Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

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CHAPTER 247

HOUSE BILL 2636

AN ACT

AMENDING SECTIONS 49-1001 AND 49-1002, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-1006.01 AND 49-1006.02; REPEALING SECTIONS 49-1015 AND 49-1015.01, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 49-1015; AMENDING SECTIONS 49-1017 AND 49-1017.01, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1017.02; AMENDING SECTIONS 49-1018, 49-1019, 49-1020, 49-1022 AND 49-1023, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1024; AMENDING SECTIONS 49-1031 AND 49-1036, ARIZONA REVISED STATUTES; REPEALING TITLE 49, CHAPTER 6, ARTICLES 3 AND 4, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING NEW ARTICLES 3 AND 4; AMENDING SECTIONS 49-1091 AND 49-1091.01, ARIZONA REVISED STATUTES; REPEALING SECTIONS 49-1031, 49-1092 AND 49-1093, ARIZONA REVISED STATUTES; REPEALING LAWS 2004, CHAPTER 273, SECTION 7; REPEALING LAWS 2004, CHAPTER 273, SECTION 14, AS AMENDED BY LAWS 2013, CHAPTER 244, SECTION 5; AMENDING LAWS 2015, CHAPTER 13, SECTION 6; MAKING APPROPRIATIONS; RELATING TO UNDERGROUND STORAGE TANKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 49-1001, Arizona Revised Statutes, is amended to read:

49-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Being used" means not having been taken out of operation.

2. "Closure" means the removal of an underground storage tank from operation.

3. "Corrective actions" means those actions that are prescribed pursuant to section 49-1005.

4. "Designated representative" means a person to whom an owner or an operator, or both, assign in writing any right, title or interest ~~which~~ THAT the owner or operator, or both, may have in and to the proceeds of a reimbursement for a corrective action made under article 3 of this chapter.

5. "Energy policy act" means the underground storage tank compliance act, title XV, subtitle B of the ~~federal~~ energy policy act of 2005 (P.L. 109-58; 119 Stat. 1092~~; 42 United States Code section 6991~~), as amended.

6. "Fiduciary" means:

(a) A trust company or bank certified or authorized to engage in the trust business pursuant to title 6, chapter 8, article 1.

(b) Any person appointed by a court or testamentary act to act as personal representative, executor, trustee, administrator, guardian, conservator, receiver or trustee in bankruptcy.

(c) Any person acting as a trustee of a deed of trust pursuant to section 33-803.

(d) Any person acting as a trustee pursuant to title 14, chapter 7.

(e) Any person acting pursuant to and subject to fiduciary obligations under the employee retirement income security act of 1974 (29 United States Code sections 1101 through 1114).

7. "Guarantor" means a person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this chapter.

8. "Motor fuel" means petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine.

9. "New piping component" means any underground pipe or combination of pipes that contains and conveys a regulated substance between a tank and a motor fuel dispenser, including any valve, elbow, connector or joint that is added to an underground storage tank on or after January 1, 2009 and that was not originally included or installed as part of the underground storage tank.

10. "Occurrence" means an incident or accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

11. "Operator" means a person in control of, or having responsibility for, the day-to-day operation of an underground storage tank.

12. "Out of operation" means having been closed in accordance with all applicable fire codes and other statutory and regulatory requirements for closure in effect on the date that closure was accomplished.

13. "Person" means an individual, trust, firm, joint stock company, corporation, joint venture, partnership, association, consortium, state, municipality, interstate body, commission, political subdivision of a state and the United States government.

14. "Petroleum" means petroleum, including crude oil or any fraction of crude oil, which is liquid at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute, and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, residual fuel oils, lubricants, jet fuels, distillate fuel oils, petroleum solvents and used oils.

15. "Political subdivision" means a county, city, town or other taxing district other than the state that is authorized to take property by eminent domain.

16. "Regulated substance" means:

(a) Petroleum.

(b) A substance specified in the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9601(14)) but not including a substance regulated as a hazardous waste under the HAZARDOUS AND solid waste ~~disposal act~~ AMENDMENTS of 1984 (P.L. 98-616; 98 Stat. 3221~~; 42 United States Code section 6921~~).

17. "Release" means a spill, leak, emission, discharge, escape, leach or disposal of a regulated substance from an underground storage tank into groundwater, surface water or soils.

18. "Suspected release" means any of the following:

(a) The discovery by owners and operators or others of released regulated substances at the underground storage tank site or in the surrounding area.

(b) Erratic behavior of regulated substance dispensing equipment, the sudden loss of a regulated substance from an underground storage tank, an unexplained presence of water in the underground storage tank or other extraordinary operating conditions that could reasonably be associated with a release from an underground storage tank and that are observed by owners and operators, unless system equipment is found to be defective but not leaking and is repaired or replaced immediately.

(c) That the monitoring results from a release detection method required under 40 Code of Federal Regulations sections 280.41 and 280.42, this chapter or rules adopted pursuant to this chapter indicate that a release may have occurred unless either of the following occurs:

(i) The monitoring device is found to be defective and is immediately repaired, recalibrated or replaced and additional monitoring data do not confirm the initial result.

(ii) In the case of inventory control, a second month of inventory reconciliation data does not confirm the initial result.

19. "Tank" means a stationary device constructed of wood, concrete, steel, plastic or other nonearthen materials and used to contain regulated substances.

20. "Under-dispenser containment" means a secondary containment device that is beneath a motor fuel dispenser, that is connected to the underground storage tank and that is designed to be liquid tight.

21. "Underground storage tank" means a tank or combination of tanks and underground pipes and impact valves connected to tanks being used or having been used to contain regulated substances and which has at least ten ~~per cent~~ PERCENT of the total volume of the tank and underground portions of pipes connected to the tank underground. Underground storage tank does not mean any of the following:

(a) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) A tank used for storing heating oil for consumptive use on the premises where stored.

(c) A septic tank.

(d) A pipeline facility, including gathering lines, regulated under either:

(i) The natural gas pipeline safety act of 1968 (49 United States Code sections 1671 through 1686).

(ii) The hazardous liquid pipeline safety act of 1979 (49 United States Code section 2001).

(e) An intrastate pipeline facility regulated under a state law comparable to the provisions of law referred to in subdivision (d), item (i) or (ii) OF THIS PARAGRAPH.

(f) A surface impoundment, pit, pond or lagoon.

(g) A storm water or wastewater collection system.

(h) A flow-through process tank.

(i) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(j) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated on or above the surface of the floor.

(k) Pipes connected to any of the structures described in subdivisions (a) through (j) OF THIS PARAGRAPH.

22. "VOLUNTEER" MEANS A PROPERTY OWNER OR A PERSON OTHER THAN AN OWNER OR OPERATOR THAT ASSUMES RESPONSIBILITY FOR CORRECTIVE ACTIONS FOR A RELEASE FROM AN UNDERGROUND STORAGE TANK.

Sec. 2. Section 49-1002, Arizona Revised Statutes, is amended to read:

49-1002. Notification requirements; exemptions

A. Except as otherwise provided in this section, each owner of an underground storage tank shall notify the department in writing and shall specify the tank's age, size, type, location and use.

B. For an underground storage tank that was taken out of operation on or before January 1, 1974, regardless of whether the tank was removed from the ground, the owner is exempt from giving notice.

C. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was removed from the ground, the owner is exempt from giving notice.

D. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was not removed from the ground, the owner shall specify the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation. These requirements are in addition to the requirements for notice prescribed in subsection A OF THIS SECTION.

E. For an underground storage tank that was taken out of operation after November 8, 1984 but before December 22, 1988 the director may require the owner to make reasonable efforts to specify the age, size, location and use of the tank, the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation and the date of its removal from operation.

F. An owner OR OPERATOR who brings an underground storage tank into operation shall meet the notification requirements of this section ~~within~~ AT LEAST thirty days ~~after~~ BEFORE BRINGING the tank ~~is brought~~ into operation. An owner OR OPERATOR who brings a new piping component or under-dispenser containment into operation on or after January 1, 2009 shall meet the notification requirements of this section within thirty days after the new piping component or under-dispenser containment is brought into operation.

G. A person who sells a tank for use as an underground storage tank shall notify the purchaser of the notice requirements of subsection F OF THIS SECTION AND SHALL PROVIDE TO THE DEPARTMENT DOCUMENTATION OF THE NOTICE GIVEN.

H. The notices required by this section shall be made on forms prescribed by the department.

Sec. 3. Title 49, chapter 6, article 1, Arizona Revised Statutes, is amended by adding sections 49-1006.01 and 49-1006.02, to read:

49-1006.01. Insurance for releases; termination; notice; coverage; assistance

A. BEGINNING ON JANUARY 1, 2016 AND CONTINUING FOR TWENTY-FOUR MONTHS, IF AN OWNER OR OPERATOR MAKES A CLAIM AGAINST ITS INSURANCE OR AN ALTERNATIVE FINANCIAL RESPONSIBILITY MECHANISM FOR A RELEASE AND ITS CLAIM IS DENIED OR OTHERWISE NOT PAID, THE OWNER OR OPERATOR SHALL PROVIDE TO THE DEPARTMENT A COPY OF THE NOTICE OF DENIAL OR OTHER EVIDENCE OF NONPAYMENT.

B. IF THE INSURANCE USED TO MEET THE FINANCIAL RESPONSIBILITY REQUIREMENTS OF THIS CHAPTER IS TERMINATED OR NOT RENEWED, THE INSURER SHALL NOTIFY THE DEPARTMENT OF THE TERMINATION OR NONRENEWAL WITHIN THIRTY DAYS AFTER THE DATE OF TERMINATION OR NONRENEWAL. THE NOTICE TO THE DEPARTMENT SHALL STATE THE NAME AND ADDRESS OF THE INSURED, THE DATE OF TERMINATION OR NONRENEWAL AND THE ADDRESS OF THE FACILITY THAT HAD BEEN INSURED.

C. BEFORE JANUARY 1, 2017 OR ON THE INSURANCE CONTRACT RENEWAL DATE, WHICHEVER IS EARLIER, AN OWNER OR OPERATOR THAT SATISFIES FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH INSURANCE SHALL HAVE POLICY COVERAGE THAT EXTENDS TO ONE OF THE FOLLOWING:

1. THE DATE OF THE MOST RECENT BASELINE ASSESSMENT CONDUCTED PURSUANT TO SECTION 49-1052 OR COMPARABLE SITE CHARACTERIZATION AS DETERMINED BY THE DEPARTMENT.

2. THE DATE OF THE UNDERGROUND STORAGE TANK SYSTEM INSTALLATION.

3. THE EARLIEST RETROACTIVE COVERAGE DATE OF THE PREVIOUS INSURANCE POLICY OR ALTERNATIVE FINANCIAL RESPONSIBILITY MECHANISM.

D. THE DEPARTMENT SHALL ASSIST AN OWNER OR OPERATOR IN PURSUING THE OWNER'S OR OPERATOR'S CLAIM AGAINST THE FINANCIAL RESPONSIBILITY MECHANISM AND OBTAINING COVERAGE FOR A CONFIRMED RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM THAT IS COVERED BY THE MECHANISM.

49-1006.02. <u>Insurance primacy; requirements; fund access</u>

A. FOR OWNERS OR OPERATORS THAT SATISFY FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH INSURANCE, THE FOLLOWING APPLY:

1. THE POLICY THAT COVERS THE UNDERGROUND STORAGE TANK SYSTEM AT THE TIME THE RELEASE IS DISCOVERED SHALL BE PRIMARY TO ELIGIBILITY UNDER SECTIONS 49-1017 AND 49-1054.

2. THE OWNER OR OPERATOR IS NOT REQUIRED TO EXHAUST INSURANCE COVERAGE IN ORDER TO BE ELIGIBLE UNDER SECTIONS 49-1017 AND 49-1054.

