

REFERENCE TITLE: **environmental remediation; liability; release**

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2128

Introduced by
Representative Bliss

AN ACT

AMENDING SECTIONS 49-281, 49-282, 49-285.01, 49-289.03 AND 49-292, ARIZONA REVISED STATUTES; RELATING TO ENVIRONMENTAL REMEDIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 49-281, Arizona Revised Statutes, is amended to
3 read:

4 **49-281. Definitions**

5 In this article, unless the context otherwise requires:

6 1. "Applicant" means any individual, employee, officer, managing
7 body, trust, firm, joint stock company, consortium, public or private
8 corporation, including a government corporation, partnership or
9 association, this state, a political subdivision of this state, or a
10 commission of the United States government or a federal facility, an
11 interstate body or any other entity that applies for a settlement under
12 either section 49-292.01 or 49-292.02.

13 2. "Community" means the broad spectrum of persons determined by
14 the director to be within an existing or proposed site placed on the
15 registry pursuant to section 49-287.01.

16 3. "Community involvement area" means the geographical area that is
17 within a site placed on the registry pursuant to section 49-287.01 and
18 additional geographic areas as found appropriate in the director's
19 discretion.

20 4. "Dispose" means the deposit, injection, dumping, spilling,
21 leaking or placing of any pollutant into or on any land or water so that
22 the pollutant or any constituent of the pollutant may enter the
23 environment or be discharged into any waters, including aquifers.

24 5. "Eligible party" means a person who enters into a written
25 agreement with the director to implement and complete a remedial
26 investigation and feasibility study with respect to a site or portion of a
27 site that was on the annual priority list on May 1, 1997 or any other
28 person who incurs costs for a remedial action that is in substantial
29 compliance with section 49-282.06 as determined by the director.

30 6. "Facility" means any land, building, installation, structure,
31 equipment, device, conveyance, area, source, activity or practice.

32 7. "Fund" means the water quality assurance revolving fund
33 established by section 49-282.

34 8. "Hazardous substance":

35 (a) Has the same meaning prescribed in section 49-201. **but**

36 (b) Does not include petroleum as defined in section 49-1001,
37 except to the extent that a constituent of petroleum is subject to section
38 49-283.02.

39 9. "Nonrecoverable costs" means any costs incurred by the director
40 after June 30, 1997:

41 (a) That consist of salaries and benefits paid to state employees,
42 including direct and indirect costs, except as specifically provided in
43 section 49-282.05, section 49-285, subsection B, section 49-285.01,
44 section 49-287.01, section 49-287.06, subsection H and section 49-287.07

1 and for epidemiological studies conducted by the department of health
2 services.

3 (b) For activities conducted pursuant to section 49-287.02.

4 (c) For water monitoring activities conducted pursuant to section
5 49-225.

6 (d) For well inspections, but not other remedial actions, to
7 determine whether vertical cross-contamination is resulting from a well
8 pursuant to section 45-605 or 49-282.04.

9 (e) For rulemaking.

10 10. "Orphan shares" means the shares of the cost of a remedial
11 action that are allocated to an identified person who is determined to be
12 a responsible party and that are not paid or otherwise satisfied by that
13 responsible party due to any of the following:

14 (a) The party cannot be located or no longer exists.

15 (b) The party has entered into a qualified business settlement
16 pursuant to this article.

17 (c) The party has entered into a settlement pursuant to this
18 article for an amount that is less than its allocated share.

19 (d) The director has determined that the share allocated to the
20 party is uncollectible.

21 11. "PROSPECTIVE REMEDIATOR" MEANS A PERSON THAT WISHES TO
22 REMEDIATE A SITE BUT THAT DOES NOT WISH TO PURCHASE THE SITE.

23 12. "PROSPECTIVE REMEDIATOR AGREEMENT" MEANS AN AGREEMENT ENTERED
24 INTO BETWEEN THE DEPARTMENT AND A PROSPECTIVE REMEDIATOR THAT MEETS THE
25 REQUIREMENTS OF SECTION 49-285.01.

