

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

**CHAPTER 192**  
**SENATE BILL 1421**

AN ACT

AMENDING SECTIONS 49-104, 49-218.01, 49-225, 49-241 AND 49-546, ARIZONA  
REVISED STATUTES; RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-104, Arizona Revised Statutes, is amended to  
3 read:

4 49-104. Powers and duties of the department and director

5 A. The department shall:

6 1. Formulate policies, plans and programs to implement this title  
7 to protect the environment.

8 2. Stimulate and encourage all local, state, regional and federal  
9 governmental agencies and all private persons and enterprises that have  
10 similar and related objectives and purposes, cooperate with those  
11 agencies, persons and enterprises and correlate department plans, programs  
12 and operations with those of the agencies, persons and enterprises.

13 3. Conduct research on its own initiative or at the request of the  
14 governor, the legislature or state or local agencies pertaining to any  
15 department objectives.

16 4. Provide information and advice on request of any local, state or  
17 federal agencies and private persons and business enterprises on matters  
18 within the scope of the department.

19 5. Consult with and make recommendations to the governor and the  
20 legislature on all matters concerning department objectives.

21 6. Promote and coordinate the management of air resources to ensure  
22 their protection, enhancement and balanced utilization consistent with the  
23 environmental policy of this state.

24 7. Promote and coordinate the protection and enhancement of the  
25 quality of water resources consistent with the environmental policy of  
26 this state.

27 8. Encourage industrial, commercial, residential and community  
28 development that maximizes environmental benefits and minimizes the  
29 effects of less desirable environmental conditions.

30 9. Ensure the preservation and enhancement of natural beauty and  
31 man-made scenic qualities.

32 10. Provide for the prevention and abatement of all water and air  
33 pollution including that related to particulates, gases, dust, vapors,  
34 noise, radiation, odor, nutrients and heated liquids in accordance with  
35 article 3 of this chapter and chapters 2 and 3 of this title.

36 11. Promote and recommend methods for the recovery, recycling and  
37 reuse or, if recycling is not possible, the disposal of solid wastes  
38 consistent with sound health, scenic and environmental quality policies.

39 ~~Beginning in 2014,~~ The department shall report annually on its revenues  
40 and expenditures relating to the solid and hazardous waste programs  
41 overseen or administered by the department.

42 12. Prevent pollution through the regulation of the storage,  
43 handling and transportation of solids, liquids and gases that may cause or  
44 contribute to pollution.

1           13. Promote the restoration and reclamation of degraded or  
2 despoiled areas and natural resources.

3           ~~14. Assist the department of health services in recruiting and~~  
4 ~~training state, local and district health department personnel.~~

5           ~~15.~~ 14. Participate in the state civil defense program and develop  
6 the necessary organization and facilities to meet wartime or other  
7 disasters.

8           ~~16.~~ 15. Cooperate with the Arizona-Mexico commission in the  
9 governor's office and with researchers at universities in this state to  
10 collect data and conduct projects in the United States and Mexico on  
11 issues that are within the scope of the department's duties and that  
12 relate to quality of life, trade and economic development in this state in  
13 a manner that will help the Arizona-Mexico commission to assess and  
14 enhance the economic competitiveness of this state and of the  
15 Arizona-Mexico region.

16           ~~17.~~ 16. Unless specifically authorized by the legislature, ensure  
17 that state laws, rules, standards, permits, variances and orders are  
18 adopted and construed to be consistent with and no more stringent than the  
19 corresponding federal law that addresses the same subject matter. This  
20 paragraph ~~shall not be construed to~~ DOES NOT adversely affect standards  
21 adopted by an Indian tribe under federal law.

22           ~~18.~~ 17. Provide administrative and staff support for the oil and  
23 gas conservation commission.

24           B. The department, through the director, shall:

25           1. Contract for the services of outside advisers, consultants and  
26 aides reasonably necessary or desirable to enable the department to  
27 adequately perform its duties.

28           2. Contract and incur obligations reasonably necessary or desirable  
29 within the general scope of department activities and operations to enable  
30 the department to adequately perform its duties.

31           3. Utilize any medium of communication, publication and exhibition  
32 when disseminating information, advertising and publicity in any field of  
33 its purposes, objectives or duties.

34           4. Adopt procedural rules that are necessary to implement the  
35 authority granted under this title, but that are not inconsistent with  
36 other provisions of this title.

37           5. Contract with other agencies, including laboratories, in  
38 furthering any department program.

39           6. Use monies, facilities or services to provide matching  
40 contributions under federal or other programs that further the objectives  
41 and programs of the department.

