

State of Arizona  
Senate  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 273

**SENATE BILL 1306**

AN ACT

AMENDING TITLE 49, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1015.01; AMENDING SECTIONS 49-1052, 49-1053, 49-1054, 49-1091 AND 49-1093, ARIZONA REVISED STATUTES; REPEALING TITLE 49, CHAPTER 6, ARTICLES 2 AND 3, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; 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. Title 49, chapter 6, article 1, Arizona Revised Statutes,  
3 is amended by adding section 49-1015.01, to read:

4 49-1015.01. Regulated substance fund; purpose

5 A. A REGULATED SUBSTANCE FUND IS ESTABLISHED. THE DIRECTOR SHALL  
6 ADMINISTER THE FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF  
7 SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE  
8 DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS  
9 PROVIDED IN SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE  
10 CREDITED TO THE FUND.

11 B. THE REGULATED SUBSTANCE FUND CONSISTS OF MONIES APPROPRIATED BY THE  
12 LEGISLATURE, UNDERGROUND STORAGE TANK TAX REVENUES, ASSURANCE ACCOUNT MONIES  
13 ENCUMBERED BY THE DIRECTOR FOR IMPLEMENTING WORK PLANS AND CORRECTIVE ACTION  
14 PLANS IN WHICH MONITORED NATURAL ATTENUATION IS ALL OR A PORTION OF THE  
15 SELECTED REMEDY, MONIES REIMBURSED TO THE FUND AND GIFTS, GRANTS AND  
16 DONATIONS.

17 C. MONIES IN THE FUND SHALL BE USED FOR RELEASES FROM UNDERGROUND  
18 STORAGE TANKS. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND SHALL  
19 BE USED AT SITES SELECTED BASED ON AN ANALYSIS OF RISK TO HUMAN HEALTH AND  
20 THE ENVIRONMENT BY THE DIRECTOR AS FOLLOWS:

21 1. FOR THE REASONABLE AND NECESSARY COSTS OF ADMINISTERING AND TAKING  
22 CORRECTIVE ACTIONS OF REGULATED SUBSTANCES IF THE DEPARTMENT CANNOT LOCATE  
23 AN OWNER OR OPERATOR OF THE UNDERGROUND STORAGE TANK WITHIN NINETY DAYS OR  
24 WITHIN SUCH SHORTER PERIOD AS NECESSARY TO PROTECT HUMAN HEALTH OR THE  
25 ENVIRONMENT.

26 2. NOTWITHSTANDING PARAGRAPH 1, FOR THE REASONABLE AND NECESSARY COSTS  
27 OF TAKING CORRECTIVE ACTIONS OF REGULATED SUBSTANCES.

28 D. MONIES IN THE FUND MAY ALSO BE USED FOR CORRECTIVE ACTIONS RELATED  
29 TO A WORK PLAN OR CORRECTIVE ACTION PLAN APPROVED BY THE DEPARTMENT BEFORE  
30 JULY 1, 2010 IN WHICH MONITORED NATURAL ATTENUATION IS ALL OR A PORTION OF  
31 THE SELECTED REMEDY, INCLUDING CORRECTIVE ACTIONS AT SITES AT WHICH MONITORED  
32 NATURAL ATTENUATION IS NOT ADEQUATE. MONIES FOR MONITORED NATURAL  
33 ATTENUATION SHALL BE DEPOSITED IN THE MONITORED NATURAL ATTENUATION ACCOUNT  
34 OF THE FUND AND SHALL ONLY BE USED FOR THOSE PURPOSES.

35 E. MONIES IN THE FUND SHALL NOT BE USED TO IMPLEMENT THE WATER QUALITY  
36 ASSURANCE REVOLVING FUND PROGRAM PURSUANT TO CHAPTER 2, ARTICLE 5 OF THIS  
37 TITLE.

38 Sec. 2. Section 49-1052, Arizona Revised Statutes, is amended to read:  
39 49-1052. Coverage of corrective action costs

40 A. The department shall provide from the assurance account coverage  
41 in the amounts authorized by subsection I of this section and sections  
42 49-1017, 49-1022 and 49-1054 of the costs incurred after September 15, 1989  
43 of the following:

1           1. Sampling, analysis and reporting initiated pursuant to section  
2 49-1004 that confirms the presence of a release that requires corrective  
3 action pursuant to section 49-1005.

4           2. Sampling, analysis and reporting initiated pursuant to section  
5 49-1008 that confirms the presence of a release that requires corrective  
6 action pursuant to section 49-1005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41           B. The department may provide the coverage required by this section  
42 either by paying the owner, the operator or a designated representative of  
43 the owner or operator or any combination of these persons or a political  
44 subdivision covered by subsection H of this section or by making direct  
45 payments for eligible actions on behalf of the owner, operator or political

1 subdivision. If the department determines that an application for direct  
2 payment or reimbursement is incomplete, the department within forty-five days  
3 of the application shall notify the owner or operator of the missing  
4 information as specifically as possible and shall permit the owner or  
5 operator to provide the additional information within thirty days. On the  
6 request of an applicant, the department shall grant an additional sixty days  
7 to submit the missing information. The grant of additional time tolls the  
8 period for making an interim determination on matters relating to direct  
9 payment or reimbursement pursuant to section 49-1091.

10 C. An owner, an operator, a designated representative of an owner or  
11 operator or a political subdivision covered by subsection H of this section  
12 may apply to the department for coverage of the eligible costs pursuant to  
13 this article and rules adopted pursuant to this article. Any employee of the  
14 owner or operator may submit an application to the department on behalf of  
15 the owner or operator.

16 D. The department shall not pay for eligible costs unless the  
17 department determines that the eligible activities have met, or when  
18 completed will meet, the applicable requirements of section 49-1004 or  
19 49-1005. The department may require by rule that persons who perform payable  
20 eligible activities meet specified standards of qualification and be approved  
21 by the department.

22 E. The department shall not provide any coverage described in this  
23 article to an owner or operator of underground storage tanks described in  
24 section 49-1031, subsection C. The department shall not provide any coverage  
25 described in this article with respect to the substances described in section  
26 49-1031, subsection C, unless the tax imposed by article 2 of this chapter  
27 applies to such substances.