26 ~~11.~~ 13. "Release" means any spilling, leaking, pumping, pouring,
27 emitting, emptying, discharging, injecting, escaping, leaching, dumping or
28 disposing into the environment but excludes:

29 (a) Any release that results in exposure to persons solely within a
30 workplace, with respect to a claim that such persons may assert against
31 the employer of such persons.

32 (b) Emissions from the engine exhaust of any motor vehicle, rolling
33 stock, aircraft, vessel or pipeline pumping station engine.

34 (c) Release of source MATERIAL, by-product MATERIAL or special
35 nuclear material, as those terms are defined in section 30-651, resulting
36 from the operation of a production or utilization facility as defined in
37 the atomic energy act of 1954 (68 Stat. 919; 42 United States Code
38 sections 2011 through 2297), which is subject to the regulatory authority
39 of the United States nuclear regulatory commission as specified in that
40 act, and the agreement, dated March 30, 1967, entered into between the
41 governor of this state and the United States atomic energy commission
42 pursuant to section 30-656 and section 274 of the atomic energy act of
43 1954, as amended.

44 (d) The normal application of fertilizer.

1 ~~12.~~ 14. "Remedial actions":

2 (a) Means those actions that are reasonable, necessary,
3 cost-effective and technically feasible in the event of the release or
4 threat of release of hazardous substances into the environment, such
5 actions as may be necessary to investigate, monitor, assess and evaluate
6 such release or threat of release, actions of remediation, removal or
7 disposal of hazardous substances or taking such other actions as may be
8 necessary to prevent, minimize or mitigate damage to the public health or
9 welfare or to the environment that may otherwise result from a release or
10 threat of release of a hazardous substance. ~~Remedial actions include~~

11 (b) **INCLUDES** the use of biostimulation with indigenous microbes and
12 bioaugmentation using microbes that are nonpathogenic, that are
13 nonopportunistic and that are naturally occurring. Remedial actions may
14 include community information and participation costs and providing an
15 alternative drinking water supply.

16 ~~13.~~ 15. "Remedy" means a remedial action selected in a record of
17 decision issued pursuant to section 49-287.04.

18 ~~14.~~ 16. "Site" means the geographical areal extent of
19 contamination.

20 ~~15.~~ 17. "Vertical cross-contamination" means the vertical
21 migration of released hazardous substances in groundwater through a well
22 from an aquifer or aquifer layer to another aquifer or aquifer layer.

23 Sec. 2. Section 49-282, Arizona Revised Statutes, is amended to
24 read:

25 **49-282. Water quality assurance revolving fund**

26 A. The water quality assurance revolving fund is established to be
27 administered by the director. The fund consists of monies from the
28 following sources:

29 1. Monies appropriated by the legislature.

30 2. Fertilizer license fees allocated under section 3-272,
31 subsection B, paragraph 2.

32 3. Pesticide registration fees allocated under section 3-351,
33 subsection D, paragraph 2.

34 4. The tax on water use pursuant to section 42-5302.

35 5. Water quality assurance fees collected under section 45-616.

36 6. Industrial discharge registration fees collected under section
37 49-209.

38 7. Hazardous waste facility registration fees collected under
39 section 49-929.

40 8. Hazardous waste resource recovery facility registration fees
41 collected under section 49-930.

42 9. Monies recovered from responsible parties as remedial action
43 costs.

44 10. Monies received as costs for a review of remedial actions at
45 the request of a person other than this state.

1 11. Monies received from the collection of corporate income taxes
2 under title 43, chapter 11, article 2 as prescribed by subsection B of
3 this section.

4 12. Prospective purchaser OR PROSPECTIVE REMEDIATOR agreement fees
5 collected under section 49-285.01.

