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FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 177

SENATE BILL 1410

AN ACT

AMENDING SECTION 49-282, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1994, EIGHTH SPECIAL SESSION, CHAPTER 8, SECTION 7; AMENDING SECTION 49-283, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-285.01; AMENDING SECTIONS 49-1001 AND 49-1001.01, ARIZONA REVISED STATUTES; RELATING TO THE ENVIRONMENT.

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

Section 1. Section 49-282, Arizona Revised Statutes, as amended by Laws 1994, eighth special session, chapter 8, section 7, is amended to read:

49-282. Water quality assurance revolving fund; uses; remedial action criteria

A. A water quality assurance revolving fund is established in the state treasury to be administered by the director. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature including monies appropriated pursuant to section 42-1341, subsection C, paragraph 4, subdivision (d).

2. Fertilizer license fees allocated under section 3-272, subsection B, paragraph 2.

3. Pesticide registration fees allocated under section 3-351, subsection D, paragraph 2.

4. The tax on water use pursuant to section 42-1552.

5. Water quality assurance fees collected under section 45-616.

6. Industrial discharge registration fees collected under section 49-209.

1 7. Aquifer protection permit application fees and individual permit
2 annual registration fees collected under sections 49-241 and 49-242.

3 8. Solid waste landfill registration fees pursuant to section 49-747.

4 9. Manifest resubmittal fees collected under section 49-922.01.

5 10. Hazardous waste facility registration fees collected under section
6 49-929.

7 11. Hazardous waste resource recovery facility registration fees
8 collected under section 49-930.

9 12. Monies obtained as civil or criminal penalties imposed under this
10 chapter.

11 13. Monies recovered from responsible parties as remedial action costs.

12 14. Monies received as costs for a review of remedial actions at the
13 request of a person other than the state as prescribed by section 49-285,
14 subsection B.

15 15. PROSPECTIVE PURCHASER AGREEMENT FEES COLLECTED UNDER SECTION
16 49-285.01.

17 B. Monies in the fund are exempt from lapsing under section 35-190.
18 Interest earned on monies in the fund shall be credited to the fund. Any
19 amount remaining in the fund on June 30 of each year exceeding twenty-five
20 million dollars shall be deposited in the state general fund.

21 C. Monies from the water quality assurance revolving fund shall be
22 used for the following purposes:

23 1. To provide state matching monies or to meet such other obligations
24 as are prescribed by section 104 of CERCLA.

25 2. For all reasonable and necessary costs incurred in remedial actions
26 if a responsible party cannot be determined or identified by the director.

27 3. For all reasonable and necessary costs incurred in remedial actions
28 if a responsible party has failed or refused to undertake a remedial action
29 after being ordered to do so by the director.

30 4. For the reasonable and necessary costs of monitoring, assessing,
31 identifying, locating and evaluating the degradation, destruction, loss of
32 or threat to the waters of the state resulting from a release of a hazardous
33 substance to the environment.

34 5. For the reasonable and necessary costs of conducting site
35 investigations, feasibility studies, health effect studies and risk
36 assessments related to the release of a hazardous substance to the
37 environment that has posed or may pose a threat to the waters of the state.

38 6. For the reasonable and necessary costs of administering the fund.

39 7. For the costs of the water quality monitoring program described in
40 section 49-225.

41 8. For the reasonable and necessary costs of processing and issuing
42 permits and administering the registration programs described in sections
43 49-241 and 49-242.

44 9. For emergency response use as prescribed in section 49-282.02.

1 D. Remedial actions shall:

2 1. Assure the protection of public health and welfare and the
3 environment.

4 2. To the extent practicable, provide for the control, management or
5 cleanup of the hazardous substances so as to allow the maximum beneficial use
6 of the waters of the state.

7 3. Be cost-effective over the period of potential exposure to such
8 substances.

9 E. The director shall adopt rules governing the uses of monies from
10 the fund, the determination of priorities among cleanup sites and the
11 selection of remedial actions to be undertaken either under the fund or by
12 a responsible party, including the level and extent of cleanup. The director
13 may adopt CERCLA rules, guidelines or procedures by reference. In adopting
14 the rules required by this subsection and in selecting remedial actions the
15 director shall consider the following factors:

16 1. Population, environmental and welfare concerns at risk.

17 2. Routes of exposure.

18 3. Amount, concentration, hazardous properties, environmental fate,
19 such as the ability to bio-accumulate, persistence and probability of
20 reaching the waters of the state, and the form of the substance present.

21 4. Physical factors affecting human exposure such as hydrogeology,
22 climate and the extent of previous and expected migration.

23 5. The extent to which a responsible party can be identified and the
24 ability of that party to reimburse the fund for remedial action costs.

25 6. The extent to which the amount of water available for beneficial
26 uses will be preserved by a particular type of remedial action.

27 7. The technical practicality and cost-effectiveness of remedial
28 actions applicable to a site.

29 8. The availability of other appropriate federal or state remedial
30 action and enforcement mechanisms, including funding sources established
31 under CERCLA, to respond to the release.

