

HOUSE FLOOR AMENDMENT EXPLANATION



Bill Number: **HB 2056**

Diaz Floor Amendment

The Diaz floor amendment dated February 15, 2023 at 11:30 AM:

- Excludes, notwithstanding any other law, the following as a water of this State, WOTUS or protected surface waters, and from the Arizona Department of Environmental Quality's Dredge and Fill Permit Program:
 - Dry wash
 - Arroyo
 - Swale
 - Gully
 - Rill or
 - A similar erosional feature characterized by low volume, infrequent or short duration flows.
- Makes technical and conforming changes.

Amendment explanation prepared by Paul Bergelin

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2/17/2023

DIAZ FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2056
(Reference to printed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 49-201, Arizona Revised Statutes, is amended to
3 read:

4 49-201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administrator" means the administrator of the United States
7 environmental protection agency.

8 2. "Aquifer" means a geologic unit that contains sufficient
9 saturated permeable material to yield usable quantities of water to a well
10 or spring.

11 3. "Best management practices" means those methods, measures or
12 practices to prevent or reduce discharges and includes structural and
13 nonstructural controls and operation and maintenance procedures. Best
14 management practices may be applied before, during and after discharges to
15 reduce or eliminate the introduction of pollutants into receiving waters.
16 Economic, institutional and technical factors shall be considered in
17 developing best management practices.

18 4. "CERCLA" means the comprehensive environmental response,
19 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
20 2767; 42 United States Code sections 9601 through 9657), commonly known as
21 "superfund".

22 5. "Clean closure" means implementation of all actions specified in
23 an aquifer protection permit, if any, as closure requirements, as well as

1 elimination, to the greatest degree practicable, of any reasonable
2 probability of further discharge from the facility and of either exceeding
3 aquifer water quality standards at the applicable point of compliance or,
4 if an aquifer water quality standard is exceeded at the time the permit is
5 issued, causing further degradation of the aquifer at the applicable point
6 of compliance as provided in section 49-243, subsection B, paragraph 3.
7 Clean closure also means postclosure monitoring and maintenance are
8 unnecessary to meet the requirements in an aquifer protection permit.

9 6. "Clean water act" means the federal water pollution control act
10 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code
11 sections 1251 through 1376), as amended.

12 7. "Closed facility" means:

13 (a) A facility that ceased operation before January 1, 1986, that is
14 not, on August 13, 1986, engaged in the activity for which the facility was
15 designed and that was previously operated and for which there is no intent
16 to resume operation.

17 (b) A facility that has been approved as a clean closure by the
18 director.

19 (c) A facility at which any postclosure monitoring and maintenance
20 plan, notifications and approvals required in a permit have been completed.

21 8. "Concentrated animal feeding operation" means an animal feeding
22 operation that meets the criteria prescribed in 40 Code of Federal
23 Regulations part 122, appendix B for determining a concentrated animal
24 feeding operation for purposes of 40 Code of Federal Regulations sections
25 122.23 and 122.24, appendix C.

26 9. "Department" means the department of environmental quality.

27 10. "Direct reuse" means the beneficial use of reclaimed water for
28 specific purposes authorized pursuant to section 49-203, subsection A,
29 paragraph 7.

30 11. "Director" means the director of environmental quality or the
31 director's designee.

1 12. "Discharge" means the direct or indirect addition of any
2 pollutant to the waters of the state from a facility. For purposes of the
3 aquifer protection permit program prescribed by article 3 of this chapter,
4 discharge means the addition of a pollutant from a facility either directly
5 to an aquifer or to the land surface or the vadose zone in such a manner
6 that there is a reasonable probability that the pollutant will reach an
7 aquifer.

8 13. "Discharge impact area" means the potential areal extent of
9 pollutant migration, as projected on the land surface, as the result of a
10 discharge from a facility.

11 14. "Discharge limitation" means any restriction, prohibition,
12 limitation or criteria established by the director, through a rule, permit
13 or order, on quantities, rates, concentrations, combinations, toxicity and
14 characteristics of pollutants.

15 15. "Effluent-dependent water" means a surface water or portion of a
16 surface water that consists of a point source discharge without which the
17 surface water would be ephemeral. An effluent-dependent water may be
18 perennial or intermittent depending on the volume and frequency of the
19 point source discharge of treated wastewater.

20 16. "Environment" means WOTUS, any other surface waters,
21 groundwater, drinking water supply, land surface or subsurface strata or
22 ambient air, within or bordering on this state.