6 B. The water quality assurance revolving fund shall be assured of
7 an annual funding amount of \$18,000,000. At the beginning of each fiscal
8 year, the state treasurer shall transfer the sum of \$15,000,000 to the
9 water quality assurance revolving fund from the corporate income tax as
10 collected pursuant to title 43, chapter 11, article 2. As custodian of
11 the fund, the director shall certify to the governor, the state treasurer,
12 the president of the senate and the speaker of the house of
13 representatives at the end of that fiscal year the amount of monies
14 deposited in the water quality assurance revolving fund pursuant to
15 subsection A, paragraphs 1 through 8 of this section. At the end of the
16 fiscal year the state treasurer shall adjust the \$15,000,000 transfer of
17 corporate income tax so that, when combined with monies deposited in the
18 fund during that fiscal year pursuant to subsection A, paragraphs 1
19 through 8 of this section, the fund receives \$18,000,000 each fiscal year.
20 This adjustment shall occur as part of the year-end book closing process
21 for that fiscal year. If sufficient monies from the corporate income tax
22 are not available to make any necessary upward adjustments as part of the
23 year-end book closing, the state treasurer shall transfer the monies
24 necessary to achieve the \$18,000,000 funding level from the transaction
25 privilege and severance tax clearing account pursuant to section 42-5029,
26 subsection D, paragraph 4, to the water quality assurance revolving fund.
27 Any transfers prescribed by this subsection shall not be deducted from the
28 net proceeds distributed pursuant to section 43-206.

29 C. At the beginning of each fiscal year, the director of
30 environmental quality shall contract with the department of water
31 resources for the transfer of up to \$800,000 from the water quality
32 assurance revolving fund to the Arizona water quality fund established by
33 section 45-618 for support services for the water quality assurance
34 revolving fund program. The support services provided for the water
35 quality assurance revolving fund program shall be determined by the
36 director of water resources in consultation with the director of
37 environmental quality.

38 D. Monies in the fund are exempt from lapsing under section 35-190.
39 Interest earned on monies in the fund shall be credited to the fund.

40 E. Monies from the water quality assurance revolving fund shall be
41 used for the following purposes:

42 1. To provide state matching monies or to meet such other
43 obligations as are prescribed by section 104 of CERCLA.

44 2. For all reasonable and necessary costs to implement this
45 article, including:

- 1 (a) Taking remedial actions.
- 2 (b) Conducting investigations of an area to determine if a release
- 3 or a threatened release of a hazardous substance exists.
- 4 (c) Conducting remedial investigations, feasibility studies, health
- 5 effect studies and risk assessments.
- 6 (d) Identifying and investigating potentially responsible parties
- 7 and allocating liability among the responsible parties.
- 8 (e) Funding orphan shares.
- 9 (f) Participating in the allocation process, administrative appeals
- 10 and court actions.
- 11 (g) Funding the community advisory boards and other community
- 12 involvement activities.
- 13 (h) Remediating pollutants if necessary to remediate a hazardous
- 14 substance.
- 15 3. For the reasonable and necessary costs of monitoring, assessing,
- 16 identifying, locating and evaluating the degradation, destruction, loss of
- 17 or threat to the waters of the state resulting from a release of a
- 18 hazardous substance to the environment.
- 19 4. For the reasonable and necessary costs of administering the
- 20 fund.
- 21 5. For the reasonable and necessary costs of administering the
- 22 industrial discharge registration program under section 49-209.
- 23 6. For the costs of the water quality monitoring program described
- 24 in section 49-225.
- 25 7. For compliance monitoring, investigation and enforcement
- 26 activities pertaining to generating, transporting, treating, storing and
- 27 disposing of hazardous waste. The amount to be used pursuant to chapter 5
- 28 of this title is limited to the amount received in the prior fiscal year
- 29 from the hazardous waste facility registration fee.
- 30 8. For emergency response use as prescribed in section 49-282.02.
- 31 9. For all reasonable and necessary costs of the preparation and
- 32 execution of prospective purchaser agreements.
- 33 10. For all reasonable and necessary costs of the voluntary
- 34 remediation program.
- 35 11. To reimburse a political subdivision of this state for its
- 36 reasonable, necessary and cost-effective remedial action costs incurred in
- 37 response to a release or threat of a release of a hazardous substance or
- 38 pollutants that presents an immediate and substantial endangerment to the
- 39 public health or the environment. The political subdivision is not
- 40 eligible for reimbursement until it has taken all reasonable efforts to
- 41 obtain reimbursement from the responsible party and the federal
- 42 government. Not more than \$250,000 may be spent from the fund for this
- 43 purpose in any fiscal year.
- 44 12. For all reasonable and necessary costs incurred by the
- 45 department pursuant to section 49-282.04 and the department of water