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

31 1. The owner or operator is delinquent in the payment of any fee,  
32 penalty or interest thereon imposed under this chapter and fails to cure that  
33 delinquency within thirty days after receiving notice from the department.  
34 If the owner or operator cures the delinquency more than thirty days after  
35 receiving notice from the department, the owner or operator may submit a new  
36 application for coverage. The new application shall be prioritized for  
37 review and payment in the ordinary course of ranking. If the owner or  
38 operator cures the delinquency within thirty days after receiving notice from  
39 the department, the owner or operator retains the owner's or operator's place  
40 in the priority system. The department shall provide notice of the  
41 delinquency within thirty days after receiving an application for payment  
42 from the assurance account or within sixty days after a work plan is  
43 submitted for preapproval. If the department does not provide notice  
44 pursuant to this paragraph, the department shall not withhold payment based  
45 on that delinquency nor shall the department use that delinquency as a basis

1 for the department to delay preapproval of corrective actions and related  
2 costs. An owner or operator remains eligible for coverage for other  
3 underground storage tank sites if no fees, penalties or interest is  
4 delinquent for those sites.

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

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

37 (a) The department has filed an action in superior court unless the  
38 court determines in its discretion on the merits of the action that  
39 withholding payment is an appropriate sanction. Processing of payment shall  
40 be postponed until the court determines the owner's or operator's  
41 eligibility.

42 (b) The department takes corrective actions pursuant to section  
43 49-1017, subsection A, paragraphs 1 and 2, without the consent of the owner  
44 or operator.

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

30 4. An individual, an owner or operator or any entity seeking coverage  
31 is convicted of fraud relating to performance of eligible activities or to  
32 any claim made for payment from the assurance account. This paragraph applies  
33 only to the individual, the owner or operator or the entity that is actually  
34 convicted of fraud relating to a corrective action or to a claim made for  
35 payment.

36 5. The owner or operator has failed to comply with the financial  
37 responsibility requirements of 40 Code of Federal Regulations part 280,  
38 subpart H with respect to the underground storage tanks included in the  
39 application for coverage and all of the following conditions are met:

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

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

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

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

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

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

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

11 G. The department shall establish criteria for determining priorities  
12 among the applications for coverage under this article. The criteria shall  
13 include:

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

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

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

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

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

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

25 7. Whether the payment has been previously deferred because of  
26 insufficient monies in the assurance account and, if deferred, the length of  
27 such deferral.

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

34 I. The department may provide the coverage described in this article  
35 for eligible activity costs with respect to a release from an underground  
36 storage tank incurred by a person who currently owns the property or a person  
37 with principal control of the property ON WHICH THE UNDERGROUND STORAGE TANK  
38 IS OR WAS LOCATED or the underground storage tank and who undertakes to meet  
39 the requirements of section 49-1005, but who is not an owner or  
40 operator. FOR CLAIMS PAID ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT  
41 TO THIS SECTION, a person who undertakes to meet the requirements and who is  
42 not an owner or an operator is eligible for ~~one hundred~~ NINETY per cent  
43 coverage, EXCEPT THAT IF THE TEN PER CENT PER APPLICATION THAT IS NOT COVERED  
44 EXCEEDS THE ASSESSED VALUATION OF THE REAL PROPERTY, THE PERSON IS ELIGIBLE  
45 FOR ONE HUNDRED PER CENT COVERAGE IN AN APPLICATION. IF THAT PERSON IS NOT

1 ELIGIBLE FOR ONE HUNDRED PER CENT COVERAGE AND DOES NOT PAY THE TEN PER CENT  
2 REMAINING AND NOTWITHSTANDING THE LIMITATIONS PRESCRIBED IN SECTION 49-1017,  
3 THE DEPARTMENT SHALL TAKE CORRECTIVE ACTION WITH RESPECT TO THAT RELEASE. A  
4 PERSON WHO TAKES CORRECTIVE ACTION PURSUANT TO THIS SUBSECTION SHALL SUBMIT  
5 CERTIFICATION TO THE DEPARTMENT THAT THE PERSON HAS PAID THE REMAINING COSTS  
6 OR HAS AGREED TO PAY THOSE REMAINING COSTS AS DEMONSTRATED IN AN EXISTING  
7 AGREEMENT. By December 31 of each year, the department of environmental  
8 quality shall forward a list of the parties who received payment pursuant to  
9 this subsection during the previous calendar year to the department of  
10 revenue for purposes of determining eligibility for the income tax credit  
11 provided in sections 43-1085 and 43-1173. By December 31 of each year, the  
12 department of environmental quality shall also provide the department of  
13 revenue verification of the corrective actions taken by each person during  
14 the previous calendar year pursuant to this subsection.

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

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

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

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

1 manner, the claimant, at any time thereafter, may correct, supplement or  
2 resubmit the work plan. Failure to submit a timely claim or work plan shall  
3 result in denial of the claim. Any monies encumbered or set aside regarding  
4 the claim shall be returned to the assurance account, except for those monies  
5 encumbered or set aside for the purpose of well abandonment or site  
6 restoration. The time limit prescribed by this subsection does not apply to  
7 closed sites RELEASES that are subsequently reopened for the performance of  
8 additional corrective actions or at which corrective actions are proceeding  
9 pursuant to a work plan for preapproval submitted before the site RELEASE was  
10 closed.

11 N. The department shall provide coverage for the costs of corrective  
12 actions relating to soil remediation that are consistent with remediation  
13 standards developed pursuant to chapter 1, article 4 of this title. ~~Payment~~  
14 ~~shall only be made for corrective action costs to remediate to levels~~  
15 ~~approved by the department pursuant to rule. The department shall not~~  
16 ~~enforce this subsection until final rules are adopted.~~ PAYMENT MAY BE MADE  
17 FOR THE MOST COST EFFECTIVE CORRECTIVE ACTIONS TO REMEDIATE SOIL EITHER TO  
18 THE PREDETERMINED RESIDENTIAL SOIL CLEAN UP LEVELS OR SITE SPECIFIC  
19 RESIDENTIAL SOIL CLEAN UP LEVELS FOR UNRESTRICTED USE OF THE PROPERTY AS  
20 DETERMINED BY A RISK BASED HEALTH ASSESSMENT PERFORMED PURSUANT TO RULES  
21 ADOPTED PURSUANT TO ARTICLE 1 OF THIS CHAPTER. THE DEPARTMENT SHALL PROVIDE  
22 COVERAGE FOR THE COSTS OF CORRECTIVE ACTIONS RELATING TO GROUNDWATER  
23 REMEDIATION AND FOR APPROVED CORRECTIVE ACTION PLANS THAT ARE SUBMITTED ON  
24 OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION AND FOR WORK  
25 PLANS THAT ARE ASSOCIATED WITH AN APPROVED CORRECTIVE ACTION PLAN THAT IS  
26 SUBMITTED TO THE DEPARTMENT ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT  
27 TO THIS SECTION, AND PAYMENT SHALL BE MADE ONLY FOR THE MOST COST EFFECTIVE  
28 RISK BASED CORRECTIVE ACTION IN ACCORDANCE WITH RULES ADOPTED UNDER ARTICLE  
29 1 OF THIS CHAPTER. ON ADOPTION OF RULES AND AFTER A REQUEST TO THE  
30 DEPARTMENT, THE DEPARTMENT SHALL ISSUE A NO FURTHER ACTION LETTER ON  
31 COMPLETION OF SOURCE REMOVAL AND SOURCE CONTROL AND APPROVAL OF A GROUNDWATER  
32 MONITORED NATURAL ATTENUATION CORRECTIVE ACTION PLAN. THE DEPARTMENT SHALL  
33 PROVIDE COVERAGE FOR CORRECTIVE ACTIONS RELATED TO THE CONTROL AND REMOVAL  
34 OF A SOURCE OF CONTAMINATION BUT SHALL NOT PROVIDE COVERAGE FOR PERMANENT  
35 CLOSURE OF AN UNDERGROUND STORAGE TANK. A SOURCE OF CONTAMINATION INCLUDES  
36 ANY ONE OR MORE OF THE FOLLOWING:

