

Douglas A. Ducey  
Governor



Andy Tobin  
Director

## ARIZONA DEPARTMENT OF ADMINISTRATION

WATER QUALITY APPEALS BOARD  
1400 WEST WASHINGTON ST • SUITE B200  
PHOENIX, ARIZONA 85007  
(602) 542-1723

September 1, 2021

**Via U.S. Mail**  
**and e-mail**

Representative Gail Griffin  
House Committee on Natural Resources, Energy & Water, Chair  
Arizona House of Representatives  
1700 W. Washington St.  
Phoenix, AZ 85007

Re: **Water Quality Appeals Board Sunset Review**

Dear Representative Griffin:

Below is the Water Quality Appeals Board's response to your June 21, 2021 letter requesting information regarding the sunset factors in A.R.S. § 41-2954, certain additional information requests, and requests pursuant to Laws 2021, Chapter 176 listed in the same order as in the June 21 letter:

### **Sunset Review Factors**

1. *The objective and purpose in establishing the agency and the extent to which the objective and purpose are met by private enterprises in other states.*

The Water Quality Appeals Board was established to provide an independent forum for appeals by regulated entities of orders issued by the Arizona Department of Environmental Quality ("ADEQ") pursuant to Title 49, Chapter 2, relating to water quality. An appeal to the Board may be taken from any grant, denial, modification, or revocation of any permit issued under Title 49, Chapter 2. A.R.S. § 49-323.A. The Board is empowered to hold hearings on the appeals. Final decisions of the Board may be appealed to superior court. The quasi-judicial objective and purpose of the Board is not met by private enterprise.

2. *The extent to which the agency has met its statutory objective and purpose and the efficiency with which it has operated.*

The Water Quality Appeals Board has heard appeals in recent years that include the following:

### WQAB Cases

Case No.	Case Name	Hearing by Board/OAH	Description
2012-001	Arizona Aerospace Foundation Pima Air & Space Museum v. ADEQ		Appeal of APP Permit (parties settled)
2012-002, 003, 004	Pima County v. ADEQ and Rosemont Copper Co.		Appeal of APP Permit
2012-005	Town of Florence, et al. v. ADEQ and Florence Copper Inc.		Appeal of Temporary APP Permit
2013-001	AZ Hydroponic Farming, LLC v. ADEQ		Appeal of APP Permit
2013-002	Fiesta Canning Co. v. ADEQ		Appeal of Reclaimed Water Permit (parties settled)
2013-003	City of Phoenix v. ADEQ		Appeal of APP Permit (parties settled)
2013-004	City of Glendale v. ADEQ		Appeal of APP Permit (parties settled)
2016-001	APS v. ADEQ	Board	Parties settled
2016-002	Town of Florence, et al. v. ADEQ	Board	Appeal of APP Permit
2017-001	Arizona Mining Reform Coalition, et al. v. ADEQ	OAH	Appeal of AZPDES Permit
2017-002	San Carlos Apache Tribe v. ADEQ	OAH	Appeal of AZPDES Permit
2021-001	SWVP-GTIS MR, LLC v. ADEQ and Florence Copper, Inc.	Board	Appeal of APP Permit (dismissed per joint request of parties)
2021-002	Center for Biological Diversity & Dr. Kevin L. Gibson v. ADEQ	Board	Dismissed appeal of APP Permit for lack of standing
2021-003	City of Goodyear v. ADEQ	TBD	Pending case involving appeal of certain terms in AZPDES permit

*3. The extent to which the agency serves the entire state rather than specific interests.*

The Board has statewide jurisdiction. The Board holds hearings and makes decisions regarding all appeals from jurisdictional orders issued by ADEQ, affecting the specified water quality issues statewide.

*4. The extent to which rules adopted by the agency are consistent with the legislative mandate.*

According to the Governor's Regulatory Review Council (GRRC), the Board has adopted all rules it is required by statute to promulgate. The Board is established by A.R.S. § 49-322.D. The Board's rules set forth in A.A.C. Title 2, Chapter 17, fulfill the Board's statutory requirement as they establish the procedure the Board uses to conduct hearings.

