STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

April 10, 2018

The Honorable Michele Reagan
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Secretary Reagan:

I am transmitting to you the following bills from the Fifty-third Legislature, 2nd Regular Session, which I signed on April 10, 2018:

HB 2173 notice of participation; jurisdictional elections (Coleman)
HB 2304 public buildings; omnibus (Campbell)
HB 2449 child care assistance; tiered reimbursement (Udall)
SB 1008 common schools; average daily membership (Petersen)
SB 1112 insurance; surplus lines; exemption (Fann)
SB 1117 liquor establishments; peace officers; firearms (Kavanagh)
SB 1164 DES; fingerprint card; tax information (Brophy McGee)
SB 1166 permanent guardianship; subsidy (Brophy McGee)
SB 1201 county treasurer; electronic records; liens (Worsley)
SB 1208 ATVs; off-highway vehicles (Pratt)
SB 1217 insurance; small employers; continuation coverage (Brophy McGee)
SB 1247 health insurance; mandated provision prohibited (Barto)
SB 1287 ADOT revisions (Worsley)
SB 1289 schools; national motto; state motto (Griffin)
SB 1353 limited liability company act; revisions (Worsley)
SB 1389 HIV; needs assessment; prevention (Brophy McGee)
SB 1494 environment; underground injection control program (Griffin)
SB 1500 employment security; employee; employer; status (Smith)
SB 1517 state dinosaur; Sonorasaurus (Brophy McGee)

1700 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007
602-542-4331 • www.azgovernor.gov

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

cc: Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

Senate Engrossed

FILED

MICHELE REAGAN

SECRETARY OF STATE

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 170

SENATE BILL 1494

AN ACT

AMENDING SECTIONS 49-203, 49-210 AND 49-250, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.2; AMENDING SECTIONS 49-261, 49-262, 49-263 AND 49-264, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 49-203, Arizona Revised Statutes, is amended to read:

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.

4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

7. Adopt, by rule or as permit conditions, ~~such~~ discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and ~~such~~ other standards and conditions as ~~are~~ reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.

8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided

by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D~~,~~ shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a ~~case by case~~ CASE-BY-CASE basis, taking into account site conditions and operational factors.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as ~~is~~ reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that ~~such~~ notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, ~~or~~ 3.1 OR 3.2 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and ~~such~~ other programs affording water quality protection that are administered by the department for purposes of administration and

enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

Sec. 2. Section 49-210, Arizona Revised Statutes, is amended to read:

49-210. Water quality fee fund; appropriation; exemption; monies held in trust

A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.

B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

D. Monies in the water quality fee fund shall be used for the following purposes:

1. The issuance of aquifer protection permits pursuant to section 49-241.

2. The aquifer protection permit registration fee procedures pursuant to section 49-242.

3. Dry well registration fee procedures pursuant to section 49-332.

4. Technical review fee procedures pursuant to section 49-353.

5. Inspection fee procedures pursuant to section 49-104, subsection C.

6. The issuance of permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.

7. Operator certification pursuant to sections 49-352 and 49-361.

8. IMPLEMENTATION AND ADMINISTRATION OF THE UNDERGROUND INJECTION CONTROL PERMIT PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.2 OF THIS CHAPTER.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

Sec. 3. Section 49-250, Arizona Revised Statutes, is amended to read:

49-250. Exemptions

A. The director may, by rule, exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from ~~such~~ THE facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.

B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.

2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.

3. The noncommercial use of consumer products generally available to and used by the public.

4. Ponds used for watering livestock and wildlife.

5. Mining overburden returned to the excavation site including any common material ~~which~~ THAT has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.

6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.

7. Discharge to a community sewer system.

8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.

9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.

10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.

11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.

12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.

13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.

14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.

15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.

16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.

17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.

18. Facilities used in:

(a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.

(b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.

(c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions ~~which~~ THAT have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.

20. Storage, treatment or disposal of inert material.

21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.

22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.

23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:

(a) ~~Fire fighting~~ FIREFIGHTING system testing and maintenance.

(b) Potable water sources, including waterline flushings.

(c) Irrigation drainage and lawn watering.

(d) Routine external building wash down without detergents.

(e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.

(f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.