- 37 1. FREE PRODUCT.
- 38 2. A REGULATED SUBSTANCE PRESENT IN SOIL THAT CAUSES OR THREATENS TO  
39 CAUSE AN EXCEEDANCE OF THE AQUIFER WATER QUALITY STANDARDS.
- 40 3. A REGULATED SUBSTANCE PRESENT IN GROUNDWATER AT LEVELS THAT WOULD  
41 PREVENT TIMELY REDUCTION OF CONTAMINANT CONCENTRATIONS IN COMPARISON WITH THE  
42 PERFORMANCE OF ACTIVE REMEDIATION.
- 43 4. ANY OTHER PRESENCE OF A REGULATED SUBSTANCE CAUSING AN ONGOING  
44 SOURCE OF CONTAMINATION, AS DETERMINED BY THE DEPARTMENT.

1           O. If a person intends to seek payment from the assurance account, the  
2 corrective action selected in a corrective action plan shall be the most  
3 cost-effective alternative that meets the requirements of section 49-1005.  
4 Monies from state appropriations shall not be used for administrative costs.  
5 If the most inexpensive corrective action alternative is not selected, the  
6 person shall demonstrate to the department the criteria supporting the  
7 corrective action selected in the corrective action plan. Nothing in this  
8 subsection shall affect the department's review of corrective action costs  
9 pursuant to article 3 of this chapter.

10           P. The coverage provided by this section is available only to the  
11 extent of the monies available in the assurance account. If there are  
12 insufficient monies available in the assurance account to pay all eligible  
13 costs which the department has determined should be paid, the department  
14 shall defer such payment until sufficient monies are available to pay such  
15 eligible costs. The department shall not provide any coverage and the  
16 assurance account is not liable for compensating third parties for bodily  
17 injury or property damage caused by releases from underground storage tanks.

18           Q. FROM AND AFTER DECEMBER 31, 2005, THE DEPARTMENT SHALL NOT ACCEPT  
19 AN APPLICATION TO THE ASSURANCE ACCOUNT FOR AN AMOUNT OF LESS THAN FIVE  
20 THOUSAND DOLLARS UNLESS ANY OF THE FOLLOWING APPLIES:

21           1. THE REIMBURSEMENT OR PREAPPROVAL APPLICATION IS THE FINAL  
22 APPLICATION ASSOCIATED WITH THE RELEASE.

23           2. THE APPLICATION FOR DIRECT PAYMENT IS THE FINAL APPLICATION  
24 ASSOCIATED WITH THE PREAPPROVED WORK PLAN.

25           3. THE APPLICATION IS THE LAST APPLICATION SUBMITTED BY THAT APPLICANT  
26 ON OR BEFORE JUNE 30, 2010.

27           Sec. 3. Section 49-1053, Arizona Revised Statutes, is amended to read:

28           49-1053. Preapproval options; process; requirements; schedules;  
29                                   corrective action priority

30           A. An owner, an operator or the designated representative of either  
31 or a person prescribed by section 49-1052, subsection I may elect the  
32 preapproval process pursuant to this section or may elect to conduct  
33 corrective actions pursuant to the preapproval process described in rules  
34 adopted pursuant to this article. BEGINNING ON JULY 1, 2005, A PERSON TAKING  
35 CORRECTIVE ACTION PURSUANT TO SECTION 49-1052, SUBSECTION I SHALL PROCEED  
36 ONLY IN ACCORDANCE WITH THE PREAPPROVAL PROCESS DESCRIBED IN RULE FOR ANY  
37 CLAIMS MADE FOR COSTS INCURRED IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS AT  
38 A SINGLE FACILITY.

39           B. An owner, an operator or the designated representative of either  
40 is not required to seek preapproval for eligible costs.

41           C. An owner or operator may not elect either preapproval process if  
42 the corrective action costs included in the application for coverage pertain  
43 to a site that is the subject of an order issued pursuant to section 49-1013  
44 or if the owner or operator has formally consented in writing to an  
45 administrative order.

1 D. Except as provided by subsection J of this section, compliance with  
2 or noncompliance with preapproval procedures is not a basis for determining  
3 priority among the applications for coverage pursuant to this article.

4 E. This section shall not be construed to relieve an owner, an  
5 operator or the designated representative of either from any of the  
6 requirements of this chapter.

7 F. While the application is pending the department shall not take  
8 enforcement action or impose penalties against the owner, operator or  
9 designated representative who submitted the application for preapproval. The  
10 department shall not consider the passage of time while the preapproval  
11 application is pending to be a basis for taking an enforcement action. For  
12 any corrective action submitted for preapproval pursuant to rule, the period  
13 of time for compliance with corrective actions associated with that  
14 preapproval begins to run from the date of preapproval of the corrective  
15 action.

16 G. If an owner or operator elects to perform corrective actions  
17 pursuant to this section, the owner or operator shall do all of the  
18 following:

19 1. Install up to four groundwater monitoring wells as are necessary  
20 to determine the extent of groundwater contamination on the property on which  
21 the release occurred.

22 2. Investigate the vertical extent of soil contamination.

23 3. Submit an on-site investigation report to the department.

24 H. The on-site investigation report shall describe the findings of the  
25 investigation conducted pursuant to this section and shall include a  
26 description of current and reasonably foreseeable future receptors within  
27 one-quarter mile of the property on which the release occurred and existing  
28 and potential exposure pathways.

