

State of Arizona
Senate
Forty-fourth Legislature
Second Regular Session
2000

SENATE BILL 1321

AN ACT

AMENDING TITLE 49, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5;
RELATING TO THE VOLUNTARY ENVIRONMENTAL PERFORMANCE ACT; PROVIDING FOR
CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 49, chapter 1, Arizona Revised Statutes, is amended
3 by adding article 5, to read:

4 ARTICLE 5. VOLUNTARY ENVIRONMENTAL PERFORMANCE PROGRAM

5 49-171. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ACTUAL HARM" MEANS DAMAGE, LOSS OR INJURY.

8 2. "ENVIRONMENTAL MANAGEMENT SYSTEM" MEANS THAT PART OF THE OVERALL
9 MANAGEMENT SYSTEM THAT INCLUDES ORGANIZATIONAL STRUCTURE, PLANNING
10 ACTIVITIES, RESPONSIBILITIES, PRACTICES, PROCEDURES, PROCESSES AND RESOURCES
11 FOR DEVELOPING, IMPLEMENTING, ACHIEVING, REVIEWING AND MAINTAINING THE
12 ENVIRONMENTAL POLICY.

13 3. "ENVIRONMENTAL POLICY" MEANS A STATEMENT BY AN ORGANIZATION OF ITS
14 INTENTIONS AND PRINCIPLES IN RELATION TO ITS OVERALL ENVIRONMENTAL
15 PERFORMANCE THAT PROVIDES A FRAMEWORK FOR ACTION AND FOR THE SETTING OF ITS
16 ENVIRONMENTAL PROTECTION GOALS.

17 4. "ORGANIZATION" MEANS A COMPANY, CORPORATION, POLITICAL SUBDIVISION,
18 FIRM, ENTERPRISE OR INSTITUTION, OR ANY PART OR COMBINATION, WHETHER
19 INCORPORATED OR NOT, PUBLIC OR PRIVATE, THAT HAS ITS OWN FUNCTIONS AND
20 ADMINISTRATION. FOR ORGANIZATIONS WITH MORE THAN ONE OPERATING UNIT, A
21 SINGLE OPERATING UNIT MAY BE DEFINED AS AN ORGANIZATION.

22 49-172. Powers and duties of the director; rules; no license

23 A. AFTER CONSULTATION WITH REPRESENTATIVES FROM THE REGULATED
24 COMMUNITY, LOCAL GOVERNMENTS, ENVIRONMENTAL ADVOCACY GROUPS AND OTHER
25 INTERESTED CITIZENS, THE DIRECTOR SHALL DEVELOP AND IMPLEMENT A VOLUNTARY
26 ENVIRONMENTAL PERFORMANCE PROGRAM IN ACCORDANCE WITH THIS ARTICLE. THE
27 DIRECTOR SHALL ADOPT RULES TO IMPLEMENT THIS ARTICLE.

28 B. THE DIRECTOR SHALL ADMINISTER THE PROGRAM.

29 C. PARTICIPATION IN THE PROGRAM BY ANY ORGANIZATION IS VOLUNTARY AND
30 SHALL BE REVIEWED ANNUALLY BY THE DEPARTMENT.

31 D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NOTHING IN THIS ARTICLE
32 CONSTITUTES A LICENSE FOR PURPOSES OF TITLE 41, CHAPTER 6, ARTICLE 7.1.

33 49-173. Eligibility and application requirements

34 A. AN ORGANIZATION THAT MEETS THE PROGRAM ELEMENTS IS ELIGIBLE TO
35 PARTICIPATE IN THE VOLUNTARY ENVIRONMENTAL PERFORMANCE PROGRAM.

36 B. MANDATORY PROGRAM ELEMENTS REQUIRED FOR ALL PARTICIPANTS IN THE
37 PROGRAM ARE AS FOLLOWS:

38 1. THE EXISTENCE AND MAINTENANCE OF AN ENVIRONMENTAL MANAGEMENT SYSTEM
39 THAT IS APPROPRIATE TO THE NATURE, SCALE AND ENVIRONMENTAL IMPACTS OF THE
40 ORGANIZATION'S ACTIVITIES, PRODUCTS OR SERVICES AND THAT CONSTITUTES AN
41 EFFECTIVE PROGRAM TO PREVENT AND DETECT VIOLATIONS OF LAW, INCLUDING ALL OF
42 THE FOLLOWING:

43 (a) A MANAGEMENT APPROVED ENVIRONMENTAL POLICY.

44 (b) PROCEDURES TO ACHIEVE AND MAINTAIN COMPLIANCE WITH APPLICABLE
45 ENVIRONMENTAL STATUTES AND RULES.

1 (c) MANDATORY TRAINING PROGRAMS FOR PERSONNEL PERFORMING TASKS THAT
2 CAN RESULT IN NONCOMPLIANCE WITH ENVIRONMENTAL STATUTES AND RULES.

