

## **§ 49-1001. Definitions**

In this chapter, unless the context otherwise requires:

1. "Being used" means not having been taken out of operation.
2. "Closure" means the removal of an underground storage tank from operation.
3. "Corrective actions" means those actions that are prescribed pursuant to section 49-1005.
4. "Designated representative" means a person to whom an owner or an operator, or both, assign in writing any right, title or interest that the owner or operator, or both, may have in and to the proceeds of a reimbursement for a corrective action made under article 3 of this chapter.
5. "Energy policy act" means the underground storage tank compliance act, title XV, subtitle B of the energy policy act of 2005 ( P.L. 109-58; 119 Stat. 1092), as amended.
6. "Fiduciary" means:
  - (a) A trust company or bank certified or authorized to engage in the trust business pursuant to title 6, chapter 8, article 1.
  - (b) Any person appointed by a court or testamentary act to act as personal representative, executor, trustee, administrator, guardian, conservator, receiver or trustee in bankruptcy.
  - (c) Any person acting as a trustee of a deed of trust pursuant to section 33-803.
  - (d) Any person acting as a trustee pursuant to title 14, chapter 7.
  - (e) Any person acting pursuant to and subject to fiduciary obligations under the employee retirement income security act of 1974 ( 29 United States Code sections 1101 through 1114).
7. "Guarantor" means a person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this chapter.
8. "Motor fuel" means petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine.

9. "New piping component" means any underground pipe or combination of pipes that contains and conveys a regulated substance between a tank and a motor fuel dispenser, including any valve, elbow, connector or joint that is added to an underground storage tank on or after January 1, 2009 and that was not originally included or installed as part of the underground storage tank.

10. "Occurrence" means an incident or accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

11. "Operator" means a person in control of, or having responsibility for, the day-to-day operation of an underground storage tank.

12. "Out of operation" means having been closed in accordance with all applicable fire codes and other statutory and regulatory requirements for closure in effect on the date that closure was accomplished.

13. "Person" means an individual, trust, firm, joint stock company, corporation, joint venture, partnership, association, consortium, state, municipality, interstate body, commission, political subdivision of a state and the United States government.

14. "Petroleum" means petroleum, including crude oil or any fraction of crude oil, which is liquid at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute, and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, residual fuel oils, lubricants, jet fuels, distillate fuel oils, petroleum solvents and used oils.

15. "Political subdivision" means a county, city, town or other taxing district other than the state that is authorized to take property by eminent domain.

16. "Regulated substance" means:

(a) Petroleum.

(b) A substance specified in the comprehensive environmental response, compensation, and liability act of 1980 ( P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9601 (14)) but not including a substance regulated as a hazardous waste under the hazardous and solid waste amendments of 1984 ( P.L. 98-616; 98 Stat. 3221).

17. "Release" means a spill, leak, emission, discharge, escape, leach or disposal of a regulated substance from an underground storage tank into groundwater, surface water or soils.

18. "Suspected release" means any of the following:

(a) The discovery by owners and operators or others of released regulated substances at the underground storage tank site or in the surrounding area.

(b) Erratic behavior of regulated substance dispensing equipment, the sudden loss of a regulated substance from an underground storage tank, an unexplained presence of water in the underground storage tank or other extraordinary operating conditions that could reasonably be associated with a release from an underground storage tank and that are observed by owners and operators, unless system equipment is found to be defective but not leaking and is repaired or replaced immediately.

(c) That the monitoring results from a release detection method required under 40 Code of Federal Regulations sections 280.41 and 280.42, this chapter or rules adopted pursuant to this chapter indicate that a release may have occurred unless either of the following occurs:

(i) The monitoring device is found to be defective and is immediately repaired, recalibrated or replaced and additional monitoring data do not confirm the initial result.

(ii) In the case of inventory control, a second month of inventory reconciliation data does not confirm the initial result.

19. "Tank" means a stationary device constructed of wood, concrete, steel, plastic or other nonearthen materials and used to contain regulated substances.

20. "Under-dispenser containment" means a secondary containment device that is beneath a motor fuel dispenser, that is connected to the underground storage tank and that is designed to be liquid tight.

21. "Underground storage tank" means a tank or combination of tanks and underground pipes and impact valves connected to tanks being used or having been used to contain regulated substances and which has at least ten percent of the total volume of the tank and underground portions of pipes connected to the tank underground. Underground storage tank does not mean any of the following:

(a) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) A tank used for storing heating oil for consumptive use on the premises where stored.

(c) A septic tank.

(d) A pipeline facility, including gathering lines, regulated under either:

(i) The natural gas pipeline safety act of 1968 (49 United States Code sections 1671 through 1686).

(ii) The hazardous liquid pipeline safety act of 1979 (49 United States Code section 2001).

(e) An intrastate pipeline facility regulated under a state law comparable to the provisions of law referred to in subdivision (d), item (i) or (ii) of this paragraph .

(f) A surface impoundment, pit, pond or lagoon.

(g) A storm water or wastewater collection system.

(h) A flow-through process tank.

(i) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(j) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated on or above the surface of the floor.

(k) Pipes connected to any of the structures described in subdivisions (a) through (j) of this paragraph .

22. "Volunteer" means a property owner or a person other than an owner or operator that assumes responsibility for corrective actions for a release from an underground storage tank.

(Amended by L. 2015, ch. 247,s. 1, eff. 7/2/2015.)

**§ 49-1001.01. Definition of owner; rules**

A. In this chapter, "owner" of an underground storage tank means a person who either:

1. Holds a legal, equitable, or possessory interest of any kind in an underground storage tank.
2. Held at the time of a release, or immediately before an underground storage tank was last operated, a legal, equitable or possessory interest of any kind in the underground storage tank.

B. A person who acquires ownership or control of property where an underground storage tank is located is not the owner of the underground storage tank if either of the following applies:

1. The person, after conducting a due diligence investigation immediately prior to acquiring ownership of the property, did not know and had no reason to know that the underground storage tank was located on the property. Due diligence shall consist of performing a phase I environmental assessment of the property which meets the requirements of ASTM standard E- 1527-93 or E- 1528-93, or other generally accepted commercial practices or standards for due diligence performed prior to the adoption of this standard.
2. The person has not placed regulated substances in the underground storage tank and has not dispensed regulated substances from the underground storage tank. For the purposes of this paragraph, dispensing does not mean emptying the underground storage tank for purpose of closure.

C. A person who holds indicia of ownership primarily to protect a security interest in either the petroleum underground storage tank or in the property on which the petroleum underground storage tank is or was located but who does not participate in the management of the underground storage tank and who is not otherwise engaged in petroleum refining or marketing is not an owner for purposes of this chapter.

D. A person who holds indicia of ownership as prescribed by subsection C of this section and who acquires ownership or control of a petroleum underground storage tank through foreclosure of the property where a petroleum underground storage tank is located shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release if the person does all of the following:

1. Complies with the notification requirements prescribed by section 49-1002.
  2. Complies with the reporting requirements prescribed by section 49-1004, subsections A and C to the extent that the information is known to the person at the time of the report.
  3. Temporarily or permanently closes the petroleum underground storage tank as prescribed by section 49-1008.
  4. Divests itself of the property in a reasonably prompt manner using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking into consideration all of the facts and circumstances.
- E. A fiduciary is not an owner or operator for purposes of this chapter, except if the appointment of the fiduciary is for the purpose of avoiding liability under this chapter. This subsection does not preclude claims against assets held in an estate, a trust or any other fiduciary capacity that contains an underground storage tank in which regulated substances are placed or dispensed. Those claims may be asserted against a fiduciary in its representative capacity without regard to whether the fiduciary is personally liable, and the liability of the fiduciary is limited to the value of the estate, trust or other property that is held in a fiduciary capacity. A fiduciary may not be a fiduciary and grantor of the same fiduciary estate.
- F. The director may adopt rules to implement subsection E of this section.

**§ 49-1002. Notification requirements; exemptions**

- A. Except as otherwise provided in this section, each owner of an underground storage tank shall notify the department in writing and shall specify the tank's age, size, type, location and use.
- B. For an underground storage tank that was taken out of operation on or before January 1, 1974, regardless of whether the tank was removed from the ground, the owner is exempt from giving notice.
- C. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was removed from the ground, the owner is exempt from giving notice.
- D. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was not removed from the ground, the owner shall specify the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation. These requirements are in addition to the requirements for notice prescribed in subsection A of this section .
- E. For an underground storage tank that was taken out of operation after November 8, 1984 but before December 22, 1988 the director may require the owner to make reasonable efforts to specify the age, size, location and use of the tank, the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation and the date of its removal from operation.
- F. An owner or operator who brings an underground storage tank into operation shall meet the notification requirements of this section at least thirty days before bringing the tank into operation. An owner or operator who brings a new piping component or under-dispenser containment into operation on or after January 1, 2009 shall meet the notification requirements of this section within thirty days after the new piping component or under-dispenser containment is brought into operation.
- G. A person who sells a tank for use as an underground storage tank shall notify the purchaser of the notice requirements of subsection F of this section and shall provide to the department documentation of the notice given .
- H. The notices required by this section shall be made on forms prescribed by the department.

(Amended by L. 2015, ch. 247, s. 2, eff. 7/2/2015.)

**§ 49-1003. Detection of releases; record keeping requirements**

A. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain a release detection system that complies with the requirements of 40 Code of Federal Regulations sections 280.40 through 280.44.

B. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain systematic and complete records of release detection information that complies with the requirements of 40 Code of Federal Regulations section 280.45.

C. The director shall adopt rules establishing release detection requirements and release detection record keeping requirements. The rules adopted pursuant to this subsection shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.



**§ 49-1004. Reporting requirements**

A. The operator and owner of an underground storage tank shall notify the department of each release or suspected release from the tank as soon as practicable but no later than twenty-four hours after the release or suspected release is detected.

B. The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twenty-four hours after the release is detected.

C. Notice by the operator and owner required by this section may be made orally or in writing but shall be followed within fourteen days by a written report to the department that a release or suspected release has been detected. The written report shall specify to the extent known at the time of the report the nature of the release or suspected release, the regulated substance released, the quantity of the release, the period of time over which the release occurred, the initial response and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report. In addition, the written report shall include additional information required by rules that are consistent with federal regulations in effect on the date on which the rules are adopted.

D. The director shall prescribe by rule the reporting, investigation and confirmation actions to be taken in the event of a release or suspected release of a regulated substance from an underground storage tank. Any rules adopted pursuant to this section shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted. Until rules adopted pursuant to this subsection are in effect, reporting, investigation and confirmation actions shall be accomplished in a manner consistent with 40 Code of Federal Regulations sections 280.50 through 280.53.

**§ 49-1005. Corrective action**

A. When a release is discovered the owner and operator of an underground storage tank shall take immediate action to stop the release and to identify and mitigate any fire, explosion or vapor hazard.

B. The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank, except to the extent that this responsibility is limited by section 49-1016, subsection F or section 49-1019, subsection D. A person may take corrective action pursuant to section 49-1016, subsection C.

C. Nothing in this section prevents the director from taking or requiring corrective action pursuant to any other provision of law.

D. Corrective actions shall:

1. Assure the protection of public health and welfare and the environment.
2. To the extent practicable, provide for the control, management or cleanup of regulated substances so as to allow the maximum beneficial use of the water and soil of this state.
3. Be reasonable, necessary, cost-effective and technically feasible.

E. Notwithstanding chapter 2, article 2 of this title, the director may approve a corrective action that may result in water quality exceeding water quality standards after completion of the corrective action, if the director finds that the corrective action meets the requirements of this section. The director's approval pursuant to this section does not affect the classification of an aquifer pursuant to section 49-224. The director shall adopt rules to implement this section. These rules shall include public notice provisions, criteria for the selection of corrective actions, including the level and extent of cleanup and the comparison of corrective action alternatives that may include plume remediation alternatives, monitoring, source control, controlled migration, physical containment and natural attenuation.

