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FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 259

HOUSE BILL 2114

AN ACT

AMENDING SECTION 49-281, ARIZONA REVISED STATUTES; AMENDING SECTION 49-282, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1994, EIGHTH SPECIAL SESSION, CHAPTER 8, SECTION 7; REPEALING SECTION 49-282, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 202, SECTION 8; AMENDING SECTIONS 49-282.01, 49-282.02, 49-283, 49-285, 49-291, 49-293, 49-295 AND 49-296, ARIZONA REVISED STATUTES; AMENDING SECTION 49-285, ARIZONA REVISED STATUTES, AS AMENDED BY SECTION 7 OF THIS ACT; AMENDING TITLE 49, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-297 AND 49-298; REPEALING LAWS 1995, CHAPTER 202, SECTION 9; PROVIDING FOR DELAYED REPEAL; RELATING TO THE ENVIRONMENT.

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

2 Section 1. Section 49-281, Arizona Revised Statutes, is amended to
3 read:

4 49-281. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Dispose" means the deposit, injection, dumping, spilling, leaking
7 or placing of any pollutant into or on any land or water so that the
8 pollutant or any constituent of the pollutant may enter the environment or
9 be discharged into any waters, including aquifers.

10 2. "Fund" means the water quality assurance revolving fund established
11 by section 49-282.

12 3. "Hazardous substance" has the same meaning as prescribed in section
13 49-201, but does not include petroleum as defined in section 49-1001.

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

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

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

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

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

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

10 ~~9.~~ 7. Manifest resubmittal fees collected under section 49-922.01.

11 ~~10.~~ 8. Hazardous waste facility registration fees collected under
12 section 49-929.

13 ~~11.~~ 9. Hazardous waste resource recovery facility registration fees
14 collected under section 49-930.

15 ~~12.~~ 10. Monies obtained as civil or criminal penalties imposed under
16 this chapter.

17 ~~13.~~ 11. Monies recovered from responsible parties as remedial action
18 costs.

19 ~~14.~~ 12. Monies received as costs for a review of remedial actions at
20 the request of a person other than the state as prescribed by section 49-285,
21 subsection B.

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

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

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

30 2. For all reasonable and necessary costs incurred in remedial actions
31 if a responsible party cannot be determined or identified by the director OR
32 IF A RESPONSIBLE PARTY IS INSOLVENT AS PRESCRIBED BY SECTION 44-1002, IS NOT
33 SUBJECT TO CLAIMS DUE TO FEDERAL BANKRUPTCY CODE PROTECTION OR IS OTHERWISE
34 PROTECTED FROM JUDGMENT.

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

38 4. For the reasonable and necessary costs of monitoring, assessing,
39 identifying, locating and evaluating the degradation, destruction, loss of
40 or threat to the waters of the state resulting from a release of a hazardous
41 substance to the environment.

42 5. For the reasonable and necessary costs of conducting site
43 investigations, feasibility studies, health effect studies and risk

1 assessments related to the release of a hazardous substance to the
2 environment that has posed or may pose a threat to the waters of the state.

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

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

6 ~~8. For the reasonable and necessary costs of processing and issuing~~
7 ~~permits and administering the registration programs described in sections~~
8 ~~49-241 and 49-242.~~

9 8. FOR COMPLIANCE MONITORING, INVESTIGATION AND ENFORCEMENT ACTIVITIES
10 PERTAINING TO GENERATING, TRANSPORTING, TREATING, STORING AND DISPOSING OF
11 HAZARDOUS WASTE. THE AMOUNT TO BE USED PURSUANT TO CHAPTER 5 OF THIS TITLE
12 IS LIMITED TO THE AMOUNT RECEIVED IN THE PRIOR FISCAL YEAR FOR THE HAZARDOUS
13 WASTE FACILITY REGISTRATION FEE.

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

15 D. Remedial actions shall:

16 1. Assure the protection of public health and welfare and the
17 environment.

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

21 3. Be REASONABLE, NECESSARY, cost-effective AND TECHNICALLY FEASIBLE
22 FOR THEIR DESIGN AND IMPLEMENTATION, INCLUDING OPERATION AND MAINTENANCE,
23 over the period of ~~potential~~ REASONABLY EXPECTED HUMAN AND ENVIRONMENTAL
24 exposure to such substances.

25 E. The director shall adopt rules governing the uses of monies from
26 the fund, the determination of priorities among cleanup sites and the
27 selection of remedial actions to be undertaken either under the fund or by
28 a responsible party, including the level and extent of cleanup. The director
29 may adopt CERCLA rules, guidelines or procedures by reference. In adopting
30 the rules required by this subsection and in selecting remedial actions the
31 director shall consider the following factors:

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

33 2. Routes of exposure.

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

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

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

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

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

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

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

6 G. Any political subdivision of this state which uses, used or may use
7 waters of the state for drinking water purposes or any state agency,
8 regardless of whether the political subdivision or state agency is a
9 responsible party, may apply to the director for monies from the fund to be
10 used for remedial action. An application to the fund for remedial action
11 costs shall not be treated as an admission that a political subdivision or
12 an agency of the state is a responsible party, but a political subdivision
13 or a state agency that is a responsible party is liable for remedial action
14 costs in the same manner, including reimbursement of the fund, as any other
15 responsible party. ~~No political subdivision may receive more than two
16 hundred fifty thousand dollars or one half of the monies available in the
17 fund, whichever is greater.~~ The political subdivision shall commit a local
18 matching amount at least equal to the amount sought from the fund.

19 H. THE DIRECTOR SHALL PREPARE AND SUBMIT A WRITTEN REPORT TO THE
20 SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE IN
21 DECEMBER OF EACH YEAR. THE REPORT SHALL DESCRIBE ALL REMEDIAL ACTIONS TAKEN
22 THAT USE MONIES FROM THE FUND AND SHALL DESCRIBE THE STATUS OF ALL SITES
23 WHERE REMEDIAL ACTIONS HAVE BEEN TAKEN OR ARE PLANNED, INCLUDING THE SITE
24 LOCATIONS, THE BASIS FOR INCLUDING AN AREA WITHIN A SITE AND WHETHER REMEDIAL
25 ACTIONS TAKEN TO DATE WOULD SUPPORT AN INCREASE OR DECREASE IN THE SIZE OF
26 THE SITE.

27 Sec. 3. Repeal

28 Section 49-282, Arizona Revised Statutes, as amended by Laws 1995,
29 chapter 202, section 8, is repealed.

30 Sec. 4. Section 49-282.01, Arizona Revised Statutes, is amended to
31 read:

32 49-282.01. Maximum annual payments of fees and taxes by mines
33 to water quality assurance revolving fund;
34 definitions

35 A. Notwithstanding any other law, a person engaging in mining is not
36 required to pay fees and taxes listed in section 49-282, subsection A,
37 paragraphs 2 through ~~12~~ 10 in excess of the lesser of:

- 38 1. Ten thousand dollars in a calendar year per individual mining site.
39 2. Twenty-five thousand dollars in a calendar year per mining entity.

