

State of Arizona  
Senate  
Forty-fifth Legislature  
First Regular Session  
2001

CHAPTER 182

# SENATE BILL 1466

AN ACT

AMENDING SECTIONS 49-1052, 49-1054, 49-1091 AND 49-1092, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1091.01; RELATING TO UNDERGROUND STORAGE TANKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-1052, Arizona Revised Statutes, is amended to  
3 read:

4 49-1052. Coverage of corrective action costs

5 A. The department shall provide from the assurance account coverage  
6 in the amounts authorized by subsection I of this section and sections  
7 49-1017, 49-1022 and 49-1054 of the costs incurred after September 15, 1989  
8 of the following:

9 1. Sampling, analysis and reporting initiated pursuant to section  
10 49-1004 that confirms the presence of a release that requires corrective  
11 action pursuant to section 49-1005.

12 2. Sampling, analysis and reporting initiated pursuant to section  
13 49-1008 that confirms the presence of a release that requires corrective  
14 action pursuant to section 49-1005.

15 3. Permanent closure pursuant to section 49-1008 before July 1, 1999,  
16 if the owner or operator satisfies both of the following requirements:

17 (a) A release associated with the tank being closed was reported to  
18 the department.

19 (b) The closure of the tank met all applicable closure requirements  
20 of section 49-1008 and rules adopted pursuant to that section.

21 4. Permanent closure of a tank pursuant to section 49-1008 on or after  
22 July 1, 1999, if the owner or operator satisfies all of the following  
23 requirements:

24 (a) The closure of the tank meets all applicable closure requirements  
25 of section 49-1008 and the rules adopted pursuant to that section.

26 (b) A release to native soils was confirmed and reported to the  
27 department before closure activities were initiated.

28 (c) The source of the release is the tank that is being closed.

29 (d) The tank that is being closed met the temporary closure  
30 requirements or the new or upgraded tank requirements in rules adopted  
31 pursuant to section 49-1014 at the time of the release.

32 (e) The tank cannot be repaired under the rules adopted pursuant to  
33 section 49-1014.

34 5. Corrective actions initiated pursuant to section 49-1005.

35 6. Permanent closure pursuant to section 49-1008, for persons  
36 described in subsection I of this section, if all of the following are met:

37 (a) The underground storage tank being closed is the source of a  
38 release to native soil that requires corrective action.

39 (b) Permanent closure of the underground storage tank met all of the  
40 applicable closure requirements of section 49-1008 and the rules adopted  
41 pursuant to that section.

42 (c) A release to native soil associated with the underground storage  
43 tank being closed was reported to the department.

44 (d) The person described in subsection I of this section meets the  
45 requirements of section 49-1016, subsection C.

1           7. Costs incurred for professional fees directly related to the  
2 preparation of an assurance account application. The department shall credit  
3 these fees toward the applicant's copayment obligation.

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 eligible actions on behalf of the owner, operator or political  
9 subdivision. If the department determines that an application for direct  
10 payment or reimbursement is incomplete, the department within forty-five days  
11 of the application shall notify the owner or operator of the missing  
12 information as specifically as possible and shall permit the owner or  
13 operator to provide the additional information within thirty days. On the  
14 request of an applicant the department shall grant an additional sixty days  
15 to submit the missing information. The grant of additional time tolls the  
16 period for making an interim determination on matters relating to direct  
17 payment or reimbursement pursuant to section 49-1091.

18           C. An owner, an operator, a designated representative of an owner or  
19 operator or a political subdivision covered by subsection H of this section  
20 may apply to the department for coverage of the eligible costs pursuant to  
21 this article and rules adopted pursuant to this article. Any employee of the  
22 owner or operator may submit an application to the department on behalf of  
23 the owner or operator.

24           D. The department shall not pay for eligible costs unless the  
25 department determines that the eligible activities have met, or when  
26 completed will meet, the applicable requirements of section 49-1004 or  
27 49-1005. The department may require by rule that persons who perform payable  
28 eligible activities meet specified standards of qualification and be approved  
29 by the department.

30           E. The department shall not provide any coverage described in this  
31 article to an owner or operator of underground storage tanks described in  
32 section 49-1031, subsection C. The department shall not provide any coverage  
33 described in this article with respect to the substances described in section  
34 49-1031, subsection C, unless the tax imposed by article 2 of this chapter  
35 applies to such substances.

36           F. The department shall not provide any coverage described in this  
37 article to an owner or operator or any person or entity employed or retained  
38 by an owner or operator, if any of the following applies:

39           1. The owner or operator is delinquent in the payment of any fee,  
40 penalty or interest thereon imposed under this chapter and fails to cure that  
41 delinquency within thirty days after receiving notice from the department.  
42 If the owner or operator cures the delinquency more than thirty days after  
43 receiving notice from the department, the owner or operator may submit a new  
44 application for coverage. The new application shall be prioritized for  
45 review and payment in the ordinary course of ranking. If the owner or

1 operator cures the delinquency within thirty days after receiving notice from  
2 the department, the owner or operator retains the owner's or operator's place  
3 in the priority system. The department shall provide notice of the  
4 delinquency within thirty days after receiving an application for payment  
5 from the assurance account or within sixty days after a work plan is  
6 submitted for preapproval. If the department does not provide notice  
7 pursuant to this paragraph, the department shall not withhold payment based  
8 on that delinquency nor shall the department use that delinquency as a basis  
9 for the department to delay preapproval of corrective actions and related  
10 costs. An owner or operator remains eligible for coverage for other  
11 underground storage tank sites if no fees, penalties or interest is  
12 delinquent for those sites.