3 (d) ANNUAL EVALUATIONS, WHICH ARE AVAILABLE TO THE PUBLIC, OF THE
4 ORGANIZATION'S ENVIRONMENTAL PERFORMANCE AS IT RELATES TO THE ORGANIZATION'S
5 ENVIRONMENTAL POLICY, INCLUDING COMPLIANCE WITH ENVIRONMENTAL STATUTES AND
6 RULES.

7 2. THE EXISTENCE AND MAINTENANCE OF VERIFIABLE, QUANTITATIVE AND
8 QUALITATIVE MEASURES THAT DOCUMENT COMPLIANCE WITH ENVIRONMENTAL STATUTES AND
9 RULES, AND OTHER PERFORMANCE GOALS THAT MAY BE CONTAINED IN THE COOPERATIVE
10 AGREEMENT ENTERED INTO BY THE ORGANIZATION SUCH AS RESOURCE CONSERVATION OR
11 POLLUTION PREVENTION.

12 C. THE DIRECTOR MAY ESTABLISH MANDATORY PROGRAM ELEMENTS IN ADDITION
13 TO THOSE PRESCRIBED IN SUBSECTION B.

14 D. THE DIRECTOR MAY ESTABLISH ELECTIVE PROGRAM ELEMENTS IN ADDITION TO
15 THE MANDATORY PROGRAM ELEMENTS PRESCRIBED IN SUBSECTION B. ORGANIZATIONS
16 APPLYING TO PARTICIPATE IN THE PROGRAM MAY SELECT FROM AMONG THE ELECTIVE
17 PROGRAM ELEMENTS. THE NUMBER OF ELECTIVE PROGRAM ELEMENTS PROPOSED BY THE
18 DIRECTOR SHALL BE BASED ON THE SIZE OF THE ORGANIZATION AND THE INCENTIVES
19 BEING REQUESTED BY THE ORGANIZATION. ALL ELECTIVE PROGRAM ELEMENTS SHALL BE
20 DESIGNED TO RESULT IN MEASURABLE IMPROVEMENT OR ENHANCEMENT OF THE
21 ENVIRONMENTAL QUALITY OF THIS STATE OR SHALL BE ACTIVITIES THAT ARE
22 BENEFICIAL TO THE ENVIRONMENT. ELECTIVE PROGRAM ELEMENTS MAY INCLUDE:

23 1. DEVELOPMENT AND MAINTENANCE OF PROGRAMS THAT PROVIDE TECHNICAL
24 ASSISTANCE OR MENTORING TO ONE OR MORE SPECIFIED ORGANIZATIONS TO ENCOURAGE
25 TECHNOLOGY TRANSFERS RELATED TO ENVIRONMENTAL PROTECTION.

26 2. ACTIVE PARTICIPATION IN ENVIRONMENTAL IMPROVEMENT PROGRAMS.

27 3. ACTIVE PARTICIPATION IN OR IMPLEMENTATION OF ONE OR MORE RECOGNIZED
28 VOLUNTARY ENVIRONMENTAL PROGRAMS, SUCH AS TRIP REDUCTION.

29 4. PROMOTION, SPONSORSHIP AND PARTICIPATION IN COMMUNITY ENVIRONMENTAL
30 AND ENVIRONMENTAL ADVISORY PROGRAMS.

31 5. DEVELOPMENT AND MAINTENANCE OF MANAGEMENT PROGRAMS THAT DISCIPLINE
32 OR REWARD EMPLOYEES, OR BOTH, AS APPROPRIATE, FOR FAILING TO MEET, MEETING OR
33 EXCEEDING REQUIREMENTS OF ENVIRONMENTAL LAWS OR PERMITS AND FOR PARTICIPATION
34 IN VOLUNTARY ENVIRONMENTAL ACTIVITIES.

35 6. IMPLEMENTATION OF PROGRAMS THAT REDUCE ADVERSE ENVIRONMENTAL
36 IMPACTS RELATING TO THE DEVELOPMENT, MANUFACTURING, DISTRIBUTION AND
37 MARKETING OF THE ORGANIZATION'S PRODUCTS OR SERVICES.

38 7. EVALUATION AND REVISION OF ENVIRONMENTAL MANAGEMENT SYSTEMS TO
39 UPDATE AND STRENGTHEN ENVIRONMENTAL POLICIES, PROCEDURES, GOALS AND EMPLOYEE
40 TRAINING PROGRAMS.