1 resources pursuant to section 45-605 for well inspections, remedial
2 actions and review and approval of well construction necessary to prevent
3 vertical cross-contamination. The director of environmental quality and
4 the director of water resources shall enter into an agreement for the
5 transfer of these costs.

6 13. For actions that are taken pursuant to section 49-282.03 before
7 the selection of a remedy.

8 14. For the reasonable and necessary costs of the conveyance, use
9 or discharge of water remediated as part of a remedy under this article.

10 15. For the reasonable and necessary costs incurred by the
11 department of health services at the request of the director of
12 environmental quality to assess and evaluate the effect of a release or
13 threatened release of hazardous substances to the public health or welfare
14 and the environment. The director of environmental quality and the
15 director of the department of health services shall enter into an
16 agreement for the transfer of these costs. The assessment and evaluation
17 by the department of health services may include:

18 (a) Performing health effect studies and risk assessments.
19 (b) Evaluating and calculating cleanup standards.
20 (c) Assisting in communicating health and risk issues to the
21 public.

22 16. For the reasonable and necessary costs incurred by the
23 department of law to provide legal services at the request of the director
24 of environmental quality.

25 17. For the reasonable and necessary costs of contracting for the
26 goods and services to enable the director to implement this article.

27 18. For remediation demonstration projects that use bioremediation
28 or other alternative technologies. The department may not use more than
29 \$500,000 in a fiscal year pursuant to this paragraph.

30 F. Any political subdivision of this state that uses, used or may
31 use waters of the state for drinking water purposes or any state agency,
32 regardless of whether the political subdivision or state agency is a
33 responsible party, may apply to the director for monies from the fund to
34 be used for remedial action. An application to the fund for remedial
35 action costs shall not be treated as an admission that a political
36 subdivision or an agency of this state is a responsible party, but a
37 political subdivision or a state agency that is a responsible party is
38 liable for remedial action costs in the same manner, including
39 reimbursement of the fund, as any other responsible party. The political
40 subdivision shall commit a local matching amount at least equal to the
41 amount sought from the fund.

42 G. The director of environmental quality shall prepare and submit a
43 budget for the water quality assurance revolving fund program and the
44 director of water resources shall prepare and submit a budget for the
45 Arizona water quality fund with the departments' budgets that are required

1 pursuant to section 35-111. The committees on appropriations of the house
2 of representatives and the senate shall review the water quality assurance
3 revolving fund budget and the Arizona water quality fund budget to ensure
4 that the departments' expenditures are made in accordance with the
5 legislature's intent and that the departments are making adequate progress
6 toward accomplishing that intent.

7 Sec. 3. Section 49-285.01, Arizona Revised Statutes, is amended to
8 read:

9 **49-285.01. Prospective purchaser or prospective remediator
10 agreements; assignment; notice; fees; rules**

11 A. The department may provide, pursuant to section 49-292, to a
12 prospective purchaser of a facility **OR A PROSPECTIVE REMEDIATOR OF A SITE**
13 a written release and a covenant not to sue and may also agree to seek an
14 order of the court granting approval of a settlement that includes
15 immunity from contribution claims for any potential liability for existing
16 contamination under this article or CERCLA if all of the following
17 conditions are met:

18 1. The facility is within a site identified on the registry
19 maintained by the department pursuant to section 49-287.01 or the
20 department has been provided sufficient information to reasonably identify
21 the extent of the contamination at the facility.

