

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. § 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF EXEMPT RULEMAKING

#### TITLE 14. PUBLIC SERVICE CORPORATIONS, CORPORATIONS AND ASSOCIATIONS, SECURITIES REGULATION

#### CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

#### PREAMBLE

1. **Sections Affected**

R14-2-106	<b><u>Rulemaking Action</u></b>
R14-2-207	Amend
R14-2-208	Amend
R14-2-209	Amend
R14-2-507	Amend
  
2. **The specific authority for the rulemaking, including both the authorizing statute and institutional plants; central and district heating plants; and district heating systems, both on the property of and within the buildings of the users.**

Authorizing statutes: A.R.S. §§ 40-202, 40-321, and 4-360.21 through 4-360.29

Implementing statutes: A.R.S. §§ 40-202, 40-321, and 4-360.21 through 4-360.29

Constitutional authority: Arizona Constitutional Article 15, §§ 2 and 3
  
3. **The effective date of the rules:**

August 15, 1996
  
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**

**Notice of Rulemaking Docket Opening:**  
2 A.A.R. 40, January 5, 1996

**Notice of Proposed Rulemaking:**  
2 A.A.R. 796, January 26, 1996
  
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Paul Bullis, Chief Counsel, Legal Division
Address:	Corporation Commission 1200 West Washington Phoenix, Arizona 85007
Telephone:	(602) 542-3402
Fax:	(602) 542-4870
  
6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

R14-2-106 was amended to correspond with a numbering change to a Section of the Arizona Revised Statutes made by the Arizona Legislature.

R14-2-207, R14-2-208, R14-2-209, and R14-2-507 pertain to electric and telephone utilities and were amended to change the effective date of nationally recognized industry standards which are incorporated by reference. Also, wording changes were made for consistency among these rules.

The Corporation Commission has determined that rules in this Chapter are exempt from the Attorney General certification provisions in the Arizona Administrative Procedure Act (A.R.S. § 41-1041) by a court order (*State of Arizona v. Arizona Corporation Commission*, 114 Ariz. Rep. 36 (Ct. App. 1992)).

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7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority to a political subdivision of the state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

The amendments update referenced national standards for regulated electric and telephone utilities and revise wording regarding referenced documents. The national standards are for construction, operation, and maintenance. The regulations which reference the national standards affect electronic and telephone utilities, their employees, and their customers. The amendments require future construction, operation, and maintenance by regulated electric and telephone utilities to meet latest national standards.

The amendments create no cost and benefits to political subdivisions. The amendments contribute to safer and more effective future facilities of regulated electric and telephone utilities.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None.

10. A summary of the principle comments and the agency response to them:

A hearing was held on March 19, 1996, and no members of the public appeared to comment on the proposed amendments. No written comments were received by the Commission.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

National Electrical Safety Code (ANSI C2): This document covers basic provisions for safeguarding persons from hazards arising from the installation, operation, or maintenance of 10 conductors and equipment in electric supply stations, and overhead and underground electric supply and communications lines. It also includes work rules for the construction, maintenance, and operation of electric supply and communication lines and equipment.

Power Piping Code (ANSI/ASME B31.1.): Document prescribes minimum requirements for the design, materials, fabrication, assembly, erection, examination, inspection, and testing of piping systems for electric generation stations; industrial and institutional plants; central and district heating plants; and district heating systems, both on the property of and within the buildings of the users.

These documents may be found at the Offices of the Arizona Commission, Utilities Division, Engineering Section, 1200 West Washington, Phoenix, Arizona 85007.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS, CORPORATIONS AND ASSOCIATIONS, SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION  
FIXED UTILITIES

ARTICLE 1. GENERAL PROVISIONS

Section  
R14-2-106. Commission Color Code to Identify Location of Underground Facilities

ARTICLE 2. ELECTRIC UTILITIES

Section  
R14-2-207. Line Extensions  
R14-2-208. Provision of Service  
R14-2-209. Meter Reading

ARTICLE 5. TELEPHONE UTILITIES

Section  
R-14-2-507. Provision of Service

ARTICLE 1. GENERAL PROVISIONS

R14-2-106. Commission Color Code to Identify Location of Underground Facilities

A. If the location of an underground facility is marked with stakes, paint, or in some customary manner pursuant to A.R.S. § 40-360.21(13) ~~40-360.21(12)~~, the facility owner will use the following color code:

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Facility Type	Specific Color
Electric Power Distribution and Transmission.	Safety Red.
Gas Distribution and Transmission; Oil Product Distribution and Transmission; Dangerous Materials, Product Lines.	High Visibility Safety Yellow
Telephone and Telegraph System; Cable Television.	Safety Alert Orange.
Fiber Optics Communication Lines.	The Letter "F" in Safety Alert Orange.
Water Systems; Slurry Pipelines.	Safety Precaution Blue.
Sanity Sewer Systems	Safety Green

**UNACCEPTABLE FACILITY LOCATION COLORS**

Fluorescent Pink - This shall be considered a land surveyor marking.  
White - This shall be reserved for excavator markings.

- B. No change.
- C. No change.
- D. No change.

**ARTICLE 2. ELECTRIC UTILITIES**

**R14-2-207. Line Extensions**

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. Single phase underground extensions in subdivision developments
  - 1. No change.
  - 2. No change.
  - 3. Installation of single phase underground electric lines within a subdivision.
    - a. No change.
    - b. No change.
    - c. The utility shall install or cause to be installed underground electric lines and related equipment in accordance with the applicable provisions of the 1993 1990 edition (and no future editions) of the ANSI C2 (National Electrical Safety Code) (and no future editions), with sufficient capacity and suitable materials which shall assure adequate and reasonable electric service in the foreseeable future. ANSI C2 is incorporated by reference; and on file with the Office of the Secretary of State, and copies, Copies are available from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, New York 10017, with sufficient capacity and suitable materials which shall assure adequate and reasonable electric service in the foreseeable future.
      - d. No change.
    - 4. No change.
    - 5. No change.
  - F. No change.

**R14-2-208. Provision of Service**

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. Construction standard and safety

- 1. Each utility shall construct all facilities in accordance with the provisions of the 1993 edition (and no future editions) of ANSI C2 Standards (National Electrical Safety Code, 1990 edition), incorporated herein by reference and on file with the Office of the Secretary of State, and the 1995 1989 edition (and no future editions) of ANSI B31.1 Standards (ASME Code for Pressure Piping), incorporated herein by reference and on file with the Office of the Secretary of State, except for such changes as may be made or permitted by the Commission in orders directed to specific public service corporations after appropriate proceedings, provided that such changes be of an equal or more rigid standard. The rule does not include any later amendments or editions of the incorporated matter. Copies of the National Electrical Safety Code are available from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, New York 10017. Copies of the ASME Code for Pressure Piping are available from the American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.
- 2. Each utility shall adopt a standard alternating nominal voltage or standard alternating nominal voltages (as may be required by its distribution system) for its entire service area or for each of the several districts into which the system may be divided, which standard voltage or voltages shall be stated in the rules and regulations of each utility and shall be measured at the customer's service entrance. Each utility shall, under normal operating conditions, maintain its standard voltage within the limits of the 1989 edition (and no future editions) of ANSI C84.1 (American National Standard for Electric Power Systems and Equipment (Voltage Ratings [60Hz]), incorporated by reference and on file with the Office of the Secretary of State. The rule does not include any later amendments or editions of the incorporated matter, copies of which Copies are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

**R14-2-209. Meter Reading**

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. Meter testing and maintenance program
  - 1. Each utility shall file with the Commission a plan for the routine maintenance and replacement of meters which

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meets the requirements of the 1988 edition (and no future editions) of ANSI C12.1 (American National Standard Code for Electricity Metering), incorporated by reference and on file with the Office of the Secretary of State. The rule does not include any later amendments or editions of the incorporated matter, copies of which Copies are available from the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

- C. No change.
- D. No change.
- E. Construction standards

1. Each utility shall construct all facilities in accordance with the provisions of the 1993 edition (and no future editions) of ANSI C2 (National Electrical Safety Code), incorporated herein by reference and on file with the Office of the Secretary of State. Copies are available from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, New York 10017. All utility facilities shall be constructed in accordance with the 1977 edition of the National Electric Safety Code (NESC), and where the NESC does not apply, the American National Standards Institute (ANSI) C1 standards 1975 edition, will apply, except in the instance of REA co-operatives, where the standards of the Rural Electrification Administration (REA) will apply.

