

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

CHAPTER 170
SENATE BILL 1494

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 49-203. Powers and duties of the director and department

5 A. The director shall:

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

8 2. Adopt, by rule, a permit program that is consistent with but no
9 more stringent than the requirements of the clean water act for the point
10 source discharge of any pollutant or combination of pollutants into
11 navigable waters. The program and the rules shall be sufficient to enable
12 this state to administer the permit program identified in section 402(b)
13 of the clean water act including the sewage sludge requirements of section
14 405 of the clean water act and as prescribed by article 3.1 of this
15 chapter.

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

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

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

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

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

32 8. Assess and collect fees to revoke, issue, deny, modify or
33 suspend permits issued pursuant to this chapter and to process permit
34 applications. The director may also assess and collect costs reasonably
35 necessary if the director must conduct sampling or monitoring relating to
36 a facility because the owner or operator of the facility has refused or
37 failed to do so on order by the director. The director shall set fees
38 that are reasonably related to the department's costs of providing the
39 service for which the fee is charged. State agencies are exempt from all
40 fees imposed pursuant to this chapter. Monies collected from aquifer
41 protection permit fees and from Arizona pollutant discharge elimination
42 system permit fees shall be deposited, pursuant to sections 35-146 and
43 35-147, in the water quality fee fund established by section 49-210.
44 Monies from other permit fees shall be deposited, pursuant to sections
45 35-146 and 35-147, in the water quality fee fund unless otherwise provided

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

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

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

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

21 B. The director may:

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

1 2. Require any person who has discharged, is discharging or may
2 discharge into the waters of the state under article 3, ~~OR~~ 3.1 OR 3.2 of
3 this chapter and any person who is subject to pretreatment standards and
4 requirements or sewage sludge use or disposal requirements under article
5 3.1 of this chapter to collect samples, to establish and maintain records,
6 including photographs, and to install, use and maintain sampling and
7 monitoring equipment to determine the absence or presence and nature of
8 the discharge or indirect discharge or sewage sludge use or disposal.

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

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

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

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

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

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

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

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

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

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

5 49-210. Water quality fee fund; appropriation; exemption;
6 monies held in trust

7 A. The water quality fee fund is established consisting of monies
8 appropriated by the legislature and fees received pursuant to sections
9 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352,
10 49-353 and 49-361. The director shall administer the fund.

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

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

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

20 1. The issuance of aquifer protection permits pursuant to section
21 49-241.

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

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

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

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

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

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

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

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

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

3 49-250. Exemptions

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

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

14 1. Household and domestic activities.

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

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

19 4. Ponds used for watering livestock and wildlife.

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

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

28 7. Discharge to a community sewer system.

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

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

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

37 11. Closed facilities. However, if the facility ever resumes
38 operation the facility shall obtain an aquifer protection permit and the
39 facility shall be treated as a new facility for purposes of section
40 49-243.

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

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

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

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

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

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

18 18. Facilities used in:

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

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

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

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

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

34 20. Storage, treatment or disposal of inert material.

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

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

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

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

- 1 (b) Potable water sources, including waterline flushings.
- 2 (c) Irrigation drainage and lawn watering.
- 3 (d) Routine external building wash down without detergents.
- 4 (e) Pavement wash water where no spills or leaks of toxic or
- 5 hazardous material have occurred unless all spilled material has first
- 6 been removed and no detergents have been used.
- 7 (f) Air conditioning, compressor and steam equipment condensate
- 8 that has not contacted a hazardous or toxic material.
- 9 (g) Foundation or footing drains in which flows are not
- 10 contaminated with process materials.
- 11 (h) Occupational safety and health administration or mining safety
- 12 and health administration safety equipment.

13 24. Industrial wastewater treatment facilities designed, constructed
14 and operated as required by section 49-243, subsection B, paragraph 1 and
15 using a treatment system approved by the director to treat wastewater to
16 meet aquifer water quality standards prior to discharge, if that water is
17 stored at a groundwater storage facility pursuant to title 45, chapter
18 3.1.

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

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

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

30 ARTICLE 3.2. UNDERGROUND INJECTION CONTROL PERMIT PROGRAM

31 49-257. Applicability of federal definitions

32 THE DEFINITIONS PRESCRIBED IN THE UNDERGROUND INJECTION CONTROL
33 PROGRAM IN PART C OF THE SAFE DRINKING WATER ACT IN EFFECT ON JANUARY 1,
34 2018 AND IN THE IMPLEMENTING REGULATIONS CONTAINED IN THE CODE OF FEDERAL
35 REGULATIONS IN EFFECT ON JANUARY 1, 2018 APPLY TO THIS ARTICLE.

36 49-257.01. Underground injection control permit program;
37 permits; prohibitions; exemptions; rules

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

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

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

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

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

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

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

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

19 49-261. Compliance orders; appeal; enforcement

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

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

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

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

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

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

3 49-262. Injunctive relief; civil penalties; recovery of
4 litigation costs

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

10 1. That a person is in violation of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 38 1. The seriousness of the violation or violations.
39 2. The economic benefit, if any, that results from the violation.
40 3. Any history of similar violations.
41 4. Any good faith efforts to comply with the applicable
42 requirements.
43 5. The economic impact of the penalty on the violator.

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

2 7. Other matters as justice may require.

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

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

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

15 49-263. Criminal violations; classification; definition

16 A. It is unlawful to:

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

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

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

23 4. Violate a water quality standard.

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

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

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

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

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

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

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

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

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

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

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

5 49-264. Private right of action; citizen suits; right to
6 intervene

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR APRIL 10, 2018.

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