

House Engrossed

environmental programs; amendments

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

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)

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

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

4 49-152. Soil remediation standards; restrictions on property
5 use

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

12 1. Establish predetermined risk based standards by rule. At a
13 minimum, separate standards shall be established for residential and
14 nonresidential exposure assumptions. Until risk based remediation
15 standards are formally established by rule, the director shall establish
16 interim standards adopting:

17 (a) The Arizona health based guidance levels developed by the
18 department of health services to include a health based standard for total
19 petroleum hydrocarbons as the standards for residential uses.

20 (b) The guidance levels in subdivision (a) of this paragraph
21 modified to reflect the United States environmental protection agency
22 published assumptions for exposures that are not residential as the
23 standards for nonresidential uses. The initial adoption of these interim
24 standards shall be effective by December 15, 1995 and shall be deemed
25 emergency rules pursuant to section 41-1026.

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

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

37 1. The predetermined residential risk based remediation standard.

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

42 C. If the owner has elected to use an engineering or institutional
43 control to meet the standards prescribed in subsection B of this section,
44 or if the owner has elected to leave contamination on the property that
45 exceeds the applicable residential standard for the property **AT A SITE**

1 REMEDIATED UNDER PROGRAMS, SETTLEMENTS OR ORDERS ADMINISTERED BY THE
2 DEPARTMENT UNDER THIS TITLE, the owner shall record in each county where
3 the property is located an institutional control that consists of a
4 restrictive covenant that is labeled "declaration of environmental use
5 restriction" pertaining to the area of the property necessary to protect
6 the public health and the environment. A person who is conducting a
7 remedial action, remediation, corrective action or response action that
8 requires an institutional or engineering control and who is not the owner
9 of the property shall obtain written consent from the owner before
10 implementing the institutional control or constructing the engineering
11 control. On implementation of the institutional or engineering control,
12 the owner shall record a declaration of environmental use restriction in
13 each county where the property is located. If the institutional control
14 or engineering control will affect right-of-way that is owned, maintained
15 or controlled by a public entity for public benefit, the person shall also
16 obtain the public entity's written consent before implementing the
17 institutional control or constructing the engineering control. The
18 declaration of environmental use restriction shall limit by legal
19 description:

20 1. The area of the property where the institutional control or
21 engineering control shall be maintained.

22 2. The area of the property to be restricted to nonresidential use,
23 because contamination remains on the property above the standards
24 prescribed in subsection B, paragraph 1 or 2 of this section.

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

40 1. Meet predetermined risk based remedial standards for residential
41 exposure assumptions.

42 2. Present a risk based hazard index equal to or less than one from
43 noncancer health effects and a risk estimate of carcinogenic health
44 effects equal to or less than the range of risk levels set forth in 40
45 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2).

1 E. The department shall establish a repository in the department
2 listing sites remediated under programs administered by the department
3 under this title. The repository shall include the name and address of
4 the owner of the property, when the remediation was conducted, the legal
5 description and street address of the property, the applicability of
6 section 33-434.01, the type of financial assurance mechanism that is being
7 used, if applicable, and a description of the purpose of the declaration
8 of environmental use restriction.

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

- 19 1. Issuance of a tax deed.
- 20 2. Foreclosure of a tax lien.
- 21 3. Foreclosure of any mortgage, deed of trust or other encumbrance
22 or lien on the property.
- 23 4. Adverse possession.
- 24 5. Exercise of eminent domain.
- 25 6. Application of the doctrine of abandonment, the doctrine of
26 waiver or any other common law doctrine.

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

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

- 35 1. A legal description and the address of the area of the property
36 that is subject to the declaration.
- 37 2. The date that remediation was completed and a map of the area of
38 the property that is subject to the declaration.
- 39 3. A description of the environmental contaminants that were the
40 subject of the remediation, remedial action, corrective action or response
41 action.
- 42 4. A statement that more detailed information is available at the
43 department, including the address at which that information will be
44 maintained.

1 5. A notarized signature of a department official indicating
2 approval of the declaration of environmental use restriction.

3 6. The notarized signature of the owner.

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

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

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

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

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

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

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

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

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

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

1 days after each inspection, the owner shall submit to the department a
2 written report that:

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

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

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

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

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

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

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

41 49-210. Water quality fee fund; appropriation; exemption;
42 monies held in trust

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

1 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, ~~49-332~~, 49-352,
2 49-353 and 49-361. The director shall administer the fund.

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

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

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

12 1. To issue aquifer protection permits pursuant to section 49-241.

13 2. The aquifer protection permit registration fee procedures
14 pursuant to section 49-242.

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

16 ~~4.~~ 3. Technical review fee procedures pursuant to section 49-353.

17 ~~5.~~ 4. Inspection fee procedures pursuant to section 49-104,
18 subsection C.

