Senate Engrossed House Bill
environmental programs; amendments

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 177

HOUSE BILL 2410

AN ACT

AMENDING SECTIONS 49-152, 49-210, 49-245.02 AND 49-257.01, ARIZONA REVISED STATUTES; REPEALING TITLE 49, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES; REPEALING SECTION 49-457.02, ARIZONA REVISED STATUTES; AMENDING SECTIONS 49-542.04, 49-551.01 AND 49-554, ARIZONA REVISED STATUTES; REPEALING SECTION 49-558.01, ARIZONA REVISED STATUTES; AMENDING SECTION 49-927, ARIZONA REVISED STATUTES; REPEALING LAWS 2001, CHAPTER 371, SECTION 20; AMENDING LAWS 2017, CHAPTER 295, SECTION 3; RELATING TO THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-152, Arizona Revised Statutes, is amended to read:

49-152. Soil remediation standards; restrictions on property use

A. Notwithstanding any other remediation levels established under this title, the director shall approve remediation levels calculated in accordance with this subsection and shall accomplish the following for remediation of contaminated soil to protect public health and the environment in accordance with the applicable provisions of this title and section 33-434.01:

1. Establish predetermined risk based standards by rule. At a minimum, separate standards shall be established for residential and nonresidential exposure assumptions. Until risk based remediation standards are formally established by rule, the director shall establish interim standards adopting:
   (a) The Arizona health based guidance levels developed by the department of health services to include a health based standard for total petroleum hydrocarbons as the standards for residential uses.
   (b) The guidance levels in subdivision (a) of this paragraph modified to reflect the United States environmental protection agency published assumptions for exposures that are not residential as the standards for nonresidential uses. The initial adoption of these interim standards shall be effective by December 15, 1995 and shall be deemed emergency rules pursuant to section 41-1026.

2. Issue guidance on methods for calculating case-by-case, site specific risk based remediation levels in accordance with risk assessment methodologies that are accepted in the scientific community and shall not preclude the use of newly developed risk assessment methodologies that are accepted in the scientific community.

B. The owner of a property may elect to remediate the property to meet a site specific residential or nonresidential risk based remediation standard or a predetermined residential or nonresidential risk based remediation standard. The property is suitable for unrestricted use if it has been remediated without the use of engineering or institutional controls to meet either of the following:

1. The predetermined residential risk based remediation standard.
2. A site specific risk based hazard index equal to or less than one or a risk of carcinogenic health effects that is less than or equal to the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2), based on residential exposure.

C. If the owner has elected to use an engineering or institutional control to meet the standards prescribed in subsection B of this section, or if the owner has elected to leave contamination on the property that exceeds the applicable residential standard for the property AT A SITE
REMEDIATED UNDER PROGRAMS, SETTLEMENTS OR ORDERS ADMINISTERED BY THE
DEPARTMENT UNDER THIS TITLE, the owner shall record in each county where
the property is located an institutional control that consists of a
restrictive covenant that is labeled "declaration of environmental use
restriction" pertaining to the area of the property necessary to protect
the public health and the environment. A person who is conducting a
remedial action, remediation, corrective action or response action that
requires an institutional or engineering control and who is not the owner
of the property shall obtain written consent from the owner before
implementing the institutional control or constructing the engineering
control. On implementation of the institutional or engineering control,
the owner shall record a declaration of environmental use restriction in
each county where the property is located. If the institutional control
or engineering control will affect right-of-way that is owned, maintained
or controlled by a public entity for public benefit, the person shall also
obtain the public entity's written consent before implementing the
institutional control or constructing the engineering control. The
declaration of environmental use restriction shall limit by legal
description:

1. The area of the property where the institutional control or
engineering control shall be maintained.
2. The area of the property to be restricted to nonresidential use,
because contamination remains on the property above the standards
prescribed in subsection B, paragraph 1 or 2 of this section.

D. At the written request of the owner of property that is subject
to a declaration of environmental use restriction, the director shall
determine whether release or modification of the declaration of
environmental use restriction is appropriate. If a release has been
requested, the director shall make this determination within sixty days
after the date of the property owner's request. If the director
determines that release of the declaration of environmental use
restriction is appropriate, the director shall record in each county where
the property is located a notice releasing the declaration of
environmental use restriction. The declaration of environmental use
restriction is perpetual unless released pursuant to this section. The
director shall determine that release of a declaration of environmental
use restriction is appropriate if the property has been remediated,
without the use of institutional controls or engineering controls, to
either:

1. Meet predetermined risk based remedial standards for residential
exposure assumptions.
2. Present a risk based hazard index equal to or less than one from
noncancer health effects and a risk estimate of carcinogenic health
effects equal to or less than the range of risk levels set forth in
E. The department shall establish a repository in the department listing sites remediated under programs administered by the department under this title. The repository shall include the name and address of the owner of the property, when the remediation was conducted, the legal description and street address of the property, the applicability of section 33-434.01, the type of financial assurance mechanism that is being used, if applicable, and a description of the purpose of the declaration of environmental use restriction.

