

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 15. REVENUE

#### CHAPTER 5. DEPARTMENT OF REVENUE TRANSACTION PRIVILEGE AND USE TAX SECTION

#### PREAMBLE

- | <u>Sections Affected</u> | <u>Rulemaking Action</u> |
|--------------------------|--------------------------|
| R15-5-502                | Repeal                   |
| R15-5-610                | Repeal                   |
| R15-5-1403               | Repeal                   |
| R15-5-1407               | Repeal                   |
| R15-5-1611               | Repeal                   |
| R15-5-1612               | Repeal                   |
| R15-5-1707               | Repeal                   |
| R15-5-2303               | Repeal                   |
- The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 42-105  
Implementing statute: A.R.S. § 42-1303
- The effective date of the rules:  
January 16, 1997
- A list of all previous notices appearing in the Register, addressing the final rule:  
Notice of Rulemaking Docket Opening:  
2 A.A.R. 3691, August 23, 1996  
Notice of Proposed Rulemaking:  
2 A.A.R. 3834, September 6, 1996
- The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Christie Comanita  
Tax Analyst  
Address: Tax Research & Analysis Section  
Department of Revenue  
1600 West Monroe  
Phoenix, Arizona 85007  
Telephone: (602) 542-4672  
Facsimile: (602) 542-4680
- An explanation of the rule, including the agency's reasons for initiating the rule:  
The rules in 15 A.A.C. 5 deal with various aspects of income, transaction privilege tax, use tax, and the bingo statutes. As a result of 5-year reviews of several of the Article in 15 A.A.C. 5, the Department is repealing antiquated and repetitive transaction privilege and use tax rules. The rules in this rulemaking are repealed for 1 of 2 reasons. First, several of the rules repeat statutory language without adding any implementation interpretation of the statute. Second, several of the rules are obsolete and in conflict with current statutes.
- 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 of a political subdivision of this state:  
Not applicable.

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

Identification of the rulemaking:

As a result of a Department 5-year review of 15 A.A.C. 5, the Department is repealing antiquated and repetitive rules.

The repeal of these rules will benefit the public by eliminating repetitive and obsolete rules which no longer serve their intended purpose. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the repeal of the rules.

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

None.

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

The Department did not receive any oral or written comments on the rule action after the publication of the Notice of Proposed Rulemaking.

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

None.

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

None.

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

No.

**14. The full text of the rules follows:**

**TITLE 15. REVENUE**

**CHAPTER 5. DEPARTMENT OF REVENUE**

**TRANSACTION PRIVILEGE AND USE TAX SECTION**

**ARTICLE 5. SALES TAX  
COMMUNICATIONS CLASSIFICATIONS**

Section

R15-5-502. General

**ARTICLE 6. SALES TAX  
CONTRACTING CLASSIFICATION**

Section

R15-5-610. Mobile Home and Manufactured Buildings

**ARTICLE 14. SALES TAX  
RAILROAD AND AIRCRAFT CLASSIFICATION**

Section

R15-5-1403. Interstate Transportation

R15-5-1407. School for Pilots

**ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION**

Section

R15-5-1611. Commercial Property—Merchant's Associations

R15-5-1612. Commercial Property—Sharecrop Agreements

**ARTICLE 17. SALES TAX  
RESTAURANTS AND BARS CLASSIFICATION**

Section

R15-5-1707. Sales by Nonprofit Organizations

**ARTICLE 23. USE TAX**

Section

R15-5-2303. Purchaser's Liability

**ARTICLE 5. SALES TAX  
COMMUNICATIONS CLASSIFICATIONS**

**R15-5-502. General**

Gross income from transmitting of local or long distance messages by telephone or telegraph within the state is taxable under this clas-

sification. The word "telephone" shall include radio telephone service for which charges are made for service between stations within the state including service between mobile and fixed stations.

