

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

**CHAPTER 247**  
**HOUSE BILL 2636**

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 49-1001, Arizona Revised Statutes, is amended to  
3 read:  
4 49-1001. Definitions  
5 In this chapter, unless the context otherwise requires:  
6 1. "Being used" means not having been taken out of operation.  
7 2. "Closure" means the removal of an underground storage tank from  
8 operation.  
9 3. "Corrective actions" means those actions that are prescribed  
10 pursuant to section 49-1005.  
11 4. "Designated representative" means a person to whom an owner or an  
12 operator, or both, assign in writing any right, title or interest ~~which~~ THAT  
13 the owner or operator, or both, may have in and to the proceeds of a  
14 reimbursement for a corrective action made under article 3 of this chapter.  
15 5. "Energy policy act" means the underground storage tank compliance  
16 act, title XV, subtitle B of the ~~federal~~ energy policy act of 2005  
17 (P.L. 109-58; 119 Stat. 1092; ~~42 United States Code section 6991~~), as  
18 amended.  
19 6. "Fiduciary" means:  
20 (a) A trust company or bank certified or authorized to engage in the  
21 trust business pursuant to title 6, chapter 8, article 1.  
22 (b) Any person appointed by a court or testamentary act to act as  
23 personal representative, executor, trustee, administrator, guardian,  
24 conservator, receiver or trustee in bankruptcy.  
25 (c) Any person acting as a trustee of a deed of trust pursuant to  
26 section 33-803.  
27 (d) Any person acting as a trustee pursuant to title 14, chapter 7.  
28 (e) Any person acting pursuant to and subject to fiduciary obligations  
29 under the employee retirement income security act of 1974 (29 United States  
30 Code sections 1101 through 1114).  
31 7. "Guarantor" means a person, other than an owner or operator, who  
32 provides evidence of financial responsibility for an owner or operator  
33 pursuant to this chapter.  
34 8. "Motor fuel" means petroleum or a petroleum based substance that is  
35 motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel or any  
36 grade of oxygenated gasoline typically used in the operation of a motor  
37 engine.  
38 9. "New piping component" means any underground pipe or combination of  
39 pipes that contains and conveys a regulated substance between a tank and a  
40 motor fuel dispenser, including any valve, elbow, connector or joint that is  
41 added to an underground storage tank on or after January 1, 2009 and that was  
42 not originally included or installed as part of the underground storage tank.  
43 10. "Occurrence" means an incident or accident, including continuous or  
44 repeated exposure to conditions, which results in a release from an  
45 underground storage tank.

- 1           11. "Operator" means a person in control of, or having responsibility  
2 for, the day-to-day operation of an underground storage tank.
- 3           12. "Out of operation" means having been closed in accordance with all  
4 applicable fire codes and other statutory and regulatory requirements for  
5 closure in effect on the date that closure was accomplished.
- 6           13. "Person" means an individual, trust, firm, joint stock company,  
7 corporation, joint venture, partnership, association, consortium, state,  
8 municipality, interstate body, commission, political subdivision of a state  
9 and the United States government.
- 10          14. "Petroleum" means petroleum, including crude oil or any fraction of  
11 crude oil, which is liquid at sixty degrees Fahrenheit and 14.7 pounds per  
12 square inch absolute, and petroleum based substances comprised of a complex  
13 blend of hydrocarbons derived from crude oil through processes of separation,  
14 conversion, upgrading and finishing, such as motor fuels, residual fuel oils,  
15 lubricants, jet fuels, distillate fuel oils, petroleum solvents and used  
16 oils.
- 17          15. "Political subdivision" means a county, city, town or other taxing  
18 district other than the state that is authorized to take property by eminent  
19 domain.
- 20          16. "Regulated substance" means:  
21           (a) Petroleum.  
22           (b) A substance specified in the comprehensive environmental response,  
23 compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42  
24 United States Code section 9601(14)) but not including a substance regulated  
25 as a hazardous waste under the HAZARDOUS AND solid waste ~~disposal act~~  
26 ~~AMENDMENTS~~ of 1984 (P.L. 98-616; 98 Stat. 3221; ~~42 United States Code section~~  
27 ~~6921~~).
- 28          17. "Release" means a spill, leak, emission, discharge, escape, leach  
29 or disposal of a regulated substance from an underground storage tank into  
30 groundwater, surface water or soils.
- 31          18. "Suspected release" means any of the following:  
32           (a) The discovery by owners and operators or others of released  
33 regulated substances at the underground storage tank site or in the  
34 surrounding area.  
35           (b) Erratic behavior of regulated substance dispensing equipment, the  
36 sudden loss of a regulated substance from an underground storage tank, an  
37 unexplained presence of water in the underground storage tank or other  
38 extraordinary operating conditions that could reasonably be associated with a  
39 release from an underground storage tank and that are observed by owners and  
40 operators, unless system equipment is found to be defective but not leaking  
41 and is repaired or replaced immediately.  
42           (c) That the monitoring results from a release detection method  
43 required under 40 Code of Federal Regulations sections 280.41 and 280.42,  
44 this chapter or rules adopted pursuant to this chapter indicate that a  
45 release may have occurred unless either of the following occurs:

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

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

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

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

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

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

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

22 (c) A septic tank.

