

State of Arizona  
Senate  
Forty-second Legislature  
Second Regular Session  
1996

**FILED**

**Jane Dee Hull  
Secretary of State**

CHAPTER 292

**SENATE BILL 1403**

AN ACT

AMENDING SECTIONS 49-544, 49-1015 AND 49-1052, ARIZONA REVISED STATUTES; AMENDING SECTION 49-1054, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, FOURTH SPECIAL SESSION, CHAPTER 1, SECTION 4; REPEALING SECTIONS 49-1056 AND 49-1073, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5; REPEALING LAWS 1995, FOURTH SPECIAL SESSION, CHAPTER 1, SECTION 9; MAKING AN APPROPRIATION; RELATING TO UNDERGROUND STORAGE TANKS.

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

Section 1. Section 49-544, Arizona Revised Statutes, is amended to read:

49-544. Emissions inspection fund; composition; authorized expenditures; exemptions; investment

A. An emissions inspection fund is established in the state treasury and is subject to legislative appropriation. The emissions inspection fund shall consist of:

1. Monies appropriated to the fund by the legislature.
2. All monies which are remitted by owners of vehicles and which are collected for emissions inspection.
3. All monies collected by the director for the issuance of inspection certificates to owners of fleet emissions inspection stations.
4. Monies received from private grants or donations when so designated by the grantor or donor.
5. Monies received from the United States by grant or otherwise to assist the state in any emissions inspection program.
6. All monies collected pursuant to section 49-543, subsection G.

1           ~~7. Monies collected or allocated from the underground storage tank~~  
2 ~~revolving fund established by section 49-1015.~~

3           B. Monies in the emissions inspection fund may be used for the  
4 following:

5           1. Enforcement of the provisions of this article related to fleet  
6 emissions inspections, exemptions, and certificates of waiver.

7           2. Payment of contractual charges to independent contractors pursuant  
8 to section 49-545.

9           3. Costs to the state of administering the emissions inspection  
10 services performed by the independent contractor, including inspection  
11 station auditing, contractor training and certification, and motorist  
12 assistance.

13           4. Funding the state's portion of the catalytic converter program  
14 costs prescribed by section 49-542.

15           5. Funding the vehicle repair grant program prescribed by section  
16 49-542.

17           6. Funding the costs in excess of ten dollars per year for the  
18 transient loaded emissions test as authorized under section 49-542.

19           7. Other costs of administering and enforcing THE provisions of this  
20 article.

21           C. The director of the department of administration shall approve  
22 properly certified claims submitted by the department of environmental  
23 quality for the payment of contractual charges to independent contractors and  
24 for enforcement of the provisions of this article related to fleet emissions  
25 inspections, exemptions and certificates of waiver. When such claims are  
26 approved by the director of the department of administration and transmitted  
27 to the state treasurer, he shall transfer the amounts claimed to the director  
28 of environmental quality.

29           D. Monies in the emissions inspection fund are exempt from the  
30 provisions of section 35-190, relating to lapsing of appropriations.

31           E. The state treasurer shall invest inactive monies in the emissions  
32 inspection fund pursuant to laws governing such deposits. All interest  
33 earned on emissions inspection fund monies shall be credited by the state  
34 treasurer to the emissions inspection fund.

35           Sec. 2. Section 49-1015, Arizona Revised Statutes, is amended to read:

36           49-1015. Underground storage tank revolving fund; regulatory  
37 account; use; purpose

38           A. An underground storage tank revolving fund is established in the  
39 state treasury and shall be administered by the director. Monies in the fund  
40 are exempt from lapsing under section 35-190. The fund shall be divided into  
41 three separate accounts designated as the regulatory account, the assurance  
42 account and the grant account. The monies in the assurance account and the  
43 grant account shall be divided into two portions. Monies generated and  
44 collected from a county with a population in excess of one million two

1 hundred thousand persons according to the most recent United States decennial  
2 census shall be segregated from the monies generated and collected from any  
3 other county and shall be placed in an area A, as defined in section 49-541,  
4 account. On notice from the director, the state treasurer shall invest and  
5 divest monies in each separate account as provided by section 35-313. The  
6 state treasurer shall credit monies from these investments to the respective  
7 account. The regulatory account shall be used according to this section.  
8 The assurance account and grant account shall be used according to articles  
9 3 and 4 of this chapter.