2. No change.

F. No change.

ARTICLE 5. TELEPHONE UTILITIES

R14-2-507. Provision of Service

- A. No change.
- B. No change.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY  
UNDERGROUND STORAGE TANKS

PREAMBLE

- |    |   |   |
|----|---|---|
| 1. | <u>Section Affected</u><br>R18-12-605.01<br>R18-12-607.01<br>R18-12-707 | <u>Rulemaking Action</u><br>New Section<br>New Section<br>Amend |
|----|---|---|
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
 Authorizing statutes: A.R.S. §§ 49-1014, 49-1052(B), and 49-1052(O)  
 Implementing statutes: A.R.S. §§ 49-1014, 49-1052(B), and 49-1052(O)  
 Session Law: Laws 1995 Ch.. 1, 4 S.S. §10.
3. The effective date of the rules:  
August 15, 1996
4. A list of all previous notices appearing in the Register addressing the exempt rule:  
Notice of Public Information:  
2 A.A.R. 3249, June 28, 1996
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
 Name: Michael L. Denby or Martha L. Seaman  
 Address: Department of Environmental Quality  
 3033 North Central, 8th Floor  
 Phoenix, Arizona 85012  
 Telephone: (602) 207-2220  
 (602) 207-2222  
 Fax (602) 207-2251

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6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:

UST Soil Clean up Standards

R18-12-605.01

*Purpose*

The UST Soil Clean up Standards will provide coverage for the costs of corrective actions relating to soil remediation that are consistent with remediation standards developed pursuant to A.R.S. Title 49, Chapter 1, Article 4. Payment from the State Assurance Fund ("SAF") shall be made for corrective action costs to remediate soil to levels approved by the Department pursuant to this rule.

*Statutory Authority*

The Department of Environmental Quality, Underground Storage Tank Soil Clean Up Standards were drafted in accordance with the statutory mandate at A.R.S. § 49-1052(O) and Laws 1995 Ch. 1, 4 S.S., §10. These rules are exempt from the Arizona Administrative Procedures Act but were subject to public notice and 3 public hearings. The oral comments at the hearings and all written comments were reviewed by the Department. Those comments which warranted modifications to the rule text were incorporated. Due to the short time frames, the Department will not produce a Response to Public Comments with the adopted rule package, but will generate that document at a later date. Please contact the Department if you wish to receive this document.

In accordance with Laws 1995 Ch. 1, 4 S.S., §10, these rules are not subject to Governor's Regulatory Review Council approval or Attorney General approval. Therefore, these rules become law upon adoption by the Director on August 15, 1996.

*Interim Soil Remediation Standards*

These UST rules, by statute, are to be consistent with the remediation standards developed pursuant to Title 49, Chapter 1, Article 4. The Department produced the Interim Soil Remediation Standards ("ISRS") rules in accordance with Title 49, Chapter 1, Article 4. The ISRS rules were approved and effective March 29, 1996. These UST rules do not attempt to interpret the meaning of the ISRS. Rather, these UST rules set forth the limits of SAF payment for soil remediation consistent with the ISRS.

The ISRS under A.A.C. R18-7-205 establishes 2 main areas of soil remediation -residential and non-residential. This distinction is used within these UST soil clean up standards to segregate the amount the SAF will pay for a UST clean up. If the property is residential as defined in A.A.C. R18-7-205 and A.R.S. § 49-151, the SAF will pay for a residential level clean up. If the property is not residential as defined in A.A.C. R18-7-205 and A.R.S. § 49-151, the SAF will only pay those costs associated with a non-residential level clean up. However, the Department does not discourage the voluntary clean up of non-residential property to a residential level.

An additional tool utilized by the ISRS and for which the SAF will pay under the circumstances noted in these rules, is risk assessments. The Department is confident that many petroleum clean ups will not require an HBGL level remediation, but can be closed expeditiously after a risk assessment.

*Section-by-Section Analysis*

**Subsection A.** This subsection sets forth the effective date of this rule. These rules apply to all costs of corrective action services conducted on or after November 15, 1996, for that portion of a release which is confined to soil. This subsection, in conjunction with Subsection (G), makes note that these rules do not apply to incidental soil clean up associated with a groundwater clean up.

**Subsection B.** Subject to the provisions in subsections (C) through (G), this section sets forth that the Assurance Account will not make payments for corrective action expenses to clean up the soil to a cleaner, and therefore more stringent, level than: 1) background in accordance with A.A.C. R18-7204; 2) the greatest allowable remaining concentration under A.A.C. R18-7-205.

**Note:** Throughout this rule the Department attempts to define the limits of clean up in regard to the remaining concentration of a component of a released regulated substance in the soil. This means that if the HBGL is 7,000 mg/kg TPH for residential clean up, the greatest allowable remaining concentration is 7,000 mg/kg TPH. Therefore, on a residential clean up, the Department will not pay to clean up to a level of 6,999 mg/kg TPH or lower, but will pay for the clean up from 20,000 mg/kg TPH to 7,000 mg/kg TPH.

**Note:** Background is defined at A.A.C. R18-7-201 as "the concentration of a naturally-occurring contaminant in like lithology and soils within close proximity to, but not affected by, a release." Therefore, the Department does not expect to find many of the constituents of petroleum as background concentrations.

**Subsection C.** This subsection establishes the costs for which the Department will pay. The costs are those associated with: 1) reducing the concentration to the standard found in A.A.C. R18-7204 (background) or A.A.C. R18-7-205 (Bugles); 2) site specific risk assessment. The reasonable cost of undertaking the risk assessment will be paid.

**Subsection D.** Where the contract between the owner or operator of an UST system and the land owner, who is not an owner or operator of the UST system, expressly calls for clean up of the property to ADEQ Suggested Soil Clean up Levels, or "SSCL's" the Department will pay for a residential risk assessment.

**Note:** This exception does not include contracts between land owners and consultants.

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Because the UST statutes define two classes of persons - owners of UST's and operators of UST's - the Department realizes that owners of land who are not owners under A.R.S. §49-1001.01 are beyond the reach of the UST laws. Additionally, the ISRS dictates that any non-residential clean up must contain a Voluntary Environmental Mitigation Use Restriction ("VEMUR"), which must be signed by the property owner. Therefore, in those circumstances where the owner/operator of the UST is not the owner of the property, and the operator cleans the property to non-residential levels, but the land owner refuses to sign a VEMUR, the Department will pay for a residential risk assessment. This was established for contracts which were in existence prior to April 1, 1996. Any contract entered into and not renewed after April 1, 1996 will be eligible for this exception. This exception will expire in 2001. The Department felt 5 years was sufficient for all parties to renegotiate their contracts to provide for the VEMUR in the event of a non-residential clean up.

**Note:** This exception does not include contracts between land owners and consultants.

**Subsection E.** There are 4 situations in which the Department will honor alternative clean up levels established prior to the effective date of this subsection: 1) an order of a court; 2) an order of the Director; 3) a work plan pre-approved by the Department; or, 4) a corrective action plan in accordance with 40 CFR 280.66.

**Subsection F.** This subsection sets forth 2 additional costs for which the Department will pay. First, the costs associated with cleaning up to a concentration less than the greatest allowable remaining concentration during a remedial action activity, if it was not feasible to control the clean up technology. As an example, actual soil contaminant concentrations are not measured during soil vapor extraction (SVE) remediation. When actual soil concentration measurements are made at the completion of SVE remediation, contaminant concentrations may be below regulatory thresholds. This exception assures contractors that the Department will not seek to pro-rate the costs in such cases, but will pay the full reasonable and necessary costs for the remediation. This exception applies to all clean up technologies which cannot be stopped precisely at the ISRS level. The Department acknowledges that remediation is not an exact science. This section puts forth in express terms the understanding that the Department will not consider such costs unreasonable.

Additionally, this subsection acknowledges that the Department will pay for the demobilization and abandoning of corrective action equipment. This subsection is intended to cover demobilization and abandonment costs associated with compliance with these rules. Because there are sites which are presently being remediated, but which will no longer need remediation upon enforcement of this section, the Department will pay to have those sites closed and the equipment demobilized.

**Subsection G.** This section, in conjunction with section (A) dictates that these rules will not be used to interfere with the clean up of groundwater contamination. Should an eligible person incidentally remediate the soil while remediating the groundwater, the Department will not use these rules to deny payment. However, if the Department determines that the "incidental" clean up of the soil was not associated with the groundwater remediation, these rules may apply.

*Issues*

This portion of the Preamble explains several issues considered by the Department in promulgating today's rule.