13 2. The owner or operator is delinquent in filing any excise tax return  
14 required by section 49-1032, subsection B and fails to cure that delinquency  
15 within thirty days after receiving notice of the delinquency from the  
16 department. If the owner or operator cures the delinquency more than thirty  
17 days after receiving notice from the department, the owner or operator may  
18 submit a new application for coverage. The new application shall be  
19 prioritized for review and payment in the ordinary course of ranking. If the  
20 owner or operator cures the delinquency within thirty days, after receiving  
21 notice from the department, the owner or operator retains the owner's or  
22 operator's place in the priority system. The department shall provide notice  
23 of the delinquency within thirty days after receiving an application for  
24 payment from the assurance account or within sixty days after a work plan is  
25 submitted for preapproval. If the department does not provide notice  
26 pursuant to this paragraph, the department shall not withhold payment based  
27 on that delinquency. The department shall not use a delinquency pursuant to  
28 this paragraph as a basis for the department to delay preapproval or  
29 corrective actions and related costs.

30 3. The underground storage tanks included in the application for  
31 coverage are located at a site that is the subject of an enforcement  
32 proceeding under section 49-1013. The owner or operator remains eligible for  
33 coverage for other sites where underground storage tanks are located if the  
34 owner or operator is not the subject of an enforcement proceeding regarding  
35 those sites. Payment from the assurance account will be withheld during the  
36 time that a final compliance order is in effect only for those costs directly  
37 associated with those activities that are the subject of the compliance  
38 order. Any payment costs that are incurred prior to a compliance order  
39 becoming final and that are not directly associated with the subject of that  
40 compliance order shall be eligible for payment pursuant to this section.  
41 Processing of payment from the assurance account shall not be delayed until  
42 a compliance order becomes final. An owner or operator shall not be  
43 considered to be the subject of an enforcement proceeding for purposes of  
44 eligibility for assurance account payments if any of the following apply  
45 APPLIES:

1 (a) The department has filed an action in superior court unless the  
2 court determines in its discretion on the merits of the action that  
3 withholding payment is an appropriate sanction. Processing of payment shall  
4 be ~~delayed~~ POSTPONED until the court determines the owner's or operator's  
5 eligibility.

6 (b) The department takes corrective actions pursuant to section  
7 49-1017, subsection A, paragraphs 1 and 2, without the consent of the owner  
8 or operator.

9 (c) An owner or operator formally consents in writing to an  
10 administrative order. If the department determines that the owner or  
11 operator is in violation of the consent order, the owner or operator shall  
12 not be considered to be subject to an enforcement proceeding and processing  
13 of payment from the assurance account shall not be delayed until a final  
14 administrative decision is rendered finding that the owner or operator is in  
15 violation of the consent order. Payment from the assurance account shall be  
16 withheld only for those costs determined in the final administrative decision  
17 to be incurred for those activities that are the direct subject of the  
18 determined violation of the consent order. Any other payment costs that are  
19 incurred prior to a final administrative decision finding a violation of the  
20 consent order or payment costs that are not the direct subject of the consent  
21 order violation shall be eligible for payment pursuant to this section. For  
22 compliance orders and violated consent orders that become final on or before  
23 November 1, 2000, on satisfaction of a final compliance order or a final  
24 administrative decision on a violated consent order, an owner or operator  
25 regains eligibility of coverage for costs incurred for activities that are  
26 the subject of the final compliance order or final violated consent order.  
27 For compliance orders and violated consent orders that become final after  
28 November 1, 2000, an owner or operator regains coverage for costs incurred  
29 for activities that are the subject of the final compliance order or final  
30 violated consent order, except that the director may withhold coverage of up  
31 to twenty-five per cent of the eligible costs incurred for activities that  
32 are performed to cure the violation and that gave rise to the final  
33 compliance order or final violated consent order if the owner or operator has  
34 not demonstrated good faith attempts to meet the requirements of the final  
35 compliance order or to correct the violation of the consent order. Any  
36 decision by the director to withhold coverage under this subdivision is an  
37 appealable agency action.

38 4. An individual, an owner or operator or any entity seeking coverage  
39 is convicted of fraud relating to performance of eligible activities or to  
40 any claim made for payment from the assurance account. This paragraph  
41 applies only to the individual, the owner or operator or the entity that is  
42 actually convicted of fraud relating to a corrective action or to a claim  
43 made for payment.

44 5. The owner or operator has failed to comply with the financial  
45 responsibility requirements of 40 Code of Federal Regulations part 280,

1 subpart H with respect to the underground storage tanks included in the  
2 application for coverage and all of the following conditions are met:

3 (a) On or after July 1, 1996 the person seeking coverage is an owner  
4 or operator of the tank.

5 (b) As of July 1, 1996 there are no preexisting conditions precluding  
6 the ability to obtain financial responsibility which would have covered the  
7 release.

8 (c) The release is reported on or after July 1, 1996.

9 (d) The owner or operator fails to provide information to refute both  
10 of the following conditions:

11 (i) The tank was not pumped before July 1, 1996 for the purposes of  
12 removing free product.

13 (ii) Regulated substances were placed in or dispensed from the tank  
14 on or after July 1, 1996.

