

CHAPTER 190

Senate Bill 8

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; PRESCRIBING AIR POLLUTION PERMIT PROCEDURES; PRESCRIBING PENALTIES; PROVIDING FOR JUDICIAL REVIEW; PROVIDING FOR TEMPORARY CONDITIONAL PERMITS; AMENDING SECTIONS 36-779.01, 36-780, 36-784.02, 36-787, 36-789, 36-789.01, 36-1702, 36-1706, 36-1707.01, 36-1707.04, 36-1708, 36-1712.02, 36-1714, 36-1715 AND 36-1720, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 8, ARIZONA REVISED STATUTES BY ADDING SECTION 36-785.01, 36-789.02 AND 36-791, AND AMENDING TITLE 36, CHAPTER 14, ARTICLE 1, ARIZONA REVISED STATUTES BY ADDING SECTIONS 36-1711, 36-1713.01, 36-1718.01 AND 36-1720.01

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

Section 1. PURPOSE

The purpose of this act is to make certain substantive changes in the statutes regarding air pollution procedures and controls.

Sec. 2. Section 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, IN THE AGGREGATE WITH OTHER SUCH EQUIPMENT OF THE APPLICANT AT THE SAME LOCATION OR PROPERTY OTHER THAN A ONE OR TWO FAMILY RESIDENCE, 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. THE CONTROL OFFICER MAY REQUIRE THAT SUCH APPLICATION INCLUDE ALL MACHINES, EQUIPMENT, INCINERATORS, DEVICES OR OTHER ARTICLES THAT ARE USED OR TO BE USED BY THE APPLICANT IN A CERTAIN PROCESS OR A SINGLE FACILITY OR LOCATION. 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 section, 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~~ BASED ON the AVERAGE 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. 3. Section 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 non-compliance 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~~ OR KNOWINGLY OR WILFULLY SUBMITTING FALSE INFORMATION REPORTS OR RECORDS TO THE BOARD OF SUPERVISORS OR THE CONTROL OFFICER is guilty of a misdemeanor punishable as provided in section 36-789.01.

Sec. 4. Section 36-784.02, Arizona Revised Statutes, is amended to read:

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~~ ARE 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.

Sec. 5. Title 36, chapter 6, article 8, Arizona Revised Statutes, is amended by adding section 36-785.01, to read:

36-785.01. JUDICIAL REVIEW; GROUNDS; PROCEDURES

A. JUDICIAL REVIEW OF HEARING BOARD DECISIONS SHALL BE PURSUANT TO THE PROVISIONS OF TITLE 12, CHAPTER 7, ARTICLE 6, EXCEPT AS PROVIDED IN THIS SECTION.

B. WITHIN THIRTY DAYS AFTER SERVICE OF NOTICE OF A FINAL DECISION OR ORDER OF THE BOARD, OR AN ORDER DENYING A REHEARING TIMELY APPLIED FOR, ANY PERSON WHO WAS A PARTY OF RECORD IN THE PROCEEDINGS BEFORE THE BOARD, INCLUDING THE CONTROL OFFICER OR DEPARTMENT AUTHORIZED OR DESIGNATED TO ENFORCE AIR POLLUTION REGULATIONS, MAY APPEAL THEREFROM TO THE SUPERIOR COURT IN THE COUNTY IN WHICH THE HEARING WAS CONDUCTED AND THE SCOPE OF SUCH REVIEW SHALL BE DETERMINED PURSUANT TO SECTION 12-910.

C. A NOTICE OF APPEAL, DESIGNATING THE GROUNDS THEREFORE, AND A DEMAND IN WRITING FOR A CERTIFIED TRANSCRIPT OF THE TESTIMONY AND EXHIBITS SHALL BE FILED WITH THE COURT AND SERVED ON THE BOARD. AFTER RECEIPT OF THE DEMAND, ACCOMPANIED BY PAYMENT OF A FEE OF THE CURRENT PREVAILING RATE FOR TRANSCRIPT, AND ONE DOLLAR FOR CERTIFICATION THEREOF, THE BOARD SHALL MAKE AND CERTIFY THE TRANSCRIPT AND FILE IT WITH THE CLERK OF THE COURT TO WHICH THE APPEAL HAS BEEN TAKEN WITHIN THIRTY DAYS, UNLESS EXTENDED BY AGREEMENT OF THE PARTIES OR ORDER OF THE COURT.