**Issue #1.** Several commentors expressed concern that the UST soil clean up standards do not provide for the payment of residential level clean ups on certain sites which are arguably residential. This is a difficult point to address in this rule. The ISRS were developed as an umbrella rule to provide a standard for soil clean up. What the commentors are asking the UST section to do is to interpret exactly what types of uses and zonings are covered within the determination of "residential" under the ISRS. In order to assist the regulated community in the understanding of the residential and non-residential distinction, the UST Section offers the following discussion.

The regulated community offered three areas of residential zoning which they felt were not addressed in the UST soil rule or the ISRS. They are as follows:

"Cumulative zoning classifications: In some zoning ordinances, less restrictive zoning classifications accumulate the land uses allowed in more restrictive classifications. The operation of this principle is typically described in general provisions, and not in each individual zoning district. Under this structure, commercial and industrial zoning districts would allow, as of right, the residential uses described in more restrictive residential zoning districts.

Mixed commercial and residential zones. Some zoning ordinances contain specific zoning districts in which both commercial and residential uses are allowed as of right. For example, the Pima County CB-1 (Neighborhood Commercial) zone allows both residential and commercial uses.

Specific plans, PADs, PUDs. Arizona zoning enabling law and court decisions allow local jurisdictions to adopt specific plans, planned area developments and planned unit developments which provide greater flexibility than standard zoning districts. Under these zoning devices, large areas are designated as a 'Planned Area Development,' 'Planned Unit Development,' or 'Specific Plan,' in which a variety of land uses (including residential and commercial uses) are allowed as depicted on a master development plan. The interim soil remediation rule language quoted above address this possibility through subparagraph (D)(3), which discusses residential uses permitted under a 'master plan.' In other areas, such as in Tucson, these plans are called 'specific' plans."

**Response:** The UST Section has reviewed these three designations and suggests the following:

- A. Cumulative zoning. Zoning designations which allow, as a matter of right, residential use may be considered residential in terms of soil clean up. If the zoning allows the change from a non-residential use to a residential use without approval or special use permits from the zoning organization, the property is considered residential.

- B. Mixed commercial and residential. Similar to cumulative zoning, those areas which allow multiple uses, among them residential and non-residential, may be considered residential. If the use of the property can be changed from a non-residential use to a residential use without approval or special use permits from the zoning organization, the property is considered residential.
- C. Specific plans. If a zoning organization is using a zoning device which sets forth an approved master development plan and the property at issue falls within the residential designations within the plan, the Department will consider this property residential. If the property is currently used for non-residential purposes but the approved master development plan designates the property as residential and if the zoning allows the change from a non-residential use to a residential use without approval or special use permits from the zoning organization, the property is considered residential.

**Issue #2.** Several commentors expressed concern that these rules would not enable the clean up of potentially residential property, or what is currently used as residential property, to the residential levels set forth in the ISRS.

**Response:** The Department feels these issues are addressed in the ISRS and residential use or residential zoning are determinative of residential clean up levels. Nothing in these rules prevents the eligible person from voluntarily cleaning up the release to a level more stringent than the ISRS. Rather, these rules set forth the extent of the clean up for which the eligible person may seek reimbursement.

### UST Pre-approval Requirements

#### R18-12-607.01

##### *Purpose*

The UST pre-approval requirements provide a uniform process for the assessment and remediation of leaking underground storage tanks. These requirements will establish a program of Departmental oversight. The Department will be able to review the proposed work plans for a corrective action before they are implemented, thereby assuring the eligible person of the reasonableness and payment for the corrective action work.

##### *Statutory Authority*

The Department of Environmental Quality, Underground Storage Tank Pre-approval Requirements were drafted in accordance with the statutory mandate at A.R.S. § 49-1052(B) and Laws 1995 Ch. 1, 4 S.S., §10. These rules are exempt from the Arizona Administrative Procedures Act but were subject to public notice and 3 public hearings. The oral comments at the hearings and all written comments were reviewed by the Department. Those comments which warranted modifications to the rule text were incorporated. Due to the short time frames, the Department will not produce a Response to Public Comments with the adopted rule package, but will generate that document at a later date. Please contact the Department if you wish to receive this document.

In accordance with Laws 1995 Ch. 1, 4 S.S., §10, these rules are not subject to Governor's Regulatory Review Council approval or Attorney General approval. Therefore, these rules become law upon adoption by the Director on August 15, 1996.

##### *Section-by-Section Analysis:*

**Subsection A:** This subsection establishes that the requirements for pre-approval procedures are effective for all phases of corrective action which are started after the effective date of the rule. One phase of corrective action ends when a report of the activities performed during that phase is submitted to the Department. The next set of activities constitutes the next phase. Therefore, if a quarterly monitoring report is submitted to the Department, it signifies the end of a phase. Before the next phase (the next quarter of monitoring) begins, compliance with this subsection is required. This subsection also clarifies that an application for pre-approval may include multiple phases of corrective action. However, the work plan submitted with the pre-approval application must include all phases to be covered under that work plan.

**Note:** As a general rule, the submission of an SAF application for reimbursement is not an end of a phase. However, the report of work, evidencing the completion of an activity performed in compliance with the CFR, in the SAF application may be an end of a phase.

**Subsection B:** This subsection establishes the preapproval procedures for those eligible persons who elect to begin corrective action without waiting for work plan approval from the Department. This procedure was provided for those eligible persons who, for economic or other reasons, cannot afford to wait the 60 days to proceed with their corrective action. To exercise this option, the eligible person must notify the Department of the intent to proceed without submission of a pre-approval application. Also, the phases of corrective action subject to the election must be specified. Corrective actions taken under this election are still payable from the SAF. However, they will be subject to the test of technical and financial reasonableness under R18-12-605. Subsection (Q)(2) reinforces the payment standard under this option.

There are some penalties for not submitting an application for pre-approval. When the application for reimbursement is up for payment, the 5 points for pre-approval, as provided under R18-12-606(E) will not accrue. Furthermore, 15 points will be deducted from the total number of 606(E) priority points the application would otherwise receive. In addition, instead of being ranked in a payment round before work actually begins, the application for reimbursement will enter the process after work has been completed and the invoices and bills for that work are submitted with the application.

The choice of this option will result in not only 605 post-completion review, but a deduction in priority points. At first glance, the reduction of priority points may not affect non-Maricopa corrective actions. However, the Department believes that if the current

level of claims for non-Maricopa clean ups continues at the present rate, that the non-Maricopa fund will be subject to the priority point system within a year.

**Subsection C:** This subsection contains "grandfather" provisions. The formal application procedure is not applicable to pre-approval requests which are submitted prior to this rule's effective date, provided the request is subsequently approved. This provision avoids the need for applications to be resubmitted if they are in the review process when this Section becomes effective. Similar exemption is also provided for corrective action plans. The last two classes of exemptions are for corrective actions conducted under court orders or Department enforcement actions (A.R.S. § 49-1013).

**Subsection D:** This subsection allows for certain corrective actions to be deemed to be pre-approved, provided specified provisions are met. This subsection addresses initial response and abatement, the site check, and free product removal. The Department does not require the eligible person to submit a pre-approval application for these activities because these activities must be conducted rapidly after discovery. Also, the specifics of the actions are established in the Code of Federal Regulations (CFR).

Corrective action activities which fall into the above categories are deemed pre-approved effective from the date the release, or condition requiring immediate action, is reported to the Department. These actions are payable from SAF funds if the situation is reported to the Department, actions meet the technical and financial reasonableness test of R18-12-605, and the activity has been undertaken in accordance with the requirements of the CFR. Furthermore, verification of compliance is to be made part of one of the documents listed under (C)(4) of the subsection.

Finally, if these initial activities will take more than 45 days, an application for pre-approval must be submitted before the end of the 45th day. Because the requirement is for submission of an application, the abatement, response and free product removal can continue during the review process.

**Subsection E:** This subsection provides the requirements for UST removal activities to be deemed pre-approved. If contamination is found which requires corrective action during the removal of an UST system from the ground, the removal expense is payable from the SAF. Because the eligible person seldom knows in advance that the contamination exists; expecting the submission of an application for pre-approval prior to each removal is not realistic. There is a clarification that the amount of SAF payment for soil excavation is limited to the volume required for system removal and sampling.

**Subsection F:** This subsection addresses another category of corrective action activity which is deemed pre-approved. Initial site characterization is similar to the other initial activities addressed in subsection (D).

