

CHAPTER 164

Senate Bill 1

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; PROVIDING CERTAIN CONTROLS ON THE POLLUTION OF AIR; DEFINING THE TERM "AIR POLLUTION"; PROVIDING FOR STANDARDS BY RULES AND REGULATIONS; PROVID-

ING FOR PERMIT PROCEDURES; PROVIDING PROCEDURES FOR OBTAINING CONDITIONAL PERMIT; PROVIDING PRECEDENCE FOR AIR POLLUTION COURT ACTIONS; PRESCRIBING EMERGENCY PROCEDURES; AMENDING SECTIONS 28-327, 36-771, 36-773, 36-778, 36-779, 36-779.01, 36-780, 36-781, 36-782, 36-785, 36-786, 36-787, 36-789, 36-1701, 36-1704, 36-1705, 36-1706, 36-1707, 36-1707.01, 36-1708, 36-1709, 36-1710, 36-1713, 36-1714, 36-1715, 36-1717, ARIZONA REVISED STATUTES; REPEALING SECTIONS 36-777, 36-783, 36-784, 36-788, 36-1703, 36-1711, 36-1712, 36-1716, 36-1719, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 8, BY ADDING SECTIONS 36-770, 36-777, 36-779.02 TO 36-779.07, INCLUSIVE, 36-784 TO 36-784.04, INCLUSIVE, 36-788, 36-789.01, ARIZONA REVISED STATUTES, AND AMENDING TITLE 36, CHAPTER 14, ARTICLE 1, BY ADDING SECTIONS 36-1700, 36-1707.02 TO 36-1707.06, INCLUSIVE, 36-1712 TO 36-1712.04, INCLUSIVE, 36-1716, 36-1719, 36-1720, ARIZONA REVISED STATUTES, AND MAKING AN APPROPRIATION.

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

Section 1. Title 36, chapter 6, article 8, Arizona Revised Statutes, is amended by adding section 36-770, to read:

36-770. DECLARATION OF POLICY

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all of the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the state department of health and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standards set by the state board of health

(division of air pollution control) shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the state board of health.

Sec. 2. Sec. 36-771, Arizona Revised Statutes, is amended to read:

36-771. DEFINITIONS

In this article, unless the context otherwise requires:

1. "Advisory council" means any county air pollution control advisory council established pursuant to this article.

2. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, windborne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or causes damage to property, or unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, or obscures visibility, or which in any way degrades the quality of the ambient air below the standards established by the board of supervisors.

4. "Board of supervisors" means any county board of supervisors.

5. "Control officer" means the executive head of the department authorized or designated to enforce air pollution regulations, or the executive head of an air pollution control district established pursuant to section 36-773.

6. "Hearing board" means any county air pollution hearing board established pursuant to this article.

7. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

8. "Special inspection warrant" is an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the control officer or his deputies, authorizing him to enter into or upon public or private property for the purpose of making an inspection authorized by law.

Sec. 3. Sec. 36-773, Arizona Revised Statutes, is amended to read:

36-773. BOARD OF SUPERVISORS

A. The board of supervisors of a county, in order to conserve and promote the public health, safety, and general welfare, shall within its territorial limits, or any portion thereof, investigate the degree to which the atmosphere of the county is contaminated by air pollution and the causes, sources, and extent of such air pollution or, if the state is developing a study in the county pursuant to section 36-1705, cooperate with and assist the state in such a study.

B. The board of supervisors of a county shall authorize or designate an existing department of the county government or establish an air pollution control district to carry out the necessary investigations, inspections, and enforcement of any rules and regulations adopted pursuant to this article.

C. The board of supervisors of a county may in lieu of the provisions of subsection B, in addition to the joint exercise of powers provided for in title 11, chapter 7, article 3, establish a multi-county air quality control region with one or more other counties by agreement with the board of supervisors of such other county or counties, and contract for the joint administration of this article within such region, including, but not limited to, the joint adoption of regulations and standards and the enforcement thereof by a joint region hearing board. Any region created under this subsection shall be governed by all of the provisions applicable to a county.

Sec. 4. REPEAL

Sec. 36-777, Arizona Revised Statutes, is repealed.

Sec. 5. Title 36, chapter 6, article 8, is amended by adding a new section 36-777 to read:

36-777. ADVISORY COUNCIL

The board of supervisors may appoint an advisory council of such membership as it deems necessary to advise and consult with the board of supervisors, the control agency, and the control officer in effecting the purposes of this article.

Sec. 6. Sec. 36-778, Arizona Revised Statutes, is amended to read:

36-778. HEARING BOARD

A. The board of supervisors shall appoint an air pollution hearing board.

B. The hearing board shall consist of five members. The five members shall be knowledgeable in the field of air pollution. Each board member shall serve for a term of three years. Of the members first appointed, two shall be appointed for terms of one year each, two shall be appointed for terms of two years each, and one shall be appointed for the full term of three years.

C. The hearing board shall select a chairman and vice chairman and such other officers as it deems necessary.

D. The board of supervisors may authorize compensation for hearing board members, and may authorize reimbursement for subsistence and travel, including travel from and to their respective places of residence when on official business.

Sec. 7. Sec. 36-779, Arizona Revised Statutes, is amended to read:

36-779. RULES AND REGULATIONS; HEARINGS; LIMITATIONS

A. The board of supervisors shall adopt within one hundred twenty days after the effective date of this act such rules and regulations as it determines are necessary and feasible to control the release into the atmosphere of air contaminants originating within the territorial limits of the county or multi-county air quality control region in order to control air pollution, which rules and regulations shall contain standards at least equal to or more restrictive than those adopted by the state board of health. In fixing such standards, the board or region shall give consideration but shall not be limited to:

1. The latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

2. Atmosphere conditions and the types of air pollution agent or agents which, when present in the atmosphere, may interact with another agent or agents to produce an adverse effect on public health and welfare.