23 17. "Ephemeral water" means a surface water or portion of surface
24 water that flows or pools only in direct response to precipitation.

25 18. "Existing facility" means a facility on which construction began
26 before August 13, 1986 and that is neither a new facility nor a closed
27 facility. For the purposes of this definition, construction on a facility
28 has begun if the facility owner or operator has either:

29 (a) Begun, or caused to begin, as part of a continuous on-site
30 construction program any placement, assembly or installation of a building,
31 structure or equipment.

1 (b) Entered a binding contractual obligation to purchase a building,
2 structure or equipment that is intended to be used in its operation within
3 a reasonable time. Options to purchase or contracts that can be terminated
4 or modified without substantial loss, and contracts for feasibility
5 engineering and design studies, do not constitute a contractual obligation
6 for purposes of this definition.

7 19. "Facility" means any land, building, installation, structure,
8 equipment, device, conveyance, area, source, activity or practice from
9 which there is, or with reasonable probability may be, a discharge.

10 20. "Gray water" means wastewater that has been collected separately
11 from a sewage flow and that originates from a clothes washer or a bathroom
12 tub, shower or sink but that does not include wastewater from a kitchen
13 sink, dishwasher or toilet.

14 21. "Hazardous substance" means:

15 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
16 307(a) of the clean water act.

17 (b) Any element, compound, mixture, solution or substance designated
18 pursuant to section 102 of CERCLA.

19 (c) Any hazardous waste having the characteristics identified under
20 or listed pursuant to section 49-922.

21 (d) Any hazardous air pollutant listed under section 112 of the
22 federal clean air act (42 United States Code section 7412).

23 (e) Any imminently hazardous chemical substance or mixture with
24 respect to which the administrator has taken action pursuant to section 7
25 of the federal toxic substances control act (15 United States Code section
26 2606).

27 (f) Any substance that the director, by rule, either designates as a
28 hazardous substance following the designation of the substance by the
29 administrator under the authority described in subdivisions (a) through (e)
30 of this paragraph or designates as a hazardous substance on the basis of a
31 determination that such substance represents an imminent and substantial
32 endangerment to public health.

1 22. "Inert material":

2 (a) Means broken concrete, asphaltic pavement, manufactured
3 asbestos-containing products, brick, rock, gravel, sand and soil. ~~inert~~
4 ~~material also~~

5 (b) Includes material that when subjected to a water leach test that
6 is designed to approximate natural infiltrating waters will not leach
7 substances in concentrations that exceed numeric aquifer water quality
8 standards established pursuant to section 49-223, including overburden and
9 wall rock that is not acid generating, taking into consideration acid
10 neutralization potential, and that has not and will not be subject to mine
11 leaching operations.

12 23. "Intermittent water" means a surfacewater or portion of surface
13 water that flows continuously during certain times of the year and more
14 than in direct response to precipitation, such as when it receives water
15 from a spring, ~~AN~~ elevated groundwater table or another surface source,
16 such as melting snowpack.

17 24. "Major modification" means a physical change in an existing
18 facility or a change in its method of operation that results in a
19 significant increase or adverse alteration in the characteristics or volume
20 of the pollutants discharged, or the addition of a process or major piece
21 of production equipment, building or structure that is physically separated
22 from the existing operation and that causes a discharge, provided that:

23 (a) A modification to a groundwater protection permit facility as
24 defined in section 49-241.01, subsection C that would qualify for an
25 area-wide permit pursuant to section 49-243 consisting of an activity or
26 structure listed in section 49-241, subsection B shall not constitute a
27 major modification solely because of that listing.

28 (b) For a groundwater protection permit facility as defined in
29 section 49-241.01, subsection C, a physical expansion that is accomplished
30 by lateral accretion or upward expansion within the pollutant management
31 area of the existing facility or group of facilities shall not constitute a
32 major modification if the accretion or expansion is accomplished through

1 sound engineering practice in a manner compatible with existing facility
2 design, taking into account safety, stability and risk of environmental
3 release. For a facility described in section 49-241.01, subsection C,
4 paragraph 1, expansion of a facility shall conform with the terms and
5 conditions of the applicable permit. For a facility described in section
6 49-241.01, subsection C, paragraph 2, if the area of the contemplated
7 expansion is not identified in the notice of disposal, the owner or
8 operator of the facility shall submit to the director the information
9 required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

10 25. "New facility" means a previously closed facility that resumes
11 operation or a facility on which construction was begun after August 13,
12 1986 on a site at which no other facility is located or to totally replace
13 the process or production equipment that causes the discharge from an
14 existing facility. A major modification to an existing facility is deemed
15 a new facility to the extent that the criteria in section 49-243,
16 subsection B, paragraph 1 can be practicably applied to such modification.
17 For the purposes of this definition, construction on a facility has begun
18 if the facility owner or operator has either:

19 (a) Begun, or caused to begin as part of a continuous on-site
20 construction program, any placement, assembly or installation of a
21 building, structure or equipment.