41 E. THE DIRECTOR MAY ESTABLISH ADDITIONAL ELECTIVE PROGRAM ELEMENTS IF
42 THOSE ELEMENTS ARE DESIGNED TO RESULT IN THE MEASURABLE IMPROVEMENT AND
43 ENHANCEMENT OF THE ENVIRONMENTAL QUALITY OF THIS STATE. ANY ADDITIONAL
44 ALTERNATIVE ELECTIVE PROGRAM ELEMENTS ESTABLISHED BY THE DIRECTOR SHALL HAVE

1 A REASONABLE NEXUS TO THE INDUSTRY OR BUSINESS OF THE ORGANIZATION TO WHICH
2 THEY APPLY.

3 F. THE DIRECTOR SHALL DETERMINE APPLICATION REQUIREMENTS AND PRESCRIBE
4 APPLICATION FORMS FOR ORGANIZATIONS TO SUBMIT PROPOSALS TO PARTICIPATE IN THE
5 PROGRAM. THE DIRECTOR SHALL REVIEW AS MANY OF THE APPLICATIONS THAT ARE
6 SUBMITTED FOR THE PROGRAM AS PRACTICABLE. AFTER AN APPLICATION HAS BEEN
7 REVIEWED, THE DIRECTOR SHALL NOTIFY THE ORGANIZATION THAT THE APPLICATION IS
8 COMPLETE OR THAT THE APPLICATION IS INCOMPLETE. IF THE APPLICATION IS
9 INCOMPLETE, THE DIRECTOR SHALL DESCRIBE THE ADDITIONAL INFORMATION THAT IS
10 REQUIRED TO COMPLETE THE APPLICATION.

11 49-174. Application review; cooperative agreement; public
12 records

13 A. IF THE DIRECTOR DETERMINES THAT THE APPLICATION MEETS THE
14 REQUIREMENTS OF THE PROGRAM, THE DIRECTOR SHALL NOTIFY THE ORGANIZATION IN
15 WRITING. THE DIRECTOR ON BEHALF OF THE DEPARTMENT MAY ENTER INTO ONE OR MORE
16 WRITTEN COOPERATIVE AGREEMENTS WITH THE APPLICANT. EACH WRITTEN COOPERATIVE
17 AGREEMENT SHALL DESCRIBE THE INCENTIVES BEING OFFERED TO THE ORGANIZATION AND
18 THE PERFORMANCE REQUIRED OF THE ORGANIZATION IN ORDER TO RECEIVE THE
19 INCENTIVES BEING OFFERED IN THE AGREEMENT.

20 B. IF THE DIRECTOR DETERMINES THAT AN APPLICATION DOES NOT MEET THE
21 REQUIREMENTS OF THE PROGRAM, THE DIRECTOR SHALL NOTIFY THE ORGANIZATION IN
22 WRITING AND SHALL PROVIDE AN ADEQUATE OPPORTUNITY FOR THE ORGANIZATION TO
23 ADDRESS THE AREAS OF DEFICIENCY.

24 C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DECISION OF THE
25 DIRECTOR CONCERNING WHETHER TO ENTER INTO A WRITTEN COOPERATIVE AGREEMENT IN
26 ORDER TO ALLOW THE APPLICANT TO PARTICIPATE IN THE VOLUNTARY ENVIRONMENTAL
27 PERFORMANCE PROGRAM IS FINAL AND IS NOT SUBJECT TO ADMINISTRATIVE OR JUDICIAL
28 REVIEW.

29 D. FOR AT LEAST THIRTY DAYS BEFORE THE DIRECTOR ENTERS INTO A
30 VOLUNTARY ENVIRONMENTAL PERFORMANCE AGREEMENT TO ALLOW AN ORGANIZATION TO
31 PARTICIPATE IN THE VOLUNTARY ENVIRONMENTAL PERFORMANCE PROGRAM, THE DIRECTOR
32 SHALL MAKE THE FOLLOWING DOCUMENTS AVAILABLE FOR PUBLIC REVIEW AND COMMENT:

33 1. THE APPLICATION, INCLUDING INFORMATION REGARDING THE ENVIRONMENTAL
34 MANAGEMENT SYSTEM.

35 2. THE DOCUMENTATION SUBMITTED BY THE ORGANIZATION PURSUANT TO SECTION
36 49-173, SUBSECTIONS B AND C.

37 3. AN OUTLINE OF THE PERFORMANCE MEASURES, TARGETS AND OBJECTIVES BY
38 WHICH THE ORGANIZATION WILL BE EVALUATED.

39 4. THE PROPOSED COOPERATIVE AGREEMENTS DESCRIBED IN SUBSECTION A OF
40 THIS SECTION.

41 E. THE DIRECTOR SHALL CONSIDER THE PUBLIC COMMENTS RECEIVED PURSUANT
42 TO SUBSECTION D OF THIS SECTION PRIOR TO ENTERING INTO A COOPERATIVE
43 AGREEMENT WITH AN ORGANIZATION.