42           7. Accept gifts, grants, matching monies or direct payments from  
43 public or private agencies or private persons and enterprises for  
44 department services and publications and to conduct programs that are  
45 consistent with the general purposes and objectives of this chapter.

1 Monies received pursuant to this paragraph shall be deposited in the  
2 department fund corresponding to the service, publication or program  
3 provided.

4 8. Provide for the examination of any premises if the director has  
5 reasonable cause to believe that a violation of any environmental law or  
6 rule exists or is being committed on the premises. The director shall  
7 give the owner or operator the opportunity for its representative to  
8 accompany the director on an examination of those premises. Within  
9 forty-five days after the date of the examination, the department shall  
10 provide to the owner or operator a copy of any report produced as a result  
11 of any examination of the premises.

12 9. Supervise sanitary engineering facilities and projects in this  
13 state, authority for which is vested in the department, and own or lease  
14 land on which sanitary engineering facilities are located, and operate the  
15 facilities, if the director determines that owning, leasing or operating  
16 is necessary for the public health, safety or welfare.

17 10. Adopt and enforce rules relating to approving design documents  
18 for constructing, improving and operating sanitary engineering and other  
19 facilities for disposing of solid, liquid or gaseous deleterious matter.

20 11. Define and prescribe reasonably necessary rules regarding the  
21 water supply, sewage disposal and garbage collection and disposal for  
22 subdivisions. The rules shall:

23 (a) Provide for minimum sanitary facilities to be installed in the  
24 subdivision and may require that water systems plan for future needs and  
25 be of adequate size and capacity to deliver specified minimum quantities  
26 of drinking water and to treat all sewage.

27 (b) Provide that the design documents showing or describing the  
28 water supply, sewage disposal and garbage collection facilities be  
29 submitted with a fee to the department for review and that no lots in any  
30 subdivision be offered for sale before compliance with the standards and  
31 rules has been demonstrated by approval of the design documents by the  
32 department.

33 12. Prescribe reasonably necessary measures to prevent pollution of  
34 water used in public or semipublic swimming pools and bathing places and  
35 to prevent deleterious conditions at ~~such~~ THOSE places. The rules shall  
36 prescribe minimum standards for the design of and for sanitary conditions  
37 at any public or semipublic swimming pool or bathing place and provide for  
38 abatement as public nuisances of premises and facilities that do not  
39 comply with the minimum standards. The rules shall be developed in  
40 cooperation with the director of the department of health services and  
41 shall be consistent with the rules adopted by the director of the  
42 department of health services pursuant to section 36-136, subsection I,  
43 paragraph 10.

1           13. Prescribe reasonable rules regarding sewage collection,  
2 treatment, disposal and reclamation systems to prevent the transmission of  
3 sewage borne or insect borne diseases. The rules shall:

4           (a) Prescribe minimum standards for the design of sewage collection  
5 systems and treatment, disposal and reclamation systems and for operating  
6 the systems.

7           (b) Provide for inspecting the premises, systems and installations  
8 and for abating as a public nuisance any collection system, process,  
9 treatment plant, disposal system or reclamation system that does not  
10 comply with the minimum standards.

11           (c) Require that design documents for all sewage collection  
12 systems, sewage collection system extensions, treatment plants, processes,  
13 devices, equipment, disposal systems, on-site wastewater treatment  
14 facilities and reclamation systems be submitted with a fee for review to  
15 the department and may require that the design documents anticipate and  
16 provide for future sewage treatment needs.

17           (d) Require that construction, reconstruction, installation or  
18 initiation of any sewage collection system, sewage collection system  
19 extension, treatment plant, process, device, equipment, disposal system,  
20 on-site wastewater treatment facility or reclamation system conform with  
21 applicable requirements.

22           14. Prescribe reasonably necessary rules regarding excreta storage,  
23 handling, treatment, transportation and disposal. The rules may:

24           (a) Prescribe minimum standards for human excreta storage,  
25 handling, treatment, transportation and disposal and shall provide for  
26 inspection of premises, processes and vehicles and for abating as public  
27 nuisances any premises, processes or vehicles that do not comply with the  
28 minimum standards.

29           (b) Provide that vehicles transporting human excreta from privies,  
30 septic tanks, cesspools and other treatment processes shall be licensed by  
31 the department subject to compliance with the rules. The department may  
32 require payment of a fee as a condition of licensure. The department may  
33 establish by rule a fee as a condition of licensure, including a maximum  
34 fee. As part of the rulemaking process, there must be public notice and  
35 comment and a review of the rule by the joint legislative budget  
36 committee. ~~After September 30, 2013,~~ The department shall not increase  
37 that fee by rule without specific statutory authority for the increase.  
38 The fees shall be deposited, pursuant to sections 35-146 and 35-147, in  
39 the solid waste fee fund established by section 49-881.