F. When recorded, an owner's declaration of environmental use restriction under subsection B of this section is a covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns and inures to the benefit of the department and the state. If notice of the declaration of environmental use restriction that includes a specific description of the area of the property that is subject to the declaration of environmental use restriction is contained in the repository maintained by the department pursuant to subsection E of this section, a declaration of environmental use restriction may not be extinguished, limited or impaired through any of the following:

1. Issuance of a tax deed.
2. Foreclosure of a tax lien.
3. Foreclosure of any mortgage, deed of trust or other encumbrance or lien on the property.
4. Adverse possession.
5. Exercise of eminent domain.
6. Application of the doctrine of abandonment, the doctrine of waiver or any other common law doctrine.

G. Each party to a declaration of environmental use restriction shall incorporate the terms of the declaration of environmental use restriction into any lease, license or other agreement that is signed by the party and that grants a right with respect to the property that is subject to the declaration of environmental use restriction. The incorporation may be in full or by reference.

H. A declaration of environmental use restriction is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.
2. The date that remediation was completed and a map of the area of the property that is subject to the declaration.
3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.
4. A statement that more detailed information is available at the department, including the address at which that information will be maintained.
5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.

6. The notarized signature of the owner.

I. If institutional controls are used in addition to a declaration of environmental use restriction to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect public health and the environment.

2. A statement indicating that if any person desires to cancel or modify the institutional control in the future, the person must obtain prior written approval from the department pursuant to this section.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that institutional controls are being maintained.

J. If engineering controls are used to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement of all requirements for maintenance of the engineering control including a description of the control, the date it was constructed and the reason it must remain in place to protect public health and the environment.

2. A statement that if any person desires to change the engineering controls in the future that person shall obtain prior written approval from the department.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that engineering controls are being maintained.

4. A brief description of the engineering control plan and financial assurance mechanism prescribed by section 49-152.01, if applicable.

K. When the declaration of environmental use restriction is recorded or modified, an owner electing to use institutional or engineering controls to satisfy the requirements of this section shall pay the department a fee established by rule. If the control is an institutional control, the owner shall submit to the department a written report once each calendar year regarding the status of the institutional control. If the control is an engineering control, the owner shall maintain the engineering control on the property to ensure that it continues to protect public health and the environment and shall inspect each engineering control at least once each calendar year. Within thirty
days after each inspection, the owner shall submit to the department a written report that:

1. Describes the condition of the engineering control.
2. States the nature and cost of all restoration made to the engineering control during the calendar year.
3. Includes current photographs of the engineering control.
4. Describes the status of the financial assurance mechanism prescribed by section 49-152.01, if applicable, and a certification that the financial assurance mechanism is being maintained.

L. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and development plan approval for the property. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction. A declaration of environmental use restriction does not authorize a use of property that is otherwise prohibited by zoning ordinances or other ordinances or laws. A declaration of environmental use restriction may include activity limitations and use restrictions that would otherwise be permitted by zoning ordinances or other ordinances or laws.

M. The department shall adopt rules as necessary to implement this section. These rules may be combined with any rules necessary to implement section 49-158.

N. The department may enter on the property at all reasonable times to assess the condition of each engineering control. When the department enters on property to assess the condition of an engineering control, the department shall:

1. Provide twenty-four hours' advance notice of the entry to the property owner, if practicable.
2. Allow the owner or an authorized representative of the owner to accompany the department representative.
3. Present photographic identification on entry of the property.
4. Provide the owner or an authorized representative of the owner with notice of the right to have a duplicate sample or split of any sample taken during the inspection if the duplicate or split of any sample would not prohibit an analysis from being conducted or render an analysis inconclusive.

O. Nothing in this section shall preclude the department from initiating an action under other provisions of state or federal law.

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

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

A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections
The director shall administer the fund.

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

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

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

1. To issue aquifer protection permits pursuant to section 49-241.
2. The aquifer protection permit registration fee procedures pursuant to section 49-242.