Because the scope of the initial site characterization deemed to be pre-approved is so limited, provision is made for an eligible person to submit a pre-approval application. The formal process is required when the activities deemed to be pre-approved either cannot be accomplished due to site-specific conditions or if those activities fail to fully define the horizontal and vertical extent of the contamination. Also, if the eligible person desires, an application for pre-approval can be made. If this election is made, the specific content of the application is set forth in the subsection. The application content for initial site characterization is limited compared to the full site characterization work plan described in subsection (I). The limited application content is designed to minimize the cost of preparation and expedite the Department's review process.

**Subsection G:** This subsection sets forth the contents of a request for pre-approval. The requirements of this subsection constitute what is generally termed the application. An application is submitted after the initial site characterization is completed, except where, under the circumstances described in subsection (F)(7)(a), it cannot be completed. The request consists of the SAF application form described under R18-12-604, a work plan for site characterization or remedial activities as provided in the Section, and the detailed cost estimates.

**Subsection H:** This subsection establishes the standard content of all work plans. It is designed to eliminate the repetition of identical information in multiple subsections. The information requested is designed to provide the Department with all of the general knowledge needed to understand the situation at and around the facility and associated with the release. The rule content, in this subsection and in subsections (I) and (K), also serves as a form of checklist for the entity developing a work plan. By going through the rule, the plan developer can ensure that the pertinent classes of information have been considered.

**Subsection I:** This subsection prescribes the information, in addition to that set forth in subsection (H), needed to evaluate a work plan dealing with site characterization. This subsection contains a fair amount of detail because the process lends itself to linear logic and because the number of incomplete site characterizations submitted to the Department in the past has been unacceptably high.

**Subsection J:** This subsection sets forth the standard which the Department will use to determine if the site characterization work plan can be approved. It should also be used by the environmental consulting firm as a self-check before the work plan is submitted.

**Subsection K:** This subsection, like subsection (I), is information which is supplemental to the basic work plan content established under subsection (H), but for responding to contamination (actual remedial activities). This subsection contains less detail than previous subsections because the site characterization report information is included, the kinds of situations which may be encountered at the release site are nearly unlimited, and the number of potential remedial approaches is extensive. The environmental consultant is expected to exercise sound professional judgement in the selection of techniques to be used and should be able to provide a rationale for using those techniques. The same expectation is part of the method and rationale for measuring remedial progress and determining when the objective has been reached. Although the description of the information needed may be relatively simple, the actual resulting document will, in many cases, be extensive.

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**Subsection L:** This subsection establishes the standards the Department will use in determining if a work plan for responses to contamination can be approved. As with the standards for site characterization in subsection (J), these standards should be reviewed by the environmental consultant.

**Subsection M:** This section addresses review and approval (or denial) of applications for pre-approval. The first test is based on the cost effectiveness, considering the threat to human health and the environment, of the corrective action.

The Department must review and decide on application approval or denial within 90 days. There are periods of time (during which the eligible person is correcting technical deficiencies or establishing eligibility) which are not counted against the 90-day period.

The eligible person has certain options which are established under subsection (M)(3). The eligible person may, if the Department has not taken specified actions within specified time frames, give notice and go ahead with corrective action activities. This is similar to the provisions of subsection (B). However, in this case, the eligible person has attempted to comply with the application content and process and the Department has failed to meet its deadline. The application, when time for prioritization for payment comes, will receive the 5 priority points for pre-approval and will not have the total points reduced by 15, as would be the case if the eligible person elected not to submit an application at all under subsection (B). If the eligible person elects the (M)(3)(a) option, actual work which is consistent with the work plan of the approved pre-approval application will be placed in the payment round based on the date of the application. For any inconsistent work, the payment round will be based on the date of submission of the bills and invoices submitted for reimbursement. The work which is inconsistent is subject to all of the normal review and approval process for a reimbursement claim and, other than accruing the 5 priority points (see above) has no advantage over claims for reimbursement which were submitted prior to the effective date of this rule.

Subsection (M)(3)(b) establishes another option. The eligible person may go ahead with corrective action after submission of the application, but before the end of the initial 60 day period. If this election is made, there will be no accrual of priority points for pre-approval. Within this option, the eligible person has two alternatives. If notice is given that the corrective action is going to proceed, the application for reimbursement of corrective action costs will be treated identically to one where notice was given under subsection (B). The second alternative is for the eligible person not to give notice to the Department and waive recovery of any corrective action costs which would have been part of the pre-approval application.

Subsections (M)(4) through (8) address application approval, technical deficiency statements, and denial procedures. Subsection (M)(9) is a clarification that only one statement of technical deficiencies will be issued by the Department on an application. However, technical deficiencies which violate the general powers and duties of the Department under A.R.S. § 49-104 will not be deemed pre-approved and therefore, will not be accepted for SAF payment.

**Note:** The Department has made a distinction between technical deficiencies (deficiencies in the work plans proposed for a corrective action), and eligibility requirements (in accordance with Title 49, Chapter 6, Article 3). Because many of the SAF applications result in a determination of ineligibility, the Department did not want to bear the burden of reviewing an application for pre-approval of when the party had yet to establish eligibility. Therefore, when the Department receives a pre-approval application, the Department will first determine eligibility. This determination will not involve any technical deficiencies. Additionally, the time taken by the pre-approval applicant to respond to both eligibility and technical deficiencies will not subtract from the 90 day deadline imposed upon ADEQ.

**Subsection N:** This subsection addresses the review process for actual work performed under an approved work plan. Work which is inconsistent with the work plan must be reviewed in accordance with the provisions of subsections (O) through (Q) before payment is made. Subsection (L)(2) addresses the review of costs on a line item between the pre-approval application and the actual claim. If an action is approved at a rate of \$80 per hour and the invoice comes in at \$100 per hour, the excess over the approved rate will not be paid.

**Subsection O:** This subsection addresses work which is not consistent with the pre-approved work plan. Inconsistent work will be paid as if it had been included in the pre-approved application, if it is found to be reasonable and necessary and if the total cost approved under the application is not exceeded. Inconsistent work which is reasonable and necessary, but in excess of the total amount pre-approved, will be paid. However, the amount in excess will be treated as a reimbursement claim, except the priority points assigned will be the same as those of the pre-approved application.

**Subsection P:** This subsection establishes those elements the Department will review in determining whether work outside the scope of the work plan was reasonable and necessary. The Department will consider all the elements of this section. However, the consideration of these elements does not mean that a lack of a "force majeure" or act of a third person will weigh against the eligible person. Furthermore, the mere existence of a "force majeure" or act of a third person will not insure that the inconsistency was reasonable and necessary. Rather, these are the factors the Department will consider when making a reasonable and necessary determination.

**Subsection Q:** This subsection addresses payments for submission costs of the pre-approval application, for phases of corrective action for which the eligible person has elected not to complete the application review and approval/denial process, and for initial activities deemed pre-approved under subsections (D), (E), or (F). The cost of putting the application documents together and handling other submission related expenses will be paid if financially and technically reasonable under R18-12-605. For corrective action expenses where the eligible person elects not to complete the process, either under subsection (B) or under (M)(3)(a), the associated costs will be reviewed against the statutory requirements for the SAF and the financial and technical reasonableness requirements of R18-12-605. The review will occur during the normal reimbursement application process.

*Issues*

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This portion of the Preamble explains several issues considered by the Department in promulgating today's rule.

**Issue #1.** Some of the regulated community complained that this rule is over-burdensome. Some are of the opinion that the rule requires a surplus of information even for a very limited site.

**Response:** The Department understands that responsible and competent consultants will find some of these requirements unnecessary. However, because the Department is forced to establish the standards for all corrective actions, the rules need to be broad. All circumstances must be set forth in detail so the Department can determine whether the work plan is reasonable and cost effective.

**Issue #2.** There was discussion that the rules should expressly not provide for the payment of professionally drawn maps.

**Response:** The Department noted in subsection (H)(5)(d)(i) that it wants the locations of monitor wells surveyed. The issue of restricting the submission of documentation to non-professional maps was difficult to address. The Department does not want surveyed site plans. However, the Department does not want the poor quality maps that are indecipherable, misleading, or incomplete. As with many aspects of this rule, professional judgment should play a role as to what methods and means are used to comply with the requirements of this Section.

**Issue #3.** There have been many discussions and comments that these rules are unduly burdensome upon the regulated community and the Department.