3. ELIGIBILITY UNDER SECTIONS 49-1017 AND 49-1054 IS CONTINGENT ON FILING A TIMELY INSURANCE CLAIM UNDER THE POLICY AND PURSUING THAT CLAIM UNTIL A DENIAL IS RECEIVED OR, AFTER ASSISTANCE FROM THE DEPARTMENT AS PRESCRIBED IN SECTION 49-1006.01, SUBSECTION D, UNTIL THE DEPARTMENT DETERMINES THAT THE CLAIM HAS BEEN CONSTRUCTIVELY DENIED.

4. AN OWNER OR OPERATOR THAT FAILS TO PURSUE AN INSURANCE CLAIM IS NO LONGER ELIGIBLE UNDER SECTIONS 49-1017 AND 49-1054.

B. AN OWNER OR OPERATOR THAT SATISFIES FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH INSURANCE AND THAT WILL NOT RECEIVE PAYMENT FROM ITS INSURANCE PROVIDER UNTIL AFTER THE EXPENDITURE OF AT LEAST FIFTY THOUSAND DOLLARS PER FACILITY AS PROVIDED IN AN INSURANCE POLICY THAT IS IN EFFECT ON APRIL 1, 2015 OR THAT SATISFIES FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH AN ALTERNATIVE FINANCIAL RESPONSIBILITY MECHANISM IS ELIGIBLE UNDER SECTIONS 49-1017 AND 49-1054 AFTER MEETING A COST SHARING OBLIGATION BY PAYMENT OF THE FIRST FIFTY THOUSAND DOLLARS PER FACILITY FOR WORK THAT IS CONDUCTED ON OR AFTER JANUARY 1, 2016. THIS ELIGIBILITY IS SUBJECT TO THE LIMITS PRESCRIBED IN SECTION 49-1054, SUBSECTION A AND IS SUBJECT TO THE PREAPPROVAL PROCESS

PRESCRIBED IN SECTION 49-1051. ELIGIBILITY PURSUANT TO THIS SUBSECTION FOR OWNERS OR OPERATORS THAT MEET FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH INSURANCE IS CONTINGENT ON PROVIDING TIMELY NOTICE OF THE RELEASE TO THE INSURANCE CARRIER UNDER THE POLICY AND THAT ELIGIBILITY ENDS ON THE DATE THAT THE INSURER IS OBLIGATED TO PROVIDE PAYMENT UNDER THE POLICY.

Sec. 4. Repeal

Sections 49-1015 and 49-1015.01, Arizona Revised Statutes, are repealed.

Sec. 5. Title 49, chapter 6, article 1, Arizona Revised Statutes, is amended by adding a new section 49-1015, to read:

49-1015. Underground storage tank revolving fund; use; purpose

A. THE UNDERGROUND STORAGE TANK REVOLVING FUND IS ESTABLISHED AND SHALL BE ADMINISTERED BY THE DIRECTOR. MONIES IN THE FUND ARE EXEMPT FROM LAPSING UNDER SECTION 35-190.

B. THE FUND CONSISTS OF MONIES APPROPRIATED BY THE LEGISLATURE, UNDERGROUND STORAGE TANK TAX REVENUES COLLECTED AND DISTRIBUTED PURSUANT TO SECTION 49-1036, MONIES OBTAINED FROM THE FEES IMPOSED BY THIS CHAPTER AND THE RULES ADOPTED UNDER THIS CHAPTER AND MONIES REIMBURSED TO THE FUND BY THE DEPARTMENT.

C. MONIES FROM THE FUND MAY BE USED FOR THE FOLLOWING:

1. TO PROVIDE STATE MATCHING MONIES AND TO MEET OTHER OBLIGATIONS AS PRESCRIBED BY SECTION 9003(h)(7)(B) OF THE FEDERAL SOLID WASTE DISPOSAL ACT (42 UNITED STATES CODE SECTION 6991(c)).

2. FOR ALL THE REASONABLE AND NECESSARY COSTS INCURRED IN TAKING CORRECTIVE ACTIONS PURSUANT TO SECTION 49-1017 AND NONCORRECTIVE ACTIONS PURSUANT TO SECTION 49-1017.02.

3. FOR THE COSTS OF RECOVERING THE EXPENSES OF CORRECTIVE ACTIONS PURSUANT TO SECTION 49-1017 AND NONCORRECTIVE ACTIONS PURSUANT TO SECTION 49-1017.02.

4. TO PROVIDE REIMBURSEMENT FOR ELIGIBLE COSTS.

5. FOR THE COSTS INCURRED IN ADMINISTERING THE REGULATORY REQUIREMENTS OF THIS CHAPTER.

6. TO REIMBURSE THE DEPARTMENT FOR THE REASONABLE AND NECESSARY COSTS INCURRED BY THE DEPARTMENT IN ADMINISTERING THE CORRECTIVE ACTION REQUIREMENTS OF THIS CHAPTER.

7. TO REIMBURSE THE DEPARTMENT FOR THE REASONABLE AND NECESSARY COSTS INCURRED BY THE DEPARTMENT IN ADMINISTERING UNDERGROUND STORAGE TANK GRANT PROGRAMS.

8. TO REIMBURSE THE DEPARTMENT FOR THE REASONABLE AND NECESSARY COSTS INCURRED BY THE DEPARTMENT IN ADMINISTERING THE FUND. THE DEPARTMENT MAY NOT PAY FROM THE FUND ANY COSTS, PAYMENTS OR OTHER EXPENSES THAT RESULT FROM A CONTRACT AWARDED PURSUANT TO THIS SECTION UNLESS THE CONTRACT INCLUDES PERFORMANCE STANDARDS AND CONTRACTUAL PENALTIES FOR NONPERFORMANCE OR INADEQUATE PERFORMANCE UNDER THE CONTRACT.

C. THE DIRECTOR SHALL REIMBURSE THE FUND FOR ANY CORRECTIVE ACTION COSTS OR NONCORRECTIVE ACTION COSTS THAT ARE PAID OUT OF THE FUND AND THAT ARE SUBSEQUENTLY RECOVERED BY THE DEPARTMENT.

D. MONIES IN THE FUND MAY NOT BE USED TO IMPLEMENT THE WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM PURSUANT TO CHAPTER 2, ARTICLE 5 OF THIS TITLE.

Sec. 6. Section 49-1017, Arizona Revised Statutes, is amended to read:

49-1017. Powers of director; corrective actions

A. The director may take corrective action with respect to a release of a regulated substance that is petroleum into the environment from an underground storage tank if the director determines that action is necessary to protect human health, safety or the environment and any of the following conditions exist:

1. The department cannot locate, within ninety days or a shorter period necessary to protect human health or the environment, a person who is all of the following:

(a) An owner or operator of the tank concerned.

(b) Subject to the corrective action requirements of section 49-1005.

(c) Financially or technically capable of properly carrying out the corrective action required by section 49-1005. If the owner or operator and the department jointly determine that the owner or operator is not financially or technically able to carry out the corrective action ~~and the owner or operator has demonstrated an inability to use an environmental contractor~~, the department and the owner may enter into a contract under which the department acts as manager of the corrective action on behalf of the owner or operator. The existence of a management contract with the department does not relieve the owner of any liability for costs that are not ~~covered by section 49-1054, subsection A~~ PAYABLE BY THE DEPARTMENT UNDER THIS CHAPTER.

2. Corrective action costs at a facility exceed the amount of coverage required by section 49-1006 and~~, considering the class or category of underground storage tank from which the release occurred,~~ expenditures from the underground storage tank revolving fund are necessary to ensure effective corrective action.

~~3. The owner or operator has failed or refused to comply with an order of the director under section 49-1013 to take the corrective actions required by section 49-1005.~~

B. In determining whether to take a corrective action pursuant to subsection A of this section, the director shall consider and make written findings regarding all of the following factors:

1. The physical and chemical characteristics of the type of petroleum released, including its toxicity, persistence and potential for migration.

2. The hydrogeologic characteristics of the site where the underground storage tank is located and the surrounding area.

3. The proximity, quality and current and future uses of nearby surface water and groundwater.

4. The potential effects of residual contamination on nearby surface water and groundwater.

5. The degree of exposure.

6. THE NEED FOR FINANCIAL ASSISTANCE.

C. If direct costs are incurred by the director for undertaking corrective action with respect to a release of a regulated substance that is petroleum, the owner and operator are liable to this state for these direct costs~~, except for those amounts that are eligible for and within the coverage limits provided by section 49-1054 or those amounts that are not allocated to the owner or operator pursuant to subsection D of this section~~. Liability imposed pursuant to this subsection is strict. ~~In~~ FOR THE PURPOSES OF this subsection, "direct costs" means the cost of the corrective actions, investigations, enforcement and litigation EXCEPT FOR THOSE AMOUNTS THAT ARE NOT ALLOCATED TO THE OWNER OR OPERATOR PURSUANT TO SUBSECTION D OF THIS SECTION.

D. If there is more than one responsible person, liability under this section shall be equitably allocated on a case-by-case basis according to section 49-1016, subsection F, and using the following factors as those factors are appropriate under the circumstances:

1. The duration and percentage of ownership or operation of the underground storage tank during a release of regulated substances from the tank.

2. The amount and nature of the regulated substances released.

3. The degree of care exercised by each person with respect to the regulated substances released.

4. The ability to distinguish between the respective releases of more than one responsible person.

5. Other factors that are appropriate under the circumstances.

E. The allocation of liability under this section shall be promptly determined by one or more mediators who shall be selected by the responsible persons within sixty days after the responsible persons are identified by the director. The director may select a mediator and convene a mediation ~~upon~~ ON the failure of the responsible persons to select one or more mediators. The mediator shall not have a conflict of interest with the responsible persons. A mediation convened by the director shall be held within sixty days ~~of~~ AFTER the mediator being selected. The director shall provide notice to the responsible persons of the time and place for the mediation and the name of the mediator or mediators. This notice shall be provided at least forty-five days prior to the date scheduled for mediation. Costs of mediation shall be eligible for ~~coverage under section 49-1054~~ PAYMENT and shall be allocated to participants in the mediation in the same proportion as the costs of corrective action. Nothing in this section shall excuse the obligations of an owner or operator to take timely and adequate action in response to a

release of regulated substances as required in this chapter. Nothing in this section shall diminish the right of any person to bring an action against any other person as provided in section 49-1019 for contribution or reimbursement for the reasonable costs of corrective action that person has been allocated pursuant to this section.

F. The director may take a corrective action with respect to a release of a regulated substance that is not petroleum only as a remedial action subject to chapter 2, article 5 of this title, and the rules adopted pursuant to that article. If the director takes a corrective action for the release of a regulated substance that is not petroleum, all of the rights, duties and responsibilities of a person associated with the release shall be determined pursuant to that article.

G. AN OWNER, OPERATOR OR OTHER PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MAY REQUEST THAT THE DEPARTMENT CONDUCT CORRECTIVE ACTION UNDER THIS SECTION. SUBJECT TO THE AVAILABILITY OF MONIES ALLOCATED AND THE PRIORITY ASSIGNED TO THE SITE PURSUANT TO SUBSECTION B OF THIS SECTION, THE DEPARTMENT MAY CONDUCT THE CORRECTIVE ACTION.

H. A REQUEST FOR CORRECTIVE ACTION PURSUANT TO SUBSECTION G OF THIS SECTION SHALL BE ON A FORM PROVIDED BY THE DEPARTMENT AND SHALL CONTAIN SUFFICIENT INFORMATION RELATED TO THE SITE AND THE FACTORS PRESCRIBED IN SUBSECTION B OF THIS SECTION TO ALLOW THE DIRECTOR TO MAKE A DETERMINATION OF PRIORITY FOR THAT REQUEST.

