

~~technical correction; underground storage; closure~~
(now: underground storage tanks; standards; reimbursements)

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 440

HOUSE BILL 2671

AN ACT

AMENDING SECTIONS 49-1009 AND 49-1015, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1031.01; AMENDING SECTIONS 49-1051, 49-1052, 49-1053, 49-1054, 49-1055, 49-1056 AND 49-1071, ARIZONA REVISED STATUTES; REPEALING LAWS 2015, CHAPTER 247, SECTION 22; APPROPRIATING MONIES; RELATING TO UNDERGROUND STORAGE TANKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-1009, Arizona Revised Statutes, is amended to
3 read:

4 49-1009. Tank performance standards

5 A. A person shall not install an underground storage tank unless
6 the underground storage tank meets all of the following requirements:

7 1. It is designed to prevent releases due to corrosion or
8 structural failure for the operational life of the tank.

9 2. It is cathodically protected against corrosion, constructed of
10 noncorrosive material, steel clad with a noncorrosive material or designed
11 in a manner to prevent the release of a regulated substance.

12 3. The material used in the construction or lining of the tank is
13 compatible with the substance to be stored.

14 B. ~~Beginning January 1, 2009,~~ A person shall not install an
15 underground storage tank unless the underground storage tank meets the
16 secondary containment PERFORMANCE STANDARDS FOR NEW UNDERGROUND STORAGE
17 TANK SYSTEMS PRESCRIBED IN 40 CODE OF FEDERAL REGULATIONS SECTION 280.20
18 AS IN EFFECT ON JANUARY 1, 2020 and release detection requirements for
19 ~~hazardous substance underground storage tank systems in 40 Code of Federal~~
20 ~~Regulations section 280.42 and the~~ interstitial monitoring requirements
21 PRESCRIBED in 40 Code of Federal Regulations section ~~280.43, subsection G~~
22 280.43(g) AS IN EFFECT ON JANUARY 1, 2020.

23 C. ~~Beginning January 1, 2009,~~ A person shall not install a new
24 piping component that is ~~twenty-five per cent~~ FIFTY PERCENT or more of the
25 total linear footage of all connected piping of the underground storage
26 tank unless all connected piping of the underground storage tank that
27 conveys a regulated substance under pressure is brought into compliance
28 with the secondary containment PERFORMANCE STANDARDS FOR NEW UNDERGROUND
29 STORAGE TANK SYSTEMS PRESCRIBED IN 40 CODE OF FEDERAL REGULATIONS SECTION
30 280.20 AS IN EFFECT ON JANUARY 1, 2020 and release detection requirements
31 for ~~hazardous substance underground storage tank systems in 40 Code of~~
32 ~~Federal Regulations section 280.42 and the~~ interstitial monitoring
33 requirements PRESCRIBED in 40 Code of Federal Regulations section ~~280.43,~~
34 ~~subsection G~~ 280.43(g) AS IN EFFECT ON JANUARY 1, 2020.

35 D. ~~Beginning January 1, 2009,~~ An owner or operator who installs or
36 replaces a ~~motor fuel~~ dispenser SYSTEM that connects to an underground
37 storage tank shall install under-dispenser containment. The
38 under-dispenser containment shall meet the ~~release detection requirements~~
39 ~~of 40 Code of Federal Regulations section 280.42, subsection B,~~
40 ~~paragraph 1~~ PERFORMANCE STANDARDS FOR NEW UNDERGROUND STORAGE TANK SYSTEMS
41 PRESCRIBED IN 40 CODE OF FEDERAL REGULATIONS SECTION 280.20(f) AS IN
42 EFFECT ON JANUARY 1, 2020.

43 E. The owner and operator of an underground storage tank shall use
44 an underground storage tank, a new piping component, under-dispenser
45 containment and any secondary containment material that is made of or

1 lined with materials that are compatible with the regulated substance
2 stored in or dispensed from the underground storage tank.

3 F. The director may adopt rules specifying design, construction,
4 installation, performance and compatibility standards for underground
5 storage tanks. The rules adopted pursuant to this subsection shall be
6 consistent with and ~~not~~ NOT more stringent than federal regulations in
7 effect on the date on which the rules are adopted.

8 G. The director may require an owner and operator of an underground
9 storage tank to perform or cause to be performed a tank test to determine
10 compliance with the standards established pursuant to this section.

11 Sec. 2. Section 49-1015, Arizona Revised Statutes, is amended to
12 read:

13 49-1015. Underground storage tank revolving fund; use;
14 purpose

15 A. The underground storage tank revolving fund is established and
16 shall be administered by the director. Monies in the fund are exempt from
17 lapsing under section 35-190.