*5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.*

The most recent 5-year review of Title 2, Chapter 17 was approved by GRRC November 5, 2019. As part of that review, GRRC recommended the Water Quality Appeals Board conduct a rulemaking to amend and repeal outdated, redundant, or unnecessary rules, make certain rules consistent with other rules and statutes, and improve the Board's rules to make them more clear, concise, understandable, and effective. The Board reviewed proposed amendments to the rules in multiple public meetings of the Board, published the notice of rulemaking as required in the Administrative Register, and held a public hearing on the proposed changes on March 16, 2021, but no public comments were received. GRRC approved the Water Quality Appeals Board rules update package at GRRC's May 4, 2021 meeting.

6. *The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction and the ability of the agency to timely investigate and resolve complaints within its jurisdiction.*

The Board does not have jurisdiction to investigate complaints.

7. *The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.*

Not applicable.

8. *The extent to which agencies have addressed deficiencies in their enabling statutes that prevent them from fulfilling their statutory mandate.*

Not applicable.

9. *The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this A.R.S. § 41-2954.*

Not applicable.

10. *The extent to which the termination of the agency would significantly affect the public health, safety, or welfare.*

The Board was established prior to the creation of the Office of Administrative Hearings. The Board is comprised of three members that are independent and have technical expertise qualifications in water and environmental issues. The Board does route some appeals to the Office of Administrative Hearings ("OAH") to conduct the evidentiary hearing process. However, the proposed decision of the OAH administrative law judge is sent to the Board for final decision in the exercise of its technical expertise. If the Board is terminated, appeals could be taken to OAH, and expert testimony regarding technical issues could be provided in that forum, with the ADEQ Director making the final decision regarding the appeal. In a prior sunset review, ADEQ indicated that the technical competence of the Board served as a valuable public medium for the issues. The establishment of the Board was designed to provide stakeholders an independent body whose administrative decisions are final and cannot be overruled by the ADEQ Director.

11. *The extent to which the level of regulation exercised by the agency compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.*

Not applicable.

12. *The extent to which the agency has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.*

The Board has in the past used contract court reporters to record meetings. The Board now uses digital recordings to reduce hearing expenses to the state.

13. *The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limited the abilities of individuals and businesses to operate efficiently and increasing the cost of government.*

Not applicable.

### **Additional Factors**

1. *Identify the problem or the needs that the agency is intended to address.*

The Board hears and decides appeals relating to the grant, denial, modification or revocation of individual permits involving specific water quality issues, including aquifer protection and surface water protection.

2. *State, to the extent practicable, in quantitative and qualitative terms, the objectives of the agency and its anticipated accomplishments.*

The Board is comprised of three members who have technical expertise qualifications in water and environmental issues whose final decisions cannot be overruled by the ADEQ Director. The Board is a neutral, independent body that provides additional expeditious review of ADEQ decisions referenced in the enabling statutes. The Board has in recent years heard appeals that include the appeals listed in the table above in response to item 2.

3. *Identify any other agencies having similar, conflicting, or duplicative objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.*

None.

4. *Assess the consequences of eliminating the agency or of consolidating it with another agency.*

The Board provides a valuable forum for independent review of decisions by ADEQ affecting water quality permits as mandated in the enabling statute. The Board also provides technical proficiency in evaluating the ADEQ decisions and facilitating an appropriate outcome.

## Occupational Regulation Factors

1. *The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502, as amended, transferred and renumbered by Laws 2021, Chapter 176.*

Not applicable.

2. *The extent to which the failure to regulate a profession or occupation will result in:*
  - a. *the loss of insurance*
  - b. *an impact to the ability to practice in other states or as required by federal law*
  - c. *an impact to the required licensure or registration with the federal government*
  - d. *the loss of constitutionally afforded practices*

Not applicable.

Please contact the Board if you need further information.

Sincerely,

*Connie Castillo*

\_\_\_\_\_  
Clerk, Water Quality Appeals Board

- c: Senator Sine Kerr, Senate Committee on Natural Resources, Energy & Water, Chair  
Kaitlyn Neff, Senate Committee on Natural Resources, Energy & Water, Analyst  
Paul Bergelin, House of Representatives, [pbergelin@azleg.gov](mailto:pbergelin@azleg.gov)