32 F. Remedial actions required by this article shall be consistent with
33 the requirements of title 45, chapter 2.

34 G. Any political subdivision of this state which uses, used or may use
35 waters of the state for drinking water purposes or any state agency,
36 regardless of whether the political subdivision or state agency is a
37 responsible party, may apply to the director for monies from the fund to be
38 used for remedial action. An application to the fund for remedial action
39 costs shall not be treated as an admission that a political subdivision or
40 an agency of the state is a responsible party, but a political subdivision
41 or a state agency that is a responsible party is liable for remedial action
42 costs in the same manner, including reimbursement of the fund, as any other
43 responsible party. No political subdivision may receive more than two
44 hundred fifty thousand dollars or one-half of the monies available in the

1 fund, whichever is greater. The political subdivision shall commit a local
2 matching amount at least equal to the amount sought from the fund.

3 Sec. 2. Section 49-283, Arizona Revised Statutes, is amended to read:

4 49-283. Responsible party liability exemptions: definitions

5 A. For purposes of imposing liability under this article, and except
6 as provided in subsections B, C, D, E, F, ~~and~~ G, H AND I, a person is deemed
7 the party responsible for the release or threatened release of a hazardous
8 substance if the person:

9 1. Owned or operated the facility:

10 (a) When the hazardous substance was placed or came to be located in
11 or on the facility.

12 (b) When the hazardous substance was located in or on the facility but
13 before the release.

14 (c) During the time of the release or threatened release.

15 2. Owned or possessed the hazardous substance and arranged, by
16 contract, agreement or otherwise, for the disposal, treatment or transport
17 for disposal or treatment of the hazardous substance.

18 3. Accepted for transport to a disposal or treatment facility waste
19 that contained a hazardous substance and either selected the facility to
20 which it was transported or disposed of it in a manner contrary to law.

21 B. Notwithstanding the provisions of subsection A, a person that owns
22 real property is not a responsible party if there is a release or threatened
23 release of a hazardous substance from a facility in or on the property unless
24 one or more of the following applies to that person:

25 1. Was engaged in the business of generating, transporting, storing,
26 treating or disposing of a hazardous substance at the facility or disposing
27 of waste at the facility, or knowingly permitted others to engage in such a
28 business at the facility.

29 2. Permitted any person to use the facility for disposal of a
30 hazardous substance.

31 3. Knew or reasonably should have known that a hazardous substance was
32 located in or on the facility at the time right, title or interest in the
33 property was first acquired by the person and engaged in conduct by which he
34 associated himself with the release. For the purpose of this paragraph, a
35 written warranty, representation or undertaking, which is set forth in an
36 instrument conveying any right, title or interest in the real property and
37 which is executed by the person conveying the right, title or interest, or
38 which is set forth in any memorandum of any such instrument executed for the
39 purpose of recording, is admissible as evidence of whether the person
40 acquiring any right, title or interest in the real property knew or
41 reasonably should have known that a hazardous substance was located in or on
42 the facility.

1 4. Took action which significantly contributed to the release after
2 he knew or reasonably should have known that a hazardous substance was
3 located in or on the facility.

4 C. Any liability which accrues to an owner of real property under this
5 section does not accrue to any other person who is not an owner of the real
6 property merely because the other person holds some right, title or interest
7 in the real property. An owner of real property on which a public utility
8 easement is located is not a responsible party with respect to any release
9 caused by any act or omission of the public utility which holds the easement
10 in carrying out the specific use for which the easement was granted.

11 D. A person otherwise deemed a responsible party is not liable under
12 this article if he can establish by a preponderance of the evidence that the
13 release or threat of release of a hazardous substance and the resulting
14 damages were caused solely by:

15 1. An act of God.

16 2. An act of war.

17 3. An act or omission of a third party other than an employee or agent
18 of that person or other than one whose act or omission occurs in connection
19 with a contractual relationship, existing directly or indirectly, with that
20 person, unless the sole contractual arrangement arises from a published
21 tariff and acceptance for carriage by a common carrier by rail, if that
22 person establishes by a preponderance of the evidence that:

23 (a) He exercised due care with respect to the hazardous substance
24 concerned, taking into consideration the characteristics of the hazardous
25 substance in light of all relevant facts and circumstances.

26 (b) He took precautions against foreseeable acts or omissions of any
27 such third party and the consequences that could foreseeably result from such
28 acts or omissions.

29 4. A release or threatened release which was subject to limits or
30 conditions in a federal permit or a state permit relating to the protection
31 of public health or the environment and the operation of the releasing
32 facility has been and is in compliance with applicable limits or conditions.

33 5. The application of a pesticide product registered under the federal
34 insecticide, fungicide, and rodenticide act (61 Stat. 163) and applied
35 according to label requirements.

36 6. Liability has been assumed by the federal postclosure liability
37 fund established under 42 United States Code section 9607(k).

38 7. Any combination of paragraphs 1 through 6 of this subsection.

39 E. A person is not a responsible party with respect to a hazardous
40 substance that is located on or beneath property that is owned or occupied
41 by that person if the hazardous substance is present solely because it
42 migrated from property that is not owned or occupied by that person and that
43 person is not otherwise a responsible party as prescribed by subsection A,
44 paragraph 2 or 3.

