

House Engrossed

hazardous substance release; notice; liability

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

CHAPTER 42

HOUSE BILL 2127

AN ACT

AMENDING SECTION 49-283, ARIZONA REVISED STATUTES; RELATING TO WATER
QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 49-283, Arizona Revised Statutes, is amended to
3 read:

4 49-283. Responsible party liability; exemptions; notice;
5 definitions

6 A. For THE purposes of imposing liability under this article, and
7 except as provided in this section, a person is deemed the party
8 responsible for the release or threatened release of a hazardous substance
9 if the person:

10 1. Owned or operated the facility:

11 (a) When the hazardous substance was placed or came to be located
12 in or on the facility.

13 (b) When the hazardous substance was located in or on the facility
14 but before the release.

15 (c) During the time of the release or threatened release.

16 2. Owned or possessed the hazardous substance and arranged, by
17 contract, agreement or otherwise, for the disposal, treatment or transport
18 for disposal or treatment of the hazardous substance.

19 3. Accepted for transport to a disposal or treatment facility waste
20 that contained a hazardous substance and either selected the facility to
21 which it was transported or disposed of it in a manner contrary to law.

22 B. Notwithstanding ~~the provisions of~~ subsection A OF THIS SECTION,
23 a person that owns real property is not a responsible party if there is a
24 release or threatened release of a hazardous substance from a facility in
25 or on the property unless one or more of the following applies to that
26 person:

27 1. Was engaged in the business of generating, transporting,
28 storing, treating or disposing of a hazardous substance at the facility or
29 disposing of waste at the facility, or knowingly ~~permitted~~ ALLOWED others
30 to engage in such a business at the facility.

31 2. ~~Permitted~~ ALLOWED any person to use the facility for disposal of
32 a hazardous substance.

33 3. Knew or reasonably should have known that a hazardous substance
34 was located in or on the facility at the time right, title or interest in
35 the property was first acquired by the person and engaged in conduct by
36 which he associated himself with the release. For the purpose of this
37 paragraph, a written warranty, representation or undertaking, which is set
38 forth in an instrument conveying any right, title or interest in the real
39 property and which is executed by the person conveying the right, title or
40 interest, or which is set forth in any memorandum of any such instrument
41 executed for the purpose of recording, is admissible as evidence of
42 whether the person acquiring any right, title or interest in the real
43 property knew or reasonably should have known that a hazardous substance
44 was located in or on the facility. For purposes of this paragraph,
45 "associated himself with the release" means having actual knowledge of the

1 release and taking action or failing to take action that the person is
2 authorized to take and that increases the volume or toxicity of the
3 hazardous substance that has been released.

4 4. Took action ~~which~~ THAT significantly contributed to the release
5 after ~~he~~ THE PERSON knew or reasonably should have known that a hazardous
6 substance was located in or on the facility.

7 C. Any liability ~~which~~ THAT accrues to an owner of real property
8 under this section does not accrue to any other person who is not an owner
9 of the real property merely because the other person holds some right,
10 title or interest in the real property. An owner of real property on
11 which a public utility easement is located is not a responsible party with
12 respect to any release caused by any act or omission of the public utility
13 ~~which~~ THAT holds the easement in carrying out the specific use for which
14 the easement was granted.

15 D. A person otherwise deemed a responsible party is not liable
16 under this article if ~~he~~ THE PERSON can establish by a preponderance of
17 the evidence that the release or threat of release of a hazardous
18 substance and the resulting damages were caused solely by:

19 1. An act of God.

20 2. An act of war.

21 3. An act or omission of a third party, whether lawful or unlawful,
22 including acts of vandalism or unlawful disposal of hazardous waste or
23 hazardous substances, other than an employee or agent of that person or
24 other than one whose act or omission occurs in connection with a
25 contractual relationship, existing directly or indirectly, with that
26 person, unless the sole contractual arrangement arises from a published
27 tariff and acceptance for carriage by a common carrier by rail, if that
28 person establishes by a preponderance of the evidence that:

29 (a) ~~He~~ THAT PERSON exercised due care with respect to the hazardous
30 substance concerned, taking into consideration the characteristics of the
31 hazardous substance in light of all relevant facts and circumstances.

32 (b) ~~He~~ THAT PERSON took precautions against foreseeable acts or
33 omissions of any such third party and the consequences that could
34 foreseeably result from such acts or omissions.