Sec. 7. Section 49-1017.01, Arizona Revised Statutes, is amended to read:

49-1017.01. <u>Settlement authority; participation; financial information; process; payment; notice</u>

A. The director shall consider any offer by an owner or operator who is potentially liable for direct costs incurred by the director pursuant to section 49-1017, subsection C, without regard to the extent of that owner's or operator's liability, if the owner or operator is unable to pay for the direct costs. An owner or operator whose liability for direct costs arose from a criminal act is not eligible to enter into a settlement agreement pursuant to this section. An owner's or operator's decision to enter into a settlement agreement pursuant to this section is not an admission in a judicial proceeding as to the fact or extent of that owner's or operator's liability with respect to releases or threatened releases that are covered by the settlement. An owner or operator who is a party to a settlement pursuant to this section is not required to participate in allocation proceedings pursuant to section 49-1017, subsections D and E. Any settlement approved by the department does not release the owner or operator from any responsibility or duty imposed pursuant to this chapter other than liability for direct costs incurred pursuant to section 49-1017, subsection C.

B. Any settlement approved by the department does not increase the liability of any other owner or operator pursuant to this chapter and does not create any liability for the department or this state.

C. The director shall consider all of the following factors in considering an owner's or operator's ability to pay for the direct costs:

1. The financial resources of the owner or operator, including available financial assurance mechanisms other than the ~~assurance account~~ UNDERGROUND STORAGE TANK REVOLVING FUND.

2. The amount of coverage available to the owner or operator from the ~~assurance account~~ UNDERGROUND STORAGE TANK REVOLVING FUND for the direct costs. As a condition of settlement, the owner or operator shall apply to the ~~assurance account~~ UNDERGROUND STORAGE TANK REVOLVING FUND and any applicable grant program for coverage of the direct costs before requesting settlement pursuant to this section.

3. The owner's or operator's ability to continue in business after payment of the owner's or operator's liability for direct costs as defined in section 49-1017, subsection C.

4. Whether payment of the owner's or operator's liability for direct costs as defined in section 49-1017, subsection C would require the owner or operator to seek protection under the federal bankruptcy law or render the owner or operator insolvent.

5. The financial resources of all concerns in which the owner or operator maintains ownership, control or management.

D. An owner or operator seeking settlement pursuant to subsection A of this section shall submit a letter requesting a financial hardship settlement and shall include the owner's or operator's tax returns and all schedules, financial statements, balance statements and other information concerning the owner's or operator's gross income and net worth for the five years immediately preceding the date of the application. Within ninety days after the receipt of the application, the director may require additional information to verify the owner's or operator's eligibility for settlement pursuant to subsection A of this section. The owner or operator may provide any additional information the owner or operator believes to be relevant to the application. The director shall keep confidential any financial information submitted by the owner or operator pursuant to this subsection. If the director or the attorney general disputes a claim of confidentiality, the director or the attorney general shall provide written notice that the claim is disputed to the owner or operator claiming the confidentiality. The information shall be made available to the public if the owner or operator claiming confidentiality does not file an action for declaratory relief in superior court within thirty days after receiving the notice.

E. The owner or operator shall cooperate with the director in providing reasonable access and information for the director to carry out the requirements of this section as a condition of the settlement.

F. If the director verifies that the owner or operator is unable to pay the direct costs incurred by the director pursuant to section 49-1017, subsection C, the director shall enter into a settlement within ninety days after receipt of the application and any other information required pursuant to this section. The director shall allow the settlement amount to be paid over a period of time that does not exceed ten years. Settlement payments over a period of time are subject to the payment of interest at the rate of six ~~per cent~~ PERCENT a year, except that payments are not subject to interest if the entire settlement amount is paid within five years. The owner or operator may file a petition with the director to modify the payment schedule on a showing of good cause that the payment schedule cannot be met.

G. The director may require that notice of the terms of the settlement agreement be provided to the public to allow for comment for a period of thirty days before the department enters into a settlement agreement. Any interested person may comment on the settlement agreement in writing to the director. The director may withdraw from a settlement agreement after considering the comments.

H. If the director determines that the owner or operator does not qualify for a settlement pursuant to this section, the director shall notify the owner or operator in writing within ninety days after the receipt of all information required pursuant to this section stating the reasons for ineligibility. The application for settlement is deemed denied if the director does not notify the owner or operator within ninety days ~~of~~ AFTER the director's receipt of all applicable information. A denial of a settlement application under this subsection constitutes an appealable agency action as defined in section 41-1092. In any administrative appeal hearing conducted pursuant to title 41, chapter 6, article 10, the documents submitted by the owner or operator pursuant to this section are not confidential. Any appeal is limited to the owner's or operator's eligibility for a financial hardship settlement pursuant to this section and the owner's or operator's ability to pay the direct costs incurred by the director pursuant to section 49-1017, subsection C.

Sec. 8. Title 49, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 49-1017.02, to read:

49-1017.02. <u>Powers of the director; noncorrective actions</u>

A. SUBJECT TO THE AVAILABILITY OF MONIES IN THE UNDERGROUND STORAGE TANK REVOLVING FUND THAT ARE ALLOCATED BY THE DIRECTOR, AN OWNER, AN OPERATOR OR ANOTHER PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MAY REQUEST THAT THE DEPARTMENT CONDUCT ONE OR MORE OF THE FOLLOWING NONCORRECTIVE ACTIONS AT A SITE:

1. OBTAINING A BASELINE ASSESSMENT OF A TANK OR SITE AS PRESCRIBED IN SECTION 49-1052.

2. CONFIRMATION OF A SUSPECTED RELEASE AT A TANK OR SITE.

3. PERMANENT CLOSURE OF AN UNDERGROUND STORAGE TANK AS PRESCRIBED BY SECTION 49-1008.

B. IN DETERMINING THE PRIORITY FOR REQUESTS UNDER SUBSECTION A OF THIS SECTION, THE DIRECTOR MAY CONSIDER THE FOLLOWING FACTORS:

1. THE AGE, CONSTRUCTION AND OPERATIONAL HISTORY OF THE UNDERGROUND STORAGE TANK AT THE SITE.

2. THE HYDROGEOLOGIC CHARACTERISTICS OF THE SITE WHERE THE UNDERGROUND STORAGE TANK IS LOCATED AND THE SURROUNDING AREA.

3. THE PROXIMITY, QUALITY AND CURRENT AND FUTURE USES OF NEARBY SURFACE WATER AND GROUNDWATER.

4. THE POTENTIAL EFFECTS OF RESIDUAL CONTAMINATION TO NEARBY SURFACE WATER AND GROUNDWATER.

5. THE DEGREE OF EXPOSURE, INCLUDING THE PHYSICAL AND CHEMICAL CHARACTERISTICS OF THE TYPE OF PETROLEUM SOLD OR SUSPECTED TO HAVE BEEN RELEASED, INCLUDING ITS TOXICITY, PERSISTENCE AND POTENTIAL FOR MIGRATION.

6. THE FINANCIAL ABILITY OF THE PERSON TO CONDUCT THE ACTION WITH THE PERSON'S OWN MONIES.

C. A REQUEST FOR A NONCORRECTIVE ACTION UNDER THIS SECTION SHALL BE ON A FORM PROVIDED BY THE DEPARTMENT AND SHALL CONTAIN SUFFICIENT INFORMATION RELATED TO THE SITE AND THE FACTORS PRESCRIBED IN SUBSECTION B OF THIS SECTION TO ALLOW THE DIRECTOR TO MAKE A DETERMINATION OF PRIORITY FOR THAT REQUEST.

Sec. 9. Section 49-1018, Arizona Revised Statutes, is amended to read:

49-1018. Corrective action; enforcement; priority

The director shall give priority in undertaking state-led corrective actions pursuant to section 49-1017 to releases of regulated substances from underground storage tanks ~~which~~ THAT pose the greatest threat to human health and the environment AND SHALL CONSIDER THE DEGREE TO WHICH FINANCIAL ASSISTANCE FROM THE DEPARTMENT IS NECESSARY TO ENSURE THAT CORRECTIVE ACTIONS WILL BE CONDUCTED.

Sec. 10. Section 49-1019, Arizona Revised Statutes, is amended to read:

49-1019. Release of regulated substance; causes of action; limitation; liability

A. Any one of the following persons may bring an action in superior court against a person who caused or contributed to the release of a regulated substance from an underground storage tank to require that person to reimburse one of the following persons for the reasonable costs of corrective actions taken in response to the release:

1. An owner or operator of an underground storage tank or any other person who takes a corrective action pursuant to section 49-1005.

2. An owner or operator of an underground storage tank or any other person from whom costs are recovered by this state pursuant to ~~section 49-1017 or 49-1017.01~~ THIS CHAPTER.

B. The person seeking reimbursement has the burden of demonstrating that the corrective action costs incurred were reasonable.

C. This article does not affect or modify the obligations or liability of a person, by reason of subrogation or otherwise, under any other provision of common law, federal law or the laws of this state, for damages, injury or loss resulting from a release of a regulated substance or for the costs of a corrective action, except that a person who receives compensation for the costs of a corrective action pursuant to this article is precluded from recovering compensation for the same corrective action costs pursuant to any other federal law or the laws of this state. A person who receives compensation for corrective action costs pursuant to federal law or the laws of this state is precluded from receiving compensation for the same corrective action costs as provided in this article.

D. Liability under this section shall be equitably allocated on a case-by-case basis in accordance with section 49-1017, subsection D. Any party authorized to bring an action pursuant to subsection A of this section and any party against whom an action is brought may have liability allocated through mediation in accordance with section 49-1017, subsection D or through the informal appeal process in accordance with section 49-1091.

E. The department may take corrective action for a release and recover direct costs pursuant to section 49-1017 in proportion to the allocation made pursuant to subsection D of this section if an owner or an operator does not perform all necessary corrective actions and there is no other person to perform corrective actions pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C. ~~An owner or an operator is eligible for ninety per cent coverage from the assurance account for reasonable and necessary eligible costs above those for which the owner or operator is liable if the owner or operator elects to perform corrective action which exceeds the allocated share of liability.~~

Sec. 11. Section 49-1020, Arizona Revised Statutes, is amended to read:

49-1020. Fees

Each owner and operator of an underground storage tank ~~which~~ THAT is subject to regulation under this chapter shall pay annually to the department a fee of one hundred dollars for each tank. An owner or operator who sold or relinquished legal, equitable or possessory interest in the property on or before January 1, 1990 shall not be responsible to pay the fee prescribed by this section. The director, with the approval of the attorney general, may abate fee balances if the administration costs exceed the amount of the fees due. The fees collected under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the ~~regulatory account of the~~ underground storage tank revolving fund established ~~in~~ BY section 49-1015. The director shall adopt rules to provide for the orderly imposition and collection of the fees imposed by this section.

Sec. 12. Section 49-1022, Arizona Revised Statutes, is amended to read:

49-1022. Regulated substance migration off site; responsibility; corrective action; notice; appeal; coverage

A. The director may undertake corrective action in response to a release from an underground storage tank that migrates on or under a person's property as the result of an occurrence at another property or that the department determines is likely to migrate on or under a person's property, if all of the following occur:

1. The person has authority to allow access to the property so that corrective action may be taken on the person's property.

2. The owner or operator of the underground storage tank that is the source of the release makes a written request that the department attempt to obtain access to the property. As part of the written request, the owner or operator shall demonstrate to the department the following before the department attempts to obtain access to the property:

(a) The owner or operator has sent and the person has received at least two written requests to allow the owner or operator to have access to the property at reasonable times and under reasonable conditions.

(b) The owner or operator has made an offer of reasonable compensation to the person.

(c) Contamination is likely to spread or increase in severity if access to the property is not obtained.

3. The person has received a written request from the department to have access to the property, at reasonable times and under reasonable conditions in a manner that does not constitute a taking as provided by law, to take corrective action with respect to only the release that has migrated on that person's property.

4. The person has refused to allow the owner or operator or the department to have access to the property or does not respond to the department within sixty days after receiving the request for access.