40           15. Perform the responsibilities of implementing and maintaining a  
41 data automation management system to support the reporting requirements of  
42 title III of the superfund amendments and reauthorization act of 1986  
43 (P.L. 99-499) and article 2 of this chapter.

44           16. Approve remediation levels pursuant to article 4 of this  
45 chapter.

1           17. Establish or revise fees by rule pursuant to the authority  
2 granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this  
3 title for the department to adequately perform its duties. All fees shall  
4 be fairly assessed and impose the least burden and cost to the parties  
5 subject to the fees. In establishing or revising fees, the department  
6 shall base the fees on:

7           (a) The direct and indirect costs of the department's relevant  
8 duties, including employee salaries and benefits, professional and outside  
9 services, equipment, in-state travel and other necessary operational  
10 expenses directly related to issuing licenses as defined in title 41,  
11 chapter 6 and enforcing the requirements of the applicable regulatory  
12 program.

13           (b) The availability of other funds for the duties performed.

14           (c) The impact of the fees on the parties subject to the fees.

15           (d) The fees charged for similar duties performed by the  
16 department, other agencies and the private sector.

17           18. Appoint a person with a background in oil and gas conservation  
18 to act on behalf of the oil and gas conservation commission and administer  
19 and enforce the applicable provisions of title 27, chapter 4 relating to  
20 the oil and gas conservation commission.

21           C. The department may:

22           1. Charge fees to cover the costs of all permits and inspections it  
23 performs to ensure compliance with rules adopted under section 49-203,  
24 except that state agencies are exempt from paying the fees. Monies  
25 collected pursuant to this subsection shall be deposited, pursuant to  
26 sections 35-146 and 35-147, in the water quality fee fund established by  
27 section 49-210.

28           2. Contract with private consultants for the purposes of assisting  
29 the department in reviewing applications for licenses, permits or other  
30 authorizations to determine whether an applicant meets the criteria for  
31 issuance of the license, permit or other authorization. If the department  
32 contracts with a consultant under this paragraph, an applicant may request  
33 that the department expedite the application review by requesting that the  
34 department use the services of the consultant and by agreeing to pay the  
35 department the costs of the consultant's services. Notwithstanding any  
36 other law, monies paid by applicants for expedited reviews pursuant to  
37 this paragraph are appropriated to the department for use in paying  
38 consultants for services.

39           D. The director may:

40           1. If the director has reasonable cause to believe that a violation  
41 of any environmental law or rule exists or is being committed, inspect any  
42 person or property in transit through this state and any vehicle in which  
43 the person or property is being transported and detain or disinfect the  
44 person, property or vehicle as reasonably necessary to protect the  
45 environment if a violation exists.

1           2. Authorize in writing any qualified officer or employee in the  
2 department to perform any act that the director is authorized or required  
3 to do by law.

4           Sec. 2. Section 49-218.01, Arizona Revised Statutes, is amended to  
5 read:

6           49-218.01. Brownfields cleanup revolving loan fund program;  
7                           eligibility

8           A. The director ~~shall~~ MAY implement the Brownfields cleanup  
9 revolving loan fund program pursuant to the requirements of the CERCLA  
10 Brownfields cleanup revolving loan fund program.

11           B. The director may:

12           1. Enter into financial assistance agreements, as deemed  
13 appropriate, with eligible persons for the performance of eligible  
14 activities at eligible sites.

15           2. Apply for, accept and administer grants and other financial  
16 assistance from the federal government and from other public and private  
17 sources for the Brownfields cleanup revolving loan fund program.

18           3. Enter into agreements to administer the program.

19           4. Enter into agreements with the water infrastructure finance  
20 authority pursuant to section 49-1203 to perform any of the functions of  
21 the fund manager pursuant to the CERCLA Brownfields cleanup revolving loan  
22 fund program.

23           5. Assess fees to administer the Brownfields cleanup revolving loan  
24 fund program consistent with any cooperative agreement with the  
25 environmental protection agency.

26           C. Financial assistance monies shall be used to perform removal  
27 actions that meet the requirements of the applicable program or oversight  
28 mechanism, the CERCLA Brownfields cleanup revolving loan fund program and  
29 this article. To the extent possible, the department shall eliminate  
30 duplicative requirements among the programs.