18 B. The fund consists of monies appropriated by the legislature,
19 underground storage tank tax revenues collected and distributed pursuant
20 to section 49-1036, monies obtained from the fees imposed by this chapter
21 and the rules adopted under this chapter and monies reimbursed to the fund
22 by the department. On notice from the director, the state treasurer shall
23 invest and divest monies in the fund as provided by section 35-313, and
24 monies earned from investment shall be credited to the fund.

25 C. Monies from the fund may be used for the following:

26 1. To provide state matching monies and to meet other obligations
27 as prescribed by section 9003(h)(7)(B) of the solid waste disposal act (42
28 United States Code section 6991b(h)(7)(B)).

29 2. For all the reasonable and necessary costs incurred in taking
30 corrective actions pursuant to section 49-1017 and noncorrective actions
31 pursuant to section 49-1017.02.

32 3. For the costs of recovering the expenses of corrective actions
33 pursuant to section 49-1017 and noncorrective actions pursuant to section
34 49-1017.02.

35 4. To provide reimbursement for eligible costs.

36 5. For the costs incurred in administering the regulatory
37 requirements of this chapter.

38 6. To reimburse the department for the reasonable and necessary
39 costs incurred by the department in administering the corrective action
40 requirements of this chapter.

41 7. To reimburse the department for the reasonable and necessary
42 costs incurred by the department in administering THE underground storage
43 tank ~~grant programs~~ SITE IMPROVEMENT PROGRAM.

44 8. To reimburse the department for the reasonable and necessary
45 costs incurred by the department in administering the fund. The

1 department may not pay from the fund any costs, payments or other expenses
2 that result from a contract awarded pursuant to this section unless the
3 contract includes performance standards and contractual penalties for
4 nonperformance or inadequate performance under the contract.

5 D. The director shall reimburse the fund for any corrective action
6 costs or noncorrective action costs that are paid out of the fund and that
7 are subsequently recovered by the department.

8 E. Monies in the fund may not be used to implement the water
9 quality assurance revolving fund program pursuant to chapter 2, article 5
10 of this title.

11 Sec. 3. Title 49, chapter 6, article 2, Arizona Revised Statutes,
12 is amended by adding section 49-1031.01, to read:

13 49-1031.01. Underground storage tank excise tax; legislative
14 review

15 THE EXCISE TAX PRESCRIBED BY SECTION 49-1031 AND THE PROGRAMS IT
16 SUPPORTS SHALL BE REVIEWED AT THE SAME TIME AS LEGISLATIVE REVIEW OF THE
17 DEPARTMENT CONDUCTED PURSUANT TO TITLE 41, CHAPTER 27.

18 Sec. 4. Section 49-1051, Arizona Revised Statutes, is amended to
19 read:

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

22 A. An owner, an operator, ~~OR~~ the designated representative of the
23 owner or operator ~~or a person that meets the requirements of section~~
24 ~~49-1016, subsection C~~ must follow the preapproval process pursuant to this
25 section to be eligible for reimbursement from the underground storage tank
26 revolving fund for corrective actions taken pursuant to section 49-1053,
27 subsection A. Preapproval applications must include a detailed scope of
28 work that conforms to the requirements of sections 49-1005 and 49-1053, a
29 schedule for conducting corrective actions and a cost sheet. Beginning
30 January 1, 2016 and except as prescribed in subsection J of this section,
31 corrective actions and costs for activities that were completed before
32 departmental approval of the scope of work are not eligible for
33 reimbursement under section 49-1054. If the preapproved scope of work
34 cannot be implemented as approved, the person seeking reimbursement shall
35 submit a change notice to the department. To be eligible for
36 reimbursement, a change notice must be approved by the department before
37 implementation of the change notice.

38 B. This section does not relieve an owner, an operator or the
39 designated representative of the owner or operator from any of the
40 requirements of this chapter.

41 C. While the application for preapproval is pending, the department
42 may not take enforcement action or impose penalties against the owner,
43 operator or designated representative who submitted the application for
44 preapproval. The department may not consider the passage of time while
45 the preapproval application is pending to be a basis for taking an

1 enforcement action. For any corrective action submitted for preapproval
2 pursuant to rule, the period of time for compliance with corrective
3 actions associated with that preapproval begins to run after the date of
4 preapproval of the corrective action.

5 D. On determination by the department or its designated contractor
6 that the application for preapproval is complete, the department or its
7 designated contractor shall determine whether the owner or operator was a
8 small owner at the time of the application. For the purposes of this
9 subsection, "small owner" means an owner that owns fewer than twenty
10 underground storage tank facilities in this state.