B. The department shall issue a notice describing the proposed corrective action to the owner or operator and the person on whose property the department will undertake corrective action if it elects to undertake corrective action pursuant to subsection A of this section. The owner or operator or the person on whose property the department undertakes corrective action may appeal pursuant to title 41, chapter 6, article 10, within thirty days ~~of~~ AFTER the notice or within thirty days ~~from~~ AFTER the performance of the corrective action. If, after an appeal, it is determined that the department failed to return the property to substantially the same condition the property was in before being accessed, the person on whose property the department undertakes the corrective action may be eligible for ~~coverage from the assurance account~~ PAYMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING

FUND only to the extent the department failed to return the property to substantially the same condition the property was in before being accessed.

C. ~~The department is eligible for coverage of corrective action costs incurred in obtaining access, performing corrective action pursuant to this section and returning the property to substantially the same condition the property was in before being accessed.~~ The owner or operator shall reimburse the ~~assurance account for ten per cent of~~ DEPARTMENT FOR any costs paid from the ~~assurance account to the department or the person~~ UNDERGROUND STORAGE TANK REVOLVING FUND pursuant to this section.

D. The department shall promptly provide to a person whose property is accessed under this section a copy of the results of any analysis of the soil or groundwater relating to the accessed property arising from the department's access or corrective action undertaken at the property. The department shall not sue the person for any secondary contamination created by the access or corrective action.

E. If a release of a regulated substance has migrated on or under a person's property, the department shall relieve the owner or operator of the underground storage tank from responsibility from performing corrective action at the property where the release has migrated or where the department has determined it is likely to have migrated, if the owner or operator is unable to gain access to the property after complying with ~~the provisions of~~ subsection A, paragraph 2, subdivisions (a) and (b) of this section. Nothing in this section relieves the owner or operator from liability for completing the requirements of section 49-1005 relating to the owner's or operator's property or any other property to which the contamination may have migrated. The department may require that the owner or operator investigate any other properties potentially impacted by the release in order to complete the requirements of section 49-1005.

Sec. 13. Section 49-1023, Arizona Revised Statutes, is amended to read:

49-1023. <u>Delivery prohibition; stop use tag; definitions</u>

A. A product deliverer shall not deliver, deposit or place a regulated substance into an underground storage tank that has a stop use tag from the director affixed to a fill pipe of the underground storage tank pursuant to subsection B of this section.

B. The director may issue a stop use order to the owner and operator of the underground storage tank and affix a stop use tag that is easily visible to the product deliverer on all fill pipes of the underground storage tank to stop operation of the underground storage tank if either of the following ~~exist~~ EXISTS:

1. The director has determined that the underground storage tank is in violation of section 49-1003 or 49-1009 or the rules adopted pursuant to those sections, as applicable, and the continued operation of the underground storage tank may result in a continued release or new release from the underground storage tank.

2. The director has determined that the underground storage tank is in violation of section 49-1006, 49-1020 OR 49-1031 or the rules adopted pursuant to ~~that section~~ THOSE SECTIONS, after providing the owner and operator with thirty days' notice and an opportunity to demonstrate compliance.

C. A stop use order becomes effective immediately on issuance and suspends use of the underground storage tank.

D. The owner and operator of an underground storage tank that has received a stop use tag pursuant to subsection B of this section shall ensure that no person removes or tampers with the stop use tag until the requirements for return of the underground storage tank to operation pursuant to subsection E of this section are met, and shall immediately empty the underground storage tank and comply with the remaining temporary closure requirements adopted under section 49-1008.

E. An owner or operator shall not bring an underground storage tank that has received a stop use tag pursuant to subsection B of this section back into operation until the owner or operator has demonstrated to the director that the underground storage tank meets the requirements of sections 49-1003, 49-1006 and 49-1009 and the rules adopted pursuant to those sections, as applicable, and the owner or operator has received written confirmation from the director that the requirements of sections 49-1003, 49-1006, ~~and~~ 49-1009, 49-1020 AND 49-1031 and the rules adopted pursuant to those sections, as applicable, have been met. The director shall provide written confirmation as soon as practicable, but not later than five business days, to the owner or operator that the requirements of sections 49-1003, 49-1006, ~~and~~ 49-1009, 49-1020 AND 49-1031 and the rules adopted pursuant to those sections have been met.

F. ~~Upon~~ ON issuance of a stop use order, the director shall notify product deliverers by posting on the department's website the name and location of a facility with an underground storage tank that has a stop use tag. The notice shall also specify which underground storage tank at the facility has a stop use tag.

G. The director shall remove the stop use notice from the department's website within five business days after determining that the requirements of subsection E of this section have been met.

H. The director may adopt rules to implement this section.

I. For the purposes of this section:

1. "Product deliverer" means a person, including an owner, operator or oil company, or a distributor as defined in section 28-5601, a supplier as defined in section 28-5601, a petroleum transportation company and any other entity that delivers, deposits or places a regulated substance into an underground storage tank.

2. "Stop use tag" means a tag, device or mechanism that is prescribed by the director, that is designed to be affixed to a fill pipe of an underground storage tank and that clearly states and conveys that it is

unlawful to deliver, deposit or place a regulated substance into the underground storage tank to which it is affixed.

Sec. 14. Title 49, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 49-1024, to read:

49-1024. Report; underground storage tank revolving fund program

THE DEPARTMENT SHALL COMPILE A REPORT ON THE UNDERGROUND STORAGE TANK REVOLVING FUND PROGRAM ON OR BEFORE DECEMBER 31, 2017, AND ON OR BEFORE DECEMBER 31 EVERY THREE YEARS THEREAFTER. THE DEPARTMENT SHALL SUBMIT THE REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND PROVIDE A COPY OF EACH REPORT TO THE SECRETARY OF STATE. THE DEPARTMENT SHALL POST EACH REPORT ON AN ACCESSIBLE, PUBLIC WEBPAGE ON THE DEPARTMENT'S WEBSITE. THE REPORT SHALL CONTAIN THE DEPARTMENT'S FINDINGS AND SHALL INCLUDE THE FOLLOWING INFORMATION:

1. UNDERGROUND STORAGE TANK REVOLVING FUND FINANCIAL INFORMATION, INCLUDING REVENUES, EXPENDITURES AND CURRENT ACCOUNT BALANCES.

2. THE AMOUNT OF ANY REMAINING UNPAID TIME-BARRED CLAIMS.

3. A DESCRIPTION OF THE WORK COMPLETED FOR EACH PROGRAM GRANT COMPONENT.

4. THE AMOUNT OF REIMBURSEMENTS MADE ANNUALLY FROM THE FUND.

5. A LISTING OF NEW RELEASES REPORTED AND SITES CLOSED, A LISTING OF LIABILITIES OWED TO SMALL OWNERS AND OTHER OWNERS AND PROJECTED LIABILITIES FOR THE FUND THROUGH THE TERMINATION OF THE PROGRAM.

6. A DESCRIPTION OF ANY STATE-LED CORRECTIVE ACTIONS, INCLUDING THE NUMBER OF NEW SITES, THE NUMBER OF NEW RELEASES REPORTED, THE NUMBER OF SITES CLOSED, THE AVERAGE COST OF CORRECTIVE ACTION AND PROJECTED LIABILITIES FOR STATE-LED CORRECTIVE ACTIONS THROUGH THE TERMINATION OF THE PROGRAM.

7. THE TOTAL NUMBER OF OPEN RELEASES THAT ARE CLEANED TO CLOSURE, THE REMAINING NUMBER OF OPEN RELEASES, THE NUMBER OF APPLICATION OR REIMBURSEMENT DENIALS BY THE DEPARTMENT AND THE NUMBER OF PREAPPROVAL APPEALS.

Sec. 15. Section 49-1031, Arizona Revised Statutes, is amended to read:

49-1031. Imposition of tax

A. From and after July 1, 1990, there is imposed and the director shall collect an excise tax on the operation of underground storage tanks regulated under this chapter measured by the quantity of regulated substances placed in a tank in any calendar year. The tax is levied at the rate of one cent per gallon of regulated substance. ~~On or before December 15 each year the director shall recommend to the legislature any revision to the tax rate necessary to maintain the assurance account of the underground storage tank revolving fund at the level prescribed by section 49-1051.~~

B. For proper administration of this article, and to prevent the evasion of the tax imposed by this article, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the director that all regulated substances ~~which~~ THAT are motor vehicle

fuel as defined in section 28-101, aviation fuel as defined in section 28-101 and diesel as defined in section 28-6001, subsection B and ~~which~~ THAT are refined, manufactured, produced, compounded or blended in this state, or imported into this state, will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it. Under this presumption, the owner and operator of an underground storage tank from which motor vehicle fuel, aviation fuel or diesel is dispensed and from which no further bulk distribution will be made, shall be considered to have paid the tax collected under title 28, chapter 16, article 6.

C. The tax imposed by this article does not apply to underground storage tanks operated by the United States or this state or agencies of the United States or this state or to any of the following substances placed in underground storage tanks:

1. Naphtha-type jet fuel or kerosene-type jet fuel.

2. Regulated substances as defined in section 49-1001, paragraph 16, subdivision (b), unless such regulated substances were placed in an underground storage tank prior to July 1, 1997, and the owner or operator of the underground storage tank has paid prior to July 1, 1997 all taxes imposed by this article applicable to such regulated substances. If the owner or operator has paid those taxes, the owner or operator may elect to continue to pay the tax imposed by this article regarding such regulated substances.

D. The owner and operator of an underground storage tank regulated under this chapter are jointly and severally liable for the tax, but the owner and operator may agree between themselves and file a notarized affidavit with the director designating either the owner or operator as primarily responsible for the tax under this article.

E. Any person who purchases motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101, or diesel as defined in section 28-6001, subsection B for which the tax imposed by this section has been paid and which fuel has been placed in a tank which is not subject to the underground storage tank tax imposed by this section and from which no further bulk distribution of the fuel will be made, may claim a refund of the tax levied. Refunds shall be submitted on forms prescribed by the director and shall be supported by substantiation for the amount of the tax paid.

F. Any person eligible to claim a refund of the tax imposed by this section, including an assignee of a refund claim, may assign such claim to the person from whom the fuel was purchased, and the assignee of the claim may claim the refund allowed under subsection E of this section provided that the assignor of the claim certifies in writing to the assignee, on forms prescribed by the director, that the assignor relinquishes all interest in the refund and shall not also claim a refund from the director.

G. If a refund claim is assigned to a person who is required to make payments under title 28, chapter 16, article 6, the refund shall be taken into account in the manner provided in section 28-6005.

H. The director shall adopt temporary and permanent rules for administering the tax imposed by this article and specifying the forms of the return and of the certification provided for in sections 28-6003 and 28-6004. The temporary and permanent rules shall prescribe the forms for and manner in which refunds may be claimed and refund claims assigned pursuant to subsection F of this section, shall specify the circumstances in which fuel may be excluded from the quantity of fuel used to measure the tax pursuant to title 28, chapter 16, article 6, and shall prescribe the forms for and manner which the certification provided in title 28, chapter 16, article 6 shall be made.

I. Title 41, chapter 6 shall not apply to the temporary rules adopted pursuant to this section. The temporary rules shall be filed with the secretary of state and shall be effective for a period of one hundred eighty days ~~from~~ AFTER the date of filing with the secretary of state. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of one hundred eighty days ~~from~~ AFTER the date the renewed temporary rules are filed with the secretary of state.

J. The permanent rules adopted pursuant to this section shall be adopted as provided in title 41, chapter 6.

Sec. 16. Section 49-1036, Arizona Revised Statutes, is amended to read:

49-1036. Remission and disposition of revenues

The director shall promptly deposit, pursuant to sections 35-146 and 35-147, all monies collected under this article and shall credit these payments to the underground storage tank revolving fund. ~~as follows:~~

~~1. Nine-tenths of the net revenues shall be credited to the assurance account.~~

~~2. One-tenth of the net revenues shall be credited to the grant account until the balance in the grant account exceeds five million six hundred thousand dollars, from and after which date all of the net revenues shall be credited to the assurance account.~~

Sec. 17. Repeal

Title 49, chapter 6, articles 3 and 4, Arizona Revised Statutes, are repealed.