1 F. A person is not liable for costs or damages incurred solely as a
2 result of an action taken or omitted while rendering care, assistance or
3 advice that is consistent with rules adopted by the director, is consistent
4 with the national contingency plan or is under the direction of an on-scene
5 coordinator appointed pursuant to the national contingency plan and that is
6 rendered with respect to a release or a threat of a release of a hazardous
7 substance that creates a danger to public health or the environment. This
8 subsection does not preclude liability for costs or damages that result from
9 that person's negligence.

10 G. A state or local government is not liable for costs or damages
11 incurred as a result of an action taken in response to an emergency created
12 by the release or threatened release of a hazardous substance that is
13 generated by or from a facility owned by another person. This subsection
14 does not preclude liability for costs or damages that result from gross
15 negligence or intentional misconduct by this state or local government. For
16 purposes of this subsection, reckless, willful or wanton misconduct
17 constitutes gross negligence.

18 H. A PERSON WHO MAINTAINS INDICIA OF OWNERSHIP IN A PROPERTY PRIMARILY
19 TO PROTECT A SECURITY INTEREST IN A FACILITY AND WHO DOES NOT PARTICIPATE IN
20 THE MANAGEMENT OF THE FACILITY IS NOT LIABLE AS AN OWNER OR OPERATOR OF THAT
21 FACILITY PURSUANT TO THIS SECTION. THIS SUBSECTION DOES NOT APPLY TO A
22 PERSON WHO DOES ANY OF THE FOLLOWING:

23 1. THROUGH INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE CAUSES,
24 CONTRIBUTES TO OR AGGRAVATES THE RELEASE OF A HAZARDOUS SUBSTANCE.

25 2. FAILS TO DISCLOSE TO THE FACILITY'S PURCHASER THE KNOWN PRESENCE
26 OF A RELEASE OR A THREATENED RELEASE OF A HAZARDOUS SUBSTANCE AT THE TIME OF
27 SALE OR DIVESTITURE OF THE FACILITY OR THE SECURITY INTEREST IN THE FACILITY.

28 3. FAILS TO OBTAIN A PHASE I ENVIRONMENTAL ASSESSMENT OF THE FACILITY
29 THAT COMPLIES WITH STANDARDS ADOPTED BY RULE PURSUANT TO SUBSECTION K OF THIS
30 SECTION AT THE TIME OF FORECLOSURE OR AT A REASONABLE TIME BEFORE. THIS
31 PARAGRAPH DOES NOT APPLY TO RESIDENTIAL PROPERTIES WITH FEWER THAN FIVE
32 RESIDENTIAL UNITS.

33 4. FAILS TO DO ANY OF THE FOLLOWING AFTER ACQUIRING OWNERSHIP OF THE
34 FACILITY:

35 (a) PROVIDE THE DEPARTMENT REASONABLE ACCESS SO THAT THE NECESSARY
36 REMEDIAL ACTIONS MAY BE CONDUCTED.

37 (b) UNDERTAKE REASONABLE STEPS TO CONTROL ACCESS TO THE AREA OF KNOWN
38 PRESENCE OF A RELEASE OF A HAZARDOUS SUBSTANCE TO PROTECT THE PUBLIC HEALTH,
39 WELFARE AND THE ENVIRONMENT.

40 (c) ACT DILIGENTLY TO SELL OR OTHERWISE DIVEST THE PROPERTY WITHIN TWO
41 YEARS OF THE LENDER'S POSSESSION OR OWNERSHIP, WHICHEVER IS EARLIER.

42 I. A FIDUCIARY IS NOT PERSONALLY LIABLE AS AN OWNER OR OPERATOR
43 PURSUANT TO THIS SECTION. THIS SECTION DOES NOT PRECLUDE CLAIMS AGAINST
44 ASSETS HELD IN AN ESTATE, A TRUST OR OTHER FIDUCIARY CAPACITY FOR THE RELEASE

1 OR A THREATENED RELEASE OF A HAZARDOUS SUBSTANCE FROM ONE OF THE ASSETS.
2 THIS SECTION DOES NOT APPLY IF EITHER OF THE FOLLOWING APPLY:

3 1. A FIDUCIARY THROUGH INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE
4 CAUSES, AGGRAVATES OR CONTRIBUTES TO THE RELEASE OR THREATENED RELEASE OF
5 HAZARDOUS SUBSTANCES OR PERMITS OTHERS TO DO SO, EXCEPT THAT A FIDUCIARY
6 SHALL NOT BE LIABLE FOR THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF ANY
7 NONEMPLOYEE AGENT OR INDEPENDENT CONTRACTOR SO LONG AS THE FIDUCIARY HAS NOT
8 SPECIFICALLY DIRECTED THE NONEMPLOYEE AGENT OR INDEPENDENT CONTRACTOR TO
9 PERFORM THE GROSSLY NEGLIGENT ACT OR ENGAGE IN THE INTENTIONAL MISCONDUCT.