(g) Foundation or footing drains in which flows are not contaminated with process materials.

(h) Occupational safety and health administration or mining safety and health administration safety equipment.

24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.

25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

26. EXCEPT FOR CLASS V WELLS, ANY UNDERGROUND INJECTION WELL COVERED BY A PERMIT ISSUED UNDER ARTICLE 3.2 OF THIS CHAPTER OR UNDER 42 UNITED STATE CODE SECTION 300h-1(c). THIS EXEMPTION DOES NOT APPLY UNTIL THE DATE THAT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY APPROVES THE DEPARTMENT'S UNDERGROUND INJECTION CONTROL PERMIT PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.2 OF THIS CHAPTER.

Sec. 4. Title 49, chapter 2, Arizona Revised Statutes, is amended by adding article 3.2, to read:

ARTICLE 3.2. UNDERGROUND INJECTION CONTROL PERMIT PROGRAM

49-257. Applicability of federal definitions

THE DEFINITIONS PRESCRIBED IN THE UNDERGROUND INJECTION CONTROL PROGRAM IN PART C OF THE SAFE DRINKING WATER ACT IN EFFECT ON JANUARY 1, 2018 AND IN THE IMPLEMENTING REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS IN EFFECT ON JANUARY 1, 2018 APPLY TO THIS ARTICLE.

49-257.01. Underground injection control permit program; permits; prohibitions; exemptions; rules

A. THE DEPARTMENT SHALL ESTABLISH AN UNDERGROUND INJECTION CONTROL PERMIT PROGRAM, INCLUDING A PERMITTING PROCESS.

B. AN UNDERGROUND INJECTION IS PROHIBITED UNLESS THE UNDERGROUND INJECTION IS INTO A WELL AUTHORIZED BY RULE OR UNLESS IT IS AUTHORIZED BY A PERMIT ISSUED PURSUANT TO THIS ARTICLE OR BY A PERMIT ISSUED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. A PERSON MAY NOT CONSTRUCT ANY WELL THAT IS REQUIRED TO HAVE A PERMIT UNTIL THE PERSON IS ISSUED THE

PERMIT OR IS OTHERWISE AUTHORIZED UNDER THE PERMIT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE OR FEDERAL LAW.

C. ANY UNDERGROUND INJECTION ACTIVITY IS PROHIBITED IF IT IS CONDUCTED IN A MANNER THAT ALLOWS THE MOVEMENT OF FLUID CONTAINING ANY CONTAMINANT INTO UNDERGROUND SOURCES OF DRINKING WATER AND IF THE PRESENCE OF THAT CONTAMINANT MAY ENDANGER UNDERGROUND SOURCES OF DRINKING WATER.

D. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A CLASS V WELL IS EXEMPT FROM THIS ARTICLE IF THE WELL HAS AN AQUIFER PROTECTION PERMIT OBTAINED PURSUANT TO ARTICLE 3 OF THIS CHAPTER AND THAT PERMIT SATISFIES FEDERAL UNDERGROUND INJECTION CONTROL REQUIREMENTS FOR A CLASS V WELL.

E. THE DIRECTOR SHALL ADOPT RULES FOR THE PURPOSES OF ESTABLISHING AND OPERATING THE UNDERGROUND INJECTION CONTROL PERMIT PROGRAM PURSUANT TO THIS ARTICLE. RULES ADOPTED BY THE DIRECTOR SHALL MEET THE MINIMUM REQUIREMENTS PRESCRIBED BY 42 UNITED STATES CODE SECTION 300h(b).

F. THE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE IS EXEMPT FROM SECTION 41-3102.

Sec. 5. Section 49-261, Arizona Revised Statutes, is amended to read:

49-261. <u>Compliance orders; appeal; enforcement</u>

A. If the director determines that a person is in violation of a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6, any provision of article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter, a rule adopted pursuant to article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter, a discharge limitation or any other condition of a permit issued under article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter or is creating an imminent and substantial endangerment to the public health or environment, the director may issue an order requiring compliance within a reasonable time period.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing.

C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.

D. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Appeals shall be conducted ~~according~~ PURSUANT to section 49-321.

E. At the request of the director the attorney general may commence an action in superior court to enforce orders issued under this section once an order becomes final.