Sec. 18. Title 49, chapter 6, Arizona Revised Statutes, is amended by adding new articles 3 and 4, to read:

ARTICLE 3. UNDERGROUND STORAGE TANK
REVOLVING FUND PAYMENT PROCESS

49-1051. Preapproval process; requirements; corrective action priority

A. AN OWNER, AN OPERATOR OR THE DESIGNATED REPRESENTATIVE OF EITHER OR A PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MUST FOLLOW THE PREAPPROVAL PROCESS PURSUANT TO THIS SECTION TO BE ELIGIBLE FOR REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR CORRECTIVE

ACTIONS TAKEN PURSUANT TO SECTION 49-1053, SUBSECTION A. PREAPPROVAL APPLICATIONS MUST INCLUDE A DETAILED SCOPE OF WORK THAT CONFORMS TO THE REQUIREMENTS OF SECTIONS 49-1005 AND 49-1053, A SCHEDULE FOR CONDUCTING CORRECTIVE ACTIONS AND A COST SHEET. BEGINNING JANUARY 1, 2016, CORRECTIVE ACTIONS AND COSTS FOR ACTIVITIES THAT WERE COMPLETED BEFORE DEPARTMENTAL APPROVAL OF THE SCOPE OF WORK ARE NOT ELIGIBLE FOR REIMBURSEMENT UNDER SECTION 49-1054. IF THE PREAPPROVED SCOPE OF WORK CANNOT BE IMPLEMENTED AS APPROVED, THE PERSON SEEKING REIMBURSEMENT SHALL SUBMIT A CHANGE NOTICE TO THE DEPARTMENT. TO BE ELIGIBLE FOR REIMBURSEMENT, A CHANGE NOTICE MUST BE APPROVED BY THE DEPARTMENT BEFORE IMPLEMENTATION OF THE CHANGE NOTICE.

B. THIS SECTION DOES NOT RELIEVE AN OWNER, AN OPERATOR OR THE DESIGNATED REPRESENTATIVE OF EITHER FROM ANY OF THE REQUIREMENTS OF THIS CHAPTER.

C. WHILE THE APPLICATION FOR PREAPPROVAL IS PENDING, THE DEPARTMENT MAY NOT TAKE ENFORCEMENT ACTION OR IMPOSE PENALTIES AGAINST THE OWNER, OPERATOR OR DESIGNATED REPRESENTATIVE WHO SUBMITTED THE APPLICATION FOR PREAPPROVAL. THE DEPARTMENT MAY NOT CONSIDER THE PASSAGE OF TIME WHILE THE PREAPPROVAL APPLICATION IS PENDING TO BE A BASIS FOR TAKING AN ENFORCEMENT ACTION. FOR ANY CORRECTIVE ACTION SUBMITTED FOR PREAPPROVAL PURSUANT TO RULE, THE PERIOD OF TIME FOR COMPLIANCE WITH CORRECTIVE ACTIONS ASSOCIATED WITH THAT PREAPPROVAL BEGINS TO RUN FROM THE DATE OF PREAPPROVAL OF THE CORRECTIVE ACTION.

D. ON DETERMINATION BY THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR THAT THE APPLICATION FOR PREAPPROVAL IS COMPLETE, THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR SHALL DETERMINE WHETHER THE OWNER OR OPERATOR WAS A SMALL OWNER AT THE TIME OF THE APPLICATION. FOR THE PURPOSES OF THIS SUBSECTION, "SMALL OWNER" MEANS AN OWNER THAT OWNS FEWER THAN TWENTY UNDERGROUND STORAGE TANK FACILITIES IN THIS STATE.

E. IN PROCESSING THE APPLICATION FOR PREAPPROVAL, THE DEPARTMENT SHALL DETERMINE THE CORRECTIVE ACTION PRIORITY OF THE RELEASE WITHIN NINETY DAYS AFTER THE RECEIPT OF THE MATERIALS REQUIRED BY THIS SECTION. THE CORRECTIVE ACTION PRIORITY SHALL BE BASED ON ALL OF THE FOLLOWING:

1. THE NEED FOR FINANCIAL ASSISTANCE, INCLUDING THE AVAILABILITY OF COVERAGE UNDER INSURANCE OR OTHER FINANCIAL ASSURANCE MECHANISMS.

2. THE EXTENT TO WHICH A DELAY IN REIMBURSEMENT WILL AFFECT THE ABILITY TO CONDUCT CORRECTIVE ACTIONS.

3. THE RISK TO HUMAN HEALTH AND THE ENVIRONMENT.

4. THE PRESENCE OF PREEXISTING CONTAMINATION OF GROUNDWATER BY A HAZARDOUS SUBSTANCE AS DEFINED IN SECTION 49-281.

F. AN OWNER, OPERATOR OR PERSON WHO MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MAY REQUEST REIMBURSEMENT UNDER SECTION 49-1053. SUBJECT TO THE AVAILABILITY OF MONIES ALLOCATED AND THE ASSIGNED PRIORITY OF THE SITE PURSUANT TO SUBSECTION E OF THIS SECTION, THE DEPARTMENT MAY MAKE REIMBURSEMENTS FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND.

G. AN APPLICATION FOR PREAPPROVAL AND REIMBURSEMENT PURSUANT TO THIS SECTION SHALL BE ON A FORM PROVIDED BY THE DEPARTMENT AND SHALL CONTAIN SUFFICIENT INFORMATION TO ALLOW THE DIRECTOR TO MAKE A DETERMINATION OF PRIORITY FOR THAT REQUEST.

H. ANY DETERMINATION MADE BY THE DEPARTMENT PURSUANT TO THIS SECTION CONSTITUTES A WRITTEN INTERIM DETERMINATION RELATING TO PREAPPROVAL PURSUANT TO SECTION 49-1091.

I. THE DEPARTMENT MAY ALTER THE CORRECTIVE ACTION PRIORITY OF THE RELEASE AT ANY TIME BASED ON THE RESULTS OF SAMPLING AND MONITORING CONDUCTED PURSUANT TO THIS SECTION OR ANY OTHER INFORMATION OBTAINED BY THE DEPARTMENT.

49-1052. Noncorrective actions; baseline assessment

A. A BASELINE PERIOD OF SEVEN YEARS FROM JANUARY 1, 2016 IS ESTABLISHED FOR UNDERGROUND STORAGE TANKS. BEGINNING JANUARY 1, 2016, DURING THE BASELINE PERIOD, AN OWNER, OPERATOR OR PERSON WHO MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MAY DO THE FOLLOWING:

1. ELECT TO CONDUCT A BASELINE ASSESSMENT PURSUANT TO THIS SECTION.

2. REQUEST A GRANT TO COVER COSTS ASSOCIATED WITH THE BASELINE ASSESSMENT PURSUANT TO SECTION 49-1071.

3. REQUEST THE DEPARTMENT TO PERFORM THE BASELINE ASSESSMENT UNDER SECTION 49-1017.02.

B. THE DEPARTMENT SHALL ESTABLISH STANDARDS FOR CONDUCTING BASELINE ASSESSMENTS PURSUANT TO THIS SECTION. UNTIL THE DEPARTMENT ESTABLISHES STANDARDS BY RULE OR BY GUIDANCE DOCUMENTS, BASELINE ASSESSMENT WORK PLANS SHALL BE SUBMITTED TO THE DEPARTMENT FOR APPROVAL AND SHALL BE CONSIDERED FOR PREAPPROVAL ON A CASE-BY-CASE BASIS, BASED ON COMPLIANCE WITH SUBSECTION D OF THIS SECTION.

C. BASELINE ASSESSMENTS SHALL BE CONDUCTED UNDER THE DIRECTION OF A PERSON WHO IS A PROFESSIONAL ENGINEER OR A REGISTERED GEOLOGIST WHO IS REGISTERED UNDER TITLE 32, CHAPTER 1 OR A REMEDIATION SPECIALIST WHO IS CERTIFIED UNDER TITLE 32, CHAPTER 1 AND THE RULES ADOPTED UNDER THAT CHAPTER.

D. THE SCOPE OF THE BASELINE ASSESSMENT SHALL ADDRESS LIKELY RELEASE AREAS AND SHALL INCLUDE A COLLECTION OF SUFFICIENT INFORMATION TO ALLOW FOR A DETERMINATION OF THE CURRENT ENVIRONMENTAL CONDITION OF THE PROPERTY. SAMPLES SHALL BE COLLECTED IN AREAS WHERE CONTAMINATION IS MOST LIKELY TO HAVE OCCURRED AND SAMPLE LOCATIONS SHALL CONSIDER SITE-SPECIFIC CONDITIONS, LOCATION OF POTENTIAL RECEPTORS AND PREEXISTING CONTAMINATION. THE BASELINE ASSESSMENT MUST INCLUDE THE REGISTERED OR CERTIFIED PROFESSIONAL'S INTERPRETATION REGARDING CONFIRMATION OF AN UNKNOWN RELEASE AND EVALUATION OF POTENTIAL RISK FOR THE PURPOSE OF PRIORITIZING CORRECTIVE ACTIONS.

E. IF UNKNOWN CONTAMINATION IS IDENTIFIED IN THE BASELINE ASSESSMENT, ALL OF THE FOLLOWING APPLY:

1. THE OWNER, OPERATOR OR PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C SHALL COMPLY WITH THE REPORTING REQUIREMENTS PURSUANT TO SECTION 49-1004 AND SHALL INITIATE CORRECTIVE ACTIONS PURSUANT TO SECTION 49-1005.

2. UNLESS DOCUMENTATION IS PROVIDED TO THE DEPARTMENT THAT DEMONSTRATES THAT THE OPERATING UNDERGROUND STORAGE TANK IS NOT THE SOURCE OF THE RELEASE, THE DEPARTMENT SHALL REQUIRE TIGHTNESS TESTING.

3. IF CONTINUED OPERATION OF THE UNDERGROUND STORAGE TANK MAY RESULT IN A CONTINUED RELEASE, THE DEPARTMENT MAY INITIATE DELIVERY PROHIBITION AS PRESCRIBED IN SECTION 49-1023.

49-1053. Reimbursement of corrective action costs; definition

A. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND UNDER THE PREAPPROVAL PROCESS PRESCRIBED IN SECTION 49-1051 IN THE AMOUNTS AUTHORIZED BY SECTION 49-1054 OF THE COSTS INCURRED FOR THE FOLLOWING:

1. SAMPLING, ANALYSIS AND REPORTING THAT ARE INITIATED PURSUANT TO SECTION 49-1004 AND THAT CONFIRM THE PRESENCE OF A RELEASE THAT REQUIRES CORRECTIVE ACTION PURSUANT TO SECTION 49-1005.

2. SAMPLING, ANALYSIS AND REPORTING THAT ARE INITIATED PURSUANT TO SECTION 49-1008 AND THAT CONFIRM THE PRESENCE OF A RELEASE THAT REQUIRES CORRECTIVE ACTION PURSUANT TO SECTION 49-1005.

3. CORRECTIVE ACTIONS INITIATED PURSUANT TO SECTION 49-1005.

B. THE DEPARTMENT MAY PROVIDE THE REIMBURSEMENT REQUIRED BY THIS SECTION EITHER BY PAYING THE OWNER, THE OPERATOR OR A DESIGNATED REPRESENTATIVE OF THE OWNER OR OPERATOR OR ANY COMBINATION OF THESE PERSONS, A POLITICAL SUBDIVISION PURSUANT TO SUBSECTION F OF THIS SECTION OR A PERSON WHO MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C. IF THE DEPARTMENT DETERMINES THAT AN APPLICATION FOR REIMBURSEMENT IS INCOMPLETE, THE DEPARTMENT WITHIN FORTY-FIVE DAYS AFTER THE APPLICATION SHALL NOTIFY THE APPLICANT OF THE MISSING INFORMATION AS SPECIFICALLY AS POSSIBLE AND SHALL PERMIT THE APPLICANT TO PROVIDE THE ADDITIONAL INFORMATION WITHIN THIRTY DAYS. ON THE REQUEST OF AN APPLICANT, THE DEPARTMENT SHALL GRANT AN ADDITIONAL SIXTY DAYS TO SUBMIT THE MISSING INFORMATION. THE GRANT OF ADDITIONAL TIME TOLLS THE PERIOD FOR MAKING AN INTERIM DETERMINATION ON MATTERS RELATING TO REIMBURSEMENT PURSUANT TO SECTION 49-1091.