F. The director shall prescribe by rule the corrective actions to be taken in the event of a release of a regulated substance from an underground storage tank. Any rules adopted pursuant to this subsection shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted. The director shall adopt rules to permit a risk-based corrective action alternative . Corrective actions shall include requirements regarding:

1. Initial response measures.

2. Initial abatement measures.

3. A site check.

4. Initial site characterization.

5. Removal of free product.

6. Investigations for soil, surface water and groundwater cleanups.

7. Responses to contaminated soil, surface water and groundwater.

G. Corrective actions may include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, that are nonopportunistic and that are naturally occurring.

H. Until rules adopted pursuant to subsection F of this section are in effect, corrective actions shall be accomplished in a manner consistent with and no more stringent than 40 Code of Federal Regulations sections 280.60 through 280.67.

(Amended by L. 2016, ch. 352, s. 15, eff. 8/5/2016.)

**§ 49-1006. Statement of financial responsibility**

A. If required by regulations adopted pursuant to 42 United States Code section 6991b(d) to establish evidence of financial responsibility, an owner and operator shall file with the department a statement of financial responsibility containing evidence that the owner and operator are financially capable of taking the actions required by this chapter.

B. Evidence of financial responsibility required by this section shall be established in a manner prescribed by the director by rule. The rules adopted pursuant to this section shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.

**§ 49-1006.01. Insurance for releases; termination; notice;  
coverage; assistance**

A. Beginning on January 1, 2016 and continuing for twenty-four months, if an owner or operator makes a claim against its insurance or an alternative financial responsibility mechanism for a release and its claim is denied or otherwise not paid, the owner or operator shall provide to the department a copy of the notice of denial or other evidence of nonpayment.

B. If the insurance used to meet the financial responsibility requirements of this chapter is terminated or not renewed, the insurer shall notify the department of the termination or nonrenewal within thirty days after the date of termination or nonrenewal. The notice to the department shall state the name and address of the insured, the date of termination or nonrenewal and the address of the facility that had been insured.

C. Before January 1, 2017 or on the insurance contract renewal date, whichever is earlier, an owner or operator that satisfies financial responsibility requirements through insurance shall have policy coverage that extends to one of the following:

1. The date of the most recent baseline assessment conducted pursuant to section 49-1052 or comparable site characterization as determined by the department.
2. The date of the underground storage tank system installation.
3. The earliest retroactive coverage date of the previous insurance policy or alternative financial responsibility mechanism.

D. The department shall assist an owner or operator in pursuing the owner's or operator's claim against the financial responsibility mechanism and obtaining coverage for a confirmed release from an underground storage tank system that is covered by the mechanism.

(Added by L. 2015, ch. 247, s. 3, eff. 7/2/2015.)

**§ 49-1006.02. Insurance primacy; requirements; fund access**

A. For owners or operators that satisfy financial responsibility requirements through insurance, the following apply:

1. The policy that covers the underground storage tank system at the time the release is discovered shall be primary to eligibility under sections 49-1017 and 49-1054.
2. The owner or operator is not required to exhaust insurance coverage in order to be eligible under sections 49-1017 and 49-1054.
3. except as provided in subsection c of this section, eligibility under sections 49-1017 and 49-1054 is contingent on filing a timely insurance claim under the policy and pursuing that claim until a denial is received or, after assistance from the department as prescribed in section 49-1006.01, subsection D, until the department determines that the claim has been constructively denied.
4. An owner or operator that fails to pursue an insurance claim is no longer eligible under sections 49-1017 and 49-1054.

B. An owner or operator that satisfies financial responsibility requirements through insurance and that will not receive payment from its insurance provider until after the expenditure of at least fifty thousand dollars per facility as provided in an insurance policy that is in effect on April 1, 2015 or that satisfies financial responsibility requirements through an alternative financial responsibility mechanism is eligible under sections 49-1017 and 49-1054 after meeting a cost sharing obligation by payment of the first fifty thousand dollars per facility for work that is conducted on or after January 1, 2016. This eligibility is subject to the limits prescribed in section 49-1054, subsection A and is subject to the preapproval process prescribed in section 49-1051. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, eligibility pursuant to this subsection for owners or operators that meet financial responsibility requirements through insurance is contingent on providing timely notice of the release to the insurance carrier under the policy and that eligibility ends on the date that the insurer is obligated to provide payment under the policy.

C. AN OWNER OR OPERATOR THAT SATISFIES FINANCIAL RESPONSIBILITY REQUIREMENTS THROUGH INSURANCE AND THAT HAD A RELEASE REPORTED BETWEEN JULY 1, 2006 AND DECEMBER 31, 2015, THAT REQUIRES ADDITIONAL CORRECTIVE ACTION IS ELIGIBLE UNDER SECTIONS 49-1017 AND 49-1054 SUBJECT TO THE PREAPPROVAL PROCESS PRESCRIBED IN SECTION 49-1051 WITHOUT

FILING A TIMELY CLAIM AGAINST ITS INSURANCE CARRIER IF THE OWNER OR OPERATOR WAS IN COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS AT THE TIME OF THE RELEASE. THE MAXIMUM AMOUNT ELIGIBLE FOR REIMBURSEMENT UNDER THIS SUBSECTION IS FIVE HUNDRED THOUSAND DOLLARS PER FACILITY AFTER MEETING A COST SHARING OBLIGATION BY PAYMENT OF THE FIRST FIFTY THOUSAND DOLLARS PER FACILITY FOR WORK CONDUCTED ON OR AFTER JANUARY 1, 2016 AND WITHOUT ANY REDUCTIONS FOR PAYMENTS MADE PURSUANT TO LAWS 2015, CHAPTER 247, SECTION 25, AS AMENDED BY SECTION 2 OF THIS ACT.

(Amended by L. 2018, ch. 299,s. 1, eff. 8/3/2018. Added by L. 2015, ch. 247,s. 3, eff. 7/2/2015.)

**§ 49-1007. Liability of guarantors**

A. If the owner or operator of an underground storage tank files for protection under the federal bankruptcy laws and with reasonable diligence jurisdiction in a state court or the federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided pursuant to section 49-1006 may be asserted directly against the guarantor. In the case of an action pursuant to this section, the guarantor may invoke all rights and defenses which would have been available to the owner or operator against the claimant if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

B. The total liability of any guarantor is limited to the aggregate amount which the guarantor provides to the owner or operator as evidence of financial responsibility and which the owner or operator provides to the department pursuant to section 49-1006.

C. Nothing in this section shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of a guarantor for bad faith either in negotiating or in failing to negotiate the settlement of a claim.

D. Nothing in this section shall be construed to diminish the liability of a person under the comprehensive environmental response, compensation, and liability act of 1980 ( P.L. 96-510; 94 Stat. 2769; 42 United States Code sections 9607 or 9611) or other applicable law.



**§ 49-1008. Closure**

The temporary closure, permanent closure and change in service of an underground storage tank shall be accomplished in a safe and secure manner which prevents releases of regulated substances. The director shall prescribe by rule standards for these activities. Any rules adopted pursuant to this section shall be consistent with the federal regulations in effect on the date on which the rules are adopted. Until the rules adopted pursuant to this section are in effect, a temporary closure, permanent closure or change in service shall be accomplished in a manner consistent with 40 Code of Federal Regulations parts 280.70 through 280.74.

**§ 49-1009. [Effective Until ninety days after adjournment] Tank performance standards**

A. A person shall not install an underground storage tank unless the underground storage tank meets all of the following requirements:

1. It is designed to prevent releases due to corrosion or structural failure for the operational life of the tank.
2. It is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release of a regulated substance.
3. The material used in the construction or lining of the tank is compatible with the substance to be stored.

B. Beginning January 1, 2009, a person shall not install an underground storage tank unless the underground storage tank meets the secondary containment and release detection requirements for hazardous substance underground storage tank systems in 40 Code of Federal Regulations section 280.42 and the interstitial monitoring requirements in 40 Code of Federal Regulations section 280.43, subsection G.

C. Beginning January 1, 2009, a person shall not install a new piping component that is twenty-five per cent or more of the total linear footage of all connected piping of the underground storage tank unless all connected piping of the underground storage tank that conveys a regulated substance under pressure is brought into compliance with the secondary containment and release detection requirements for hazardous substance underground storage tank systems in 40 Code of Federal Regulations section 280.42 and the interstitial monitoring requirements in 40 Code of Federal Regulations section 280.43, subsection G.

D. Beginning January 1, 2009, an owner or operator who installs or replaces a motor fuel dispenser that connects to an underground storage tank shall install under-dispenser containment. The under-dispenser containment shall meet the release detection requirements of 40 Code of Federal Regulations section 280.42, subsection B, paragraph 1.

E. The owner and operator of an underground storage tank shall use an underground storage tank, a new piping component, under-dispenser containment and any secondary containment material that is made of or lined with materials that are compatible with the regulated substance stored in or dispensed from the underground storage tank.

**ARS 49-1009 [Effective Until ninety days after adjournment]  
Tank performance standards (Arizona Revised Statutes (2021  
Edition))**

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F. The director may adopt rules specifying design, construction, installation, performance and compatibility standards for underground storage tanks. The rules adopted pursuant to this subsection shall be consistent with and no more stringent than federal regulations in effect on the date on which the rules are adopted.

G. The director may require an owner and operator of an underground storage tank to perform or cause to be performed a tank test to determine compliance with the standards established pursuant to this section.

This section is set out more than once. See also A.R.S. § 49-10092, effective ninety days after adjournment.

**§ 49-1009. [Effective ninety days after adjournment] Tank performance standards**

A. A person shall not install an underground storage tank unless the underground storage tank meets all of the following requirements:

1. It is designed to prevent releases due to corrosion or structural failure for the operational life of the tank.
2. It is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release of a regulated substance.
3. The material used in the construction or lining of the tank is compatible with the substance to be stored.

B. A person shall not install an underground storage tank unless the underground storage tank meets the secondary containment performance standards for new underground storage tank systems prescribed in 40 Code of FEDERAL REGULATIONS section 280.20 as in EFFECT on January 1, 2020 and release detection requirements for interstitial monitoring in 40 Code of Federal Regulations section 280.43(g) as in effect on January 1, 2020.

C. A person shall not install a new piping component that is fifty percent or more of the total linear footage of all connected piping of the underground storage tank unless all connected piping of the underground storage tank that conveys a regulated substance under pressure is brought into compliance with the secondary containment performance standards for new underground storage tank systems prescribed in 40 Code of FEDERAL REGULATIONS section 280.20 as in EFFECT on January 1, 2020 and release detection requirements for interstitial monitoring in 40 Code of Federal Regulations section 280.43(g) as in effect on January 1, 2020.

D. An owner or operator who installs or replaces a dispenser system that connects to an underground storage tank shall install under-dispenser containment. The under-dispenser containment shall meet the performance standards for new underground storage tank systems prescribed in 40 Code of Federal REGULATIONS section 280.20(f) as in EFFECT on January 1, 2020.

E. The owner and operator of an underground storage tank shall use an underground storage tank, a new piping component, under-dispenser containment and any secondary containment material that is made of or

lined with materials that are compatible with the regulated substance stored in or dispensed from the underground storage tank.

F. The director may adopt rules specifying design, construction, installation, performance and compatibility standards for underground storage tanks. The rules adopted pursuant to this subsection shall be consistent with and not more stringent than federal regulations in effect on the date on which the rules are adopted.

G. The director may require an owner and operator of an underground storage tank to perform or cause to be performed a tank test to determine compliance with the standards established pursuant to this section.