15 The owner or operator remains eligible for coverage for other sites where the  
16 owner or operator has complied with the financial responsibility requirements  
17 of this paragraph. The conditions described in subdivision (d) of this  
18 paragraph shall not apply to releases reported after January 1, 2000.

19 G. The department shall establish criteria for determining priorities  
20 among the applications for coverage under this article. The criteria shall  
21 include:

22 1. The need for financial assistance. The financial need evaluation  
23 shall include the owner's or operator's corrective action liabilities at all  
24 of the owner's or operator's underground storage tank sites in the state.

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

26 3. Whether the coverage is provided as a direct payment to a person  
27 performing an eligible activity.

28 4. The extent to which a delay in providing coverage will affect an  
29 eligible activity in progress.

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

31 6. The date on which an eligible activity for which coverage is sought  
32 is to be or was taken.

33 7. Whether the payment has been previously deferred because of  
34 insufficient monies in the assurance account and, if deferred, the length of  
35 such deferral.

36 H. The department may provide the coverage described in this article  
37 for eligible activity costs incurred by a political subdivision with respect  
38 to a release from an underground storage tank if the underground storage tank  
39 or the property where the underground storage tank is located comes into the  
40 possession or control of the political subdivision under either title 12,  
41 chapter 8, article 2 or 3.

42 I. The department may provide the coverage described in this article  
43 for eligible activity costs with respect to a release from an underground  
44 storage tank incurred by a person who currently owns the property or a person  
45 with principal control of the property or the underground storage tank and

1 who undertakes to meet the requirements of section 49-1005, but who is not  
2 an owner or operator. A person who undertakes to meet the requirements and  
3 who is not an owner or an operator is eligible for one hundred per cent  
4 coverage. By December 31 of each year, the department of environmental  
5 quality shall forward a list of the parties who received payment pursuant to  
6 this subsection during the previous calendar year to the department of  
7 revenue for purposes of determining eligibility for the income tax credit  
8 provided in sections 43-1085 and 43-1173. By December 31 of each year, the  
9 department of environmental quality shall also provide the department of  
10 revenue verification of the corrective actions taken by each person during  
11 the previous calendar year pursuant to this subsection.

12 J. Subject to section 38-503 and other applicable statutes and rules,  
13 the department may contract with a private consultant for the purpose of  
14 assisting the department in reviewing work plans, site characterization  
15 reports, corrective action plans, monitoring reports and other information  
16 to determine whether corrective actions meet the criteria and requirements  
17 of this chapter and the rules adopted by the director. If the department  
18 contracts with a consultant pursuant to this section, an owner or operator  
19 may request that the department expedite the review or inspection process by  
20 requesting that the department use the services of the consultant and by  
21 agreeing to pay to the department the costs of the consultant's  
22 services. The department shall not use a private consultant if the fee  
23 charged for that service would be more than the fee the department would  
24 charge to provide that service. The department shall pay the consultant for  
25 the services rendered by the consultant from fees paid by the applicant to  
26 the department pursuant to this section.

27 K. Claims for coverage that are not paid within one hundred eighty  
28 days after receipt by the department of a complete and correct claim accrue  
29 interest at the rate of eight per cent per year. Interest shall not accrue  
30 on any claim that is unpaid as a result of insufficient monies in the area  
31 account for that claim.

32 L. Requests by the department for additional information from  
33 claimants shall be reasonably related to the determination of the validity  
34 of the claim as prescribed by this article.

35 M. Except for claims for appeals costs authorized pursuant to section  
36 ~~49-1054~~, subsection ~~€~~ 49-1091.01, claims for coverage, or a work plan for  
37 preapproval, at a site shall be submitted to the department no more than one  
38 year after the claimant receives a site closure letter sent by the department  
39 by certified mail with notice that the claimant has one year to submit a  
40 claim for that site. If the claim is submitted in a timely manner, the  
41 claimant may correct or supplement the claim within a reasonable time as  
42 specified by the department without loss of coverage. If a work plan is  
43 submitted in a timely manner, the claimant, at any time thereafter, may  
44 correct, supplement or resubmit the work plan. Failure to submit a timely  
45 claim or work plan shall result in denial of the claim. Any monies

1 encumbered or set aside regarding the claim shall be returned to the  
2 assurance account, except for those monies encumbered or set aside for the  
3 purpose of well abandonment or site restoration. The time limit prescribed  
4 by this subsection does not apply to closed sites that are subsequently  
5 reopened for the performance of additional corrective actions or at which  
6 corrective actions are proceeding pursuant to a work plan for preapproval  
7 submitted before the site was closed.

8 N. The department shall provide coverage for the costs of corrective  
9 actions relating to soil remediation that are consistent with remediation  
10 standards developed pursuant to chapter 1, article 4 of this title. Payment  
11 shall only be made for corrective action costs to remediate to levels  
12 approved by the department pursuant to rule. The department shall not  
13 enforce this subsection until final rules are adopted.

14 O. If a person intends to seek payment from the assurance account, the  
15 corrective action selected in a corrective action plan shall be the most  
16 cost-effective alternative that meets the requirements of section 49-1005.  
17 Monies from state appropriations shall not be used for administrative costs.  
18 If the most inexpensive corrective action alternative is not selected, the  
19 person shall demonstrate to the department the criteria supporting the  
20 corrective action selected in the corrective action plan. Nothing in this  
21 subsection shall affect the department's review of corrective action costs  
22 pursuant to article 3 of this chapter.