Sec. 6. Section 49-262, Arizona Revised Statutes, is amended to read:

49-262. Injunctive relief; civil penalties; recovery of litigation costs

A. Whether or not a person has requested a hearing, the director, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health if the director has reason to believe either of the following:

1. That a person is in violation of:

(a) Any provision of article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter.

(b) A rule adopted pursuant to section 49-203, subsection A, paragraph 6.

(c) A rule adopted pursuant to article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter.

(d) A discharge limitation or any other condition of a permit issued under article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter.

2. That a person is creating an actual or potential endangerment to the public health or environment because of acts performed in violation of this chapter.

B. Notwithstanding any other provision of this chapter, if the director, the county attorney or the attorney general has reason to believe that a person is creating an imminent and substantial endangerment to the public health or environment because of acts performed in violation of article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter or a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 2, 6 or 7, the county attorney or attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.

C. A person who violates any provision of article 2, 3 or 3.1 of this chapter or a rule, permit, discharge limitation or order issued or adopted pursuant to article 2, 3 or 3.1 of this chapter is subject to a civil penalty of not ~~to exceed~~ MORE THAN twenty-five thousand dollars per day per violation. A person who violates any rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6 is subject to a civil penalty of not ~~to exceed~~ MORE THAN five thousand dollars per day per violation. A PERSON WHO VIOLATES ANY RULE ADOPTED, PERMIT CONDITION OR ANY OTHER PROVISION OF ARTICLE 3.2 OF THIS CHAPTER IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS PER DAY PER VIOLATION. The attorney general may, and at the request of the director shall, commence an action in superior court to recover civil penalties provided by this section.

D. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.

E. All civil penalties except litigation costs obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. Except as applied to permits issued or authorized pursuant to article 3.1 OR 3.2 of this chapter, it shall be an affirmative defense to civil liability under this section and section 49-261 for causing or contributing to a violation of a water quality standard established pursuant to this chapter, or a violation of a permit condition prohibiting a violation of an aquifer water quality standard or limitation at the point of compliance or a surface water quality standard if the release that caused or contributed to the violation came from a facility owned or operated by a party that has either:

1. Undertaken a remedial or response action approved by the director or the administrator under this title or CERCLA in response to the release of a hazardous substance, pollutant or contaminant that caused or contributed to the violation of article 2 of this chapter and is in compliance with that remedial or response action.

2. Otherwise resolved its liability for the release of a hazardous substance that caused or contributed to the violation of article 2 of this chapter in whole or in part by the execution of a settlement agreement or consent decree with the director or administrator under this article, CERCLA or any other environmental law and is in compliance with that settlement agreement or consent decree.

G. Subsection F of this section does not prevent the director from taking an appropriate enforcement action to address the release of a hazardous substance, pollutant or contaminant or the violation of a permit condition before or as an element of an approved remedial or response action, settlement agreement or consent decree.

H. In determining the amount of a civil penalty for a violation under article 3, ~~or~~ 3.1 OR 3.2 of this chapter, the court shall consider the following factors:

1. The seriousness of the violation or violations.

2. The economic benefit, if any, that results from the violation.

3. Any history of similar violations.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty on the violator.

6. The extent to which the violation was caused by a third party.

7. Other matters as justice may require.

I. A single operational upset that leads to simultaneous violations of more than one pollutant limitation in a permit issued or authorized pursuant to section 49-255.01 constitutes a single violation for purposes of any penalty calculation.

J. If a permittee holds both a permit issued or authorized pursuant to article 3 of this chapter and a permit issued or authorized pursuant to article 3.1 OR 3.2 of this chapter and the permittee violates a similar provision in both permits simultaneously, the department shall not recover penalties for violations of both permits based on the same act or omission.

Sec. 7. Section 49-263, Arizona Revised Statutes, is amended to read:

49-263. Criminal violations; classification; definition

A. It is unlawful to:

1. Discharge without a permit or appropriate authority under this chapter.

2. Fail to monitor, sample or report discharges as required by a permit issued under this chapter.

3. Violate a discharge limitation specified in a permit issued under this chapter.

4. Violate a water quality standard.

5. COMMENCE UNDERGROUND INJECTION OR CONSTRUCTION OF AN UNDERGROUND INJECTION WELL WITHOUT A PERMIT OR OTHER APPROPRIATE AUTHORITY UNDER THIS CHAPTER.