**ARTICLE 6. SALES TAX  
CONTRACTING CLASSIFICATION**

**R15-5-610. Mobile Home and Manufactured Buildings**

- A.** Effective July 21, 1979, mobile home and manufactured building dealers are taxable as prime contractors when the gross income includes site preparation, moving to the site, or set-up. The taxable base shall be the gross income or gross proceeds of sale less the sale price of land, if applicable, not to exceed the fair market value and the 35% standard deduction in lieu of labor.
- B.** The sale of a used mobile home or manufactured building is exempt from the tax under the contracting classification. If the sale of a used mobile home or manufactured building does not include site preparation, moving to the site or set-up, such sale may be subject to the tax as a retail sale.
- C.** When a mobile home or manufactured building dealer sells furniture, furnishings, fixtures, appliances and attachments, which are in addition to such items which were incorporated as component parts of said home or building during the manufacturing process, such sales are sales of tangible personal property and subject to the tax under the retail classification. If the sale of a used mobile home or manufactured building is exempt from the tax pursuant to subsection (B), the sale of furniture, furnishings, fixtures, appliances and attachments, which were incorporated as component parts of such home or building during the manufacturing process are also exempt. Sales of additional furniture, furnishings, fixtures, appliances, and attachments are taxable as retail sales.
- D.** If the sale of a mobile home or manufactured building is taxable under the contracting classification, a trade-in will not be allowed for purposes of reducing the tax liability. If the sale of such home or building is taxable as a retail sale a trade-in will be allowed.

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ARTICLE 14. SALES TAX  
RAILROAD AND AIRCRAFT CLASSIFICATION

**R15-5-1403. Interstate Transportation**

Income from transportation of passengers or property originating of the state and carried into the state, originating within the state and carried out of the state, or carried through the state, is not taxable.

**R15-5-1407. School for Pilots**

A person conducting a bona fide school for airplane pilots is not subject to the tax of tuition charges.

ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION

**R15-5-1611. Commercial Property—Merchant's Association**

Contributions made to the landlord for promotion by tenants belonging to a merchant's association are taxable as rental income. However, if contributions are received directly by the association as a separate entity, such amounts are not includable as rental income.

**R15-5-1612. Commercial Property—Sharecrop Agreements**  
Agreements entered into whereby the owner of land is to receive compensation from a sharecrop venture solely on the basis of profits derived from the operation are not taxable.

ARTICLE 17. SALES TAX  
RESTAURANTS AND BARS CLASSIFICATION

**R15-5-1707. Sales by Nonprofit Organizations**

Income derived from sales by churches, lodges, and other nonprofit organizations not regularly engaged in the restaurant business, for the purpose of fund-raising, is not taxable.

ARTICLE 23. USE TAX

**R15-5-2303. Purchaser's Liability**

The purchaser is directly liable for the payment of Use Tax on tangible personal property brought into Arizona for use, storage, or consumption.

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TITLE 15. REVENUE

CHAPTER 7. DEPARTMENT OF REVENUE

BINGO SECTION

PREAMBLE

1. **Sections Affected**  
R15-7-101  
R15-7-102
- Rulemaking Action**  
Repeal  
Repeal
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. § 42-105 and 5-402  
Implementing statute: A.R.S. § 5-401 et seq.
3. **The effective date of the rules:**  
January 16, 1997
4. **A list of all previous notices appearing in the Register, addressing the final rule:**  
**Notice of Rulemaking Docket Opening:**  
2 A.A.R. 3692, August 23, 1996  
**Notice of Proposed Rulemaking:**  
2 A.A.R. 3836, September 6, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Christie Comanita  
Tax Analyst  
Address: Tax Research & Analysis Section  
Department of Revenue  
1600 West Monroe  
Phoenix, Arizona 85007  
Telephone: (602) 542-4672  
Facsimile: (602) 542-4680
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The rules in Title 15 deal with various aspects of income, transaction privilege tax, use tax, and the bingo statutes. As a result of a 5-year review of Chapter 7, Article 1, the Department is repealing the only 2 rules found in the Article. These rules do not implement, interpret, or prescribe law or policy nor do they describe a procedure or practice or the Department.
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 of a political subdivision of this state:**  
Not applicable.

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

Identification of the rulemaking:

As a result of a Department 5-year review of 15 A.A.C. 7, the Department is repealing the rules in Article 1.

The repeal of these rules will benefit the public by eliminating information that is inappropriate for a rule. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the repeal of these rules.

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

None.

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

The Department did not receive any oral or written comments on the rule action after the publication of the Notice of Proposed Rulemaking.

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

None.

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

None.

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

No.

14. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 7. DEPARTMENT OF REVENUE

BINGO SECTION

ARTICLE 1. INTRODUCTION

and pursuant to A.R.S. § 5-401 et seq.