10 B. The regulatory account consists of monies appropriated by the  
11 legislature, monies which are expenses, costs and judgments recovered  
12 pursuant to this chapter, monies obtained from the fees imposed by this  
13 chapter and the rules adopted under this chapter and gifts.

14 C. Monies from the regulatory account may be used for the following:

15 1. To provide state matching monies and to meet other obligations as  
16 prescribed by section 9003(h)(7)(B) of the federal solid waste disposal act.

17 2. For all the reasonable and necessary costs incurred in taking  
18 corrective actions pursuant to section 49-1017.

19 3. For the costs of recovering the expenses of corrective actions  
20 pursuant to section 49-1017.

21 4. For the costs incurred in administering the regulatory requirements  
22 of this chapter.

23 5. For the costs of administering the regulatory account. The  
24 reasonable costs of the department to administer the regulatory account shall  
25 be reimbursed by the regulatory account, but the regulatory account shall not  
26 be charged with any other costs incurred by the department in administering  
27 this chapter.

28 ~~D. Beginning in fiscal year 1996-1997, fifty per cent of the monies~~  
29 ~~received from the area A, as defined in section 49-541, portion of the~~  
30 ~~underground storage tank tax established pursuant to section 49-1031 and~~  
31 ~~fifty per cent of the interest income earned by the area A portion of the~~  
32 ~~fund shall be transferred to the state treasurer for deposit in the emissions~~  
33 ~~inspection fund established by section 49-544.~~

34 Sec. 3. Section 49-1052, Arizona Revised Statutes, is amended to read:  
35 49-1052. Partial coverage of corrective action costs

36 A. The department shall provide from the assurance account partial  
37 coverage of the costs incurred after September 15, 1989 of a corrective  
38 action initiated under section 49-1005, EXCEPT AS PROVIDED IN SUBSECTION P  
39 OF THIS SECTION. The partial coverage provided by this section is available  
40 only to the extent of the monies available in the assurance account. If  
41 there are insufficient monies available in the assurance account to pay all  
42 corrective action costs which the department has determined should be paid,  
43 the department shall defer such payment until sufficient monies are available  
44 to pay such corrective action costs. The department shall not provide any

1 coverage, and the assurance account is not liable, for compensating third  
2 parties for bodily injury or property damage caused by releases from  
3 underground storage tanks.

4 B. The department may provide the coverage required by this section  
5 either by paying the owner, the operator or a designated representative of  
6 the owner or operator or any combination of these persons or a political  
7 subdivision covered by subsection H of this section or by making direct  
8 payments for corrective actions on behalf of the owner, operator or political  
9 subdivision. Pursuant to rules adopted by the department the department  
10 shall require compliance with preapproval procedures for all corrective  
11 actions and related costs for which payment is being sought pursuant to this  
12 section. Preapproval shall not be required by the department until final  
13 rules are adopted. Owners or operators who are not seeking payment pursuant  
14 to this section are exempt from any preapproval requirements. This  
15 subsection shall not be construed to relieve an owner or operator from any  
16 of the requirements of this chapter. THE DEPARTMENT SHALL NOT IMPOSE THE  
17 REQUIREMENTS OF THIS CHAPTER ON AN OWNER OR OPERATOR IN A MANNER WHICH IS  
18 INCONSISTENT WITH THE PROCEDURES FOR PREAPPROVAL ADOPTED PURSUANT TO THE  
19 RULES AUTHORIZED UNDER THIS SUBSECTION. THE DEPARTMENT SHALL NOT TAKE  
20 ENFORCEMENT ACTION OR IMPOSE PENALTIES AGAINST THE OWNER OR OPERATOR WHO  
21 SUBMITTED THE APPLICATION FOR PREAPPROVAL WHILE THE APPLICATION FOR  
22 PREAPPROVAL IS PENDING. THE DEPARTMENT SHALL NOT CONSIDER THE PASSAGE OF  
23 TIME WHILE THE PREAPPROVAL APPLICATION IS PENDING TO BE A BASIS FOR TAKING  
24 AN ENFORCEMENT ACTION.