23 P. The coverage provided by this section is available only to the  
24 extent of the monies available in the assurance account. If there are  
25 insufficient monies available in the assurance account to pay all eligible  
26 costs which the department has determined should be paid, the department  
27 shall defer such payment until sufficient monies are available to pay such  
28 eligible costs. The department shall not provide any coverage and the  
29 assurance account is not liable for compensating third parties for bodily  
30 injury or property damage caused by releases from underground storage tanks.

31 Sec. 2. Section 49-1054, Arizona Revised Statutes, is amended to read:  
32 49-1054. Extent of coverage; insurance

33 A. The department shall provide coverage from the assurance account  
34 for ninety per cent of the reasonable and necessary costs of eligible  
35 activities pursuant to section 49-1052, subsection A. Ninety per cent of the  
36 reasonable and necessary costs shall be the extent of coverage, except that  
37 owners and operators are eligible for coverage from the assurance account for  
38 only fifty per cent of the reasonable and necessary costs of corrective  
39 actions pertaining to soil and groundwater remediation for releases reported  
40 after June 30, 2000 from underground storage tanks that are not permanently  
41 closed, not temporarily closed or not upgraded in accordance with the rules  
42 adopted pursuant to section 49-1014. The owner or operator shall pay the  
43 remaining costs of the eligible activities pursuant to section 49-1052,  
44 subsection A. The maximum amount that is subject to coverage is five hundred  
45 thousand dollars. An owner or operator is eligible for additional coverage

1 from the assurance account up to a maximum of one million dollars if the  
2 owner or operator meets both of the following conditions:

3 1. The owner or operator has submitted certification to the department  
4 that the owner or operator has submitted a claim against any applicable  
5 insurance coverage and has certified to the department the amount of any  
6 benefits or reimbursement that the owner or operator has received or will  
7 receive from any insurance coverage that might apply to the costs of the  
8 corrective action. The owner or operator is eligible for payment from the  
9 department to the extent that the corrective action costs have not been  
10 reimbursed by insurance and within the coverage limits prescribed by this  
11 paragraph. The department may compel the production of documents to  
12 determine the existence, amount and type of coverage available. An owner or  
13 operator shall report to the department any subsequent payment or  
14 reimbursement for claims made for corrective actions costs. The owner or  
15 operator shall remit to the department within thirty days any amounts that  
16 were previously paid to the owner or operator from the underground storage  
17 tank revolving fund assurance account and that have also been recovered from  
18 insurance.

19 2. The owner or operator has utilized to the maximum extent possible  
20 any alternative financial assurance mechanisms required for coverage pursuant  
21 to section 49-1052, subsection F, paragraph 5. The department may compel the  
22 production of documents to determine the existence, amount and type of  
23 alternative coverage available. An owner or operator shall report to the  
24 department any payment of corrective actions costs through these alternative  
25 mechanisms. The owner or operator shall remit to the department within  
26 thirty days any amounts that were recovered by the owner or operator from the  
27 underground storage tank revolving fund assurance account and that have also  
28 been recovered from any alternative mechanisms.

29 B. The department shall not disburse more than the maximum amounts  
30 prescribed by subsection A of this section from the assurance account for  
31 corrective action costs associated with an occurrence regardless of the  
32 number of persons who are eligible for coverage.

33 C. The department shall pay eligible costs that are reasonable and  
34 were actually incurred. Reasonableness of corrective actions shall be  
35 determined based on the law and the facts available to the owner, operator  
36 or person described in section 49-1052, subsection I at the time the  
37 technical decision was made. ~~For any appeal of an interim determination or  
38 final determination that is preceded by an informal appeal in which a party  
39 prevails in whole or in part, the department shall pay from the assurance  
40 account the reasonable costs and fees, not to exceed the amount appealed,  
41 incurred by the appealing party in preparing for and pursuing those portions  
42 of the appeal on which the party prevailed, except the party is not eligible  
43 to receive that portion of the costs and fees associated with the preparation  
44 of additional information requested pursuant to section 49-1052, subsection  
45 8, if that information was not provided within the time frames established~~

1 ~~by that subsection. Appeals costs shall be paid in the next regular round~~  
2 ~~of payment without being subject to ranking and in the order received by the~~  
3 ~~department. Corrective action costs that are preapproved by the department~~  
4 ~~or corrective actions that are performed at the written request or written~~  
5 ~~instruction of the department are deemed reasonable, necessary and~~  
6 ~~reimbursable. The department's review of corrective action costs that were~~  
7 ~~preapproved is limited to determining whether the corrective actions were~~  
8 ~~actually performed and whether the corrective actions and costs conform to~~  
9 ~~the preapproval. The department shall pay all conforming corrective actions~~  
10 ~~and costs without further review. At least every three years, the department~~  
11 ~~shall establish schedules of corrective action costs which the department~~  
12 ~~considers reasonable. For those years that the department does not establish~~  
13 ~~a cost schedule, all costs shall be adjusted annually in accordance with the~~  
14 ~~percentage change in the bureau of labor statistics annual number for the~~  
15 ~~final producer price index for finished goods less food and energy not~~  
16 ~~seasonally adjusted. These cost schedules shall be task-based costs relating~~  
17 ~~to the phases of corrective action. The department may establish additional~~  
18 ~~cost schedules for incremental costs that are necessary to supplement the~~  
19 ~~task-based costs to reflect limited site specific conditions. No other cost~~  
20 ~~schedules shall be established and all eligible work shall be reviewed and~~  
21 ~~paid based on the task-based costs and incremental costs when necessary. The~~  
22 ~~department shall not require costs associated with a given task to include~~  
23 ~~details on time and materials if the total costs claimed for that task do not~~  
24 ~~exceed the amount for that task in the schedule of corrective action costs~~  
25 ~~as established pursuant to this section. The department shall pay the costs~~  
26 ~~that are associated with a given task and that do not exceed the amount for~~  
27 ~~that task in the applicable cost schedule. Payments to an owner or operator~~  
28 ~~shall be based on the schedule of corrective action costs in effect on the~~  
29 ~~date a contract for corrective action work was entered into by the owner or~~  
30 ~~operator, or if that date cannot be determined, the date work associated with~~  
31 ~~the corrective action was performed. The cost schedules apply to all~~  
32 ~~corrective action costs submitted for payment from the assurance account,~~  
33 ~~including any costs incurred by the department in taking corrective actions~~  
34 ~~after May 27, 1998 and to the recovery of those corrective action costs by~~  
35 ~~the department pursuant to sections 49-1017, 49-1017.01 and 49-1022.~~