Section

R15-7-101. General  
R15-7-102. Inquiries

~~R25-7-102. Inquiries~~

~~Inquiries concerning specific problems may be directed to the Department of Revenue, Bingo Section, 1600 West Monroe, Phoenix, Arizona 85007.~~

ARTICLE 1. INTRODUCTION

R15-7-101. General

These rules apply to games of bingo held or conducted subject to

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY

REMEDIAL ACTION

PREAMBLE

1. Sections Affected:

Article 3  
R18-7-301

Rulemaking Action

New Article  
New Section

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. §§ 41-1003 and 49-104

Implementing statutes: A.R.S. §§ 49-282(A)(13) and 49-285.01

3. The effective date of the rules:

January 14, 1997

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

2 A.A.R. 3404, July 19, 1996

2 A.A.R. 3625, August 23, 1996

Notice of Proposed Rulemaking:  
2 A.A.R. 3625, August 23, 1996

5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Katheryn A. Cross  
Address: Department of Environmental Quality  
3033 North Central Avenue, Eighth Floor  
Phoenix, Arizona 85012-2809  
Telephone: (602) 207-2222 or (800) 234-5677, ext. 2222 (Arizona only)  
Fax: (602) 207-2251

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

Under A.R.S. § 49-285.01, the Department may charge a reasonable fee for the preparation and execution of a prospective purchaser agreement. Today's final rule consists of one section, R18-7-301 which sets forth fees associated with a prospective purchaser agreement.

A. Background for these Final Rules

In enacting A.R.S. § 49-285.01 in 1996, the Arizona legislature has joined a growing number of states in seeking creative approaches to expedite the redevelopment of former industrial sites. In many cases, the threat of environmental liability and uncertainty associated with environmental contamination has discouraged redevelopment of these former industrial sites. A.R.S. § 49-285.01 allows the Department to enter into a prospective purchaser agreement which provides a written release and covenant not to sue for any potential Water Quality Assurance Revolving Fund ("WQARF") liability for existing contamination if certain statutory conditions are met. Although the statute also refers to providing immunity from contribution claims, the Department has been advised by legal counsel that such immunity can only be provided through a court decree, since the Department lacks the authority to prevent other parties from pursuing claims.

At this time, the Department believes that the statute is largely self-executing, and can be implemented directly without rules to further explain and carry out the statutory intent. Therefore, today's final rule covers A.R.S. § 49-285.01(H), which specifically directs the Department to adopt rules to implement the fees charged for preparation and execution of a prospective purchaser agreement. If experience shows that A.R.S. § 49-285.01 is not self-executing, the Department will adopt any additional rules necessary to implement the statute.

B. Specific Section-by-Section Explanation of this Proposal:

Under A.R.S. § 49-285.01, the Department may provide a prospective purchaser agreement to a person who demonstrates compliance with the statutory conditions and who pays the fees prescribed in this rule. The Department intends to conduct a due diligence review in determining whether there is compliance with the statutory conditions listed in A.R.S. § 49-285.01.

These rules provide that a review fee must be paid before any prospective purchaser agreement is executed. The review fee consists of three components: an initial \$900 fee; an hourly fee, if certain conditions apply; and a fee to cover legal notice publication costs.

The Department is unable at this time to anticipate all costs related to the preparation and execution of a prospective purchaser agreement. For this reason, the Department proposes a fixed initial fee and will pass along the actual costs which vary according to specific agreement features.

The Department will charge an initial fee of \$900 for a prospective purchaser agreement requiring minimal review. The initial fee covers direct and indirect Departmental technical review time and direct and indirect Department administrative costs. A prospective purchaser agreement requiring minimal review is one which requires 30 hours or less of review time spent by the Department. The initial fee of \$900 is based upon our best estimate of anticipated Departmental review time.

The Department is passing on to the applicant those fees which are not predictable due to variations in specific agreements. Those variable fees are technical review time in excess of 30 hours, any legal review fees, and legal notice publication costs. The rule provides that prospective purchasers are to be informed in advance of any hourly fees including technical review time, and legal review time. The Department will not incur billable expenses on behalf of the purchaser without first obtaining written approval.

The \$900 initial fee is based upon use of standard agreement language which covers commonly encountered situations. If a prospective purchaser requests specific language, or if circumstances arise outside those contemplated in the standard agreement, legal review by the Attorney General is necessary and additional fees will be charged.