40 B. A person who pays such fees and taxes for mining facilities or
41 activities in the amount specified in subsection A of this section may submit
42 evidence of such payment to the appropriate entity in lieu of paying
43 additional fees and taxes for that calendar year for mining facilities or
44 activities.

1 C. If a mining facility or activity is owned or operated by more than
2 one person, the payment of fees or the compliance with this section for the
3 facility or activity by one person constitutes compliance by all other owners
4 and operators.

5 D. For purposes of this section:

6 1. "Individual mining site" means a mining facility or activity or
7 group of mining activities or facilities located in a contiguous geographical
8 area and owned or operated by the same person.

9 2. "Mining" means the exploration, extraction, beneficiation and
10 processing, including smelting and refining, of ores and minerals and all
11 incidental activities.

12 3. "Mining entity" means a person who owns or operates more than one
13 individual mining site in this state.

14 Sec. 5. Section 49-282.02, Arizona Revised Statutes, is amended to
15 read:

16 49-282.02. Water quality assurance revolving fund: emergency
17 response use: definition

18 A. Notwithstanding any other statute, monies from the water quality
19 assurance revolving fund may be used for all reasonable costs incurred in
20 remedial actions taken in response to a release or threat of a release of a
21 hazardous substance or pollutant that presents an emergency to the public
22 health or the environment. Within ten days of the date that the first
23 remedial action costs are incurred, the director shall make a written
24 determination that an emergency exists or that an emergency existed at the
25 time the remedial action costs were incurred. A remedial action funded as
26 an emergency response shall be completed within one year of the director's
27 written determination that an emergency exists.

28 B. Any reasonable, NECESSARY AND COST-EFFECTIVE remedial action costs
29 incurred by the director pursuant to this section in response to a release
30 or a threat of a release of a hazardous substance THAT PRESENTS AN IMMINENT
31 AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH OR THE ENVIRONMENT may be
32 recovered in a civil action brought by the attorney general against any
33 responsible party as prescribed by section 49-285, subsection A. This
34 subsection does not preclude the department from initiating actions under
35 other provisions of state or federal law. With respect to any reasonable,
36 ~~and~~ necessary AND COST-EFFECTIVE remedial action costs incurred by the
37 director pursuant to this section in responding to a release or a threat of
38 a release of a pollutant, the attorney general may recover those costs in a
39 civil action against a person only to the extent otherwise permitted by
40 statute or the common law and not pursuant to this article.

41 C. For purposes of this section: —

42 1. "IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH OR THE
43 ENVIRONMENT" MEANS, FOR PURPOSES OF COST RECOVERY, AN IMMEDIATE AND

1 SIGNIFICANT RISK OF HARM TO THE PUBLIC HEALTH OR THE ENVIRONMENT AS A RESULT
2 OF A RELEASE OF A HAZARDOUS SUBSTANCE.

3 2. "Remedial actions" means those actions necessary to prevent,
4 minimize or mitigate significant damage to public health or the environment
5 that may result from a release or a threat of release, based on an evaluation
6 of the factors prescribed in 40 Code of Federal Regulations section
7 300.415(b)(2) as amended on January 1, 1992. Remedial actions include those
8 actions consistent with appropriate removal action prescribed by 40 Code of
9 Federal Regulations section 300.415(d) as amended on January 1, 1992.

10 Sec. 6. Section 49-283, Arizona Revised Statutes, is amended to read:
11 49-283. Responsible party

12 A. For purposes of imposing liability under this article, and except
13 as provided in subsections B, C, D, E, F and G, a person is deemed the party
14 responsible for the release or threatened release of a hazardous substance
15 if the person:

16 1. Owned or operated the facility:

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

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

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

22 2. Owned or possessed the hazardous substance and arranged, by
23 contract, agreement or otherwise, for the disposal, treatment or transport
24 for disposal or treatment of the hazardous substance.

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

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

32 ~~1. Was engaged in the business of generating, transporting, storing,~~
33 ~~treating or disposing of a hazardous substance at the facility or disposing~~
34 ~~of waste at the facility, or knowingly permitted others to engage in such a~~
35 ~~business at the facility.~~

36 2. Permitted any person to use the facility for disposal of a
37 hazardous substance.

38 3. Knew or reasonably should have known that a hazardous substance was
39 located in or on the facility at the time right, title or interest in the
40 property was first acquired by the person and engaged in conduct by which he
41 associated himself with the release. For the purpose of this paragraph, a
42 written warranty, representation or undertaking, which is set forth in an
43 instrument conveying any right, title or interest in the real property and
44 which is executed by the person conveying the right, title or interest, or

1 which is set forth in any memorandum of any such instrument executed for the
2 purpose of recording, is admissible as evidence of whether the person
3 acquiring any right, title or interest in the real property knew or
4 reasonably should have known that a hazardous substance was located in or on
5 the facility. FOR PURPOSES OF THIS PARAGRAPH, "ASSOCIATED HIMSELF WITH THE
6 RELEASE" MEANS HAVING ACTUAL KNOWLEDGE OF THE RELEASE AND TAKING ACTION OR
7 FAILING TO TAKE ACTION THAT THE PERSON IS AUTHORIZED TO TAKE AND THAT
8 INCREASES THE VOLUME OR TOXICITY OF THE HAZARDOUS SUBSTANCE THAT HAS BEEN
9 RELEASED.

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

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

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

24 1. An act of God.

25 2. An act of war.

26 3. An act or omission of a third party, WHETHER LAWFUL OR UNLAWFUL
27 INCLUDING ACTS OF VANDALISM OR UNLAWFUL DISPOSAL OF HAZARDOUS WASTE OR
28 HAZARDOUS SUBSTANCES, other than an employee or agent of that person or other
29 than one whose act or omission occurs in connection with a contractual
30 relationship, existing directly or indirectly, with that person, unless the
31 sole contractual arrangement arises from a published tariff and acceptance
32 for carriage by a common carrier by rail, if that person establishes by a
33 preponderance of the evidence that:

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

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

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

1 under section 49-282, subsection E. A responsible party may be held liable
2 for remedial action costs for a release of a hazardous substance even though
3 the conduct that resulted in the release or the release itself occurred
4 before August 13, 1986.