44 F. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL DISCLOSURES
45 REQUIRED PURSUANT TO THE COOPERATIVE AGREEMENT ARE PUBLIC RECORDS AVAILABLE

1 TO THE PUBLIC, UNLESS THE DISCLOSURES ARE MADE FOR THE SOLE PURPOSE OF
2 RECEIVING A CIVIL PENALTY WAIVER AND THE CIVIL PENALTY WAIVER IS NOT GRANTED
3 BY THE DIRECTOR OR UNLESS THE INFORMATION IS PROTECTED FROM DISCLOSURE AS
4 PROVIDED IN THIS TITLE.

5 G. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF A CIVIL PENALTY
6 WAIVER IS NOT GRANTED BY THE DIRECTOR, DISCLOSURES MADE BY THE ORGANIZATION
7 TO THE DIRECTOR FOR THE SOLE PURPOSE OF RECEIVING A CIVIL PENALTY WAIVER ARE
8 NOT PUBLIC RECORDS AND MAY NOT BE INTRODUCED BY THE STATE AS EVIDENCE IN ANY
9 PROCEEDING. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS SUBSECTION DOES
10 NOT PREVENT THE STATE FROM USING INFORMATION OBTAINED THROUGH A COMPULSORY
11 PROCESS IN ANY PROCEEDING TO PROVE NONCOMPLIANCE.

12 49-175. Withdrawal and termination from program

13 A. ON WRITTEN NOTICE TO THE DIRECTOR ANY ORGANIZATION MAY ELECT TO
14 WITHDRAW FROM PARTICIPATION IN THE PROGRAM AT ANY TIME.

15 B. THE DIRECTOR SHALL TERMINATE THE PARTICIPATION OF ANY ORGANIZATION
16 IN THE PROGRAM IF:

17 1. THE ORGANIZATION HAS MADE ANY MATERIAL MISREPRESENTATIONS OR
18 MATERIAL OMISSIONS TO THE DIRECTOR EITHER IN ITS APPLICATION OR AT ANY TIME
19 DURING THE ORGANIZATION'S PARTICIPATION IN THE PROGRAM. ANY INCENTIVES
20 GRANTED SHALL BE REVOKED AND DEEMED VOID.

21 2. THE ORGANIZATION OR ANY OF ITS SENIOR MANAGERIAL AGENTS ACTING FOR
22 OR ON BEHALF OF THE ORGANIZATION ARE CONVICTED OF ANY FELONY IN STATE OR
23 FEDERAL COURT RELATED TO THE ADMINISTRATION OF OR COMPLIANCE WITH
24 ENVIRONMENTAL LAWS, REGULATIONS OR PERMITS.

25 3. THE ORGANIZATION HAS REPEATEDLY FAILED TO COMPLY WITH ENVIRONMENTAL
26 LAWS, RULES, PERMITS OR CONSENT JUDGMENTS, UNLESS THE NONCOMPLIANCE IS
27 CORRECTED OR REMEDIATED IN A TIMELY MANNER TO THE SATISFACTION OF THE
28 DIRECTOR AND THE ORGANIZATION HAS AGREED IN WRITING TO IMPLEMENT PROCEDURES
29 APPROVED BY THE DIRECTOR. IF THE NONCOMPLIANCE OCCURS AGAIN AND IS
30 ATTRIBUTABLE TO THE ORGANIZATION'S FAILURE TO IMPLEMENT ADEQUATELY THE
31 PROCEDURES APPROVED BY THE DIRECTOR OR OTHERWISE VIOLATES THE AGREEMENT TO
32 ADOPT AND IMPLEMENT THE PROCEDURES APPROVED BY THE DIRECTOR, THE DIRECTOR
33 SHALL TERMINATE THE PARTICIPATION OF THE ORGANIZATION IN THE PROGRAM.

34 C. THE DIRECTOR MAY TERMINATE THE PARTICIPATION OF ANY ORGANIZATION IN
35 THE PROGRAM IF AN ORGANIZATION FAILS TO PERFORM OR ACCOMPLISH ANY OF THE
36 AGREED REQUIREMENTS CONTAINED IN THE AGREEMENT ENTERED INTO BY THE
37 ORGANIZATION PURSUANT TO SECTION 49-174 OR IF THE ORGANIZATION FAILS TO
38 COOPERATE AS DEEMED NECESSARY BY THE DEPARTMENT TO ADMINISTER AND ENFORCE
39 THIS ARTICLE.

40 D. ALL INCENTIVES PROVIDED BY THIS STATE PURSUANT TO SECTION 49-176
41 SHALL BE WITHDRAWN EFFECTIVE ON TERMINATION OR WITHDRAWAL OF THE
42 ORGANIZATION'S PARTICIPATION IN THE PROGRAM. IF AN ORGANIZATION WITHDRAWS OR
43 IS TERMINATED FROM THE PROGRAM, THE ORGANIZATION FORFEITS ANY UNUSED
44 INCENTIVES.