36 D. The department shall allow upgrade and replacement costs incurred  
37 at the time of corrective action for compliance with 40 Code of Federal  
38 Regulations section 280.21 regarding corrosion protection and spill and  
39 overfill prevention to be applied on a dollar for dollar basis not to exceed  
40 ten per cent of the reasonable and necessary costs of corrective actions as  
41 calculated pursuant to subsection A of this section.

42 E. An owner or operator shall not receive payment from the department  
43 until after the owner or operator has submitted certification to the  
44 department that the owner or operator has submitted a claim against any  
45 applicable insurance coverage and has certified to the department the amount

1 of any benefits or reimbursement that the owner or operator has received or  
2 will receive from any insurance coverage that might apply to the costs of the  
3 corrective action. The owner or operator is eligible for payment from the  
4 department to the extent that the corrective action costs have not been and  
5 will not be reimbursed by insurance and within the coverage limits prescribed  
6 by this section. An owner or operator shall report to the department whether  
7 it has insurance coverage available and shall comply with all applicable  
8 financial responsibility requirements. The department may compel the  
9 production of documents to determine the existence, amount and type of  
10 coverage available. An owner or operator shall report to the department any  
11 subsequent payment or reimbursement for claims made for corrective actions  
12 costs. The owner or operator shall remit to the department within thirty  
13 days any amounts that were previously paid to the owner or operator from the  
14 underground storage tank revolving fund assurance account and that have also  
15 been recovered from insurance.

16 F. APPEALS FEES AND COSTS PAYABLE PURSUANT TO SECTION 49-1091.01 SHALL  
17 BE PAID IN THE NEXT REGULAR ROUND OF PAYMENT WITHOUT BEING SUBJECT TO RANKING  
18 AND IN THE ORDER RECEIVED BY THE DEPARTMENT.

19 Sec. 3. Section 49-1091, Arizona Revised Statutes, is amended to read:  
20 49-1091. Underground storage tank informal appeals

21 A. A person who undertakes corrective action pursuant to section  
22 49-1052, subsection I or an owner or operator may informally appeal the  
23 following decisions or determinations pursuant to this section:

24 1. A written interim decision from the underground storage tank  
25 program of the department.

26 2. A written interim determination from the department on matters  
27 relating to owner or operator status.

28 3. A written interim determination from the department on matters  
29 relating to preapproval, direct payment or reimbursement from the underground  
30 storage tank assurance account.

31 4. A written interim determination or decision relating to the  
32 allocation of liability pursuant to this chapter.

33 B. The department's failure to respond with a written interim decision  
34 to the owner's or operator's submission to the department of any documents  
35 identified in subsection G of this section within one hundred twenty days of  
36 receipt is a basis for an informal appeal.

37 C. A person who undertakes corrective action pursuant to section  
38 49-1052, subsection I or an owner or operator who is subject to an  
39 interim decision or determination described in subsections A and B of this  
40 section, and who disagrees with the interim decision or determination, may  
41 file a written notice of disagreement with the department within thirty days  
42 of receiving the department's interim decision or determination. The notice  
43 shall include a description of the specific portions of the interim decision  
44 or determination with which the person, owner or operator disagrees and may  
45 include a request to meet with the department to resolve the

1 disagreement. The department shall schedule a meeting within thirty days  
2 after receiving the request.

3 D. A person who requests a meeting pursuant to subsection C of this  
4 section or an authorized representative of the person designated in writing  
5 may attend the meeting with any individuals who may be helpful in discussing  
6 the matter with the department.

