

PROPOSED AMENDMENT
SENATE AMENDMENTS TO H.B. 2636
(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 49-1002, Arizona Revised Statutes, is amended to
3 read:

4 49-1002. Notification requirements; exemptions

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

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

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

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

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

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

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

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

14 Sec. 2. Title 49, chapter 6, article 1, Arizona Revised Statutes, is
15 amended by adding section 49-1006.01, to read:

16 49-1006.01. Requirements for insurers

17 A. BEGINNING JANUARY 1, 2016, AN INSURER THAT PROVIDES THE FINANCIAL
18 RESPONSIBILITY MECHANISM FOR AN OWNER OR OPERATOR UNDER THIS CHAPTER SHALL
19 EXPRESSLY AGREE TO BOTH OF THE FOLLOWING IN ITS COVERAGE TERMS WITH THE OWNER
20 OR OPERATOR:

21 1. AFTER A BASELINE ASSESSMENT IS CONDUCTED AS PRESCRIBED IN SECTION
22 49-1052 AND IF A CLAIM IS MADE ON THE PROVIDER'S INSURANCE, THE INSURER BEARS
23 THE BURDEN OF DEMONSTRATING THAT A RELEASE DISCOVERED FROM THE FACILITY
24 WITHIN THE PERIOD OF COVERAGE IS NOT WITHIN THE SCOPE OF THE COVERAGE
25 PROVIDED BY THE INSURER.

26 2. THE INSURANCE COVERAGE TERMS MAY NOT REQUIRE THE OWNER OR OPERATOR
27 TO BEAR THE BURDEN OF DEMONSTRATING THAT A RELEASE DISCOVERED DURING THE
28 PERIOD OF COVERAGE IS WITHIN THE SCOPE OF THE POLICY'S COVERAGE.

29 B. IF THE INSURANCE USED TO MEET THE FINANCIAL RESPONSIBILITY
30 REQUIREMENTS OF THIS CHAPTER IS TERMINATED OR NOT RENEWED, THE INSURER SHALL
31 NOTIFY THE DEPARTMENT OF THE TERMINATION OR NONRENEWAL WITHIN FIFTEEN DAYS
32 AFTER THE DATE OF TERMINATION OR NONRENEWAL. THE NOTICE TO THE DEPARTMENT

1 SHALL STATE THE NAME AND ADDRESS OF THE INSURED, THE DATE OF TERMINATION OR
2 NONRENEWAL AND THE ADDRESS OF THE FACILITY THAT HAD BEEN INSURED.

3 C. FROM AND AFTER DECEMBER 31, 2016, FOR ANY INSURANCE POLICY THAT
4 COVERS A FACILITY WHERE A BASELINE ASSESSMENT HAS BEEN CONDUCTED, ANY
5 RETROACTIVE DATES OF COVERAGE SHALL EXTEND AT LEAST TO THE EFFECTIVE DATE OF
6 THE BASELINE ASSESSMENT.

7 Sec. 3. Repeal

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

10 Sec. 4. Title 49, chapter 6, article 1, Arizona Revised Statutes, is
11 amended by adding a new section 49-1015, to read:

12 49-1015. Underground storage tank revolving fund; use; purpose

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

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

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

22 1. TO PROVIDE STATE MATCHING MONIES AND TO MEET OTHER OBLIGATIONS AS
23 PRESCRIBED BY SECTION 9003(h)(7)(B) OF THE FEDERAL SOLID WASTE DISPOSAL ACT
24 (42 UNITED STATES CODE SECTION 6991(c)).

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

28 3. FOR THE COSTS OF RECOVERING THE EXPENSES OF CORRECTIVE ACTIONS
29 PURSUANT TO SECTION 49-1017 AND NONCORRECTIVE ACTIONS PURSUANT TO SECTION
30 49-1017.02.

31 4. TO PROVIDE REIMBURSEMENT FOR ELIGIBLE COSTS.

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

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

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

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

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

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

21 Sec. 5. Section 49-1017, Arizona Revised Statutes, is amended to read:

22 49-1017. Powers of director; corrective actions

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

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

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

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

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

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

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

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

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

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

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

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

31 5. The degree of exposure.

32 6. THE NEED FOR FINANCIAL ASSISTANCE.