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

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

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

6. To issue permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.

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

8. Paying the cost of implementing section 49-203, subsection A, paragraph 7 and section 49-221, subsection E.

9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.

10. To implement and administer the underground injection control permit program established pursuant to article 3.3 of this chapter.

11. To implement and administer the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.
Sec. 3. Section 49-245.02, Arizona Revised Statutes, is amended to read:

49-245.02. General permit for certain discharges associated with man-made bodies of water

A. A general permit is issued for the following discharges:
   1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:
      (a) The vadose zone injection wells are registered pursuant to section 49-332 INVENTORIED PURSUANT TO THE UNDERGROUND INJECTION CONTROL PROGRAM UNDER EITHER:
         (i) STATE RULES APPROVED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO 42 UNITED STATES CODE SECTION 300h.
         (ii) FEDERAL REGULATIONS ADOPTED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO 42 UNITED STATES CODE SECTION 300h.
      (b) The discharge occurs only in response to storm events.
      (c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration THE INVENTORY made pursuant to subdivision (a) of this paragraph.
      (d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
      (e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
      (f) The vadose zone injection wells are not used for any other purpose.

   2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:
      (a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
      (b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10^{-7} \text{ cm/sec or less.}

3. Point source discharges to protected surface waters from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter.

(b) The discharges occur only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

Sec. 4. Section 49-257.01, Arizona Revised Statutes, is amended to read:

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

A. The department shall establish an underground injection control permit program, including a permitting process.

B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency, WHICH ARE NOT SUBJECT TO SECTION 49-224, SUBSECTION B. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.

C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.

D. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).
Sec. 5. **Repeal**
   A. Title 49, chapter 2, article 8, Arizona Revised Statutes, is repealed.
   B. Section 49-457.02, Arizona Revised Statutes, is repealed.

Sec. 6. Section 49-542.04, Arizona Revised Statutes, is amended to read:

49-542.04. *Off-road vehicle and engine standards*
   A. The department **shall** MAY adopt rules for air pollution emission standards for off-road vehicles and engines marketed in the state beginning with the 1999 model year.
   B. The standards may include the following categories:
      1. Heavy-duty diesel vehicles rated at 175-750 horsepower.
      2. Small utility and lawn and garden equipment engines rated at less than twenty-five horsepower.
      3. Recreational vehicles rated at less than twenty-five horsepower.
      4. Specialty engines and go-carts rated at greater than twenty-five horsepower.
      5. Off-road motorcycles and all terrain vehicles.
   C. In a county with a population of more than one million two hundred thousand persons according to the most recent United States decennial census, the department **shall** MAY adopt rules for air pollution emission standards for golf cart engines.

Sec. 7. Section 49-551.01, Arizona Revised Statutes, is amended to read:

49-551.01. *Diesel vehicle low emissions incentive grants; criteria*
   A. The department may award incentive grants from the air quality fund established by section 49-551 for diesel vehicles:
      1. To operate on alternative fuel or clean burning fuel as defined in section 1-215.
      2. To operate on ultra low sulfur diesel fuel as defined in section 49-558.01 that is used in an engine with an emission control device.
      3. Powered by an engine that meets or exceeds an emissions standard for diesel particulate matter of 0.05 grams per brake horsepower hour.
   B. A vehicle that is awarded an incentive grant pursuant to this section shall meet the following criteria:
      1. The vehicle has a gross vehicle weight rating of at least seventeen thousand five hundred pounds.
      2. The vehicle is not a recreational vehicle as defined in section 28-3102.
      3. The vehicle is registered in this state and the incentive grant recipient signs a statement, under penalty of perjury, that it is the recipient's intent that the vehicle will be registered in this state for at least three years from AFTER the date the vehicle is awarded an incentive grant pursuant to this section and that the recipient intends to
operate the vehicle more than fifty percent of the time in area A or area B.

4. The vehicle is subject to the financial responsibility requirements prescribed in section 28-4032, subsection A.

  C. An incentive grant awarded pursuant to this section shall provide for real and quantifiable emissions reductions. Engine retrofit or conversions may meet the requirements of subsection A of this section if they have been approved for use by any one of the following:

  1. The United States environmental protection agency voluntary retrofit program.
  2. The United States environmental protection agency verification protocol for retrofit catalyst particulate filter and engine modification control technologies for highway and nonroad use diesel engines.
  3. The California air resources board diesel emission control strategy verification procedure.
  4. Sections 43100 and 43102 of the health and safety code of the state of California.