10 2. THE APPOINTMENT OF THE FIDUCIARY IS FOR THE PURPOSE OF AVOIDING
11 LIABILITY UNDER THIS ARTICLE. IT IS PRIMA-FACIE EVIDENCE THAT THE FIDUCIARY
12 WAS APPOINTED TO AVOID LIABILITY UNDER THIS ARTICLE IF THE FACILITY IS THE
13 ONLY SUBSTANTIAL ASSET IN THE FIDUCIARY ESTATE.

14 ~~H.~~ J. Subsections F ~~and~~, G, H AND I shall not be construed to affect
15 the liability of any person who is otherwise liable with respect to the
16 release or threat of release pursuant to this section.

17 K. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT SUBSECTIONS H AND I.

18 L. A FIDUCIARY MAY NOT BE A FIDUCIARY AND GRANTOR OF THE SAME
19 FIDUCIARY ESTATE.

20 M. FOR PURPOSES OF THIS SECTION:

21 1. "FIDUCIARY" MEANS:

22 (a) A TRUST COMPANY OR BANK CERTIFIED OR AUTHORIZED TO ENGAGE IN THE
23 TRUST BUSINESS PURSUANT TO TITLE 6, CHAPTER 8, ARTICLE 1.

24 (b) ANY PERSON APPOINTED BY A COURT OR TESTAMENTARY ACT TO ACT AS
25 PERSONAL REPRESENTATIVE, EXECUTOR, TRUSTEE, ADMINISTRATOR, GUARDIAN,
26 CONSERVATOR, RECEIVER OR TRUSTEE IN BANKRUPTCY.

27 (c) ANY PERSON ACTING AS A TRUSTEE OF A DEED OF TRUST PURSUANT TO
28 SECTION 33-803.

29 (d) ANY PERSON ACTING AS A TRUSTEE PURSUANT TO TITLE 14, CHAPTER 7.

30 (e) ANY PERSON ACTING PURSUANT TO AND SUBJECT TO FIDUCIARY OBLIGATIONS
31 UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, 29 UNITED STATES
32 CODE SECTIONS 1101 THROUGH 1114.

33 2. "INDICIA OF OWNERSHIP" MEANS LEGAL OR EQUITABLE TITLE THAT HAS BEEN
34 ACQUIRED THROUGH OR IS INCIDENT TO THE DEFAULT OF A BORROWER.

35 Sec. 3. Title 49, chapter 2, article 5, Arizona Revised Statutes, is
36 amended by adding section 49-285.01, to read:

37 49-285.01. Prospective purchaser agreements; assignment;
38 notice; fees; rules

39 A. THE DEPARTMENT MAY PROVIDE, PURSUANT TO SECTION 49-292, TO A
40 PROSPECTIVE PURCHASER OF A FACILITY A WRITTEN RELEASE, COVENANT NOT TO SUE
41 AND IMMUNITY FROM CONTRIBUTION CLAIMS FOR ANY POTENTIAL LIABILITY FOR
42 EXISTING CONTAMINATION UNDER THIS ARTICLE OR CERCLA IF ALL OF THE FOLLOWING
43 CONDITIONS ARE MET:

1 1. THE FACILITY IS IDENTIFIED ON THE WATER QUALITY ASSURANCE REVOLVING
2 FUND PRIORITY LIST MAINTAINED BY THE DEPARTMENT OR THE DEPARTMENT HAS BEEN
3 PROVIDED SUFFICIENT INFORMATION TO REASONABLY IDENTIFY THE EXTENT OF THE
4 CONTAMINATION AT THE FACILITY.

5 2. THE PERSON IS NOT CURRENTLY LIABLE FOR AN EXISTING OR THREATENED
6 RELEASE OF A HAZARDOUS SUBSTANCE AT THE FACILITY.

7 3. THE PROPOSED REDEVELOPMENT OR REUSE OF THE FACILITY WILL NOT
8 CONTRIBUTE TO OR EXACERBATE EXISTING KNOWN CONTAMINATION OR UNREASONABLY
9 INTERFERE WITH REMEDIAL MEASURES NECESSARY AT THE FACILITY OR CAUSE THE
10 CONTAMINATION TO PRESENT A SUBSTANTIAL HEALTH RISK TO THE PUBLIC.

11 4. THE AGREEMENT WILL PROVIDE A SUBSTANTIAL PUBLIC BENEFIT THAT MAY
12 INCLUDE ANY OF THE FOLLOWING:

13 (a) AN AGREEMENT BY THE PROSPECTIVE PURCHASER TO PROVIDE SUBSTANTIAL
14 FUNDING OR OTHER RESOURCES TO PERFORM OR FACILITATE REMEDIAL MEASURES AT THE
15 FACILITY PURSUANT TO THIS CHAPTER.

16 (b) AN AGREEMENT BY THE PROSPECTIVE PURCHASER TO PERFORM SUBSTANTIAL
17 REMEDIAL MEASURES AT THE FACILITY PURSUANT TO THIS CHAPTER.

18 (c) PRODUCTIVE REUSE OF A VACANT OR ABANDONED INDUSTRIAL OR COMMERCIAL
19 FACILITY.

