

## NOTICES OF SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, or repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rulemaking with the Governor's Regulatory Review Council and the Secretary of State's Office for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*.

## NOTICE OF ADOPTED SUMMARY RULEMAKING

### TITLE 18. ENVIRONMENTAL QUALITY

#### CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY REMEDIAL ACTION

##### PREAMBLE

- Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R18-7-101	Repeal
R18-7-102	Repeal
R18-7-103	Repeal
R18-7-104	Repeal
R18-7-105	Repeal
R18-7-106	Repeal
R18-7-107	Repeal
R18-7-108	Repeal
R18-7-109	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. § 41-1027(A)(1) (summary rulemaking authority for repeal of rules made obsolete by supervening legislation)

Implementing statutes: Laws 1997, Chapter 287, including Secs. 55 and 56
- The effective date of the summary rules:**

The repeal of R18-7-101 through R18-7-109 will take final effect on the date this Notice of Final Summary Rulemaking is filed with the Secretary of State.
- The name and address of agency personnel with whom persons may communicate regarding the rule:**

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- The concise explanatory statement, including an explanation of the rule and the agency's reasons for initiating the rule:**

This Notice of Final Summary Rulemaking repeals the rules currently located at R18-7-101 through R18-7-109 which govern the Water Quality Assurance Revolving Fund ("WQARF") program. The rules at R18-7-101 through R18-7-109 need to be repealed because they are superseded by the statutory provisions of Laws 1997, Chapter 287

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(A.R.S. Title 49, Chapter 2, Article 5).

This Notice of Final Summary Rulemaking deletes the proposed heading change and the proposed rule renumbering that were contained in the Notice of Summary Rulemaking because these proposed changes are not the proper subject matter for a summary rulemaking.

There were no comments, and therefore no agency responses, concerning this rule making.

6. **Reference to any study that the agency proposes to rely on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.**  
None.
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, because the rulemaking will not diminish a previous grant of authority of a political subdivision of this state.
8. **The economic, small business, and consumer impact:**  
Under A.R.S. § 41-1055(D)(2), an economic, small business, and consumer impact statement is not required for this rule making because it only repeals existing rule language that is inconsistent with supervening legislation and implementing rule makings.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Not applicable (see answer to Question 8).
10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:**  
No oral proceeding was conducted, and the agency received no written comments.
11. **An explanation of why summary proceedings are justified:**  
See answer to Question 5.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
There are no other matters prescribed by statute that are applicable to the Department or rules affected by this rule making.
13. **Incorporations by reference and their location in the rules:**  
There are no incorporations by reference in this rule making.
14. **The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY  
REMEDIAL ACTION**

**ARTICLE 1. WATER QUALITY ASSURANCE REVOLVING FUND**

Section

- R18-7-101. ~~Applicability~~ Repealed
- R18-7-102. ~~Definitions~~ Repealed
- R18-7-103. ~~Uses of the Fund; Priorities~~ Repealed
- R18-7-104. ~~Determination of Site Priorities; Selection of Remedial Actions~~ Repealed
- R18-7-105. ~~Remedial Actions by State Agencies or Political Subdivisions~~ Repealed
- R18-7-106. ~~Remedial Actions by the Director~~ Repealed
- R18-7-107. ~~Remedial Actions by a Person or Responsible Party~~ Repealed
- R18-7-108. ~~Remedial Action Plan~~ Repealed
- R18-7-109. ~~Remedial Action Requirements; Level and Extent of Cleanup~~ Repealed

**ARTICLE 1. WATER QUALITY ASSURANCE REVOLVING FUND**

**~~R18-7-101. Applicability~~**

~~This Article applies to:~~

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1. Remedial actions taken by the Director, state agencies or political subdivisions using Fund monies.
2. Remedial actions ordered by the Director pursuant to A.R.S. § 49-287(D)(3).
3. Actions taken by any person seeking recovery of the costs of a remedial action pursuant to A.R.S. § 49-285(A).
4. All other uses of the Fund pursuant to A.R.S. § 49-282(B).