22 (b) Entered a binding contractual obligation to purchase a building,
23 structure or equipment that is intended to be used in its operation within
24 a reasonable time. Options to purchase or contracts that can be terminated
25 or modified without substantial loss, and contracts for feasibility
26 engineering and design studies, do not constitute a contractual obligation
27 for purposes of this definition.

28 26. "Nonpoint source" means any conveyance that is not a point
29 source from which pollutants are or may be discharged to WOTUS.

30 27. "Non-WOTUS protected surface water" means a protected surface
31 water that is not a WOTUS.

1 28. "Non-WOTUS waters of the state" means waters of the state that
2 are not WOTUS.

3 29. "On-site wastewater treatment facility" means a conventional
4 septic tank system or alternative system that is installed at a site to
5 treat and dispose of wastewater of predominantly human origin that is
6 generated at that site.

7 30. "Ordinary high watermark" means the line on the shore of an
8 intermittent or perennial protected surface water established by the
9 fluctuations of water and indicated by physical characteristics such as a
10 clear, natural line impressed on the bank, shelving, changes in the
11 character of soil, destruction of terrestrial vegetation, the presence of
12 litter and debris or other appropriate means that consider the
13 characteristics of the channel, floodplain and riparian area.

14 31. "Perennial water" means a surface water or portion of surface
15 water that flows continuously throughout the year.

16 32. "Permit" means a written authorization issued by the director or
17 prescribed by this chapter or in a rule adopted under this chapter stating
18 the conditions and restrictions governing a discharge or governing the
19 construction, operation or modification of a facility. For the purposes of
20 regulating non-WOTUS protected surface waters, a permit shall not include
21 provisions governing the construction, operation or modification of a
22 facility except as necessary for the purpose of ensuring that a discharge
23 meets water quality-related effluent limitations or to require best
24 management practices for the purpose of ensuring that a discharge does not
25 cause an exceedance of an applicable surface water quality standard.

26 33. "Person" means an individual, employee, officer, managing body,
27 trust, firm, joint stock company, consortium, public or private
28 corporation, including a government corporation, partnership, association
29 or state, a political subdivision of this state, a commission, the United
30 States government or any federal facility, interstate body or other entity.

1 34. "Point source":

2 (a) Means any discernible, confined and discrete conveyance,
3 including any pipe, ditch, channel, tunnel, conduit, well, discrete
4 fissure, container, rolling stock, concentrated animal feeding operation or
5 vessel or other floating craft from which pollutants are or may be
6 discharged to WOTUS or protected surface water. ~~Point source~~

7 (a) Does not include return flows from irrigated agriculture.

8 35. "Pollutant" means fluids, contaminants, toxic wastes, toxic
9 pollutants, dredged spoil, solid waste, substances and chemicals,
10 pesticides, herbicides, fertilizers and other agricultural chemicals,
11 incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum
12 products, chemical wastes, biological materials, radioactive materials,
13 heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining,
14 industrial, municipal and agricultural wastes or any other liquid, solid,
15 gaseous or hazardous substances.

16 36. "Postclosure monitoring and maintenance" means those activities
17 that are conducted after closure notification and that are necessary to:

18 (a) Keep the facility in compliance with either the aquifer water
19 quality standards at the applicable point of compliance or, for any aquifer
20 water quality standard that is exceeded at the time the aquifer protection
21 permit is issued, the requirement to prevent the facility from further
22 degrading the aquifer at the applicable point of compliance as provided
23 under section 49-243, subsection B, paragraph 3.

24 (b) Verify that the actions or controls specified as closure
25 requirements in an approved closure plan or strategy are routinely
26 inspected and maintained.

27 (c) Perform any remedial, mitigative or corrective actions or
28 controls as specified in the aquifer protection permit or perform
29 corrective action as necessary to comply with this paragraph and article 3
30 of this chapter.

31 (d) Meet property use restrictions.