1 E. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NOTHING IN THIS ARTICLE
2 IS AN APPEALABLE AGENCY ACTION AS DEFINED IN SECTION 41-1092 OR A CONTESTED
3 CASE AS DEFINED IN SECTION 41-1001. A PARTY TO THE COOPERATIVE AGREEMENT WHO
4 IS ADVERSELY AFFECTED BY A DECISION OF THE DIRECTOR PURSUANT TO SUBSECTIONS B
5 AND C OF THIS SECTION MAY SEEK JUDICIAL REVIEW BY APPEALING THE DIRECTOR'S
6 DECISION DIRECTLY TO SUPERIOR COURT. IN ORDER TO PREVAIL, THAT PERSON MUST
7 DEMONSTRATE THAT THE DIRECTOR'S DECISION WAS ARBITRARY, CAPRICIOUS OR AN
8 ABUSE OF DISCRETION.

9 49-176. Incentives for participation; penalty waivers; public
10 records

11 A. THE DIRECTOR SHALL ESTABLISH AND MAY PROVIDE INCENTIVES TO BE
12 GRANTED TO ANY ORGANIZATION THAT COMPLIES WITH ALL OF THE MANDATORY PROGRAM
13 ELEMENTS AND THE PRESCRIBED NUMBER OF ELECTIVE PROGRAM ELEMENTS, AS AGREED TO
14 BY THE ORGANIZATION AND THE DIRECTOR. ANY ORGANIZATION MAY REQUEST SOME OR
15 ALL OF THE INCENTIVES ESTABLISHED PURSUANT TO THIS SUBSECTION. INCENTIVES ARE
16 LIMITED TO ANY COMBINATION OF THE FOLLOWING:

17 1. FORMAL PUBLIC RECOGNITION BY THE GOVERNOR AND THE DIRECTOR AT LEAST
18 ANNUALLY INCLUDING:

- 19 (a) STATE PREFERRED VENDOR STATUS.
- 20 (b) AWARDS.
- 21 (c) PUBLIC ANNOUNCEMENTS.
- 22 (d) NEWS RELEASES.

23 2. GREATER RELIANCE BY THE DIRECTOR ON THE ORGANIZATION'S
24 SELF-MONITORING, SELF-REPORTING, SELF-CERTIFICATION OR THIRD PARTY
25 CERTIFICATION TO DEMONSTRATE COMPLIANCE WITH ENVIRONMENTAL LAWS AND PERMITS,
26 WHICH MAY RESULT IN FEWER INSPECTIONS. THE DIRECTOR SHALL NOT REDUCE THE
27 NUMBER OF INSPECTIONS TO FEWER THAN IS REQUIRED BY LAW.

28 3. ACCELERATION OF REVIEW AND PROCESSING OF PERMIT APPLICATIONS.

29 4. ABILITY TO CONSOLIDATE PERMIT APPLICATIONS FOR EACH FACILITY OF THE
30 ORGANIZATION WITH ONE REPRESENTATIVE FROM THE DIRECTOR RESPONSIBLE FOR ALL
31 PERMITTING COMMUNICATIONS WITH THE ORGANIZATION.

32 5. CONSOLIDATION AND SIMPLIFICATION OF REPORTING AND MONITORING
33 REQUIREMENTS.

34 6. EXTENSION OF TERMS OF ENVIRONMENTAL PERMITS UP TO THE MAXIMUM
35 AUTHORIZED UNDER THE RELEVANT ENVIRONMENTAL LAWS.

36 7. TOTAL OR PARTIAL WAIVER OF CIVIL PENALTIES FOR NONCOMPLIANCE
37 BEGINNING AFTER THE ORGANIZATION ENTERS INTO A WRITTEN COOPERATIVE AGREEMENT
38 WITH THE DIRECTOR PURSUANT TO SECTION 49-174.

39 B. THE TERMS AND CONDITIONS OF THE INCENTIVES SHALL BE CONTAINED IN
40 THE AGREEMENT ENTERED INTO BY THE ORGANIZATION AND THE DIRECTOR PURSUANT TO
41 SECTION 49-174. THE AGREEMENT SHALL PROVIDE THAT INCENTIVES SHALL BE AWARDED
42 ONLY IF THE ORGANIZATION HAS SUFFICIENTLY COMPLIED WITH THE AGREEMENT.
43 STANDARDS FOR SUFFICIENT COMPLIANCE SHALL BE DESCRIBED IN THE COOPERATIVE
44 AGREEMENT.