**R18-7-102. Definitions**

In addition to the definitions provided in A.R.S. §§ 49-201 and 49-281, the following definitions shall apply in this Article:

1. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499).
2. "Cleanup" means a remedial action taken or approved by the Director that is designed to avert, remove, reduce or eliminate a release or threatened release of a hazardous substance to the environment.
3. "Decision record" means written statement issued by the Director or the Director's designated representative that documents the manner in which remedial action requirements were met and how remedial action criteria were considered in accepting a remedial action proposal for financing under the Fund and reserving Fund monies for such proposal.
4. "Emergency action" means a remedial action, pursuant to A.R.S. § 49-287(D)(1) and (3), designed to avert, prevent, control, eliminate or minimize an imminent and substantial danger to public health or welfare, or the environment, or to determine if such danger exists.
5. "Letter of determination" means a written statement issued by the Director documenting the reasons for approving or rejecting remedial action plan.
6. "Operator" means, within the context of "operated" under A.R.S. § 49-283(A)(1), any person who authorized, initiated or implemented the transportation, storage, treatment, disposal or release of a hazardous substance from or at a facility, but does not include a person or financial institution who holds or held a lien, encumbrance, security interest or loan agreement that attached to the facility so long as such person or financial institution makes or made no decision or takes or took no action that causes or caused or contributes or contributed to a release or threatened release of a hazardous substance from or at a facility.
7. "Owner" means, within the context of "owned" under A.R.S. § 49-283(A)(1) and (A)(2) and "owned" under A.R.S. § 49-283(C), any person who holds or held legal, equitable, or other interest in a facility from which a release or threatened release of a hazardous substance has occurred or will occur, but does not include a person or financial institution who holds or held a lien, encumbrance, security interest or loan agreement that attaches or attached to the facility so long as such person or financial institution makes or made no decision or takes or took no action that causes or caused or contributes or contributed to the release or threatened release of a hazardous substance from or at a facility.
8. "Remedial action criteria" means those factors listed in R18-7-104(A)(1) through (8).
9. "Remedial action plan" means a written plan of proposed remedial action submitted to the Director in accordance with R18-7-108.
10. "Remedial action requirements" means the requirements of R18-7-109(A)(1) through (4).
11. "Site" means the total area, projected in three dimensions, which has been or may be affected by a release or a threatened releases a hazardous substance.

**R18-7-103. Uses of the Fund; Priorities**

**A.** The Director shall prepare an annual Fund budget for the uses of the Fund specified by A.R.S. § 48-282.B.

**B.** The annual Fund budget allocations and order of priorities from highest to lowest shall be as follows:

1. A minimum of \$250,000 reserved for financing emergency actions.
2. Reasonable and necessary costs to administer the Fund.
3. Reasonable and necessary costs to finance the water quality monitoring program described in A.R.S. § 49-225.
4. Reasonable and necessary costs for Fund-financed remedial actions, as described in A.R.S. § 49-282(B)(1) through (B)(5) taken by the Director, state agencies or political subdivisions.

**C.** Reasonable and necessary costs pursuant to subsection (B)(2) through (4), shall include:

1. Hiring, compensation and training personnel.
2. Contracting for legal services.
3. Procuring equipment, supplies and services, including laboratory services.
4. Letting of contracts and hiring, management and oversight of contractors.
5. Fiscal management and accounting functions of the Fund.
6. Providing for public participation as required under R18-7-110.
7. Distributing and disseminating information about the Fund and remedial actions.

**R18-7-104. Determination of Site Priorities; Selection of Remedial Actions**

**A.** To determine priorities among sites requiring remedial action and in selecting appropriate remedial actions, the Director shall consider the remedial action criteria as provided herein:

1. Population, environment and welfare concerns at risk:
  - a. Population includes the total number of persons who were, are, or may be exposed to a release or threatened release of a hazardous substance.



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- b. Proposals with equal scores shall be further prioritized by the Director based on each proposal's estimated total funding requirements, with the higher priority ranking applied to the lowest total dollar requirement.
  - 2. The Director shall develop an annual priority list of proposed remedial action sites, subject to public review and comment as specified in R18-7-110, which shall identify the proposed remedial action sites that, given the availability of monies in the Fund as prescribed by R18-7-103(B), may receive financing under the Fund.
  - 3. After public review and comment, the Director shall prepare a decision record and send it to the persons that submitted proposals and the persons that provided comments pursuant to R18-7-110.
- C.** The Director may cancel the reservation of Fund monies for remedial action sites on the priority list if an emergency action arises and there are insufficient sums in the Fund to finance both the emergency action and the remedial actions. The Director shall restore all or part of the reservation of Fund monies for remedial action sites so canceled if there are sufficient sums in the Fund to do so prior to the beginning of the next fiscal year. The Director shall provide written notice within one week of such cancellation or restoration of the reservation of monies to the person affected by such decision.

