

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 254
HOUSE BILL 2405

AN ACT

AMENDING SECTIONS 49-262 AND 49-354, 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 49-262, Arizona Revised Statutes, is amended to
3 read:

4 49-262. Injunctive relief; civil penalties; recovery of
5 litigation costs; affirmative defense; interim
6 operator or manager

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

12 1. That a person is in violation of:

13 (a) Any provision of article 2, 3, 3.1, ~~or~~ 3.2 or 3.3 of this
14 chapter.

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

17 (c) A rule adopted pursuant to article 2, 3, 3.1, ~~or~~ 3.2 or 3.3 of
18 this chapter.

19 (d) A discharge limitation or any other condition of a permit
20 issued under article 2, 3, 3.1, ~~or~~ 3.2 or 3.3 of this chapter.

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

24 B. Notwithstanding any other provision of this chapter, if the
25 director, the county attorney or the attorney general has reason to
26 believe that a person is creating an imminent and substantial endangerment
27 to the public health or environment because of acts performed in violation
28 of article 2, 3, 3.1, ~~or~~ 3.2 or 3.3 of this chapter or a rule adopted or a
29 condition of a permit issued pursuant to section 49-203, subsection A,
30 paragraph 2, 6 or 7, the county attorney or attorney general may request a
31 temporary restraining order, a preliminary injunction, a permanent
32 injunction or any other relief necessary to protect the public health.

33 C. A person who violates any provision of article 2, 3, 3.1 or 3.2
34 of this chapter or a rule, permit, discharge limitation or order issued or
35 adopted pursuant to article 2, 3, 3.1 or 3.2 of this chapter is subject to
36 a civil penalty of not more than ~~twenty-five thousand dollars~~ \$25,000 per
37 day per violation. A person who violates any rule adopted or a condition
38 of a permit issued pursuant to section 49-203, subsection A, paragraph 6
39 is subject to a civil penalty of not more than ~~five thousand dollars~~
40 \$5,000 per day per violation. A person who violates any rule adopted,
41 permit condition or ~~any~~ other provision of article 3.3 of this chapter is
42 subject to a civil penalty of not more than ~~five thousand dollars~~ \$5,000
43 per day per violation. The attorney general may, and at the request of
44 the director shall, commence an action in superior court to recover civil
45 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 or 3.3 of this chapter, it ~~shall be~~ IS an affirmative
12 defense to civil liability under this section and section 49-261 for
13 causing or contributing to a violation of a water quality standard
14 established pursuant to this chapter, or a violation of a permit condition
15 prohibiting a violation of an aquifer water quality standard or limitation
16 at the point of compliance or a surface water quality standard if the
17 release that caused or contributed to the violation came from a facility
18 owned or 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, 3.1, ~~or~~ 3.2 or 3.3 of this chapter, the court shall
37 consider 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.
- 44 6. The extent to which the violation was caused by a third party.
- 45 7. Other matters as justice may require.

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

5 J. If a permittee holds both a permit issued or authorized pursuant
6 to article 3 of this chapter and a permit issued or authorized pursuant to
7 article 3.1, ~~or~~ 3.2 or 3.3 of this chapter and the permittee violates a
8 similar provision in both permits simultaneously, the department shall not
9 recover penalties for violations of both permits based on the same act or
10 omission.

11 K. FOR A WASTEWATER TREATMENT FACILITY OR SYSTEM THAT IS REGULATED
12 AS A PUBLIC SERVICE CORPORATION BY THE CORPORATION COMMISSION, THE
13 DEPARTMENT MAY MAKE A WRITTEN REQUEST TO THE CORPORATION COMMISSION TO
14 TAKE NECESSARY CORRECTIVE ACTIONS WITHIN THIRTY CALENDAR DAYS AFTER BOTH
15 OF THE FOLLOWING OCCUR:

16 1. THE DEPARTMENT DOES ANY ONE OR MORE OF THE FOLLOWING:

17 (a) DETERMINES THAT THE WASTEWATER TREATMENT FACILITY OR SYSTEM IS
18 OUT OF COMPLIANCE WITH AN ADMINISTRATIVE ORDER ISSUED BY THE DEPARTMENT
19 FOR A VIOLATION OF THIS CHAPTER.

20 (b) FILES A CIVIL ACTION AGAINST THE OWNER OR OPERATOR OF THE
21 WASTEWATER TREATMENT FACILITY OR SYSTEM FOR A VIOLATION OF THIS CHAPTER.

22 (c) DETERMINES THAT AN EMERGENCY EXISTS WITH RESPECT TO THE
23 WASTEWATER TREATMENT FACILITY OR SYSTEM.

24 2. THE DEPARTMENT DETERMINES THAT THE CORPORATION COMMISSION TAKING
25 NECESSARY CORRECTIVE ACTIONS WOULD EXPEDITE THE WASTEWATER TREATMENT
26 FACILITY'S OR SYSTEM'S RETURN TO COMPLIANCE WITH THIS CHAPTER.

27 Sec. 2. Section 49-354, Arizona Revised Statutes, is amended to
28 read:

29 49-354. Enforcement; violation; classification; compliance
30 orders; judicial review; injunctive relief; civil
31 administrative penalties; interim operator or
32 manager; civil penalties

33 A. A person who violates this article or a rule adopted pursuant to
34 this article is guilty of a class 2 misdemeanor for each violation. In
35 the instance of a continuing violation, each day a violation continues
36 constitutes a separate offense.