(Amended by L. 2021, ch. 37, s. 1, eff. ninety days after adjournment.)

This section is set out more than once. See also A.R.S. § 49-10091, effective until ninety days after adjournment.

**§ 49-1010. Preemption of local regulation; delegation of  
administrative authority**

A. The provisions of this chapter and the rules which implement this chapter, as they relate to the identification, prevention and remediation of releases of regulated substances from underground storage tanks are of statewide concern and shall not be subject to further local regulation.

B. The director, by intergovernmental agreement or otherwise, may delegate to other departments or agencies and to a city, town or county the authority to administer the provisions of and enforce all or any part of this chapter or the rules adopted pursuant to this chapter.

**§ 49-1011. Right to inspect records, tanks and equipment**

A. For the purposes of developing rules, conducting studies or enforcing the provisions of this chapter, an owner or operator of an underground storage tank shall, on request of the director:

1. Furnish to the department information relating to the tank and its associated equipment and contents.
2. Permit the director to conduct monitoring and testing of tanks or surrounding soils, air, surface water or groundwater.
3. Permit the director to inspect and copy all records relating to tanks.
4. Permit the director to inspect and obtain samples of regulated substances contained in tanks.

B. The director shall conduct all inspections permitted pursuant to subsection A at a reasonable time and complete these inspections with reasonable promptness.

**§ 49-1012. Confidentiality of records**

A. Records or other information furnished to or obtained by the director concerning regulated substances are available to the public, except that any records and information which relate to the trade secrets, processes, operations, style of work or apparatus or confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the department in the administration of this chapter unless the owner or operator expressly agrees to their publication or availability to the public. This section does not prohibit the appropriate governmental agency from publishing quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary in this section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this chapter shall be available to the public.

B. This section does not prohibit the department from providing confidential information to a duly authorized congressional committee or the United States environmental protection agency if the information is treated as prescribed by 40 Code of Federal Regulations part 2.



**§ 49-1013. Enforcement and penalties**

A. If the director determines that a person is in violation of this chapter or the rules adopted pursuant to this chapter the director may issue an order requiring compliance within a reasonable time. A compliance order becomes final thirty days after the order is served unless within thirty days of service the person named on the order requests a hearing. A hearing shall be conducted pursuant to title 41, chapter 6, article 10. A compliance order that is the subject of a hearing as prescribed by this section becomes final and subject to appeal on the decision of the director to uphold the compliance order. Except as provided in section 41-1092.08, subsection H, the director's final decision may be appealed by any party to the superior court pursuant to title 12, chapter 7, article 6. A person becomes the subject of an enforcement proceeding pursuant to this chapter when a compliance order against that person becomes final.

B. If the director issues a stop use order pursuant to section 49-1023, the owner or operator may request a hearing within thirty days after the issuance of the stop use order. A hearing shall be conducted pursuant to title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, the director's final decision may be appealed by the owner or operator to the superior court pursuant to title 12, chapter 7, article 6.

C. If a person fails to comply with a final order under this section within the time specified in the order, the person is subject to a civil penalty of not to exceed twenty-five thousand dollars for each day of continued noncompliance.

D. An owner who fails to notify or submits false information pursuant to section 49-1002 is subject to a civil penalty of not to exceed ten thousand dollars for each underground storage tank for which notification is not given or false information is submitted.

E. An owner or operator of an underground storage tank who fails to comply with any of the requirements or standards of this chapter or who fails to comply with a stop use order is subject to a civil penalty of not to exceed ten thousand dollars for each underground storage tank for each day of violation.

F. A product deliverer as defined in section 49-1023 who fails to comply with the requirements of section 49-1023, subsection A is subject to a civil penalty of not to exceed ten thousand dollars for each underground storage tank for each violation.

G. The penalties provided for in this section shall not be cumulated with any penalties sought and obtained by the department or the United States pursuant to title VI of the hazardous and solid waste amendments of 1984 ( P.L. 98-616; 98 Stat. 3221).

H. The director may file an action in the superior court to enforce this chapter and to collect penalties for violations of this chapter. The director may seek all appropriate relief including temporary and permanent injunctions.

I. All monies collected under the penalty provisions of this section shall be deposited in the state general fund.

**§ 49-1014. Rules; policies; guidelines**

A. The director shall adopt rules pursuant to title 41, chapter 6 necessary to provide procedures for the administration of this chapter and to cause the program for the regulation of underground storage tanks established by this chapter to be approved by the administrator of the environmental protection agency pursuant to 42 United States Code section 6991c.

B. The director may establish policies and guidelines for the administration of this chapter, subject to the following:

1. If a substantive policy statement as defined in section 41-1001 or a guideline is issued by the director, the director shall provide written notice to persons regulated by this chapter before the effective date of a policy or guideline that affects the substantive rights of owners and operators or other parties regulated under the underground storage tank program. The written notice shall set forth the effective date of the policy or guideline. The policy or guideline shall not be retroactive or applied retroactively except as specifically authorized by law or by the agreement of the department and the person who is regulated by this chapter.
2. The department shall not base a determination of compliance with the requirements of this chapter in whole or in part on a policy or guideline that is not specifically authorized by statute or rule.

**§ 49-1015. Underground storage tank revolving fund; use;  
purpose**

A. The underground storage tank revolving fund is established and shall be administered by the director. Monies in the fund are exempt from lapsing under section 35-190.

B. The fund consists of monies appropriated by the legislature, underground storage tank tax revenues collected and distributed pursuant to section 49-1036, monies obtained from the fees imposed by this chapter and the rules adopted under this chapter and monies reimbursed to the fund by the department. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Monies from the fund may be used for the following:

1. To provide state matching monies and to meet other obligations as prescribed by section 9003(h)(7)(B) of the solid waste disposal act (42 United States Code section 6991 b (h )(7)(b)).
2. For all the reasonable and necessary costs incurred in taking corrective actions pursuant to section 49-1017 and noncorrective actions pursuant to section 49-1017.02.
3. For the costs of recovering the expenses of corrective actions pursuant to section 49-1017 and noncorrective actions pursuant to section 49-1017.02.
4. To provide reimbursement for eligible costs.
5. For the costs incurred in administering the regulatory requirements of this chapter.
6. To reimburse the department for the reasonable and necessary costs incurred by the department in administering the corrective action requirements of this chapter.
7. To reimburse the department for the reasonable and necessary costs incurred by the department in administering underground storage tank grant programs.
8. To reimburse the department for the reasonable and necessary costs incurred by the department in administering the fund. The department may not pay from the fund any costs, payments or other expenses that result from a contract awarded pursuant to this section unless the contract

includes performance standards and contractual penalties for nonperformance or inadequate performance under the contract.

D. The director shall reimburse the fund for any corrective action costs or noncorrective action costs that are paid out of the fund and that are subsequently recovered by the department.

E. Monies in the fund may not be used to implement the water quality assurance revolving fund program pursuant to chapter 2, article 5 of this title.

(Amended by L. 2016, ch. 120,s. 2, eff. 8/5/2016. Added by L. 2015, ch. 247,s. 5, eff. 7/2/2015.)

**§ 49-1015.01. [Repealed]**

(Repealed by L. 2015, ch. 247,s. 4, eff. 7/2/2015. Amended by L. 2013, ch. 244,s. 1, eff. 9/13/2013.)

**§ 49-1016. Responsibilities of owners and operators**

A. Unless specifically indicated otherwise, the responsibilities of this chapter are imposed on the owner and the operator of an underground storage tank. If the owner and operator of an underground storage tank are separate persons, only one person is required to discharge any specific responsibility. Both persons are liable in the event of noncompliance.

B. The liabilities and responsibilities for releases of regulated substances imposed pursuant to this chapter shall apply even if the conduct that resulted in the release or the release itself occurred before August 13, 1986.

C. If a person comes into the possession or control of property where an underground storage tank is located and the person is not the owner as defined in section 49-1001.01, the person shall:

1. Notify the department in writing specifying the tank's location, size and use, if known, if the owner has failed to do so.
2. Notify the department of each release or suspected release from the tank as soon as practicable if the owner or operator has failed to do so.
3. If the person voluntarily undertakes to remove or otherwise close the tank, do so in a safe and secure manner which prevents releases of regulated substances and in accordance with standards prescribed by the director pursuant to section 49-1008, except for the requirement to perform corrective action.
4. If the person voluntarily undertakes corrective action, take corrective action in a manner consistent with federal regulations and rules adopted by the director pursuant to section 49-1005.

D. A person acting under subsection C of this section shall not incur the liability of an owner.

E. No agreement or conveyance shall be effective to transfer the obligations imposed by this chapter from the owner or operator of any underground storage tank, or from any person who may be liable for a release or threat of release under this chapter, to any other person. Nothing in this section shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this chapter nor shall it bar a cause of action that an owner or operator or any other person has or would have against any person.

F. In any action brought by the department under section 49-1013, the state bears the burden of establishing that an owner or operator has violated the

requirements of this chapter. An owner or operator is responsible for only the owner's or operator's contribution to any contamination that creates liability under this chapter. No party bears the burden of proving any person's contribution to the contamination in any informal or formal appeal pursuant to section 49-1017, subsection D, section 49-1019, subsection D or section 49-1091.

G. If there is prima facie evidence that other identified or unidentified persons not at the owner's or operator's facility have contributed to the contamination, the owner or operator shall be responsible to take corrective action only to the extent, by area, of the owner's or operator's release. The owner or operator shall not be required to identify or to prove the contribution of any contributing persons in order to limit the owner's or operator's own liability, but the owner or operator shall provide to the department any information the owner or operator knows regarding the identity or contribution of any other contributing persons. If the owner or operator does not disclose the information prior to the owner's or operator's formal appeal of a decision by the department, upon the department's request, the administrative hearing shall be continued for no more than thirty days from the scheduled hearing date. If who contributed to the contamination cannot be determined by a preponderance of evidence, or if an allocation for some or all of the contamination cannot be established by a preponderance of evidence, the liability that is not established to be the owner's or operator's by a preponderance of the evidence shall not be allocated to the owner or operator.

H. The department may issue a written interim decision or determination compelling owners and operators to allocate liability in accordance with section 49-1019, subsection D if either of the following conditions are met:

1. The owners and operators agree that no other owners or operators are liable for the contamination.
2. The contamination is from a single underground storage tank facility.



**§ 49-1017. Powers of director; corrective actions**

A. The director may take corrective action with respect to a release of a regulated substance that is petroleum into the environment from an underground storage tank if the director determines that action is necessary to protect human health, safety or the environment and any of the following conditions exist:

1. The department cannot locate, within ninety days or a shorter period necessary to protect human health or the environment, a person who is all of the following:

(a) An owner or operator of the tank concerned.

(b) Subject to the corrective action requirements of section 49-1005.

(c) Financially or technically capable of properly carrying out the corrective action required by section 49-1005. If the owner or operator and the department jointly determine that the owner or operator is not financially or technically able to carry out the corrective action, the department and the owner may enter into a contract under which the department acts as manager of the corrective action on behalf of the owner or operator. The existence of a management contract with the department does not relieve the owner of any liability for costs that are not payable by the department under this chapter.

2. Corrective action costs at a facility exceed the amount of coverage required by section 49-1006 and expenditures from the underground storage tank revolving fund are necessary to ensure effective corrective action.

B. In determining whether to take a corrective action pursuant to subsection A of this section, the director shall consider and make written findings regarding all of the following factors:

1. The physical and chemical characteristics of the type of petroleum released, including its toxicity, persistence and potential for migration.