5 B. In order to preserve any right to recover remedial action costs
6 from responsible parties, remedial actions conducted by this state, a
7 political subdivision of this state or any other person shall when evaluated
8 as a whole be in substantial compliance with the rules and procedures adopted
9 pursuant to section 49-282, subsection E. The director's approval of a
10 remedial action that is conducted by a person other than the state is not
11 required to preserve any right to recover remedial action costs from
12 potentially responsible parties. Any person other than the state who
13 undertakes a remedial action may request that the director approve the
14 remedial action at any time before, during or after the remedial action. Any
15 remedial action so approved by the director shall be deemed to be in
16 substantial compliance with the rules and procedures adopted pursuant to
17 section 49-282, subsection E. Any person who requests the director's
18 approval of a remedial action shall reimburse the department for the total
19 reasonable cost to the department for the review of the remedial action
20 unless the director waives all or a part of the reimbursement. These monies
21 shall be deposited in the water quality assurance revolving fund established
22 by section 49-282. Costs that are reimbursed to the department by a party
23 that obtains the director's approval of remedial actions pursuant to this
24 subsection constitute remedial action costs that may be recovered from
25 responsible parties.

26 C. Any person who is a defendant in an enforcement proceeding brought
27 under section 49-287 may join in the action of any other person who is or may
28 be a responsible party. Following adjudication of liability and recovery of
29 remedial action costs in an action brought under this article, any person
30 held liable for such costs may bring a separate action to require any other
31 person who is or may be a responsible party to contribute to the payment of
32 such costs.

33 ~~D. If any person in an action brought under this article establishes~~
34 ~~by a preponderance of the evidence that the release or threatened release~~
35 ~~referred to in this article is divisible, the person is liable only for his~~
36 ~~portion of the release.~~

37 ~~E.~~ D. This article does not affect or modify in any way the
38 obligations or liability of any person, by reason of subrogation or
39 otherwise, under any other provision of state or federal law, including
40 common law, for damages, injury or loss resulting from a release of any
41 hazardous substance or for remedial action costs, except that any person who
42 receives compensation for remedial action costs pursuant to this article is
43 precluded from recovering compensation for the same remedial action costs
44 pursuant to any other federal or state law. Any person who receives

1 compensation for remedial action costs pursuant to any other federal or state
2 law is precluded from receiving compensation for the same remedial action
3 costs as provided in this article.

4 ~~F.~~ E. This article shall not be construed to affect the equitable
5 powers of apportionment of any court following adjudication of liability.
6 IN ANY ACTION IN WHICH THERE IS APPORTIONMENT, THE STATE MAY INTERVENE AS A
7 MATTER OF RIGHT. In exercising its powers of apportionment OR IN ALLOCATING
8 SEVERAL LIABILITY BETWEEN TWO OR MORE POTENTIALLY RESPONSIBLE PARTIES, a
9 court shall consider the following:

10 ~~1. The ability of responsible parties to demonstrate that their~~
11 ~~contribution to a release or threat of release of the hazardous substance can~~
12 ~~be distinguished.~~

13 ~~2.~~ 1. The amount AND CONCENTRATION of the EACH hazardous substance
14 involved.

15 ~~3.~~ 2. The degree of toxicity of the EACH hazardous substance
16 involved.

17 ~~4.~~ 3. The degree of involvement by the responsible parties in the
18 generation, transportation, treatment, storage or disposal of the hazardous
19 substance.

20 ~~5. The degree of care exercised by the parties with respect to the~~
21 ~~hazardous substance concerned, taking into account the characteristics of the~~
22 ~~hazardous substance.~~

23 ~~6. The degree of cooperation by the responsible parties with federal,~~
24 ~~state or local officials to prevent any harm to the public health or the~~
25 ~~environment.~~

26 4. THE FINANCIAL RESOURCES OF THE RESPONSIBLE PARTY, ITS ABILITY TO
27 CONTINUE IN BUSINESS AFTER PAYMENT OF THE ALLOCATED AMOUNT AND WHETHER THE
28 DEMAND FOR COST RECOVERY WOULD RENDER THE RESPONSIBLE PARTY INSOLVENT OR
29 REQUIRE THE RESPONSIBLE PARTY TO SEEK PROTECTION UNDER FEDERAL BANKRUPTCY
30 LAW.

31 5. THE MAGNITUDE OF THE RISK TO HUMAN HEALTH OR THE ENVIRONMENT CAUSED
32 BY EACH HAZARDOUS SUBSTANCE INVOLVED.

33 6. ANY OTHER FACTORS DEEMED APPROPRIATE BY THE COURT TO BALANCE THE
34 EQUITIES OF THE PARTIES.

35 ~~G.~~ F. An action brought by a person other than the state to recover
36 remedial action costs from a responsible party shall be brought within three
37 years of the completion of the remedial action or within six years of the
38 initiation of on-site physical construction activities for the remediation,
39 removal or disposal of hazardous substances, whichever is earlier.

40 Sec. 8. Section 49-285, Arizona Revised Statutes, as amended by
41 section 7 of this act, is amended to read:

1 49-285. Liability for remedial actions costs; limitation of
2 actions

3 A. Except as otherwise provided in subsections C and ~~E~~ F of this
4 section and section 49-283, a person who is a responsible party shall be
5 strictly, JOINTLY and severally liable for such reasonable, necessary and
6 cost-effective expenditures as are incurred by this state, a political
7 subdivision of this state or any other person in a manner consistent with the
8 rules and procedures adopted under section 49-282, subsection E. A
9 responsible party may be held liable for remedial action costs for a release
10 of a hazardous substance even though the conduct that resulted in the release
11 or the release itself occurred before August 13, 1986.

12 B. In order to preserve any right to recover remedial action costs
13 from responsible parties, remedial actions conducted by this state, a
14 political subdivision of this state or any other person shall when evaluated
15 as a whole be in substantial compliance with the rules and procedures adopted
16 pursuant to section 49-282, subsection E. The director's approval of a
17 remedial action that is conducted by a person other than the state is not
18 required to preserve any right to recover remedial action costs from
19 potentially responsible parties. Any person other than the state who
20 undertakes a remedial action may request that the director approve the
21 remedial action at any time before, during or after the remedial action. Any
22 remedial action so approved by the director shall be deemed to be in
23 substantial compliance with the rules and procedures adopted pursuant to
24 section 49-282, subsection E. Any person who requests the director's
25 approval of a remedial action shall reimburse the department for the total
26 reasonable cost to the department for the review of the remedial action
27 unless the director waives all or a part of the reimbursement. These monies
28 shall be deposited in the water quality assurance revolving fund established
29 by section 49-282. Costs that are reimbursed to the department by a party
30 that obtains the director's approval of remedial actions pursuant to this
31 subsection constitute remedial action costs that may be recovered from
32 responsible parties.