25 C. An owner, an operator, a designated representative of an owner or  
26 operator or a political subdivision covered by subsection H of this section  
27 may apply to the department for partial coverage of the corrective action  
28 costs pursuant to this article and rules adopted pursuant to this article.

29 D. The department shall not pay for corrective action costs unless the  
30 department determines that the corrective action has met, or when completed  
31 will meet, the requirements of section 49-1005. The department may require  
32 by rule that persons who perform payable corrective actions meet specified  
33 standards of qualification and be approved by the department.

34 E. The department shall not provide any coverage described in this  
35 article to the United States or to its agencies or this state or to its  
36 agencies or to owners and operators of underground storage tanks used for the  
37 purpose of storing, handling or distributing naphtha-type jet fuel or  
38 kerosene-type jet fuel with respect to such tanks.

39 F. The department shall not provide any coverage described in this  
40 article to an owner or operator or any person or entity employed or retained  
41 by an owner or operator, if any of the following apply:

42 1. The owner or operator is delinquent in the payment of any fee,  
43 penalty, or interest thereon imposed under this chapter and fails to cure  
44 that delinquency after notice from the department.

1           2. The owner or operator is delinquent in filing any excise tax return  
2 required by section 49-1032, subsection B and fails to cure that delinquency.

3           3. The underground storage tanks included in the application for  
4 coverage are located at a site that is the subject of an enforcement  
5 proceeding under section 49-1013. The owner or operator remains eligible for  
6 coverage for other sites where underground storage tanks are located if the  
7 owner or operator is not the subject of an enforcement proceeding regarding  
8 those sites. Payment from the assurance account will be withheld during the  
9 pendency of a final compliance order for those costs directly associated with  
10 those activities that are the subject of the compliance order. Any payment  
11 costs that are incurred prior to a compliance order becoming final and that  
12 are not directly associated with the subject of that compliance order shall  
13 be eligible for payment pursuant to this section. An owner or operator who  
14 formally consents in writing to an administrative order shall not be  
15 considered to be subject to an enforcement proceeding, provided that the  
16 owner or operator is in compliance with the consent order.

17           4. An individual, an owner or operator or any entity seeking coverage  
18 is convicted of fraud relating to a corrective action or to any claim made  
19 for corrective action payment from the assurance account. This paragraph  
20 applies only to the individual, the owner or operator or the entity that is  
21 actually convicted of fraud relating to a corrective action or to a claim  
22 made for corrective action payment.

23           5. The owner or operator has failed to comply with the financial  
24 responsibility requirements of 40 Code of Federal Regulations part 280,  
25 subpart H with respect to the underground storage tanks included in the  
26 application for coverage and all of the following conditions are met on or  
27 after July 1, 1996:

28           (a) The person seeking coverage is an owner or operator of the tank.

29           (b) The tank is in operation AND THERE ARE NO PREEXISTING CONDITIONS  
30 PRECLUDING THE ABILITY TO OBTAIN FINANCIAL RESPONSIBILITY WHICH WOULD HAVE  
31 COVERED THE RELEASE.

32           (c) The release is reported.

33 The owner or operator remains eligible for coverage for other sites where the  
34 owner or operator has complied with the financial responsibility requirements  
35 of this paragraph.

36           G. The department shall establish criteria for determining priorities  
37 among the applications for partial coverage under this article. The criteria  
38 shall include:

39           1. The need for financial assistance.

40           2. The risk to human health and the environment.

41           3. Whether the partial coverage is provided as a direct payment to a  
42 person performing a corrective action.

43           4. The extent to which a delay in providing coverage will affect a  
44 corrective action in progress.

1           5. The date on which an application for coverage is made.

2           6. The date on which a corrective action for which coverage is sought  
3 is to be or was taken.

4           7. Whether the payment has been previously deferred because of  
5 insufficient monies in the assurance account and, if deferred, the length of  
6 such deferral.

7           H. The department may provide the partial coverage described in this  
8 article for corrective action costs incurred by a political subdivision with  
9 respect to a release from an underground storage tank if the underground  
10 storage tank or the property where the underground storage tank is located  
11 comes into the possession or control of the political subdivision under  
12 either title 12, chapter 8, article 2 or 3.