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

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

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

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

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

33 (g) A storm water or wastewater collection system.

34 (h) A flow-through process tank.

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

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

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

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

1           Sec. 2. Section 49-1002, Arizona Revised Statutes, is amended to read:  
2           49-1002. Notification requirements; exemptions

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

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

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

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

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

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

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

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

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

39           49-1006.01. Insurance for releases; termination; notice;  
40 coverage; assistance

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

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

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

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

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

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

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

21 49-1006.02. Insurance primacy; requirements; fund access

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

24 1. THE POLICY THAT COVERS THE UNDERGROUND STORAGE TANK SYSTEM AT THE  
25 TIME THE RELEASE IS DISCOVERED SHALL BE PRIMARY TO ELIGIBILITY UNDER SECTIONS  
26 49-1017 AND 49-1054.

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

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

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

36 B. AN OWNER OR OPERATOR THAT SATISFIES FINANCIAL RESPONSIBILITY  
37 REQUIREMENTS THROUGH INSURANCE AND THAT WILL NOT RECEIVE PAYMENT FROM ITS  
38 INSURANCE PROVIDER UNTIL AFTER THE EXPENDITURE OF AT LEAST FIFTY THOUSAND  
39 DOLLARS PER FACILITY AS PROVIDED IN AN INSURANCE POLICY THAT IS IN EFFECT ON  
40 APRIL 1, 2015 OR THAT SATISFIES FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH  
41 AN ALTERNATIVE FINANCIAL RESPONSIBILITY MECHANISM IS ELIGIBLE UNDER SECTIONS  
42 49-1017 AND 49-1054 AFTER MEETING A COST SHARING OBLIGATION BY PAYMENT OF THE  
43 FIRST FIFTY THOUSAND DOLLARS PER FACILITY FOR WORK THAT IS CONDUCTED ON OR  
44 AFTER JANUARY 1, 2016. THIS ELIGIBILITY IS SUBJECT TO THE LIMITS PRESCRIBED  
45 IN SECTION 49-1054, SUBSECTION A AND IS SUBJECT TO THE PREAPPROVAL PROCESS  
46 PRESCRIBED IN SECTION 49-1051. ELIGIBILITY PURSUANT TO THIS SUBSECTION FOR

1 OWNERS OR OPERATORS THAT MEET FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH  
2 INSURANCE IS CONTINGENT ON PROVIDING TIMELY NOTICE OF THE RELEASE TO THE  
3 INSURANCE CARRIER UNDER THE POLICY AND THAT ELIGIBILITY ENDS ON THE DATE THAT  
4 THE INSURER IS OBLIGATED TO PROVIDE PAYMENT UNDER THE POLICY.

5 Sec. 4. Repeal

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

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

10 49-1015. Underground storage tank revolving fund: use: purpose

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

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

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

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

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

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

29 4. TO PROVIDE REIMBURSEMENT FOR ELIGIBLE COSTS.

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

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

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

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

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

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

4 Sec. 6. Section 49-1017, Arizona Revised Statutes, is amended to read:  
5 49-1017. Powers of director; corrective actions

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

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

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

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

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

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

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

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

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

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

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

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

46 5. The degree of exposure.

1           6. THE NEED FOR FINANCIAL ASSISTANCE.

2           C. If direct costs are incurred by the director for undertaking  
3 corrective action with respect to a release of a regulated substance that is  
4 petroleum, the owner and operator are liable to this state for these direct  
5 costs, ~~except for those amounts that are eligible for and within the coverage~~  
6 ~~limits provided by section 49-1054 or those amounts that are not allocated to~~  
7 ~~the owner or operator pursuant to subsection D of this section.~~ Liability  
8 imposed pursuant to this subsection is strict. ~~In~~ FOR THE PURPOSES OF this  
9 subsection, "direct costs" means the cost of the corrective actions,  
10 investigations, enforcement and litigation EXCEPT FOR THOSE AMOUNTS THAT ARE  
11 NOT ALLOCATED TO THE OWNER OR OPERATOR PURSUANT TO SUBSECTION D OF THIS  
12 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  
33 the mediator being selected. The director shall provide notice to the  
34 responsible persons of the time and place for the mediation and the name of  
35 the mediator or mediators. This notice shall be provided at least forty-five  
36 days prior to the date scheduled for mediation. Costs of mediation shall be  
37 eligible for ~~coverage under section 49-1054~~ PAYMENT and shall be allocated to  
38 participants in the mediation in the same proportion as the costs of  
39 corrective action. Nothing in this section shall excuse the obligations of  
40 an owner or operator to take timely and adequate action in response to a  
41 release of regulated substances as required in this chapter. Nothing in this  
42 section shall diminish the right of any person to bring an action against any  
43 other person as provided in section 49-1019 for contribution or reimbursement  
44 for the reasonable costs of corrective action that person has been allocated  
45 pursuant to this section.

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

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

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

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

20 49-1017.01. Settlement authority; participation; financial  
21 information; process; payment; notice

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

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

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

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

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

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

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

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

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

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

37          F. If the director verifies that the owner or operator is unable to  
38 pay the direct costs incurred by the director pursuant to section 49-1017,  
39 subsection C, the director shall enter into a settlement within ninety days  
40 after receipt of the application and any other information required pursuant  
41 to this section. The director shall allow the settlement amount to be paid  
42 over a period of time that does not exceed ten years. Settlement payments  
43 over a period of time are subject to the payment of interest at the rate of  
44 six ~~per cent~~ PERCENT a year, except that payments are not subject to interest  
45 if the entire settlement amount is paid within five years. The owner or

1 operator may file a petition with the director to modify the payment schedule  
2 on a showing of good cause that the payment schedule cannot be met.