D. WHEN AN APPEAL IS TAKEN FROM AN ORDER OR

DECISION OF THE BOARD, SUCH ORDER OR DECISION SHALL REMAIN IN EFFECT PENDING FINAL DETERMINATION OF THE MATTER, UNLESS STAYED BY THE COURT, ON A HEARING AFTER NOTICE TO THE BOARD AND UPON A FINDING BY THE COURT THAT THERE IS PROBABLE CAUSE FOR APPEAL AND THAT GREAT OR IRREPARABLE DAMAGE MAY RESULT TO THE PETITIONER WARRANTING SUCH STAY.

E. AN APPEAL MAY BE TAKEN TO THE COURT OF APPEALS FROM THE ORDER OF THE SUPERIOR COURT AS IN OTHER CIVIL CASES. PROCEEDINGS UNDER THIS SECTION 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. 6. Section 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. IN THE PRELIMINARY HEARING IN AN ACTION FOR AN INJUNCTION OR RESTRAINING ORDER BROUGHT PURSUANT TO THIS ARTICLE, ANY FINDINGS OF THE HEARING BOARD SHALL BE PRIMA FACIE EVIDENCE OF THE FACT OR FACTS FOUND THEREIN UNTIL REBUTTED.

Sec. 7. Section 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 STATE ENTOMOLOGIST OR 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 officer 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. 8. Section 36-789.01, Arizona Revised Statutes, is amended 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~~ THREE HUNDRED dollars per day for each day the violation continues. Each day of violation shall constitute a separate offense. PEACE OFFICERS AND THE CONTROL OFFICER 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 A VIOLATION OF 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.

Sec. 9. Title 36, chapter 6, article 8, Arizona Revised Statutes, is amended by adding section 36-789.02, to read:

36-789.02. DEFENSES

VIOLATIONS UNDER SECTION 36-789.01 SHALL BE MALUM PROHIBITUM. LACK OF CRIMINAL INTENT SHALL NOT CONSTITUTE A DEFENSE TO SUCH VIOLATIONS.

Sec. 10. Title 36, chapter 6, article 8, Arizona Revised Statutes, is amended by adding section 36-791, to read:

36-791. PRESERVATION OF RIGHTS

IT IS THE PURPOSE OF THIS ARTICLE TO PROVIDE ADDITIONAL AND CUMULATIVE REMEDIES TO PREVENT, ABATE, AND CONTROL AIR POLLUTION IN THE STATE. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO ABRIDGE OR ALTER RIGHTS OF ACTION OR REMEDIES IN EQUITY UNDER THE COMMON LAW OR STATUTORY LAW, CRIMINAL OR CIVIL, NOR SHALL ANY PROVISIONS OF THIS ARTICLE, OR ANY ACT DONE BY VIRTUE THEREOF, BE CONSTRUED AS ESTOPPING THE STATE OR ANY MUNICIPALITY, OR OWNERS OF LAND FROM THE EXERCISE OF THEIR RIGHTS IN EQUITY OR UNDER THE COMMON LAW OR STATUTORY LAW TO SUPPRESS NUISANCES OR TO ABATE POLLUTION.

Sec. 11. Section 36-1702, Arizona Revised Statutes, is amended to read:

36-1702. DIVISION OF AIR POLLUTION CONTROL; DIRECTOR; POWERS

A. There shall be a division of air pollution control in the department of health. The commissioner shall administer this chapter through the division, which shall be headed by a director appointed by the commissioner.

B. In addition to any other powers invested in it by law, the department may:

1. Accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited in the state treasury to the account of the department of the division.

2. Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.

C. POWERS AND AUTHORITY GRANTED IN THIS CHAPTER TO THE DIRECTOR SHALL AT ALL TIMES BE EXERCISED IN ACCORDANCE WITH THE POLICIES AND DIRECTIVES OF THE COMMISSIONER AND THE BOARD OF HEALTH.

Sec. 12. Section 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 MOBILE OR PORTABLE combustion engines, machinery and equipment which ~~is~~ ARE CAPABLE OF BEING 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 mat-

ters, 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, EXCEPT AS PROVIDED IN THIS CHAPTER, until jurisdiction and control is surrendered by the division to such county or region.