33 C. Any person who is a defendant in an enforcement proceeding brought
34 under section 49-287 may join in the action of any other person who is or may
35 be a responsible party. Following adjudication of liability and recovery of
36 remedial action costs in an action brought under this article, any person
37 held liable for such costs may bring a separate action to require any other
38 person who is or may be a responsible party to contribute to the payment of
39 such costs.

40 D. IF ANY PERSON IN AN ACTION BROUGHT UNDER THIS ARTICLE ESTABLISHES
41 BY A PREPONDERANCE OF THE EVIDENCE THAT THE RELEASE OR THREATENED RELEASE
42 REFERRED TO IN THIS ARTICLE IS DIVISIBLE, THE PERSON IS LIABLE ONLY FOR HIS
43 PORTION OF THE RELEASE.

1 ~~D~~ E. This article does not affect or modify in any way the
2 obligations or liability of any person, by reason of subrogation or
3 otherwise, under any other provision of state or federal law, including
4 common law, for damages, injury or loss resulting from a release of any
5 hazardous substance or for remedial action costs, except that any person who
6 receives compensation for remedial action costs pursuant to this article is
7 precluded from recovering compensation for the same remedial action costs
8 pursuant to any other federal or state law. Any person who receives
9 compensation for remedial action costs pursuant to any other federal or state
10 law is precluded from receiving compensation for the same remedial action
11 costs as provided in this article.

12 ~~E~~ F. This article shall not be construed to affect the equitable
13 powers of apportionment of any court following adjudication of liability. In
14 exercising its powers of apportionment a court shall consider the following:

- 15 1. The amount and concentration of each hazardous substance involved.
- 16 2. The degree of toxicity of each hazardous substance involved.
- 17 3. The degree of involvement by the responsible parties in the
18 generation, transportation, treatment, storage or disposal of the hazardous
19 substance.

20 4. The financial resources of the responsible party, its ability to
21 continue in business after payment of the allocated amount and whether the
22 demand for cost recovery would render the responsible party insolvent or
23 require the responsible party to seek protection under federal bankruptcy
24 law.

25 5. The magnitude of the risk to human health or the environment caused
26 by each hazardous substance involved.

27 6. Any other factors deemed appropriate by the court to balance the
28 equities of the parties.

29 ~~F~~ G. An action brought by a person other than the state to recover
30 remedial action costs from a responsible party shall be brought within three
31 years of the completion of the remedial action or within six years of the
32 initiation of on-site physical construction activities for the remediation,
33 removal or disposal of hazardous substances, whichever is earlier.

34 Sec. 9. Section 49-291, Arizona Revised Statutes, is amended to read:

35 49-291. Notice and settlement; recovery of costs

36 A. The director may issue to potentially responsible parties including
37 owners or operators and other persons described in section 49-283 a notice
38 letter that requires abatement of the release or threat of a release and
39 appropriate remedial action consistent with the criteria listed in the rules
40 adopted pursuant to section 49-282. The notice letter shall be transmitted
41 to the potentially responsible parties by return receipt requested mail or
42 by hand delivery and shall include all of the following:

- 1 1. The reasons for the remedial action.
- 2 2. A reasonable time for beginning the remedial action, taking into
- 3 account the urgency of protecting public health or welfare, the waters of
- 4 this state or the environment.
- 5 3. The steps necessary to comply with the criteria listed in the rules
- 6 adopted pursuant to section 49-282.
- 7 4. The intention of the director to take remedial action and the
- 8 possible liability of the potentially responsible party for the costs of that
- 9 action if the remedial actions set forth in the notice letter are not taken
- 10 by the potentially responsible party.
- 11 B. A potentially responsible party who receives a notice letter
- 12 pursuant to this section has ninety days from the date of receipt of the
- 13 notice letter to present to the director a written, good faith offer to
- 14 voluntarily conduct all or a portion of those remedial actions set forth in
- 15 the notice letter. The director has sole discretion to determine whether to
- 16 accept an offer, and this decision of the director is not subject to judicial
- 17 review.
- 18 C. On receipt of an offer pursuant to subsection B of this section,
- 19 the director may enter into negotiations with the potentially responsible
- 20 party. A decision by the director not to enter into settlement negotiations
- 21 or a decision not to settle under this section is not subject to judicial
- 22 review. If the director decides not to enter into settlement negotiations
- 23 pursuant to this section, the director shall provide to the party seeking
- 24 settlement a written statement that contains the reasons for this decision
- 25 within sixty days of receipt of the offer. Within one hundred eighty days
- 26 after the director's decision to negotiate following receipt of a good faith
- 27 offer made as prescribed by subsection A of this section, the director shall
- 28 determine whether negotiations should continue. If the director determines
- 29 that negotiations should not continue, the director shall inform the
- 30 potentially responsible parties in writing. The director may then issue an
- 31 order pursuant to section 49-287, subsection D or take remedial action
- 32 pursuant to this article. A decision of the director that negotiations
- 33 should not continue is not subject to judicial review. A written statement
- 34 provided by the director pursuant to this subsection is not admissible as
- 35 evidence in any action to determine status as a responsible party or
- 36 liability for remedial action costs.
- 37 D. If a potentially responsible party does not submit an offer in
- 38 response to a notice letter, the attorney general at the request of the
- 39 director may seek to have the potentially responsible party perform the
- 40 remedial actions set forth in the notice letter by issuing a remedial action
- 41 order pursuant to section 49-287, subsection D or by filing an action in the
- 42 superior court in Maricopa county. In the alternative and at the discretion
- 43 of the director, the director may perform the remedial actions set forth in
- 44 the notice letter issued pursuant to subsection A of this section. At the

1 request of the director, the attorney general also shall file an action in
2 the superior court in Maricopa county to recover all reasonable and necessary
3 costs incurred by the director in the performance of the remedial actions set
4 forth in the notice letter.

5 E. FOR NOTICE LETTERS ISSUED AFTER THE EFFECTIVE DATE OF THIS
6 AMENDMENT TO THIS SECTION, TWO YEARS AFTER A NOTICE LETTER IS ISSUED PURSUANT
7 TO SUBSECTION A OF THIS SECTION, THE NOTICE LETTER IS DEEMED WITHDRAWN UNLESS
8 THE DIRECTOR HAS ENTERED INTO A SETTLEMENT WITH THE POTENTIALLY RESPONSIBLE
9 PARTY OR HAS ISSUED AN ORDER PURSUANT TO SECTION 49-287, SUBSECTION D OR HAS
10 FILED AN ACTION IN THE SUPERIOR COURT OR THE UNITED STATES DISTRICT COURT
11 AGAINST THE POTENTIALLY RESPONSIBLE PARTY. THE STATE'S FAILURE TO TAKE
12 ACTION WITHIN THE TIME LIMITS PRESCRIBED BY THIS SUBSECTION BARS THE STATE
13 FROM RECOVERING ITS POST-RESPONSE COSTS INCURRED THROUGH THE EXPIRATION OF
14 THE TWO YEAR PERIOD, AND THOSE POST-RESPONSE COSTS SHALL BE TREATED AS AN
15 ORPHAN SHARE THAT IS RECOVERABLE ONLY FROM THE STATE GENERAL FUND.