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

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

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

26 49-1017.02. Powers of the director; noncorrective actions

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

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

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

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

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

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

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

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

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

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

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

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

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

12           49-1018. Corrective action; enforcement; priority

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

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

21           49-1019. Release of regulated substance; causes of action;  
22 limitation; liability

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

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

30           2. An owner or operator of an underground storage tank or any other  
31 person from whom costs are recovered by this state pursuant to ~~section~~  
32 ~~49-1017 or 49-1017.01~~ THIS CHAPTER.

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

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

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

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

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

19 **49-1020. Fees**

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

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

34 **49-1022. Regulated substance migration off site:**  
35 **responsibility; corrective action; notice; appeal;**  
36 **coverage**

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

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

44 2. The owner or operator of the underground storage tank that is the  
45 source of the release makes a written request that the department attempt to  
46 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.

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

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

45 E. If a release of a regulated substance has migrated on or under a  
46 person's property, the department shall relieve the owner or operator of the

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

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

14 49-1023. Delivery prohibition; stop use tag; definitions

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

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

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

29 2. The director has determined that the underground storage tank is in  
30 violation of section 49-1006, ~~49-1020 OR 49-1031~~ THOSE SECTIONS, after providing the owner and  
31 operator with thirty days' notice and an opportunity to demonstrate  
32 compliance.  
33

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

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

43 E. An owner or operator shall not bring an underground storage tank  
44 that has received a stop use tag pursuant to subsection B of this section  
45 back into operation until the owner or operator has demonstrated to the  
46 director that the underground storage tank meets the requirements of sections

1 49-1003, 49-1006 and 49-1009 and the rules adopted pursuant to those  
2 sections, as applicable, and the owner or operator has received written  
3 confirmation from the director that the requirements of sections 49-1003,  
4 49-1006, ~~and~~ 49-1009, 49-1020 AND 49-1031 and the rules adopted pursuant to  
5 those sections, as applicable, have been met. The director shall provide  
6 written confirmation as soon as practicable, but not later than five business  
7 days, to the owner or operator that the requirements of sections 49-1003,  
8 49-1006, ~~and~~ 49-1009, 49-1020 AND 49-1031 and the rules adopted pursuant to  
9 those sections have been met.

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

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

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

19 I. For the purposes of this section:

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

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

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

32 49-1024. Report; underground storage tank revolving fund  
33 program

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

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

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

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

- 1           4. THE AMOUNT OF REIMBURSEMENTS MADE ANNUALLY FROM THE FUND.
- 2           5. A LISTING OF NEW RELEASES REPORTED AND SITES CLOSED, A LISTING OF
- 3 LIABILITIES OWED TO SMALL OWNERS AND OTHER OWNERS AND PROJECTED LIABILITIES
- 4 FOR THE FUND THROUGH THE TERMINATION OF THE PROGRAM.
- 5           6. A DESCRIPTION OF ANY STATE-LED CORRECTIVE ACTIONS, INCLUDING THE
- 6 NUMBER OF NEW SITES, THE NUMBER OF NEW RELEASES REPORTED, THE NUMBER OF SITES
- 7 CLOSED, THE AVERAGE COST OF CORRECTIVE ACTION AND PROJECTED LIABILITIES FOR
- 8 STATE-LED CORRECTIVE ACTIONS THROUGH THE TERMINATION OF THE PROGRAM.
- 9           7. THE TOTAL NUMBER OF OPEN RELEASES THAT ARE CLEANED TO CLOSURE, THE
- 10 REMAINING NUMBER OF OPEN RELEASES, THE NUMBER OF APPLICATION OR REIMBURSEMENT
- 11 DENIALS BY THE DEPARTMENT AND THE NUMBER OF PREAPPROVAL APPEALS.

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

14           49-1031. Imposition of tax

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

23           B. For proper administration of this article, and to prevent the  
24 evasion of the tax imposed by this article, it shall be presumed until the  
25 contrary is established by competent proof under rules and procedures adopted  
26 by the director that all regulated substances ~~which~~ THAT are motor vehicle  
27 fuel as defined in section 28-101, aviation fuel as defined in section 28-101  
28 and diesel as defined in section 28-6001, subsection B and ~~which~~ THAT are  
29 refined, manufactured, produced, compounded or blended in this state, or  
30 imported into this state, will be placed in an underground storage tank from  
31 which the fuel is dispensed to users who consume the fuel and do not further  
32 distribute it. Under this presumption, the owner and operator of an  
33 underground storage tank from which motor vehicle fuel, aviation fuel or  
34 diesel is dispensed and from which no further bulk distribution will be made,  
35 shall be considered to have paid the tax collected under title 28, chapter  
36 16, article 6.