13           I. The department may provide the partial coverage described in this  
14 article for corrective action costs with respect to a release from an  
15 underground storage tank incurred by a person who undertakes to meet the  
16 requirements of sections 49-1002, 49-1004, 49-1005 and 49-1008, but who is  
17 not an owner or operator. A person who undertakes to meet the requirement  
18 and who is not an owner or an operator is eligible for one hundred per cent  
19 coverage. By December 31 of each year, the department of environmental  
20 quality shall forward a list of the parties who received payment pursuant to  
21 this subsection during the previous calendar year to the department of  
22 revenue for purposes of determining eligibility for the income tax credit  
23 provided in sections 43-1085 and 43-1173. By December 31 of each year, the  
24 department of environmental quality shall also provide the department of  
25 revenue verification of the corrective actions taken by each person during  
26 the previous calendar year pursuant to this subsection.

27           J. The department may provide the partial coverage described in this  
28 article for corrective action costs with respect to a release from an  
29 underground storage tank incurred by a person who owns or owned property at  
30 the time an underground storage tank is located on the property under the  
31 circumstances described in section 49-1001.01. Partial coverage provided  
32 under this subsection shall be subject to the requirements imposed by this  
33 article.

34           K. On or after January 1, 1996 and subject to section 38-503 and other  
35 applicable statutes and rules, the department may contract with a private  
36 consultant for the purpose of assisting the department in reviewing work  
37 plans, site characterization reports, corrective action plans, monitoring  
38 reports and other information to determine whether corrective actions meet  
39 the criteria and requirements of this chapter and the rules adopted by the  
40 director. If the department contracts with a consultant pursuant to this  
41 section, an owner or operator may request that the department expedite the  
42 review or inspection process by requesting that the department use the  
43 services of the consultant and by agreeing to pay to the department the costs  
44 of the consultant's services. The department shall not use a private

1 consultant if the fee charged for that service would be more than the fee the  
2 department would charge to provide that service. The department shall pay  
3 the consultant for the services rendered by the consultant from fees paid by  
4 the applicant to the department pursuant to this section.

5 L. Claims for coverage that are not paid within one hundred eighty  
6 days after receipt by the department of a complete and correct claim accrue  
7 interest at the rate of eight per cent per year. Interest shall not accrue  
8 on any claim that is unpaid as a result of insufficient monies in the area  
9 account for that claim.

10 M. Requests by the department for additional information from  
11 claimants shall be reasonably related to the determination of the validity  
12 of the claim as prescribed by this article.

13 N. Beginning on January 1, 1996, claims for coverage at a site shall  
14 be submitted to the department no more than one hundred twenty days after the  
15 claimant receives a site closure letter sent by the department by certified  
16 mail with notice that the claimant has one hundred twenty days to submit a  
17 claim for that site. If the claim is submitted in a timely manner, the  
18 claimant may correct or supplement the claim on request of the department  
19 within a reasonable time as specified by the department without loss of  
20 coverage. Failure to submit a timely claim shall result in denial of the  
21 claim.

22 O. The department shall provide coverage for the costs of corrective  
23 actions relating to soil remediation that are consistent with remediation  
24 standards developed pursuant to chapter 1, article 4 of this title. Payment  
25 shall only be made for corrective action costs to remediate to levels  
26 approved by the department pursuant to rule. The department shall not  
27 enforce this subsection until final rules are adopted.

28 P. NO COVERAGE SHALL BE PROVIDED FOR ANY PHASE OF CORRECTIVE ACTION  
29 UNLESS THE DEPARTMENT IS NOTIFIED OF THE PROPOSED CORRECTIVE ACTION PRIOR TO  
30 COMMENCEMENT OF THE ACTION. THE DEPARTMENT SHALL, UPON RECEIPT OF THE  
31 NOTICE, NOTIFY THE OWNER OR OPERATOR THAT:

- 32 1. MONIES IN THE ASSURANCE FUND ARE LIMITED.  
33 2. PAYMENTS FROM THE FUND MAY BE DELAYED.  
34 3. NO INTEREST SHALL BE PAID ON ANY DELAYED PAYMENT PURSUANT TO  
35 SUBSECTION L OF THIS SECTION.