16 Sec. 10. Section 49-293, Arizona Revised Statutes, is amended to read:

17 49-293. De minimis settlements

18 A. ANY PARTY WHO HAS RECEIVED A NOTICE LETTER PURSUANT TO SECTION
19 49-291 OR A WRITTEN NOTIFICATION FROM THE DEPARTMENT OF RESPONSIBLE PARTY
20 LIABILITY OR POTENTIAL RESPONSIBLE PARTY LIABILITY MAY REQUEST FROM THE
21 DEPARTMENT A DE MINIMIS SETTLEMENT. THE REQUEST SHALL CONTAIN SUFFICIENT
22 INFORMATION TO DEMONSTRATE THAT THE PARTY MEETS THE CRITERIA PRESCRIBED BY
23 THIS SECTION FOR A DE MINIMIS SETTLEMENT. If the director determines that it
24 is in the public interest and not inconsistent with equitable apportionment
25 and the factors prescribed in section 49-285, subsection ~~F~~ E, the director
26 may settle with any party who may be a responsible party under section
27 49-283, subsection A, ~~paragraphs~~ PARAGRAPH 1, 2 or 3 if that settlement
28 involves only a minor portion of the total remedial action costs at the
29 facility and, in the judgment of the director, if both:

30 1. The amount of the hazardous substances contributed by that party
31 to the facility is minimal in comparison to the amount of other hazardous
32 substances at the facility.

33 2. The toxic or other hazardous effects of the hazardous substances
34 contributed by that party to the facility are minimal in comparison to the
35 toxic or other hazardous effects of other hazardous substances at the
36 facility.

37 B. A decision by the director not to enter into a de minimis
38 settlement with a responsible party is ~~not~~ subject to ~~judicial review~~ APPEAL
39 UNDER SECTION 49-298. IF THE DIRECTOR DECIDES NOT TO ENTER INTO A DE MINIMIS
40 SETTLEMENT WITH A PARTY, THE DIRECTOR SHALL PROVIDE THAT PARTY WITH A WRITTEN
41 STATEMENT THAT CONTAINS THE REASONS FOR THE DECISION. THE WRITTEN STATEMENT
42 SHALL BE PROVIDED WITHIN NINETY DAYS OF RECEIPT OF THE PARTY'S WRITTEN
43 REQUEST FOR A DE MINIMIS SETTLEMENT. ON RECEIPT OF THE DIRECTOR'S DECISION

1 THE PARTY WHO REQUESTED THE SETTLEMENT MAY FILE AN APPEAL WITH THE OFFICE OF
2 ADMINISTRATIVE HEARINGS.

3 C. The director may provide a covenant not to sue concerning any
4 liability to the state under this article or under CERCLA to any party who
5 has settled with the state under this section ~~unless a covenant would be~~
6 ~~contrary to the public interest.~~

7 D. The provisions of section 49-292, subsection C apply to settlements
8 reached pursuant to this section.

9 E. THE DIRECTOR SHALL REPORT TO THE PRESIDENT OF THE SENATE AND THE
10 SPEAKER OF THE HOUSE OF REPRESENTATIVES IN DECEMBER EACH YEAR REGARDING THE
11 NUMBER OF DE MINIMIS SETTLEMENTS MADE WITH RESPONSIBLE PARTIES AND SHALL
12 INCLUDE A BRIEF DESCRIPTION OF THE TERMS OF THE SETTLEMENTS.

13 F. TO DETERMINE WHETHER A DE MINIMIS SETTLEMENT IS IN THE PUBLIC
14 INTEREST, THE DIRECTOR SHALL CONSIDER THE FOLLOWING FACTORS AFTER RECEIVING
15 PUBLIC COMMENT:

- 16 1. WHETHER IT IS FAIR AND EQUITABLE.
- 17 2. WHETHER IT RESULTS IN PROMPT RESOLUTION WITHOUT DISPROPORTIONATE
18 SETTLEMENT AND TRANSACTIONAL EXPENSES OR PREVENTS INSOLVENCY OR BANKRUPTCY.
- 19 3. WHETHER IT WOULD RESULT IN OTHER RESPONSIBLE PARTIES OR THE STATE
20 BEARING A DISPROPORTIONATE SHARE OF REMEDIAL ACTION COSTS.
- 21 4. WHETHER IT PROTECTS PUBLIC HEALTH AND THE ENVIRONMENT.

22 Sec. 11. Section 49-295, Arizona Revised Statutes, is amended to read:
23 49-295. Environmental liens

24 A. In addition to other rights or remedies available to this state,
25 and in order to protect the state's interest in recovering monies expended
26 by the state for remedial action, all remedial action costs for which a
27 person is liable to the state FOR THE REMEDIAL ACTIONS CONDUCTED AT THAT
28 FACILITY BY THE STATE under this article constitute a lien in favor of the
29 state against only the property that is a facility subject to or affected by
30 that remedial action and in which the person who is liable has an ownership
31 interest.

32 B. The director may request the attorney general to file an action in
33 the superior court in the county in which the property is located for an
34 order establishing an environmental lien. The application for an
35 environmental lien may be filed and recorded pursuant to subsection H of this
36 section. The application for an environmental lien shall include the
37 following information:

- 38 1. The name of the record owner of the real property on which the
39 environmental lien is requested, the name of the person purportedly liable,
40 if different, and the person's ownership interest.
- 41 2. The legal description of the real property where the environmental
42 lien attaches.
- 43 3. The amount and an itemization of remedial action costs that have
44 been incurred by this state as of the time the application is filed.

1 4. A statement of the evidence demonstrating that the person is liable
2 for remedial action costs incurred by the state under this article.

3 C. On the filing of an application for an environmental lien, the
4 court shall set a hearing date at least thirty but not more than forty-five
5 days from the date the application is filed with the court. The hearing may
6 be rescheduled if all parties agree to a different date. Service of the
7 application and notice of the hearing date on the purportedly liable person
8 and the record owner of the subject real property, if different, shall be in
9 the manner prescribed in the Arizona rules of civil procedure.