29 I. Based on the results of the on-site investigation, the owner or  
30 operator shall request closure and include a report of the extent of soil and  
31 groundwater contamination or submit a preapproval application for additional  
32 corrective action. A preapproval application submitted pursuant to this  
33 section shall be submitted as part of an on-site investigation report and  
34 shall include a contingency work plan for sampling and monitoring of  
35 groundwater monitoring wells.

36 J. An owner or operator who elects the preapproval process pursuant  
37 to this section and who is financially needy shall be paid, without being  
38 subject to ranking, in the next regular round in the order received by the  
39 department. The payment shall be for the reasonable and necessary costs  
40 incurred to perform the on-site investigation activities required by this  
41 section. The financial need evaluation shall be conducted in a manner  
42 consistent with section 49-1052, subsection G. The owner or operator may  
43 submit financial information necessary for the department to make a financial  
44 need determination.

1 K. All financial documentation and the on-site investigation report  
2 or the preapproval application shall be submitted to the department pursuant  
3 to one of the following schedules:

4 1. For releases reported on or after July 1, 1999, the materials shall  
5 be submitted to the department within one hundred eighty days of the release  
6 in order for the applicant to be eligible for participation in the  
7 preapproval option provided by this section. Failure to submit the materials  
8 within this time period shall not be deemed by the department to be evidence  
9 of noncompliance with the corrective action requirements of this chapter.

10 2. The materials shall be submitted on or before March 1, 2000 for  
11 releases reported prior to July 1, 1999 and for which the owner or operator  
12 has submitted a preapproval application prior to July 1, 1999 which includes  
13 on-site investigation activities.

14 3. The materials shall be submitted on or before March 1, 2000 for  
15 releases reported prior to July 1, 1999 and for which the owner or operator  
16 has not submitted a preapproval application or conducted an initial  
17 investigation of the release.

18 L. The department shall determine the corrective action priority of  
19 the release within ninety days of the receipt of the materials required by  
20 this section. The corrective action priority shall provide one of the  
21 following options:

22 1. No further corrective action is necessary for the release.

23 2. The time for compliance with corrective action, other than sampling  
24 and monitoring of groundwater monitoring wells, is tolled until the date  
25 monies are encumbered for the preapproval application.

26 3. The owner or operator must continue corrective action before the  
27 monies are encumbered for the preapproval application.

28 M. The corrective action priority shall be based upon all of the  
29 following:

30 1. Consideration of site specific contamination.

31 2. Geologic and hydrologic conditions.

32 3. Location and potential effect on present and reasonably foreseeable  
33 future receptors.

34 4. The presence of preexisting contamination of groundwater by  
35 hazardous substances as defined in section 49-281.

36 N. Any determination made by the department pursuant to this section  
37 constitutes a written interim determination relating to preapproval pursuant  
38 to section 49-1091.

39 O. If the department determines that the time for compliance with  
40 corrective action is tolled until the date monies are encumbered for the  
41 preapproval application pursuant to subsection L, paragraph 2 of this  
42 section, the owner or operator shall sample and monitor any groundwater  
43 monitoring wells installed on the property where the release occurred. The  
44 department shall determine the frequency of the monitoring and sampling.

1 P. The department may alter the corrective action priority of the  
2 release at any time based on the results of sampling and monitoring conducted  
3 pursuant to this section or any other information obtained by the department.

4 Sec. 4. Section 49-1054, Arizona Revised Statutes, is amended to read:  
5 49-1054. Extent of coverage; insurance

6 A. The department shall provide coverage from the assurance account  
7 for ninety per cent of the reasonable and necessary costs of eligible  
8 activities pursuant to section 49-1052, subsection A. EFFECTIVE  
9 RETROACTIVELY TO FROM AND AFTER DECEMBER 31, 2002, ASSURANCE ACCOUNT COVERAGE  
10 UP TO FIVE HUNDRED THOUSAND DOLLARS CONSTITUTES A PRIMARY FINANCIAL ASSURANCE  
11 MECHANISM FOR ALL OWNERS AND OPERATORS FOR ACTIVITIES DESCRIBED IN SECTION  
12 49-1052, SUBSECTION A, BUT DOES NOT PROVIDE COVERAGE FOR COMPENSATING THIRD  
13 PARTIES FOR BODILY INJURY OR PROPERTY DAMAGE AS MAY BE REQUIRED BY FEDERAL  
14 LAW OR RULE AND AS MAY BE EVIDENCED BY A STATEMENT OF FINANCIAL  
15 RESPONSIBILITY PRESCRIBED BY SECTION 49-1006. Ninety per cent of the  
16 reasonable and necessary costs shall be the extent of coverage, except that  
17 owners and operators are eligible for coverage from the assurance account for  
18 only fifty per cent of the reasonable and necessary costs of corrective  
19 actions pertaining to soil and groundwater remediation for releases reported  
20 after June 30, 2000 from underground storage tanks that are not permanently  
21 closed, not temporarily closed or not upgraded in accordance with the rules  
22 adopted pursuant to section 49-1014. The owner or operator shall pay the  
23 remaining costs of the eligible activities pursuant to section 49-1052,  
24 subsection A AND SHALL SUBMIT CERTIFICATION THAT THE OWNER OR OPERATOR HAS  
25 PAID THOSE REMAINING COSTS OR HAS AGREED TO PAY THOSE REMAINING COSTS AS  
26 DEMONSTRATED IN AN EXISTING AGREEMENT. EFFECTIVE RETROACTIVELY TO FROM AND  
27 AFTER DECEMBER 31, 2002 AND NOTWITHSTANDING SECTION 49-1052, SUBSECTION F,  
28 PARAGRAPH 5, the maximum amount that is subject to coverage is five hundred  
29 thousand dollars. OWNERS AND OPERATORS WHO FILE A CLAIM AGAINST ANY  
30 APPLICABLE INSURANCE COVERAGE AVAILABLE TO THEM MAY PRESERVE THEIR  
31 ELIGIBILITY FOR ASSURANCE ACCOUNT COVERAGE FOR AMOUNTS ABOVE FIVE HUNDRED  
32 THOUSAND DOLLARS UP TO THE MAXIMUM OF ONE MILLION DOLLARS AS PRESCRIBED BY  
33 THIS SECTION. An owner or operator is eligible for additional coverage from  
34 the assurance account up to a maximum of one million dollars if the owner or  
35 operator meets both of the following conditions:

36 1. ~~The owner or operator has submitted certification to the department~~  
37 ~~that the owner or operator has submitted a claim against any applicable~~  
38 ~~insurance coverage and has certified to the department the amount of any~~  
39 ~~benefits or reimbursement that the owner or operator has received or will~~  
40 ~~receive from any insurance coverage that might apply to the costs of the~~  
41 ~~corrective action. The owner or operator is eligible for payment from the~~  
42 ~~department to the extent that the corrective action costs have not been~~  
43 ~~reimbursed by insurance and within the coverage limits prescribed by this~~  
44 ~~paragraph. The department may compel the production of documents to~~  
45 ~~determine the existence, amount and type of coverage available. An owner or~~

1 ~~operator shall report to the department any subsequent payment or~~  
2 ~~reimbursement for claims made for corrective actions costs. The owner or~~  
3 ~~operator shall remit to the department within thirty days any amounts that~~  
4 ~~were previously paid to the owner or operator from the underground storage~~  
5 ~~tank revolving fund assurance account and that have also been recovered from~~  
6 ~~insurance.~~

7 2. ~~The owner or operator has utilized to the maximum extent possible~~  
8 ~~any INSURANCE OR alternative financial assurance mechanisms required for~~  
9 ~~coverage pursuant to section 49-1052, subsection F, paragraph 5. The~~  
10 ~~department may compel the production of documents to determine the existence,~~  
11 ~~amount and type of INSURANCE OR alternative coverage available. An owner or~~  
12 ~~operator shall report to the department any payment of corrective actions~~  
13 ~~costs through these alternative mechanisms. The owner or operator shall~~  
14 ~~remit to the department within thirty days any amounts that were recovered~~  
15 ~~by the owner or operator from the underground storage tank revolving fund~~  
16 ~~assurance account and that have also been recovered from any alternative~~  
17 ~~mechanisms. FOR THE SECOND FIVE HUNDRED THOUSAND DOLLARS IN POSSIBLE~~  
18 ~~COVERAGE, THE OWNER OR OPERATOR IS ELIGIBLE FOR PAYMENT FROM THE ASSURANCE~~  
19 ~~ACCOUNT TO THE EXTENT THAT THE CORRECTIVE ACTION COSTS HAVE NOT BEEN AND WILL~~  
20 ~~NOT BE REIMBURSED BY INSURANCE OR ANY ALTERNATIVE FINANCIAL ASSURANCE~~  
21 ~~MECHANISM AND ARE WITHIN THE COVERAGE LIMITS PRESCRIBED BY THIS SECTION.~~

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

26 C. The department shall pay eligible costs that are reasonable and  
27 were actually incurred FOR CORRECTIVE ACTIONS THAT WERE ACTUALLY PERFORMED.  
28 THE COSTS FOR THE CORRECTIVE ACTIONS SHALL BE DOCUMENTED IN AN APPLICATION  
29 FOR PAYMENT FROM THE ASSURANCE ACCOUNT. THE DEPARTMENT SHALL PAY ONLY FOR  
30 THOSE REPORTS THAT ARE REQUIRED IN RULES ADOPTED PURSUANT TO THIS CHAPTER AND  
31 ONLY ON THE DEPARTMENT'S RECEIPT AND APPROVAL OF THE REPORT. Reasonableness  
32 of corrective actions shall be determined based on the law and the facts  
33 available to the owner, operator or person described in section 49-1052,  
34 subsection I at the time the technical decision was made. Corrective action  
35 costs that are preapproved by the department or corrective actions that are  
36 performed at the written request or written instruction of the department are  
37 deemed reasonable, necessary and reimbursable. At least every three years,  
38 the department shall establish schedules of corrective action costs which the  
39 department considers reasonable. For those years that the department does  
40 not establish a cost schedule, all costs shall be adjusted annually in  
41 accordance with the percentage change in the bureau of labor statistics  
42 annual number for the final producer price index for finished goods less food  
43 and energy not seasonally adjusted. FROM AND AFTER JUNE 30, 2005, PAYMENT  
44 FROM THE ASSURANCE ACCOUNT SHALL BE BASED ON THE SCHEDULE OF CORRECTIVE  
45 ACTION COSTS IN EFFECT WHEN THE APPLICATION TO THE ASSURANCE ACCOUNT IS

1 SUBMITTED TO THE DEPARTMENT. BEFORE JULY 1, 2005, PAYMENT FROM THE ASSURANCE  
2 ACCOUNT SHALL BE BASED ON THE SCHEDULE OF CORRECTIVE ACTION COSTS IN EFFECT  
3 ON THE DATE A CONTRACT FOR CORRECTIVE ACTION WORK WAS ENTERED INTO BY THE  
4 OWNER OR OPERATOR, OR IF THAT DATE CANNOT BE DETERMINED, THE DATE THAT WORK  
5 ASSOCIATED WITH THE CORRECTIVE ACTION WAS PERFORMED. These cost schedules  
6 shall be task-based costs relating to the phases of corrective action. The  
7 department may establish additional cost schedules for incremental costs that  
8 are necessary to supplement the task-based costs to reflect limited site  
9 specific conditions. No other cost schedules shall be established and all  
10 eligible work shall be reviewed and paid based on the task-based costs and  
11 incremental costs when necessary. The department shall not require costs  
12 associated with a given task to include details on time and materials if the  
13 total costs claimed for that task do not exceed the amount for that task in  
14 the schedule of corrective action costs as established pursuant to this  
15 section. The department shall pay the costs that are associated with a given  
16 task and that do not exceed the amount for that task in the applicable cost  
17 schedule. ~~Payments to an owner or operator shall be based on the schedule~~  
18 ~~of corrective action costs in effect on the date a contract for corrective~~  
19 ~~action work was entered into by the owner or operator, or if that date cannot~~  
20 ~~be determined, the date work associated with the corrective action was~~  
21 ~~performed.~~ The cost schedules apply to all corrective action costs submitted  
22 for payment from the assurance account, including any costs incurred by the  
23 department in taking corrective actions after May 27, 1998 and to the  
24 recovery of those corrective action costs by the department pursuant to  
25 sections 49-1017, 49-1017.01 and 49-1022. BEGINNING FROM AND AFTER JUNE 30,  
26 2005, ALL PRIOR ESTABLISHED COST SCHEDULES ARE REPEALED. The department  
27 shall pay for work item costs as if the work was specified within a  
28 preapproved work plan if the work is within the work objectives of a  
29 preapproved work plan, and if either of the following apply APPLIES:

30 1. The cost is for a work item that is substituted for a work item  
31 that was set forth in the preapproved work plan, if the cost does not exceed  
32 both of the following:

33 (a) The cost schedule for the work item submitted in substitution.

34 (b) The cost of the work item originally preapproved.