1 37. "Practicably" means able to be reasonably done from the
2 standpoint of technical practicability and, except for pollutants addressed
3 in section 49-243, subsection I, economically achievable on an
4 industry-wide basis.

5 38. "Protected surface waters" means waters of the state listed on
6 the protected surface waters list under section 49-221, subsection G and
7 all WOTUS.

8 39. "Public waters" means waters of the state open to or managed for
9 use by members of the general public.

10 40. "Recharge project" means a facility necessary or convenient to
11 obtain, divert, withdraw, transport, exchange, deliver, treat or store
12 water to infiltrate or reintroduce that water into the ground.

13 41. "Reclaimed water" means water that has been treated or processed
14 by a wastewater treatment plant or an on-site wastewater treatment
15 facility.

16 42. "Regulated agricultural activity" means the application of
17 nitrogen fertilizer or a concentrated animal feeding operation.

18 43. "Safe drinking water act" means the federal safe drinking water
19 act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

20 44. "Standards" means water quality standards, pretreatment
21 standards and toxicity standards established pursuant to this chapter.

22 45. "Standards of performance" means performance standards, design
23 standards, best management practices, technologically based standards and
24 other standards, limitations or restrictions established by the director by
25 rule or by permit condition.

26 46. "Tank" means a stationary device, including a sump, that is
27 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
28 material that provides substantial structural support, and that is designed
29 to contain an accumulation of solid, liquid or gaseous materials.

30 47. "Toxic pollutant" means a substance that will cause significant
31 adverse reactions if ingested in drinking water. Significant adverse

1 reactions are reactions that may indicate a tendency of a substance or
2 mixture to cause long lasting or irreversible damage to human health.

3 48. "Trade secret" means information to which all of the following
4 apply:

5 (a) A person has taken reasonable measures to protect from
6 disclosure and the person intends to continue to take such measures.

7 (b) The information is not, and has not been, reasonably obtainable
8 without the person's consent by other persons, other than governmental
9 bodies, by use of legitimate means, other than discovery based on a showing
10 of special need in a judicial or quasi-judicial proceeding.

11 (c) No statute specifically requires disclosure of the information
12 to the public.

13 (d) The person has satisfactorily shown that disclosure of the
14 information is likely to cause substantial harm to the business's
15 competitive position.

16 49. "Vadose zone" means the zone between the ground surface and any
17 aquifer.

18 50. "Waters of the state" means all waters within the jurisdiction
19 of this state, including all perennial or intermittent streams, lakes,
20 ponds, impounding reservoirs, marshes, watercourses, waterways, wells,
21 aquifers, springs, irrigation systems, drainage systems and other bodies or
22 accumulations of surface, underground, natural, artificial, public or
23 private water situated wholly or partly in or bordering on the state.
24 NOTWITHSTANDING ANY OTHER LAW, A DRY WASH, ARROYO, SWALE, GULLY OR RILL OR
25 OTHER SIMILAR EROSIONAL FEATURE THAT IS CHARACTERIZED BY LOW VOLUME,
26 INFREQUENT OR SHORT DURATION FLOWS IS NOT A WATER OF THIS STATE, WOTUS OR
27 PROTECTED SURFACE WATER.

28 51. "Well" means a bored, drilled or driven shaft, pit or hole whose
29 depth is greater than its largest surface dimension.

30 52. "Wetland" means, for the purposes of non-WOTUS protected surface
31 waters, an area that is inundated or saturated by surface or groundwater at
32 a frequency and duration sufficient to support, and under normal conditions

1 does support, a prevalence of vegetation typically adapted for life in
2 saturated soil conditions.

3 53. "WOTUS" means waters of the state that are also navigable waters
4 as defined by section 502(7) of the clean water act.

5 54. "WOTUS protected surface water" means a protected surface water
6 that is a WOTUS."

7 Renumber to conform

8 Page 1, line 5, after "ARROYO" insert ", SWALE, GULLY OR RILL"

9 Line 6, strike "PHYSICAL" insert "EROSIONAL"; strike "ON PRIVATE PROPERTY";
10 strike "DOES NOT CONTAIN WATER" insert "IS CHARACTERIZED BY LOW VOLUME,
11 INFREQUENT OR SHORT DURATION FLOWS"

12 Line 7, after "STATE" insert "OR PROTECTED SURFACE WATER"

13 Line 8, strike "WATER OF THE UNITED STATES UNDER THE CLEAN WATER ACT" insert
14 "WOTUS"

15 Amend title to conform

LUPE DIAZ

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