July 1, 1989, to adopt rules on agricultural general permits using the recommendations of the committees.