3. The preservation and development of the economy of the state.

4. Securing, to the greatest degree practicable, the enjoyment of the natural attractions of the state and the comfort and convenience of the inhabitants.

B. No rule or regulation may be enacted or amended except after the board of supervisors first holds a public hearing after twenty days' notice of such hearing. The proposed rule or regulation, or any proposed amendment of a rule or regulation, shall be made available to the public at the time of notice of such hearing.

C. All rules and regulations enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

Sec. 8. Sec. 36-779.01, Arizona Revised Statutes, is amended to read:

36-779.01. PERMITS; EXCEPTIONS; APPLICATIONS; FEES

A. Any person erecting, installing, replacing or making a major alteration to any machine, equipment, incinerator, device or other article which may cause or contribute to air pollution or the use of which may eliminate or reduce or control the emission of air pollutants, shall first obtain an installation permit from the control officer. An installation permit shall remain in effect until the operating permit for such equipment is granted or denied or the application is canceled. The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which is rated at less than five hundred thousand british thermal units per hour.

B. Before any machine, equipment, incinerator, device or other article described in subsection A of this section, in existence or in operation at the time of, or subsequent to, the effective date of this article may be operated or used, an operating permit shall be obtained in writing from the control officer. No such operating permit shall be granted either by the control officer or the hearing board for any such machine, equipment, incinerator, device or other article described in subsection A of this section that is or has been constructed or installed without an installation permit until the necessary information is presented to the control officer and such machine, equipment, incinerator, device or article is altered, if necessary, and made to conform to the applicable standards.

C. Every application for an installation permit or an operating permit shall be filed in the manner and form prescribed by the control officer, and shall contain all the information necessary to enable the control officer to make the determination to grant or deny such application. Before acting on an application for an installation permit or an operating permit, the control officer may require the applicant to furnish further information or further plans or specifications. The control officer shall act, within a reasonable time, not to exceed thirty days on such applications and shall notify the applicant in writing of his approval or denial of such application; provided however, that the control officer may have a reasonable period of time, not to exceed six months from the effective date of this act, in which to gather information, inspect premises, and issue such permits.

D. Permits issued pursuant to this section may be issued subject to such terms and conditions as the control officer deems necessary

and subject to payment of a reasonable fee not to exceed the actual direct cost of providing the services required for each permit. Operating permits issued pursuant to this section shall be renewed annually, subject to compliance with the rules and regulations and the provisions of this article, upon payment of an annual renewal fee equal to the initial fee for such permit. The funds received for permits issued pursuant to this section shall be deposited in a special public health fund and shall be used by the control officer to defray the costs incurred pursuant to this article.

Sec. 9. Title 36, chapter 6, article 8, Arizona Revised Statutes, is amended by adding sections 36-779.02 to 36-779.07, inclusive to read:

36-779.02. GRANT OR DENIAL OF APPLICATIONS

A. The control officer shall deny an installation permit or an operating permit if the applicant does not show that every such machine, equipment, incinerator, device or other article described in subsection A of section 36-779.01, the use of which may cause or contribute to air pollution, or the use of which may eliminate or reduce or control the emission of air pollutants, is so designed, controlled, or equipped with such air pollution control equipment, that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of this article and the rules and regulations adopted by the board of supervisors.

B. Prior to acting on an application for an operating permit, the control officer may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the machine, equipment, incinerator, device or other article described in the installation permit. In the event of such a requirement, the control officer shall notify the applicant in writing of the type and characteristics of such facilities.

C. In acting upon an application for an operating permit, if the control officer finds that such machine, equipment, incinerator, device or other article described in subsection A of section 36-779.01 has been constructed not in accordance with the installation permit, he shall deny the application for such operating permit. The control officer shall not accept any further application for an operating permit for such machine, equipment, incinerator, device or other article so constructed until he finds that such machine, equipment, incinerator, device or other article has been reconstructed in accordance with the installation permit.

D. In the event of denial of an installation permit or an operating permit, the control officer shall notify the applicant in writing of the reasons for such denial. Service of this notification may be made in

person or by registered or certified mail, and such service may be proved by the written acknowledgement of the persons served or affidavit of the person making the service. The control officer shall not accept a further application unless the applicant has corrected the reasons for the objections specified by the control officer as reasons for such denial.

36-779.03. APPEALS TO HEARING BOARD

Within ten days after notice is given by the control officer of denial of an installation permit or an operating permit, the applicant may petition the hearing board, in writing, for a public hearing, which shall be held within thirty days after receipt of the petition. The hearing board, after notice and a public hearing, may sustain, modify or reverse the action of the control officer.

36-779.04. NONTRANSFERABLE

An installation permit or an operating permit shall not be transferable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

36-779.05. EXPIRATION

An installation permit shall expire two years from the date of its issuance.

36-779.06. POSTING OF PERMIT

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine, equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

36-779.07. NOTICE BY BUILDING PERMIT AGENCIES

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 36-779.01. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the control officer or the state division of air pollution control and shall furnish a copy of such notice to the control officer and the state division of air pollution control.

Sec. 10. Sec. 36-780, Arizona Revised Statutes, is amended to read:

36-780. CLASSIFICATION AND REPORTING; PRODUCTION OF RECORDS; CONFIDENTIALITY OF RECORDS; VIOLATION; PENALTY

A. The board of supervisors by rules or regulations which are equal to or more restrictive than those adopted by the state board of health, shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, and the nature and duration of emissions and as to such other information as is relevant to air pollution and deemed necessary by the board.