22 2. The person is not currently liable for an existing or threatened
23 release of a hazardous substance at the facility.

24 3. The proposed redevelopment or reuse of the facility will not
25 contribute to or exacerbate existing known contamination or unreasonably
26 interfere with remedial measures necessary at the facility or cause the
27 contamination to present a substantial health risk to the public.

28 4. The agreement will provide a substantial public benefit that may
29 include any of the following:

30 (a) An agreement by the prospective purchaser **OR PROSPECTIVE**
31 **REMEDIATOR** to provide substantial funding or other resources to perform or
32 facilitate remedial measures at the facility pursuant to this chapter.

33 (b) An agreement by the prospective purchaser **OR PROSPECTIVE**
34 **REMEDIATOR** to perform substantial remedial measures at the facility
35 pursuant to this chapter.

36 (c) Productive reuse of a vacant or abandoned industrial or
37 commercial facility.

38 (d) Development of a facility by a governmental entity or nonprofit
39 organization to address an important public purpose.

40 (e) Creation of conservation or recreation areas.

41 5. The department consults with local planning and zoning
42 authorities with jurisdiction over the facility and considers reasonably
43 anticipated future land uses at the facility and surrounding properties.

44 B. If the prospective purchaser **OR PROSPECTIVE REMEDIATOR** of a
45 facility is affiliated with any other person who is a party responsible

1 for the release or threatened release of a hazardous substance under this
2 chapter, through any familial relationship or any corporate or contractual
3 relationship other than a contract to protect a security interest, the
4 director may refuse to provide a written release or covenant not to sue or
5 may refuse to seek an order of the court granting immunity from
6 contribution claims under this section.

7 C. An agreement between the department and a prospective purchaser
8 **OR PROSPECTIVE REMEDIATOR** shall include provisions deemed necessary by the
9 department and may include:

10 1. A representation by the prospective purchaser **OR PROSPECTIVE**
11 **REMEDIATOR** that the purchaser **OR PROSPECTIVE REMEDIATOR** did not cause or
12 contribute to the contamination or otherwise cause or contribute to a
13 release or threatened release of a hazardous substance at the property
14 before the purchaser acquired title.

15 2. If the prospective purchaser **OR PROSPECTIVE REMEDIATOR** does not
16 undertake remedial action, a representation that the purchaser **OR**
17 **PROSPECTIVE REMEDIATOR** will not exacerbate or contribute to the existing
18 contamination.

19 3. An agreement that any activity that the prospective purchaser **OR**
20 **PROSPECTIVE REMEDIATOR** may conduct or direct on the contaminated property
21 will not unreasonably interfere with any ongoing remedial actions that are
22 being performed by a responsible party or the department and that the
23 purchaser **OR PROSPECTIVE REMEDIATOR** will cooperate with those activities.

24 4. An agreement to undertake those measures that constitute a
25 public benefit as prescribed by subsection A, paragraph 4 of this section.

26 5. If remedial measures are to be performed under the agreement, an
27 agreement to perform those measures in compliance with the applicable
28 statutes and rules, including sections 49-151 and 49-152, and if pursuant
29 to a consent judgment, under the department's supervision.

30 6. Unless the contamination was caused by this state, a waiver by
31 the person of any claim or cause of action against this state that arises
32 from contamination at the facility that exists as of the date of
33 acquisition of ownership or operation of the facility **OR AS OF THE DATE OF**
34 **THE PROSPECTIVE REMEDIATOR AGREEMENT**.

35 7. A grant of an easement to the department and its authorized
36 representatives for purposes of ensuring compliance with the agreement or
37 for remedial measures authorized pursuant to this article in connection
38 with contamination at the facility as of the date of acquisition of
39 ownership or operation of the facility **OR AS OF THE DATE OF THE**
40 **PROSPECTIVE REMEDIATOR AGREEMENT**.