36 Sec. 4. Section 49-1054, Arizona Revised Statutes, as amended by Laws  
37 1995, fourth special session, chapter 1, section 4, is amended to read:

38 49-1054. Extent of coverage; insurance

39 A. The department shall provide coverage from the assurance account  
40 for ninety per cent of the reasonable and necessary costs of corrective  
41 actions pertaining to soil and groundwater remediation. ~~The maximum amount~~  
42 ~~that is subject to ninety per cent coverage is two hundred fifty thousand~~  
43 ~~dollars for corrective action costs that are incurred before January 1, 1992,~~  
44 ~~two hundred twenty five thousand dollars for corrective action costs that are~~

1 ~~incurred on or after January 1, 1992 and before July 1, 1996, and one million~~  
2 ~~dollars for corrective action costs that are incurred on or after July 1,~~  
3 ~~1996.~~ The claimant shall pay the remaining costs of the corrective action.  
4 THE MAXIMUM AMOUNT THAT IS SUBJECT TO NINETY PER CENT COVERAGE IS FIVE  
5 HUNDRED THOUSAND DOLLARS. AN OWNER OR OPERATOR IS ELIGIBLE FOR ADDITIONAL  
6 COVERAGE FROM THE ASSURANCE ACCOUNT UP TO A MAXIMUM OF ONE MILLION DOLLARS  
7 IF THE OWNER OR OPERATOR IS IN COMPLIANCE WITH THE REQUIREMENTS FOR COVERAGE  
8 PURSUANT TO SECTION 49-1052, SUBSECTION F, PARAGRAPH 5 AND MEETS BOTH OF THE  
9 FOLLOWING CONDITIONS:

10 1. THE OWNER OR OPERATOR HAS SUBMITTED CERTIFICATION TO THE DEPARTMENT  
11 THAT THE OWNER OR OPERATOR HAS SUBMITTED A CLAIM AGAINST ANY APPLICABLE  
12 INSURANCE COVERAGE AND HAS CERTIFIED TO THE DEPARTMENT THE AMOUNT OF ANY  
13 BENEFITS OR REIMBURSEMENT THAT THE OWNER OR OPERATOR HAS RECEIVED FROM ANY  
14 INSURANCE COVERAGE THAT MIGHT APPLY TO THE COSTS OF THE CORRECTIVE ACTION.  
15 THE OWNER OR OPERATOR IS ELIGIBLE FOR PAYMENT FROM THE DEPARTMENT TO THE  
16 EXTENT THAT THE CORRECTIVE ACTION COSTS HAVE NOT BEEN REIMBURSED BY INSURANCE  
17 AND WITHIN THE COVERAGE LIMITS PRESCRIBED BY THIS PARAGRAPH. THE DEPARTMENT  
18 MAY COMPEL THE PRODUCTION OF DOCUMENTS TO DETERMINE THE EXISTENCE, AMOUNT AND  
19 TYPE OF COVERAGE AVAILABLE. AN OWNER OR OPERATOR SHALL REPORT TO THE  
20 DEPARTMENT ANY SUBSEQUENT PAYMENT OR REIMBURSEMENT FOR CLAIMS MADE FOR  
21 CORRECTIVE ACTIONS COSTS. THE OWNER OR OPERATOR SHALL REMIT TO THE  
22 DEPARTMENT WITHIN THIRTY DAYS ANY AMOUNTS THAT WERE PREVIOUSLY PAID TO THE  
23 OWNER OR OPERATOR FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND ASSURANCE  
24 ACCOUNT AND THAT HAVE ALSO BEEN RECOVERED FROM INSURANCE.