11 E. In processing the application for preapproval, the department
12 shall determine the corrective action priority of the release within
13 ninety days after the receipt of the materials required by this section.
14 The corrective action priority shall be based on all of the following:

15 1. The need for financial assistance, including the availability of
16 coverage under insurance or other financial assurance mechanisms.

17 2. The extent to which a delay in reimbursement will affect the
18 ability to conduct corrective actions.

19 3. The risk to human health and the environment.

20 4. The presence of preexisting contamination of groundwater by a
21 hazardous substance as defined in section 49-281.

22 F. An owner, ~~OR operator or person who meets the requirements of~~
23 ~~section 49-1016, subsection C~~ may request reimbursement under section
24 49-1053. Subject to the availability of monies allocated and the assigned
25 priority of the site pursuant to subsection E of this section, the
26 department may make reimbursements from the underground storage tank
27 revolving fund.

28 G. An application for preapproval and reimbursement pursuant to
29 this section shall be on a form provided by the department and shall
30 contain sufficient information to allow the director to make a
31 determination of priority for that request.

32 H. Any determination made by the department pursuant to this
33 section constitutes a written interim determination relating to
34 preapproval pursuant to section 49-1091.

35 I. The department may alter the corrective action priority of the
36 release at any time based on the results of sampling and monitoring
37 conducted pursuant to this section or any other information obtained by
38 the department.

39 J. Corrective actions and costs for activities that were completed
40 before the department's approval of the scope of work are eligible for
41 reimbursement under section 49-1054 if the applicant otherwise complies
42 with subsection A of this section, ~~the corrective actions and costs for~~
43 ~~activities could not reasonably have been incurred through the preapproval~~
44 ~~process~~ and any of the following ~~apply~~ APPLIES:

1 1. For corrective actions and costs for activities that are
2 completed from and after December 31, 2015 through December 31, 2019 and
3 that are not the subject of a preapproval or reimbursement under
4 time-barred claims provisions because the applicant's financial
5 responsibility mechanism was defective at the time of the release or the
6 release occurred before financial responsibility was in place, the
7 applicant is eligible for reimbursement for those corrective actions and
8 costs for activities that are incurred from and after the date the
9 applicant demonstrates to the department that the applicant is in
10 compliance with financial responsibility requirements and the financial
11 responsibility is demonstrated to the department before January 1, 2019.
12 From and after December 31, 2018, the applicant is only eligible for
13 reimbursement for corrective actions and costs incurred in response to
14 releases confirmed after the date the applicant has demonstrated
15 compliance with financial responsibility requirements.

16 2. For corrective actions and costs for activities completed from
17 and after December 31, 2015 through December 31, 2019, and for which the
18 applicant's compliance with the preapproval process was impracticable due
19 to:

20 (a) The urgency of the corrective action to address newly
21 discovered contamination.

22 (b) The need for corrective action to avoid risk to public health
23 and the environment.

24 3. For corrective actions and costs for activities completed from
25 and after December 31, 2015 through December 31, ~~2018~~ 2019, the corrective
26 actions and costs are not the subject of a time-barred claim or were not
27 otherwise reimbursed by the department.

28 4. Only for corrective actions and costs of activities completed
29 before January 1, ~~2019~~ 2020, the claim for reimbursement is received by
30 the department before January 1, ~~2020~~ 2021 and paragraph 1, 2 or 3 of this
31 subsection applies.

32 K. The department shall develop an expedited preapproval process
33 not later than December 31, 2019 to address those corrective action costs
34 incurred for newly discovered contamination and to address those
35 corrective action costs necessary to avoid risk to public health and the
36 environment.

37 L. Direct costs incurred by the department in conducting corrective
38 action pursuant to section 49-1017 that are in excess of the coverage
39 limits applicable to time-barred claims as otherwise provided by law shall
40 reduce the amount otherwise payable to an owner or operator pursuant to
41 section 49-1054 but any amount remaining under section 49-1054 shall be
42 available to the owner or operator for additional corrective action costs.

43 M. For direct costs incurred by the department in conducting
44 corrective action pursuant to section 49-1017 after December 31, 2016, the
45 owner or operator is liable to the department for any amount incurred

1 except for the amount that is eligible and within the amount allowable
2 under section 49-1054.

3 Sec. 5. Section 49-1052, Arizona Revised Statutes, is amended to
4 read:

5 49-1052. Noncorrective actions; baseline assessment

6 A. ~~A baseline period of seven years after January 1, 2016 is~~
7 ~~established for underground storage tanks.~~ Beginning January 1, 2016
8 THROUGH JANUARY 1, 2033, during the baseline period, an owner, operator or
9 person who meets the requirements of section 49-1016, subsection C may do
10 the following:

11 1. Elect to conduct a baseline assessment pursuant to this section.