**Response:** The Department has a statutory obligation to produce these rules. The Department is confident that the only means of establishing a pre-approval program is to require the specific information contained in this rule. This is the minimum information from which the Department can reasonably make a determination that the proposed work plan and corrective action is reasonable and necessary. It is true that this rule will require the consultant to spend additional time and energy in accumulating and providing this required information. However, this is information the Department feels the consultant should already be compiling prior to making any professional judgments regarding the actions to be taken at an UST release. Additionally, this is virtually the same information which is currently required under the voluntary pre-approval procedures of R18-12-607.

This program will have a cost upon the Department. With approximately 3,000 UST sites open, and only a handful of personnel to review work plans, the Department will be inundated. However, the Department will make every effort to meet the deadlines imposed upon it in this rule.

**Issue #4.** The Department has received comment that a consultant certification process may be a better alternative to this pre-approval process.

**Response.** The Department would like to note that such a process of consultant certification was recently offered and championed by the Department. This proposal was met with staunch rejection from the regulated community. The Department still considers consultant certification to be a viable alternative to pre-approval. However, the legislature has mandated the production of pre-approval rules by August 15, 1996.

**Issue #5.** An important point was raised by the consulting community. In accordance with R18-12-602(F) a requirement for pre-qualification is that the firm indemnify the Department against injury resulting from the Departmental designation of the firm as one pre-qualified to perform corrective action services eligible for reimbursement. The concern is that the Department through the review and modification of a work plan may cause the professional consultant to engage in activities which cause injury to a person.

**Response:** In response to this concern, the Department requests that the consultant appeal the approval of a work plan any time the consultant, in his or her professional judgment, disagrees with any determination by the Department that the consultant engage or not engage in a specified activity and when the consultant feels that in his or her professional judgment the undertaking of, or failure to undertake, that action might result in an injury to a person as noted in R18-12-602(F).

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority to a political subdivision of the state:**  
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**  
Not applicable.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
There are no substantial changes between the rule text which was made available prior to the public comment period and this final text. However, this rule text was never a proposed rule. Therefore, this Notice will not contain a description of the changes between the proposed rule and the final rule.
10. **A Summary of the principle comments and the agency response to them:**  
The Department is not required to summarize comments nor to produce a concise explanatory statement. However, the Department will be making available a Response to Comments at a later time.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
12. **Incorporations by reference and their location in the rules:**  
R18-12-605.01(E)(4): 40 CFR 280.66, as amended on July 1, 1994, Washington, D.C.

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- R18-12-607.01(C)(2) : 40 CFR 280.66, as amended on July 1, 1994, Washington, D.C.  
R18-12-607.01(D)(3)(a) : 40 CFR 280.61, as amended on July 1, 1994, Washington, D.C.  
R18-12-607.01(D)(3)(b) : 40 CFR 280.62, as amended on July 1, 1994, Washington, D.C.  
R18-12-607.01(D)(3)(c) : 40 CFR 280.64, as amended on July 1, 1994, Washington, D.C.  
R18-12-607.01(F) : 40 CFR 280.63, as amended on July 1, 1994, Washington, D.C.

13. Was this rule previously adopted as an emergency rule?  
No.

14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY  
UNDERGROUND STORAGE TANKS

ARTICLE 6. UNDERGROUND STORAGE TANK  
ASSURANCE FUND

R18-12-605.01     Soil Clean-up Standards  
R18-12-607.01     Pre-approval

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT  
PROGRAM

R18-12-707.     Work Plan

ARTICLE 6. UNDERGROUND STORAGE TANK  
ASSURANCE FUND

R18-12-605.01.     Soil Clean-up Standards

- A. The payment provisions of this Section shall apply to all costs of corrective action services conducted on or after November 15, 1996, for that portion of a release which is confined to soil, as defined under A.A.C. R18-7-201(25).
- B. Subject to the provisions of subsections (C) through (G) of this Section, no payment from the assurance fund shall be made for corrective action expenses incurred to remediate the release of a regulated substance to a standard more stringent than either of the following:
1. The background concentration for any component of the released regulated substance determined in accordance with A.A.C. R18-7-204.
  2. The greatest allowable remaining concentration for any component of the released regulated substance permitted under A.A.C. R18-7-205.
- C. If the concentration of any component of the released regulated substance is greater than the remediation standards described in subsection (B) of this Section, the assurance fund shall pay, subject to the provisions of A.R.S. §§ 49-1052, 49-1054 and this Article, corrective action expenses incurred in accordance with the following, as elected by the eligible person:
1. Reducing the concentration of any component of the released regulated substance to the greatest allowable remaining concentration determined in accordance with A.A.C. R18-7204 or permitted under A.A.C. R18-7-205.
  2. Reducing the concentration of any component of the released regulated substance, including the cost of the site specific risk assessment, to the following:
    - a. For properties described in A.A.C. R18-7-206(C)(1) through (3), to the greatest allowable remaining concentration determined in accordance with A.A.C. R18-7-206 (C).
    - b. For properties not described in A.A.C. R18-7-

206(C)(1) through (3), to the greatest allowable remaining concentration in accordance with A.A.C. R18-7-206(D)(2) or A.A.C. R18-7-206(E). The cost of engineering controls determined under A.A.C. R18-7-206(E) shall be paid as follows:

- i. Corrective action expense for a site-specific risk assessment determined in accordance with A.A.C. R18-7-206(E), shall include the cost of installing engineering controls if the eligible person can demonstrate the cost effectiveness in accordance with A.R.S. § 49-1052(B) and the rules promulgated thereunder.
  - ii. Corrective action expense for a site-specific risk assessment determined in accordance with A.A.C. R18-7-206(E), shall not include the cost of maintaining engineering controls required under A.A.C. R18-7-206(E).
- D. For the period ending August 15, 2001 only, the assurance fund shall pay, subject to the provisions of A.R.S. §49-1052, § 49-1054, and this Article, corrective action expenses, including the cost of the site-specific risk assessment, incurred for reducing the concentration of any component of the released regulated substance to the greatest allowable remaining concentration determined in accordance with A.A.C. R18-7-206(D)(1) under the following circumstances:
1. If a written contract, entered into prior to April 1, 1996, and not renewed after April 1, 1996, between the property owner and an owner or operator of the UST system, sets forth in express terms a requirement to remediate to the Department's Suggested Soil Cleanup Levels or "SSCLs". The eligible person shall submit a true and correct copy of the contract to the Department for review and acceptance. The submitted contract shall be entitled to confidentiality protection under A.R.S. § 49-1012.
  2. If a written contract was entered into prior to April 1, 1996, and is not renewed after April 1, 1996, between the property owner and an owner or operator of the UST system, relating to the ownership or operation of the UST system, and the property owner, who is not the operator of the UST system or an owner, as defined in A.R.S. § 49-1001.01, refuses to sign a Voluntary Environmental Mitigation Use Restriction ("VEMUR") for a site which has been remediated or determined to be at or below non-residential concentrations. The owner or operator of the UST system shall provide written notice to the Department that the property owner refuses to sign a VEMUR.
- E. In all cases, the assurance fund shall pay, subject to the provisions of A.R.S. §49-1052, A.R.S. § 49-1054, and this Article, corrective action expenses incurred for reducing the concentration of any component of the released regulated substance

to a remediation standard established prior to the effective date of this Section by any of the following:

1. An Order of a court of competent jurisdiction;
2. An Order of the Director in accordance with A.R.S. §49-1013;
3. A work plan pre-approved by the Department under R18-12-607 or R18-12-607.01;
4. A corrective action plan in accordance with 40 CFR 280.66 approved by the Department. 40 CFR 280.66, as amended on July 1, 1994 (and no future amendments or additions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.

**F.** The assurance fund shall pay, subject to the provisions of A.R.S. §§ 49-1052, 49-1054, and this Article, for either of the following:

1. Reducing the concentration of any component of the released regulated substance below the standards of this Section where it was not feasible to control the cleanup technology to limit corrective actions to the standards of this subsection.
2. Demobilizing and abandoning of corrective action equipment at or from the facility.

**G.** Nothing in this Section shall be used to deny payment for corrective action expenses directly related to the remediation of groundwater, regardless of the concentration of regulated substance reached in the soil.

**R18-12-607.01. Pre-approval**

**A.** The Department shall not make payment from the assurance account for the costs of corrective action performed during a phase of corrective action that is initiated after the effective date of this Section unless the eligible person meets the requirements of this Section. A phase of corrective action is initiated with the first corrective action activity performed following the submission to the Department of a report of work evidencing the completion of any activity performed in compliance with the requirements of A.R.S. § 49-1005(D). An application for pre-approval may include multiple phases of corrective action, provided applications that include work plans described under subsections (F), (I), or (K) of this Section are limited to phases described in one of those subsections.

