



## **ARIZONA STATE SENATE**

**Fifty-First Legislature, Second Regular Session**

### **REVISED**

FACT SHEET FOR S.B. 1274

#### aquifer protection permit; post-closure procedure

##### Purpose

Establishes periodic closure cost estimate and financial responsibility reporting requirements for aquifer protection permits.

##### Background

An Aquifer Protection Permit, or APP, issued by the Arizona Department of Environmental Quality (ADEQ) is required for new or existing facilities that release pollutants directly into an aquifer, onto the land surface or underlying soil when it is likely the pollutants will reach an aquifer. There are currently 25 exemptions to the APP requirement in statute (A.R.S. § 49-250). Facilities subject to an APP include mines, industrial facilities and wastewater treatment plants. Area-wide permits may be issued in lieu of an individual permit to cover facilities under common ownership in a contiguous geographic area. An APP is issued for the life of the facility.

All APP applicants and permittees must demonstrate financial capability to construct, operate, close and ensure proper postclosure care of the facility in compliance with statute and rule. A permittee shall maintain the financial capability for the duration of the permit and report as specified in the permit. Available financial mechanisms to demonstrate such ability include the following: 1) self-assurance; 2) performance surety bond; 3) certificate of deposit; 4) trust fund; 5) letter of credit; 6) insurance policy; 7) cash deposit; and 8) guarantees or other financial mechanisms approved by the Director of ADEQ (Director). Financial capability must be demonstrated if modifications are made to the original APP, if the financial assurance mechanism changes, or if the revision of a closure strategy results in an increase in the estimated costs. ADEQ rule allows an applicant to demonstrate financial assurance in accordance with another governmental agency's regulations if the financial assurance conditions are equal to or better than the conditions required by ADEQ.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

##### Provisions

1. Exempts a state or federal agency or a county, city, town or other local government from the cost estimate updating and periodic reporting requirements.

***Cost Estimate***

2. Requires the cost estimate for evaluation of an applicant's financial competence for closure to be based on the cost to hire a third party to conduct the closure strategy plan.
3. Provides an exemption to the above provision if the financial responsibility mechanism provided is self-assurance or a guarantee, and a determination by the Director that the applicant or permittee is technically and financially capable of closing the facility at its own cost and conducting postclosure monitoring and maintenance.
4. Requires the permittee to update its cost estimate in accordance with the following:
  - a) for the duration of the permit, on a periodic basis as scheduled in the permit, no more frequently than once every five years;
  - b) to address incremental changes in the cost estimate that result from a significant amendment to the APP, as defined in rule;
  - c) to adjust for inflation; or
  - d) as necessary to reflect increased costs resulting from changes to the facility, the facility closure strategy, or any other relevant conditions.

***Financial Responsibility***

5. Requires an applicant or permittee to demonstrate financial responsibility to cover the estimated closure costs and postclosure monitoring and maintenance by providing a mechanism or a combination of mechanisms, as prescribed by rule or federal law, to the Director for approval.
6. Stipulates that demonstration of financial responsibility by means of self-assurance or guarantee must include an aggregate of the estimated closure and postclosure costs for all self-assured APPs to determine if the permittee or guarantor meets the applicable financial test.
7. Requires the permittee to maintain its demonstration of financial responsibility for the duration of the APP and report to the Director that the mechanism is being maintained no more frequently than once every two years.
8. Requires the permittee to:
  - a) maintain its demonstration of financial responsibility for the duration of the APP; and
  - b) a maximum of once every two years, demonstrate financial responsibility and report such maintenance to the Director.

***Miscellaneous***

9. Sets the point of compliance aquifer water quality standards as equivalent to the numeric or narrative standards, or the requirement that discharges cause no further degradation of water quality that exists at the time of permit issuance.

FACT SHEET - Revised

S.B. 1274

Page 3

10. Allows the Director to issue an order for mitigation of non-hazardous releases that threaten drinking water sources regardless of when the non-hazardous substance was disposed of.
11. Requires the Director to have the applicant's consent before including a remedial action requirement as a condition of an APP, under the Water Quality Assurance Revolving Fund program.
12. Removes the ability for the Director to include a mitigation measure order for non-hazardous releases as a condition of an APP.
13. Modifies the definition of postclosure monitoring and maintenance to include routine inspections and maintenance.
14. Makes technical and conforming changes.
15. Becomes effective on the general effective date.

Revisions

- Clarifies the provisions regarding cost estimate.

Senate Action

GE            2/3    DP    5-2-0-0

Prepared by Senate Research

February 4, 2014

SLL/lS