2. The hydrogeologic characteristics of the site where the underground storage tank is located and the surrounding area.

3. The proximity, quality and current and future uses of nearby surface water and groundwater.

4. The potential effects of residual contamination on nearby surface water and groundwater.

5. The degree of exposure.

6. The need for financial assistance.

C. If direct costs are incurred by the director for undertaking corrective action with respect to a release of a regulated substance that is petroleum, the owner and operator are liable to this state for these direct costs. Liability imposed pursuant to this subsection is strict. For the purposes of this subsection, "direct costs" means the cost of the corrective actions, investigations, enforcement and litigation except for those amounts that are not allocated to the owner or operator pursuant to subsection d of this section .

D. If there is more than one responsible person, liability under this section shall be equitably allocated on a case-by-case basis according to section 49-1016, subsection F, and using the following factors as those factors are appropriate under the circumstances:

1. The duration and percentage of ownership or operation of the underground storage tank during a release of regulated substances from the tank.

2. The amount and nature of the regulated substances released.

3. The degree of care exercised by each person with respect to the regulated substances released.

4. The ability to distinguish between the respective releases of more than one responsible person.

5. Other factors that are appropriate under the circumstances.

E. The allocation of liability under this section shall be promptly determined by one or more mediators who shall be selected by the responsible persons within sixty days after the responsible persons are identified by the director. The director may select a mediator and convene a mediation on the failure of the responsible persons to select one or more mediators. The mediator shall not have a conflict of interest with the responsible persons. A mediation convened by the director shall be held within sixty days after the mediator being selected. The director shall provide notice to the responsible persons of the time and place for the mediation and the name of the mediator or mediators. This notice shall be provided at least forty-five days prior to the date scheduled for mediation. Costs of mediation shall be eligible for payment and shall be allocated to participants in the mediation in the same proportion as the costs of corrective action. Nothing in this section shall excuse the obligations of an owner or operator to take timely and adequate

action in response to a release of regulated substances as required in this chapter. Nothing in this section shall diminish the right of any person to bring an action against any other person as provided in section 49-1019 for contribution or reimbursement for the reasonable costs of corrective action that person has been allocated pursuant to this section.

F. The director may take a corrective action with respect to a release of a regulated substance that is not petroleum only as a remedial action subject to chapter 2, article 5 of this title, and the rules adopted pursuant to that article. If the director takes a corrective action for the release of a regulated substance that is not petroleum, all of the rights, duties and responsibilities of a person associated with the release shall be determined pursuant to that article.

G. An owner, operator or other person that meets the requirements of section 49-1016, subsection C may request that the department conduct corrective action under this section. Subject to the availability of monies allocated and the priority assigned to the site pursuant to subsection B of this section, the department may conduct the corrective action.

H. A request for corrective action pursuant to subsection G of this section shall be on a form provided by the department and shall contain sufficient information related to the site and the factors prescribed in subsection B of this section to allow the director to make a determination of priority for that request.

(Amended by L. 2015, ch. 247, s. 6, eff. 7/2/2015.)

**§ 49-1017.01. Settlement authority; participation; financial  
information; process; payment; notice**

A. The director shall consider any offer by an owner or operator who is potentially liable for direct costs incurred by the director pursuant to section 49-1017, subsection C, without regard to the extent of that owner's or operator's liability, if the owner or operator is unable to pay for the direct costs. An owner or operator whose liability for direct costs arose from a criminal act is not eligible to enter into a settlement agreement pursuant to this section. An owner's or operator's decision to enter into a settlement agreement pursuant to this section is not an admission in a judicial proceeding as to the fact or extent of that owner's or operator's liability with respect to releases or threatened releases that are covered by the settlement. An owner or operator who is a party to a settlement pursuant to this section is not required to participate in allocation proceedings pursuant to section 49-1017, subsections D and E. Any settlement approved by the department does not release the owner or operator from any responsibility or duty imposed pursuant to this chapter other than liability for direct costs incurred pursuant to section 49-1017, subsection C.

B. Any settlement approved by the department does not increase the liability of any other owner or operator pursuant to this chapter and does not create any liability for the department or this state.

C. The director shall consider all of the following factors in considering an owner's or operator's ability to pay for the direct costs:

1. The financial resources of the owner or operator, including available financial assurance mechanisms other than the underground storage tank revolving fund .
2. The amount of coverage available to the owner or operator from the underground storage tank revolving fund for the direct costs. As a condition of settlement, the owner or operator shall apply to the underground storage tank revolving fund and any applicable grant program for coverage of the direct costs before requesting settlement pursuant to this section.
3. The owner's or operator's ability to continue in business after payment of the owner's or operator's liability for direct costs as defined in section 49-1017, subsection C.
4. Whether payment of the owner's or operator's liability for direct costs as defined in section 49-1017, subsection C would require the owner or operator to seek protection under the federal bankruptcy law or render the owner or operator insolvent.

5. The financial resources of all concerns in which the owner or operator maintains ownership, control or management.

D. An owner or operator seeking settlement pursuant to subsection A of this section shall submit a letter requesting a financial hardship settlement and shall include the owner's or operator's tax returns and all schedules, financial statements, balance statements and other information concerning the owner's or operator's gross income and net worth for the five years immediately preceding the date of the application. Within ninety days after the receipt of the application, the director may require additional information to verify the owner's or operator's eligibility for settlement pursuant to subsection A of this section. The owner or operator may provide any additional information the owner or operator believes to be relevant to the application. The director shall keep confidential any financial information submitted by the owner or operator pursuant to this subsection. If the director or the attorney general disputes a claim of confidentiality, the director or the attorney general shall provide written notice that the claim is disputed to the owner or operator claiming the confidentiality. The information shall be made available to the public if the owner or operator claiming confidentiality does not file an action for declaratory relief in superior court within thirty days after receiving the notice.

E. The owner or operator shall cooperate with the director in providing reasonable access and information for the director to carry out the requirements of this section as a condition of the settlement.

F. If the director verifies that the owner or operator is unable to pay the direct costs incurred by the director pursuant to section 49-1017, subsection C, the director shall enter into a settlement within ninety days after receipt of the application and any other information required pursuant to this section. The director shall allow the settlement amount to be paid over a period of time that does not exceed ten years. Settlement payments over a period of time are subject to the payment of interest at the rate of six percent a year, except that payments are not subject to interest if the entire settlement amount is paid within five years. The owner or operator may file a petition with the director to modify the payment schedule on a showing of good cause that the payment schedule cannot be met.

G. The director may require that notice of the terms of the settlement agreement be provided to the public to allow for comment for a period of thirty days before the department enters into a settlement agreement. Any interested person may comment on the settlement agreement in writing to the director. The director may withdraw from a settlement agreement after considering the comments.

H. If the director determines that the owner or operator does not qualify for a settlement pursuant to this section, the director shall notify the owner or operator in writing within ninety days after the receipt of all information required pursuant to this section stating the reasons for ineligibility. The application for settlement is deemed denied if the director does not notify the owner or operator within ninety days after the director's receipt of all applicable information. A denial of a settlement application under this subsection constitutes an appealable agency action as defined in section 41-1092. In any administrative appeal hearing conducted pursuant to title 41, chapter 6, article 10, the documents submitted by the owner or operator pursuant to this section are not confidential. Any appeal is limited to the owner's or operator's eligibility for a financial hardship settlement pursuant to this section and the owner's or operator's ability to pay the direct costs incurred by the director pursuant to section 49-1017, subsection C.

(Amended by L. 2015, ch. 247,s. 7, eff. 7/2/2015.)

**§ 49-1017.02. Powers of the director; noncorrective actions**

A. Subject to the availability of monies in the underground storage tank revolving fund that are allocated by the director, an owner, an operator or another person that meets the requirements of section 49-1016, subsection C may request that the department conduct one or more of the following noncorrective actions at a site:

1. Obtaining a baseline assessment of a tank or site as prescribed in section 49-1052.
2. Confirmation of a suspected release at a tank or site.
3. Permanent closure of an underground storage tank as prescribed by section 49-1008.

B. In determining the priority for requests under subsection A of this section, the director may consider the following factors:

1. The age, construction and operational history of the underground storage tank at the site.
2. The hydrogeologic characteristics of the site where the underground storage tank is located and the surrounding area.
3. The proximity, quality and current and future uses of nearby surface water and groundwater.
4. The potential effects of residual contamination to nearby surface water and groundwater.
5. The degree of exposure, including the physical and chemical characteristics of the type of petroleum sold or suspected to have been released, including its toxicity, persistence and potential for migration.
6. The financial ability of the person to conduct the action with the person's own monies.

C. A request for a noncorrective action under this section shall be on a form provided by the department and shall contain sufficient information related to the site and the factors prescribed in subsection b of this section to allow the director to make a determination of priority for that request.

(Added by L. 2015, ch. 247, s. 8, eff. 7/2/2015.)

**§ 49-1018. Corrective action; enforcement; priority**

The director shall give priority in undertaking state-led corrective actions pursuant to section 49-1017 to releases of regulated substances from underground storage tanks that pose the greatest threat to human health and the environment and shall consider the degree to which financial assistance from the department is necessary to ensure that corrective actions will be conducted .

(Amended by L. 2015, ch. 247,s. 9, eff. 7/2/2015.)



**§ 49-1019. Release of regulated substance; causes of action;  
limitation; liability**

A. Any one of the following persons may bring an action in superior court against a person who caused or contributed to the release of a regulated substance from an underground storage tank to require that person to reimburse one of the following persons for the reasonable costs of corrective actions taken in response to the release:

1. An owner or operator of an underground storage tank or any other person who takes a corrective action pursuant to section 49-1005.
2. An owner or operator of an underground storage tank or any other person from whom costs are recovered by this state pursuant to this chapter .

B. The person seeking reimbursement has the burden of demonstrating that the corrective action costs incurred were reasonable.

C. This article does not affect or modify the obligations or liability of a person, by reason of subrogation or otherwise, under any other provision of common law, federal law or the laws of this state, for damages, injury or loss resulting from a release of a regulated substance or for the costs of a corrective action, except that a person who receives compensation for the costs of a corrective action pursuant to this article is precluded from recovering compensation for the same corrective action costs pursuant to any other federal law or the laws of this state. A person who receives compensation for corrective action costs pursuant to federal law or the laws of this state is precluded from receiving compensation for the same corrective action costs as provided in this article.

D. Liability under this section shall be equitably allocated on a case-by-case basis in accordance with section 49-1017, subsection D. Any party authorized to bring an action pursuant to subsection A of this section and any party against whom an action is brought may have liability allocated through mediation in accordance with section 49-1017, subsection D or through the informal appeal process in accordance with section 49-1091.

E. The department may take corrective action for a release and recover direct costs pursuant to section 49-1017 in proportion to the allocation made pursuant to subsection D of this section if an owner or an operator does not perform all necessary corrective actions and there is no other person to perform corrective actions pursuant to section 49-1016, subsection C .

(Amended by L. 2015, ch. 247,s. 10, eff. 7/2/2015.)

**§ 49-1020. Fees**

Each owner and operator of an underground storage tank that is subject to regulation under this chapter shall pay annually to the department a fee of one hundred dollars for each tank. An owner or operator who sold or relinquished legal, equitable or possessory interest in the property on or before January 1, 1990 shall not be responsible to pay the fee prescribed by this section. The director, with the approval of the attorney general, may abate fee balances if the administration costs exceed the amount of the fees due. The fees collected under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the underground storage tank revolving fund established by section 49-1015. The director shall adopt rules to provide for the orderly imposition and collection of the fees imposed by this section.

(Amended by L. 2015, ch. 247, s. 11, eff. 7/2/2015.)

**§ 49-1021. Applicability**

Until rules adopted pursuant to this chapter are in effect, this chapter shall apply only to the extent described by 40 Code of Federal Regulations section 280.10 and the energy policy act. Rules adopted pursuant to this chapter shall apply only to underground storage tanks not excluded or deferred by the federal regulations in effect on the date on which the rules are adopted.