**B.** An eligible person who elects to begin a phase of corrective action without awaiting approval of a work plan by the Department shall be subject to all of the following pre-approval procedures:

1. Prior to beginning the phase of corrective action the eligible person shall notify the Department, in writing;
2. The technical and financial reasonableness of the corrective action shall be reviewed and approved in accordance with R18-12-605;
3. The eligible person who makes such an election shall:
  - a. Not accrue 5 points for pre-approval under R18-12-606(E).
  - b. Have 15 points subtracted from the composite numerical score determined in accordance with R18-12-606(D);
4. An application for payment of corrective action cost of any phase subject to the election described under subsection (B) shall be ranked for payment in the regular round based on the date the reimbursement application is received by the Department.

**C.** The pre-approval procedures of this Section shall not apply to corrective action expenses incurred under any of the following:

1. A work plan submitted prior to the effective date of this Section and subsequently approved, in writing, by the Department.
2. A corrective action plan in accordance with 40 CFR 280.66 submitted prior to the effective date of this Section and subsequently approved by the Department. 40 CFR 280.66, as amended on July 1, 1994 (and no future amendments or additions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
3. An Order of a court of competent jurisdiction.
4. An Order of the Director in accordance with A.R.S. § 49-1013.

**D.** An eligible person shall be deemed to be in compliance with pre-approval requirements for initial corrective action activities described in this subsection from the date of the report to the Department of the release or of the subsequent discovery of the existence of free product or fire, explosion or vapor hazards, if all of the following are met:

1. Discovery of the release or subsequent discovery of free product or fire, explosion or vapor hazards is reported to the Department.
2. Work and costs are in compliance with the financial and technical reasonableness requirements of R18-12-605.
3. Compliance with one or more of the following:
  - a. Initial response activities under A.R.S. § 49-1005(D)(1), subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.61. 40 CFR 280.61 as amended on July 1, 1994 (and no future amendments or editions) is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
  - b. Initial abatement measures and site check activities under A.R.S. § 49-1005(D)(2) and (3), subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.62. 40 CFR 280.62 as amended on July 1, 1994 (and no future amendments or editions) is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
  - c. Free product removal under A.R.S. § 49-1005(D)(5), subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.64. 40 CFR 280.64 as amended on July 1, 1994 (and no future amendments or editions) is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
4. Confirmation of compliance with the requirements of subsection (D) is demonstrated in the submission to the Department of 1 of the following:
  - a. A request for LUST file closure;
  - b. An application for pre-approval of site characterization in accordance with subsections (G) through (I);
  - c. An application for pre-approval of response to contaminated soil, surface water or groundwater in accordance with subsections (G), (H), and (K).
5. If the initial corrective action activities are expected to extend beyond 45 days from the date of initiation, the eligible person may continue the initial corrective action activities only if the eligible person submits an application, in accordance with subsections (G), (H) and (K), which includes the continuing initial corrective action activities, for pre-approval to the Department prior to the 45th day.

**E.** An eligible person shall be deemed to be in compliance with pre-approval requirements for the costs of removing an UST

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system from the ground if documented contamination exists, corrective action is required under A.R.S. § 49-1005, and all of the following are met:

1. Discovery of the release is reported to the Department.
  2. Work and costs are in compliance with the financial and technical reasonableness requirements of R18-12-605.
  3. Work is in compliance with the requirements of R18-12-271.
  4. Excavation costs are limited to the costs necessary to excavate the volume of soil required to remove the tank and piping from the ground and meet the sampling requirements of R18-12-272.
  5. Confirmation of compliance with the requirements of subsection (E) is demonstrated in the submission to the Department of one of the items under subsection (D)(4)(a) through (c).
- F. An eligible person shall be deemed to be in compliance with pre-approval requirements for initial site characterization under A.R.S. § 49-1005(D)(4) that are performed, subject to the provisions of A.R.S. § 49-1005(F), in accordance with the provisions of 40 CFR 280.63, if the person meets the requirements of subsections (F)(1) through (6) or the requirements of subsection (F)(7). 40 CFR 280.63 as amended on July 1, 1994, (and no future amendments or additions), is incorporated by reference and is on file with the Department and the Office of the Secretary of State.
1. Discovery of the release is reported to the Department.
  2. Work and costs are in compliance with the financial and technical reasonableness requirements of R18-12-605.
  3. Non-intrusive site information described in subsections (H)(4)(a), (d), and (e) of this Section, is collected.
  4. A single vertical boring is drilled as close as physically possible to each confirmed release point, but not further than 5 feet (1.5 meters) from the release point. Borings shall not be drilled deeper than any of the following:
    - a. The depth at which groundwater is encountered,
    - b. 10 feet deeper than the last field detectable evidence of contamination,
    - c. The depth at which bedrock is encountered.
  5. A soil sample for laboratory analysis is taken at least every 10 vertical feet but no more than every 5 vertical feet during a boring described in subsection (F)(4). All sampling shall meet the requirements of R18-12-280.
  6. Confirmation of compliance with the requirements of subsection (F) is demonstrated in the submission to the Department of one of the items under subsections (D)(4)(a) through (c).
  7. An eligible person shall submit an application for pre-approval if either of the following exist:
    - a. A request for pre-approval of site characterization in accordance with subsections (G) through (I) shall be made if site specific conditions prevent compliance with the provisions of subsection (F)(4)(a) through (c) or (F)(5), or if the full horizontal and vertical extent of contamination is not determined under the provisions of subsections (F)(1) through (6).
    - b. A request for pre-approval of initial site characterization is elected by the eligible person. The request shall be included with the application described under R18-12-604 and shall include the cost estimates described under subsection (G)(2) of this Section. In addition, a work plan that shall be limited to the information described under subsections (H)(1)(a), (H)(2)(a), (H)(2)(e), (H)(3), (H)(4)(a), (H)(4)(d), and (H)(4)(e) of this Section, and a statement that the initial site characterization activities

shall be performed, subject to the provisions of A.R.S. § 49-1005(F), in accordance with 40 CFR 280.63 and subsection (F)(4) and (5) of this Section.

- G. A request for pre-approval for conducting investigations for soil, waters of the United States and groundwater cleanups under A.R.S. § 49-1005(D)(6) or responses to contaminated soil, waters of the United States and groundwater under A.R.S. § 49-1005(D)(7), with the exception of subsection (F)(7)(a), shall be made after the initial site characterization under A.R.S. § 49-1005(D)(4) is completed and included with the application described under R18-12-604. An application for pre-approval shall include both of the following:
1. A work plan which contains the information set forth under subsections (H) and (I) or (K);
  2. A detailed estimate of cost, by category of cost in accordance with R18-12-604(D)(6) and R18-12-605(E), to implement the work plan. Each contingency described in the work plan shall be identified in the estimate and include a separate cost estimate for the contingency.
- H. Except as provided under subsection (F)(7)(b) of this Section, any work plan submitted to the Department shall contain all of the following:
1. Facility identification and location information which shall include both of the following:
    - a. UST facility information including: facility name, facility identification number, street address including city and zip code, county, and the legal description of the property.
    - b. Description of the current occupancy of the facility, current property use as either residential or non-residential, the zoning classification assigned to the facility and under any pending application for a change in zoning classification, and, where applicable, the master plan designation of the facility as residential or non-residential including identification of the master plan.
  2. Name, complete address, daytime telephone and FAX number of each of the following:
    - a. Eligible person;
    - b. UST owner;
    - c. Property owner, if different than the UST owner;
    - d. UST operator;
    - e. Person at the facility serving as a contact person to the Department.
  3. Name of the environmental consulting firm, name of the firm contact, complete address, daytime telephone and FAX number.
  4. UST history and potential contaminant sources, pathways and receptors, including all of the following:
    - a. Information on the release that is the subject of the pre-approval application including, that information required under A.R.S. § 49-1004(C), the LUST number assigned to the release, and all currently known or available LUST numbers for other releases reported at the facility.
    - b. UST excavation information including: dimensions of the height, width, and depth, of the excavation and a description of the material used to backfill the excavation as either clean fill, contaminated soil, presently not backfilled, or another type of backfill. Demonstration of compliance with the requirements of subsection (E) of this Section shall be included in this section of the work plan.
    - c. A description of all corrective action activities initiated prior to the submittal of the work plan and documentation of any notice submitted to the