**R18-7-105. Remedial Actions by State Agencies or Political Subdivisions**

- A.** Any state agency or political subdivision applying for Fund monies must submit a letter of intent to the Director.
- 1. At the beginning of each state fiscal year, the Director shall request letters of intent from state agencies and political subdivisions through the publication of a notice. The notice shall be published one time in two newspapers of state-wide circulation and shall contain:
    - a. The estimated amount of Fund monies available to state agencies or political subdivisions.
    - b. Permissible uses of Fund monies, in accordance with R18-7-103.
    - c. Eligibility requirements of A.R.S. § 49-282(F).
    - d. The name and address of the person to whom letters of intent should be sent.
    - e. The location where additional information can be obtained.
    - f. The deadline for submittal of letters of intent.
  - 2. The letter of intent shall include:
    - a. The name, title, address and telephone number of the person submitting the letter of intent, and the person's authority to act for the state agency or political subdivision.
    - b. A description of the need for a remedial action and the type of remedial action to be undertaken.
    - c. An estimated schedule for completing the proposed remedial action.
    - d. A statement of how the proposed remedial action meets the requirements specified in R18-7-109.A. and considers the criteria specified in R18-7-104.A., including the information in support thereof.
    - e. A projected itemized budget for the proposed remedial activities.
    - f. The source of matching funds, if submitted by a political subdivision in accordance with A.R.S. § 49-282(F).
    - g. Identification of a responsible party or potentially responsible party, if known, subject to the limitations of A.R.S. § 49-282(F) applicable to state agencies and political subdivisions.
- B.** The Director shall evaluate proposed remedial actions in accordance with R18-7-104(B).
- C.** If the letter of intent is incomplete, the Director shall notify the submitting state agency or political subdivision in writing by certified mail, return receipt requested, or by hand delivery within 30 calendar days of receipt of the letter of intent and specify what additional information is needed. The information requested must be submitted to the Director within 15 calendar days of receipt of the Director's notification. Extensions of time for resubmissions may be granted by the Director for good cause and only if the request for extension is submitted in writing within the 15 days allowed.
- D.** Upon issuance of a decision record, the Director shall send a copy of the decision record certified mail, return receipt requested, or by hand delivery to the state agency or political subdivision informing them of the reservation of Fund monies. The state agency or political subdivision shall submit a remedial action plan pursuant to R18-7-108(A) and (B) within 90 calendar days of the receipt of the decision record.
- E.** If the state agency or political subdivision fails to submit a timely and approvable remedial action plan, the reservation of Fund monies for the proposed remedial site shall be cancelled. The state agency or political subdivision shall be so notified in writing and may reapply for consideration under the Fund in the following fiscal year. Monies that are released by the cancellation of a reservation shall be reserved for the next highest priority ranked remedial site proposal on the annual priority list that can be funded and a decision record documenting this change shall be issued.
- F.** The Director shall review the remedial action plan according to R18-7-108. If the Director approves the remedial action plan, the Director shall award Fund monies through a contract.

**R18-7-106. Remedial Actions by the Director**

- A.** If the Director elects to undertake a Fund-financed remedial action, which is not an emergency action, the Director shall develop the information required under R18-7-105(A)(2)(b), (c), (d), (e) and (g), and R18-7-108(A)(2), (3), (4), (5), (7) and (8), and (B)(1) through (7), and shall comply with the provisions of R18-7-104(B).
- B.** If a Fund-financed remedial action is undertaken where a responsible party has failed or refused to comply with an abatement order issued by the Director pursuant to A.R.S. § 49-287(D)(3), the Director shall establish a responsible party expense account to document costs incurred by such action.

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- C.** Before undertaking a Fund-financed emergency action, the Director or the Director's designated representative shall prepare a decision record.