**§ 49-1022. Regulated substance migration off site; responsibility; corrective action; notice; appeal; coverage**

A. The director may undertake corrective action in response to a release from an underground storage tank that migrates on or under a person's property as the result of an occurrence at another property or that the department determines is likely to migrate on or under a person's property, if all of the following occur:

1. The person has authority to allow access to the property so that corrective action may be taken on the person's property.
2. The owner or operator of the underground storage tank that is the source of the release makes a written request that the department attempt to obtain access to the property. As part of the written request, the owner or operator shall demonstrate to the department the following before the department attempts to obtain access to the property:
  - (a) The owner or operator has sent and the person has received at least two written requests to allow the owner or operator to have access to the property at reasonable times and under reasonable conditions.
  - (b) The owner or operator has made an offer of reasonable compensation to the person.
  - (c) Contamination is likely to spread or increase in severity if access to the property is not obtained.
3. The person has received a written request from the department to have access to the property, at reasonable times and under reasonable conditions in a manner that does not constitute a taking as provided by law, to take corrective action with respect to only the release that has migrated on that person's property.
4. The person has refused to allow the owner or operator or the department to have access to the property or does not respond to the department within sixty days after receiving the request for access.

B. The department shall issue a notice describing the proposed corrective action to the owner or operator and the person on whose property the department will undertake corrective action if it elects to undertake corrective action pursuant to subsection A of this section. The owner or operator or the person on whose property the department undertakes corrective action may appeal pursuant to title 41, chapter 6, article 10, within thirty days after the notice or within thirty days after the performance of the corrective action. If, after an appeal, it is determined that the department

**ARS 49-1022 Regulated substance migration off site;  
responsibility; corrective action; notice; appeal; coverage  
(Arizona Revised Statutes (2021 Edition))**

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failed to return the property to substantially the same condition the property was in before being accessed, the person on whose property the department undertakes the corrective action may be eligible for payment from the underground storage tank revolving fund only to the extent the department failed to return the property to substantially the same condition the property was in before being accessed.

C. The owner or operator shall reimburse the department for any costs paid from the underground storage tank revolving fund pursuant to this section.

D. The department shall promptly provide to a person whose property is accessed under this section a copy of the results of any analysis of the soil or groundwater relating to the accessed property arising from the department's access or corrective action undertaken at the property. The department shall not sue the person for any secondary contamination created by the access or corrective action.

E. If a release of a regulated substance has migrated on or under a person's property, the department shall relieve the owner or operator of the underground storage tank from responsibility from performing corrective action at the property where the release has migrated or where the department has determined it is likely to have migrated, if the owner or operator is unable to gain access to the property after complying with subsection A, paragraph 2, subdivisions (a) and (b) of this section. Nothing in this section relieves the owner or operator from liability for completing the requirements of section 49-1005 relating to the owner's or operator's property or any other property to which the contamination may have migrated. The department may require that the owner or operator investigate any other properties potentially impacted by the release in order to complete the requirements of section 49-1005.

(Amended by L. 2015, ch. 247, s. 12, eff. 7/2/2015.)

**§ 49-1023. Delivery prohibition; stop use tag; definitions**

A. A product deliverer shall not deliver, deposit or place a regulated substance into an underground storage tank that has a stop use tag from the director affixed to a fill pipe of the underground storage tank pursuant to subsection B of this section.

B. The director may issue a stop use order to the owner and operator of the underground storage tank and affix a stop use tag that is easily visible to the product deliverer on all fill pipes of the underground storage tank to stop operation of the underground storage tank if either of the following exists :

1. The director has determined that the underground storage tank is in violation of section 49-1003 or 49-1009 or the rules adopted pursuant to those sections, as applicable , and the continued operation of the underground storage tank may result in a continued release or new release from the underground storage tank.

2. The director has determined that the underground storage tank is in violation of section 49-1006, 49-1020 or 49-1031 or the rules adopted pursuant to those sections , after providing the owner and operator with thirty days' notice and an opportunity to demonstrate compliance.

C. A stop use order becomes effective immediately on issuance and suspends use of the underground storage tank.

D. The owner and operator of an underground storage tank that has received a stop use tag pursuant to subsection B of this section shall ensure that no person removes or tampers with the stop use tag until the requirements for return of the underground storage tank to operation pursuant to subsection E of this section are met, and shall immediately empty the underground storage tank and comply with the remaining temporary closure requirements adopted under section 49-1008.

E. An owner or operator shall not bring an underground storage tank that has received a stop use tag pursuant to subsection B of this section back into operation until the owner or operator has demonstrated to the director that the underground storage tank meets the requirements of sections 49-1003, 49-1006 and 49-1009 and the rules adopted pursuant to those sections, as applicable, and the owner or operator has received written confirmation from the director that the requirements of sections 49-1003, 49-1006, 49-1009 , 49-1020 and 49-1031 and the rules adopted pursuant to those sections, as applicable, have been met. The director shall provide written confirmation as soon as practicable, but not later than five business days, to the owner or operator that the requirements of sections 49-1003, 49-1006,

49-1009 , 49-1020 and 49-1031 and the rules adopted pursuant to those sections have been met.

F. On issuance of a stop use order, the director shall notify product deliverers by posting on the department's website the name and location of a facility with an underground storage tank that has a stop use tag. The notice shall also specify which underground storage tank at the facility has a stop use tag.

G. The director shall remove the stop use notice from the department's website within five business days after determining that the requirements of subsection E of this section have been met.

H. The director may adopt rules to implement this section.

I. For the purposes of this section:

1. "Product deliverer" means a person, including an owner, operator or oil company, or a distributor as defined in section 28-5601, a supplier as defined in section 28-5601, a petroleum transportation company and any other entity that delivers, deposits or places a regulated substance into an underground storage tank.

2. "Stop use tag" means a tag, device or mechanism that is prescribed by the director, that is designed to be affixed to a fill pipe of an underground storage tank and that clearly states and conveys that it is unlawful to deliver, deposit or place a regulated substance into the underground storage tank to which it is affixed.

(Amended by L. 2015, ch. 247,s. 13, eff. 7/2/2015. Amended by L. 2014, ch. 14,s. 3, eff. 7/24/2014.)

**§ 49-1024. Report; underground storage tank revolving fund  
program**

The department shall compile a report on the underground storage tank revolving fund program on or before December 31, 2017, and on or before December 31 every three years thereafter. The department shall submit the report to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of each report to the secretary of state. The department shall post each report on an accessible, public webpage on the department's website. The report shall contain the department's findings and shall include the following information:

1. Underground storage tank revolving fund financial information, including revenues, expenditures and current account balances.
2. The amount of any remaining unpaid time-barred claims.
3. A description of the work completed for each program grant component.
4. The amount of reimbursements made annually from the fund.
5. A listing of new releases reported and sites closed, a listing of liabilities owed to small owners and other owners and projected liabilities for the fund through the termination of the program.
6. A description of any state-led corrective actions, including the number of new sites, the number of new releases reported, the number of sites closed, the average cost of corrective action and projected liabilities for state-led corrective actions through the termination of the program.
7. The total number of open releases that are cleaned to closure, the remaining number of open releases, the number of application or reimbursement denials by the department and the number of preapproval appeals.

(Added by L. 2015, ch. 247, s. 14, eff. 7/2/2015.)



**§ 49-1031. [Repealed Effective 12/31/2023] Imposition of tax**

A. From and after July 1, 1990, there is imposed and the director shall collect an excise tax on the operation of underground storage tanks regulated under this chapter measured by the quantity of regulated substances placed in a tank in any calendar year. The tax is levied at the rate of one cent per gallon of regulated substance.

B. For proper administration of this article, and to prevent the evasion of the tax imposed by this article, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the director that all regulated substances that are motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101 and diesel as defined in section 28-6001, subsection B and that are refined, manufactured, produced, compounded or blended in this state, or imported into this state, will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it. Under this presumption, the owner and operator of an underground storage tank from which motor vehicle fuel, aviation fuel or diesel is dispensed and from which no further bulk distribution will be made, shall be considered to have paid the tax collected under title 28, chapter 16, article 6.

C. The tax imposed by this article does not apply to underground storage tanks operated by the United States or this state or agencies of the United States or this state or to any of the following substances placed in underground storage tanks:

1. Naphtha-type jet fuel or kerosene-type jet fuel.
2. Regulated substances as defined in section 49-1001, paragraph 16, subdivision (b), unless such regulated substances were placed in an underground storage tank prior to July 1, 1997, and the owner or operator of the underground storage tank has paid prior to July 1, 1997 all taxes imposed by this article applicable to such regulated substances. If the owner or operator has paid those taxes, the owner or operator may elect to continue to pay the tax imposed by this article regarding such regulated substances.

D. The owner and operator of an underground storage tank regulated under this chapter are jointly and severally liable for the tax, but the owner and operator may agree between themselves and file a notarized affidavit with the director designating either the owner or operator as primarily responsible for the tax under this article.

E. Any person who purchases motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101, or diesel as defined in section 28-6001, subsection B for which the tax imposed by this section has been paid and which fuel has been placed in a tank which is not subject to the underground storage tank tax imposed by this section and from which no further bulk distribution of the fuel will be made, may claim a refund of the tax levied. Refunds shall be submitted on forms prescribed by the director and shall be supported by substantiation for the amount of the tax paid.

F. Any person eligible to claim a refund of the tax imposed by this section, including an assignee of a refund claim, may assign such claim to the person from whom the fuel was purchased, and the assignee of the claim may claim the refund allowed under subsection E of this section provided that the assignor of the claim certifies in writing to the assignee, on forms prescribed by the director, that the assignor relinquishes all interest in the refund and shall not also claim a refund from the director.

G. If a refund claim is assigned to a person who is required to make payments under title 28, chapter 16, article 6, the refund shall be taken into account in the manner provided in section 28-6005.

H. The director shall adopt temporary and permanent rules for administering the tax imposed by this article and specifying the forms of the return and of the certification provided for in sections 28-6003 and 28-6004. The temporary and permanent rules shall prescribe the forms for and manner in which refunds may be claimed and refund claims assigned pursuant to subsection F of this section, shall specify the circumstances in which fuel may be excluded from the quantity of fuel used to measure the tax pursuant to title 28, chapter 16, article 6, and shall prescribe the forms for and manner which the certification provided in title 28, chapter 16, article 6 shall be made.

I. Title 41, chapter 6 shall not apply to the temporary rules adopted pursuant to this section. The temporary rules shall be filed with the secretary of state and shall be effective for a period of one hundred eighty days after the date of filing with the secretary of state. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of one hundred eighty days after the date the renewed temporary rules are filed with the secretary of state.

J. The permanent rules adopted pursuant to this section shall be adopted as provided in title 41, chapter 6.

**ARS 49-1031 [Repealed Effective12/31/2023] Imposition of tax  
(Arizona Revised Statutes (2021 Edition))**

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(Amended by L. 2015, ch. 247,s. 15, eff. 7/2/2015. Repealed by L. 2015, ch. 247,s. 22, eff. 12/31/2023.)

**§ 49-1032. [Conditionally repealed - see note] Return and  
payment of tax; due date**

A. The tax levied under this article is due and payable annually on or before March 31 for the preceding calendar year and is delinquent if not postmarked on or before that date or if not received by the department on or before March 31 for taxpayers electing to file in person.

B. At the time the tax is paid the taxpayer shall prepare and file with the tax a return, on a form prescribed by the director, showing the amount of tax for which he is liable for the period covered by the return. The return shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the return is true, complete and correct according to the best belief and knowledge of the owner or operator filing the report.

(Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1033. [Conditionally repealed - see note] Extensions;  
abatement**

A. The director, for good cause, may extend the time for making any return required by this article and may grant such reasonable additional time within which to make the return as he deems proper if at least ninety per cent of the tax liability is paid when the extension is requested.

