

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.

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

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

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

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

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

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

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

2. For all reasonable and necessary costs to implement this 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

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

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

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

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

(a) Performing health effect studies and risk assessments.

(b) Evaluating and calculating cleanup standards.

(c) Assisting in communicating health and risk issues to the public.

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

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

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

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

G. The director of environmental quality shall prepare and submit a budget for the water quality assurance revolving fund program and the director of water resources shall prepare and submit a budget for the 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.