

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 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY SOLID WASTE MANAGEMENT

PREAMBLE

- Sections Affected**
R18-13-702
- Rulemaking Action**
Amend
- 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. § 49-104
Implementing statute: A.R.S. §§ 49-762.03 and 49-857
- The effective date of the rules:**
October 1, 1999 (the Department specified this date so that the fee changes are effective at the beginning of a bill-ing cycle for the regulated community).
- A list of all previous notices appearing in the Register addressing the exempt rule:**
None. This is an exempt rulemaking.
- The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Deborah K. Blacik or Martha L. Seaman
Address: Department of Environmental Quality
Rule Development Section, M0836A-829
3033 N. Central Avenue
Telephone: (602) 207-2223 or within Arizona (800) 234-5677, Ext. 2223
Fax: (602) 207-2251
TTD: (602) 207-4829
- 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:**

In this rulemaking, the Department is amending R18-13-702(J) to increase hourly rate fees for the review of a solid waste facility plan including the special waste management plan component. The Department is also amending Schedule B to reduce the initial fee for review of a substantial change to a solid waste facility plan for a municipal solid waste landfill from \$1,187 to \$766.

The historical perspective for R18-13-702 is as follows: In 1983, the Arizona Legislature required the Department to conduct a plan review and approve or disapprove plans for solid waste facilities operating within the state. In 1990, the Arizona Legislature included a special waste management plan component as a part of the plan review for a solid waste facility that treated, disposed, or stored special waste. In 1995, the Department adopted the solid waste plan review fee rules R18-13-701 and R18-13-702 in a rulemaking that was exempt from the APA. These rules became effective July 1, 1996. In 1997, the Department amended R18-13-702 to include fees for the special waste management plan component of the plan in a rulemaking that was subject to the APA. In preparation for establishing the fees and hourly rates to be charged, the Department contracted with the independent accounting firm of Arthur Andersen & Co. (AA&C), to conduct a study for the Department. In determining the hourly rate, AA&C reviewed the number of hours spent by program staff in reviewing various types of solid waste facility

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plans and costs the Department incurred in conducting those plan reviews. The fee study was completed in November 1994 and was the basis for the rates and fees established in the solid waste plan review fee rules and the special waste management plan component fee rule. Based on the AA&C study, effective July 1, 1996, the hourly rate for review of a solid waste facility plan was set at \$38.30 in R18-13-702(J). Effective July 1, 1997, the hourly rate for review of a special waste management plan component also was set at \$38.30.

The existing rules for solid waste facility plan review fees including the special waste management plan component clarify what Department costs are included in the hourly rate, what labor hours spent in the review of a plan will be charged to the applicant and explain the Department's billing procedure, payment by the applicant, and the consequences of failure to pay the bill.

In 1999, the Arizona Legislature exempted the rulemaking concerning the fees for the special waste management plan component from the requirements of the APA. Therefore, this exempt rulemaking includes the special waste management plan component in its amendments.

The amendment of R18-13-702 to increase in the hourly rate from \$38.30 to \$42.91 is based on a 1999 study conducted by the Solid Waste Section of the Department. The 1999 study used the same basic methodology that was employed in the 1994 study that was the basis for the fees charged in the current R18-13-702. The 1999 study compared the current salaries, the employee related expenses, the operating and equipment costs, and the overhead costs with those in the 1994 study to determine the 1999 hourly rate. Like the current hourly rate, the updated hourly rate includes time at the facility inspecting the site, time at public hearings, time at meetings with the public, and time at preapplication conferences but does not include training necessary for review of the plan, travel time to and from the facility, or supervisory time spent in a technical review capacity.

The Department bases the reduction in initial fees for review of a substantial change to a solid waste facility plan for municipal solid waste landfills in Schedule B on its experience in reviewing these plans; the majority of these plans require less Departmental time to review than originally anticipated when this rule was adopted. This fee reduction will benefit the applicants by reducing initially the fees they will be submitting to the Department.

The exempt rulemaking for solid waste facility plan review fees is authorized and required by A.R.S. § 49-762.03(F) which provides:

“F. The department shall collect from the applicant a reasonable fee based on the department's reasonable direct costs, not including indirect costs for the processing, review, approval or disapproval of the plan, to be reviewed on an annual basis. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. That rulemaking is exempt from Title 41, Chapter 6, except that the director shall provide for reasonable notice and a hearing.”

The exempt rulemaking for the special waste management plan component of the solid waste facility plan review fees is authorized by A.R.S. § 49-857(C) which provides:

“C. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. The rulemaking is exempt from Title 41, Chapter 6, except that the director shall provide for reasonable notice and a hearing.”

7. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed 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.
8. **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.
9. **The summary of the economic, small business, and consumer impact:**
Not applicable.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
None.
11. **A summary of the principal comments and the agency response to them:**
The agency received no comments regarding these rules.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
13. **Incorporations by reference and their location in the rules**
Not applicable.
14. **Was this rule previously adopted as an emergency rule?**
No.
15. **The full text of the rules follows**

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT**

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

Sections

R18-13-702. Solid Waste Facility Plan Review Fees

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-702. Solid Waste Facility Plan Review Fees

- A. With each solid waste facility plan submitted for approval pursuant to A.R.S. § 49-762, the applicant shall remit an initial fee in accordance with 1 of the schedules in this subsection, unless otherwise provided in subsection (B) of this Section. This Section also lists the maximum fees for which the owner or applicant shall be billed for a plan submitted to the Department for approval. All fees paid shall be payable to the State of Arizona. Fees paid to the Department shall be deposited into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

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Schedule A New - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans:		
MSWLF	\$5,936	\$37,074
C & D Landfill and Other Non-MSWLF	\$2,987	\$22,826
Other Solid Waste Facilities	\$1,609	\$15,473
Special Waste Management Plan Component	\$556	\$2,383