20 (d) DEVELOPMENT OF A FACILITY BY A GOVERNMENTAL ENTITY OR NONPROFIT
21 ORGANIZATION TO ADDRESS AN IMPORTANT PUBLIC PURPOSE.

22 (e) CREATION OF CONSERVATION OR RECREATION AREAS.

23 5. THE DEPARTMENT CONSULTS WITH LOCAL PLANNING AND ZONING AUTHORITIES
24 WITH JURISDICTION OVER THE FACILITY AND CONSIDERS REASONABLY ANTICIPATED
25 FUTURE LAND USES AT THE FACILITY AND SURROUNDING PROPERTIES.

26 B. IF THE PROSPECTIVE PURCHASER OF A FACILITY IS AFFILIATED WITH ANY
27 OTHER PERSON WHO IS A PARTY RESPONSIBLE FOR THE RELEASE OR THREATENED RELEASE
28 OF A HAZARDOUS SUBSTANCE UNDER THIS CHAPTER, THROUGH ANY FAMILIAL
29 RELATIONSHIP, ANY CORPORATE OR CONTRACTURAL RELATIONSHIP OTHER THAN A
30 CONTRACT TO PROTECT A SECURITY INTEREST, THE DIRECTOR MAY REFUSE TO PROVIDE
31 A WRITTEN RELEASE, COVENANT NOT TO SUE OR IMMUNITY FROM CONTRIBUTION CLAIMS
32 UNDER THIS SECTION.

33 C. AN AGREEMENT BETWEEN THE DEPARTMENT AND A PROSPECTIVE PURCHASER
34 SHALL INCLUDE PROVISIONS DEEMED NECESSARY BY THE DEPARTMENT AND MAY INCLUDE:

35 1. A REPRESENTATION BY THE PROSPECTIVE PURCHASER THAT THE PURCHASER
36 DID NOT CAUSE OR CONTRIBUTE TO THE CONTAMINATION OR OTHERWISE CAUSE OR
37 CONTRIBUTE TO A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE AT THE
38 PROPERTY BEFORE THE PURCHASER ACQUIRED TITLE.

39 2. IF THE PROSPECTIVE PURCHASER DOES NOT UNDERTAKE REMEDIAL ACTION,
40 A REPRESENTATION THAT THE PURCHASER WILL NOT EXACERBATE OR CONTRIBUTE TO THE
41 EXISTING CONTAMINATION OR CREATE ADDITIONAL CONTAMINATION BY AN ACT OR
42 OMISSION.

43 3. AN AGREEMENT THAT ANY ACTIVITY THAT THE PROSPECTIVE PURCHASER MAY
44 CONDUCT OR DIRECT ON THE CONTAMINATED PROPERTY WILL NOT UNREASONABLY

1 INTERFERE WITH ANY ONGOING REMEDIAL ACTIONS THAT ARE BEING PERFORMED BY A
2 RESPONSIBLE PARTY OR THE DEPARTMENT AND THAT THE PURCHASER WILL COOPERATE
3 WITH THOSE ACTIVITIES.

4 4. AN AGREEMENT TO UNDERTAKE THOSE MEASURES THAT CONSTITUTE A PUBLIC
5 BENEFIT AS PRESCRIBED BY SUBSECTION A, PARAGRAPH 4 OF THIS SECTION.

6 5. IF REMEDIAL MEASURES ARE TO BE PERFORMED UNDER THE AGREEMENT, AN
7 AGREEMENT TO PERFORM THOSE MEASURES IN COMPLIANCE WITH THE APPLICABLE
8 STATUTES AND RULES, INCLUDING SECTIONS 49-151 AND 49-152, AND IF PURSUANT TO
9 A CONSENT JUDGMENT, UNDER THE DEPARTMENT'S SUPERVISION.

10 6. UNLESS THE CONTAMINATION WAS CAUSED BY THIS STATE, A WAIVER BY THE
11 PERSON OF ANY CLAIM OR CAUSE OF ACTION AGAINST THIS STATE THAT ARISES FROM
12 CONTAMINATION AT THE FACILITY THAT EXISTS AS OF THE DATE OF ACQUISITION OF
13 OWNERSHIP OR OPERATION OF THE FACILITY.

14 7. A GRANT OF AN EASEMENT TO THE DEPARTMENT AND ITS AUTHORIZED
15 REPRESENTATIVES FOR PURPOSES OF ENSURING COMPLIANCE WITH THE AGREEMENT OR FOR
16 REMEDIAL MEASURES AUTHORIZED PURSUANT TO THIS ARTICLE IN CONNECTION WITH
17 CONTAMINATION AT THE FACILITY AS OF THE DATE OF ACQUISITION OF OWNERSHIP OR
18 OPERATION OF THE FACILITY.

19 8. A RESERVATION OF RIGHTS AS TO ANY PERSON WHO IS NOT A PARTY TO THE
20 AGREEMENT.

21 9. THE LEGAL DESCRIPTION OF THE PROPERTY.