B. When the control officer has reasonable cause to believe that any person is violating any provision of this article or any rule or regulation adopted pursuant to this article or any requirement of an operating or conditional permit issued pursuant to this article he may request, in writing, that such person forthwith produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules and regulations adopted pursuant to this article.

C. The owner, lessee, or operator of a potential air contaminant source shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable and required to determine compliance in a manner acceptable to the control officer, and shall supply monitoring information as directed in writing by the control officer. Such devices shall be available for inspection by the control officer during all reasonable times.

D. Any records or other information furnished to or obtained by the board of supervisors, or the control officer, concerning one or more air pollution sources, which records and information relate to production or sales figures or to the processes or production unique to the owner or operator, or which would tend to adversely affect the competitive position of such owner or operator, shall be only for the confidential use of the board of supervisors, or the control officer, in the administration of this article, unless such owner or operator shall expressly agree to their publication or availability to the public. No provision of this section shall be construed to prohibit the appropriate governmental agency from publishing quantitative and qualitative statistics pertaining to the emission of pollutants.

E. Any person violating the provisions of this section shall be guilty of a misdemeanor punishable as provided in section 36-789.01.

Sec. 11. Sec. 36-781, Arizona Revised Statutes, is amended to read:

36-781. VIOLATIONS; ORDER OF ABATEMENT; TIME FOR COMPLIANCE

When the control officer has reasonable cause to believe that any person is violating any provision of this article or any rule or regulation adopted pursuant to this article or any requirement of an operating or conditional permit issued pursuant to this article he may forthwith serve upon such person by registered or certified mail or in person an order of abatement or may file a complaint alleging violation pursuant to section 36-789.01, or both. The order shall state with particularity the act being done that constitutes the violation, shall state in its entirety the certain requirement, provision or rule or regulation being violated, and that the alleged violator is entitled to a hearing if such hearing is requested in writing within twenty days after the date of issuance of the order. The order may be conditional and require a person to refrain from the particular acts unless certain conditions are met.

Sec. 12. Sec. 36-782, Arizona Revised Statutes, is amended to read:

36-782. HEARINGS ON ORDERS OF ABATEMENT

A. An order of abatement issued by the control officer shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 36-781 unless the person or persons named in such order shall have made a timely request for a hearing before the hearing board. If a hearing is requested, the hearing board shall hold the hearing within thirty days from receipt of the request unless such time is extended by the hearing board. Written notice of the time and place of the hearing shall be sent by the hearing board to the person or persons requesting the hearing and to the control officer at least fifteen days before the hearing.

B. If the board, after the hearing, determines that the act or acts set forth in the order constitute a violation of any provision of this article or of the rules and regulations adopted pursuant to this article or any requirement of an operating or conditional permit issued pursuant to this article and that no conditional permit is justified, the board shall affirm or modify the order for abatement. The order may be conditional and require a person to refrain from the particular act or acts unless certain conditions are met.

Sec. 13. REPEAL

Sec. 36-783, Arizona Revised Statutes, is repealed.

Sec. 14. REPEAL

Sec. 36-784, Arizona Revised Statutes, is repealed.

Sec. 15. Title 36, chapter 6, article 8 is amended by adding new sections 36-784 to 36-784.04, inclusive, to read:

36-784. CONDITIONAL PERMIT; STANDARDS

The hearing board may grant to any person one conditional permit for each air pollution source which allows such person to vary from certain requirements of rules or regulations adopted by the board of supervisors if the hearing board finds that additional time is needed for compliance and, upon the basis of evidence presented to it, that the conditional permit, if granted, will not unduly endanger human health or safety either directly or indirectly.

36-784.01. PETITION FOR CONDITIONAL PERMIT; PUBLICATION; PUBLIC HEARING

A. A person who seeks a conditional permit shall file a petition with the hearing board. Within thirty days after the filing of a petition for conditional permit, the hearing board shall set a hearing date. The hearing date shall be within sixty days after the filing of the petition.

B. Notice of the filing of a petition for conditional permit and of the hearing date on said petition shall be published in the manner provided in section 36-786.

C. The hearing on the petition for the conditional permit shall be public.

36-784.02. DECISIONS ON PETITIONS FOR CONDITIONAL PERMIT; TERMS AND CONDITIONS OF CONDITIONAL PERMIT

A. Within thirty days after the conclusion of the hearing on the petition for a conditional permit, the hearing board shall deny the petition or grant the petition on such terms and conditions as it deems appropriate.

B. The terms and conditions which may be imposed as a condition to the granting or the continued existence of a conditional permit shall include but not be limited to:

1. A detailed plan, not to exceed one year in duration, for completion of corrective steps needed to conform to the requirements of the rules and regulations of the board and the provisions of this article.

2. Such written reports as may be required.

3. The right to make periodic inspection of the facilities for which the conditional permit is granted.

C. A reasonable fee as may be prescribed by the control officer shall be deposited in the special public health fund.

36-784.03. TERM OF CONDITIONAL PERMIT

A conditional permit, and any extension thereof, shall be valid for such period as the hearing board prescribes but in no event for more than one year from the date of initial issuance.

36-784.04. SUSPENSION AND REVOCATION OF CONDITIONAL PERMIT

If the terms and conditions of the conditional permit are being violated, the control officer may seek to revoke or suspend the conditional permit granted. In such event, the control officer shall serve notice of such violation on the holder of the conditional permit in the manner provided in section 36-786. The notice shall specify the nature of such violation and the date on which a hearing will be held by the hearing board to determine if such a violation has occurred and whether the conditional permit should be suspended or revoked. The date of said hearing shall be within thirty days from the date said notice is served upon the holder of the conditional permit.