41 8. A reservation of rights as to any person who is not a party to
42 the agreement.

43 9. The legal description of the property.

1 10. In any case in which the state conducts remedial actions and
2 there are unrecovered response costs at a property for which the
3 prospective purchaser is not liable, the state as a condition of the
4 agreement may impose a lien ~~upon~~ ON that property for the unrecovered
5 costs. The priority of the lien is as of the date the lien is recorded in
6 the county where the property is located. The lien becomes due on the
7 sale, assignment or transfer of the property by the prospective purchaser
8 unless the new purchaser, assignee or transferor accepts and assumes the
9 lien as a personal obligation with the department's prior written
10 agreement.

11 D. Subject to satisfactory performance of the obligations under the
12 agreement, the prospective purchaser OR PROSPECTIVE REMEDIATOR is not
13 liable to this state under this article for any release of a hazardous
14 substance at the facility that exists on the date of acquisition of
15 ownership or operation of the facility OR ON THE DATE OF THE PROSPECTIVE
16 REMEDIATOR AGREEMENT. The person shall bear the burden of proving that
17 any hazardous substance existed on the facility as a result of releases of
18 the hazardous substance before the date of acquisition of ownership or
19 operation of the facility OR BEFORE THE DATE OF THE PROSPECTIVE REMEDIATOR
20 AGREEMENT. This release from liability may be voided by the director if
21 the person fails to perform any of the provisions of the prospective
22 purchaser OR PROSPECTIVE REMEDIATOR agreement.

23 E. The purchaser OR PROSPECTIVE REMEDIATOR shall provide written
24 notice to the department of any sale, assignment or other transfer of the
25 property at least fifteen business days before the date of the transfer.

26 F. An agreement pursuant to this section is assignable if the
27 assignee qualifies pursuant to subsections A and B of this section for a
28 prospective purchaser OR PROSPECTIVE REMEDIATOR agreement under this
29 section and notice is given to the department as prescribed by subsection
30 E of this section. On assignment, the assignee assumes the obligations
31 and the benefits of the agreement. Unless the assignor has breached the
32 agreement, the assignor retains the benefits of the agreement.

33 G. The department shall provide notice of a prospective purchaser
34 OR PROSPECTIVE REMEDIATOR agreement by publication in a newspaper of
35 general circulation in the county in which the property is located at
36 least fifteen business days before the execution of a prospective
37 purchaser OR PROSPECTIVE REMEDIATOR agreement. The notice shall include a
38 general description of the contents of the agreement. Any interested
39 person may comment on the proposed agreement in writing to the director.

40 H. The department may charge a reasonable fee for the preparation
41 and execution of a prospective purchaser OR PROSPECTIVE REMEDIATOR
42 agreement. The director may adopt rules to implement this section.

1 Sec. 4. Section 49-289.03, Arizona Revised Statutes, is amended to
2 read:

3 49-289.03. Community involvement plan; community advisory
4 boards; rules

5 A. The public shall receive notice and be provided an opportunity
6 to comment to the director regarding the following actions taken by the
7 director:

8 1. The placement of a site on the registry as provided in section
9 49-287.01.

10 2. The selection of a remedy as provided in section 49-287.04.

11 3. Entering into a prospective purchaser **OR PROSPECTIVE REMEDIATOR**
12 agreement with a person pursuant to section 49-285.01.

13 4. Entering into a settlement with a responsible party pursuant to
14 section 49-292, 49-292.01 or 49-292.02.

15 B. The director shall adopt rules to implement this section and to
16 govern providing information to communities and community involvement
17 areas that include how to disseminate information, the location of public
18 information repositories and notice requirements.

19 C. Before it implements a remedial investigation as provided in
20 section 49-287.03, subsection D the department shall develop a community
21 involvement plan for each site that does all of the following:

22 1. Establishes a community advisory board.