35 4. A release or threatened release ~~which~~ THAT was subject to limits
36 or conditions in a federal permit or a state permit relating to the
37 protection of public health or the environment and the operation of the
38 releasing facility has been and is in compliance with applicable limits or
39 conditions.

40 5. The application of a pesticide product registered under the
41 federal insecticide, fungicide, and rodenticide act (61 Stat. 163) and
42 applied according to label requirements.

43 6. Liability has been assumed by the federal postclosure liability
44 fund established under 42 United States Code section 9607(k).

45 7. Any combination of paragraphs 1 through 6 of this subsection.

1 E. A person is not a responsible party with respect to a hazardous
2 substance that is located on or beneath property that is owned or occupied
3 by that person if the hazardous substance is present solely because it
4 migrated from property that is not owned or occupied by that person and
5 that person is not otherwise a responsible party as prescribed by
6 subsection A, paragraph 2 or 3 OF THIS SECTION.

7 F. A person is not liable for costs or damages incurred solely as a
8 result of an action taken or omitted while rendering care, assistance or
9 advice that is consistent with rules adopted by the director, is
10 consistent with the national contingency plan or is under the direction of
11 an on-scene coordinator appointed pursuant to the national contingency
12 plan and that is rendered with respect to a release or a threat of a
13 release of a hazardous substance that creates a danger to public health or
14 the environment. This subsection does not preclude liability for costs or
15 damages that result from that person's negligence.

16 G. A state or local government and its employees or authorized
17 representatives are not liable for costs or damages incurred as a result
18 of an action taken in response to an emergency created by the release or
19 threatened release of a hazardous substance that is generated by or from a
20 facility owned by another person. This subsection does not preclude
21 liability for costs or damages that result from gross negligence or
22 intentional misconduct by this state or local government. For THE
23 purposes of this subsection, reckless, ~~willful~~ WILFUL or wanton misconduct
24 constitutes gross negligence.

25 H. A person who maintains indicia of ownership in a property
26 primarily to protect a security interest in a facility and who does not
27 participate in the management of the facility is not liable as an owner or
28 operator of that facility pursuant to this section. This subsection does
29 not apply to a person who does any of the following:

30 1. Through intentional misconduct or gross negligence causes,
31 contributes to or aggravates the release of a hazardous substance.

32 2. Fails to disclose to the facility's purchaser the known presence
33 of a release or a threatened release of a hazardous substance at the time
34 of sale or divestiture of the facility or the security interest in the
35 facility.

36 3. Fails to obtain a phase I environmental assessment of the
37 facility that complies with standards adopted by rule pursuant to
38 subsection K of this section at the time of or at a reasonable time before
39 foreclosure. This paragraph does not apply to residential properties with
40 fewer than five residential units.

41 4. Fails to do any of the following after acquiring ownership of
42 the facility:

43 (a) Provide the department reasonable access so that the necessary
44 remedial actions may be conducted.

1 (b) Undertake reasonable steps to control access to the area of
2 known presence of a release of a hazardous substance to protect the public
3 health and welfare and the environment.

4 (c) Act diligently to sell or otherwise divest the property within
5 two years ~~of~~ AFTER the lender's possession or ownership, whichever is
6 earlier.

7 I. A fiduciary is not personally liable as an owner or operator
8 pursuant to this section. This section does not preclude claims against
9 assets held in an estate, a trust or other fiduciary capacity for the
10 release or a threatened release of a hazardous substance from one of the
11 assets. This section does not apply if either of the following ~~apply~~
12 ~~APPLIES~~:

13 1. A fiduciary through intentional misconduct or gross negligence
14 causes, aggravates or contributes to the release or threatened release of
15 hazardous substances or ~~permits~~ ~~ALL~~OWS others to do so, except that a
16 fiduciary shall not be liable for the intentional misconduct or gross
17 negligence of any nonemployee agent or independent contractor if the
18 fiduciary has not specifically directed the nonemployee agent or
19 independent contractor to perform the grossly negligent act or engage in
20 the intentional misconduct.

21 2. The appointment of the fiduciary is for the purpose of avoiding
22 liability under this article. It is prima facie evidence that the
23 fiduciary was appointed to avoid liability under this article if the
24 facility is the only substantial asset in the fiduciary estate.

25 J. Subsections F, G, H and I ~~shall not be construed to~~ OF THIS
26 ~~SECTION DO NOT~~ affect the liability of any person who is otherwise liable
27 with respect to the release or threat of release pursuant to this section.