Sec. 16. Sec. 36-785, Arizona Revised Statutes, is amended to read:

36-785. DECISIONS OF HEARING BOARD; SUBPOENAS; EFFECTIVE DATE

A. All decisions of the hearing board, including the majority of opinion and all concurring and dissenting opinions, shall be in writing and shall be of public record.

B. A majority of the total membership of the hearing board shall concur in a decision for it to have effect.

C. The chairman or, in his absence, the vice chairman may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing. Obedience to subpoenas may be enforced pursuant to section 12-2212.

D. Subject to the approval of the board of supervisors, the hearing board may adopt a manual of procedures governing its operation.

E. Decisions of the hearing board shall become effective not less than thirty days after they are issued unless:

1. A rehearing is granted which shall have the effect of staying the decision.

2. It is determined that an emergency exists which justifies an earlier effective date.

F. The hearing board may revoke or modify an order of abatement, a permit or a conditional permit only after first holding a

hearing within thirty days from the giving of notice of such hearing as provided in section 36-786.

Sec. 17. Sec. 36-786, Arizona Revised Statutes, is amended to read:

36-786. NOTICE OF HEARING; PUBLICATION; SERVICE

A. Any notice of hearing required by this article shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county, and by posting copies of the petition and notice in at least three conspicuous places in the county.

B. If the hearing involves any violation of rules or regulations adopted pursuant to this article or a conditional permit therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional permit, shall be served personally or by registered or certified mail at least fifteen days prior to the hearing with a written notice of hearing.

Sec. 18. Sec. 36-787, Arizona Revised Statutes, is amended to read:

36-787. INJUNCTIVE RELIEF

Upon the failure or refusal of a person to comply with an order for abatement by the hearing board or the control officer in cases where an order for abatement has become effective, the county may file an action in the superior court of that county to restrain and enjoin the person from engaging in further acts violating the order of abatement. The court shall proceed as in other actions for injunctions.

Sec. 19. REPEAL

Sec. 36-788, Arizona Revised Statutes, is repealed.

Sec. 20. Title 36, chapter 6, article 8, Arizona Revised Statutes, is amended by adding a new section 36-788 to read:

36-788. PRECEDENCE OF ACTIONS

For the benefit of the people of the state, court actions and proceedings brought under this article shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

Sec. 21. Sec. 36-789, Arizona Revised Statutes, is amended to read:

36-789. UNLAWFUL OPEN BURNING; EXCEPTIONS;
VIOLATION; PENALTY

A. Notwithstanding the provisions of any other section of this article, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

B. "Open outdoor fire", as used in this section, means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. "Flue", as used in this section, means any duct or passage for air, gases or the like, such as a stack or chimney.

C. The following fires are excepted from the provisions of this section:

1. Fires used only for cooking of food or for providing warmth for human beings or for recreational purposes or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

3. Fires set by or permitted by the county agricultural agents of the county for the purpose of disease and pest prevention.

4. Fires set by or permitted by the federal government or any of its departments, agencies or agents, the state or any of its agencies, departments or political subdivisions, for the purpose of watershed rehabilitation or control through vegetative manipulation.

5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule, regulation or conditional permit issued pursuant to title 36, chapter 14, article 1 when the state division of air pollution control pursuant to section 36-1706 has assumed jurisdiction of the county in which the fire is located.

6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

D. Permission for the setting of any fire given by a public officer in the performance of official duty under paragraph 2, 3 or 4 of subsection C shall be given in writing and a copy of such written permission shall be transmitted immediately to the director of the state division of air pollution control and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such

time as approved by the control officer or the director of the division of air pollution control, unless doing so would defeat the purpose of the exemption.

E. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation.

F. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article.

G. Any violation of this section shall be a misdemeanor punishable as provided in section 36-789.01. Peace officers and the control officers and his deputies shall have the authority to issue a notice to appear under the same conditions and procedures set forth in section 13-1422 for any violation of this section.

Sec. 22. Title 36, chapter 6, article 8, Arizona Revised Statutes, is amended by adding a new section 36-789.01 to read:

36-789.01. MISDEMEANOR; PENALTY

Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article or any effective order of abatement issued pursuant to this article is guilty of a misdemeanor punishable by imposition of a fine of not less than fifty dollars or more than one thousand dollars per day for each day the violation continues. Each day of violation shall constitute a separate offense.

Sec. 23. Title 36, chapter 14, article 1, Arizona Revised Statutes, is amended by adding section 36-1700, to read:

36-1700. DECLARATION OF POLICY

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all of the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the state department of health and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standards set by the state board of health (division of air pollution control) shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the state board of health.

Sec. 24. Sec. 36-1701, Arizona Revised Statutes, is amended to read:

36-1701. DEFINITIONS

In this article unless the context otherwise requires:

1. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, windborne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, or obscures visibility, or which in any way degrades the quality of the ambient air below the standards established by the board of health.

3. "Board of health" means the state board of health.

4. "Commissioner" means the state health commissioner.

5. "Department" means the state department of health.

6. "Director" means the director of the division of air pollution control.

7. "Division" means the division of air pollution control within the state department of health.

8. "Hearing board" means the state air pollution control hearing board.

9. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

10. "Special inspection warrant" is an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the director or his deputies, authorizing him to enter into or upon any public or private property for the purpose of making an inspection authorized by law.

Sec. 25. REPEAL

Sec. 36-1703, Arizona Revised Statutes, is repealed.

Sec. 26. Sec. 36-1704, Arizona Revised Statutes, is amended to read:

36-1704. HEARING BOARD

A. There shall be an air pollution control hearing board appointed by the governor and with the advice and consent of the senate.

B. The hearing board shall consist of five members. The five members shall be knowledgeable in the field of air pollution. Each board member shall serve for a term of three years. Of the members first appointed, two shall be appointed for terms of one year each, two shall be appointed for terms of two years each, and one shall be appointed for the full term of three years.