35 2. The cost is for reasonable and necessary work that is not specified  
36 within the preapproved work plan as a work item, and is not a substituted  
37 work item, if the cost does not result in both of the following:

38 (a) Payments under the preapproved work plan to exceed the total  
39 preapproved amount.

40 (b) Payments to exceed the cost schedule for that work item.

41 If payment for the costs pursuant to paragraph 2 of this subsection would  
42 cause an exceedance of the total preapproved amount in the work plan, that  
43 excess amount for the work that is equal to or less than the applicable cost  
44 schedules shall be prioritized for payment as prescribed by section 49-1052,  
45 subsection G.

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. EFFECTIVE RETROACTIVELY TO FROM AND AFTER DECEMBER 31, 2002, an  
8 owner or operator shall not receive payment from the department until after  
9 the owner or operator has submitted certification to the department that the  
10 ~~owner or operator has submitted a claim against any applicable insurance~~  
11 ~~coverage and has certified to the department OF the amount of any benefits~~  
12 ~~or reimbursement that the owner or operator has received or will receive from~~  
13 ~~any insurance coverage that might apply HAS BEEN APPLIED to the costs of the~~  
14 ~~corrective action FOR THE OCCURRENCE. The owner or operator is eligible for~~  
15 ~~payment from the department to the extent that the corrective action costs~~  
16 ~~have not been and will not be reimbursed TO THE OWNER OR OPERATOR, OR ITS~~  
17 ~~CONSULTANT, REPRESENTATIVE OR AGENT, by insurance and within the coverage~~  
18 ~~limits prescribed by this section. A PROVIDER OF INSURANCE OR AN ALTERNATIVE~~  
19 ~~FINANCIAL ASSURANCE MECHANISM WHO IS NOT AN OWNER OR OPERATOR WITH RESPECT~~  
20 ~~TO THE OCCURRENCE IS NOT ELIGIBLE FOR PAYMENT FROM THE ASSURANCE ACCOUNT. An~~  
21 ~~owner or operator shall report to the department whether it has insurance~~  
22 ~~coverage available and shall comply with all applicable financial~~  
23 ~~responsibility requirements. IF THE DIRECTOR HAS REASON TO BELIEVE THAT AN~~  
24 ~~OWNER OR OPERATOR, OR ITS CONSULTANT, REPRESENTATIVE OR AGENT, HAS RECEIVED~~  
25 ~~OR MAY RECEIVE ANY PAYMENT FOR CORRECTIVE ACTIONS FROM INSURANCE, the~~  
26 ~~department may compel the production of documents to determine the existence,~~  
27 ~~amount and type of INSURANCE coverage available AND TO WHOM PAYMENT WAS MADE~~  
28 ~~OR MAY BE MADE. An owner or operator shall report to the department any~~  
29 ~~subsequent payment or reimbursement FROM INSURANCE TO THE OWNER OR OPERATOR~~  
30 ~~OR ITS CONSULTANT, REPRESENTATIVE OR AGENT for claims made for corrective~~  
31 ~~actions costs. The owner or operator shall remit to the department within~~  
32 ~~thirty days any amounts that were previously paid to the owner or operator~~  
33 ~~OR ITS CONSULTANT, REPRESENTATIVE OR AGENT from the underground storage tank~~  
34 ~~revolving fund assurance account and that have also been recovered from~~  
35 ~~insurance.~~

36 F. Appeals fees and costs payable pursuant to section 49-1091.01 shall  
37 be paid in the next regular round of payment without being subject to ranking  
38 and in the order received by the department.

39 Sec. 5. Section 49-1091, Arizona Revised Statutes, is amended to read:  
40 49-1091. Underground storage tank informal appeals

41 A. A person who undertakes corrective action pursuant to section  
42 49-1052, subsection 1 or an owner or operator may informally appeal the  
43 following decisions or determinations pursuant to this section:

44 1. A written interim decision from the underground storage tank  
45 program of the department.

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

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

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

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

12           C. A person who undertakes corrective action pursuant to section  
13 49-1052, subsection I or an owner or operator who is subject to an interim  
14 decision or determination described in subsections A and B of this section,  
15 and who disagrees with the interim decision or determination, may file a  
16 written notice of disagreement with the department within thirty days of  
17 receiving the department's interim decision or determination. The notice  
18 shall include a description of the specific portions of the interim decision  
19 or determination with which the person, owner or operator disagrees and may  
20 include a request to meet with the department to resolve the disagreement.  
21 The department shall schedule a meeting within thirty days after receiving  
22 the request.

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

27           E. The department shall issue a final written decision or  
28 determination within forty-five days of receiving the notice of disagreement  
29 or within fifteen days of a meeting pursuant to subsection C of this section,  
30 whichever is later. If no notice of disagreement is filed, the department  
31 shall issue a final written decision or determination within forty-five days  
32 after the issuance of the interim decision or determination. Before the  
33 expiration of time for the department to issue a final written decision or  
34 determination, the department may request additional information from the  
35 person who has submitted a notice of disagreement that is necessary to make  
36 a final decision or determination. A person who receives this request shall  
37 have fifteen days to submit the requested information to the department. The  
38 time frames for the department to issue a final decision or determination  
39 shall be extended for up to fifteen days during the time the requested  
40 information is outstanding, and for up to fifteen additional days, if  
41 applicable, after any information is submitted to the department. The time  
42 to submit the requested information may be extended for up to sixty days on  
43 the request of a person who submits a notice of disagreement. The time  
44 frames for the department to issue a final decision or determination shall  
45 be extended accordingly. The time frames for the department to issue a final

1 decision or determination shall also be extended if information relating to  
2 the subject of the notice of disagreement is not requested by the department  
3 but is provided to the department for the first time less than fifteen days  
4 from the date the department is required to issue a final decision or  
5 determination. In this situation, the time frames shall be extended to allow  
6 the department fifteen days from the date the information is submitted to  
7 issue a final decision or determination. If the department fails to issue  
8 a final written decision or determination within the time specified in this  
9 subsection, the department's written interim decision or determination  
10 becomes the final written decision or determination. The final written  
11 decision or determination shall address the notice of disagreement received  
12 pursuant to subsection C of this section. The final written decision or  
13 determination is the only decision or determination that is appealable as an  
14 appealable agency action as defined in section 41-1092 or a contested case  
15 as defined in section 41-1001.

16 F. The period of time for compliance with corrective actions  
17 associated with the subject matter of a notice of disagreement is tolled from  
18 the date that a person who undertakes corrective action pursuant to section  
19 49-1052, subsection I or an owner or operator files a written notice of  
20 disagreement with the department until the date the final decision or  
21 determination is rendered by the department and any appeals are completed.