25 2. THE OWNER OR OPERATOR HAS UTILIZED TO THE MAXIMUM EXTENT POSSIBLE  
26 ANY ALTERNATIVE FINANCIAL ASSURANCE MECHANISMS REQUIRED FOR COVERAGE PURSUANT  
27 TO SECTION 49-1052, SUBSECTION F, PARAGRAPH 5. THE DEPARTMENT MAY COMPEL THE  
28 PRODUCTION OF DOCUMENTS TO DETERMINE THE EXISTENCE, AMOUNT AND TYPE OF  
29 ALTERNATIVE COVERAGE AVAILABLE. AN OWNER OR OPERATOR SHALL REPORT TO THE  
30 DEPARTMENT ANY PAYMENT OF CORRECTIVE ACTIONS COSTS THROUGH THESE ALTERNATIVE  
31 MECHANISMS. THE OWNER OR OPERATOR SHALL REMIT TO THE DEPARTMENT WITHIN  
32 THIRTY DAYS ANY AMOUNTS THAT WERE RECOVERED BY THE OWNER OR OPERATOR FROM THE  
33 UNDERGROUND STORAGE TANK REVOLVING FUND ASSURANCE ACCOUNT AND THAT HAVE ALSO  
34 BEEN RECOVERED FROM ANY ALTERNATIVE MECHANISMS.

35 B. The department shall not disburse more than the maximum amounts  
36 prescribed by subsection A OF THIS SECTION from the assurance account for  
37 corrective action costs associated with an occurrence regardless of the  
38 number of persons who are eligible for coverage.

39 C. The department shall not pay corrective action costs unless the  
40 department determines that the costs were reasonable and were actually  
41 incurred. CORRECTIVE ACTION COSTS THAT ARE PREAPPROVED BY THE DEPARTMENT  
42 ARE DEEMED REASONABLE. The department may establish schedules of corrective  
43 action costs which the department considers reasonable.

1 D. The department shall allow upgrade and replacement costs incurred  
2 at the time of corrective action for compliance with 40 Code of Federal  
3 Regulations section 280.21 regarding corrosion protection and spill and  
4 overfill prevention to be applied on a dollar for dollar basis not to exceed  
5 ten per cent of the reasonable and necessary costs of corrective actions as  
6 calculated pursuant to subsection A OF THIS SECTION.

7 E. An owner or operator shall not receive payment from the department  
8 until after the owner or operator has submitted certification to the  
9 department that the owner or operator has submitted a claim against any  
10 applicable insurance coverage and ~~that the owner or operator has not received~~  
11 HAS CERTIFIED TO THE DEPARTMENT THE AMOUNT OF ANY benefits or reimbursement  
12 THAT THE OWNER OR OPERATOR HAS RECEIVED from any insurance coverage that  
13 might apply to the costs of the corrective action. The owner or operator is  
14 eligible for payment from the department to the extent that the corrective  
15 action costs have not been reimbursed by insurance and within the coverage  
16 limits prescribed by this section. An owner or operator shall report to the  
17 department whether it has insurance coverage available and shall comply with  
18 all applicable financial responsibility requirements. The department may  
19 compel the production of documents to determine the existence, amount and  
20 type of coverage available. An owner or operator shall report to the  
21 department any subsequent payment or reimbursement for claims made for  
22 corrective actions costs. The owner or operator shall remit to the  
23 department within thirty days any amounts that were previously paid to the  
24 owner or operator from the underground storage tank revolving fund assurance  
25 account and that have also been recovered from insurance.

26 Sec. 5. Repeal

27 A. Sections 49-1056 and 49-1073, Arizona Revised Statutes, are  
28 repealed.

29 B. Laws 1995, fourth special session, chapter 1, section 9 is  
30 repealed.

31 Sec. 6. Title 49, chapter 6, Arizona Revised Statutes, is amended by  
32 adding article 5, to read:

33 ARTICLE 5. CERTIFICATION

34 49-1081. Definitions

35 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

36 1. "SUPERVISION" MEANS THE IMMEDIATE, ON-SITE CONTROL AND DIRECTION  
37 BY A PERSON CERTIFIED BY THE DEPARTMENT IN ACCORDANCE WITH THIS ARTICLE AND  
38 THE RULES ADOPTED PURSUANT TO THIS ARTICLE, OF A PERSON WHO IS PERFORMING  
39 TANK SERVICE AND WHO IS NOT CERTIFIED IN ACCORDANCE WITH THIS ARTICLE AND THE  
40 RULES ADOPTED PURSUANT TO THIS ARTICLE.