23 2. Designates a spokesperson to inform the public and to act as a
24 liaison between the department, the local government and the responsible
25 party.

26 3. Provides for newsletters with current information about the
27 status of remedial action at the site and other pertinent information to
28 be distributed to residents within the site.

29 4. Schedules community advisory board meetings.

30 D. A selection committee shall be established for each site that is
31 required to have a community involvement plan pursuant to section
32 49-287.03, subsection D. The selection committee shall consist of the
33 following members:

34 1. One representative of the department.

35 2. One representative of a potentially responsible party, an owner
36 or operator of a facility within the site or an affected business or
37 industry.

38 3. One local elected official.

39 4. Two community members who are not employees of any responsible
40 party, the department or the local government.

41 E. Each community advisory board shall advise the department, the
42 public and the responsible parties of issues, concerns and opportunities
43 related to the expeditious cleanup of the site. Each community advisory
44 board shall be composed of at least five but not more than twenty members.
45 The members of the community advisory board shall be chosen to represent a

1 diversified cross section of the community with an appropriate balance of
2 interested parties and affected groups. Applications for membership on
3 the community advisory board and the names of the applicants shall be
4 publicly available. Community advisory board members may serve on more
5 than one community advisory board and multiple sites may share a community
6 advisory board to avoid unnecessary multiple boards.

7 F. Each community advisory board shall:

8 1. Within ninety days after appointment of members by the selection
9 committee, elect cochairpersons and other officers if needed and shall
10 develop a charter defining at a minimum operating procedures, membership
11 terms and obligations, goals for developing issues, concerns and
12 opportunities related to expeditious cleanup of the site, and any other
13 anticipated activities of the board for identifying and improving the
14 public's access and understanding of information regarding the remediation
15 processes at the site.

16 2. In response to site activities or a request from a community
17 advisory board member or a city, town or county in which the site is
18 located, meet with the department and any identified responsible parties
19 to receive site briefings, progress reports and other pertinent
20 information.

21 3. Coordinate with the department to establish local repositories
22 for the dissemination of information about the site.

23 G. Each community advisory board may:

24 1. Make site visits and participate in public meetings related to
25 cleanup opportunities and remedy selection decisions.

26 2. Participate in an annual meeting held by the department in each
27 county that has a site undergoing a remedial investigation and feasibility
28 study under section 49-287.03 or in the process of selecting or
29 implementing a remedy for the purpose of facilitating public involvement
30 and identifying funding priorities for site cleanups.

31 Sec. 5. Section 49-292, Arizona Revised Statutes, is amended to
32 read:

33 **49-292. Settlement; authority and effect**

34 A. The director shall consider any offer of settlement by a person
35 ~~who~~ THAT is potentially liable for remedial action costs under this
36 article and CERCLA. The director shall consider the factors in section
37 49-282.06 and section 49-285, subsections E and F in determining whether
38 to settle any person's liability. In determining the settlement amount,
39 the director shall take into account any past costs incurred for remedial
40 actions at the site by the person. Costs of remedial actions that are
41 incurred by an eligible party as defined in section 49-281, that are or
42 have been approved by the director pursuant to section 49-285, subsection
43 B and that are conducted under the oversight of the director shall be used
44 as a credit against that eligible party's liability. ~~Nothing in~~ This
45 section ~~requires~~ DOES NOT REQUIRE the director to reimburse from the fund

1 the orphan share of costs of approved remedial actions incurred by an
2 eligible party before June 30, 1997. The director may enter into a
3 settlement agreement or consent decree with a potentially responsible
4 party or with a prospective purchaser **OR PROSPECTIVE REMEDIATOR** pursuant
5 to section 49-285.01 without making an express finding in the settlement
6 agreement or consent decree regarding an imminent and substantial
7 endangerment to the public health or welfare, the waters of this state or
8 the environment.