C. The hearing board shall select a chairman and vice chairman and such other officers as it deems necessary.

D. Hearing board members shall serve with compensation as prescribed by law for the board of health, and shall be entitled to reimbursement for subsistence and travel in the same manner prescribed for other state officers.

Sec. 27. Sec. 36-1705, Arizona Revised Statutes, is amended to read:

36-1705. DUTIES OF DIVISION

A. The division shall:

1. Determine whether the meteorology of the state is such that air sheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.

2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use, and economic feasibility of aircleaning devices, the effect on human health and danger to property from air contam-

inants, the effect on industrial operations of remedial measures, and other matters necessary to arrive at a better understanding of air pollution and its control.

3. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.

4. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.

5. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 36-1708.

6. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.

7. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.

8. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.

9. Compile and publish from time to time reports, data, and statistics with respect to those matters studied and investigated by the division.

B. The division may delegate authority to a multi-county air quality control region or to a county to carry out the provisions of this chapter.

Sec. 28. Sec. 36-1706, Arizona Revised Statutes, is amended to read:

36-1706. STATE AND COUNTY CONTROL

A. The division and the state hearing board shall have original jurisdiction and control, as provided in this chapter, over such air pollution matters, air pollution sources, installation permits, operating permits, conditional permits and violations that pertain to:

1. Major sources of air pollution as shall be defined by rules and regulations promulgated by the state board of health, which shall include any air pollution source capable of generating more than seventy-five tons of air contaminants per day.
2. Air pollution generated by operations and activities of all agencies and departments of the state and its political subdivisions.
3. Air pollution by motor vehicles.
4. Air pollution by combustion engines, machinery and equipment which is operated in more than one county during the period of such permit.

B. Except as specified in subsection A of this section, jurisdiction and control of air pollution shall be by the county or multi-county air quality control region pursuant to the provisions of article 8, chapter 6 of this title. The county or multi-county air quality control region shall relinquish jurisdiction and control over such air pollution matters, air pollution sources, installation permits, operating permits, conditional permits and violations as the director of the division, with the prior approval of the state board of health given at a public meeting, designates and at such times as he asserts jurisdiction and control at the state level. The order of the director which asserts state jurisdiction and control shall specify the matters, geographical area, or air pollution source or sources over which the division shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted and the provisions of this chapter shall govern until jurisdiction and control is surrendered by the division to such county or region.

Sec. 29. Sec. 36-1707, Arizona Revised Statutes, is amended to read:

36-1707. RULES AND REGULATIONS; HEARINGS; LIMITATIONS

A. Within ninety days after the effective date of this act, the board of health shall adopt such rules and regulations as it determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, promulgate, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such standards the board shall give consideration but shall not be limited to:

1. The latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

2. Atmosphere conditions and the types of air pollution agent or agents which, when present in the atmosphere, may interact with another agent or agents to produce an adverse effect on public health and welfare.

3. The preservation and development of the economy of the state.

4. Securing, to the greatest degree practicable, the enjoyment of the natural attractions of the state and the comfort and convenience of the inhabitants.

B. No rule or regulation may be enacted or amended except after the board of health first holds a public hearing after twenty days' notice of such hearing. The proposed rule or regulation, or any proposed amendment of a rule or regulation, shall be made available to the public at the time of notice of such hearing.

C. The division shall enforce the rules and regulations adopted by the board of health.

D. All rules and regulations enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

E. Any person who violates the air quality or emission standards adopted under this section is guilty of a misdemeanor punishable as provided in section 36-1720.

Sec. 30. Sec. 36-1707.01, Arizona Revised Statutes, is amended to read:

36-1707.01. PERMITS; EXCEPTIONS; APPLICATIONS; FEES

A. Any person erecting, installing, replacing or making a major alteration to any machine, equipment, incinerator, device or other article which may cause or contribute to air pollution or the use of which may eliminate or reduce or control the emission of air pollutants, shall first obtain an installation permit from the director. An installation permit shall remain in effect until the operating permit for such equipment is granted or denied or the application is canceled.

The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which is rated at less than five hundred thousand british thermal units per hour.

B. Before any machine, equipment, incinerator, device or other article described in subsection A of this section, in existence or in

operation at the time of, or subsequent to, the effective date of this article may be operated or used, an operating permit shall be obtained in writing from the director. No such operating permit shall be granted either by the director or the hearing board for any such machine, equipment, incinerator, device or other article described in subsection A of this section that is or has been constructed or installed without an installation permit until the necessary information is presented to the director and such machine, equipment, incinerator, device or article is altered, if necessary, and made to conform to the applicable standards.

C. Every application for an installation permit or an operating permit shall be filed in the manner and form prescribed by the director, and shall contain all the information necessary to enable the director to make the determination to grant or deny such application. Before acting on an application for an installation permit or an operating permit, the director may require the applicant to furnish further information or further plans or specifications. The director shall act, within a reasonable time, not to exceed thirty days on such applications and shall notify the applicant in writing of his approval or denial of such application; provided, however, that the director may have a reasonable period of time, not to exceed six months from the effective date of this act, in which to gather information, inspect premises, and issue such permits.

D. Permits issued pursuant to this section may be issued subject to such terms and conditions as the director deems necessary and subject to payment of a reasonable fee not to exceed the actual direct cost of providing the services required for each permit. Operating permits issued pursuant to this section shall be renewed annually subject to compliance with the rules and regulations and the provisions of this article, upon payment of an annual renewal fee equal to the initial fee for such permit. The funds received for permits issued pursuant to this section shall be deposited in the state general fund.