41 2. "TANK SERVICE" MEANS INSTALLATION, RETROFITTING, TANK TIGHTNESS  
42 TESTING, CLOSURE, CATHODIC PROTECTION OR INTERIOR TANK LINING OF AN  
43 UNDERGROUND STORAGE TANK OR A PART OF AN UNDERGROUND STORAGE TANK.

1           49-1082. Certification of underground storage tank service  
2                   providers: rules: suspension or revocation of  
3                   certification

4           A. BEGINNING FROM AND AFTER DECEMBER 31, 1996, A PERSON SHALL NOT  
5 PERFORM TANK SERVICES ON AN UNDERGROUND STORAGE TANK SYSTEM UNLESS THE PERSON  
6 IS CERTIFIED IN ACCORDANCE WITH THIS ARTICLE AND THE RULES ADOPTED PURSUANT  
7 TO THIS ARTICLE, OR IS SUPERVISED BY A PERSON CERTIFIED IN ACCORDANCE WITH  
8 THIS ARTICLE AND THE RULES ADOPTED PURSUANT TO THIS ARTICLE.

9           B. THE DEPARTMENT SHALL NOT CERTIFY A PERSON AS A TANK SERVICE  
10 PROVIDER UNTIL THAT PERSON COMPLETES THE REQUIREMENTS OF THIS ARTICLE AND THE  
11 RULES ADOPTED PURSUANT TO THIS ARTICLE. IN ACCORDANCE WITH SUBSECTION D, THE  
12 SUPERVISOR IS RESPONSIBLE FOR ALL PERSONS PERFORMING WORK UNDER THE  
13 SUPERVISOR AND ANY VIOLATIONS OF THIS ARTICLE OR RULES ADOPTED PURSUANT TO  
14 THIS ARTICLE ARE ATTRIBUTABLE TO THE SUPERVISOR.

15           C. BY JANUARY 1, 1997, THE DEPARTMENT SHALL ADOPT RULES FOR THE  
16 ESTABLISHMENT AND MAINTENANCE OF AN UNDERGROUND STORAGE TANK SERVICE PROVIDER  
17 CERTIFICATION PROGRAM. THE CERTIFICATION PROGRAM SHALL INCLUDE THE SUBMITTAL  
18 AND VERIFICATION OF INFORMATION THAT THE DIRECTOR DETERMINES IS NECESSARY TO  
19 ENSURE THAT THE TANK SERVICE PROVIDER POSSESSES AND MAINTAINS THE ESSENTIAL  
20 KNOWLEDGE, SKILLS AND WORK HISTORY TO PERFORM THE SERVICE EFFECTIVELY AND IN  
21 A MANNER THAT PROTECTS HUMAN HEALTH AND THE ENVIRONMENT. THE DEPARTMENT MAY  
22 ESTABLISH SEPARATE CERTIFICATION METHODS FOR EACH AREA OF TANK SERVICE AS IT  
23 IS DEFINED, AND MAY DEFINE THE DURATION OF THE CERTIFICATION PERIOD, WHICH  
24 SHALL BE AT LEAST ONE YEAR.

25           D. THE DEPARTMENT, UPON REASONABLE EVIDENCE, MAY SUSPEND OR REVOKE THE  
26 CERTIFICATION OF ANY PERSON WHO FAILS TO MAINTAIN THE STANDARDS ESTABLISHED  
27 PURSUANT TO THIS ARTICLE OR WHO EXHIBITS INCOMPETENCE, NEGLIGENCE OR FRAUD  
28 IN PERFORMING THE CERTIFIED ACTIVITY OR IN OTHER WORK RELATING TO THE  
29 CERTIFIED ACTIVITY. A PERSON WHOSE CERTIFICATION IS REVOKED OR SUSPENDED  
30 PURSUANT TO THIS SUBSECTION MAY APPEAL THE DECISION PURSUANT TO TITLE 41,  
31 CHAPTER 6, ARTICLE 10.

32           Sec. 7. Advisory committee on prioritizing underground storage  
33                   tank corrective actions and state assurance fund  
34                   coverage

35           A. The advisory committee on prioritizing underground storage tank  
36 corrective actions and state assurance fund coverage is established  
37 consisting of:

38           1. The director of the department of environmental quality or the  
39 director's designee.

