

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2410

(Reference to printed bill)

1 Page 1, between lines 1 and 2, insert:

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

1 standards shall be effective by December 15, 1995 and shall be deemed  
2 emergency rules pursuant to section 41-1026.

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

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

14 1. The predetermined residential risk based remediation standard.

15 2. A site specific risk based hazard index equal to or less than one  
16 or a risk of carcinogenic health effects that is less than or equal to the  
17 range of risk levels set forth in 40 Code of Federal Regulations section  
18 300.430(e)(2)(i)(A)(2), based on residential exposure.

19 C. If the owner has elected to use an engineering or institutional  
20 control to meet the standards prescribed in subsection B of this section,  
21 or if the owner has elected to leave contamination on the property that  
22 exceeds the applicable residential standard for the property **AT A SITE**  
23 **REMEDiated UNDER PROGRAMS, SETTLEMENTS OR ORDERS ADMINISTERED BY THE**  
24 **DEPARTMENT UNDER THIS TITLE**, the owner shall record in each county where  
25 the property is located an institutional control that consists of a  
26 restrictive covenant that is labeled "declaration of environmental use  
27 restriction" pertaining to the area of the property necessary to protect  
28 the public health and the environment. A person who is conducting a  
29 remedial action, remediation, corrective action or response action that  
30 requires an institutional or engineering control and who is not the owner  
31 of the property shall obtain written consent from the owner before  
32 implementing the institutional control or constructing the engineering  
33 control. On implementation of the institutional or engineering control,

1 the owner shall record a declaration of environmental use restriction in  
2 each county where the property is located. If the institutional control or  
3 engineering control will affect right-of-way that is owned, maintained or  
4 controlled by a public entity for public benefit, the person shall also  
5 obtain the public entity's written consent before implementing the  
6 institutional control or constructing the engineering control. The  
7 declaration of environmental use restriction shall limit by legal  
8 description:

9 1. The area of the property where the institutional control or  
10 engineering control shall be maintained.

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

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

28 1. Meet predetermined risk based remedial standards for residential  
29 exposure assumptions.

30 2. Present a risk based hazard index equal to or less than one from  
31 noncancer health effects and a risk estimate of carcinogenic health effects  
32 equal to or less than the range of risk levels set forth in 40 Code of  
33 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 the  
4 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 of  
8 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 with  
11 and burdens the property, binds the owner and the owner's heirs, successors  
12 and assigns and inures to the benefit of the department and the state. If  
13 notice of the declaration of environmental use restriction that includes a  
14 specific description of the area of the property that is subject to the  
15 declaration of environmental use restriction is contained in the repository  
16 maintained by the department pursuant to subsection E of this section, a  
17 declaration of environmental use restriction may not be extinguished,  
18 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.

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

3           1. A legal description and the address of the area of the property  
4 that is subject to the declaration.

5           2. The date that remediation was completed and a map of the area of  
6 the property that is subject to the declaration.

7           3. A description of the environmental contaminants that were the  
8 subject of the remediation, remedial action, corrective action or response  
9 action.

10          4. A statement that more detailed information is available at the  
11 department, including the address at which that information will be  
12 maintained.

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

15          6. The notarized signature of the owner.

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

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

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

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

31          J. If engineering controls are used to satisfy the requirements of  
32 this section, the declaration of environmental use restriction, in addition

1 to the information required by subsection H of this section, shall include  
2 all of the following:

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

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

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

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

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

26 1. Describes the condition of the engineering control.

27 2. States the nature and cost of all restoration made to the  
28 engineering control during the calendar year.

29 3. Includes current photographs of the engineering control.

30 4. Describes the status of the financial assurance mechanism  
31 prescribed by section 49-152.01, if applicable, and a certification that  
32 the financial assurance mechanism is being maintained.

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

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

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

18 1. Provide twenty-four hours' advance notice of the entry to the  
19 property owner, if practicable.

20 2. Allow the owner or an authorized representative of the owner to  
21 accompany the department representative.

22 3. Present photographic identification on entry of the property.

23 4. Provide the owner or an authorized representative of the owner  
24 with notice of the right to have a duplicate sample or split of any sample  
25 taken during the inspection if the duplicate or split of any sample would  
26 not prohibit an analysis from being conducted or render an analysis  
27 inconclusive.

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

30 Renumber to conform

31 Page 3, between lines 24 and 25, insert:

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