31           D. The following are not eligible for the Brownfields cleanup  
32 revolving loan fund program:

33           1. A site listed or proposed for listing on the national priorities  
34 list.

35           2. A site that is subject to state or federal unilateral  
36 administrative orders, a court order, administrative orders on consent or  
37 a judicial consent decree issued to or entered into by parties under  
38 CERCLA or this title.

39           3. A site that is subject to the jurisdiction, custody or control  
40 of the United States government.

41           E. The director, through the attorney general, may take actions  
42 necessary to enforce the loan contract and achieve repayment of loans  
43 provided under this article.

1           Sec. 3. Section 49-225, Arizona Revised Statutes, is amended to  
2 read:

3           49-225. Water quality monitoring

4           A. The director of environmental quality ~~shall~~, with the advice and  
5 cooperation of the Arizona department of agriculture and the director of  
6 water resources WHEN APPROPRIATE, SHALL conduct ongoing monitoring of the  
7 waters of the state including the state's navigable waters and aquifers to  
8 detect the presence of new and existing pollutants, determine compliance  
9 with applicable water quality standards, determine the effectiveness of  
10 best management practices, agricultural best management practices and best  
11 available demonstrated control technologies, evaluate the effects of  
12 pollutants on public health or the environment and determine water quality  
13 trends.

14           B. The director shall maintain a statewide ~~data base~~ DATABASE of  
15 groundwater and soils sampled for pollutants. All agencies shall submit  
16 to the director, in a timely manner, the results of any groundwater or  
17 soils sampling for pollutants and the results of any groundwater or soils  
18 sampling that detect any pollutants.

19           C. The director shall establish minimum requirements and schedules  
20 for groundwater and soils sampling that will ensure precise and accurate  
21 results. The requirements shall be distributed to all agencies that  
22 conduct sampling. All sampling conducted shall meet the minimum  
23 requirements established pursuant to this subsection.

24           Sec. 4. Section 49-241, Arizona Revised Statutes, is amended to  
25 read:

26           49-241. Permit required to discharge

27           A. Unless otherwise provided by this article, any person who  
28 discharges or who owns or operates a facility that discharges shall obtain  
29 an aquifer protection permit from the director.

30           B. Unless exempted under section 49-250, or unless the director  
31 determines that the facility will be designed, constructed and operated so  
32 that there will be no migration of pollutants directly to the aquifer or  
33 to the vadose zone, the following are considered to be discharging  
34 facilities and shall be operated pursuant to either an individual permit  
35 or a general permit, including agricultural general permits, under this  
36 article:

37           1. Surface impoundments, including holding, storage settling,  
38 treatment or disposal pits, ponds and lagoons.

39           2. Solid waste disposal facilities except for mining overburden and  
40 wall rock that has not been and will not be subject to mine leaching  
41 operations.

42           3. Injection wells.

43           4. Land treatment facilities.

44           5. Facilities that add a pollutant to a salt dome formation, salt  
45 bed formation, dry well or underground cave or mine.



1           6. Mine tailings piles and ponds.  
2           7. Mine leaching operations.  
3           8. Underground water storage facilities.  
4           9. Sewage treatment facilities, including on-site wastewater  
5 treatment facilities.  
6           10. Wetlands designed and constructed to treat municipal and  
7 domestic wastewater for underground storage.  
8           C. The director shall provide public notice and an opportunity for  
9 public comment on any request for a determination from the director under  
10 subsection B of this section that there will be no migration of pollutants  
11 from a facility. A public hearing may be held at the discretion of the  
12 director if sufficient public comment warrants a hearing. The director  
13 may inspect and may require reasonable conditions and appropriate  
14 monitoring and reporting requirements for a facility managing pollutants  
15 that are determined not to migrate under subsection B of this section.  
16 The director may identify types of facilities, available technologies and  
17 technical criteria for facilities that will qualify for ~~such~~ a  
18 determination. The director's determination may be revoked on evidence  
19 that pollutants have migrated from the facility. The director may impose  
20 a review fee for a determination under subsection B of this section. Any  
21 issuance, denial or revocation of a determination may be appealed pursuant  
22 to section 49-323.  
23           ~~D. The director shall publish a list of the names and locations of~~  
24 ~~existing facilities that are required to obtain an aquifer protection~~  
25 ~~permit. The director may revise the list as needed. Any revised list~~  
26 ~~shall contain deadlines for the submittal of applications for aquifer~~  
27 ~~protection permits, based on the degree of risk to the public health and~~  
28 ~~welfare and the environment and based on a work plan of the director~~  
29 ~~designed to process all applications for an aquifer protection permit no~~  
30 ~~later than January 1, 2004 for nonmining facilities and no later than~~  
31 ~~January 1, 2006 for mining facilities.~~  
32           ~~E.~~ D. The director shall annually make the fee schedule for  
33 aquifer protection permit applications available to the public on request  
34 and on the department's website, and a list of the names and locations of  
35 the facilities that have filed applications for aquifer protection  
36 permits, with a description of the status of each application, ~~shall be~~ IS  
37 available to the public on request.  
38           ~~F.~~ E. The director shall prescribe the procedures for aquifer  
39 protection permit applications and fee collection under this section. The  
40 director shall deposit, pursuant to sections 35-146 and 35-147, all monies  
41 collected under this section in the water quality fee fund established by  
42 section 49-210 and may authorize expenditures from the fund, subject to  
43 legislative appropriation, to pay reasonable and necessary costs of  
44 processing and issuing permits and administering the registration program.