40           2. One person who represents the petroleum industry and who is  
41 appointed by the president of the senate.

42           3. One person who represents petroleum marketers and who is appointed  
43 by the speaker of the house of representatives.

1           4. One person who represents convenience stores with retail petroleum  
2 outlets and who is appointed by the governor.

3           5. One member who represents the insurance industry and who is  
4 appointed by the president of the senate.

5           6. One person who represents governmental entities with underground  
6 storage tanks, excluding state and federal agencies and who is appointed by  
7 the speaker of the house of representatives.

8           7. One person who represents service station dealers and who is  
9 appointed by the governor.

10          8. One person who represents lending institutions and who is appointed  
11 by the president of the senate.

12          9. One person who represents environmental consultants and who is  
13 appointed by the speaker of the house of representatives.

14          10. One person who represents environmental contractors and who is  
15 appointed by the governor.

16          11. One person who represents an environmental organization and who is  
17 appointed by the governor.

18          12. Two members of the senate, one from the majority party and one from  
19 the minority party, who serve as ex officio, nonvoting members and who are  
20 appointed by the president of the senate.

21          13. Two members of the house of representatives, one from the majority  
22 party and one from the minority party, who serve as ex officio, nonvoting  
23 members and who are appointed by the speaker of the house of representatives.

24           B. The committee shall select a chairperson and a vice-chairperson.

25           C. The committee shall examine, analyze and make recommendations on:

26           1. The implementation of a system and procedures for the  
27 prioritization of corrective actions related to leaking underground storage  
28 tanks, including:

29           (a) Criteria for analyzing risk to human health and the environment.

30           (b) The basis and procedures for payment from the underground storage  
31 tank assurance account, determined exclusively on risk to human health and  
32 the environment.

33           (c) An appeals process for underground storage tank owners and  
34 operators who dispute their ranking.

35           (d) The need to modify the provisions of the underground storage tank  
36 program to accommodate prioritization.

37           2. Requiring a site closure letter to be issued when a site poses no  
38 threat to human health and the environment, with the result that:

39           (a) No further corrective action work is required by the department  
40 at the site.

41           (b) No further payment is required from the assurance account for  
42 corrective action work at the site that is not otherwise required, already  
43 performed or in progress.

1           3. The feasibility of noncompliance penalties relating to payment from  
2 the underground storage tank assurance account.

3           4. The feasibility of transferring the financial responsibility  
4 requirements for underground storage tank corrective actions back to the  
5 private insurance industry and the discontinuation of the state coverage for  
6 corrective actions, including a focus on:

7           (a) Whether or not the risk of releases from underground storage tanks  
8 has been reduced to a manageable level.

9           (b) To what extent existing leaking underground storage tanks have  
10 been discovered and remediated.

11           (c) The existence of markets in the private sector for the financing  
12 of the coverage of underground storage tanks that is currently provided by  
13 the state underground storage tank assurance account.

14           (d) Whether or not the insurance industry can maintain an actuarially  
15 sound program for insuring underground storage tank sites and offer  
16 affordable rates for this coverage.

17           D. Legislative staff and department of environmental quality staff  
18 shall provide technical assistance and staff support to the committee.

19           E. The committee shall submit a final report containing the  
20 committee's findings and recommendations to the president of the senate, the  
21 speaker of the house of representatives and the governor on or before  
22 December 15, 1996.

23           Sec. 8. Appropriation; purpose

24           The sum of \$3,000,000 is appropriated from the state general fund to  
25 the area A account of the underground storage tank revolving fund in fiscal  
26 year 1996-1997 only for the purpose of paying claims for partial coverage of  
27 corrective action costs incurred prior to May 1, 1996 pursuant to section  
28 49-1052, Arizona Revised Statutes.

29           Sec. 9. Delayed repeal

30           Section 7 of this act is repealed from and after January 31, 1997.

31           Sec. 10. Emergency

32           This act is an emergency measure that is necessary to preserve the  
33 public peace, health or safety and is operative immediately as provided by  
34 law.

APPROVED BY THE GOVERNOR APRIL 29, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 1996