Schedule B Substantial Change or Update of Demonstration of Financial Responsibility in accordance with A.R.S. § 49-770 - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans:		
MSWLF	\$1,187 <u>\$766</u>	\$18,537
C & D Landfill and Other Non-MSWLF	\$597	\$11,413
Other Solid Waste Facilities	\$322	\$7,736
Special Waste Management Plan Component	\$278	\$1,191

Schedule C Closure - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans:		
MSWLF	\$1,379	\$9,728
C & D Landfill and Other Non-MSWLF	\$1,532	\$10,417
Other Solid Waste Facilities	\$1,226	\$11,949
Special Waste Management Plan Component	\$111	\$477

- B.** For a complex plan, fees shall be determined as follows:
The initial fee submitted with the plan shall be equal to the initial fee for the single component with the highest initial fee as set forth in schedules in subsection (A). The maximum fee shall be the sum total of the maximum fee for each individual component as set forth in schedules in subsection (A).
- C.** For each plan being reviewed, the Department shall issue an itemized interim bill to the applicant with each letter of deficiency or letter of intent to approve the facility plan. The applicant shall pay the interim bill within 45 days of receipt of the bill. If the interim bill is not paid within 45 days, the Department shall mail a notice of the past due bal-

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ance to the applicant. If the applicant does not pay the interim bill within 30 days of receipt of the notice of past due balance, the Department shall either cease review of the plan or withhold final approval of the plan pending payment of the interim bill.

- D.** The Department shall issue a final itemized bill at the same time the Department issues the approval to operate or informs the applicant in writing of denial of approval. If the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the difference between the actual cost and the amount listed and paid shall be returned to the applicant with a final itemized bill within 30 days of the issuance of the approval to operate, or denial of the approval. If the actual cost of plan review is greater than the corresponding amount listed, the Department shall send the applicant a final itemized bill for the difference between the initial fee and any interim fees paid and the actual cost of reviewing the plan, except that the final bill shall not exceed the applicable maximum fee specified in subsection (A) or (B). Such difference shall be paid in full within 45 days of receipt of the bill.
- E.** The Department shall keep a record of all fees due, including the costs associated with denial of approval. Any amount due the Department shall be paid to the Department within 45 days of issuance of the approval. If the final bill is not paid within the 45 days, the Department shall mail a notice of past due balance to the applicant. Failure to pay the amount due within 15 days of receipt of the notice of past due balance shall result in the automatic initiation of proceedings by the Department for suspension of the approval, in accordance with A.R.S. § 41-782, and the suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 41-782. The Department shall review no further plans for an entity which has not paid all fees due for a previous approval or denial of approval.
- F.** When determining actual cost under subsection (D), the Department shall use an hourly billing rate for all direct labor hours spent working on the review of a plan, plus any direct cost specified in subsection (I), which were incurred but are not included in the hourly billing rate.
- G.** Billable labor hours spent working on the review of a solid waste facility plan shall consist of time spent by solid waste plan review technical staff on tasks specifically related to the processing, approval, or denial of a particular solid waste facility plan, including time at the facility or proposed site inspecting the facility or site, time at a public hearing, time at meetings with the public, or time at meetings with the applicant or the applicant's representatives, including the time at a preapplication conference.
- H.** Direct labor hours shall not include any of the following:
1. Training necessary for review of a specific plan.
 2. Travel to or from any facility, meetings, or hearings which is necessary in conjunction with a plan review.
 3. Time by clerical or supervisory staff, unless the supervisory staff is filling in for a particular technical staff member in that person's absence.
- I.** Other allowable direct costs that the Department shall include in the plan review fee, if applicable, are any of the following:
1. Laboratory analysis charges.
 2. Public notice advertising.
 3. Presiding officer expenses.
 4. Court reporter expenses.
 5. Facility rentals.
 6. Contract services.
 7. Other reasonable, direct, plan review-related expenses documented in writing by the Department.
- J.** ~~Except as provided in subsection (M), the~~ The hourly rate shall be ~~\$38.30~~ \$42.91, beginning ~~July 1, 1996~~ October 1, 1999. If the fee schedule or hourly rate is not changed, the current fee schedule and hourly rate shall remain in effect for ~~the following~~ each successive fiscal year. The hourly rate ~~shall be~~ is based on an annual sum of the following solid waste facility plan review program related costs divided by the total number of direct labor hours allocated for solid waste facility plan review for that year:
1. Salary and the costs of employee benefits for plan review technical employees directly involved in the review of solid waste facility plans.
 2. Salary and costs of employee benefits for plan review support employees, such as supervisory and clerical personnel, prorated on a per employee bases.
 3. Other operating expenses attributable to all solid waste facility plan review employees.
 4. Per diem expenses and travel expenses.
 5. Capital equipment.
- K.** Except as provided in subsection (M), an applicant who has submitted an administratively complete plan for a solid waste facility plan approval before July 1, 1996, shall not be required to remit an initial fee and shall be billed only for those direct labor hours and other direct costs incurred by the Department on or after July 1, 1996. If a solid waste facility plan is not administratively complete on July 1, 1996, an initial fee for that type of plan shall be paid at the time of resubmission.

- L.** An applicant who has submitted an administratively complete plan for a special waste management component before July 1, 1997, shall not be required to remit an initial fee and shall be billed only for direct hours and other direct costs incurred by the Department on or after July 1, 1997. If a special waste management component plan is not administratively complete before July 1, 1997, an initial fee for that type of plan shall be paid at the time of resubmission.
- M.** The fees listed in Schedules A, B, and C for the special waste management plan component of a solid waste facility plan are effective July 1, 1997.