C. THE DEPARTMENT MAY NOT PAY FOR ELIGIBLE COSTS UNLESS THE DEPARTMENT DETERMINES THAT THE ELIGIBLE ACTIVITIES HAVE MET, OR WHEN COMPLETED WILL MEET, THE APPLICABLE REQUIREMENTS OF SECTION 49-1004 OR 49-1005. THE DEPARTMENT MAY REQUIRE BY RULE THAT PERSONS THAT PERFORM PAYABLE ELIGIBLE ACTIVITIES MEET SPECIFIED STANDARDS OF QUALIFICATION AND BE APPROVED BY THE DEPARTMENT.

D. THE DEPARTMENT MAY NOT PROVIDE ANY REIMBURSEMENT DESCRIBED IN THIS ARTICLE TO AN OWNER OR OPERATOR OF UNDERGROUND STORAGE TANKS DESCRIBED IN SECTION 49-1031, SUBSECTION C. THE DEPARTMENT MAY NOT PROVIDE ANY REIMBURSEMENT DESCRIBED IN THIS ARTICLE WITH RESPECT TO THE SUBSTANCES DESCRIBED IN SECTION 49-1031, SUBSECTION C, UNLESS THE TAX IMPOSED BY ARTICLE 2 OF THIS CHAPTER APPLIES TO SUCH SUBSTANCES.

1 E. THE DEPARTMENT SHALL ESTABLISH CRITERIA FOR DETERMINING PRIORITIES
2 AMONG THE APPLICATIONS FROM SMALL OWNERS FOR REIMBURSEMENT UNDER THIS
3 ARTICLE. FOR ALL OTHER OWNERS THAT ARE ELIGIBLE FOR REIMBURSEMENT FROM THE
4 FUND THROUGH THE COST SHARING PRESCRIBED IN SECTION 49-1006.02, SUBSECTION B,
5 PRIORITY SHALL BE BASED ON THE DATE OF COMPLETION OF THE WORK. THE CRITERIA
6 FOR SMALL OWNERS SHALL INCLUDE:
7 1. THE NEED FOR FINANCIAL ASSISTANCE.
8 2. THE EXTENT TO WHICH A DELAY IN PROVIDING REIMBURSEMENT WILL AFFECT
9 AN ELIGIBLE ACTIVITY IN PROGRESS.
10 3. THE DATE ON WHICH AN APPLICATION FOR REIMBURSEMENT IS SUBMITTED TO
11 THE DEPARTMENT.
12 4. WHETHER THE PAYMENT HAS BEEN PREVIOUSLY DEFERRED BECAUSE OF
13 INSUFFICIENT MONIES IN THE UNDERGROUND STORAGE TANK REVOLVING FUND AND, IF
14 DEFERRED, THE LENGTH OF THE DEFERRAL.
15 F. THE DEPARTMENT MAY PROVIDE THE REIMBURSEMENT DESCRIBED IN THIS
16 ARTICLE FOR ELIGIBLE ACTIVITY COSTS INCURRED BY A POLITICAL SUBDIVISION WITH
17 RESPECT TO A RELEASE FROM AN UNDERGROUND STORAGE TANK IF THE UNDERGROUND
18 STORAGE TANK OR THE PROPERTY WHERE THE UNDERGROUND STORAGE TANK IS LOCATED
19 COMES INTO THE POSSESSION OR CONTROL OF THE POLITICAL SUBDIVISION UNDER TITLE
20 12, CHAPTER 8, ARTICLE 2 OR 3.
21 G. SUBJECT TO SECTION 38-503 AND OTHER APPLICABLE STATUTES AND RULES,
22 THE DEPARTMENT MAY CONTRACT WITH A PRIVATE CONSULTANT FOR THE PURPOSE OF
23 ASSISTING THE DEPARTMENT IN REVIEWING PREAPPROVAL AND REIMBURSEMENT
24 APPLICATIONS, SITE CHARACTERIZATION REPORTS, CORRECTIVE ACTION PLANS,
25 MONITORING REPORTS AND OTHER INFORMATION TO DETERMINE WHETHER CORRECTIVE
26 ACTIONS MEET THE CRITERIA AND REQUIREMENTS OF THIS CHAPTER AND THE RULES
27 ADOPTED BY THE DIRECTOR.
28 H. REQUESTS BY THE DEPARTMENT FOR ADDITIONAL INFORMATION FROM
29 APPLICANTS SHALL BE REASONABLY RELATED TO THE DETERMINATION OF THE VALIDITY
30 OF THE CLAIM AS PRESCRIBED BY THIS ARTICLE.
31 I. EXCEPT FOR APPEALS COSTS AUTHORIZED PURSUANT TO SECTION 49-1091.01,
32 APPLICATIONS FOR REIMBURSEMENT UNDER A PREAPPROVED SCOPE OF WORK SHALL BE
33 SUBMITTED TO THE DEPARTMENT NOT MORE THAN ONE YEAR AFTER THE APPLICANT
34 RECEIVES A CLOSURE LETTER SENT BY THE DEPARTMENT BY CERTIFIED MAIL WITH
35 NOTICE THAT THE APPLICANT HAS ONE YEAR TO SUBMIT A CLAIM FOR THAT RELEASE.
36 FAILURE TO SUBMIT A TIMELY REIMBURSEMENT REQUEST UNDER A PREAPPROVED SCOPE OF
37 WORK SHALL RESULT IN DENIAL OF THE CLAIM. THE TIME LIMIT PRESCRIBED BY THIS
38 SUBSECTION DOES NOT APPLY TO CLOSED RELEASES THAT ARE SUBSEQUENTLY REOPENED
39 FOR THE PERFORMANCE OF ADDITIONAL CORRECTIVE ACTIONS OR AT WHICH CORRECTIVE
40 ACTIONS ARE PROCEEDING PURSUANT TO A WORK PLAN FOR PREAPPROVAL SUBMITTED
41 BEFORE THE RELEASE WAS CLOSED.
42 J. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT UNDER A PREAPPROVED SCOPE
43 OF WORK FOR THE REASONABLE, NECESSARY, COST-EFFECTIVE AND TECHNICALLY
44 FEASIBLE COSTS OF CORRECTIVE ACTIONS RELATING TO SOIL REMEDIATION THAT ARE
45 CONSISTENT WITH REMEDIATION STANDARDS ADOPTED PURSUANT TO CHAPTER 1, ARTICLE

4 OF THIS TITLE OR SITE-SPECIFIC, RISK-BASED LEVELS AS DETERMINED UNDER RULES ADOPTED PURSUANT TO THIS CHAPTER. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT UNDER A PREAPPROVED SCOPE OF WORK FOR THE REASONABLE, NECESSARY, COST-EFFECTIVE AND TECHNICALLY FEASIBLE COSTS OF CORRECTIVE ACTIONS RELATING TO GROUNDWATER REMEDIATION TO PREDETERMINED STANDARDS OR SITE-SPECIFIC, RISK-BASED LEVELS AS DETERMINED UNDER RULES ADOPTED PURSUANT TO THIS CHAPTER. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT FOR CORRECTIVE ACTIONS RELATED TO THE CONTROL AND REMOVAL OF A SOURCE OF CONTAMINATION. A SOURCE OF CONTAMINATION INCLUDES ANY ONE OR MORE OF THE FOLLOWING:

1. FREE PRODUCT.

2. A REGULATED SUBSTANCE PRESENT IN SOIL THAT CAUSES OR THREATENS TO CAUSE AN EXCEEDANCE OF THE AQUIFER WATER QUALITY STANDARDS.

3. A REGULATED SUBSTANCE PRESENT IN GROUNDWATER AT LEVELS THAT WOULD PREVENT TIMELY REDUCTION OF CONTAMINANT CONCENTRATIONS IN COMPARISON WITH THE PERFORMANCE OF ACTIVE REMEDIATION.

4. ANY OTHER PRESENCE OF A REGULATED SUBSTANCE CAUSING AN ONGOING SOURCE OF CONTAMINATION, AS DETERMINED BY THE DEPARTMENT.

K. ON PREAPPROVAL BY THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR OF CORRECTIVE ACTION COSTS FOR SMALL OWNERS, THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR SHALL ENCUMBER MONIES IN THE CORRECTIVE ACTION ALLOCATION FOR THAT YEAR. IF MONIES ARE AVAILABLE IN THE CORRECTIVE ACTION ALLOCATION FOR THAT YEAR, REIMBURSEMENT SHALL BE MADE WHEN THE CORRECTIVE ACTION FOR WHICH THE MONIES WERE ENCUMBERED IS COMPLETED AS DETERMINED BY THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR.

L. THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR SHALL PREAPPROVE REIMBURSEMENT OF CORRECTIVE ACTION COSTS FOR AN OWNER THAT IS NOT A SMALL OWNER WITHOUT ENCUMBERING MONIES. IF MONIES ARE AVAILABLE IN THE CORRECTIVE ACTION ALLOCATION FOR THAT YEAR AT THE END OF THE CORRECTIVE ACTION ALLOCATION YEAR, REIMBURSEMENT SHALL BE BASED ON THE DATE THE CORRECTIVE ACTION IS COMPLETED AS DETERMINED BY THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR.

M. IF THERE ARE INSUFFICIENT MONIES TO PAY FOR APPROVED CORRECTIVE ACTION IN ANY ANNUAL CORRECTIVE ACTION ALLOCATION, THE DEPARTMENT SHALL REIMBURSE THE CORRECTIVE ACTION FROM THE NEXT ANNUAL CORRECTIVE ACTION ALLOCATION, WITH THE PRIORITY THAT REIMBURSEMENTS FIRST GO TO SMALL OWNERS.

N. THE DEPARTMENT MAY NOT ACCEPT AN APPLICATION TO THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR REIMBURSEMENT FROM AN APPLICANT FOR COSTS ASSOCIATED WITH A SINGLE FACILITY MORE FREQUENTLY THAN ONCE EACH CALENDAR MONTH, AND THE DEPARTMENT MAY NOT ACCEPT AN APPLICATION FOR COSTS ASSOCIATED WITH A SINGLE FACILITY FOR AN AMOUNT OF LESS THAN FIVE THOUSAND DOLLARS UNLESS THE REIMBURSEMENT IS THE FINAL APPLICATION ASSOCIATED WITH THE FACILITY.

O. AN APPLICATION FOR REIMBURSEMENT PURSUANT TO THIS SECTION SHALL BE ON A FORM PROVIDED BY THE DEPARTMENT AND SHALL CONTAIN SUFFICIENT INFORMATION TO ALLOW THE DIRECTOR TO MAKE A DETERMINATION OF PRIORITY FOR THAT REQUEST.

P. FOR THE PURPOSES OF THIS SECTION, "SMALL OWNER" MEANS AN OWNER THAT OWNS FEWER THAN TWENTY UNDERGROUND STORAGE TANK FACILITIES IN THIS STATE.