B. The director, with the approval of the attorney general, may abate small tax balances if the administration costs exceed the amount of tax due.

(Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1034. [Conditionally repealed - see note] Audits**

The director may require a person who is required to pay the tax under this article to appear, at reasonable times and on reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine compliance with this article. The director shall audit the records of a sufficient number of taxpayers under this section to ensure general compliance with this article.

(Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1035. [Conditionally repealed - see note] Interest; penalty;  
lien**

A. If the tax, or any portion of the tax, is not paid on or before the date prescribed for its payment, the director shall collect, as part of the tax, interest on the unpaid amount at the rate determined pursuant to section 42-1123 from the date prescribed for payment until the full amount is paid.

B. If a taxpayer fails to make and file a return as required under this article on or before the due date as extended by the director, unless the failure is due to reasonable cause and not due to wilful neglect, a penalty of five per cent of the tax found to be remaining due shall be added to the tax for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five per cent of the tax remaining due. The penalty so added to the tax is due and payable on notice and demand by the director.

C. If any tax, interest or penalty imposed by this article is not paid when due, the unpaid amounts are a lien from the date the amounts became due on all real and personal property and rights to property belonging to the taxpayer. The lien may be perfected by recording a notice of lien in the county in which the property is located. The notice shall specify the nature of the tax, the amount of tax, interest and penalty due, the taxable period for which the amounts are due and the name and last known address of the taxpayer who is liable for the amounts.

(Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1036. Remission and disposition of revenues**

The director shall promptly deposit, pursuant to sections 35-146 and 35-147, all monies collected under this article and shall credit these payments to the underground storage tank revolving fund.

(Amended by L. 2015, ch. 247, s. 16, eff. 7/2/2015. Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )



**§ 49-1051. Preapproval process; requirements; corrective action priority**

A. An owner, an operator, the designated representative of the owner or operator or a person that meets the requirements of section 49-1016, subsection C must follow the preapproval process pursuant to this section to be eligible for reimbursement from the underground storage tank revolving fund for corrective actions taken pursuant to section 49-1053, subsection A. Preapproval applications must include a detailed scope of work that conforms to the requirements of sections 49-1005 and 49-1053, a schedule for conducting corrective actions and a cost sheet. Beginning January 1, 2016 and except as prescribed in subsection J of this section, corrective actions and costs for activities that were completed before departmental approval of the scope of work are not eligible for reimbursement under section 49-1054. If the preapproved scope of work cannot be implemented as approved, the person seeking reimbursement shall submit a change notice to the department. To be eligible for reimbursement, a change notice must be approved by the department before implementation of the change notice.

B. This section does not relieve an owner, an operator or the designated representative of the owner or operator from any of the requirements of this chapter.

C. While the application for preapproval is pending, the department may not take enforcement action or impose penalties against the owner, operator or designated representative who submitted the application for preapproval. The department may not consider the passage of time while the preapproval application is pending to be a basis for taking an enforcement action. For any corrective action submitted for preapproval pursuant to rule, the period of time for compliance with corrective actions associated with that preapproval begins to run after the date of preapproval of the corrective action.

D. On determination by the department or its designated contractor that the application for preapproval is complete, the department or its designated contractor shall determine whether the owner or operator was a small owner at the time of the application. For the purposes of this subsection, "small owner" means an owner that owns fewer than twenty underground storage tank facilities in this state.

E. In processing the application for preapproval, the department shall determine the corrective action priority of the release within ninety days after the receipt of the materials required by this section. The corrective action priority shall be based on all of the following:

1. The need for financial assistance, including the availability of coverage under insurance or other financial assurance mechanisms.
2. The extent to which a delay in reimbursement will affect the ability to conduct corrective actions.
3. The risk to human health and the environment.
4. The presence of preexisting contamination of groundwater by a hazardous substance as defined in section 49-281.

F. An owner, operator or person who meets the requirements of section 49-1016, subsection C may request reimbursement under section 49-1053. Subject to the availability of monies allocated and the assigned priority of the site pursuant to subsection E of this section, the department may make reimbursements from the underground storage tank revolving fund.

G. An application for preapproval and reimbursement pursuant to this section shall be on a form provided by the department and shall contain sufficient information to allow the director to make a determination of priority for that request.

H. Any determination made by the department pursuant to this section constitutes a written interim determination relating to preapproval pursuant to section 49-1091.

I. The department may alter the corrective action priority of the release at any time based on the results of sampling and monitoring conducted pursuant to this section or any other information obtained by the department.

J. Corrective actions and costs for activities that were completed before the department's approval of the scope of work are eligible for reimbursement under section 49-1054 if the applicant otherwise complies with subsection A of this section, the corrective actions and costs for activities could not reasonably have been incurred through the preapproval process and any of the following apply:

1. For corrective actions and costs for activities that are completed from and after december 31, 2015 through december 31, 2019 and that are not the subject of a preapproval or reimbursement under time-barred claims provisions because the applicant's financial responsibility mechanism was defective at the time of the release or the release occurred before financial responsibility was in place, the applicant is eligible for reimbursement for those corrective actions and costs for activities that are incurred from and after the date the applicant demonstrates to the department that the

applicant is in compliance with financial responsibility requirements and the financial responsibility is demonstrated to the department before January 1, 2019. From and after December 31, 2018, the applicant is only eligible for reimbursement for corrective actions and costs incurred in response to releases confirmed after the date the applicant has demonstrated compliance with financial responsibility requirements.

2. For corrective actions and costs for activities completed from and after December 31, 2015 through December 31, 2019, and for which the applicant's compliance with the preapproval process was impracticable due to:

(a) The urgency of the corrective action to address newly discovered contamination.

(b) The need for corrective action to avoid risk to public health and the environment.

3. For corrective actions and costs for activities completed from and after December 31, 2015 through December 31, 2018, the corrective actions and costs are not the subject of a time-barred claim or were not otherwise reimbursed by the department.

4. Only for corrective actions and costs of activities completed before January 1, 2019, the claim for reimbursement is received by the department before January 1, 2020 and paragraph 1, 2 or 3 of this subsection applies.

K. The department shall develop an expedited preapproval process not later than December 31, 2019 to address those corrective action costs incurred for newly discovered contamination and to address those corrective action costs necessary to avoid risk to public health and the environment.

L. Direct costs incurred by the department in conducting corrective action pursuant to section 49-1017 that are in excess of the coverage limits applicable to time-barred claims as otherwise provided by law shall reduce the amount otherwise payable to an owner or operator pursuant to section 49-1054 but any amount remaining under section 49-1054 shall be available to the owner or operator for additional corrective action costs.

M. For direct costs incurred by the department in conducting corrective action pursuant to section 49-1017 after December 31, 2016, the owner or operator is liable to the department for any amount incurred except for the amount that is eligible and within the amount allowable under section 49-1054.

(Amended by L. 2019, ch. 114, s. 1, eff. 8/27/2019. Amended by L. 2015, ch. 247, s. 18, eff. 7/2/2015. Repealed effective on the earlier of the following: 1.

Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1052. Noncorrective actions; baseline assessment**

A. A baseline period of seven years after January 1, 2016 is established for underground storage tanks. Beginning January 1, 2016, during the baseline period, an owner, operator or person who meets the requirements of section 49-1016, subsection C may do the following:

1. Elect to conduct a baseline assessment pursuant to this section.
2. Request monies to cover costs associated with the baseline assessment pursuant to section 49-1071.
3. Request the department to perform the baseline assessment under section 49-1017.02.

B. The department shall establish standards for conducting baseline assessments pursuant to this section. Until the department establishes standards by rule or by guidance documents, baseline assessment work plans shall be submitted to the department for approval and shall be considered for preapproval on a case-by-case basis, based on compliance with subsection D of this section.

C. Baseline assessments shall be conducted under the direction of a person who is a professional engineer or a registered geologist who is registered under title 32, chapter 1 or a remediation specialist .

D. The scope of the baseline assessment shall address likely release areas and shall include a collection of sufficient information to allow for a determination of the current environmental condition of the property. Samples shall be collected in areas where contamination is most likely to have occurred and sample locations shall consider site-specific conditions, location of potential receptors and preexisting contamination. The baseline assessment must include the registered or certified professional's interpretation regarding confirmation of an unknown release and evaluation of potential risk for the purpose of prioritizing corrective actions.

E. If unknown contamination is identified in the baseline assessment, all of the following apply:

1. The owner, operator or person that meets the requirements of section 49-1016, subsection C shall comply with the reporting requirements pursuant to section 49-1004 and shall initiate corrective actions pursuant to section 49-1005.

2. Unless documentation is provided to the department that demonstrates that the operating underground storage tank is not the source of the release, the department shall require tightness testing.

3. If continued operation of the underground storage tank may result in a continued release, the department may initiate delivery prohibition as prescribed in section 49-1023.

(Amended by L. 2019, ch. 114,s. 2, eff. 8/27/2019. Amended by L. 2015, ch. 247,s. 18, eff. 7/2/2015. Amended by L. 2013, ch. 244,s. 2, eff. 9/13/2013. Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1053. Reimbursement of corrective action costs; definition**

A. The department may provide reimbursement from the underground storage tank revolving fund under the preapproval process prescribed in section 49-1051 in the amounts authorized by section 49-1054 of the costs incurred for the following:

1. Sampling, analysis and reporting that are initiated pursuant to section 49-1004 and that confirm the presence of a release that requires corrective action pursuant to section 49-1005.
2. Sampling, analysis and reporting that are initiated pursuant to section 49-1008 and that confirm the presence of a release that requires corrective action pursuant to section 49-1005.
3. Corrective actions initiated pursuant to section 49-1005.
4. Preparation of the initial approved preapproval application and the consulting expenses incurred in participating in the initial preapproval meeting but not more than two percent of the amount incurred for the project cost in the first year. Costs must be submitted in the first reimbursement request for corrective actions that is submitted pursuant to section 49-1054.

B. The department may provide the reimbursement required by this section either by paying the owner, the operator or a designated representative of the owner or operator or any combination of these persons, a political subdivision pursuant to subsection F of this section or a person who meets the requirements of section 49-1016, subsection C. If the department determines that an application for reimbursement is incomplete, the department within forty-five days after receiving the application shall notify the applicant of the missing information as specifically as possible and shall allow the applicant to provide the additional information within thirty days. On the request of an applicant, the department shall grant an additional sixty days to submit the missing information. The grant of additional time tolls the period for making an interim determination on matters relating to reimbursement pursuant to section 49-1091.

C. The department may not pay for eligible costs unless the department determines that the eligible activities have met, or when completed will meet, the applicable requirements of section 49-1004 or 49-1005. The department may require by rule that persons that perform payable eligible activities meet specified standards of qualification and be approved by the department.

D. The department may not provide any reimbursement described in this article to an owner or operator of underground storage tanks described in section 49-1031, subsection C. The department may not provide any reimbursement described in this article with respect to the substances described in section 49-1031, subsection C, unless the tax imposed by article 2 of this chapter applies to such substances.

E. The department shall establish criteria for determining priorities among the applications from small owners for reimbursement under this article. For all other owners that are eligible for reimbursement from the fund through the cost sharing prescribed in section 49-1006.02, subsection B, priority shall be based on the date of completion of the work. The criteria for small owners shall include:

1. The need for financial assistance.
2. The extent to which a delay in providing reimbursement will affect an eligible activity in progress.
3. The date on which an application for reimbursement is submitted to the department.
4. Whether the payment has been previously deferred because of insufficient monies in the underground storage tank revolving fund and, if deferred, the length of the deferral.

F. The department may provide the reimbursement described in this article for eligible activity costs incurred by a political subdivision with respect to a release from an underground storage tank if the underground storage tank or the property where the underground storage tank is located comes into the possession or control of the political subdivision under title 12, chapter 8, article 2 or 3.

G. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purpose of assisting the department in reviewing preapproval and reimbursement applications, site characterization reports, corrective action plans, monitoring reports and other information to determine whether corrective actions meet the criteria and requirements of this chapter and the rules adopted by the director.

H. Requests by the department for additional information from applicants shall be reasonably related to the determination of the validity of the claim as prescribed by this article.



I. Except for appeals costs authorized pursuant to section 49-1091.01, applications for reimbursement under a preapproved scope of work shall be submitted to the department not more than one year after the applicant receives a closure letter sent by the department by certified mail with notice that the applicant has one year to submit a claim for that release. Failure to submit a timely reimbursement request under a preapproved scope of work shall result in denial of the claim. The time limit prescribed by this subsection does not apply to closed releases that are subsequently reopened for the performance of additional corrective actions or at which corrective actions are proceeding pursuant to a work plan for preapproval submitted before the release was closed.

J. The department may provide reimbursement under a preapproved scope of work for the reasonable, necessary, cost-effective and technically feasible costs of corrective actions relating to soil remediation that are consistent with remediation standards adopted pursuant to chapter 1, article 4 of this title or site-specific, risk-based levels as determined under rules adopted pursuant to this chapter. The department may provide reimbursement under a preapproved scope of work for the reasonable, necessary, cost-effective and technically feasible costs of corrective actions relating to groundwater remediation to predetermined standards or site-specific, risk-based levels as determined under rules adopted pursuant to this chapter. The department may provide reimbursement for corrective actions related to the control and removal of a source of contamination. A source of contamination includes any one or more of the following:

1. Free product.
2. A regulated substance present in soil that causes or threatens to cause an exceedance of the aquifer water quality standards.
3. A regulated substance present in groundwater at levels that would prevent timely reduction of contaminant concentrations in comparison with the performance of active remediation.
4. Any other presence of a regulated substance causing an ongoing source of contamination, as determined by the department.

K. On preapproval by the department or its designated contractor of corrective action costs for small owners, the department or its designated contractor shall encumber monies in the corrective action allocation for that year. If monies are available in the corrective action allocation for that year, reimbursement shall be made when the corrective action for which the monies were encumbered is completed as determined by the department or its designated contractor.

L. The department or its designated contractor shall preapprove reimbursement of corrective action costs for an owner that is not a small owner without encumbering monies. If monies are available in the corrective action allocation for that year at the end of the corrective action allocation year, reimbursement shall be based on the date the corrective action is completed as determined by the department or its designated contractor.

M. If there are insufficient monies to pay for approved corrective action in any annual corrective action allocation, the department shall reimburse the corrective action from the next annual corrective action allocation, with the priority that reimbursements first go to small owners.

N. The department may not accept an application to the underground storage tank revolving fund for reimbursement from an applicant for costs associated with a single facility more frequently than once each calendar month, and the department may not accept an application for costs associated with a single facility for an amount of less than \$5,000 unless the reimbursement is the final application associated with the facility.

O. An application for reimbursement pursuant to this section shall be on a form provided by the department and shall contain sufficient information to allow the director to make a determination of priority for that request.

P. For the purposes of this section, "small owner" means an owner that owns fewer than twenty underground storage tank facilities in this state.

(Amended by L. 2019, ch. 114, s. 3, eff. 8/27/2019. Amended by L. 2015, ch. 247, s. 18, eff. 7/2/2015. Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1054. Extent of reimbursement**

A. The department may provide reimbursement from the underground storage tank revolving fund for the reasonable and necessary costs of eligible activities pursuant to section 49-1053, subsection A for releases that are reported before the end of the baseline period established pursuant to section 49-1052. Receipt of financial assistance from the underground storage tank revolving fund does not constitute a financial assurance mechanism and may not be used to demonstrate compliance with financial responsibility requirements or to provide compensation to third parties for bodily injury or property damage. Reimbursement from the underground storage tank revolving fund to owners, operators and persons that meet the requirements of section 49-1016, subsection C may not exceed one million dollars per facility.

B. The department may compel the production of documents to determine the existence, amount and type of insurance or alternative coverage available. An owner, operator or person that meets the requirements of section 49-1016, subsection C shall report to the department any payment of corrective actions costs through insurance and alternative mechanisms.

C. The department may not disburse more than the maximum amounts prescribed by subsection A of this section from the underground storage tank revolving fund for corrective action costs associated with a facility.

D. The department shall pay eligible costs that are reasonable and were actually incurred for corrective actions that were actually performed. The costs for the corrective actions shall be submitted as prescribed in sections 49-1051 and 49-1053. The department shall pay only for corrective actions that have been completed and that have been conducted pursuant to the preapproval approved by the department. Reasonableness of corrective actions shall be determined based on the law and the facts available to the owner, operator or person that meets the requirements of section 49-1016, subsection C at the time the technical decision was made. The department shall establish schedules of corrective action costs that the department considers reasonable.

E. The owner or operator is eligible for payment from the department to the extent that the corrective action costs have not been reimbursed to the owner or operator, or its consultant, representative or agent, by insurance or by an alternative financial assurance mechanism. A provider of insurance or an alternative financial assurance mechanism who is not an owner or operator with respect to the occurrence is not eligible for payment from the underground storage tank revolving fund.

F. An owner or operator shall report to the department whether it has insurance coverage available and shall comply with all applicable financial responsibility requirements. If the director has reason to believe that an owner or operator, or its consultant, representative or agent, has received or may receive any payment for corrective actions from insurance or alternative financial assurance mechanism, the department may compel the production of documents to determine the existence, amount and type of insurance or alternative financial assurance coverage available and to whom payment was made or may be made. An owner or operator shall report to the department any subsequent payment or reimbursement from insurance or an alternative financial assurance mechanism to the owner or operator or its consultant, representative or agent for corrective actions costs.

G. The owner or operator shall remit to the department within thirty days any amounts that were previously paid to the owner or operator or its consultant, representative or agent from the underground storage tank revolving fund and that have also been recovered from insurance or any alternative financial assurance mechanisms.

H. Appeals fees and costs payable pursuant to section 49-1091.01 shall be paid in the next regular round of payment without being subject to ranking and in the order received by the department.

(Amended by L. 2015, ch. 247,s. 18, eff. 7/2/2015. Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1055. Extent of reimbursement; termination of eligibility**

A. from and after December 31, 2022, only those releases of a regulated substance that are reported before January 1, 2023 as prescribed in section 49-1004 are eligible for corrective action cost reimbursements from the underground storage tank revolving fund.

B. An application for reimbursement of eligible costs from the underground storage tank revolving fund shall be filed with the department not later than 5:00 p.m. on December 31, 2030.

C. An application for preapproval made pursuant to section 49-1051 shall be filed with the department not later than 5:00 p.m. on December 31, 2029.

D. Any application made or expense incurred after December 31, 2030 is not eligible for reimbursement from the underground storage tank revolving fund and all such claims are extinguished.

(Amended by L. 2015, ch. 247, s. 18, eff. 7/2/2015. Repealed effective on the earlier of the following: 1. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, after payment and extinguishment of all claims that were timely submitted and transfer of monies as prescribed by section 8, paragraph 2 of this act. 2. Receipt of sixty million dollars into the regulated substance fund established by section 49-1015.01, Arizona Revised Statutes, as added by this act, from monies transferred pursuant to this paragraph. If the regulated substance fund does not receive sixty million dollars pursuant to paragraph 1 of this section, the director of environmental quality shall deposit into the regulated substance fund monies collected by the department pursuant to section 49-1031, Arizona Revised Statutes, until a total of sixty million dollars of tax revenues collected pursuant to section 49-1031, Arizona Revised Statutes, in addition to monies encumbered and deposited in the monitored natural attenuation account, is received by the regulated substance fund. )

**§ 49-1056. Lien rights; unrecovered corrective action costs; lien amount**

A. If the department or this state incurs unrecovered corrective action costs from a corrective action undertaken on behalf of a volunteer, a property owner, a person other than the underground storage tank owner or an owner or operator that did not have the required financial responsibility mechanism at the time the release is discovered or the claim is filed, the department has a lien on the property , or, by agreement with the responsible party, may obtain a lien on any other property or other financial responsibility mechanism of the responsible party.

B. The lien shall be in the amount of the estimated increase in the market value of the property as determined by a commercial real estate appraiser who shall determine the difference between the current market value of the property and the estimated market value of the property after corrective action is complete. the director shall use an appraiser who is a member of a nationally recognized real estate appraisal association, institute or society.

C. The department shall reduce the amount of the lien as follows:

1. To the amount of the total unrecovered corrective action costs if that amount is less than the difference between the current market value of the property and the estimated market value of the property after corrective action is complete.
2. If a volunteer, a property owner, a person other than the underground storage tank owner or an owner or operator that did not have the required financial responsibility mechanism at the time the release is discovered or the claim is filed makes a determination at any time after corrective action begins that a change in circumstances has substantially reduced the increase in the market value of the property.

(Amended by L. 2019, ch. 114,s. 4, eff. 8/27/2019. Added by L. 2015, ch. 247,s. 18, eff. 7/2/2015.)

**§ 49-1057. Intergovernmental agreements**

The department may enter into intergovernmental agreements with Indian tribes pursuant to title 11, chapter 7, article 3 to extend to the tribes the partial coverage provided by this article and the responsibilities imposed by articles 1 and 2 of this chapter.

(Added by L. 2015, ch. 247, s. 18, eff. 7/2/2015.)

**§ 49-1071. Noncorrective action tank site improvement; purposes; priority**

A. Subject to the availability of monies in the underground storage tank revolving fund that are annually allocated by the director for each of the following types of actions, an owner, operator or person that meets the requirements of section 49-1016, subsection C may request that the department provide monies for that person to conduct one or more of the following actions, up to a maximum of \$300,000 per site:

1. Actions necessary to ensure that the underground storage tank, its piping and its under-dispenser containment comply with standards for new installations prescribed by section 49-1009 or other applicable federal requirements, including replacement of system components, up to a maximum of \$200,000.
2. Removal of underground storage tanks for purposes of permanent closure or replacement, up to a maximum of \$25,000 per tank. if petroleum contaminated media that require over-excavation are encountered during removal of the underground storage tank, up to an additional \$15,000 per site is available for reimbursement.
3. Confirmation of a suspected release at a tank or site, up to a maximum of \$20,000.
4. Obtaining a baseline assessment of a site as prescribed in section 49-1052, up to a maximum of \$40,000.

B. In determining the priority for requests under subsection A of this section, the director may consider the following factors:

1. The age, construction and operational history of the underground storage tank.
2. The hydrogeologic characteristics of the site where the underground storage tank is located and the surrounding area.
3. The proximity, quality and current and future uses of nearby surface water and groundwater.
4. The potential effects of residual contamination on nearby surface water and groundwater.
5. The degree of exposure.
6. The financial resources of the applicant.



C. an application for funding and request for reimbursement under this section shall be on a form provided by the department and shall include:

1. Detailed information about the site, including the type, number and location of tanks.
2. Information about the owner and operator, including the type of financial responsibility.
3. A description of the evidence of any release or suspected release.
4. The proposed actions necessary to meet tank and system performance standards.

D. Monies may not be provided under this section for work that takes place more than one year after the date that monies are approved.

E. An application for monies pursuant to this section may be filed with the department at any time during the actions prescribed by subsection A of this section but only those costs incurred after the department approves the application are eligible for reimbursement. The maximum amounts prescribed in this section apply to applications approved by the department whether before or after the effective date of this amendment to this section.

(Amended by L. 2019, ch. 114,s. 6, eff. 8/27/2019. Amended by L. 2015, ch. 247,s. 18, eff. 7/2/2015.)

**§ 49-1072. [Repealed]**

(Repealed by L. 2015, ch. 247,s. 17, eff. 7/2/2015.)