12 2. Request monies to cover costs associated with the baseline
13 assessment pursuant to section 49-1071.

14 3. Request the department to perform the baseline assessment under
15 section 49-1017.02.

16 B. The department shall establish standards for conducting baseline
17 assessments pursuant to this section. Until the department establishes
18 standards by rule or by guidance documents, baseline assessment work plans
19 shall be submitted to the department for approval and shall be considered
20 for preapproval on a case-by-case basis, based on compliance with
21 subsection D of this section.

22 C. Baseline assessments shall be conducted under the direction of a
23 person who is a professional engineer or a registered geologist who is
24 registered under title 32, chapter 1 or a remediation specialist.

25 D. The scope of the baseline assessment shall address likely
26 release areas and shall include a collection of sufficient information to
27 allow for a determination of the current environmental condition of the
28 property. Samples shall be collected in areas where contamination is most
29 likely to have occurred and sample locations shall consider site-specific
30 conditions, location of potential receptors and preexisting contamination.
31 The baseline assessment must include the registered or certified
32 professional's interpretation regarding confirmation of an unknown release
33 and evaluation of potential risk for the purpose of prioritizing
34 corrective actions.

35 E. If unknown contamination is identified in the baseline
36 assessment, all of the following apply:

37 1. The owner, operator or person that meets the requirements of
38 section 49-1016, subsection C shall comply with the reporting requirements
39 pursuant to section 49-1004 and shall initiate corrective actions pursuant
40 to section 49-1005.

41 2. Unless documentation is provided to the department that
42 demonstrates that the operating underground storage tank is not the source
43 of the release, the department shall require tightness testing.

1 3. If continued operation of the underground storage tank may
2 result in a continued release, the department may initiate delivery
3 prohibition as prescribed in section 49-1023.

4 Sec. 6. Section 49-1053, Arizona Revised Statutes, is amended to
5 read:

6 49-1053. Reimbursement of corrective action costs; definition

7 A. The department may provide reimbursement from the underground
8 storage tank revolving fund under the preapproval process prescribed in
9 section 49-1051 in the amounts authorized by section 49-1054 of the costs
10 incurred for the following:

11 1. Sampling, analysis and reporting that are initiated pursuant to
12 section 49-1004 and that confirm the presence of a release that requires
13 corrective action pursuant to section 49-1005.

14 2. Sampling, analysis and reporting that are initiated pursuant to
15 section 49-1008 and that confirm the presence of a release that requires
16 corrective action pursuant to section 49-1005.

17 3. Corrective actions initiated pursuant to section 49-1005.

18 4. Preparation of the initial approved preapproval application and
19 the consulting expenses incurred in participating in the initial
20 preapproval meeting but not more than two percent of the amount incurred
21 for the project cost in the first year. Costs must be submitted in the
22 first reimbursement request for corrective actions that is submitted
23 pursuant to section 49-1054.

24 B. The department may provide the reimbursement required by this
25 section either by paying the owner, the operator or a designated
26 representative of the owner or operator or any combination of these
27 persons, ~~OR a political subdivision pursuant to subsection F of this~~
28 ~~section or a person who meets the requirements of section 49-1016,~~

29 ~~subsection C.~~ If the department determines that an application for
30 reimbursement is incomplete, the department within forty-five days after
31 receiving the application shall notify the applicant of the missing
32 information as specifically as possible and shall allow the applicant to
33 provide the additional information within thirty days. On the request of
34 an applicant, the department shall grant an additional sixty days to
35 submit the missing information. The grant of additional time tolls the
36 period for making an interim determination on matters relating to
37 reimbursement pursuant to section 49-1091.

38 C. The department may not pay for eligible costs unless the
39 department determines that the eligible activities have met, or when
40 completed will meet, the applicable requirements of section 49-1004 or
41 49-1005. The department may require by rule that persons that perform
42 payable eligible activities meet specified standards of qualification and
43 be approved by the department.

44 D. The department may not provide any reimbursement described in
45 this article to an owner or operator of underground storage tanks

1 described in section 49-1031, subsection C. The department may not
2 provide any reimbursement described in this article with respect to the
3 substances described in section 49-1031, subsection C, unless the tax
4 imposed by article 2 of this chapter applies to such substances.