Sec. 31. Title 36, chapter 14, article 1, Arizona Revised Statutes, is amended by adding sections 36-1707.02 to 36-1707.06, inclusive, to read:

36-1707.02. GRANT OR DENIAL OF APPLICATIONS

A. The director shall deny an installation permit or an operating permit if the applicant does not show that every such machine, equipment, incinerator, device or other article described in subsection A of section 36-1707.01, the use of which may cause or contribute to air pollution, or the use of which may eliminate or reduce or control the emission of air pollutants, is so designed, controlled, or equipped with such air pollution control equipment, that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of this article and the rules and regulations adopted by the board of health.

B. Prior to acting on an application for an operating permit, the director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the machine, equipment, incinerator, device or other article described in the installation permit. In the event of such a requirement, the director shall notify the applicant in writing of the type and characteristics of such facilities.

C. In acting upon an application for an operating permit, if the director finds that such machine, equipment, incinerator, device or other article described in subsection A of section 36-1707.01 has been constructed not in accordance with the installation permit, he shall deny the application for such operating permit. The director shall not accept any further application for an operating permit for such machine, equipment, incinerator, device or other article so constructed until he finds that such machine, equipment, incinerator, device or other article has been reconstructed in accordance with the installation permit.

D. In the event of denial of an installation permit or an operating permit, the director shall notify the applicant in writing of the reasons for such denial. Service of this notification may be made in person or by registered or certified mail, and such service may be proved by the written acknowledgment of the persons served or affidavit of the person making the service. The director shall not accept a further application unless the applicant has corrected the reasons for the objections specified by the director as reasons for such denial.

36-1707.03. APPEALS TO HEARING BOARD

Within ten days after notice is given by the director of denial of an installation permit or an operating permit, the applicant may petition the hearing board, in writing, for a public hearing, which shall be held within thirty days after receipt of the petition. The hearing board, after notice and a public hearing, may sustain, modify or reverse the action of the director.

36-1707.04. NONTRANSFERABLE

An installation permit or an operating permit shall not be transferable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

36-1707.05. POSTING OF PERMIT

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such ma-

chine, equipment incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

36-1707.06. NOTICE BY BUILDING PERMIT AGENCIES

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 36-1707.01. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the division of air pollution control and shall furnish a copy of such notice to the county air pollution control officer and the division.

Sec. 32. Sec. 36-1708, Arizona Revised Statutes, is amended to read:

36-1708. CLASSIFICATION AND REPORTING; PRODUCTION OF RECORDS; CONFIDENTIALITY OF RECORDS; VIOLATION; PENALTY

A. The board of health, by rule or regulation, shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, and the nature and duration of emissions and as to such other information as is relevant to air pollution and deemed necessary by the board.

B. When the director has reasonable cause to believe that any person is violating any provision of this chapter or any rule or regulation adopted pursuant to this chapter or any requirement of an operating or conditional permit issued pursuant to this chapter, he may request, in writing, that such person forthwith produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules and regulations adopted pursuant to this chapter.

C. The owner, lessee or operator of an air contaminant source under the control of the division shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable, necessary, and required to determine compliance in a manner acceptable to the director, and shall supply monitoring information as directed in writing by the director. Such devices shall be available for inspection by the director, or his deputies, during all reasonable times.

D. Any records or other information furnished to or obtained by the director concerning one or more air pollution sources, which records and information relate to production or sales figures or to the processes or production unique to the owner or operator, or which would tend to adversely affect the competitive position of such owner or operator, shall be only for the confidential use of the director in the administration of this chapter, unless such owner or operator shall expressly agree to their publication or availability to the public. No provision of this section shall be construed to prohibit the appropriate governmental agency from publishing quantitative and qualitative statistics pertaining to the emission of pollutants.

E. Any person violating the provisions of this section shall be guilty of a misdemeanor punishable as provided in section 36-1720.

Sec. 33. Sec. 36-1709, Arizona Revised Statutes, is amended to read:

36-1709. VIOLATIONS; ORDER OF ABATEMENT; TIME FOR COMPLIANCE

When the director has reasonable cause to believe that any person is violating any provision of this chapter or any rule or regulation adopted pursuant to this chapter or any requirement of an operating or conditional permit issued pursuant to this chapter, he may forthwith serve upon such person by registered or certified mail or in person an order of abatement or may file a complaint alleging violation pursuant to section 36-1720, or both. The order shall state with particularity the act being done that constitutes the violation, shall state in its entirety the certain requirement, provision or rule or regulation being violated, and that the alleged violator is entitled to a hearing, if such hearing is requested in writing within twenty days after the date of issuance of the order. The order may be conditional and require a person to refrain from the particular acts unless certain conditions are met.

Sec. 34. Sec. 36-1710, Arizona Revised Statutes, is amended to read:

36-1710. HEARINGS ON ORDERS OF ABATEMENT

A. An order of abatement issued by the director shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 36-1709 unless the person or persons named in such order shall have made a timely request for a hearing before the hearing board. If a hearing is requested, the hearing board shall hold the hearing within thirty days from receipt of the request unless such time is extended by the hearing board. Written notice of the time and place of the hearing shall be sent by the hearing board to the person or persons requesting the hearing and to the director, at least fifteen days before the hearing.

B. If the board, after the hearing, determines that the act or acts set forth in the order constitute a violation of any provision of this chapter or of the rules and regulations adopted pursuant to this chapter or any requirement of an operating or conditional permit issued pursuant to this chapter and that no conditional permit is justified, the board shall affirm or modify the order for abatement. The order may be conditional and require a person to refrain from the particular act or acts unless certain conditions are met.

Sec. 35. REPEAL

Sec. 36-1711, Arizona Revised Statutes, is repealed.

Sec. 36. REPEAL

Sec. 36-1712, Arizona Revised Statutes, is repealed.