1 C. If EXCESS direct costs are incurred by the director for undertaking
2 corrective action with respect to a release of a regulated substance that is
3 petroleum, the owner and operator are liable to this state for these EXCESS
4 direct costs, ~~except for those amounts that are eligible for and within the~~
5 ~~coverage limits provided by section 49-1054 or those amounts that are not~~
6 ~~allocated to the owner or operator pursuant to subsection D of this section.~~
7 Liability imposed pursuant to this subsection is strict. ~~In~~ FOR THE PURPOSES
8 OF this subsection, "EXCESS direct costs" means the cost of the corrective
9 actions, investigations, enforcement and litigation OTHER THAN THOSE AMOUNTS
10 THAT ARE ELIGIBLE FOR REIMBURSEMENT AND THAT ARE WITHIN THE REIMBURSEMENT
11 LIMITS PRESCRIBED IN SECTION 49-1054 AND THOSE AMOUNTS THAT ARE NOT ALLOCATED
12 TO THE OWNER OR OPERATOR PURSUANT TO SUBSECTION D OF THIS SECTION.

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

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

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

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

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

25 5. Other factors that are appropriate under the circumstances.

26 E. The allocation of liability under this section shall be promptly
27 determined by one or more mediators who shall be selected by the responsible
28 persons within sixty days after the responsible persons are identified by the
29 director. The director may select a mediator and convene a mediation ~~upon~~ ON
30 the failure of the responsible persons to select one or more mediators. The
31 mediator shall not have a conflict of interest with the responsible persons.
32 A mediation convened by the director shall be held within sixty days ~~of~~ AFTER

1 the mediator being selected. The director shall provide notice to the
2 responsible persons of the time and place for the mediation and the name of
3 the mediator or mediators. This notice shall be provided at least forty-five
4 days prior to the date scheduled for mediation. Costs of mediation shall be
5 eligible for ~~coverage under section 49-1054~~ PAYMENT and shall be allocated to
6 participants in the mediation in the same proportion as the costs of
7 corrective action. Nothing in this section shall excuse the obligations of
8 an owner or operator to take timely and adequate action in response to a
9 release of regulated substances as required in this chapter. Nothing in this
10 section shall diminish the right of any person to bring an action against any
11 other person as provided in section 49-1019 for contribution or reimbursement
12 for the reasonable costs of corrective action that person has been allocated
13 pursuant to this section.

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

21 G. AN OWNER, OPERATOR OR OTHER PERSON THAT MEETS THE REQUIREMENTS OF
22 SECTION 49-1016, SUBSECTION C MAY REQUEST THAT THE DEPARTMENT CONDUCT
23 CORRECTIVE ACTION UNDER THIS SECTION. SUBJECT TO THE AVAILABILITY OF MONIES
24 ALLOCATED AND THE PRIORITY ASSIGNED TO THE SITE PURSUANT TO SUBSECTION B OF
25 THIS SECTION, THE DEPARTMENT MAY CONDUCT THE CORRECTIVE ACTION. AN OWNER,
26 OPERATOR OR OTHER PERSON THAT MAKES A REQUEST TO THE DEPARTMENT AS PRESCRIBED
27 IN THIS SUBSECTION SHALL AGREE TO ASSIGN TO THE DEPARTMENT THE RIGHTS UNDER
28 ANY INSURANCE AS PRESCRIBED IN SUBSECTION H OF THIS SECTION.

29 H. AN OWNER OR OPERATOR WHO SATISFIES FINANCIAL RESPONSIBILITY
30 REQUIREMENTS WITH INSURANCE COVERAGE AND WHO RECEIVES THE BENEFITS OF PAYMENT
31 FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR CORRECTIVE ACTION COSTS
32 PURSUANT TO THIS SECTION SHALL ASSIGN TO THE DEPARTMENT THE RIGHTS NECESSARY

1 TO RECOVER THOSE PAYMENTS FROM THE OWNER OR OPERATOR'S INSURANCE COVERAGE.
2 THE ASSIGNMENT OF RIGHTS SHALL EXTEND TO THE AMOUNT OF BENEFITS RECEIVED FROM
3 THE UNDERGROUND STORAGE TANK REVOLVING FUND AND THE OWNER OR OPERATOR SHALL
4 EXECUTE THE ASSIGNMENT ON WRITTEN REQUEST FROM THE DEPARTMENT.

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

10 Sec. 6. Section 49-1017.01, Arizona Revised Statutes, is amended to
11 read:

12 49-1017.01. Settlement authority; participation; financial
13 information; process; payment; notice

14 A. The director shall consider any offer by an owner or operator who
15 is potentially liable for EXCESS direct costs incurred by the director
16 pursuant to section 49-1017, subsection C, without regard to the extent of
17 that owner's or operator's liability, if the owner or operator is unable to
18 pay for the EXCESS direct costs. An owner or operator whose liability for
19 EXCESS direct costs arose from a criminal act is not eligible to enter into a
20 settlement agreement pursuant to this section. An owner's or operator's
21 decision to enter into a settlement agreement pursuant to this section is not
22 an admission in a judicial proceeding as to the fact or extent of that
23 owner's or operator's liability with respect to releases or threatened
24 releases that are covered by the settlement. An owner or operator who is a
25 party to a settlement pursuant to this section is not required to participate
26 in allocation proceedings pursuant to section 49-1017, subsections D and
27 E. Any settlement approved by the department does not release the owner or
28 operator from any responsibility or duty imposed pursuant to this chapter
29 other than liability for EXCESS direct costs incurred pursuant to section
30 49-1017, subsection C.