**~~R18-7-107. Remedial Actions by a Person or Responsible Party~~**

- A.** When the Director orders a responsible party, including an owner or operator to abate a release or threatened release of a hazardous substance pursuant to A.R.S. § 49-287(D)(3), the abatement order shall specify the remedial action to be undertaken and shall contain a schedule for taking the remedial action.
- B.** A person intending to seek recovery of remedial action costs from a responsible party under A.R.S. § 49-285(A) shall submit, prior to undertaking the remedial action, a remedial action plan to the Director for approval subject to R18-7-108(A) through (E).

**~~R18-7-108. Remedial Action Plan~~**

- A.** Any remedial action plan shall contain all of the following information:
1. The name, title, address, and telephone number of the person submitting the remedial action plan.
  2. The location and legal description of the site.
  3. A description of the nature of the release or threatened release of a hazardous substance, which identifies the time, duration, source, substance, quantity and concentration of each hazardous substance included in the release or threatened release.
  4. A description of the routes of exposure, type of environment at risk and population potentially exposed to the release or threatened release of a hazardous substance.
  5. A description of the purpose and schedule of the remedial action to be performed, which includes a work plan describing the tasks and activities necessary to accomplish the remedial action and the procedures to be followed.
  6. A notarized statement from the person submitting the plan indicating whether or not the person intends to seek cost recovery against a responsible party. The statement shall include the name, address and telephone number of the other responsible party, and include the basis for liability by the responsible party.
  7. A description of how remedial action requirements were or are to be met and how remedial action criteria were or are to be considered in selecting the proposed remedial action.
  8. An explanation of how the proposed remedial action plan is expeditious.
  9. For a political subdivision only, a notarized statement of its ability to provide matching monies at least equal to the amount sought for Fund-financed remedial actions.
- B.** A remedial action plan also shall contain the following information, subject to the limitations or conditions specified herein, and, with the Director's conditional approval pursuant to subsection (D), can be submitted as a series of phased requirements or actions, if one requirement or action may be dependent upon the result of another requirement or action:
1. A preliminary assessment to research and review information to determine the likelihood that a release of a hazardous substance has occurred or may occur from a facility or site, if there is reason to believe that a release or threatened release of a hazardous substance exists.
  2. A remedial investigation, if detailed information is needed to determine the nature, magnitude, extent and source of a release of a hazardous substance from a facility, a group of facilities or a site.
  3. A risk assessment that addresses all potential exposure pathways and affected populations, if needed to evaluate or determine if public health or welfare or the environment may be or has been affected by or is in danger from an exposure to a release or threatened release of a hazardous substance.
  4. A health effects study to assess health risks and adverse health impacts, if there has been human exposure to the release of a hazardous substance, or when a risk assessment indicates that human exposure has probably occurred as a result of a release, or when epidemiologic evidence indicates the presence of adverse health effects in a population that may have been exposed to the release of a hazardous substance.
  5. A feasibility study to evaluate alternative cleanup actions, if there is a need to assess cleanup alternatives and to select the most efficient and cost effective method to avert, remove, mitigate, reduce or eliminate the danger posed by the release or threatened release of a hazardous substance.
  6. A description of cleanup methods and how these methods meet the requirements of R18-7-109(B), (C), and (D), if necessary to avert, remove, reduce, or eliminate a release or threatened release of a hazardous substance.
  7. A description of operation and maintenance needs, including a monitoring plan, if continuous treatment, removal, mitigation or other management activities are required.
- C.** The Director shall review all remedial action plans for completeness within 90 days of receipt of the plan.
- D.** If a remedial action plan is incomplete or otherwise not in accordance with the requirements of Subsections A. and B., the Director shall transmit a letter by certified mail, return receipt requested, or by hand delivery describing the deficiencies of the plan and the conditions for approval. If the person submitting the plan fails to comply with all of the conditions for approval, the Director shall, in writing, reject the remedial action plan by issuance of a letter of determination.
- E.** If the remedial action plan is approved, the Director shall send a letter of determination to the person submitting the plan.
- F.** An approved remedial action plan may be revised, modified or cancelled by the Director.
1. The Director may take such action if:

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- a. Requested in writing by the person that submitted the remedial action plan and the request supports revision, modification or cancellation based upon changed conditions or new and relevant information; or
  - b. The Director determines that conditions under which the existing remedial action plan was approved have sufficiently changed to necessitate a revision, modification or cancellation.
2. The Director shall issue a letter of determination to the person who submitted the original remedial action plan or requested a revision, modification or cancellation of a remedial action plan in approving or rejecting the revision, modification or cancellation.
  3. The Director shall establish an appropriate public review and comment period in accordance with procedures of R18-7-110 prior to the issuance of a letter of determination for a revised, modified or cancelled remedial action plan if:
    - a. The existing remedial action plan was subject to public review and comment, and the proposed change in the remedial action plan is substantial; or
    - b. The proposed change is of significant public concern.

