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Jane Dee Hull
Secretary of State

CHAPTER 270

HOUSE BILL 2288

AN ACT

AMENDING SECTIONS 49-281 AND 49-1005, ARIZONA REVISED STATUTES; AMENDING SECTION 49-282, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 202, SECTION 8; AMENDING LAWS 1995, FOURTH SPECIAL SESSION, CHAPTER 1, SECTION 10; RELATING TO THE ENVIRONMENT.

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

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

49-281. Definitions

In this article, unless the context otherwise requires:

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

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

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

4. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, but excludes:

(a) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine.

(c) Release of source, by-product or special nuclear material, as those terms are defined in section 30-651, resulting from the operation of a production or utilization facility as defined in the atomic energy act of 1954, as amended (68 Stat. 919), which is subject to the regulatory authority of the United States nuclear regulatory commission as specified in that act, and the agreement, dated March 30, 1967, entered into between the governor of this state and the United States atomic energy commission pursuant to section 30-656 and section 274 of the atomic energy act of 1954, as amended.

(d) The normal application of fertilizer.

5. "Remedial actions" means those actions the director determines are reasonable and necessary in the event of the release or threat of release of hazardous substances into the environment such that the waters of the state are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the state. REMEDIAL ACTIONS INCLUDE THE USE OF BIOSTIMULATION WITH INDIGENOUS MICROBES AND BIOAUGMENTATION USING MICROBES THAT ARE NONPATHOGENIC, NONOPPORTUNISTIC AND THAT ARE NATURALLY OCCURRING. Remedial actions may include community information and participation costs and providing an alternative drinking water supply.

Sec. 2. Section 49-282, Arizona Revised Statutes, as amended by Laws 1995, chapter 202, section 8, is amended to read:

49-282. <u>Water quality assurance revolving fund; uses; remedial action criteria</u>

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.

7. Manifest resubmittal fees collected under section 49-922.01.

8. Hazardous waste facility registration fees collected under section 49-929.

9. Hazardous waste resource recovery facility registration fees collected under section 49-930.

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

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

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

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

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

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

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

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

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

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

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

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

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

9. FOR compliance monitoring, investigation and enforcement activities pertaining to generating, transporting, treating, storing and disposing of hazardous waste. The amount to be used for this type of activity is limited to the amount received in the prior fiscal year for the hazardous waste facility registration fee.

D. Remedial actions shall:

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

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

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

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

1. Population, environmental and welfare concerns at risk.

2. Routes of exposure.

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

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

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

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

7. The technical practicality and cost-effectiveness of remedial actions applicable to a site~~.~~ INCLUDING THE USE OF BIOREMEDIATION IF APPROPRIATE FOR BOTH SOIL AND WATER REMEDIAL ACTIONS.

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

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

G. Any political subdivision of this state which uses, used or may use waters of the state for drinking water purposes or any state agency, regardless of whether the political subdivision or state agency is a responsible party, may apply to the director for a loan of monies from the fund to be used for remedial action. An application to the fund for remedial action costs shall not be treated as an admission that a political subdivision or an agency of the state is a responsible party, but a political subdivision or a state agency that is a responsible party is liable for remedial action costs in the same manner, including reimbursement of the fund, as any other responsible party. The political subdivision shall commit a local matching amount at least equal to the amount sought from the fund.

Sec. 3. Section 49-1005, Arizona Revised Statutes, is amended to read:

49-1005. Corrective action

A. When a release is discovered the owner and operator of an underground storage tank shall take immediate action to stop the release and to identify and mitigate any fire, explosion or vapor hazard.

B. Except as otherwise provided in section 49-1016, subsection C, the owner and operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank.

C. Nothing in this section shall prevent the director from taking or requiring corrective action pursuant to any other provision of law.

D. The director shall prescribe by rule the corrective actions to be taken in the event of a release of a regulated substance from an underground storage tank. Any rules adopted pursuant to this subsection shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted. Corrective actions shall include requirements regarding:

1. Initial response measures.
2. Initial abatement measures.
3. A site check.
4. Initial site characterization.
5. Removal of free product.
6. Investigations for soil, surface water and groundwater cleanups.
7. Responses to contaminated soil, surface water and groundwater.

E. CORRECTIVE ACTIONS MAY INCLUDE THE USE OF BIOSTIMULATION WITH INDIGENOUS MICROBES AND BIOAUGMENTATION USING MICROBES THAT ARE NONPATHOGENIC, NONOPPORTUNISTIC AND THAT ARE NATURALLY OCCURRING.

~~E.~~ F. Until rules adopted pursuant to subsection D of this section are in effect, corrective actions shall be accomplished in a manner consistent with and no more stringent than 40 Code of Federal Regulations sections 280.60 through 280.67.

Sec. 4. Laws 1995, fourth special session, chapter 1, section 10 is amended to read:

Sec. 10. Preapproval program for underground storage tank claims; soil remediation; emergency rules

A. Notwithstanding section 49-1052, subsections B and O, Arizona Revised Statutes, the department of environmental quality shall adopt rules not later than August 15, 1996 that relate to preapproval requirements for claims from the underground storage tank revolving fund and coverage for the costs of corrective actions relating to soil remediation. THESE RULES SHALL PROVIDE THAT THROUGH THE PREAPPROVAL PROCESS THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL DETERMINE, ON A SITE-BY-SITE BASIS, THE MOST COST EFFECTIVE CORRECTIVE ACTION FOR THAT SITE TAKING INTO CONSIDERATION THE RISK TO HUMAN HEALTH AND THE ENVIRONMENT. IN MAKING THIS DETERMINATION, THE DEPARTMENT SHALL CONSIDER THE USE OF BIOREMEDIATION AND OTHER COST EFFECTIVE REMEDIATION

1 TECHNOLOGIES. THE RULES SHALL PROHIBIT PAYMENT FROM THE UNDERGROUND STORAGE
2 TANK REVOLVING FUND FOR CLAIMS FOR COSTS INCURRED FOR CORRECTIVE ACTIONS THAT
3 EXCEED THE COSTS OF CORRECTIVE ACTIONS APPROVED BY THE DEPARTMENT. The rules
4 shall be emergency rules and are exempt from title 41, chapter 6, Arizona
5 Revised Statutes, except that the department shall provide public notice and
6 a public hearing.
7 B. Notwithstanding section 49-1052, subsection B, Arizona Revised
8 Statutes, any phase of a corrective action that is initiated after final
9 certification of the rules prescribed by subsection A of this section is
10 subject to those rules.
11 C. Nothing in this section shall be construed to relieve the owner or
12 operator of an underground storage tank from the requirements of title 49,
13 chapter 6, Arizona Revised Statutes.

APPROVED BY THE GOVERNOR APRIL 23,1996

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