5 E. The department shall establish criteria for determining
6 priorities among the applications from small owners for reimbursement
7 under this article. For all other owners that are eligible for
8 reimbursement from the fund through the cost sharing prescribed in section
9 49-1006.02, subsection B, priority shall be based on the date of
10 completion of the work. The criteria for small owners shall include:

- 11 1. The need for financial assistance.
- 12 2. The extent to which a delay in providing reimbursement will
13 affect an eligible activity in progress.
- 14 3. The date on which an application for reimbursement is submitted
15 to the department.
- 16 4. Whether the payment has been previously deferred because of
17 insufficient monies in the underground storage tank revolving fund and, if
18 deferred, the length of the deferral.

19 F. The department may provide the reimbursement described in this
20 article for eligible activity costs incurred by a political subdivision
21 with respect to a release from an underground storage tank if the
22 underground storage tank or the property where the underground storage
23 tank is located comes into the possession or control of the political
24 subdivision under title 12, chapter 8, article 2 or 3.

25 G. Subject to section 38-503 and other applicable statutes and
26 rules, the department may contract with a private consultant for the
27 purpose of assisting the department in reviewing preapproval and
28 reimbursement applications, site characterization reports, corrective
29 action plans, monitoring reports and other information to determine
30 whether corrective actions meet the criteria and requirements of this
31 chapter and the rules adopted by the director.

32 H. Requests by the department for additional information from
33 applicants shall be reasonably related to the determination of the
34 validity of the claim as prescribed by this article.

35 I. Except for appeals costs authorized pursuant to section
36 49-1091.01, applications for reimbursement under a preapproved scope of
37 work shall be submitted to the department not more than one year after the
38 applicant receives a closure letter sent by the department by certified
39 mail with notice that the applicant has one year to submit a claim for
40 that release. Failure to submit a timely reimbursement request under a
41 preapproved scope of work shall result in denial of the claim. The time
42 limit prescribed by this subsection does not apply to closed releases that
43 are subsequently reopened for the performance of additional corrective
44 actions or at which corrective actions are proceeding pursuant to a work
45 plan for preapproval submitted before the release was closed.

1 J. The department may provide reimbursement under a preapproved
2 scope of work for the reasonable, necessary, cost-effective and
3 technically feasible costs of corrective actions relating to soil
4 remediation that are consistent with remediation standards adopted
5 pursuant to chapter 1, article 4 of this title or site-specific,
6 risk-based levels as determined under rules adopted pursuant to this
7 chapter. The department may provide reimbursement under a preapproved
8 scope of work for the reasonable, necessary, cost-effective and
9 technically feasible costs of corrective actions relating to groundwater
10 remediation to predetermined standards or site-specific, risk-based levels
11 as determined under rules adopted pursuant to this chapter. The
12 department may provide reimbursement for corrective actions related to the
13 control and removal of a source of contamination. A source of
14 contamination includes any one or more of the following:

- 15 1. Free product.
- 16 2. A regulated substance present in soil that causes or threatens
17 to cause an exceedance of the aquifer water quality standards.
- 18 3. A regulated substance present in groundwater at levels that
19 would prevent timely reduction of contaminant concentrations in comparison
20 with the performance of active remediation.
- 21 4. Any other presence of a regulated substance causing an ongoing
22 source of contamination, as determined by the department.

23 K. On preapproval by the department or its designated contractor of
24 corrective action costs for small owners, the department or its designated
25 contractor shall encumber monies in the corrective action allocation for
26 that year. If monies are available in the corrective action allocation
27 for that year, reimbursement shall be made when the corrective action for
28 which the monies were encumbered is completed as determined by the
29 department or its designated contractor.

30 L. IF THERE ARE INSUFFICIENT MONIES TO PAY FOR APPROVED CORRECTIVE
31 ACTIONS IN ANY ANNUAL CORRECTIVE ACTION ALLOCATION, the department or its
32 designated contractor ~~shall~~ MAY preapprove reimbursement of corrective
33 action costs for an owner that is not a small owner without encumbering
34 monies. If monies are available in the corrective action allocation for
35 that year at the end of the corrective action allocation year,
36 reimbursement ~~shall~~ MAY be based on the date the corrective action is
37 completed as determined by the department or its designated contractor.

38 M. If there are insufficient monies to pay for approved corrective
39 action in any annual corrective action allocation, the department shall
40 reimburse the corrective action from the next annual corrective action
41 allocation, with the priority that reimbursements first go to small
42 owners.

43 N. The department may not accept an application to the underground
44 storage tank revolving fund for reimbursement from an applicant for costs
45 associated with a single facility more frequently than once each calendar

1 month, and the department may not accept an application for costs
2 associated with a single facility for an amount of less than \$5,000 unless
3 the reimbursement is the final application associated with the facility.