9 B. In any settlement agreement or consent decree entered into
10 pursuant to subsection A of this section, the director may provide any
11 potentially responsible party with a covenant not to sue concerning any
12 liability to **the THIS** state under this article or under CERCLA, including
13 future liability that may result from a release or threat of a release of
14 a hazardous substance addressed by a remedial action, whether that action
15 is on site or off site. A covenant not to sue takes effect when the
16 settlement agreement or consent decree becomes final. A covenant not to
17 sue with respect to future liability shall include an exception that
18 allows the director to sue the responsible party concerning future
19 liability from the release or threatened release that is the subject of
20 the covenant if the liability arises out of conditions that are unknown to
21 the director at the time the director enters into the covenant. A
22 covenant not to sue does not preclude the director from suing the
23 potentially responsible party for failure to comply with the terms of the
24 settlement agreement or consent decree in which the covenant was included.

25 C. A potentially responsible party **who THAT** has resolved its
26 liability to **the THIS** state that arises from this article or from CERCLA
27 in a judicially approved consent decree is not liable for claims for
28 contribution or cost recovery regarding matters addressed in the consent
29 decree. Any such judicially approved consent decree does not discharge
30 other potentially responsible parties unless its terms so provide, but
31 such a settlement does reduce the potential liability of other potentially
32 responsible parties by the amount of the settlement. If a potentially
33 responsible party receives an allocation pursuant to section 49-287.06 or
34 49-287.07 that is less than the amount the potentially responsible party
35 agreed to pay **the THIS** state pursuant to a settlement agreement or consent
36 decree, the excess amount paid by the potentially responsible party shall
37 be credited to the fund. Any payment by a potentially responsible party
38 in excess of the allocation shall not reduce the proportionate liability
39 of any other potentially responsible party.

40 D. If **the THIS** state has obtained less than complete relief from a
41 potentially responsible party **who THAT** has resolved its liability to **the**
42 **THIS** state, **the THIS** state may bring an action against any other
43 potentially responsible party pursuant to section 49-287.07 **who THAT** has
44 not so resolved its liability.

1 E. A potentially responsible party ~~who~~ THAT has resolved its
2 liability to ~~the~~ THIS state may seek contribution for matters addressed in
3 the settlement from any person ~~who~~ THAT is not a party to a settlement
4 entered into under this section.

5 F. In any action under this section, the rights of any potentially
6 responsible party ~~who~~ THAT has resolved its liability to ~~the~~ THIS state in
7 a judicially approved consent decree or a settlement agreement are
8 subordinate to the rights of ~~the~~ THIS state for matters addressed in the
9 settlement agreement or consent decree, unless otherwise provided in the
10 settlement agreement or consent decree. If a potentially responsible
11 party ~~who~~ THAT has resolved its liability to ~~the~~ THIS state in a
12 settlement agreement or a consent decree provides written notice to the
13 department that it has initiated a lawsuit to recover some or all of its
14 remedial action costs from other potentially responsible parties, the
15 department within thirty days shall provide written notice to the party
16 filing the lawsuit of the department's intent to assert any superior
17 claims the department may have against the other potentially responsible
18 parties. If practicable, the written notice shall include the anticipated
19 dollar amount of the department's claims against each party.

20 G. The court shall not approve a consent decree entered into
21 pursuant to this section for a period of thirty days after the date that
22 notice of the terms of the consent decree is provided to the public to
23 allow for public comment. Any comment shall be filed with the court and a
24 copy shall be sent by mail to the director and to the settling party.
25 After the expiration of the ~~thirty-day~~ THIRTY-DAY public comment period,
26 the director through the attorney general may petition the court for entry
27 of the consent order.

28 H. A person's decision to enter into a settlement agreement
29 pursuant to this article ~~shall not be construed as~~ IS NOT an admission in
30 any other judicial proceeding as to the fact or extent of that person's
31 liability with respect to the releases or threatened releases that are
32 covered by the settlement.