7 E. The department shall issue a final written decision or  
8 determination within forty-five days of receiving the notice of disagreement  
9 or within fifteen days of a meeting pursuant to subsection C of this section,  
10 whichever is later. If no notice of disagreement is filed relating to the  
11 ~~preapproval, reimbursement or direct pay from the assurance account~~, the  
12 department shall issue a final written DECISION OR determination within  
13 forty-five days after the issuance of the INTERIM DECISION OR determination.  
14 BEFORE THE EXPIRATION OF TIME FOR THE DEPARTMENT TO ISSUE A FINAL WRITTEN  
15 DECISION OR DETERMINATION, THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION  
16 FROM THE PERSON WHO HAS SUBMITTED A NOTICE OF DISAGREEMENT THAT IS NECESSARY  
17 TO MAKE A FINAL DECISION OR DETERMINATION. A PERSON WHO RECEIVES THIS  
18 REQUEST SHALL HAVE FIFTEEN DAYS TO SUBMIT THE REQUESTED INFORMATION TO THE  
19 DEPARTMENT. THE TIMEFRAMES FOR THE DEPARTMENT TO ISSUE A FINAL DECISION OR  
20 DETERMINATION SHALL BE EXTENDED FOR UP TO FIFTEEN DAYS DURING THE TIME THE  
21 REQUESTED INFORMATION IS OUTSTANDING, AND FOR UP TO FIFTEEN ADDITIONAL DAYS,  
22 IF APPLICABLE, AFTER ANY INFORMATION IS SUBMITTED TO THE DEPARTMENT. THE  
23 TIME TO SUBMIT THE REQUESTED INFORMATION MAY BE EXTENDED FOR UP TO SIXTY DAYS  
24 ON THE REQUEST OF A PERSON WHO SUBMITS A NOTICE OF DISAGREEMENT. THE  
25 TIMEFRAMES FOR THE DEPARTMENT TO ISSUE A FINAL DECISION OR DETERMINATION  
26 SHALL BE EXTENDED ACCORDINGLY. THE TIMEFRAMES FOR THE DEPARTMENT TO ISSUE  
27 A FINAL DECISION OR DETERMINATION SHALL ALSO BE EXTENDED IF INFORMATION  
28 RELATING TO THE SUBJECT OF THE NOTICE OF DISAGREEMENT IS NOT REQUESTED BY THE  
29 DEPARTMENT BUT IS PROVIDED TO THE DEPARTMENT FOR THE FIRST TIME LESS THAN  
30 FIFTEEN DAYS FROM THE DATE THE DEPARTMENT IS REQUIRED TO ISSUE A FINAL  
31 DECISION OR DETERMINATION. IN THIS SITUATION, THE TIMEFRAMES SHALL BE  
32 EXTENDED TO ALLOW THE DEPARTMENT FIFTEEN DAYS FROM THE DATE THE INFORMATION  
33 IS SUBMITTED TO ISSUE A FINAL DECISION OR DETERMINATION. If the department  
34 fails to issue a final written decision or determination within the time  
35 specified in this subsection, the department's written interim decision or  
36 determination becomes the final written decision or determination. The final  
37 written decision or determination shall address the notice of disagreement  
38 received pursuant to subsection C of this section. The final written  
39 decision or determination is the only decision or determination that is  
40 appealable as an appealable agency action as defined in section 41-1092 or  
41 a contested case as defined in section 41-1001.

42 F. The period of time for compliance with corrective actions  
43 associated with the subject matter of a notice of disagreement is tolled from  
44 the date that a person who undertakes corrective action pursuant to section  
45 49-1052, subsection I or an owner or operator files a written notice of

1 disagreement with the department until the date the final decision or  
2 determination is rendered by the department and any appeals are completed.

3 G. A written interim decision shall address one of the following  
4 technical issues:

5 1. The department's approval, disapproval or notice of deficiency of  
6 site characterization reports.

7 2. The department's approval, disapproval or notice of deficiency of  
8 corrective action plans for soil or groundwater, or both.

9 3. The department's approval, disapproval or notice of deficiency of  
10 a work plan.

11 4. The department's determination or confirmation of a release.

12 5. The department's approval, disapproval or notice of deficiency of  
13 requests for closing a case file corresponding to a release from a leaking  
14 underground storage tank.

15 H. The department shall not alter the time limits prescribed by this  
16 chapter by adoption of a time limit by rule.

17 I. The department's failure to respond with a written interim  
18 determination to the owner's or operator's submission of an application for  
19 preapproval, direct payment or reimbursement from the underground storage  
20 tank assurance account within ninety days of receipt is a basis for an  
21 informal appeal.

22 Sec. 4. Title 49, chapter 6, article 6, Arizona Revised Statutes, is  
23 amended by adding section 49-1091.01, to read:

24 49-1091.01. Fee and cost reimbursement; application; limitations

25 A. THE PROVISIONS OF THIS SECTION APPLY TO AN OWNER, OPERATOR OR A  
26 PERSON WHO UNDERTAKES CORRECTIVE ACTION PURSUANT TO SECTION 49-1052,  
27 SUBSECTION I FOR ANY OF THE FOLLOWING:

28 1. A WRITTEN INTERIM DETERMINATION OR INTERIM DECISION FROM THE  
29 DEPARTMENT ON MATTERS RELATING TO:

30 (a) OWNER OR OPERATOR STATUS.

31 (b) PREAPPROVAL, DIRECT PAYMENT OR REIMBURSEMENT FROM THE ASSURANCE  
32 ACCOUNT, AS DEFINED IN SECTION 49-1051.

33 2. THE DEPARTMENT'S APPROVAL, DISAPPROVAL OR NOTICE OF DEFICIENCY OF:

34 (a) SITE CHARACTERIZATION REPORTS.

35 (b) CORRECTIVE ACTION PLANS FOR SOIL, GROUNDWATER OR BOTH.