The statute requires that the Department provide public notice of prospective purchaser agreements and an opportunity for public comment before the agreement is executed. The Department intends that this public notice be consistent with that provided under the Water Quality Assurance Revolving Fund ("WQARF") rules and take the form of a legal notice. The Department's reasoning is that people affected by WQARF notices are those likely to be affected by prospective purchaser agreements. Public input for these agreements is best obtained by placing the notice where people are accustomed to finding it, in the legal notices section of the newspaper. The Department interprets A.R.S. § 49-285.01(G) as requiring one notice in a newspaper of general circulation in the county where the property is located. Today's rule requires a single notice, in contrast to the potentially double notice required under WQARF rules found in R18-7-110(B). For this reason, legal notice

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cost under today's rule is less expensive than under the WQARF rules. Fees for publication of legal notices vary according to specific rates set by individual county newspapers, and because of their variability are treated as a "pass through" cost to prospective purchasers. Please see Section 6 of this notice which contains the economic, small business and consumer impacts for information regarding specific newspaper rates.

The Department anticipates that cost estimates for technical review time in excess of the initial 30 hours and for any legal review fees incurred by the Attorney General would take a form similar to current Water Quality Assurance Revolving Fund and voluntary reimbursement agreements, or cost estimates signed by the Department and the interested party.

The initial fee is due when the prospective purchaser agreement is submitted for review. The publication cost and any hourly fees are due within 30 days of billing. The review fee is payable to the state of Arizona, and shall be paid in full before a prospective purchaser agreement is executed.

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

Not applicable.

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

EXECUTIVE SUMMARY

The Prospective Purchaser's Agreement (PPA) is a purely voluntary instrument entered into by the applicant and ADEQ to facilitate the purchase of a WQARF site (or a portion of a WQARF site) or other contaminated property by a party who is not responsible for the contamination on the site. The agreement might be sought by the prospective purchaser of a property who wants to bring the site into full productive use, or to gain title to the property without potentially being held liable for cleanup costs. If the Department approves the agreement, the applicant obtains an assurance that he/she (or the company) will not be liable to the State for cleanup of the existing contamination on the site. Currently, there are 408,726 acres (the equivalent of about 639 square miles) in Arizona that the Department has designated as WQARF sites. Sixty percent of these (247,252 acres) are located in Maricopa County; and 32% (131,307 acres) are in Gila County. A.R.S. § 49-285.01 directs the Department to charge reasonable fees for preparation and execution of the PPA. Apart from the PPA's voluntary nature, the fees to be paid by the applicant are essentially to enable ADEQ to recover its costs for processing the agreement. The initial fee for the agreement is set by the Department at \$900. This sum is for ADEQ technical review and administration of the PPA. In addition to the initial fee, there are costs associated with the publication of a legal public notice which is required by the rule, and contingency costs for the use of Attorney General staff time, in the event the latter is required. Because the PPA is voluntary, the Department assumes that the value (the economic benefits) of the agreement to the applicant outweighs its costs.

Cleanup of contamination on Superfund sites, locally and nationally, typically require extremely large financial resources; estimates in some cases have been in the tens of millions of dollars. The fees to be paid by the applicant are therefore minimal, when viewed in the context of a property owner's assurance of freedom from WQARF liability for cleanup costs. In addition, a substantial benefit could accrue to the general public if the Department facilitates a site's return to full productive use, when it might otherwise have to remain vacant or fall into disuse. Since the PPA is strictly voluntary and fees are of a cost recovery nature, the Department regards this arrangement as more fair and equitable than one in which all taxpayers (through the General Fund) are compelled to shoulder the costs of a service that directly benefits only a particular group. Furthermore, a substantial public benefit occurs as part of the process. ADEQ therefore believes that the benefits of this rule outweigh the costs.

ECONOMIC IMPACTS OF THE PROSPECTIVE PURCHASER'S AGREEMENT RULE

A.R.S. § 41-1055 REQUIREMENTS FOR AN EIS

B (2) Persons Directly Affected by the Rule

1. Prospective Purchasers of WQARF Priority List and other Sites -- These are all individuals, private businesses, municipalities and other political subdivisions of the State who desire to enter into a prospective purchaser's agreement with ADEQ.
2. State Agencies that are involved in the preparation of the PPAs -- ADEQ, as the implementing Agency, will make available its staff in the Remedial Projects Section to administer and conduct a technical review of the site that is the subject of the agreement. Staff from the Attorney General's Office may also be required to review the agreement in cases that are complex, that may present legal problems, or that are beyond the scope of the model agreement.
3. Responsible Parties as defined under A.R.S. § 49-283 -- These are entities who are responsible for the existing contamination of a site and are responsible for its cleanup. They will be informed of the agreement entered into by ADEQ and the prospective purchaser.
4. Newspapers of general circulation in the County where the property is Located -- The publication of required legal public notices will generate revenue for these newspapers.
5. The general public could receive a substantial benefit from the facilitation of a process whereby a contaminated WQARF site is brought back to full economic use.
6. Because the PPA applicants will pay fees which are reasonably equivalent to the Department's costs of processing the application, the taxpaying public will diminish its burden of providing services that will benefit specific groups.