37 B. If the director determines that a person is in violation of this
38 article or a rule adopted pursuant to this article, the director may issue
39 an order requiring compliance immediately or within a specified time
40 period. A compliance order shall state with reasonable specificity the
41 nature of the violation, a time for compliance if applicable and the right
42 to a hearing. The director shall transmit the compliance order to the
43 alleged violator by certified mail, return receipt requested, or by hand
44 delivery. A compliance order becomes final and enforceable in the
45 superior court unless within thirty days after the receipt of the order

1 the alleged violator requests a hearing before an administrative law judge
2 pursuant to title 41, chapter 6, article 10. If a hearing is requested,
3 the order does not become final until the administrative law judge has
4 issued a final decision on the appeal. Except as provided in section
5 41-1092.08, subsection H, a final administrative decision is subject to
6 judicial review pursuant to title 12, chapter 7, article 6. At the
7 request of the director the attorney general may begin an action in
8 superior court to enforce orders issued under this subsection after an
9 order becomes final.

10 C. If the director determines that a person is in violation of this
11 article or a rule adopted pursuant to this article to implement the
12 requirements contained in 40 Code of Federal Regulations parts 141 and
13 142, including the national primary drinking water regulations, the
14 director may issue a compliance order pursuant to subsection B of this
15 section imposing a civil administrative penalty. All penalty amounts
16 shall be calculated as follows:

17 1. If the violator is a public water system that serves more than
18 ten thousand persons, the director may impose a civil administrative
19 penalty of up to ~~one thousand dollars~~ \$1,000 per day per violation up to
20 ~~ten thousand dollars~~ \$10,000 per violation.

21 2. If the violator is a public water system that serves five
22 hundred to ten thousand persons, the director may impose a civil
23 administrative penalty that does not exceed ~~five hundred dollars~~ \$500 per
24 day per violation up to ~~five thousand dollars~~ \$5,000 per violation.

25 3. If the violator is a public water system that serves fewer than
26 five hundred persons, the director may impose a civil administrative
27 penalty that does not exceed ~~one hundred dollars~~ \$100 per day per
28 violation up to ~~one thousand dollars~~ \$1,000 per violation.

29 D. When determining the amount of a civil administrative penalty
30 pursuant to subsection C of this section, the director shall consider all
31 of the following:

- 32 1. The size of the public water system.
- 33 2. Any good faith effort by the public water system to maintain
34 compliance with national primary drinking water regulations.
- 35 3. The seriousness of the violation.
- 36 4. Any history of violation of the national primary drinking water
37 regulations.
- 38 5. Any history of recalcitrance by the violator.
- 39 6. Any economic benefit resulting from the violation, as an
40 aggravating factor only.
- 41 7. Any other factor deemed relevant.

42 E. FOR A PUBLIC WATER SYSTEM THAT IS REGULATED AS A PUBLIC SERVICE
43 CORPORATION BY THE CORPORATION COMMISSION, THE DEPARTMENT MAY MAKE A
44 WRITTEN REQUEST TO THE CORPORATION COMMISSION TO TAKE NECESSARY CORRECTIVE

1 ACTIONS WITHIN THIRTY CALENDAR DAYS AFTER BOTH OF THE FOLLOWING CONDITIONS
2 OCCUR:

3 1. THE DEPARTMENT DOES ANY ONE OR MORE OF THE FOLLOWING:

4 (a) DETERMINES THAT THE FACILITY IS OUT OF COMPLIANCE WITH AN
5 ADMINISTRATIVE ORDER ISSUED BY THE DEPARTMENT FOR A VIOLATION OF THIS
6 CHAPTER.

7 (b) FILES A CIVIL ACTION AGAINST THE OWNER OR OPERATOR OF THE
8 PUBLIC WATER SYSTEM FOR A VIOLATION OF THIS CHAPTER.

9 (c) DETERMINES THAT AN EMERGENCY EXISTS WITH RESPECT TO THE PUBLIC
10 WATER SYSTEM.

11 2. THE DEPARTMENT DETERMINES THAT THE CORPORATION COMMISSION TAKING
12 NECESSARY CORRECTIVE ACTIONS WOULD EXPEDITE THE PUBLIC WATER SYSTEM'S
13 RETURN TO COMPLIANCE WITH THIS CHAPTER.

14 ~~F.~~ F. Civil administrative penalties may not be recovered pursuant
15 to subsection C of this section if civil penalties are sought pursuant to
16 subsection ~~G~~ H of this section for the same violation.

17 ~~F.~~ G. All civil administrative penalties obtained pursuant to
18 subsection C of this section shall be deposited, pursuant to sections
19 35-146 and 35-147, in the state general fund.

20 ~~G.~~ H. In addition to the authority provided in subsection C of
21 this section, the attorney general may, and at the request of the director
22 shall, begin an action in superior court to recover civil penalties in an
23 amount of not more than ~~five hundred dollars~~ \$500 per violation per day
24 from any person who violates this article or a rule adopted pursuant to
25 this article. All civil penalties obtained under this subsection shall be
26 deposited, pursuant to sections 35-146 and 35-147, in the state general
27 fund. Civil penalties may not be recovered pursuant to this subsection if
28 civil administrative penalties are sought pursuant to subsection C of this
29 section for the same violation.

30 ~~H.~~ I. If the director has reason to believe that a person is in
31 violation of this article or a rule adopted or an order issued pursuant to
32 this article or believes that a person is creating an actual or potential
33 endangerment to the public health because of acts performed in violation
34 of this article or a rule adopted pursuant to this article, the director,
35 through the attorney general, may request a temporary restraining order, a
36 preliminary injunction, a permanent injunction or any other relief
37 necessary to protect the public health.

APPROVED BY THE GOVERNOR MAY 25, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 25, 2019.