1 C. ANY AGREEMENT THAT IS ENTERED INTO BY THE DIRECTOR PURSUANT TO THIS
2 ARTICLE AND THAT PROVIDES FOR CIVIL PENALTY WAIVERS FOR NONCOMPLIANCE SHALL
3 CONTAIN THE FOLLOWING PROVISIONS:

4 1. THE DIRECTOR SHALL NOT GRANT A CIVIL PENALTY WAIVER TO THE
5 ORGANIZATION FOR NONCOMPLIANCE THAT BEGINS AFTER ENTRY INTO THE PROGRAM IF
6 ANY OF THE FOLLOWING OCCURS:

7 (a) THE NONCOMPLIANCE IS DISCOVERED BY THE ORGANIZATION AND, IF THE
8 NONCOMPLIANCE CREATES AN IMMINENT AND SUBSTANTIAL HAZARD TO HUMAN HEALTH OR
9 THE ENVIRONMENT, IS NOT DISCLOSED TO THE DIRECTOR WITHIN TWENTY-FOUR HOURS
10 AND IS NOT CORRECTED OR REMEDIATED IN A TIMELY MANNER AS APPROVED BY THE
11 DIRECTOR.

12 (b) EXCEPT AS PROVIDED IN SUBDIVISION (a) OF THIS PARAGRAPH, THE
13 NONCOMPLIANCE IS DISCOVERED BY THE ORGANIZATION AND IS NOT DISCLOSED TO THE
14 DIRECTOR WITHIN SEVENTY-TWO HOURS OR A LATER TIME, NOT TO EXCEED TEN DAYS, AS
15 SPECIFIED IN THE AGREEMENT, AND IS NOT CORRECTED OR REMEDIATED IN A TIMELY
16 MANNER AS APPROVED BY THE DIRECTOR.

17 (c) THE NONCOMPLIANCE WAS DISCOVERED OR WAS READILY DISCOVERABLE BY
18 THE EXERCISE OF DUE DILIGENCE AND WAS NOT DISCLOSED BY THE ORGANIZATION
19 BEFORE ANY OF THE FOLLOWING:

20 (i) THE ORGANIZATION RECEIVING ACTUAL NOTICE OF A FEDERAL, STATE OR
21 LOCAL AGENCY INSPECTION OR INVESTIGATION THAT MIGHT REASONABLY BE EXPECTED TO
22 DISCOVER THE NONCOMPLIANCE.

23 (ii) THE ISSUANCE BY A FEDERAL, STATE OR LOCAL AGENCY OF AN INFORMATION
24 REQUEST TO THE ORGANIZATION RELATED TO THE NONCOMPLIANCE.

25 (iii) THE REPORTING OF THE VIOLATION TO A FEDERAL, STATE OR LOCAL AGENCY
26 BY A WHISTLE-BLOWER EMPLOYEE RATHER THAN BY AN EMPLOYEE OR ANY OTHER PERSON
27 AUTHORIZED TO SPEAK ON BEHALF OF THE ORGANIZATION.

28 (iv) THE DISCOVERY OR IMMINENT DISCOVERY OF THE NONCOMPLIANCE BY A
29 FEDERAL, STATE OR LOCAL AGENCY.

30 (v) ISSUANCE BY A FEDERAL, STATE OR LOCAL AGENCY OF AN ADMINISTRATIVE
31 ORDER RELATED TO THE NONCOMPLIANCE.

32 (vi) FILING BY A FEDERAL, STATE OR LOCAL AGENCY OF A JUDICIAL COMPLAINT
33 IN ANY COURT RELATED TO THE NONCOMPLIANCE.

34 (d) THE NONCOMPLIANCE RESULTS IN SERIOUS ACTUAL HARM TO HUMAN HEALTH
35 OR THE ENVIRONMENT.

36 (e) THE NONCOMPLIANCE VIOLATES THE SPECIFIC TERMS OF ANY JUDICIAL OR
37 ADMINISTRATIVE ORDER OR CONSENT AGREEMENT.

38 2. THE DIRECTOR MAY REFUSE TO GRANT A CIVIL PENALTY WAIVER IF ANY OF
39 THE FOLLOWING OCCURS:

40 (a) THE NONCOMPLIANCE RESULTS IN A SIGNIFICANT COST SAVING FOR THE
41 ORGANIZATION.

42 (b) EXCEPT AS PROVIDED IN PARAGRAPH 1, SUBDIVISION (a) OF THIS
43 SUBSECTION, THE NONCOMPLIANCE CREATES AN IMMINENT AND SUBSTANTIAL HAZARD TO
44 HUMAN HEALTH OR THE ENVIRONMENT.

1 (c) THE ORGANIZATION FAILS TO PROVIDE INFORMATION TO THE DIRECTOR OR
2 ACCESS TO EMPLOYEES AND ASSISTANCE IN INVESTIGATING ANY NONCOMPLIANCE
3 PROBLEMS.