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- d. Department for self-initiated corrective actions.
  - d. The known or estimated depth to groundwater along with the date and source of this information.
  - e. Available site specific lithologic and geologic information. If no site specific information is available, information from known LUST releases, identified by LUST number, located within 500 feet of the facility shall be included. If no LUST release exists within 500 feet of the facility, other information shall be reported. The source and date of the information shall be included.
  - f. Volume and location of excavated soil located at the facility.
  - g. A list of all waters of the United States located within 1/4 mile of the facility, as listed in 18 A.A.C. 11.
  - h. Unless the vertical extent of contamination is limited to the vadose zone, a list of all wells registered with the Arizona Department of Water Resources (ADWR), and any other known or observed wells located within 1/4 mile of the facility. For ADWR registered wells, the list shall include the Arizona Department of Water Resources registration number, water use category, reported water level, and drill date, if recorded.
  - i. A list of all schools, hospitals, nursing homes, and residential areas as described under A.R.S. § 49-151(3), located within 500 feet of the facility.
5. Maps and diagrams, in accordance with all of the following:
- a. Site location map, drawn to scale, which shall include the local area within a 1/4 mile of the facility and all of the following information:
    - i. A north arrow;
    - ii. The map scale;
    - iii. The facility, prominently marked;
    - iv. Streets, roads, alleys or other thoroughfares with labels;
    - v. The general locations of all items listed in accordance with subsection (H)(4)(f);
    - vi. The location of other LUST sites listed in accordance with subsection (H)(4)(e) identified by LUST file number;
    - vii. The location of all wells listed in accordance with subsection (H)(4)(h);
    - viii. The locations of waters of the United States listed in accordance with subsection (H)(4)(g).
  - b. All site plans produced in accordance with subsections (H)(5)(c) through (e) of this section shall be drawn to scale and include all of the following:
    - i. A north arrow;
    - ii. The map scale;
    - iii. The property boundaries;
    - iv. Adjacent land uses and general locations, as known, of structures surrounding the facility which could affect or be affected by the release including utility corridors, sewer systems, irrigation canals, drainage channels, transportation avenues, wells with any monitor well identification numbers, and waters of the United States;
    - v. Any buildings, on-site structures, or above ground storage tanks;
    - vi. The type and extent of on-site ground-surface cover described as asphalt, concrete, soil, or another specific type of cover;
    - vii. The present and former tank locations including all piping and above ground ancillary equipment with labels giving the size and contents of each tank. If any of this information is not known, estimated information shall be provided;
    - viii. Location of the release listed in accordance with subsection (H)(4)(a);
    - ix. Extent of any existing excavations resulting from UST corrective actions and the location of any excavated soil stockpiles;
    - x. Any structures, such as overhead power lines, that may interfere with drilling access.
  - c. A site plan which shows previous soil investigations, including all of the following:
    - i. Boring locations and identification numbers.
    - ii. Other soil sample collection locations, and identification numbers.
    - iii. Direct push probe point locations and identification numbers.
  - d. A site plan showing the results of previous groundwater investigations including all of the following:
    - i. Surveyed monitor well locations and identification numbers.
    - ii. Direct push probe points location and identification numbers.
    - iii. An arrow denoting groundwater flow direction of each aquifer being monitored.
  - e. A site plan showing the results of previous waters of the United States investigations which shall include both of the following:
    - i. Waters of the United States sample collection locations and identification number for each location.
    - ii. An arrow denoting flow direction of the waters of the United States, if applicable.
  - f. Construction diagrams of existing monitor wells showing well identification numbers and, if available:
    - i. Total depth and diameter of hole.
    - ii. Casing material, diameter, screened interval, groundwater elevation, wellhead and surface completion, and intervals for the annular fill materials described as sand, grout, or another specified material.
6. Tabulations of laboratory analytical results and water level data previously acquired to investigate the release which is the subject of the pre-approval application. If the laboratory analytical data have not been previously submitted to the Department, all laboratory analytical reports and chain of custody forms shall be included. Tabulation of laboratory analytical results is not required, nor will be accepted, where no laboratory analytical reports or chain of custody forms exist. The tabulations shall include the following:
- a. Soil sampling analytical results including at least the sample identification number, the depth at which each sample was collected, and the date each sample was taken.
  - b. Groundwater sampling analytical results including at least the sample identification number and the date each sample was taken.
  - c. Waters of the United States sampling analytical results including the sample identification number and date each sample was taken.
  - d. Monitor well water level measurement data that

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shall include, for each measurement, at least the monitor well identification number, date of measurement, elevation of top of casing, screened interval, depth to water, and the water level elevation. If free product is present, include depth to free product and the elevation of the free product level.

7. A proposed work schedule for initiating, monitoring, and completing the corrective action activities under the work plan and for permit acquisition. The schedule shall identify the major activity increments of the work plan, including interim and final reporting to the Department, and include for each increment an estimate of the time for completion, following the Department approval of the work plan.
  - I. Any work plan submitted to the Department for investigations for soil, waters of the United States, and groundwater cleanups under A.R.S. § 49-1005(D)(6) shall meet the requirements of subsection (H) and all of the following:
    1. All work plans submitted under subsection (I) shall contain all of the following:
      - a. The number of proposed samples, borings, probe points, and monitoring wells, and a rationale for the total number, locations, and proposed depths.
      - b. The locations of proposed samples, borings, probe points, and wells shown on the map described in subsection (H)(5)(b).
      - c. A description, including standard operating procedures, of the field equipment such as drill rig, field vapor detectors, and direct push equipment that will be used to obtain samples and to drill or install borings, wells, and probe points.
      - d. A list of all applicable permits and off-site access agreements that have been obtained or may be required.
    2. If groundwater contamination has been found or if contaminated soils may be in contact with groundwater, all of the following shall be included:
      - a. A description of the local known or estimated hydrologic conditions such as the depth to groundwater, gradient, flow direction, confining layers, multiple aquifers or water table fluctuation (seasonal or historic) that may affect the construction or location of monitor wells. Known or estimated groundwater flow direction shall be shown on the site plan described in subsection (H)(5)(b).
      - b. Diagrams showing the construction of proposed wells including:
        - i. Total depth and diameter of hole.
        - ii. Casing material, diameter, screened interval, groundwater elevation, wellhead and surface completion, and intervals for the annular fill materials described as sand, grout, or another specified material.
      - c. A description of proposed well construction materials, and installation and development procedures.
    3. If contamination of waters of the United States has been found, all of the following shall be included:
      - a. The uses of the waters of the United States or any unique waters designation pursuant to 18 A.A.C. 11 and a description of the known or estimated local gradient, flow direction, and average monthly discharge.
      - b. Nature of the waters of the United States identified as perennial or ephemeral.
    4. A contingency plan shall be included that provides for additional soil, waters of the United States, or groundwa-
- ter investigations, in the event that the investigations conducted under subsections (I)(1) through (3) do not adequately determine the full extent of contamination, or a rationale shall be provided as to why a contingency plan is not required. The contingency plans shall meet the requirements of (I)(1) through (3). The contingency plan shall contain conditions under which the additional investigations shall be performed.
- J. A work plan for investigations for soil, waters of the United States, and groundwater cleanups that meets the requirements of subsections (H) and (I) shall be approved by the Department if the eligible person demonstrates through the work plan that the full extent and location of soils contaminated by the release and presence and concentrations of dissolved product contamination in ground water and waters of the United States will be determined.
  - K. Any work plan submitted to the Department for responding to contaminated soil, groundwater, and waters of the United States under A.R.S. § 49-1005(D)(7) shall meet the requirements of subsection (H) and all of the following:
    1. A report of investigations for soil, waters of the United States, and groundwater cleanups, approved by the Department, that demonstrates characterization of the full horizontal and vertical extent of contamination has been achieved. At a minimum, the report shall contain all of the information requested in subsection (H) and a description of the outcome of any investigations conducted under an approved work plan pursuant to subsection (I). If this report was previously submitted and approved, the date of the report and the date of submittal to the Department shall be submitted and shall be deemed sufficient to meet the requirements of subsection (K).
    2. A description of corrective action goals, including numerical cleanup goals for each contaminant released to soil, groundwater, or waters of the United States. A rationale for each goal shall be provided for each contaminant released to soil, groundwater, or waters of the United States. Each rationale shall demonstrate that the cleanup goal is not more stringent than one of the following:
      - a. The Aquifer Water Quality Standards pursuant to R18-11-405 and R18-11-406 at a designated point of compliance.
      - b. The Water Quality Standards under Title 18, Chapter 11, Article 1.
      - c. Soil Cleanup provisions pursuant to R18-12-605.01.
    3. Narratives, figures, diagrams, and maps necessary to describe the proposed design and operation of each system used to perform corrective actions. This section of the work plan shall provide a rationale, including supporting documentation, for the selection and design of each system, including criteria for evaluation of the effectiveness in achieving corrective action goals.
    4. The locations and methods to be utilized to verify that corrective action goals have been met.
    5. A plan for abandoning or decommissioning corrective action systems after verification that corrective action goals have been met.
    6. Copies of all permits that have been obtained and a list of all other permits that may be required.
    7. Additional information that the eligible person or the corrective action service provider preparing the work plan determines is necessary for the Department to approve the work plan.
  - L. A work plan for responding to contaminated soil, groundwater, and waters of the United States that meets the requirements of subsections (H) and (K) shall be approved by the