Sec. 37. Title 36, chapter 14, article 1, Arizona Revised Statutes, is amended by adding new sections 36-1712 to 36-1712.04, inclusive, to read:

36-1712. CONDITIONAL PERMIT; STANDARDS

The hearing board may grant to any person one conditional permit for each air pollution source which allows such person to vary from certain requirements of rules or regulations adopted by the state board of health if the hearing board finds that additional time is needed for compliance and, upon the basis of evidence presented to it, that the conditional permit, if granted, will not unduly endanger human health or safety either directly or indirectly.

36-1712.01. PETITION FOR CONDITIONAL PERMIT; PUBLICATION; PUBLIC HEARING

A. A person who seeks a conditional permit shall file a petition with the hearing board. Within thirty days after the filing of a petition for conditional permit, the hearing board shall set a hearing date. The hearing date shall be within sixty days after the filing of the petition.

B. Notice of the filing of a petition for conditional permit and of the hearing date on said petition shall be published in the manner provided in section 36-1714.

C. The hearing on the petition for the conditional permit shall be public.

36-1712.02. DECISIONS ON PETITIONS FOR CONDITIONAL PERMIT; TERMS AND CONDITIONS

A. Within thirty days after the conclusion of the hearing on the petition for a conditional permit, the hearing board shall deny the petition or grant the petition on such terms and conditions as it deems appropriate.

B. The terms and conditions which may be imposed as a condition to the granting or the continued existence of a conditional permit shall include, but not be limited to:

1. A detailed plan for completion of corrective steps needed to conform to the requirements of the rules and regulations of the board and the provisions of this article.

2. A requirement that necessary construction shall begin during the first year of the conditional permit.

3. A requirement that all necessary construction shall be completed within such period as the board may prescribe but such period shall not exceed three years from the date of initial issuance of such conditional permit except as provided in subsection B of section 36-1712.03.

4. Such written reports as may be required.

5. The right to make periodic inspection of the facilities for which the conditional permit is granted.

C. A reasonable fee as may be prescribed by the director shall be deposited in the state general fund.

36-1712.03. TERM OF CONDITIONAL PERMIT

A. A conditional permit issued by the hearing board shall be valid for such period as the hearing board prescribes but in no event for more than one year.

B. A holder of a conditional permit may petition the hearing board for renewals of such permit. The total term of such renewals and the initial period of such permit shall not exceed three years from the date of initial issuance of such permit. Such petition may be filed at any time not more than sixty days nor less than thirty days prior to the expiration of such permit. The board, within thirty days of receipt of such petition, shall renew the conditional permit for one year if the petitioner is in compliance with and conforming to the terms and conditions imposed pursuant to section 36-1712.02. The board may refuse to renew the conditional permit, if after a public hearing held within thirty days of receipt of such petition the board finds that the petitioner is not in compliance with and conforming to the terms and conditions of the conditional permit. If, after a period of three years from the date of original issuance, the petitioner is not in compliance with and conforming to such terms and conditions, the board may renew such permit for one additional year if the board finds that such failure to comply and conform is due to conditions beyond the control of such petitioner.

36-1712.04. SUSPENSION AND REVOCATION OF CONDITIONAL PERMIT

If the terms and conditions of the conditional permit are being violated, the director may seek to revoke or suspend the conditional permit granted. In such event, the director shall serve notice of such violation on the holder of the conditional permit in the manner provided in section 36-1714. The notice shall specify the nature of such violation and the date on which a hearing will be held to determine if such a violation has occurred and whether the conditional permit should be suspended or revoked. The date of said hearing shall be within thirty days from the date said notice is served upon the holder of the conditional permit.

Sec. 38. Sec. 36-1713, Arizona Revised Statutes, is amended to read:

36-1713. DECISIONS OF HEARING BOARD; SUBPOENAS; TIME LIMITATIONS; REVOCATION

A. All decisions of the hearing board, including the majority opinion and all concurring and dissenting opinions, shall be in writing and shall be of public record.

B. A majority of the total membership of the hearing board shall concur in a decision for it to have effect.

C. The chairman or, in his absence, the vice chairman may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing. Obedience to subpoenas may be enforced pursuant to section 12-2212.

D. Subject to the approval of the board of health, the hearing board may adopt a manual of procedures governing its operation.

E. Decisions of the hearing board shall become effective not less than thirty days after they are issued unless:

1. A rehearing is granted which shall have the effect of staying the decision.

2. It is determined that an emergency exists which justifies an earlier effective date.

F. The hearing board may revoke or modify an order of abatement, a permit or a conditional permit only after first holding a hearing within thirty days from the giving of notice of such hearing as provided in section 36-1714.

G. When the division has asserted control pursuant to section 36-1706 the hearing board may revoke or modify an order of abate-

ment, a permit, or a conditional permit previously issued at the county level only after first holding a hearing within thirty days from the giving of notice of such hearing as provided in section 36-1714.

Sec. 39. Sec. 36-1714, Arizona Revised Statutes, is amended to read:

36-1714. NOTICE OF HEARING; PUBLICATION; SERVICE

A. Any notice of hearing required by this chapter shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county, and by posting copies of the petition and notice in at least three conspicuous places in the county.

B. If the hearing involves any violation of rules or regulations adopted pursuant to this chapter, or a conditional permit therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional permit, shall be served personally or by registered or certified mail at least fifteen days prior to the hearing with a written notice of hearing.

Sec. 40. Sec. 36-1715, Arizona Revised Statutes, is amended to read:

36-1715. INJUNCTIVE RELIEF

Upon the failure or refusal of a person to comply with an order for abatement by the hearing board or the director in cases where an order for abatement has become effective, the director may file an action in the superior court of the county concerned to restrain and enjoin the person from engaging in further acts violating the order of abatement. The court shall proceed as in other actions for injunctions.