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

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

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

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

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

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

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

25 D. An owner or operator seeking settlement pursuant to subsection A of
26 this section shall submit a letter requesting a financial hardship settlement
27 and shall include the owner's or operator's tax returns and all schedules,
28 financial statements, balance statements and other information concerning the
29 owner's or operator's gross income and net worth for the five years
30 immediately preceding the date of the application. Within ninety days after
31 the receipt of the application, the director may require additional
32 information to verify the owner's or operator's eligibility for settlement

1 pursuant to subsection A of this section. The owner or operator may provide
2 any additional information the owner or operator believes to be relevant to
3 the application. The director shall keep confidential any financial
4 information submitted by the owner or operator pursuant to this subsection.
5 If the director or the attorney general disputes a claim of confidentiality,
6 the director or the attorney general shall provide written notice that the
7 claim is disputed to the owner or operator claiming the confidentiality. The
8 information shall be made available to the public if the owner or operator
9 claiming confidentiality does not file an action for declaratory relief in
10 superior court within thirty days after receiving the notice.

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

14 F. If the director verifies that the owner or operator is unable to
15 pay the **EXCESS** direct costs incurred by the director pursuant to section
16 49-1017, subsection C, the director shall enter into a settlement within
17 ninety days after receipt of the application and any other information
18 required pursuant to this section. The director shall allow the settlement
19 amount to be paid over a period of time that does not exceed ten years.
20 Settlement payments over a period of time are subject to the payment of
21 interest at the rate of six ~~per-cent~~ **PERCENT** a year, except that payments are
22 not subject to interest if the entire settlement amount is paid within five
23 years. The owner or operator may file a petition with the director to modify
24 the payment schedule on a showing of good cause that the payment schedule
25 cannot be met.

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

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

16 Sec. 7. Title 49, chapter 6, article 1, Arizona Revised Statutes, is
17 amended by adding section 49-1017.02, to read:

18 49-1017.02. Powers of the director; noncorrective actions

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

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

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

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

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

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

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

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

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

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

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

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

17 Sec. 8. Section 49-1018, Arizona Revised Statutes, is amended to read:

18 49-1018. Corrective action; enforcement; priority

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

25 Sec. 9. Section 49-1019, Arizona Revised Statutes, is amended to read:

26 49-1019. Release of regulated substance; causes of action;
27 limitation; liability

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

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

3 2. An owner or operator of an underground storage tank or any other
4 person from whom costs are recovered by this state pursuant to ~~section~~
5 ~~49-1017 or 49-1017.01~~ THIS CHAPTER.

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

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

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

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

1 ~~liable if the owner or operator elects to perform corrective action which~~
2 ~~exceeds the allocated share of liability.~~

3 Sec. 10. Section 49-1020, Arizona Revised Statutes, is amended to
4 read:

5 49-1020. Fees

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

18 Sec. 11. Section 49-1022, Arizona Revised Statutes, is amended to
19 read:

20 49-1022. Regulated substance migration off site;
21 responsibility; corrective action; notice; appeal;
22 coverage

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

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

30 2. The owner or operator of the underground storage tank that is the
31 source of the release makes a written request that the department attempt to
32 obtain access to the property. As part of the written request, the owner or

1 operator shall demonstrate to the department the following before the
2 department attempts to obtain access to the property:

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

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

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

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

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

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

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

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

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

27 Sec. 12. Section 49-1023, Arizona Revised Statutes, is amended to
28 read:

29 49-1023. Delivery prohibition; stop use tag; definitions

30 A. A product deliverer shall not deliver, deposit or place a regulated
31 substance into an underground storage tank that has a stop use tag from the

1 director affixed to a fill pipe of the underground storage tank pursuant to
2 subsection B of this section.

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

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

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

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

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

27 E. An owner or operator shall not bring an underground storage tank
28 that has received a stop use tag pursuant to subsection B of this section
29 back into operation until the owner or operator has demonstrated to the
30 director that the underground storage tank meets the requirements of sections
31 49-1003, 49-1006 and 49-1009 and the rules adopted pursuant to those
32 sections, as applicable, and the owner or operator has received written

1 confirmation from the director that the requirements of sections 49-1003,
2 49-1006, ~~and~~ 49-1009, 49-1020 AND 49-1031 and the rules adopted pursuant to
3 those sections, as applicable, have been met. The director shall provide
4 written confirmation as soon as practicable, but not later than five business
5 days, to the owner or operator that the requirements of sections 49-1003,
6 49-1006, ~~and~~ 49-1009, 49-1020 AND 49-1031 and the rules adopted pursuant to
7 those sections have been met.