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**B (3) COST-BENEFIT ANALYSIS**

**B (3)a.1. Costs to ADEQ, the Implementing Agency**

The costs to ADEQ for implementing the rule will be the costs of staff time required to administer and provide a technical review of the agreement. The Remedial Projects Section of the ADEQ Waste Programs Division has determined that it will take approximately 30 hours of staff time to put together a simple, i.e., model PPA. The staff hours are broken down according to the following:

STAFF	HOURLY RATES	HOURS	TOTAL COST
Section Manager	\$38.92	2	\$ 77.84
Unit Manager	\$35.72	4	\$142.88
Hydrologist III	\$30.97	8	\$247.76
Project Manager	\$29.57	8	\$236.56
Legal Asst. III	\$25.24	6	\$151.44
Program & Project Specialist II (public noticing)	\$24.18	2	\$48.36
<b>TOTAL</b>		<b>30</b>	<b>\$904.84</b>

A more detailed description of ADEQ staff hours and procedures is found in Appendix A. The initial fee, which is rounded out to \$900, represents the costs of 30 hours of staff time utilized which is anticipated to be adequate for processing a simple agreement. The rates are based on the position number's hourly salary rate, plus the costs of WQARF ERE (employee related expenses) and program and agency overhead costs. Data were supplied by the ADEQ Budget Section.

In the event more than 30 hours are required, ADEQ will charge an hourly rate of \$30 for every hour of staff time utilized above the estimated 30 hours. The hourly rate represents the weighted average (\$30.16) of the total cost, rounded to the nearest dollar. There are no incremental costs to ADEQ as a result of this rule, since the fees are intended to reimburse ADEQ's costs.

**BENEFITS TO ADEQ --** There are no incremental benefits to ADEQ as a result of this rule. Fees to be paid by the applicant are merely to reimburse ADEQ for its costs; no profit margins are contemplated.

**B (3) a2. COSTS TO THE ATTORNEY GENERAL'S OFFICE (AGO) --** If the PPA requires a review by the Attorney General's staff, the applicant will have to pay fees based on the actual cost to ADEQ. The calculation will be based on the prevailing contractual agreement between ADEQ and AGO for services rendered by the latter. The current rate for an Assistant Attorney General assigned to WQARF cases is \$42.50 per hour; for a supervisor, it is \$50.80 per hour. This is a contingency cost which may or may not be incurred by the applicant. Again, these fees are merely to reimburse ADEQ for its costs.

**BENEFITS TO THE AGO --** Like ADEQ, there are no incremental benefits to the AGO.

**B (3) b. COSTS TO POLITICAL SUBDIVISIONS --** If a municipality or any political subdivision of the State makes an application for a PPA, ADEQ will process the application like any other. The applicant will then have to pay all applicable fees.

**BENEFITS TO POLITICAL SUBDIVISIONS --** Benefits to a municipality or any other entity that applies for a PPA will depend on the reasons for the application. If the PPA is pursued to enable the development of a site by a government entity to address an important public purpose, obviously, the benefits have to be evaluated in light of that purpose. An important public purpose is achieved, for example, if remediation is enhanced or accelerated; or the intended land use for a site is the creation of conservation or recreation areas. City parks or public golf courses, for instance, are among amenities that a municipality may provide for the benefit of its residents and the general public.