  5. Actual emission testing performed on the vehicle.

  D. Notwithstanding subsection B, paragraph 4 of this section, the director may award incentive grants for school buses and municipal vehicles that otherwise meet the requirements of subsection B of this section.

Sec. 8. Section 49-554, Arizona Revised Statutes, is amended to read:

49-554. Technical assistance review

A. The department of environmental quality, with the assistance of the governor’s energy office and state universities, shall develop a program to:

1. Expedite testing and certification of technological developments related to improving air quality through a reduction in vehicle emissions.

2. Develop incentives to encourage development and innovation of technologies that improve air quality through a reduction in vehicle emissions.

3. Establish a board with technical expertise to assist developers of promising technologies with the emission certification processes of the California air resources board and the United States environmental protection agency. The board shall:

   (a) Perform an initial evaluation of the technology, including a review of existing test data.

   (b) Develop procedures to apply those technologies in this state that have been certified by the California air resources board, the United States environmental protection agency or this state.

   (c) Recommend a program of incentives to encourage private entities to use technologies that have been reviewed and approved by the board.
(d) Recommend legislation requiring the use of approved technologies by the state and political subdivisions.

(e) Recommend a credit trading and banking program to encourage innovative solutions to the reduction of emissions from all sources.

B. The department may enter into intergovernmental agreements and memorandums of understanding to accomplish the purposes of this section.

Sec. 9. Repeal

Section 49-558.01, Arizona Revised Statutes, is repealed.

Sec. 10. Section 49-927, Arizona Revised Statutes, is amended to read:

49-927. Hazardous waste management fund
A. THE hazardous waste management fund is established to be administered by the department. The fund consists of monies appropriated by the legislature, monies collected pursuant to section 49-931 and monies collected as fees for issuing permits under section 49-922, subsection B, paragraph 5. Monies in the fund are subject to legislative appropriation and are exempt from section 35-190 relating to lapsing of appropriations. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

B. Monies in the hazardous waste management fund shall be used for the following purposes:
1. Informing, educating and training the general public, treatment, storage and disposal facility operators, hazardous waste handlers and others.
2. Supporting statewide hazardous waste planning and program development activities.
3. Processing, issuing and maintaining permits for treatment, storage or disposal facilities.
4. Compliance monitoring, investigation and enforcement activities pertaining to generating, transporting, treating, storing and disposing of hazardous waste under this article.
5. Funding the pollution prevention technical assistance program established pursuant to section 49-965 and providing matching funds under section 6605 of the pollution prevention act of 1990 (P.L. 101-508).
6. Administration of the pollution prevention program pursuant to article 4 of this chapter.
7. Reimbursement of appropriations received for fiscal year 1991-1992 to the state general fund as provided by law.
8. Remediating properties that have been reported to the state board of technical registration before August 6, 2016 if there is evidence that the property owner did not comply with state law for removal of the gross contamination on the property.

C. Ten percent of the monies in the fund shall be transmitted to the emergency response fund established by section 49-132 to be used for
staffing local emergency planning committees and equipping local fire
departments, fire districts and public safety agencies for the development
of hazardous materials emergency response teams.

Sec. 11. **Repeal**
Laws 2001, chapter 371, section 20 is repealed.

Sec. 12. **Laws 2017, chapter 295, section 3 is amended to read:**

Sec. 3. **Conditional enactment; notice**

A. Section 3-3493, Arizona Revised Statutes, as amended by this act
LAWS 2017, CHAPTER 295, SECTION 2, does not become effective unless on or
before July 1, 2024 the United States environmental protection agency
approves the proposed modifications to the gasoline fuel formulation
requirements as part of the state implementation plan for air quality.

B. The director of the department of environmental quality shall
notify in writing the director of the Arizona legislative council on or
before October 1, 2024 either:

1. Of the date on which the condition was met.
2. That the condition was not met.

Sec. 13. **Department of environmental quality; real property
ownership conveyance; department of administration; exemption**

A. Notwithstanding any other law, on the effective date of this
act, clear title to the following one square mile of real property is
conveyed from the department of environmental quality to the department of
administration:

Section 32, township 4 South, range 1 West, Gila and
Salt River base and meridian, Maricopa county, Arizona.

B. The department of environmental quality and the department of
administration shall execute documents and take other actions reasonably
necessary to complete the conveyance of ownership of the real property.

C. Title 37, chapter 4, Arizona Revised Statutes, relating to
acquisition of real property, does not apply to the conveyance prescribed
by this section.

Sec. 14. **Retroactivity**
Laws 2017, chapter 295, section 3, as amended by this act applies
retroactively to from and after June 29, 2022.