10 D. On a showing by the state of probable cause that the person is
11 liable for remedial action costs incurred by the state under this article and
12 the amount of the remedial action costs and that the person has an ownership
13 interest in the real property that is the subject of the application for an
14 environmental lien, the court may issue an order establishing an
15 environmental lien in favor of the state.

16 E. The order establishing an environmental lien shall be filed and
17 recorded as provided in subsection H of this section. If the state records
18 the application for an environmental lien as provided in subsection H of this
19 section, the environmental lien shall be deemed to attach as of the date of
20 recording of the application for the environmental lien, once the order
21 establishing the environmental lien is filed and recorded. If the state does
22 not record the application for the environmental lien, the environmental lien
23 attaches only on the recording of the order establishing the lien as provided
24 in subsection H of this section.

25 F. If after establishment of an environmental lien the state incurs
26 additional remedial action costs for which the person is liable under this
27 article, the state may seek to amend the existing lien to include in the
28 amount of the lien the additional remedial action costs incurred. The state
29 shall file a statement itemizing the costs incurred with the court, with
30 service as prescribed in subsection C of this section. On a showing by the
31 state of probable cause with respect to the amount of those additional
32 remedial action costs, the court may increase the amount of the environmental
33 lien by the amount of those additional remedial action costs.

34 G. Any person that has been determined liable for remedial action
35 costs in a probable cause hearing for purposes of establishing a lien and
36 that owns an interest in real property that is the subject of an
37 environmental lien established under this section shall notify the state in
38 writing at least sixty days before alienating the interest. If the state
39 believes that it will incur future remedial action costs at the facility, the
40 state may within thirty days of receipt of the notification request a
41 probable cause hearing pursuant to subsection C of this section. The court
42 shall schedule the requested hearing before expiration of the sixty day
43 period beginning on the date the state received notice that the person
44 intends to alienate its interest, unless the parties agree to a continuance.

1 Unless the person giving notice to the state withdraws that notice before the
2 scheduled date of the hearing, the court shall conduct a hearing to estimate
3 the state's future remedial action costs and may issue an order amending the
4 lien to include total future remedial action costs that the state appears
5 reasonably likely to incur. Any order increasing the amount of an existing
6 lien pursuant to this subsection may be filed and recorded as provided in
7 subsection H of this section. Any person having an ownership interest in the
8 property that may be adversely affected by the order increasing the
9 environmental lien may challenge the increased lien amount by filing a motion
10 to quash pursuant to subsection I of this section. If the state fails to
11 request a probable cause hearing with respect to estimated future remedial
12 action costs within thirty days of receipt of the notification, any person
13 subsequently purchasing an interest in real property that is subject to an
14 environmental lien takes that interest subject only to existing, unsatisfied
15 liens, and that person is liable to the state for future remedial action
16 costs only to the extent it is liable for those costs because it is a
17 responsible party under section 49-283 or because it is otherwise liable
18 under other federal, state or common law.

19 H. Any application, order, lien, release or other document required
20 to be recorded under this section shall be recorded in the office of the
21 county recorder of the county where the real property is located. A filing
22 fee or other charge is not required for filing any document pursuant to this
23 section. The filing or mailing of any document pursuant to this section is
24 the responsibility of the director or the director's designee. A copy of an
25 environmental lien shall also be sent by certified mail to any other person
26 including an owner, purchaser, holder of a mortgage or security interest or
27 judgment lien creditor whose interest was perfected and recorded before an
28 application for an environmental lien was recorded.

29 I. If a court issues an order establishing an environmental lien, any
30 person having an interest in the real property that may be adversely affected
31 by establishment of the lien may file a motion to quash the lien. The court
32 retains jurisdiction to resolve any issue of fact or law raised by the motion
33 to quash. If the motion to quash raises issues of fact, the person
34 challenging the lien and the state are entitled to conduct expedited
35 discovery on application to the court and are entitled to a priority for
36 trial.

37 J. At any time after the lien is recorded any person having an
38 ownership interest in real property subject to an environmental lien may move
39 the court to substitute other security for the lien. The court shall retain
40 jurisdiction to determine the sufficiency of the substituted security. On
41 approval of the substituted security, the environmental lien shall be
42 released.

43 K. Notwithstanding any other provision of this section, an
44 environmental lien does not apply to real property that is used primarily for

1 or that is under construction for use in single or multi-family housing at
2 the time the environmental lien is recorded.

3 L. The director shall release an environmental lien if the lien or a
4 claim or judgement for the remedial action costs is satisfied. If the lien
5 or a claim or judgement for the remedial action costs has been partially but
6 not wholly satisfied, the director on request of any person having an
7 ownership interest in the property shall reduce the amount of the lien by the
8 amount satisfied. The director may release an environmental lien if the
9 director determines that the lien is not in the best interest of the state.

10 M. If the court refuses to issue an order establishing an
11 environmental lien, any person having an interest in the property against
12 which an environmental lien was sought is not entitled to attorney fees or
13 damages against the state if the court determines that there was reasonable
14 cause for the application.

15 N. Any determination of any issue by the court in a hearing held
16 pursuant to this section shall not be considered binding in any future
17 judicial or administrative proceeding except that any issue litigated in a
18 motion to quash filed pursuant to this section shall not be litigated again
19 in any subsequent motion to quash filed pursuant to this section that is
20 filed by the same party.

21 O. An environmental lien is subject to any other lien that is
22 perfected and recorded before the attachment date of the environmental lien
23 as determined pursuant to subsection E of this section.

24 P. On entry of a final judgment in favor of the state for remedial
25 action costs, an environmental lien may be foreclosed in the manner provided
26 for foreclosure of mortgages pursuant to title 33, chapter 6, article 2. The
27 state may combine an action to recover remedial action costs with an action
28 to foreclose an environmental lien established under this section.

29 Q. This section does not preclude the state from initiating other
30 actions under this title or under federal law.

31 Sec. 12. Section 49-296, Arizona Revised Statutes, is amended to read:
32 49-296. Nonbinding allocation of responsibility; mixed funding

33 A. On request of a potentially responsible party or on the director's
34 own initiative, the director may prepare a nonbinding preliminary allocation
35 of responsibility for a site for which there is more than one potentially
36 responsible party. This preliminary allocation shall be based on the factors
37 prescribed in section 49-285, subsection ~~F~~ E. The preliminary allocation
38 shall allocate total remedial action costs or any portion of those costs
39 among potentially responsible parties at that site. If requested by a
40 potentially responsible party, the director's costs in preparing the
41 preliminary allocation constitute remedial actions costs that may be
42 recovered from responsible parties. The preliminary allocation is not
43 subject to judicial review and is not admissible as evidence in any
44 proceeding relating to status as a responsible party or liability for

1 remedial action costs. The preliminary allocation does not constitute an
2 apportionment or other statement on divisibility of harm or causation. The
3 director's decision not to prepare a preliminary allocation of responsibility
4 is not subject to judicial review.