49-1054. Extent of reimbursement

A. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR THE REASONABLE AND NECESSARY COSTS OF ELIGIBLE ACTIVITIES PURSUANT TO SECTION 49-1053, SUBSECTION A FOR RELEASES THAT ARE REPORTED BEFORE THE END OF THE BASELINE PERIOD ESTABLISHED PURSUANT TO SECTION 49-1052. RECEIPT OF FINANCIAL ASSISTANCE FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND DOES NOT CONSTITUTE A FINANCIAL ASSURANCE MECHANISM AND MAY NOT BE USED TO DEMONSTRATE COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS OR TO PROVIDE COMPENSATION TO THIRD PARTIES FOR BODILY INJURY OR PROPERTY DAMAGE. REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND TO OWNERS, OPERATORS AND PERSONS THAT MEET THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MAY NOT EXCEED ONE MILLION DOLLARS PER FACILITY.

B. THE DEPARTMENT MAY COMPEL THE PRODUCTION OF DOCUMENTS TO DETERMINE THE EXISTENCE, AMOUNT AND TYPE OF INSURANCE OR ALTERNATIVE COVERAGE AVAILABLE. AN OWNER, OPERATOR OR PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C SHALL REPORT TO THE DEPARTMENT ANY PAYMENT OF CORRECTIVE ACTIONS COSTS THROUGH INSURANCE AND ALTERNATIVE MECHANISMS.

C. THE DEPARTMENT MAY NOT DISBURSE MORE THAN THE MAXIMUM AMOUNTS PRESCRIBED BY SUBSECTION A OF THIS SECTION FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR CORRECTIVE ACTION COSTS ASSOCIATED WITH A FACILITY.

D. THE DEPARTMENT SHALL PAY ELIGIBLE COSTS THAT ARE REASONABLE AND WERE ACTUALLY INCURRED FOR CORRECTIVE ACTIONS THAT WERE ACTUALLY PERFORMED. THE COSTS FOR THE CORRECTIVE ACTIONS SHALL BE SUBMITTED AS PRESCRIBED IN SECTIONS 49-1051 AND 49-1053. THE DEPARTMENT SHALL PAY ONLY FOR CORRECTIVE ACTIONS THAT HAVE BEEN COMPLETED AND THAT HAVE BEEN CONDUCTED PURSUANT TO THE PREAPPROVAL APPROVED BY THE DEPARTMENT. REASONABLENESS OF CORRECTIVE ACTIONS SHALL BE DETERMINED BASED ON THE LAW AND THE FACTS AVAILABLE TO THE OWNER, OPERATOR OR PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C AT THE TIME THE TECHNICAL DECISION WAS MADE. THE DEPARTMENT SHALL ESTABLISH SCHEDULES OF CORRECTIVE ACTION COSTS THAT THE DEPARTMENT CONSIDERS REASONABLE.

E. THE OWNER OR OPERATOR IS ELIGIBLE FOR PAYMENT FROM THE DEPARTMENT TO THE EXTENT THAT THE CORRECTIVE ACTION COSTS HAVE NOT BEEN REIMBURSED TO THE OWNER OR OPERATOR, OR ITS CONSULTANT, REPRESENTATIVE OR AGENT, BY INSURANCE OR BY AN ALTERNATIVE FINANCIAL ASSURANCE MECHANISM. A PROVIDER OF INSURANCE OR AN ALTERNATIVE FINANCIAL ASSURANCE MECHANISM WHO IS NOT AN OWNER OR OPERATOR WITH RESPECT TO THE OCCURRENCE IS NOT ELIGIBLE FOR PAYMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND.

F. AN OWNER OR OPERATOR SHALL REPORT TO THE DEPARTMENT WHETHER IT HAS INSURANCE COVERAGE AVAILABLE AND SHALL COMPLY WITH ALL APPLICABLE FINANCIAL RESPONSIBILITY REQUIREMENTS. IF THE DIRECTOR HAS REASON TO BELIEVE THAT AN OWNER OR OPERATOR, OR ITS CONSULTANT, REPRESENTATIVE OR AGENT, HAS RECEIVED

OR MAY RECEIVE ANY PAYMENT FOR CORRECTIVE ACTIONS FROM INSURANCE OR ALTERNATIVE FINANCIAL ASSURANCE MECHANISM, THE DEPARTMENT MAY COMPEL THE PRODUCTION OF DOCUMENTS TO DETERMINE THE EXISTENCE, AMOUNT AND TYPE OF INSURANCE OR ALTERNATIVE FINANCIAL ASSURANCE COVERAGE AVAILABLE AND TO WHOM PAYMENT WAS MADE OR MAY BE MADE. AN OWNER OR OPERATOR SHALL REPORT TO THE DEPARTMENT ANY SUBSEQUENT PAYMENT OR REIMBURSEMENT FROM INSURANCE OR AN ALTERNATIVE FINANCIAL ASSURANCE MECHANISM TO THE OWNER OR OPERATOR OR ITS CONSULTANT, REPRESENTATIVE OR AGENT FOR CORRECTIVE ACTIONS COSTS.

G. THE OWNER OR OPERATOR SHALL REMIT TO THE DEPARTMENT WITHIN THIRTY DAYS ANY AMOUNTS THAT WERE PREVIOUSLY PAID TO THE OWNER OR OPERATOR OR ITS CONSULTANT, REPRESENTATIVE OR AGENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND AND THAT HAVE ALSO BEEN RECOVERED FROM INSURANCE OR ANY ALTERNATIVE FINANCIAL ASSURANCE MECHANISMS.

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

49-1055. Extent of reimbursement; termination of eligibility

A. FROM AND AFTER DECEMBER 31, 2022, ONLY THOSE RELEASES OF A REGULATED SUBSTANCE THAT ARE REPORTED BEFORE JANUARY 1, 2023 AS PRESCRIBED IN SECTION 49-1004 ARE ELIGIBLE FOR CORRECTIVE ACTION COST REIMBURSEMENTS FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND.

B. AN APPLICATION FOR REIMBURSEMENT OF ELIGIBLE COSTS FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND SHALL BE FILED WITH THE DEPARTMENT NOT LATER THAN 5:00 P.M. ON DECEMBER 31, 2030.

C. AN APPLICATION FOR PREAPPROVAL MADE PURSUANT TO SECTION 49-1051 SHALL BE FILED WITH THE DEPARTMENT NOT LATER THAN 5:00 P.M. ON DECEMBER 31, 2029.

D. ANY APPLICATION MADE OR EXPENSE INCURRED AFTER DECEMBER 31, 2030 IS NOT ELIGIBLE FOR REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND AND ALL SUCH CLAIMS ARE EXTINGUISHED.

49-1056. Lien rights; unrecovered corrective action costs

IF THE DEPARTMENT OR THIS STATE INCURS UNRECOVERED CORRECTIVE ACTION COSTS FROM A CORRECTIVE ACTION UNDERTAKEN ON BEHALF OF A VOLUNTEER, A PROPERTY OWNER, A PERSON OTHER THAN THE UNDERGROUND STORAGE TANK OWNER OR AN OWNER OR OPERATOR THAT DID NOT HAVE THE REQUIRED FINANCIAL RESPONSIBILITY MECHANISM AT THE TIME THE RELEASE IS DISCOVERED OR THE CLAIM IS FILED, THE DEPARTMENT HAS A LIEN ON THE PROPERTY FOR THE UNRECOVERED CORRECTIVE ACTION COSTS, OR, BY AGREEMENT WITH THE RESPONSIBLE PARTY, MAY OBTAIN A LIEN ON ANY OTHER PROPERTY OR OTHER FINANCIAL RESPONSIBILITY MECHANISM OF THE RESPONSIBLE PARTY.

49-1057. Intergovernmental agreements

THE DEPARTMENT MAY ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH INDIAN TRIBES PURSUANT TO TITLE 11, CHAPTER 7, ARTICLE 3 TO EXTEND TO THE TRIBES THE PARTIAL COVERAGE PROVIDED BY THIS ARTICLE AND THE RESPONSIBILITIES IMPOSED BY ARTICLES 1 AND 2 OF THIS CHAPTER.

ARTICLE 4. GRANTS

49-1071. Grants; purposes; priority

A. SUBJECT TO THE AVAILABILITY OF MONIES IN THE UNDERGROUND STORAGE TANK REVOLVING FUND THAT ARE ANNUALLY ALLOCATED BY THE DIRECTOR FOR EACH OF THE FOLLOWING TYPES OF ACTIONS, AN OWNER, OPERATOR OR PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MAY REQUEST THAT THE DEPARTMENT PROVIDE MONIES FOR THAT PERSON TO CONDUCT ONE OR MORE OF THE FOLLOWING ACTIONS, UP TO A MAXIMUM OF ONE HUNDRED THOUSAND DOLLARS PER SITE:

1. ACTIONS NECESSARY TO ENSURE THAT THE UNDERGROUND STORAGE TANK, ITS PIPING AND ITS UNDER-DISPENSER CONTAINMENT COMPLY WITH STANDARDS FOR NEW INSTALLATIONS PRESCRIBED BY SECTION 49-1009 OR OTHER APPLICABLE FEDERAL REQUIREMENTS, INCLUDING REPLACEMENT OF SYSTEM COMPONENTS, UP TO A MAXIMUM OF ONE HUNDRED THOUSAND DOLLARS.

2. REMOVAL OF UNDERGROUND STORAGE TANKS FOR PURPOSES OF PERMANENT CLOSURE OR REPLACEMENT, UP TO A MAXIMUM OF TWENTY THOUSAND DOLLARS PER TANK.

3. CONFIRMATION OF A SUSPECTED RELEASE AT A TANK OR SITE, UP TO A MAXIMUM OF TEN THOUSAND DOLLARS.

4. OBTAINING A BASELINE ASSESSMENT OF A SITE AS PRESCRIBED IN SECTION 49-1052, UP TO A MAXIMUM OF THIRTY THOUSAND DOLLARS.

B. IN DETERMINING THE PRIORITY FOR REQUESTS UNDER SUBSECTION A OF THIS SECTION, THE DIRECTOR MAY CONSIDER THE FOLLOWING FACTORS:

1. THE AGE, CONSTRUCTION AND OPERATIONAL HISTORY OF THE UNDERGROUND STORAGE TANK.

2. THE HYDROGEOLOGIC CHARACTERISTICS OF THE SITE WHERE THE UNDERGROUND STORAGE TANK IS LOCATED AND THE SURROUNDING AREA.

3. THE PROXIMITY, QUALITY AND CURRENT AND FUTURE USES OF NEARBY SURFACE WATER AND GROUNDWATER.

4. THE POTENTIAL EFFECTS OF RESIDUAL CONTAMINATION ON NEARBY SURFACE WATER AND GROUNDWATER.

5. THE DEGREE OF EXPOSURE.

6. THE FINANCIAL RESOURCES OF THE GRANT APPLICANT.

C. A REQUEST FOR A GRANT OF MONIES UNDER THIS SECTION SHALL INCLUDE:

1. DETAILED INFORMATION ABOUT THE SITE, INCLUDING THE TYPE, NUMBER AND LOCATION OF TANKS.

2. INFORMATION ABOUT THE OWNER AND OPERATOR, INCLUDING THE TYPE OF FINANCIAL RESPONSIBILITY.

3. A DESCRIPTION OF THE EVIDENCE OF ANY RELEASE OR SUSPECTED RELEASE.

4. THE PROPOSED ACTIONS NECESSARY TO MEET TANK AND SYSTEM PERFORMANCE STANDARDS.

D. MONIES MAY NOT BE PROVIDED UNDER THIS SECTION FOR WORK THAT TAKES PLACE MORE THAN ONE YEAR AFTER THE DATE THAT MONIES ARE APPROVED.

Sec. 19. Section 49-1091, Arizona Revised Statutes, is amended to read:

49-1091. Underground storage tank informal appeals

A. A person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator may informally appeal the following decisions or determinations pursuant to this section:

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

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

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

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

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

C. A person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator who is subject to an interim decision or determination described in subsections A and B of this section, and who disagrees with the interim decision or determination, may file a written notice of disagreement with the department within thirty days ~~of~~ AFTER receiving the department's interim decision or determination. The notice shall include a description of the specific portions of the interim decision or determination with which the person, owner or operator disagrees and may include a request to meet with the department to resolve the disagreement. The department shall schedule a meeting within thirty days after receiving the request.