An analysis of the "public benefit" is possible in the case of Watkins Shelter which is owned and operated by the City of Phoenix (COP). A PPA between the COP and ADEQ is pending, to enable the City to purchase a WQARF site located at 1120 West Watkins which used to belong to a company named CHEM Research. The location of the site as a shelter is desirable because of its proximity to other services that are often used by homeless people. Contamination on the site consists of traces of PCE (tetrachloroethylene) in the soil, and monitoring of the groundwater in three wells is being required of COP by ADEQ. ADEQ has determined that there is no threat to human health and the environment from the hazardous substances in the soil. The City is budgeting about \$2.4 million to acquire the property, rehabilitate the existing structure to bring it up to code, and operate it as an "overflow" shelter for the homeless during the winter months. The following table shows the breakdown of the City's costs:

Phase I including purchase cost	\$ 910,110
Phase II rehabilitation	\$1,072,235

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Phase II COP costs	\$ 200,000
1996-97 operating costs	\$ 260,975
<b>TOTAL</b>	<b>\$2,443,321</b>

The shelter will be open from December 1 through March 31 of each year, serving about 370 people each night, or an estimated 2,400 unduplicated persons annually. COP Human Services analysts translate this to an estimated 31,000 bed-nights (1 person/night) available for the homeless each year. The overflow shelter is being made available by the City because demand for facilities for the homeless is much higher than existing available supply during the winter months.

An analysis of hypothetical COP costs are made by comparing what local hotels/motels serving homeless people are charging. One such motel, the Flamingo Airpporter, charges \$30.95 per bed-night for single adults or \$135 per week plus tax. For a family of four (e.g., two adults and two children), the charge is \$42 per room per night, or \$175 plus tax per week. If at least half of the unduplicated persons served by the overflow shelter are single adults, and their motel costs were to be subsidized by the City, the cost would be about \$2.6 million annually, assuming that these adults are sheltered on a weekly basis. On the assumption that the other half of the homeless population is composed of families, also served on a weekly basis, the cost is estimated to be about \$840,000. Without the overflow facility, therefore, the total costs to shelter the homeless would be about \$3.4 million annually. By building and operating the Watkins Shelter for at least five years, and serving the same number of people annually, the City would be spending about \$4.3 million. If COP were to defray the costs of sheltering the same number of people in private sector facilities for the homeless, the cost is estimated to be about \$17 million (assuming there are no changes in room rates). A substantial public benefit to homeless people and savings to the City (and taxpayers) is therefore estimated at \$12.7 million for a period of five years.

**B (3) c1. COSTS TO APPLICANT PRIVATE BUSINESSES** -- Private businesses that want to apply for a PPA would do so if it is apparent to them that the benefits to be derived from a PPA will be much greater than its potential costs. The only certain costs of a PPA are the initial fee and whatever public notice costs are incurred, which are dependent on the specific newspaper involved. Contingency costs are AGO staff costs and additional ADEQ hourly costs, if relevant.

**BENEFITS TO APPLICANT PRIVATE BUSINESSES** -- Some of the benefits an applicant business owner could derive would be inherent in the location of the site. Site location, desirability of the site for the intended land use, availability for development, proximity to markets, appraisal values of competing sites -- these are all factors that could significantly affect the business owner's bottom line. The market value of the property alone, and prevailing market conditions, could impel a prospective purchaser to seek a PPA because there is the potential for profits -- something every business owner aims for. An example of benefits accruing to Arizona is illustrated by a PPA that has been completed between ADEQ and FACS Group, Inc., a private sector firm in Tempe. The company has purchased approximately 8 acres of the 82.5-acre WQARF site in the Northwest Tempe area. Contamination on the property has not been defined. Although ADEQ has determined that groundwater in the area is contaminated with volatile organic compounds, it has not been established that the groundwater beneath the property (located at 1345 South 52nd St.) is actually contaminated.

FACS Group's purchase of the property is part of the consolidation of credit card management and related activities involving the West Coast operations of several department store chains. The property is currently being leased and the tenant, Broadway Stores, Inc. employs about 400 employees. Payroll at the end of 1995 was \$10.9 million. The consolidation of credit card management and other activities will require the addition of about 700 new jobs for the Tempe and surrounding areas, raising the total employment figures to 1,100. Payroll is estimated by the company to be over \$19 million annually by the time the company is fully staffed.

Aside from the employment benefits, other benefits in the form of income taxes to be paid by the employees, property taxes, sales, unemployment and other taxes to be paid by the employer will accrue to various levels of government.

**B (3) c2. COSTS TO NEWSPAPERS** -- Newspapers are mainly operated as private businesses. They will be impacted by this rule to the extent that publication of a legal public notice is required by statute in a newspaper of county wide circulation where the site is located. There are no costs to newspapers required by this rule

**BENEFITS TO NEWSPAPERS** -- Newspapers will derive the benefits from revenues resulting from the publication of the legal public notices. Revenues will depend on which newspaper publishes the notice and how many lines or column inches of copy are required.

