

Senate Engrossed

~~water; wastewater system; county operation~~
(now: water; wastewater system; corrective actions)

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 214
SENATE BILL 1307

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

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

11 1. That a person is in violation of:

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

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

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

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

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

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

31 C. A person who violates any provision of article 2, 3, 3.1 or 3.2
32 of this chapter or a rule, permit, discharge limitation or order issued or
33 adopted pursuant to article 2, 3, 3.1 or 3.2 of this chapter is subject to
34 a civil penalty of not more than \$25,000 per day per violation. A person
35 who violates any rule adopted or a condition of a permit issued pursuant
36 to section 49-203, subsection A, paragraph 6 is subject to a civil penalty
37 of not more than \$5,000 per day per violation. A person who violates any
38 rule adopted, permit condition or other provision of article 3.3 of this
39 chapter is subject to a civil penalty of not more than \$5,000 per day per
40 violation. The attorney general may, and at the request of the director
41 shall, commence an action in superior court to recover civil penalties
42 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, 3.2 or 3.3 of this chapter, it is 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, 3.1, 3.2 or 3.3 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, 3.2 or 3.3 of this chapter and the permittee violates a
10 similar provision in both permits simultaneously, the department shall not
11 recover penalties for violations of both permits based on the same act or
12 omission.

13 K. For a wastewater treatment facility or system that is regulated
14 as a public service corporation by the corporation commission, the
15 department ~~may~~ SHALL make a written request to the CHAIRPERSON AND
16 EXECUTIVE DIRECTOR OF THE corporation commission to take necessary
17 corrective actions, AND THE CORPORATION COMMISSION SHALL COMMENCE
18 NECESSARY CORRECTIVE ACTIONS within thirty calendar days after both of the
19 following occur:

20 1. The department does any one or more of the following:

21 (a) Determines that the wastewater treatment facility or system is
22 out of compliance with an administrative order issued by the department
23 for a violation of this chapter.

24 (b) Files a civil action against the owner or operator of the
25 wastewater treatment facility or system for a violation of this chapter.

26 (c) Determines that an emergency exists with respect to the
27 wastewater treatment facility or system.

28 2. The department determines that the corporation commission taking
29 necessary corrective actions would expedite the wastewater treatment
30 facility's or system's return to compliance with this chapter.

31 L. IF THE DEPARTMENT MAKES A WRITTEN REQUEST TO THE CORPORATION
32 COMMISSION AS PRESCRIBED BY SUBSECTION K OF THIS SECTION, THE DEPARTMENT
33 SHALL PROVIDE A COPY OF THE REQUEST TO THE GOVERNING BODY OF ANY LOCAL
34 JURISDICTION WITH RESIDENTS SERVED BY THE FACILITY OR SYSTEM THAT IS THE
35 SUBJECT OF THE REQUEST.

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

38 49-354. Enforcement; violation; classification; compliance
39 orders; judicial review; injunctive relief; civil
40 administrative penalties; civil penalties

41 A. A person who violates this article or a rule adopted pursuant to
42 this article is guilty of a class 2 misdemeanor for each violation. In

1 the instance of a continuing violation, each day a violation continues
2 constitutes a separate offense.

3 B. If the director determines that a person is in violation of this
4 article or a rule adopted pursuant to this article, the director may issue
5 an order requiring compliance immediately or within a specified time
6 period. A compliance order shall state with reasonable specificity the
7 nature of the violation, a time for compliance if applicable and the right
8 to a hearing. The director shall transmit the compliance order to the
9 alleged violator by certified mail, return receipt requested, or by hand
10 delivery. A compliance order becomes final and enforceable in the
11 superior court unless within thirty days after the receipt of the order
12 the alleged violator requests a hearing before an administrative law judge
13 pursuant to title 41, chapter 6, article 10. If a hearing is requested,
14 the order does not become final until the administrative law judge has
15 issued a final decision on the appeal. Except as provided in section
16 41-1092.08, subsection H, a final administrative decision is subject to
17 judicial review pursuant to title 12, chapter 7, article 6. At the
18 request of the director, the attorney general may begin an action in
19 superior court to enforce orders issued under this subsection after an
20 order becomes final.