Sec. 41. REPEAL

Sec. 36-1716, Arizona Revised Statutes, is repealed.

Sec. 42. Title 36, chapter 14, article 1, is amended by adding a new section 36-1716, to read:

36-1716. PRECEDENCE OF ACTIONS

For the benefit of the people of the state, court actions and proceedings brought under this article shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

Sec. 43. Sec. 36-1717, Arizona Revised Statutes, is amended to read:

36-1717. MOTOR VEHICLE AND COMBUSTION ENGINE EMISSION; CONTROL DEVICES; STANDARDS

A. The board of health shall within ninety days after the effective date of this section adopt rules and regulations setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules or regulations promulgated pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of section 28-955 and section 28-327.

B. The state board of health shall within ninety days after the effective date of this section adopt rules and regulations which specify the content, methods, procedures and techniques to be utilized in a statewide vehicular air pollution testing and control program and shall determine whether this program is being conducted according to the rules and regulations adopted by the board. The division of air pollution control shall administer these regulations and seek compliance with conditions of any contractual arrangements which the state may make for inspectional services related to air pollution control.

C. Subject to the provisions of subsection A, notwithstanding the provisions of any other section of this chapter, the board of health may, upon the recommendation of the division, approve or disapprove designs of emissions control devices for motor vehicles and combustion engines.

D. At such time as the state board of health shall determine that effective motor vehicle and combustion engine emission control devices are generally available at reasonable cost, the state board of health shall, by rules and regulation, require the installation of such emission control devices on motor vehicles and combustion engines.

E. The state board of health shall make studies and conduct public hearings on the composition of fuels and their effect on emissions from motor vehicles and combustion engines and report on these studies to the legislature by January 1, 1971.

Sec. 44. REPEAL

Sec. 36-1719, Arizona Revised Statutes, is repealed.

Sec. 45. Title 36, chapter 14, article 1, is amended by adding new sections 36-1719 and 36-1720, to read:

36-1719. AIR POLLUTION EMERGENCY

A. If the commissioner determines that air pollution in any area constitutes or may constitute an emergency risk to the health of

those in the area, such determination shall be communicated to the governor. The governor may, by proclamation, declare that an emergency exists and may prohibit, restrict or condition the following:

1. Motor vehicle traffic;
2. The operation of retail, commercial, manufacturing, industrial, or similar activity;
3. Operation of incinerators;
4. The burning or other consumption of fuels;
5. The burning of any materials whatsoever; and
6. Any and all other activity which contributes or may contribute to the emergency.

B. Orders of the governor shall be enforced by the division of air pollution control and the state and local police and air pollution enforcement personnel forces. Those authorized to enforce such orders may use such reasonable force as is required in the enforcement thereof, and may take such reasonable steps as are required to assure compliance therewith including but not limited to the following:

1. Enter upon any property or establishment believed to be violating such order and, if a request does not produce compliance, causing compliance with such order;
2. Stopping, detouring, rerouting, and prohibiting vehicle traffic;
3. Disconnecting incinerator or other types of combustion facilities.

C. Notwithstanding any other provision of this chapter the commissioner, upon receipt of evidence that a particular pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons, may request the attorney general to bring suit on behalf of the department in the appropriate superior court to immediately enjoin any contributor to the alleged pollution to stop the emission of contaminants causing such pollution or to take such other action as may be necessary.

36-1720. MISDEMEANOR; PENALTY

Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article or any effective order of abatement issued pursuant to this article is guilty of a misdemeanor punishable by imposition of a fine of not less than fifty dollars or more than one thousand dollars per day for each day the violation continues. Each day of violation shall constitute a separate offense.

Sec. 46. Sec. 28-327, Arizona Revised Statutes, is amended to read:

28-327. AIR POLLUTION CONTROL DEVICES; AFFIDAVIT; VIOLATIONS

A. Beginning with motor vehicles and motor vehicle engines of the 1968 model year, no certificate of title or registration, including permission to install or exchange blocks or engines, shall be issued, transferred or renewed unless the application is accompanied by a sworn affidavit, upon a form furnished by the vehicle division, that the motor vehicle or motor vehicle engine is equipped with approved emission control devices that are both connected and operating. This section shall not apply to the initial certificate of title or registration applied for at the time of the first retail sale of a motor vehicle or motor vehicle engine. Any person who makes a false statement in such sworn affidavit is guilty of a misdemeanor.

B. Motor vehicles required by law to be equipped with operating emission control devices shall be subject to inspection and repair or adjustment pursuant to sections 28-982 and 28-983.

C. Any person who removes, alters, or causes the removal or alteration of a motor vehicle emission control device to decrease or diminish the effectiveness of such device is guilty of a misdemeanor.

D. The provisions of this section shall not apply to motor vehicles that are used exclusively for competition and not operated on the public streets and highways.

Sec. 47. LIMITATIONS

Nothing in this act shall be construed to:

1. Limit or abridge the lawful activities of the state board of health hearing board or division of air pollution control.

2. Require the readoption of any rule, regulation or standard previously adopted by a board of supervisors or the state board of health prior to the effective date of this article provided such rule or regulation is in conformity with the provisions of this chapter.

Sec. 48. APPROPRIATION; PURPOSE; EXEMPTION

A. The sum of two hundred fourteen thousand dollars is appropriated to the state board of health for the purpose of carrying out the provisions of this act.

B. The appropriation made under the terms of subsection A of this section is exempt from the provisions of section 35-173, Arizona Revised Statutes, relating to quarterly allotments.

Sec. 49. EMERGENCY

To preserve the public peace, health and safety it is necessary

that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor — May 18, 1970

Filed in the Office of the Secretary of State — May 18, 1970