In Maricopa County, the Arizona Republic is considered to be the newspaper with the widest circulation. The Republic charges \$7.50 per line per day for local public notices of between 2 to 7 days. There is a required minimum of three lines and a maximum of 25 characters per line. If the publication days fall on a Saturday or Sunday, the charge is \$7.65 per line per day. On the assumption that the public notice is published during a week day, and that 100 lines are used, the cost to the applicant is \$750.

In other counties, a legal public notice of 10 column inches can range from \$52 to over \$232. The Arizona Daily Star in Pima County charges \$23.24 per column inch. Assuming the legal public notice is 10 inches, the cost would be \$232.40.

The Yuma Daily Sun in Yuma County charges \$7.40 per column inch. And the Arizona Daily Sun in Coconino County charges \$5.20 per column inch.

**B (4) IMPACTS ON PUBLIC AND PRIVATE EMPLOYMENT** -- There are no impacts on public or private employment anticipated by this rule, i.e., the rule by itself will not create new jobs or destroy existing ones. Any new jobs created by businesses that may occur will be the result of private business decisions. All the rule does is facilitate the acquisition of a WQARF site, presumably to return the property to its full economic use.

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Existing ADEQ and AGO staff will handle the processing of PPAs; therefore, no public sector employment impacts are anticipated. But, if the PPA accelerates the return to productive use of sites which are now undeveloped or would otherwise remain vacant, private businesses could be set up on these sites, and employment opportunities would then be generated for the Arizona labor force. This would be an intended and beneficial consequence of this rule.

**B (5) IMPACTS ON SMALL BUSINESSES**

B (5) a. **SMALL BUSINESSES SUBJECT TO THE RULE** -- Some of the applicants could be small business owners. There are no differential impacts on small or big businesses. It has to be repeated that the PPA is purely voluntary. There is no requirement for any business to obtain a PPA if it cannot afford the fees.

B (5) b. **ADMINISTRATIVE COSTS** -- There are no administrative costs to small and other businesses except the fees.

B (5) c. **REDUCTION OF IMPACT ON SMALL BUSINESSES** -- The voluntary nature of the PPA makes reduction of impact on small businesses unnecessary.

B (5) d. **COSTS AND BENEFITS TO PRIVATE PERSONS** -- A city or other political subdivision that applies for a PPA could possibly pass on the costs of fees to its residents. It is also possible that these costs could be readily absorbed by its existing budget. Either way, local taxpayers will pay. On the other hand, the fees are minimal when considered in relation to the "substantial public benefit" that could result.

B (6) **PROBABLE EFFECTS ON STATE REVENUES** -- No new State revenues are projected. Fees to be paid to ADEQ are intended to be of a cost recovery nature.

B (7) **LESS INTRUSIVE OR LESS COSTLY ALTERNATIVES** -- The statute permits ADEQ to charge "reasonable fees" for providing the service. No less intrusive or less costly alternatives were contemplated by ADEQ.

**APPENDIX A -- PROSPECTIVE PURCHASER'S AGREEMENT: Analysis of ADEQ Staff Hours and Procedures**

Section Manager, Remedial Projects Section (RPS) -- 2 hours

Policy guidance to Unit Manager -- 0.5

Review of final PPA draft -- 1

Brief Division Director and Agency Director for signature -- 0.5

Unit Manager, RPS -- 4 hours

Guidance to staff to assure consistency among PPAs -- 1

Intensive review of PPA drafts -- 2

Attend meeting with prospective purchaser -- 1

Project Manager, RPS -- 8 hours

Initial meeting with purchaser -- 1

Legal/administrative review (PRP) -- 2

Consultation with Hydrologist III -- 1

Management briefing with Unit & Section Mgrs. -- 1

Draft/review site-specific PPA -- 2.5

PPA signature meeting -- 0.5

Hydrologist III, RPS -- 8 hours

Initial meeting with purchaser -- 1

Technical file review of existing groundwater data -- 2.5

Quality assurance/review of site specific data -- 2

Advise Project Manager, assist with public comments -- 1.5

Management briefing with Unit and Section Manager -- 1

Legal Assistant III -- 6 hours

Research into the regulatory history of the site and prospective purchaser -- 2

Investigate site-specific public records (including those from local planning and zoning authorities) and identification of potential responsible parties -- 2

Draft of substantial public benefit section for the agreement -- 0.5

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Preparation of the legal description, easements, etc. of the property -- 0.5

Arrange for recording of PPA with local Recorder's Office -- 0.5

Coordinate with Project Manager and other RPS staff -- 0.5

Program and Project Specialist II -- 2 hours

Draft the formal Public Notice for the finalized PPA -- 1

Transmit the Public Notice to newspaper, verify publication and assist in the preparation of responses to public comments received -- 1

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
R18-7-301.