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

- 41           1. Naphtha-type jet fuel or kerosene-type jet fuel.
- 42           2. Regulated substances as defined in section 49-1001, paragraph 16,
- 43 subdivision (b), unless such regulated substances were placed in an
- 44 underground storage tank prior to July 1, 1997, and the owner or operator of
- 45 the underground storage tank has paid prior to July 1, 1997 all taxes imposed
- 46 by this article applicable to such regulated substances. If the owner or

1 operator has paid those taxes, the owner or operator may elect to continue to  
2 pay the tax imposed by this article regarding such regulated substances.

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

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

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

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

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

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

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

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

3           49-1036. Remission and disposition of revenues

4           The director shall promptly deposit, pursuant to sections 35-146 and  
5 35-147, all monies collected under this article and shall credit these  
6 payments to the underground storage tank revolving fund. ~~as follows:~~

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

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

13           Sec. 17. Repeal

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

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

18                           ARTICLE 3. UNDERGROUND STORAGE TANK  
19                           REVOLVING FUND PAYMENT PROCESS

20           49-1051. Preapproval process; requirements; corrective action  
21                           priority

22           A. AN OWNER, AN OPERATOR OR THE DESIGNATED REPRESENTATIVE OF EITHER OR  
23 A PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C MUST  
24 FOLLOW THE PREAPPROVAL PROCESS PURSUANT TO THIS SECTION TO BE ELIGIBLE FOR  
25 REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND FOR CORRECTIVE  
26 ACTIONS TAKEN PURSUANT TO SECTION 49-1053, SUBSECTION A. PREAPPROVAL  
27 APPLICATIONS MUST INCLUDE A DETAILED SCOPE OF WORK THAT CONFORMS TO THE  
28 REQUIREMENTS OF SECTIONS 49-1005 AND 49-1053, A SCHEDULE FOR CONDUCTING  
29 CORRECTIVE ACTIONS AND A COST SHEET. BEGINNING JANUARY 1, 2016, CORRECTIVE  
30 ACTIONS AND COSTS FOR ACTIVITIES THAT WERE COMPLETED BEFORE DEPARTMENTAL  
31 APPROVAL OF THE SCOPE OF WORK ARE NOT ELIGIBLE FOR REIMBURSEMENT UNDER  
32 SECTION 49-1054. IF THE PREAPPROVED SCOPE OF WORK CANNOT BE IMPLEMENTED AS  
33 APPROVED, THE PERSON SEEKING REIMBURSEMENT SHALL SUBMIT A CHANGE NOTICE TO  
34 THE DEPARTMENT. TO BE ELIGIBLE FOR REIMBURSEMENT, A CHANGE NOTICE MUST BE  
35 APPROVED BY THE DEPARTMENT BEFORE IMPLEMENTATION OF THE CHANGE NOTICE.

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

39           C. WHILE THE APPLICATION FOR PREAPPROVAL IS PENDING, THE DEPARTMENT  
40 MAY NOT TAKE ENFORCEMENT ACTION OR IMPOSE PENALTIES AGAINST THE OWNER,  
41 OPERATOR OR DESIGNATED REPRESENTATIVE WHO SUBMITTED THE APPLICATION FOR  
42 PREAPPROVAL. THE DEPARTMENT MAY NOT CONSIDER THE PASSAGE OF TIME WHILE THE  
43 PREAPPROVAL APPLICATION IS PENDING TO BE A BASIS FOR TAKING AN ENFORCEMENT  
44 ACTION. FOR ANY CORRECTIVE ACTION SUBMITTED FOR PREAPPROVAL PURSUANT TO  
45 RULE, THE PERIOD OF TIME FOR COMPLIANCE WITH CORRECTIVE ACTIONS ASSOCIATED

1 WITH THAT PREAPPROVAL BEGINS TO RUN FROM THE DATE OF PREAPPROVAL OF THE  
2 CORRECTIVE ACTION.

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

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

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

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

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

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

20 F. AN OWNER, OPERATOR OR PERSON WHO MEETS THE REQUIREMENTS OF SECTION  
21 49-1016, SUBSECTION C MAY REQUEST REIMBURSEMENT UNDER SECTION 49-1053.  
22 SUBJECT TO THE AVAILABILITY OF MONIES ALLOCATED AND THE ASSIGNED PRIORITY OF  
23 THE SITE PURSUANT TO SUBSECTION E OF THIS SECTION, THE DEPARTMENT MAY MAKE  
24 REIMBURSEMENTS FROM THE UNDERGROUND STORAGE TANK REVOLVING FUND.

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

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

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

35 49-1052. Noncorrective actions; baseline assessment

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

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

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

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

45 B. THE DEPARTMENT SHALL ESTABLISH STANDARDS FOR CONDUCTING BASELINE  
46 ASSESSMENTS PURSUANT TO THIS SECTION. UNTIL THE DEPARTMENT ESTABLISHES

1 STANDARDS BY RULE OR BY GUIDANCE DOCUMENTS, BASELINE ASSESSMENT WORK PLANS  
2 SHALL BE SUBMITTED TO THE DEPARTMENT FOR APPROVAL AND SHALL BE CONSIDERED FOR  
3 PREAPPROVAL ON A CASE-BY-CASE BASIS, BASED ON COMPLIANCE WITH SUBSECTION D OF  
4 THIS SECTION.