22 G. A written interim decision shall address one of the following  
23 technical issues:

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

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

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

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

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

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

36 I. The department's failure to respond with a written interim  
37 determination to the owner's or operator's submission, OR TO THE SUBMISSION  
38 FROM A PERSON WHO UNDERTAKES CORRECTIVE ACTION PURSUANT TO SECTION 49-1052,  
39 SUBSECTION I, of an application for preapproval, direct payment or  
40 reimbursement from the underground storage tank assurance account within  
41 ninety days of receipt is a basis for an informal appeal.

42 Sec. 6. Section 49-1093, Arizona Revised Statutes, is amended to read:  
43 49-1093. Underground storage tank technical appeals panel

44 A. The underground storage tank technical appeals panel is established  
45 consisting of five TEN regular members and two THREE alternate members who

1 are appointed by and who serve at the pleasure of the governor for staggered  
2 two year terms. Each member shall have a baccalaureate degree and  
3 professional experience in hydrology, hydrogeology, geology or engineering.  
4 Experience with underground storage tank corrective actions is highly  
5 preferred. A member shall not be an employee of the United States  
6 environmental protection agency or this state, but may be a faculty member  
7 at a state university.

8 B. Members and alternates are eligible for compensation pursuant to  
9 section 38-611, subsection D for each day they attend a hearing or conduct  
10 formal deliberations.

11 C. Members are subject to title 38, chapter 3, article 8, relating to  
12 conflict of interest. A panel member shall not participate in an  
13 administrative hearing if the member has IS INVOLVED IN an appeal pending  
14 pursuant to this section that is substantially similar to the matter on  
15 appeal. A PANEL MEMBER SHALL DISCLOSE TO ALL PARTIES ALL POTENTIAL CONFLICTS  
16 OF INTEREST WITHIN FORTY-EIGHT HOURS AFTER APPOINTMENT TO PARTICIPATE IN AN  
17 ADMINISTRATIVE HEARING. A CURRENT PANEL MEMBER SHALL NOT APPEAR BEFORE THE  
18 PANEL AS AN EMPLOYEE, CONSULTANT, WITNESS OR EXPERT WITNESS FOR A PARTY TO  
19 AN APPEAL. A former panel member shall not appear before the panel as an  
20 employee, or consultant, WITNESS OR EXPERT WITNESS for a party to an appeal  
21 for a period of one year. A panel member shall not participate in an  
22 administrative hearing if either of the following apply:

23 1. The member is or was during the preceding year an employee of a  
24 party at the hearing.

25 2. The member is or was employed during the preceding year by a firm  
26 appearing on behalf of a party at the hearing.

27 D. A PERSON WHO IS INVOLVED IN A PENDING APPEAL PURSUANT TO THIS  
28 SECTION SHALL NOT COMMUNICATE DIRECTLY OR INDIRECTLY WITH ANY MEMBER OF THE  
29 PANEL ABOUT ANY SUBSTANTIVE ISSUE IN A PENDING APPEAL UNLESS ANY OF THE  
30 FOLLOWING APPLIES:

31 1. ALL PARTIES ARE PRESENT.

32 2. THE COMMUNICATION IS MADE DURING A SCHEDULED PROCEEDING IN WHICH  
33 A PARTY FAILS TO APPEAR AFTER PROPER NOTICE.

34 3. THE COMMUNICATION IS MADE IN WRITING WITH COPIES TO ALL PARTIES.

35 ~~D.~~ E. The appellant, the department or the administrative law judge  
36 selected by the office of administrative hearings may request that the panel  
37 participate in a hearing arising from a final decision or determination  
38 issued pursuant to section 49-1091. If five panel members including  
39 alternates are not available, the hearing may proceed if at least three  
40 members including alternates are available.

41 ~~E.~~ F. Hearings shall be conducted in accordance with this article and  
42 the procedures in title 41, chapter 6, article 10, relating to convening and  
43 conducting hearings and time frames for issuing decisions. The notice of  
44 hearing issued pursuant to section 41-1092.05 shall be served on the panel  
45 members.

1           ~~F.~~ G. The scope of the hearing shall be limited to those matters and  
2 rationale specifically addressed in the final determination or decision  
3 issued by the department pursuant to section 49-1091.

4           ~~G.~~ H. Unless otherwise agreed by the parties, before the hearing, the  
5 parties shall exchange a list of witnesses and any copies of documents to be  
6 introduced at the hearing and attempt in good faith to stipulate to those  
7 witnesses who will be called to testify, the documents that may be introduced  
8 at the hearing and any facts and law at issue in the matter. Before the  
9 hearing, the administrative law judge as necessary shall issue an order  
10 listing the witnesses to be called, the documents that may be introduced and  
11 clarifying or limiting any procedural, legal or factual issues in the matter,  
12 scheduling any deadlines and hearing dates, and requesting any prehearing  
13 briefing.

14           ~~H.~~ I. The panel shall hear testimony, review evidence, examine  
15 witnesses if necessary and prepare written findings of fact regarding the  
16 matters specifically identified by the department pursuant to subsection ~~F-~~  
17 G of this section. The administrative law judge and the panel members shall  
18 deliberate at the conclusion of the hearing. Following these deliberations,  
19 the panel members shall weigh the evidence presented and issue written  
20 findings of fact based solely on the testimony presented at the hearing and  
21 the exhibits received into evidence. The administrative law judge shall  
22 adopt the panel's technical findings of fact in the recommended decision to  
23 the director unless the administrative law judge determines that the  
24 technical findings of fact are technically invalid. The administrative law  
25 judge shall prepare a written explanation in the recommended decision to the  
26 director regarding the reasons for the administrative law judge's finding and  
27 shall include a copy of the panel's technical findings of fact with the  
28 recommended decision.

29           ~~I.~~ J. The director may affirm, reject or modify the recommended  
30 decision of the administrative law judge. The director may only reject or  
31 modify the technical findings of fact in the recommended decision if the  
32 director determines they are technically invalid. The director may only  
33 reject or modify the conclusions of law in the recommended decision if the  
34 director determines they are incorrect as a matter of law. The director's  
35 decision shall be issued in accordance with the time frames prescribed in  
36 section 41-1092.08, subsection B. The recommended decision becomes the final  
37 administrative decision if the director's decision is not issued within  
38 thirty days after receipt of the recommended decision.

39           ~~J.~~ K. Any party may intervene in an appeal at the discretion of the  
40 administrative law judge.