4 D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NOTHING IN THIS ARTICLE
5 IS AN APPEALABLE AGENCY ACTION AS DEFINED IN SECTION 41-1092, AN ACTION
6 AGAINST A PARTY AS DEFINED IN SECTION 41-1092.12 OR A CONTESTED CASE AS
7 DEFINED IN SECTION 41-1001. A PARTY TO THE COOPERATIVE AGREEMENT WHO IS
8 ADVERSELY AFFECTED BY A DECISION OF THE DIRECTOR PURSUANT TO THIS SECTION MAY
9 SEEK JUDICIAL REVIEW BY FILING AN APPEAL OF THE DIRECTOR'S DECISION DIRECTLY
10 TO SUPERIOR COURT. IN ORDER TO PREVAIL, THAT PERSON MUST DEMONSTRATE THAT
11 THE DIRECTOR'S DECISION WAS ARBITRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION.

12 E. ON RECEIPT BY THE DIRECTOR ALL PENALTY WAIVER REQUESTS MADE TO THE
13 DIRECTOR PURSUANT TO THIS ARTICLE SHALL BE MADE AVAILABLE TO THE PUBLIC.

14 F. CONSISTENT WITH SECTION 49-174, SUBSECTION F, ALL DECISIONS MADE BY
15 THE DIRECTOR CONCERNING PENALTY WAIVER REQUESTS MADE PURSUANT TO THIS ARTICLE
16 SHALL BE MADE AVAILABLE TO THE PUBLIC PROMPTLY.

17 G. ALL PENALTY WAIVERS SHALL BE IN WRITING IN THE FORM OF A MUTUAL
18 AGREEMENT, AN ADMINISTRATIVE CONSENT ORDER OR A JUDICIAL CONSENT JUDGMENT.

19 49-177. Environmental management pollution prevention fund;
20 loans; voluntary environmental performance program
21 account; donations

22 A. THE DIRECTOR SHALL ESTABLISH AND ADMINISTER AN ENVIRONMENTAL
23 MANAGEMENT POLLUTION PREVENTION FUND PROGRAM TO PROVIDE LOW COST LOANS FOR
24 POLLUTION PREVENTION, TOXIC USE REDUCTION, SOURCE REDUCTION, RESOURCE
25 RECOVERY, ENERGY EFFICIENCY AND INNOVATIVE ENVIRONMENTAL TECHNOLOGY
26 ACTIVITIES. LOANS SHALL BE FUNDED FROM MONIES CONTRIBUTED TO THE
27 ENVIRONMENTAL MANAGEMENT POLLUTION PREVENTION FUND ESTABLISHED IN SUBSECTION
28 B OF THIS SECTION. THE DIRECTOR MAY ENTER INTO ONE OR MORE AGREEMENTS WITH
29 STATE OR LOCAL AGENCIES, OTHER PUBLIC ENTITIES, POLITICAL SUBDIVISIONS OR
30 AUTHORITIES OF THE STATE AS NECESSARY TO IMPLEMENT THIS SECTION.

31 B. THE ENVIRONMENTAL MANAGEMENT POLLUTION PREVENTION FUND IS
32 ESTABLISHED CONSISTING OF LEGISLATIVE APPROPRIATIONS, OTHER MONIES MADE
33 AVAILABLE PURSUANT TO LAW AND GRANTS AND DONATIONS ACCEPTED PURSUANT TO
34 SUBSECTION C OF THIS SECTION. MONIES IN THE FUND ARE CONTINUOUSLY
35 APPROPRIATED TO THE DIRECTOR FOR THE EXCLUSIVE PURPOSE OF FUNDING THE
36 ENVIRONMENTAL MANAGEMENT POLLUTION PREVENTION FUND PROGRAM ESTABLISHED
37 PURSUANT TO SUBSECTION A OF THIS SECTION, EXCEPT THAT MONIES ARE SUBJECT TO
38 ANNUAL APPROPRIATION BY THE LEGISLATURE TO THE DIRECTOR FOR THE PURPOSE OF
39 COVERING THE REASONABLE COSTS OF ADMINISTERING THE ENVIRONMENTAL MANAGEMENT
40 POLLUTION PREVENTION FUND PROGRAM. INTEREST EARNED ON MONIES IN THE FUND
41 SHALL BE CREDITED TO THE FUND. MONIES IN THE FUND ARE EXEMPT FROM THE
42 PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

43 C. THE DIRECTOR MAY ACCEPT DONATIONS AND GRANTS FOR ANY PURPOSE
44 RELATED TO THE ENVIRONMENTAL MANAGEMENT POLLUTION PREVENTION FUND PROGRAM OR
45 FOR FUNDING THE VOLUNTARY ENVIRONMENTAL PERFORMANCE PROGRAM BUT SHALL NOT

1 SOLICIT DONATIONS. THE DIRECTOR SHALL DIRECT THE DISPOSITION OF ALL
2 DONATIONS AND GRANTS FOR ANY PURPOSE CONSISTENT WITH THE TERMS AND CONDITIONS
3 UNDER WHICH A DONATION OR GRANT IS MADE. THE DEPARTMENT SHALL REPORT BY
4 DECEMBER 1 OF EACH YEAR TO THE JOINT LEGISLATIVE BUDGET COMMITTEE THE AMOUNT
5 OF GRANTS RECEIVED FOR THE VOLUNTARY ENVIRONMENTAL PERFORMANCE PROGRAM
6 PURSUANT TO THIS SUBSECTION.