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

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

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

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

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

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

30 49-1053. Reimbursement of corrective action costs; definition

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

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

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

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

42 B. THE DEPARTMENT MAY PROVIDE THE REIMBURSEMENT REQUIRED BY THIS  
43 SECTION EITHER BY PAYING THE OWNER, THE OPERATOR OR A DESIGNATED  
44 REPRESENTATIVE OF THE OWNER OR OPERATOR OR ANY COMBINATION OF THESE PERSONS,  
45 A POLITICAL SUBDIVISION PURSUANT TO SUBSECTION F OF THIS SECTION OR A PERSON  
46 WHO MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION C. IF THE

1 DEPARTMENT DETERMINES THAT AN APPLICATION FOR REIMBURSEMENT IS INCOMPLETE,  
2 THE DEPARTMENT WITHIN FORTY-FIVE DAYS AFTER THE APPLICATION SHALL NOTIFY THE  
3 APPLICANT OF THE MISSING INFORMATION AS SPECIFICALLY AS POSSIBLE AND SHALL  
4 PERMIT THE APPLICANT TO PROVIDE THE ADDITIONAL INFORMATION WITHIN THIRTY  
5 DAYS. ON THE REQUEST OF AN APPLICANT, THE DEPARTMENT SHALL GRANT AN  
6 ADDITIONAL SIXTY DAYS TO SUBMIT THE MISSING INFORMATION. THE GRANT OF  
7 ADDITIONAL TIME TOLLS THE PERIOD FOR MAKING AN INTERIM DETERMINATION ON  
8 MATTERS RELATING TO REIMBURSEMENT PURSUANT TO SECTION 49-1091.

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

15 D. THE DEPARTMENT MAY NOT PROVIDE ANY REIMBURSEMENT DESCRIBED IN THIS  
16 ARTICLE TO AN OWNER OR OPERATOR OF UNDERGROUND STORAGE TANKS DESCRIBED IN  
17 SECTION 49-1031, SUBSECTION C. THE DEPARTMENT MAY NOT PROVIDE ANY  
18 REIMBURSEMENT DESCRIBED IN THIS ARTICLE WITH RESPECT TO THE SUBSTANCES  
19 DESCRIBED IN SECTION 49-1031, SUBSECTION C, UNLESS THE TAX IMPOSED BY ARTICLE  
20 2 OF THIS CHAPTER APPLIES TO SUCH SUBSTANCES.

21 E. THE DEPARTMENT SHALL ESTABLISH CRITERIA FOR DETERMINING PRIORITIES  
22 AMONG THE APPLICATIONS FROM SMALL OWNERS FOR REIMBURSEMENT UNDER THIS  
23 ARTICLE. FOR ALL OTHER OWNERS THAT ARE ELIGIBLE FOR REIMBURSEMENT FROM THE  
24 FUND THROUGH THE COST SHARING PRESCRIBED IN SECTION 49-1006.02, SUBSECTION B,  
25 PRIORITY SHALL BE BASED ON THE DATE OF COMPLETION OF THE WORK. THE CRITERIA  
26 FOR SMALL OWNERS SHALL INCLUDE:

- 27 1. THE NEED FOR FINANCIAL ASSISTANCE.
- 28 2. THE EXTENT TO WHICH A DELAY IN PROVIDING REIMBURSEMENT WILL AFFECT  
29 AN ELIGIBLE ACTIVITY IN PROGRESS.
- 30 3. THE DATE ON WHICH AN APPLICATION FOR REIMBURSEMENT IS SUBMITTED TO  
31 THE DEPARTMENT.
- 32 4. WHETHER THE PAYMENT HAS BEEN PREVIOUSLY DEFERRED BECAUSE OF  
33 INSUFFICIENT MONIES IN THE UNDERGROUND STORAGE TANK REVOLVING FUND AND, IF  
34 DEFERRED, THE LENGTH OF THE DEFERRAL.

35 F. THE DEPARTMENT MAY PROVIDE THE REIMBURSEMENT DESCRIBED IN THIS  
36 ARTICLE FOR ELIGIBLE ACTIVITY COSTS INCURRED BY A POLITICAL SUBDIVISION WITH  
37 RESPECT TO A RELEASE FROM AN UNDERGROUND STORAGE TANK IF THE UNDERGROUND  
38 STORAGE TANK OR THE PROPERTY WHERE THE UNDERGROUND STORAGE TANK IS LOCATED  
39 COMES INTO THE POSSESSION OR CONTROL OF THE POLITICAL SUBDIVISION UNDER TITLE  
40 12, CHAPTER 8, ARTICLE 2 OR 3.

41 G. SUBJECT TO SECTION 38-503 AND OTHER APPLICABLE STATUTES AND RULES,  
42 THE DEPARTMENT MAY CONTRACT WITH A PRIVATE CONSULTANT FOR THE PURPOSE OF  
43 ASSISTING THE DEPARTMENT IN REVIEWING PREAPPROVAL AND REIMBURSEMENT  
44 APPLICATIONS, SITE CHARACTERIZATION REPORTS, CORRECTIVE ACTION PLANS,  
45 MONITORING REPORTS AND OTHER INFORMATION TO DETERMINE WHETHER CORRECTIVE