4 O. An application for reimbursement pursuant to this section shall
5 be on a form provided by the department and shall contain sufficient
6 information to allow the director to make a determination of priority for
7 that request.

8 P. For the purposes of this section, "small owner" means an owner
9 that owns fewer than twenty underground storage tank facilities in this
10 state.

11 Sec. 7. Section 49-1054, Arizona Revised Statutes, is amended to
12 read:

13 49-1054. Extent of reimbursement

14 A. The department may provide reimbursement from the underground
15 storage tank revolving fund for the reasonable and necessary costs of
16 eligible activities pursuant to section 49-1053, subsection A for releases
17 that are reported before the end of the baseline period established
18 pursuant to section 49-1052. Receipt of financial assistance from the
19 underground storage tank revolving fund does not constitute a financial
20 assurance mechanism and may not be used to demonstrate compliance with
21 financial responsibility requirements or to provide compensation to third
22 parties for bodily injury or property damage. Reimbursement from the
23 underground storage tank revolving fund to owners, ~~AND~~ operators ~~and~~
24 ~~persons that meet the requirements of section 49-1016, subsection C~~ may
25 not exceed ~~one million dollars~~ \$1,000,000 per facility.

26 B. The department may compel the production of documents to
27 determine the existence, amount and type of insurance or alternative
28 coverage available. An owner, ~~OR~~ operator ~~or person that meets the~~
29 ~~requirements of section 49-1016, subsection C~~ shall report to the
30 department any payment of corrective actions costs through insurance and
31 alternative ~~FINANCIAL ASSURANCE~~ mechanisms.

32 C. The department may not disburse more than the maximum amounts
33 prescribed by subsection A of this section from the underground storage
34 tank revolving fund for corrective action costs associated with a
35 facility.

36 D. The department shall pay eligible costs that are reasonable and
37 were actually incurred for corrective actions that were actually
38 performed. The costs for the corrective actions shall be submitted as
39 prescribed in sections 49-1051 and 49-1053. The department shall pay only
40 for corrective actions that have been completed and that have been
41 conducted pursuant to the preapproval approved by the department.
42 Reasonableness of corrective actions shall be determined based on the law
43 and the facts available to the owner, ~~OR~~ operator ~~or person that meets~~
44 ~~the requirements of section 49-1016, subsection C~~ at the time the

1 technical decision was made. The department shall establish schedules of
2 corrective action costs that the department considers reasonable.

3 E. The owner or operator is eligible for payment from the
4 department to the extent that the corrective action costs have not been
5 reimbursed to the owner or operator, or its consultant, representative or
6 agent, by insurance or by an alternative financial assurance mechanism. A
7 provider of insurance or an alternative financial assurance mechanism ~~who~~
8 ~~THAT~~ is not an owner or operator with respect to the occurrence is not
9 eligible for payment from the underground storage tank revolving fund.

10 F. An owner or operator shall report to the department whether it
11 has insurance coverage available and shall comply with all applicable
12 financial responsibility requirements. If the director has reason to
13 believe that an owner or operator, or its consultant, representative or
14 agent, has received or may receive any payment for corrective actions from
15 insurance or ~~AN~~ alternative financial assurance mechanism, the department
16 may compel the production of documents to determine the existence, amount
17 and type of insurance or alternative financial assurance coverage
18 available and to whom payment was made or may be made. An owner or
19 operator shall report to the department any subsequent payment or
20 reimbursement from insurance or an alternative financial assurance
21 mechanism to the owner or operator or its consultant, representative or
22 agent for corrective actions costs.

23 G. The owner or operator shall remit to the department within
24 thirty days any amounts that were previously paid to the owner or operator
25 or its consultant, representative or agent from the underground storage
26 tank revolving fund and that have also been recovered from insurance or
27 any alternative financial assurance mechanisms.

28 H. Appeals fees and costs payable pursuant to section 49-1091.01
29 shall be paid in the next regular round of payment without being subject
30 to ranking and in the order received by the department.

31 Sec. 8. Section 49-1055, Arizona Revised Statutes, is amended to
32 read:

33 ~~49-1055.~~ Extent of reimbursement; termination of eligibility

34 A. From and after December 31, ~~2022~~ 2032, only those releases of a
35 regulated substance that are reported before January 1, ~~2023~~ 2033 as
36 prescribed in section 49-1004 are eligible for corrective action cost
37 reimbursements from the underground storage tank revolving fund.

38 B. An application for reimbursement of eligible costs from the
39 underground storage tank revolving fund shall be filed with the department
40 not later than 5:00 p.m. on December 31, ~~2030~~ 2040.

41 C. An application for preapproval made pursuant to section 49-1051
42 shall be filed with the department not later than 5:00 p.m. on
43 December 31, ~~2029~~ 2039.