22 10. IN ANY CASE IN WHICH THE STATE CONDUCTS REMEDIAL ACTIONS AND THERE
23 ARE UNRECOVERED RESPONSE COSTS AT A FACILITY FOR WHICH THE OWNER OF THE
24 FACILITY IS NOT LIABLE, THE STATE MAY, AS A CONDITION OF THE AGREEMENT,
25 IMPOSE A LIEN UPON THAT FACILITY FOR THE UNRECOVERED COSTS. THE AGREEMENT
26 MAY REQUIRE THAT THE LIEN CONFORM TO REQUIREMENTS OF SECTION 49-295.

27 D. SUBJECT TO SATISFACTORY PERFORMANCE OF THE OBLIGATIONS UNDER THE
28 AGREEMENT, THE PROSPECTIVE PURCHASER IS NOT LIABLE TO THIS STATE UNDER THIS
29 ARTICLE FOR ANY RELEASE OF A HAZARDOUS SUBSTANCE AT THE FACILITY THAT EXISTS
30 ON THE DATE OF ACQUISITION OF OWNERSHIP OR OPERATION OF THE FACILITY. THE
31 PERSON SHALL BEAR THE BURDEN OF PROVING THAT ANY HAZARDOUS SUBSTANCE EXISTED
32 ON THE FACILITY AS A RESULT OF RELEASES OF THE HAZARDOUS SUBSTANCE BEFORE THE
33 DATE OF ACQUISITION OF OWNERSHIP OR OPERATION OF THE FACILITY. THIS RELEASE
34 FROM LIABILITY MAY BE VOIDED BY THE DIRECTOR IF THE PERSON FAILS TO PERFORM
35 ANY OF THE PROVISIONS OF THE PROSPECTIVE PURCHASER AGREEMENT.

36 E. THE PURCHASER SHALL PROVIDE WRITTEN NOTICE TO THE DEPARTMENT OF ANY
37 SALE, ASSIGNMENT OR OTHER TRANSFER OF THE PROPERTY AT LEAST FIFTEEN BUSINESS
38 DAYS BEFORE THE DATE OF THE TRANSFER.

39 F. AN AGREEMENT PURSUANT TO THIS SECTION IS ASSIGNABLE IF THE ASSIGNEE
40 QUALIFIES PURSUANT TO SUBSECTIONS A AND B OF THIS SECTION FOR A PROSPECTIVE
41 PURCHASER AGREEMENT UNDER THIS SECTION AND NOTICE IS GIVEN TO THE DEPARTMENT
42 AS PRESCRIBED BY SUBSECTION D OF THIS SECTION. ON ASSIGNMENT, THE ASSIGNEE
43 ASSUMES THE OBLIGATIONS AND THE BENEFITS OF THE AGREEMENT. UNLESS THE

1 ASSIGNOR HAS BREACHED THE AGREEMENT, THE ASSIGNOR RETAINS THE BENEFITS OF THE
2 AGREEMENT.

3 G. THE DEPARTMENT SHALL PROVIDE NOTICE OF A PROSPECTIVE PURCHASER
4 AGREEMENT BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY
5 IN WHICH THE PROPERTY IS LOCATED AT LEAST FIFTEEN BUSINESS DAYS BEFORE THE
6 EXECUTION OF A PROSPECTIVE PURCHASER AGREEMENT. THE NOTICE SHALL INCLUDE A
7 GENERAL DESCRIPTION OF THE CONTENTS OF THE AGREEMENT. ANY INTERESTED PERSON
8 MAY COMMENT ON THE PROPOSED AGREEMENT IN WRITING TO THE DIRECTOR.

9 H. THE DEPARTMENT MAY CHARGE A REASONABLE FEE FOR THE PREPARATION AND
10 EXECUTION OF A PROSPECTIVE PURCHASER AGREEMENT. THE DIRECTOR SHALL ADOPT
11 RULES TO IMPLEMENT THIS SECTION.

12 Sec. 4. Section 49-1001, Arizona Revised Statutes, is amended to read:
13 49-1001. Definitions

14 In this chapter, unless the context otherwise requires:

15 1. "Being used" means not having been taken out of operation.
16 2. "Closure" means the removal of an underground storage tank from
17 operation.

18 3. "Corrective actions" means those actions that are prescribed
19 pursuant to section 49-1005, subsection E.

20 4. "Designated representative" means a person to whom an owner or an
21 operator, or both, assign in writing any right, title or interest which the
22 owner or operator, or both, may have in and to the proceeds of a
23 reimbursement for a corrective action made under article 3 of this chapter.

24 5. "FIDUCIARY" MEANS:

25 (a) A TRUST COMPANY OR BANK CERTIFIED OR AUTHORIZED TO ENGAGE IN THE
26 TRUST BUSINESS PURSUANT TO TITLE 6, CHAPTER 8, ARTICLE 1.

27 (b) ANY PERSON APPOINTED BY A COURT OR TESTAMENTARY ACT TO ACT AS
28 PERSONAL REPRESENTATIVE, EXECUTOR, TRUSTEE, ADMINISTRATOR, GUARDIAN,
29 CONSERVATOR, RECEIVER OR TRUSTEE IN BANKRUPTCY.

30 (c) ANY PERSON ACTING AS A TRUSTEE OF A DEED OF TRUST PURSUANT TO
31 SECTION 33-803.