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

E. The department shall issue a final written decision or determination within forty-five days ~~of~~ AFTER receiving the notice of disagreement or within fifteen days ~~of~~ AFTER a meeting pursuant to subsection C of this section, whichever is later. If no notice of disagreement is filed, the department shall issue a final written decision or determination within forty-five days after the issuance of the interim decision or determination. Before the expiration of time for the department to issue a final written decision or determination, the department may request additional information from the person who has submitted a notice of disagreement that is necessary to make a final decision or determination. A

person ~~who~~ THAT receives this request shall have fifteen days to submit the requested information to the department. The time frames for the department to issue a final decision or determination shall be extended for up to fifteen days during the time the requested information is outstanding, and for up to fifteen additional days, if applicable, after any information is submitted to the department. The time to submit the requested information may be extended for up to sixty days on the request of a person ~~who~~ THAT submits a notice of disagreement. The time frames for the department to issue a final decision or determination shall be extended accordingly. The time frames for the department to issue a final decision or determination shall also be extended if information relating to the subject of the notice of disagreement is not requested by the department but is provided to the department for the first time less than fifteen days ~~from~~ AFTER the date the department is required to issue a final decision or determination. In this situation, the time frames shall be extended to allow the department fifteen days ~~from~~ AFTER the date the information is submitted to issue a final decision or determination. If the department fails to issue a final written decision or determination within the time specified in this subsection, the department's written interim decision or determination becomes the final written decision or determination. The final written decision or determination shall address the notice of disagreement received pursuant to subsection C of this section. The final written decision or determination is the only decision or determination that is appealable as an appealable agency action as defined in section 41-1092 or a contested case as defined in section 41-1001.

F. The period of time for compliance with corrective actions associated with the subject matter of a notice of disagreement is tolled from the date that a person who undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator files a written notice of disagreement with the department until the date the final decision or determination is rendered by the department and any appeals are completed.

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

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

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

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

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

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

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

I. The department's failure to respond with a written interim determination to the owner's or operator's submission, or to the submission from a person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C, of an application for preapproval~~, direct payment~~ or reimbursement from the underground storage tank ~~assurance account~~ REVOLVING FUND within ninety days ~~of~~ AFTER receipt is a basis for an informal appeal.

Sec. 20. Section 49-1091.01, Arizona Revised Statutes, is amended to read:

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

A. ~~The provisions of~~ This section ~~apply~~ APPLIES to an owner, AN operator or a person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C for any of the following:

1. A written interim determination or interim decision from the department on matters relating to:

(a) Owner or operator status.

(b) Preapproval~~, direct payment~~ or reimbursement from the ~~assurance account, as defined in~~ UNDERGROUND STORAGE TANK REVOLVING FUND ESTABLISHED BY section ~~49-1051~~ 49-1015.

2. The department's approval, disapproval or notice of deficiency of:

(a) Site characterization reports.

(b) Corrective action plans for soil~~,~~ OR groundwater, or both.

B. An owner, operator or person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C shall receive reimbursement for reasonable attorney fees, consultant fees and costs that are actually incurred and not excessive in all proceedings that follow the interim decision or interim determination pursuant to section 49-1091, if that party satisfies both of the following requirements:

1. Submitted a written notice of the disagreement to the department within thirty days pursuant to section 49-1091.

2. Requested and participated in a meeting with the department regarding decisions or determinations pursuant to section 49-1091, subsection A, paragraph 2 or ~~section 49-1091,~~ subsection G, paragraph 1 or 2.

C. The attorney fees, consultant fees and costs shall be paid only for those amounts that are reasonable, actually incurred and not excessive in the portion of the proceedings that are the subject of the notice of disagreement in which the owner, operator or person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I,~~ 49-1016, SUBSECTION C prevailed, including proceedings resulting in a favorable decision or determination from the department or in a judicial proceeding.

D. The reimbursement provided by subsection B of this section is subject to the following limitations:

1. Fees and costs shall not be paid if the department makes a favorable determination or decision on the issue appealed before or in the final decision or determination.

2. Fees and costs shall not be paid if all of the following conditions are met:

(a) Information requested pursuant to section ~~49-1052~~ 49-1053, subsection B or section 49-1091, subsection E is not provided to the department before the time the department issues a final decision or determination that is adverse to the owner, operator or person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C.

(b) The final decision or determination is subsequently reversed or otherwise decided in favor of the person based on information previously requested by the department.

3. In an appeal of a determination regarding an application for preapproval~~, direct payment~~ or reimbursement from the ~~assurance account~~ UNDERGROUND STORAGE TANK REVOLVING FUND, attorney fees, consultant fees and costs paid pursuant to this subsection may not exceed the amount that is in dispute.

4. If information requested by the department pursuant to section ~~49-1052~~ 49-1053, subsection B or section 49-1091, subsection E is provided to the department before the department issues a final decision or determination that is adverse to the owner, operator or person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C, and the final decision or determination is subsequently reversed or otherwise decided in favor of the owner, operator or person ~~who~~ THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016, SUBSECTION C based on that information, attorney fees, consultant fees and costs shall only be paid for those amounts actually incurred after the information was provided.

Sec. 21. Repeal

Sections 49-1092 and 49-1093, Arizona Revised Statutes, are repealed.

Sec. 22. Delayed repeal

Section 49-1031, Arizona Revised Statutes, as amended by this act, is repealed from and after December 31, 2023.

Sec. 23. Repeal

A. Laws 2004, chapter 273, section 7 is repealed.

B. Laws 2004, chapter 273, section 14, as amended by Laws 2013, chapter 244, section 5, is repealed.

Sec. 24. Laws 2015, chapter 13, section 6 is amended to read:

Sec. 6. Underground storage tank revolving fund; transfer of monies; uses

Notwithstanding any other law, ~~the administrative caps established in section 49-1051, subsection B, paragraphs 2 and 3, Arizona Revised Statutes, are suspended for fiscal year 2015-2016, and~~ the department of environmental

quality may transfer a ~~combined~~ total of $6,531,000 from the ~~assurance account of the~~ underground storage tank revolving fund established by section ~~49-1051~~ 49-1015, Arizona Revised Statutes, ~~and the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes,~~ AS ADDED BY THIS ACT, for administrative costs of the department in fiscal year 2015-2016.

Sec. 25. Previously time-barred underground storage tank revolving fund claims; requirements; limitations; appeals

Notwithstanding any other law:

1. For releases of a regulated substance that were properly reported before July 1, 2006:

(a) Costs for corrective action are eligible for reimbursement up to five hundred thousand dollars per facility for an applicant who satisfies federal financial responsibility obligations prescribed in 40 code of federal regulations part 280 through a financial assurance mechanism other than insurance and one million dollars per facility for an applicant who satisfies federal financial responsibility obligations through insurance, without regard to the number of releases at the facility.

(b) If reimbursement eligibility for a facility was exhausted through claims submitted on or before June 30, 2010 as a result of payment or eligibility limits in place on that date, that facility is not eligible for any additional reimbursement under this section.

(c) If claims for reimbursement at a facility were made on or before June 30, 2010, the total amount of payment on those claims shall reduce eligibility for reimbursement under this section by the amount paid on the claims.

2. For releases of a regulated substance that were properly reported on or after July 1, 2006, but before January 1, 2016, costs for corrective actions are eligible for reimbursement up to five hundred thousand dollars per facility for an applicant who satisfies federal financial responsibility obligations prescribed in 40 code of federal regulations part 280 through a financial assurance mechanisms other than insurance and one million dollars per facility for an applicant who satisfies federal financial responsibility obligations through insurance, without regard to the number of releases at the facility.

3. The department of environmental quality is not required to take any action on an application for reimbursement until January 1, 2017.

4. The department of environmental quality shall pay all compensable claims for corrective action costs arising from releases that were reported before July 1, 2006 and that are submitted on or before December 31, 2016, before paying any claims under this section for corrective action costs arising from releases reported on or after July 1, 2006. Claims submitted pursuant to this section are compensable only for costs incurred after June 30, 2010.

5. Subject to paragraph 4 of this section, the department of environmental quality shall pay all compensable claims submitted by December 31, 2016 in equal proportion based on the amount of the claim, without regard to who the applicant is or the time that the claim is submitted, if the claim is timely submitted. The department of environmental quality shall determine the percentage of each claim to be paid based on the monies available in the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes.

6. Only claims that are approved by the department of environmental quality are eligible for payment under this section. The department shall reimburse costs that are reasonable and were actually incurred for corrective actions that were actually performed. The costs for the corrective actions shall be documented in an application by the facility for payment from the underground storage tank revolving fund that shall be submitted by December 31, 2016. The department shall provide reimbursement for ninety percent of the reasonable and necessary costs of eligible activities pursuant to this section. Applications for reimbursement shall include a declaration that is signed by the owner or operator and that affirms that the submitted costs are true and accurate, have not previously been submitted to the department and have not been reimbursed to the owner or operator by insurance or an alternative financial assurance mechanism. A provider of insurance or an alternative financial assurance mechanism that is not an owner or operator with respect to that facility is not eligible for payment under this section.

7. The department of environmental quality shall determine the amount of monies in the underground storage tank revolving fund prescribed by section 49-1015, Arizona Revised Statutes, as added by this act, on December 31, 2016 that is available to pay claims under this section. The department is not required to evaluate available monies from the fund and issue payments more than once per year thereafter.

8. An owner or operator is not eligible to receive payment from the department of environmental quality unless the owner or operator is in compliance with the financial responsibility obligations under 40 code of federal regulations part 280.

9. Any appeals of reimbursement decisions made under this section are subject to title 41, chapter 6, article 10, Arizona Revised Statutes.

Sec. 26. <u>Transfer of fund monies; underground storage tank revolving fund; regulated substance fund</u>

All unexpended and unencumbered monies remaining in the following are transferred to the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, as added by this act:

1. The underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, as repealed by this act.

2. The regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as repealed by this act.

3. The regulatory account of the underground storage tank revolving fund established by section 49-1015, as repealed by this act.

4. The assurance account of the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, as repealed by this act.

5. The grant account of the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, as repealed by this act.

Sec. 27. Distribution of underground storage tank revolving fund monies for fiscal year 2015-2016

In addition to the monies transferred pursuant to Laws 2015, chapter 13, section 6, as amended by this act, for fiscal year 2015-2016, the director of environmental quality may distribute monies in the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, as added by this act, as follows:

1. Not more than $3,000,000 for the administrative costs of the underground storage tank program.

2. Not more than $3,000,000 for grants authorized under section 49-1071, Arizona Revised Statutes.

3. Not more than $7,000,000 for corrective actions taken under section 49-1017, Arizona Revised Statutes.

4. Not more than $1,000,000 for noncorrective actions taken under section 49-1017.02, Arizona Revised Statutes.

5. Not more than $6,000,000 for corrective actions preapproved under title 49, chapter 6, article 3, Arizona Revised Statutes.

6. Not less than $28,000,000 for payment of time-barred claims as provided by this act.

APPROVED BY THE GOVERNOR APRIL 9, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2015.

Passed the House March 11, 20 15

by the following vote: 53 Ayes,

4 Nays, 3 Not Voting

Speaker of the House

☐ Pro Tempore

Jim Drake

Chief Clerk of the House

Passed the Senate April 2, 20 15

by the following vote: 20 Ayes,

8 Nays, 2 Not Voting

President of the Senate

Charmin Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2636

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 2, 2015,

by the following vote: 47 Ayes,

12 Nays, 1 Not Voting

Speaker of the House

Pro Tempore

Jim Drake

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6th day of April, 2015,

at 9:13 o'clock A. M.

Secretary to the Governor

Approved this 9th day of

April, 2015,

at 11:45 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10th day of April, 2015,

at 8:10 o'clock A. M.

Michele Reagan

Secretary of State

H.B. 2636