

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 ~~sueh~~ 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.