32 (d) ANY PERSON ACTING AS A TRUSTEE PURSUANT TO TITLE 14, CHAPTER 7.

33 (e) ANY PERSON ACTING PURSUANT TO AND SUBJECT TO FIDUCIARY OBLIGATIONS
34 UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, 29 UNITED STATES
35 CODE SECTIONS 1101 THROUGH 1114.

36 ~~5-~~ 6. "Guarantor" means a person, other than an owner or operator,
37 who provides evidence of financial responsibility for an owner or operator
38 pursuant to this chapter.

39 ~~6-~~ 7. "Motor fuel" means petroleum or a petroleum based substance
40 that is motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel
41 or any grade of oxygenated gasoline typically used in the operation of a
42 motor engine.

1 ~~7-~~ 8. "Occurrence" means an incident or accident, including
2 continuous or repeated exposure to conditions, which results in a release
3 from an underground storage tank.

4 ~~8-~~ 9. "Operator" means a person in control of, or having
5 responsibility for, the day-to-day operation of an underground storage tank.

6 ~~9-~~ 10. "Out of operation" means having been closed in accordance with
7 all applicable fire codes and other statutory and regulatory requirements for
8 closure in effect on the date that closure was accomplished.

9 ~~10-~~ 11. "Person" means an individual, trust, firm, joint stock
10 company, corporation, joint venture, partnership, association, consortium,
11 state, municipality, interstate body, commission, political subdivision of
12 a state and the United States government.

13 ~~11-~~ 12. "Petroleum" means petroleum, including crude oil or any
14 fraction of crude oil, which is liquid at sixty degrees Fahrenheit and 14.7
15 pounds per square inch absolute, and petroleum based substances comprised of
16 a complex blend of hydrocarbons derived from crude oil through processes of
17 separation, conversion, upgrading and finishing, such as motor fuels,
18 residual fuel oils, lubricants, jet fuels, distillate fuel oils, petroleum
19 solvents and used oils.

20 ~~12-~~ 13. "Political subdivision" means a county, city, town or other
21 taxing district other than the state that is authorized to take property by
22 eminent domain.

23 ~~13-~~ 14. "Regulated substance" means:

24 (a) Petroleum.

25 (b) A substance specified in the comprehensive environmental response,
26 compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42
27 United States Code section 9601(14)) but not including a substance regulated
28 as a hazardous waste under the solid waste disposal act of 1984 (P.L. 98-616;
29 98 Stat. 3221; 42 United States Code section 6921).

30 ~~14-~~ 15. "Release" means a spill, leak, emission, discharge, escape,
31 leach or disposal of a regulated substance from an underground storage tank
32 into groundwater, surface water or subsurface soils.

33 ~~15-~~ 16. "Suspected release" means any of the following:

34 (a) The discovery by owners and operators or others of released
35 regulated substances at the underground storage tank site or in the
36 surrounding area.

37 (b) Erratic behavior of regulated substance dispensing equipment, the
38 sudden loss of a regulated substance from an underground storage tank, an
39 unexplained presence of water in the underground storage tank or other
40 extraordinary operating conditions that could reasonably be associated with
41 a release from an underground storage tank and that are observed by owners
42 and operators, unless system equipment is found to be defective but not
43 leaking and is repaired or replaced immediately.

1 (c) That the monitoring results from a release detection method
2 required under 40 Code of Federal Regulations sections 280.41 and 280.42,
3 this chapter or rules adopted pursuant to this chapter indicate that a
4 release may have occurred unless either of the following occurs:

5 (i) The monitoring device is found to be defective and is immediately
6 repaired, recalibrated or replaced and additional monitoring data do not
7 confirm the initial result.

8 (ii) In the case of inventory control, a second month of inventory
9 reconciliation data does not confirm the initial result.

10 ~~16-~~ 17. "Tank" means a stationary device constructed of wood,
11 concrete, steel, plastic or other nonearthen materials and used to contain
12 regulated substances.

13 ~~17-~~ 18. "Underground storage tank" means a tank or combination of
14 tanks and underground pipes connected to tanks being used or having been used
15 to contain regulated substances and which has at least ten per cent of the
16 total volume of the tank and underground portions of pipes connected to the
17 tank underground. Underground storage tank does not mean any of the
18 following:

19 (a) A farm or residential tank of one thousand one hundred gallons or
20 less capacity used for storing motor fuel for noncommercial purposes.

21 (b) A tank used for storing heating oil for consumptive use on the
22 premises where stored.

23 (c) A septic tank.

24 (d) A pipeline facility, including gathering lines, regulated under
25 either:

26 (i) The natural gas pipeline safety act of 1968 (49 United States Code
27 sections 1671 through 1686).

28 (ii) The hazardous liquid pipeline safety act of 1979 (49 United
29 States Code section 2001).

30 (e) An intrastate pipeline facility regulated under a state law
31 comparable to the provisions of law referred to in subdivision (d), item (I)
32 or (ii).

33 (f) A surface impoundment, pit, pond or lagoon.

34 (g) A storm water or wastewater collection system.