1 ACTIONS MEET THE CRITERIA AND REQUIREMENTS OF THIS CHAPTER AND THE RULES  
2 ADOPTED BY THE DIRECTOR.

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

6 I. EXCEPT FOR APPEALS COSTS AUTHORIZED PURSUANT TO SECTION 49-1091.01,  
7 APPLICATIONS FOR REIMBURSEMENT UNDER A PREAPPROVED SCOPE OF WORK SHALL BE  
8 SUBMITTED TO THE DEPARTMENT NOT MORE THAN ONE YEAR AFTER THE APPLICANT  
9 RECEIVES A CLOSURE LETTER SENT BY THE DEPARTMENT BY CERTIFIED MAIL WITH  
10 NOTICE THAT THE APPLICANT HAS ONE YEAR TO SUBMIT A CLAIM FOR THAT RELEASE.  
11 FAILURE TO SUBMIT A TIMELY REIMBURSEMENT REQUEST UNDER A PREAPPROVED SCOPE OF  
12 WORK SHALL RESULT IN DENIAL OF THE CLAIM. THE TIME LIMIT PRESCRIBED BY THIS  
13 SUBSECTION DOES NOT APPLY TO CLOSED RELEASES THAT ARE SUBSEQUENTLY REOPENED  
14 FOR THE PERFORMANCE OF ADDITIONAL CORRECTIVE ACTIONS OR AT WHICH CORRECTIVE  
15 ACTIONS ARE PROCEEDING PURSUANT TO A WORK PLAN FOR PREAPPROVAL SUBMITTED  
16 BEFORE THE RELEASE WAS CLOSED.

17 J. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT UNDER A PREAPPROVED SCOPE  
18 OF WORK FOR THE REASONABLE, NECESSARY, COST-EFFECTIVE AND TECHNICALLY  
19 FEASIBLE COSTS OF CORRECTIVE ACTIONS RELATING TO SOIL REMEDIATION THAT ARE  
20 CONSISTENT WITH REMEDIATION STANDARDS ADOPTED PURSUANT TO CHAPTER 1, ARTICLE  
21 4 OF THIS TITLE OR SITE-SPECIFIC, RISK-BASED LEVELS AS DETERMINED UNDER RULES  
22 ADOPTED PURSUANT TO THIS CHAPTER. THE DEPARTMENT MAY PROVIDE REIMBURSEMENT  
23 UNDER A PREAPPROVED SCOPE OF WORK FOR THE REASONABLE, NECESSARY,  
24 COST-EFFECTIVE AND TECHNICALLY FEASIBLE COSTS OF CORRECTIVE ACTIONS RELATING  
25 TO GROUNDWATER REMEDIATION TO PREDETERMINED STANDARDS OR SITE-SPECIFIC,  
26 RISK-BASED LEVELS AS DETERMINED UNDER RULES ADOPTED PURSUANT TO THIS CHAPTER.  
27 THE DEPARTMENT MAY PROVIDE REIMBURSEMENT FOR CORRECTIVE ACTIONS RELATED TO  
28 THE CONTROL AND REMOVAL OF A SOURCE OF CONTAMINATION. A SOURCE OF  
29 CONTAMINATION INCLUDES ANY ONE OR MORE OF THE FOLLOWING:

30 1. FREE PRODUCT.

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

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

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

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

45 L. THE DEPARTMENT OR ITS DESIGNATED CONTRACTOR SHALL PREAPPROVE  
46 REIMBURSEMENT OF CORRECTIVE ACTION COSTS FOR AN OWNER THAT IS NOT A SMALL

1 OWNER WITHOUT ENCUMBERING MONIES. IF MONIES ARE AVAILABLE IN THE CORRECTIVE  
2 ACTION ALLOCATION FOR THAT YEAR AT THE END OF THE CORRECTIVE ACTION  
3 ALLOCATION YEAR, REIMBURSEMENT SHALL BE BASED ON THE DATE THE CORRECTIVE  
4 ACTION IS COMPLETED AS DETERMINED BY THE DEPARTMENT OR ITS DESIGNATED  
5 CONTRACTOR.

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

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

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

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

22 49-1054. Extent of reimbursement

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

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

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

43 D. THE DEPARTMENT SHALL PAY ELIGIBLE COSTS THAT ARE REASONABLE AND  
44 WERE ACTUALLY INCURRED FOR CORRECTIVE ACTIONS THAT WERE ACTUALLY PERFORMED.  
45 THE COSTS FOR THE CORRECTIVE ACTIONS SHALL BE SUBMITTED AS PRESCRIBED IN  
46 SECTIONS 49-1051 AND 49-1053. THE DEPARTMENT SHALL PAY ONLY FOR CORRECTIVE

1 ACTIONS THAT HAVE BEEN COMPLETED AND THAT HAVE BEEN CONDUCTED PURSUANT TO THE  
2 PREAPPROVAL APPROVED BY THE DEPARTMENT. REASONABLENESS OF CORRECTIVE ACTIONS  
3 SHALL BE DETERMINED BASED ON THE LAW AND THE FACTS AVAILABLE TO THE OWNER,  
4 OPERATOR OR PERSON THAT MEETS THE REQUIREMENTS OF SECTION 49-1016, SUBSECTION  
5 C AT THE TIME THE TECHNICAL DECISION WAS MADE. THE DEPARTMENT SHALL  
6 ESTABLISH SCHEDULES OF CORRECTIVE ACTION COSTS THAT THE DEPARTMENT CONSIDERS  
7 REASONABLE.