**R18-7-109. Remedial Action Requirements; Level and Extent of Cleanup**

- A.** All remedial actions shall meet the following requirements:
1. Remedial actions shall be reasonable and necessary to prevent, minimize or mitigate danger to public health or welfare or to the environment from the release or threatened release of a hazardous substance.
  2. Remedial actions shall provide for the control, management or cleanup of a release or threatened release of a hazardous substance so as to allow the maximum beneficial use of the waters of the state. For remedial actions that may affect surface water, the evaluation of beneficial use must include the protection of surface water as required pursuant to R18-11-201 through R18-11-214 and R18-11-303. For remedial actions that may affect aquifers, the evaluation of beneficial use must include protection of drinking water pursuant to A.R.S. § 49-223, unless the aquifer or that part of the aquifer affected by the remedial action has been reclassified by the Director for a non-drinking water protected use pursuant to A.R.S. § 49-224(C).
  3. Remedial actions shall be cost effective over the period of actual or projected exposure to health or welfare or the environment from a release or threatened release of a hazardous substance. In evaluating cost effectiveness, the Director shall take into account the total short and long term costs of the remedial action, including the costs of operation and maintenance.
  4. Remedial actions shall be consistent with A.R.S. §§ 45-401 through 45-655, which includes all applicable and adopted Active Management Area Plans, Irrigation Non-expansion Area Plans, and all other applicable water management requirements, plans or permits.
  5. Remedial actions shall be consistent with A.A.C. R18-7-201 through R18-7-209.
- B.** Subject to meeting remedial action requirements, and except for health risk assessments and health effects studies, the Director shall favor the selection of remedial actions that permanently and significantly reduce the volume, toxicity or mobility of a hazardous substance when it is practicable, cost effective and necessary to protect public health or welfare or the environment.
- C.** The Director shall require an expedited interim or permanent remedial action for cleanup when any of the following applies:
1. There is an actual or potential direct contact with a hazardous substance by a human or animal population.
  2. There are drums, barrels, tanks or other bulk storage containers that pose a danger or threat of a danger to public health or welfare or the environment.
  3. There are contaminated soils that pose a danger or threat of danger to public health or welfare or the environment.
  4. There is a danger or threat of danger from fire or explosion.
  5. There are weather conditions that cause the migration of the hazardous substance to accelerate and cause a threat to public health or welfare or the environment.
- D.** Subject to meeting remedial action requirements and considering remedial action criteria in establishing the level and extent of cleanup, the Director shall:
1. Require that remedial actions are appropriate under the circumstances presented by the release or threatened release of the hazardous substance. In determining what is appropriate, the Director shall consider the circumstances of the release or threatened release, the population at risk, the beneficial uses of waters of the state, the environmental media affected, and the most current scientific, medical and engineering information available.
  2. Require that the remedial actions conform to the following statutes and rules, and any amendments thereto, when applicable:
    - a. Surface Water Quality Standards adopted by the Department as R18-11-204 and R18-11-205.
    - b. Groundwater Quality Standards adopted by the Department as R9-21-403 and drinking water aquifer water quality standards adopted by A.R.S. § 49-223(A).
    - c. Hazardous waste corrective action rules adopted by the Department as R18-8-264(A) for those facilities required to obtain a hazardous waste permit pursuant to R18-8-270.
    - d. Corrective action requirements authorized under A.R.S. § 49-1005 pertaining to releases from underground tanks that contain regulated substances as defined by A.R.S. § 49-1001(8).

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3. ~~Require cleanup to a level sufficient to prevent or abate an imminent and substantial danger to public health or welfare or the environment where there are no standards established in law for a particular hazardous substance.~~