35 (h) A flow-through process tank.

36 (i) A liquid trap or associated gathering lines directly related to
37 oil or gas production and gathering operations.

38 (j) A storage tank situated in an underground area, such as a
39 basement, cellar, mine working, drift, shaft or tunnel, if the storage tank
40 is situated on or above the surface of the floor.

41 (k) Pipes connected to any of the structures described in subdivisions
42 (a) through (j).

43 Sec. 5. Section 49-1001.01, Arizona Revised Statutes, is amended to
44 read:

1 49-1001.01. Definition of owner; rules

2 A. In this chapter, unless the context otherwise requires, "owner"
3 means a person who owns an underground storage tank or a person who owned an
4 underground storage tank immediately before the underground storage tank was
5 taken out of operation. A person who acquires ownership or control of
6 property where an underground storage tank is located is the owner of the
7 underground storage tank, except that the person is not an owner if either
8 of the following applies:

9 1. The person, after conducting a due diligence investigation
10 immediately prior to acquiring ownership of the property, did not know and
11 had no reason to know that the underground storage tank was located on the
12 property. Due diligence shall consist of performing a phase I environmental
13 assessment of the property which meets the requirements of ASTM standard
14 E-1527-93 or E-1528-93, or other generally accepted commercial practices or
15 standards for due diligence performed prior to the adoption of this standard.

16 2. The person has not placed regulated substances in the underground
17 storage tank and has not dispensed regulated substances from the underground
18 storage tank, and the department, after reasonable investigations, can
19 determine the identity of the previous owner of the property containing the
20 underground storage tank immediately prior to the person's acquisition of the
21 property. For the purposes of this paragraph, dispensing does not mean
22 emptying the underground storage tank for purpose of closure.

23 B. A person who holds indicia of ownership primarily to protect a
24 security interest in either the petroleum underground storage tank or in the
25 property on which the petroleum underground storage tank is or was located
26 but who does not participate in the management of the underground storage
27 tank and who is not otherwise engaged in petroleum refining or marketing is
28 not an owner for purposes of this chapter.

29 C. A person who holds indicia of ownership as prescribed by subsection
30 B of this section and who acquires ownership or control of a petroleum
31 underground storage tank through foreclosure of the property where a
32 petroleum underground storage tank is located shall not be deemed an owner
33 and shall not be required to investigate a release or take corrective action
34 in response to a release if the person does all of the following:

35 1. Complies with the notification requirements prescribed by section
36 49-1002.

37 2. Complies with the reporting requirements prescribed by section
38 49-1004, subsections A and C to the extent that the information is known to
39 the person at the time of the report.

40 3. Temporarily or permanently closes the petroleum underground storage
41 tank as prescribed by section 49-1008.

42 4. Divests itself of the property in a reasonably prompt manner using
43 whatever commercially reasonable means are relevant or appropriate with

1 respect to the property, taking into consideration all of the facts and
2 circumstances.

3 D. A FIDUCIARY IS NOT AN OWNER OR OPERATOR FOR PURPOSES OF THIS
4 CHAPTER, EXCEPT IF THE APPOINTMENT OF THE FIDUCIARY IS FOR THE PURPOSE OF
5 AVOIDING LIABILITY UNDER THIS CHAPTER. THIS SUBSECTION DOES NOT PRECLUDE
6 CLAIMS AGAINST ASSETS HELD IN AN ESTATE, A TRUST OR ANY OTHER FIDUCIARY
7 CAPACITY THAT CONTAINS AN UNDERGROUND STORAGE TANK IN WHICH REGULATED
8 SUBSTANCES ARE PLACED OR DISPENSED. THOSE CLAIMS MAY BE ASSERTED AGAINST A
9 FIDUCIARY IN ITS REPRESENTATIVE CAPACITY WITHOUT REGARD TO WHETHER THE
10 FIDUCIARY IS PERSONALLY LIABLE, AND THE LIABILITY OF THE FIDUCIARY IS LIMITED
11 TO THE VALUE OF THE ESTATE, TRUST OR OTHER PROPERTY THAT IS HELD IN A
12 FIDUCIARY CAPACITY. A FIDUCIARY MAY NOT BE A FIDUCIARY AND GRANTOR OF THE
13 SAME FIDUCIARY ESTATE.

14 E. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT SUBSECTION D OF THIS
15 SECTION.

16 Sec. 6. Performance audit

17 The auditor general shall assess the impact of section 49-283,
18 subsection I, Arizona Revised Statutes, as added by this act, to determine
19 whether properties covered by that subsection are being remediated for soil
20 and groundwater contamination. The auditor general shall report the findings
21 to the joint legislative audit committee by January 1, 1999.

22 Sec. 7. Retroactivity

23 A. Section 49-283, subsections F, G, H and I, Arizona Revised
24 Statutes, as amended by this act, apply retroactively to from and after
25 August 13, 1986.

26 B. Section 49-1001.01, subsection D, Arizona Revised Statutes, as
27 amended by this act, applies retroactively to from and after September 15,
28 1989.

APPROVED BY THE GOVERNOR APRIL 12, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 1996.