19 ~~6.~~ 5. To issue permits under the Arizona pollutant discharge
20 elimination system program pursuant to section 49-255.01.

21 ~~7.~~ 6. Operator certification pursuant to sections 49-352 and
22 49-361.

23 ~~8.~~ 7. Paying the cost of implementing section 49-203, subsection
24 A, paragraph 7 and section 49-221, subsection E.

25 ~~9.~~ 8. Water quality monitoring pursuant to section 49-225 and
26 reporting of aquifer pollution information pursuant to section 49-249.

27 ~~10.~~ 9. To implement and administer the underground injection
28 control permit program established pursuant to article 3.3 of this
29 chapter.

30 ~~11.~~ 10. To implement and administer the dredge and fill permit
31 program established pursuant to article 3.2 of this chapter, including
32 review and analysis for issuing jurisdictional determinations.

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

1 (c) The body of water is lined and maintained to achieve a
2 hydraulic conductivity of 10⁻⁷ cm/sec or less.

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

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

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

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

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

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

25 49-257.01. Underground injection control permit program;
26 permits; prohibitions; rules

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

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

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

41 D. The director shall adopt rules for the purposes of establishing
42 and operating the underground injection control permit program pursuant to
43 this article. Rules adopted by the director shall meet the minimum
44 requirements prescribed by 42 United States Code section 300h(b).

1 operate the vehicle more than fifty ~~per cent~~ PERCENT of the time in area A
2 or area B.

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

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

9 1. The United States environmental protection agency voluntary
10 retrofit program.

11 2. The United States environmental protection agency verification
12 protocol for retrofit catalyst particulate filter and engine modification
13 control technologies for highway and nonroad use diesel engines.

14 3. The California air resources board diesel emission control
15 strategy verification procedure.

16 4. Sections 43100 and 43102 of the health and safety code of the
17 state of California.

18 5. Actual emission testing performed on the vehicle.

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

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

25 49-554. Technical assistance review

26 A. The department of environmental quality, with the assistance of
27 ~~the governor's energy office and~~ state universities, ~~shall~~ MAY develop a
28 program to:

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

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

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

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

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

43 (c) Recommend a program of incentives to encourage private entities
44 to use technologies that have been reviewed and approved by the board.

1 (d) Recommend legislation requiring the use of approved
2 technologies by the state and political subdivisions.

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

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

7 Sec. 9. Repeal

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

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

11 49-927. Hazardous waste management fund

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

21 B. Monies in the hazardous waste management fund shall be used for
22 the following purposes:

23 1. Informing, educating and training the general public, treatment,
24 storage and disposal facility operators, hazardous waste handlers and
25 others.

26 2. Supporting statewide hazardous waste planning and program
27 development activities.

28 3. Processing, issuing and maintaining permits for treatment,
29 storage or disposal facilities.

30 4. Compliance monitoring, investigation and enforcement activities
31 pertaining to generating, transporting, treating, storing and disposing of
32 hazardous waste under this article.

33 5. Funding the pollution prevention technical assistance program
34 established pursuant to section 49-965 and providing matching funds under
35 section 6605 of the pollution prevention act of 1990 (P.L. 101-508).

36 6. ~~Administration of~~ ADMINISTERING the pollution prevention program
37 pursuant to article 4 of this chapter.

38 ~~7. Reimbursement of appropriations received for fiscal year~~
39 ~~1991-1992 to the state general fund as provided by law.~~

40 ~~8. Remediating properties that have been reported to the state~~
41 ~~board of technical registration before August 6, 2016 if there is evidence~~
42 ~~that the property owner did not comply with state law for removal of the~~
43 ~~gross contamination on the property.~~

44 C. Ten percent of the monies in the fund shall be transmitted to
45 the emergency response fund established by section 49-132 to be used for

1 staffing local emergency planning committees and equipping local fire
2 departments, fire districts and public safety agencies for the development
3 of hazardous materials emergency response teams.

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

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

7 Sec. 3. Conditional enactment; notice

8 A. Section 3-3493, Arizona Revised Statutes, as amended by ~~this act~~
9 LAWS 2017, CHAPTER 295, SECTION 2, does not become effective unless on or
10 before July 1, ~~2022~~ 2024 the United States environmental protection agency
11 approves the proposed modifications to the gasoline fuel formulation
12 requirements as part of the state implementation plan for air quality.

13 B. The director of the department of environmental quality shall
14 notify in writing the director of the Arizona legislative council on or
15 before October 1, ~~2022~~ 2024 either:

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

18 Sec. 13. Department of environmental quality; real property
19 ownership conveyance; department of
20 administration; exemption

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

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

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

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

33 Sec. 14. Retroactivity

34 Laws 2017, chapter 295, section 3, as amended by this act applies
35 retroactively to from and after June 29, 2022.