1 D. Any application made or expense incurred after December 31, ~~2030~~
2 2040 is not eligible for reimbursement from the underground storage tank
3 revolving fund and all such claims are extinguished.

4 Sec. 9. Section 49-1056, Arizona Revised Statutes, is amended to
5 read:

6 49-1056. Lien rights; unrecovered corrective action costs

7 A. If the department or this state incurs unrecovered corrective
8 action costs from a corrective action undertaken on behalf of ~~a volunteer,~~
9 ~~a property owner,~~ a person other than the underground storage tank owner
10 ~~or an owner or operator that did not have the required financial~~
11 ~~responsibility mechanism at the time the release is discovered or the~~
12 ~~claim is filed,~~ the department has a lien on the property, ~~or, by~~
13 ~~agreement with the responsible party, may obtain a lien on any other~~
14 ~~property or other financial responsibility mechanism of the responsible~~
15 ~~party~~ FOR THE UNRECOVERED CORRECTIVE ACTION COSTS.

16 ~~B. The lien shall be in the amount of the estimated increase in the~~
17 ~~market value of the property as determined by a commercial real estate~~
18 ~~appraiser who shall determine the difference between the current market~~
19 ~~value of the property and the estimated market value of the property after~~
20 ~~corrective action is complete. The director shall use an appraiser who is~~
21 ~~a member of a nationally recognized real estate appraisal association,~~
22 ~~institute or society.~~

23 ~~C. The department shall reduce the amount of the lien as follows:~~

24 ~~1. To the amount of the total unrecovered corrective action costs~~
25 ~~if that amount is less than the difference between the current market~~
26 ~~value of the property and the estimated market value of the property after~~
27 ~~corrective action is complete.~~

28 ~~2. If a volunteer, a property owner, a person other than the~~
29 ~~underground storage tank owner or an owner or operator that did not have~~
30 ~~the required financial responsibility mechanism at the time the release is~~
31 ~~discovered or the claim is filed makes a determination at any time after~~
32 ~~corrective action begins that a change in circumstances has substantially~~
33 ~~reduced the increase in the market value of the property.~~

34 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, THE DEPARTMENT MAY
35 FORGO A LIEN ON THE PROPERTY WHEN THE DIRECTOR ORDERS CORRECTIVE ACTIONS
36 THAT ARE NECESSARY TO PROTECT HUMAN HEALTH, SAFETY OR THE ENVIRONMENT
37 PURSUANT TO SECTION 49-1017.

38 Sec. 10. Section 49-1071, Arizona Revised Statutes, is amended to
39 read:

40 49-1071. Noncorrective action tank site improvement;
41 purposes; priority

42 A. Subject to the availability of monies in the underground storage
43 tank revolving fund that are annually allocated by the director for each
44 of the following types of actions, an owner, operator or person that meets
45 the requirements of section 49-1016, subsection C may request that the

1 department provide monies for that person to conduct one or more of the
2 following actions, up to a maximum of \$300,000 per site:

3 1. Actions necessary to ensure that the underground storage tank,
4 its piping and its under-dispenser containment comply with standards for
5 new installations prescribed by section 49-1009 or other applicable
6 federal requirements, including replacement of system components, up to a
7 maximum of \$200,000.

8 2. Removal of underground storage tanks for purposes of permanent
9 closure or replacement, up to a maximum of \$25,000 per tank. If petroleum
10 contaminated media that require over-excavation are encountered during
11 removal of the underground storage tank, up to an additional \$15,000 per
12 site is available for reimbursement.

13 3. Confirmation of a suspected release at a tank or site, up to a
14 maximum of \$20,000.

15 4. Obtaining a baseline assessment of a site as prescribed in
16 section 49-1052, up to a maximum of \$40,000.

17 B. In determining the priority for requests under subsection A of
18 this section, the director may consider the following factors:

19 1. The age, construction and operational history of the underground
20 storage tank.

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

23 3. The proximity, quality and current and future uses of nearby
24 surface water and groundwater.

25 4. The potential effects of residual contamination on nearby
26 surface water and groundwater.

27 5. The degree of exposure.

28 6. The financial resources of the applicant.

29 C. An application for funding and request for reimbursement under
30 this section shall be on a form provided by the department and shall
31 include:

32 1. Detailed information about the site, including the type, number
33 and location of tanks.

34 2. Information about the owner and operator, including the type of
35 financial responsibility.

36 3. A description of the evidence of any release or suspected
37 release.

38 4. The proposed actions necessary to meet tank and system
39 performance standards.