Sec. 13. Section 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, IN THE AGGREGATE WITH OTHER SUCH EQUIPMENT OF THE APPLICANT AT THE SAME LOCATION OR PROPERTY OTHER THAN A ONE OR TWO FAMILY RESIDENCE, 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 appli-

cation. THE DIRECTOR MAY REQUIRE THAT SUCH APPLICATION INCLUDE ALL MACHINES, EQUIPMENT INCINERATORS, DEVICES OR OTHER ARTICLES THAT ARE USED OR TO BE USED BY THE APPLICANT IN A CERTAIN PROCESS OR A SINGLE FACILITY OR LOCATION. 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 applications; provided, however, that the director may have a reasonable period of time, not to exceed six months from the effective date of this section, 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~~ BASED ON the AVERAGE 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. 14. Section 36-1707.04, Arizona Revised Statutes, is amended to read:

36-1707.04. PERMIT NONTRANSFERABLE; EXCEPTION

A. 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.

B. THIS SECTION SHALL NOT APPLY TO MOBILE OR PORTABLE MACHINERY OR EQUIPMENT WHICH IS TRANSFERRED FROM ONE LOCATION TO ANOTHER AFTER NOTIFICATION TO THE DEPARTMENT OF THE TRANSFER.

Sec. 15. Section 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~~ OR KNOWINGLY OR WILFULLY SUBMITTING FALSE INFORMATION, REPORTS OR RECORDS TO THE DIVISION IS guilty of a misdemeanor punishable as provided in section 36-1720.

Sec. 16. Title 36, chapter 14, article 1, Arizona Revised Statutes, is amended by adding section 36-1711 to read:

36-1711. TEMPORARY CONDITIONAL PERMITS

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, AFTER A PERSON HAS PETITIONED FOR A CONDITIONAL PERMIT, THE COMMISSIONER MAY ISSUE SUCH PERSON ONE NONRENEWABLE TEMPORARY CONDITIONAL PERMIT WHICH SHALL BE VALID FOR NO

MORE THAN NINETY DAYS WHEN IT APPEARS THAT, IF GRANTED, ACTIVITIES ALLOWED BY THE PERMIT WILL NOT UNDULY ENDANGER HUMAN HEALTH OR SAFETY EITHER DIRECTLY OR INDIRECTLY AND EXTRAORDINARY OR EMERGENCY CIRCUMSTANCES ARE PRESENT THAT WOULD MAKE APPLICATION UNDER THE OTHER PROVISIONS OF THIS CHAPTER INEQUITABLE.

Sec. 17. Section 36-1712.02, Arizona Revised Statutes, is amended to read:

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~~ ARE 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.

Sec. 18. Title 36, chapter 14, article 1, Arizona Revised Statutes, is amended by adding section 36-1713.01, to read:

36-1713.01. JUDICIAL REVIEW; GROUNDS; PROCEDURES

A. JUDICIAL REVIEW OF HEARING BOARD DECISIONS SHALL BE PURSUANT TO THE PROVISIONS OF TITLE 12, CHAPTER 7, ARTICLE 6, EXCEPT AS PROVIDED IN THIS SECTION.

B. WITHIN THIRTY DAYS AFTER SERVICE OF NOTICE OF A FINAL DECISION OR ORDER OF THE BOARD, OR AN ORDER DENYING A REHEARING TIMELY APPLIED FOR, ANY PERSON WHO WAS A PARTY OF RECORD IN THE PROCEEDINGS BEFORE THE BOARD, INCLUDING THE DIRECTOR OR DIVISION, MAY APPEAL THEREFROM TO THE SUPERIOR COURT OF MARICOPA COUNTY AND THE SCOPE OF SUCH REVIEW SHALL BE DETERMINED PURSUANT TO SECTION 12-910.