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

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

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

17 I. For the purposes of this section:

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

23 2. "Stop use tag" means a tag, device or mechanism that is prescribed
24 by the director, that is designed to be affixed to a fill pipe of an
25 underground storage tank and that clearly states and conveys that it is
26 unlawful to deliver, deposit or place a regulated substance into the
27 underground storage tank to which it is affixed.

28 Sec. 13. Section 49-1031, Arizona Revised Statutes, is amended to
29 read:

30 49-1031. Imposition of tax

31 A. From and after July 1, 1990, there is imposed and the director
32 shall collect an excise tax on the operation of underground storage tanks

1 regulated under this chapter measured by the quantity of regulated substances
2 placed in a tank in any calendar year. The tax is levied at the rate of one
3 cent per gallon of regulated substance. ~~On or before December 15 each year~~
4 ~~the director shall recommend to the legislature any revision to the tax rate~~
5 ~~necessary to maintain the assurance account of the underground storage tank~~
6 ~~revolving fund at the level prescribed by section 49-1051.~~

7 B. For proper administration of this article, and to prevent the
8 evasion of the tax imposed by this article, it shall be presumed until the
9 contrary is established by competent proof under rules and procedures adopted
10 by the director that all regulated substances ~~which~~ THAT are motor vehicle
11 fuel as defined in section 28-101, aviation fuel as defined in section 28-101
12 and diesel as defined in section 28-6001, subsection B and ~~which~~ THAT are
13 refined, manufactured, produced, compounded or blended in this state, or
14 imported into this state, will be placed in an underground storage tank from
15 which the fuel is dispensed to users who consume the fuel and do not further
16 distribute it. Under this presumption, the owner and operator of an
17 underground storage tank from which motor vehicle fuel, aviation fuel or
18 diesel is dispensed and from which no further bulk distribution will be made,
19 shall be considered to have paid the tax collected under title 28, chapter
20 16, article 6.

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

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

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

6 E. Any person who purchases motor vehicle fuel as defined in section
7 28-101, aviation fuel as defined in section 28-101, or diesel as defined in
8 section 28-6001, subsection B for which the tax imposed by this section has
9 been paid and which fuel has been placed in a tank which is not subject to
10 the underground storage tank tax imposed by this section and from which no
11 further bulk distribution of the fuel will be made, may claim a refund of the
12 tax levied. Refunds shall be submitted on forms prescribed by the director
13 and shall be supported by substantiation for the amount of the tax paid.

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

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

24 H. The director shall adopt temporary and permanent rules for
25 administering the tax imposed by this article and specifying the forms of the
26 return and of the certification provided for in sections 28-6003 and
27 28-6004. The temporary and permanent rules shall prescribe the forms for and
28 manner in which refunds may be claimed and refund claims assigned pursuant to
29 subsection F of this section, shall specify the circumstances in which fuel
30 may be excluded from the quantity of fuel used to measure the tax pursuant to
31 title 28, chapter 16, article 6, and shall prescribe the forms for and manner

1 which the certification provided in title 28, chapter 16, article 6 shall be
2 made.

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

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

13 Sec. 14. Section 49-1036, Arizona Revised Statutes, is amended to
14 read:

15 49-1036. Remission and disposition of revenues

16 The director shall promptly deposit, pursuant to sections 35-146 and
17 35-147, all monies collected under this article and shall credit these
18 payments to the underground storage tank revolving fund. ~~as follows:~~