7 D. DONATIONS MADE FOR THE PURPOSE OF FUNDING THE VOLUNTARY
8 ENVIRONMENTAL PERFORMANCE PROGRAM SHALL BE MADE DIRECTLY TO THE STATE
9 TREASURER. THE STATE TREASURER SHALL DEPOSIT MONIES RECEIVED PURSUANT TO
10 THIS SUBSECTION INTO A VOLUNTARY ENVIRONMENTAL PERFORMANCE PROGRAM ACCOUNT
11 ESTABLISHED BY THE STATE TREASURER. INTEREST EARNED ON MONIES IN THE ACCOUNT
12 SHALL BE CREDITED TO THE ACCOUNT. THE TREASURER SHALL TRANSFER MONIES
13 RECEIVED PURSUANT TO THIS SUBSECTION TO THE DEPARTMENT AT THE BEGINNING OF
14 EACH QUARTER. THE TREASURER SHALL NOT DISCLOSE TO THE DEPARTMENT THE
15 IDENTITY OR AMOUNT OF ANY DONATIONS RECEIVED PURSUANT TO THIS
16 SUBSECTION. THE TREASURER SHALL REPORT ANNUALLY TO THE JOINT LEGISLATIVE
17 BUDGET COMMITTEE THE AMOUNT OF DONATIONS RECEIVED PURSUANT TO THIS
18 SUBSECTION.

19 49-178. Program termination

20 THE VOLUNTARY ENVIRONMENTAL PERFORMANCE PROGRAM ESTABLISHED BY THIS
21 ARTICLE TERMINATES ON DECEMBER 31, 2004, PURSUANT TO SECTION 41-3102.

22 Sec. 2. Purpose; intent

23 A. The legislature declares that increased use of pollution prevention
24 strategies, more cost-effective options for compliance with environmental
25 laws and reduction in occurrences of noncompliance with environmental laws
26 can be achieved through the establishment and implementation of a voluntary
27 environmental performance program pursuant to this act.

28 B. The voluntary environmental performance program established in this
29 act provides organizations with the opportunity to enter voluntarily into an
30 agreement with the department of environmental quality through which the
31 department shall provide benefits to the participating organizations that
32 comply with a prescribed number of program elements established by the
33 director that are designed to reduce the adverse environmental impacts of the
34 organization, and elective program elements that encourage activities in
35 pollution prevention, toxic use reduction, source reduction, resource
36 recovery, energy efficiency and innovative environmental technology
37 investments.

38 C. By participation in this program, organizations will improve the
39 economy and this state's environment by increasing consumer and shareholder
40 confidence, boosting management and employee morale and operating in a safe
41 and sensible manner that lessens the impact on the environment. The
42 legislature finds that environmental protection can be further enhanced by
43 authorizing innovative advances in environmental regulatory methods.

44 D. It is the policy of the legislature that this state develop
45 environmental regulatory methods that:

- 1 1. Increase levels of trust and communication among agencies,
2 regulated parties and the public.
- 3 2. Reduce time and money spent by agencies and facility owners and
4 operators on paperwork and other administrative tasks that do not benefit the
5 environment.
- 6 3. Encourage facility owners and operators to assess the pollution
7 they emit or cause directly and indirectly to the air, water and land.
- 8 4. Encourage facility owners and operators to innovate, set measurable
9 and verifiable goals, and implement the most effective pollution prevention,
10 source reduction or other pollution reduction strategies for their particular
11 facilities, while complying with verifiable and enforceable pollution limits.
- 12 Sec. 3. Conditional enactment; funding for voluntary
13 environmental performance act program
- 14 A. Title 49, chapter 1, article 5, Arizona Revised Statutes, as added
15 by this act, does not become effective unless one of the following conditions
16 is met:
- 17 1. A law is enacted by the forty-fifth legislature before July 1, 2001
18 that appropriates at least \$250,000 to the department of environmental
19 quality for purposes of this act.
- 20 2. Before July 1, 2001, at least \$250,000 is donated pursuant to
21 section 49-177, subsection C, Arizona Revised Statutes, as added by this act
22 for the purpose of funding the voluntary environmental performance program
23 established by this act. The director of environmental quality shall notify
24 the director of the Arizona legislative council when the department of
25 environmental quality has received \$250,000.
- 26 B. Notwithstanding section 49-177, subsection D, Arizona Revised
27 Statutes, as added by this act, the state treasurer, upon the receipt of
28 \$250,000 in donations shall immediately transmit that amount to the
29 department of environmental quality.