C. A NOTICE OF APPEAL, DESIGNATING THE GROUNDS THEREFORE, AND A DEMAND IN WRITING FOR A CERTIFIED TRANSCRIPT OF THE TESTIMONY AND EXHIBITS SHALL BE FILED WITH THE COURT AND SERVED ON THE BOARD. AFTER RECEIPT OF THE DEMAND, ACCOMPANIED BY PAYMENT OF A FEE OF THE CURRENT PREVAILING RATE FOR TRANSCRIPT, AND ONE DOLLAR FOR CERTIFICATION THEREOF, THE BOARD SHALL MAKE AND CERTIFY THE TRANSCRIPT AND FILE IT WITH THE CLERK OF THE COURT TO WHICH THE APPEAL HAS BEEN TAKEN WITHIN THIRTY DAYS, UNLESS EXTENDED BY AGREEMENT OF THE PARTIES OR ORDER OF THE COURT.

D. WHEN AN APPEAL IS TAKEN FROM AN ORDER OR DECISION OF THE BOARD, SUCH ORDER OR DECISION SHALL REMAIN IN EFFECT PENDING FINAL DETERMINATION OF THE MATTER, UNLESS STAYED BY THE COURT, ON A HEARING AFTER NOTICE TO THE BOARD AND UPON A FINDING BY THE COURT THAT THERE IS PROBABLE CAUSE FOR APPEAL AND THAT GREAT OR IRREPARABLE DAMAGE MAY RESULT TO THE PETITIONER WARRANTING SUCH STAY.

E. AN APPEAL MAY BE TAKEN TO THE COURT OF APPEALS FROM THE ORDER OF THE SUPERIOR COURT AS IN OTHER CIVIL CASES. PROCEEDINGS UNDER THIS SECTION 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. 19. Section 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. 20. Section 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. IN THE PRELIMINARY HEARING IN AN ACTION FOR AN INJUNCTION OR RESTRAINING ORDER BROUGHT PURSUANT TO THIS CHAPTER, ANY FINDINGS OF THE HEARING BOARD SHALL BE PRIMA FACIE EVIDENCE OF THE FACT OR FACTS FOUND THEREIN UNTIL REBUTTED.

Sec. 21. Title 36, chapter 14, article 1, Arizona Revised Statutes, is amended by adding section 36-1718.01, to read:

36-1718.01. PRESERVATION OF RIGHTS

IT IS THE PURPOSE OF THIS ARTICLE TO PROVIDE ADDITIONAL AND CUMULATIVE REMEDIES TO PREVENT, ABATE, AND CONTROL AIR POLLUTION IN THE STATE. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO ABRIDGE OR ALTER RIGHTS OF ACTION OR REMEDIES IN EQUITY UNDER THE COMMON LAW OR STATUTORY LAW, CRIMINAL OR CIVIL, NOR SHALL ANY PROVISIONS OF THIS ARTICLE, OR ANY ACT DONE BY VIRTUE THEREOF, BE CONSTRUED AS ESTOPPING THE STATE OR ANY MUNICIPALITY, OR OWNERS OF LAND FROM THE EXERCISE OF THEIR RIGHTS IN EQUITY OR UNDER THE COMMON LAW OR STATUTORY LAW TO SUPPRESS NUISANCES OR TO ABATE POLLUTION.

Sec. 22. Section 36-1720, Arizona Revised Statutes, is amended to read:

36-1720. MISDEMEANOR; PENALTY

A. 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.

B. ANY PERSON WHO VIOLATES ANY PROVISION OF ARTICLE 8, CHAPTER 6, OF THIS TITLE OR ANY RULE OR REGULATION ADOPTED PURSUANT TO SUCH ARTICLE OR ANY EFFECTIVE ORDER OF ABATEMENT ISSUED PURSUANT TO SUCH ARTICLE IS SUBJECT TO PENALTIES PRESCRIBED IN SECTION 36-789.01, NOTWITHSTANDING THE FACT THAT SUCH PROVISIONS, RULES, REGULATIONS OR ORDERS OF ABATEMENT ARE BEING ENFORCED BY THE DIVISION PURSUANT TO SECTION 36-1706.

Sec. 23. Title 36, chapter 14, article 1, Arizona Revised Statutes, is amended by adding section 36-1720.01, to read:

36-1720.01. DEFENSES

VIOLATIONS UNDER SECTION 36-1720 SHALL BE MALUM PROHIBITUM. LACK OF CRIMINAL INTENT SHALL NOT CONSTITUTE A DEFENSE TO SUCH VIOLATIONS.

Approved by the Governor—May 17, 1971

Filed in the Office of the Secretary of State—May 17, 1971