28 K. The director may adopt rules to implement subsections H and I OF
29 THIS SECTION.

30 L. A fiduciary may not be a fiduciary and grantor of the same
31 fiduciary estate.

32 M. A unit of state or local government is not liable for purposes
33 of this section if that unit is not liable under section 101(35)(A)(ii) or
34 section 101(20)(D) of CERCLA.

35 N. Nonmanagerial employees acting within the course and scope of
36 their employment are not liable under this article.

37 O. THE OWNER OF A QUALIFYING PROPERTY SHALL PROVIDE WRITTEN NOTICE
38 TO:

39 1. ANY PROSPECTIVE BUYER OF THE QUALIFYING PROPERTY. NOTICE
40 REQUIRED PURSUANT TO THIS PARAGRAPH SHALL OCCUR BEFORE THE QUALIFYING
41 PROPERTY IS CONVEYED.

42 2. THE DIRECTOR:

43 (a) WHEN THE QUALIFYING PROPERTY OWNER LISTS OR OFFERS THE
44 QUALIFYING PROPERTY OR ANY PORTION OF THE QUALIFYING PROPERTY FOR SALE.

1 (b) WHEN THE PURCHASE OF THE QUALIFYING PROPERTY OR ANY PORTION OF
2 THE QUALIFYING PROPERTY IS COMPLETE.

3 3. THE STATE MINE INSPECTOR IF THE SITE IS A MINE OR ABANDONED MINE
4 AS DEFINED IN SECTION 27-301:

5 (a) WHEN THE QUALIFYING PROPERTY OWNER LISTS OR OFFERS THE
6 QUALIFYING PROPERTY OR ANY PORTION OF THE QUALIFYING PROPERTY FOR SALE.

7 (b) WHEN THE PURCHASE OF THE QUALIFYING PROPERTY OR ANY PORTION OF
8 THE QUALIFYING PROPERTY IS COMPLETE.

9 ~~0.~~ P. For THE purposes of this section:

10 1. "Fiduciary" means:

11 (a) A trust company or bank certified or authorized to engage in
12 the trust business pursuant to title 6, chapter 8, article 1.

13 (b) Any person appointed by a court or testamentary act to act as
14 personal representative, executor, trustee, administrator, guardian,
15 conservator, receiver or trustee in bankruptcy.

16 (c) Any person acting as a trustee of a deed of trust pursuant to
17 section 33-803.

18 (d) Any person acting as a trustee pursuant to title 14, chapter 7.

19 (e) Any person acting pursuant to and subject to fiduciary
20 obligations under the employee retirement income security act of 1974 (29
21 United States Code sections 1101 through 1114).

22 2. "Indicia of ownership" means legal or equitable title that has
23 been acquired through or is incident to the default of a borrower.

24 3. "PROSPECTIVE BUYER" MEANS A PERSON THAT HAS ENTERED INTO A
25 CONTRACT TO PURCHASE A QUALIFYING PROPERTY.

26 4. "QUALIFYING PROPERTY" MEANS PROPERTY WHERE THERE HAS BEEN A
27 RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE THAT IS KNOWN TO
28 THE OWNER OF THE PROPERTY, THE OWNER IS A RESPONSIBLE PARTY AS PRESCRIBED
29 IN THIS SECTION AND THE PROPERTY MEETS EITHER OF THE FOLLOWING
30 CLASSIFICATIONS:

31 (a) A SITE ON THE REGISTRY ESTABLISHED PURSUANT TO SECTION
32 49-287.01.

33 (b) A SITE NOT ON THE REGISTRY ESTABLISHED PURSUANT TO SECTION
34 49-287.01 IF THE DEPARTMENT HAS IDENTIFIED THE RELEASE OR THREAT OF
35 RELEASE OF A HAZARDOUS SUBSTANCE AND ENGAGES IN REGULATORY ACTION THAT
36 RESULTS IN A WRITTEN NOTICE OF VIOLATION OR WRITTEN ENFORCEMENT ACTION IN
37 RESPONSE TO THE RELEASE OR THREAT OF RELEASE OF A HAZARDOUS SUBSTANCE AND
38 THE ENFORCEMENT ACTION IS ONGOING.

39 5. "WRITTEN NOTICE" MEANS WRITTEN COMMUNICATION TO A PROSPECTIVE
40 BUYER THAT THERE HAS BEEN A RELEASE OR THREATENED RELEASE OF A HAZARDOUS
41 SUBSTANCE ON THE QUALIFYING PROPERTY.

42

APPROVED BY THE GOVERNOR APRIL 7, 2025.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2025.