40 D. Monies may not be provided under this section for work that
41 takes place more than ~~one year~~ FIVE HUNDRED FORTY-FIVE DAYS after the date
42 that monies are approved.

43 E. An application for monies pursuant to SUBSECTION A, PARAGRAPH 1,
44 2 OR 4 OF this section may be filed with the department at any time ~~during~~
45 ~~the actions prescribed by subsection A of this section~~ but only those

1 costs incurred after the department approves the application are eligible
2 for reimbursement. FOR AN APPLICATION FOR MONIES PURSUANT TO SUBSECTION
3 A, PARAGRAPH 3 OF THIS SECTION, THE DEPARTMENT MAY REIMBURSE COSTS
4 INCURRED FOR WORK THAT TAKES PLACE BEFORE THE DEPARTMENT'S APPROVAL. The
5 maximum amounts prescribed in this section apply to applications approved
6 by the department whether before or after August 27, 2019.

7 F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR
8 APPLICATIONS MADE PURSUANT TO THIS SECTION THAT ARE RECEIVED BY THE
9 DEPARTMENT BEFORE SEPTEMBER 30, 2020, THE DEPARTMENT MAY REIMBURSE COSTS
10 INCURRED FOR WORK CONDUCTED ON OR AFTER OCTOBER 1, 2020, INCLUDING COSTS
11 INCURRED FOR WORK THAT OCCURRED BEFORE THE DEPARTMENT'S FINAL
12 DETERMINATION.

13 Sec. 11. Repeal

14 Laws 2015, chapter 247, section 22 is repealed.

15 Sec. 12. Previously ineligible underground storage tank
16 revolving fund claims; requirements limitation;
17 appeals

18 Notwithstanding any other law:

19 1. For owners and operators that properly reported and confirmed a
20 release of regulated substances after an owner's or operator's requirement
21 to establish evidence of financial responsibility pursuant to 40 Code of
22 Federal Regulations Part 280 and before July 1, 1996, but failed to comply
23 with the financial responsibility requirement and received at least one
24 payment from the assurance account, all of the following apply:

25 (a) Costs for corrective actions that were conducted between
26 July 1, 2010 and December 31, 2016 are eligible for reimbursement of up to
27 \$1,000,000 per facility without regard to the number of releases at the
28 facility as assurance account time-barred claims. If claims for
29 reimbursement at a facility were made before July 1, 2010, the total
30 amount of payment on those claims shall reduce eligibility for
31 reimbursement under this subdivision by the amount paid on the claims. The
32 department shall provide reimbursement for ninety percent of the
33 reasonable and necessary costs of eligible activities pursuant to this
34 subdivision.

35 (b) Costs for corrective actions that were conducted after
36 January 1, 2017 are eligible for reimbursement of up to \$1,000,000 per
37 facility without regard to the number of releases at the facility under
38 the department of environmental quality's preapproval program. Costs
39 incurred before December 31, 2021 are eligible without the department's
40 prior approval under section 49-1053, Arizona Revised Statutes. Costs for
41 corrective actions conducted on and after January 1, 2022 are eligible for
42 reimbursement subject to the requirements of sections 49-1051, 49-1053 and
43 49-1054, Arizona Revised Statutes, as amended by this act.

1 2. Facilities for which corrective actions are being performed
2 under the department's state lead program or preapproval program on the
3 effective date of this section are not eligible for any additional
4 reimbursement under this section.

5 3. Claims for reimbursement of corrective action costs incurred
6 before January 1, 2022 shall be submitted to the department on or before
7 December 31, 2022 and on a form prescribed by the department.
8 Applications for reimbursement shall include a certification that is
9 signed by the owner or operator and that affirms that the submitted costs
10 are true and accurate and have not previously been submitted and paid or
11 denied by the department for a reason other than failure to demonstrate
12 financial responsibility. At a minimum, an owner or operator shall be
13 required to submit invoices, proof of payment and documentation of work
14 for which reimbursement is sought.

15 4. Only costs that are approved by the department are eligible for
16 payment under this section. The department shall reimburse costs that are
17 reasonable and were actually incurred for corrective actions that were
18 actually performed.

19 5. The department is not required to take any action on an
20 application for reimbursement until January 1, 2023.

21 6. The department shall determine the amount of monies in the
22 underground storage tank revolving fund established by section 49-1015,
23 Arizona Revised Statutes, as amended by this act, that is available to pay
24 claims under this section. The department is not required to evaluate
25 available monies from the fund and issue payments more than once per year
26 thereafter. The department shall develop criteria to prioritize payments
27 that include reimbursing small owners and operators first.

APPROVED BY THE GOVERNOR JULY 10, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2021.