36 B. AN OWNER, OPERATOR OR PERSON WHO UNDERTAKES CORRECTIVE ACTION  
37 PURSUANT TO SECTION 49-1052, SUBSECTION I, SHALL RECEIVE REIMBURSEMENT FOR  
38 REASONABLE ATTORNEY FEES, CONSULTANT FEES AND COSTS THAT ARE ACTUALLY  
39 INCURRED AND NOT EXCESSIVE IN ALL PROCEEDINGS THAT FOLLOW THE INTERIM  
40 DECISION OR INTERIM DETERMINATION PURSUANT TO SECTION 49-1091 IF THAT PARTY  
41 SATISFIES BOTH OF THE FOLLOWING REQUIREMENTS:

42 1. SUBMITTED A WRITTEN NOTICE OF THE DISAGREEMENT TO THE DEPARTMENT  
43 WITHIN THIRTY DAYS PURSUANT TO SECTION 49-1091.

1           2. REQUESTED AND PARTICIPATED IN A MEETING WITH THE DEPARTMENT  
2 REGARDING DECISIONS OR DETERMINATIONS PURSUANT TO SECTION 49-1091, SUBSECTION  
3 A, PARAGRAPH 2 OR SECTION 49-1091, SUBSECTION G, PARAGRAPH 1 OR 2.

4           C. THE ATTORNEY FEES, CONSULTANT FEES AND COSTS SHALL BE PAID ONLY FOR  
5 THOSE AMOUNTS THAT ARE REASONABLE, ACTUALLY INCURRED AND NOT EXCESSIVE IN THE  
6 PORTION OF THE PROCEEDINGS THAT ARE THE SUBJECT OF THE NOTICE OF DISAGREEMENT  
7 IN WHICH THE OWNER, OPERATOR OR PERSON WHO UNDERTAKES CORRECTIVE ACTION  
8 PURSUANT TO SECTION 49-1052, SUBSECTION I, PREVAILED, INCLUDING PROCEEDINGS  
9 RESULTING IN A FAVORABLE DECISION OR DETERMINATION FROM THE DEPARTMENT OR IN  
10 A JUDICIAL PROCEEDING.

11           D. THE REIMBURSEMENT PROVIDED BY SUBSECTION B OF THIS SECTION IS  
12 SUBJECT TO THE FOLLOWING LIMITATIONS:

13           1. FEES AND COSTS SHALL NOT BE PAID IF THE DEPARTMENT MAKES A  
14 FAVORABLE DETERMINATION OR DECISION ON THE ISSUE APPEALED BEFORE OR IN THE  
15 FINAL DECISION OR DETERMINATION.

16           2. FEES AND COSTS SHALL NOT BE PAID IF ALL OF THE FOLLOWING CONDITIONS  
17 ARE MET:

18           (a) INFORMATION REQUESTED PURSUANT TO SECTION 49-1052, SUBSECTION B  
19 OR SECTION 49-1091, SUBSECTION E IS NOT PROVIDED TO THE DEPARTMENT BEFORE THE  
20 TIME THE DEPARTMENT ISSUES A FINAL DECISION OR DETERMINATION THAT IS ADVERSE  
21 TO THE OWNER, OPERATOR OR PERSON WHO UNDERTAKES CORRECTIVE ACTION PURSUANT  
22 TO SECTION 49-1052, SUBSECTION I.

23           (b) THE FINAL DECISION OR DETERMINATION IS SUBSEQUENTLY REVERSED OR  
24 OTHERWISE DECIDED IN FAVOR OF THE PERSON BASED ON INFORMATION PREVIOUSLY  
25 REQUESTED BY THE DEPARTMENT.

26           3. IN AN APPEAL OF A DETERMINATION REGARDING AN APPLICATION FOR  
27 PREAPPROVAL, DIRECT PAYMENT OR REIMBURSEMENT FROM THE ASSURANCE ACCOUNT,  
28 ATTORNEY FEES, CONSULTANT FEES AND COSTS PAID PURSUANT TO THIS SUBSECTION MAY  
29 NOT EXCEED THE AMOUNT THAT IS IN DISPUTE.

30           4. IF INFORMATION REQUESTED BY THE DEPARTMENT PURSUANT TO SECTION  
31 49-1052, SUBSECTION B OR SECTION 49-1091, SUBSECTION E IS PROVIDED TO THE  
32 DEPARTMENT BEFORE THE DEPARTMENT ISSUES A FINAL DECISION OR DETERMINATION  
33 THAT IS ADVERSE TO THE OWNER, OPERATOR OR PERSON WHO UNDERTAKES CORRECTIVE  
34 ACTION PURSUANT TO SECTION 49-1052, SUBSECTION I, AND THE FINAL DECISION OR  
35 DETERMINATION IS SUBSEQUENTLY REVERSED OR OTHERWISE DECIDED IN FAVOR OF THE  
36 OWNER, OPERATOR OR PERSON WHO UNDERTAKES CORRECTIVE ACTION PURSUANT TO  
37 SECTION 49-1052, SUBSECTION I BASED ON THAT INFORMATION, ATTORNEY FEES,  
38 CONSULTANT FEES AND COSTS SHALL ONLY BE PAID FOR THOSE AMOUNTS ACTUALLY  
39 INCURRED AFTER THE INFORMATION WAS PROVIDED.

40           Sec. 5. Section 49-1092, Arizona Revised Statutes, is amended to read:

41           49-1092. Underground storage tank policy commission;  
42                           membership; powers; definitions

43           A. An underground storage tank policy commission is established to  
44 review and provide recommendations to improve the program established  
45 pursuant to this chapter.