**§ 49-1073. [Repealed]**

(Repealed by L. 2015, ch. 247,s. 17, eff. 7/2/2015.)

## **§ 49-1081. Definitions**

In this article, unless the context otherwise requires:

1. "Attended facility" means an underground storage tank facility at which it is the usual and customary practice for the owner or operator, or any employee of the owner or operator, to be present on site during normal hours of operation.
2. "Class A individual" means a person designated by the owner or operator as having primary management responsibility or decision-making authority for the operation, maintenance and record keeping of an underground storage tank facility. The person may or may not be the owner or operator.
3. "Class B individual" means a person designated by the owner or operator as having daily responsibility for the operation, maintenance and record keeping of an underground storage tank facility. The person may or may not be the owner or operator.
4. "Class C individual" means a person designated by the owner or operator as having daily responsibility for an initial response to an alarm or other indication of an emergency caused by a release or suspected release from an underground storage tank. The person may or may not be the owner or operator.
5. "Supervision" means the immediate, on-site control and direction by a person certified by the department in accordance with section 49-1082 and the rules adopted pursuant to section 49-1082 of a person who is performing tank service and who is not certified in accordance with section 49-1082 and the rules adopted pursuant to section 49-1082.
6. "Tank service" means installation, retrofitting, tank tightness testing, closure, cathodic protection or interior tank lining of an underground storage tank or a part of an underground storage tank.

**§ 49-1082. Certification of underground storage tank service  
providers; rules; suspension or revocation of certification**

A. Beginning from and after December 31, 1996, a person shall not perform tank services on an underground storage tank system unless the person is certified in accordance with this section and the rules adopted pursuant to this section, or is supervised by a person certified in accordance with this section and the rules adopted pursuant to this section.

B. The department shall not certify a person as a tank service provider until that person completes the requirements of this section and the rules adopted pursuant to this section. In accordance with subsection D, the supervisor is responsible for all persons performing work under the direction of the supervisor and any violations of this section or rules adopted pursuant to this section are attributable to the supervisor.

C. By January 1, 1997, the department shall adopt rules for the establishment and maintenance of an underground storage tank service provider certification program. The certification program shall include the submittal and verification of information that the director determines is necessary to ensure that the tank service provider possesses and maintains the essential knowledge, skills and work history to perform the service effectively and in a manner that protects human health and the environment. The department may establish separate certification methods for each area of tank service as it is defined, and may define the duration of the certification period, which shall be at least one year.

D. The department, on reasonable evidence, may suspend or revoke the certification of any person who fails to maintain the standards established pursuant to this section or who exhibits incompetence, negligence or fraud in performing the certified activity or in other work relating to the certified activity. A person whose certification is revoked or suspended pursuant to this subsection may appeal the decision pursuant to title 41, chapter 6, article 10.

**§ 49-1083. Designation; training; record keeping requirements; rules**

A. Beginning August 9, 2012, an owner or operator shall designate a class A individual who must be trained pursuant to subsections E and F of this section within thirty days or another period specified by the director after being designated by the owner or operator.

B. Beginning August 9, 2012, an owner or operator must designate a class B individual who must be trained pursuant to subsections E and F of this section within thirty days or another period specified by the director after being designated by the owner or operator.

C. Beginning August 9, 2012, an owner or operator must designate one or more class C individuals who must be trained pursuant to subsections E and F of this section before assuming the role of a class C individual. For an attended facility, a class C individual must be on site during the usual and customary hours of operation.

D. The class A individual and class B individual shall be retrained if the director determines that an underground storage tank at the facility is not equipped and operated in accordance with release detection, corrosion protection, spill prevention and overfill protection in compliance with sections 49-1003, 49-1009 and 49-1023 and the rules adopted under those sections, as applicable. Documentation of the retraining must be maintained in accordance with subsection G of this section.

E. The director shall establish the duration for which training is valid and the duration shall not be less than one year or more than three years.

F. The training shall be in a format approved by the director and shall include the following:

1. For a class a individual, the requirements associated with notification under section 49-1002, release detection under section 49-1003, reporting requirements under section 49-1004, financial responsibility under section 49-1006, closure under section 49-1008, underground storage tank performance under section 49-1009, delivery prohibition under section 49-1023 and this section and the rules adopted under those sections, as applicable.

2. For a class B individual, the requirements associated with release detection under section 49-1003, reporting requirements under section 49-1004, underground storage tank performance under section 49-1009, delivery prohibition under section 49-1023, the training requirements for a

class C individual under paragraph 3 and the rules adopted under those sections, as applicable.

3. For a class C individual, initial response procedures to an alarm or other indication of an emergency caused by a release or suspected release from an underground storage tank, including procedures for contacting a class A or class B individual and any emergency responder.

G. An owner and operator shall document that the training requirements of this section have been met for each class A, class B or class C individual. Training shall be documented on a form prescribed by the director. Training records shall be maintained for a period of not less than three years after the training is completed and shall be available for inspection by the director on request.

H. The director may adopt rules to implement this section.

**§ 49-1091. Underground storage tank informal appeals**

A. A person that undertakes corrective action pursuant to section 49-1016, subsection C or an owner or operator may informally appeal the following decisions or determinations pursuant to this section:

1. A written interim decision from the underground storage tank program of the department.
2. A written interim determination from the department on matters relating to owner or operator status.
3. A written interim determination from the department on matters relating to preapproval or reimbursement from the underground storage tank revolving fund .
4. A written interim determination or decision relating to the allocation of liability pursuant to this chapter.

B. The department's failure to respond with a written interim decision to the owner's or operator's submission to the department of any documents identified in subsection G of this section within one hundred twenty days after receipt is a basis for an informal appeal.

C. A person that undertakes corrective action pursuant to section 49-1016, subsection C or an owner or operator who is subject to an interim decision or determination described in subsections A and B of this section, and who disagrees with the interim decision or determination, may file a written notice of disagreement with the department within thirty days after receiving the department's interim decision or determination. The notice shall include a description of the specific portions of the interim decision or determination with which the person, owner or operator disagrees and may include a request to meet with the department to resolve the disagreement. The department shall schedule a meeting within thirty days after receiving the request.

D. A person that requests a meeting pursuant to subsection C of this section or an authorized representative of the person designated in writing may attend the meeting with any individuals who may be helpful in discussing the matter with the department.

E. The department shall issue a final written decision or determination within forty-five days after receiving the notice of disagreement or within fifteen days after a meeting pursuant to subsection C of this section, whichever is later. If no notice of disagreement is filed, the department shall issue a final written decision or determination within forty-five days after



the issuance of the interim decision or determination. Before the expiration of time for the department to issue a final written decision or determination, the department may request additional information from the person who has submitted a notice of disagreement that is necessary to make a final decision or determination. A person that receives this request shall have fifteen days to submit the requested information to the department. The time frames for the department to issue a final decision or determination shall be extended for up to fifteen days during the time the requested information is outstanding, and for up to fifteen additional days, if applicable, after any information is submitted to the department. The time to submit the requested information may be extended for up to sixty days on the request of a person that submits a notice of disagreement. The time frames for the department to issue a final decision or determination shall be extended accordingly. The time frames for the department to issue a final decision or determination shall also be extended if information relating to the subject of the notice of disagreement is not requested by the department but is provided to the department for the first time less than fifteen days after the date the department is required to issue a final decision or determination. In this situation, the time frames shall be extended to allow the department fifteen days after the date the information is submitted to issue a final decision or determination. If the department fails to issue a final written decision or determination within the time specified in this subsection, the department's written interim decision or determination becomes the final written decision or determination. The final written decision or determination shall address the notice of disagreement received pursuant to subsection C of this section. The final written decision or determination is the only decision or determination that is appealable as an appealable agency action as defined in section 41-1092 or a contested case as defined in section 41-1001.

F. The period of time for compliance with corrective actions associated with the subject matter of a notice of disagreement is tolled from the date that a person who undertakes corrective action pursuant to section 49-1016, subsection C or an owner or operator files a written notice of disagreement with the department until the date the final decision or determination is rendered by the department and any appeals are completed.

G. A written interim decision shall address one of the following technical issues:

1. The department's approval, disapproval or notice of deficiency of site characterization reports.
2. The department's approval, disapproval or notice of deficiency of corrective action plans for soil or groundwater, or both.

3. The department's approval, disapproval or notice of deficiency of a work plan.
  4. The department's determination or confirmation of a release.
  5. The department's approval, disapproval or notice of deficiency of requests for closing a case file corresponding to a release from a leaking underground storage tank.
- H. The department shall not alter the time limits prescribed by this chapter by adoption of a time limit by rule.
- I. The department's failure to respond with a written interim determination to the owner's or operator's submission, or to the submission from a person that undertakes corrective action pursuant to section 49-1016, subsection C , of an application for preapproval or reimbursement from the underground storage tank revolving fund within ninety days after receipt is a basis for an informal appeal.

(Amended by L. 2015, ch. 247,s. 19, eff. 7/2/2015.)

**§ 49-1091.01. Fee and cost reimbursement; application;  
limitations**

A. This section applies to an owner, an operator or a person that undertakes corrective action pursuant to section 49-1016, subsection C for any of the following:

1. A written interim determination or interim decision from the department on matters relating to:

(a) Owner or operator status.

(b) Preapproval or reimbursement from the underground storage tank revolving fund established by section 49-1015 .

2. The department's approval, disapproval or notice of deficiency of:

(a) Site characterization reports.

(b) Corrective action plans for soil or groundwater , or both.

B. An owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C shall receive reimbursement for reasonable attorney fees, consultant fees and costs that are actually incurred and not excessive in all proceedings that follow the interim decision or interim determination pursuant to section 49-1091, if that party satisfies both of the following requirements:

1. Submitted a written notice of the disagreement to the department within thirty days pursuant to section 49-1091.

2. Requested and participated in a meeting with the department regarding decisions or determinations pursuant to section 49-1091, subsection A, paragraph 2 or subsection G, paragraph 1 or 2.

C. The attorney fees, consultant fees and costs shall be paid only for those amounts that are reasonable, actually incurred and not excessive in the portion of the proceedings that are the subject of the notice of disagreement in which the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C prevailed, including proceedings resulting in a favorable decision or determination from the department or in a judicial proceeding.

D. The reimbursement provided by subsection B of this section is subject to the following limitations:

1. Fees and costs shall not be paid if the department makes a favorable determination or decision on the issue appealed before or in the final decision or determination.
2. Fees and costs shall not be paid if all of the following conditions are met:
  - (a) Information requested pursuant to section 49-1053 , subsection B or section 49-1091, subsection E is not provided to the department before the time the department issues a final decision or determination that is adverse to the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C .
  - (b) The final decision or determination is subsequently reversed or otherwise decided in favor of the person based on information previously requested by the department.
3. In an appeal of a determination regarding an application for preapproval or reimbursement from the underground storage tank revolving fund , attorney fees, consultant fees and costs paid pursuant to this subsection may not exceed the amount that is in dispute.
4. If information requested by the department pursuant to section 49-1053 , subsection B or section 49-1091, subsection E is provided to the department before the department issues a final decision or determination that is adverse to the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C , and the final decision or determination is subsequently reversed or otherwise decided in favor of the owner, operator or person that undertakes corrective action pursuant to section 49-1016, subsection C based on that information, attorney fees, consultant fees and costs shall only be paid for those amounts actually incurred after the information was provided.

(Amended by L. 2015, ch. 247,s. 20, eff. 7/2/2015.)

**§ 49-1092. [Repealed]**

(Repealed by L. 2015, ch. 247,s. 21, eff. 7/2/2015.)

**§ 49-1093. [Repealed]**

(Repealed by L. 2015, ch. 247,s. 21, eff. 7/2/2015.)