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

15 F. AN OWNER OR OPERATOR SHALL REPORT TO THE DEPARTMENT WHETHER IT HAS  
16 INSURANCE COVERAGE AVAILABLE AND SHALL COMPLY WITH ALL APPLICABLE FINANCIAL  
17 RESPONSIBILITY REQUIREMENTS. IF THE DIRECTOR HAS REASON TO BELIEVE THAT AN  
18 OWNER OR OPERATOR, OR ITS CONSULTANT, REPRESENTATIVE OR AGENT, HAS RECEIVED  
19 OR MAY RECEIVE ANY PAYMENT FOR CORRECTIVE ACTIONS FROM INSURANCE OR  
20 ALTERNATIVE FINANCIAL ASSURANCE MECHANISM, THE DEPARTMENT MAY COMPEL THE  
21 PRODUCTION OF DOCUMENTS TO DETERMINE THE EXISTENCE, AMOUNT AND TYPE OF  
22 INSURANCE OR ALTERNATIVE FINANCIAL ASSURANCE COVERAGE AVAILABLE AND TO WHOM  
23 PAYMENT WAS MADE OR MAY BE MADE. AN OWNER OR OPERATOR SHALL REPORT TO THE  
24 DEPARTMENT ANY SUBSEQUENT PAYMENT OR REIMBURSEMENT FROM INSURANCE OR AN  
25 ALTERNATIVE FINANCIAL ASSURANCE MECHANISM TO THE OWNER OR OPERATOR OR ITS  
26 CONSULTANT, REPRESENTATIVE OR AGENT FOR CORRECTIVE ACTIONS COSTS.

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

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

35 49-1055. Extent of reimbursement; termination of eligibility

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

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

43 C. AN APPLICATION FOR PREAPPROVAL MADE PURSUANT TO SECTION 49-1051  
44 SHALL BE FILED WITH THE DEPARTMENT NOT LATER THAN 5:00 P.M. ON DECEMBER 31,  
45 2029.

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

4 49-1056. Lien rights; unrecovered corrective action costs

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

14 49-1057. Intergovernmental agreements

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

19 ARTICLE 4. GRANTS

20 49-1071. Grants; purposes; priority

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

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

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

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

36 4. OBTAINING A BASELINE ASSESSMENT OF A SITE AS PRESCRIBED IN SECTION  
37 49-1052, UP TO A MAXIMUM OF THIRTY THOUSAND DOLLARS.

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

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

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

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

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

3 5. THE DEGREE OF EXPOSURE.

4 6. THE FINANCIAL RESOURCES OF THE GRANT APPLICANT.

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

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

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

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

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

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

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

17 49-1091. Underground storage tank informal appeals

18 A. A person ~~who~~ THAT undertakes corrective action pursuant to section  
19 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator may  
20 informally appeal the following decisions or determinations pursuant to this  
21 section:

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

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

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

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

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

35 C. A person ~~who~~ THAT undertakes corrective action pursuant to section  
36 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator who is  
37 subject to an interim decision or determination described in subsections A  
38 and B of this section, and who disagrees with the interim decision or  
39 determination, may file a written notice of disagreement with the department  
40 within thirty days ~~of~~ AFTER receiving the department's interim decision or  
41 determination. The notice shall include a description of the specific  
42 portions of the interim decision or determination with which the person,  
43 owner or operator disagrees and may include a request to meet with the  
44 department to resolve the disagreement. The department shall schedule a  
45 meeting within thirty days after receiving the request.

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

5 E. The department shall issue a final written decision or  
6 determination within forty-five days ~~of~~ AFTER receiving the notice of  
7 disagreement or within fifteen days ~~of~~ AFTER a meeting pursuant to subsection  
8 C of this section, whichever is later. If no notice of disagreement is  
9 filed, the department shall issue a final written decision or determination  
10 within forty-five days after the issuance of the interim decision or  
11 determination. Before the expiration of time for the department to issue a  
12 final written decision or determination, the department may request  
13 additional information from the person who has submitted a notice of  
14 disagreement that is necessary to make a final decision or determination. A  
15 person ~~who~~ THAT receives this request shall have fifteen days to submit the  
16 requested information to the department. The time frames for the department  
17 to issue a final decision or determination shall be extended for up to  
18 fifteen days during the time the requested information is outstanding, and  
19 for up to fifteen additional days, if applicable, after any information is  
20 submitted to the department. The time to submit the requested information  
21 may be extended for up to sixty days on the request of a person ~~who~~ THAT  
22 submits a notice of disagreement. The time frames for the department to  
23 issue a final decision or determination shall be extended accordingly. The  
24 time frames for the department to issue a final decision or determination  
25 shall also be extended if information relating to the subject of the notice  
26 of disagreement is not requested by the department but is provided to the  
27 department for the first time less than fifteen days ~~from~~ AFTER the date the  
28 department is required to issue a final decision or determination. In this  
29 situation, the time frames shall be extended to allow the department fifteen  
30 days ~~from~~ AFTER the date the information is submitted to issue a final  
31 decision or determination. If the department fails to issue a final written  
32 decision or determination within the time specified in this subsection, the  
33 department's written interim decision or determination becomes the final  
34 written decision or determination. The final written decision or  
35 determination shall address the notice of disagreement received pursuant to  
36 subsection C of this section. The final written decision or determination is  
37 the only decision or determination that is appealable as an appealable agency  
38 action as defined in section 41-1092 or a contested case as defined in  
39 section 41-1001.