1           B. The underground storage tank policy commission consists of the  
2 following members:

3           1. A representative from a city or town government that owns or  
4 operates underground storage tanks.

5           2. A representative of an environmental organization.

6           3. A representative of the public who has environmental experience.

7           4. A representative of owners or operators with one hundred or more  
8 underground storage tanks in this state.

9           5. A representative of owners or operators with at least ten but fewer  
10 than one hundred underground storage tanks in this state.

11          6. A representative of owners or operators with fewer than ten  
12 underground storage tanks in this state.

13          7. A representative of environmental consultants who is qualified by  
14 the underground storage tank program.

15          8. A representative of the public who has experience in finance or  
16 insurance matters.

17          9. An environmental attorney not employed by the state.

18          10. A representative of the attorney general's office.

19          11. The director or the director's designee.

20          C. The governor shall appoint the members listed in subsection B,  
21 paragraphs 1 through 9 of this section. Members serve at the pleasure of the  
22 governor for staggered three year terms. Members appointed pursuant to  
23 subsection B, paragraphs 4 through 9 of this section shall have experience  
24 with underground storage tanks. Members are not entitled to compensation but  
25 are eligible for reimbursement of expenses pursuant to title 38, chapter 4,  
26 article 2. Members of the commission are subject to title 38, chapter 3,  
27 article 8, relating to conflict of interest. Notwithstanding this  
28 subsection, unless a member has a direct pecuniary or proprietary interest,  
29 a member's discussion or vote on an issue of general applicability to the  
30 program established pursuant to this chapter is not an indirect conflict of  
31 interest. A member shall not vote on or otherwise participate in any manner  
32 on a specific recommendation of the commission relating to a particular site  
33 if the member has been identified as an owner or operator of that site by the  
34 department or if the member receives a significant portion of income directly  
35 from a person identified as an owner or operator of that site.

36          D. The underground storage tank policy commission shall:

37           1. Select a chairperson and vice-chairperson from among its members.

38           2. Submit reports to the speaker of the house of representatives, the  
39 president of the senate, the governor and the director at least annually.  
40 These reports shall evaluate the overall effectiveness of the underground  
41 storage tank program, including:

42           (a) The adequacy of protection to human health and the environment.

43           (b) The cost-effectiveness of corrective actions.

44           (c) The appropriate use of assurance account monies.

1 (d) The need for additional assurance account monies or other monies  
2 to meet the needs of the program.

3 (e) Evaluation and recommendation of dates to phase out the assurance  
4 account and transfer responsibility for corrective action costs to the  
5 private insurance industry.

6 (f) Ways to reduce future claims to the assurance account and  
7 encourage compliance with new tank standards by lowering claim ceilings and  
8 increasing copayments.

9 3. Have at least thirty days to review and make written  
10 recommendations to the director before the department's adoption of  
11 substantive policies or guidelines of the program that affect the substantive  
12 rights of owners and operators or other regulated parties. The director  
13 shall consider the written recommendations of the commission before  
14 implementing the policies or guidelines.

15 4. Be provided with the applicable information described in section  
16 41-1021, subsection B, at the time of the docket opening regarding a proposed  
17 rule that affects the substantive rights of owners and operators or other  
18 parties regulated pursuant to this chapter. The commission may provide  
19 written comments within a timely manner. The department shall consider any  
20 written comments of the commission before publication of a notice of a  
21 proposed rule adoption pursuant to section 41-1022.

22 E. The commission may:

23 1. Form subcommittees to consider specific issues.

24 2. Transmit specific recommendations for improving the program to the  
25 director, the speaker of the house of representatives, the president of the  
26 senate and the governor.

27 3. AT THE REQUEST OF A COMMISSION MEMBER, CONSIDER ISSUES ARISING OUT  
28 OF ANY PERMIT, FEE OR OTHER SUBSTANTIVE REQUIREMENT THAT AFFECT THE OWNERSHIP  
29 OR OPERATION OF A FACILITY THAT CONDUCTS THE RETAIL SALE OF MOTOR VEHICLE  
30 FUELS.

31 F. Meetings of the commission or any subcommittee shall be open to the  
32 public and an opportunity for public comment shall be provided at each  
33 meeting.

34 G. The director and the department shall cooperate in providing  
35 information to the commission. The director shall consider the  
36 recommendations of the commission in administering the requirements of this  
37 chapter.

38 H. For the purposes of this section:

39 1. "Issue of general applicability" means an issue that affects a  
40 substantial number of the constituents of the program and therefore qualifies  
41 as a remote interest as defined in section 38-502.

42 2. "Significant portion of income" has the same meaning prescribed in  
43 section 49-322, subsection B.

APPROVED BY THE GOVERNOR APRIL 21, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2001.

Passed the House April 09, 2001

by the following vote: 58 Ayes,  
0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate March 15, 2001

by the following vote: 27 Ayes,  
2 Nays, 1 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1466

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 16, 2001,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

Rancho  
President of the Senate

Chermin Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of April, 2001,

at 2:59 o'clock P M.

Jandra Haming  
Secretary to the Governor

APPROVED THIS 21 day of

April, 2001,

at 9:57 o'clock A M.

Janice Yee Hull  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of April, 2001,

at 4:45 o'clock P M.

Robert Bayless  
Secretary of State

S.B. 1466