1           Sec. 5. Section 49-546, Arizona Revised Statutes, is amended to  
2 read:

3           49-546. Fleet emissions inspection stations; certificates of  
4                   inspection; dealer's inventory; investigations;  
5                   revocation or suspension of permit

6           A. Any registered owner or lessee of a fleet of at least  
7 twenty-five vehicles may apply to the director for a permit to establish a  
8 fleet emissions inspection station. The director shall not issue any  
9 fleet emissions inspection station permit until the director has found  
10 that the applicant:

11           1. Maintains an established place of business for the repair and  
12 maintenance of the applicant's fleet of vehicles.

13           2. Has obtained approved machinery, tools and equipment to  
14 adequately conduct the required emissions inspections.

15           3. Employs properly trained and licensed personnel with which to  
16 perform the necessary labor.

17           4. Agrees to provide data as may be prescribed by the director.

18           B. Any operator of a fleet emissions inspection station under a  
19 valid permit ~~shall~~, upon filing an application in the manner and form  
20 prescribed by the director and paying the prescribed fee, **SHALL** receive a  
21 sufficient number of certificates of inspection for each vehicle in the  
22 applicant's fleet. A certificate of inspection shall not be issued to  
23 any fleet vehicle until it has been inspected and found to comply with  
24 applicable regulations. A certificate of inspection issued to a fleet  
25 vehicle is transferable ~~to an auctioneer who intends to sell the vehicle~~  
26 ~~and who is licensed as a used motor vehicle dealer~~ **AS PRESCRIBED BY THE**  
27 **DIRECTOR**. The certificate of inspection is valid for a period of not more  
28 than one hundred eighty days after the transfer unless the vehicle is  
29 reregistered with a new owner, in which case the vehicle shall be  
30 inspected in accordance with this article before the reregistration.

31           C. A holder of a fleet emissions inspection station permit shall  
32 not inspect or certificate any vehicle for which the permittee is not the  
33 registered owner or lessee, unless authorized by the director.

34           D. Vehicles that are owned by a licensed vehicle dealer and that  
35 are held for resale as a part of the dealer's business inventory ~~shall be~~  
36 **ARE** deemed a part of the dealer's vehicle fleet for the purposes of this  
37 section.

38           E. Every vehicle subject to this section and registered in this  
39 state shall be inspected in accordance with this article or the rules  
40 adopted pursuant to this article. A vehicle that is subject to this  
41 section may not be registered or reregistered until the vehicle has passed  
42 inspection or been issued a waiver pursuant to section 49-542.

43           F. The director shall investigate the operation of each fleet  
44 emissions inspection station as the conditions and circumstances of the  
45 operation may indicate. The director may require the holder of any fleet

1 permit to submit ~~such~~ documentation required concerning the operation of  
2 the inspection station. The director may suspend or revoke and require  
3 the surrender and forfeiture of any fleet emissions inspection station  
4 permit and certificates of inspection of the permittee if the director  
5 finds that the station is not operated in accordance with this article and  
6 the lawful rules adopted by the director or the holder of the permit has  
7 failed or refused to submit records or documentation required.

8 G. For the purposes of section 49-542.03, this section applies to a  
9 fleet motor vehicle dealer who meets both of the following conditions:

10 1. The principal place of business is within fifty miles of the  
11 outer boundary of area A.

12 2. The dealer certifies to the department that customers who reside  
13 in area A are the primary source of the dealer's business.

APPROVED BY THE GOVERNOR APRIL 11, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2018.