41           Sec. 7. Repeal

42           Title 49, chapter 6, articles 2 and 3, Arizona Revised Statutes, are  
43 repealed.

1           Sec. 8. Regulated substance fund; deposit of monies

2           On July 1, 2011, after payment of all claims that were timely submitted  
3 to the department of environmental quality, the director of environmental  
4 quality shall transfer all of the following from the underground storage tank  
5 assurance account established pursuant to section 49-1015, Arizona Revised  
6 Statutes, into the regulated substance fund established pursuant to section  
7 49-1015.01, Arizona Revised Statutes, as added by this act:

8           1. An amount equal to the amount of copayments made by claimants  
9 pursuant to section 49-1052, subsection I, Arizona Revised Statutes, as  
10 amended by this act, and section 49-1054, subsection A, Arizona Revised  
11 Statutes, as amended by this act, and retained by the underground storage  
12 tank assurance account.

13           2. Any monies remaining in the underground storage tank assurance  
14 account after all claims are paid or extinguished, or both, pursuant to  
15 section 9 of this act up to a maximum of sixty million dollars. Any monies  
16 remaining in the underground storage tank assurance account in excess of  
17 sixty million dollars shall be deposited in the state general fund.

18           3. Any assurance account monies encumbered by the director on or  
19 before June 30, 2011 for corrective actions related to a work plan or  
20 corrective action plan approved by the department before June 30, 2010 in  
21 which monitored natural attenuation is all or a portion of the selected  
22 remedy and for which monies may be necessary to meet the standards for case  
23 closure. Nothing in this paragraph shall be construed to affect the existing  
24 statutory claims process for claims involving monitored natural  
25 attenuation. Monies encumbered for monitored natural attenuation pursuant  
26 to this paragraph shall be deposited in the monitored natural attenuation  
27 account of the regulated substance fund.

28           Sec. 9. Underground storage tank assurance account; termination  
29                                   of eligibility

30           Notwithstanding any other law:

31           1. From and after June 30, 2006, only releases of a regulated  
32 substance that are reported before July 1, 2006 as provided in section  
33 49-1004, Arizona Revised Statutes, are subject to coverage for corrective  
34 action costs from the underground storage tank assurance account.

35           2. An application for reimbursement for or direct payment of eligible  
36 reasonable and necessary costs from the underground storage tank assurance  
37 account shall be filed with the department of environmental quality no later  
38 than 5:00 p.m. on June 30, 2010.

39           3. An application for preapproval made pursuant to section 49-1052,  
40 subsection I, Arizona Revised Statutes, or section 49-1053, Arizona Revised  
41 Statutes, shall be filed with the department of environmental quality no  
42 later than 5:00 p.m. on June 30, 2009.

43           4. Any application made or expense incurred after June 30, 2010 is not  
44 eligible for coverage from the underground storage tank assurance account and  
45 all such claims are extinguished.

1           Sec. 10. Underground storage tank assurance account  
2                           liabilities; report

3           By September 1, 2009, the department of environmental quality shall  
4 prepare and submit a report to the governor, the president of the senate and  
5 the speaker of the house of representatives regarding the anticipated  
6 financial liability of the underground storage tank assurance account based  
7 on applications for payment submitted to the department by June 30, 2009.

8           Sec. 11. Resubmittal of application for payment; limitation  
9                           waived

10           Notwithstanding the one year time limitation for claims prescribed by  
11 section 49-1052, subsection M, Arizona Revised Statutes, any application that  
12 was denied by the department of environmental quality after December 31, 2002  
13 for failure to comply with section 49-1054, subsection E, Arizona Revised  
14 Statutes, may be resubmitted to the department before January 1, 2005 and the  
15 department shall review and process the application as prescribed in this  
16 act.

17           Sec. 12. Underground storage tank program rules; notice and  
18                           hearing

19           The director of environmental quality shall adopt rules to implement  
20 sections 1, 2 and 9 of this act, including rules that may relate to the  
21 imposition of reasonable fees for review of reports related to releases and  
22 corrective actions after June 30, 2011.

23           Sec. 13. Rural underground storage tank closure initiative

24           The department of environmental quality shall consult with local and  
25 county governments in rural areas of this state before June 30, 2006 to  
26 ensure the identification and permanent closure of historic underground  
27 storage tanks using existing statutory authority, including the municipal  
28 tank closure program.

29           Sec. 14. Effective date; condition; notice

30           A. Section 7 of this act, relating to the repeal of title 49, chapter  
31 6, articles 2 and 3, Arizona Revised Statutes, is effective on the earlier  
32 of the following:

33           1. Receipt of sixty million dollars into the regulated substance fund  
34 established by section 49-1015.01, Arizona Revised Statutes, as added by this  
35 act, after payment and extinguishment of all claims that were timely  
36 submitted and transfer of monies as prescribed by section 8, paragraph 2 of  
37 this act.

38           2. Receipt of sixty million dollars into the regulated substance fund  
39 established by section 49-1015.01, Arizona Revised Statutes, as added by this  
40 act, from monies transferred pursuant to this paragraph. If the regulated  
41 substance fund does not receive sixty million dollars pursuant to paragraph  
42 1 of this section, the director of environmental quality shall deposit into  
43 the regulated substance fund monies collected by the department pursuant to  
44 section 49-1031, Arizona Revised Statutes, until a total of sixty million  
45 dollars of tax revenues collected pursuant to section 49-1031, Arizona

1 Revised Statutes, in addition to monies encumbered and deposited in the  
2 monitored natural attenuation account, is received by the regulated substance  
3 fund.

4 3. December 31, 2013.

5 B. The director of environmental quality shall immediately provide  
6 written notice to the director of the Arizona legislative council when the  
7 regulated substance fund has received a total of sixty million dollars of tax  
8 revenues as prescribed by this section.

APPROVED BY THE GOVERNOR MAY 26, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 27, 2004.

Passed the House May 5, 2004

by the following vote: 46 Ayes,

12 Nays, 2 Not Voting

Jake Flake  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate February 23, 2004

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Plunett  
President of the Senate

Charmine Bellinger  
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. 1306

**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 May 20, 2004,

by the following vote: 21 Ayes,

6 Nays, 2 Not Voting

Ken Blunt Excused  
President of the Senate

Charmion Ballinger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20th day of May, 2004,

at 1:53 o'clock p. M.

Winnifer Ibarra  
Secretary to the Governor

Approved this 26 day of

May, 2004,

at 4:40 o'clock p. M.

J. R. Ruppel  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 27 day of May, 2004

at 8:29 o'clock A M.

James K. Brewer  
Secretary of State

S.B. 1306