5 B. A settlement agreement made pursuant to this article may provide
6 that the director shall reimburse a party to the agreement from the fund for
7 the costs of specific remedial actions that the party has agreed to perform.
8 In appropriate cases, the director may make reasonable efforts pursuant to
9 this article to recover any fund expenditures from responsible parties who
10 are not involved in the settlement agreement. A decision by the director not
11 to reimburse a party from the fund for the costs of conducting a remedial
12 action that is contained in a settlement agreement is not subject to judicial
13 review.

14 Sec. 13. Title 49, chapter 2, article 5, Arizona Revised Statutes, is
15 amended by adding sections 49-297 and 49-298, to read:

16 49-297. Withdrawal of responsible party notice: appeal

17 A. IF THE DEPARTMENT NOTIFIES A PERSON IN WRITING THAT THE PERSON IS
18 OR MAY BE A RESPONSIBLE PARTY, THAT PERSON MAY REQUEST IN WRITING THAT THE
19 DIRECTOR WITHDRAW THE NOTICE. THE WRITTEN REQUEST SHALL INCLUDE SUFFICIENT
20 INFORMATION TO DEMONSTRATE TO THE DEPARTMENT THAT NO RELEASE OR THREAT OF A
21 RELEASE OCCURRED AT THE FACILITY.

22 B. WITHIN NINETY DAYS OF THE RECEIPT OF A WRITTEN REQUEST MADE AS
23 PRESCRIBED BY SUBSECTION A, THE DIRECTOR SHALL GRANT OR DENY THE REQUEST IN
24 WRITING. FAILURE OF THE DIRECTOR TO ISSUE A WRITTEN DECISION WITHIN NINETY
25 DAYS IS DEEMED A DENIAL OF THE REQUEST.

26 C. ON DENIAL OF ALL OR PART OF A REQUEST MADE AS PRESCRIBED BY
27 SUBSECTION A, THE PERSON MAKING THE REQUEST MAY APPEAL THAT DECISION TO THE
28 OFFICE OF ADMINISTRATIVE HEARINGS.

29 49-298. Appeals to the office of administrative hearings:
30 judicial review

31 A. ANY PERSON WHO IS OR MAY BE ADVERSELY AFFECTED MAY APPEAL TO THE
32 OFFICE OF ADMINISTRATIVE HEARINGS ANY OF THE FOLLOWING ACTIONS:

33 1. WRITTEN NOTIFICATION BY THE DEPARTMENT OF RESPONSIBLE PARTY
34 LIABILITY OR POTENTIALLY RESPONSIBLE PARTY LIABILITY PURSUANT TO SECTION
35 49-283.

36 2. A NOTICE LETTER ISSUED BY THE DEPARTMENT PURSUANT TO SECTION
37 49-291.

38 3. A DENIAL OF A REQUEST TO WITHDRAW A NOTICE LETTER PURSUANT TO
39 SECTION 49-297.

40 4. AN ORDER ISSUED BY THE DIRECTOR FOR REMEDIAL ACTION PURSUANT TO
41 SECTION 49-287.

42 5. FAILURE OF THE DEPARTMENT TO ENTER INTO A DE MINIMIS SETTLEMENT AS
43 PRESCRIBED BY SECTION 49-293, SUBSECTION B.

44 6. OTHER AGENCY ACTION THAT IMPOSES POTENTIAL LIABILITY.

1 B. AN APPEAL SHALL BE INITIATED BY FILING A NOTICE OF APPEAL WITH THE
2 OFFICE OF ADMINISTRATIVE HEARINGS WITHIN THIRTY DAYS AFTER RECEIPT OF THE
3 WRITTEN NOTICE OF THE ACTION BEING APPEALED.

4 Sec. 14. Joint select committee on the water quality assurance
5 revolving fund; report

6 A. The joint select committee on the water quality assurance revolving
7 fund is established, consisting of the following persons:

8 1. Three members of the house of representatives appointed by the
9 speaker of the house of representatives, no more than two of whom shall be
10 members of the same political party.

11 2. Three members of the senate appointed by the president of the
12 senate, no more than two of whom shall be members of the same political
13 party.

14 3. A representative of the attorney general's office, designated by
15 the attorney general.

16 4. A representative of the department of environmental quality,
17 designated by the director of environmental quality.

18 5. A representative of a city appointed by the president of the
19 senate.

20 6. A representative of an agricultural improvement district appointed
21 by the speaker of the house of representatives.

22 7. A representative of a county appointed by the president of the
23 senate.

24 8. Two citizens, one of whom shall reside in an area affected by a
25 state water quality assurance revolving fund site, appointed by the speaker
26 of the house of representatives.

27 9. One person representing a public health organization, appointed by
28 the president of the senate.

29 10. Two persons representing businesses that are affected by the water
30 quality assurance revolving fund program, one appointed by the speaker of the
31 house of representatives and one appointed by the president of the senate.

32 B. The committee shall:

33 1. Review the potential costs associated with remediating the existing
34 water quality assurance revolving fund sites.

35 2. Consider measures to encourage and expedite remediation of
36 contaminated property.

37 3. Consider alternative methods for determining liability among
38 responsible parties and potentially responsible parties for remedial actions
39 taken pursuant to state law, including possible processes for allocating that
40 liability.

41 4. Consider options for an adequate dedicated source of funding for
42 the water quality assurance revolving fund established pursuant to section
43 49-282, Arizona Revised Statutes.

1 5. Consider the effects of precluding the use of CERCLA at sites in
2 this state that are not included in the national priorities list by the
3 administrator of the United States environmental protection agency.

4 6. Consider the recommendations of the groundwater task force
5 appointed by the department of environmental quality and the department of
6 water resources concerning administrative and legislative improvements to
7 groundwater remediation programs.

8 C. In addition to the issues prescribed by subsection B of this
9 section, the committee is directed to develop recommendations to accomplish
10 at least the following goals:

11 1. Improvements to the de minimis settlement process.
12 2. Incentives for the end use of remediated water.
13 3. Establishment of a process for the equitable apportionment of
14 liability.

15 4. Incentives for early management of groundwater plumes to prevent
16 migration and to control sources of contamination.

17 5. Identification of contaminated sites that present a serious risk
18 to human health and the environment which can be effectively remediated using
19 cost-effective and practicable remedial measures.

20 6. Evaluation of other issues that will result in a more efficient,
21 fair and effective water quality assurance revolving fund program.

22 D. The committee shall make recommendations on these issues and shall
23 report its recommendations to the speaker of the house of representatives and
24 the president of the senate by December 1, 1996.