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Department if the eligible person demonstrates, pursuant to subsection (K)(1), that the full horizontal and vertical extent of contamination has been characterized and, through the work plan, that its implementation will protect human health, safety, and the environment. In making this determination, the Department shall consider the following:

1. The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
2. The hydrogeologic characteristics of the facility and surrounding area;
3. The proximity, quality, and current and future uses of nearby waters of the United States and ground water;
4. The potential effects of residual contamination on nearby waters of the United States and ground water;
5. An exposure assessment;
6. Any information assembled in compliance with A.R.S. § 49-1005.

M. The review and approval or denial of an application for pre-approval shall be in accordance with the following:

1. The Department shall determine on a site by site basis, if the work plan submitted for pre-approval is the most cost effective corrective action for that site taking into consideration the risk to human health and the environment.
2. The Department shall approve or deny an application for pre-approval within 90 days. The 90-day period shall begin on the date the Department receives the application and shall end on the date the approval or denial is mailed:
  - a. If the Department sends a statement of technical deficiencies, the period of days taken to deliver the statement and for the eligible person to submit a revised application shall not accrue to the 90-day period.
  - b. If the Department sends a determination of assurance account ineligibility in accordance with A.R.S. Title 49, Chapter 6, Article 3, the period of days taken to deliver the statement and for the ineligible person to establish eligibility shall not accrue to the 90-day period.
3. Before the Department makes a final determination of approval or denial of the pre-approval application, the eligible person may elect any of the following options:
  - a. Notwithstanding subsection (B), if the Department has not made a determination of technical deficiencies within 60 days of the date the Department receives the application, or if the Department has not made a final determination approving or denying an application within 90 days, computed in accordance with subsection (M)(2), of the date the Department receives the application, the eligible person may begin corrective action activities which are the subject of the pre-approval application by providing notice to the Department in accordance with subsection (B), but shall not incur the 15-point penalty provided under that subsection. The eligible person shall receive 5 points for pre-approval in accordance with R18-12-606(E) and shall be ranked for payment in a regular round in accordance with either of the following:
    - i. To the extent that work set forth in the pre-approval application reflects work that is subsequently approved, the regular round for such approved work shall be based on the date the Department receives the pre-approval application.
    - ii. To the extent that work set forth in the pre-

approval application reflects work that is subsequently denied, the regular round for such denied work shall be based on the date the Department receives the application for reimbursement of corrective action costs for such work. The application for reimbursement for such work shall be subject to all provisions of this Article except this Section.

b. If the eligible person proceeds with corrective action before day 61, none of the 5 priority points for pre-approval shall accrue under R18-12-606(E) and the eligible person may elect to do either of the following:

- i. Comply with the provisions of subsection (B) of this Section.
- ii. Not comply with the provisions of subsection (B) of this Section and receive no payment under this Article for corrective action activities which are the subject of the pre-approval application.

4. If the Department determines that the pre-approval application is complete and the application demonstrates that the requirements of this Section have been met, the Department will inform the eligible person, by certified mail, that the request for pre-approval, including any specific requirements determined by the Department, is approved.
5. If the Department determines that the application for pre-approval fails to meet the requirements of this Section, the Department shall send the eligible person, by certified mail, a statement of technical deficiencies. The Department may include with the statement, any part of the application found to be deficient. The eligible person shall have 30 days from the date of receipt, as evidenced by the date on the return receipt, to correct all technical deficiencies and submit a revised pre-approval application to the Department. The Department shall consider the date of submission of the revised pre-approval application to be the postmarked date or date a hand-delivered application is date-stamped by the Department.
6. If, after the Department receives the revised application, and the Department determines that the application meets the requirements of this Section, the Department shall inform the eligible person, by certified mail, that the request for pre-approval, including any specific requirements determined by the Department, is approved.
7. The Department shall deny, in writing by certified mail, a pre-approval application that is not revised and returned to the Department within 30 days from the date of delivery of the deficiency statement to the eligible person
8. The Department shall deny, in writing by certified mail, a pre-approval application that is revised and returned to the Department within 30 days, but which remains deficient.
9. The Department shall not make more than one finding of technical deficiencies before it denies a pre-approval application. All technical deficiencies not included in the statement of technical deficiencies shall be deemed acceptable if such technical deficiencies are not directly related to or a consequence of the deficiencies set forth in the statement of technical deficiencies. In no case shall technical deficiencies which violate A.R.S. § 49-104 be deemed acceptable.

N. Before payment will be made in accordance with A.R.S. Title 49, Chapter 6, Article 3 for work associated with an approved work plan the Department shall review both of the following:

1. Information submitted to ADEQ detailing the work completed for consistency with the approved work plan. Work and its associated costs which are not consistent with the approved work plan will be paid only if the work meets the requirements of subsections (O) through (Q) of this Section.
  2. Invoices and bills submitted for consistency with subsection (N)(1) of this Section, and the approved work plan. The Department shall not make payment from the assurance account for invoices and bills which are in excess of the detailed estimate of costs in accordance with subsection (G)(2) pre-approved by the Department.
- O. Work conducted outside the scope of the pre-approved work plan shall be reviewed by the Department and paid by the assurance account as follows:
1. If the Department determines that the completed work and associated invoices and bills are reasonable and necessary in accordance with subsection (P) of this Section, and the total of all inconsistent and consistent invoices and bills are within the total pre-approved cost, the Department shall pay the inconsistent costs in accordance with the pre-approved work plan.
  2. If the Department determines that the completed work and associated invoices and bills are reasonable and necessary in accordance with subsection (P) of this Section, and the total of all inconsistent and consistent invoices and bills exceeds the total pre-approved cost, the Department shall pay the amount in excess in accordance with R18-12-606 using the date the invoices and bills are submitted to the Department and the priority points allocated to the pre-approved application.
- P. For the costs of all corrective action work conducted outside the scope of the pre-approved work plan the Department shall determine if those costs were reasonable and necessary, taking into consideration all of the following:
1. In accordance with R18-12-605, the technical and financial reasonableness of the work.
  2. The objectives and contingencies of the pre-approved work plan.
  3. Documentation submitted by the eligible person setting forth either of the following:
    - a. That the costs of the deviation associated with the inconsistent invoices and bills were the direct result of the occurrence of an act of war, an act of God, a legal constraint, or an act or omission of a third party other than an employee or agent of the eligible person.
    - b. That the costs of the deviation associated with the inconsistent invoices and bills were less than or equal to the costs of the applicable line item in the approved work plan.
- Q. The Department shall make payment from the assurance account as follows:
1. All costs incurred by the eligible person in complying with the submission requirements of this Section which meet the financial and technical reasonableness requirements of R18-12-605 shall be paid.
  2. For eligible persons who incur costs in accordance with subsections (D), (E), or (F) all costs shall be reviewed, in accordance with Title 49, Chapter 6, Article 3 and R18-12-605, at the time of submission of the reimbursement application to the Department for payment. Eligible persons in compliance with subsections (D), (E), or (F) shall receive the 5 points for pre-approval under R18-12-606(E).
  3. For eligible persons who elect to notify the Department in accordance with subsections (B) or (M)(3)(a) of this section, all costs shall be reviewed, in accordance with Title 49, Chapter 6, Article 3 and R18-12-605, at the time of submission of the reimbursement application to the Department for payment.

**R18-12-707. Work Plan**

- A. No change.
  1. No change.
  2. No change.
  3. No change.
  4. No change.
  5. No change.
  6. No change.
  7. No change.
  8. No change.
  9. No change.
- B. A work plan for a grant for an eligible project under R18-12-702(A)(4) shall consist of the information required under ~~R18-12-607(B)~~ R18-12-607.01 and the requirements of subsections (A)(6) through (9).
- C. No change.