6. VIOLATE ANY UNDERGROUND INJECTION STANDARD OR REQUIREMENT THAT IS REQUIRED BY A PERMIT ISSUED OR AUTHORIZED UNDER THIS CHAPTER.

B. A person who with criminal negligence performs an act prohibited under subsection A of this section is guilty of a class 6 felony.

C. A person who knowingly performs an act prohibited under subsection A of this section is guilty of a class 5 felony.

D. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act prohibited under subsection A of this section is guilty of a class 2 felony.

E. FOR A CLASS II WELL, A PERSON WHO KNOWINGLY VIOLATES ANY UNDERGROUND INJECTION CONTROL PERMIT PROGRAM REQUIREMENTS PRESCRIBED BY THIS CHAPTER MAY BE SUBJECT TO PIPELINE (PRODUCTION) SEVERANCE.

~~E.~~ F. A violation of any provision of this chapter for which a penalty is not otherwise prescribed is a class 2 misdemeanor.

~~F.~~ G. The attorney general may enforce this section.

~~G.~~ H. Monetary criminal penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

~~H.~~ I. For purposes of this section "person" has the meaning assigned to that term by section 13-105.

Sec. 8. Section 49-264, Arizona Revised Statutes, is amended to read:

49-264. Private right of action; citizen suits; right to intervene

A. Except as provided in subsection B OF THIS SECTION, a person ~~having~~ THAT HAS an interest ~~which~~ THAT is or may be adversely affected by a violation of this chapter or a rule adopted or an order issued by the department pursuant to this chapter may commence a civil action in superior court on ~~his~~ THE PERSON'S own behalf against the director alleging a failure of the director to perform an act or duty under this chapter ~~which~~ THAT is not discretionary with the director. The court shall have jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in any of the following cases:

1. Before one hundred twenty days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.

2. If after conducting an investigation the director determines within one hundred twenty days after receiving notice of the alleged violation from the plaintiff that no violation has occurred, or the director had determined ~~prior to~~ BEFORE receiving the notice of the alleged violation that the violation had not occurred.

3. If the department has issued and is diligently processing a notice of violation or an order or has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.

4. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.

5. IF the director is diligently pursuing the violation under another state or federal environmental law.

C. In an action commenced under this section the plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party that substantially prevails.

E. A PERSON THAT IS OR MAY BE ADVERSELY AFFECTED BY A VIOLATION OF ANY REQUIREMENT OF THE UNDERGROUND INJECTION CONTROL PERMIT PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.2 OF THIS CHAPTER MAY INTERVENE AS A MATTER OF RIGHT IN ANY PENDING STATE CIVIL OR ADMINISTRATIVE ENFORCEMENT ACTION. A PERSON'S RIGHT TO INTERVENE IS LIMITED AS FOLLOWS:

1. A PERSON MAY INTERVENE ONLY IF THE PERSON IS ADVERSELY AFFECTED BY THE VIOLATION THAT IS NAMED IN THE STATE'S ACTION.

1 2. A PERSON MAY INTERVENE ONLY FOR PURPOSES OF OBTAINING THE
2 FOLLOWING REMEDIES FOR THE STATE:
3 (a) A TEMPORARY RESTRAINING ORDER.
4 (b) INJUNCTIVE RELIEF.
5 (c) CIVIL PENALTIES.
6 (d) ANY COMBINATION OF THE PENALTIES PRESCRIBED IN THIS PARAGRAPH.

APPROVED BY THE GOVERNOR APRIL 10, 2018

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2018

Passed the House April 3, 2018,

by the following vote: 34 Ayes,

23 Nays, 3 Not Voting

Speaker of the House

Jim Drake

Chief Clerk of the House

Passed the Senate February 20, 2018,

by the following vote: 17 Ayes,

13 Nays, 0 Not Voting

President of the Senate

Susan Aceves

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

4th day of April, 2018,

at 4:18 o'clock P. M.

Secretary to the Governor

Approved this 10th day of

April, 2018,

at 9:41 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 10 day of April, 2018,

at 3:08 o'clock P. M.

Michele Reagan

Secretary of State

S.B. 1494