1. ADEQ, on its own initiative, has clarified that the Department may provide a covenant not to sue to a prospective purchaser.

The proposed rule read as follows:

"A. A person who demonstrates compliance to the Department with A.R.S. § 49-285.01 and who pays the fees prescribed in this Article may enter into a prospective purchaser agreement with the Department."

The adopted rule reads as follows:

~~"A. A person who demonstrates compliance to the Department with entering into a prospective purchaser agreement with the Department pursuant to A.R.S. § 49-285.01 and who pays the fees prescribed in this Article may enter into a prospective purchaser agreement with the Department shall pay to the Department the fees prescribed in this Article."~~

2. ADEQ, on its own initiative, has clarified the amount of the hourly ADEQ charge by adding the dollar amount to the rule text. Formerly this information appeared only in the Preamble.

The proposed rule read as follows:

"D. In addition to the initial fee described above, the Department shall charge an hourly fee for its review of a prospective purchaser agreement which requires more than 30 hours of Departmental review and shall charge an hourly legal review fee for any prospective purchaser agreement which requires legal review by the Attorney General. The Department shall notify the applicant of any estimated hours necessary to conduct its review over the initial review, and whether any legal review is required. The Department shall receive written authorization from the applicant before expending any billable hours."

The adopted rule reads as follows:

~~"D. In addition to the initial fee described above, the Department shall charge an hourly a fee of \$30 per hour for its review of a prospective purchaser agreement which requires more than 30 hours of Departmental review and shall charge an hourly a legal review fee for any prospective purchaser agreement which requires legal review by the Attorney General. The Department shall notify the applicant of any estimated hours over those necessary to conduct its review over for the initial review, and whether any legal review is required. The Department shall receive obtain written authorization from the applicant before expending any billable hours in excess of 30."~~

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

There were no public comments received on this rule.

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. **Incorporation by reference and their location in the rules:**

None.

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

No.

14. **The full text of the rules follows:**

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY  
REMEDIAL ACTION

**ARTICLE 3. PROSPECTIVE PURCHASER AGREEMENT**

**R18-7-301. Prospective Purchaser Agreement Fees**

**ARTICLE 3. PROSPECTIVE PURCHASER AGREEMENT**

**R18-7-301. Prospective Purchaser Agreement Fees**

- A.** A person entering into a prospective purchaser agreement with the Department pursuant to A.R.S. § 49-285.01 shall pay to the Department the fees prescribed in this Article.
- B.** A person shall remit a review fee for each prospective purchaser agreement submitted for review. The review fee shall consist of all of the following:
1. An initial fee as prescribed in subsection (C).
  2. An hourly fee, if the conditions of subsection (D) apply.
  3. The publication costs for the legal notice as prescribed in subsection (E) of this Section.
- C.** The Department shall charge an initial fee of \$900 for a prospective purchaser agreement requiring minimal review. The initial fee covers direct and indirect Departmental technical review time and direct and indirect Department administrative costs. A prospective purchaser agreement requiring minimal review is one which requires 30 or fewer hours of review time spent by the Department.

- D.** In addition to the initial fee described above, the Department shall charge a fee of \$30 per hour for its review of a prospective purchaser agreement which requires more than 30 hours of Departmental review and shall charge a legal review fee for any prospective purchaser agreement which requires legal review by the Attorney General. The Department shall notify the applicant of any estimated hours over those necessary for the initial review, and whether any legal review is required. The Department shall obtain written authorization from the applicant before expending any billable hours in excess of 30.
- E.** The Department shall publish a legal notice announcing an opportunity for public comment on the prospective purchaser agreement. The legal notice shall include a general description of the contents of the agreement; the location where information regarding the agreement can be obtained; the name and address of the Departmental contact where comments may be sent; and the time and date that the comment period closes.
- F.** The initial fee is due when the prospective purchaser agreement is submitted for review. The publication cost and any hourly fees are due within 30 days of billing. Review fees are payable to the state of Arizona, and shall be paid in full before a prospective purchaser agreement is executed.