25 Sec. 15. Delayed repeal

26 Section 7 of this act is repealed from and after July 31, 1997.

27 Sec. 16. Delayed effective date

28 Section 8 of this act is effective from and after July 31, 1997.

29 Sec. 17. Effect on pending WOARF and CERCLA actions

30 This act shall not apply to legal actions filed and served on or before
31 April 1, 1996, and that contain a claim under title 49, chapter 2, article
32 5, Arizona Revised Statutes, or under CERCLA.

33 Sec. 18. Settlements and consent decrees; liability

34 A. Until August 1, 1997, the director of the department of
35 environmental quality may collect from a responsible party in any settlement
36 agreement or in any consent decree entered pursuant to title 49, chapter 2,
37 article 5, Arizona Revised Statutes, or in any consent decree pursuant to any
38 litigation under CERCLA commenced after the effective date of this act, only
39 the responsible party's proportionate share of liability for the matters
40 covered in the settlement agreement or consent decree after considering the
41 following factors:

42 1. The responsible party's contribution to the soil and groundwater
43 contamination.

1 2. The amount, concentration and degree of toxicity of each hazardous
2 substance released by the responsible party.

3 3. The degree of involvement by the responsible party in the
4 generation, transportation, treatment, storage or disposal of the hazardous
5 substance.

6 4. The financial resources of the responsible party.

7 5. The responsible party's ability to continue in business after
8 payment of its proportional share and whether the payment of the
9 proportionate share would render the responsible party insolvent or require
10 the responsible party to seek protection under federal bankruptcy law.

11 6. The magnitude of the risk to human health or the environment caused
12 by each hazardous substance released by the responsible party.

13 7. The cooperation or the lack of cooperation of the responsible party
14 with the director of the department of environment quality.

15 8. Orphan shares and the shares of non-participating responsible
16 parties shall not be included in any other responsible party's proportionate
17 share.

18 9. Any other factors deemed appropriate by the director of the
19 department of environment quality to balance the equities of the parties.

20 B. The responsible party shall bear the burden of providing the
21 director of the department of environmental quality sufficient information
22 to determine the factors in subsection A, paragraphs 1 through 5, of this
23 section. As long as the responsible party is negotiating in good faith
24 pursuant to section 49-291 or section 49-293, Arizona Revised Statutes, or
25 the parties are involved in any administrative proceeding pursuant to
26 sections 49-293, 49-297 or 49-298, Arizona Revised Statutes, or any
27 administrative proceeding to appeal the director's consideration of the
28 factors contained in this section, the director shall not proceed with
29 litigation against the responsible party.

30 C. If the director of the department of environmental quality and the
31 responsible party are not able to agree on a settlement agreement or a
32 consent decree pursuant to title 49, chapter 2, article 5, Arizona Revised
33 Statutes, or in any consent decree pursuant to any litigation under CERCLA
34 commenced after the effective date of this act, or if the responsible party
35 fails to provide the director sufficient information to determine the factors
36 in subsection A, paragraphs 1 through 5, of this section, the director may
37 pursue litigation against the responsible party. Any such action that is
38 originally filed by the department of environmental quality is subject to the
39 allocation factors prescribed by subsection A of this section. The attorney
40 general and the director shall not encourage the environmental protection
41 agency or any third party to file any CERCLA action in which the attorney
42 general or the director could later intervene. Further, any intervention or
43 joinder as a co-plaintiff by the department or attorney general in a CERCLA
44 action shall be approved personally by the governor of Arizona after the

1 responsible party is given an opportunity to meet with the governor. The
2 responsible party may seek an administrative review of any decision made
3 pursuant to this subsection in accordance with section 49-298, Arizona
4 Revised Statutes, as added by this act.

5 Sec. 19. Independent study; groundwater contamination sites;
6 underground storage tank revolving fund; procurement
7 code

8 A. The department of environmental quality may use up to \$250,000 from
9 the water quality assurance revolving fund established pursuant to section
10 49-282, Arizona Revised Statutes, to contract for an independent study that
11 will assess those sites that are listed as water quality assurance revolving
12 fund sites. The audit shall review, assess and categorize those sites on the
13 following factors:

- 14 1. The relative risk of harm to human health and the environment.
- 15 2. The practicability of clean up at that site.
- 16 3. A consideration of effective technologies at that site.
- 17 4. Cost by project site.

18 B. The independent study shall consider the effects of potential
19 changes in the liability allocation system, including the effects of joint
20 liability, several liability and liability for releases that occurred before
21 August, 1986.

22 C. The department of environmental quality is exempt from title 41,
23 chapter 23, Arizona Revised Statutes, relating to the procurement of this
24 independent study, except that the department of environmental quality shall
25 prepare a request for proposals which shall provide notice to the public, and
26 shall require competitive, sealed bids from all prospective bidders, which
27 shall become public on award of the contract.

28 D. The department is authorized to accept private gifts, grants and
29 donations in addition to the amount authorized for the independent study
30 pursuant to subsection A of this section.

31 Sec. 20. Retroactivity

32 Section 19 of this act is effective retroactively to April 1, 1996.

33 Sec. 21. Intent

34 The legislature intends by this act to undertake a comprehensive review
35 of the existing program that is financed by the water quality assurance
36 revolving fund. The legislature intends that the joint select committee
37 established by this act shall consider the issues brought before the
38 committee and develop recommendations for the forty-third legislature to
39 consider in the first regular session, recognizing that this act removes
40 joint liability from the current liability structure and does not in itself
41 provide for a dedicated source of funding sufficient for the amended program.
42 Ultimately, the legislature intends that the state should be precluded from
43 using federal law to enforce its claims to the extent federal law is
44 inconsistent with state law and that the forty-third legislature, first

1 regular session determine whether preclusion should be codified in statute.
2 During the interim, the legislature intends that the state comply with the
3 provisions in section 18 of this act. It is intended that this act, in
4 conjunction with the actions to be taken by the forty-third legislature, will
5 accomplish the following:

6 1. Establishment of a water quality assurance program that is fair,
7 workable, financially practicable, and based upon, but not limited to, the
8 factors set forth in subsection A of section 19 of this act.

9 2. Identification and establishment of a dedicated source of funding
10 sufficient for the operation of the revised water quality assurance program.

11 Sec. 22. Repeal

12 Section 14 of this act is repealed on February 1, 1997.

13 Sec. 23. Repeal

14 Laws 1995, chapter 202, section 9 is repealed.

15 Sec. 24. Retroactivity

16 Section 23 of this act applies retroactively to from and after June 30,
17 1996.

APPROVED BY THE GOVERNOR APRIL 23, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 1996