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

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

25 Sec. 15. Repeal

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

1 Sec. 16. Title 49, chapter 6, Arizona Revised Statutes, is amended by
2 adding new articles 3 and 4, to read:

3 ARTICLE 3. UNDERGROUND STORAGE TANK

4 REVOLVING FUND PAYMENT PROCESS

5 49-1051. Preapproval process; requirements; corrective action
6 priority

7 A. AN OWNER, AN OPERATOR OR THE DESIGNATED REPRESENTATIVE OF EITHER OR
8 A PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MUST
9 FOLLOW THE PREAPPROVAL PROCESS PURSUANT TO THIS SECTION TO BE ELIGIBLE FOR
10 REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR CORRECTIVE
11 ACTIONS TAKEN PURSUANT TO SECTION 49-1053, SUBSECTION A. PREAPPROVAL
12 APPLICATIONS MUST INCLUDE A DETAILED SCOPE OF WORK THAT CONFORMS TO THE
13 REQUIREMENTS OF SECTIONS 49-1005 AND 49-1053, A SCHEDULE FOR CONDUCTING
14 CORRECTIVE ACTIONS AND A COST SHEET. BEGINNING JANUARY 1, 2016, CORRECTIVE
15 ACTIONS AND COSTS FOR ACTIVITIES THAT WERE COMPLETED BEFORE DEPARTMENTAL
16 APPROVAL OF THE SCOPE OF WORK ARE NOT ELIGIBLE FOR REIMBURSEMENT UNDER
17 SECTION 49-1054. IF THE PREAPPROVED SCOPE OF WORK CANNOT BE IMPLEMENTED AS
18 APPROVED, THE PERSON SEEKING REIMBURSEMENT SHALL SUBMIT A CHANGE NOTICE TO
19 THE DEPARTMENT. TO BE ELIGIBLE FOR REIMBURSEMENT, A CHANGE NOTICE MUST BE
20 APPROVED BY THE DEPARTMENT BEFORE IMPLEMENTATION OF THE CHANGE NOTICE.

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

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

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

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

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

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

15 3. THE RISK TO HUMAN HEALTH AND THE ENVIRONMENT.

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

18 F. AN OWNER, OPERATOR OR PERSON WHO MEETS THE REQUIREMENTS OF SECTION
19 49-1016, SUBSECTION C MAY REQUEST REIMBURSEMENT UNDER SECTION 49-1053.
20 SUBJECT TO THE AVAILABILITY OF MONIES ALLOCATED AND THE ASSIGNED PRIORITY OF
21 THE SITE PURSUANT TO SUBSECTION E OF THIS SECTION, THE DEPARTMENT MAY MAKE
22 REIMBURSEMENTS FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND. AN OWNER,
23 OPERATOR OR OTHER PERSON WHO MAKES A REQUEST TO THE DEPARTMENT AS PRESCRIBED
24 IN THIS SUBSECTION SHALL AGREE TO ASSIGN TO THE DEPARTMENT THE RIGHTS UNDER
25 ANY INSURANCE COVERAGE AS PRESCRIBED IN SUBSECTION G OF THIS SECTION.

26 G. AN OWNER OR OPERATOR WHO SATISFIES FINANCIAL RESPONSIBILITY
27 REQUIREMENTS WITH INSURANCE COVERAGE AND WHO RECEIVES THE BENEFITS OF PAYMENT
28 FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR CORRECTIVE ACTION COSTS
29 PURSUANT TO THIS SECTION SHALL ASSIGN TO THE DEPARTMENT THE RIGHTS NECESSARY
30 TO RECOVER THOSE PAYMENTS FROM THE OWNER'S OR OPERATOR'S INSURANCE COVERAGE.
31 THE ASSIGNMENT OF RIGHTS SHALL EXTEND TO THE AMOUNT OF BENEFITS RECEIVED FROM

1 THE UNDERGROUND STORAGE TANK REVOLVING FUND AND SHALL BE EXECUTED ON WRITTEN
2 REQUEST FROM THE DEPARTMENT.

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

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

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

13 49-1052. Noncorrective actions: baseline assessment

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

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

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

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

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

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

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

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

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

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

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

22 49-1053. Reimbursement of corrective action costs: definition

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

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

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

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

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

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

21 D. THE DEPARTMENT MAY NOT PROVIDE ANY REIMBURSEMENT DESCRIBED IN THIS
22 ARTICLE TO AN OWNER OR OPERATOR OF UNDERGROUND STORAGE TANKS DESCRIBED IN
23 SECTION 49-1031, SUBSECTION C. THE DEPARTMENT MAY NOT PROVIDE ANY
24 REIMBURSEMENT DESCRIBED IN THIS ARTICLE WITH RESPECT TO THE SUBSTANCES
25 DESCRIBED IN SECTION 49-1031, SUBSECTION C, UNLESS THE TAX IMPOSED BY ARTICLE
26 2 OF THIS CHAPTER APPLIES TO SUCH SUBSTANCES.

27 E. THE DEPARTMENT SHALL ESTABLISH CRITERIA FOR DETERMINING PRIORITIES
28 AMONG THE APPLICATIONS FOR REIMBURSEMENT UNDER THIS ARTICLE. THE CRITERIA
29 SHALL INCLUDE:

30 1. THE NEED FOR FINANCIAL ASSISTANCE.

31 2. THE EXTENT TO WHICH A DELAY IN PROVIDING REIMBURSEMENT WILL AFFECT
32 AN ELIGIBLE ACTIVITY IN PROGRESS.

1 3. THE DATE ON WHICH AN APPLICATION FOR REIMBURSEMENT IS SUBMITTED TO
2 THE DEPARTMENT.