21 C. If the director determines that a person is in violation of this
22 article or a rule adopted pursuant to this article to implement the
23 requirements contained in 40 Code of Federal Regulations parts 141 and
24 142, including the national primary drinking water regulations, the
25 director may issue a compliance order pursuant to subsection B of this
26 section imposing a civil administrative penalty. All penalty amounts
27 shall be calculated as follows:

28 1. If the violator is a public water system that serves more than
29 ten thousand persons, the director may impose a civil administrative
30 penalty of up to \$1,000 per day per violation up to \$10,000 per violation.

31 2. If the violator is a public water system that serves five
32 hundred to ten thousand persons, the director may impose a civil
33 administrative penalty that does not exceed \$500 per day per violation up
34 to \$5,000 per violation.

35 3. If the violator is a public water system that serves fewer than
36 five hundred persons, the director may impose a civil administrative
37 penalty that does not exceed \$100 per day per violation up to \$1,000 per
38 violation.

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

42 1. The size of the public water system.

1 2. Any good faith effort by the public water system to maintain
2 compliance with national primary drinking water regulations.

3 3. The seriousness of the violation.

4 4. Any history of violation of the national primary drinking water
5 regulations.

6 5. Any history of recalcitrance by the violator.

7 6. Any economic benefit resulting from the violation, as an
8 aggravating factor only.

9 7. Any other factor deemed relevant.

10 E. For a public water system that is regulated as a public service
11 corporation by the corporation commission, the department ~~may~~ SHALL make a
12 written request to the CHAIRPERSON AND EXECUTIVE DIRECTOR OF THE
13 corporation commission to take necessary corrective actions, AND THE
14 CORPORATION COMMISSION SHALL COMMENCE NECESSARY CORRECTIVE ACTIONS within
15 thirty calendar days after both of the following conditions occur:

16 1. The department does any one or more of the following:

17 (a) Determines that the facility is out of compliance with an
18 administrative order issued by the department for a violation of this
19 chapter.

20 (b) Files a civil action against the owner or operator of the
21 public water system for a violation of this chapter.

22 (c) Determines that an emergency exists with respect to the public
23 water system.

24 2. The department determines that the corporation commission taking
25 necessary corrective actions would expedite the public water system's
26 return to compliance with this chapter.

27 F. IF THE DEPARTMENT MAKES A WRITTEN REQUEST TO THE CORPORATION
28 COMMISSION AS PRESCRIBED BY SUBSECTION E OF THIS SECTION, THE DEPARTMENT
29 SHALL PROVIDE A COPY OF THE REQUEST TO THE GOVERNING BODY OF ANY LOCAL
30 JURISDICTION WITH RESIDENTS SERVED BY THE FACILITY OR SYSTEM THAT IS THE
31 SUBJECT OF THE REQUEST.

32 ~~F.~~ G. Civil administrative penalties may not be recovered pursuant
33 to subsection C of this section if civil penalties are sought pursuant to
34 subsection ~~H~~ I of this section for the same violation.

35 ~~G.~~ H. All civil administrative penalties obtained pursuant to
36 subsection C of this section shall be deposited, pursuant to sections
37 35-146 and 35-147, in the state general fund.

38 ~~H.~~ I. In addition to the authority provided in subsection C of
39 this section, the attorney general may, and at the request of the director
40 shall, begin an action in superior court to recover civil penalties in an
41 amount of not more than \$500 per violation per day from any person who
42 violates this article or a rule adopted pursuant to this article. All
43 civil penalties obtained under this subsection shall be deposited,

1 pursuant to sections 35-146 and 35-147, in the state general fund. Civil
2 penalties may not be recovered pursuant to this subsection if civil
3 administrative penalties are sought pursuant to subsection C of this
4 section for the same violation.

5 ~~I.~~ J. If the director has reason to believe that a person is in
6 violation of this article or a rule adopted or an order issued pursuant to
7 this article or believes that a person is creating an actual or potential
8 endangerment to the public health because of acts performed in violation
9 of this article or a rule adopted pursuant to this article, the director,
10 through the attorney general, may request a temporary restraining order, a
11 preliminary injunction, a permanent injunction or any other relief
12 necessary to protect the public health.

APPROVED BY THE GOVERNOR APRIL 9, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2021.