40 F. The period of time for compliance with corrective actions  
41 associated with the subject matter of a notice of disagreement is tolled from  
42 the date that a person who undertakes corrective action pursuant to section  
43 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C or an owner or operator files a  
44 written notice of disagreement with the department until the date the final  
45 decision or determination is rendered by the department and any appeals are  
46 completed.

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

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

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

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

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

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

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

15 I. The department's failure to respond with a written interim  
16 determination to the owner's or operator's submission, or to the submission  
17 from a person ~~who~~ THAT undertakes corrective action pursuant to section  
18 ~~49-1052, subsection I~~ 49-1016, SUBSECTION C, of an application for  
19 preapproval, ~~direct payment~~ or reimbursement from the underground storage  
20 tank ~~assurance account~~ REVOLVING FUND within ninety days ~~of~~ AFTER receipt is  
21 a basis for an informal appeal.

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

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

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

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

30 (a) Owner or operator status.

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

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

35 (a) Site characterization reports.

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

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

43 1. Submitted a written notice of the disagreement to the department  
44 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.

32           4. If information requested by the department pursuant to section  
33 ~~49-1052~~ 49-1053, subsection B or section 49-1091, subsection E is provided to  
34 the department before the department issues a final decision or determination  
35 that is adverse to the owner, operator or person ~~who~~ THAT undertakes  
36 corrective action pursuant to section ~~49-1052, subsection I~~ 49-1016,  
37 SUBSECTION C, and the final decision or determination is subsequently  
38 reversed or otherwise decided in favor of the owner, operator or person ~~who~~  
39 THAT undertakes corrective action pursuant to section ~~49-1052, subsection I~~  
40 49-1016, SUBSECTION C based on that information, attorney fees, consultant  
41 fees and costs shall only be paid for those amounts actually incurred after  
42 the information was provided.

43           Sec. 21. Repeal

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

45           Sec. 22. Delayed repeal

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

3 Sec. 23. Repeal

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

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

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

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

10 Notwithstanding any other law, ~~the administrative caps established in~~  
11 ~~section 49-1051, subsection B, paragraphs 2 and 3, Arizona Revised Statutes,~~  
12 ~~are suspended for fiscal year 2015-2016, and~~ the department of environmental  
13 quality may transfer a ~~combined~~ total of \$6,531,000 from the ~~assurance~~  
14 ~~account of the~~ underground storage tank revolving fund established by section  
15 ~~49-1051~~ 49-1015, Arizona Revised Statutes, ~~and the regulated substance fund~~  
16 ~~established by section 49-1015.01, Arizona Revised Statutes, AS ADDED BY THIS~~  
17 ~~ACT,~~ for administrative costs of the department in fiscal year 2015-2016.

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

21 Notwithstanding any other law:

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

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

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

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

39 2. For releases of a regulated substance that were properly reported  
40 on or after July 1, 2006, but before January 1, 2016, costs for corrective  
41 actions are eligible for reimbursement up to five hundred thousand dollars  
42 per facility for an applicant who satisfies federal financial responsibility  
43 obligations prescribed in 40 code of federal regulations part 280 through a  
44 financial assurance mechanisms other than insurance and one million dollars  
45 per facility for an applicant who satisfies federal financial responsibility

1 obligations through insurance, without regard to the number of releases at  
2 the facility.

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

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

12 5. Subject to paragraph 4 of this section, the department of  
13 environmental quality shall pay all compensable claims submitted by December  
14 31, 2016 in equal proportion based on the amount of the claim, without regard  
15 to who the applicant is or the time that the claim is submitted, if the claim  
16 is timely submitted. The department of environmental quality shall determine  
17 the percentage of each claim to be paid based on the monies available in the  
18 underground storage tank revolving fund established by section 49-1015,  
19 Arizona Revised Statutes.

20 6. Only claims that are approved by the department of environmental  
21 quality are eligible for payment under this section. The department shall  
22 reimburse costs that are reasonable and were actually incurred for corrective  
23 actions that were actually performed. The costs for the corrective actions  
24 shall be documented in an application by the facility for payment from the  
25 underground storage tank revolving fund that shall be submitted by December  
26 31, 2016. The department shall provide reimbursement for ninety percent of  
27 the reasonable and necessary costs of eligible activities pursuant to this  
28 section. Applications for reimbursement shall include a declaration that is  
29 signed by the owner or operator and that affirms that the submitted costs are  
30 true and accurate, have not previously been submitted to the department and  
31 have not been reimbursed to the owner or operator by insurance or an  
32 alternative financial assurance mechanism. A provider of insurance or an  
33 alternative financial assurance mechanism that is not an owner or operator  
34 with respect to that facility is not eligible for payment under this section.

35 7. The department of environmental quality shall determine the amount  
36 of monies in the underground storage tank revolving fund prescribed by  
37 section 49-1015, Arizona Revised Statutes, as added by this act, on December  
38 31, 2016 that is available to pay claims under this section. The department  
39 is not required to evaluate available monies from the fund and issue payments  
40 more than once per year thereafter.

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

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