3 4. WHETHER THE PAYMENT HAS BEEN PREVIOUSLY DEFERRED BECAUSE OF
4 INSUFFICIENT MONIES IN THE UNDERGROUND STORAGE TANK REVOLVING FUND AND, IF
5 DEFERRED, THE LENGTH OF THE DEFERRAL.

6 F. THE DEPARTMENT MAY PROVIDE THE REIMBURSEMENT DESCRIBED IN THIS
7 ARTICLE FOR ELIGIBLE ACTIVITY COSTS INCURRED BY A POLITICAL SUBDIVISION WITH
8 RESPECT TO A RELEASE FROM AN UNDERGROUND STORAGE TANK IF THE UNDERGROUND
9 STORAGE TANK OR THE PROPERTY WHERE THE UNDERGROUND STORAGE TANK IS LOCATED
10 COMES INTO THE POSSESSION OR CONTROL OF THE POLITICAL SUBDIVISION UNDER TITLE
11 12, CHAPTER 8, ARTICLE 2 OR 3.

12 G. SUBJECT TO SECTION 38-503 AND OTHER APPLICABLE STATUTES AND RULES,
13 THE DEPARTMENT MAY CONTRACT WITH A PRIVATE CONSULTANT FOR THE PURPOSE OF
14 ASSISTING THE DEPARTMENT IN REVIEWING PREAPPROVAL AND REIMBURSEMENT
15 APPLICATIONS, SITE CHARACTERIZATION REPORTS, CORRECTIVE ACTION PLANS,
16 MONITORING REPORTS AND OTHER INFORMATION TO DETERMINE WHETHER CORRECTIVE
17 ACTIONS MEET THE CRITERIA AND REQUIREMENTS OF THIS CHAPTER AND THE RULES
18 ADOPTED BY THE DIRECTOR.

19 H. REQUESTS BY THE DEPARTMENT FOR ADDITIONAL INFORMATION FROM
20 APPLICANTS SHALL BE REASONABLY RELATED TO THE DETERMINATION OF THE VALIDITY
21 OF THE CLAIM AS PRESCRIBED BY THIS ARTICLE.

22 I. EXCEPT FOR APPEALS COSTS AUTHORIZED PURSUANT TO SECTION 49-1091.01,
23 APPLICATIONS FOR REIMBURSEMENT UNDER A PREAPPROVED SCOPE OF WORK SHALL BE
24 SUBMITTED TO THE DEPARTMENT NOT MORE THAN ONE YEAR AFTER THE APPLICANT
25 RECEIVES A CLOSURE LETTER SENT BY THE DEPARTMENT BY CERTIFIED MAIL WITH
26 NOTICE THAT THE APPLICANT HAS ONE YEAR TO SUBMIT A CLAIM FOR THAT RELEASE.
27 FAILURE TO SUBMIT A TIMELY REIMBURSEMENT REQUEST UNDER A PREAPPROVED SCOPE OF
28 WORK SHALL RESULT IN DENIAL OF THE CLAIM. THE TIME LIMIT PRESCRIBED BY THIS
29 SUBSECTION DOES NOT APPLY TO CLOSED RELEASES THAT ARE SUBSEQUENTLY REOPENED
30 FOR THE PERFORMANCE OF ADDITIONAL CORRECTIVE ACTIONS OR AT WHICH CORRECTIVE
31 ACTIONS ARE PROCEEDING PURSUANT TO A WORK PLAN FOR PREAPPROVAL SUBMITTED
32 BEFORE THE RELEASE WAS CLOSED.

1 J. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT UNDER A PREAPPROVED SCOPE
2 OF WORK FOR THE REASONABLE, NECESSARY, COST-EFFECTIVE AND TECHNICALLY
3 FEASIBLE COSTS OF CORRECTIVE ACTIONS RELATING TO SOIL REMEDIATION THAT ARE
4 CONSISTENT WITH REMEDIATION STANDARDS ADOPTED PURSUANT TO CHAPTER 1, ARTICLE
5 4 OF THIS TITLE OR SITE-SPECIFIC, RISK-BASED LEVELS AS DETERMINED UNDER RULES
6 ADOPTED PURSUANT TO THIS CHAPTER. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT
7 UNDER A PREAPPROVED SCOPE OF WORK FOR THE REASONABLE, NECESSARY, COST-
8 EFFECTIVE AND TECHNICALLY FEASIBLE COSTS OF CORRECTIVE ACTIONS RELATING TO
9 GROUNDWATER REMEDIATION TO PREDETERMINED STANDARDS OR SITE-SPECIFIC, RISK-
10 BASED LEVELS AS DETERMINED UNDER RULES ADOPTED PURSUANT TO THIS CHAPTER. THE
11 DEPARTMENT MAY PROVIDE REIMBURSEMENT FOR CORRECTIVE ACTIONS RELATED TO THE
12 CONTROL AND REMOVAL OF A SOURCE OF CONTAMINATION. A SOURCE OF CONTAMINATION
13 INCLUDES ANY ONE OR MORE OF THE FOLLOWING:

- 14 1. FREE PRODUCT.
- 15 2. A REGULATED SUBSTANCE PRESENT IN SOIL THAT CAUSES OR THREATENS TO
16 CAUSE AN EXCEEDANCE OF THE AQUIFER WATER QUALITY STANDARDS.
- 17 3. A REGULATED SUBSTANCE PRESENT IN GROUNDWATER AT LEVELS THAT WOULD
18 PREVENT TIMELY REDUCTION OF CONTAMINANT CONCENTRATIONS IN COMPARISON WITH THE
19 PERFORMANCE OF ACTIVE REMEDIATION.
- 20 4. ANY OTHER PRESENCE OF A REGULATED SUBSTANCE CAUSING AN ONGOING
21 SOURCE OF CONTAMINATION, AS DETERMINED BY THE DEPARTMENT.

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

29 L. THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR SHALL PREAPPROVE
30 REIMBURSEMENT OF CORRECTIVE ACTION COSTS FOR AN OWNER THAT IS NOT A SMALL
31 OWNER WITHOUT ENCUMBERING MONIES. IF MONIES ARE AVAILABLE IN THE CORRECTIVE
32 ACTION ALLOCATION FOR THAT YEAR AT THE END OF THE CORRECTIVE ACTION

1 ALLOCATION YEAR, REIMBURSEMENT SHALL BE BASED ON THE DATE THE CORRECTIVE
2 ACTION IS COMPLETED AS DETERMINED BY THE DEPARTMENT OR ITS DESIGNATED
3 CONTRACTOR.

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

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

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

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

20 49-1054. Extent of reimbursement

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

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

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

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

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

27 F. AN OWNER OR OPERATOR SHALL REPORT TO THE DEPARTMENT WHETHER IT HAS
28 INSURANCE COVERAGE AVAILABLE AND SHALL COMPLY WITH ALL APPLICABLE FINANCIAL
29 RESPONSIBILITY REQUIREMENTS. IF THE DIRECTOR HAS REASON TO BELIEVE THAT AN
30 OWNER OR OPERATOR, OR ITS CONSULTANT, REPRESENTATIVE OR AGENT, HAS RECEIVED
31 OR MAY RECEIVE ANY PAYMENT FOR CORRECTIVE ACTIONS FROM INSURANCE OR
32 ALTERNATIVE FINANCIAL ASSURANCE MECHANISM, THE DEPARTMENT MAY COMPEL THE

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

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

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

15 49-1055. Extent of reimbursement; termination of eligibility

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

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

23 C. AN APPLICATION FOR PREAPPROVAL MADE PURSUANT TO SECTION 49-1051
24 SHALL BE FILED WITH THE DEPARTMENT NOT LATER THAN 5:00 P.M. ON DECEMBER 31,
25 2029.

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

29 ARTICLE 4. GRANTS

30 49-1071. Grants; purposes; priority

31 A. SUBJECT TO THE AVAILABILITY OF MONIES IN THE UNDERGROUND STORAGE
32 TANK REVOLVING FUND THAT ARE ANNUALLY ALLOCATED BY THE DIRECTOR FOR EACH OF

1 THE FOLLOWING TYPES OF ACTIONS, AN OWNER, OPERATOR OR PERSON THAT MEETS THE
2 REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MAY REQUEST THAT THE DEPARTMENT
3 PROVIDE MONIES FOR THAT PERSON TO CONDUCT ONE OR MORE OF THE FOLLOWING
4 ACTIONS, UP TO A MAXIMUM OF ONE HUNDRED THOUSAND DOLLARS PER SITE:

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

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

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

13 4. OBTAINING A BASELINE ASSESSMENT OF A SITE AS PRESCRIBED IN SECTION
14 49-1052, UP TO A MAXIMUM OF THIRTY THOUSAND DOLLARS.

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

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

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

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

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

25 5. THE DEGREE OF EXPOSURE.

26 6. THE FINANCIAL RESOURCES OF THE GRANT APPLICANT.

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

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

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

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

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

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

5 Sec. 17. Section 49-1091, Arizona Revised Statutes, is amended to
6 read:

7 49-1091. Underground storage tank informal appeals

8 A. A person ~~who~~ THAT undertakes corrective action pursuant to section
9 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator may
10 informally appeal the following decisions or determinations pursuant to this
11 section:

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

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

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

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

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

25 C. A person ~~who~~ THAT undertakes corrective action pursuant to section
26 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator who is
27 subject to an interim decision or determination described in subsections A
28 and B of this section, and who disagrees with the interim decision or
29 determination, may file a written notice of disagreement with the department
30 within thirty days ~~of~~ AFTER receiving the department's interim decision or
31 determination. The notice shall include a description of the specific
32 portions of the interim decision or determination with which the person,

1 owner or operator disagrees and may include a request to meet with the
2 department to resolve the disagreement. The department shall schedule a
3 meeting within thirty days after receiving the request.

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

8 E. The department shall issue a final written decision or
9 determination within forty-five days ~~of~~ AFTER receiving the notice of
10 disagreement or within fifteen days ~~of~~ AFTER a meeting pursuant to subsection
11 C of this section, whichever is later. If no notice of disagreement is
12 filed, the department shall issue a final written decision or determination
13 within forty-five days after the issuance of the interim decision or
14 determination. Before the expiration of time for the department to issue a
15 final written decision or determination, the department may request
16 additional information from the person who has submitted a notice of
17 disagreement that is necessary to make a final decision or determination. A
18 person ~~who~~ THAT receives this request shall have fifteen days to submit the
19 requested information to the department. The time frames for the department
20 to issue a final decision or determination shall be extended for up to
21 fifteen days during the time the requested information is outstanding, and
22 for up to fifteen additional days, if applicable, after any information is
23 submitted to the department. The time to submit the requested information
24 may be extended for up to sixty days on the request of a person ~~who~~ THAT
25 submits a notice of disagreement. The time frames for the department to
26 issue a final decision or determination shall be extended accordingly. The
27 time frames for the department to issue a final decision or determination
28 shall also be extended if information relating to the subject of the notice
29 of disagreement is not requested by the department but is provided to the
30 department for the first time less than fifteen days ~~from~~ AFTER the date the
31 department is required to issue a final decision or determination. In this
32 situation, the time frames shall be extended to allow the department fifteen

1 days ~~from~~ AFTER the date the information is submitted to issue a final
2 decision or determination. If the department fails to issue a final written
3 decision or determination within the time specified in this subsection, the
4 department's written interim decision or determination becomes the final
5 written decision or determination. The final written decision or
6 determination shall address the notice of disagreement received pursuant to
7 subsection C of this section. The final written decision or determination is
8 the only decision or determination that is appealable as an appealable agency
9 action as defined in section 41-1092 or a contested case as defined in
10 section 41-1001.

11 F. The period of time for compliance with corrective actions
12 associated with the subject matter of a notice of disagreement is tolled from
13 the date that a person who undertakes corrective action pursuant to section
14 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator files a
15 written notice of disagreement with the department until the date the final
16 decision or determination is rendered by the department and any appeals are
17 completed.

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

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

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

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

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

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

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

1 I. The department's failure to respond with a written interim
2 determination to the owner's or operator's submission, or to the submission
3 from a person ~~who~~ THAT undertakes corrective action pursuant to section
4 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C, of an application for
5 preapproval, ~~direct payment~~ or reimbursement from the underground storage
6 tank ~~assurance account~~ REVOLVING FUND within ninety days ~~of~~ AFTER receipt is
7 a basis for an informal appeal.

8 Sec. 18. Section 49-1091.01, Arizona Revised Statutes, is amended to
9 read:

10 49-1091.01. Fee and cost reimbursement; application; limitations

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

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

16 (a) Owner or operator status.

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

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

21 (a) Site characterization reports.

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

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

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

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

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

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

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

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

18 (a) Information requested pursuant to section ~~49-1052~~ 49-1053,
19 subsection B or section 49-1091, subsection E is not provided to the
20 department before the time the department issues a final decision or
21 determination that is adverse to the owner, operator or person ~~who~~ THAT
22 undertakes corrective action pursuant to section ~~49-1052, subsection I~~
23 49-1016, SUBSECTION C.

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

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

1 4. If information requested by the department pursuant to section
2 ~~49-1052~~ 49-1053, subsection B or section 49-1091, subsection E is provided to
3 the department before the department issues a final decision or determination
4 that is adverse to the owner, operator or person ~~who~~ THAT undertakes
5 corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016,
6 SUBSECTION C, and the final decision or determination is subsequently
7 reversed or otherwise decided in favor of the owner, operator or person ~~who~~
8 THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~
9 49-1016, SUBSECTION C based on that information, attorney fees, consultant
10 fees and costs shall only be paid for those amounts actually incurred after
11 the information was provided.

12 Sec. 19. Repeal

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

14 Sec. 20. Repeal

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

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

18 Amend title to conform

SYLVIA ALLEN

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